

Enrolled Senate Bill 72

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CHAPTER

AN ACT

Relating to special education; creating new provisions; amending ORS 343.035, 343.065, 343.164, 343.165 and 343.177; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 343.035 is amended to read:

343.035. As used in this chapter unless the context requires otherwise:

(1) "Child with a disability" means a school-age child who is entitled to a free appropriate public education as specified by ORS 339.115 and who requires special education because the child has been evaluated as having one of the following conditions as defined by rules established by the State Board of Education:

- (a) Mental retardation[,];
- (b) Hearing impairment, including difficulty in hearing and deafness[,];
- (c) Speech or language impairment[,];
- (d) Visual impairment, including blindness[,];
- (e) Deaf-blindness[,];
- (f) Emotional disturbance[,];
- (g) Orthopedic or other health impairment[,];
- (h) Autism[,];
- (i) Traumatic brain injury; or
- (j) Specific learning disabilities.

(2) "Decision" means the decision of the hearing officer.

(3) "Determination" means the determination by the school district concerning the identification, evaluation or educational placement of a child with a disability or the provision of a free appropriate public education to the child in a program paid for by the district.

(4) "Developmental delay" means:

(a) Delay, at a level of functioning and in accordance with criteria established by rules of the State Board of Education, in one or more of the following developmental areas:

- (A) Cognitive development;
- (B) Physical development, including vision and hearing;
- (C) Communication development;
- (D) Social or emotional development; or
- (E) Adaptive development; or

(b) A disability, in accordance with criteria established by rules of the State Board of Education, that can be expected to continue indefinitely and is likely to cause a substantial delay in a child's development and ability to function in society.

(5) "Early childhood special education" means **instruction that is:**

(a) Free, appropriate[,] **and** specially designed [*instruction*] to meet the unique needs of a preschool child with a disability[,];

(b) **Provided from** three years of age until the age of eligibility for kindergarten[, *where instruction is*]; **and**

(c) Provided in any of the following settings: [*Home, hospitals, institutions, special schools, classrooms, and community child care or preschool settings, or both.*]

(A) **The home, a hospital, an institution, a special school, a classroom or a community child care setting;**

(B) **A preschool; or**

(C) **A combination of a setting described in subparagraph (A) of this paragraph and a preschool.**

(6) "Early intervention services" means services for preschool children with disabilities from birth until three years of age that are:

(a) Designed to meet the developmental needs of children with disabilities and the needs of the family related to enhancing the child's development;

(b) Selected in collaboration with the parents; and

(c) 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.

(7) "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 this chapter.

(8) "Individualized family service plan" means a written plan of early childhood special education, related services, early intervention services and other services developed in accordance with criteria established by rules of the State Board of Education for each child eligible for services under this chapter.

(9) "Instruction" means providing families with information and skills that support the achievement of the goals and outcomes in the child's individualized family service plan and working with preschool children with disabilities in one or more of the following developmental areas:

(a) Communication development[,];

(b) Social or emotional development[,];

(c) Physical development, including vision and hearing[,];

(d) Adaptive development; and

(e) Cognitive development.

(10) "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 time as a resolution is agreed to by the parties or the mediation process is terminated.

(11) "Order" has the meaning given that term in ORS chapter 183.

(12) "Other services" means those services which may be provided to preschool children with disabilities and to their families that are not early childhood special education or early intervention services and are not paid for with early childhood special education or early intervention funds.

(13) "Parent" means the parent, person acting as a parent or a legal guardian, other than a state agency, of the child or the surrogate parent. "Parent" may be further defined by rules adopted by the State Board of Education.

(14) “Preschool child with a disability” means a child from:

(a) Birth until three years of age who is eligible for early intervention services because the child is experiencing developmental delay or has a diagnosed mental or physical condition that will result in developmental delay; or

(b) Three years of age to eligibility for entry into kindergarten who needs early childhood special education services because the child is experiencing developmental delay or because the child has been evaluated as having one of the conditions listed for a school-age child under subsection (1) of this section.

(15)(a) “Related services” means transportation and such developmental, corrective and other supportive services as are required to assist a child with a disability to benefit from special education, [and includes] **including:**

(A) Speech-language and audiology services[,];

(B) Interpreting services[,];

(C) Psychological services[,];

(D) Physical and occupational therapy[,];

(E) Recreation, including therapeutic recreation[,];

(F) Social work services[,];

(G) School nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child[,];

(H) Early identification and assessment of disabilities in children[,];

(I) Counseling services, including rehabilitation counseling[,];

(J) Orientation and mobility services[,];

(K) Medical services for diagnostic or evaluation purposes; and

(L) Parent counseling and training.

(b) “Related services” does not include a medical device that is surgically implanted or the replacement of a medical device that is surgically implanted.

(16) “School district” means a common or union high school district [or an education service district] that is charged with the duty or contracted with by a public agency to educate children eligible for special education.

(17) “Service coordination” means the activities carried out by a service coordinator to assist and enable a preschool child with a disability and the child’s family to receive the rights, procedural safeguards and services that are authorized under the state’s early intervention and early childhood special education programs and to coordinate access to other services designated on the individualized family service plan.

(18)[(a)] “Special education” means specially designed instruction **that is provided** at no cost to [the parents,] **parents** to meet the unique needs of a child with a disability[, including instruction]. **“Special education” includes instruction that:**

(a) **May be** conducted in the classroom, [in the home, in hospitals and institutions and in other settings, and instruction in physical education.] **the home, a hospital, an institution, a special school or another setting; and**

(b) [“Special education” also includes] **May involve physical education services**, speech-language services, transition services or other related services designated by rule [if it consists of specially designed instruction, at no cost to the parents,] **to be services** to meet the unique needs of a child with a disability.

(19) “Unaccompanied homeless youth” has the meaning given that term in the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11434a(6).

(20) “Ward of the state” means a child who is temporarily or permanently in the custody of, or committed to, a public or private agency through the action of the juvenile court. “Ward of the state” may be further defined by rules adopted by the State Board of Education.

SECTION 2. ORS 343.065 is amended to read:

343.065. (1) The Superintendent of Public Instruction shall employ personnel qualified by training and experience to supervise the types of services required by the special programs authorized

by this chapter. Personnel so employed shall assist the school districts, county and regional facilities, early childhood special education programs, early intervention services and hospitals in the organization and development of special programs authorized by this chapter, shall have general supervision of such programs, and shall assist school districts, early childhood special education and early intervention contractors in obtaining required services, equipment and materials, particularly where the number of children is too small to justify district or contractor purchase of equipment and materials.

(2) The Department of Education shall distribute to all school districts administrative guidelines, technical assistance materials, practice guidance materials and other training materials it develops for the purpose of assisting school districts [*and education service districts*] in complying with the provisions of this chapter and with rules adopted by the department under this chapter.

(3) Upon receipt of any materials described in subsection (2) of this section, a school district [*or education service district*] shall distribute copies of the materials to all instructional staff.

SECTION 3. The amendments to ORS 343.035 and 343.065 by sections 1 and 2 of this 2009 Act first apply to the 2009-2010 school year.

SECTION 4. ORS 343.164 is amended to read:

343.164. (1) A school district shall obtain informed written parental consent before the school district conducts [*a preplacement*] **an initial evaluation or a reevaluation** and before **the initial provision of special education and related services** for a child with a disability [*is initially placed in a program providing special education and related services*].

[*(2) A school district shall obtain informed written parental consent before the school district conducts a reevaluation of a child with a disability.*]

[*(3) Notwithstanding subsection (2) of this section, written parental consent need not be obtained if the school district can demonstrate that it has taken reasonable measures to obtain consent and that the child's parent has failed to respond.*]

(2)(a) At any time, the parent of a child may revoke, in writing, consent for:

(A) An initial evaluation;

(B) The initial provision and the continuing provision of special education and related services; and

(C) A reevaluation.

(b) If a parent revokes consent as provided in paragraph (a) of this subsection, the revocation is not retroactive and does not invalidate an action that was based on the consent and that occurred after the consent was given and before the consent was revoked.

[*(4)*] (3) The school district shall follow procedures prescribed in rules of the State Board of Education when necessary consent is not obtained.

SECTION 5. ORS 343.165 is amended to read:

343.165. (1) A hearing shall be conducted pursuant to rules of the State Board of Education if:

(a) The parent requests a hearing to contest the determination of the school district concerning the identification, evaluation, individualized education program, educational placement or the provision of a free appropriate public education to the child; or

(b) The school district requests a hearing to obtain a decision regarding whether its identification, evaluation, individualized education program or educational placement of the child is appropriate or whether the district's proposed action is necessary to provide the child with a free appropriate public education.

(2) Notwithstanding subsection (1)(b) of this section, a school district may not request a hearing if a parent refuses **or revokes** consent for placement in a program providing special education and related services.

(3)(a) Except as provided in paragraph (b) of this subsection, a hearing described in subsection (1) of this section must be requested within two years after the date of the act or omission that gives rise to the right to request a hearing under subsection (1) of this section.

(b) The timeline described in paragraph (a) of this subsection does not apply to a parent if the parent was prevented from requesting the hearing due to:

(A) Specific misrepresentations by the school district that it had resolved the problem forming the basis of the complaint; or

(B) The school district withholding from the parent information that the district was required to provide under this chapter.

(4) The State Board of Education shall adopt rules that establish when a school district is obligated to initiate a contested case hearing to ensure that a student with a disability is provided with a free appropriate public education.

(5) The board's rules in subsection (1) of this section shall be as consistent as possible with the procedures applicable to a contested case under ORS chapter 183. However, the board's rules shall provide that:

(a) Any party to a hearing has the right to prohibit the introduction of any evidence that has not been disclosed to that party at least five business days before the hearing; and

(b) The hearing officer may prohibit the introduction of any evidence regarding evaluations and recommendations based on those evaluations that a party intends to use at the hearing, if the evidence has not been disclosed to the other party at least five business days before the hearing, unless the other party consents to the introduction of the evidence.

(6) Notwithstanding subsection (5) of this section, in an expedited hearing the evidence must be disclosed to the other party not later than two business days before the hearing.

(7) The parent shall be entitled to have the child who is the subject of the hearing present at the hearing and to have the hearing open to the public.

(8) An expedited hearing shall be held if:

(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 for the child is substantially likely to result in injury to the child or others.

(9) The hearing shall be conducted by an independent hearing officer appointed by the Superintendent of Public Instruction. The hearing officer:

(a) Shall not be:

(A) An employee of a school district involved in the education or care of the child;

(B) An employee of the Department of Education; or

(C) A person having any personal or professional interest that would conflict with the person's objectivity in the hearing.

(b) Shall possess:

(A) 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) The knowledge and ability to conduct hearings in accordance with appropriate standard legal practice; and

(C) The knowledge and ability to render and write decisions in accordance with standard legal practice.

SECTION 6. ORS 343.177 is amended to read:

343.177. (1) During the pendency of any administrative or judicial proceedings concerning the identification, evaluation or educational placement of the child or the provision of a free appropriate public education to the child, the child shall remain in the then current educational program placement.

(2) Notwithstanding subsection (1) of this section, the placement of a child may be changed if:

(a) The parent consents to placement in a program provided or selected by the district at the district's expense until **the parent provides a written revocation of consent or until** the proceedings referred to in subsection (1) of this section are completed if applying for initial admission to a public school;

(b) The parent and the school district agree to temporary placement in some other program;

(c) The school district orders a change in placement to an appropriate interim alternative educational setting for up to 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability:

(A) Due to a weapon, illegal drug or controlled substance incident; or

(B) Because 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 of Education or school district;

(d) A hearing officer 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, pursuant to rules of the State Board of Education; or

(e) School personnel order a change in placement to an interim alternative educational setting for more than 10 school days for a child with a disability who violates a code of student conduct and the behavior that gave rise to the violation is determined not to be a manifestation of the child's disability.

(3) If the placement of a child with a disability is changed under subsection (2)(e) of this section:

(a) The relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration as the disciplinary procedures would be applied to children without disabilities;

(b) The child continues to be entitled to a free appropriate public education under ORS 339.252, although the education may be provided in an interim alternative educational setting; and

(c) The child shall remain in the interim alternative educational setting pending the decision of a hearing officer or until the expiration of the school district's determination of duration of the change in placement under paragraph (a) of this subsection, whichever occurs first.

(4) For the purposes of subsection (2)(b) of this section, a decision of a hearing officer under ORS 343.165 that agrees with the child's parents that a change of placement is appropriate shall be treated as an agreement between the school district and the parents.

SECTION 7. The amendments to ORS 343.164, 343.165 and 343.177 by sections 4 to 6 of this 2009 Act first apply to special education and related services that are provided on or after December 31, 2008.

SECTION 8. This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

Passed by Senate May 4, 2009

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Secretary of Senate

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President of Senate

Passed by House May 26, 2009

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Speaker of House

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M,....., 2009

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Secretary of State