

Senate Bill 72

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Reduces responsibilities of education service districts for purpose of special education.
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to special education; creating new provisions; amending ORS 343.035 and 343.065; and de-
3 claring an emergency.

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

5 **SECTION 1.** ORS 343.035 is amended to read:

6 343.035. As used in this chapter unless the context requires otherwise:

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

11 (a) Mental retardation[,];

12 (b) Hearing impairment, including difficulty in hearing and deafness[,];

13 (c) Speech or language impairment[,];

14 (d) Visual impairment, including blindness[,];

15 (e) Deaf-blindness[,];

16 (f) Emotional disturbance[,];

17 (g) Orthopedic or other health impairment[,];

18 (h) Autism[,];

19 (i) Traumatic brain injury; or

20 (j) Specific learning disabilities.

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

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

25 (4) "Developmental delay" means:

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

28 (A) Cognitive development;

29 (B) Physical development, including vision and hearing;

30 (C) Communication development;

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

- 1 **(D)** Social or emotional development; or
- 2 **(E)** Adaptive development; or
- 3 (b) A disability, in accordance with criteria established by rules of the State Board of Education,
- 4 that can be expected to continue indefinitely and is likely to cause a substantial delay in a child’s
- 5 development and ability to function in society.
- 6 (5) “Early childhood special education” means **instruction that is:**
- 7 **(a)** Free, appropriate[,] **and** specially designed [*instruction*] to meet the unique needs of a pre-
- 8 school child with a disability[,];
- 9 **(b) Provided from** three years of age until the age of eligibility for kindergarten[, *where in-*
- 10 *struction is*]; **and**
- 11 **(c)** Provided in any of the following settings: [*Home, hospitals, institutions, special schools,*
- 12 *classrooms, and community child care or preschool settings, or both.*]
- 13 **(A) The home, a hospital, an institution, a special school, a classroom or a community**
- 14 **child care setting;**
- 15 **(B) A preschool; or**
- 16 **(C) A combination of a setting described in subparagraph (A) of this paragraph and a**
- 17 **preschool.**
- 18 (6) “Early intervention services” means services for preschool children with disabilities from
- 19 birth until three years of age that are:
- 20 (a) Designed to meet the developmental needs of children with disabilities and the needs of the
- 21 family related to enhancing the child’s development;
- 22 (b) Selected in collaboration with the parents; and
- 23 (c) Provided:
- 24 (A) Under public supervision;
- 25 (B) By personnel qualified in accordance with criteria established by rules of the State Board
- 26 of Education; and
- 27 (C) In conformity with an individualized family service plan.
- 28 (7) “Individualized education program” means a written statement of an educational program for
- 29 a child with a disability that is developed, reviewed and revised in a meeting in accordance with
- 30 criteria established by rules of the State Board of Education for each child eligible for special edu-
- 31 cation and related services under this chapter.
- 32 (8) “Individualized family service plan” means a written plan of early childhood special educa-
- 33 tion, related services, early intervention services and other services developed in accordance with
- 34 criteria established by rules of the State Board of Education for each child eligible for services un-
- 35 der this chapter.
- 36 (9) “Instruction” means providing families with information and skills that support the achieve-
- 37 ment of the goals and outcomes in the child’s individualized family service plan and working with
- 38 preschool children with disabilities in one or more of the following developmental areas:
- 39 **(a)** Communication development[,];
- 40 **(b)** Social or emotional development[,];
- 41 **(c)** Physical development, including vision and hearing[,];
- 42 **(d)** Adaptive development; and
- 43 **(e)** Cognitive development.
- 44 (10) “Mediation” means a voluntary process in which an impartial mediator assists and facili-
- 45 tates two or more parties to a controversy in reaching a mutually acceptable resolution of the

1 controversy and includes all contacts between a mediator and any party or agent of a party, until
2 such time as a resolution is agreed to by the parties or the mediation process is terminated.

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

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

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

10 (14) "Preschool child with a disability" means a child from:

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

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

18 (15)(a) "Related services" means transportation and such developmental, corrective and other
19 supportive services as are required to assist a child with a disability to benefit from special educa-
20 tion, [*and includes*] **including:**

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

22 (B) Interpreting services[,];

23 (C) Psychological services[,];

24 (D) Physical and occupational therapy[,];

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

26 (F) Social work services[,];

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

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

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

31 (J) Orientation and mobility services[,];

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

33 (L) Parent counseling and training.

34 (b) "Related services" does not include a medical device that is surgically implanted or the re-
35 placement of a medical device that is surgically implanted.

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

39 (17) "Service coordination" means the activities carried out by a service coordinator to assist
40 and enable a preschool child with a disability and the child's family to receive the rights, procedural
41 safeguards and services that are authorized under the state's early intervention and early childhood
42 special education programs and to coordinate access to other services designated on the individ-
43 ualized family service plan.

44 (18)[(a)] "Special education" means specially designed instruction **that is provided** at no cost
45 to [*the parents,*] **parents** to meet the unique needs of a child with a disability[, *including*

1 *instruction*]. **“Special education” includes instruction that:**

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

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

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

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

14 **SECTION 2.** ORS 343.065 is amended to read:

15 343.065. (1) The Superintendent of Public Instruction shall employ personnel qualified by training
 16 and experience to supervise the types of services required by the special programs authorized by
 17 this chapter. Personnel so employed shall assist the school districts, county and regional facilities,
 18 early childhood special education programs, early intervention services and hospitals in the organ-
 19 ization and development of special programs authorized by this chapter, shall have general super-
 20 vision of such programs, and shall assist school districts, early childhood special education and early
 21 intervention contractors in obtaining required services, equipment and materials, particularly where
 22 the number of children is too small to justify district or contractor purchase of equipment and ma-
 23 terials.

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

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

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

32 **SECTION 4.** **This 2009 Act being necessary for the immediate preservation of the public**
 33 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
 34 **on its passage.**