

# Oregon State Board of Education

*April 14, 2016*

<p><b>SUBJECT:</b> Examination of Children Instructed by Parent, Legal Guardian, or Private Teacher, 581-021-0026; Homeschooling for Children with Disabilities, 581-021-0029</p> <p><b>STAFF NAME &amp; OFFICE:</b> Jan McComb &amp; Cindy Hunt, Deputy Supt. Office</p> <p><b>SUMMARY:</b> Lowers compulsory school age from seven years to six years to comply with legislation.</p> <p><input type="checkbox"/> New Rule    <input checked="" type="checkbox"/> Amend Existing Rule    <input type="checkbox"/> Repeal Rule</p>	<p><input type="checkbox"/> Consent Agenda</p> <p><input checked="" type="checkbox"/> First Reading</p> <p><input type="checkbox"/> Action (Adoption)</p> <p><input type="checkbox"/> Information</p>
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## **BACKGROUND**

A body of research supports the policy of children starting school by age six or seven. The Department of Education proposed legislation in 2015 (SB 321) to lower the compulsory school age from seven years to five years. The Legislature heard from the public that many five-year-olds were not mature enough for school and amended the bill to lower the compulsory age to six years. The law takes effect July 1, 2016.

While no administrative rules exist on the compulsory school age (being straight forward in its statutory language, no rules are needed), there *are* rules referencing the compulsory school age in the homeschooling rules. Those parents who decide to educate their children at home must register the decision at their local ESD once the child researches the compulsory school age.

The attached amended administrative rules update the homeschooling rules to reflect the lower compulsory school age.

## **SUMMARY OF PREVIOUS BOARD ACTION**

The board has not heard this issue before.

## **POLICY ISSUE OR CONCERNS (IF APPLICABLE)**

Change in rule aligns with statutory change.

## **CHANGED SINCE LAST BOARD MEETING? (IF APPLICABLE)**

- N/A; first read—hasn't been before board
- No; same as last month
- Yes - As follows:

## **EFFECT OF A "YES" OR "NO" VOTE (AS APPROPRIATE)**

A "yes" vote will update rules such that they align with the lower compulsory education age.

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A “no” vote will leave the administrative rule stating that homeschooling parents must notify their ESD of their plan to home school when their child turns seven rather than six. The statute trumps the rule, so parents will still need to notify their ESD of their plan to homeschool when their child turns six regardless of what the rule states. Not changing the rule will potentially lead to needless confusion for parents and ESDs.

## STAFF RECOMMENDATION

Approve     Approve next month     No recommendation at this time

**Hearing Date:**

**Prompted by:**

State law changes     Federal law changes     other

## FISCAL ANALYSIS (AS APPROPRIATE)

No impact. The vast majority of six year olds already enroll in first grade.

### Kindergarten Students First Enrolled in 2014-15\* by Age on September 1, 2014

Age	Number of Students
4	12
5	20,270
6	20,712
7	86
8	16
Other	22
Total	41,118

## ATTACHMENTS (e.g., OAR with “track changes” ...)

Attachment 1:

**581-021-0026**

**Examination of Children Instructed by Parent, Legal Guardian or Private Teacher**

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(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~~6~~ and 18 whose parent or parents seek exemption from compulsory school attendance under ORS 339.030(1)(c) or (1)(d). [A child is considered to be six years of age if the sixth birthday of the child occurred on or before September 1 immediately preceding the beginning of the current school term.](#)

(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).

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- (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:

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(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 [sevensix](#) 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:

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(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 [sevensix](#) 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 339.035 is punishable as set out in 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**

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(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 76 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:

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- (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.

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- (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 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:

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(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.

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(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