

**581-023-0100 revisions (SB 13 and adding developmental delay)**

**Eligibility Criteria for Student Weighting for Purposes of State School Fund Distribution**

(1) The following definitions apply to this rule:

- (a) "Average Daily Membership" or "ADM" means the membership defined in ORS 327.006(3) and OAR 581-023-0006;
- (b) "Days in Session" means number of days of instruction during which students are under the guidance and direction of teachers;
- (c) "Department" means the Oregon Department of Education;
- (d) "Language Minority Student" means:
  - (A) Individuals whose native language is not English; or
  - (B) Individuals who come from environments where a language other than English is dominant; or
  - (C) Individuals who are Native Americans or Native Alaskans and who come from environments where a language other than English has had a significant impact on their level of English proficiency.
- (e) "Superintendent" means the State Superintendent of Public Instruction;
- (f) "Weighted Average Daily Membership" or "ADMw" means the ADM plus an additional amount or weight as described in ORS 327.013.

(2) Pursuant to ORS 327.013(7)(a)(A) the resident school districts shall receive one additional ADM or "weight" for children with disabilities who comprise up to 11 percent of the district's ADM. The Department will calculate the percentage of children with disabilities on the basis of resident counts of students eligible for weighting from the Special Education Child Count and the resident ADM:

- (a) To be eligible, a student must be in the ADM of the school district and meet the following criteria:
  - (A) The student ~~must be~~ eligible for special education ~~and have a current IEP.~~
  - (B) ~~The student is currently receiving special education services in accordance with thea current IEP,~~ having been evaluated as having one of the following conditions: intellectual disability ~~(OAR 581-015-2155), hearing impairment including difficulty in hearing and deafness, deaf or hard of hearing OAR 581-015-2150),~~ speech or language impairment ~~(OAR 581-015-2135),~~ visual impairment ~~(OAR 581-015-2189),~~ deafblindness ~~(OAR 581-015-2140)~~ ~~serious emotional disturbance, emotional behavior disability (OAR 581-015-2145),~~ orthopedic ~~impairment (OAR 581-015-2160),~~ or other health impairment ~~(OAR 581-015-212165),~~ autism ~~spectrum disorder (OAR 581-015-2130),~~ traumatic brain injury ~~(OAR 581-015-2175),~~ or specific learning disabilities ~~(OAR 581-015-2170),~~ or ~~developmental delay (OAR 581-015-2127);~~ and
  - (B) The student must be between the ages 5 and 21 and generate federal funding for purposes of special education.
- (b) Districts may apply for an exception to the 11 percent ceiling. Applications are to be made on forms provided by the Department. Upon receipt of the ~~application~~ ~~application~~, the Superintendent may conduct a complete review of a district's special education records. The Superintendent shall develop a process for conducting such reviews which will include the following elements:
  - (A) Comparison of district claims with those submitted by other districts;
  - (B) Participation of school district and education service district staff in the review. No district staff shall be asked to review claims submitted by the employing district.

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(c) After considering the recommendations of the review committee the Superintendent may allow all or a portion of the requested added weighted ADM over 11 percent;

(d) The Superintendent shall make the determination of approval for funding above the 11 percent limitation. Such determination may be appealed for review by the State Board of Education according to a process established by the Superintendent;

(e) If the review indicates that a district has claimed ineligible special education students, the Superintendent also shall withhold the related federal funds from the district, pursuant to OAR 581-015-2020;

(f) A district must submit an application for an exception to the 11 percent ceiling no later than six months after the close of the year for which payment is being sought. Payments for allowable exceptions shall be made in the following school year as part of the May 15 payment.

(3) Pursuant to ORS 336.640(4), the resident school districts shall receive an additional 1.0 times the ADM of all eligible pregnant and parenting students:

(a) To be eligible, a student must be in the ADM of the resident school district and meet the following criteria:

(A) The student must be identified through systematic procedures established by the district;

(B) The student must be enrolled and receiving services described in ORS 336.640(1)(b) and (d);

(C) The student must have an individualized written plan for such services, which identifies the specific services, their providers, and funding resources.

(b) Students counted in section (2) of this rule are not eligible under this section.

(4) Pursuant to ORS 327.013(7)(a)(B), the resident school districts shall receive an additional .5 times the ADM of all eligible students enrolled in an English as a Second Language program. To be eligible, a student must be in the ADM of the school district in grades K through 12 and be a language minority student attending English as a Second Language (ESL) classes in a program, which meets basic U.S. Department of Education, Office of Civil Rights guidelines. These guidelines provide for:

(a) Educational Theory and Approach that describes the district's educational approach (e.g., ESL, transitional bilingual education, structured English immersion, dual language, etc.) for educating English Language Learner (ELL) students that is recognized as a sound approach by experts in the field, or recognized as a legitimate educational strategy to ensure that ELL students acquire English language proficiency and are provided meaningful access to the educational program.

(b) A systematic procedure for identifying students who may need ESL classes, and for assessing their language acquisition and academic needs;

(c) A planned program for ESL and academic development, using instructional methodologies recognized as effective with language minority students;

(d) Instruction by credentialed staff and trained in instructional strategies that are effective with second language learners and language minority students, or by tutors supervised by credentialed staff trained in instructional strategies that are effective with second language learners and language minority students;

(e) Adequate equipment and instructional materials;

(f) Evaluation of program effectiveness in preparing ESL students for academic success in the mainstream curriculum.

(g) Process for transition from ELL Services that include procedures and criteria for determining when students no longer need those services. The criteria shall include:

(A) Achieving at the Advanced level on the State's English Language Proficiency Assessment (ELPA).

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(B) The Advanced level is a culmination of progress demonstrated on the same state proficiency measure over a legitimate period of time.

(5) Students served in the following programs are not eligible for weighting:

- (a) Programs funded fully by state funds, programs funded fully by federal funds, and programs funded fully by a combination of state and federal funds;
- (b) Private and parochial schools unless placed by the resident district in a registered private alternative program or state approved special education program;
- (c) Instruction by a private tutor or parent under ORS 339.035.

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(6) No later than January 15 of each year, the designated official for a school district shall submit to the Department a report of students eligible under sections (3) and (4) of this rule. The report shall include the following data for the period October 1 through December 31:

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- (a) Total days in session for the quarter ending December 31 for the school or program reporting;
- (b) Total days membership for the quarter ending December 31 for all students served in eligible programs.

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(7) Not later than July 10 of each year, the designated official for a school district shall submit to the Department a final report of students eligible under sections (3) and (4) of this rule. The report shall include the following:

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- (a) Total days in session during the regular school year for the school or program reporting;
- (b) Name of each student;
- (c) Total days membership beginning with the first day of instruction for each student and ending with the date of withdrawal from the eligible program or the end of the regular school year, whichever comes first;
- (d) Grade level of the student.

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(8) School districts must retain supporting documentation for a minimum of two years.

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(9) The Department shall perform periodic reviews of the eligibility of students reported for additional weighting. Any funds provided for ineligible students shall be recovered by the Department for redistribution to school districts.

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**Statutory/Other Authority:** ORS 327.013 & 327.125  
**Statutes/Other Implemented:** ORS 327.013 & 327.125  
**History:**  
ODE 12-2011, f. & cert. ef. 10-31-11  
ODE 20-2008, f. & cert. ef. 6-27-08  
EB 6-1994, f. & cert. ef. 4-29-94  
EB 31-1992, f. & cert. ef. 10-14-92

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