

# OREGON ADMINISTRATIVE RULES for SPECIAL EDUCATION

Early Intervention (0-2 Years)  
Early Childhood Special Education (3-5 Years)  
School Age (K-21)

*AUGUST 2013*



## **Oregon Department of Education**

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Oregon Revised Statutes, 2011 Edition  
<http://www.leg.state.or.us/ors/home.htm>

Proposed OAR Revisions & Adoptions by the  
Oregon School Board  
<http://www.ode.state.or.us/search/page/?id=236>

OARs adopted by the State School Board in 2012:  
<http://www.ode.state.or.us/search/page/?id=3541>

OARS adopted by the State School Board in 2013:  
<http://www.ode.state.or.us/search/page/?id=3819>

Proposed OAR changes for 2013:  
<http://www.ode.state.or.us/search/page/?=3820>

# OREGON DEPARTMENT OF EDUCATION

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**SECRETARY OF STATE, ARCHIVES DIVISION  
Division 400: ESDs, School Districts, & Individual School Records  
(Selected OARs)**

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**FEDERAL REGULATIONS**

[34 CFR § 300 Part B IDEA](#)

*INDIVIDUALS WITH DISABILITIES EDUCATION ACT 2004  
School Age (5 to 21) and Early Childhood Special Education (3 to 5)*

[34 CFR § 303 Part C IDEA](#)

*INDIVIDUALS WITH DISABILITIES EDUCATION ACT 2004  
Early Intervention (Birth to 3)*

[34 CFR § 99 FERPA](#)

*Family Educational Rights and Privacy Act*

[34 CFR § 104 Section 504/ADA](#)

*Nondiscrimination on the basis of disability in programs or activities  
receiving federal financial assistance.*

# OREGON DEPARTMENT OF EDUCATION

## DIVISION 1 PROCEDURAL RULES

### 581-001-0005

#### Model Rules of Procedure

Pursuant to the provisions of ORS 183.341, the State Board of Education adopts the Attorney General's Model Rules of Procedure under the Administrative Procedure Act in effect on January 1, 2012, except for special education due process hearings authorized under ORS 343.165, special education complaint investigations under ORS 343.041(3), and rulemaking relating to the implementation of Individuals with Disabilities Act, which shall be heard in accordance with rules of the State Board of Education implementing the federal law, Individuals with Disabilities Education Act, in effect as of January 1, 2012 [ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the Department of Education.]

Stat. Auth.: ORS 183

Stats. Implemented: ORS 183.341

Hist.: 1EB 2, f. 12-22-58; 1EB 125, f. 11-4-71, ef. 11-15-71; 1EB 160, f. 11-2-73, ef. 11-25-73; Renumbered from 581-061-0035, 4-1-76; 1EB 222, f. 3-22-76, ef. 4-1-76; 1EB 14-1978, f. & ef. 4-3-78; 1EB 7-1980, f. & ef. 4-17-80; 1EB 20-1981(Temp), f. 12-29-81, ef. 12-31-81; 1EB 11-1982, f. & ef. 3-24-82; 1EB 2-1984, f. 2-17-84, ef. 5-8-84; 1EB 22-1986, f. & ef. 7-14-86; EB 2-1995, f. & cert. ef. 1-24-95; ODE 2-2006(Temp), f. & cert. ef. 2-14-06 thru 8-1-06; Administrative correction 8-22-06; ODE 4-2007, f. & cert. ef. 2-21-07; ODE 6-2011, f. & cert. ef. 4-22-11; ODE 10-2012, f. 3-30-12, cert. ef. 4-2-12

### 581-001-0110

#### Confidentiality and Inadmissibility of Mediation Communications

- (1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.
- (2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.
- (3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.
- (4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.
- (5) Mediations Excluded. Sections (6)-(10) of this rule do not apply to:
  - (a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or
  - (b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;
  - (c) Mediation in which the only parties are public bodies;
  - (d) Mediation involving two or more public bodies and a private party if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential;
  - (e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation.
- (6) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:
  - (a) All the parties to the mediation and the mediator agree in writing to the disclosure; or
  - (b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)-(d), (j)-(l) or (o)-(p) of section (9) of this rule.

- (7) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in sections (8)-(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.
- (8) Written Agreement. Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondiscoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an "agreement to mediate." [Form not included. See ED. NOTE.]
- (9) Exceptions to confidentiality and inadmissibility.
- (a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.
  - (b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.
  - (c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.
  - (d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.
  - (e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.
  - (f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.
  - (g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation.
  - (h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.
  - (i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.
  - (j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

- (k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:
  - (A) a request for mediation, or
  - (B) a communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation, or
  - (C) a final offer submitted by the parties to the mediator pursuant to ORS 243.712, or
  - (D) a strike notice submitted to the Employment Relations Board.
- (l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.
- (m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:
  - (A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege, or
  - (B) Attorney work product prepared in anticipation of litigation or for trial, or
  - (C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency, or
  - (D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation, or
  - (E) Settlement concepts or proposals, shared with the mediator or other parties.
- (n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the State Superintendent, Associate Superintendent or designee determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.
- (o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under ORS 30.402 or state or federal law requires the terms to be confidential.
- (p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).
- (10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

[ED. NOTE: The form(s) referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth. ORS 36.224

Stats. Implemented: ORS 36.224, ORS 36.228, ORS 36.230, ORS 36.232

Hist.: ODE 7-2001, f. & cert. ef. 1-29-01

**DIVISION 15  
SPECIAL EDUCATION**

**DEFINITIONS**

**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) "**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.
- (34) "**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.
- (35) "**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.
- (36) "**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.
- (37) "**Superintendent**" means the State Superintendent of Public Instruction or the designee of the State Superintendent of Public Instruction.
- (38) "**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.
- (39) "**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.
- (40) "**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

## **GENERAL SUPERVISION**

### **581-015-2005**

#### **Criteria for Approving School District Special Education Programs**

(1) School districts operating or initiating special education programs must have their programs approved by the State Superintendent of Public Instruction in order to qualify such programs for state reimbursement. As part of this process, districts must subscribe to the following:

- (a) Special education instructional programs in the district must include a continuum of services to meet the individual special education needs of all resident children with disabilities, including resident children with disabilities enrolled in public charter schools. For all school purposes residency for children with disabilities enrolled in charter schools is determined in accordance with ORS chapter 338.
- (b) Special education must be established and conducted as an integral part of the district's regular school program.
- (c) Children who require special education have the same rights and privileges provided to other students.

(2) In addition, the school district must have on file with the Oregon Department of Education a set of assurances and other documentation as required that ensure district compliance with requirements set forth in Oregon Revised Statutes and Oregon Administrative Rules for the education of children with disabilities.

Stat. Auth.: ORS 343.041, 343.045

Stats. Implemented: ORS 343.221

Hist.: 1EB 208, f. 12-19-75, ef. 1-16-76; Renumbered from 581-022-0175; 1EB 248, f. & ef. 9-23-76; 1EB 269, f. & ef. 12-22-77; 1EB 48-1978, f. & ef. 11-17-78; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0035, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 10-2011(Temp), f. & cert. ef. 8-23-11 thru 2-19-12; ODE 8-2012, f. & cert. ef. 2-17-12

### **581-015-2010**

#### **Census and Data Reporting**

(1) Each school district must report to the Department all resident children with disabilities who have been identified, located and evaluated and are receiving early intervention, early childhood special education or special education from a public or private educational program on December 1 of each school year.

(2) Charter School Students - Each school district in which a charter school is located reports children with disabilities enrolled in the charter schools located in the district and receiving services described in (1), regardless of parental residency. Residency for children enrolled in charter schools is determined in accordance with ORS chapter 338.

(3) If no children have been identified, located, and evaluated as being disabled, school districts must report this fact.

(4) Private School Students - Each school district must conduct an annual count of the number of private school children as follows:

(a) On October 1 of each year, each school district must count all children attending private schools located within the boundaries of the district.

(b) On December 1 of each year, each school district must count all parentally placed children with disabilities attending non-profit private schools located within the boundaries of the district, in accordance with OAR 581-015-2475, whether or not these children are receiving equitable special education services as described in OAR 581-015-2460.

(5) School districts must report to the Department additional data as required by the Department for the preparation of reports to federal or state agencies. The Department will notify school districts of additional data needed to meet the requirements of federal or state law and the applicable reporting dates.

Stat. Auth.: ORS 343.041, 343.045 & 343.055;

Stats. Implemented: ORS 338.165, 343.155, 34 CFR 300.137 & 139

Hist.: ODE 2-2000, f. & cert. ef. 2-1-00; Renumbered from 581-015-0038, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 10-2011(Temp), f. & cert. ef. 8-23-11 thru 2-19-12; ODE 8-2012, f. & cert. ef. 2-17-12

### **581-015-2015**

#### **Compliance Monitoring**

School districts involved in the education of children with disabilities will be monitored by the Department on a regular basis to ensure compliance with the requirements of the Individuals with Disabilities Education Act, Oregon Revised Statutes, and Oregon Administrative Rules. Monitoring procedures may include district self-assessment, data collection, analysis and reporting, on-site visits, review of policies and procedures, review of the development and implementation of IEPs, improvement planning, and auditing federal fund use.

Stat. Auth.: ORS 343.041, ORS 343.045 & ORS 343.055

Stats. Implemented: ORS 343.041, ORS 343.055

Hist.: 1EB 15-1983, f. 11-23-83, ef. 11-25-83; EB 6-1993, f. & cert. ef. 2-11-93; EB 11-1995, f. & cert. ef. 5-25-95; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0048, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2020**

#### **Recovery of Funds for Misclassified Children**

(1) School districts must ensure that children identified on the special education child count under Part B of the Individuals with Disabilities Education Act are limited to eligible children.

(2) For purposes of this rule, an "eligible child" means a child aged three through school-age who:

(a) Is determined to be a child with a disability under OAR 581-015-2130 to 581-015-2180;

(b) Has a current IEP or IFSP that provides for special education and related services that is being implemented; and

(c) Is receiving a free appropriate public education.

(3) For the purposes of this rule, an "ineligible child" means a child for whom one or more of the requirements in subsection (2) is not met.

(4) The Department may recover funds for ineligible children included on a district's special education child count.

Stat. Auth.: ORS 343.041, 343.055

Stats. Implemented: ORS 343.243

Hist.: 1EB 269, f. & ef. 12-22-77; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0049, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2025**

#### **Advanced Payment to School Districts for Special Education Programs**

(1) In accordance with ORS 343.670, the Department may make advance payments to a school district or education service district that operates a special education program approved by the State Superintendent of Public Instruction.

(2) Advance payments paid by the Oregon Department of Education to the school or education service district will be made quarterly.

(3) The first three advance payments will be calculated either upon the district's reimbursement for the prior year or the district's estimated costs for special education for the coming school year, at the discretion of the Department.

- (4) The fourth payment will be based upon the district's approved reimbursement for the current claim less the three advance payments.
- (5) In no event will the fourth payment be remitted until the Department has completed the final auditing of a district's claim.

Stat. Auth.: ORS 343.041, 343.055

Stats. Implemented: ORS 343.670

Hist.: 1EB 269, f. & ef. 12-22-77; 1EB 14-1979, f. 10-4-79, ef. 10-5-79; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0057, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2030**

#### **Procedures for Complaints as Required by IDEA Regulations**

- (1) An organization or individual, including an organization or individual from another state, may file with the State Superintendent of Public Instruction a written, signed complaint that the Department, or a sub grantee, including but not limited to a regional program, an education service district or a local education agency is violating or has violated the Individuals with Disabilities Education Act or regulations under that Act.
- (2) The complainant must send a copy of the complaint to the public agency serving the child at the same time the complainant files the complaint with the Department.
- (3) Upon receipt of a complaint under this provision, the Department will provide a copy of the Notice of Procedural Safeguards to a parent or adult student who files a complaint.
- (4) If a complaint alleges violations outside the scope of the Individuals with Disabilities Education Act, the complainant will be informed of alternative procedures that are available to address the complainant's allegations.
- (5) The complaint must allege a violation that occurred not more than one year before the date that the complaint is received by the Department
- (6) The complaint must include the facts on which the complaint is based. If the facts as alleged by the complainant would be considered a violation of the Individuals with Disabilities Education Act:
  - (a) The Superintendent will request the public agency to respond to the allegations. The Superintendent (or designee) may also initiate attempts to resolve the complaint through mediation or alternative dispute resolution, including local resolution.
  - (b) The respondent must respond to the allegations and furnish any information or documents requested by the Superintendent within ten business days from the receipt of request for response from the Superintendent unless another time period is specified by the Superintendent. At the same time, the respondent must send a copy of the response and documents to the complainant. If the complainant does not otherwise have access to confidential information in the response, the respondent must provide the complainant with the non-confidential portion(s) of the response.
- (7) The Superintendent will give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint or the public agency's response. The complainant must provide a copy of any further written information to the public agency that is the subject of the complaint, unless it would be a hardship to do so. In those situations, the Department will provide a copy of the written information to the public agency.
- (8) The Superintendent will review all of the written information submitted by the complainant and the public agency to resolve the allegations in the complaint.
- (9) The Superintendent may conduct further investigation, such as telephone or onsite interviews, to the extent necessary to resolve the complaint allegations.
- (10) If a written complaint is received that is also the subject of a due process hearing under OAR 581-015-2345, or contains multiple issues of which one or more are part of that hearing, the Superintendent will set aside any part of the complaint that is being addressed in the due process hearing, until the conclusion of the hearing. Any issue in the complaint that is not a part of the due process hearing will be resolved using the time limit and procedures in this rule.
- (11) If an issue raised in a complaint has previously been decided in a due process hearing involving the same parties, the hearing decision is binding and the Superintendent will inform the complainant to that effect. A complaint alleging a school district's failure to implement a due process decision will be resolved by the Superintendent.
- (12) The Superintendent will issue a written decision that addresses each allegation in the complaint and contains findings of fact, conclusions, and reasons for the Department's final decision within 60 days of receipt of the complaint unless:
  - (a) Exceptional circumstances related to the complaint require an extension; or

- (b) The complainant and public agency agree in writing to extend the time to try mediation or local resolution.
- (13) If the Superintendent finds a violation, the Superintendent's written decision will include any necessary corrective action to be undertaken as well as any documentation to be supplied by any party to ensure that the corrective action has occurred. If the decision is that a school district has failed to provide appropriate services, the Superintendent will address:
- (a) How to remediate the failure to provide those services, including, as appropriate, compensatory education, monetary reimbursement or other corrective action appropriate to the needs of the child; and
  - (b) Appropriate future provision of services for all children with disabilities.
- (14)(a) Parties may seek judicial review of the final order under ORS 183.484. Judicial review may be obtained by filing a petition for review within 60 days of service of the final order with the Marion County Circuit Court or with the Circuit Court for the County where the party resides.
- (b) Pursuant to OAR 137-004-0080 and ORS 183.484(2), a party to the complaint may request reconsideration of the final order by the Superintendent within 60 days after the date of the order. Except as provided in this subsection, the Superintendent and a party seeking reconsideration shall follow the procedure for reconsideration described in OAR 137-004-0080.
- (c) Notwithstanding OAR 137-004-0080, the Superintendent may not stay a final order upon request by a party and any party subject to Corrective Action resulting from the order must commence the Corrective Action according to the final order.
- (15) Corrective action ordered by the Superintendent must be completed within the timelines established in the final order unless another time period is specified by the Department.
- (16) At any time during the pendency of the complaint, if the Superintendent determines that there is a strong likelihood that the respondent has significantly breached the Individuals with Disabilities Education Act and that delay may cause irreparable harm, the Superintendent may order interim relief.
- (17) If the respondent refuses to voluntarily comply with a plan of correction when so ordered, the Superintendent may take one or more of following actions:
- (a) Disapprove in whole or part, the respondent's application for federal funding;
  - (b) Withhold or terminate further assistance to the respondent for an approved project;
  - (c) Suspend payments, under an approved project, to a respondent;
  - (d) Order, in accordance with a final state audit resolution determination, the repayment of specified federal funds; and
  - (e) Withhold all or part of a district's basic school support in accordance with ORS 327.103.
- (18) Before the Superintendent denies or withholds funding or orders reimbursement as provided in section (17) of this rule, the Superintendent will notify the respondent of the right to request a hearing in accordance with ORS 183.415.
- (a) The hearing request must be made to the Superintendent within 30 days of receiving notice;
  - (b) The Superintendent will appoint a hearings officer who will conduct the hearing in accordance with ORS 183.413 to 183.470;
  - (c) The burden of proof at the hearing is on the Department;
  - (d) The Superintendent's decision is final, subject to appeal to the United States Secretary of Education or the Oregon Court of Appeals.
- (19) No person may be subject to retaliation or discrimination for having filed or participated in this complaint procedure. Any person who believes that she or he has been subject to retaliation or discrimination may file a complaint under this rule with the Superintendent.

Stat. Auth.: ORS 343.041

Stats. Implemented: ORS 343.041, 34 CFR 300.151-153; 34 CFR 300.504(a)(2)

Hist.: 1EB 28-1980, f. & ef. 12-23-80; EB 26-1987(Temp), f. & ef. 11-17-87; EB 22-1988, f. & cert. ef. 5-24-88; EB 32-1988, f. & cert. ef. 8-3-88; EB 44-1990, f. & cert. ef. 9-12-90; EB 35-1992(Temp), f. & cert. ef. 11-24-92; EB 8-1993, f. & cert. ef. 3-25-93; ODE 15-1999, f. & cert. ef. 9-24-99, Renumbered from 581-001-0010; ODE 29-2000, f. & cert. ef. 12-11-00; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0054, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 6-2011, f. & cert. ef. 4-22-11; ODE 9-2013(Temp), f. & cert. ef. 4-9-13 thru 10-6-13; ODE 14-2013, f. & cert. ef. 7-11-13

## **581-015-2035**

### **Minimum Standards for Sign Language Interpreters Serving Students in Public Schools**

(1) Definitions. For purposes of this rule, the following definitions shall apply:

- (a) "CI" means Certificate of Interpretation issued by RID.
- (b) "CT" means Certificate of Transliteration issued by RID.
- (c) "EI/ECSE" means Early Intervention and Early Childhood Special Education.

- (d) "EIPA" means the Educational Interpreter Performance Assessment®, including both the written and performance components.
- (e) "NIC" means the National Interpreter Certification by RID.
- (f) "Public School" means a public agency or school district or as defined in OAR 581-015-2000.
- (g) "RID" means Registry of Interpreters for the Deaf Inc.
- (h) "Sign Language Interpreter" means a person who provides educational interpreting services to students with hearing impairments.
- (i) "Student" means a student with a hearing impairment who is:
  - (A) Eligible for EI/ECSE or special education services under OAR 581-015-2150; or
  - (B) A qualified student with a disability under Section 504 as defined in OAR 581-015-2390.
- (2) Minimum Standard. A public school may employ or contract for the services of a sign language interpreter for a student only if the sign language interpreter meets the following minimum standards:
  - (a) The sign language interpreter must achieve a passing score of 3.5 or above on the EIPA Performance Test or hold RID NIC, CI or CT Certification; and
  - (b)(A) Hold a Bachelor's or Associate's Degree from an Interpreter Education Program or in a related educational field; or (B) Achieve a passing score on the EIPA Written test.
- (3) Continuing professional development. Each sign language interpreter must complete and document 12 seat hours of continuing professional development related to sign-language interpretation each school year that the sign language interpreter is employed by or working under a contract for a public school in Oregon. A public school may only employ or contract for the services of sign language interpreters that meet this continuing professional development requirement.
- (4) Timeline for meeting rule requirements. Sign language interpreters must meet the following requirements if the interpreter is employed by or under a contract with a public school:
  - (a) On or after July 1, 2008, the interpreter must meet the standards required by section (3) of this rule.
  - (b) On or after July 1, 2013, the interpreter must meet all of the requirements of this rule.

Stat. Auth.: ORS 185.225, 343.041  
 Stats. Implemented: ORS 185.110, 185.225  
 Hist.: ODE 11-2008, f. & cert. ef. 4-21-08

## **FREE APPROPRIATE PUBLIC EDUCATION**

### **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, except for children enrolled in charter schools. For all school purposes residency for charter school students is determined in accordance with ORS chapter 338.

Stat. Auth.: ORS 343.055  
 Stats. Implemented: ORS 338.165, 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; ODE 10-2011(Temp), f. & cert. ef. 8-23-11 thru 2-19-12; ODE 8-2012, f. & cert. ef. 2-17-12

### **581-015-2045**

#### **Age Limitations and Exceptions to FAPE**

- (1) A district must admit an otherwise eligible student who has not yet reached 21 years of age on or before September 1 of the current school year.
- (2) A student who receives a regular high school diploma is no longer entitled to FAPE. A regular education diploma does not include an alternative degree that is not fully aligned with the state's academic standards, such as a certificate or general educational development credential (GED).

- (3) If a school district chooses to provide special education to a student with a regular high school diploma, that student remains eligible for FAPE.
- (4) The obligation to make a FAPE available to individuals with disabilities 18 through 21 years old who have been convicted as adults and are incarcerated in an adult correctional facility applies only to those individuals who, in their last educational placement before their incarceration in the adult correctional facility:
  - (a) Were identified as being a child with a disability as defined in OAR 581-015-2000(4); or
  - (b) Had an individualized education program.
- (5) For purposes of subsection (4) of this rule,
  - (a) "Adult correctional facility" means:
    - (A) A local correctional facility as defined ORS 169.005;
    - (B) A regional correctional facility as defined in ORS 169.620; or
    - (C) A Department of Corrections institution as defined in ORS 421.005;
  - (b) "Identified as being a child with a disability" means has been determined eligible or was involved in the process of determining the individual's disability and eligibility for special education and related services under OAR 581-015-2130 to OAR 581-015-2180; and
  - (c) "Last educational placement" includes juvenile correctional facilities.

Stat. Auth.: ORS 343.055,

Stats. Implemented: ORS 339.115, 34 CFR 300.102

Hist: ODE 3-2000, f. & cert. ef. 2-1-00; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0601, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2050**

#### **Graduation**

- (1) Graduation with a regular high school diploma under OAR 581-022-1130 constitutes a change in placement, requiring written prior notice in accordance with OAR 581-015-2310.
- (2) A school district is not required to conduct a reevaluation before terminating eligibility due to graduation with a regular high school diploma.
- (3) In accordance with OAR 581-022-1130, a school district may award an alternative document as described in local school board policies to a student with a disability. Graduation with an alternative document does not terminate eligibility under OAR 581-015-2045(2), require an evaluation. or require written prior notice.

Stat. Auth.: ORS 343.055

Stats. Implemented: ORS 339.115, ORS 343.295

Hist: ODE 3-2000, f. & cert. ef. 2-1-00; Renumbered from 581-015-0602, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2055**

#### **Assistive Technology**

- (1) School districts must ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if required as a part of the child's special education, related services or supplementary aids and services.
- (2) On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP team determines that the child needs access to those devices to receive a free appropriate public education.
- (3) School district policies govern liability, if any, for the loss or damage of assistive technology devices.
- (4) School district policies govern transfer of an assistive technology device when a child with a disability using the device ceases to attend school in the district that purchased the device. "Transfer" means the process by which a school district that has purchased an assistive technology device may sell, lease or loan the device for the continuing use of a child with a disability who is ceasing to attend school in the district.

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

Stats. Implemented: ORS 343.045, ORS 343.223, 34 CFR 300.105

Hist.: ODE 34-1999, f. 12-13-99, cert. ef. 12-14-99; Renumbered from 581-015-0560, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2060**

#### **Accessible Materials**

- (1) School districts must ensure the timely provision of print instructional materials, including textbooks that comply with the National Instructional Materials Accessibility Standards (NIMAS) for students who are blind or print disabled, in accordance with OAR 581-022-1640.
- (2) School districts must ensure the timely provision of instructional materials in accessible formats to children who need instructional materials in accessible formats, including those who are not blind or print disabled.

Stat. Auth.: ORS 343.041, ORS 343.045,  
 Stats. Implemented: ORS 343.045, 34 CFR 300.172  
 Hist.: ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2065**

#### **Extended School Year Services**

- (1) School districts must ensure that extended school year services are available as necessary to provide a free appropriate public education to a child with a disability.
- (2) Extended school year services must be provided only if the child's IEP team determines, on an individual basis, that the services are necessary for the provision of free appropriate public education to the child.
- (3) A school district may not:
  - (a) Limit extended school year services to particular categories of disability; or
  - (b) Unilaterally limit the type, amount, or duration of those services.
- (4) The purpose of extended school year services is the maintenance of the child's learning skills or behavior, not the teaching of new skills or behaviors.
- (5) School districts must develop criteria for determining the need for extended school year services. Criteria must include regression and recoupment time based on documented evidence or, if no documented evidence, on predictions according to the professional judgment of the team.
- (6) For the purposes of section (5) of this rule:
  - (a) "Regression" means significant loss of skills or behaviors in any area specified on the IEP as a result of an interruption in education services;
  - (b) "Recoupment" means the recovery of skills or behaviors specified on the IEP to a level demonstrated before the interruption of education services.
- (7) For the purposes of this rule, "extended school year services" means special education and related services that:
  - (a) Are provided to a child with a disability:
    - (A) Beyond the normal school year of the school district;
    - (B) In accordance with the child's IEP; and
    - (C) At no cost to the parents of the child; and
  - (b) Meet the standards of the Department.

Stat. Auth.: ORS 343.055, ORS 343.151  
 Stats. Implemented: ORS 343.151, 34 CFR 300.106  
 Hist.: ODE 3-2000, f. & cert. ef. 2-1-00; Renumbered from 581-015-0605, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2070**

#### **Nonacademic Services**

- (1) School districts must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP team, to provide nonacademic and extracurricular services and activities in a manner to afford children with disabilities an equal opportunity for participation in those services and activities.
- (2) Nonacademic and extracurricular services and activities may include meals, recess periods, counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school district, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the school district and assistance in making outside employment available.

Stat. Auth.: ORS 343.041, 343.045 & 343.055  
 Stats. Implemented: ORS 343.045, 34 CFR 300.107  
 Hist.: 1EB 269, f. & ef. 12-22-77; EB 11-1995, f. & cert. ef. 5-25-95; ODE 31-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 8-2004(Temp), f. & cert. ef. 5-11-04 thru 10-15-04; ODE 9-2004, f. & cert. ef. 7-9-04; Renumbered from 581-015-0062, ODE 10-2007, f. & cert. ef. 4-25-07



## **581-015-2075**

### **Charter Schools**

- (1) For all school purposes, residency for charter school children is determined in accordance with ORS chapter 338, revised 2011.
- (2) In accordance with procedural safeguards for special education, a school district must serve resident children with disabilities attending public charter schools located in the district in the same manner as the school district serves children with disabilities in other district schools, including but not limited to:
  - (a) Identifying, locating, and evaluating students, in accordance with OAR 581-015-2100 – 581-015-2180, to determine which children enrolled in a public charter school may be in need of special education and related services
  - (b) Implementing special education and related services according to each child's individual education programs (IEP) in accordance with OAR 581-015-2200 – 581-015-2230.
  - (c) Providing supplementary and related services on site at the public charter school to the same extent to which the school district has a policy or practice of providing such services on site to its other public schools.
- (3) A school district in which a public charter school is located must provide IDEA funds to those charter schools on the same basis as the school district provides IDEA funds to other public schools in the district, including proportional distribution based on relative enrollment of children with disabilities, at the same time as funds are distributed to other public schools in the district.
- (4) When a student enrolls in a public charter school, the school district in which the public charter school is located shall:
  - (a) Provide written notification of the student's enrollment to the student in which the student resides;
  - (b) Request, in accordance with applicable confidentiality provisions in IDEA and OAR 581-015-0220 through 581-015-0400 and 34 CFR §§300.610 through 300.620, the student records of the student, including all information related to an individualized education program developed for the student;
  - (c) If a student resides in another district, provide written notification to the student's parent, guardian, or person in parental relationship to provide information about:
    - (A) The school district's responsibility to identify, locate and evaluate to determine a student's need for special education and related services and to provide those special education services in the public charter school; and
    - (B) The methods by which the school district may be contacted to answer questions or provide information related to special education and related services.
- (5) Each school district that receives an individualized education program (IEP) under subsection (4)(b) must, in consultation with the child's parents, provide a free appropriate public education to the child, in accordance with OAR 581-015-2230(1), until the new district implements the individualized education program from the previous district or develops, adopts and implements a new IEP that meets the applicable requirements. If the information received was in effect in a previous school district in another state, the district will implement it in accordance with OAR 581-015-2230(2).
- (6) When a student no longer is enrolled in a public charter school for any reason, the school district in which the public charter school is located shall notify
  - (a) The school district in which the student resides to provide notice:
    - (A) that the student no longer is enrolled in the public charter school; and
    - (B) that the district will provide the student education records including all information related to the student's individualized education program if the student seeks enrollment or services from the district in which the student resides. Transfer of the information in (6)(b)(ii) is subject to the confidentiality provisions of IDEA and OAR 581-021-0230 – 581-021-0400.
  - (b) The student's parent, guardian or person in parental relationship to provide information about:
    - (A) The responsibility of the school district in which the student resides to identify, locate and evaluate students and implement services; and
    - (B) The methods by which the school district in (6)(a) may be contacted to answer questions or provide information about special education and related services.
    - (C) The responsibility of the district to provide student education records, including all information related to the student's individualized education program, if the student seeks enrollment or services from another school district, including the parental resident district. Transfer of student education records (6)(b)(ii) is subject to the requirements of IDEA and OAR 581-021-0230 – 581-021-0400.

Stat. Auth.: ORS 338.165

Stats. Implemented: ORS 338.165, 343.045, 34 CFR 300.209

Hist.: ODE 10-2007, f. & cert. ef. 4-25-07; ODE 10-2011(Temp), f. & cert. ef. 8-23-11 thru 2-19-12; ODE 8-2012, f. & cert. ef. 2-17-12

## CHILD FIND

### **581-015-2080**

#### **Child Find**

(1) The requirements of this rule apply to all children unless they are no longer entitled to a free appropriate public education under OAR 581-015-2040 – 581-015-2050.

(2) School districts must identify, locate and evaluate all resident children with disabilities, regardless of the severity of the disability, who are in need of early intervention, early childhood special education, or special education services, including:

- (a) Highly mobile children with disabilities (such as migrant and homeless children);
- (b) Children who are wards of the state;
- (c) Indian preschool children who reside on reservations;
- (d) Children who are suspected of having a disability even though they are advancing from grade to grade;
- (e) Children enrolled in public charter schools;
- (f) Children who are home schooled;
- (g) Children below the age of compulsory school attendance who are not enrolled in a public or private school program; and
- (h) Children above the age of compulsory school attendance who have not graduated with a regular high school diploma.

(3) For purposes of this rule, residency is determined in accordance with ORS chapter 339, except for children enrolled in charter schools. Residency for children enrolled in charter schools is determined in accordance with ORS chapter 338. The district in which the charter school is located is responsible for child find for students enrolled in the charter school regardless of parental resident district.

(4) The district in which the private school is located is responsible for conducting child find activities for all children enrolled in the private school, in accordance with OAR 581-015-2085, regardless of parental resident district.

(5) The lead agency as defined in OAR 581-015-2700(20) and its contractors provides a public awareness program that:

(a) Prepares and disseminates information on the availability of early intervention and other services, as described in paragraph (b) of this section, to all primary referral sources (especially hospitals and physicians). The information is to be given to:

- (A) Parents with infants and toddlers;
- (B) Parents with premature infants;
- (C) Parents with infants that have physical risk factors associated with learning or developmental complications; and
- (D) Parents of toddlers with disabilities, regarding services available to them on their child's third birthday, no fewer than 90 days prior to the toddler's third birthday.

(b) Has procedures for assisting primary referral sources to disseminate information on the availability of early intervention services to parents of infants or toddlers with disabilities. This information includes:

- (A) A description of the availability of early intervention services;
- (B) A description of the child find system and how to refer a child under age three for an evaluation or early intervention services; and
- (C) A central directory as defined in OAR 581-015-2713.

(6) The lead agency must coordinate child find efforts with all other major State efforts to locate and identify children by other State agencies relevant to early childhood or educational or developmental needs.

Stat. Auth.: ORS 343.041, 343.045, 343.157

Stats. Implemented: ORS 343.045, 343.157, 34 CFR 300.111, 34 CFR 303.302, 34 CFR 301

Hist.: 1EB 269, f. & ef. 12-22-77; 1EB 14-1983, f. 11-23-83, ef. 11-25-83; EB 11-1995, f. & cert. ef. 5-25-95; ODE 16-2000, f. & cert. ef. 5-23-00; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0037, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 10-2011(Temp), f. & cert. ef. 8-23-11 thru 2-19-12; ODE 8-2012, f. & cert. ef. 2-17-12; ODE 14-2012, f. 3-30-12, cert. ef. 4-2-12

### **581-015-2085**

#### **Child Find for Children Attending Private Schools**

- (1) Each school district must locate, identify and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary and secondary schools located within the boundaries of the school district.
- (2) The child find process for parentally-placed private school children must be designed to ensure the equitable participation of parentally-placed private school children with disabilities and an accurate count of such children.
- (3) The school district's child find activities for parentally-placed private school children must be similar to, and completed within a comparable time period, to child find activities for public school children with disabilities.
- (4) The cost of implementing child find activities, including individual evaluations, may not be considered in determining whether a school district has met its obligations to spend a proportionate share under OAR 581-015-2470.
- (5) These child find requirements apply to all parentally-placed private school children, including those children who are residents of another state.
- (b) Each school district must consult with appropriate representatives of private school children with disabilities on how to carry out these activities, in accordance with OAR 581-015-2480.

Stat. Auth.: ORS 343.041, ORS 343.045, ORS 343.157  
 Stats. Implemented: ORS 343.045, ORS 343.157, 34 CFR 300.131  
 Hist.: ODE 10-2007, f. & cert. ef. 4-25-07

## CONSENT

### **581-015-2090**

#### **Consent**

- (1) Consent means that the parent or adult student:
  - (a) Has been fully informed, in his or her native language or other mode of communication, of all information relevant to the activity for which consent is sought; and
  - (b) Understands and agrees in writing to the carrying out of the activity for which his or her consent is sought.
- (2) Consent is voluntary on the part of the parent and meets the requirements of the consent provisions of this rule and 34 CFR 300.622 and 34 CFR 99.30 implementing IDEA, and FERPA respectively.
- (3) Consent for initial evaluation:
  - (a) The school district must provide notice under OAR 581-015-2310 and obtain informed written consent from the parent or adult student before conducting an initial evaluation to determine if a child qualifies as a child with a disability under OAR 581-015-2130 through 581-015-2180.
    - (A) Consent for initial evaluation may not be construed as consent for the initial provision of special education and related services.
    - (B) The school district must make reasonable efforts to obtain the informed consent from a parent for an initial evaluation to determine a child's eligibility for special education services.
  - (b) If a parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for an initial evaluation, does not respond to a request for consent for an initial evaluation, or revokes consent for an initial evaluation, the school district may, but is not required to, pursue the initial evaluation of the child using mediation or due process hearing procedures. A district does not violate its child find obligations if it declines to pursue the evaluation using these procedures.
  - (c) Consent for initial evaluation for a child who is a ward of the state may be obtained under OAR 581-015-2095(2).
- (4) Consent for initial provision of services:
  - (a) A school district must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.
  - (b) The school district must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.
  - (c) If a parent or adult student does not respond or refuses to consent for initial provision of special education and related services or revokes consent for the initial provision of special education and related services, the school district may not seek to provide special education and related services to the child by using mediation or due process hearing procedures.
  - (d) If a parent or adult student refuses to grant consent for initial provision of special education and related services, does not respond to a request to provide such consent, or revokes consent for the initial provision of special education and related services:
    - (A) The school district will not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide the child with the special education and related services for which the school district requests consent; and

- (B) The school district is not required to convene an IEP meeting or develop an IEP for the child for the special education and related services for which the school district requests such consent.
- (e) If, at any time subsequent to the initial provision of special education and related services, the parent or adult student revokes consent in writing for the continued provision of special education and related services, the school district
  - (A) May not continue to provide special education and related services to the student, but must provide prior written notice in accordance with OAR 581-015-2310 before ceasing the provision of special education and related services; and
  - (B) Is not required to amend the student's education records to remove any references to the student's receipt of special education and related services because of the revocation of consent.
- (5) Consent for reevaluation:
  - (a) A school district must obtain informed parent consent before conducting any reevaluation of a child with a disability, except as provided in subsections (b) and OAR 581-015-2095.
  - (b) If a parent refuses to consent to the reevaluation or revokes consent for the reevaluation, the school district may, but is not required to, pursue the reevaluation by using mediation or due process hearing procedures. A district does not violate its child find obligations if it declines to pursue the reevaluation using these procedures.
- (6) Consent to Access Public Benefits or Insurance:
  - (a) Prior to accessing a child or parent's public benefits or insurance for the first time, or disclosing a child's personally identifiable information to a State's public benefits or insurance program for the first time, a public agency or school district must obtain informed consent in accordance with IDEA 34 CFR 300.622 and the Family Rights and Privacy Act (FERPA (34 CFR 99.30)).
  - (b) Such consent must specify:
    - (A) The personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular child);
    - (B) The purpose of the disclosure (e.g., billing for services), and
    - (C) The agency to which the disclosure may be made (e.g., the State's public benefits or insurance program (e.g., Medicaid); and
    - (D) Specify that the parent understands and agrees that the public agency may access the child's or parent's public benefits or insurance to pay for services.
- (7) Revocation of consent:
  - (a) A parent or adult student may revoke consent at any time before the completion of the activity or action for which they have given consent.
    - (A) A parent or adult student may revoke consent for an evaluation or reevaluation that has not yet been conducted.
    - (B) A parent or adult student may revoke consent for the provision of special education services in writing at any time before or during the provision of those services.
    - (C) A parent or adult student may revoke consent for release of personally identifiable information to the State's public benefits or insurance program (e.g., Medicaid).
  - (b) If a parent or adult student revokes consent, that revocation is not retroactive.
- (8) Other consent requirements:
  - (a) The school district must document its reasonable efforts to obtain parent consent in accordance with OAR 581-015-2195(3).
  - (b) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent does not respond to a request for consent:
    - (A) The school district may not use mediation or due process hearing procedures to seek consent; and
    - (B) The school district is not required to consider the child as eligible for special education services.
  - (c) A refusal to consent to one service or activity may not be used to deny the parent or child any other service, benefit, or activity of the school district, except as provided in this rule.

Stat. Auth.: ORS 343.041, 343.045, 343.055, 343.155, 343.164

Stats. Implemented: ORS 343.155, 343.164, 34 CFR 300.9, 300.154, 300.300; 300.622

Hist.: 1EB 269, f. & ef. 12-22-77; 1EB 37-1978, f. & ef. 10-5-78; EB 9-1993, f. & cert. ef. 3-25-93; EB 11-1995, f. & cert. ef. 5-25-95; ODE 16-1999, f. & cert. ef. 9-24-99; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0039, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 13-2009, f. & cert. ef. 12-10-09; ODE 11-2013(Temp), f. & cert. ef. 4-25-13 thru 10-21-13

## **581-015-2095**

### **Exceptions to Consent**

- (1) Written parent or adult student consent is not required before:
  - (a) Reviewing existing data as part of an evaluation or a reevaluation;
  - (b) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children; or
  - (c) Conducting evaluation tests, procedures or instruments that are identified on a child's IEP as a measure for determining progress; or
  - (d) Conducting a screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation.
- (2) Consent for initial evaluation for wards of the state: If a child is a ward of the state and is not residing with the child's parent, the public agency is not required to obtain informed written consent from the parent for an initial evaluation to determine whether the child is a child with a disability if:
  - (a) Despite reasonable efforts to do so, the agency cannot discover the whereabouts of the parent of the child;
  - (b) The rights of the parents of the child have been terminated in accordance with state law; or
  - (c) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.
- (3) If, after reasonable efforts to obtain parent consent, the parent does not respond, the school district may conduct a reevaluation without consent, unless the reevaluation is an individual intelligence test or test of personality. "Reasonable efforts" means that the school district has used procedures consistent with OAR 581-015-2195(3).
- (4) Written consent is not required if an administrative law judge determines under OAR 581-015-2375 that the evaluation or reevaluation is necessary to ensure that the child is provided with a free appropriate public education.

Stat. Auth.: ORS 343.041, ORS 343.045, ORS 343.055, ORS 343.164;

Stats. Implemented: ORS 343.155, ORS 343.164, 34 CFR 300.300; 34 CFR 300.302

Hist.: ODE 16-1999, f. & cert. ef. 9-24-99; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0042, ODE 10-2007, f. & cert. ef. 4-25-07

## **EVALUATIONS & ELIGIBILITY DETERMINATIONS**

### **581-015-2100**

#### **Responsibility for Evaluation and Eligibility Determination**

- (1) For school-age children, school districts and juvenile and adult corrections education programs are the public agencies responsible for evaluating children and determining their eligibility for special education services.
- (2) For preschool children,
  - (a) School districts are responsible for the eligibility evaluations of children for EI/ECSE services.
  - (b) Designated referral and evaluation agencies are responsible for determining the eligibility of children for EI/ECSE services.
  - (c) EI/ECSE programs are responsible for conducting any necessary evaluations other than for eligibility determination.

Stat. Auth.: ORS 343.041, ORS 343.045, ORS 343.055 & ORS 343.157

Stats. Implemented: ORS 343.055, ORS 343.157

Hist.: ODE 12-2000, f. 5-3-00, cert. ef. 5-3-00; Renumbered from 581-015-0700, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2105**

#### **Evaluation and Reevaluation Requirements**

- (1) General: A public agency must conduct an evaluation or reevaluation process in accordance with this rule and 581-015-2110 before:
  - (a) Determining that a child is a child with a disability under OAR 581-015-2130 through 581-015-2180;
  - (b) Determining that a child continues to have a disability under OAR 581-015-2130 through 581-015-2180;
  - (c) Changing the child's eligibility, or

- (d) Terminating the child's eligibility as a child with a disability, unless the termination is due to graduation from high school with a regular diploma or exceeding the age of eligibility for a free appropriate public education under OAR 581-015-2045.
- (2) Request for initial evaluation: Consistent with the consent requirements in OAR 581-015-2090, a parent or public agency may initiate a request for an initial evaluation to determine if a child is a child with a disability.
- (3) When initial evaluation must be conducted:
  - (a) An initial evaluation must be conducted to determine if a child is eligible for special education services when a public agency suspects or has reason to suspect that:
    - (A) The child has a disability that has an adverse impact on the child's educational performance; and
    - (B) The child may need special education services as a result of the disability.
  - (b) The public agency must designate a team to determine whether an initial evaluation will be conducted.
    - (A) The team must include the parent and at least two professionals, at least one of whom is a specialist knowledgeable and experienced in the evaluation and education of children with disabilities.
    - (B) The team may make this decision without a meeting. If a meeting is held, parents must be invited to participate in accordance with OAR 581-015-2190.
- (4) Reevaluation:
  - (a) The public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with OAR 581-015-2115, subject to subsection (b) and OAR 581-015-2110(2):
    - (A) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
    - (B) If the child's parents or teacher requests a reevaluation.
  - (b) A reevaluation for each child with a disability:
    - (A) May occur not more than once a year, unless the parent and public agency agree otherwise; and
    - (B) Must occur at least every three years, unless the parent and public agency agree that a reevaluation is unnecessary.
- (5) Summary of Achievement and Performance: For a student whose eligibility terminates due to graduation with a regular diploma or exceeding the age of eligibility, a school district must provide the student with a summary of the student's academic achievement and functional performance, including recommendations on how to assist the student in meeting the student's postsecondary goals.

Stat. Auth.: ORS 343.041, ORS 343.157

Stats. Implemented: ORS 343.146, ORS 343.157, 34 CFR 300.301; 34 CFR 300.303

Hist.: ODE 10-2007, f. & cert. ef. 4-25-07

## **581-015-2110**

### **General Evaluation and Reevaluation Procedures**

- (1) Evaluation planning. Before conducting any evaluation or reevaluation of a child, the public agency must conduct evaluation planning in accordance with OAR 581-015-2115.
- (2) Notice and consent.
  - (a) Before conducting any evaluation or reevaluation, the public agency must provide notice to the parent in accordance with OAR 581-015-2310 that describes any evaluation procedures the agency proposes to conduct as a result of the evaluation planning process.
  - (b) Before conducting any evaluation or reevaluation, the public agency must obtain informed written consent for evaluation in accordance with OAR 581-015-2090 and 581-015-2095.
  - (c) If the public agency refuses an evaluation or reevaluation requested by the parent, the public agency must provide the parent with prior written notice under OAR 581-015-2310.
  - (d) Parents may challenge the public agency's refusal to conduct a reevaluation under OAR 581-015-2345.
- (3) Conduct of evaluation. In conducting the evaluation, the public agency must:
  - (a) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent that may assist in determining:
    - (A) Whether the child is a child with a disability under OAR 581-015-2130 through 581-015-2180; and

- (B) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);
- (b) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and
- (c) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
- (4) Other evaluation procedures. Each public agency must ensure that:
- (a) Assessments and other evaluation materials used to assess a child under this part:
- (A) Are selected and administered so as not to be discriminatory on a racial or cultural basis;
- (B) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so;
- (C) Are used for the purposes for which the assessments or measures are valid and reliable;
- (D) Are administered by trained and knowledgeable personnel; and
- (E) Are administered in accordance with any instructions provided by the producer of the assessments.
- (b) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
- (c) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).
- (d) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;
- (e) The evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified; and
- (f) The evaluation includes assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child.
- (5) Evaluation timelines:
- (a) Initial. An initial evaluation must be completed within 60 school days from written parent consent to the date of the meeting to consider eligibility.
- (b) Reevaluation. A reevaluation must be completed within 60 school days from written parent consent (or from the date the evaluation is initiated under OAR 581-015-2095(3)(c)) to the date of the meeting to consider eligibility, continuing eligibility or the student's educational needs.
- (c) Exceptions. An evaluation may be completed in more than 60 school days under the following circumstances documented in the child's educational record:
- (A) The parents of a child repeatedly fail or refuse to produce the child for an evaluation, or for other circumstances outside the school district's control.
- (B) The student is a transfer student in the process of evaluation and the district and the parents agree in writing to a different length of time to complete the evaluation in accordance with subsection (d);
- (C) The district and the parents agree in writing to extend the timeline for an evaluation to determine eligibility for specific learning disabilities in accordance with OAR 581-015-2170.
- (d) Transfer students.
- (A) When a child with disabilities transfers from one school district to another school district in the same school year, the previous and current school district must coordinate any pending assessments as necessary and as expeditiously as possible to ensure prompt completion of the evaluation.
- (B) The exception under subsection (c)(B) only applies if the current school district is making sufficient progress to ensure a prompt completion of the evaluation and the parent and current school district agree to a specific time for completion of the evaluation.

Stat. Auth.: ORS 343.041 & 343.157  
 Stats. Implemented: ORS 343.146, 343.157, 34 CFR 300.304, 300.305  
 Hist.: ODE 10-2007, f. & cert. ef. 4-25-07; ODE 6-2013, f. & cert. ef. 1-17-13

## **581-015-2115**

### **Evaluation Planning**

- (1) Review of existing evaluation data. As part of an initial evaluation (if appropriate) and as part of any reevaluation, the child's IEP or IFSP team, and other qualified professionals, as appropriate, must:
  - (a) Review existing evaluation data on the child, including:
    - (A) Evaluations and information provided by the parents of the child;
    - (B) Current classroom-based, local, or state assessments, and classroom-based observations; and
    - (C) Observations by teachers and related services providers; and
  - (b) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine:
    - (A) Whether the child is, or continues to be, a child with a disability;
      - (i) For a school-age child, under OAR 581-015-2130 through 581-015-2180; or
      - (ii) For a preschool child, under OAR 581-015-2780 or 581-015-2795;
    - (B) The present levels of academic achievement and related developmental needs of the child;
    - (C) Whether the child needs, or continues to need, EI/ECSE or special education and related services; and
    - (D) For reevaluation, whether the child needs any additions or modifications to special education and related services or, for a preschool child, any additions or modifications to ECSE services:
      - (i) To enable the child to meet the measurable annual goals in the child's IEP or IFSP; and
      - (ii) To participate, as appropriate, in the general education curriculum or, for preschool children, appropriate activities.
- (2) Conduct of review. The team described in subsection (1) may conduct this review without a meeting. If a public agency holds a meeting for this purpose, parents must be invited to participate in conformance with OAR 581-015-2190 or, for parents of preschool children, with OAR 581-015-2750.
- (3) Source of data. The public agency must administer tests and other evaluation materials as may be needed to produce the additional data identified under subsection (1)(b).
- (4) Requirements if additional data are not needed.
  - (a) If the child's IEP or IFSP team determines that no additional data are needed to determine whether the child is or continues to be a child with a disability, and to determine the child's educational and developmental needs, the public agency must notify the child's parents:
    - (A) Of that determination and the reasons for it; and
    - (B) Of the right of the parents to request an assessment to determine whether, for purposes of services under this part, the child continues to be a child with a disability, and to determine the child's educational and developmental needs.
  - (b) The public agency is not required to conduct an assessment of the child unless requested to do so by the child's parents.

Stat. Auth.: ORS 343.041, ORS 343.045, ORS 343.055 & ORS 343.157

Stats. Implemented: ORS 343.146, ORS 343.157, 34 CFR 300.305

Hist.: ODE 12-2000, f. 5-3-00, cert. ef. 5-3-00; Renumbered from 581-015-0701, ODE 10-2007, f. & cert. ef. 4-25-07

## **581-015-2120**

### **Determination of Eligibility**

- (1) Upon completing the administration of assessments and other evaluation materials, a team must determine whether the child is a child with a disability under OAR 581-015-2130 through 581-015-2180 and the educational needs of the child.
  - (a) The team must include the parent, in accordance with OAR 581-015-2190, and two or more qualified professionals, at least one of whom is knowledgeable and experienced in the evaluation and education of children with the suspected disability. This team may be the child's IEP team.
  - (b) For a child suspected of having a specific learning disability, the team must meet the requirements of OAR 581-015-2170.
- (2) The team must prepare an evaluation report and written statement of eligibility.
  - (a) The evaluation report(s) must describe and explain the results of the evaluation conducted.
  - (b) The written statement of eligibility must include:
    - (A) A list of the evaluation data considered in determining the child's eligibility;
    - (B) A determination of whether the child meets the minimum evaluation criteria for one of the disability categories in OAR 581-015-2130 through 581-015-2180 or OAR 581-015-2795;
    - (C) A determination of whether the primary basis for the suspected disability is:



- (i) A lack of appropriate instruction in reading (including the essential components of reading) or math; or
  - (ii) Limited English proficiency;
  - (D) A determination of whether the child's disability has an adverse impact on the child's educational performance;
  - (E) A determination of whether, as a result of the disability, the child needs special education services; and
  - (F) The signature of each member of the team indicating agreement or disagreement with the eligibility determination.
- (c) For a child suspected of having a specific learning disability, the team's written report and documentation of determination of eligibility must meet the requirements of OAR 581-015-2170.
- (3) The team must determine a child to be eligible under this rule if the child has a disability and needs special education and related services, even though the child is advancing from grade to grade.
- (4) For a child who may have disabilities in more than one category, the team need only qualify the child under one disability category. However, the child must be evaluated in all areas related to the suspected disability or disabilities, and the child's IEP must address all of the child's special education needs.
- (5) The team may not find a child eligible for special education services if:
- (a) The determinant factor for that eligibility decision is:
    - (A) Lack of appropriate instruction in reading, including the essential components of reading instruction, or lack of appropriate instruction in math; or
    - (B) Limited English proficiency; and
  - (b) The child does not otherwise meet the eligibility criteria under OAR 581-015-2130 through 581-015-2180.
- (6) The school district must provide a copy of the evaluation report and the documentation of determination of eligibility to the parent at no cost.

Stat. Auth.: ORS 343.045; ORS 343.146, ORS 343.157

Stats. Implemented: ORS 343.035, ORS 343.146, ORS 343.157, 34 CFR 300.306, 34 CFR 300.308, 34 CFR 300.111

Hist.: EB 22-1995, f. & cert. ef. 9-15-95; ODE 12-2000, f. 5-3-00, cert. ef. 5-3-00; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03;

Renumbered from 581-015-0053, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2125**

#### **Interpretation of Evaluation Data**

In interpreting evaluation data for the purpose of determining if a child is a child with a disability under OAR 581-015-2130 through 581-015-2180, and the educational needs of the child, each team must:

- (1) Draw upon information from a variety of sources, including but not limited to, aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background and adaptive behavior; and
- (2) Ensure that information obtained from all these sources is documented and carefully considered.

Stat. Auth.: ORS 343.041, ORS 343.157;

Stats. Implemented: ORS 343.157, ORS 343.045, ORS 343.146, ORS 343.155; 34 CFR 300.306

Hist.: 1EB 269, f. & ef. 12-22-77; EB 22-1995, f. & cert. ef. 9-15-95; ODE 12-2000, f. 5-3-00, cert. ef. 5-3-00; Renumbered from 581-015-0073, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2130**

#### **Autism Spectrum Disorder**

- (1) If a child is suspected of having an autism spectrum disorder, the following evaluation must be conducted:
  - (a) Developmental profile. A developmental profile that describes the child's historical and current characteristics that are associated with an autism spectrum disorder, including:
    - (A) Impairments in communication;
    - (B) Impairments in social interaction;
    - (C) Patterns of behavior, interests or activities that are restricted, repetitive, or stereotypic; and
    - (D) Unusual responses to sensory experiences.
  - (b) Observations. At least three observations of the child's behavior, at least one of which involves direct interactions with the child. The observations must occur in multiple environments, on at least two different days, and be completed by one or more licensed professionals knowledgeable about the behavioral characteristics of autism spectrum disorder.
  - (c) Communication assessment. An assessment of communication to address the communication characteristics of autism spectrum disorder, including measures of language semantics and

- pragmatics completed by a speech and language pathologist licensed by the State Board of Examiners for Speech-Language Pathology and Audiology or the Teacher Standards and Practices Commission;
- (d) Medical or health assessment statement. A medical statement or a health assessment statement indicating whether there are any physical factors that may be affecting the child's educational performance;
  - (e) Behavior rating tool. An assessment using an appropriate behavior rating tool or an alternative assessment instrument that identifies characteristics associated with an autism spectrum disorder.
  - (f) Other.
    - (A) Any additional assessments necessary to determine the impact of the suspected disability:
      - (i) On the child's educational performance for a school-age child; or
      - (ii) On the child's developmental progress for a preschool child; and
    - (B) Any additional evaluations or assessments necessary to identify the child's educational needs.
- (2) To be eligible as a child with an autism spectrum disorder, the child must meet all of the following minimum criteria:
- (a) The team must have documented evidence that the child demonstrates all of the characteristics listed under subsection (1)(a). Each of these characteristics must be:
    - (A) Characteristic of an autism spectrum disorder;
    - (B) Inconsistent or discrepant with the child's development in other areas; and
    - (C) Documented over time and/or intensity.
- (3) For a child to be eligible for special education services as a child with an autism spectrum disorder, the eligibility team must also determine that:
- (a) The child's disability has an adverse impact on the child's educational performance; and
  - (b) The child needs special education services as a result of the disability.
- (4) A child may not be eligible for special education services on the basis of an autism spectrum disorder if the child's primary disability is an emotional disturbance under OAR 581-015-2145. However, a child with autism spectrum disorder as a primary disability may also have an emotional disturbance as a secondary disability.

Stat. Auth.: ORS 343.035(1), ORS 343.045, ORS 343.146, ORS 343.157;  
 Stats. Implemented: ORS 343.035(1), ORS 343.045, ORS 343.146, ORS 343.157, 34 CFR 300.8; 34 CFR 300.306  
 Hist.: 1EB 29-1978, f. & ef. 7-20-78; 1EB 18-1983(Temp), f. & ef. 12-20-83; 1EB 7-1986, f. & ef. 2-24-86; EB 25-1991(Temp), f. & cert. ef. 11-29-91; EB 16-1992, f. & cert. ef. 5-13-92; EB 22-1995, f. & cert. ef. 9-15-95; ODE 11-2000, f. 5-3-00, cert. ef. 7-1-00; ODE 8-2001, f. & cert. ef. 1-29-01; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0051(1), ODE 10-2007, f. & cert. ef. 4-25-07

**OAR 581-015-2135**  
**Communication Disorder**

- (1) If a child is suspected of having a communication disorder, the following evaluation must be conducted:
- (a) Speech-language assessment. A speech and language assessment administered by a speech and language pathologist licensed by a State Board of Examiners for Speech-Language Pathology and Audiology or the Teacher Standards and Practices Commission, including:
    - (A) When evaluating syntax, morphology, semantics or pragmatics, a representative language sample and comprehensive standardized tests that assess expression and comprehension;
    - (B) When a voice disorder is suspected, a voice assessment scale; and
    - (C) When a fluency disorder is suspected, an observation in at least two settings;
  - (b) Medical or health assessment statement. For a child suspected of having a voice disorder, a medical statement by an otolaryngologist licensed by a State Board of Medical Examiners. For other than a voice disorder, if a medical or health diagnosis is needed, a medical statement or health assessment statement describing relevant medical issues;
  - (c) Hearing evaluation or screening. An evaluation or screening of the child's hearing acuity and, if needed, a measure of middle ear functioning;
  - (d) Other.
    - (A) An evaluation of the child's oral mechanism, if needed;
    - (B) Any additional assessments necessary to determine the impact of the suspected disability:
      - (i) On the child's educational performance for a school-age child; or
      - (ii) On the child's developmental progress for a preschool child; and
    - (C) Any additional evaluations or assessments necessary to identify the child's educational needs.

- (2) To be eligible as a child with a specific communication disorder, the child must meet the following minimum criteria:
- (a) Voice disorder:
    - (A) The child demonstrates chronic vocal characteristics that deviate in at least one of the areas of pitch, quality, intensity or resonance;
    - (B) The child's voice disorder impairs communication or intelligibility; and
    - (C) The child's voice disorder is rated as moderate to severe on a voice assessment scale.
  - (b) Fluency disorder:
    - (A) The child demonstrates an interruption in the rhythm or rate of speech that is characterized by hesitations, repetitions, or prolongations of sounds, syllables, words or phrases;
    - (B) The child has a fluency disorder that interferes with communication and calls attention to itself across two or more settings; and
    - (C) The child demonstrates moderate to severe vocal dysfluencies or the child evidences associated secondary behaviors, such as struggling or avoidance as measured by a standardized measure.
  - (c) Phonological or articulation disorder:
    - (A) The child's phonology or articulation is rated significantly discrepant as measured by a standardized test; and
    - (B) The disorder is substantiated by a language sample or other evaluation(s).
  - (d) Syntax, morphology, pragmatic or semantic disorder:
    - (A) The child's language in the area of syntax, morphology, semantics or pragmatics is significantly discrepant as measured by standardized test(s) or other evaluation data; and
    - (B) The disorder is substantiated by a language sample or other evaluation(s).
    - (C) For a child to be eligible with a syntax, morphology, pragmatic or semantic disorder, the disorder is not the result of another disability.
- (3) For a child to be eligible for special education services as a child with a communication disorder, the eligibility team must also determine that:
- (a) The child's disability has an adverse impact on the child's educational performance; and
  - (b) The child needs special education services as a result of the disability.

Stat. Auth.: ORS 343.035(1), ORS 343.045, ORS 343.146, ORS 343.157;  
 Stats. Implemented: ORS 343.035(1), ORS 343.045, ORS 343.146, ORS 343.157, 34 CFR 300.8; 34 CFR 300.306  
 Hist.: 1EB 29-1978, f. & ef. 7-20-78; 1EB 18-1983(Temp), f. & ef. 12-20-83; 1EB 7-1986, f. & ef. 2-24-86; EB 25-1991(Temp), f. & cert. ef. 11-29-91; EB 16-1992, f. & cert. ef. 5-13-92; EB 22-1995, f. & cert. ef. 9-15-95; ODE 11-2000, f. 5-3-00, cert. ef. 7-1-00; ODE 8-2001, f. & cert. ef. 1-29-01; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0051(2), ODE 10-2007, f. & cert. ef. 4-25-07

## **581-015-2140**

### **Deafblindness**

- (1) If a child is suspected of having deafblindness, the following evaluation must be conducted:
- (a) The minimum evaluation procedures for hearing impairment and vision impairment under OAR 581-015-2150 and 581-015-2180, respectively;
  - (b) If the child demonstrates inconsistent or inconclusive responses in an assessment of one sensory area, a functional assessment must be administered by a state licensed educator of the visually impaired, a state licensed educator of the hearing impaired or an audiologist licensed by the State Board of Examiners for Speech-Language Pathology and Audiology.
- (2) To be eligible as a child with deafblindness, the child must meet one or more of the following minimum criteria:
- (a) The child meets the minimum criteria for both vision impairment and hearing impairment under OAR 581-015-2150 and 581-015-2180, respectively; or
  - (b) The child meets the minimum criteria for either vision impairment or hearing impairment and demonstrates inconsistent or inconclusive responses in an assessment of the other sensory area; or
  - (c) The child meets the minimum criteria for either vision impairment or hearing impairment and has a degenerative disease or pathology that affects the acuity of the other sensory area.
- (3) For a child to be eligible for special education services as a child having deafblindness, the eligibility team must also determine that:
- (a) The child's disability has an adverse impact on the child's educational performance; and
  - (b) The child needs special education services as a result of the disability.

Stat. Auth.: ORS 343.035(1), ORS 343.045, ORS 343.146, ORS 343.157;  
Stats. Implemented: ORS 343.035(1), ORS 343.045, ORS 343.157, 34 CFR 300.8; 34 CFR 300.306  
Hist.: 1EB 29-1978, f. & ef. 7-20-78; 1EB 18-1983(Temp), f. & ef. 12-20-83; 1EB 7-1986, f. & ef. 2-24-86; EB 25-1991(Temp), f. & cert. ef. 11-29-91; EB 16-1992, f. & cert. ef. 5-13-92; EB 22-1995, f. & cert. ef. 9-15-95; ODE 11-2000, f. 5-3-00, cert. ef. 7-1-00; ODE 8-2001, f. & cert. ef. 1-29-01; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0051(3), ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2145**

#### **Emotional Disturbance**

(1) If a child is suspected of having an emotional disturbance, the following evaluation must be conducted:

- (a) Social-emotional evaluation. An evaluation of the child's emotional and behavioral status, including a developmental or social history, when appropriate.
- (b) Medical or health assessment statement. A medical statement or a health assessment statement indicating whether there are any physical factors that may be affecting the child's educational performance;
- (c) Behavior rating scales. The completion of at least two behavior-rating scales, at least one of which is a standardized behavior measurement instrument;
- (d) Observation. An observation in the classroom and in at least one other setting by someone other than the child's regular teacher;
- (e) Other:
  - (A) Any additional assessments necessary to determine the impact of the suspected disability:
    - (i) On the child's educational performance for a school-age child; or
    - (ii) On the child's developmental progress for a preschool child; and
  - (B) Any additional evaluations or assessments necessary to identify the child's educational needs.

(2)(a) To be eligible as a child with an emotional disturbance, the child must meet the following minimum criteria:

- (b) The child exhibits one or more of the following characteristics over a long period of time and to a marked degree:
  - (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.

(3) For a child to be eligible for special education services as a child with an emotional disturbance, the eligibility team must also determine that:

- (a) The child's disability has an adverse impact on the child's educational performance; and
- (b) The child needs special education services as a result of the disability;

(4) A child who is socially maladjusted may not be identified as having an emotional disturbance unless the child also meets the minimum criteria under this rule.

Stat. Auth.: ORS 343.035(1), 343.045, 343.146 & 343.157  
Stats. Implemented: ORS 343.035(1), 343.045, 343.146, 343.157, 34 CFR 300.8 & 34 CFR 300.306  
Hist.: 1EB 29-1978, f. & ef. 7-20-78; 1EB 18-1983(Temp), f. & ef. 12-20-83; 1EB 7-1986, f. & ef. 2-24-86; EB 25-1991(Temp), f. & cert. ef. 11-29-91; EB 16-1992, f. & cert. ef. 5-13-92; EB 22-1995, f. & cert. ef. 9-15-95; ODE 11-2000, f. 5-3-00, cert. ef. 7-1-00; ODE 8-2001, f. & cert. ef. 1-29-01; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0051(4), ODE 10-2007, f. & cert. ef. 4-25-07; ODE 13-2011, f. & cert. ef. 10-31-11

### **581-015-2150**

#### **Hearing Impairment**

(1) If a child is suspected of having a hearing impairment, the following evaluation must be conducted:

- (a) Audiology assessment. An audiological assessment by an audiologist licensed by the State Board of Examiners for Speech-Language Pathology and Audiology;
- (b) Medical or health assessment statement. A medical statement or a health assessment statement indicating that the hearing loss is sensory-neural or conductive, if the conductive loss has been determined to be untreatable by a physician;
- (c) Other:
  - (A) Any additional assessments necessary to determine the impact of the suspected disability:
    - (i) On the child's educational performance for a school-age child; or
    - (ii) On the child's developmental progress for a preschool child; and

- (B) Any additional evaluations or assessments necessary to identify the child's educational needs.
- (2) To be eligible as a child with a hearing impairment, the child must meet one of the following minimum criteria:
- (a) The child has a pure tone average loss of 25 dbHL or greater in the better ear for frequencies of 500 Hz, 1000 Hz, and 2000 Hz, or a pure tone average loss of 35 dbHL or greater in the better ear for frequencies of 3000 Hz, 4000 Hz, and 6000 Hz; or
  - (b) The child has a unilateral hearing impairment with a pure tone average loss of 50 dbHL or greater in the affected ear for the frequencies 500 Hz to 4000 Hz; and
  - (c) The loss is either sensorineural or conductive if the conductive loss has been determined to be currently untreatable by a physician.
- (3) For a child to be eligible for special education services as a child with a hearing impairment, the eligibility team must also determine that:
- (a) The child's disability has an adverse impact on the child's educational performance; and
  - (b) The child needs special education services as a result of the disability.

Stat. Auth.: ORS 343.035(1), ORS 343.045, ORS 343.146, ORS 343.157;  
 Stats. Implemented: ORS 343.035(1), ORS 343.045, ORS 343.146, ORS 343.157, 34 CFR 300.8; 34 CFR 300.306  
 Hist.: 1EB 29-1978, f. & ef. 7-20-78; 1EB 18-1983(Temp), f. & ef. 12-20-83; 1EB 7-1986, f. & ef. 2-24-86; EB 25-1991(Temp), f. & cert. ef. 11-29-91; EB 16-1992, f. & cert. ef. 5-13-92; EB 22-1995, f. & cert. ef. 9-15-95; ODE 11-2000, f. 5-3-00, cert. ef. 7-1-00; ODE 8-2001, f. & cert. ef. 1-29-01; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0051(5), ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2155**

#### **Intellectual Disability**

- (1) If a child is suspected of having an intellectual disability, the following evaluation must be conducted:
- (a) Intelligence test. An individually administered standardized intelligence test meeting the reliability and validity standards of the American Psychological Association and administered by a licensed school psychologist, a psychologist licensed by the State Board of Psychological Examiners, or other individual assigned by a school district who has the training and experience to administer and interpret individually administered intelligence tests;
  - (b) Adaptive behavior scale. The administration of a valid adaptive behavior scale;
  - (c) Medical or health assessment statement. A medical statement or a health assessment statement indicating whether there are any sensory or physical factors that may be affecting the child's educational performance;
  - (d) Developmental history. A developmental history of the child;
  - (e) Other:
    - (A) Any additional assessments necessary to determine the impact of the suspected disability:
      - (i) On the child's educational performance for a school-age child; or
      - (ii) On the child's developmental progress for a preschool child; and
    - (B) Any additional evaluations or assessments necessary to identify the child's educational needs.
- (2) To be eligible as a child with an intellectual disability, the child must meet all of the following minimum criteria:
- (a) The child's intelligence test score is 2 or more standard deviations below the mean;
  - (b) The child has deficits in adaptive behavior coexistent with the child's impairment in intellectual functioning;
  - (c) The child's developmental level or educational achievement is significantly below age or grade norms; and
  - (d) The child's developmental or educational problems are not primarily the result of sensory disabilities or other physical factors.
- (3) For a child to be eligible for special education services as a child with an intellectual disability, the eligibility team must also determine that:
- (a) The child's disability has an adverse impact on the child's educational performance; and
  - (b) The child needs special education services as a result of the disability.

Stat. Auth.: ORS 343.035(1), 343.045, 343.146, 343.157;  
 Stats. Implemented: ORS 343.035(1), 343.045, 343.146, 343.157, 34 CFR 300.8, 300.306  
 Hist.: 1EB 29-1978, f. & ef. 7-20-78; 1EB 18-1983(Temp), f. & ef. 12-20-83; 1EB 7-1986, f. & ef. 2-24-86; EB 25-1991(Temp), f. & cert. ef. 11-29-91; EB 16-1992, f. & cert. ef. 5-13-92; EB 22-1995, f. & cert. ef. 9-15-95; ODE 11-2000, f. 5-3-00, cert. ef. 7-1-00; ODE 8-2001, f. & cert. ef. 1-29-01; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0051(6), ODE 10-2007, f. & cert. ef. 4-25-07; ODE 12-2011, f. & cert. ef. 10-31-11

## **OAR 581-015-2160**

### **Orthopedic Impairment**

- (1) If a child is suspected of having an orthopedic impairment, the following evaluation must be conducted:
  - (a) Medical or health assessment statement. A medical statement or a health assessment statement indicating a diagnosis of an orthopedic or neuromotor impairment or a description of the motor impairment;
  - (b) Motor assessment. A standardized motor assessment, including the areas of fine motor, gross motor and self-help, when appropriate, by a specialist knowledgeable about orthopedic or neuromotor development;
  - (c) Other:
    - (A) Any additional assessments necessary to determine the impact of the suspected disability:
      - (i) On the child's educational performance for a school-age child; or
      - (ii) On the child's developmental progress for a preschool child; and
    - (d) Any additional evaluations or assessments necessary to identify the child's educational needs.
- (2) To be eligible as a child with an orthopedic impairment, the child must meet all of the following minimum criteria:
  - (a) The child has a motor impairment that results in deficits in the quality, speed or accuracy of movement. These deficits must be documented by a score of two or more standard deviations below the mean in fine motor skills, gross motor skills, or self-help skills, or functional deficits in at least two of these three motor areas; and
  - (b) The child's condition is permanent or is expected to last for more than 60 calendar days.
- (3) For a child to be eligible for special education services as a child with an orthopedic impairment, the eligibility team must also determine that:
  - (a) The child's disability has an adverse impact on the child's educational performance; and
  - (b) The child needs special education services as a result of the disability.

Stat. Auth.: ORS 343.035(1), ORS 343.045, ORS 343.146, ORS 343.157;

Stats. Implemented: ORS 343.035(1), ORS 343.045, ORS 343.146, ORS 343.157, 34 CFR 300.8; 34 CFR 300.306

Hist.: 1EB 29-1978, f. & ef. 7-20-78; 1EB 18-1983(Temp), f. & ef. 12-20-83; 1EB 7-1986, f. & ef. 2-24-86; EB 25-1991(Temp), f. & cert. ef. 11-29-91; EB 16-1992, f. & cert. ef. 5-13-92; EB 22-1995, f. & cert. ef. 9-15-95; ODE 11-2000, f. 5-3-00, cert. ef. 7-1-00; ODE 8-2001, f. & cert. ef. 1-29-01; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0051(7), ODE 10-2007, f. & cert. ef. 4-25-07

## **581-015-2165**

### **Other Health Impairment**

- (1) If a child is suspected of having an other health impairment, the following evaluation must be conducted:
  - (a) Medical or health assessment statement. A medical statement or a health assessment statement, indicating a diagnosis of a health impairment or a description of the impairment, and a statement that the child's condition is permanent or is expected to last for more than 60 calendar days;
  - (b) Other:
    - (A) Any additional assessments necessary to determine the impact of the suspected disability:
      - (i) On the child's educational performance for a school-age child; or
      - (ii) On the child's developmental progress for a preschool child; and
    - (B) Any additional evaluations or assessments necessary to identify the child's educational needs.
- (2) To be eligible as a child with an other health impairment, the child must meet all of the minimum criteria:
  - (a) The child exhibits limited strength, vitality or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment;
  - (b) The child's limited strength, vitality or alertness is due to a chronic or acute health problem; and
  - (c) The child's condition is permanent or expected to last for more than 60 calendar days.
- (3) For a child to be eligible for special education services as a child with an other health impairment, the eligibility team must also determine that:
  - (a) The child's disability has an adverse impact on the child's educational performance; and
  - (b) The child needs special education services as a result of the disability.

Stat. Auth.: ORS 343.035(1), ORS 343.045, ORS 343.146, ORS 343.157;  
Stats. Implemented: ORS 343.035(1), ORS 343.045, ORS 343.146, ORS 343.157, 34 CFR 300.8; 34 CFR 300.306  
Hist.: 1EB 29-1978, f. & ef. 7-20-78; 1EB 18-1983(Temp), f. & ef. 12-20-83; 1EB 7-1986, f. & ef. 2-24-86; EB 25-1991(Temp), f. & cert. ef. 11-29-91; EB 16-1992, f. & cert. ef. 5-13-92; EB 22-1995, f. & cert. ef. 9-15-95; ODE 11-2000, f. 5-3-00, cert. ef. 7-1-00; ODE 8-2001, f. & cert. ef. 1-29-01; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0051(8), ODE 10-2007, f. & cert. ef. 4-25-07

## **581-015-2170**

### **Specific Learning Disability**

- (1) If a child is suspected of having a specific learning disability, the following evaluation must be conducted:
  - (a) Academic assessment. An assessment of the child's academic achievement toward Oregon grade-level standards;
  - (b) Review. A review of cumulative records, previous IEPs or IFSPs and teacher collected work samples;
  - (c) Observation. An observation of the child in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty, which must consist of:
    - (A) Information from an observation by a qualified professional in routine classroom instruction and monitoring of the child's performance before the child was referred for an evaluation; or
    - (B) An observation conducted by a qualified professional (who is a member of the evaluation team) of the child's academic performance in a regular classroom after the child has been referred for an evaluation and parent consent obtained; or
    - (C) For a child who is less than school age or out of school, an observation in an age-appropriate environment.
  - (d) Progress monitoring data, including:
    - (A) Data that demonstrate that before, or as part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
    - (B) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress that is directly linked to instruction.
  - (e) For a student evaluated using a response to intervention model as part of a comprehensive evaluation process to determine if the child has a specific learning disability, the evaluation must include documentation of:
    - (A) The type, intensity, and duration of scientific, research-based instructional intervention(s) provided in accordance with the district's response to intervention model;
    - (B) The student's rate of progress during the instructional intervention(s);
    - (C) A comparison of the student's rate of progress to expected rates of progress.
    - (D) Progress monitoring on a schedule that:
      - (i) Allows a comparison of the student's progress to the performance of peers;
      - (ii) Is appropriate to the student's age and grade placement;
      - (iii) Is appropriate to the content monitored; and
      - (iv) Allows for interpretation of the effectiveness of intervention.
  - (f) For a student evaluated using a model that is based on the student's strengths and weaknesses, the evaluation must include an assessment of the student's strengths and weaknesses in classroom performance and academic achievement, relative to age, Oregon grade-level standards, or intellectual development.
  - (g) Other:
    - (A) If needed, a developmental history;
    - (B) If needed, an assessment of cognition, fine motor, perceptual motor, communication, social or emotional, and perception or memory if the child exhibits impairment in one or more these areas;
    - (C) If needed, a medical statement or health assessment indicating whether there are any physical factors that may be affecting the child's educational performance; and
    - (D) Any other assessments required to determine the impact of the suspected disability:
      - (i) On the child's educational performance for a school-age child; or
      - (ii) On the child's developmental progress for a preschool child.
- (2) For consideration of eligibility in the area of specific learning disabilities, the eligibility team must include:
  - (a) A group of qualified professionals and the parent;

- (b) The child's regular classroom teacher or, if the child does not have a regular classroom teacher, a regular classroom teacher qualified to teach a child of his or her age, or, for a child of less than school age, a preschool teacher; and
  - (c) A person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or other qualified professional.
- (3) To be eligible as a child with a specific learning disability, the child must meet the following minimum criteria:
- (a) The child does not achieve adequately for the child's age or to meet Oregon grade-level standards in one or more of the following areas when provided with learning experiences and instruction appropriate for the child's age or Oregon grade-level standards:
    - (A) Basic reading skills;
    - (B) Reading fluency skills;
    - (C) Reading comprehension;
    - (D) Mathematics calculation;
    - (E) Mathematics problem-solving;
    - (F) Written Expression;
    - (G) Oral expression; or
    - (H) Listening comprehension.
  - (b) For a student evaluated using a response to intervention model, in relation to one or more of the areas in subsection (3)(a), the student does not make sufficient progress to meet age or Oregon grade-level standards based on the student's response to scientific, research-based intervention.
  - (c) For a student evaluated using a model that is based on the student's strengths and weaknesses, in relation to one or more of the areas in subsection (3)(a), the student exhibits a pattern of strengths and weaknesses in classroom performance, academic achievement, or both, relative to age, Oregon grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability.
  - (d) The child's rate of progress in subsection (3)(b) or pattern of strengths and weaknesses in subsection (3)(c) is not primarily the result of:
    - (A) A visual, hearing, or motor impairment; intellectual disability or emotional disturbance;
    - (B) Cultural factors;
    - (C) Environmental or economic disadvantage; or
    - (D) Limited English proficiency.
- (4) For a child to be eligible for special education services as a child with a specific learning disability, the eligibility team must also determine that:
- (a) The child's disability has an adverse impact on the child's educational performance; and
  - (b) The child needs special education services as a result of the disability.
- (5) The eligibility team must prepare an evaluation report and written statement of eligibility documenting its findings, including:
- (a) The evaluation data considered in determining the child's eligibility;
  - (b) A determination of whether the child meets the minimum criteria for a specific learning disability;
  - (c) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;
  - (d) The educationally relevant medical findings, if any;
  - (e) If the child participated in a response to intervention process, documentation that the parents were notified in a timely manner about: the state's policies regarding the amount and nature of student performance data that would be collected, and the general education services that would be provided, as part of the response to intervention process; strategies for increasing the child's rate of learning; and the parent's right to request an evaluation.
  - (f) The determination of the team concerning the effects of a visual, hearing, or motor disability; intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and
  - (g) A determination of whether the primary basis for the suspected disability is:
    - (A) A lack of appropriate instruction in reading or math; or
    - (B) Limited English proficiency;
  - (h) A determination of whether the child's disability has an adverse impact on the child's educational performance;
  - (i) A determination of whether, as a result of the disability, the child needs special education services; and



- (j) The signature of each member of the team indicating agreement or disagreement with the eligibility determination.

Stat. Auth.: ORS 343.035(1), 343.045, 343.146, 343.157;

Stats. Implemented: ORS 343.035(1), 343.045, 343.146, 343.157, 34 CFR 300.8, 300.306

Hist.: 1EB 29-1978, f. & ef. 7-20-78; 1EB 18-1983(Temp), f. & ef. 12-20-83; 1EB 7-1986, f. & ef. 2-24-86; EB 25-1991(Temp), f. & cert. ef. 11-29-91; EB 16-1992, f. & cert. ef. 5-13-92; EB 22-1995, f. & cert. ef. 9-15-95; ODE 11-2000, f. 5-3-00, cert. ef. 7-1-00; ODE 8-2001, f. & cert. ef. 1-29-01; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0051(9), ODE 10-2007, f. & cert. ef. 4-25-07; ODE 12-2011, f. & cert. ef. 10-31-11

### **581-015-2175**

#### **Traumatic Brain Injury**

- (1) If a child is suspected of having a traumatic brain injury, the following evaluation must be conducted:
- (a) Medical or health assessment statement. A medical statement or a health assessment statement indicating that an event may have resulted in a traumatic brain injury as defined in subsection (2);
  - (b) Psychological assessment. A comprehensive psychological assessment using a battery of instruments intended to identify deficits associated with a traumatic brain injury administered by a licensed school psychologist, a psychologist licensed by a State Board of Psychological Examiners, or other individuals who have the training and experience to administer and interpret the tests within the battery;
  - (c) Other.
    - (A) Other assessments including, but not limited to, motor assessments if the child exhibits motor impairments; communication assessments if the child exhibits communication disorders; and psychosocial assessments if the child exhibits changed behavior. These assessments must be completed by educators knowledgeable in the specific area being assessed;
    - (B) Other information relating to the child's suspected disability, including pre-injury performance and a current measure of adaptive ability;
    - (C) An observation in the classroom and in at least one other setting;
    - (D) Any additional assessments necessary to determine the impact of the suspected disability:
      - (i) On the child's educational performance for a school-age child; or
      - (ii) On the child's developmental progress for a preschool child; and
    - (E) Any additional evaluations or assessments necessary to identify the child's educational needs.
- (2) To be eligible as a child with a traumatic brain injury, the child must meet all of the following minimum criteria:
- (a) The child has an acquired injury to the brain caused by an external physical force;
  - (b) The child's condition is permanent or expected to last for more than 60 calendar days;
  - (c) The child's injury results in an impairment of one or more of the following areas:
    - (A) Communication;
    - (B) Behavior;
    - (C) Cognition, memory, attention, abstract thinking, judgment, problem-solving, reasoning, and/or information processing;
    - (D) Sensory, perceptual, motor and/or physical abilities.
- (3) For a child to be eligible for special education services as a child with a traumatic brain injury, the eligibility team must also determine that:
- (a) The child's disability has an adverse impact on the child's educational performance; and
  - (b) The child needs special education services as a result of the disability.
- (4) Students with brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma, are not eligible under the category of traumatic brain injury but may be eligible under a different category under this rule.

Stat. Auth.: ORS 343.035(1), ORS 343.045, ORS 343.146, ORS 343.157;

Stats. Implemented: ORS 343.035(1), ORS 343.045, ORS 343.146, ORS 343.157, 34 CFR 300.8; 34 CFR 300.306

Hist.: 1EB 29-1978, f. & ef. 7-20-78; 1EB 18-1983(Temp), f. & ef. 12-20-83; 1EB 7-1986, f. & ef. 2-24-86; EB 25-1991(Temp), f. & cert. ef. 11-29-91; EB 16-1992, f. & cert. ef. 5-13-92; EB 22-1995, f. & cert. ef. 9-15-95; ODE 11-2000, f. 5-3-00, cert. ef. 7-1-00; ODE 8-2001, f. & cert. ef. 1-29-01; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0051(10), ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2180**

#### **Vision Impairment**

- (1) If a child is suspected of having a vision impairment, the following evaluation must be conducted:

- (a) Medical statement. A medical statement by an ophthalmologist or optometrist licensed by a State Board of Examiners indicating whether the child has a vision impairment;
  - (b) Vision assessment. An assessment by a teacher of the visually impaired to identify the child's educational and compensatory needs, including a functional assessment of the child's residual visual acuity or field of vision.
  - (c) Other: Any additional assessments necessary to determine the impact of the suspected disability:
    - (A) On the child's educational performance for a school-age child; or
    - (B) On the child's developmental progress for a preschool child.
- (2) To be eligible as a child with a vision impairment, the child must meet one or more of the following minimum criteria:
- (a) The child's residual acuity is 20/70 or less in the better eye with correction;
  - (b) The child's visual field is restricted to 20 degrees or less in the better eye;
  - (c) The child has an eye pathology or a progressive eye disease which in the opinion of the ophthalmologist is expected to reduce either residual acuity or visual field according to the criteria stated in subsections (2)(a) or (b); or
  - (d) The assessment results of a licensed ophthalmologist or optometrist are inconclusive, and the child demonstrates inadequate use of residual vision.
- (3) For a child to be eligible for special education services as a child with vision impairment, the eligibility team must also determine that:
- (a) The child's disability has an adverse impact on the child's educational performance; and
  - (b) The child needs special education services as a result of the disability.

Stat. Auth.: ORS 343.035(1), ORS 343.045, ORS 343.146, ORS 343.157;  
 Stats. Implemented: ORS 343.035(1), ORS 343.045, ORS 343.146, ORS 343.157, 34 CFR 300.8; 34 CFR 300.306  
 Hist.: 1EB 29-1978, f. & ef. 7-20-78; 1EB 18-1983(Temp), f. & ef. 12-20-83; 1EB 7-1986, f. & ef. 2-24-86; EB 25-1991(Temp), f. & cert. ef. 11-29-91; EB 16-1992, f. & cert. ef. 5-13-92; EB 22-1995, f. & cert. ef. 9-15-95; ODE 11-2000, f. 5-3-00, cert. ef. 7-1-00; ODE 8-2001, f. & cert. ef. 1-29-01; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0051(11), ODE 10-2007, f. & cert. ef. 4-25-07

## **PARENT PARTICIPATION**

### **581-015-2190**

#### **Parent Participation – General**

- (1) School districts must provide one or both parents with an opportunity to participate in meetings with respect to the identification, evaluation, IEP and educational placement of the child, and the provision of a free appropriate public education to the child.
- (2) Meeting Notice:
  - (a) School districts must provide parents with a written notice of the meeting sufficiently in advance to ensure that one or both parents will have an opportunity to attend.
  - (b) The written notice must:
    - (A) State the purpose, time and place of the meeting and who will attend;
    - (B) Inform the parent that they may invite other individuals whom they believe have knowledge or special expertise regarding the child;
    - (C) Inform the parent that the team may proceed with the meeting even if the parent is not in attendance; and
    - (D) Inform the parent of whom to contact before the meeting to provide information if they are unable to attend.
- (3) The school district must take whatever action is necessary to ensure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.
- (4) A meeting does not include informal or unscheduled conversations involving school district personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.
- (5) Conducting a meeting without a parent in attendance: A meeting may be conducted without a parent in attendance if the school district has given the parent notice under subsection (2), or, for IEP or placement meetings, in accordance with OAR 581-015-2195.
- (6) Transfer of rights:
  - (a) The right to parent participation transfers to an adult student under OAR 581-015-2325.

- (b) After the transfer of rights to an adult student under OAR 581-015-2325, the school district must provide written notice of meetings to the adult student and parent, if the parent can be reasonably located. A parent receiving notice of a meeting under this subsection is not entitled to attend the meeting unless invited by the adult student or by the school district.

Stat. Auth.: ORS 343.041 & ORS 343.055, ORS 343.155

Stats. Implemented: ORS 343.155, 34 CFR 300.500; 34 CFR 300.327; 34 CFR 300.501(b)

Hist.: ODE 17-1999, f. & cert. ef. 9-24-99; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0063, ODE 10-2007, f. & cert. ef. 4-25-07

## **581-015-2195**

### **Additional Parent Participation Requirements for IEP and Placement Meetings**

- (1) Parent Participation: School districts must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP or placement meeting or are afforded the opportunity to participate, including:
- (a) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
  - (b) Scheduling the meeting at a mutually agreed on time and place.
- (2) Other Methods to Ensure Parent Participation: If neither parent can attend, the school district must use other methods to ensure parent participation, including, but not limited to, individual or conference phone calls or home visits.
- (3) Conducting an IEP/Placement Meeting without a Parent in Attendance: An IEP or placement meeting may be conducted without a parent in attendance if the school district is unable to convince the parents that they should attend.
- (a) If the school district proceeds with an IEP meeting without a parent, the district must have a record of its attempts to arrange a mutually agreed on time and place such as:
    - (A) Detailed records of telephone calls made or attempted and the results of those calls;
    - (B) Copies of correspondence sent to the parents and any responses received; and
    - (C) Detailed records of visits made to the parent's home or place of employment and the results of those visits.
  - (b) The Department considers school district attempts to convince parents to attend sufficient if the school district:
    - (A) Communicates directly with the parent and arranges a mutually agreeable time and place, and sends written notice required under OAR 581-015-2190(2) to confirm this arrangement; or
    - (B) Sends written notice required under OAR 581-015-2190(2) proposing a time and place for the meeting and states in the notice that the parent may request a different time and place, and confirms that the parent received the notice.
  - (c) "Sufficient attempts" may all occur before the scheduled IEP or placement meeting, and do not require the scheduling of multiple agreed-upon meetings unless the team believes this would be in the best interest of the child.
- (4) Considering Transition: If a purpose of the meeting is to consider postsecondary goals and transition services for a student, the written notice required by OAR 581-015-2190(2) must also:
- (a) Indicate this purpose;
  - (b) Indicate that the school district will invite the student; and
  - (c) Identify any other agency that will be invited to send a representative in accordance with OAR 581-015-2210(2)(b).
- (5) The school district must give the parent a copy of the IEP at no cost to the parent. If the parent does not attend the IEP meeting, the school district must ensure that a copy is provided to the parent.
- (6) When conducting IEP team meetings and placement meetings, the parent of a child with a disability and a school district may agree to use alternative means of meeting participation, such as video conferences and conference calls.

Stat. Auth.: ORS 343.041, ORS 343.045 & ORS 343.055

Stats. Implemented: ORS 343.045 & ORS 343.155, 34 CFR 300.322, 300.500; 34 CFR 300.327; 34 CFR 300.328; 34 CFR 300.501(c)

Hist.: 1EB 269, f. & ef. 12-22-77; EB 9-1993, f. & cert. ef. 3-25-93; EB 11-1995, f. & cert. ef. 5-25-95; ODE 17-1999, f. & cert. ef. 9-24-99; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0067, ODE 10-2007, f. & cert. ef. 4-25-07

## INDIVIDUALIZED EDUCATION PROGRAM (IEP)

### **581-015-2200 Content of IEP**

- (1) The individualized education program (IEP) must include:
- (a) A statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum.
  - (b) A statement of measurable annual goals, including academic and functional goals (and, for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of short-term objectives) designed to:
    - (A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
    - (B) Meet each of the child's other educational needs that result from the child's disability.
  - (c) A description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;
  - (d) A statement of the specific special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child:
    - (A) To advance appropriately toward attaining the annual goals;
    - (B) To be involved and progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and
    - (C) To be educated and participate with other children with disabilities and children without disabilities,
  - (e) The projected dates for initiation of services and modifications and the anticipated frequency, amount, location and duration of the services and modifications described in subsection (1)(d) of this rule.
  - (f) An explanation of the extent, if any, to which the child will not participate with children without disabilities in the regular class and activities described in subsection (1)(d) of this rule.
  - (g) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district-wide assessments of student achievement that are needed for the child to participate in the assessment:
    - (A) A child may not be exempt from participation in State or district-wide assessment, including extended and juried assessments, because of a disability, unless the parent has requested an exemption under OAR 581-022-0612.
    - (B) If the IEP team determines that the child must take an alternate assessment in any area instead of a regular State or district-wide assessment, a statement of why the child cannot participate in the regular assessment, and why the alternate assessment selected is appropriate for the child.
- (2) For the purposes of transition, the IEP must include:
- (a) Beginning not later than the first IEP to be in effect when the child turns 16, or younger, if determined appropriate by the IEP team, and updated annually thereafter:
    - (A) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; and
    - (B) The transition services (including courses of study) needed to assist the child in reaching those goals.
  - (b) Beginning at least one year before a student reaches age 18, or when the district obtains actual knowledge that within one year the student will marry or become emancipated before age 18, a statement that the district has informed the student that procedural rights will transfer to the student upon age 18, marriage or emancipation, whichever occurs first.

Stat. Auth.: ORS 343.041, 343.045, 343.055 & 343.151

Stats. Implemented: ORS 343.151 & 34 CFR 300.320

Hist.: 1EB 269, f. & ef. 12-22-77; EB 9-1993, f. & cert. ef. 3-25-93; ODE 32-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0068, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 26-2008, f. 10-23-08, cert. ef. 10-24-08

## **581-015-2205**

### **IEP Team Considerations and Special Factors**

- (1) In developing, reviewing and revising the child's IEP, the IEP team must consider:
  - (a) The strengths of the child;
  - (b) The concerns of the parents for enhancing the education of their child;
  - (c) The results of the initial or most recent evaluation of the child; and
  - (d) The academic, developmental, and functional needs of the child.
- (2) In developing, reviewing and revising the child's IEP, the IEP team must consider the following special factors:
  - (a) The communication needs of the child; and
  - (b) Whether the child needs assistive technology devices and services.
- (3) In developing, reviewing and revising the IEP of children described below, the IEP team must consider the following additional special factors:
  - (a) For a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies to address that behavior;
  - (b) For a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;
  - (c) For a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child; and
  - (d) For a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communication with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode.
- (4) If, in considering these special factors, the IEP team determines that a child needs a particular device or service (including an intervention, accommodation, or other program modification) for the child to receive free appropriate public education, the IEP team must include a statement to that effect in the child's IEP.
- (5) Nothing in OAR 581-015-2200 or this rule may be construed to require the IEP team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.

Stat. Auth.: ORS 343.041, ORS 343.045; ORS 343.055, ORS 343.151

Stats. Implemented: ORS 343.051, 34 CFR 300.320; 34 CFR 300.324(a)(1) & (2), (b)(2)

Hist.: ODE 32-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0568, ODE 10-2007, f. & cert. ef. 4-25-07

## **581-015-2210**

### **IEP Team**

- (1) School districts must ensure that the IEP Team for each child with a disability includes the following participants:
  - (a) One or both of the child's parents, except as provided in OAR 581-015-2195;
  - (b) The child where appropriate;
  - (c) At least one regular education teacher of the child, if the child is or may be participating in the regular education environment, consistent with section (4) of this rule;
  - (d) At least one special education teacher of the child or, if appropriate, at least one special education provider of the child;
  - (e) A representative of the school district, who may also be another member of the team, who is:
    - (A) Qualified to provide, or supervise the provision of, specially designed instruction;
    - (B) Knowledgeable about the general education curriculum;
    - (C) Knowledgeable about district resources; and
    - (D) Authorized to commit district resources and ensure that services set out in the IEP will be provided.
  - (f) An individual who can interpret the instructional implications of the evaluation results (who may also be another member of the team);
  - (g) Other individuals, including related services personnel as appropriate, invited by:
    - (A) The parent, whom the parent determines to have knowledge or special expertise regarding the child; or

- (B) The school district, whom the school district determines to have knowledge or special expertise regarding the child; and
- (h) Transition services participants, as described in section (2) of this rule.
- (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.
- (3) IEP team attendance:
  - (a) A member of the IEP team described in subsection (1)(c) through (1)(f) is not required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the school district agree in writing that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed at the meeting.
  - (b) A member of the IEP team described in subsection (1)(c) through (1)(f) may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of curriculum or related services, if:
    - (A) The parent and school district consent in writing to the excusal; and
    - (B) The member submits, in writing to the parent and the IEP team, input into the development of the IEP before the meeting.
- (4) The regular education teacher of the child must participate as a member of the IEP team, to the extent appropriate, in the development, review, and revision of the child's IEP, including assisting in the determination of:
  - (a) Supplementary aids and services, program modifications and supports for school personnel that will be provided for the child; and
  - (b) Appropriate positive behavioral interventions and supports, and other strategies for the child.

Stat. Auth.: ORS 343.041, ORS 343.045, ORS 343.055, ORS 343.151  
 Stats. Implemented: ORS 343.151, <sup>1</sup>34 CFR 300.344, 34 CFR 300.321; 34 CFR 300.324(a)(3) &(b)(3)  
 Hist.: 1EB 269, f. & ef. 12-22-77; EB 9-1993, f. & cert. ef. 3-25-93; ODE 32-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0066, ODE 10-2007, f. & cert. ef. 4-25-07

**581-015-2215**  
**Oregon Standard IEP**

- (1) Each school district must use the Oregon Standard IEP form in the development, review and revision of all IEPs, unless an alternate form is approved under subsection (4).
- (2) A school district may use an alternate form in the development, review and revision of IEPs if the Department approves the alternate form.
- (3) Criteria for approval. The criteria for approval of alternate forms includes, but is not limited to:
  - (a) Whether the alternate form meets the requirements for the contents of an IEP under OARs 581-015-2200, 581-015-2205, 581-015-2330, and 581-015-2065; and
  - (b) Whether use of the alternate form will reduce unnecessary or confusing paperwork.
- (4) Approval process.
  - (a) Within 10 days of the established date of submission of the alternate form for approval, the Department will decide:
    - (A) Whether the alternate form is approved or disapproved; and
    - (B) Any conditions that apply to the use of the alternate form.
  - (b) A school district may ask for a reconsideration of the decision within 30 days of receiving the Department's decision in subsection (3). The Department will issue a written response to the district of the reconsideration within 30 days of receiving the request.
  - (c) If a school district changes or modifies the approved alternate form, the district must submit the form for approval before its use.
  - (d) The decisions of the Department under this rule are final.

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<sup>1</sup> Correction: 34 CFR 300.324

Stat. Auth.: ORS 343.041, ORS 343.045, ORS 343.055, ORS 343.151  
Stats. Implemented: ORS 343.151  
Hist.: ODE 17-2000, f. & cert. ef. 5-23-00; Renumbered from 581-015-0703, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2220**

#### **When IEPs Must Be In Effect**

- (1) General:
  - (a) At the beginning of each school year, a school district must have in effect an IEP for each child with a disability within the district's jurisdiction.
  - (b) School districts must provide special education and related services to a child with a disability in accordance with an IEP.
- (2) Initial IEPs:
  - (a) A school district must conduct a meeting to develop an initial IEP within 30 calendar days of a determination that the child needs special education.
  - (b) As soon as possible following development of the IEP, special education and related services must be made available to the child in accordance with the child's IEP.
- (3) Accessibility of IEPs. Each school district must:
  - (a) Ensure that the IEP is accessible to each regular education teacher, special education teacher, related service provider and other service provider who is responsible for its implementation; and
  - (b) Inform each teacher and provider described in (3)(a) of his or her specific responsibilities for implementing the child's IEP and the specific accommodations, modifications and supports that must be provided for or on behalf of the child in accordance with the IEP.

Stat. Auth.: ORS 343.041, ORS 343.045 & ORS 343.055;  
Stats. Implemented: ORS 343.151, 34 CFR 300.323; 34 CFR 300.324  
Hist.: 1EB 269, f. & ef. 12-22-77; EB 11-1995, f. & cert. ef. 5-25-95; ODE 32-1999, f. 12-13-99, cert. ef. 12-14-99; Renumbered from 581-015-0064, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2225**

#### **Review and Revision of IEPs**

- (1) Annual review: Each school district must ensure that the IEP Team reviews the child's IEP periodically, but at least once every 365 days, to:
  - (a) Determine whether the annual goals for the child are being achieved; and
  - (b) Revise the IEP, as appropriate, to address:
    - (A) Any lack of expected progress toward the annual goals described in OAR 581-015-2200 and in the general education curriculum, if appropriate;
    - (B) The results of any reevaluation conducted under OAR 581-015-2105;
    - (C) Information about the child provided to, or by, the parents;
    - (D) The child's anticipated needs; or
    - (E) Other matters.
- (2) Agreement to amend or modify IEP
  - (a) In making changes to a child's IEP between annual IEP Team meetings, the parent of a child with a disability and the school district may agree not to hold an IEP Team meeting to make these changes, and instead may develop a written document to amend or modify the child's current IEP.
  - (b) If changes are made to the child's IEP in accordance with subsection (1), the district must ensure that the child's IEP team is informed of these changes.
- (3) Amendments to IEP
  - (a) Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or as provided in subsection (2) by amending the IEP rather than by redrafting the entire IEP.
  - (b) Upon request, the parent must be provided with a revised copy of the IEP with the amendments incorporated.

Stat. Auth.: ORS 343.041, ORS 343.045, ORS 343.055, ORS 343.151  
Stats. Implemented: ORS 343.151, 34 CFR 300.324(a)(4), (a)(5), (a)(6), (b)(1)  
Hist.: ODE 10-2007, f. & cert. ef. 4-25-07

### **OAR 581-015-2230**

#### **Transfer Students**

- (1) In state: If a child with a disability (who had an IEP that was in effect in a previous school district in Oregon) transfers to a new district in Oregon, and enrolls in a new school within the same school

year, the new school district (in consultation with the child's parents) must provide a free appropriate public education to the child (including services comparable to those described in the child's IEP from the previous district), until the new district either:

- (a) Adopts the child's IEP from the previous school district; or
- (b) Develops, adopts and implements a new IEP for the child.

(2) Out of state: If a child with a disability (who had an IEP that was in effect in a previous school district in another state) transfers to a new district in Oregon, and enrolls in a new school within the same school year, the new school district (in consultation with the child's parents) must provide a free appropriate public education to the child (including services comparable to those described in the child's IEP from the previous district), until the new district:

- (a) Conducts an initial evaluation (if determined necessary by the new district); and
- (b) Develops, adopts and implements a new IEP, if appropriate, that meets applicable requirements.

Stat. Auth.: ORS 343.041, ORS 343.045 & ORS 343.055;  
Stats. Implemented: ORS 343.045 & ORS 343.155, 34 CFR 300.323  
Hist.: ODE 10-2007, f. & cert. ef. 4-25-07

### **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

## **PLACEMENTS AND LEAST RESTRICTIVE ENVIRONMENT**

### **581-015-2240**

#### **Requirement for Least Restrictive Environment**

School districts must ensure that:

- (1) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who do not have a disability and
- (2) Special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Stat. Auth.: ORS 343.041, 343.045 & 343.055  
Stats. Implemented: ORS 343.045, 343.155 & 34 CFR 300.114  
Hist.: 1EB 269, f. & ef. 12-22-77; EB 11-1995, f. & cert. ef. 5-25-95; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0059, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 26-2008, f. 10-23-08, cert. ef. 10-24-08

### **581-015-2245**

#### **Alternative Placements and Supplementary Aids and Services**

School districts must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. The continuum must:

- (1) Include as alternative placements, instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions; and
- (2) Make provision for supplementary aids and services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

Stat. Auth.: ORS 343.041, ORS 343.045 & ORS 343.055,  
Stats. Implemented: ORS 343.045 & ORS 343.155, 34 CFR 300.115  
Hist.: 1EB 269, f. & ef. 12-22-77; EB 11-1995; f. & cert. ef. 5-25-95; ODE 31-1999, f. 12-13-99, cert. ef. 12-14-99; Renumbered from 581-015-0060, ODE 10-2007, f. & cert. ef. 4-25-07



### **581-015-2250**

#### **Placement of the Child**

School districts must ensure that:

- (1) The educational placement of a child with a disability:
  - (a) Is determined by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options;
  - (b) Is made in conformity with the Least Restrictive Environment (LRE) provisions of OAR 581-015-2240 to 581-015-2255.
  - (c) Is based on the child's current IEP;
  - (d) Is determined at least once every 365 days; and
  - (e) Is as close as possible to the child's home;
- (2) The alternative placements under OAR 581-015-2245 are available to the extent necessary to implement the IEP for each child with a disability;
- (3) Unless the child's IEP requires some other arrangement, the child is educated in the school that he or she would attend if not disabled;
- (4) In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services which he or she needs; and
- (5) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

Stat. Auth.: ORS 343.041, ORS 343.045 & ORS 343.055.

Stats. Implemented: ORS 343.045 & ORS 343.155, 34 CFR 300.116; 34 CFR 300.327

Hist.: 1EB 269, f. & ef. 12-22-77; EB 11-1995, f. & cert. ef. 5-25-95; ODE 31-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0061, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2255**

#### **Nonacademic Settings**

- (1) In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities described in OAR 581-015-2070, each school district must ensure that each child with a disability participates with children who do not have a disability in the extracurricular services and activities to the maximum extent appropriate to the needs of that child.
- (2) School districts must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings.

Stat. Auth.: ORS 343.041, 343.045 & 343.055

Stats. Implemented: ORS 343.045, 343.155 & 34 CFR 300.117

Hist.: ODE 10-2007, f. & cert. ef. 4-25-07; ODE 26-2008, f. 10-23-08, cert. ef. 10-24-08

## **CHILDREN IN PRIVATE SCHOOLS PLACED BY A PUBLIC AGENCY**

### **581-015-2260**

#### **Rights of Children with Disabilities in Private Schools Placed or Referred by Public Agencies**

Each public agency must ensure that a child with a disability who is placed in or referred to a private preschool, school or facility by the public agency as a means of providing early intervention/early childhood special education (EI/ECSE) or special education and related services:

- (1) Is provided EI/ECSE or special education and related services in conformance with an IEP or IFSP, and at no cost to the parents;
- (2) Is provided an education that meets the standards that apply to education provided by the public agency (except that private school teachers do not need to be highly qualified special education teachers); and
- (3) Has all of the rights of a child with a disability who is served by the public agency.

Stat. Auth.: ORS 343.041, ORS 343.045, ORS 343.055

Stats. Implemented: ORS 343.221, 34 CFR 300.148

Hist.: ODE 12-2000, f. 5-3-00, cert. ef. 5-3-00; Renumbered from 581-015-0701, ODE 10-2007, f. & cert. ef. 4-25-07

## **581-015-2265**

### **Obligations of Public Agencies that Contract with Approved Private Schools**

- (1) For the purposes of this rule, "public agency" means school districts and other public agencies that contract to provide EI/ECSE or special education. Public agencies may contract with private schools or preschools that are approved by the Department as contractors for EI/ECSE or special education pursuant to OAR 581-015-2270 through 581-015-2280.
- (2) For a child birth through age 21, the public agency must fulfill all federal and state requirements relating to the evaluation, IFSP or IEP development, and placement when determining whether the child shall be placed in an approved private preschool for EI/ECSE services. For children ages 3 through 21, the public agency also must determine whether placement in an approved private school or preschool constitutes a free appropriate public education in the least restrictive environment for each child.
- (3) A public agency that proposes to place a child with a disability in an approved private school or preschool must ensure that:
  - (a) The school-aged child is a resident of the school district under Oregon law;
  - (b) The child is eligible to receive EI/ECSE or special education services.
- (4) Before the public agency places a child with a disability in an approved private school or preschool:
  - (a) The public agency must initiate and conduct a meeting to develop an IFSP or IEP meeting.
  - (b) The public agency must ensure that a representative of the approved private school or preschool attends the meeting.
  - (c) If a representative of the approved private school or preschool is unable to attend the meeting, the public agency must use other methods to ensure participation including, but not limited to, individual or conference telephone calls, or individual meetings.
- (5) After a public agency initially places a child in an approved private school or preschool, any subsequent meetings to review or revise the child's IFSP or IEP are the responsibility of the public agency.
- (6) The public agency may request by written agreement that the approved private school or preschool initiate and conduct IFSP or IEP meetings. If the approved private school or preschool initiates and conducts these meetings at the request of the public agency, the public agency must ensure that the parents and a representative of the public agency:
  - (a) Are involved in any decision about the child's IFSP or IEP; and
  - (b) Agree to any proposed changes in the program before those changes are implemented.
- (7) The public agency must conduct the meeting pursuant to OAR 581-015-2250 or, for ECSE, OAR 581-015-2845, to determine the annual educational placement of a child.
- (8) The public agency placing a child age 3 through 21 in an approved private school or preschool must ensure that the child and the child's parents receive all the rights and protections as required for children with disabilities served by public agencies as set forth in federal law and in OAR chapter 581, division 015.
- (9) The school district where the child resides must ensure that transportation is provided to and from the approved private school or preschool.

Stat. Auth.: ORS 343.041, ORS 343.045, ORS 343.055;

Stats. Implemented: ORS 343.221, 34 CFR 300.325

Hist.: 1EB 40-1978, f. & ef. 10-5-78; EB 18-1994, f. & cert. ef. 12-15-94; ODE 16-2000, f. & cert. ef. 5-23-00; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03; Renumbered from 581-015-0141, ODE 10-2007, f. & cert. ef. 4-25-07

## **PRIVATE SCHOOL APPROVAL**

### **581-015-2270**

#### **Standards for Approval of Private Schools for School-age Children**

- (1) Applicability:
  - (a) This rule applies to private schools that intend to provide special education and related services to school-age children with disabilities who are placed in the school by a school district.
  - (b) This rule does not apply to educational programs operated by public agencies at treatment centers under OAR 581-015-2570 to 581-015-2574.
  - (c) This rule does not apply to private alternative schools registered under OAR 581-021-0072 if the contracting school district is providing the special education and related services in the student's IEP.
- (2) Requirement for approval: Private schools that intend to provide special education under a written agreement with a school district must submit an application for initial approval and an annual application for renewal to the Department on a form provided by the Department in accordance with this rule.

- (3) Initial approval: The application for initial approval must include:
- (a) Documentation that the private school meets the following requirements:
    - (A) The applicable fire codes of the local or state fire marshal, including an annual inspection and documentation of correction of any violations;
    - (B) Facility occupancy and use standards set forth by the appropriate local building inspectors;
    - (C) Health standards of the county health department (including annual inspection and correction of any violations for environmental health, food service, and communicable disease); and
    - (D) OAR 581-022-1420 Emergency Plans and Safety Programs;
    - (E) If the private school acquired or leased a building after October 12, 1988, a copy of the Asbestos Management Plan in accordance with OAR 581-022-1430; and
    - (F) OAR 581-022-1440 Infectious Diseases including Acquired Immune Deficiency Syndrome (AIDS), Human Immunodeficiency Virus (HIV), and Hepatitis B and C
  - (b) Documentation that the private school:
    - (A) Has in effect commercial general liability insurance with policy limits of at least \$500,000 per school site.
      - (i) The private school must provide the Department with the name of the insurance company, the number of the insurance policy, the policy limits covered by the policy, and the effective term of the policy.
      - (ii) If policy will expire during the approval year, the private school must submit documentation to the Department before the expiration date to maintain approval status.
    - (B) Has procedures in place regarding staff hiring and evaluation that require:
      - (i) The careful checking of personal and professional references for all potential employees;
      - (ii) Criminal background checks in compliance with ORS 181.539, 326.603, 326.607 and 342.232 for all potential employees; and
      - (iii) A regular schedule of staff evaluations of the competencies of all employees to work with children.
    - (C) Has a policy of nondiscrimination;
    - (D) Provides hours of instruction that meet state standards;
    - (E) Grants credit toward high school graduation consistent with OAR 581-022-1130 Diploma Requirements and 581-022-1350(2) and (3) Alternative Education Programs, or, if appropriate, an alternate document of completion as permitted under ORS 343.295.
  - (c) Assurances that the private school:
    - (A) Uses curriculum content, teaching practices and equipment that do not violate the constitutional prohibition on religious entanglement;
    - (B) Implements the special education services as described in each child's individualized education program in accordance with the contract between the private school and the placing school district;
    - (C) Maintains the confidentiality of student records consistent with state and federal laws relating to student records;
    - (D) Notifies the Department and the contracting public agency of any written complaint it receives concerning the special education programs and services being provided;
    - (E) Notifies the contracting public agency of the need for any change in a child's educational program and does not make changes in a child's IEP or special education program or services, or placement, unless the contracting school district consents to the changes; and
    - (F) Initiates and convenes IEP meetings only when this assistance is requested by a written agreement with the contracting school district in accordance with OAR 581-015-2265;
    - (G) Evaluates a child only when this assistance is requested by a written agreement with the contracting school district;
    - (H) Has at least one individual qualified to provide special education and licensed according to rules established by the Teacher Standards and Practices Commission available to serve the population of students described in the application. Private schools may provide special education and related services to students with disabilities placed by public agencies by employing professionals who are licensed within their own specialties. Pursuant to OAR 584-036-0010, these personnel are not required to hold licensure from the Teacher Standards and Practices Commission.
    - (I) Ensures that students have the opportunity to participate in district-wide and state-wide assessments of student achievement; and
    - (J) Meets the state curriculum standards set pursuant to OAR 581-022-1210.
- (4) Renewal: The annual application for renewal of approval must include:
- (a) Documentation that the private school meets:
    - (A) The requirements in subsection (3)(a)(A) and (3)(a)(C);
    - (B) If remodeled since the previous approval, the requirement in subsection (3)(a)(B);

- (b) Documentation that the private school has insurance in accordance with subsection (3)(b)(A);
- (c) Assurances that the private school meets the requirements in subsection (3)(a)(D)–(F), (3)(b)(B)–(E); and (3)(c).

Stat. Auth.: ORS 343.041, 343.045 & 343.055

Stats. Implemented: 343.221

Hist.: 1EB 28-1978, f. & ef. 7-20-78; EB 18-1994, f. & cert. ef. 12-15-94; ODE 18-2000, f. & cert. ef. 5-23-00; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04; ODE 10-2004, f. & cert. ef. 8-4-04; Renumbered from 581-015-0126, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 14-2009, f. & cert. ef. 12-10-09

## 581-015-2275

### Standards for Approval of Private Preschools

#### (1) Applicability:

- (a) This rule applies to private preschools that intend to provide a preschool setting, early intervention (EI) or early childhood special education (ECSE) and related services, in accordance with an individual family service plan IFSP to children with disabilities ages birth to five placed in the preschool by the contractor or subcontractor.
- (b) This rule does not apply to:
  - (A) Private preschools that include kindergarten (which must apply for approval under OAR 581-015-2265);
  - (B) Public agencies providing educational programs at treatment centers under OARs 581-015-2570 to 581-015-2574;
  - (C) Public programs including preschools operated by school districts. Oregon Head Start Prekindergarten, Head Start, Migrant Seasonal Head Start, Tribal Head Start, Early Head Start, Migrant Education preschools, and Even Start Family Literacy programs.

#### (2) Requirement for approval:

- (a) Private preschools that intend to provide EI or ECSE and related services and/or a preschool setting under a written agreement with an EI/ECSE contractor or subcontractor must submit an application for initial approval and an annual application for renewal to the Department on a form provided by the Department, in accordance with this rule.
- (b) A current Certificate of Approval from the Department of Employment's Child Care Division may be submitted in place of certain requirements as specified below, provided that:
  - (A) The Certificate of Approval is maintained throughout the approval period; or
  - (B) If the Certificate of Approval will expire during the approval term, the private school submits a new Certificate of Approval to the Department before the expiration date to maintain approved status.

#### (3) Initial approval:

- (a) The application for initial approval must include documentation that the private preschool meets the following requirements:
  - (A) The applicable fire codes of the local or state fire marshal, including an annual inspection and documentation of correction of any violations;
  - (B) A copy of the initial facility occupancy and use standards set forth by the appropriate local building inspector;
  - (C) Health standards of the county health department (including annual inspection and correction of any violations for environmental health, food service, and communicable disease);
  - (D) The requirements set by OAR 581-022-1420 Emergency Plans and Safety Programs; and
  - (E) Procedures for staff hiring and evaluation that require:
    - (i) The careful checking of personal and professional references for all potential employees;
    - (ii) Criminal background checks in compliance with ORS 181.539, 326.603, 326.607 and 342.232 for all potential employees and evidence that these have been completed; and
    - (iii) A regular schedule of staff evaluations of the competencies of all employees to work with children.
- (b) The application for initial approval must also include the following:
  - (A) Documentation that the private preschool has in effect commercial general liability insurance with policy limits of at least \$500,000 per school site.
    - (i) The private preschool must provide the Department with the name of the insurance company, the number of the insurance policy, the policy limits covered by the policy, and the effective term of the policy.
    - (ii) If policy will expire during the approval year, the private school must submit documentation to the Department before the expiration date to maintain approval status.
  - (B) The private school's policy of nondiscrimination.

- (c) The application for initial approval must include assurances that the private preschool:
  - (A) Has at least one individual who is qualified to provide EI/ECSE and meets the requirements of OAR 581-015-1100(2) and (3);
  - (B) Uses curriculum content, teaching practices and equipment that do not violate the constitutional prohibition on religious entanglement;
  - (C) Implements each child's IFSP in accordance with the private preschool's written agreement with the EI/ECSE contractor or subcontractor responsible for the child's placement;
  - (D) Maintains the confidentiality of student records consistent with state and federal laws relating to student records;
  - (E) Notifies the Department and the contracting EI/ECSE contractor or subcontractor of any written complaint it receives for the EI/ECSE programs and services being provided;
  - (F) Notifies the contracting EI/ECSE contractor or subcontractor of the need for any change in a child's educational program and does not make changes in a child's IFSP, program, services, or placement, unless the contracting EI/ECSE contractor or subcontractor consents to the changes;
  - (G) Initiates and convenes the IFSP only when this assistance is requested by a written agreement with the contracting EI/ECSE contractor or subcontractor in accordance with OAR 581-015-2265;
  - (H) Evaluates a child only when this assistance is requested by a written agreement with the contracting EI/ECSE contractor or subcontractor; and
  - (I) Provides the opportunity for a child to participate in the Early Childhood assessment if this assistance is requested by a written agreement with the contracting EI/ECSE contractor or subcontractor.
- (d) A current Certificate of Approval may be submitted in place of the requirements in subsection (3)(a).
- (4) Renewal: The annual application for renewal of approval must include:
  - (a) Documentation that the private preschool:
    - (A) Meets the requirements in subsection (3)(a)(A) and (C);
    - (B) If remodeled since the previous approval, meets the requirement in (3)(a)(B); and
    - (C) Has insurance in effect in accordance with subsection (3)(b)(A);
  - (b) Assurances that the private preschool meets the requirements in subsections (3)(a)(D)–(E), (3)(b)(B)–(C), and (3)(c).
  - (c) A current Certificate of Approval may be submitted in place of requirements in subsection (4)(a)(A)–(B).

Stat. Auth.: ORS 343.041, 343.045, 343.055  
 Stats. Implemented: ORS 343.465, 343.475 & 343.495  
 Hist.: ODE 10-2007, f. & cert. ef. 4-25-07; ODE 14-2009, f. & cert. ef. 12-10-09

### **581-015-2280**

#### **Process for Approval of Private School or Preschool as a Contractor with Public Agencies**

- (1) Initial approval: A private school or private preschool applying for initial approval may submit an application to the Department at any time pursuant to OAR 581-015-2270 and 581-015-2275, respectively. The private school or preschool will be notified by the Department of its approval or denial as quickly as possible but no later than 45 days after receipt of the completed application. The period of approval of the private school or preschool receiving initial approval will be from the date of notification of approval by the Department until the 15th day of August.
- (2) Renewal:
  - (a) After a private school or preschool receives initial approval of an application, the private school or preschool must submit annual applications for renewal in accordance with OAR 581-015-2270 and 581-015-2275, respectively.
  - (b) The Department will begin accepting a private school's or preschool's annual application for renewal on April 1 of each year. The Department will notify the private school or preschool of its decision to renew or deny renewal of approval within 45 days of receipt of the completed application. The period of approval for a private school requesting renewal will be one year beginning on the 15th day of August.
- (3) Amendment:
  - (a) An approved private school or preschool may make major program changes only with written prior approval from the Department. A major program change consists of any change in the information contained in a private school's or preschool's approved application that would affect the school or preschool's approval or disapproval under this rule.
  - (b) To request and receive approval for program changes, the private school or preschool must submit an amendment to the current approved application describing the changes proposed and

the reasons for the changes. In addition, the amendment must describe the effect the changes will have on the children currently served under contracts with public agencies.

- (c) After submitting an amendment as described in subsection (4)(a) of this rule, the private school or preschool may operate the services under the provisions of the amendment with conditional approval until the Department notifies the private school of the approval or denial of the amendment. The Department will notify the private school or preschool of approval or denial within a reasonable period of time, but no more than 45 days after receipt of the amendment by the Department.

Stat. Auth.: ORS 343.041, ORS 343.045, ORS 343.055

Stats. Implemented: ORS 343.221, ORS 343.475, ORS 343.495

Hist.: 1EB 28-1978, f. & ef. 7-20-78; EB 40-1988(Temp), f. & cert. ef. 11-15-88; EB 20-1989, f. & cert. ef. 5-15-89; EB 18-1994, f. & cert. ef. 12-15-94; ODE 18-2000, f. & cert. ef. 5-23-00; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0131, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2285**

#### **Suspension, Revocation or Refusal to Renew Approval**

The Department may suspend, revoke or refuse to renew its approval of a private school or preschool to contract with public agencies for the provision of early intervention, early childhood special education or special education services if:

- (1) The private school fails to maintain the approval standards in OAR 581-015-2270;
- (2) The private preschool fails to maintain the approval standards in OAR 581-015-2275;
- (3) The private school or preschool violates the rights of children with disabilities; or
- (4) The private school or preschool refuses to implement corrective actions ordered by the Department after completion of a special investigation.

Stat. Auth.: ORS 343.041, ORS 343.045, ORS 343.055

Stats. Implemented: ORS 343.055

Hist.: ODE 18-2000, f. & cert. ef. 5-23-00; Renumbered from 581-015-0711, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2290**

#### **Appeal of Denial, Suspension, Revocation or Refusal to Renew Approval**

A private school or preschool may appeal the Department's denial, suspension, revocation or refusal to renew approval of a private school or preschool to contract with public agencies for the provision of early intervention, early childhood special education or special education services by requesting a contested case hearing under the provisions of ORS 183.413 through ORS 183.470.

Stat. Auth.: ORS 343.041, ORS 343.045, ORS 343.055

Stats. Implemented: ORS 343.055

Hist.: ODE 18-2000, f. & cert. ef. 5-23-00; Renumbered from 581-015-0712, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2295**

#### **Out-of-State Placements for Special Education**

- (1) Any private educational institution located outside the state of Oregon which provides special education to Oregon students eligible for special education pursuant to a contract with an Oregon district, ESD, or the Oregon Department of Education must first be approved by the state education agency of the state in which the educational institution is located.
- (2) Documentation of such approval must be maintained by the district placing a child in an out-of-state program and made available to the Department upon request.
- (3) Contractual arrangements for out-of-state special education services may be made when:
  - (a) It is determined that no appropriate in-state placement option is available; and
  - (b) Such a placement is made after the development of an IEP as specified in OAR 581-015-2190 through 581-015-2225.
- (4) In the event the state does not have a formal, approved process, the school shall meet whatever requirements apply for private schools to serve publicly placed students in that state.

Stat. Auth.: ORS 343.041, ORS 343.045

Stats. Implemented: ORS 343.041, ORS 343.045

Hist.: ODE 10-2007, f. & cert. ef. 4-25-07

## PROCEDURAL SAFEGUARDS

### **581-015-2300**

#### **Access to Student Education Records**

(1) For purposes of ensuring the safeguards required for education records of children with disabilities, including early intervention and early childhood special education records, the Department adopts by reference the provisions of FERPA, 34 CFR 99.1 to 99.38, the IDEA, 34 CFR 300.610 to 34 CFR 300.627 and 34 CFR 303.401 through 303.411.

(a) For children with disabilities under age three, references to a "student" in these rules means an infant or toddler with a disability.

(b) For children with disabilities under age three, "student records" means EI records.

(2) This provision includes all education records with respect to:

(a) The identification, evaluation, and educational placement of the child; and

(b) The provision of a free appropriate public education to the child.

(3) The program, district, agency, or contractor must comply with a parent's request to inspect and review records without unnecessary delay and within the following timelines:

(a) For children under age three, before any meeting regarding an IFSP, or any hearing pursuant to 303.430(d) and 303.435 through 303.340, and in no case more than 10 days after the request has been made.

(b) For children over the age of three, before any meeting regarding an IEP/IFSP, or any due process hearing, or resolution session related to a due process hearing, and in no case more than 45 days after the request has been made.

Stat. Auth.: ORS 343.041, 343.155 Stats. Implemented: ORS 343.155, 343.173, 34 CFR 300.501 & 34 CFR 303.405(a) Hist: ODE 4-2000, f. & cert. ef. 2-1-00; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03; Renumbered from 581-015-0606, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 13-2012(Temp), f. 3-30-12, cert. ef. 4-2-12 thru 9-1-12; ODE 15-2012, f. 6-8-12, cert. ef. 6-11-12

### **581-015-2305**

#### **Independent Educational Evaluation**

(1) A parent of a child with a disability or suspected disability has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the school district.

(a) "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of the child.

(b) "Public expense" means that the school district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

(2) If a parent requests an independent educational evaluation at public expense, the school district must provide information to parents about where an independent educational evaluation may be obtained, and the school district criteria applicable for independent educational evaluations.

(3) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation, the qualifications of the examiner, and cost, must be the same as the criteria the school district uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

(a) Except for the criteria in subsection (3), a school district may not impose conditions, or timelines related to obtaining an independent education evaluation at public expense.

(b) The school district must provide parents an opportunity to demonstrate that unique circumstances justify an independent education evaluation that does not meet the district's criteria.

(4) If a parent requests an independent education evaluation at public expense, the school district must, without unnecessary delay, either:

(a) Ensure that an independent educational evaluation is provided at public expense unless the school district demonstrates in a hearing under OAR 581-015-2345 that the evaluation obtained by the parent did not meet school district criteria in accordance with (3); or

(b) Initiate a due process hearing under OAR 581-015-2345 to show that its evaluation is appropriate.

(5) If the school district initiates a hearing and the final decision is that the school district's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(6) If the parent requests an independent educational evaluation, the school district may ask why the parent disagrees with the public evaluation. The parent may, but is not required, to provide an explanation. The school district may not unreasonably delay either providing the independent

education evaluation at public expense or initiating a due process hearing to defend the public evaluation.

- (7) If the parent obtains an independent educational evaluation at public expense or shares with the district an evaluation obtained at private expense, the results of the evaluation:
  - (a) Must be considered by the school district, if it meets the district's criteria, in any decision made with respect to the provision of a free appropriate public education to the child; and
  - (b) May be presented by any party as evidence at a due process hearing.
- (8) If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.
- (9) A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

Stat. Auth.: ORS 343.041, ORS 343.045 & ORS 343.055; ORS 343.155

Stats. Implemented: ORS 343.155, ORS 343.173, 34 CFR 300.502

Hist.: 1EB 269, f. & ef. 12-22-77; 1EB 18-1979(Temp), f. & ef. 11-15-79; 1EB 5-1980, f. 2-22-80, ef. 2-23-80; EB 28-1989(Temp), f. & cert. ef. 10-16-89; EB 3-1990, f. & cert. ef. 1-26-90; EB 11-1995, f. & cert. ef. 5-25-95; ODE 21-1999, f. & cert. ef. 9-24-99; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0094, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2310**

#### **Prior Written Notice**

- (1) For purposes of this rule, school district also means ECSE program and its contractors and subcontractors.
- (2) Prior written notice must be given to the parent of a child, and to the adult student after rights have transferred, within a reasonable period of time before a school district
  - (a) Proposes to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child; or
  - (b) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.
- (3) The content of the prior written notice must include:
  - (a) A description of the action proposed or refused by the school district;
  - (b) An explanation of why the district proposes or refuses to take the action;
  - (c) A description of each evaluation procedure, assessment, test, record, or report the school district used as a basis for the proposed or refused action;
  - (d) A statement that the parents of a child with a disability have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of the Notice of Procedural Safeguards may be obtained;
  - (e) Sources for parents to contact to obtain assistance in understanding their procedural safeguards.
  - (f) A description of other options that the IEP Team considered and the reasons why those options were rejected; and
  - (g) A description of other factors that are relevant to the agency's proposal or refusal.
- (4) The prior notice must be:
  - (a) Written in language understandable to the general public; and
  - (b) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
- (5) If the native language or other mode of communication of the parent is not a written language, the school district must take steps to ensure that:
  - (a) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;
  - (b) The parent understands the content of the notice; and
  - (c) There is written evidence that the requirements in subsections (5)(a) and (b) of this rule have been met.

Stat. Auth.: ORS 343.045, 343.155

Stats. Implemented: ORS 343.155, 343.159, 34 CFR 300.503

Hist.: 1EB 18-1979(Temp), f. & ef. 11-15-79; 1EB 5-1980, f. 2-22-80, ef. 2-23-80; EB 28-1989(Temp), f. & cert. ef. 10-16-89; EB 3-1990, f. & cert. ef. 1-26-90; EB 11-1995, f. & cert. ef. 5-25-95; ODE 18-1999, f. & cert. ef. 9-24-99; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04; Renumbered from 581-015-0075, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 11-2013(Temp), f. & cert. ef. 4-25-13 thru 10-21-13



## **581-015-2315**

### **Notice of Procedural Safeguards**

- (1) School districts must give parents a copy of the Notice of Procedural Safeguards at a minimum only one time per year, except that a copy must be given to the parents:
  - (a) Upon initial referral or parent request for evaluation;
  - (b) Upon request by a parent; and
  - (c) Also to the child, at least a year before the child's 18th birthday.
- (2) The procedural safeguards notice must include all of the content provided in the Notice of Procedural Safeguards published by the Department in the following areas:
  - (a) Independent educational evaluations;
  - (b) Prior written notice;
  - (c) Parental consent;
  - (d) Access to educational records;
  - (e) Mediation, complaints and due process hearings;
  - (f) The child's placement during pendency of due process proceedings;
  - (g) Procedures for students who are subject to placement in an interim alternative educational setting;
  - (h) Requirements for unilateral placement by parents of children in private school at public expense;
  - (i) Civil actions, including the time period for filing such actions;
  - (j) Attorney's fees; and
  - (k) Transfer of rights at age of majority.
- (3) The Notice of Procedural Safeguards must be written in language understandable to the general public.
- (4) The Notice of Procedural Safeguards must be provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
- (5) If the native language or other mode of communication of the parent is not a written language, the school district shall take steps to ensure:
  - (a) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
  - (b) That the parent understands the content of the notice; and
  - (c) That there is written evidence that the district has met these requirements.

Stat. Auth.: ORS 343.055; ORS 343.155

Stats. Implemented: ORS 343.155, 34 CFR 300.504

Hist.: ODE 19-1999, f. & cert. ef. 9-24-99; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0079, ODE 10-2007, f. & cert. ef. 4-25-07

## **581-015-2320**

### **Surrogate Parents**

- (1) School districts must ensure that the rights of a child with a disability, or suspected of having a disability, are protected by appointing a surrogate parent not more than 30 days after a determination by the district that the child needs a surrogate because:
  - (a) No parent (as defined in OAR 581-015-2005(20)) can be identified or located after reasonable efforts;
  - (b) The child is a ward of the state and there is reasonable cause to believe that the child has a disability; or
  - (c) The child is an unaccompanied homeless youth.
- (2) The school district may not appoint a surrogate solely because the parent or adult student to whom rights have transferred is uncooperative or unresponsive to special education needs.
- (3) Each school district must have a method for determining whether a child needs a surrogate parent and for assigning a surrogate parent to the child. The school district must ensure that each person approved to serve as a surrogate:
  - (a) Is not an employee of the school district or the Department or any other agency that is involved in the education or care of the child;
  - (b) Is free of any personal or professional interest that conflicts with representing the child's special education interests; and
  - (c) Has knowledge and skills that ensure adequate representation of the child in special education decisions.
- (4) For an unaccompanied homeless youth, appropriate staff of emergency shelters, independent living programs and street outreach programs may be appointed as a temporary surrogate parent without

regard to subsection (3)(a) until a surrogate can be appointed that meets all of the requirements of subsection (3).

- (5) An appointed surrogate parent has all of the special education rights and procedural safeguards available to the parent.
- (6) A surrogate is not considered an employee of a school district solely on the basis that the surrogate is compensated from public funds.
- (7) The duties of the surrogate parent are to:
  - (a) Protect the special education rights of the child;
  - (b) Be acquainted with the child's disability and the child's special education needs;
  - (c) Represent the child in all matters relating to the identification, evaluation, IEP and educational placement of the child; and
  - (d) Represent the child in all matters relating to the provision of a free appropriate public education to the child.
- (8) A surrogate has the same rights granted to a parent in a hearing under OAR 581-015-2360, and the procedures regarding hearings in OAR 581-015-2340 through 581-015-2385 apply.
- (9) A parent, or an adult student to whom rights have transferred, may give written consent for a surrogate to be appointed.
  - (a) When a parent or an adult student requests that a surrogate be appointed:
    - (A) The parent or adult student retains all parental rights to receive notice under OAR 581-015-2190, 581-015-2195, 581-015-2310, and 581-015-2315 and all of the information provided to the surrogate.
    - (B) The surrogate, alone, is responsible for all matters relating to the special education of the child unless the parent or adult student revokes consent for the surrogate's appointment.
  - (b) The parent or adult student may revoke consent at any time by providing a written request to revoke the surrogate's appointment.
- (10) The school district may change or terminate the appointment of a surrogate when:
  - (a) The person appointed as surrogate is no longer willing to serve;
  - (b) Rights transfer to the adult student or the child graduates with a regular diploma;
  - (c) The child is no longer eligible for special education services;
  - (d) The legal guardianship of the child is transferred to a person who is able to carry out the role of the parent;
  - (e) A foster parent is identified who can carry out the role of parent under OAR 581-015-2000(20);
  - (f) The parent, who previously could not be identified or located, is now identified or located;
  - (g) The appointed surrogate is no longer eligible;
  - (h) The child moves to another school district; or
  - (i) The child is no longer a ward of the state or an unaccompanied homeless youth.
- (11) A person appointed as surrogate will not be held liable for actions taken in good faith on behalf of the parent in protecting the special education rights of the child.

Stat. Auth.: ORS 343.041, ORS 343.045 & ORS 343.055; ORS 343.155

Stats. Implemented: ORS 343.155, 34 CFR 300.519

Hist.: 1EB 18-1979(Temp), f. & ef. 11-15-79; 1EB 5-1980, f. 2-22-80, ef. 2-23-80; EB 9-1992, f. & cert. ef. 4-7-92; EB 11-1995, f. & cert. ef. 5-25-95; ODE 23-1999, f. & cert. ef. 9-24-99; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0099, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2325**

#### **Transfer of Procedural Rights at Age of Majority**

- (1) When a child with a disability reaches the age of majority under ORS 109.510 or 109.520, or is emancipated pursuant to ORS 419B.550 to 419B.558, the rights accorded to the child's parents under the special education laws transfer to the child. A student for whom rights have transferred is considered an "adult student" under OAR 581-015-2000.
- (2) Notwithstanding section (1) of this rule:
  - (a) Pursuant to a protective proceeding under ORS Chapter 125, the Probate Court may find the child to be incapacitated to make educational decisions and may appoint a guardian to exercise these rights.
  - (b) Under ORS 419B.220 or ORS 419C.220, the Juvenile Court may appoint a surrogate parent to exercise these rights if the child is a ward of the state.
- (3) School districts are not responsible for the costs of a protective proceeding unless the school district is the Petitioner.

- (4) Pursuant to OAR 581-015-2320(9), a child to whom rights transfer may request that a surrogate be appointed to exercise the child's special education rights.
- (5) This rule applies to all students, including students who are incarcerated in a state or local adult or juvenile correctional facility or jail.

Stat. Auth.: ORS 343.055, ORS 343.155

Stats. Implemented: ORS 343.155, ORS 343.181, 34 CFR 300.520

Hist.: ODE 24-1999, f. & cert. ef. 9-24-99; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0101, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2330**

#### **Notice of Transfer of Rights at Majority**

- (1) The school district must provide notice to the child and the parent that rights will transfer at the age of majority. This notice must be provided at the IEP meeting and documented on the IEP:
  - (a) At least one year before the child's 18th birthday; or
  - (b) Upon actual knowledge that within a year the child will likely marry or become emancipated before age 18.
- (2) The school district must provide written notice to the child and to the parent at the time of the transfer of rights.

Stat. Auth.: ORS 343.055, ORS 343.155

Stats. Implemented: ORS 343.155, OAR 343.181, 34 CFR 300.520

Hist.: ODE 25-1999, f. & cert. ef. 9-24-99; Renumbered from 581-015-0102, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2335**

#### **Mediation**

- (1) The Department offers mediation at no cost to the parties to resolve special education disputes, including matters arising before the filing of a complaint or hearing request.
- (2) Mediation:
  - (a) Must be voluntary on the part of the parties;
  - (b) Must not be used to deny or delay a parent's right to a due process hearing under OAR 581-015-2345, a complaint under OAR 581-015-2030 or other procedural safeguards; and
  - (c) Must be conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
- (3) The Department maintains a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services. The parties to mediation participate in the selection of the mediator. Mediators are selected from the list on a random, rotational, or other impartial basis.
- (4) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.
- (5) An agreement reached by the parties to the dispute in the mediation process must be set forth in a legally binding written mediation agreement. The written agreement must:
  - (a) State the terms of the agreement;
  - (b) State that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and
  - (c) Be signed by the parent and a representative of the school district who has the authority to bind the district.
- (6) The mediation agreement is enforceable in any state court of competent jurisdiction or in a district court of the United States.
- (7) Discussions that occur during the mediation process are confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings.
- (8) Notwithstanding subsection (6), a mediation communication is not confidential if it relates to child or elder abuse and is made to a person who is required to report abuse, or threats of physical harm, or professional conduct affecting licensure.
- (9) An individual who serves as a mediator:
  - (a) May not be an employee of:
    - (A) Any school district;
    - (B) The Department of Corrections;
    - (C) The Department of Education; and
  - (b) Must not have a personal or professional interest that conflicts with the person's objectivity.

- (10) A person who otherwise qualifies as a mediator is not an employee under subsection (9)(a) of this rule solely because he or she is paid by the Department to serve as a mediator.
- (11) The Department may request parents who are reluctant to use the mediation process to meet with a neutral party who would explain the benefits of the mediation process and encourage the parents to use the process. This meeting shall occur at a time and location convenient to the parents and at no cost to the parents. The Department or school district may not deny or delay a parent's right to a due process hearing if the parent fails to participate in this meeting.

Stat.: Auth.: ORS 343.055; ORS 343.155

Stats.: Implemented: ORS 343.155, 34 CFR 300.506

Hist.: ODE 22-1999, f. & cert. ef. 9-24-99; Renumbered from 581-015-0095, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2340**

#### **Procedural Rules for Due Process Hearings**

- (1) Pursuant to an interagency agreement with the Office of Administrative Hearings, the Office of Administrative Hearings will assign administrative law judges to conduct special education due process hearings.
- (2) The Department of Justice's model rules for administrative hearings, OAR 137-003-0501 through 137-003-0700, apply to the extent consistent with federal law and these Division 15 regulations. The Department's interagency agreement with the Office of Administrative Hearings will identify delegations of authority and the application of the rules in this section.

Stat. Auth.: ORS 343.041, ORS 343.045 & ORS 343.055, ORS 343.155

Stats. Implemented: ORS 343.055, ORS 343.155

Hist.: ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0097, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2345**

#### **Hearing Request and Response**

- (1) Request for Hearing
  - (a) Parent Requests for a Due Process Hearing
    - (A) A parent may request a due process hearing in accordance with subsection(3) if the parent does not agree with the identification, evaluation, educational placement of a child, or the provision of a free appropriate education to a child who may be disabled.
    - (B) The parent, or the attorney representing the child, must provide notice to the school district and to the Department when requesting a hearing. The notice (which remains confidential) must, include:
      - (i) The child's name and address (or available contact information in the case of a homeless child);
      - (ii) The name of the school the child is attending;
      - (iii) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and
      - (iv) A proposed resolution of the problem to the extent known and available to the party at the time.
  - (b) School District Requests for a Due Process Hearing:
    - (A) A school district may request a due process hearing regarding identification, evaluation or educational placement of a child with a disability, or the provision of a free appropriate public education to the child.
    - (B) The school district requesting a due process hearing, or the attorney representing the district, must provide notice to the parent and to the Department in as described in subsection (1)(a)(B).
  - (c) A party may not have a hearing until the party, or the attorney representing the party, files a due process hearing request that meets the requirements of subsection (1)(a)(B) or (1)(b)(B).
- (2) Response to hearing request:
  - (a) School district: If the school district has not sent a prior written notice to the parent regarding the subject matter in the parent's due process request, the school district must, within ten days of receiving the request:
    - (A) Send to the parent a response that includes:
      - (i) An explanation of why the school district proposed or refused to take the action raised in the hearing request;
      - (ii) A description of other options that the IEP team considered and the reasons why those options were rejected;

- (iii) A description of each evaluation procedure, assessment, record or report the school district used as the basis for the proposed or refused action; and
- (iv) A description of the factors relevant to the school district's proposal or refusal.
- (B) The school district's response under subsection (2)(a)(A) may not be construed to preclude the school district from asserting that the parent's due process request was insufficient, where appropriate.
- (b) Parent and school district:
  - (A) The party that did not file the hearing request must, within ten days of receiving the request for hearing, send to the other party a response that specifically addresses the issues raised in the hearing request.
  - (B) A school district providing a response to an issue under subsection (3)(a) is not required to respond to the same issue under (3)(b).
- (3) Time limitation and exception:
  - (a) A special education due process hearing must be requested within two years after the date of the act or omission that gives rise to the right to request the hearing.
  - (b) This timeline does not apply to a parent if the parent was prevented from requesting the hearing due to specific misrepresentations by the school district that it had resolved the problem forming the basis of the complaint, or the school district's withholding of information from the parent that the district was required to provide under Chapter 343.
- (4) Information: The Department will inform a parent of any free or low-cost legal services and other relevant services available in the area if a parent requests the information.

Stat. Auth.: ORS 343.045, ORS 343.055 & ORS 343.155;  
 Stats. Implemented: ORS 343.165, 34 CFR 300.507, 300.508, 300.511(e)  
 Hist.: 1EB 269, f. & ef. 12-22-77; 1EB 18-1979(Temp), f. & ef. 11-15-79; 1EB 5-1980, f. 2-22-80, ef. 2-23-80; EB 28-1989(Temp), f. & cert. ef. 10-16-89; EB 3-1990, f. & cert. ef. 1-26-90; EB 9-1992, f. & cert. ef. 4-7-92; EB 9-1993, f. & cert. ef. 3-25-93; ODE 20-1999, f. & cert. ef. 9-24-99; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0081, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2350**

#### **Sufficiency of Hearing Request**

- (1) A written request for hearing will be deemed sufficient unless the party receiving the request notifies the administrative law judge and the other party in writing, within 15 days of receipt of the hearing request, that the receiving party believes the notice does not meet the requirements of OAR 581-015-2345.
- (2) Within five days of receiving notice that a party is objecting to the sufficiency of the other party's hearing notice, the administrative law judge must make a determination on the face of the hearing request of whether the hearing request meets the requirements of OAR 581-015-2345, and must immediately notify the parties in writing of that determination.
- (3) A party may amend its hearing request only if:
  - (A) The other party consents in writing to the amendment and is given the opportunity to resolve the hearing request through a resolution meeting; or
  - (B) The administrative law judge grants permission, except that this permission may only be granted at any time not later than five days before a due process hearing occurs.
- (4) If a party files an amended hearing request, the applicable timelines for the resolution session and resolution period begin again with the filing of the amended hearing request.

Stat. Auth.: ORS 343.045, ORS 343.055 & ORS 343.155;  
 Stats. Implemented: ORS 343.165, 34 CFR 300.508(d)  
 Hist.: ODE 10-2007, f. & cert. ef. 4-25-07

### **OAR 581-015-2355**

#### **Resolution Process**

- (1) Resolution meeting:
  - (a) Within 15 days of receiving a parent's due process hearing request, the school district must hold a resolution meeting with the parents and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the complaint.
  - (b) The meeting:
    - (A) Must include a representative of the school district who has decision-making authority on behalf of the school district; and
    - (B) May not include an attorney for the school district unless the parent is accompanied by an attorney.

- (c) The purpose of the meeting is for the parent of the child to discuss the hearing request, and the facts that form the basis of that request, so that the school district has the opportunity to resolve the dispute that is the basis for the due process hearing request.
  - (d) This resolution meeting need not be held if:
    - (A) The parent and school district agree in writing to waive the meeting; or
    - (B) The parent and school district agree to use the mediation process.
  - (e) The parent and the school district determine the relevant members of the IEP team to attend the meeting.
- (2) Resolution period:
- (a) If the school district has not resolved the dispute to the satisfaction of the parents within 30 days of the receipt of the due process hearing request, the due process hearing may occur.
  - (b) The 45 day hearing timeline begins at the end of the 30 day resolution period except as provided in subsection (2)(c).
  - (c) The 45 day hearing timeline begins the next business day after any of the following circumstances.
    - (A) The parties agree in writing to waive the resolution session.
    - (B) After the mediation or resolution meeting starts but before the end of the 30 day resolution period, the parties agree in writing that no agreement is possible.
    - (C) Both parties agree in writing to continue the mediation at the end of the 30 day resolution period, but later, the parent or school district withdraws from the mediation process.
  - (d) The failure of a parent requesting a due process hearing to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held, unless:
    - (A) The parties have agreed to waive the resolution session; or
    - (B) The parties have agreed to use mediation instead of the resolution meeting.
  - (e) If the school district is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented (as in OAR 581-015-2195), the school district may, at the conclusion of the 30 day resolution period, request that a hearing officer or administrative law judge dismiss the parent's due process hearing request.
  - (f) If the school district fails to hold the resolution meeting within 15 days of receiving the parent's due process hearing request or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer or administrative law judge to begin the 45 day hearing timeline.
- (3) Resolution agreement:
- (a) If a resolution to the dispute is reached at the resolution meeting, the parties must execute a legally binding written agreement that is:
    - (A) Signed by both the parent and a representative of the school district who has the authority to bind the district; and
    - (B) Enforceable in any state court of competent jurisdiction or in a district court of the United States.
  - (b) If the parties execute a resolution agreement, either party may void the agreement within three business days of the agreement's execution.

Stat. Auth.: ORS 343.045, ORS 343.055 & ORS 343.155; ORS 343.165  
 Stats. Implemented: ORS 343.045, ORS 343.155 & ORS 343.165, 34 CFR 300.510  
 Hist.: ODE 10-2007, f. & cert. ef. 4-25-07

## **581-015-2360**

### **Pre-Hearing Conference, Notice of Hearing and Hearing Rights**

- (1) Upon receipt of a written request by a parent or the school district for a hearing regarding the identification, evaluation, individualized education program, educational placement of the child or the provision of a free appropriate public education to a child, the Superintendent will:
  - (a) Appoint an administrative law judge, in accordance with OAR 581-015-2365, to conduct the hearing.
  - (b) Provide the parent with a copy of the Notice of Procedural Safeguards;
  - (c) Inform the parties that mediation is available at no cost to the parents or school district; and
  - (d) Inform the parent of any free or low-cost legal services and other relevant services.
- (2) Subject matter of hearing: The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the hearing request unless the other party agrees otherwise.
- (3) Pre-Hearing Conference: The administrative law judge will require the parties to appear in person or by telephone for a pre-hearing conference for the purpose of:

- (a) Identifying the issues to be resolved;
  - (b) Establishing the length and scheduling of the hearing;
  - (c) Deciding whether the hearing record will be a written or electronic verbatim record;
  - (d) Reviewing the parties' hearing rights and procedures; and
  - (e) Notifying the parties of the availability of mediation at no cost through the Department.
- (4) Notice of Hearing:
- (a) The administrative law judge will provide a notice to the parties of the hearing. The notice will be served by registered or certified mail.
  - (b) The hearing notice will include:
    - (A) A statement of the time and place of the hearing, the scheduling of pre-hearing exchange of documents and any other filing deadlines, and the date for issuance of the final order;
    - (B) A statement of the authority and jurisdiction under which the hearing is to be held;
    - (C) A reference to the particular sections of the statutes and rules involved;
    - (D) A short and plain statement of the matters asserted or charged;
    - (E) A statement that mediation is available to the parties at no cost from the Department;
    - (F) A statement of hearing rights as described in subsection (3).
- (5) Due Process Hearing Rights: Parties to a due process hearing conducted under OAR 581-015-2360 (Notice of Hearing, Hearing Rights, and Pre-Hearing Conference) or OAR 581-015-2400 through 581-015-2445 (Discipline for Students with Disabilities) have the following rights:
- (a) During the pendency of any due process hearing or judicial appeal, the child must, remain in the present educational placement unless:
    - (A) The school district and the parent agree otherwise;
    - (B) If applying for initial admission to a public school, the parent consents to the child's placement in a program provided or selected by the district at the district's expense until all proceedings are completed;
    - (C) The school district orders a change in placement to an appropriate interim alternative educational setting for up to 45 school days due to a weapon, illegal drug, or controlled substance incident or for serious bodily injury;
    - (D) The administrative law judge orders a change in placement to an appropriate interim alternative educational setting for up to 45 school days due to the substantial likelihood of injurious behavior; or
    - (E) The school district implements a disciplinary removal to an interim alternative educational setting for a student when the student's behavior is determined not to be a manifestation of the student's disability.
  - (b) Any party to a hearing has the right to:
    - (A) Be accompanied and advised by counsel and by individuals who have special knowledge or training with respect to the problems of children with disabilities;
    - (B) Present evidence and confront, cross-examine, and compel the attendance of witnesses;
    - (C) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least 5 business days before the hearing;
    - (D) Obtain a written or, at the option of the parents, electronic verbatim record of the hearing at no cost to the parents; and
    - (E) Obtain a written or, at the option of the parents, electronic findings of fact and hearing decision at no cost to the parents.
  - (c) The parent involved in a hearing has the right to:
    - (A) Have the child present who is the subject of the hearing; and
    - (B) Open the hearing to the public.

Stat. Auth.: ORS 343.041, ORS 343.045 & ORS 343.055; ORS 343.155, ORS 343.165  
 Stats. Implemented: ORS 343.155, ORS 343.165, ORS 343.177, 34 CFR 300.504; 34 CFR 300.507(b)(2); 34 CFR 300.511; 34 CFR 300.512; 34 CFR 300.518, 34 CFR 300.530; 34 CFR 300.533  
 Hist.: 1EB 18-1979(Temp), f. & ef. 11-15-79; 1EB 5-1980, f. 2-22-80, ef. 2-23-80; EB 28-1989(Temp), f. & cert. ef. 10-16-89; EB 29-1989(Temp), f. & cert. ef. 10-16-89; EB 3-1990, f. & cert. ef. 1-26-90; EB 9-1992, f. & cert. ef. 4-7-92; EB 11-1995, f. & cert. ef. 5-25-95; ODE 20-1999, f. & cert. ef. 9-24-99; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0080, ODE 10-2007, f. & cert. ef. 4-25-07

## **581-015-2365**

### **Criteria for Administrative Law Judge**

- (1) An administrative law judge appointed to conduct a hearing regarding the identification, evaluation, educational placement of a child, or the provision of a free appropriate public education to a child who may have a disability must:
  - (a) Not be employed by the Department or a school district; and
  - (b) Not have a professional or personal interest that would conflict with the person's objectivity in the hearing.
- (2) An administrative law judge must:
  - (a) Possess knowledge of, and the ability to understand, the provisions of state and federal special education laws, regulations, and legal interpretations by federal and state courts;
  - (b) Possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
  - (c) Possess the knowledge and ability to render and write decisions in accordance with standard legal practice.
- (3) For purposes of section (1)(a) of this rule, a person who otherwise qualifies to conduct a hearing is not an employee of the Department or school district solely because the person is paid by the Department or school district to serve as a hearings officer.
- (4) The Department keeps a list of the persons serving as administrative law judges, which includes a statement of the qualifications of each person.

Stat. Auth.: ORS 343.041, ORS 343.045 & ORS 343.055; ORS 343.155, ORS 343.165

Stats. Implemented: ORS 343.165, 34 CFR 300.511(c)

Hist.: 1EB 269, f. & ef. 12-22-77; EB 28-1989(Temp), f. & cert. ef. 10-16-89; EB 3-1990, f. & cert. ef. 1-26-90; EB 11-1995, f. & cert. ef. 5-25-95; ODE 33-1999, f. 12-13-99, cert. ef. 12-14-99; Renumbered from 581-015-0096, ODE 10-2007, f. & cert. ef. 4-25-07

## **581-015-2370**

### **Conduct of Hearing**

- (1) The hearing will be conducted by and under the control of the administrative law judge appointed under 581-015-2360.
- (2) At the discretion of the administrative law judge, the hearing will be conducted in the following manner:
  - (a) Statement and evidence of the school district in support of its action;
  - (b) Statement and evidence of the parents disputing the school district action;
  - (c) Rebuttal testimony.
- (3) The administrative law judge, counsel or other representatives of the parties, and the parents if the parents are not represented, have the right to question or cross-examine any witnesses.
- (4) The hearing may be continued with recesses as determined by the administrative law judge.
- (5) The administrative law judge may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious or immaterial matter.
- (6) Exhibits must be marked, and the markings must identify the person offering the exhibits. The exhibits will be preserved by the Superintendent as part of the record of the proceedings.
- (7) Each hearing must be conducted at a time and place that is reasonably convenient to the parents and child involved.

Stat. Auth.: ORS 343.041, ORS 343.045, ORS 343.055, ORS 343.155, ORS 343.165

Stats. Implemented: ORS 343.155 & ORS 343.165, 34 CFR 300.512; 34 CFR 300.515(d)

Hist.: 1EB 269, f. 12-22-77, ef. 12-22-77; EB 28-1989(Temp), f. & cert. ef. 10-16-89; EB 3-1990, f. & cert. ef. 1-26-90; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0086, ODE 10-2007, f. & cert. ef. 4-25-07

## **581-015-2375**

### **Decision of Administrative Law Judge**

- (1) The decision of the hearing officer in a contested case will comply with ORS 343.167.
- (2) The decision will be entered and mailed to the parties not later than 45 days after the expiration of the resolution period under OAR 581-015-2375 unless a specific extension has been granted by the administrative law judge at the request of a party.
- (3) A copy of the hearing decision will be sent to the parent and school district accompanied by a statement describing the method of appealing the decision.
- (4) The Department will submit a copy of the findings and hearing decision to the State Advisory Council for Special Education or a subcommittee of the Council, and make the findings and decisions available to the public, in such a manner so that personally identifiable information will not be disclosed.



Stat. Auth.: ORS 343.041, ORS 343.045 & ORS 343.055; ORS 343.155, ORS 343.165  
Stats. Implemented: ORS 343.167, 34 CFR 300.513, 34 CFR 300.515  
Hist.: 1EB 269, f. & ef. 12-22-77; 1EB 18-1979(Temp), f. & ef. 11-15-79; 1EB 5-1980, f. 2-22-80, ef. 2-23-80; EB 28-1989(Temp), f. & cert. ef. 10-16-89; EB 3-1990, f. & cert. ef. 1-26-90; EB 9-1993, f. & cert. ef. 3-25-93; EB 11-1995, f. & cert. ef. 5-25-95; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0088, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2380**

#### **Informal Disposition**

Nothing contained herein shall be construed to preclude any system of consultations or conferences with parents that is used by school districts with regard to identification, evaluation or educational placement of a child with a disability. Such conferences or consultations, however, shall not be held in lieu of a hearing requested under <sup>2</sup>OAR 581-015-0081 if one is requested. A request for a hearing shall not preclude informal disposition of the matter by stipulation, agreed settlement or consent order.

Stat. Auth.: ORS 343.041, ORS 343.045 & ORS 343.055, ORS 343.155  
Stats. Implemented: ORS 343.155  
Hist.: 1EB 269, f. & ef. 12-22-77; EB 11-1995, f. & cert. ef. 5-25-95; Renumbered from 581-015-0091, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2383**

#### **Failure to Appear at a Hearing**

- (1) When a parent, having requested a hearing, fails to appear at the specified time and place, the administrative law judge must enter a decision which supports the school district action.
- (2) The decision supporting the school district's action must set forth the material on which the action is based, or the material must be attached to and made a part of the decision.

Stat. Auth.: ORS 343.041, ORS 343.045 & ORS 343.055, ORS 343.155, ORS 343.165  
Stats. Implemented: ORS 343.155 & ORS 343.165  
Hist.: 1EB 269, f. & ef. 12-22-77; 1EB 18-1979(Temp), f. & ef. 11-15-79; 1EB 5-1980, f. 2-22-80, ef. 2-23-80; EB 11-1995, f. & cert. ef. 5-25-95; Renumbered from 581-015-0084, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2385**

#### **Hearing Costs**

- (1) Costs of the Proceedings:
  - (a) The school district must reimburse the Department for the costs related to conducting the hearing, including pre-hearing conferences, scheduling arrangements, and other related matters.
  - (b) The school district must provide the parent with a written, or at the option of the parent, an electronic verbatim recording of the hearing, within a reasonable time of the close of the hearing.
- (2) Attorney Fees: Funds under Part B of the Individuals with Disabilities Education Act may not be used to pay attorney fees or costs of a party related to an action or proceeding under this rule.

Stat. Auth.: ORS 343.041, ORS 343.045, ORS 343.055, ORS 343.167;  
Stats. Implemented: ORS 343.165, ORS 343.167, 34 CFR 300.512; 34 CFR 300.517(b)  
Hist.: EB 28-1989(Temp), f. & cert. ef. 10-16-89; EB 3-1990, f. & cert. ef. 1-26-90; EB 9-1992, f. & cert. ef. 4-7-92; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0093, ODE 10-2007, f. & cert. ef. 4-25-07

## **HEARINGS UNDER SECTION 504**

### **581-015-2390**

#### **Definitions for Hearings Under Section 504 of the Rehabilitation Act**

The following definitions apply to OAR 581-015-2395:

- (1) "Student with a disability under Section 504" means any student who has a physical or mental impairment that substantially limits one or more major life activities.
- (2) As used in section (1) of this rule:
  - (a) "Physical or mental impairment" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular;

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<sup>2</sup> Correction: 581-015-2345

reproductive; digestive; genito-urinary; hemic and lymphatic; skin; endocrine; any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities;

(b) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working;

(3) "Qualified student with a disability under Section 504" means a student with a disability under Section 504 who is:

(a) Of an age during which persons without a disability are provided educational services;

(b) Of any age during which it is mandatory under state law to provide such services to students with disabilities; or

(c) To whom a state is required to provide a free appropriate public education under the Individuals with Disabilities Education Act.

(4) "School District" means a school district as defined in ORS 343.153.

Stat. Auth.: ORS 326 & 323.055

Stats. Implemented: ORS 343.041

Hist.: EB 7-1987(Temp), f. & ef. 5-11-87; EB 24-1988, f. & cert. ef. 5-24-88; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03; Renumbered from 581-015-0108, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 26-2008, f. 10-23-08, cert. ef. 10-24-08; ODE 12-2011, f. & cert. ef. 10-31-11

### **581-015-2395**

#### **Procedures for a Hearing under Section 504 of the Rehabilitation Act of 1973**

(1) The parent or guardian of a qualified student with a disability under section 504 may file a written request for a hearing with the State Superintendent of Public Instruction with respect to actions regarding the identification, evaluation, provision of a free appropriate education, or education placement of the student with the disability under Section 504, which the parent or guardian alleges to be in violation of Section 504 of the Rehabilitation Act of 1973, Public Law 93-112, or any amendment thereof. In such event, the Superintendent will conduct a hearing.

(2) The school district involved in the hearing is responsible for the costs of the hearing.

(3) The prehearing and hearing procedures in OAR 581-015-2340 through 581-015-2383 apply to hearings conducted under Section 504 of the Rehabilitation Act.

(4) The parties are entitled to the procedural rights under OAR 581-015-2360 with the exceptions of the stay-put provision and the right to obtain at no cost a written or electronic verbatim record of the hearing, both of which do not apply to a hearing under this rule.

(5) Nothing in this rule is meant to prevent the parties from also seeking due process remedies under the Individuals with Disabilities Education Act as set forth in OAR 581-015-2340 through 581-015-2385.

Stat. Auth.: ORS 326 & ORS 343.055

Stats. Implemented: ORS 343.041

Hist.: EB 7-1987(Temp), f. & ef. 5-11-87; EB 24-1988, f. & cert. ef. 5-24-88; EB 24-1990, f. & cert. ef. 5-18-90; EB 9-1993, f. & cert. ef. 3-25-93; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03; Renumbered from 581-015-0109, ODE 10-2007, f. & cert. ef. 4-25-07

## **DISCIPLINE**

### **581-015-2400**

#### **Definitions**

For the purposes of OAR 581-015-2400 through 581-015-2445, the following definitions apply:

(1) "**Behavioral intervention plan**" means an individualized plan, including positive interventions, designed to assist a student to decrease inappropriate behavior and increase or teach an alternative appropriate behavior.

(2) "**Current educational placement**" means the type of educational placement of the child as described in the child's "annual determination of placement" document at the time of the disciplinary removal. It does not mean the specific location or school but the type of placement on the continuum of placement options (e.g. regular classroom with support; regular classroom with resource room support; special class; special school; home instruction, etc.).

(3) "**Disciplinary removal**" means suspension, expulsion, or other removal from school for disciplinary reasons, including removals for mental health examinations for students who threaten violence or harm in public schools under ORS 339.250(4)(b)(C). It does not include:

(a) Removals by other agencies;

(b) Removals for public health reasons (e.g. head lice, immunizations, communicable diseases, etc.);

(c) In-school suspensions if the child continues to have access to the general curriculum and to special education and related services as described in the child's IEP, and continues to participate with children without disabilities to the extent they would in their current placement; or

(d) Bus suspensions, unless the student's IEP includes transportation as a related service, the district makes no alternative transportation arrangements for the student, and the student does not attend school as a result of the bus suspension.

(4) "**Functional behavioral assessment**" means an individualized assessment of the student that results in a hypothesis about the function of a student's behavior and, as appropriate, recommendations for a behavior intervention plan.

(5) "**Suspension**" means any disciplinary removal other than expulsion.

Stat. Auth.: ORS 343.041, 343.045 & 343.155

Stats. Implemented: ORS 343.155

Hist.: ODE 35-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0550, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 26-2008, f. 10-23-08, cert. ef. 10-24-08

### **581-015-2405**

#### **Disciplinary Removals for Up to 10 School Days for Children with Disabilities**

(1) School districts may remove a child with a disability who violates a code of student conduct from the child's current educational placement to an appropriate interim alternative educational setting, another setting, or suspension, for up to ten school days in a school year to the same extent, and with the same notice, as for children without disabilities. These removals are not considered a change in placement.

(2) During disciplinary removals described in section (1) of this rule:

(a) School districts are not required to provide access to special education and the general curriculum unless students without disabilities are provided access during this time.

(b) School districts are not required to determine whether the child's behavior resulting in disciplinary removal is a manifestation of the child's disability.

(3) For the purpose of counting days of suspensions under OAR 581-015-2405 through 581-015-2445:

(a) Suspensions of a half day or less are counted as a half day; and

(b) Suspensions of more than a half-day are counted as a whole day.

(4) For the purposes of determining "current educational placement" in subsection (1) of this rule:

(a) Children who received special education services in another state and are found eligible for special education in Oregon are treated as initially placed in special education in Oregon, and any days of suspension accrued in the former state are not counted toward the ten days.

(b) For children who move from one school district to another school district in Oregon, any days of suspension from the former district carry over to the new school district unless the school district does not have actual knowledge of the previous suspensions.

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

Stats. Implemented: ORS 343.155, 34 CFR 300.530

Hist.: ODE 35-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0551, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2410**

#### **Additional Disciplinary Removals of Up to 10 School Days Each (No Pattern)**

(1) School districts may remove a child with a disability who violates a code of student conduct from the child's current educational placement to an appropriate interim alternative educational setting, another setting, or suspension for additional periods of up to ten school days in a school year to the same extent, and with the same notice, as for children without disabilities, if the removals do not constitute a pattern under section (2) of this rule. These removals are not considered a change in placement.

(2) School personnel must determine, on a case-by-case basis, whether the series of removals constitute a pattern:

(a) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and

(b) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of removals to one another.

(3) Services. During removals described in section (1) of this rule:

(a) School districts must provide services that are necessary to enable the child:

- (A) To continue to participate in the general education curriculum, although in another setting; and
- (B) To progress toward meeting the goals in the child's IEP.
- (b) School personnel, in consultation with at least one of the child's teachers, determine the extent to which the services described in subsection (3)(a) of this rule are needed, and the location for delivery of those services.
- (c) School districts are not required to determine whether the behavior resulting in removal is a manifestation of the child's disability.
- (4) The determination in subsection (2) is subject to review under OAR 581-015-2445.

Stat. Auth.: ORS 343.041, ORS 343.045 & ORS 343.155;  
 Stats. Implemented: ORS 343.155, 34 CFR 300.530; 34 CFR 300.536  
 Hist.: ODE 35-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0552, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2415**

#### **Disciplinary Removals of More than 10 School Days (Pattern or Consecutive)**

- (1) A disciplinary removal is considered a change in educational placement and the school district must follow special education due process procedures if:
  - (a) The removal will be for more than 10 consecutive school days (e.g. expulsion); or
  - (b) The child will be removed for more than 10 cumulative school days from their current educational placement in a school year, and those removals constitute a pattern under OAR 581-015-2410(2).
- (2) School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a disciplinary removal under subsection (1) for a child with a disability who violates a code of conduct.
- (3) Manifestation determination. Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the school district must determine whether the child's behavior is a manifestation of the student's disability in accordance with OAR 581-015-2420.
- (4) Manifestation. If the determination under subsection (3) is that the child's behavior is a manifestation of the child's disability, the school district must:
  - (a) Return the child to the placement from which the child was removed, unless:
    - (A) The parent and school district agree to a change of placement as part of the modification of the behavioral intervention plan under subsection (4)(b);
    - (B) The school district removes the child to an interim alternative educational setting under OAR 581-015-2425 for a weapons or drug violation or for infliction of serious bodily injury; or
    - (C) The school district obtains an order from an administrative law judge under OAR 581-015-2430 allowing a change in placement to an interim alternative educational setting for injurious behavior; and
  - (b) Either:
    - (A) Conduct a functional behavioral assessment, unless the school district conducted a functional behavioral assessment before the behavior occurred that prompted the disciplinary action, and implement a behavior intervention plan; or
    - (B) If the student already has a behavior plan, review the behavioral intervention plan and modify it, as necessary, to address the behavior.
- (5) No manifestation. If the determination under subsection (3) is that the child's behavior is not a manifestation of the child's disability:
  - (a) The school district may proceed with disciplinary action applicable to children without disabilities under section (1) of this rule, in the same manner and for the same duration in which the procedures would be applied to children without disabilities.
  - (b) If the school district takes such action applicable to all children, the school district must:
    - (A) On the date on which the decision is made to remove the student under subsection (5), notify the parents of that decision and provide the parents with notice of procedural safeguards under OAR 581-015-2315.
    - (B) Provide services to the student in an interim alternative educational setting, determined by the IEP team, in accordance with OAR 581-015-2435; and
    - (C) Provide, as appropriate, a functional behavioral assessment, and behavior intervention services and modifications that are designed to address the behavior violation so that it does not recur.

- (6) Placement pending due process hearing. If a parent requests a due process hearing because of a disagreement with the manifestation determination or any decision about placement related to the disciplinary removal in section (1) of this rule, the child remains in the interim alternative educational setting pending the decision of the administrative law judge under OAR 581-015-2445, or until the end of the disciplinary removal under subsection (1), whichever occurs first, unless the parent and school district agree otherwise.

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

Stats. Implemented: ORS 343.155, 34 CFR 300.504(a)(3), 34 CFR 300.530, 300.531, 300.532, 300.533

Hist.: ODE 35-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0553, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2420**

#### **Manifestation Determination**

- (1) In determining whether the child's behavior is a manifestation of the child's disability, the school district, the parent, and relevant members of the IEP team (as determined by the parent and the district) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:
- (a) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
  - (b) If the conduct in question was the direct result of the school district's failure to implement the IEP.
- (2) If the school district, the parent, and relevant members of the IEP team determine that either subsection (1)(a) or (b) is applicable for the child, the conduct must be determined to be a manifestation of the child's disability.
- (3) If the basis for the team's determination is that the school district did not implement the child's IEP, the school district must take immediate steps to remedy those deficiencies.

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

Stats. Implemented: ORS 343.155, 34 CFR 300.530(e)

Hist.: ODE 35-1999, f. 12-13-99, cert. ef. 12-14-99; Renumbered from 581-015-0554, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2425**

#### **Removal to an Interim Alternative Educational Setting by School District**

- (1) Definitions:
- (a) "Drug" means illegal drug or controlled substance but does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or otherwise legally possessed. It does not include alcohol or tobacco.
  - (b) "Drug violation" means the use, possession, sale or solicitation of drugs at school or a school function.
  - (c) "Serious bodily injury" means bodily injury, which involves substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ or mental faculty.
  - (d) "Weapon" means a weapon, device, instrument, material or substance, animate or inanimate, that is used for, or is readily capable of causing death or serious bodily injury, except that it does not include a pocket knife with a blade of less than 2 1/2 inches in length.
  - (e) "Weapon violation" means carrying a weapon to school or to a school function or acquiring a weapon at school.
- (2) School districts may remove a child with disabilities from their current educational placement to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 school days in a school year without regard to whether the behavior is determined to be a manifestation of the child's disability for:
- (a) A drug or weapon violation as defined in subsection (1); or
  - (b) If the child has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the Department or a school district.
- (3) A removal for a drug or weapon violation, or for inflicting serious bodily injury, is considered a change in placement.
- (4) School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a removal under subsection (2) for a child with a disability who violates a code of conduct.

- (5) For removals described in subsection (2) of this rule, school districts must:
- (a) On the date on which the decision is made to remove the student under subsection (2), notify the parents of that decision and provide the parents with notice of procedural safeguards under OAR 581-015-2315;
  - (b) Provide the services to the student in an interim alternative educational setting, determined by the IEP team, in accordance with OAR 581-015-2435;
  - (c) Within 10 school days of any decision to remove a child under subsection (2), determine whether the child's behavior is a manifestation of the child's disability in accordance with OAR 581-015-2420; and
  - (d) Provide, as appropriate, a functional behavioral assessment, and behavior intervention services and modifications that are designed to address the behavior violation so that it does not recur.
- (6) Placement pending due process hearing. If a parent requests a due process hearing because of a disagreement with the manifestation determination, removal to the interim alternative educational setting, or any decision about placement related to a disciplinary removal under section (2) of this rule, the child remains in the interim alternative educational setting pending the decision of the administrative law judge under OAR 581-015-2445, or until the end of the removal under section (2), whichever occurs first, unless the parent and school district agree otherwise.

Stat. Auth.: ORS 343.041, 343.045 & 343.155

Stats. Implemented: ORS 343.155, 34 CFR 300.504(a)(3), 300.530; 300.533, 300.536

Hist.: ODE 35-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0555, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 29-2012, f. 11-7-12, cert. ef. 11-9-12

### **581-015-2430**

#### **Removal to an Interim Alternative Educational Setting by Administrative Law Judge (Injurious Behavior)**

- (1) "Injurious behavior" means behavior that is substantially likely to result in injury to the child or to others.
- (2) School districts may request an expedited due process hearing under OAR 581-015-2445 to obtain an order from an administrative law judge to order a change in placement of the child to an interim alternative educational setting for not more than 45 school days for injurious behavior.
- (3) The interim alternative educational setting must meet the requirements of OAR 581-015-2435(2).
- (4) The procedures in subsection (2) may be repeated if the school district believes that returning the child to the original placement is substantially likely to result in injurious behavior.
- (5) Nothing in this rule precludes a school district from seeking a court order to remove a child from the child's current educational placement to another placement if the district believes that the maintaining the child in the child's current educational placement is substantially likely to result in injurious behavior.

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

Stats. Implemented: ORS 343.155, 34 CFR 300.532

Hist.: ODE 35-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0556, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2435**

#### **Requirements of an Interim Alternative Educational Setting**

An interim alternative educational setting under OAR 581-015-2415 and 581-015-2425 must:

- (1) Be determined by the child's IEP team; and
- (2) Enable the child to:
  - (a) Continue to participate in the general curriculum, although in another setting; and
  - (b) Progress toward achieving the goals in the child's IEP.

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

Stats. Implemented: ORS 343.155, 34 CFR 300.530

Hist.: ODE 35-1999, f. 12-13-99, cert. ef. 12-14-99; Renumbered from 581-015-0557, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2440**

#### **Protections for Children Not Yet Eligible for Special Education**

- (1) The provisions of OAR 581-015-2400 through 581-015-2435 apply to children not yet identified as children with disabilities if the school district had knowledge that the child was a child with a disability.

(2) For the purposes of subsection (1) of this rule, a school district "had knowledge" if, before the behavior that precipitated the disciplinary action occurred:

- (a) The parent of the child expressed a concern in writing to supervisory or administrative school personnel, or a teacher of the child, that the child is in need of special education and related services;
- (b) The parent of the child requested a special education evaluation of the child; or
- (c) The teacher of the child, or other school personnel, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the school district's director of special education or other supervisory personnel of the district.

(3) Notwithstanding subsections (1) and (2) of this rule, a school district will not be considered to have had knowledge that the child was a child with a disability if:

- (a) The parent of the child has not allowed an evaluation of the child or has refused services under OAR 581-015-2090;
- (b) The child has been evaluated in accordance with OAR 581-015-2090–581-015-2180, and the child was determined not eligible; or
- (c) The parent or adult student has revoked consent for the continued provision of special education and related services pursuant to OAR 581-015-2090(4)(a)(B) or 581-015-2735(4)(a)(B).

(4) If the school district did not have knowledge before taking disciplinary action against the child, the district may take the same disciplinary actions as applied to children without disabilities who engaged in comparable behaviors. However:

- (a) If a special education evaluation is requested or if the school district initiates a special education evaluation, the evaluation must be conducted in an expedited manner.
- (b) Until the evaluation is completed, the child remains in the educational placement determined by school personnel, which can include suspension, expulsion, or placement in alternative education under OAR 581-021-0071.
- (c) If, on completion of the evaluation, the child is determined to be a child with a disability, the school district must conduct an IEP meeting to develop an IEP and determine placement and must provide special education and related services.
- (d) The provisions of OAR 581-015-2400–581-015-2435 and 581-015-2445 apply beginning on the date of the eligibility determination.

Stat. Auth.: ORS 343.041, 343.045 & 343.155

Stats. Implemented: ORS 343.155, 34 CFR 300.534

Hist.: ODE 35-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0558, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 13-2009, f. & cert. ef. 12-10-09

## **581-015-2445**

### **Expedited Due Process Hearings**

(1) An expedited due process hearing must be held if a hearing is requested under OAR 581-015-2345 because:

- (a) In a dispute over a disciplinary action for a child with a disability, the child's parent disagrees with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding the child's educational placement; or
- (b) The school district believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

(2) Expedited due process hearings must meet the requirements of OAR 581-015-2340 through 581-015-2385; except that:

- (a) Unless the parents and school district agree in writing to waive the resolution meeting in OAR 581-015-2355 or agree to use the mediation process in OAR 581-015-2335:
  - (A) A resolution meeting must occur within seven days of receiving notice of the due process hearing request; and
  - (B) The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process hearing request.
- (b) The expedited hearing must occur within 20 school days of the date the hearing is requested and must result in a written decision within 10 school days after the hearing.

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

Stats. Implemented: ORS 343.155, 34 CFR 300.532

Hist.: ODE 35-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0559, ODE 10-2007, f. & cert. ef. 4-25-07

## CHILDREN IN PRIVATE SCHOOLS ENROLLED BY THEIR PARENTS

### 581-015-2450

#### Definitions

For the purposes of OAR 581-015-2450 through 581-015-2515, the following definitions apply:

- (1) **"Enrolled in a public school or ECSE program"** means enrolled in, attending, and, for children ages 7 to 18, not exempt from compulsory school attendance as a private school student.
- (2) **"IDEA funds"** means federal funds allocated to the public agency under the Individuals with Disabilities Education Act.
- (3) **"Private school child with a disability"** means a child with a disability or preschool child with a disability aged 3 to school-age who has been enrolled by a parent in a private school or facility, and who, if aged 7 to 18, is exempt from compulsory school attendance under ORS 339.115.
  - (a) This term includes school-age children who are exempt from compulsory school attendance under ORS 339.115, even if a school district permits the student to attend one or more classes pursuant to a district policy permitting partial enrollment.
  - (b) This term does not include:
    - (A) Children three years of age until the age of eligibility for public school who can be provided a free appropriate public education in a private preschool or child care setting selected and paid for by their parents; or
    - (B) Children who are exempt from compulsory school attendance under ORS 339.115 as a home schooled student; or
    - (C) Children who are not of compulsory school attendance age who have rejected public agency services but who are not attending a private school; or
    - (D) Children who are placed in a private school by the public agency.
- (4) **"Private school"** means a private elementary or secondary school or facility, including a private religious school. A preschool is considered a private school under this provision only if it is part of a private elementary or secondary school.
- (4) **"Public agency"** means:
  - (a) For school-aged children, the school district where the private elementary or secondary school is located; and
  - (b) For children aged 3 up to school-age, the EI/ECSE contractor where the private elementary school or secondary school is located.
- (5) **"Services plan"** means a written statement that describes the special education and related services the school district will provide to a parentally-placed private school child with a disability who has been designated to receive services, including the location of services and any transportation necessary, consistent with OAR 581-015-2460. Unlike an IEP or IFSP, a service plan does not need to provide a free appropriate public education.

Stat. Auth.: ORS 343.041, ORS 343.045, ORS 343.055

Stat. Implemented: ORS 343.055, 34 CFR 300.133

Hist.: ODE 16-2000, f. & cert. ef. 5-23-00; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03; Renumbered from 581-015-0705, ODE 10-2007, f. & cert. ef. 4-25-07

### 581-015-2455

#### Provision of services for Private School Children with Disabilities

- (1) Each public agency must provide for participation in special education and related services to private school children with disabilities who are enrolled in private schools located within the school district boundaries, to the extent consistent with the number and location of these children.
- (2) No private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school
- (3) Decisions about the services that will be provided to private school children with disabilities must be made in accordance with OAR 581-015-2460 and OAR 581-015-2480.
- (4) Special education and related services provided to private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public agency, except that private school teachers providing equitable services to private school children with disabilities do not have to meet the highly qualified special education teacher requirements.
- (5) Special education and related services must be provided to private school children with disabilities by employees of the public agency or through contract by the public agency with an individual, association, agency, organization, or other entity.



- (6) Private school children with disabilities may receive a different amount of services than children with disabilities in public schools.
- (7) Special education and related services may be provided to parentally-placed private school children on the premises of private, including religious, schools, to the extent consistent with law.
- (8) Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be secular, neutral and nonideological.

Stat. Auth.: ORS 343.041, ORS 343.045, ORS 343.055

Stats. Implemented: ORS 343.155, 34 CFR 300.132; 34 CFR 300.137, 34 CFR 300.138; 34 CFR 300.139

Hist.: 1EB 28-1978, f. & ef. 7-20-78; 1EB 25-1980, f. & ef. 11-7-80; EB 12-1995, f. & cert. ef. 5-25-95; ODE 16-2000, f. & cert. ef. 5-23-00; ODE 30-2000, f. & cert. ef. 12-11-00; Renumbered from 581-015-0166, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2460**

#### **Services Plan**

- (1) If a child with a disability is enrolled by a parent in private school and will receive special education or related services from a public agency, the public agency must:
  - (a) Initiate and conduct meetings to develop, review and revise a services plan for the child in accordance with subsection (3); and
  - (b) Ensure that a representative of the child's private school attends each meeting. If the representative cannot attend, the public agency must use other methods to ensure participation by the private school, including individual or conference telephone calls.
- (2) The services plan must describe the specific special education and related services that the public agency will provide to the child in light of the services that the public agency has determined, through the consultation process described in OAR 581-015-2480, it will make available to private school children with disabilities.
- (3) The services plan must, to the extent appropriate:
  - (a) Meet the requirements of OAR 581-015-2200 with respect to the services provided; and
  - (b) Be developed reviewed and revised consistent with OARs 581-015-2190 through 581-015-2210 and 581-015-2220(2) and (3).
- (4) Transportation:
  - (a) Public agencies are not required to provide transportation from the child's home to the private school.
  - (b) If necessary for the child to benefit from or participate in the services provided by the public agency, the public agency must provide transportation to the child:
    - (A) From the child's school or the child's home to a site other than the private school; and
    - (B) From the service site to the private school, or to the child's home, depending on the timing of the services.

Stat. Auth.: ORS 343.041, ORS 343.045 & ORS 343.055;

Stats. Implemented: ORS 343.155, 34 CFR 300.137 & 139

Hist.: 1EB 28-1978, f. & ef. 7-20-78; EB 11-1995, f. & cert. ef. 5-25-95; ODE 16-2000, f. & cert. ef. 5-23-00; Renumbered from 581-015-0151, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2465**

#### **Documentation Requirements**

Each public agency must maintain in its records and provide annually to the Department the following information for parentally-placed private school children:

- (1) The number of parentally-placed private school children evaluated;
- (2) The number determined to be children with disabilities, and
- (3) The number of children served.

Stat. Auth.: ORS 343.041, ORS 343.045 & ORS 343.055

Stats. Implemented: ORS 343.155, 34 CFR 300.132

Hist.: ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2470**

#### **Expenditures for Parentally-Placed Private School Children**

- (1) Formulas for determining funds available for provision of special education and related services to private school children with disabilities:
  - (a) For school-age children: Each school district must spend an amount that is the same proportion of the school district's total subgrant of IDEA funds as the number of school-age private school children with disabilities who are enrolled by their parents in private schools located within the

boundaries of the school district is to the total number of school-age children with disabilities in its jurisdiction.

- (b) For private school children with disabilities aged 3 up to school-age, the EI/ECSE contractor must spend:
  - (A) An amount that is the same proportion of the contractor's total IDEA fund subgrant under section 611(f) for ECSE children as the number of ECSE private school children with disabilities who are enrolled by their parents in private schools located within the boundaries of the ECSE service area is to the total number of ECSE children with disabilities in the service area; and
  - (B) An amount that is the same proportion of the contractor's total IDEA fund subgrant under section 619(g) as the number of ECSE private school children with disabilities who are enrolled by their parents in private schools located within the boundaries of the ECSE service area is to the total number of ECSE children with disabilities in the service area.
- (2) If a public agency has not expended for equitable services all of the proportionate funds designated for that purpose by the end of the fiscal year the IDEA funds were appropriated, the public agency must obligate the remaining funds for special education and related services to parentally-placed private school children with disabilities for a carry-over period of one additional year.
- (3) Expenditures for child find activities described in OAR 581-015-2085 may not be considered in determining whether the public agency has met the requirements of section (1).
- (4) A public agency is neither required to or prohibited from providing services to private school children with disabilities in excess of those required by this part, consistent with State law or local policy. State and local funds must not supplant the proportionate amount of federal funds required to be expended under subsection (1).
- (5) The cost of the transportation described in OAR 581-015-2460(4)(b) may be included in calculating whether the public agency has met the requirement of section (1) of this rule.

Stat. Auth.: ORS 343.041, ORS 343.045, 343.055 & ORS 343.157,

Stat. Implemented: ORS 343.055, 34 CFR 300.133 & 139

Hist.: ODE 16-2000, f. & cert. ef. 5-23-00; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03; Renumbered from 581-015-0706, ODE 10-2007, f. & cert. ef. 4-25-07

### **OAR 581-015-2475**

#### **Private School Child Count**

- (1) Each public agency must:
  - (a) After timely and meaningful consultation with representatives of private school children consistent with OAR 581-015-2480, determine the number of private school children with disabilities attending private schools located within the boundaries of the public agency;
  - (b) Conduct the count on December 1 of each year; and
  - (c) Use the count to determine the amount that the public agency will spend on providing special education and related services to private school children with disabilities in the next fiscal year.

Stat. Auth.: ORS 343.055 & ORS 343.157;

Stat. Implemented: ORS 343.055, 34 CFR 300.133

Hist.: ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2480**

#### **Consultation with Representatives of Private School Children with Disabilities**

- (1) To ensure timely and meaningful consultation, public agencies must consult with representatives of private school children with disabilities during the design and development of special education and related services for the children, including regarding:
  - (a) The child find process, including how private school children suspected of having a disability can participate equitably, and how parents, teachers, and private school officials will be informed of the process;
  - (b) The determination of the proportionate share of IDEA funds available to serve private school children with disabilities, including the determination of how the proportionate share of funds was calculated;
  - (c) The consultation process among the public agency and representatives of private school children with disabilities, including how such process will operate throughout the school year to ensure that private school children with disabilities identified through the child find process can meaningfully participate in special education and related services;

- (d) How, where and by whom special education and related services will be provided for private school children with disabilities, including a discussion of the types of services (including direct services and alternate service delivery mechanisms), how such services will be apportioned if funds are insufficient to serve all children, and how and when these decisions will be made; and
  - (e) How, if the public agency disagrees with the views of private school officials on the provision of services or the types of services (whether provided directly or through a contract), the public agency will provide to the private school officials a written explanation of the reasons why the public agency chose not to provide services directly or through a contract.
- (2) For the purposes of this rule, “representatives of private school children with disabilities” means representatives of parents of private school children with disabilities and private school officials or other private school representatives.
  - (3) The public agency makes the final decisions with respect to the services to be provided to eligible private school children.

Stat. Auth.: ORS 343.041, ORS 343.045 & ORS 343.055;  
 Stats. Implemented: ORS 343.041, ORS 343.055 & 34 CFR 300.134 & 137  
 Hist.: 1EB 28-1978, f. & ef. 7-20-78; EB 13-1995, f. & cert. ef. 5-25-95; ODE 16-2000, f. & cert. ef. 5-23-00; Renumbered from 581-015-0171, ODE 10-2007, f. & cert. ef. 4-25-07

### **OAR 581-015-2483**

#### **Written Affirmation**

- (1) When timely and meaningful consultation has occurred as described in OAR 581-015-2480, the public agency must obtain a written affirmation signed by the representatives of participating private schools.
- (2) If the representatives do not provide the affirmations within a reasonable period of time, the school district must forward the documentation of the consultation process to the Department.

Stat. Auth.: ORS 343.041, ORS 343.045 & ORS 343.055;  
 Stats. Implemented: ORS 343.041, ORS 343.055 & 34 CFR 300.135  
 Hist.: ODE 10-2007, f. & cert. ef. 4-25-07

### **OAR 581-015-2485**

#### **Complaint by Private School Official**

- (1) A private school official may submit a complaint to the Department under OAR 581-015-2030 that the public agency did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of the private school official.
  - (a) If the private school official wishes to submit a complaint, the official must provide the basis of the noncompliance by the public agency to the Department, and the public agency must forward the appropriate documentation to the Department.
  - (b) If the private school official is dissatisfied with the decision of the Department, the official may submit a complaint to the United States Secretary of Education by providing the basis of the noncompliance by the public agency to the Secretary, and the Department will forward the appropriate documentation to the Secretary.
- (2) For the purposes of this rule, a “private school official” is an administrator of the private school.

Stat. Auth.: ORS 343.041, ORS 343.045, ORS 343.055  
 Stat. Implemented: ORS 343.055, 34 CFR 300.136  
 Hist.: ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2490**

#### **Complaints and Due Process Hearings for Private School Children**

- (1) Due process hearing procedures do not apply to complaints that a public agency has failed to meet the requirements relating to the provision of services to and expenditures for private school children, including the provision of services indicated on the child's services plan.
- (2) Due process hearing procedures do apply to complaints that a public agency has failed to meet the child find requirements, including the requirements regarding evaluation, determination of eligibility for special education services, and reevaluation. Any due process hearing request regarding the child find requirements must be filed with the public agency in which the private school is located and with the Department under OAR 581-015-2345.
- (3) Complaints that a public agency has failed to meet any of the requirements related to private school children may be filed under OAR 581-015-2030.

Stat. Auth.: ORS 343.055 , ORS 343.155  
Stats. Implemented: ORS 343.055, 34 CFR 300.140  
Hist.: ODE 16-2000, f. & cert. ef. 5-23-00; Renumbered from 581-015-0707, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2495**

#### **Funds and Property Not to Benefit Private Schools**

- (1) A public agency may not use IDEA funds to finance the existing level of instruction in a private school or to otherwise benefit the private school.
- (2) The public agency must use IDEA funds to meet the special education needs of students enrolled in private schools, but not for:
  - (a) The needs of a private school; or
  - (b) The general needs of the students enrolled in the private school.

Stat. Auth.: ORS 343.041, ORS 343.045 & ORS 343.055  
Stats. Implemented: ORS 343.155, 34 CFR 300.141  
Hist.: 1EB 28-1978, f. & ef. 7-20-78; EB 11-1995, f. & cert. ef. 5-25-95; ODE 16-2000, f. & cert. ef. 5-23-00; Renumbered from 581-015-0196, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2500**

#### **Use of Personnel**

- (1) A public agency may use IDEA funds to make public agency personnel available in other than public facilities:
  - (a) To the extent necessary to implement any of the requirements related to private school children with disabilities; and
  - (b) If those services are not normally provided by the private school.
- (2) A public agency may use IDEA funds to pay for the services of an employee of a private school to provide services to private school children if:
  - (a) The employee performs the services outside of his or her regular hours of duty; and
  - (b) The employee performs the services under public supervision and control.

Stat. Auth.: ORS 343.055  
Stats. Implemented: ORS 343.055, 34 CFR 300.142  
Hist.: ODE 16-2000, f. & cert. ef. 5-23-00; Renumbered from 581-015-0708, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2505**

#### **Separate Classes Prohibited**

A public agency may not use IDEA funds for classes that are organized separately on the basis of school enrollment or religion of the students if:

- (1) The classes are at the same site; and
- (2) The classes include students enrolled in public schools or ECSE programs and students enrolled in private schools.

Stat. Auth.: ORS 343.041, ORS 343.045 & ORS 343.055  
Stats. Implemented: ORS 659.150; 34 CFR 300.143  
Hist.: 1EB 28-1978, f. & ef. 7-20-78; EB 11-1995, f. & cert. ef. 5-25-95; ODE 16-2000, f. & cert. ef. 5-23-00; Renumbered from 581-015-0191, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2510**

#### **Property, Equipment, and Supplies**

- (1) A public agency must keep title to and exercise continuing administrative control of all property, equipment and supplies that the public agency acquires with IDEA funds for the benefit of private school children with disabilities.
- (2) The public agency may place equipment and supplies in a private school for a period of time needed to implement the services plan of a private school child with disabilities or for child find purposes.
- (3) The public agency must ensure that the equipment and supplies placed in a private school:
  - (a) Are used only for the purposes identified in section (2); and
  - (b) Can be removed from the private school without remodeling the private school facility.
- (4) The public agency must remove equipment and supplies from a private school if:
  - (a) The equipment and supplies are no longer needed for the purposes identified in section (2); or
  - (b) Removal is necessary to avoid unauthorized use of the equipment and supplies.
- (5) IDEA funds must not be used for repairs, minor remodeling, or construction of private school facilities.

Stat. Auth.: ORS 343.041, ORS 343.045 & ORS 343.055  
Stats. Implemented: ORS 343.055, 34 CFR 300.144

## **581-015-2515**

### **Reimbursement for Private Placement**

- (1) If a private school child with a disability has available a free appropriate public education and the parents choose to place the child in a private school, the public agency is not required to pay for the cost of the child's education, including special education and related services, at the private school. However, the public agency must include that child in the population whose needs are addressed as parentally-placed private school children consistent with OAR 581-015-2475.
- (2) Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child and the question of financial responsibility are subject to the due process procedures under OAR 581-015-2340 through 581-015-2385.
- (3) If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary, or secondary school without the consent of or referral by the public agency, a court or an administrative law judge may require the agency to reimburse the parents for the cost of that enrollment if the court or administrative law judge finds that the agency had not made a free appropriate public education (FAPE) available to the child in a timely manner before that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by an administrative law judge or a court even if it does not meet the State standards that apply to education provided by public agencies.
- (4) The cost of reimbursement described in paragraph (3) of this section may be reduced or denied if:
  - (a) At the most recent IEP or IFSP meeting that the parents attended before removal of the child from the public school or ECSE program, the parents did not inform the IEP or IFSP team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or
  - (b) At least ten business days (including any holidays that occur on a business day) before the removal of the child from the public school or ECSE program, the parents did not give written notice to the public agency of the information described in paragraph (4)(a) of this rule.
- (5) The cost of reimbursement described in paragraph (3) of this section may also be reduced or denied if:
  - (a) Before the parents' removal of the child from the public school or ECSE program, the public agency informed the parents, through the notice requirements of OAR 581-015-2310, of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or
  - (b) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.
- (6) Notwithstanding the notice requirement in paragraph (4), the cost of reimbursement:
  - (a) Must not be reduced or denied for failure to provide the notice if:
    - (A) Compliance with paragraph (4) would likely result in physical harm to the child;
    - (B) The public agency prevented the parent from providing the notice; or
    - (C) The parents had not received notice of procedural safeguards under OAR 581-015-2315 informing them of this notice requirement; and
  - (b) May, in the discretion of a court or an administrative law judge, not be reduced or denied for failure to provide such notice if:
    - (A) The parent is illiterate and cannot write in English; or
    - (B) Compliance with paragraph (4) would likely result in serious emotional harm to the child.

Stat. Auth.: ORS 343.041, ORS 343.045 & ORS 343.055; ORS 343.155

Stats. Implemented: ORS 343.155, 34 CFR 300.148

Hist.: 1EB 28-1978, f. & ef. 7-20-78; EB 11-1995, f. & cert. ef. 5-25-95; ODE 16-2000, f. & cert. ef. 5-23-00; Renumbered from 581-015-0156, ODE 10-2007, f. & cert. ef. 4-25-07

## **USE OF PUBLIC AND PRIVATE INSURANCE**

### **581-015-2530**

#### **Children with Disabilities under IDEA Enrolled in Public Benefits or Insurance**

- (1) A school district program may use the State's Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for special education and related services required under IDEA and permitted under the public benefits or insurance program, as specified in subsection (2) below.

- (2) With regard to services required to provide a free appropriate public education (FAPE) to a child with disabilities under IDEA, a school district.
- (a) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child with disabilities to receive FAPE under the IDEA;
  - (b) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for special education and related services pursuant to IDEA, but may pay the cost that the parent otherwise would be required to pay; and
  - (c) May not use the child's benefits under a public insurance program if that use would:
    - (A) Decrease available lifetime coverage or any other insured benefit;
    - (B) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;
    - (C) Increase premiums or lead to the discontinuation of insurance; or
    - (D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and
- (3) Prior to accessing a child's or parent's public benefits or insurance for the first time, and after providing notification to the child's parents consistent with (4) below, the school district, must obtain written, parental consent that:
- (a) Meets the requirements of the Family Education Rights and Privacy Act (34 CFR part 99) and the parental consent provisions in IDEA (34 CFR §300.622) requiring that consent state:
    - (A) The personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular child);
    - (B) The purpose of the disclosure (e.g., billing for services under the Individuals with Disabilities Education Act (IDEA)); and
    - (C) The agency to which the disclosure may be made (e.g., the State's public benefits or insurance program (e.g., Medicaid)); and
    - (D) Specifies that the parent understands and agrees that the public agency may access the parent's or child's public benefits or insurance to pay for services under IDEA.
- (4) Prior to accessing a child's or parent's public benefits or insurance for the first time, and annually thereafter, the school district must provide prior written notification, consistent with requirements of OAR 581-015-2310(4) and (5), to the child's parents, that includes:
- (a) A statement of the parental consent provisions in paragraphs (3)(a)(A) and (B) above;
  - (b) A statement of the "no cost" provisions in paragraphs (2)(a) through (c) above.
  - (c) A statement that the parents have the right under the Family Education Rights and Privacy Act (FERPA) and IDEA, Part B, and OAR 581-015-2090 to withdraw their consent to disclosure of their child's personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) at any time; and
  - (d) A statement that the withdrawal of consent or refusal to provide consent, pursuant to FERPA and IDEA, to disclose personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.
- (5) Use of IDEA Part B funds.
- (a) If a school district is unable to obtain parental consent to use the parents' public benefits or insurance when the parents would incur a cost for a specified service required to ensure a free appropriate public education, the district may use its Part B funds to pay for the service.
  - (b) To avoid financial cost to parents who otherwise would consent to use public benefits or insurance, the district may use its Part B funds to pay the cost the parents otherwise would have to pay to use the public insurance (e.g., the deductible or co-pay amounts).
  - (c) Proceeds from public benefits or insurance will not be treated as program income for purposes of 34 CFR 80.25.
  - (d) If a school district or ECSE program spends reimbursements from federal funds (e.g., Medicaid) for special education and related services, those funds will not be considered "state or local" funds for purposes of the maintenance of effort provisions pursuant to IDEA 34 CFR §§ 300.163 and 300.203.
- (6) Construction. Nothing in this rule should be construed to alter the requirements imposed on a state Medicaid agency, or any other agency administering a public benefits or insurance program by federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, 42 U.S.C. 1396 through 1396v and 42 U.S.C. 1397 aa through 1397jj, or any other insurance program.

Stat. Auth.: ORS 343.041, 343.045 & 343.055  
 Stats. Implemented: ORS 343.045 & 343.155, 34 CFR 300.154

### **581-015-2535**

#### **Children with Disabilities Covered by Private Insurance**

- (1) With regard to services required to provide FAPE to a child with disabilities, a school district may access a parent's private insurance proceeds only if the parent provides informed consent consistent with this chapter.
- (2) Each time the school district proposes to access the parent's private insurance proceeds, it must:
  - (a) Obtain parent consent in accordance with this rule; and
  - (b) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.
- (3) IDEA funds:
  - (a) If a school district is unable to obtain parental consent to use the parent's private insurance, to ensure FAPE, the district may use its Part B funds to pay for the service.
  - (b) To avoid financial cost to parents who otherwise would consent to use private insurance, or public insurance if the parent would incur a cost, the school district may use its Part B funds to pay the cost the parents otherwise would have to pay to use the parent's insurance (e.g., the deductible or co-pay amounts).
  - (c) Proceeds from private insurance will not be treated as program income for purposes of 34 CFR 80.25.

Stat. Auth.: ORS 343.041, ORS 343.045 & ORS 343.055;

Stats. Implemented: ORS 343.164, ORS 343.045 & ORS 343.155, 34 CFR 300.154

Hist.: ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0608, ODE 10-2007, f. & cert. ef. 4-25-07

## **REGIONAL PROGRAMS**

### **581-015-2540**

#### **Definitions for Regional Programs**

The following definitions apply to OAR 581-015-2545 through 581-015-2565 unless otherwise indicated by the context.

- (1) "**Administrative Unit**" means the school district or ESD within each region chosen to operate the regional program through contract with the Department of Education.
- (2) "**Consultation services**" means technical assistance to or conferring with the local education agency and staff or early intervention/early childhood special education providers and staff or families to assist them to provide services to eligible children.
- (3) "**Department**" means the Oregon Department of Education.
- (4) "**Direct services**" means services provided to the child by regional specialists.
- (5) "**Eligible children**" means children with low-incidence, high need disabilities who need the services of the regional program.
- (6) "**Low incidence, high need disabilities**" means one or more of the following categories under OAR 581-015-2130 through 581-015-2180: autism spectrum disorder, deafblindness, hearing impairment, orthopedic impairment, traumatic brain injury, and vision impairment. A child with an orthopedic impairment is eligible for regional services only if determined to be severely orthopedically impaired by his/her eligibility team based on eligibility tool(s) approved by the Department.
- (7) "**Regional program**" means direct or consultative services funded through the Department provided on a single or multi-county basis that assist school districts and early intervention/ early childhood special education providers in meeting the unique needs of eligible children.
- (8) "**Services**" means early intervention services, early childhood special education and/or related services, and special education and/or related services, as defined in 581-015-2700 and OAR 581-015-2000, respectively.
- (9) "**Superintendent**" means the State Superintendent of Public Instruction.

Stat. Auth.: ORS 343.236

Stats. Implemented: ORS 343.236

Hist.: EB 27-1988, f. & cert. ef. 6-9-88; EB 10-1996, f. & cert. ef. 6-26-96; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03; Renumbered from 581-015-0291, ODE 10-2007, f. & cert. ef. 4-25-07

## **581-015-2545**

### **Administration of Regional Programs**

- (1) The Superintendent may provide services to eligible children on a regional basis to the extent possible with funds allocated for this purpose:
  - (a) The Superintendent determines the number of regions and their boundaries;
  - (b) The Superintendent selects a local school district, education service district, and/or county school district to serve as the Administrative Unit in each region;
  - (c) The Superintendent may designate a Department employee to give general coordination to regional programs;
  - (d) The Superintendent may appoint an advisory committee to provide policy direction for regional programs. This committee reports to the State Board of Education through the regional program coordinator.
- (2) The Administrative Unit provides general management to the regional program by:
  - (a) Preparing a regional plan that will include administrative structure, provision of direct and consultation services to eligible children, their families and staff, inservice activities, supervision of instruction, subcontracting and budget;
  - (b) Serving as fiscal agent for the region including arrangement of subcontracts; preparation of budgets for the receipt of local, state, and federal funds; provision of reports regarding child data, progress, and services; and the management of all fiscal functions including but not limited to, business services;
  - (c) Selecting, hiring, and directing regional employees using funds granted for that purpose and making employee benefits consistent with other district employees;
  - (d) Appointing a regional coordinator who will give general direction to the regional program and act as liaison to the Department; and
  - (e) Appointing a Regional Advisory Council to provide advice to the Administrative unit on program and policy direction.
- (3) The Regional Advisory Council consists of seven to eleven members representing each county in the region. At least one person must represent each of the following categories:
  - (a) Superintendent of an education service district or local school district;
  - (b) Special education supervisor or teacher of an education service district or local school district;
  - (c) Individual who supervises or provides early intervention or early childhood special education services;
  - (d) Director on board of an education service district or local school district;
  - (e) Individual with a disability or parent of an eligible child.
  - (f) Regular education teacher or building administrator.
- (4) The Administrative Unit governing board will request names from each education service district, school district, county school district, and early intervention and early childhood special education program in the area served by the regional program and make appointments to the council.

Stat. Auth.: ORS 343.236

Stats. Implemented: ORS 343.236

Hist.: EB 27-1988, f. & cert. ef. 6-9-88; EB 10-1996, f. & cert. ef. 6-26-96; Renumbered from 581-015-0292, ODE 10-2007, f. & cert. ef. 4-25-07

## **581-015-2550**

### **Eligibility for Regional Services**

- (1) The determination of a child's eligibility for services as a child with autism spectrum disorder, deafblindness, hearing impairment, traumatic brain injury, orthopedic impairment, or vision impairment is the responsibility of:
  - (a) The resident school district for children who are at the age of eligibility for kindergarten through age 21 in accordance with OAR 581-015-2130 through 581-015-2180; or
  - (b) The designated referral and evaluation agency for children who are at the age of eligibility for:
    - (A) Early intervention, from birth until the age of three in accordance with OAR 581-015-2780; and
    - (B) Early childhood special education, from the age of three until eligible for kindergarten in accordance with OAR 581-015-2795.
- (2) Regional programs may assist the local district or designated referral and evaluation agency in evaluating and/or determining eligibility when the local district or the designated referral and evaluation agency does not have a person trained and experienced in the area of the suspected disability(ies).



- (3) A child who is found eligible for services as a child with autism spectrum disorder, deafblindness, hearing impairment, traumatic brain injury, or vision impairment may be eligible for regional services if the child needs regional program services.
- (4) A child who is found eligible for services as a child with orthopedic impairment may be eligible for regional services if the child is determined to be severely orthopedically impaired by his/her eligibility team based on eligibility tool(s) approved by the Department, and needs regional program services.

Stat. Auth.: ORS 343.236

Stats. Implemented: ORS 343.236

Hist.: EB 27-1988, f. & cert. ef. 6-9-88; EB 10-1996, f. & cert. ef. 6-26-96; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03; Renumbered from 581-015-0293, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2555**

#### **Referral for Regional Services**

In referring a child to the regional program, the district or early intervention/early childhood special education program must provide the regional coordinator with the following information:

- (1) A request for regional services;
- (2) A statement of a child's eligibility in one of the following categories, if previously determined: autism spectrum disorder; deafblindness, hearing impairment, orthopedic impairment, traumatic brain injury, vision impairment, or;
- (3) A statement from the child's eligibility team for a child who, has a severe orthopedic impairment including eligibility tool(s) approved by the Department, if previously determined; and
- (4) Additional information as the regional coordinator or other regional program representative may request.

Stat. Auth.: ORS 343.236

Stats. Implemented: ORS 343.236

Hist.: EB 27-1988, f. & cert. ef. 6-9-88; EB 10-1996, f. & cert. ef. 6-26-96; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03; Renumbered from 581-015-0294, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 26-2008, f. 10-23-08, cert. ef. 10-24-08

### **581-015-2560**

#### **Individualized Educational Program/Individualized Family Service Plan**

- (1) An eligible child must have an individualized educational plan (IEP) developed in accordance with OAR 581-015-2220 or an individualized family service plan (IFSP) in accordance with OAR 581-015-2815.
- (2) The IEP/IFSP must be developed by an appropriately constituted team in accordance with OAR 581-015-2825 for preschool children, and OAR 581-015-2210 for school-age children. A designated regional program staff must be included in the development of the IEP/IFSP.
- (3) The IEP/IFSP serves as the basis for determining the child's unique developmental or educational needs and the extent and nature of services to be provided, including services provided by the regional program.

Stat. Auth.: ORS 343.236

Stats. Implemented: ORS 343.236

Hist.: EB 27-1988, f. & cert. ef. 6-9-88; EB 10-1996, f. & cert. ef. 6-26-96; Renumbered from 581-015-0295, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2565**

#### **Regional Program Services**

- (1) The resident school district has the primary responsibility for the education of an eligible school age child, and is responsible for all costs beyond the fiscal capacity of the regional program that result from the full implementation of the child's IEP.
- (2) The Department, through its contractors and subcontractors, has the primary responsibility for early intervention and early childhood special education services for eligible children from birth until eligible for kindergarten, and is responsible for all costs beyond the fiscal capacity of the regional program which result from full implementation of the child's IFSP.
- (3) Eligible children may receive one or more of the following regional services based upon the child's needs according to the IEP or IFSP and available resources of the regional program and agreement of the resident school district or EI/ECSE contractor:

- (a) Direct services to the child as determined in the IEP/IFSP by an itinerant specialist up to full-time instruction in a self-contained classroom operated by the regional program;
  - (b) Consultation to providers of the child's educational or early intervention/early childhood special education program and/or the parents;
  - (c) Participation in developing the student's IEP or IFSP;
  - (d) Recommendations for classroom activities, materials, equipment, adaptations and modifications to instruction, and/or assessment;
  - (e) Evaluation and interpretation of assessment information;
  - (f) Audiological management;
  - (g) Inservice for staff and parents; and
  - (h) Provision of certain related services.
- (4) Teachers and therapists employed by the regional program to serve eligible children must hold the appropriate special education or appropriate state licensure.
- (5) Regional programs must be in compliance with all applicable statutes and administrative rules pertaining to the education of children with disabilities.

Stat. Auth.: ORS 343.236

Stats. Implemented: ORS 343.236

Hist.: EB 27-1988, f. & cert. ef. 6-9-88; EB 10-1996, f. & cert. ef. 6-26-96; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0296, ODE 10-2007, f. & cert. ef. 4-25-07

## **OTHER PROGRAMS**

### **581-015-2570**

#### **Definitions and Purposes of Long-Term Care and Treatment (LTCT) Programs**

- (1) Definitions in this rule apply to OARs 581-015-2570 to 581-015-2574:
- (a) "Contracting school district" means the school district, the education service district, a program operated under the auspices of the State Board of Higher Education, or a program operated under the auspices of the Oregon Health and Science University Board of Directors with which the Department of Education contracts for the provision of educational services.
  - (b) "Education program" means those activities provided under contract between a contracting school district and the Department of Education, which provide a public education to preschool or school-aged children placed by a public entity, private entity or by the child's parent in a Psychiatric Day Treatment program or a Psychiatric Residential Treatment Facility;
  - (c) "Intermediate care facility" is defined in ORS 442.015 (21);
  - (d) "Psychiatric Day Treatment Programs" are defined in OAR 309-032-1505(100);
  - (e) "Psychiatric Residential Treatment Facility" is defined in OAR 309-032-1505(101).
  - (f) "Resident district" means the resident district of a student as defined under ORS 339.133 and 339.134.
  - (g) "Public Entity" means the Oregon Department of Human Services (DHS), Oregon Health Authority (OHA), the Oregon Youth Authority (OYA), Oregon School District, or their designee.
  - (h) "Treatment program" means the long-term day or residential treatment services provided by a private nonprofit or public agency and provided under contract with a state agency or designee of the state agency. Intermediate care facilities are excluded from this definition.
- (2) The purposes of the education program under OARs 581-015-2570 to 581-015-2574 are as follows:
- (a) To serve children placed by a public entity, private entity or by the child's parent for needs other than educational;
  - (b) To serve children placed by a public entity, private entity or by the child's parent who require schooling in a protected environment in order to protect the health and safety of themselves and/or others; and
  - (c) To extend the treatment process into the school day to fully implement the treatment plans of children placed by a public entity, private entity or by the child's parent.

Stat. Auth. ORS 326.051 & 343.961

Stats. Implemented: ORS 343.961

Hist.: 1EB 23-1986, f. & ef. 7-14-86; EB 7-1988, f. & cert. ef. 1-15-88; EB 22-1990, f. & cert. ef. 5-18-90; EB 10-1991(Temp), f. & cert. ef. 7-15-91; EB 31-1991, f. & cert. ef. 12-18-91; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0044, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 34-2007, f. & cert. ef. 12-12-07; ODE 14-2009, f. & cert. ef. 12-10-09; ODE 15-2011, f. & cert. ef. 12-15-11

## **581-015-2571**

### **Long-Term Care and Treatment (LTCT) Education Program Eligibility and Approval**

- (1) The Department of Education shall base education program eligibility on the following:
  - (a) An agency may offer several different treatment programs serving different populations. For the purposes of determining eligibility for funding and funding levels for education programs, each program will be considered separately. Temporary shelter programs, which would not otherwise meet the eligibility criteria provided in OAR 581-015-2571(1)(b), are eligible for funding only when attached to an eligible treatment program and the children served are primarily awaiting placement in such programs;
  - (b) To be eligible for an education program, a treatment program must submit an application to the Department's Long-Term Care and Treatment Program demonstrating that the program meets all of the following criteria:
    - (A) Either:
      - (i) A letter of approval from the Addictions and Mental Health Division certifying that the psychiatric day treatment program or psychiatric residential treatment facility meets standards applicable for intensive children's mental health services under OAR 309-032-1500; or
      - (ii) Documentation that the program provides long-term residential treatment of children placed by a state agency or designee of the state agency;
    - (B) Meet state licensing requirements for a private child-caring agency;
    - (C) Be operated by a nonprofit corporation or a political subdivision of the state;
    - (D) Demonstrate through client admissions, staff hiring practices, and client access to services that it meets requirements for ORS 659.850 relating to the prevention of discrimination; and
    - (E) Demonstrate through curriculum content, teaching practices, and facilities management that the constitutional requirements regarding no religious entanglement are met.
- (2) The Department of Education (ODE) is responsible for approving the educational program under this rule and shall base approval on the following:
  - (a) The contracting school district must ensure that the education program is operated in compliance with a written agreement with the Department that specifies, at a minimum, the following services to be provided:
    - (A) Each child who is not a child with a disability under OAR 581-015-2130 through 581-015-2180 has a personalized educational plan that includes assessment, goals, services, and timelines;
    - (B) Information pertaining to students and educational programs is provided to the Department in an accurate and timely manner;
    - (C) Children have opportunities to be educated in the least restrictive environment;
    - (D) The education program is developed and implemented in conjunction with the treatment program; and
    - (E) Other requirements as identified by the Department.
  - (b) The Department must ensure that the education program is operated in compliance with a written agreement with the contracting school district.
  - (c) Final determinations concerning the eligibility of treatment programs for education funding are at the discretion of the State Superintendent of Public Instruction.
- (3) Funding Procedures: Upon receipt of an application for funding for a program under this rule, the Department of Education will:
  - (a) Determine if the treatment program meets the eligibility criteria in this rule within 45 business days;
  - (b) If necessary, request additional funding or a limitation for funding from the State Legislature; and
  - (c) Fund the program according to the formula in OAR 581-015-2572 only when sufficient funds are available for the program under ORS 343.243 and an appropriation from the General Fund as determined by the Department.

Stat. Auth. ORS 326.051 & 343.961

Stats. Implemented: ORS 343.243 & 343.961

Hist.: ODE 14-2009, f. & cert. ef. 12-10-09; ODE 15-2011, f. & cert. ef. 12-15-11

## **581-015-2572**

### **Long-Term Care and Treatment (LTCT) Education Program Funding Formula**

- (1) The Department of Education shall provide funding to education programs based on the following:
  - (a) For the purpose of allocation of state funds under this rule, the following definitions apply:

- (A) "Net operating expenditures (NOE)" means the sum of expenditures as defined in ORS 327.006(6), divided by the average daily membership of the school district, or in the case of an ESD, its districts, which contracts for education services offered in the program;
- (B) "Service level factors" means:
  - (i) 1.75 for students in Psychiatric Day Treatment Programs; or
  - (ii) 2.00 for students in Psychiatric Residential Treatment Facilities.
- (C) "State agency slots" means the number of slots available for students in education programs under ORS 343.961, as determined by the Department based on information received from the Oregon Department of Human Services, the Oregon Health Authority, the Oregon Youth Authority and eligible day treatment programs and eligible residential treatment programs for the school year;
- (b) The Department shall use the following formula for distribution of funding: (Service level factors) x [(the contracting district's NOE in year one) x (state agency slots for year one) + (the contracting district's NOE in year two) x (state agency slots for year two)] = total state funding contract amount;
- (c) If the total state funding available for all LTCT programs is less than the total state funding needed to fully fund each LTCT contract, the amount of state funding in each contract determined under paragraph (b) of this subsection will be prorated.
- (d) A special needs fund is established at the Oregon Department of Education which will be up to five percent of the total state monies made available for the LTCT program during a biennium:
  - (A) Individual applications may be made to the Department for this fund to cover unexpected, emergency expenses;
  - (B) Funds not utilized under this paragraph for the first year of the biennium will be carried forward by the Department to the next fiscal year.

Stat. Auth. ORS 326.051 & 343.961

Stats. Implemented: ORS 343.243 & 343.961

Hist.: ODE 14-2009, f. & cert. ef. 12-10-09; ODE 15-2011, f. & cert. ef. 12-15-11

#### **581-015-2573**

##### **Due Process Hearings for Long-Term Care and Treatment (LTCT) Education Programs**

- (1) The following shall apply to Due Process Hearings involving students attending education programs:
  - (a) The contracting school district is the "school district" for the purposes of carrying out the procedures required by OAR 581-015-2340 through 581-015-2385;
  - (b) The issues of the hearing do not include the placement by the public entity, private entity or its designee or by the child's parent for long-term treatment;
  - (c) Costs under OAR 581-015-2385(1)(a) that are in excess of the contracted educational program budget will be paid by the Oregon Department of Education;
  - (d) The Oregon Department of Education is a party to such proceedings and is responsible to provide additional educational services ordered by an administrative law judge that are beyond the scope of the written agreement between the Department and the contracting school district under OARs 581-015-2570 through 581-015-2574.
- (2) The Department is not responsible for paying for transportation, care, treatment or medical expenses.

Stat. Auth. ORS 326.051 & 343.961

Stats. Implemented: ORS 343.243 & 343.961

Hist.: ODE 14-2009, f. & cert. ef. 12-10-09; ODE 15-2011, f. & cert. ef. 12-15-11

#### **581-015-2574**

##### **Resident District Obligations for Students in Long-Term Care and Treatment (LTCT) Education Programs**

- (1) The resident district must provide or pay for the daily transportation to and from a Psychiatric Day Treatment Program in which a student placed by a public entity, private entity or by the student's parent is enrolled as follows:
  - (a) The resident district may directly transport or contract for transportation services with the agency, an adjacent school district, an education service district or a private carrier as long as the subcontractor is operating under the provision of ORS 801.455, 801.460, and 820.100 through 820.150, or is exempt from these regulations by operating under the Public Utility Commission, ORS Chapter 767, or city regulations included in ORS Chapter 221.

- (b) Subject to agreement with the parent or guardian, the resident district may reimburse a parent or guardian for the transportation of a child at the per mile rate established by that district.
- (c) Transportation must be provided by the resident district even when the education calendar of the Psychiatric Day Treatment program differs from that of the resident district.
- (2) The resident district may claim reimbursement for transportation costs under ORS 327.033.
- (3) The resident district must participate in all individualized education program or personalized education plan meetings involving its students.

Stat. Auth. ORS 326.051 & 343.961

Stats. Implemented: ORS 343.961

Hist.: ODE 14-2009, f. & cert. ef. 12-10-09; ODE 15-2011, f. & cert. ef. 12-15-11

## **581-015-2575**

### **School Programs in Private Hospitals**

- (1) For purposes of this rule:
  - (a) "Patient" means a school age child;
  - (b) "Specialized intensive treatment" means that the hospital maintains special facilities, equipment, and staff;
  - (c) "School district" means the school district in which the private hospital is located.
- (2) Private hospitals not including psychiatric facilities may submit an application for approval of a school program to the State Superintendent of Public Instruction. The application submitted must include verification that:
  - (a) The hospital admits patients from throughout the state;
  - (b) The hospital provides specialized intensive treatment that is unique and generally not available in local community hospitals;
  - (c) The hospital provides services to patients who have severe, low incidence types of disabling conditions including but not limited to burns, orthopedic impairments, and head injuries, but not including drug and alcohol problems;
  - (d) The hospital admits patients who can be expected to be hospitalized for five days or more or readmitted frequently; and
  - (e) The facility is licensed as a hospital under OAR 333-500-0010(1)(a).
- (3) Approval of the application by the State Superintendent of Public Instruction establishes the school district's eligibility to receive state funds to operate the hospital education program.
- (4) All patients are eligible to receive educational services. Educational services must begin if a patient's hospital stay is expected to last five school days or longer and the hospital staff has determined the patient is medically able to receive educational services.
- (5) The school district contracting to provide the education program must develop or implement an existing individualized education program that meets all applicable state and federal requirements for patients who meet eligibility criteria for a disability under OAR 581-015-2130 through 581-015-2180:
- (6) The primary purpose of the school program for hospitalized patients is to maintain the patient's educational programs.
- (7) The hospital must:
  - (a) Provide classroom space and facilities necessary to carry out the educational program for each patient;
  - (b) Coordinate with the school program in developing each patient's educational and medical treatment needs; and
  - (c) Assume responsibility for the transportation, care, treatment, and medical costs of each patient.
- (8) All teachers in the hospital school program must have appropriate teacher licensure under rules of the Teacher Standards and Practices Commission.
- (9) Upon initial application or approval of a school program in a private hospital, the Oregon Department of Education will review the application, inspect the school program facility and confer with hospital authorities as necessary. The Department will then notify the school district whether the school program is approved or disapproved and under what conditions; if approved, the date upon which funds will be available for operation of the school program, and the effective date and length of the approval. The school district may reapply for approval at the expiration of each approval period.
- (10) The Department will monitor each program for compliance with applicable state and federal requirements.
- (11) The State Superintendent of Public Instruction will ensure that the school district contracting to provide the educational program meets the following requirements:
  - (a) The program is operated under a written agreement with the Department of Education;

- (b) Each child without a disability has a personalized educational plan that; includes goals, services, timelines, and assessment of progress.
- (c) Information pertaining to the educational programs is provided to the Department in an accurate and timely manner; and
- (d) The educational program is developed and implemented in conjunction with the medical treatment program.

Stat. Auth.: ORS 343.261

Stats. Implemented: ORS 343.261

Hist.: EB 29-1987, f. & ef. 11-19-87; EB 16-1990, f. & cert. ef. 4-5-90; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03; Renumbered from 581-015-0017, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 26-2008, f. 10-23-08, cert. ef. 10-24-08

### **581-015-2580**

#### **School Programs in State-Operated Hospitals**

- (1) For purposes of this rule:
  - (a) "Patient" means a school age child who is admitted to a state-operated hospital;
  - (b) "School district" means the school district in which the state-operated hospital or training centers is located.
- (2) All patients admitted to state operated hospitals are eligible to receive educational services.
- (3) Educational services in state operated hospitals must commence if a patient's hospital stay is expected to last five schools days or longer and the hospital staff has determined the patient is medically able to receive educational services.
- (4) The school district contracting to provide the education program shall develop or implement an existing individualized education program that meets all applicable state and federal requirements for patients who meet eligibility criteria under OAR 581-015-2130 through 581-015-2180.
- (5) The primary purpose of the school program for patients in state-operated hospitals is to maintain the patients' educational programs.
- (6) The hospital must:
  - (a) Provide classroom space and facilities necessary to carry out the educational program for each patient;
  - (b) Coordinate with the school program in developing each patient's educational and medical treatment needs; and
  - (c) Assume responsibility for the transportation, care, treatment, and medical costs of each patient.
- (7) All teachers in hospital programs must have appropriate teacher licensure under rules of the Teacher Standards and Practices Commission.
- (8) The Department will monitor each program for compliance with applicable state and federal requirements.
- (9) The State Superintendent of Public Instruction will ensure that the school district contracting to provide the educational program meets the following requirements:
  - (a) The program is operated under a written agreement with the Department of Education;
  - (b) Each child without a disability has a personalized educational plan that includes goals, services, timelines, and assessment of progress.
  - (c) Information pertaining to the educational programs is provided to the Department in an accurate and timely manner;
  - (d) The educational program is developed and implemented in conjunction with the medical treatment program.

Stat. Auth.: ORS 343.261

Stats. Implemented: ORS 343.261

Hist.: EB 28-1987, f. & ef. 11-19-87; EB 15-1990, f. & cert. ef. 4-5-90; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0016, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 26-2008, f. 10-23-08, cert. ef. 10-24-08

### **581-015-2585**

#### **Youth (*Juvenile*) Corrections Education and Juvenile Detention Education Programs**

- (1) Definitions:
  - (a) "**Youth Corrections Education Program**" means the provision of educational services to youths in youth correction facilities of the Oregon Youth Authority, and includes secure regional youth facilities, regional accountability camps, residential academies and satellites, camps and branches of those facilities.
  - (b) "**Juvenile Detention Education Program**" means the provision of educational services to youths lodged overnight who receive educational services on consecutive days within a detention facility.

- (2) Youth Corrections Education Program: The following administrative rules apply to education programs for youth housed in Oregon Youth Authority youth correctional facilities:
- (a) Special Education Rules, OAR 581-015-2000 through 581-015-2070, 581-015-2080 through 581-015-2255, 581-015-2300 through 581-015-2445, <sup>3</sup>OAR 581-015-0607 through OAR 581-015-2565, and 581-015-2585 through 581-015-2590.
  - (b) School Improvement and Professional Development Rules, OARs 581-020-0005 through 581-020-0200;
  - (c) School Governance and Student Conduct, OARs 581-021-0037 through 581-021-0440;
  - (d) Standards for Public Elementary and Secondary Schools, OARs 581-022-0102 through 581-022-0413, 581-022-0606, 581-022-0610, 581-022-0705, 581-022-1020 through 581-022-1210, 581-022-1310 through 581-022-1340, 581-022-1420, 581-022-1440, 581-022-1520, 581-022-1610 through 581-022-1670, 581-022-1710 through 581-022-1730;
  - (e) Funds to State and Local Agencies to Provide Employment and Training Services Under the Workforce Investment Act (formerly the Job Training Partnership Act (JPTA), OARs 581-060-0010 through 581-060-0020;
  - (f) Teacher Standards and Practices Commission Rules.
- (3) Juvenile Detention Education Program: All rules applicable to education programs for OYA youth correction facilities, as set out in sections (1) of this rule, apply to educational programs for juvenile detention facilities.
- (a) Students may not be suspended or expelled from juvenile detention education programs.
  - (b) Juvenile directors and the school district or education service district responsible for the education of students in a juvenile detention education program under contract with the Department will sign a letter of agreement establishing each agency's areas of responsibility and duties.
- (4) Notwithstanding OAR 581-015-2190(6)(b), the school district or ESD responsible for the special education of students in a juvenile detention program or juvenile corrections program is not required to provide notice of meetings to the parent after rights transfer to the student pursuant to OAR 581-015-2325.

Stat. Auth.: ORS 326.021

Stats. Implemented: ORS 326.695-326.712; 34 CFR 300.520(a)(2)

Hist.: EB 3-1997, f. & cert. ef. 4-25-97; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03; Renumbered from 581-015-0301, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2590**

#### **Required Days of Instruction**

The Department will schedule and provide an annual school year consisting of a minimum 220 days of actual classroom instruction (time students are present for a major portion of a scheduled school day, engaged in learning experiences related to Department goals and under guidance of teachers). Up to five days of temporary closure due to extraordinary conditions may be counted toward the 220 days, subject to the Superintendent's approval.

Stat. Auth.: ORS 326.021

Stats. Implemented: ORS 326.695-326.712

Hist.: 1EB 255, f. & ef. 12-20-76; EB 3-1997, f. & cert. ef. 4-25-97; Renumbered from 581-015-0415, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2595**

#### **Education Programs for Children at Residential Youth Care Centers**

The purpose of this rule is to ensure that school districts meet the provisions outlined in ORS 336.580.

(1) Definitions: For the purposes of this rule, the following definitions apply:

- (a) "Consultation" means scheduled opportunities for the residential youth care center director and the education representative of the district, or its contractor, to share information and concerns about the behavioral characteristics, learning styles, educational needs, and level of educational support for the children residing at the residential youth care center in order to develop, review, and agree upon the education plan;
- (b) "District" means the school district in which the residential youth care center is located;
- (c) "Least restrictive environment" means serving a child in the educational setting in which the child can reasonably be expected to learn while maintaining integration in the local community;

(d) "Open entry-open exit" means that the education program provides opportunities for students to make progress in obtaining school credits or otherwise meeting their educational goals even though they may enroll or exit at any time during the school year.

(e) "Residential youth care center" means a community program defined in ORS 420.855 and operated by a public or private agency. Residential youth care centers where resident children receive educational services funded under ORS 343.961 are not included under the provisions of this rule;

(2) (a) The school district in which the residential youth care center is located is responsible for developing a plan which meets the provisions outlined in ORS 336.580. The district may contract this responsibility to another school district or ESD. The delivery of educational services may be provided by the residential youth care center;

(b) The plan must be developed by the district or its contractor after consultation with the residential youth care center director and shall address behavioral characteristics, learning styles, and educational needs of the children pursuant to OAR 581-022-1670;

(c) The plan for an education program must provide for open entry-open exit and must provide opportunities for students to earn school credits in accordance with OAR 581-022-1350, 581-022-1131, and 581-023-0008, opportunities for earning a GED when appropriate, or appropriate skill development to ensure educational progress. A continuum of educational services must be available which assure placement of children in the least restrictive environment in which they can reasonably be expected to be successful until they are exempted from compulsory attendance or receive a high school diploma or an equivalent;

(d) The plan must be approved annually by the school district board in which the youth care center is located.

(3) The district must ensure compliance with sections (2) of this rule. If the district does not comply directly or through its contractor, the State Superintendent will find the district deficient and may apply the penalty provided in ORS 327.103.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 336.580

Hist.: EB 9-1988(Temp), f. & cert. ef. 2-17-88; EB 29-1988, f. & cert. ef. 7-5-88; ODE 2-1998, f. & cert. ef. 2-27-98; Renumbered from 581-015-0505, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 28-2007, f. & cert. ef. 12-12-07

## **581-015-2600**

### **Incarcerated Youth**

(1) In accordance with OAR 581-015-2045, the obligation to make a free appropriate public education available to all children with disabilities does not apply with respect to certain students aged 18 through 21 incarcerated in an adult correctional facility.

(2) For students with disabilities who are convicted as adults, incarcerated in adult correctional facilities, and otherwise entitled to a free appropriate public education:

(a) The following IEP requirements in OAR 581-015-2200 do not apply:

(A) The requirements relating to participation of children with disabilities in statewide and school district assessments; and

(B) The requirements relating to transition planning and transition services, with respect to the students whose eligibility will end, because of their age, before they will be eligible to be released from adult correctional facilities based on consideration of their sentence and eligibility for early release.

(b) The IEP team may modify the student's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated. The requirements of OAR 581-015-2200 and 581-015-2240 do not apply with respect to these modifications.

(3) For purposes of this rule, "adult correctional facility" has the meaning in OAR 581-015-2045.

(4) Notwithstanding OAR 581-015-2190(6)(b), the public agency responsible for the special education of students in an adult correctional facility is not required to provide notice of meetings to the parent after rights transfer to the student pursuant to OAR 581-015-2325.

Stat. Auth.: ORS 343.055;

Stats. Implemented: ORS 339.115, 34 CFR 300.324(d)

Hist: ODE 3-2000, f. & cert. ef. 2-1-00; Renumbered from 581-015-0603, ODE 10-2007, f. & cert. ef. 4-25-07



## **581-015-2605**

### **Plans to Serve Students in Local or Regional Correctional Facilities**

A school district must have a plan, approved by the local school board, to provide or cause to be provided appropriate education for children placed in a local or regional correctional facility located in the school district.

Stat. Auth.: ORS 343.055

Stats. Implemented: ORS 339.129

Hist: ODE 3-2000, f. & cert. ef. 2-1-00; Renumbered from 581-015-0604, ODE 10-2007, f. & cert. ef. 4-25-07

## **581-015-2610**

### **Standards for Home, Hospital, Institutional or Other Regularly Scheduled Instruction**

- (1) School districts may provide home, hospital, institutional, or other regularly scheduled instruction to any eligible student with a disability.
- (2) Funding: School districts that provide home, hospital, institutional, or other regularly scheduled instruction under section (1) of this rule may claim state school funding under OAR 581-023-0100.
- (3) Criteria for Placement: School districts that propose to place a student with a disability in a home, hospital, institutional, or other regularly scheduled program must ensure that the following criteria are met:
  - (a) The student must be enrolled as a resident student of the school district;
  - (b) The home, hospital, institutional, or other regularly scheduled program must be appropriate to the unique educational needs of the student;
  - (c) The student must meet the minimum criteria established by the State Board of Education for determining eligibility to receive special education as set forth in OAR 581-015-2130 through 581-015-2180.

Stat. Auth.: ORS 343.041, ORS 343.045 & ORS 343.055

Stats. Implemented: ORS 343.261

Hist.: 1EB 1 87, f. 3-6-75, ef. 3-25-75; Renumbered from 581-022-0155; 1EB 248, f. & ef. 9-23-76; EB 11-1995, f. & cert. ef. 5-25-95; Renumbered from 581-015-0015, ODE 10-2007, f. & cert. ef. 4-25-07

## **EARLY INTERVENTION AND EARLY CHILDHOOD SPECIAL EDUCATION PROGRAMS**

## **581-015-2700**

### **Definitions — EI/ECSE Program**

For the purposes of OAR 581-015-2700 to 581-015-2910, the definitions in this rule and 581-015-2000 apply.

- (1) "**Assessment**" means the ongoing procedures used by appropriate qualified personnel to identify the child's unique strengths and needs throughout the period of the child's eligibility. For EI this includes, the initial assessment of the child and family prior to the first IFSP meeting.
- (2) "**Communication**" means receptive or expressive language development.
- (3) "**Contractor**" means the agency designated by the Department to administer the provision of EI and ECSE within selected service areas.
- (4) "**Department**" means the Oregon Department of Education.
- (5) "**Designated referral and evaluation agency**" means the agency in each county designated to be the referral point for parents and others who suspect that a child may need early intervention or early childhood special education, and to be responsible for assuring that all referred children suspected of having a disability receive evaluation for potential eligibility for early intervention and early childhood special education.
- (6) "**Early childhood special education (ECSE)**" means free, specially designed instruction to meet the unique needs of a preschool child with a disability, three years of age until the age of eligibility for public school, including instruction in physical education, speech-language services, travel training, and orientation and mobility services. Instruction is provided in any of the following settings: home, hospitals, institutions, special schools, classrooms and community childcare or preschool settings, or both.
- (7) "**Early intervention and early childhood special education assistants**" means individuals who implement program activities under the direct supervision of the professional personnel.

- (8) "**Early intervention and early childhood special education specialists**" means professionals who implement or coordinate the implementation of individualized family service plans.
- (9) "**Early intervention (EI)**" means services for preschool children with disabilities from birth until three years of age, including Indian children and children who are homeless and their families, these services are:
- (a) Based on scientifically-based research, as defined in OAR 581-015-2000, to the extent practicable;
  - (b) Designed to meet the child's developmental needs and the needs of the family related to enhancing the child's development as identified by the IFSP team, in any one or more of the following areas: physical development; cognitive development; communication development; social or emotional development; or adaptive development;
  - (c) Selected in collaboration with the parents;
  - (d) Provided:
    - (A) Under public supervision;
    - (B) By personnel qualified in accordance with criteria established by rules of the State Board of Education; and
    - (C) In conformity with an individualized family service plan;
  - (e) At no cost to parents;
  - (f) Meet all applicable state requirements; and
  - (g) Include the following types of intervention services ( defined in 303.13(1): family training, counseling, in-home visits; special instruction; speech-language pathology and audiology services, and sign language and cued language services; occupational therapy; physical therapy; psychological services; service coordination; medical services only for diagnostic or evaluation purposes; early identification, screening, and assessment services; health services necessary to enable the child to benefit from other early intervention services; nursing services, nutrition services, social work services; vision services; assistive technology devices and services; and transportation and related costs that are necessary to enable a child and the child's family to receive another early intervention service.
- (10) "**Educational records**" means those records that are:
- (a) Directly related to a student; and
  - (b) Maintained by a primary contractor or subcontractor.
- (11) "**Evaluation**" means the procedures used by qualified personnel to determine;
- (a) A child's initial eligibility for EI or ECSE services;
  - (b) A child's continuing eligibility for EI or ECSE services; and
- (12) "**Health Services**" means services necessary to enable an otherwise eligible child to benefit from the other early intervention services under this part during the time that the child is eligible to receive early intervention services.
- (b) The term includes:
    - (A) Such services as clean intermittent catheterization, tracheotomy care, tube feeding, the changing of Dressings or colostomy collection bags, and other health services; and
    - (B) Consultation by physicians with other service providers concerning the special health care needs of infants and toddlers with disabilities that will need to be addressed in the course of providing other early intervention services.
  - (c) The term does not include:
    - (A) Services that are:
      - (i) Surgical in nature ;
      - (ii) Purely medical in nature; or
      - (iii) Related to the implementation, optimization, maintenance, or placement of a medical device that is surgically implanted.
        - (I) Nothing in this part limits the right of an infant or toddler with a disability with a surgically implanted device to receive the early intervention services that are identified in the child's IFSP as being needed to meet the child's IFSP and developmental outcomes.
        - (II) Nothing in this part prevents the EI provider from routinely checking that either the hearing aid or the external components of a surgically implanted device of an infant or toddler with a disability are functioning properly;
      - (B) Devices necessary to control or treat a medical condition; and
      - (C) Medical-Health services (such as immunizations and regular "well baby" care) that are routinely recommended for all children.
- (13) "**IFSP Content**" means the definition as stated in OAR 581-015-2815 which includes:
- (a) "Frequency" which means the number of days or sessions that a service is provided;

- (b) "Duration" which means projecting when a given service will no longer be provided (such as when the child is expected to achieve the outcomes in his or her IFSP);
  - (c) "Intensity" which means whether a service will be provided on an individual basis;
  - (d) "Method" which means how a service is provided; and
  - (e) "Location" which means the actual place or places where a service will be provided.
- (14) "**Independent educational evaluation (IEE)**" means an evaluation conducted by a qualified examiner who is not employed by the Department, the contractor, or subcontractor responsible for the child in question.
- (15) "**Indian**" means an individual who is a member of an Indian tribe. "Indian Tribe" means any federal or state Indian tribe, band, rancheria, pueblo, colony, or community, including any native village or regional village corporation
- (16) "**Individualized family service plan (IFSP)**" means a written plan of early childhood special education, related services, early intervention services, and other services developed in accordance with criteria established by the State Board of Education for each child eligible for services under this chapter.
- (17) "**Informed clinical opinion**" means the acquisition and interpretation of multiple sources of information as part of the evaluation and assessment process. This includes evaluation and assessment results, observation reports, previous testing results, medical data, parent reports, and other evaluative information. A review of this information is used in forming a determination regarding current developmental status and the need for EI.
- (a) Informed clinical opinion may be used as an independent basis to establish a child's eligibility under this Section even when other instruments do not establish eligibility.
  - (b) In no event may informed clinical opinion be used to negate the results of evaluation instruments used to establish eligibility.
- (18) "**Initial Assessment**" means the assessment of a child and the family assessment that is conducted prior to the child's first IFSP meeting.
- (19) "**Instruction**" means providing families with information and skills that support the achievement of the goals and outcomes in the child's IFSP and working with preschool children with disabilities in one or more of the following developmental areas: communication development, social or emotional development, physical development, including vision and hearing, adaptive development, and cognitive development.
- (20) "**Lead Agency**" means the agency designated by the Governor under Section 635(a)(10) of IDEA and § 303.120 that receives funds under Section 643 of the Act to administer the responsibilities under Part C of the Act.
- (21) "**Local Education Agency**" or LEA
- (a) LEA means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, or other political subdivision of the State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools
  - (b) Educational service agencies and other public institutions or agencies. This includes the following:
    - (A) A regional public multiservice agency-
      - (i) Authorized by State law to develop, manage, and provide services or programs to LEAs; and
      - (ii) Recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the State.
    - (B) Any public institution or agency having administrative control and direction of a public elementary school or secondary school, including public charter school, that is established as an LEA under State law.
    - (C) Entities that meet the definition of intermediate educational unit or IEU in section 602(23) of IDEA, as in effect prior to June 4, 1997.
  - (c) BIE funded schools which are funded by the Bureau of Indian Education and not subject to the jurisdiction of the SEA other than the Bureau of Indian Education, but only to the extent that the inclusion makes the school eligible for programs which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under the Act with the smallest student population,
- (22) "**Monitoring**" means activities carried out by the Department and its contractors which measure the subcontractor's compliance with state and federal mandates for the provision of EI and ECSE.
- (23) "**Multidisciplinary**" means the involvement of two or more separate disciplines or professions and with respect to-

- (a) evaluation of the child and assessments of the child and family, this may include one individual who is qualified in more than one discipline or profession; and
  - (b) for the IFSP Team this means the involvement of the parent and two or more individuals from separate disciplines or professions and one of these individuals must be the service coordinator.
- (24) "**Natural environment**" means settings that are natural or normal for the child's age peers who have no disability.
- (25) "**Other services**" means those services that may be provided to preschool children with disabilities and to their families that are not EI or ECSE services and are not paid for with EI or ECSE funds.
- (26) "**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, generally authorized to act as the child's parent, or authorized to make EI, educational health or developmental decisions for the child ( but not the State if the child is a ward of the State).
    - (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 EI or 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 or EI decisions on behalf of a child, then that person will be the parent for special education purposes, except that if an EIS provider or a public agency provides any services to a child or any family member of that child, that EIS provider or public agency may not act as the parent for that child.
- (27) "**Parent Training and Information Center**" means a center assisted under section 671 or 672 of IDEA
- (28) "**Periodic review**" means a review of the IFSP for a child and the child's family. An EI or ECSE program or parent may request a review of the IFSP.
- (29) "**Personally Identifiable Information**" means information as identified in the Family Educational Rights and Privacy Act (FERPA) found at 34 CFR 99.3 and OAR 581-015-2000(23), except any reference to a "student" means a "child" in this part and any reference to a "school" means an EIS provider as used in this part.
- (30) "**Physical development**" means gross or fine motor development.
- (31) "**Preschool child with disabilities**" means all children from:
- (a) Birth until three years of age, including infants and toddlers who are eligible for EI services under OAR 581-015-2780(3); or
  - (b) Three years of age to eligibility for public school who are eligible for ECSE services under OAR 581-015-2795.
- (32) "**Professional Development Plan**" means a written document specifying the name of the employee, the position, current qualifications, current deficits, an accounting of steps to be taken to rectify deficits including timelines, persons responsible, and the final date by which the plan will be complete.
- (33) "**Public agency**" or "public agencies" means the lead agency and any other agency or political subdivision of the state.
- (34) "**Qualified Personnel**" means personnel who have met State approved or recognized certification, licensing, registration, or other comparable requirements that apply to the areas in which the individuals are conducting evaluations or assessments or providing early intervention services.
- (35) "**Related services**" includes transportation and such developmental, corrective, and other supportive services, including 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, social work services, parent counseling and training, and medical services, as may be required to assist a child with disabilities, three years of age until the age of eligibility for public school, to benefit from special education or early childhood special education and includes early identification and assessment of disabling conditions. Medical services shall be for diagnostic and evaluation purposes only. 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).

(36) "**Related services personnel**" means professionals who consult, supervise, train staff, design curriculum, or implement related services.

(37) "**Service coordination**" means the activities carried out by a service coordinator to assist and enable an eligible child and the child's family to receive the rights, procedural safeguards and services that are authorized under the state's EI program and to coordinate access to other services designated on the IFSP.

(38) "**Sign Language and cued language services**" include teaching sign language, cued language, and auditory/oral language, providing oral translation services (such as amplification), and providing sign and cued language interpretation.

(39) "**State Education Agency**" or SEA means the State Board of Education or other agency or officer primarily responsible for State supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law and the term includes the agency that receives funds under IDEA to administer the State's responsibilities under part B of the Act.

(40) "**State Interagency Coordinating Council**" (SICC) means a council appointed by the Governor for IDEA Part C purposes in compliance with 34 CFR 303.600-303.605

(41) "Subcontractor" means the agency or agencies selected by the contractor to provide services for EI and ECSE.

(42) "**Supervision**" means the activities carried out by the Department and its primary contractors to oversee the provision of EI and ECSE services.

(43) "**Supervisor**" means a professional who supervise and train staff, design curriculum, and administer EI or ECSE programs.

(44) The following words are defined in OAR 581-015-2000:

- (a) "Assistive technology device";
- (b) "Assistive technology service";
- (c) "Children with disabilities";
- (d) "Autism";
- (e) "Communication disorder";
- (f) "Deafblindness";
- (g) "Emotional disturbance";
- (h) "Hearing impairment";
- (i) "Intellectual disability";
- (j) "Orthopedic impairment";
- (k) "Other health impairment";
- (l) "Specific learning disability";
- (m) "Traumatic brain injury";
- (n) "Visual impairment";
- (o) "Consent";
- (p) "Day";
- (q) "Department";
- (r) "General curriculum";
- (s) "Health assessment statement";
- (t) "Identification";
- (u) "Individualized education program (IEP)";
- (v) "Mediation";
- (w) "Medical statement";
- (x) "Native language";
- (y) "Participating agency";
- (z) "Personally identifiable information";
- (aa) "Placement";
- (bb) "Private school";
- (cc) "School district";
- (dd) "Short term objectives";
- (ee) "Special education";
- (ff) "Specially designed instruction";
- (gg) "Supplementary aids and services";
- (hh) "Superintendent";

- (ii) "Surrogate parent";
- (jj) "Ward of the state"; and
- (kk) "Scientifically Based Research"

Stat. Auth.: ORS 343.475

Stats. Implemented: ORS 343.475, 34 CFR 300.5 - 300.45, 34 CFR 99.3, 34 CFR 303.4-303.37, 34 CFR 303.600-303.605

Hist.: EB 23-1992, f. & cert. ef. 6-23-92; EB 4-1995, f. & ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04; Renumbered from 581-015-0900, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 14-2012, f. 3-30-12, cert. ef. 4-2-12; ODE 20-2012, f. & cert. ef. 8-1-12

### **581-015-2705**

#### **Establishment of Service Areas**

- (1) The Department establishes service areas for the provision of EI and ECSE to ensure the provision of services to preschool children with disabilities.
- (2) The service areas are designated by the Department and may include multiple counties.

Stat. Auth.: ORS 343.475

Stats. Implemented: ORS 343.475, ORS 343.495

Hist.: EB 23-1992, f. & cert. ef. 6-23-92; ODE 24-2000, f. & cert. ef. 10-16-00; Renumbered from 581-015-0910, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2710**

#### **Selection of Contractor**

- (1) The Department selects a contractor to provide administration and coordination of EI and ECSE in the selected service area.
- (2) The contractor will be selected using criteria developed by the Department which include:
  - (a) Geographic location;
  - (b) Previous experience in the administration of special education, early intervention, or related programs; and
  - (c) Expressed willingness to administer the EI and ECSE program in their area in compliance with the applicable state and federal requirements.
- (3) The contractor will administer the EI and ECSE programs under a contract from the Department. The contract for administration will include requirements for the following:
  - (a) Staffing expectations for the administration of the area program;
  - (b) Necessary reports to the Department;
  - (c) Development of an area service plan;
  - (d) Fiscal responsibility for the administration of contractor funds and the distribution of funds to subcontractors;
  - (e) Selection and monitoring of subcontractors including the designated referral and evaluation agency;
  - (f) Coordination of technical assistance to EI and ECSE programs in the contractor's service area;
  - (g) Assurances that written agreements exist between agencies to assure interagency coordination in each county of the designated service area;
  - (h) Assurances that a continuum of alternative placements is available to meet the needs of preschool children with disabilities enrolled in ECSE;
  - (i) Criteria for supervision of services provided by the contractor when no local subcontractor is available or appropriate; and
  - (j) Such other requirements as are determined necessary by the Department to assure the provision of EI and ECSE services as authorized by ORS 343.465 to ORS 343.534.
- (4) The contract will include timelines, criteria, and procedures to be used by the Department for withholding funds or terminating the contract for failure to comply with contract requirements.

Stat. Auth.: ORS 343.475

Stats. Implemented: ORS 343.465, ORS 343.475, ORS 343.495

Hist.: EB 23-1992, f. & cert. ef. 6-23-92; ODE 24-2000, f. & cert. ef. 10-16-00 Renumbered from 581-015-0920, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2712 Availability of Early Intervention Services**

Appropriate early intervention services are offered to eligible children as soon as possible consistent with scientifically based research, to the extent practicable, and are available to all infants and toddlers with disabilities and their families, including-

- (1) Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State; and
- (2) Infants and toddlers with disabilities who are homeless and their families.

Stat. Auth.: ORS 343.475, 326.051  
Stats. Implemented: ORS 343.475  
Hist.: ODE 14-2012, f. 3-30-12, cert. ef. 4-2-12

### **581-015-2713 Central Directory**

The EI system shall include a central directory that is accessible to the general public (i.e. through the lead agency's website and other appropriate means) which includes accurate, up-to-date information about-

- (1) Public and private early intervention services, resources, and experts available in the State;
- (2) Professional and other groups (including parent support, and training and information centers that provide assistance to infants and toddlers with disabilities eligible for EI services and their families); and
- (3) Research and demonstration projects being conducted in the State relating to infants and toddlers with disabilities.

Stat. Auth.: ORS 326.051  
Stats. Implemented: ORS 343.475, 34 CFR 303.117  
Hist.: ODE 14-2012, f. 3-30-12, cert. ef. 4-2-12

### **581-015-2715**

#### **Role of Local Interagency Coordinating Council (LICC)**

- (1) Each contractor, in conjunction with subcontractor(s), must solicit the advice and assistance of the local interagency coordinating council (LICC) in each county within the contractor's service area, regarding:
  - (a) Identification of service needs;
  - (b) Coordination of services with other agency services;
  - (c) Procedures for resolving local disputes; and
  - (d) Development of local interagency agreements.
- (2) The recommendations from each LICC must be used by the contractor and subcontractor in developing a plan for services required by the Department. This plan will include components described in section (1) of this rule, and be presented in a format provided by the Department, and must include:
  - (a) A written description of the process used in assisting each LICC in the development of their recommendations;
  - (b) The contractor's and subcontractor's proposal for implementing the recommendations from the LICC in each county;
  - (c) Recommendations from the LICC that the contractor and subcontractor(s) does not propose to implement, and the reason for that decision; and
  - (d) A written description of the process used to resolve disagreements between the LICC and the contractor and subcontractor(s).
- (3) When there is unresolved conflict over the service plan, and recommendations from the LICC the Department will:
  - (a) Investigate the conflict; and
  - (b) Make the final decision regarding plan approval and implementation.
- (4) The contractor(s) must provide, within available funds, fiscal and other support for the LICC to perform the functions described in this rule. The LICC must submit an annual budget to the contractor(s) to demonstrate the use of the funds.
- (5) The LICC must collaborate with other agencies and programs in planning and implementing services for young children and their families in the local community.

Stat. Auth.: ORS 343.475  
Stats. Implemented: ORS 343.475, ORS 343.507  
Hist.: EB 23-1992, f. & cert. ef. 6-23-92; ODE 24-2000, f. & cert. ef. 10-16-00; Renumbered from 581-015-0930, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2720**

#### **Census and Data Reporting - EI/ECSE Program**

Contractors and subcontractors must follow the rules and procedures in OAR 581-015-2010 for reporting to the Department all resident preschool children with disabilities with the following definition exception: "School district" means contractors or subcontractors.

Stat. Auth.: ORS 343.475

Stats. Implemented: ORS 343.475, ORS 343.495 & ORS343.513 - ORS 343.533

Hist.: ODE 24-2000, f. & cert. ef. 10-16-00; Renumbered from 581-015-1045, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2725**

#### **Compliance Monitoring - EI/ECSE Program**

Contractors and subcontractors involved in the education of preschool children with disabilities will be monitored by the Department of Education on a regular basis as specified in Oregon's federally approved special education policies and procedures and Part C application to ensure compliance with the requirements of the Individuals with Disabilities Education Act, Oregon Revised Statutes, and Oregon Administrative Rules. Monitoring procedures may include program self-assessment, data collection, analysis and reporting, on-site visits, review of policies and procedures, review of the development and implementation of IFSPs, improvement planning, and auditing federal fund use.

Stat. Auth.: ORS 343.041, ORS 343.475

Stats. Implemented: ORS 343.475

Hist.: EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-1110, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2730**

#### **Parent Consent for EI**

- (1) The public agency must obtain written parental consent before conducting an initial evaluation or reevaluation.
- (2) Written parental consent must also be obtained before the provision of EI services described in the IFSP. The parents of a child eligible for EI services must determine whether they, their child, or other family members will accept or decline any EI services, and may decline such a service after first accepting it, without jeopardizing other EI services. If the parents do not provide consent for a particular EI service or withdraw consent after first providing it, that service will not be provided. The EI services for which parental consent is obtained will be provided.
- (3) If consent is not given, the public agency must make reasonable efforts to ensure that the parent:
  - (a) Is fully aware of the nature of the evaluation and assessment or the services that would be available; and
  - (b) Understands that the child will not receive the evaluation and assessment or services unless consent is given.

Stat. Auth.: ORS 343.475, 343.531

Stats. Implemented: ORS 343.475, 343.531, 34 CFR 303.420 (c)

Hist.: EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04; Renumbered from 581-015-0938, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 14-2012, f. 3-30-12, cert. ef. 4-2-12

### **581-015-2735**

#### **Parent Consent for ECSE**

- (1) Consent means that the parent:
  - (a) Has been fully informed, in his or her native language or other mode of communication, of all information relevant to the activity for which consent is sought; and
  - (b) Understands and agrees in writing to the carrying out of the activity for which his or her consent is sought.
- (2) Consent is voluntary on the part of the parent and meets the requirements of the consent provisions of this rule and 34 CFR 300.622 and 34 CFR 99.30 implementing IDEA, and FERPA respectively.
- (3) Consent for initial evaluation:
  - (a) The public agency must provide notice under OAR 581-015-2745 and obtain informed written parental consent before conducting an initial ECSE evaluation to determine if a child qualifies as a child with a disability under OAR 581-015-2795. Consent for initial evaluation may not be construed as consent for the initial provision of special education and related services.



- (b) The public agency must make reasonable efforts to obtain the informed consent from a parent for an initial evaluation to determine a child's eligibility for ECSE services.
  - (c) If a parent of a child enrolled in public preschool or seeking to be enrolled in public preschool does not provide consent for an initial evaluation, does not respond to a request for consent for an initial evaluation, or revokes consent for an initial evaluation, the public agency may, but is not required to, pursue the initial evaluation of the child using mediation or due process hearing procedures. A public agency does not violate its child find obligations if it declines to pursue the evaluation using these procedures.
- (4) Consent for initial provision of services:
- (a) The contractor or subcontractor must obtain informed consent from the parent of the child before the initial provision of ECSE services to the child.
  - (b) The contractor or subcontractor must make reasonable efforts to obtain informed consent from the parent for the initial provision of ECSE services to the child.
  - (c) If a parent does not respond or refuses to consent for initial provision of ECSE services or revokes consent for the initial provision of ECSE services, the contractor or subcontractor may not seek to provide ECSE services to the child by using mediation or due process hearing procedures.
  - (d) If a parent refuses to grant consent for initial provision of ECSE services, does not respond to a request to provide consent for the initial provision of ECSE services, or revokes consent for such services:
    - (A) The contractor or subcontractor will not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide the child with the ECSE services for which the contractor or subcontractor requests consent; and
    - (B) The contractor or subcontractor is not required to convene an IFSP meeting or develop an IFSP for the child for the ECSE services for which consent is requested.
  - (e) If, at any time subsequent to the initial provision of ECSE services, the parent of a student revokes consent in writing for the continued provision of ECSE services, the school district
    - (A) May not continue to provide ECSE services to the student, but must provide prior written notice in accordance with OAR 581-015-2310 before ceasing the provision of special education and related services; and
    - (B) Is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.
- (5) Consent for reevaluation:
- (a) The public agency must obtain informed parent consent before conducting any reevaluation of a child with a disability, except as provided in subsections (b) and OAR 581-015-2740(3).
  - (b) If a parent refuses to consent to the reevaluation or revokes consent for the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using mediation or due process hearing procedures. A district does not violate its child find obligations if it declines to pursue the reevaluation using these procedures.
  - (c) If, after reasonable efforts to obtain parent consent, the parent does not respond, the public agency may conduct the reevaluation without consent, unless the reevaluation is an individual intelligence test or test of personality.
- (6) Consent to Access Public Benefits or Insurance
- (a) Prior to accessing a child or parent's public benefits or insurance for the first time, or disclosing a child's personally identifiable information to the State's public benefits or insurance program for the first time, the ECSE program must obtain informed consent in accordance with IDEA, 34 CFR 300.622 and with the Family Rights and Privacy Act (FERPA), 34 CFR 99.30.
  - (b) Such consent must specify:
    - (A) The personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular child);
    - (B) The purpose of the disclosure (e.g., billing for services), and
    - (C) The agency to which the disclosure may be made (e.g., the State's public benefits or insurance program (e.g., Medicaid)); and
    - (D) Specify that the parent understands and agrees that the public agency may access the child's or parent's public benefits or insurance to pay for services.
- (7) Revocation of consent:
- (a) A parent may revoke consent at any time before the completion of the activity or action for which they have given consent.
    - (A) A parent may revoke consent for an evaluation or reevaluation that has not yet been conducted.

(B) A parent may revoke consent for the provision of special education services in writing at any time before or during the provision of those services.

(C) A parent may revoke consent for release of personally identifiable information to the State's public benefits or insurance program (e.g., Medicaid).

(b) If a parent revokes consent, that revocation is not retroactive.

(8) Other consent requirements:

(a) The public agency must document its reasonable efforts to obtain parent consent in accordance with OAR 581-015-2755(2)(b).

(b) A parent's refusal to consent to one service or activity may not be used to deny the parent or child any other service, benefit, or activity of the contractor or subcontractor, except as provided in this rule.

(c) If a parent of a child who is placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent does not respond to a request for consent:

(A) The public agency may not use mediation or due process hearing procedures to seek consent; and

(B) The public agency is not required to consider the child as eligible for ECSE services.

Stat. Auth.: ORS 343.475, 343.531

Stats. Implemented: ORS 343.475, 343.531, 34 CFR 300.300

Hist.: EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0939, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 13-2009, f. & cert. ef. 12-10-09; ODE 11-2013(Temp), f. & cert. ef. 4-25-13 thru 10-21-13

### **581-015-2740**

#### **Exceptions to Parental Consent - EI/ECSE Program**

(1) Parental consent is not required before:

(a) Reviewing existing data as part of an evaluation or a reevaluation;

(b) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children; or

(c) Conducting evaluation tests, procedures or instruments that are identified on a child's IFSP as a measure for determining progress; or

(d) Conducting a screening of a child by an EI/ECSE specialist to determine appropriate instructional strategies for curriculum implementation.

(2) Consent for initial evaluation for wards of the state (for children age three and above): If a child is a ward of the state and is not residing with the child's parent, the public agency is not required to obtain informed written consent from the parent for an initial evaluation to determine whether the child is a child with a disability if:

(a) Despite reasonable efforts to do so, the agency cannot discover the whereabouts of the parent of the child;

(b) The rights of the parents of the child have been terminated in accordance with state law; or

(c) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

(3) For children age three and above, if, after reasonable efforts to obtain parent consent, the parent does not respond, the contractor or subcontractor may conduct the reevaluation without consent, unless the reevaluation is an individual intelligence test or test of personality.

(4) For the purposes of (3) of this rule, "reasonable efforts" means the contractor or subcontractor has used procedures consistent with OAR 581-015-2755(2)(b).

(5) Parental consent is not required if an administrative law judge determines under OAR 581-015-2375 that the evaluation or reevaluation is necessary to ensure that the child is provided with appropriate EI services, or for children in ECSE, a free appropriate public education.

Stat. Auth.: ORS 343.475; ORS 343.531

Stats. Implemented: ORS 343.475, ORS 343.531, 34 CFR 300.300; 34 CFR 300.302

Hist.: ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0937, ODE 10-2007, f. & cert. ef. 4-25-07

## **581-015-2745**

### **Prior Written Notice and Notice of Procedural Safeguards — EI/ECSE Program**

- (1) Prior written notice must be given to the parent or surrogate parent a reasonable time before the contractor or subcontractor proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, placement of the child; or
  - (a) The provision of appropriate EI services if the child is from birth to age three; or
  - (b) The provision of a free appropriate public education to the child if the child is three years of age to eligibility for public school.
- (2) The content of the prior written notice must include:
  - (a) A description of the action proposed or refused by the contractor or subcontractor;
  - (b) An explanation of why the contractor or subcontractor proposed or refused to take the action;
  - (c) A description of any options that the IFSP team and reasons why those options were rejected;
  - (d) A description of each evaluation procedure, assessment, test, record, or report which is directly relevant to the proposal or refusal;
  - (e) A description of any other factors relevant to the contractor's or subcontractor's proposal or refusal;
  - (f) A statement that the parents of a child with a disability have procedural safeguards and, if it is not an initial referral for evaluation, the means by which a copy of the Notice of Procedural Safeguards may be obtained;
  - (g) Sources for parents to contact to obtain assistance in understanding their procedural safeguards; and
  - (h) For children in EI, a statement of the complaint procedures under OAR 581-015-2030, including a description of how to file a complaint and the timelines under those procedures.
- (3) The prior notice must be:
  - (a) Written in language understandable to the general public; and
  - (b) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
- (4) If the native language or other mode of communication of the parent is not a written language, the contractor or subcontractor must take steps to ensure that:
  - (a) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;
  - (b) The parent understands the content of the notice; and
  - (c) There is written evidence that the requirements in subsections (5)(a) and (b) of this rule have been met.
- (5) If a parent is deaf or blind, or has no written language, the mode of communication must be that normally used by the parent (such as sign language, Braille, or oral communication).
- (6) Notice of Procedural Safeguards: Contractors and subcontractors must provide notice of Procedural Safeguards as described in OAR 581-015-2315.

Stat. Auth.: ORS 343.475, 343.531

Stats. Implemented: ORS 343.475, 343.527, 343.531, 34 CFR 300.503, 300.504

Hist.: EB 23-1992, f. & cert. ef. 6-23-92; EB 4-1995, f. & cert. ef. 1-24-95; EB 27-1995, f. & cert. ef. 12-11-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 8-2001, f. & cert. ef. 1-29-01; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03; ODE 1-2004, f. & cert. ef. 1-15-04;

Renumbered from 581-015-0940, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 11-2013(Temp), f. & cert. ef. 4-25-13 thru 10-21-13

## **581-015-2750**

### **Parent Participation – General – EI/ECSE Program**

- (1) For a child under age three, contractors or subcontractors must provide parents with an opportunity to participate in meetings with respect to the identification, evaluation, IFSP, placement of the child and the provision of appropriate EI services and transition to ECSE or other services. For IFSP meetings, contractors and subcontractors must also follow requirements of OAR 581-015-2755.
- (2) For a child age three and older, contractors or subcontractors must provide parents with an opportunity to participate in meetings with respect to the identification, evaluation, IFSP, placement of the child, the provision of a free appropriate public education and transition to school age or other services. For IFSP and placement meetings, contractors and subcontractors must also follow requirements of OAR 581-015-2755.
- (3) Contractors or subcontractors must provide parents and other participants with a written notice of the meeting sufficiently in advance to ensure that parents and others will have an opportunity to attend. The written notice must:
  - (a) State the purpose, time and place of the meeting and who will attend;

- (b) Inform the parents that they or the agency may invite other individuals who they believe have knowledge or expertise regarding the child;
  - (c) Inform the parents of a child age three or older that the team may proceed with the meeting even if the parent is not in attendance; and
  - (d) Inform the parents of whom to contact before the meeting to provide information if they are unable to attend.
- (4) The contractor or subcontractor must take whatever action is necessary to ensure that the parents understand the proceedings at a meeting, including:
- (a) For a child under age three, conducting the meeting in the native language of the family or other mode of communication used by the family unless it is clearly not feasible to do so; and
  - (b) For a child age three and over, arranging for an interpreter for parents who are deaf or whose native language is other than English.
- (5) A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, instructional plans, or coordination of service provision if those issues are not addressed in the child's IFSP. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response parent proposal that will be discussed at a later meeting.
- (6) Conducting a meeting without a parent in attendance: A meeting may be conducted without a parent in attendance if the public agency has given the parent notice under subsection (3) or, for IFSP or placement meetings, in accordance with OAR 581-015-2755.

Stat. Auth.: ORS 343.475;

Stats. Implemented: ORS 343.475, ORS 343.531, 34 CFR 300.501

Hist.: ODE 24-2000, f. & cert. ef. 10-16-00; ODE 8-2001, f. & cert. ef. 1-29-01; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04; Renumbered from 581-015-0962, ODE 10-2007, f. & cert. ef. 4-25-07

## **581-015-2755**

### **Additional Parental Participation Requirements for IFSP and Placement Meetings - EI/ECSE Program**

- (1) For a child under age three:
- (a) Contractors or subcontractors must schedule IFSP meetings in settings and at times that are convenient to families;
  - (b) If neither parent can attend, the contractor or subcontractor must use other methods to ensure parent participation, including, but not limited to, individual or conference phone calls or home visits; and
  - (c) The contents of the IFSP must be fully explained to the parents and informed written consent obtained from the parents before the provision of EI services described in the plan.
- (2) For a child age three and older:
- (a) Contractors or subcontractors must take steps to ensure that one or both of the parents of a child with a disability are present at each IFSP or placement meeting or are afforded the opportunity to participate, including:
    - (A) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
    - (B) Scheduling the meeting at a mutually agreed on time and place.
    - (C) If neither parent can attend, the contractor or subcontractor must use other methods to ensure parent participation, including, but not limited to, individual or conference phone calls or home visits;
  - (b) An IFSP or placement meeting may be conducted without a parent in attendance if the contractor or subcontractor is unable to convince the parents that they should attend. If the contractor or subcontractor proceeds with an IFSP or placement meeting without a parent in attendance, the contractor or subcontractor must have a record of its attempts to arrange a mutually agreed on time and place, such as:
    - (A) Detailed records of telephone calls made or attempted and the results of those calls;
    - (B) Copies of correspondence sent to the parents and any responses received; and
    - (C) Detailed records of visits made to the parent's home or place of employment and the results of those visits.
  - (c) The Department considers contractor or subcontractor attempts to convince parents to attend sufficient if the contractor or subcontractor:
    - (A) Communicates directly with the parent and arranges a mutually agreeable time and place, and sends written notice required under OAR 581-015-2750 to confirm this arrangement; or

- (B) Sends written notice required under OAR 581-015-2750, proposing a time and place for the meeting and stating in the notice that the parent may request a different time and place, and confirms that the parent received the notice.
  - (C) "Sufficient attempts" may all occur before the scheduled IEP or placement meeting, and do not require the scheduling of multiple agreed-upon meetings unless the team believes this would be in the best interest of the child.
- (3) The contractor or subcontractor must give the parent a copy of the IFSP at no cost to the parent. If the parent does not attend the IFSP meeting, the contractor subcontractor must ensure that a copy is provided to the parent.

Stat. Auth.: ORS 343.475; ORS 343.521; ORS 343.531

Stats. Implemented: ORS 343.475, ORS 343.495, ORS 343.521, ORS 343.531, 34 CFR 300.322, 34 CFR 300.501

Hist.: ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03CFR 300.501; Renumbered from 581-015-0966, ODE 10-2007, f. & cert. ef. 4-25-07

## **581-015-2760**

### **Surrogate Parents - EI/ECSE**

- (1) Each contractor or subcontractor serving a child participating in EI or ECSE must ensure that the rights of the child are protected by appointing a surrogate parent not more than 30 days after a determination by the contractor or subcontractor that the child needs a surrogate because:
  - (a) No parent (as defined in OAR 581-015-2700(19)) can be identified or located after reasonable efforts; or
  - (b) The child is a ward of the state and there is reasonable cause to believe that the child has a disability.
- (2) In determining the need for a surrogate, the contractor or subcontractor must consider whether it is likely to take any action regarding the child that would require notice under OAR 581-015-2745 to the parents.
- (3) Each contractor or subcontractor must have a method for determining whether a child needs a surrogate parent and for assigning a surrogate parent to the child. The contractor or subcontractor must ensure that each person approved to serve as surrogate:
  - (a) Is not an employee of the contractor or subcontractor or the Department or any other agency involved in the early intervention, education or care of the child;
  - (b) Does not provide EI/ECSE services to the child or to any family members of the child;
  - (c) Is free of any personal or professional interest that conflicts with representing the child's early intervention or special education interests; and
  - (d) Has the necessary knowledge and skills to protect the special education rights of the child.
- (4) An appointed surrogate parent has all of the special education rights and procedural safeguards available to the parent.
- (5) A surrogate is not considered an employee of a contractor or subcontractor solely on the basis that the surrogate is compensated from public funds.
- (6) The duties of the surrogate parent are to:
  - (a) Protect the early intervention or special education rights of the child;
  - (b) Be acquainted with the child's disability and the child's EI or ECSE needs; and
  - (c) Represent the child in all matters relating to the identification, evaluation and assessment, IFSP services, or the provision of a free appropriate public education to the child receiving ECSE and any other EI/ECSE rights.
- (7) A surrogate has the same rights granted to a parent in a hearing under OAR 581-015-2870 if the identification, evaluation, IFSP or placement of the child is contested.
- (8) A parent may give written consent for a surrogate to be appointed. When a parent requests that a surrogate be appointed, the parent retains all parental rights to receive notice under OAR 581-015-2745 through 581-015-2755 and all of the information provided to the surrogate. The surrogate, alone, is responsible for all matters relating to the special education of the child unless the parent revokes consent for the surrogate's appointment. If a parent gives written consent for a surrogate to be appointed, the parent may revoke consent at any time by providing a written request to revoke the surrogate's appointment.
- (9) The contractor or subcontractor may change or terminate the appointment of a surrogate when:
  - (a) The person appointed as surrogate is no longer willing to serve;
  - (b) The child is no longer eligible for EI or ECSE services;
  - (c) The legal guardianship of the child is transferred to a person who is able to carry out the role of the parent;

- (d) A foster parent is identified who can carry out the role of parent under OAR 581-015-2700;
  - (e) The appointed surrogate is no longer eligible;
  - (f) The child moves to another subcontractor area; or
  - (g) The child is no longer a ward of the state.
- (10) A person appointed as surrogate will not be held liable for actions taken in good faith on behalf of the parent in protecting the special education rights of the child.
- (11) The contractor or subcontractor must not appoint a surrogate solely because the parent is uncooperative or unresponsive to the EI or ECSE needs of the child.

Stat. Auth.: ORS 343.475, ORS 343.531,  
 Stats. Implemented: ORS 343.475 & 343.531; 34 CFR 300.519  
 Hist.: EB 12-1993, f. & cert. ef. 3-25-93; EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04; Renumbered from 581-015-0935, ODE 10-2007, f. & cert. ef. 4-25-07

**581-015-2765**

**Independent Education Evaluation - ECSE**

- (1) Any parent of a preschool child with disabilities three years of age through the age of eligibility for public school may request an independent education evaluation at the expense of:
- (a) The school district if the parent disagrees with an evaluation obtained by the school district; or
  - (b) The contracting agency if the parent disagrees with an evaluation obtained by the contractor or subcontractor.
- (2) Agencies from (1)(a) and (b) of this rule must follow the procedures in OAR 581-015-2305 when responding to a parent request for an independent education evaluation.

Stat. Auth.: ORS 343.475, ORS 343.531  
 Stats. Implemented: ORS 343.475, ORS 343.495, ORS 343.531, 34 CFR 300.502  
 Hist.: ODE 24-2000, f. & cert. ef. 10-16-00; Renumbered from 581-015-0962, ODE 10-2007, f. & cert. ef. 4-25-07

**581-015-2770**

**Confidentiality of Records for Preschool Children with Disabilities**

Contractors and subcontractors must follow the rules and procedures in OAR 581-015-2030 and 34 CFR 303.400 through 303.416 for confidentiality of records for preschool children with disabilities with the following exception: "School district" means contractors or subcontractors.

Stat. Auth.: ORS 343.475, 343.485  
 Stats. Implemented: ORS 343.485 & 34 CFR 303.400–303.417  
 Hist.: EB 23-1992, f. & cert. ef. 6-23-92; ODE 24-2000, f. & cert. ef. 10-16-00; Renumbered from 581-015-1010, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 13-2012(Temp), f. 3-30-12, cert. ef. 4-2-12 thru 9-1-12; ODE 15-2012, f. 6-8-12, cert. ef. 6-11-12

**581-015-2774**

**Referral Procedures**

Children must be referred to the lead agency for Child Find purposes as soon as possible, but in no case more than seven days after the child has been identified.

- (1) This applies to all referrals including infants and toddlers under the age of three who are the subjects of a substantiated case of child abuse or neglect, or who are identified as directly affected by illegal drug abuse or withdrawal symptoms from prenatal drug exposure.
- (2) Primary referral sources may include: hospitals including prenatal facilities, physicians, parents, child care programs, LEAs and schools, public health facilities, other public health or social service agencies, other clinics or health care providers, public agencies and staff in the child welfare system, homeless family shelters, and domestic violence shelters and agencies.

Stat. Auth.: ORS 326.051, 343.475  
 Stats. Implemented: 34 CFR 303.303  
 Hist.: ODE 14-2012, f. 3-30-12, cert. ef. 4-2-12

**581-015-2775**

**EI Evaluation**

- (1) General.

- (a) A public agency must conduct an evaluation or reevaluation process in accordance with this rule before determining that a child qualifies for early intervention (EI) services, changing the child's eligibility, or terminating the child's eligibility under OAR 581-015-2780.
  - (b) EI evaluations and reevaluations must be conducted in accordance with OAR 581-015-2790(8) and (9)(b)-(f).
- (2) Request for initial evaluation. Consistent with the consent requirements in OAR 581-015-2730:
- (a) a parent or public agency may initiate a request for an initial evaluation to determine if a child qualifies for EI services.
  - (b) a public agency must refer a child as soon as possible, but in no case more than seven days after the child has been identified.
- (3) When initial evaluation must be conducted. An initial evaluation must be conducted to determine if a child is eligible for EI services when a public agency suspects or has reason to suspect that the child has a disability, developmental delay, or condition likely to result in developmental delay.
- (4) Evaluation planning. Before conducting any evaluation or reevaluation, the public agency must conduct evaluation planning in accordance with OAR 581-015-2115.
- (5) Notice and consent.
- (a) Before conducting any evaluation or reevaluation, the public agency must provide notice to the parent in accordance with OAR 581-015-2745 that describes any evaluation procedures the agency proposes to conduct as a result of the evaluation planning process.
  - (b) Before conducting any evaluation or reevaluation, the public agency must obtain written consent for evaluation in accordance with OAR 581-015-2730 and 581-015-2740.
  - (c) If the public agency refuses an evaluation or reevaluation requested by the parent, the public agency must provide the parent with prior written notice under OAR 581-015-2745.
  - (d) Parents may challenge the public agency's refusal to conduct an evaluation or reevaluation under OAR 581-015-2870.
- (6) EI Evaluation requirements: An EI evaluation or reevaluation must:
- (a) Be conducted by a multidisciplinary team representing two or more separate disciplines or professions, including persons who are knowledgeable about the child;
  - (b) Assess the child's level of functioning in all the following areas: cognitive development, physical development including vision and hearing, communication development, social or emotional development, and adaptive development;
  - (c) Be based on informed clinical opinion;
  - (d) Be completed in time to conduct the initial IFSP meeting within 45 calendar days from the date of referral, except when the parent has not provided consent for the initial evaluation, or the initial assessment of the child, despite documented, repeated attempts by the lead agency or EI provider to obtain parental consent.
    - (A) These exceptional circumstances must be documented in the child's early intervention records and note the extenuating family circumstances or the lead agency or EI providers attempts to obtain consent;
    - (B) The initial evaluation, assessment, or initial IFSP meeting must be completed as soon as possible after the documented circumstances described no longer exist or consent is obtained;
    - (C) An interim IFSP should be developed and implemented to the extent appropriate: and
- (e) Include:
- (A) For a child suspected of having autism spectrum disorder, deafblindness, hearing impairment, orthopedic impairment, traumatic brain injury, or visual impairment, the evaluation requirements in OAR 581-015-2130 through 581-015-2180 for the respective disability; or
  - (B) A diagnosis of a physical or mental condition as described under in OAR 581-015-2780(3)(b); or
  - (C) An evaluation for determining a developmental delay as follows:
    - (i) At least one norm-referenced, standardized test addressing the child's level of functioning in each of the following developmental areas: cognitive; physical (including vision and hearing); communication; social or emotional; and adaptive;
    - (ii) At least one additional procedure to confirm the child's level of functioning in each area of suspected delay listed in subsection (6)(e)(C)(i) of this rule;
    - (iii) At least one 20-minute observation of the child;
    - (iv) A review of previous testing, medical data and parent reports; and
    - (v) Other evaluative information as necessary to determine eligibility.
- (f) All evaluations and assessments of a child must be conducted in the native language of the child, unless it is clearly not feasible to do so.

(7) **Reevaluation.** A public agency must conduct a reevaluation of a child receiving early intervention services in accordance with OAR 581-015-2105 if the public agency determines that the EI needs of the child warrant a reevaluation, or, subject to subsection (5), if the child's parent or EI specialist requests a reevaluation.

Stat. Auth.: ORS 343.475

Stats. Implemented: ORS 343.475, 34 CFR 303.24, 34 CFR 303.310

Hist.: EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0945, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 14-2012, f. 3-30-12, cert. ef. 4-2-12

## **581-015-2780**

### **EI Eligibility**

(1) Upon completing the administration of tests and other evaluation materials, the designated referral and evaluation agency must determine, through a multidisciplinary team, whether a child is eligible for EI services by following the procedures in this rule.

(2) The multidisciplinary team must include the parents, in accordance with OAR 581-015-2750, and individuals from two or more separate disciplines or professions, including persons who are knowledgeable about the child.

(3) To be eligible for EI services, the child must meet the minimum criteria for subsection (a), (b) or (c), below:

(a) **Categorical:**

(A) The child meets the minimum criteria for one of the following disability categories in OAR 581-015-2130 through 581-015-2180: autism spectrum disorder, deafblindness, hearing impairment, orthopedic impairment, traumatic brain injury or visual impairment.

(B) If the child meets the disability criteria for a categorical eligibility in subsection (A), the child's disability does not need to be presently adversely affecting the child's development for the child to be eligible for EI services.

(b) **Medical:** The child has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay, as documented by one of the following with the appropriate State Board licensure: a physician, a physician assistant, or a nurse practitioner.

(c) **Developmental delay:** The child experiences a developmental delay and as a result needs EI services. Developmental delay means two standard deviations or more below the mean in one or more of the following developmental areas, or 1.5 standard deviations below the mean in two or more of the developmental areas:

(A) Cognitive development;

(B) Physical development;

(C) Communication development;

(D) Social or emotional development;

(E) Adaptive development.

(4) The multidisciplinary team must prepare an evaluation report and a written statement of eligibility.

(a) The evaluation report(s) must describe and explain the results of the evaluation conducted.

(b) The written statement of eligibility must include:

(A) A list of the evaluation data considered in determining the child's eligibility;

(B) A determination of whether the child meets the minimum criteria for EI as described in (3) of this part; and

(C) The signature of each member of the team signifying his or her concurrence or dissent.

(5) For a child who may have disabilities in more than one category, the team need only qualify the child for EI services under one disability category, however:

(a) The child must be evaluated in all areas of development and areas of suspected disability; and

(b) The child's IFSP must address all of the child's early intervention needs.

(6) The multidisciplinary team must give the parents a copy of the eligibility statement and evaluation report.

(7) The contractor or subcontractor must notify the child's resident district upon determination of eligibility for EI services.

(8) A child found eligible under this rule is eligible for regional services if the child meets the criteria under OAR 581-015-2550 for vision impairment, hearing impairment, autism spectrum disorder, severe orthopedic impairment or traumatic brain injury.



Stat. Auth.: ORS 343.513

Stats. Implemented: ORS 343.513, 34 CFR 303.24

Hist.: EB 4-1995, f. & cert. ef. 1-24-95; EB 27-1995, f. & cert. ef. 12-11-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 8-2001, f. & cert. ef. 1-29-01; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0946, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 14-2012, f. 3-30-12, cert. ef. 4-2-12; ODE 20-2012, f. & cert. ef. 8-1-12

### **581-015-2785**

#### **Provision of EI Services Before an Evaluation and Assessment Are Completed**

Early intervention services for an eligible child and the child's family may begin before the completion of the evaluation and assessment process described in OAR 581-015-2775 if the following conditions are met:

- (1) Parental consent for evaluation and services is obtained;
- (2) An interim IFSP is developed that includes:
  - (a) The name of the service coordinator who will be responsible for implementation of the interim IFSP and coordination with other agencies and persons; and
  - (b) The EI services that have been determined to be needed immediately by the child and the child's family; and
  - (c) The evaluation and assessment are completed within the 45 calendar days as required in OAR <sup>4</sup>581-015-0945(1)(d).

Stat. Auth.: ORS 343.475

Stats. Implemented: ORS 343.475

Hist.: EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03; Renumbered from 581-015-0949, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2786**

#### **Dispute Resolution Within and Between Public Agencies — Early Intervention (EI) Services**

- (1) Each public agency involved in providing early intervention services may use its own internal dispute resolution procedures to resolve, in a timely manner, internal disagreements about payments for a particular service or other matters related to providing early intervention services.
- (2) A public agency's internal dispute resolution procedures may not result in delaying the provision of early intervention services.
- (3) Public agencies may not delay or deny the timely provision of early intervention services during the pendency of dispute resolution between public agencies regarding financial responsibilities.

Stat. Auth.: ORS 343.475, 343.511

Stats. Implemented: ORS 343.475, 343.495, 343.511, 34 CFR 303.120, 303.511, 303.520, 303.521

Hist.: ODE 30-2012, f. 11-7-12, cert. ef. 11-9-12

### **581-015-2790**

#### **ECSE Evaluation**

- (1) General. A public agency must conduct an evaluation or reevaluation process in accordance with this rule before:
  - (a) Determining that a child is a child with a disability under OAR 581-015-2795; or
  - (b) Determining that a child continues to have a disability under OAR 581-015-2795; or
  - (c) Changing the child's eligibility; or
  - (d) Terminating the child's eligibility as a child with a disability.
- (2) Request for initial evaluation. Consistent with the consent requirements in OAR 581-015-2735, a parent or public agency may initiate a request for an initial evaluation to determine if a child qualifies for ECSE services.
- (3) When initial evaluation must be conducted.
  - (a) An initial evaluation must be conducted to determine if a child is eligible for ECSE services when a public agency suspects or has reason to suspect that:
    - (A) The child has a disability that has an adverse impact on the child's education or development; and
    - (B) The child may need ECSE services as a result of the disability.

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<sup>4</sup> Correction: 581-015-2775(6)(d)

- (b) The public agency must designate a team to determine whether an initial evaluation will be conducted.
  - (A) The team must include the parent and at least two professionals, at least one of whom is a specialist knowledgeable and experienced in the evaluation and education of children with disabilities.
  - (B) The team may make this decision without a meeting. If a meeting is held, parents must be invited to participate in accordance with OAR 581-015-2750.
- (4) Evaluation planning. Before conducting any evaluation or reevaluation, the public agency must conduct evaluation planning in accordance with OAR 581-015-2115.
- (5) Notice and consent.
  - (a) Before conducting any evaluation or reevaluation, the public agency must provide notice to the parent in accordance with OAR 581-015-2745 that describes any evaluation procedures the agency proposes to conduct as a result of the evaluation planning process.
  - (b) Before conducting any evaluation or reevaluation, the public agency must obtain written consent for evaluation in accordance with OAR 581-015-2735 and 581-015-2740.
  - (c) If the public agency refuses an evaluation or reevaluation requested by the parent, the public agency must provide the parent with prior written notice under OAR 581-015-2745.
  - (d) Parents may challenge the public agency's refusal to conduct an evaluation or reevaluation under OAR 581-015-2870.
- (6) ECSE evaluation requirements: For a child suspected of being eligible for ECSE services, the following evaluation must be conducted:
  - (a) For a child suspected of having any of the following disabilities, an evaluation in all areas of the suspected disability following OAR 581-015-2130 through 581-015-2180, respectively:
    - (A) Autism spectrum disorder;
    - (B) Communication disorder;
    - (C) Deafblindness;
    - (D) Emotional disturbance;
    - (E) Hearing impairment;
    - (F) Intellectual Disability;
    - (G) Orthopedic impairment;
    - (H) Other health impaired;
    - (I) Specific learning disability;
    - (J) Traumatic brain injury;
    - (K) Visual impairment; or
  - (b) For a child suspected of having a developmental delay, an evaluation that includes:
    - (A) At least one norm referenced, standardized test in each area of suspected delay;
    - (B) At least one additional procedure to confirm the child's level of functioning in each area of suspected delay;
    - (C) At least one 20-minute observation of the child;
    - (D) Review of previous testing, medical data, and parent reports; and
    - (E) Other evaluative information as necessary to determine eligibility.
- (7) Reevaluation.
  - (a) Public agencies must ensure that a reevaluation of each child with a disability is conducted in accordance with OAR 581-015-2115, subject to subsection (5) and (7)(b) in this rule:
    - (A) If the public agency determines that the ECSE needs of the child warrant a reevaluation; or
    - (B) If the child's parent or ECSE specialist requests a reevaluation.
  - (b) A reevaluation for each child with a disability:
    - (A) May occur not more than once a year, unless the parent and public agency agree otherwise; and
    - (B) Must occur at least every three years, unless the parent and public agency agree that a reevaluation is unnecessary.
- (8) Conduct of evaluation. In conducting the evaluation, the public agency must:
  - (a) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent that may assist in determining:
    - (A) Whether the child is eligible for EI/ECSE services; and
    - (B) The content of the child's IFSP, including information related to enabling the child to be involved in and progress in appropriate activities;
  - (b) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and

- (c) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
- (9) Other evaluation procedures. Each public agency must ensure that:
- (a) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;
  - (b) Assessments and other evaluation materials used to assess a child under this part:
    - (A) Are selected and administered so as not to be discriminatory on a racial or cultural basis;
    - (B) Are provided and administered in the child's native language or other mode of communication as determined developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment, and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so;
    - (C) Are used for the purposes for which the assessments or measures are valid and reliable;
    - (D) Are administered by trained and knowledgeable personnel; and
    - (E) Are administered in accordance with any instructions provided by the producer of the assessments.
  - (c) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
  - (d) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).
  - (e) The evaluation is sufficiently comprehensive to identify all of the child's EI/ECSE and related services needs, whether or not commonly linked to the disability category in which the child has been classified; and
  - (f) The evaluation includes assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child.
- (10) Evaluation timelines:
- (a) Initial. An initial evaluation must be completed within 60 school days from written parent consent to the date of the meeting to consider eligibility.
  - (b) Reevaluation. A reevaluation must be completed within 60 school days from written parent consent (or from the date the evaluation is initiated under OAR 581-015-2740(3)) to the date of the meeting to consider eligibility, continuing eligibility or the student's educational needs.
  - (c) Exceptions. An evaluation may be completed in more than 60 school days under the following circumstances documented in the child's educational record:
    - (A) The parents of a child repeatedly fail or refuse to produce the child for an evaluation, or for other circumstances outside the school district's control;
    - (B) The student is a transfer student in the process of reevaluation and the public agency and the parents agree to a different length of time to complete the evaluation in accordance with subsection (d); or
    - (C) The public agency and parent agree to extend the timeline for an evaluation to determine eligibility for specific learning disabilities in accordance with OAR 581-015-2170.
  - (d) Transfer students.
    - (A) When a child with disabilities transfers from one EI/ECSE program to another EI/ECSE program in the same school year, the previous and current EI/ECSE programs must coordinate any pending assessments as necessary and as expeditiously as possible to ensure prompt completion of the evaluation.
    - (B) The exception under subsection (10)(c) only applies if the current EI/ECSE program is making sufficient progress to ensure a prompt completion of the evaluation and the parent and current EI/ECSE program agree to a specific time for completion of the evaluation.

Stat. Auth.: ORS 343.475

Stats. Implemented: ORS 343.475, 34 CFR 303.25, 34 CFR 303.321(a)(5)

Hist.: EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03; Renumbered from 581-015-0941, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 14-2012, f. 3-30-12, cert. ef. 4-2-12

## 581-015-2795

### ECSE Eligibility

- (1) Upon completing the administration of tests and other evaluation materials, the designated referral and evaluation agency must determine, through a team, whether a child is eligible for ECSE services by following the procedures in this rule.
- (2) The team must include the parents, in accordance with OAR 581-015-2750, and two or more professionals, at least one of whom is knowledgeable and experienced in the evaluation and education of children with the suspected disability. The team may be the child's IFSP team.
- (3) In determining eligibility for a child suspected of having a specific learning disability, the team must also include:
  - (a) The child's preschool teacher or, if the child does not have a preschool teacher, a preschool teacher qualified to teach a child of his or her age; and
  - (b) A person qualified to conduct individual diagnostic examinations of children, such as a psychologist, speech-language pathologist, or other qualified personnel.
- (4) To be eligible for ECSE services, the child must meet the following minimum criteria:
  - (a) Categorical. The child meets the minimum criteria for one of the disability categories in OAR 581-015-2130 through 581-015-2180; or
  - (b) Developmental delay.
    - (A) The child has a developmental delay of 1.5 standard deviations or more below the mean in two or more of the developmental areas listed under OAR 581-015-2780(3)(c);
    - (B) The child's disability has an adverse impact on the child's developmental progress; and
    - (C) The child needs ECSE services.
- (5) The team must prepare an evaluation report and a written statement of eligibility.
  - (a) The evaluation report(s) must describe and explain the results of the evaluation conducted.
  - (b) The written statement of eligibility must include:
    - (A) A list of the evaluation data considered in determining the child's eligibility;
    - (B) A determination of whether the child meets the minimum criteria for ECSE as described in (4) of this part;
    - (c) A determination of whether the primary basis for the suspected disability is:
      - (A) Lack of instruction in reading or math; or
      - (B) Limited English proficiency.
    - (d) A determination of whether the child's disability has an adverse impact on the child's developmental progress;
    - (e) A determination of whether, as a result of the disability the child needs ECSE services; and
    - (f) The signature of each member of the team indicating agreement or disagreement with the eligibility determination.
- (6) When determining eligibility for a child suspected of having a specific learning disability, the team must prepare a written report following the procedures in OAR 581-015-2170.
- (7) The team may not determine that a child is eligible for ECSE services if:
  - (a) The determinant factor for that eligibility determination is:
    - (A) Lack of appropriate instruction in reading (including the essential components of reading) or math; or
    - (B) Limited English proficiency; and
  - (b) The child does not otherwise meet the eligibility criteria under this rule.
- (8) For a child who may have disabilities in more than one category, the team need only qualify the child for ECSE services under one disability category, however;
  - (a) The child shall be evaluated in all areas of suspected disability; and
  - (b) The child's IFSP shall address all of the child's special education needs.
- (9) The team must give the parents a copy of the eligibility statement and evaluation report.
- (10) The contractor or subcontractor must notify the child's resident school district upon determination of eligibility for ECSE services.

Stat. Auth.: ORS 343.513

Stats. Implemented: ORS 343.513

Hist.: EB 4-1995, f. & cert. ef. 1-24-95; EB 27-1995, f. & cert. ef. 12-11-95; ODE 24-2000, f. & cert. ef. 10-16-00; Renumbered from 581-015-0943, ODE 10-2007, f. & cert. ef. 4-25-07

**581-015-2800****Termination of Eligibility – EI/ECSE**

- (1) A school district must evaluate a child with a disability in accordance with OAR 581-015-2775 and 2790 before determining that the child is no longer a child with a disability.
- (2) The contractor or subcontractor must provide written notice under OAR 581-015-2745 when a team determines that a child is no longer eligible for EI or ECSE services.

Stat. Auth.: ORS 343.475, ORS 343.513

Stats. Implemented: ORS 343.475; ORS 343.513

Hist.: ODE 24-2000, f. & cert. ef. 10-16-00; Renumbered from 581-015-0955, ODE 10-2007, f. & cert. ef. 4-25-07

**581-015-2805****EI and ECSE Transition**

- (1) The lead agency will describe in a written document how it will meet the transition requirements set forth in 34 CFR 303.29.
- (2) Transition from EI to ECSE or other services:
  - (a) Before a child reaches the age of eligibility for ECSE, the school district must obtain parental consent for initial evaluation under OAR 581-015-2735 and conduct an initial evaluation under OAR 581-015-2790.
  - (b) With the approval of the child's family and in accordance with OAR 581-015-2810, a transition meeting to establish a transition plan must be held at least 90 calendar days, and at the discretion of the parties, up to nine months before the child's third birthday and must include:
    - (A) Discussions with and training of parents regarding future services, placements and other matters related to the child's transition;
    - (B) Procedures to prepare the child for changes in service delivery, including steps to help the child adjust to and function in a new setting or, if appropriate, steps to exit from the program;
    - (C) A review of the child's program options for the period from the child's third birthday through the remainder of the school year; and
    - (D) With parental consent, the transmission of information about the child to the ECSE subcontractor or other service provider, if different than the child's EI subcontractor including:
      - (i) Evaluation and assessment information; and
      - (ii) Copies of IFSPs that have been developed and implemented.
  - (c) For children eligible for ECSE services under OAR 581-015-2795, contractors or subcontractors must initiate and conduct an IFSP meeting on or before the child's third birthday to:
    - (A) Review and revise the IFSP;
    - (B) Determine placement; and
    - (C) Obtain parent consent for initial placement in special education. This is the initial consent for placement in special education for school-age students.
- (3) Transition from ECSE to School-age Special Education Services:
  - (a) Before a child reaches the age of eligibility for public school, the district must:
    - (A) For children previously eligible with a developmental delay and suspected of having a disability under OAR 581-015-2130 through 581-015-2180, conduct an evaluation and determine eligibility for school age special education services; or
    - (B) For children previously eligible in a disability category under OAR 581-015-2130 through 581-015-2180, continue the child's eligibility for school age special education services. The school district may conduct a reevaluation and reconsider eligibility for special education services.
  - (b) The school district and contractor or subcontractor must hold a meeting during the year before the child is eligible to enter public school:
    - (A) To determine steps to support the child's transition from ECSE to public schooling or other educational setting; and
    - (B) For a child eligible for school age special education services, to develop an IEP that is in effect at the beginning of the school year.

Stat. Auth.: ORS 343.473, 343.521

Stats. Implemented: ORS 343.521, 34 CFR 300.124, 34 CFR 303.209

Hist.: EB 23-1992, f. & cert. ef. 6-23-92; EB 4-1995, f. & cert. ef. 1-24-95; Administrative Correction 12-1-97; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04; Renumbered from 581-015-0960, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 14-2012, f. 3-30-12, cert. ef. 4-2-12

## **581-015-2810**

### **IFSP Meeting Procedures and Timelines**

- (1) Contractors or subcontractors must conduct a meeting to develop an initial IFSP within:
  - (a) Forty-five calendar days from the date the child is referred to and determined eligible for EI services; and
  - (b) Thirty calendar days from the date the child is determined eligible for ECSE services.
- (2) Contractors or subcontractors must initiate and conduct a meeting to review and revise the IFSP every 365 days to:
  - (a) Determine whether the annual goals for the child are being achieved; and
  - (b) Revise the IFSP as appropriate to address:
    - (A) Any lack of expected progress toward the annual goals and appropriate activities;
    - (B) The results of any reevaluation;
    - (C) Existing information about the child provided to, or by, the parents;
    - (D) The child's anticipated needs; or
    - (E) Other matters.
- (3) For a child under age three:
  - (a) Contractors or subcontractors must initiate and conduct a review of the IFSP, with the participation of the child's parents consistent with OAR 581-015-2750 and 581-015-2755, every six months or more frequently if conditions warrant or if the family requests such a review.
  - (b) The purpose of this review is to determine:
    - (A) The degree to which progress on major outcomes or annual goals is being made; and
    - (B) Whether revision of major outcomes or goals or services is needed.
  - (c) This review may be carried out by a meeting or by another means that is acceptable to the parents and other participants. However, if IFSP revisions are necessary, an IFSP meeting must be conducted.
- (4) Contractors or subcontractors must initiate and conduct, with the approval of the child's family, an IFSP meeting to plan the child's transition to ECSE services or other preschool services at least 90 calendar days, and at the discretion of the parties, up to nine months, before the child's third birthday and the lead agency or its contractors must notify the LEA and SEA for the area in which the toddler resides that the toddler on his third birthday will reach the age of eligibility for services under Part B of the Act as determined in accordance with State law.
- (5) For children eligible for ECSE services under OAR 581-015-2795, contractors or subcontractors must initiate and conduct an IFSP meeting on or before the child's third birthday in accordance with OAR 581-015-2805.
- (6) Contractors or subcontractors must conduct an IFSP meeting if they believe that a change in the IFSP may be necessary to ensure the provision of appropriate EI services for a child under age three or a free appropriate public education to a child over age three.
- (7) A parent may request a meeting at any time to review or revise the IFSP.
- (8) In response to a parent request for IFSP meeting, the contractor or subcontractor must hold an IFSP meeting within a reasonable time.

Stat. Auth.: ORS 343.475, 343.521

Stats. Implemented: ORS 343.475, 343.521, 34 CFR 300.101

Hist.: ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 15-2003, f. & cert. ef. 8-14-03; ODE 1-2004, f. & cert. ef. 1-15-04; Renumbered from 581-015-0968, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 14-2012, f. 3-30-12, cert. ef. 4-2-12

## **581-015-2815**

### **IFSP Content**

- (1) Contractors or subcontractors must use IFSP forms and directions published by the Oregon Department of Education.
- (2) Oregon Department of Education IFSP forms combine the content requirements for IEPs under Part B of IDEA, IFSPs under Part C of IDEA, and IFSPs under ORS 343.521.
- (3) Each individualized family service plan must contain:
  - (a) A statement of the child's present level of development, including how the child's disability affects the child's participation in appropriate activities for the child's age. For a child under age three, the statement must include present levels of physical development including vision, hearing and health status, cognitive development, communication development, social development and adaptive development. The statement must be based on information from assessments using professionally acceptable objective criteria.

- (b) A statement of major outcomes or annual goals and short-term objectives expected to be achieved for the child and family related to:
- (A) Meeting the child's needs that result from the child's disability to enable the child to participate in appropriate activities;
  - (B) Meeting each of the child's other developmental needs that result from the child's disability.
- (c) For a child under age three, a statement of the specific early intervention services, based on scientifically based research to the extent practicable, to be provided for the child and to the family to advance toward attaining the major outcomes or annual goals (including pre-literacy, language, and numeracy skills, as developmentally appropriate for the child).
- (d) For a child age three and older, the IFSP contains IEP content including, a statement of ECSE and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for personnel that will be provided for the child:
- (A) To advance appropriately toward attaining the annual goals;
  - (B) To participate in appropriate activities and to participate in extracurricular and other nonacademic activities; and
  - (C) To be educated and participate with other children with disabilities and children without disabilities.
- (e) For a child under age three, with concurrence of the family, a statement of the family's resources, priorities, concerns and goals related to enhancing the development of the child, based on information obtained through an assessment tool and also through an interview with those family members who elect to participate in the assessment.
- (f) The projected dates for initiation of services and modifications and the anticipated frequency, location, intensity, method and duration of the services as defined in OAR 581-015-2700 and modifications described in subsection (3)(d) of this rule and the payment arrangements, if any.
- (g) The name of the service coordinator from the profession, including service coordination, most immediately relevant to the child's or family's needs (or who is otherwise qualified to carry out all applicable EI/ECSE responsibilities) responsible for coordinating the involvement of the family and agencies in implementing early intervention and other services, including transition services. The contractor or subcontractor may:
- (A) Assign the same service coordinator who was appointed at the time that the child was initially referred for evaluation; or
  - (B) Appoint a new service coordinator.
- (h) For a child under age three:
- (A) To the maximum extent appropriate, the natural environments in which early intervention services will be provided; and
  - (B) A justification of the extent, if any, to which services will not be provided in a natural environment.
- (i) For a child age three and older, an explanation of the extent, if any, to which the child will not participate with children without disabilities in the regular class and activities described in subsection (3)(d) of this rule.
- (j) A statement of:
- (A) How the progress toward major outcomes or annual goals will be measured, including the criteria, procedures and timelines used to determine:
    - (i) The degree to which progress toward achieving the outcomes or goals is being made; and
    - (ii) Whether revisions of the outcomes or goals or services are necessary.
  - (B) For a child age three and older, how the child's parents will be regularly informed of:
    - (i) Their child's progress toward major outcomes or annual goals; and
    - (ii) The extent to which that progress is sufficient to enable the child to achieve the outcomes or goals by the annual IFSP review date.
- (k) The steps to be taken and services provided to support the transition of the child from early intervention services to early childhood special education or other appropriate services, in accordance with OAR 581-015-2805, 581-015-2750, and 581-015-2810.
- (l) The steps to be taken to support the transition of the child from early childhood special education to public schooling or other education setting, in accordance with OAR 581-015-2805, 581-015-2750, and 581-015-2810.
- (m) A statement of other services, such as medical services, that the child may need but are not early intervention or early childhood special education services including the funding sources used in paying for those services or the steps to be taken to secure those services through public or private sources. This

provision does not apply to routine medical services (e.g., immunizations, and "well-baby" care) unless a child needs those services and the services are not otherwise available or being provided.

Stat. Auth.: ORS 343.475 & 343.521

Stats. Implemented: ORS 343.521

Hist.: EB 23-1992, f. & cert. ef. 6-23-92; EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04; Renumbered from 581-015-0970, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 26-2008, f. 10-23-08, cert. ef. 10-24-08; ODE 14-2012, f. 3-30-12, cert. ef. 4-2-12

### **581-015-2820**

#### **IFSP Team Consideration and Special Factors**

- (1) In developing, reviewing and revising the child's IFSP, the IFSP team must consider:
  - (a) The strengths of the child and the concerns of the parents for enhancing the development of their child; and
  - (b) The results of the initial or most recent evaluation of the child; and
  - (c) For a child age three and older, the academic, developmental and functional needs of the child.
- (2) For children age three and older, in developing, reviewing and revising the child's IFSP the IFSP team must consider the following special factors:
  - (a) The communication needs of the child; and
  - (b) Whether the child requires assistive technology devices and services.
- (3) For children age three and older, in developing, reviewing and revising the IFSP of children described below, the IFSP team must consider the following additional special factors:
  - (a) For a child whose behavior impedes his or her development or that of others, consider strategies, positive behavioral interventions and supports to address that behavior;
  - (b) For a child or family with limited English proficiency, consider the language needs of the child and the family as those needs relate to the child's IFSP;
  - (c) For a child who is blind or visually impaired, instruct the child in pre-literacy or readiness activities related to the use of Braille unless the IFSP determines, after an evaluation of the child, that this instruction is not appropriate for the child;
  - (d) For a child who is deaf or hard of hearing, consider the child's language and communication needs, including developmental level, full range of needs, and opportunities for direct instruction and direct communications with peers and professional personnel in the child's language and communication mode.
- (4) If, in considering these special factors, the IFSP team determines that a child needs a particular device or service (including intervention, accommodation or other program modification) for the child to receive free appropriate public education, the IFSP team must include a statement to that effect in the child's IFSP.
- (5) Nothing in OAR 581-015-2815 or this rule may be construed to require the IFSP team to include information under one component of a child's IFSP that is already contained under another component of the child's IFSP.

Stat. Auth.: ORS 343.475, ORS 343.521

Stats. Implemented: ORS 343.475, ORS 343.521

Hist.: ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04; Renumbered from 581-015-0972, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2825**

#### **Participants for IFSP Team Meetings and Reviews**

- (1) Each initial and annual IFSP meeting must include the following participants:
  - (a) The child's parent or parents;
  - (b) The child's EI or ECSE specialist and, as appropriate, persons who will be providing services to the child or family; for EI, this must include two or more individuals from separate disciplines or professions, and one of these individuals must be the service coordinator.
  - (c) A representative of the contractor or subcontractor who may be another member of the team and who is:
    - (A) Qualified to provide or supervise the provision of EI or ECSE services to meet the unique needs of children with disabilities;
    - (B) Knowledgeable of typical child development and appropriate activities for infants and young children; and
    - (C) Knowledgeable about the availability of resources.



- (d) For a child eligible for EI services, the service coordinator who is responsible for implementation of the IFSP and may be the child's EI specialist;
  - (e) For a child who is eligible for ECSE services, the child's preschool teacher if the child is or may be participating in a regular preschool;
  - (f) Family members and/or advocates as requested by the parents;
  - (g) Other individuals, including related services personnel as appropriate, invited by the parent, primary contractor, or subcontractor who have knowledge or special expertise regarding the child;
  - (h) An individual, who may be another member of the team who:
    - (A) Was involved in conducting the evaluation of the child;
    - (B) Is knowledgeable about the child's disability; and
    - (C) Can interpret the developmental or instructional implications of the evaluation; and
  - (i) A representative of the school district in which the child resides during the year before the child enters school.
- (2) The regular preschool teacher must participate, to the extent appropriate, in the development, review and revision of the child's IFSP, including assisting in the determination of:
- (a) Necessary modifications to appropriate preschool activities in the classroom and participation in the preschool environment;
  - (b) Supplementary aids and services, program modifications or supports for preschool personnel that will be provided for the child; and
  - (c) Appropriate positive behavioral interventions and strategies for the child.
- (3) For a child birth to three the IFSP team must be multidisciplinary as defined in OAR 581-015-2700.
- (4) IFSP team attendance for children age 3 and older:
- (a) A member of the IFSP team described in subsection (1)(b) through (1)(e) is not required to attend an IFSP meeting, in whole or in part, if the parent of a child with a disability and the contractor or subcontractor agree in writing that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed at the meeting.
  - (b) A member of the IFSP team described in subsection (1)(b) through (1)(e) may be excused from attending an IFSP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of curriculum or related services, if:
    - (A) The parent and contractor or subcontractor consent in writing to the excusal; and
    - (B) The member submits, in writing to the parent and the IFSP team, input into the development of the IFSP before the meeting.
- (5) Each review must include the participants in subsections (1)(a), (b), (d) and (2), and if feasible to do so (1) (f) of this rule. When the review indicates any changes in the IFSP, then the individualized meeting must follow all IFSP procedural requirements.
- (6) For the purposes of subsection (1)(h), if such an individual is unable to attend the meeting, arrangements must be made for the person's involvement through other means, including:
- (a) Participating in a telephone conference call;
  - (b) Having a knowledgeable authorized representative attend the meeting; or
  - (c) Making pertinent records available at the meeting.

Stat. Auth.: ORS 343.475, 343.521

Stats. Implemented: ORS 343.475, 343.521, 300 CFR 303.24

Hist.: EB 23-1992, f. & cert. ef. 6-23-92; EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04; Renumbered from 581-015-0980, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 14-2012, f. 3-30-12, cert. ef. 4-2-12

## **581-015-2830**

### **Implementation of the IFSP**

- (1) An IFSP must:
- (a) Be written before EI services or ECSE and related services are provided to the child;
  - (b) Begin as soon as possible following the meeting; and
  - (c) Be provided year round for children receiving EI services, unless agreed to otherwise by the parents; or
  - (d) Be in effect by the child's third birthday and at the beginning of the school year for children receiving ECSE services.
- (2) If a child's third birthday occurs during the summer, the child's IFSP team must determine when services begin under the IFSP.
- (3) Contractors and subcontractors must:

- (a) Ensure that the IFSP is available as soon as possible and at no cost to the parents. They must also ensure copies of the IFSP are available to each regular preschool teacher, EI/ECSE specialist, related service provider and other service provider who is responsible for its implementation; and
  - (b) Inform each teacher and provider described in (2)(a) of his or her specific responsibilities for implementing the child's IFSP and the specific accommodations, modifications and supports that must be provided for on behalf of the child in accordance with the IFSP.
- (4) Contractors or subcontractors must provide EI or ECSE and related services to a child with a disability in accordance with an IFSP.
- (5) Nothing in this rule limits a parent's right to ask for revisions of their child's IFSP or to invoke due process procedures.

Stat. Auth.: ORS 343.475, 343.521  
 Stats. Implemented: ORS 343.475, 343.521, 34 CFR 300.101, 34 CFR 303.409,  
 Hist.: EB 23-1992, f. & cert. ef. 6-23-92; EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04; Renumbered from 581-015-0990, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 14-2012, f. 3-30-12, cert. ef. 4-2-12

### **581-015- 2835**

#### **Natural Environments in EI**

Contractors or subcontractors must ensure that:

- (1) To the maximum extent appropriate to the needs of the child and family, EI services are provided in natural environments, including the home and community settings in which children without disabilities participate; and
- (2) The determination of the appropriate setting for providing EI services to an infant or toddler with a disability, including any justification for not providing a particular EI service in the natural environment is:
  - (a) Made by the IFSP Team (which includes the parent and other team members);
  - (b) Consistent with the provisions of OAR-581-2700 and 581-015-2815(3)(h);
  - (c) Based on the child's outcomes which are identified by the IFSP team.

Stat. Auth.: ORS 343.475  
 Stats. Implemented: ORS 343.475, 343.495, 34 CFR 303.344  
 Hist.: ODE 24-2000, f. & cert. ef. 10-16-00; Renumbered from 581-015-0995, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 14-2012, f. 3-30-12, cert. ef. 4-2-12

### **581-015-2840**

#### **Service Coordination**

- (1) For a child under age three, the contractor or subcontractor must:
  - (a) Provide active ongoing service coordination as an EI service; and
  - (b) Appoint a service coordinator as soon as possible when a referral is received.
- (2) For a child age three and older, contractors and subcontractors may provide service coordination as an ECSE service.
- (3) The service coordinator must:
  - (a) Coordinate all services across agency lines by serving as a single point of contact in helping parents obtain the services and assistance they need;
  - (b) Assist and enable parents of eligible children in gaining access to required EI services and other services identified in the IFSP;
  - (c) Facilitate the timely delivery of available services and conduct follow-up activities to determine that appropriate services are provided;
  - (d) Continuously seek the appropriate services in situations necessary to benefit the development of each child being served for the duration of the child's eligibility;
  - (e) Coordinate the performance of evaluation and assessments;
  - (f) Facilitate and participate in the development, review, and evaluation of IFSPs;
  - (g) Assist families in identifying available service providers;
  - (h) Coordinate and monitor the delivery of available services and other services that are identified in the IFSP to the child or family, including making appointments and referrals to providers for needed services;
  - (i) Inform families of their rights, their procedural safeguards, and the availability of advocacy services;
  - (j) Coordinate with medical and health providers;
  - (k) Facilitate the development of a transition plan to preschool, ECSE services, or other early childhood service, if appropriate; and
  - (l) Coordinate the funding sources for services required under this part.

Stat. Auth.: ORS 343.475

Stats. Implemented: ORS 343.475, 343.523, 34 CFR 303.34

Hist.: EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; Renumbered from 581-015-1120, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 14-2012, f. 3-30-12, cert. ef. 4-2-12

### **581-015-2845**

#### **Placement and Least Restrictive Environment in ECSE**

- (1) Contractors or subcontractors must ensure that:
  - (a) The placement of a child with a disability is determined by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and
  - (b) To the maximum extent appropriate to the needs of the child, ECSE services are provided in the least restrictive environment as defined in OAR 581-015-2240, including home and community settings in which children without disabilities participate.
- (2) Each child's placement must be:
  - (a) Determined at least every 365 days;
  - (b) Based on the IFSP; and
  - (c) As close as possible to the child's home.
- (3) Unless the IFSP of a child with a disability requires some other arrangement, the child must be educated in the public school or public program, if any, that he or she would attend if not disabled.
- (4) The contractor must ensure that a continuum of alternative placements is available to meet the needs of preschool children with disabilities for special education and related services.
  - (a) The continuum must include placements in the home, hospitals, institutions, special schools, classrooms, and community childcare or preschool settings.
  - (b) The continuum must provide for supplementary services to be provided in conjunction with regular preschool placement.
- (5) In determining the least restrictive environment, the team must consider the continuum of alternative placements and the following:
  - (a) Modifications needed to implement the child's IFSP;
  - (b) The level of support needed by the child;
  - (c) Any potential harmful effect on the child or on the quality of services which he or she needs;
  - (d) A child with a disability must not be removed from education in age appropriate classrooms or settings solely because of needed modifications.
- (6) The team must ensure that, to the maximum extent appropriate to the needs of that child, ECSE services are provided in settings in which children without disabilities participate, including nonacademic services and activities.

Stat. Auth.: ORS 343.475

Stats. Implemented: ORS 343.475

Hist.: EB 23-1992, f. & cert. ef. 6-23-92; EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-1000, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2850**

#### **Free Appropriate Public Education (FAPE) for ECSE**

- (1) Contractors and subcontractors must provide ECSE and related services to all resident children from three years of age until the age of eligibility for public school.
- (2) The requirements of this rule also apply to children with disabilities who have been suspended or expelled from preschool in accordance with OAR 581-015-2410 through 581-015-2440.
- (3) For purposes of this rule, a preschool child with a disability is considered resident of the service area where the child is currently living, including children living in public or private residential programs, hospitals, and similar facilities. ORS 343.475(3)
- (4) For purposes of this rule, "school district" means contractors or subcontractors.

Stat. Auth.: ORS 343.475

Stats Implemented: ORS 343.475

Hist: ODE 24-2000, f. & cert. ef. 10-16-00; Renumbered from 581-015-1002, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2855**

#### **Extended Year Services for ECSE**

- (1) Contractors and subcontractors must ensure that extended year services are available as necessary to provide a free appropriate public education to children eligible for ECSE services.

- (2) Extended year services must be provided only if the child's IFSP team determines, on an individual basis, in accordance with OAR 581-015-2755 and 581-015-2810 through 581-015-2830, that services are necessary for the provision of free appropriate public education to the child.
- (3) A contractor or subcontractor may not:
  - (a) Limit extended year services to particular categories of disability; or
  - (b) Unilaterally limit the type, amount, or duration of those services.
- (4) The purpose of extended year services is the maintenance of the child's learning skills or behavior, not the teaching of new skills or behavior.
- (5) Contractors or subcontractors must develop criteria for determining the need for extended year services. The criteria must include:
  - (a) Regression and recoupment time based on documented evidence; or
  - (b) If no documented evidence, on predictions according to the professional judgment of the team.
- (6) For the purposes of section (5) of this rule:
  - (a) "Regression" means significant loss of skills or behaviors in any area specified on the IFSP as a result of an interruption in ECSE services; and
  - (b) "Recoupment" means the recovery of skills or behaviors specified on the IFSP to a level demonstrated before the interruption of education services.
- (7) For the purposes of this rule, "extended year services" means ECSE services and related services that:
  - (a) Are provided to a child with a disability;
    - (A) Beyond the normal service year of the contractor or subcontractor;
    - (B) In accordance with the child's IFSP; and
    - (C) At no cost to the parents of the child; and
  - (b) Meet the standards of the Department.

Stat. Auth.: ORS 343.475

Stats. Implemented: ORS 343.475

Hist.: ODE 24-2000, f. & cert. ef. 10-16-00; Renumbered from 581-015-1003, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2860**

#### **Assistive Technology for ECSE**

- (1) Contractors or subcontractors must follow the rules and procedures in OAR 581-015-2055 to ensure that assistive technology devices or assistive technology services, or both, are available to preschool children with a disabilities age three through the age of eligibility for public school, if required as a part of the child's special education, related services or supplementary aids and services.
- (2) For the purposes of this rule, "school district" means contractors or subcontractors.
- (3) For the purposes of this rule, "IEP" means IFSP.

Stat. Auth.: ORS 343.475

Stats. Implemented: ORS 343.475

Hist.: ODE 24-2000, f. & cert. ef. 10-16-00; Renumbered from 581-015-1005, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2863**

#### **Procedures for EI/ECSE Complaints**

OAR 581-015-2030 applies for EI and ECSE programs.

Stat. Auth.: ORS 343.041

Stats. Implemented: ORS 343.041, 34 CFR 300.151-153; 34 CFR 300.504(a)(2)

Hist.: ODE 14-2012, f. 3-30-12, cert. ef. 4-2-12

### **581-015-2865**

#### **Mediation**

- (1) The Department offers mediation, in accordance with OAR 581-015-2335, at no cost to the parties to resolve disputes involving any EI/ECSE matter, including matters arising before the filing of a complaint or hearing request. For EI families, such matters may include a public agency's choices regarding insurance related decisions or fees, such as: copayments or deductibles, incurred as part of a child's early intervention services.
- (2) For the purposes of OAR 581-015-2335, "school district" means contractors and subcontractors for disputes involving any EI/ECSE matter.

Stat. Auth.: ORS 343.475, 343.531

Stats. Implemented: ORS 343.475, 343.531, 34 CFR 303.431, 303.521(e)

Hist.: EB 23-1992, f. & cert. ef. 6-23-92; EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; Renumbered from 581-015-1020, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 30-2012, f. 11-7-12, cert. ef. 11-9-12

### **581-015-2870**

#### **Due Process Hearings**

OARs 581-015-2340 through 581-015-2385 apply for EI and ECSE programs with the following exceptions:

- (1) "School District" means contractors and subcontractors;
- (2) Parents may not seek reimbursement or attorney fees under ORS 343.175 for EI hearings;
- (3) The Department must submit a copy of the hearing decision to the State Advisory Council for Special Education and the State Interagency Coordinating Council; and
- (4) EI parents may use the State Due Process system established in OAR 581-015-2340 through 581-015-2385 to contest the imposition of fees, or a public agency's decisions about a parent's ability to pay costs, such as co-payments or deductibles, incurred as a part of a child's early intervention services.

Stat. Auth.: ORS 343.475, 343.531

Stats. Implemented: ORS 343.475, 343.531, 34 CFR 303.521(e)

Hist.: EB 23-1992, f. & cert. ef. 6-23-92; EB 4-1995, f. & cert. ef. 1-24-95; EB 10-1996, f. & cert. ef. 6-26-96; ODE 24-2000, f. & cert. ef. 10-16-00; Renumbered from 581-015-1030, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 14-2012, f. 3-30-12, cert. ef. 4-2-12; ODE 30-2012, f. 11-7-12, cert. ef. 11-9-12

### **581-015-2875**

#### **Discipline of Children with Disabilities for ECSE**

Contractors or subcontractors must follow the rules and procedures in OAR 581-015-2400 through 581-015-2445 for discipline of children with disabilities age three through the age of eligibility for public school with the following definition exceptions:

- (1) "General curriculum" means appropriate activities engaged in by typical children of the same age;
- (2) "IEP" means IFSP; and
- (3) "Day" means calendar days excluding weekends, holidays, and ECSE program vacation days.
- (4) "School district" means contractors or subcontractors.

Stat. Auth.: ORS 343.475, ORS 343.531

Stats. Implemented: ORS 343.475, ORS 343.531

Hist.: ODE 24-2000, f. & cert. ef. 10-16-00; ODE 8-2001, f. & cert. ef. 1-29-01; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-1008, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2880**

#### **Private Placement - ECSE**

Contractors or subcontractors must follow the rules and procedures in OAR 581-015-2450 through 581-015-2515 for ECSE children placed by their parents in private schools.

Stat. Auth.: ORS 343.475

Stats. Implemented: ORS 343.475, ORS 343.495

Hist.: ODE 24-2000, f. & cert. ef. 10-16-00; Renumbered from 581-015-1125, ODE 10-2007, f. & cert. ef. 4-25-07

### **581-015-2885**

#### **Preschool Children with Disabilities Covered by Public Insurance**

- (1) Applicability: For purposes of OAR 581-015-2885, IDEA Part C requirements apply to children ages birth through two; IDEA Part B requirements apply to children ages three and above.
- (2) For purposes of this rule the term "public benefits" means public insurance including but not limited to Medicaid.
- (3) The contractor or subcontractor may use a child or family's public benefits to provide or pay for early intervention, as permitted under the public insurance program and the requirements of this rule.
- (4) The contractor or subcontractor may not require a parent to sign up for, or enroll in, public benefits to receive early intervention services under Part C.
- (5) For a child under age three, the contractor or subcontractor:
  - (a) Must obtain, prior to using public benefits, parent consent if the child or family is not enrolled in the public benefits program or if that use would:
    - (A) Decrease available lifetime coverage or any other insured benefit;

- (B) Result in the family paying for services that would otherwise be covered by the public benefits;
  - (C) Increase premiums or lead to the discontinuation of insurance; or
  - (D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.
- (b) Must provide, if the parent does not consent to use of their public benefits, the early intervention services on the IFSP for which the parent has provided consent.
- (c) Must provide written notification, prior to using public benefits, to the parents that includes:
- (A) A statement that parental consent must be obtained before the contractor or subcontractor discloses a child's personally identifiable information to the State Medicaid Agency for billing purposes;
  - (B) A statement of the no-cost protection provision in subsection (5)(a)–(b) that early intervention services on the IFSP must still be made available if the parent has consented to these services;
  - (C) A statement that the parents have the right to withdraw their consent to disclose personally identifiable information to the public agency responsible for the administration of public benefits or insurance program (e.g., Medicaid) at any time; and
  - (D) A statement of the general cost categories that the parent would incur as a result of participating in a public benefits program.
- (d) Must pay any costs incurred as a result of using public benefits for early intervention services, such as a deductible or copayment.
- (e) May use its Part C funds to pay fees and costs (e.g., the deductible or co-pay amounts) the parents otherwise would have to pay to use public benefits.
- (f) May use its Part C funds to pay for early intervention services;
- (g) Must notify EI parents that they may use any of the state's dispute resolution procedures including, but not limited to, the state complaint system under OAR 581-015-2030, and mediation, due process and related resolution sessions under 581-015-2865 through 581-015-2870 to contest the imposition of an insurance-related fee or cost, such as co-payments or deductibles, to provide early intervention services for a child who may have a disability.
- (6) For a child over age three, the ECSE program, contractor, or subcontractor may use the State's Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for special education and related services required under IDEA and permitted under the public benefits or insurance program, as specified in subsection (2) below.
- (7) With regard to services required to provide a free appropriate public education (FAPE) to a child with disabilities under IDEA, the ECSE program, contractor, or subcontractor
- (a) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child with disabilities to receive FAPE under the IDEA;
  - (b) May not require parents to incur an out-of-pocket expense such as the payment of deductible or copay amount incurred in filing a claim for special education and related services, pursuant to IDEA, but may pay the cost that the parent otherwise would be required to pay; and
  - (c) May not use the child's benefits under a public insurance program if that use would:
    - (A) Decrease available lifetime coverage or any other insured benefit;
    - (B) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;
    - (C) Increase premiums or lead to the discontinuation of insurance; or
    - (D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and
  - (d) Must not use a child's benefits under a public insurance program if that use would:
    - (A) Decrease available lifetime coverage or any other insured benefit;
    - (B) Result in the family paying for services that would otherwise be covered by the public benefits;
    - (C) Increase premiums or lead to the discontinuation of insurance; or
    - (D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.
- (8)(a) Prior to accessing a child's or parent's public benefits or insurance for the first time, and after providing notification to the child's parents consistent with (5) below, the ECSE program, contractor, or subcontractor must obtain written, parental consent that:
- (b) Meets the requirements of the Family Education Rights and Privacy Act (34 CFR part 99) and the parental consent provisions in IDEA (34 CFR §300.622) requiring that consent state:
    - (A) the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular child);

(B) the purpose of the disclosure (e.g., billing for services under the Individuals with Disabilities Education Act (IDEA);

(C) the agency to which the disclosure may be made (e.g., the State's public benefits or insurance program (e.g., Medicaid); and

(D) Specifies that the parent understands and agrees that the public agency may access the parent's or child's public benefits or insurance to pay for services under IDEA.

(9) Prior to accessing a child's or parent's public benefits or insurance for the first time, and annually thereafter, the District or ECSE program must provide prior written notification, consistent with requirements of OAR 581-015-2310(4) and (5), to the child's parents, that includes:

(a) A statement of the parental consent provisions in paragraphs (4)(a)(A) and (B) above;

(b) A statement of the "no cost" provisions in paragraphs (2)(a) through (c) above.

(c) A statement that the parents have the right under the Family Education Rights and Privacy Act (FERPA) and IDEA, Part B, and OAR 581-0152005 to withdraw their consent to disclosure of their child's personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) at any time; and

(d) A statement that the withdrawal of consent or refusal to provide consent, pursuant to FERPA and IDEA, to disclose personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

(10) Use of IDEA Part B funds.

(a) If the ECSE program, contractor, or subcontractor is unable to obtain parental consent to use the parents' public benefits or insurance when the parents would incur a cost for a specified service required to ensure a free appropriate public education, the district or ECSE program may use its Part B funds to pay for the service.

(b) To avoid financial cost to parents who would otherwise consent to use public benefits or insurance, the ECSE program, contractor, or subcontractor may use its Part B funds to pay the cost the parents otherwise would have to pay to use the public insurance (e.g., the deductible or co-pay amounts).

(c) Proceeds from public benefits or insurance will not be treated as program income for purposes of 34 CFR 80.25.

(d) If the ECSE program, contractor, or subcontractor spends reimbursements from federal funds (e.g., Medicaid) for special education and related services, those funds will not be considered "state or local" funds for purposes of the maintenance of effort provisions pursuant to IDEA. If a contractor or subcontractor spends reimbursements from federal funds (e.g., Medicaid) for early intervention, those funds will not be considered "state or local" funds for purposes of the maintenance of effort provisions.

(11) Construction. Nothing in this rule should be construed to alter the requirements imposed on a state Medicaid agency, or any other agency administering a public benefits or insurance program by federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, 42 U.S.C. 1396 through 1396v and 42 U.S.C. 1397 aa through 1397jj, or any other insurance program.

Stat. Auth.: ORS 343.475

Stats. Implemented: ORS 343.475, 343.495, 34 CFR 303.430, 303.520, 303.521

Hist.: ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-1051, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 14-2012, f. 3-30-12, cert. ef. 4-2-12; ODE 30-2012, f. 11-7-12, cert. ef. 11-9-12; ODE 11-2013(Temp), f. & cert. ef. 4-25-13 thru 10-21-13

## **581-015-2890**

### **Preschool Children with Disabilities Covered by Private Insurance**

(1) With regard to services required to provide FAPE to a preschool child or EI services to a child under the age of three, a contractor or subcontractor may access a parent's private insurance proceeds only if the parent provides informed consent consistent with this rule and applicable federal requirements related to confidentiality of personally identifiable information.

(2) For a child under the age of three, when the contractor or subcontractor proposes to access the parent's private insurance to pay for the initial provision of early intervention services, it must:

(a) Obtain parent consent in accordance with this rule; and whenever personally identifiable information is released due to an increase in frequency, length, duration, or intensity in the provision of services on the child's IFSP.

(b) Inform the parents of any of the State's payment policies and identify potential costs that the parent may incur when their private insurance is used to pay for services.

(c) Not permit use of private insurance to:

- (A) Count towards or result in a loss of benefits due to the annual or lifetime insurance coverage caps, to the parent, or the child's family members who are covered by the policy;
  - (B) Negatively affect the availability of insurance to the child, the parent, or the child's family members who are covered under the insurance policy, and insurance coverage may not be discontinued for these individuals due to the use of the insurance to pay for services; or
  - (C) Be the basis for increasing insurance premiums of the child, the parent, or the child's family members covered under the insurance policy.
- (3) For a child under the age of three, the contractor or subcontractor:
- (a) Must not require parents to pay out-of-pocket expenses (e.g., co-payments, premiums, or deductibles), even if the parent has given consent for the use of private insurance.
  - (b) May use its Part C funds to pay the cost the parents otherwise would have to pay to use public benefits (e.g., the deductible or co-pay amounts);
  - (c) May use its Part C funds to pay for early intervention services;
  - (d) Must notify parents that they may use any of the state's dispute resolution procedures including, but not limited to, the state complaint system under OAR 581-015-2030; mediation, due process, and related resolution sessions under 581-015-2865 through 581-015-2870, to contest the imposition of an insurance related fee or cost, such as co-payments or deductibles, to provide early intervention services.
- (4) For a child above the age of three, the contractor or subcontractor must obtain consent each time it proposes to access the parents' private insurance.
- (a) If a public agency is unable to obtain parental consent to use the parent's private insurance, to ensure the provision of FAPE, the public agency may use its Part B funds to pay for the service.
  - (b) To avoid financial cost to parents who otherwise would consent to use private insurance, if the parent would incur a cost, the public agency may use its Part B funds to pay the cost the parents otherwise would have to pay to use the parent's insurance (e.g., the deductible or co-pay amounts).
- (5) For all preschool children, the contractor or subcontractor must inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.
- (6) Proceeds from private insurance will not be treated as program income.

Stat. Auth.: ORS 343.475

Stats. Implemented: ORS 343.475, 343.495, 34 CFR 300.154, 303.520(b)

Hist.: ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-1052, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 14-2012, f. 3-30-12, cert. ef. 4-2-12; ODE 30-2012, f. 11-7-12, cert. ef. 11-9-12

## **581-015-2895**

### **Health and Safety**

EI and ECSE services may be provided to eligible children in a variety of settings including, but not limited to, home, hospitals, institutions, special schools, classrooms, and community child care, or preschool settings. If services are provided in any setting other than the family home, the contractor shall assure that each subcontractor meets all applicable state and local requirements including:

- (1) The applicable state health, and safety regulations;
- (2) Assurances that the subcontractor has policies or procedures in place regarding staff hiring that include careful checking of personal and professional references for all potential employees, with regularly scheduled evaluations to evaluate the employee's competence to work with young children;
- (3) The provision of adequate space to assure the full participation of all children, regardless of ability or mobility; and
- (4) The applicable personnel standards outlined in OAR 581-015-2900.

Stat. Auth.: ORS 343.475, ORS 343.495

Stats. Implemented: ORS 343.475, ORS 343.495

Hist.: EB 23-1992, f. & cert. ef. 6-23-92; ODE 24-2000, f. & cert. ef. 10-16-00; Renumbered from 581-015-1090, ODE 10-2007, f. & cert. ef. 4-25-07

## **581-015-2900**

### **Personnel Standards**

- (1) Personnel employed to provide EI or ECSE services include:
  - (a) Supervisors;
  - (b) EI and ECSE specialists;
  - (c) Related services personnel; and



- (d) EI and ECSE assistants.
- (2) Supervisors must meet the following criteria:
  - (a) Possess a minimum of a masters degree in early childhood, special education or a related field, and have three years experience with infants, toddlers, young children, and families.
  - (b) Hold a TSPC administrative endorsement or, within 12 months of employment, complete authorization as an Early Childhood Supervisor under OAR 581-015-2910; and
  - (c) Have a professional development plan based on the content of the EI/ECSE competencies.
- (3) EI and ECSE specialists must meet the following criteria:
  - (a) Possess a minimum of a baccalaureate degree in early childhood, special education or a related field;
  - (b) Have a professional development plan based on the content of the EI/ECSE competencies; and
  - (c) Hold one of the following credentials:
    - (A) TSPC licensure or endorsement in EI/ECSE;
    - (B) TSPC licensure or endorsement in related field; or
    - (C) Within 12 months of employment, authorization as an Early Childhood Specialist under OAR 581-015-2905.
- (4) Related services personnel must possess a minimum of a baccalaureate degree and a valid license necessary to practice in Oregon. Related services personnel who also provide service coordination as outlined in OAR 581-015-2840 must have:
  - (a) TSPC licensure in their area of discipline; or
  - (b) State licensure in their area of discipline; and
  - (c) A professional development plan based on the content of the EI/ECSE competencies.
- (5) EI and ECSE assistants must be at least 18 years old, have a high school diploma or equivalent, experience working with young children. EI/ECSE assistants must have a professional development plan based on the content of the EI/ECSE competencies.

Stat. Auth.: ORS 343.055, ORS 343.475

Stats. Implemented: ORS 343.055, ORS 343.475

Hist.: EB 23-1992, f. & cert. ef. 6-23-92; EB 10-1997, f. & cert. ef. 6-26-97; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-1100, ODE 10-2007, f. & cert. ef. 4-25-07

## **581-015-2905**

### **Authorization of Early Childhood Specialist**

- (1) This rule establishes an alternative to Teacher Standards and Practices Commission (TSPC) licensure or endorsements for individuals to serve as Early Childhood Specialists for Programs. Individuals with TSPC issued endorsements in EI/ECSE or a related field are not covered by sections (4) - (12).
- (2) Responsibilities of the Early Childhood Specialist may include but are not limited to:
  - (a) Coordination of EI/ECSE services to children and their families;
  - (b) Assessment of children in EI/ECSE programs;
  - (c) Development and implementation of IFSP;
  - (d) Development and implementation of data collection systems;
  - (e) Provision of consultation and support, as necessary, to families and staff;
  - (f) Training of EI/ECSE assistants;
  - (g) Compliance with procedural safeguards; and
  - (h) Provision of specialized instruction.
- (3) Early Childhood Specialists must possess a minimum of a bachelor degree in early childhood education, special education or a related field.
- (4) Individuals without a TSPC endorsement in EI/ECSE or a related field must successfully demonstrate competency at the specialist level in the following areas, which are described in the document, "Competencies for Professionals Working in EI/ECSE in Oregon":
  - (a) Typical/Atypical Childhood Development;
  - (b) Assessment;
  - (c) Family;
  - (d) Service Delivery;
  - (e) Program Management;
  - (f) Service Coordination;
  - (g) Research; and
  - (h) Professional Development Values/Ethics.

- (5) Candidates for the Early Childhood Specialist authorization must complete an application and portfolio that documents their mastery level of each component within the competency areas listed in section (4) of this rule.
- (6) The candidate must submit the application and portfolio to the Oregon Department of Education for review. Specialist employed on or after October 1, 1998, must complete the authorization within 12 months of employment. The Office of Special Education will convene a panel at least two times per year to review the candidate's portfolio. The panel will consist of a minimum of three professionals representing the Oregon Department of Education, higher education, and EI/ECSE service providers. The panel will recommend approval or non-approval of the Early Childhood Specialist authorization for the candidate to the State Superintendent of Public Instruction.
- (7) The Superintendent will approve or deny the candidate's application considering the recommendation of the panel:
  - (a) Each approved candidate will receive authorization from the Department as an Early Childhood Specialist;
  - (b) Each nonapproved candidate will receive notice from the Department. The notice will include the reasons for denial and the right of appeal to the State Board of Education.
- (8) If a candidate is unable to complete the authorization process within a 12-month period, the EI/ECSE contractor may request a waiver from the Oregon Department of Education for up to one year to allow for the candidate's completion of the authorization process.
- (9) Initial authorization is valid for a period of three years. Subsequent authorization is valid for a period of five years.
- (10) Applicant renewal of the Early Childhood Specialist authorization must include the following:
  - (a) For initial renewal, a minimum of two years experience between issuance of initial authorization and renewal application;
  - (b) For subsequent renewal, a minimum of three years experience between previous renewal and current application.
  - (c) Written verification by the applicant's supervisor documenting:
    - (A) Completion of a minimum of 75 Professional Development Units for initial reauthorization or a minimum of 125 Professional Development Units for subsequent reauthorization;
    - (B) Completion of a Professional Development Plan developed with the applicant's supervisor; and
    - (C) Development of a new Professional Development Plan developed with the applicant's supervisor.
- (11) The Department will deny or revoke authorization of an Early Childhood Specialist under any of the following conditions:
  - (a) The individual has been convicted of any of the crimes listed in ORS 342.143, or the substantial equivalent of any of those crimes if the conviction occurred in another jurisdiction or in Oregon under a different statutory name or number; or
  - (b) The individual has made a false statement as to the conviction of a crime.
- (12) The Department may deny or revoke authorization for an Early Childhood Specialist if the individual is charged with a breach of professional responsibilities, which is verified by his/her immediate supervisor.
- (13) Individual whose authorization has been revoked will receive notice from the Department. The notice will include the reasons for denial and the right of appeal to the State Board of Education.
- (14) All specialists employed by EI/ECSE contractors or subcontractors must have a professional development plan based on the content of the EI/ECSE Competencies as listed in section (4) of this rule.
- (15) A temporary waiver may be requested by the EI/ECSE contractor when an emergency arises due to a misassignment or unsuccessful recruitment efforts. The request for the waiver must be submitted to the Oregon Department of Education and must include:
  - (a) Documentation of efforts to employ personnel who meet the required competencies;
  - (b) The name, position, and qualifications of the employed personnel;
  - (c) A copy of the professional development plan as described in section (13) of this rule; and
  - (d) Assurances that the plan will be implemented.

Stat. Auth.: ORS 343.055, ORS 343.475

Stats. Implemented: ORS 343.055, ORS 343.475

Hist.: EB 15-1997, f. & cert. ef. 12-29-97; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 8-2003, f. 6-9-03, cert. ef. 6-10-03;

Renumbered from 581-015-1105, ODE 10-2007, f. & cert. ef. 4-25-07

**581-015-2910****Authorization of Early Childhood Supervisor**

- (1) This rule establishes an alternative to a Teacher Standards and Practices Commission (TSPC) administrative license for individuals to serve as Early Childhood Supervisors for Programs. Individuals with a TSPC issued administrative license and who hold a masters degree in early childhood education, special education or a related field with three years of experience working with infants, toddlers, young children and families are not covered by sections (4) through (12) of this rule.
- (2) Responsibilities of the Early Childhood Supervisor may include but are not limited to:
  - (a) Oversight of EI/ECSE services;
  - (b) Supervision and training of personnel in EI/ECSE programs;
  - (c) Serving as administrative representative at IFSP meetings;
  - (d) Facilitating meetings with personnel and families; and
  - (e) Facilitating interagency collaboration.
- (3) Early Childhood Supervisors must possess a minimum of a master's degree in early childhood education, special education or a related field.
- (4) Individuals without a TSPC administrative license must successfully demonstrate competency at the supervisor level in the following areas, which are described in the document, "Competencies for Professionals Working in EI/ECSE in Oregon":
  - (a) Typical/Atypical Childhood Development;
  - (b) Assessment;
  - (c) Family;
  - (d) Service Delivery;
  - (e) Program Management;
  - (f) Service Coordination;
  - (g) Research;
  - (h) Professional Development Values/Ethics.
- (5) Candidates for the Early Childhood Supervisor authorization must complete an application and portfolio that documents their mastery level of each component within the competency areas listed in section (4) of this rule.
- (6) The candidate must submit the application and portfolio to the Oregon Department of Education for review. Supervisors employed on or after October 1, 1998, must complete the authorization within 12 months of employment. The Office of Special Education will convene a panel at least two times per year to review candidate portfolios. The panel will consist of a minimum of three professionals representing the Oregon Department of Education, higher education, and EI/ECSE service providers. The panel will recommend approval or non-approval of the Early Childhood Supervisor authorization for the candidate to the State Superintendent of Public Instruction.
- (7) The Superintendent will approve or deny the candidate's application considering the recommendation of the panel:
  - (a) Each approved candidate will receive authorization from the Department as an Early Childhood Supervisor;
  - (b) Each non-approved candidate will receive notice from the Department. The notice will include the reasons for denial and the right of appeal to the State Board of Education.
- (8) Initial authorization is valid for a period of three years. Subsequent authorization is valid for a period of five years.
- (9) Applicants renewal of the Early Childhood Supervisor authorization must include the following:
  - (a) For initial renewal, a minimum of two years experience between issuance of initial authorization and renewal application;
  - (b) For subsequent renewal, a minimum of three years experience between previous renewal and current application.
  - (c) Written verification by the applicant's supervisor documenting:
    - (A) Completion of a minimum of 75 Professional Development Units for initial reauthorization or a minimum of 125 Professional Development Units for subsequent reauthorization;
    - (B) Completion of a Professional Development Plan developed with the applicant's supervisor; and
    - (C) Development of a new Professional Development Plan developed with the applicant's supervisor.
- (10) The Department will deny or revoke authorization of an Early Childhood Supervisor under any of the following conditions:

- (a) The individual has been convicted of any of the crimes listed in ORS 342.143, or the substantial equivalent of any of those crimes if the conviction occurred in another jurisdiction or in Oregon under a different statutory name or number; or
  - (b) The individual has made a false statement as to the conviction of a crime.
- (11) The Department may deny or revoke authorization for an Early Childhood Supervisor if the individual is charged with a breach of professional responsibilities, which is verified by his/her immediate supervisor.
- (12) Individuals whose authorization has been revoked will receive notice from the Department. The notice will include the reasons for denial and the right of appeal to the State Board of Education.
- (13) All supervisors employed by EI/ECSE contractors or subcontractors must have a professional plan based on the content of the EI/ECSE competencies as listed in section (4) of this rule.
- (14) A temporary waiver may be requested by the EI/ECSE contractor when an emergency arises due to a misassignment or unsuccessful recruitment efforts. The request for the waiver must be submitted to the Oregon Department of Education and must include:
- (a) Documentation of efforts to employ personnel who meet the required competencies;
  - (b) The name, position, and qualifications of the employed personnel;
  - (c) A copy of the professional development plan as described in section (13) of this rule; and
  - (d) Assurances that the plan will be implemented.

Stat. Auth.: ORS 343.055, ORS 343.475

Stats. Implemented: ORS 343.055, ORS 343.475

Hist.: EB 15-1997, f. & cert. ef. 12-29-97; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 8-2003, f. 6-9-03, cert. ef. 6-10-03; ODE 14-2003, f. & cert. ef. 8-14-03; Renumbered from 581-015-1106, ODE 10-2007, f. & cert. ef. 4-25-07

## DIVISION 16 OREGON SCHOOL FOR THE DEAF

### 581-016-0520

#### Definitions

The following definitions apply to OAR 581-016-0520 through 581-016-0560, unless the context indicates otherwise:

- (1) Board: The State Board of Education;
- (2) OSD: The Oregon School for the Deaf;
- (3) Superintendent: The State Superintendent of Public Instruction.
- (4) IEP: An individualized education program as defined in OAR 581-015-0005(8).

Stat. Auth.: ORS 346.010

Stats. Implemented: ORS 346.010

Hist.: 1EB 264, f. & ef. 7-5-77; EB 36-1990, f. & cert. ef. 7-10-90; EB 2-1994, f. & cert. ef. 4-29-94; ODE 12-2009, f. & cert. ef. 12-10-09

### General Placement Policy

### 581-016-0526

#### General Placement

(1) It is the policy of the State Board of Education (Policy 8100) that any student with a hearing impairment shall be served whenever possible in the student's home community if appropriate. It is the intent that all local agencies having interest in the student collaborate to offer services locally. A referral shall be made to OSD only when local programs are unable to provide a free appropriate public education consistent with the needs of the student as identified in the student's IEP.

(2) A student may be referred to OSD if the student:

- (a) Has been determined to be eligible for special education services by the resident district under OAR 581-015-0051;
- (b) Is auditorily impaired to the extent that services needed to implement the IEP as described in OAR 581-016-0536(8)(f)(A)–(D) are not available in the local district with regional program support;
- (c) Is a legal resident of the State of Oregon;
- (d) Regarding consent:
  - (A) Has the consent of a parent(s), guardian or surrogate if the student is under age 18; or
  - (B) Has given his or her consent, if over age 18; or
  - (C) Has the consent of a court-appointed guardian if one is appointed and the student is over age 18;and
- (e) Has not completed the school year in which the student turns age 21.

(3) OSD may act as an evaluation and diagnostic center for a student with hearing impairments when requested to do so by the student's resident school district or the student's parents, or when additional assessment information is needed prior to a placement decision.

Stat. Auth.: ORS 346

Stats. Implemented: ORS 346.015

Hist.: 1EB 24-1986, f. & ef. 7-11-86; EB 36-1990, f. & cert. ef. 7-10-90; EB 2-1994, f. & cert. ef. 4-29-94; ODE 12-2009, f. & cert. ef. 12-10-09

### 581-016-0536

#### Procedures for Referral and Placement

(1) The resident school district or the regional program shall contact the director of OSD to request a multidisciplinary team meeting to determine placement.

(2) The director or designee of OSD shall send the placement procedure packet to the district contact person and set a mutually agreed upon date, place and time for a meeting to determine placement.

(3) The district contact person shall obtain parent consent to send the following records to OSD and shall send the records for review to the director of OSD at least three working days prior to the multidisciplinary team meeting:

- (a) The current audiological report (OSD);
- (b) The current and previous medical, behavior, psychological, health immunization, and educational records, including previous IEPs, multidisciplinary team decisions and eligibility statements;
- (c) The current statement of eligibility;
- (d) The current IEP; and
- (e) The signed parent consent for release of information.

- (4) If the student is eligible for special education as a child with an intellectual or developmental disability, the resident school district shall contact the local mental health program case manager, who, in consultation with a Children's Services Division caseworker, shall review the IEP to determine if the student has need for residential care as part of the education program:
- (a) If the student needs residential care or other support services as part of the education program, but community resources are not available as documented by the local community mental health program case manager, the resident school district shall proceed with the placement process;
  - (b) In cases where the student does not need residential care as a part of the education program, but needs other educational services provided by OSD, the resident school district shall proceed with the placement process.
- (5) The resident school district is responsible for conducting the multidisciplinary team meeting to determine the student's placement.
- (6) Participants in the placement meeting shall include persons knowledgeable about the student, the meaning of the evaluation data and placement options. The multidisciplinary team shall consist of:
- (a) The student's parent(s), guardian, or surrogate if the student is under age 18 or has a court-appointed guardian, or alternatively the student, if the student is over age 18 and does not have a court-appointed guardian;
  - (b) The student, when appropriate;
  - (c) The resident school district representative;
  - (d) The regional program representative who is knowledgeable about the student's disability;
  - (e) The director or designee from OSD who has knowledge about services that can be provided by the special school and has the authority to commit resources for services;
  - (f) The local mental health case manager for students eligible for intellectual or developmental disability services;
  - (g) Other representatives from the student's local placement; and
  - (h) Other persons with pertinent information about the student.
- (7) The multidisciplinary placement team shall designate a member to complete the placement form.
- (8) When determining placement, the multidisciplinary team shall:
- (a) Base its decision on the student's current IEP;
  - (b) Consider documented information from a variety of sources;
  - (c) Address the variety of educational programs and services available to students without disabilities;
  - (d) Review opportunities to participate in nonacademic and extracurricular services and activities with students without disabilities;
  - (e) Consider any potential harmful effects on the student or on the quality of services provided to the student;
  - (f) Consider the following factors:
    - (A) The services needed to implement the IEP which may include, but are not limited to, areas such as academics; self-help, social, interpersonal, independent living; vocational training; and language development;
    - (B) A learning environment in which there is ample opportunity for the student to have meaningful communication with other students and teachers and exposure to cultural factors related to the student's disability;
    - (C) The student's need for direct instruction in an alternative communication system; and
    - (D) The extent of curriculum and instructional adaptations needed.
  - (g) Determine whether the student needs additional services and specialized educational resources available at OSD that are not available at the local placement options;
  - (h) Consider the impact on the student regarding the length of daily transportation for each placement option considered;
  - (i) Compare the instructional time available at local placement options to implement the student's IEP with the instructional time available at OSD; and
  - (j) Document the placement options considered and the rationale for rejection or acceptance.
- (9) Within 14 calendar days of the multidisciplinary team meeting, the resident school district shall submit the following documents to the Assistant Superintendent for the Office of Student Learning and Partnerships, Oregon Department of Education:
- (a) The eligibility statement;
  - (b) The placement meeting notes;
  - (c) The parental consent for release of information;
  - (d) A letter of placement recommendation from the regional program and the resident school district;
- and

- (e) A written statement from the local community mental health program case manager regarding the availability of local residential services, when appropriate.
- (10) The Assistant Superintendent for the Oregon Department of Education's Office of Student Learning and Partnerships shall send written notification of the multidisciplinary team's placement decision to the parent(s), guardian or surrogate, the resident school district, the regional program, and OSD. Placement shall begin after written notification is received by the parent(s) and the resident school district.
- (11) Prior to the student's enrollment at OSD, the school shall review the student's file to insure that the documents identified in section (3) of this rule have been received.

Stat. Auth.: ORS 346

Stats. Implemented: ORS 346.015

Hist.: 1EB 24-1986, f. & ef. 7-11-86; EB 36-1990, f. & cert. ef. 7-10-90; EB 2-1994, f. & cert. ef. 4-29-94; ODE 12-2009, f. & cert. ef. 12-10-09; ODE 12-2011, f. & cert. ef. 10-31-11

### **581-016-0537**

#### **General Obligations**

OSD is subject to the rules contained in division 15 of this chapter including, but not limited to, the requirements for identifying and determining eligibility of students with handicapping conditions, development of IEPs, placement of students and the provision of a free, appropriate education.

Stat. Auth.: ORS 346

Stats. Implemented: ORS 346.010

Hist.: EB 37-1990, f. & cert. ef. 7-10-90; ODE 12-2009, f. & cert. ef. 12-10-09

### **581-016-0538**

#### **Resident School District Responsibility**

- (1) When a student is placed at OSD the student's resident school district remains responsible for assuring that the student receives a free appropriate education in accordance with ORS 343.221, OAR 581-015-0005(20) and 581-015-0061.
- (2) A representative of the child's resident school district shall attend the student's IEP meetings while the student is placed at OSD.
- (3) In those cases where OSD cannot within the resources allocated provide all of the services required in the child's IEP, the resident district may elect to provide these services if in so doing OSD would become an appropriate placement.
- (4) At the time of placement, OSD and the resident district shall determine by written agreement those services for which the resident district shall remain responsible.

Stat. Auth.: ORS 346

Stats. Implemented: ORS 346.015

Hist.: EB 35-1990, f. & cert. ef. 7-10-90; ODE 12-2009, f. & cert. ef. 12-10-09

### **581-016-0541**

#### **Termination of Placement and Revocation of Consent**

- (1) The student's placement at OSD shall be determined annually by the student's multidisciplinary team and shall be terminated when:
- (a) The student has completed the school year in which the student turns age 21;
  - (b) The student graduates from the program;
  - (c) A multidisciplinary team, which includes those individuals set forth in OAR 581-016-0536(6), determines that:
    - (A) An appropriate program can be provided at the local or regional level;
    - (B) OSD is no longer the appropriate placement for the student; or
  - (d) It is required as the result of a due process hearings officer or court's decision.
- (2) If a parent, guardian or surrogate, student over the age of 18 without a court-appointed guardian, or educational staff question the appropriateness of the student's placement at OSD, the resident school district shall convene a multidisciplinary team with all of the individuals set forth in OAR 581-016-0536(6). The multidisciplinary team shall determine the appropriate placement for the student. This meeting shall occur prior to any change in placement for the student.

Stat. Auth.: ORS 346

Stats. Implemented: ORS 346.015

Hist.: 1EB 24-1986, f. & ef. 7-11-86; EB 30-1988, f. & cert. ef. 7-5-88; EB 36-1990, f. & cert. ef. 7-10-90; EB 2-1994, f. & cert. ef. 4-29-94; ODE 12-2009, f. & cert. ef. 12-10-09

## **581-016-0560**

### **Placement Appeal Procedures -- OSD**

A parent, guardian or surrogate may challenge the child's placement, denial of placement, or transfer in the manner provided in ORS 343.165 to 343.177.

Stat. Auth.: ORS 346

Stats. Implemented: ORS 346.015

Hist.: 1EB 264, f. & ef. 7-5-77; 1EB 19-1979, f. & ef. 11-15-79; 1EB 17-1982, f. & ef. 8-13-82; EB 36-1990, f. & cert. ef. 7-10-90; ODE 12-2009, f. & cert. ef. 12-10-09

## **Program Standards for the Oregon School for the Deaf**

## **581-016-0700**

### **Goals for Education**

To the extent appropriate, each student at the Oregon School for the Deaf shall have the opportunity to function as effectively as possible in six life roles as set forth in OAR 581-022-0201.

Stat. Auth.: ORS 343 & ORS 346

Stats. Implemented: ORS 346.010

Hist.: EB 31-1989, f. & cert. ef. 11-2-89

## **581-016-0710**

### **High School Requirements for Graduation**

In order for a student to graduate from the Oregon School for the Deaf (OSD), he/she must attain a certain number of units, master essential learning skills, meet competencies, and maintain/attain attendance minimums. Three different diplomas/certificates are available, depending on the goals and abilities of each student. A modified diploma or certificate of Individual Educational Program (IEP) completion may be awarded according to OAR 581-022-0415.

(1) To receive a diploma the student must:

- (a) Complete 22 units as specified OAR 581-022-0316;
- (b) Meet all OSD-required competencies in language, reading, and mathematics; and
- (c) Maintain required attendance.

(2) To receive a modified diploma the student must:

- (a) Complete 22 units of modified course work as agreed upon in the IEP;
- (b) Have satisfactory progress in school; and
- (c) Maintain required attendance.

(3) To receive a certificate of IEP completion the student must complete the IEP goals. The certificate may be issued even if the student has not completed 22 units and has not maintained the required days of attendance.

Stat. Auth.: ORS 343 & ORS 346

Stats. Implemented: ORS 346.010

Hist.: EB 31-1989, f. & cert. ef. 11-2-89

## **581-016-0720**

### **Essential Learning Skills**

The Oregon School for the Deaf shall offer a planned program of instruction which ensures the opportunity for students to obtain the essential learning skills identified in the common curriculum goals as set forth by the State Board of Education and in accordance with each learner's intellectual and physical abilities. The school shall:

- (1) Establish an individualized instruction/activity program for each child;
- (2) Provide for the inclusion of all appropriate learning goals;
- (3) Increase the application of all appropriate essential learning skills as students acquire mastery; and
- (4) Provide appropriate curricula, instruction, and activities in order for students to make necessary progress toward attainment of the essential learning skills.

Stat. Auth.: ORS 343 & ORS 346

Stats. Implemented: ORS 346.010

Hist.: EB 31-1989, f. & cert. ef. 11-2-89

## **581-016-0730**

### **Career and Vocational Education**



The Oregon School for the Deaf shall provide a continuum of career and technical instructional program to include career awareness, career exploration, career guidance, job sampling, and work experience.

Stat. Auth.: ORS 343 & ORS 346  
Stats. Implemented: ORS 346.010  
Hist.: EB 31-1989, f. & cert. ef. 11-2-89

**581-016-0740**  
**Special Provisions**

The Oregon School for the Deaf shall provide instruction which is uniquely designed for the hearing impaired and for accompanying handicaps such as vision impairment, autism, intellectual disability, orthopedic impairment, learning disability, emotional disturbance, and other health impairments; and for special abilities (i.e., talented and gifted).

Stat. Auth.: ORS 343 & 346  
Stats. Implemented: ORS 346.010  
Hist.: EB 31-1989, f. & cert. ef. 11-2-89; ODE 12-2011, f. & cert. ef. 10-31-11

**581-016-0750**  
**Curriculum**

(1) The Oregon School for the Deaf (OSD) instructional program shall instruct all students in grades K/1-8 in the areas of art, health education, language arts (including reading and writing), mathematics, physical education, science, and social studies (including geography and history). The program shall:

- (a) Provide students with the knowledge and skills necessary for successful progress in high schools;
- (b) Provide opportunities for high school students to meet requirements for graduation; and
- (c) Offer electives at the high school level in vocational education, art, and a foreign language.

(2) In addition to the academic program, OSC shall provide instruction in these areas:

- (a) Compensatory skills such as:
  - (A) Typing/Keyboarding,
  - (B) Signing and fingerspelling;
  - (C) Leadership;
  - (D) Handwriting; and
  - (E) Use of auditory, visual, and physical aids.
- (b) Self-help and skills of daily living;
- (c) Arts, crafts, and hobbies;
- (d) Orientation and mobility (for deaf/blind);
- (e) Adaptive physical education;
- (f) Career, prevocational, and technical skills;
- (g) Language/Communication development;
- (h) Related services:
  - (A) Speech pathology and audiology;
  - (B) Psychological services;
  - (C) Physical therapy;
  - (D) Occupational therapy; and
  - (E) Medical diagnostic services and health care.

Stat. Auth.: ORS 343 & ORS 346  
Stats. Implemented: ORS 346.010  
Hist.: EB 31-1989, f. & cert. ef. 11-2-89

**581-016-0760**  
**Required Days of Instruction**

The Oregon School for the Deaf shall provide a program of instructional hours or days equivalent to the requirements for public schools as set forth in OAR Chapter 22.

Stat. Auth.: ORS 343 & ORS 346  
Stats. Implemented: ORS 346.010  
Hist.: EB 31-1989, f. & cert. ef. 11-2-89

**581-016-0770**  
**Equal Educational Opportunities**

The Oregon School for the Deaf shall assure equality of opportunity for all students as provided in OAR 581-021-0045 and 581-021-0046, and ORS 359.150.

Stat. Auth.: ORS 343 & ORS 346  
Stats. Implemented: ORS 346.010  
Hist.: EB 31-1989, f. & cert. ef. 11-2-89

### **581-016-0780**

#### **Personnel**

- (1) Teachers, specialists, and administrators must hold valid Oregon certificates and be assigned in accordance with the individual certificate, school policies, program goals, and applicable statutes and administrative rules.
- (2) Related service providers shall meet state licensure requirements in their fields of specialty.
- (3) The Oregon School for the Deaf shall hire staff in compliance with state personnel rules and Department policy.
- (4) All staff will be required to meet sign language requirements established in the communication policy.

Stat. Auth.: ORS 343 & ORS 346  
Stats. Implemented: ORS 346.010  
Hist.: EB 31-1989, f. & cert. ef. 11-2-89

### **581-016-0790**

#### **Daily Class Size**

- (1) The Oregon School for the Deaf shall maintain class sizes and teacher assignments which promote effective learning consistent with the outcomes expected of each Individualized Educational Program (IEP).
- (2) In determining class size, the following shall be considered:
  - (a) The teacher-student ratio of each class;
  - (b) The total number of students assigned per teacher;
  - (c) The severity of students' needs;
  - (d) The support staff available to each teacher;
  - (e) The nature of the instructional program in relation to the teacher's professional preparation; and
  - (f) The appropriateness of instructional facilities and equipment.

Stat. Auth.: ORS 343 & ORS 346  
Stats. Implemented: ORS 346.010  
Hist.: EB 31-1989, f. & cert. ef. 11-2-89

### **581-016-0800**

#### **Educational Materials**

The Oregon School for the Deaf shall provide textbooks and other instructional materials and equipment which contribute to the attainment of general and Individualized Educational Program (IEP) goals and which are appropriate to each child's capabilities.

Stat. Auth.: ORS 343 & ORS 346  
Stats. Implemented: ORS 346.010  
Hist.: EB 31-1989, f. & cert. ef. 11-2-89

### **581-016-0810**

#### **Individual Student**

To ensure each student's educational progress, the Oregon School for the Deaf shall:

- (1) Record and maintain records of assessment results, classroom, work, behavior, and other evaluative information for identifying each student's progress and needs related to:
  - (a) Attainment of general learner goals;
  - (b) Attainment of Individualized Educational Program (IEP) goals; and
  - (c) General educational progress in personal, social, and vocational areas.
- (2) Adapt instruction and curriculum when the needs, interests, and learning styles of each student indicate an adaptation is needed; and
- (3) Report educational progress to parents and students at least annually on:
  - (a) Attainment of general learner goals;
  - (b) Attainment of IEP goals; and
  - (c) General progress in personal, social, vocational, and living skills development, when appropriate.

Stat. Auth.: ORS 343 & ORS 346  
Stats. Implemented: ORS 346.010  
Hist.: EB 31-1989, f. & cert. ef. 11-2-89

### **581-016-0820** **Instructional Program**

To ensure continual improvement of instructional programs, the Oregon School for the Deaf shall review assessment data and other evaluative information to identify levels of performance, to recognize deficiencies and to plan needed improvement. The school shall:

- (1) Identify program needs by:
  - (a) Periodically reviewing assessment results and other evaluative information; and
  - (b) Conducting program evaluation periodically in all curriculum areas stated in OAR 581-016-0603.
- (2) Implement program improvements as identified;
- (3) Provide appropriate staff-related development activities;
- (4) Report results of information stated above to the Department of Education; and
- (5) Provide a media program to enhance each student's instructional program that:
  - (a) Is coordinated to support the general goals of the school and Individualized Educational Programs;
  - (b) Has appropriate facilities, materials, and equipment which support program goals; and
  - (c) Is developed, implemented, coordinated, and maintained by personnel provided for that purpose.

Stat. Auth.: ORS 343 & ORS 346  
Stats. Implemented: ORS 346.010  
Hist.: EB 31-1989, f. & cert. ef. 11-2-89

### **581-016-0830** **Related and Support Services**

The Oregon School for the Deaf shall provide those related services which may be specified in a student's Individualized Educational Program (IEP) in order for him/her to have access to educational program; i.e., such services as:

- (1) Speech pathology and audiology;
- (2) Psychological services;
- (3) Physical therapy;
- (4) Occupational therapy;
- (5) Medical diagnostic services and specific health care; and
- (6) Counseling and guidance.

Stat. Auth.: ORS 343 & ORS 346  
Stats. Implemented: ORS 346.010  
Hist.: EB 31-1989, f. & cert. ef. 11-2-89

### **581-016-0840** **Emergency Plans and Safety Programs**

The Oregon School for the Deaf shall maintain a comprehensive safety program for all employees and students as set forth in OAR 581-022-0706 and 581-022-0707.

Stat. Auth.: ORS 343 & ORS 346  
Stats. Implemented: ORS 346.010  
Hist.: EB 31-1989, f. & cert. ef. 11-2-89

### **581-016-0850** **Operating Policies and Procedures**

The Oregon School for the Deaf shall:

- (1) Keep copies of operating policies, procedures, and rules adopted pursuant to ORS 332.107, and shall make such information available upon request;
- (2) Use a process of management planning in the areas of staffing, instruction, and facility maintenance and construction;
- (3) Maintain and make available upon request evidence of compliance with these standards; and
- (4) Review and evaluate current policies and practices periodically in order to gain/maintain school accreditation.

Stat. Auth.: ORS 343 & ORS 346  
Stats. Implemented: ORS 346.010  
Hist.: EB 31-1989, f. & cert. ef. 11-2-89

### **581-016-0860**

#### **Records and Reports**

A student record policy will be maintained by the Oregon School for the Deaf consistent with that set forth in OAR 581-022-0717.

Stat. Auth.: ORS 343 & ORS 346  
Stats. Implemented: ORS 346.010  
Hist.: EB 31-1989, f. & cert. ef. 11-2-89

### **581-016-0870**

#### **Support Services**

(1) Pupil transportation services: The Oregon School for the Deaf shall cooperate with local school districts in accordance with local school district responsibilities under ORS 343.283. Transportation shall be provided in accordance with ORS 346.042 and 346.045.

(2) Food Services: The Oregon School for the Deaf shall provide meals which are nutritious and take into account particular preparation and content which are consistent with the needs of students enrolled.

(3) Maintenance and custodial services: The Oregon School for the Deaf shall maintain buildings and grounds to provide conditions conducive to the health and safety of students, employees, and the general public.

(4) Facilities: The Oregon School for the deaf shall provide physical facilities which are appropriate to the instructional/activity program and which provide barrier-free access to all students and employees.

(5) Equipment and materials: The Oregon School for the Deaf shall provide furniture, equipment, and materials which support the general and child-specific goals of the school.

(6) Residential services: The Oregon School for the Deaf shall:

(a) Provide care, training, and assessments in the areas of living skills, play and recreational skills, social skills, and behavior management for all residential students, in a safe, clean living and learning environment;

(b) Instruct students in the planned Individualized Educational Program (IEP) assigned by the multidisciplinary team;

(c) Provide all students with social and recreational opportunities to meet the least restrictive environment guidelines as stated in PL 94-142;

(d) Maintain a consistent 24-hour (school week) program for all residential students, that supports and is coordinated with the in-class educational program;

(e) Provide parents with written student development progress reports periodically.

(7) Parent liaison services: The Oregon School for the Deaf shall provide for the liaison between the school and parents and other related agencies to assure:

(a) Appropriate communication;

(b) Advocacy for the students; and

(c) Involvement of the family in the educational process.

Stat. Auth.: ORS 343 & ORS 346  
Stats. Implemented: ORS 346.010  
Hist.: EB 31-1989, f. & cert. ef. 11-2-89

### **581-016-0880**

#### **Statewide Educational Resource**

The Oregon School for the Deaf may extend its services to other hearing impaired children and the general public by:

(1) Conducting student assessments at the request of the local school district or regional program;

(2) Providing summer enrichment experiences;

(3) Providing consultative services to families and local school district and regional personnel and

(4) Providing information to the general public regarding the education of the hearing impaired.

Stat. Auth.: ORS 343 & ORS 346  
Stats. Implemented: ORS 346.010  
Hist.: EB 31-1989, f. & cert. ef. 11-2-89

**DIVISION 21**  
**SCHOOL GOVERNANCE AND STUDENT CONDUCT**

**INTERDISTRICT TRANSFERS**

**581-021-0019**

**Interdistrict Transfers**

(1) Definitions. As used in this rule:

(a) "ADM" means the average daily membership as defined in ORS 327.006.

(b) "Individualized education program" means a written statement of an educational program for a child with a disability that is developed, reviewed and revised in a meeting in accordance with criteria established by rules of the State Board of Education for each child eligible for special education and related services under ORS Chapter 343.

(c) "Interscholastic activities" includes but is not limited to athletics, music, speech, and other related activities.

(d) "Nonresident school district" means a school district that is not the resident school district of a child.

(e) "Person in parental relationship" means, as defined in ORS 339.133, an adult who has physical custody of a child or resides in the same household as the child, interacts with the child daily, provides the child with food, clothing, shelter and incidental necessities and provides the child with necessary care, education and discipline. "Person in parental relationship" does not mean a person with a power of attorney or other written delegation of parental responsibilities if the person does not have other evidence of a parental relationship.

(f) "Resident school district" means the school district that has a legal responsibility to education a child because the child resides in the district with a parent, guardian or person in parental relationship.

(g) "School district" means a school district as defined in ORS 332.002, a state-operated school or any legally constituted combination of such entities.

(2)(a) A nonresident school district may enroll a student who is a resident of another district and receive State School Fund money for the student only if there is a signed Interdistrict Transfer Agreement between the resident school district, nonresident school district, and the parent/guardian(s) or person in parental relationship.

(b) The provisions of this rule does not affect the authority of a school district to enroll students under section 9, chapter 718, Oregon Laws 2011 (Enrolled House Bill 3681) and does not apply to students who attend a school under that section.

(c) The provisions of this rule do not affect the authority of a school district to enter into a contract with another district under ORS 339.125.

(3) It is understood that upon approval by the district of the Interdistrict Transfer Agreement that:

(a) The Resident District shall fully release the student to the Nonresident District. The Nonresident District shall claim the student as a resident student for the purposes of claiming basic school support under the State School Fund and shall report itself as the Resident District of record for ADM purposes.

(b) The Nonresident District shall report the student as a resident student for ADM per ORS 339.133. The Resident District turns over to the Nonresident District all portions of the ADMr and the ADMw that is paid from the State School Fund. Funds may only be exchanged between the districts for the student based on the Interdistrict Transfer Agreement.

(c) The Nonresident District will be accountable for meeting the requirements of the standards described in OAR chapter 581, division 22.

(d) The Resident District holds the responsibility of ensuring a free, appropriate public education (FAPE) in the least restrictive environment (LRE) for students on an Individualized Education Program (IEP).

(4) Modification to the original Interdistrict Transfer Agreement requires written consent by all parties (resident school district, nonresident school district, and parent/guardian or person in parental relationship).

(5) The Interdistrict Transfer Agreement will only be in effect beginning with the effective date listed on the form. The resident and nonresident district policy must include an annual review of each approved interdistrict transfer agreement including an annual notification to parents/guardians or person in parental relationship of the children subject to the interdistrict transfer agreement.

- (6) The Interdistrict Transfer Agreement must contain the following data about the student whom is the subject of the transfer:
- (a) Legal Last Name;
  - (b) Legal First Name;
  - (c) Legal Middle Name;
  - (d) Gender;
  - (e) Date of Birth;
  - (f) Enrolled Grade;
  - (g) House Number/Street Address: (P.O. Box as determined by District Superintendent or Designee);
  - (h) Apartment Complex;
  - (i) Apartment Number;
  - (j) City;
  - (k) State;
  - (l) Zip;
  - (m) Resident School District;
  - (n) Nonresident School District;
  - (o) Effective Date of Transfer;
  - (p) Primary Phone Number of Parent/Guardian/Person of Parental Relationship;
  - (q) Secondary Phone Number;
  - (r) Parent/Guardian/Person of Parental Relationship Name;
  - (s) Individualized Education Plan (IEP) for Special Education Services: If the student seeking transfer has an IEP in place, both the sending and receiving districts need to ensure required services are provided.
  - (t) Interscholastic Organization participation: A transfer does not guarantee eligibility to participate in competitive activities/athletics at the receiving school. Competitive eligibility is determined by the organization's rules.
  - (u) Student suspension reason and when;
  - (v) Student expulsion reason and when;
  - (w) Reason for the transfer request;
  - (x) Attendance records;
  - (y) Certification of truth: Parent/guardian/Person of Parental Relationship to certify the above information is true;
  - (z) Signature of Parent/Guardian/Person of Parental Relationship with date;
  - (aa) Final Action of Resident District with Approved or Denied; Reason for denial;
  - (bb) Resident Superintendent/Designee Signature with date;
  - (cc) Final Action of Nonresident District with Approved or Denied; Reason for denial;
  - (dd) Nonresident Superintendent/Designee Signature with date.
- (7) The Oregon Department of Education (ODE) will provide a sample agreement form. Resident school districts are responsible for developing their own written instructions.
- (8) An Interdistrict Transfer Agreement shall only be between districts within the state of Oregon.
- (9) Upon request by the nonresident district, a resident district shall release student records to the nonresident district.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 339.133

Hist.: ODE 21-2008, f. 8-28-08, cert. ef. 8-29-08; ODE 1-2012, f. 2-1-12, cert. ef. 2-3-12

## **HOME SCHOOLING**

### **581-021-0026**

#### **Examination of Children Instructed by Parent, Legal Guardian or Private Teacher**

(1) The following definitions and abbreviations apply to OAR 581-021-0026 unless otherwise specified within the rule:

- (a) "Approved Tests" Tests approved for assessment of satisfactory progress by home school students are the two most recent versions of the following tests;
  - (A) California Achievement Test;
  - (B) Comprehensive Tests of Basic Skills;
  - (C) Iowa Tests of Basic Skills/Tests of Achievement and Proficiency;

- (D) Metropolitan Achievement Battery;
  - (E) Stanford Achievement Test Battery.
  - (b) "Child" means a person between ages 7 and 18 whose parent or parents seek exemption from compulsory school attendance under ORS 339.030(1)(c) or (1)(d).
  - (c) "Education Service District" means the education service district that contains the school district of which the child is a resident.
  - (d) "Department" means the Oregon Department of Education;
  - (e) "Neutral person" means an individual selected by the parent or guardian of the child to be taught at home who has no relationship by bloodline or marriage to the child;
  - (f) "Notification" means written notice containing:
    - (A) The child's and the parent's name, address, telephone number (optional), and e-mail address (optional);
    - (B) The child's birth date; and
    - (C) The name of the school the child is presently attending, or last attended, or if child has not attended school, the name of the public school district in which the child resides.
  - (g) "Order" means to provide formal written notice.
  - (h) "Parent" is the natural parent or legal guardian of a child whom the parent desires to be exempted from compulsory attendance under the provisions of ORS 339.030(1)(c) or (1)(d).
  - (i) For the purposes of OAR 581-021-0026 only, "Qualified person" is an individual who:
    - (A) Holds a current personnel service license or teaching license from Oregon Teacher Standards and Practices Commission; or
    - (B) Has been licensed by the Oregon Board of Psychologist Examiners; or
    - (C) Has met the publisher's qualifications for purchase, and has purchased at least one test from the list set forth in section (1)(a) of this rule; or
    - (D) Provides evidence of satisfactory completion of a graduate course in which test administration and interpretation is included in the objective; or
    - (E) Has previously qualified as a tester pursuant to paragraph (1)(i) of this rule, and has during the previous year administered at least one test from the list set forth in section (1)(a) of this rule.
  - (j) "Superintendent" is the executive officer of the education service district (ESD).
- (2) The State Superintendent and the Oregon Department of Education shall make available a list of the test publishers and their addresses.
- (3) The Department shall make available a list of persons qualified to administer tests under this rule, such list to be updated by July 1 of each year. To be placed on the list, an applicant shall submit to the State Superintendent of Public Instruction evidence that satisfies any one of the requirements stated in subsection (1)(i)(A) through (E) of this rule.
- (4) When a child is taught or is withdrawn from a public or private school to be taught by a parent, legal guardian or private teacher, as provided in ORS 339.030(1)(c) or (d), the parent, legal guardian or private teacher must notify the education service district in writing within 10 days of such occurrence. In addition, when a child who is taught by a parent, legal guardian or private teacher moves to a new education service district, the parent shall notify the new education service district in writing within 10 days of such occurrence of their intent to continue home schooling.
- (a) The ESD must acknowledge in writing receipt of any notification from a parent, legal guardian or private teacher within 90 days of having record of such notification.
  - (b) The ESD must also notify at least annually, school districts of home schooled students who reside in the school district.
- (5) Children in grades 3, 5, 8, and 10, being taught as provided in section (4) of this rule, shall be examined no later than August 15 in accordance with the following procedures:
- (a) The parent or legal guardian shall select an examination from the list of approved tests provided in subsection (1)(a) above and arrange to have the examination administered to the child by a neutral qualified person as defined in subsections (1)(e) and (i) above.
    - (A) If the child was withdrawn from public or private school, the first examination shall be administered to the child at least 18 months after the date on which the child was withdrawn from public or private school.
    - (B) If the child never attended public or private school, the first examination shall be administered to the child prior to the end of grade three.
  - (b) The person administering the examination shall:
    - (A) Score or provide for the scoring of the examination; and
    - (B) Report the results of the examination to the parent or legal guardian.

- (C) Upon request of the superintendent of the education service district, the parent or legal guardian shall submit the results of the examination to the education service district.
- (6) Testing for grade levels 3, 5, 8, and 10 shall occur in the third, fifth, eighth, and tenth year ending August 15. The first year is defined as when the child is seven on September 1, or earlier at the parent's discretion.
- (7) Test score results shall be evaluated as follows:
- (a) If the composite test score of the child places the child below the 15th percentile based on national norms, the child shall be given an additional examination within one year of when the first examination was administered.
  - (b) If the composite test score of the child on the second examination shows a declining score, then the child shall be given an additional examination within one year of when the second examination was administered and the superintendent of the education service district may:
    - (A) Allow the child to continue to be taught by a parent, legal guardian or private teacher; or
    - (B) Place the education of the child under the supervision of a person holding a teaching license who is selected by the parent or legal guardian at the expense of the parent or legal guardian.
  - (c) If the composite test score of the child continues to show a declining score, the superintendent of the education service district may:
    - (A) Allow the child to continue under the educational supervision of a licensed teacher selected by the parent or legal guardian, at the expense of the parent or legal guardian, and require that the child be given an additional examination within one year of when the last examination was administered;
    - (B) Allow the child to be taught by a parent, legal guardian or private teacher and require that the child be given an additional examination within one year of when the last examination was administered; or
    - (C) Order the parent or legal guardian to send the child to school for a period not to exceed 12 consecutive months as determined by the superintendent.
  - (d) If the parent or legal guardian of the child does not consent to placing the education of the child under the supervision of a licensed teacher who is selected by the parent or legal guardian, then the superintendent of the education service district may order the child to school for a period not to exceed 12 consecutive months as determined by the superintendent.
  - (e) If the composite test score of the child on an examination is equal to or greater than the percentile score on the prior test, the child may be taught by a parent, legal guardian or private teacher and for the next examination be examined pursuant to subsection (5) of this section.
- (8) Procedures for homeschooling students with disabilities are set out in OAR 581-021-0029.
- (9) A test administrator shall certify that the administrator is qualified and neutral as defined in this rule with respect to a child being tested.
- (10) All costs for the test instrument, administration, and scoring are the responsibility of the parent.
- (11) The parent of a child who turns seven after September 1 shall not be required to provide notice of intent to home school that child until the beginning of the next school year.
- (12) Violation of ORS 339.020 or the requirements of ORS 339.035 is punishable as set out in ORS 339.990.

Stat. Auth.: ORS 339.030 & ORS 339.035

Stats. Implemented: ORS 339.035

Hist.: 1EB 8-1986, f. 3-12-86, ef. 3-17-86; 1EB 10-1986, f. 3-21-86, ef. 3-24-86; EB 6-1992(Temp), f. & cert. ef. 2-25-92; EB 26-1992, f. & cert. ef. 7-28-92; EB 33-1992(Temp), f. & cert. ef. 10-29-92; EB 14-1993, f. & cert. ef. 3-25-93; EB 12-1996, f. 7-26-96, cert. ef. 11-1-96; ODE 19-2000, f. & cert. ef. 5-23-00

## 581-021-0029

### Home Schooling for Children with Disabilities

- (1) The definitions in OAR 581-021-0026 apply to this rule, along with the following definitions:
- (a) "**District**" means the student's resident school district under 339.133
  - (b) "**Child with a disability**" means a child between the ages of 7 and 18 whose parent or guardian seeks exemption from compulsory school attendance under ORS 339.030(1)(c) or (1)(d) and who meets eligibility criteria for a specific disability category under OAR 581-015-0051.
  - (c) "**Individualized educational program**" (IEP) is defined under OAR 581-015-0005(11).
  - (d) "**Privately developed plan**" (PDP) means an individual plan developed by a team including the parent and one or more private service providers to address the educational needs of a child with a disability. A PDP shall include individual educational goals for the student and a statement indicating how satisfactory educational progress will be determined for the student.



- (e) **"Satisfactory educational progress"** means educational progress across academic and/or developmental areas appropriate to the child's age and abilities. The student need not complete all individualized educational program or privately developed plan goals for the team to determine that the student is making satisfactory educational progress.
- (2) Notice Requirements:
- (a) Parents shall notify the ESD superintendent of intent to home school a child with a disability in accordance with OAR 581-021-0026(1)(f) and (4).
  - (b) The ESD superintendent shall notify the district if the ESD receives notice that a parent intends to home school a child with a disability.
  - (c) The district shall provide written notice to the parent that it stands ready to provide a free appropriate public education if the child enrolls in the district. This notice shall be provided annually as long as:
    - (A) The child remains eligible for special education; and
    - (B) The child is exempt from compulsory education as a home schooled child; and
    - (C) The child is not receiving special education and related services from the district.
- (3) Testing and Reporting Requirements:
- (a) If a child with a disability is receiving IEP services from a district and the IEP includes a provision for IEP team assessment of satisfactory educational progress, the district shall:
    - (A) Complete this assessment according to the schedule identified in OAR 581-021-0026(6); and
    - (B) Provide the parent with a copy of the results, including a summary statement indicating whether the child has made satisfactory educational progress in light of the child's age and disability.
  - (b) If a child with a disability is receiving services under a PDP, and the PDP includes a provision for assessment of satisfactory educational progress, the PDP team shall:
    - (A) Complete this assessment according to the schedule identified in OAR 581-021-0026(6); and
    - (B) Provide the parent with a copy of the results, including a summary statement indicating whether the child has made satisfactory educational progress in light of the child's age and disability.
  - (c) Parents who are home schooling a child with a disability shall do one of the following:
    - (A) If the district has conducted an assessment under subsection (3)(a)(A), retain documentation of the child's progress under subsection (3)(a)(B) and, upon request, report this information to the ESD on the same schedule as required under OAR 581-021-0026(6); or
    - (B) Ensure that the child's progress is evaluated according to a privately developed plan, and retain and report progress, upon request, on the same schedule as required by OAR 581-021-0026; or
    - (C) Follow the testing and reporting requirements in OAR 581-021-0026.
  - (d) Parents of a child who is not identified under OAR 581-015-0051 but who is disabled under Section 504 of the Rehabilitation Act shall comply with subsections (B) or (C), above.
- (4) If the IEP or PDP team determines that the child has not made satisfactory educational progress, the superintendent shall take the actions identified in OAR 581-021-0026 in the sequence stated.
- (5) District responsibilities for home schooled children with disabilities:
- (a) When the district receives notice that a parent intends to home school a child with a disability or that a child with a disability is being home schooled, the district shall offer, and document to the parent;
    - (A) An opportunity for the child to receive special education and related services if the child were enrolled in the district; and
    - (B) An opportunity for IEP meeting to consider providing special education and related services to the child with a disability in conjunction with home schooling.
      - (i) An IEP shall only be developed for a child with a disability if the IEP team determines that a free appropriate public education can be provided in conjunction with home schooling.
      - (ii) Services may be provided in the home only to the extent that special education or related services would be provided in the home if the child were not home schooled.
  - (b) The child's IEP team shall be convened and conducted, and an IEP developed, consistent with the requirements in OAR Division 15, with the following exceptions:
    - (A) The child's parent shall be treated as both parent and regular education teacher of the child unless the parent designates another individual as the regular education teacher;
    - (B) Under "extent of non-participation in regular education" the IEP shall state that the child is exempt from compulsory school attendance and regular education is provided through home schooling; and

- (C) The IEP shall state how "satisfactory educational progress" will be determined for the student.
  - (i) If the IEP team determines that the testing requirements of OAR 581-021-0026 are appropriate for the child, the provisions of OAR 581-021-0026(6) shall apply to the child.
  - (ii) If the IEP team determines that the testing requirements of OAR 581-015-0026 are not appropriate for the child, the IEP team shall identify another measure that will be used to determine whether the child has made satisfactory educational progress.
  - (iii) Notwithstanding subsections (i) and (ii), a parent may use a PDP to determine whether the child has made satisfactory educational progress. If so, the IEP shall indicate that satisfactory educational progress will be determined by the PDP team at parent request.
- (c) Children with disabilities shall be reevaluated at least every three years in accordance with OAR 581-015-0072 through 581-015-0074 and 581-015-0701.
  - (A) If the team determines that specific evaluation is necessary to continue eligibility or to determine appropriate special education and related services for the child's IEP, and the parent refuses consent for such evaluation, or refuses to make the child available, the district shall document to the parent that the district stands ready to conduct the evaluation when the parent gives consent or makes the child available.
  - (B) If the district does not have sufficient evaluation information to determine eligibility or to develop an IEP, the district is not required to complete these activities. The district shall provide prior written notice under OAR 581-015-0075 if the district terminates eligibility or services under these circumstances.
- (d) Child find:
  - (A) If a district suspects that a home schooled child has a disability under OAR 581-015-0051, the district shall:
    - (i) Obtain parent consent for initial evaluation under OAR 581-015-0039; and
    - (ii) Conduct an initial evaluation and determine the child's eligibility to receive special education and related services consistent with OAR 581-015-0051, 0053, 0071, 0072, 0073, and 0701.
  - (B) If the child is eligible, the district shall notify the parent and shall offer and document to the parent an opportunity for an IEP meeting to consider initiation of special education and related services to the child with a disability.
  - (C) If the parent refuses consent, does not respond, or refuses to make the child available, the district shall document to the parent that the district stands ready to conduct the evaluation when the parent gives consent or makes the child available.
  - (D) If a parent does not respond or refuses to meet to consider initiation of special education and related services, the district has no further obligation to initiate the offer of a free appropriate public education as long as the child is exempted from compulsory education as a home schooled child.
- (6) If the district permits partial enrollment of home schooled children in its regular education program, the district shall permit children with disabilities to participate to the same extent as non-disabled children, if appropriate, whether or not the child is receiving IEP services from the district.
  - (a) If the child is receiving IEP services from the district, the IEP team shall determine the appropriateness of participation and the IEP shall include necessary modifications and accommodations related to the participation. Notwithstanding subsection (5)(b)(A), if the IEP calls for participation in any part of the district's regular education program, the IEP team shall include a district regular education teacher in accordance with OAR 581-015-0066(3).
  - (b) If the child is not receiving IEP services from the district, the district shall consider the participation, and necessary modifications and accommodations for the child under Section 504 of the Rehabilitation Act.
- (7) A child who is exempt from compulsory school attendance as a home schooled child with a disability will continue to be considered an exempt home schooled child even though:
  - (a) The child receives special education and related services from the district, unless these services are the equivalent of full-time enrollment in the district; or
  - (b) If the district permits partial enrollment of home schooled children and, pursuant to that policy, the child attends one or more regular education classes.
- (8) Parents of home schooled children with disabilities have the same procedural safeguards as children with disabilities enrolled in the district, except for the following:
  - (a) A parent is not entitled to an independent educational evaluation at public expense under OAR 581-015-0094 if the parent disagrees with an IEP team evaluation regarding satisfactory educational progress under this rule.

- (b) A parent may not request a due process hearing under OAR 581-015-0081 to contest a district's decision not to provide special education and related services in conjunction with home schooling.
- (c) Complaints that a school district has failed to meet any of the requirements under OAR 581-021-0029(5) or (8) may be heard under OAR 581-015-0054.

Stat. Auth.: ORS 339  
 Stats. Implemented: ORS 339.035  
 Hist.: 1 EB 29-1986, f. & ef. 7-23-86; ODE 19-2000, f. & cert. ef. 5-23-00

**581-021-0030**

**Limitation on Administration and Utilization of Tests in Public Schools**

- (1) Tests shall be considered as instruments that are means to assist decision-making on the part of parents, the public, school boards and the professional staff, rather than ends unto themselves. Tests may be used as follows in addition to other uses specified in local policies:
  - (a) To assist in making decisions about the effectiveness of school programs;
  - (b) To assist in determining the attainment of specified educational outcomes;
  - (c) To provide information to the students about themselves, to parents, and to the school staff which may assist them in making programmatic decisions of benefit to the student.
- (2) Tests of intelligence, ability, achievement or aptitude shall not be used as sole criterion for placement of students in educational groups or tracks:
  - (a) Before administering individual intelligence tests (as opposed to group intelligence tests) and all tests of personality to children in public schools, districts shall inform parents as to the purpose of testing; and the parents' written permission shall be obtained. In homes where the predominant language spoken is not English, the communications on the purpose of testing should be in the language spoken in the home;
  - (b) When a school district believes it is not feasible to comply with subsection (2)(a) of this rule, it may petition the Department of Education for a waiver in accordance with the procedure contained in the State Standards for Oregon Public Schools.

Stat. Auth.: ORS 326 & ORS 336  
 Stats. Implemented: 20 U.S.C. 1232h  
 Hist.: 1EB 141, f. 10-5-72, ef. 10-15-72; 1EB 173, f. 7-1-74, ef. 9-1-74; 1EB 226, f. & ef. 6-4-76; 1EB 16-1982, f. 8-4-82, ef. 8-5-82

**581-021-0037**

**Administration of Prescription and Nonprescription Medication to Students**

- (1) As used in this rule, definitions of terms shall be as follows:
  - (a) "Age appropriate guidelines" means the student must be able to demonstrate the ability, developmentally and behaviorally, to self medicate with permission from a parent or guardian, building administrator and in the case of a prescription medication a physician.
  - (b) "Designated staff" means the school staff person who is designated by the building level school administrator, either the principal or head teacher, to administer nonprescription or prescription medication pursuant to district policy and procedure;
  - (c)(A) "Instruction from physician, physician assistant or nurse practitioner" means a written instruction for the administration of a prescription medication to a student which shall include:
    - (i) Name of student;
    - (ii) Name of medication;
    - (iii) Dosage;
    - (iv) Route;
    - (v) Frequency of administration; and
    - (vi) Other special instruction, if any.
  - (B) The prescription medication label prepared by a pharmacist at the direction of a physician, physician assistant or nurse practitioner will meet the requirements for a written instruction if it contains the information listed in (i) through (vi) of this paragraph;
  - (d) "Instruction from the student's parent or guardian" means a written instruction for the administration of a nonprescription medication to a student which shall include:
    - (A) Name of student;
    - (B) Name of medication;
    - (C) Dosage;
    - (D) Route;

- (E) Frequency of administration;
  - (F) Other special instructions; and
  - (G) Signature of parent or guardian.
- (e) "Nonprescription medication" means only commercially prepared, nonalcohol-based medication to be taken at school that is necessary for the child to remain in school. This shall be limited to eyes, nose and cough drops, cough suppressants, analgesics, decongestants, antihistamines, topical antibiotics, anti-inflammatories and antacids that do not require written or oral instructions from a physician. Nonprescription medication does not include dietary food supplements;
- (f) "Physician" means:
- (A) A doctor of medicine or osteopathy or a physician assistant licensed to practice by the Board of Medical Examiners for the State of Oregon;
  - (B) A nurse practitioner with prescriptive authority licensed by the Oregon State Board of Nursing;
  - (C) A dentist licensed by the Board of Dentistry for the State of Oregon;
  - (D) An optometrist licensed by the Board of Optometry for the State of Oregon; or
  - (E) A naturopathic physician licensed by the Board of Naturopathy for the State of Oregon;
- (g) "Prescription medication" means any noninjectable drug, chemical compound, suspension or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by a student under the written direction of a physician. Prescription medication does not include dietary food supplements;
- (h) "Qualified trainer" means a person who is familiar with the delivery of health services in a school setting and who is:
- (A) A Registered Nurse licensed by the Oregon State Board of Nursing;
  - (B) A physician; or
  - (C) A pharmacist licensed by the State Board of Pharmacy for the State of Oregon.
- (i) "Student self-medication" means students must be able to administer medication to him or herself without requiring a trained school staff member to assist in the administration of the medication;
  - (j) "Training" means yearly instruction provided by qualified trainers to designated school staff on the administration of prescription and nonprescription medications, based on requirements set out in guidelines approved by the Department of Education, including discussion of applicable district policies, procedures and materials;
- (2) Each school district shall adopt policies and procedures that provide for:
- (a) The administration of prescription and nonprescription medication to students by trained school personnel; and
  - (b) Student self-medication including age appropriate guidelines.
- (3) Policies and procedures shall:
- (a) Include a process to designate, train and supervise appropriate staff;
  - (b) Permit designated staff to administer prescription medication under the written permission from the student's parent or guardian and instruction from a physician, physician assistant or nurse practitioner if, because of its prescribed frequency, the medication must be given during school hours;
  - (c) Permit designated staff to administer nonprescription medication under the written permission and instruction from the student's parent or guardian; and
  - (d) Permit student self-medication.
- (4) Policies and procedures related to administration of prescription and nonprescription medication and student self-medication must discuss:
- (a) Safe storage, handling, monitoring supply and disposing of medications;
  - (b) Record keeping and reporting of medication administration, including errors in administration;
  - (c) Emergency medical response for life threatening side effects and allergic reactions; and
  - (d) Student confidentiality.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 339.870

Hist.: ODE 3-1998(Temp), f. & cert. ef. 2-27-98 thru 8-25-98; ODE 6-1998, f. & cert. ef. 4-23-98; ODE 10-1999, f. & cert. ef. 2-12-99; ODE 8-2005, f. & cert. ef. 3-23-05, amended 3-17-10

## Equal Employment and Educational Opportunity

### **581-021-0045**

#### **Discrimination Prohibited**

(1) Discrimination Defined:

- (a) "Discrimination" means any act that unreasonably differentiates treatment, intended or unintended, or any act that is fair in form but discriminatory in operation, either of which is based on age, disability, national origin, race, color, marital status, religion, sex or sexual orientation;
- (b) The words "District, School District" include all common and union high school districts and education service districts and all educational agencies, programs, and services under the jurisdiction of the State Board of Education, except community college districts.
- (c) "Sexual orientation" means an individual's actual or perceived heterosexuality, homosexuality, bisexuality or gender identity, regardless of whether the individual's gender identity, appearance, expression or behavior differs from that traditionally associated with the individual's sex at birth.

(2) "General Prohibition of Discrimination": No person in Oregon shall be subjected to discrimination in any public elementary or secondary school, educational program or service, or interschool activity where the program, service, school, or activity is financed in whole or part by monies appropriated by the Legislative Assembly.

(3) "Specific Prohibitions": In providing programs or services to students, a school district shall not, on a discriminatory basis as defined in subsection (1)(a) of this rule:

- (a) Treat one person differently from another in determining whether such person satisfies any requirement of condition for the provision of such aid, benefit, or service;
- (b) Provide different aid, benefits, or services; or provide aids, benefits, or services in a different manner;
- (c) Deny any person such aid, benefit, or service;
- (d) Subject any person to separate or different rules of behavior, sanctions, or other treatment;
- (e) Aid or perpetuate discrimination by joining or remaining a member of any agency or organization which discriminates in providing any aid, benefit, or service to students or employees;
- (f) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

(4) "Exceptions": These rules shall not affect attendance boundaries, limit placement of students in programs of desegregation, nor supersede any specific statutory requirement for any educational program.

Stat. Auth.: ORS 326 & 659

Stats. Implemented: ORS 326.051 & 659.150

Hist.: 1EB 252, f. & ef. 9-30-76; 1EB 11-1984, f. & ef. 4-17-84; ODE 13-2008, f. & cert. ef. 5-23-08

### **581-021-0046**

#### **Program Compliance Standards**

(1) Access to Course Offerings. A school district shall not provide any course or otherwise carry out any of its educational programs or activities on a discriminatory basis or require or refuse participation therein by any of its students on such basis:

- (a) This section does not prohibit grouping of students in any educational program or activity by ability as assessed by objective standards of individual performance;
- (b) Where use of an objective standard of measuring skill or progress in an educational program has a discriminatory effect on persons as defined in OAR 581-021-0045, the district shall use appropriate standards which do not have such effect;
- (c) This section does not prohibit separating students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball, soccer, and other sports the purpose or major activity of which involves bodily contact.

(2) Employment Assistance. A district which actively assists any agency, organization, or person in making employment available to any of its students shall assure itself that such employment is made available without discrimination.

(3) Marital Status. A district shall not discriminate against any student or exclude any student from its educational program or activity including any class or extracurricular activity on the basis of the student's marital status; however the student may request voluntarily to participate in a separate portion of the program or activity of the district.

(4) Athletics. A district which operates or sponsors interscholastic club or intramural athletics shall provide equal athletic opportunity for members of both sexes, all age and ethnic groups, and persons with

disabilities. In determining whether equal opportunities are available, the Superintendent of Public Instruction shall consider among other factors whether the selection of sports and levels of competition effectively accommodate the interests and abilities of all students.

(5) Students Unable to Attend Because of Religious Beliefs. Any student who because of his or her religious beliefs is unable to attend classes on a particular day shall be excused from attendance requirements and from any examination or other assignment on that day. The student shall make up the examination or other assignment missed because of such absence. The absence shall not be counted for the purpose of an attendance policy that may result in exclusion, failure, or reduction of grade based upon a certain number of days.

(6) Textbooks and Curriculum Material. Nothing in this rule shall be interpreted as requiring or prohibiting or abridging in any way the use of adopted textbook or curriculum material. However, where materials are found upon investigation to provide discriminatory impact on the basis of race, color, national origin, religion, sex, sexual orientation, age, disability, or marital status, there should be established resources for employees and students of the district for supplemental alternative nondiscriminatory material.

(7) Use of Appraisal and Counseling Materials. A district which uses testing or other materials for appraising or counseling students shall not use materials which discriminate on the basis of race, color, national origin, religion, sex, sexual orientation, age, disability, or marital status, or use materials which permit or require different treatment of students on such basis unless such differences cover the same occupation and interest areas and the use of such different material is shown to be essential to the elimination of discrimination. Districts shall develop and use internal procedures for insuring that such materials may not discriminate.

(8) Bilingual or Linguistically Different Students. Districts shall develop and implement a plan for identifying students whose primary language is other than English and shall provide such students with appropriate programs until they are able to use the English language in a manner that allows effective and relevant participation in regular classroom instruction and other educational activities.

(9) Equal Educational Opportunity Plans. Districts shall develop and implement a plan which assures that all students have equal opportunity to participate in the educational programs and activities and equal access to facilities in the district. Said plan shall include courses and components which provide students with an understanding of the pluralistic realities of their society, including multi-cultural/racial/ethnic education and equity in portraying all classes protected under ORS 659.150. Upon the request of the Superintendent of Public Instruction, districts shall submit copies of such plans and other assurances as are deemed necessary and proper.

(10) Dress Codes. Districts may enforce an otherwise valid dress code or policy, as long the code or policy provides, on a case-by-case basis, for reasonable accommodation of an individual based on the health and safety needs of the individual.

(11) Interpretation of Rules. The Superintendent of Public Instruction may issue written interpretations concerning rules for nondiscrimination upon the written request of parties to a complaint at the district level.

Stat. Auth.: ORS 326 & 659

Stats. Implemented: ORS 326.051 & 659.150

Hist.: 1EB 252, f. & ef. 9-30-76; 1EB 11-1984, f. & ef. 4-17-84; ODE 13-2008, f. & cert. ef. 5-23-08

## **581-021-0049**

### **Hearings and Appeals**

(1) Districts shall adopt written procedures for the prompt resolution of complaints of discrimination. Persons may, after exhausting local grievance procedures or 90 days (whichever occurs first) appeal in writing to the Superintendent of Public Instruction. The Superintendent shall review the local school district procedures and findings of fact to determine if proper procedures were followed and what action if any shall be taken. In making this determination, the Superintendent may decide:

- (a) No substantial evidence exists for the charges of discrimination, and no further action will be taken;
- (b) Discrimination may exist, and conciliation will be attempted to reach agreement by both parties.

(2)(a) If conciliation fails to resolve the parties' differences within 30 days, the Superintendent shall promptly establish a date for a hearing on the complaint. Said hearing shall be conducted within 30 days of failure of conciliation unless both parties agree to an extension of the period. The hearing shall be conducted in accordance with provisions of Oregon's Administrative Procedures Act;

- (b) In conducting a hearing required by this rule, the Superintendent of Public Instruction shall determine if a local district is in compliance with the provisions of ORS 659.850.

(3) When a complaint of discrimination has been appealed to the Superintendent of Public Instruction, and the district has been found not to be in compliance with ORS 659.850, the Superintendent of Public

Instruction shall issue an order requiring compliance within 30 days. If the district does not comply within 30 days, the Superintendent of Public Instruction shall order appropriate remedies which may include:

- (a) Withholding of all or part of each quarterly payment of the basic school support fund due the district under ORS 327.095;
- (b) Daily fines assessed against the district;
- (c) Forbidding the district to participate in interschool activities;
- (d) Other appropriate remedies.

(4) The Superintendent of Public Instruction shall report such action to the Oregon Board of Education at its next regular meeting.

(5) Notwithstanding sections (1) and (3) of this rule, in discrimination matters alleging a denial of participation in season athletic activities wherein adherence with the local district's grievance procedure would prejudice the interest of complainant, either party may shorten the applicable timelines set forth in this rule by serving notice by first class mail upon the other party and the Superintendent of Public Instruction in substantially the following form:

**In the Matter of the NOTICE OF Discrimination Complaint MODIFICATION OF TIME of**

**You are hereby notified that timelines set forth in OAR 581-021-0049 for this matter are hereby modified for the reason set forth in OAR 581-021-0049(5).**

**Upon the third day from the postmark of this notice OAR 581-021-0049 shall be modified as follows:**

**1. In Section (1) "90 days" shall be "10 days".**

**2. In Section (3) "30 days" shall be "10 days".**

**In the event that more than one party shall serve the above notice, the notice postmarked first shall control the applicable timeline.**

Stat. Auth.: ORS 659.850

Stats. Implemented: ORS 326.051 & ORS 659.850

Hist.: 1EB 252, f. & ef. 9-30-76; 1EB 11-1984, f. & ef. 4-17-84

### **STUDENT CONDUCT AND DISCIPLINE (selected)**

#### **581-021-0050**

##### **Minimum Standards for Student Conduct and Discipline**

(1) School district boards shall prepare written rules of pupil conduct and discipline that shall include, but not necessarily be limited to, the following topics:

- (a) Assembly of students;
- (b) Dress and grooming;
- (c) Motorized and nonmotorized vehicles;
- (d) Search and seizure;
- (e) Attendance;
- (f) Freedom of expression;
- (g) Alcohol, drugs, and tobacco;
- (h) Student records;
- (i) Discipline, suspension, and expulsion.

(2) School district rules pertaining to these topics shall include statements on student rights, responsibilities, and conditions which create a need for these rules.

Stat. Auth.: ORS 339

Stats. Implemented: ORS 339.240

Hist.: 1EB 132, f. 5-19-72, ef. 6-1-72; 1EB 230, f. & ef. 6-4-76; 1EB 252, f. & ef. 9-30-76; EB 26-1989(Temp), f. & cert. ef. 9-8-89; EB 18-1990, f. & cert. ef. 4-5-90

#### **581-021-0055**

##### **Standards of Conduct**

(1) Students shall comply with the written rules of the school district board, pursue the prescribed course of study, submit to the lawful authority of teachers and school officials, and conduct themselves in an orderly fashion.

(2) Students shall be liable to discipline, suspension, or expulsion for misconduct, including but not limited to:

- (a) Theft;
- (b) Disruption of the school;
- (c) Damage or destruction of school property;
- (d) Damage or destruction of private property on school premises or during a school activity;
- (e) Assault or threats of harm;
- (f) Unauthorized use of weapons or dangerous instruments;
- (g) Unlawful use of drugs, narcotics, or alcoholic beverages;
- (h) Persistent failure to comply with rules of the lawful directions of teachers or school officials.

Stat. Auth.: ORS 339  
 Stats. Implemented: ORS 339.250  
 Hist.: 1EB 132, f. 5-19-72, ef. 6-1-72; 1EB 230, f. & ef. 6-4-76

**581-021-0060**

**Discipline Procedures, Prohibition of Corporal Punishment**

- (1) School district boards shall establish fair and reasonable procedures for discipline, suspension, or expulsion.
- (2) No student in Oregon shall be subjected to corporal punishment in any public elementary or secondary school. A school administrator is not authorized to waive the prohibition against corporal punishment based upon the request of a parent or guardian.

Stat. Auth.: ORS 339  
 Stats. Implemented: ORS 339.250  
 Hist.: 1EB 132, f. 5-19-72, ef. 6-1-72; 1EB 259, f. 1-31-77, ef. 2-1-77; EB 27-1989(Temp), f. & cert. ef. 9-8-89; EB 19-1990, f. & cert. ef. 4-5-90

**581-021-0061**

**Corporal Punishment Defined**

- (1) Corporal punishment is any act which willfully inflicts or willfully causes the infliction of physical pain on a student.
- (2) Corporal punishment does not include the emergency use of reasonable physical force by a school administrator, teacher, school employee, or volunteer as necessary to maintain order or to prevent a student from harming him/herself, other students, and school staff or property.
- (3) Corporal punishment does not include physical pain or discomfort resulting from or caused by:
  - (a) Training for or participation in athletic competition voluntarily engaged in by a student;
  - (b) Recreational activity voluntarily engaged in by a student;
  - (c) Physical exertion shared by all students in a teacher directed class activity, which may include, but is not limited to, physical education exercises, field trips, or vocational education projects; or
  - (d) Physical restraint or seclusion:
    - (A) As part of a behavior support plan in a student's individual education program which has been developed with parent participation as required in Chapter 343, or, with parent participation, in a student's Section 504 plan or other behavior support plan;
    - (B) That includes an individual threshold (number of incidents within a specific time period) for reviewing the plan; and
    - (C) Is carried out according to district policies and procedures under OAR 581-021-0062, which must be provided to the parents upon request when a plan is developed that includes the use of physical restraint and/or seclusion.

Stat. Auth.: ORS 339  
 Stats. Implemented: ORS 339.250  
 Hist.: ED 25-1989(Temp), f. & cert. ef. 9-8-89; EB 20-1990, f. & cert. ef. 4-5-90; ODE 17-2006, f. 12-11-06, cert. ef. 12-12-06

**581-021-0065**

**Suspension**

- (1) Students may be suspended when such suspension contains within its procedures the elements of prior notice (OAR 581-021-0075), specification of charges, and an opportunity for the student to present his or her view of the alleged misconduct. The suspending official shall notify the student's parent or guardian of the suspension, the conditions for reinstatement, and appeal procedures, where applicable. These procedures may be postponed in emergency situations relating to health and safety.



- (2) Emergency situations shall be limited to those instances where there is a serious risk that substantial harm will occur if suspension does not take place immediately.
- (3) School district boards shall provide students suspended under emergency conditions with the rights outlined in section (1) of this rule as soon as the emergency condition has passed.
- (4) In all suspensions ordered by the executive officer of the school district or designated representative, the district school board shall have the right of final review if the action is not taken by the school board itself.
- (5) School district boards shall limit suspension to a specific maximum number of days. That maximum shall not exceed ten school days.
- (6) School district boards or designated representatives shall specify the methods and conditions, if any, under which the student's school work can be made up. Students shall be allowed to make up school work upon their return from the suspension if that work reflects achievement over a greater period of time than the length of the suspension. For example, the students shall be allowed to make up final, mid-term, and unit examinations, without an academic penalty, but it is within the districts' discretion as to whether the students may be allowed to make up daily assignments, laboratory experiments, class discussions or presentations.
- (7) In special circumstances a suspension may be continued until some specific pending action occurs, such as a physical or mental examination, or incarceration by court action.

Stat. Auth.: ORS 339.240

Stats. Implemented: ORS 339.240, ORS 339.250 & ORS 339.260

Hist.: 1EB 132, f. 5-19-72, ef. 6-1-72; 1EB 230, f. & ef. 6-4-76; EB 18-1991, f. & cert. ef. 9-9-91; EB 11-1996, f. & cert. ef. 6-26-96

## **581-021-0070**

### **Expulsion**

- (1) A school district board may expel, or delegate authority to a hearings officer to expel, a student provided the student is not expelled without a hearing unless the student's parent(s) or guardian, or the student, if 18 years of age, waives the right to a hearing. Waiver may take place by the parent or the student, if 18 years of age, notifying the school district in writing of waiver of the right to a hearing. Waiver may also take place by the parent, or the student, if age 18 or over, failing to appear after notice, at the place and time set for the hearing:
  - (a) If the school board acts to expel, the hearing may be conducted by a hearings officer designated by the board. In cases where the hearings officer is conducting the expulsion hearing for the board, the hearings officer shall provide to the board the findings as to the facts, the recommended decision and whether or not the student is guilty of the conduct alleged. This material shall be made available at the same time to the parent or guardian, and to the student, if age 18 or over;
  - (b) If the authority to expel a student is delegated to a hearings officer, the parent, or student, if age 18 or over, shall have the right upon appeal to a board review of the decision. If the decision is appealed to the board for review, the board shall be provided findings as to the facts and the decision of the hearings officer. This material shall be made available at the same time to the parent or guardian, and to the student, if age 18 or over. When appealed, the board will affirm, modify, or rescind the decision of the hearings officer.
- (2) Student expulsion hearings shall be conducted pursuant to ORS 332.061.
- (3) Expulsion hearing policies or rules shall contain provisions for the following:
  - (a) Notice to the student and to the parent or guardian shall be given by personal service or certified mail of the charge or charges and the specific facts that support the charge or charges. The notice shall include the statement of intent to consider the charges as reason for expulsion. Where notice is given by personal service, the person serving the notice shall file a return of service. Where notice is given by certified mail to a parent of a suspended student the notice shall be placed in the mail at least five days before the date of the hearing;
  - (b) Where the student or the student's parent cannot understand the spoken English language, an interpreter shall be provided by the district;
  - (c) The student may be represented by counsel or other persons;
  - (d) The student shall be permitted to introduce evidence by testimony, writings, or other exhibits;
  - (e) The student shall be permitted to be present and hear the evidence presented by the district;
  - (f) Strict rules of evidence shall not apply to the proceedings. However, this provision shall not limit the hearings officer's control of the hearing;
  - (g) The hearings officer or the student may make a record of the hearing.

Stat. Auth.: ORS 339  
Stats. Implemented: ORS 339.240, ORS 339.250 & ORS 339.260  
Hist.: 1EB 132, f. 5-19-72, ef. 6-1-72; 1EB 212, f. 1-20-76, ef. 2-25-76; 1EB 230, f. & ef. 6-4-76; 1EB 262, f. 6-2-77, ef. 6-3-77

### 581-021-0071

#### District Information for Parents and Students Regarding the Availability of Alternative Education Programs

- (1) The following definitions apply to this rule:
  - (a) "**Erratic attendance**" means the student is frequently absent to the degree that he/she is not benefiting from the educational program;
  - (b) "**Notification**" means written notice, by personal service or certified mail, to the parent or guardian and student as required by ORS 339.250(6).
- (2) District school boards shall adopt policies and procedures for notification to students and parents, or guardians of the availability of appropriate and accessible alternative programs. This notification shall be provided in the following situations:
  - (a) Upon the occurrence of a second or any subsequent occurrence of a severe disciplinary problem within a three-year period;
  - (b) When the district finds a student's attendance pattern to be so erratic that the student is not benefiting from the educational program;
  - (c) When the district is considering expulsion as a disciplinary alternative;
  - (d) When a student is expelled pursuant to subsection (3) of ORS 339.250; and
  - (e) When an emancipated minor, parent, or legal guardian applies for a student's exemption from compulsory attendance on a semiannual basis as provided in ORS 339.030(5).
- (3) The notification must include but is not limited to the following:
  - (a) Student action which is the basis for consideration of alternative education;
  - (b) Listing of alternative programs available to this student for which the district would provide financial support in accordance with ORS 339.620 except that when notice is given in accordance with subsection (2)(e) of this rule the district shall not be obligated to provide financial support;
  - (c) The program recommended for the student based on student's learning styles and needs;
  - (d) Procedures for enrolling the student in the recommended program; and
  - (e) When the parent or guardian's language is other than English, the district must provide notification in manner that the parent or guardian can understand.
- (4) The district shall inform all parents or guardians of the law regarding alternative education and educational services available to students by such means as a statement in the student/parent handbook, notice in the newspaper, or an individual letter to a parent.
- (5) District school boards shall adopt a procedure for parents or guardians to request establishment of alternative programs within the district.
- (6) District school boards shall not approve the enrollment of a pupil in a private alternative program unless the private alternative program meets all requirements of OAR 581-021-0045.

Stat. Auth.: ORS 339  
Stats. Implemented: ORS 339.250  
Hist.: EB 35-1987, f. & ef. 12-11-87; EB 26-1990, f. & cert. ef. 5-18-90

## Physical Restraint and Seclusion

### 581-021-0550

#### Definitions

As used in OAR 581-021-0550 to 581-021-0566:

- (1) 'Chemical restraint' means a drug or medication that is used on a student to control behavior or restrict freedom of movement and that is not:
  - (a) Prescribed by a licensed physician or other qualified health professional acting under the professional's scope of practice for standard treatment of the student's medical or psychiatric condition;
  - (b) Administered as prescribed by a licensed physician or other qualified health professional acting under the professional's scope of practice.
- (2) 'Mechanical restraint' means a device used to restrict the movement of a student or the movement or normal function of a portion of the body of a student. 'Mechanical restraint' does not include:
  - (a) A protective or stabilizing device ordered by a licensed physician; or
  - (b) A vehicle safety restraint when used as intended during the transport of a student in a moving vehicle.

- (3) 'Physical restraint' means the restriction of a student's movement by one or more persons holding the student or applying physical pressure upon the student.
- (a) 'Physical restraint' does not include the touching or holding of a student without the use of force for the purpose of directing the student or assisting the student in completing a task or activity;
  - (b) 'Physical restraint does not include prone restraint as defined in Section 2, chapter 665, Oregon Laws 2011 (Enrolled House Bill 2939).
- (4) 'Prone restraint' means a restraint in which a student is held face down on the floor.
- (5) 'Public education program' means a program that:
- (a) Is for students in early childhood education, elementary school or secondary school;
  - (b) Is under the jurisdiction of a school district, an education service district or another educational institution or program;
  - (c) Receives, or serves students who receive, support in any form from any program supported, directly or indirectly, with funds appropriated to the Department of Education.
- (6) 'Seclusion' means the involuntary confinement of a student alone in a room from which the student is physically prevented from leaving. 'Seclusion' does not include:
- (a) The removal of a student for a short period of time to provide the student with an opportunity to regain self-control if the student is in a setting from which the student is not physically prevented from leaving.
- (7) 'Serious bodily injury' means any significant impairment of the physical condition of a person, as determined by qualified medical personnel, whether self-inflicted or inflicted by someone else.

Stat. Auth. 326.051

Stats. Implemented: chapter 665, Oregon Laws 2011 (Enrolled House Bill 2939)

Hist.: ODE 12-2012, f. 3-30-12, cert. ef. 5-1-12

### **581- 021-0553**

#### **Use of Physical Restraint and Seclusion in Public Education Programs**

- (1) The use of a chemical restraint, mechanical restraint or prone restraint on a student in a public education program in this state is prohibited.
- (2) The use of physical restraint or seclusion on a student in a public education program in this state is prohibited unless used as provided in Section 3, chapter 665, Oregon Laws 2011 (Enrolled House Bill 2939), which includes the following:
- (a) Physical restraint or seclusion may be used on a student in a public education program only if:
    - (A) The student's behavior imposes a reasonable threat of imminent, serious bodily injury to the student or others; and,
    - (B) Less restrictive interventions would not be effective.
  - (b) Physical restraint or seclusion may not be used for discipline, punishment or convenience of personnel of the public education program.
  - (c) If physical restraint or seclusion is used on a student, the physical restraint or seclusion must be:
    - (A) Used only for as long as the student's behavior poses a reasonable threat of imminent, serious bodily injury to the student or others;
    - (B) Imposed by personnel of the public education program who are:
      - (i) Trained to use physical restraint or seclusion through programs approved by the Department of Education under OAR 581-021-0563; or
      - (ii) Otherwise available in the case of an emergency circumstance when trained personnel are not immediately available due to the unforeseeable nature of the emergency circumstance;
    - (C) Continuously monitored by personnel of the public education program for the duration of the physical restraint or seclusion.
- (3) If physical restraint or seclusion continues for more than 30 minutes:
- (a) The student must be provided with adequate access to the bathroom and water every 30 minutes;
  - (b) Personnel of the public education program must immediately attempt to verbally or electronically notify a parent or guardian of the student; and,
  - (c) Every 15 minutes after the first 30 minutes of the physical restraint or seclusion, an administrator for the public education program must provide written authorization for the continuation of the physical restraint or seclusion, including providing documentation for the reason the physical restraint or seclusion must be continued.

Stat. Auth. 326.051

Stats. Implemented: chapter 665, Oregon Laws 2011 (Enrolled House Bill 2939)

## **581- 021-0556**

### **Program's Procedures Regarding Physical Restraint & Seclusion**

- (1) Each entity that has jurisdiction over a public education program must establish procedures for the public education program to follow after an incident involving the use of physical restraint or seclusion.
- (2) Following an incident involving the use of physical restraint or seclusion, the following must be provided to a parent or guardian of the student:
  - (a) Verbal or electronic notification of the incident by the end of the school day when the incident occurred;
  - (b) Written documentation of the incident within 24 hours of the incident that provides a description of the physical restraint or seclusion including:
    - (A) The date of the physical restraint or seclusion;
    - (B) The times when the physical restraint or seclusion began and ended;
    - (C) The location of the physical restraint or seclusion;
    - (D) A description of the student's activity that prompted the use of physical restraint or seclusion;
    - (E) The efforts used to de-escalate the situation and the alternatives to physical restraint or seclusion that were attempted;
    - (F) The names of the personnel of the public education program who administered the physical restraint or seclusion;
    - (G) A description of the training status of the personnel of the public education program who administered the physical restraint or seclusion, including any information that may need to be provided to the parent or guardian; and,
    - (H) Timely notification of a debriefing meeting to be held and of the parent's or guardian's right to attend the meeting.
- (3) If the personnel of the public education program who administered the physical restraint or seclusion had not received training from a program approved by the Department of Education, as required and in accordance with OAR 581-021-0563, the administrator of the public education program shall ensure that a parent or guardian of the student and the district superintendent receive written notification of:
  - (a) The lack of training; and
  - (b) The reason the physical restraint or seclusion was administered by a person without training.
- (4) A debriefing meeting related to the use of physical restraint or seclusion must be held within two school days of the incident and must include all personnel of the public education program who were involved in the incident and any other appropriate personnel.
  - (a) Written notes must be taken of the debriefing meeting, and a copy of the written notes must be provided to a parent or guardian of the student.
- (5) If a student is involved in five incidents in a school year involving physical restraint or seclusion, a team consisting of personnel of the public education program and a parent or guardian of the student must be formed for the purposes of reviewing and revising the student's behavior plan and ensuring the provision of any necessary behavioral supports.
- (6) If serious bodily injury or death of a student occurs in relation to the use of physical restraint or seclusion, written notification of the incident must be provided by the public education providers within 24 hours of the incident to the Department of Human Services.
- (7) If serious bodily injury or death of personnel of the public education program occurs in relation to the use of physical restraint or seclusion, written notification of the incident must be provided within 24 hours of the incident to the district superintendent and, if applicable, to the union representative for the affected party.
- (8) Each public education program must maintain a record of each incident in which injuries or death occurs in relation to the use of physical restraint or seclusion.
- (9) As indicated, per ORS 161.205 and 339.250, an individual who is a teacher, administrator, school employee or school volunteer may use reasonable physical force upon a student when and to the extent the individual reasonably believes it necessary to maintain order in the school or classroom or at a school activity or event, whether or not it is held on school property. Application of force must be consistent with Section 3, chapter 665, Oregon Laws 2011 (Enrolled House Bill 2939) and OAR 581-021-0553.
- (10) The district school board shall adopt written policies to implement Physical Restraint & Seclusion procedures consistent with and as indicated in chapter 665, Oregon Laws 2011 (Enrolled House Bill 2939), ORS 339.250 and OARs 581-021-0550 to 581-021-0566, and shall inform teachers, administrators, school employees and school volunteers.

### **581-021-0559**

#### **Reporting Requirements for the Use of Physical Restraint & Seclusion**

(1) Each entity that has jurisdiction over a public education program must prepare an annual report detailing the use of physical restraint and seclusion for the preceding school year, including, at a minimum:

- (a) The total number of incidents involving physical restraint;
- (b) The total number of incidents involving seclusion;
- (c) The total number of seclusions in a locked room;
- (d) The total number of students placed in physical restraint;
- (e) The total number of students placed in seclusion;
- (f) The total number of incidents that resulted in injuries or death to students or personnel as a result of the use of physical restraint or seclusion;
- (g) The number of students who were placed in physical restraint or seclusion more than 10 times in the course of a school year and an explanation of what steps have been taken by the public education program to decrease the use of physical restraint and seclusion for each student;
- (h) The number of incidents in which the personnel of the public education program administering physical restraint or seclusion were not trained; and
- (i) The demographic characteristics of all students upon whom physical restraint or seclusion was imposed, including race, ethnicity, gender, disability status, migrant status, English proficiency, and status as economically disadvantaged, unless the demographic information would reveal personally identifiable information about an individual student.

(2) Each entity that has jurisdiction over a public education program shall make its annual report about physical restraint and seclusion available to:

- (a) The public at the entity's main office and the website of the entity; and
- (b) The school board or governing body overseeing the entity;
- (c) If the entity is an education service district, the component school districts of the education service district;
- (d) If the entity is a public charter school, the sponsor of the public charter school;
- (e) Parents and guardians of students in a public education program, who shall be advised at least once each school year about how to access the report.

### **581-021-0563**

#### **Approval of Physical Restraint and Seclusion Training Programs for School Staff**

(1) The Department of Education shall approve training programs in physical restraint and seclusion that:

- (a) Teach evidence-based techniques that are shown to be effective in the prevention and safe use of physical restraint or seclusion;
- (b) Provide evidence-based skills training related to positive behavior support, conflict prevention, de-escalation and crisis response techniques; and
- (c) Are consistent with the philosophies, practices and techniques for physical restraint and seclusion that are established by rule or policy of the Department of Human Services.

(2) A training program seeking approval must submit in writing to the Oregon Department of Education that meets the expectations subsection (1) of this rule.

(3) Training programs approved remain in effect unless significant changes are made to the program.

- (a) If significant changes are made, the training program must be re-submitted for approval.

(4) The ODE must remove training programs from the approved list if they no longer meets the requirements specified in subsection (1) of this rule, or if they are found by the Oregon Department of Education to have violated any other laws.

Hist.: ODE 12-2012, f. 3-30-12, cert. ef. 5-1-12

**581-021-0566**

**Required Use of Approved Restraint and Seclusion Programs**

On or after July 1, 2012, a Public Education Program may only use training programs on physical restraint and seclusion that are approved by the Department of Education under OAR 581-021-0563. The Department of Education shall make the approved training list available to all Public Education Programs.

Stat. Auth. 326.051

Stats. Implemented: chapter 665, Oregon Laws 2011 (Enrolled House Bill 2939)

Hist.: ODE 12-2012, f. 3-30-12, cert. ef. 5-1-12

## Standards for Education

### 581-021-0200

#### Standard Education for Oregon Students

A Standard Education for Oregon Students is comprised of:

- (1) Common Curriculum Goals. The Common Curriculum Goals consist of:
  - (a) Essential Learning Skills. The Essential Learning Skills are those skills essential to learning and necessary for understanding in the subject matter areas. The skills are: Reading, writing, speaking, listening, mathematics, reasoning and study skills;
  - (b) Common Knowledge and Skills. The Common Knowledge and Skills consists of facts, concepts, principles, rules, procedures and methods of inquiry associated with the following subject matter areas:
    - (A) English Language Arts;
    - (B) Mathematics;
    - (C) Health Education;
    - (D) Science Education;
    - (E) Physical Education;
    - (F) Social Studies;
    - (G) Music;
    - (H) Art;
    - (I) Personal Finance;
    - (J) Second Language and Culture (proposed);
    - (K) Career Education.
- (2) Professional -- Technical Education. Occupational preparation which blends the interests and aptitudes of students with the skills and experience needed to become employed, sustain economic independence and enter advanced education and training.
- (3) Education Programs Mandated by State or Federal Law and Selected Other State Requirements Presently Constituted:
  - (a) The approximately 30 programs mandated by state statutes are in two categories, instruction and support. They include a diverse range of requirements such as protection of trees and shrubs, commemorating women in history, providing free textbooks, programs for talented and gifted students, transportation and properly maintained buildings and grounds;
  - (b) The three federally mandated programs are: The Asbestos Hazard Emergency Act of 1986, as amended; The Individuals With Disabilities Act, PL 101-476, that all children with disabilities have an opportunity for a free appropriate public education; The Family Education Rights and Privacy Act, PL 93-380, as amended by PL 93-568, that imposes certain requirements and restrictions on the release of student records;
  - (c) The following state requirements contained in OAR chapter 581, division 022:
    - (A) Goals for Elementary and Secondary Education;
    - (B) Graduation Requirements;
    - (C) Education of Talented and Gifted;
    - (D) Required Days of Instruction;
    - (E) Required Instructional Time;
    - (F) Kindergarten Programs;
    - (G) Standardization;
    - (H) Alternative Education Program;
    - (I) Special Education Program;
    - (J) Library Media Skills Instruction.
- (4) Character Education. Character Education is the process of helping students develop and practice the core ethical values that our diverse society shares and holds important. These values include, but are not limited to, respect, responsibility, caring, trustworthiness, justice and fairness, and civic virtue and citizenship.
- (5) Student Activities under the auspices of the secondary schools, which include the following:
  - (a) Student Government;
  - (b) Preparation of School Publications; e.g., newspaper, yearbook, literary magazine;
  - (c) Drama;
  - (d) Performing Music/Dance Groups;
  - (e) Interscholastic Athletics;
  - (f) Intramurals;
  - (g) Rally Squad/Dance Team/Flag Line;

- (h) Competitive Speech and Debate;
  - (i) Instruction program-related clubs or organizations; e.g., Distributive Education Club of America, Future Business Leaders of America, Future Farmers of America, Home Economics Related Occupations, Vocational Industrial Clubs of America.
- (6) International Understanding. International Understanding represents the knowledge, skills and attitudes needed to live effectively in a world possessing limited natural resources and characterized by ethnic diversity, cultural pluralism and an increased interdependence. Such knowledge, skills and attitudes are developed through broad exposure to international content in all subject areas and through learning a second language.
- (7) Support Services Necessary to Provide a Standard Education for Oregon Students:
- (a) Student Services:
    - (A) Improving attendance;
    - (B) Counseling;
    - (C) Providing health services;
    - (D) Treating students with speech and hearing disabilities;
    - (E) Providing library, audio/video, television and computer learning.
  - (b) Staff Services:
    - (A) Measuring student achievement;
    - (B) Developing curriculum and training staff.
  - (c) Administrative Services:
    - (A) Administering the district and individual schools;
    - (B) Planning, research, processing of data.
  - (d) Business Services:
    - (A) Budgeting, payroll, inventory, internal audit;
    - (B) Buying and storing of supplies;
    - (C) Printing.
  - (e) Transportation Services:
    - (A) Providing home-to-school transportation for both students with and students without disabilities;
    - (B) Transporting students to co-curricular activities.
  - (f) Food Services: Offering students nutritional lunches and breakfasts;
  - (g) Operation and Maintenance Services: Keeping buildings, equipment and grounds safe, working and in good condition.

Stat. Auth.: ORS 326.400, 326.410 & 336.067

Stats. Implemented: ORS 336.067

Hist.: EB 3-1991, f. & cert. ef. 2-28-91; EB 7-1993, f. & cert. ef. 2-11-93; ODE 26-2008, f. 10-23-08, cert. ef. 10-24-08



## EDUCATIONAL RECORDS

### 581-021-0220

#### Definitions

As used in OAR 581-021-0220 through 581-021-0440, the following definitions apply:

(1) "**Attendance**" includes, but is not limited to:

- (a) Attendance in person or by correspondence; and
- (b) The period during which a person is working under a work-study program.

(2) "**Directory Information**" means those items of personally identifiable information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. Directory information may include, and is not limited to, the student's name, address, telephone listing, electronic mail address, photograph, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended.

(3) "**Disclosure**" means to permit access to or the release, transfer, or other communication of education records, or the personally identifiable information contained in those records, to any party, by any means, including oral, written, or electronic means.

(4) "**Disciplinary action or proceeding**" means the investigation, adjudication, or imposition of sanctions by an educational agency or institution with respect to an infraction or violation of the internal rules of conduct applicable to students of the agency or institution.

(5) "**Educational Agency or Institution**" means any public or private school, education service district, state institution, private agency or youth care center providing educational services to students birth through age 21, and through Grade 12, that receives federal or state funds either directly or by contract or subcontract with the Department under any program administered by the U.S. Secretary of Education or the Department.

(6) "**Education Records**":

(a) The term means those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution;

(b) The term does not include:

(A) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the record, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;

(B) Records of the law enforcement unit of an educational agency or institution, subject to the provisions of OAR 581-021-0225.

(C) Records relating to an individual who is employed by an educational agency or institution, that are made and maintained in the normal course of business, that relate exclusively to the individual in that individual's capacity as an employee and that are not available for use for any other purpose.

Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and not excepted under this subsection;

(D) Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are:

(i) Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;

(ii) Made, maintained, or used only in connection with treatment of the student; and

(iii) Disclosed only to individuals providing the treatment. For the purpose of this definition, "treatment" does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution.

(E) Records that only contain information relating to activities in which an individual engaged after he or she is no longer a student at that agency or institution;

(F) Medical or nursing records which are made or maintained separately and solely by a licensed health care professional who is not employed by the educational agency or institution, and which are not used for education purposes of planning.

(7) "**Eligible Student**" means a student who has reached 18 years of age, or a student who is attending only an institution of postsecondary education and is not enrolled in a secondary school.

- (8) "**Institution of Postsecondary Education**" means an institution that provides education to students beyond the secondary school level; "secondary school level" means the educational level (not beyond Grade 12) at which secondary education is provided.
- (9) "**Parent**" means a parent of a student and includes a natural parent, a guardian, an individual authorized in writing to act as a parent in the absence of a parent or a guardian, or a surrogate parent appointed to represent a student with disabilities. The term does not include the state if the child is a ward of the state and the student is eligible for special education services or is suspected of being eligible for special education services under state and federal law.
- (10) "**Party**" means an individual, agency, institution, or organization.
- (11) "**Permanent record**" means the educational record maintained by the educational agency or institution which includes:
- (a) Name and address of the educational agency or institution;
  - (b) Full legal name of the student;
  - (c) Student's birth date and place of birth;
  - (d) Name of parents/guardians;
  - (e) Date of entry into the school;
  - (f) Name of school previously attended;
  - (g) Courses of study and marks received;
  - (h) Data documenting a student's progress toward achievement of state standards and must include a student's Oregon State Assessment results;
  - (i) Credits earned;
  - (j) Attendance;
  - (k) Date of withdrawal from school;
  - (l) Social security number, subject to subsection (1)(j) of this rule; and
  - (m) Such additional information as the educational agency or institution may prescribe.
- (12) "**Personally Identifiable Information**" is information as defined in the Family Educational Rights and Privacy Act (FERPA) and OAR 581-015-2700, this includes but is not limited to:
- (a) The student's name;
  - (b) The name of the student's parent or other family member;
  - (c) The address of the student or student's family;
  - (d) A personal identifier, such as the student's social security number or student number;
  - (e) A list of personal characteristics that would make the student's identity easily traceable; and
  - (f) Other information that would make the student's identity easily traceable.
- (13) "**Record**" means any information recorded in any way including, but not limited to, handwriting, print, tape, film, microfilm and microfiche.
- (14) "**Student**" means any individual who is or has been in attendance at an educational agency or institution and regarding whom the agency or institution maintains education records.
- (15) "**Substitute care program**" means family foster care, family group home care, parole foster care, family shelter care, adolescent shelter care and professional group care.
- [Publications: *Publications referenced are available from the agency.*]

Stat. Auth.: ORS 326.565 & 34 CFR | 99.3

Stats. Implemented: ORS 326.565

Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-1994, f. & cert. ef. 4-29-94; EB 20-1995, f. & cert. ef. 7-25-95; ODE 8-2007, f. & cert. ef. 3-1-07; ODE 14-2012, f. 3-30-12, cert. ef. 4-2-12

## 581-021-0225

### Records of Law Enforcement Units

- (1) "Law enforcement unit" means any individual, office, department, division, or other component of an educational agency or institution, such as a unit of commissioned police officers or noncommissioned security guards, that is officially authorized or designated by that agency or institution to:
- (a) Enforce any local, state, or federal law, or refer to appropriate authorities a matter for enforcement of any local, state, or federal law against any individual or organization other than the agency or institution itself; or
  - (b) Maintain the physical security and safety of the agency or institution.
- (2) A component of an educational agency or institution does not lose its status as a law enforcement unit if it also performs other, nonlaw enforcement functions for the agency or institution, including investigation of incidents or conduct that constitutes or leads to a disciplinary action or proceedings against the student.

- (3) Records of a law enforcement unit means those records, files, documents, and other materials that are:
  - (a) Created by a law enforcement unit;
  - (b) Created for a law enforcement purpose; and
  - (c) Maintained by the law enforcement unit.
- (4) Records of a law enforcement unit does not mean:
  - (a) Records created by a law enforcement unit for a law enforcement purpose that are maintained by a component of the educational agency or institution other than the law enforcement unit; or
  - (b) Records created and maintained by a law enforcement unit exclusively for a nonlaw enforcement purpose, such as a disciplinary action or proceeding conducted by the educational agency or institution.
- (5) Nothing in this rule prohibits an educational agency or institution from contacting its law enforcement unit, orally or in writing, for the purpose of asking that unit to investigate a possible violation of, or to enforce, any local, state, or federal law.
- (6) Education records, and personally identifiable information contained in education records, do not lose their status as education records and remain subject to the Act, including the disclosure provisions of OAR 581-021-0330, while in the possession of the law enforcement unit.
- (7) This rule neither requires nor prohibits the disclosure by an educational agency or institution of its law enforcement unit records.

Stat. Auth.: ORS 326.565 & 34 CFR | 99.8  
 Stats. Implemented:  
 Hist.: EB 20-1995, f. & cert. ef. 7-25-95

### **581-021-0230**

#### **The Rights of Parents**

An educational agency or institution shall give full rights under OAR 581-021-0220 through 581-021-0420 to either parent, unless the agency or institution has been provided with evidence that there is a court order, state statute, or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes these rights.

Stat. Auth.: ORS 326.565 & 34 CFR § 99.4  
 Stats. Implemented: ORS 326.565  
 Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-1994, f. & cert. ef. 4-29-94

### **581-021-0240**

#### **The Rights of Eligible Students**

When a student becomes an eligible student, the rights accorded to, and consent required of, parents under OAR 581-021-0220 through 581-021-0420 transfer from the parents to the student. Nothing prevents educational agencies or institutions from giving students rights in addition to those given to parents.

Stat. Auth.: ORS 326.565 & 34 CFR § 99.5  
 Stats. Implemented: ORS 326.565  
 Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-1994, f. & cert. ef. 4-29-94

### **581-021-0250**

#### **An Educational Agency or Institution's Policy Regarding Student Education Records**

- (1) Each educational agency or institution shall adopt a policy regarding how the agency or institution meets the requirements of OARs 581-021-0220 through 581-021-0430. The policy shall include:
  - (a) A description of how the agency or institution annually informs parents and students of their rights, in accordance with OAR 581-021-0260;
  - (b) A description of how a parent or eligible student may inspect and review education records according to OAR 581-021-0270;
  - (c) A statement that personally identifiable information will not be released from an education record without the prior written consent of the parent or eligible student according to OAR 581-021-0330, except under one or more of the conditions described in OAR 581-021-0340;
  - (d) A statement indicating whether the educational agency or institution has a policy of disclosing personally identifiable information under OAR 581-021-0340(1), and, if so, a specification of the criteria for determining which parties are school officials and what the agency or institution considers to be a legitimate educational interest. With respect to students with disabilities, each

educational agency or institution shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who have access to personally identifiable information;

- (e) A statement that a record of disclosures will be maintained as required by OAR 581-021-0400, and that a parent or eligible student may inspect and review that record;
  - (f) Specification by the educational agency or institution of the types of personally identifiable information the agency or institution has designated as directory information under OAR 581-021-0390;
  - (g) A statement that the agency or institution permits a parent or eligible student to request correction of the student's education records under OAR 581-021-0300, to obtain a hearing under OAR 581-021-0310(1), and to add a statement to the record under OAR 581-021-0310(3);
  - (h) A statement that the educational agency or institution, as required by OAR 581-021-0260, annually notifies parents and eligible students of their rights to review and propose amendments to the student's education records;
  - (i) A statement that the educational agency or institution maintains a permanent record on each student;
  - (j) A statement that the educational agency or institution will request the social security number of a student and will include the social security number on the permanent student record only if the parent or eligible student complies with the request. The request shall include notification to the parent or eligible student that the provision of the social security number is voluntary and notification of the purposes for which the social security number will be used;
  - (k) A statement that the educational agency or institution provides for the retention of permanent records in a minimum one-hour fire-safe place in the educational agency or institution, or for keeping duplicate permanent records in a safe depository outside the building;
  - (l) A statement that the education agency or institution complies with OAR 581-021-0255 on the request for and transfer of student education records; and
  - (m) A statement that the educational agency or institution has a policy of disclosing personally identifiable information from an education record to an ESD, state regional program, or other educational agency or institution that has requested the records and in which the student seeks or intends to enroll or is enrolled or receives services from. The term "receives services" includes, but is not limited to, an evaluation or re-evaluation for purposes of determining whether a student has a disability.
- (2) For purposes of subsection (1)(l) of this rule:
- (a) "Private agency" means an agency with which the Department of Education contracts under ORS 343.961; and
  - (b) "Youth care center" means a center as defined in ORS 420.855.
- (3) The educational agency or institution shall state the policy in writing and make a copy of it available on request to a parent or eligible student.

Stat. Auth.: ORS 326.565, 34 CFR § 99.6, 34 CFR 300.616

Stats. Implemented: ORS 326.565 & 326.575

Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-1994, f. & cert. ef. 4-29-94; EB 20-1995, f. & cert. ef. 7-25-95; EB 12-1997(Temp), f. & cert. ef. 8-28-97; ODE 4-1998, f. & cert. ef. 2-27-98; ODE 10-1998, f. & cert. ef. 6-23-98; ODE 8-2007, f. & cert. ef. 3-1-07

## **581-021-0255**

### **Transfer of Student Education Records**

- (1) Within ten days of a student seeking enrollment in or services from a public or private school including an ESD, or when a student is placed in a state institution other than an institution of postsecondary education, or a private agency or youth care center (hereinafter referred to as the new educational agency), the new educational agency must notify the public or private school, education service district, institution, agency, or youth care center in which the student was formerly enrolled (hereinafter referred to as the former educational agency), and request the student's education records.
- (2) The former educational agency must transfer all requested student education records to the new educational agency no later than 10 days after receiving the request.
- (3) The education records transferred to the new educational agency must include any education records relating to the particular student retained by an education service district.
- (4) The educational agency must retain originals of student education records for the time periods and under the conditions described in the record retention rule, OAR 166-400-0060, except that originals shall be transferred to a new education agency upon request.

(5) When original records have been transferred to a new educational agency as required in subsection (2) of this rule, readable photocopies of the following documents must be retained by the former educational agency or institution for the time periods and under the conditions as prescribed in the record retention rule, OAR 166-400-0060:

- (a) The student's permanent record as defined in subsection (11) of OAR 581-021-0220; and
- (b) Such special education records as are necessary to document compliance with state and federal audits.

(6) Notwithstanding subsections (1) and (2) of this section, for students who are in substitute care programs:

- (a) A school, institution, agency, facility or center shall notify the school, institution, agency, facility or center in which the student was formerly enrolled and shall request the student's education records within five days of the student seeking initial enrollment; and
- (b) Any school, institution, agency, facility or center receiving a request for a student's education records shall transfer all student education records relating to the particular student to the requesting school, institution, agency, facility or center no later than five days after the receipt of the request.

Stat. Auth.: ORS 326.565, 34 CFR § 99.6

Stats. Implemented: ORS 326.565

Hist.: ODE 8-2007, f. & cert. ef. 3-1-07; ODE 17-2011, f. 12-15-11, cert. ef. 1-1-12

### **581-021-0260**

#### **An Educational Agency or Institution's Annual Notification**

(1) Each educational agency or institution shall annually notify parents of students currently in attendance, and eligible students currently in attendance, at the agency or institution of their rights under OAR 581-021-0220 through 581-021-0440.

(2) The notice must inform parents and eligible students that they have a right to:

- (a) Inspect and review the student's education records;
- (b) Request the amendment of the student's education records to ensure that they are not inaccurate, misleading, or otherwise in violation of the student's privacy or other rights;
- (c) Consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that these rules authorize disclosure without consent;
- (d) Pursuant to OAR 581-021-0410, file with the U.S. Department of Education a complaint under 34 CFR § 99.64 concerning alleged failures by the agency or institution to comply with the requirements of the Family Educational Rights and Privacy Act; and
- (e) Obtain a copy of the policy adopted under OAR 581-021-0250.

(3) The notice must include all of the following:

- (a) The procedure for exercising the right to inspect and review education records.
- (b) The procedure for requesting amendment of records under OAR 581-021-0300;
- (c) Regarding disclosure of education records to school officials and teachers within the education agency whom the agency has determined to have legitimate educational interest, a specification of the criteria for determining who constitutes a school official and what constitutes a legitimate educational interest;

(4) Each educational agency or institution shall annually notify parents and eligible students of what it considers to be directory information and the conditions for disclosure of such information as provided in OAR 581-021-0390.

(5) Each educational agency or institution shall annually notify parents or eligible students that it forwards education records requested under OAR 581-021-0250(1)(m) and (p) within 10 days of receiving the request.

(6) The notice provided under section (1) of this rule must also indicate the places where copies of the policy adopted under OAR 581-021-0250 are located.

(7) An educational agency or institution may provide this notice by any means that are reasonably likely to inform the parents and eligible students of their rights;

(8) An agency or institution of elementary or secondary education shall effectively notify parents of students who have a primary or home language other than English.

(9) An educational agency or institution shall effectively notify parents or eligible students who have a disability.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 326.565 & 34 CFR § 99.7

Stats. Implemented: ORS 326.565

### **581-021-0265**

#### **Confidentiality of Student Education Records**

- (1) Each school district shall keep confidential any record maintained on a child with a disability in conformance with OAR 581-021-0220 through 581-021-0440.
- (2) Each school district shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.
- (3) One official at each school district shall assume responsibility for ensuring the confidentiality of any personally identifiable information.
- (4) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under OAR 581-015-0055 through 581-015-0606 and 581-021-0220 through 581-021-0440.

Stat. Auth.: ORS 343.041, 343.045, 343.055, 34 CFR Sec 99.7

Stats. Implemented: ORS 343.045, 343.155

Hist.: ODE 8-2007, f. & cert. ef. 3-1-07

### **581-021-0270**

#### **Rights of Inspection and Review of Education Records**

- (1) Except as limited under FERPA and IDEA, each educational agency or institution shall permit a parent, an eligible student, or a representative of a parent if authorized in writing by the parent, to inspect and review the education records of the student.
- (2) The educational agency or institution shall comply with a request for access to records:
  - (a) Within a reasonable period of time and without unnecessary delay;
  - (b) For children with disabilities under OAR 581-015-0051, before any meeting regarding an IEP, or any due process hearing, or any resolution session related to a due process hearing; and
  - (c) In no case more than 45 days after it has received the request.
  - (d) For children under three years old who receive EI services, in no case more than 10 days after the request has been made.
- (3) The educational agency or institution shall respond to the reasonable requests for explanations and interpretations of the records.
- (4) If a parent or an eligible student so requests, the educational agency or institution shall give the parent or eligible student a copy of the student's education records pursuant to ORS 192.440, except that no copy of test protocols, test questions and answers, and other documents described in 192.501(4) shall be provided unless authorized by federal law.
- (5) The educational agency or institution shall not destroy any education records if there is an outstanding request to inspect and review the records under this rule.
- (6) While an education agency or institution is not required to give an eligible student access to treatment records under the definition of "education records" in OAR 581-021-0220(6)(b)(D), the student may, at his or her expense, have those records reviewed by a physician or other appropriate professional of the student's choice.

Stat. Auth.: ORS 192.440, 192.501(4), 326.565 & 34 CFR | 99.10 and 34 CFR 303.405(a)

Stats. Implemented: ORS 326.565

Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-1994, f. & cert. ef. 4-29-94; EB 20-1995, f. & cert. ef. 7-25-95; ODE 8-2007, f. & cert. ef. 3-1-07; ODE 14-2012, f. 3-30-12, cert. ef. 4-2-12

### **581-021-0280**

#### **Fees for Copies of Education Records**

- (1) Student records are public records under ORS 192.410 through 192.505 but are exempt from disclosure except as authorized by OAR 581-021-0220 through 581-021-0440.
- (2) Unless the imposition of a fee effectively prevents a parent or eligible student from exercising the right to inspect and review the student's education records, an educational agency or institution may charge a fee for a copy of an educational record which is made for the parent or eligible student subject to section (3) of this rule.
- (3) Notwithstanding ORS 192.440(3), an educational agency or institution may not charge a fee to search for or to retrieve the education records of a student.

Stat. Auth.: ORS 192.410 - ORS 192.505, ORS 326.565 & 34 CFR § 99.11  
Stats. Implemented: ORS 326.565  
Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-1994, f. & cert. ef. 4-29-94

### **581-021-0290**

#### **Limitations on the Right to Inspect and Review Records**

If the education records of a student contain information on more than one student, the parent or eligible student may inspect, review, or be informed of only the specific information about that student.

Stat. Auth.: ORS 326.565 & 34 CFR § 99.12  
Stats. Implemented: ORS 326.565  
Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-1994, f. & cert. ef. 4-29-94

### **581-021-0300**

#### **A Parent or Eligible Student's Request for Amendment of a Student's Education Records**

- (1) If a parent or eligible student believes the education records relating to the student contain information that is inaccurate, misleading, or in violation of the student's rights of privacy or other rights, he or she may ask the educational agency or institution to amend the record.
- (2) The education agency or institution shall decide whether to amend the record as requested within a reasonable time after the agency or institution receives the request.
- (3) If the educational agency or institution decides not to amend the record as requested, it shall inform the parent or eligible student of its decision and of his or her right to a hearing under OAR 581-021-0310.

Stat. Auth.: ORS 326.565 & 34 CFR § 99.20  
Stats. Implemented: ORS 326.565  
Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-1994, f. & cert. ef. 4-29-94

### **581-021-0310**

#### **Right to a Hearing to Challenge Content**

- (1) An educational agency or institution shall give a parent or eligible student, on request, an opportunity for a hearing to challenge the content of the student's education records on the grounds that the information contained in the education records is inaccurate, misleading, or in violation of the privacy or other rights of the student.
- (2) If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall:
  - (a) Amend the record accordingly; and
  - (b) Inform the parent or eligible student of the amendment in writing.
- (3) If, as a result of the hearing, the educational agency or institution decides that the information in the education record is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall inform the parent or eligible student of the right to place a statement in the record commenting on the contested information in the record or stating why he or she disagrees with the decision of the educational agency or institution, or both.
- (4) If an educational agency or institution places a statement in the education records of a student under section (3) of this rule, the agency or institution shall:
  - (a) Maintain the statement with the contested part of the record for as long as the record is maintained; and
  - (b) Disclose the statement whenever it discloses the portion of the record to which the statement relates.

Stat. Auth.: ORS 326.565 & 34 CFR § 99.21  
Stats. Implemented: ORS 326.565  
Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-1994, f. & cert. ef. 4-29-94

### **581-021-0320**

#### **Minimum Requirements for the Conduct of a Hearing**

The hearing required by OAR 581-021-0310 must meet at a minimum the following requirements:

- (1) The educational agency or institution shall hold the hearing within a reasonable time after it has received the request for the hearing from the parent or eligible student.
- (2) The educational agency or institution shall give the parent or eligible student notice of the date, time, and place, reasonably in advance of the hearing.

- (3) The hearing may be conducted by any individual, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing.
- (4) The educational agency or institution shall give the parent or eligible student a full and fair opportunity to present evidence relevant to the issues raised under OAR 581-021-0310. The parent or eligible student may, at their own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney.
- (5) The educational agency or institution shall make its decision in writing within a reasonable period of time after the hearing.
- (6) The decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision.

Stat. Auth.: ORS 326.565 & 34 CFR § 99.22  
 Stats. Implemented: ORS 326.565  
 Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-

### **581-021-0330**

#### **Prior Consent to Disclose Information**

- (1) The parent or eligible student shall provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the student's education records, except as provided in OAR 581-021-0340.
- (2) "Signed and dated written consent" under this part may include a record and signature in electronic form that:
  - (a) Identifies and authenticates a particular person as the source of the electronic consent; and
  - (b) Indicates such person's approval of the information contained in the electronic consent.
- (3) The written consent must:
  - (a) Specify the records that may be disclosed;
  - (b) State the purpose of the disclosure; and
  - (c) Identify the party or class of parties to whom the disclosure may be made.
- (3) When a disclosure is made under section (1) of this rule:
  - (a) If a parent or eligible student so requests, the educational agency or institution shall provide him or her with a copy of the records disclosed; and
  - (b) If the parent of a student who is not an eligible student so requests, the agency or institution shall provide the student with a copy of the records disclosed.
- (4) If a child is enrolled or is going to enroll in a private school that is not located in the child's resident school district, parent consent must be obtained before any personally identifiable information about the child is released between officials of the school district where the private school is located and the resident school district.

Stat. Auth.: ORS 326.565 & 34 CFR | 99.30, 34 CFR 300.622  
 Stats. Implemented: ORS 326.565  
 Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-1994, f. & cert. ef. 4-29-94; EB 20-1995, f. & cert. ef. 7-25-95; ODE 8-2007, f. & cert. ef. 3-1-07

### **581-021-0340**

#### **Exceptions to Prior Consent**

An educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by OAR 581-021-0330 if the disclosure meets one or more of the following conditions:

- (1) The disclosure is to school board members during executive session pursuant to ORS 332.061, or to other school officials and teachers within the educational agency whom the agency or institution has determined to have legitimate educational interests.
- (2) The disclosure is to officials of another school, school system, institution of postsecondary education, education service district, state regional program, or other educational agency that has requested the records and in which the student seeks or intends to enroll, or is enrolled in or receives services from the other agency or institution. The term "receives services" includes, but is not limited to, an evaluation or re-evaluation for purposes of determining whether a student has a disability.
- (3) The disclosure is, subject to the requirements of OAR 581-021-0370, to authorized representatives of:
  - (a) The Comptroller General of the United States;
  - (b) The Secretary of the U.S. Department of Education;
  - (c) State and local educational authorities; or
  - (d) The Oregon Secretary of State's Audit Division.



- (4) The disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to:
  - (a) Determine eligibility for the aid;
  - (b) Determine the amount of the aid;
  - (c) Determine the conditions for the aid; or
  - (d) Enforce the terms and conditions of the aid;
  - (e) As used in this section, "financial aid" means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) that is conditioned on the individual's attendance at an education agency or institution.
- (5)(a) The disclosure is to organizations conducting studies for, or on behalf of, educational agencies or institutions to:
  - (A) Develop, validate, or administer predictive tests;
  - (B) Administer student aid programs; or
  - (C) Improve instruction.
- (b) The agency or institution may disclose information under this section only if:
  - (A) The study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization; and
  - (B) The information is destroyed when no longer needed for the purposes for which the study was conducted.
- (c) For the purposes of this section, the term "organization" includes, but is not limited to, federal, state and local agencies, and independent organizations.
- (6) The disclosure is to accrediting organizations to carry out their accrediting functions.
- (7) The disclosure is to parents of a dependent student, as defined in Section 152 of the Internal Revenue Code of 1986.
- (8) The disclosure is to comply with a judicial order or lawfully issued subpoena subject to the requirements of OAR 581-021-0371.
- (9) The disclosure is related to a legal action subject to the conditions of OAR 581-021-0372.
- (10) The disclosure is in connection with a health or safety emergency, under the conditions described in OAR 581-021-0380.
- (11) The disclosure is information the educational agency or institution has designated as "directory information," under the conditions described in OAR 581-021-0390.
- (12) The disclosure is to the parent of a student who is not an eligible student or to an eligible student.
- (13) The disclosure is to a court and state and local juvenile justice agencies including, but not limited to, law enforcement agencies, juvenile departments and child protective service agencies subject to conditions described in OAR 581-021-0391.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 326.565, 336.187, 34 CFR | 99.31 336.187

Stats. Implemented: ORS 326.565

Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-1994, f. & cert. ef. 4-29-94; EB 20-1995, f. & cert. ef. 7-25-95; ODE 8-2007, f. & cert. ef. 3-1-07

## **581-021-0350**

### **Limitations on the Redisclosure of Information**

- (1) An educational agency or institution may disclose personally identifiable information from an education record only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior consent of the parent or eligible student. The officers, employees, and agents of a party that receives information under this section may use the information, but only for the purposes for which the disclosure was made.
- (2) Section (1) of this rule does not prevent an educational agency or institution from disclosing personally identifiable information with the understanding that the party receiving the information may make further disclosures of the information on behalf of the educational agency or institution if:
  - (a) The disclosures meets the requirements of OAR 581-021-0340; and
  - (b) The educational agency or institution has complied with the requirements in OAR 581-021-0400(2).
- (3) Section (1) of this rule does not apply to the following:
  - (a) Disclosures to parents of a dependent student under OAR 581-021-0340(7) or to an eligible student;
  - (b) Disclosures pursuant to court orders, lawfully issued subpoenas, or legal action under OAR 581-021-0340(8) or (9);

- (c) Disclosures of directory information under OAR 581-021-0340(11).
- (4) When applicable, an educational agency or institution shall inform a party to whom disclosure is made of the requirements of this rule.
- (5) If the Family Policy Compliance Office determines that a third party improperly rediscloses personally identifiable information from education records in violation of paragraph 1, the educational agency or institution may not allow that third party access to personally identifiable information from education records for at least five years.

Stat. Auth.: ORS 326.565 & 34 CFR § 99.33

Stats. Implemented: ORS 326.565

Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-1994, f. & cert. ef. 4-29-94; ODE 8-2007, f. & cert. ef. 3-1-07

### **581-021-0360**

#### **Conditions for the Disclosure of Information to Other Educational Agencies or Institutions**

- (1) An educational agency or institution that discloses an education record under OAR 581-021-0340(2) to officials of another school or school system where the student seeks or intends to enroll shall:
- (a) Annually notify parents or eligible students that it forwards education records requested under OAR 581-021-0250(1)(m) and (p) within 10 days of receiving the request;
  - (b) Make a reasonable attempt to notify the parent or eligible student at the last known address of the parent or eligible student, unless:
    - (A) The disclosure is initiated by the parent or eligible student; or
    - (B) The annual notification of the agency or institution under §99.6 includes a notice that the agency or institution forwards education records to other agencies or institutions that have requested the records and in which the student seeks or intends to enroll;
  - (b) Give the parent or eligible student, upon request, a copy of the record that was disclosed; and
  - (c) Give the parent or eligible student, upon request, an opportunity for a hearing.
- (2) An educational agency or institution may disclose an education record of a student in attendance to another educational agency or institution if:
- (a) The student is enrolled in or receives services from the other agency or institution; and
  - (b) The disclosure meets the requirements of section (1) of this rule.

Stat. Auth.: ORS 326.565 & 34 CFR § 99.34

Stats. Implemented: ORS 326.565

Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-1994, f. & cert. ef. 4-29-94; EB 20-1995, f. & cert. ef. 7-25-95; ODE 8-2007, f. & cert. ef. 3-1-07

### **581-021-0370**

#### **Conditions for the Disclosure of Information for Federal or State Program Purposes**

- (1) The officials listed in OAR 581-021-0340(3) shall have access to education records in connection with an audit or evaluation of federal or state supported education programs, or for the enforcement of or compliance with federal or state legal requirements which relate to those programs.
- (2) Information that is collected under section (1) of this rule must:
- (a) Be protected in a manner that does not permit personal identification of individuals by anyone except the officials referred to in section (1) of this rule; and
  - (b) Be destroyed when no longer needed for the purposes listed in section (1) of this rule.
- (3) Section (2) of this rule does not apply if:
- (a) The parent or eligible student has given written consent for the disclosure under OAR 581-021-0330; or
  - (b) The collection of personally identifiable information is specifically authorized by state or federal law.

Stat. Auth.: ORS 326.565 & 34 CFR § 99.35

Stats. Implemented: ORS 326.565

Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-1994, f. & cert. ef. 4-29-94

### **581-021-0371**

#### **Conditions for Disclosure of Information to Comply with Judicial Order or Subpoena**

The educational agency or institution may disclose information under this section only if the agency or institution makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance, so that the parent or eligible student may seek protective action except as provided below.

- (1) Conditions when no notice required:
- (2) The educational agency or institution may disclose information under this section without notice to the parent or eligible student if the disclosure is in compliance with:
  - (a) A federal grand jury subpoena and the court has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed; or
  - (b) Any other subpoena issued for a law enforcement purpose and the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

Stat. Auth.: ORS 326.565 & 34 CFR | 99.31  
 Stats. Implemented: ORS 326.56  
 Hist.: ODE 8-2007, f. & cert. ef. 3-1-07

#### **581-021-0372**

##### **Conditions for the Disclosure of Information When Legal Action Initiated**

- (1) If an educational agency or institution initiates legal action against a parent or student, the educational agency or institution may disclose to the court, without a court order or subpoena, the education records of the student that are relevant for the educational agency or institution to proceed with the legal action as plaintiff.
- (2) If a parent or eligible student initiates legal action against an educational agency or institution, the educational agency or the institution may disclose to the court, without a court order or subpoena, the student's education records that are relevant for the educational agency or institution to defend itself.

Stat. Auth.: ORS 326.565 & 34 CFR | 99.31  
 Stats. Implemented: ORS 326.56  
 Hist.: ODE 8-2007, f. & cert. ef. 3-1-07

#### **581-021-0380**

##### **Conditions for the Disclosure of Information in Health and Safety Emergencies**

- (1) An educational agency or institution shall disclose personally identifiable information from an education record to law enforcement, child protective services, and health care professionals, and other appropriate parties in connection with a health and safety emergency if knowledge of the information is necessary to protect the health and safety of the student or other individuals.
- (2) Nothing in this Act or this part shall prevent an educational agency or institution from -
  - (a) Including in the education records of a student appropriate information concerning disciplinary action taken against the student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community;
  - (b) Disclosing appropriate information maintained under paragraph (2)(a) of this section to teachers and school officials in other schools who have been determined to have legitimate educational interests in the behavior of the student.
- (3) Paragraphs (1) and (2) of this section will be strictly construed.
- (4) As used in this rule, a "health or safety emergency" includes, but is not limited to, law enforcement efforts to locate a child who may be a victim of kidnap, abduction, or custodial interference and law enforcement or child protective services efforts to respond to a report of child abuse or neglect pursuant to ORS 418.750 to 418.760.
- (3) Sections (1) and (4) of this rule shall be strictly construed.

Stat. Auth.: ORS 326.565, 336.187 & 34 CFR | 99.36  
 Stats. Implemented: ORS 336.187 & 326.565  
 Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-1994, f. & cert. ef. 4-29-94; ODE 8-2007, f. & cert. ef. 3-1-07

#### **581-021-0390**

##### **Conditions for the Disclosure of Directory Information**

- (1) An educational agency or institution may disclose directory information if it has given annual public notice to parents of students in attendance and eligible students in attendance at the educational agency or institution of:
  - (a) The types of personally identifiable information that the educational agency or institution has designated as directory information;
  - (b) A parent or eligible student's right to refuse to let the educational agency or institution designate any or all of those types of information about the student as directory information; and

- (c) The period of time within which a parent or eligible student has to notify the educational agency or institution in writing that he or she does not want any or all of those types of information about the student designated as directory information.
- (2) An educational agency or institution may disclose directory information about former students without meeting the conditions in section (1) of this rule.

Stat. Auth.: ORS 326.565 & 34 CFR § 99.37

Stats. Implemented: ORS 326.565

Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-1994, f. & cert. ef. 4-29-94; EB 20-1995, f. & cert. ef. 7-25-95

### **581-021-0391**

#### **Conditions for the Disclosure of Information to Juvenile Justice Agencies**

An educational agency or institution may disclose personally identifiable information to a court and state and local juvenile justice agencies including, but not limited to, law enforcement agencies, juvenile departments and child protective service agencies provided that:

- (1) Disclosure relates to the court's or juvenile justice agency's ability to serve the needs of a student prior to the student's adjudication under ORS chapter 419C.
- (2) A person to whom personally identifiable information is disclosed under this paragraph shall certify, in writing, that the person will not disclose the information to a third party other than another court or juvenile justice agency or a person or organization providing direct services to the student on behalf of a juvenile justice agency.

Stat. Auth.: ORS 326.565, 336.187 & 34 CFR § 99.

Stats. Implemented: ORS 326.56

Hist.: ODE 8-2007, f. & cert. ef. 3-1-07

### **581-021-0400**

#### **Recordkeeping Requirements**

- (1) An educational agency or institution shall maintain a record of each request for access to and each disclosure of personally identifiable information from the education records of each student:
  - (a) The agency or institution shall maintain the record with the education records of the student as long as the records are maintained;
  - (b) For each request or disclosure the record must include:
    - (A) The parties who have requested or received personally identifiable information from the education records;
    - (B) The date access was given; and
    - (C) The legitimate interests the parties had in requesting or obtaining the information.
- (2) If an educational agency or institution discloses personally identifiable information from an education record with the understanding authorized under OAR 581-021-0350(2), the record of disclosure required under this section must include:
  - (a) The names of the additional parties to which the receiving party may disclose the information on behalf of the educational agency or institution; and
  - (b) The legitimate interests under OAR 581-021-0340 which each of the additional parties has in requesting or obtaining the information.
- (3) The following parties may inspect the record relating to each student:
  - (a) The parent or eligible student;
  - (b) The school official or his or her assistants who are responsible for the custody of the records;
  - (c) Those parties authorized in OAR 581-021-0340(1) and (3) for the purposes of auditing the recordkeeping procedures of the educational agency or institution.
- (4) Section (1) of this rule does not apply if the request was from or the disclosure was to:
  - (a) The parent or eligible student;
  - (b) A school official under OAR 581-021-0340(1);
  - (c) A party with written consent from the parent or eligible student; or
  - (d) A party seeking directory information.
  - (e) A party seeking or receiving the records as directed by a Federal grand jury or other law enforcement subpoena and the issuing court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

Stat. Auth.: ORS 326.565 & 34 CFR § 99.32, 34 CFR 300.614

Stats. Implemented: ORS 326.565

Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-1994, f. & cert. ef. 4-29-94; ODE 8-2007, f. & cert. ef. 3-1-07

**581-021-0410****Filing a Federal Complaint**

- (1) A person may file a written complaint with the Family Policy Compliance Office, U.S. Department of Education, regarding an alleged violation under the Family Educational Rights and Privacy Act. The office's address is: Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Ave. SW, Washington, D.C. 20202-5920.
- (2) A timely complaint under section (1) of this rule is defined as an allegation of a violation of the Family Educational Rights and Privacy Act that is submitted to the Family Policy Compliance Office within 180 days of the date of the alleged violation or of the date that the complainant knew or reasonable should have know of the alleged violation.
- (3) The Family Policy Compliance Office extends the time limit in section (2) of this rule if the complainant shows that he or she was prevented by circumstances beyond the complainant's control from submitting the matter within the time limit, or for other reasons considered sufficient by the Family Policy Compliance Office.

Stat. Auth.: ORS 326.565 & 34 CFR | 99.63 & 99.64

Stats. Implemented: ORS 326.565

Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-1994, f. & cert. ef. 4-29-94; ODE 8-2007, f. & cert. ef. 3-1-07

**581-021-0420****Civil Action**

Any person claiming to be aggrieved by the reckless disclosure of personally identifiable information from a student's education records, as prohibited by OAR 581-021-0220 through 581-021-0440, may file a civil action in circuit court pursuant to ORS 30.864.

Stat. Auth.: ORS 30.864 & ORS 326.565

Stats. Implemented: ORS 326.565

Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-1994, f. & cert. ef. 4-29-94

**581-021-0430****The Distribution of Rules Relating to Student Records**

- (1) The State Board of Education shall distribute the administrative rules regarding student education records to all school districts.
- (2) School districts shall make those rules available to the public schools in the district and to the public.

Stat. Auth.: ORS 326.565

Stats. Implemented: ORS 326.565

Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-1994, f. & cert. ef. 4-29-94

**DIVISION 22**  
**STANDARDS FOR PUBLIC ELEMENTARY AND SECONDARY SCHOOLS**

**581-022-0612**

**Exception of Students with Disabilities from State Assessment Testing**

(1) For the purposes of this rule a "student with a disability" is a student identified under the Individuals with Disabilities Education Act, consistent with OAR chapter 581, division 015, or a student with a disability under Section 504 of the Rehabilitation Act of 1973.

(2) A public agency shall not exempt a student with a disability from participation in the Oregon State Assessment System or any district wide assessments to accommodate the student's disability unless the parent has requested such an exemption.

Stat. Auth.: ORS 326.051 & 343.045

Stats. Implemented: ORS 329.485 & 659.850

Hist.: ODE 3-2002(Temp), f. & cert. ef. 1-25-02 thru 6-30-02; ODE 14-2002, f. & cert. ef. 5-15-02; ODE 25-2008, f. & cert. ef. 9-26-08

**581-022-1130**

**Diploma Requirements**

(1) Each district school board and public charter school with jurisdiction over high school programs shall award diplomas to all students who fulfill all state requirements as described in sections (2) to (11) of this rule and all local school district requirements as described in district school board policies or all public charter school requirements as described in the policies or charter of the public charter school.

(2) Unit of Credit Requirements for students graduating before July 1, 2009:

(a) Each student shall earn a minimum of 22 units of credit to include at least:

(A) English Language Arts -- 3 (shall include the equivalent of one unit in Written Composition);

(B) Mathematics -- 2;

(C) Science -- 2;

(D) Social Sciences 3 -- (including history, civics, geography and economics (including personal finance));

(E) Health Education -- 1;

(F) Physical Education -- 1;

(G) Career and Technical Education, The Arts or Second Language -- 1 (one unit shall be earned in any one or a combination).

(b) A district school board or public charter school with a three-year high school may submit through the waiver process alternative plans to meet unit requirements;

(c) A district school board or public charter school may increase the number of units required in specific areas, and may increase or decrease the number of elective units; however, the total units of credit required for graduation shall not be less than 22;

(d) A school district or public charter school may grant high school credit for courses taken prior to grade 9 if students taking pre-grade 9 courses are required to meet performance criteria that are equivalent to the performance criteria for students taking the same high school courses;

(e) Course syllabi shall be written for courses in grades 9 through 12 and shall be available to students, staff, parents, the district school board and other interested individuals.

(3) Except as provided in section (4) of this rule, Unit of Credit Requirements for students graduating on or after July 1, 2009 and who were first enrolled in grade 9 prior to the 2008-2009 school year:

(a) Each student shall earn a minimum of 24 units of credit to include at least:

(A) English Language Arts -- 4 (shall include the equivalent of one unit in Written Composition);

(B) Mathematics -- 3;

(C) Science -- 2;

(D) Social Sciences 3 -- (including history, civics, geography and economics (including personal finance));

(E) Health Education -- 1;

(F) Physical Education -- 1;

(G) Career and Technical Education, The Arts or Second Language -- 1 (one unit shall be earned in any one or a combination).

(b) A district school board or public charter school with a three-year high school may submit through the waiver process alternative plans to meet unit requirements;

- (c) A district school board or public charter school may increase the number of units required in specific areas, and may increase or decrease the number of elective units; however, the total units of credit required for graduation shall not be less than 24;
  - (d) A school district or public charter school may grant high school credit for courses taken prior to grade 9 if students taking pre-grade 9 courses are required to meet performance criteria that are equivalent to the performance criteria for students taking the same high school courses;
  - (e) Course syllabi shall be written for courses in grades 9 through 12 and shall be available to students, staff, parents, the district school board and other interested individuals.
- (4) Notwithstanding sections (2) and (3) of this rule, for students who began grade 9 during the 2005-2006 school year and who attended school during the 2006-2007, 2007-2008 and 2008-2009 school years, the unit of credits required for graduating is as described in section (2) of this rule if the student graduates prior to July 1, 2010.
- (5) Unit of Credit Requirements for students who were first enrolled in grade 9 during the 2008-2009 or 2009-2010 school year:
- (a) Each student shall earn a minimum of 24 units of credit to include at least:
    - (A) English Language Arts -- 4 (shall include the equivalent of one unit in Written Composition);
    - (B) Mathematics -- 3;
    - (C) Science -- 3;
    - (D) Social Sciences 3 -- (including history, civics, geography and economics (including personal finance));
    - (E) Health Education -- 1;
    - (F) Physical Education -- 1;
    - (G) Career and Technical Education, The Arts or Second Language -- 3 (units shall be earned in any one or a combination).
  - (b) A district school board or public charter school with a three-year high school may submit through the waiver process alternative plans to meet unit requirements;
  - (c) A district school board or public charter school may increase the number of units required in specific areas, and may increase or decrease the number of elective units; however, the total units of credit required for graduation shall not be less than 24;
  - (d) A school district or public charter school may grant high school credit for courses taken prior to grade 9 if students taking pre-grade 9 courses are required to meet performance criteria that are equivalent to the performance criteria for students taking the same high school courses;
  - (e) Course syllabi shall be written for courses in grades 9 through 12 and shall be available to students, staff, parents, the district school board and other interested individuals.
- (6) Unit of Credit Requirements for students who were first enrolled in grade 9 during the 2010-2011 school year or first enrolled in grade 9 in any subsequent school year:
- (a) Each student shall earn a minimum of 24 units of credit to include at least:
    - (A) English Language Arts -- 4 (shall include the equivalent of one unit in Written Composition);
    - (B) Mathematics -- 3 (shall include one unit at the Algebra I level and two units that are at a level higher than Algebra I);
    - (C) Science -- 3;
    - (D) Social Sciences 3 -- (including history, civics, geography and economics (including personal finance));
    - (E) Health Education -- 1;
    - (F) Physical Education -- 1;
    - (G) Career and Technical Education, The Arts or Second Language -- 3 (units shall be earned in any one or a combination).
  - (b) A district school board or public charter school with a three-year high school may submit through the waiver process alternative plans to meet unit requirements;
  - (c) A district school board or public charter school may increase the number of units required in specific areas, and may increase or decrease the number of elective units; however, the total units of credit required for graduation shall not be less than 24;
  - (d) A school district or public charter school may grant high school credit for courses taken prior to grade 9 if students taking pre-grade 9 courses are required to meet performance criteria that are equivalent to the performance criteria for students taking the same high school courses;
  - (e) Course syllabi shall be written for courses in grades 9 through 12 and shall be available to students, staff, parents, the district school board and other interested individuals.
- (7) Each student shall demonstrate proficiency in essential skills adopted by the State Board of Education as provided in OAR 581-022-0615;

- (8) School districts shall develop a process that provides each student the opportunity to develop an education plan and build an education profile in grades 7 through 12 with adult guidance. The plan and profile shall be reviewed and updated periodically (at least annually) and be supported by a Comprehensive Guidance Program as defined in OAR 581-022-1510.
- (9) Each student shall develop an education plan and build an education profile.
- (a) Each student shall develop an education plan that:
    - (A) Identifies personal and career interests;
    - (B) Identifies tentative educational and career goals and post high school next steps (i.e. college, workforce, military, apprenticeship, other);
    - (C) Sets goals to prepare for transitions to next steps identified in section (7)(b);
    - (D) Designs, monitors and adjusts a course of study that meets the interest and goals of the student as described in subsection (a) (A), (B) and (C) of this rule that includes but is not limited to:
      - (i) Appropriate coursework and learning experiences;
      - (ii) Identified career-related learning experiences; and
      - (iii) Identified extended application opportunities.
  - (b) Through the education profile each student shall:
    - (A) Monitor progress and achievement toward standards including:
      - (i) Content standards;
      - (ii) Essential skills;
      - (iii) Extended application standard; and
      - (iv) Other standards where appropriate (e.g. industry standards).
    - (B) Document other personal accomplishments determined by the student or school district.
    - (C) Review progress and achievement in subsection (b)(A) and (B) of this subsection at least annually.
- (10) Each student shall build a collection of evidence, or include evidence in existing collections(s), to demonstrate extended application (as defined in OAR 581-022-0102);
- (11) Each student shall participate in career-related learning experiences outlined in the education plan (as defined in OAR 581-022-0102);
- (12) Notwithstanding sections (1) to (11) of this rule, each district school board or public charter school governing board with jurisdiction over high school programs shall award a modified diploma to those students who have demonstrated the inability to meet the full set of academic content standards even with reasonable modifications and accommodations and who fulfill all requirements as described in OAR 581-022-1134.
- (13) Notwithstanding sections (1) to (11) of this rule, each district school board or public charter school governing board with jurisdiction over high school programs shall award an extended diploma to those students who have demonstrated the inability to meet the full set of academic content standards even with reasonable modifications and accommodations and who fulfill all requirements as described in OAR 581-022-1133.
- (14) Notwithstanding sections (1) to (11) of this rule and as provided in OAR 581-022-1135, schools districts and public charter schools shall make an alternative certificate available to students as an alternative for students who do not obtain the regular diploma, modified diploma or extended diploma.
- (15) Attendance Requirements:
- (a) Twelve school years shall be required beginning with grade 1, except when the school district adopts policies providing for early or delayed completion of all state and school district credit and performance requirements;
  - (b) Notwithstanding subsection (a) of this section, a student may satisfy the requirements of sections (2)(6) of this rule in less than four years. If the school district or public charter school has the consent of the student's parent or guardian, a school district or public charter school shall award a diploma to a student upon request from the student, if the student satisfies the requirements for the diploma that apply to the student based on the date of graduation of the student or the school year when the student first enrolled in grade 9, as applicable.
  - (c) If a school district or public charter school has the consent of a student's parent or guardian, the school district or public charter school may advance the student to the next grade level if the student has satisfied the requirements for the student's current grade level.
  - (d) The requirement for obtaining the consent of a student's parent or guardian under subsections (b) and (c) of this section does not apply to a student who is:
    - (A) Emancipated pursuant to ORS 419B.550 to 419B.558; or
    - (B) 18 years of age or older.



(e) The district school board may adopt policies for alternative learning experiences, such as credit by examination and credit for off-campus experiences;

(f) With any modification of the attendance requirements for graduation, school district and public charter school staff shall consider age and maturity of students, access to alternative learning experiences, performance levels, school district or public charter school guidelines and the wishes of parents and guardians.

(16) A school district or public charter school shall ensure that students have access to the appropriate resources to achieve a diploma at each high school in the school district or at the public charter school.

Stat. Auth.: ORS 326.051 & 329.451

Stats. Implemented: ORS 326.051, 329.451 & 339.280

Hist.: EB 2-1997, f. 3-27-97, cert. ef. 9-1-97; ODE 12-2002, f. & cert. ef. 4-15-02; ODE 18-2006, f. 12-11-06, cert. ef. 12-12-06; ODE 18-2007, f. & cert. ef. 9-10-07; ODE 18-2008, f. & cert. ef. 6-27-08; ODE 5-2009(Temp), f. 6-29-09, cert. ef. 6-30-09 thru 12-22-09; ODE 20-2009, f. & cert. ef. 12-10-09

### **581-022-1131**

#### **Credit Options**

(1) A school district or public charter school shall grant required and elective credit towards the diploma or a modified diploma, provided the method for accruing such credit is described in the student's personal education plan and the student earns the credit by meeting the requirements of one or more of the options described in this rule.

(2) Each school district or public charter school shall offer students the option for earning each credit required for the diploma or a modified diploma by successfully completing classroom or equivalent work (e.g., supervised independent study, career-related learning experiences, project based learning) in a course of at least 130 clock hours in accordance with OAR 581-022-0102. The classroom or equivalent work must meet Common Curriculum Goals and academic content standards required by OAR 581-022-1210.

(3) In addition to the option of earning credit required by section (2) of this rule, a school district or charter school may offer one or more of the options described in section (4) of this rule for earning credits. The school district or charter school must identify by district or school policy which options are available to students for earning credits.

(4) A school district or charter school may grant credit to a student if the student demonstrates defined levels of proficiency or mastery of recognized standards (e.g., state academic content standards and essential skills, industry-based or other national or international standards) by any one or more of the following options:

(a) Successfully completes classroom or equivalent work designed to measure proficiency or mastery of identified standards (knowledge and skills) in class or out of class, where hours of instruction may vary;

(b) Successfully passes an appropriate exam designed to measure proficiency or mastery of identified standards (knowledge and skills);

(c) Provides a collection of work or other assessment evidence which demonstrates proficiency or mastery of identified standards (knowledge and skills); and

(d) Provides documentation of prior learning activities or experiences which demonstrates proficiency or mastery of identified standards (knowledge and skills) (e.g., certification of training, letters, diplomas, awards, etc.); or

(e) Successfully completes a combination of the options set out in section (2) and this section of this rule.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 326.051

Hist.: ODE 4-2003, f. & cert. ef. 3-14-03; ODE 2-2009, f. & cert. ef. 4-23-09

### **581-022-1133**

#### **Extended Diploma**

(1) Definitions.

(a) "Other services" for the purposes of this rule means:

(A) Those services paid for or provided by another agency, such as Vocational Rehabilitation or Brokerages, which may be considered in the calculation of the total number of hours that equals at least the total number of instructional hours that is required to be provided to students who are

attending public high school. These “other services” are not to be considered educational services and are not provided by or through the school district or public charter school.

(B) Those services identified in OAR 581-022-1620(4), such as school assemblies, student orientations, testing, etc, which may be considered in the calculation of the total number of hours that equals at least the total number of instructional hours that is required to be provided to students who are attending public high school. These services are provided by the school district or public charter school.

(2) A school district or public charter school shall award an extended diploma to a student who satisfies the requirements of this rule.

(3) A school district or public charter school shall award an extended diploma only to students who have demonstrated the inability to meet the full set of academic content standards for a high school diploma with reasonable modifications and accommodations.

(4) A school district or public charter school may award an extended diploma to a student only upon the consent of the parent or guardian of the student, or upon the consent of the adult student or emancipated minor student. A district or school must receive the consent in writing and during the school year in which the extended diploma is awarded.

(A) If student is under 18, consent must be received from the parent or guardian.

(B) If the student is under age 18 and emancipated, consent must be received from the student.

(C) If the adult student is 18 or older, consent must be received from the student.

(D) If the student is under guardianship from the courts, consent must come from the court-appointed authority.

(5) To be eligible for an extended diploma, a student must:

(a) Have a documented history of an inability to maintain grade level achievement due to significant learning and instructional barriers or have a documented history of a medical condition that creates a barrier to achievement; and

(b)(A) Participate in an alternate assessment beginning no later than grade six and lasting for two or more assessment cycles; or

(B) Have a serious illness or injury that occurs after grade eight, that changes the student’s ability to participate in grade level activities and that results in the student participating in alternate assessments.

(c) While in grade nine through completion of high school, complete 12 credits, which may not include more than six credits earned in a self-contained special education classroom and shall include:

(A) Two credits of mathematics;

(B) Two credits of English;

(C) Two credits of science;

(D) Three credits of history, geography, economics or civics;

(E) One credit of health;

(F) One credit of physical education; and

(G) One credit of the arts or a second language;

(6)(a) A student shall have the opportunity to meet the requirements of an extended diploma by the later of:

(A) Four years after starting grade nine; or

(B) The student reaching the age of 21 years, if the student is entitled to a public education until the age of 21 years under state or federal law.

(b) A student may complete the requirements for an extended diploma in less than four years if the parent/guardian or adult student gives consent.

(A) The consent must be written and must clearly state that the parent/guardian or adult student is waiving the 4 years to complete the requirements for an extended diploma.

(B) A copy of all consents must be sent to the district superintendent.

(C) Each school district must annually provide the number of consents obtained to the State Superintendent of Public Instruction

(D) The consent may not be used to allow a student to satisfy the requirements for an extended diploma in less than three years.

(7) A school district or public charter school shall:

(a) Ensure that students have on-site access to the appropriate resources to achieve an extended diploma at each high school in the school district or at the public charter school.

(b) Beginning in grade five, annually provide information to the parents or guardians of a student taking an alternate assessment of the availability of an extended diploma and the requirements for the extended diploma.

- (c) A school district or public charter school may not deny a student who has the documented history described in subsection (1)(a) of this section the opportunity to pursue a diploma with more stringent requirements than a modified diploma or an extended diploma for the sole reason that the student has the documented history.
- (8)(a) A student who receives an extended diploma shall have access to instructional hours, hours of transition services and hours of other services that are designed to meet the unique needs of the student.
- (b) When added together, the school district or public charter school will provide a total number of hours of instruction and services to the student that equals at least the total number of instructional hours that is required to be provided to students who are attending a public high school.
- (c) The total number of hours that are appropriate for a student shall be determined by the individualized education program (IEP) team if the student is eligible for special education.
- (d) Based on the student's needs and performance level, the student's IEP team may decide that the student will not access the total number of hours of instruction and services required to be provided to students who are attending a public high school.
- (e) The school district or public charter school may not unilaterally decrease the total number of hours of instruction and services to which the student has access regardless of the age of the student.
- (f) If a student's IEP team decides that the student will not access the total number of hours of instruction and services to which the student has access the school district or public charter school shall annually:
- (A) Provide the following information in writing to the adult student, parent or guardian of the student:
- (i) The school district's or public charter school's duty to comply with the requirements to provide the total number of hours of instruction and services to the student; and
  - (ii) The prohibition against a school district's or public charter school's unilaterally decreasing the total number of hours of instruction and services to which the student has access.
- (B) Obtain a signed acknowledgment from the adult student, parent or guardian of the student that the adult student, parent or guardian received the information.
- (C) Include in the IEP for the student a written statement that explains the reasons the student is not accessing the total number of hours of instruction and services to which the student has access.
- (g) Transition services and other services designed to meet the unique needs of the student may be provided to the student through an interagency agreement entered into by the school district if the individualized education program developed for the student indicates that the services may be provided by another agency. The school district or public charter school retains the responsibility for ensuring that the student has access to the number of service hours required to be provided to the student.
- (h) An agency is not required to change any eligibility criteria or enrollment standards prior to entering into an interagency agreement with the school district.
- (9) School districts and public charter schools shall make extended diplomas as required by ORS 329.451 and this rule first available to students during the 2009-2010 school year.

Stat. Auth.: ORS 326.051

Stat. Implemented: ORS 329.451

Hist.: ODE 21-2009, f. & cert. ef. 12-10-09; ODE 3-2012, f. 2-1-12, cert. ef. 2-3-12

## **581-022-1134**

### **Modified Diploma**

- (1) Definitions. As used in this rule:
- (a) "Documented history" means evidence in the cumulative record and education plans of a student that demonstrates the inability over time to maintain grade level achievement even with appropriate modifications and accommodations.
- (b) "Instructional barrier" means a significant physical, cognitive or emotional barrier that impairs a student's ability to maintain grade level achievement.
- (c) "Modified course" means a course that has been systematically changed or altered for a student only after reasonable alternative instructional strategies (e.g. accommodations, remediation) are exhausted.
- (d) "Other services" for the purposes of this rule means:
- (A) Those services paid for or provided by another agency, such as Vocational Rehabilitation or Brokerages, which may be considered in the calculation of the total number of hours that equals at least the total number of instructional hours that is required to be provided to students who are

attending public high school. These “other services” are not to be considered educational services and are not provided by or through the school district or public charter school.

(B) Those services identified in OAR 581-022-1620(4), such as school assemblies, student orientations, testing, etc, which may be considered in the calculation of the total number of hours that equals at least the total number of instructional hours that is required to be provided to students who are attending public high school. These services are provided by the school district or public charter school.

(2) On or after July 1, 2009, each district school board or public charter school governing board with jurisdiction over high school programs shall award a modified diploma only to students who have demonstrated the inability to meet the full set of academic content standards for a high school diploma even with reasonable modifications and accommodations but who fulfill all state requirements as described in this rule and all applicable local school district requirements as described in district school board policies or public charter school requirements as described in school policies. In addition, on or after July 1, 2009, a district school board or public charter school governing board may only award a modified diploma to a student who meets the eligibility criteria specified in section 3 of this rule.

(3)(a) Except as provided in paragraph (c) or (d) of this section, a school district or public charter school shall grant eligibility for a modified diploma to a student who has:

(A) A documented history of an inability to maintain grade level achievement due to significant learning and instructional barriers; or

(B) A documented history of a medical condition that creates a barrier to achievement.

(b) A student shall have the opportunity to meet the requirements of a modified diploma by the later of:

(A) Four years after starting grade nine; or

(B) The student reaching the age of 21 years, if the student is entitled to a public education until the age of 21 years under state or federal law.

(c) A student may complete the requirements for a modified diploma in less than four years if the parent/guardian or adult student gives consent.

(A) The consent must be written and must clearly state that the parent/guardian or adult student is waiving the 4 years to complete the requirements for a modified diploma.

(B) A copy of all consents must be sent to the district superintendent.

(C) Each school district must annually provide the number of consents obtained to the State Superintendent of Public Instruction.

(D) The consent may not be used to allow a student to satisfy the requirements for a modified diploma in less than three years.

(d) A school district or public charter school may not deny a student who has the documented history described in paragraph (a) of this subsection the opportunity to pursue a diploma with more stringent requirements than a modified diploma for the sole reason that the student has the documented history.

(e) Students currently engaged in the use of illegal drugs are not eligible for a modified diploma if the significant learning and instructional barriers are due to the use of illegal drugs.

(f) Students currently engaged in the illegal use of alcohol are not eligible for a modified diploma if the significant learning and instructional barriers are due to the alcohol abuse, regardless of whether that student is disabled under Section 504 on the basis of alcoholism.

(g) Notwithstanding paragraph (c) and (d) of this section, a school district or public charter school may grant eligibility for a modified diploma to a student who is no longer engaging in illegal use of drugs or alcohol if the student:

(A) Has successfully completed a supervised drug or alcohol rehabilitation program and are no longer engaged in the illegal use of drugs or alcohol; or

(B) Has been rehabilitated successfully and is no longer engaged in the illegal use of drugs or alcohol; or

(C) Is participating in a supervised rehabilitation program and is no longer engaging in the illegal use of drugs or alcohol.

(4)(a) A school district or public charter school shall determine which school teams shall decide if a student will work toward obtaining a modified diploma. A student’s school team must include an adult student, parent/ guardian of the student.

(b) A school district or public charter school may award a modified diploma to a student only upon the consent of the parent or guardian of the student or upon the consent of the adult student or emancipated minor student. A district or school must receive the consent in writing and during the school year in which the modified diploma is awarded.

(A) If student is under 18, consent must be received from the parent or guardian.

(B) If the student is under age 18 and emancipated, consent must be received from the student.

- (C) If the adult student is 18 or older, consent must be received from the student or guardian.
  - (D) If the student is under guardianship from the courts, consent must come from the court-appointed authority.
- (c) Except as provided in subsection (e) of this section, a student's school team shall decide that a student should work toward a modified diploma no earlier than the end of the 6th grade and no later than 2 years before the student's anticipated exit from high school.
- (d) Beginning in grade five, school district and public charter schools shall annually provide information to the parents or guardians of a student taking an alternate assessment of the availability of a modified diploma and the requirements for the modified diploma.
- (e) A student's school team may formally decide to revise a modified diploma decision.
- (f) A student's school team may decide that a student who was not previously working towards a modified diploma should work toward a modified diploma when a student is less than 2 years from anticipated exit from high school if the documented history of the student described in section (3) of this rule has changed.
- (5) Unit of credit requirements for students graduating with a modified diploma:
- (a) To receive a modified diploma a student must earn 24 units of credit, between grade 9 and the end of their high school career with at least 12 of those credits to include:
    - (A) English Language Arts — 3;
    - (B) Mathematics — 2;
    - (C) Science — 2;
    - (D) Social Sciences (which may include history, civics, geography and economics (including personal finance)) — 2;
    - (E) Health Education — 1;
    - (F) Physical Education — 1; and
    - (G) Career Technical Education, The Arts or Second Languages (units may be earned in any one or a combination) — 1.
  - (b) School districts and public charter schools shall be flexible in awarding the remaining 12 units of credit. These credits must be awarded to meet the needs of the individual student as specified in the education plan of the student with the expectations and standards aligned to the appropriate grade level academic content standards. These credits may include:
    - (A) Additional core credits described in paragraph (a) of this section;
    - (B) Professional technical education;
    - (C) Electives; and
    - (D) Career development.
  - (c) Students may earn units of credit through regular education with or without accommodations or modifications and through modified courses.
  - (d) Students shall have the option to earn credit for demonstrating proficiency. A student may be given credit for successful demonstration of knowledge and skills that meets or exceeds defined levels of performance. Students may demonstrate proficiency through classroom work or documentation of learning experiences outside of school, or through a combination of these means.
  - (e) School districts and public charter schools shall ensure that students have access to needed courses, modifications and supports to pursue a modified diploma and to progress in the general education curriculum.
  - (f) A school district or public charter school may not require a student to earn more than 24 units of credit to receive a modified diploma.
- (6) A school district or public charter school shall grant credit toward a modified diploma only for courses that contain substantial academic content. A school district or public charter school shall grant credit for a modified diploma through a continuum of instruction beginning at basic skills and progressing through high level skills.
- (7) A school district or public charter school shall award a regular diploma under OAR 581-022-1130 if all requirements for a regular diploma are met. Completion of one or more modified courses shall not prohibit a student from earning a regular diploma; however, required core courses taken under modified conditions must be retaken under standard conditions to be counted toward a regular diploma.
- (8) A school district or public charter school shall grant credit toward a modified diploma according to individual student needs across academic content areas including applied, consumer, academic, or knowledge and skill development.
- (9) Each student shall develop an education plan and build an education profile as provided under OAR 581-022-1130.

- (10) A school district or public charter school shall inform the student and parent or guardian of the student if the courses in grades 9-12 have been modified for an individual student.
- (11) A school district or public charter school shall provide transcripts which clearly identify modified courses that do not count toward the regular diploma but that do count toward a modified diploma.
- (12) Each student shall build a collection of evidence, or include evidence in existing collections, to demonstrate extended application of the standards as defined in OAR 581-022-0102;
- (13) Each student receiving a modified diploma shall have the option of participating in the high school graduation ceremony with the members of their class receiving a high school diploma.
- (14)(a) A student who receives a modified diploma shall have access to instructional hours, hours of transition services and hours of other services that are designed to meet the unique needs of the student.
- (b) When added together, the school district or public charter school will provide a total number of hours of instruction and services to the student that equals at least the total number of instructional hours that is required to be provided to students who are attending a public high school.
- (c) The total number of hours that are appropriate for a student shall be determined by the individualized education program (IEP) team if the student is eligible for special education.
- (d) Based on the student's needs and performance level, the student's IEP team may decide that the student will not access the total number of hours of instruction and services required to be provided to students who are attending a public high school.
- (e) The school district or public charter school may not unilaterally decrease the total number of hours of instruction and services to which the student has access regardless of the age of the student.
- (f) If a student's IEP team or school team, decides that the student will not access the total number of hours of instruction and services to which the student has access the school district or public charter school shall annually:
- (A) Provide the following information in writing to the adult student, parent or guardian of the student:
- (i) The school district's or public charter school's duty to comply with the requirements to provide the total number of hours of instruction and services to the student; and
- (ii) The prohibition against a school district's or public charter school's unilaterally decreasing the total number of hours of instruction and services to which the student has access.
- (B) Obtain a signed acknowledgment from the adult student, parent or guardian of the student that the adult student, parent or guardian received the information.
- (C) Include in the IEP for the student a written statement that explains the reasons the student is not accessing the total number of hours of instruction and services to which the student has access.
- (g) Transition services and other services designed to meet the unique needs of the student may be provided to the student through an interagency agreement entered into by the school district if the individualized education program developed for the student indicates that the services may be provided by another agency. The school district or public charter school retains the responsibility for ensuring that the student has access to the number of service hours required to be provided to the student.
- (h) An agency is not required to change any eligibility criteria or enrollment standards prior to entering into an interagency agreement with the school district.
- (i) School districts and public charter schools shall ensure that students have on-site access to the appropriate resources to achieve a modified diploma at each high school in the school district or at the public charter school.
- (15)(a) The unit of credit requirements in section (5) of this rule for a modified diploma apply to all students who enter 9th grade on or after July 1, 2007.
- (b) If a student entered 9th grade prior to July 1, 2007, the student's team shall decide whether the student must meet the unit of credit requirements in section (5) of this rule to receive a modified diploma or the unit of credit requirements specified by the school district or public charter school for a modified diploma when the student entered 9th grade. If a student's team decides that a student may receive a modified diploma by meeting the unit of credit requirements required by the district or school when the student entered 9th grade, a school district or public charter school may award a student who entered 9th grade prior to July 1, 2007 a modified diploma if the student meets the unit of credit requirements for a modified diploma specified by the district or school when the student entered 9th grade.

Stat. Auth.: ORS 329.451

Stats. Implemented: ORS 329.451

Hist.: ODE 15-2008, f. & cert. ef. 5-23-08; ODE 22-2009, f. & cert. ef. 12-10-09; ODE 4-2012, f. 2-1-12, cert. ef. 2-3-12

## 581-022-1135

### Alternative Certificate

#### (1) Definitions.

(a) "Other services" for the purposes of this rule means:

(A) Those services paid for or provided by another agency, such as Vocational Rehabilitation or Brokerages, which may be considered in the calculation of the total number of hours that equals at least the total number of instructional hours that is required to be provided to students who are attending public high school. These "other services" are not to be considered educational services and are not provided by or through the school district or public charter school.

(B) Those services identified in OAR 581-022-1620(4), such as school assemblies, student orientations, testing, etc, which may be considered in the calculation of the total number of hours that equals at least the total number of instructional hours that is required to be provided to students who are attending public high school. These services are provided by the school district or public charter school.

(2) A School district or public charter school shall award an alternative certificate to a student who does not satisfy the requirements for a high school diploma, a modified diploma or an extended diploma.

(3)(a) Each district school board or public charter school governing board with jurisdiction over high school programs shall define criteria for an alternative certificate and shall award an alternative certificate to those students who have met the criteria requirements as described in district school board policies.

(4) A student shall have the opportunity to meet the requirements of an alternative certificate by the later of:

(a) Four years after starting grade nine; or

(b) The student reaching the age of 21 years, if the student is entitled to a public education until the age of 21 years under state or federal law.

(c) A student may complete the requirements for an alternative certificate in less than four years if the parent/guardian or adult student gives consent.

(A) The consent must be written and must clearly state that the parent/guardian or adult student is waiving the 4 years to complete the requirements for an alternative certificate.

(B) A copy of all consents must be sent to the district superintendent.

(C) Each school district must annually provide the number of consents obtained to the State Superintendent of Public Instruction

(D) The consent may not be used to allow a student to satisfy the requirements for an alternative certificate in less than three years.

(5) A school district or public charter school shall:

(a) Ensure that students have on-site access to the appropriate resources to achieve an alternative certificate at each high school in the school district or at the public charter school.

(b) Beginning grade five, annually provide information to the parents or guardians of a student taking an alternate assessment of the availability of an alternative certificate and the requirements for the certificate.

(6) Each student receiving an alternative certificate shall have the option of participating in the high school graduation ceremony with the members of their class receiving a high school diploma.

(7)(a) A student who receives an alternative certificate shall have access to instructional hours, hours of transition services and hours of other services that are designed to meet the unique needs of the student.

(b) When added together, the school district or public charter school will provide a total number of hours of instruction and services to the student that equals at least the total number of instructional hours that is required to be provided to students who are attending a public high school.

(c) The total number of hours that are appropriate for a student shall be determined by the individualized education program (IEP) team if the student is eligible for special education.

(d) Based on the student's needs and performance level, the student's IEP team may decide that the student will not access the total number of hours of instruction and services required to be provided to students who are attending a public high school.

(e) The school district or public charter school may not unilaterally decrease the total number of hours of instruction and services to which the student has access regardless of the age of the student.

(f) If a student's IEP team, decides that the student will not access the total number of hours of instruction and services to which the student has access the school district or public charter school shall annually:

(A) Provide the following information in writing to the adult student parent or guardian of the student:

(i) The school district's or public charter school's duty to comply with the requirements to provide the total number of hours of instruction and services to the student; and

- (ii) The prohibition against a school district's or public charter school's unilaterally decreasing the total number of hours of instruction and services to which the student has access.
- (B) Obtain a signed acknowledgment from the adult student, parent or guardian of the student that the adult student, parent or guardian received the information.
- (C) Include in the IEP for the student a written statement that explains the reasons the student is not accessing the total number of hours of instruction and services to which the student has access.
- (g) Transition services or other services designed to meet the unique needs of the student may be provided to the student through an interagency agreement entered into by the school district if the individualized education program developed for the student indicates that the services may be provided by another agency. The school district or public charter school retains the responsibility for ensuring that the student has access to the number of service hours required to be provided to the student.
- (h) An agency is not required to change any eligibility criteria or enrollment standards prior to entering into an interagency agreement with the school district.

Stat. Auth.: ORS 329.451

Stats. Implemented: ORS 329.451

Hist.: ODE 15-2008, f. & cert. ef. 5-23-08; ODE 23-2009, f. & cert. ef. 12-10-09; ODE 5-2012, f. 2-1-12, cert. ef. 2-3-12

### **581-022-1215**

#### **Literacy Instruction**

School districts and public charter schools shall provide age appropriate and developmentally appropriate literacy instruction to all students until graduation. For purposes of this rule, a student is considered to be graduated when the student receives a diploma, modified diploma, extended diploma or alternative certificate. A district or school may choose to provide literacy instruction after graduation to students who continue to attend school. The determination to provide literacy instruction after graduation to a student may be made by the student's IEP team or other school team.

Stat. Auth: ORS 326.051

Stats. Implemented: ORS 329.451

Hist.: ODE 24-2009, f. & cert. ef. 12-10-09

### **581-022-1340**

#### **Special Education for Children with Disabilities**

Each school district shall provide an educational program for all resident children with a disability who are eligible under ORS Chapter 343. The program shall be carried out in accordance with all applicable Oregon Administrative Rules.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 343.041

Hist.: EB 18-1996, f. & cert. ef. 11-1-96; ODE 25-2008, f. & cert. ef. 9-26-08

### **581-022-1940**

#### **Appeal Procedure**

- (1) A complainant may direct an appeal of a final decision by a school district to the State Superintendent of Public Instruction if:
  - (a) The complaint alleges a violation of standards of the Oregon Administrative Rules, chapter 581, division 022; or
  - (b) A violation of other statutory or administrative rule requirements for which the State Superintendent has appeal responsibilities.
- (2) The appeal must be in writing and contain:
  - (a) The name and address of the person bringing the appeal, and the district in which that person resides;
  - (b) The name and address of the district which is alleged to have violated standards; and
  - (c) A brief statement indicating each standard the district is alleged to have violated and how the district is alleged to have violated it.
- (3) A decision is deemed final if:



- (a) The district has failed to comply with the procedural time limits in its written complaint process;
  - (b) In a multi-step district complaint process, the district fails to render a written decision within 30 days of the submission of the complaint at each step; or
  - (c) The district fails to resolve a complaint within 90 days of the initial filing of a written complaint, regardless of the number of steps in the district complaint process.
- (4) Upon receipt of the appeal the State Superintendent will determine whether a violation of standards has been properly alleged and the requirements of section (2) of this rule have been satisfied.
- (a) If the State Superintendent determines that the facts of complaint, if true, would be a violation of a standard, the appeal will be accepted and the procedures listed in this rule in the following sections will be applied;
  - (b) If the State Superintendent determines that the complaint, even if true, would not violate a standard, the appeal will not be accepted. In either case, the State Superintendent will give notice of the determination to the complainant and the school district.
- (5) Within 30 days of receipt of notice of the State Superintendent's acceptance of the appeal, the district shall submit a written report with the State Superintendent which shall include:
- (a) A statement of facts;
  - (b) A statement of district action, if any, taken in response to the complaint, or if none was taken, the reason(s) therefore;
  - (c) A stipulation, if one was reached, of the settlement of the complaint; and
  - (d) A list of any complaints filed with another agency by the party, concerning the subject of the appeal.
- (6) The State Superintendent may for good cause extend the time for the filing of a report by the district.
- (7) Upon receipt of the district's report, the State Superintendent will investigate the allegations of the complaint to the extent necessary including but not limited to:
- (a) Authorizing an on-site investigation; and
  - (b) Conducting interviews, meetings and surveys and reviewing documents, data and district procedures.
- (8) The State Superintendent will issue a written decision within 60 days of receiving the district's report that addresses each allegation in the complaint and contains reasons for the State Superintendent's decision as to whether or not the district is deficient. If the schools of the district are not open during the 60-day period due to summer vacation, the decision shall be issued within 60 days after the beginning of the school year.
- (9) Notwithstanding section (8) of this rule, the State Superintendent may extend the time period for issuing a written decision on a complaint to a time period that is more than 60 days if the State Superintendent has the consent of the complainant and the allegation concerns a comprehensive or widespread deficiency and more extensive investigation is needed than may be reasonably completed within 60 days. The State Superintendent shall prepare a timeline and plan for investigation and provide copies to the complainant and district within two weeks of receiving the district's report.
- (10) If a deficiency is found, the State Superintendent's written decision will include any necessary corrective action to be undertaken by the district as well as any documentation to be supplied to ensure that the corrective action has occurred.
- (11) If a deficiency is not corrected, the provisions of ORS 327.103 will apply.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 327.103 & 326.051

Hist.: EB 18-1996, f. & cert. ef. 11-1-96; ODE 31-2007, f. & cert. ef. 12-12-07

## **581-022-1941**

### **Complaint Procedures**

- (1) Each school district must establish a process for the prompt resolution of a complaint by a person who resides in the district or by any parent or guardian of a student who attends school in the school district. The process must be in writing and state clearly who within the school district has the responsibility for responding to the complaint.
- (2) A school district's complaint procedure must specify the time period during which the complaint will be addressed and a final decision issued. If the complaint procedure has multiple steps, the procedure must establish the time period for each step as well as the overall time period for completing the procedure.
- (3) A school district's complaint procedure may distinguish between those complaints that may be appealed under OAR 581-022-1940 and other complaints.
- (4) A school district's complaint procedure may include mediation or other alternative dispute resolution processes.

(5) The procedure for hearing and acting on complaints that may be appealed under OAR 581-022-1940 must include the following:

- (a) A point at which the decision is final;
- (b) A provision for the complainant receive written notice that the district's decision may be appealed to the State Superintendent of Public Instruction under OAR 581-022-1940; and
- (c) A written decision that clearly establishes the legal basis for the decision, findings of fact and conclusions of law.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 327.103 & 326.051

Hist.: ODE 31-2007, f. & cert. ef. 12-12-07

## **DIVISION 23**

### **SCHOOL FINANCE**

#### **581-023-0104**

##### **Reimbursement to School Districts for Children with High Cost Disabilities**

- (1) Consistent with the provisions of this rule, a school district may apply to the Department for reimbursement from the high cost disability fund when combined district and ESD general fund expenditures for special education and related services for any student eligible and served under IDEA exceed \$30,000 in a fiscal year.
- (2) To be eligible for the reimbursement, the school district shall have:
- (a) Determined that the student is eligible for special education and related services under one of the disability categories set forth in OAR 581-015-2130 through 581-015-2180;
  - (b) Provided services to the student on the basis of the student's current or previous individualized education program in effect during the fiscal year; and
  - (c) Submitted a timely application as per Department requirements.
- (3) The Department shall only distribute the reimbursement to a school district for:
- (a) Expenditures exceeding \$30,000 for special education and related services that are required by the individualized education program of an individual student with a disability. Qualifying expenditures include those incurred by the school district and those incurred by the ESD through the resolution process.
  - (b) Transportation expenditures, exclusive of local, state and federal reimbursements.
  - (c) Special education general fund expenditures, exclusive of federal sources, as set forth in the Maintenance of Effort requirements of the federal IDEA. District and school level administrative expenditures (e.g. salaries) may be included by first averaging the expenditures across all the special education students enrolled as identified on the most recent SECC, then applying the average to the student for whom the district is requesting reimbursement. Similarly, teacher and educational assistant salaries must be averaged across all the special education students for whom the teacher or assistant provided instruction during the school year.
- (4) Expenditures not eligible for reimbursement include:
- (a) Regional Program expenditures;
  - (b) Reimbursed Medicaid expenditures;
  - (c) Expenditures associated with facility operations and maintenance (e.g., heat, electricity, custodial services)
- (5) In December of each year, school districts will provide the Department with an estimate of the aggregate number of students eligible for reimbursement from the High Cost Disabilities Fund and the total estimated aggregate amount of reimbursable expenditures, including ESD expenditures that will be incurred during the school year. As requested by the Department, districts will also report during the school year, updated information listing eligible students, SDID, names, estimated expenditures, and other information as requested.
- (6) A school district may submit an application for each student identified who meets the criteria set forth in section (2) and (3) of this rule.
- (7) The Department shall provide school districts with an application that shall require documentation that identifies all the school districts and ESD's expenditures for each student. Additional supporting documentation, subject to ODE review, may include a copy of the contract(s) between the school district and the service provider(s), invoices reflecting actual expenses, and any additional documentation of expenditures incurred as determined by the Department. These documents must be maintained at the District for at least three years after the submission of the student-level data.

- (8) The Department shall develop and implement a process for reviewing applications.
- (9) The Department shall prorate the distribution of funds for each school year to eligible school districts if sufficient funds are not available.
- (10) Based on the outcome of section (8), the Department will exclude from reimbursement those expenditures deemed excessive, ineligible or unsubstantiated.
- (11) Funds will be distributed to districts on or before May 15 for the current fiscal based on expenditure estimates. Adjustments will be made May 15 of the following year based on audited data and Department reviews of district records.
- (12) The decision of the Department regarding reimbursement of costs pursuant to this rule shall be final.

Stat. Auth.: ORS 326.051, 327.348  
Stats. Implemented: ORS 327.348  
Hist.: ODE 6-2004, f. & cert. ef. 3-15-04; ODE 32-2007, f. & cert. ef. 12-12-07

## DIVISION 37

### EDUCATIONAL ASSISTANTS

This division applies to all educational assistants including those who work in general education, special education, Title I, Part A of the federal Elementary and Secondary Education Act, and Early Childhood/Early Childhood Special Education programs.

#### **581-037-0005: Definitions**

The definitions below apply to OAR 581-037-0005 to 581-037-0025:

- (1) "Educational assistant" means an educational assistant as defined in ORS 342.120. The terms "paraprofessional" and "instructional aide" have the same meaning as "educational assistant".
- (2) "Early Childhood Specialist" means a person as defined in OAR 581-015-2905. "
- (3) "Early Childhood Supervisor" means a person as defined in OAR 581-015-2910 (2) "Related service provider" means a person registered, certified or licensed by the State of Oregon as qualified to provide a particular related service, as defined in ORS 343.035, that requires State registration, certification or licensing.
- (4) "Title I, Part A (I-A)" means a supplemental federally funded program under the Elementary and Secondary Education Act.
- (5) "Title I-A educational assistant" means an educational assistant employed or contracted in:
- (a) A Title 1-A targeted assisted school and is paid in whole or in part with Title 1, Part A funds;
  - or
  - (b) A Title 1-A school-wide program school; or
  - (c) A school district expending Title 1, Part A funds to provide instructional support to a public school teacher who provides equitable services to eligible private school children.
- (6) "Teacher" means a teacher as defined in ORS 342.120.

Stat. Auth.: ORS 326.051  
Stats. Implemented: ORS 326.051, 342.120, 343.041

Hist.: 1EB 118, f. 11-28-67, ef. 12-25-67; 1EB 131, f. 5-12-72, ef. 6-1-72; 1EB 227, f. & ef. 6-4-76; 1EB 15-1980, f. & ef. 6-9-80; EB 7-1990, f. & cert. ef. 1-26-90; 6-25-10

#### **581-037-0006: Qualifications of Educational Assistants**

- (1) All educational assistants or others employed or contracted in that capacity must:
- (a) Have a high school diploma or the equivalent;
  - (b) Be at least 18 years of age; and
  - (c) Have standards of moral character as required of teachers (OAR 584-005-0005).
- (2) In addition to the qualifications listed in section (1) of this rule, educational assistants providing translation services must have certification, knowledge of and the ability to provide accurate translations from a language other than English into English and from English into a language other than English.
- (3) In addition to the qualifications listed in section (1) of this rule, Title 1-A educational assistants must have:

- (a) Completed two years of study at an institution of higher education; **or**
- (b) Obtained an Associate's (or higher) degree; **or**
- (c) Met a rigorous standard of quality and demonstrate through a formal state, or local academic assessment or para-educator certificate program, knowledge of and the ability to assist in instructing:
  - (A) Reading, writing, and mathematics; or
  - (B) Reading readiness, writing readiness, and mathematics readiness, as appropriate.

Stat. Auth.:ORS 326.051  
 Stats. Implemented: ORS 326.051

Hist.: 1EB 227, f. & ef. 6-4-76; 1EB 20-1980(Temp), f. & ef. 7-15-80; 1EB 5-1981, f. & ef. 2-12-81; EB 7-1990, f. & cert. ef. 1-26-90; 6-25-10

**581-037-0015: Assignment and Direction and Supervision of Educational Assistants**

- (1) The educational assistant shall assist a teacher or Early Childhood Specialist or Supervisor or related service provider only in a supportive capacity. The role of the educational assistant is adaptable to many support tasks, and nothing in these rules should be interpreted as limiting assistants only to the performance of classroom duties. Educational assistant tasks may include but are not limited to:
- (a) Instructional support -- Tasks performed by assistants to supplement students' basic instruction by offering students opportunities to practice and apply what they have learned, including social skills, life skills, and transition skills;
  - (b) Clerical support -- Tasks such as preparing materials, duplicating and operating audiovisual equipment, which are primarily concerned with the physical arrangement of the learning environment; and
  - (c) Student control -- Duties such as supervision of students in school buildings, buses, and grounds including but not limited to lunch rooms, and playground areas, assisting with fire drills, monitoring students in hallways, etc.
  - (d) Personal care;
  - (e) Translation or Parent/Family Involvement activities; and
  - (f) Media center or computer laboratory support.
- (2) Any educational assistant assigned to instruction-related activities shall work under the supervision of an appropriately licensed teacher (or administrator, Early Childhood Specialist, specialist or supervisor; or related services provider). Supervision means:
- (a) The assigned teacher (or administrator, Early Childhood Specialist, specialist or supervisor; or related services provider) plans the instructional activities that the educational assistant carries out;
  - (b) The assigned teacher (or administrator, Early Childhood Specialist, specialist or supervisor; or related services provider) evaluates the achievement of the students with whom the educational assistant is working; and
  - (c) The assigned teacher (or administrator, Early Childhood Specialist, specialist or supervisor; or related services provider) provides a supervision plan that includes regular monitoring of the educational assistant's effectiveness and access to assistance and consultation.
- (3) In addition to the supervision requirements under section (2) of this rule, Title I educational assistants must work in close and frequent proximity to the appropriately licensed teacher identified as "highly qualified" as defined by the federal Elementary and Secondary Education Act.
- (4) A plan of supervision for the educational assistant shall provide for:
- (a) Access to assistance and consultation; and
  - (b) Regular monitoring of the educational assistant's performance to determine effectiveness of the assigned tasks and the effect on students and their families.

Stat. Auth.: ORS 326.051  
 Stats. Implemented: ORS 326.051  
 Hist.: 1EB 131, f. 5-19-72, ef. 6-1-72; 1EB 15-1980, f. & ef. 6-9-80; EB 7-1990, f. & cert. ef. 1-26-90; 6-25-10

**581-037-0025 Training of Educational Assistants**

Districts employing educational assistants in any capacity shall provide or arrange for suitable training to prepare them to perform such functions as they may be assigned.

Stat. Auth.: ORS 326.051  
 Stats. Implemented: ORS 326.051

## SECRETARY OF STATE, ARCHIVES DIVISION

### DIVISION 400

#### EDUCATIONAL SERVICE DISTRICTS, SCHOOL DISTRICTS, AND INDIVIDUAL SCHOOL RECORDS

##### 166-400-0060

##### Student Education Records

**Note:** Inclusion of a records series in this schedule does not require the series be created. If a record is created electronically, it can be retained in electronic format only if the retention period is 99 years or less.

(1) **Alternative School Referral Records** Records document referrals sent to alternative schools seeking placement of students whose public school attendance and/or disciplinary record has been unsatisfactory. Referral form indicates acceptance or non-acceptance of student in private alternative program; funding source; signatures of referring school principal and alternative program director; student name, age, date of birth, student number; and parent's name and address. Minimum retention: 3 years after school year in which records were created.

(2) **Student Athletic Activity Records** Records document student eligibility and participation in interscholastic competitive sports and athletic activities, athletic event and team publicity, and athletic events scheduling. Records may include but are not limited to parental consent forms; Oregon School Activities Association eligibility forms and reports; and related documentation and correspondence. Minimum retention: 5 years after school year in which records were created.

(3) **Attendance Records** Records document the attendance of students in school. Records may include but are not limited to teacher or school attendance register; classroom daily attendance sheet; weekly attendance and truancy records; excused and unexcused absence records; tardiness records; notes from parents/guardians; and related documentation. The attendance recorded on the Oregon Student Record is a summary of this information. SEE ALSO Oregon Student Record in this section. Minimum retention: 3 years after school year in which records were created.

(4) **Behavioral Records, Major (Class/Group A)** Records document major student behavioral infractions which result in the identification of students for suspensions or expulsions. Records may include but are not limited to psychological tests; personality tests; group or individual intelligence tests; individual education programs; physician statements; state or local government agency reports; and related correspondence and documentation. Minimum retention: Until student turns 21.

(5) **Behavioral Records, Minor (Class/Group B)** Records document minor student behavioral infractions which do not result in the identification of a student for suspension, expulsion, or special education services. Records may include but are not limited to minor behavioral referrals; records of conversations; parent notes regarding student behavior; written behavioral agreements; detention records; bus citations; functional behavior assessments; and related correspondence and documentation. Minimum retention: Until end of school year.

(6) **Child Abuse Reports Records** document suspected child abuse reported by school staff or faculty. Records may include but are not limited to notes and observations of the child, record of contact with the State Office for Services to Children and Families or law enforcement agency, and related documentation. Minimum retention: 3 years after school year in which records were created.

(7) **Child Care Facility Residency Records** Records document students who live or have lived in childcare facilities, which are licensed to provide care for five or more children. Records may include but are not limited to reports filed semi-annually with the Oregon Department of Education. Minimum retention: 3 years after school year in which records were created.

(8) **Certificate of Advanced Mastery (CAM) Records** Records document student progress to fulfilling the State requirements for awarding of a CAM certification. Records may include but are not limited to planning records, test results, work samples, and the CAM award. Minimum retention: Until student reaches age 21 or graduates, whichever is longer.

(9) **Certificate of Initial Mastery (CIM) Records** Records document student progress to fulfilling the State requirements for awarding of a CIM certification. Records may include but are not limited to planning records, test results, and the CIM award. Minimum retention: Until student reaches age 21 or graduates, whichever is longer.

(10) **Compensatory Education Programs Student Records** Records document the placement and participation of students in compensatory educational programs, which provide a variety of supplemental education services to children. Programs may or may not be all or partially funded from federal sources. Compensatory programs may include but are not limited to Children Living in Poverty, Migratory Children, Neglected and Delinquent Children, Bilingual Education, Native Children, Parent Involvement, and Civil Rights. Records may include but are not limited to background information, grade placement, instructional and cumulative service, student profile forms, placement evaluation forms, withdrawal records and related correspondence and documentation. Minimum retention: (a) Retain records that show compliance with all federal program requirements: 5 years after school year in which records were created (b) Retain all other records: 3 years after school year in which records were created.

(11) **Compulsory Attendance Excuse Records** Records document the formal excuse of a student under sixteen years of age from compulsory school attendance. Records may include but are not limited to names and addresses of student and parent or guardian; reason for request; academic information; recommendations and approval of school district; and related correspondence and documentation. Minimum retention: Until student reaches age 21 or graduates, whichever is longer.

(12) **Educational Programs Student Records** Records document the placement and participation of students in educational programs which provide a variety of education services to children. Programs may or may not be all or partially funded from federal sources. Educational programs may include but are not limited to Talented and Gifted, Alternative Learning, Early Childhood, Professional Technical Education, School-to-Work, Cooperative Work Experience, and Distance Learning. Records may include but are not limited to background information, grade placement, instructional and cumulative service, student profile forms, placement evaluation forms, and related correspondence and documentation. Minimum retention: (a) Records that show compliance with all federal program requirements: 5 years after school year in which records were created (b) Other records: 3 years after school year in which records were created.

(13) **Grade Records** Records document student progress and grades awarded by teachers, and serve as the basis for the student's official academic record. Records may include test, assignment, paper, and homework scores; and final grades for students. Records may include but are not limited to teacher grade books; grade confirmation reports; grade change records; final grade rosters; and related documentation. SEE ALSO Report Cards in this section. Minimum retention: 6 years after school year in which records were created.

(14) **Grade Reports, Administrative Records** (14) Administrative Records document grades received by students in a variety of reports organized by school, class, special program, or other grouping which are used by staff and faculty. Records may include but are not limited to administrative reports, counselors' reports, teachers' reports, grade point average reports, failure reports, honor roll reports, supplemental grade reports, class lists, and other manual or computer produced reports. Minimum retention: 3 years after school year in which records were created.

(15) **Grievance Records** Records document grievances or complaints brought forward by students against the school, district, or ESD concerning student conduct and violations of student rights and responsibilities. Records may include but are not limited to notices of grievance; written description of the complaint; informal discussion notes; formal hearing notes (including audio tapes); summary of interviews with witnesses; final summary statements; resolution of grievance; appeals documentation; and related documentation and correspondence. Minimum retention: 3 years after resolution.

(16) **Education Counseling Records** Records document the advice, assistance, evaluation, and educational planning provided for individual students by school guidance counselors. Records may include but are not limited to school performance and attitude; educational planning records; post-high school plans and career goals; college and scholarship applications records; letters of recommendation; list of honors and activities; information necessary for referral to social service agencies; correspondence; and related documentation. Minimum retention: 3 years after school year in which records were created.

(17) **High School Dual Program Student Records** Records document student participation in programs between community colleges and high schools which offer professional, technical, and other college courses to high school students for college credit. Records may include but are not limited to program approval records; application forms; course descriptions; examinations; competency evaluations and profiles; transmittal forms; registration forms; and related documentation and correspondence. Minimum retention: 3 years after school year in which records were created.

(18) **Home Schooling Records** Records document the basic educational career of a student being educated in a home school program. Records may include but are not limited to notification form or letter of intent to educate student at home; testing information; test results; census reports to the Oregon Department of Education; non-compliance notices; and related correspondence and documentation. SEE

ALSO Oregon Student Record in this section. Minimum retention: 75 years after school year in which records were created.

(19) **Inter-District Transfer Agreement Records** Records document the application process for allowing a non-resident student to attend school out of district through an inter-district transfer agreement. Records may include but are not limited to procedures, administrative guidelines, inter-district transfer agreements, certificates of residency, and related correspondence and documentation. Minimum retention: 6 years after expiration.

(20) **Intervention Programs Student Records** Records document the assessment of students considered for referral to district-approved supplemental intervention programs and to determine appropriate follow-up actions. Programs may or may not be all or partially funded from federal sources. Programs may include but are not limited to Teen Parent, Alcohol and Drug Prevention, and Violence Prevention and Intervention. Records may include but are not limited to referrals, reports by assessment providers, consent forms, treatment and other reports, program class and support group attendance records, behavioral/discipline records, and related documentation and correspondence. Minimum retention: (a) Retain records that show compliance with all federal program requirements: 5 years after school year in which records were created (b) Retain all other records: 3 years after school year in which records were created.

(21) **Non-Resident Student Records** Records document attendance of non-resident students attending district-financed programs; non-resident dependent children; and other non-resident students for whom the district does not pay tuition. Records are used to report attendance to the Oregon Department of Education and to document reimbursement claims from the Oregon Basic School Support Fund. Records may include but are not limited to attendance reports; basic school support fund reports; and related documentation. Minimum retention: 3 years after school year in which records were created.

(22) **Parent-Teacher Conference Records** Records document a teacher's report to parents or guardians of student's progress prior to end of grading period and may indicate problem areas or areas in which student is excelling. Minimum retention: 3 years after school year in which records were created.

(23) **Parental/Custodial Delegation Records** Records document who has parental or custodial responsibility for a student. Records may include but are not limited to specification of rights or abridgment of rights for non-custodial parents; restraining orders and other court documents; informal documents signed by natural parent(s); and related correspondence and documentation. Minimum retention: Until student reaches age 21 or graduates, whichever is longer.

(24) **Personal/Locker Search Records** Records document searches of a student or student's locker. Records include student name, what was searched, when, what was found, and what report was made. Minimum retention: 3 years after school year in which records were created.

(25) **Psychological Guidance and Counseling Records** Records document student psychological health care responsibilities and activities performed by school or district health professionals or non-health staff. Records that are made or maintained separately and solely by a licensed health care professional who is not employed by the educational agency or institution, and are not used for education purposes of planning, are excluded from educational record provisions. See Oregon Department of Education student health record policies for further clarification. Minimum retention: Until student turns 21 or 5 years after last action.

(26) **Registration Records** Records document registration or enrollment of students in elementary, middle, and high school. Records may include but are not limited to enrollment applications registration forms completed annually by the parent or guardian for each student at the time of admittance to school. Information contained in the records generally include student name, address, date and place of birth; parent or guardian name and address; student demographic information such as race and language spoken at home; authorization for school to act in behalf of parent or guardian in case of emergency; class scheduling data; student assignments, such as lockers, counselors, and buses; and related correspondence and documentation. Registration information may be used to create student transcripts, attendance records, and to verify or determine residency status. Minimum retention: (a) Retain completed registrations 3 years after school year in which records were created (b) Retain incomplete/withdrawn registration records 3 years after school year in which records were created.

(27) **Report Cards Records** document the periodic report by a school about a student's social, emotional, and physical progress. Information includes but is not limited to full legal name of student; teacher's name; name and address of school; indication of attendance during reporting period; grades; and other related information. This information must be recorded on the Oregon Student Record by the beginning of the next school year. SEE ALSO Grade Records and Oregon Student Record in this section. Minimum retention: (a) If information has been recorded on Oregon Student Record: 6 years after school

year in which records were created (b) If information has not been recorded on Oregon Student Record: 75 years.

(28) **Special Education Student Records** Records document students participating in special education programs and early intervention special education services. Records may include speech/hearing, academic, motor, occupational and/or physical therapy, vision/hearing, interdisciplinary team, and classroom observation reports; records relating to student behavior including psychological and social work reports; assessments obtained through other agencies; contact sheets; severity rating scales; test result records; physician's statements; parental consent records; educational program meeting records; request for hearing records; eligibility statements; individualized education plans (IEP); individualized family service plans (IFSP); and related correspondence and documentation. Minimum retention: (a) Records documenting speech pathology and physical therapy services: Until student reaches age 21 or 5 years after last seen, whichever is longer (b) ESD copies, if program at district level: Transfer records to home district after end of student participation (c) Readable photocopies of records necessary to document compliance with State and Federal audits retained by the former educational agency or institution when a student transfers out of district: 5 years after end of school year in which original record was created.

(29) **Student Health Records** Records document student health care responsibilities and activities performed by school or district health professionals or non-health staff. These records are maintained by the school nurse or another individual designated by the district to maintain confidential health information. Records may include but are not limited to medication administration records; records of nursing assessment and nursing care given in the school setting; School Health Management Plans prepared by the nurse for students with special health needs, medical records from outside health care providers and health care agencies; and psychological diagnostic test reports. Health information provided to Special Education for determining eligibility and IEP activity is maintained in the Special Education record and forwarded upon transfer of the student record. School nurse records are medical records subject to issues of confidentiality and exemption from disclosure per ORS 192.496. Health record information is protected and should be treated as other student records. Records that are made or maintained separately and solely by a licensed health care professional who is not employed by the educational agency or institution, and are not used for education purposes of planning, are excluded from educational record provisions. See Oregon Department of Education student health record policies for further clarification. SEE ALSO Student Health Screening Records and Student Immunization Records in this section. Minimum retention: Until student reaches age 21 or graduates, whichever is longer.

(30) **Student Health Screening Records** Records document the health screening status of students and mandated certifications of health. Required health screening records include vision and hearing screening results; Certificate of Immunization Status; and Tuberculosis (TB) Clearance Certificate (if required by law according to the student's birth country). Records may also include but are not limited to communications related to health and safety and directed to the school from the parent/guardian or health care provider regarding the student's attendance, participation, or activities; communications which are directed to the school by health care providers; and documentation of first aid given, and instructions sent to parents/guardians regarding these screening and first aid events. These records are part of the Student Education Record and are transferred if the student transfers to a new district. See Oregon Department of Education student health record policies for further clarification. SEE ALSO Student Health Records and Student Immunization Records in this section. Minimum retention: Until student reaches age 21 or graduates, whichever is longer.

(31) **Student Immunization Records** Records document the immunization status of an individual student. Records include but are not limited to the Certificate of Immunization Status (CIS), which includes student identification information, vaccine history, and medical and religious exemptions, and records tracking susceptible for those students not yet completely immunized. Records must be retained as part of the Student Health Screening Record and are transferred if the student transfers to a new district. SEE ALSO Student Health Screening Records and Student Health Records in this section, and Immunization Records, Administrative in the Administrative Records section. Minimum retention: (a) Retain certificate of Immunization Status (CIS): Until student reaches age 21 or graduates whichever is longer (b) Retain immunization Status Records – Susceptible (Tracking Cards): Until student attendance ends.

(32) **Oregon Student Record** Records document a core set of information about an individual student (including a home-schooled student) and his/her educational career, birth through age 21. Records include name and address of the educational agency or institution; full legal name of the student; student's birth date and place of birth; name of parents/guardians; date of entry into the school; name of school previously attended; subjects taken; marks received; credits earned; attendance; date of



withdrawal from school; social security number (as provided on a voluntary basis by parent or eligible student); and such additional information as the educational agency or institution may prescribe. Minimum retention: (a) Retain original: 75 years (b) Retain readable photocopy retained by the former educational agency or institution when a student transfers out of district: 1 year.

(33) **Transfer Application Records** Records document the authorization for transfer of students between schools within the district. Records may include but are not limited to applications for transfer which generally contain name and grade of student; reasons for transfer request; name of present school; name of school to which transfer is requested; authorizing signatures; and related correspondence and documentation. Minimum retention: 3 years after school year in which records were created.

(34) **Truancy Records** Records document non-attendance or truancy of students in elementary, middle, or high schools. Records may include but are not limited to notices of non-attendance or truancy; staff reports; investigations; hearing records; suspension notifications; and related correspondence and documentation. Minimum retention: 3 years after school year in which records were created.

(35) **Tutoring Records** Records document tutoring services provided to students. Records may include but are not limited to registration records, tutor training records, tutor personnel records, tutor class records, tutorial hours, and related documentation. Minimum retention: 3 years after school year in which records were created.

(36) **Withdrawal Records** Records document withdrawal from school by students between the ages of sixteen and eighteen by the mutual consent of parent or guardian and the school administration. Records may include but are not limited to withdrawal agreements which generally contain name and address of student and family; reason for request; student agreement not to loiter on school premises; agreement by staff to assist student with educational planning; and related correspondence and documentation. Records may also include withdrawal slips which assess student status at time of withdrawal and may include assessment of fees paid or refunded; status of textbooks, library materials, locks, and other materials used by the student; grades; attendance; and related documentation. Minimum retention: 3 years after school year in which records were created.

Stat. Auth.: ORS 192 & 357, Other Auth. Code of Federal Regulations Title 34

Stats. Implemented: ORS 192 & 357

Hist.: OSA 6-1997, f. & cert. ef. 4-22-97; Renumbered from 166-414-0010, OSA 1-2006, f. & cert. ef. 4-17-06; OSA 2-2006, f. & cert. ef. 7-26-06; OSA 3-2009, f. & cert. ef. 6-24-09; OSA 1-2010, f. & cert. ef. 5-27-10