

(To Resolve Conflicts)

B-Engrossed
Senate Bill 170

Ordered by the House June 24
Including Senate Amendments dated June 8 and House Amendments
dated June 24 to resolve conflicts

Sponsored by Senator KRUSE (Presession filed.)

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.

Requires Department of Education to be responsible for payment of costs of education of students in eligible day treatment program or eligible residential treatment program by contracting with school district in which program is located. Directs school district in which program is located to ensure education is provided to student in program.

First applies to 2011-2012 school year.

Declares emergency, effective July 1, 2011.

A BILL FOR AN ACT

1
2 Relating to education; creating new provisions; amending ORS 326.575, 327.023, 343.243 and 343.961;
3 repealing sections 75 and 77, chapter ___, Oregon Laws 2011 (Enrolled House Bill 2100); and
4 declaring an emergency.

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

6 **SECTION 1.** ORS 343.961 is amended to read:

7 343.961. [(1) *The Department of Education shall be responsible for payment of the cost of the edu-*
8 *cation in programs with which the Oregon Health Authority or Oregon Youth Authority contracts for*
9 *long-term care or treatment. Programs eligible for such education shall be in accordance with criteria*
10 *adopted by rule by the State Board of Education.*]

11 [(2) *The Department of Education shall be responsible for payment of the costs of such education*
12 *by contract with the school district, excluding transportation, care, treatment and medical expenses. The*
13 *resident district shall provide transportation to pupils enrolled in programs under ORS 430.715 who*
14 *live at home but require day treatment. The payments may be made to the school district or, at the*
15 *discretion of the school district, to the district providing the education, as set forth in subsection (3)*
16 *of this section, from the funds appropriated for the purpose.*]

17 [(3) *The school district in which the agency is located is responsible for providing the education*
18 *directly or through an adjacent school district or through the education service district in which the*
19 *program is located or one contiguous thereto. The instruction may be given in facilities of such districts*
20 *or in facilities provided by such agency.*]

21 **(1) As used in this section:**

22 **(a) "Day treatment program" means a public or private program that provides treatment**
23 **of children with a mental illness, an emotional disturbance or another mental health issue.**

24 **(b) "Eligible day treatment program" means a day treatment program with which the**

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 **Oregon Health Authority contracts for long term care or treatment. “Eligible day treatment**
2 **program” does not include residential treatment programs or programs that provide care or**
3 **treatment to juveniles who are in detention facilities.**

4 (c) **“Eligible residential treatment program” means a residential treatment program with**
5 **which the Oregon Health Authority or the Oregon Youth Authority contracts for long term**
6 **care or treatment. “Eligible residential treatment program” does not include psychiatric day**
7 **treatment programs or programs that provide care or treatment to juveniles who are in de-**
8 **tention facilities.**

9 (d) **“Residential treatment program” means a public or private residential program that**
10 **provides treatment of children with a mental illness, an emotional disturbance or another**
11 **mental health issue.**

12 (e) **“Student” means a child who is placed in an eligible day treatment program or eligible**
13 **residential treatment program by a public or private entity or by the child’s parent.**

14 (2) **The Department of Education shall be responsible for payment of the costs of educa-**
15 **tion of students in eligible day treatment programs and eligible residential treatment pro-**
16 **grams by contracting with the school district in which the eligible day treatment program**
17 **or eligible resident treatment program is located. The costs of education do not include**
18 **transportation, care, treatment or medical expenses.**

19 (3)(a) **The school district in which an eligible day treatment program or eligible residen-**
20 **tial treatment program is located is responsible for providing the education of a student,**
21 **including the identification, location and evaluation of the student for the purpose of deter-**
22 **mining the student’s eligibility to receive special education and related services.**

23 (b) **A school district that is responsible for providing an education under this subsection**
24 **may provide the education:**

25 (A) **Directly or through another school district or an education service district; and**

26 (B) **In the facilities of an eligible day treatment program or eligible residential treatment**
27 **program, the facilities of a school district or the facilities of an education service district.**

28 (c) **When a student is no longer in an eligible day treatment program or eligible resi-**
29 **dential treatment program, the responsibilities imposed by this subsection terminate and**
30 **become the responsibilities of the school district where the student is a resident, as deter-**
31 **mined under ORS 339.133 and 339.134.**

32 (4) *[The]* **A school district may request the Department of Education to combine several [*private***
33 ***agency school*] eligible day treatment programs or eligible residential treatment programs into**
34 **one contract with [*a school district, an adjacent school district*] another school district or an edu-**
35 **cation service district.**

36 (5) **The Oregon Health Authority or the Oregon Youth Authority shall give the school district**
37 **providing the education at [*a*] an eligible day treatment program or an eligible residential**
38 **treatment program 14 days’ notice before a student is dismissed from the [*treatment*] program.**

39 (6) **The Department of Education may make advances to [*such school district*] school districts**
40 **responsible for providing an education to students under this section from funds appropriated**
41 **[*therefor*] for that purpose based on the estimated agreed cost of educating the [*pupils*] students**
42 **per school year. Advances equal to 25 percent of [*such*] the estimated cost may be made on Sep-**
43 **tember 1, December 1 and March 1 of the current year. The balance may be paid whenever the full**
44 **determination of cost is made.**

45 (7) **School districts [*which*] that provide the education described in this section on a year-round**

1 plan may apply for 25 percent of the funds appropriated [*therefor*] **for that purpose** on July 1, Oc-
2 tober 1, January 1, and 15 percent on April 1. The balance may be paid whenever the full determi-
3 nation of cost is made.

4 (8) In addition to the payment methods described in this section, the Department of Education
5 may:

6 (a) Negotiate interagency agreements to pay for the cost of education in **day treatment pro-**
7 **grams and residential** treatment programs operated under the auspices of the State Board of
8 Higher Education; and

9 (b) Negotiate intergovernmental agreements to pay for the cost of education in **day treatment**
10 **programs and residential** treatment programs operated under the auspices of the Oregon Health
11 and Science University Board of Directors.

12 **SECTION 2. The amendments to ORS 343.961 by section 1 of this 2011 Act first apply to**
13 **the 2011-2012 school year.**

14 **SECTION 3.** ORS 343.243 is amended to read:

15 343.243. (1) Each school year, the Department of Education shall receive an amount, as calcu-
16 lated under this section, from the State School Fund to pay the costs of educating children in pro-
17 grams under ORS 343.261, 343.961 and 346.010.

18 (2) To meet the requirements of ORS 343.261, the department shall receive from the State School
19 Fund an amount that is equal to the product of the following:

20 (a) The average net operating expenditure per student of all school districts during the preced-
21 ing school year; and

22 (b) The number of slots available for students in the hospital programs under ORS 343.261, as
23 determined by the department for the school year.

24 (3) To meet the requirements of ORS 343.961, the department shall receive from the State School
25 Fund an amount that is equal to the product of the following:

26 (a) The average net operating expenditure per student of all school districts during the preced-
27 ing school year; and

28 [*(b) The number of slots available for students in long-term care and treatment programs under*
29 *ORS 343.961, as reported to the Department of Education by the Department of Human Services and*
30 *the Oregon Youth Authority for the school year.*]

31 **(b) The number of slots available for all students in eligible day treatment programs and**
32 **eligible residential treatment programs under ORS 343.961 for the school year, as determined**
33 **by the Department of Education based on information received from the Department of Hu-**
34 **man Services, the Oregon Health Authority, the Oregon Youth Authority and eligible day**
35 **treatment programs and eligible residential treatment programs.**

36 (4) To meet the requirements of ORS 346.010, the Department of Education shall receive from
37 the State School Fund an amount that is equal to the product of the following:

38 (a) The average net operating expenditure per student of all school districts during the preced-
39 ing school year; and

40 (b) The resident average daily membership of students enrolled in a program under ORS 346.010
41 for one-half of the school day or more, exclusive of preschool children covered by ORS 343.533.

42 (5) The children covered by this section shall be enumerated in the average daily membership
43 of the district providing the instruction but the district may not accrue credit for days' attendance
44 of such children for the purpose of distributing state school funds.

45 (6) The liability of a district shall not exceed the amount established under this section even if

1 the child is otherwise subject to ORS 336.575 and 336.580.

2 (7) The department shall credit amounts received from the State School Fund under this section
3 to the appropriate subaccount in the Special Education Account.

4 **SECTION 4.** ORS 326.575 is amended to read:

5 326.575. (1) Within 10 days of a student's seeking initial enrollment in a public or private school
6 or when a student is placed in a state institution, other than an institution of post-secondary edu-
7 cation, or a [*private agency*] **day treatment program, residential treatment program**, detention
8 facility or youth care center, the school, institution, [*agency*] **program**, facility or center shall notify
9 the public or private school or the institution, [*agency*] **program**, facility or center in which the
10 student was formerly enrolled and shall request the student's education records.

11 (2) Subject to ORS 339.260, any public or private school, state institution, [*private agency*] **day**
12 **treatment program, residential treatment program**, detention facility or youth care center re-
13 ceiving the request described in subsection (1) of this section shall transfer all student education
14 records relating to the particular student to the requesting school, institution, [*agency*] **program**,
15 facility or center no later than 10 days after the receipt of the request. The education records shall
16 include any education records relating to the particular student retained by an education service
17 district.

18 (3) Notwithstanding subsections (1) and (2) of this section, for students who are in substitute
19 care programs:

20 (a) A school, institution, [*agency*] **program**, facility or center shall notify the school, institution,
21 [*agency*] **program**, facility or center in which the student was formerly enrolled and shall request
22 the student's education records within five days of the student seeking initial enrollment; and

23 (b) Any school, institution, [*agency*] **program**, facility or center receiving a request for a
24 student's education records shall transfer all student education records relating to the particular
25 student to the requesting school, institution, [*agency*] **program**, facility or center no later than five
26 days after the receipt of the request.

27 (4) Each educational institution that has custody of the student's education records shall annu-
28 ally notify parents and eligible students of their right to review and propose amendments to the
29 records. The State Board of Education shall specify by rule the procedure for reviewing and pro-
30 posing amendments to a student's education records. If a parent's or eligible student's proposed
31 amendments to a student's education records are rejected by the educational institution, the parent
32 or eligible student shall receive a hearing on the matter. The State Board of Education shall specify
33 by rule the procedure for the hearing.

34 (5) As used in this section:

35 (a) **"Day treatment program" means a program described in ORS 343.961.**

36 [(a)] (b) "Detention facility" has the meaning given that term in ORS 419A.004.

37 [(b)] (c) "Educational institution" means a public or private school, education service district,
38 state institution, [*private agency*] **day treatment program, residential treatment program** or
39 youth care center.

40 [(c)] "Private agency" means an agency with which the Department of Education contracts under
41 ORS 343.961.]

42 (d) **"Residential treatment program" means a program described in ORS 343.961.**

43 [(d)] (e) "Substitute care program" has the meaning given that term in ORS 339.133.

44 [(e)] (f) "Youth care center" means a center as defined in ORS 420.855.

45 **SECTION 5.** ORS 327.023 is amended to read:

1 327.023. In addition to those moneys distributed through the State School Fund, the Department
2 of Education shall provide from state funds appropriated therefor, grants in aid or support for spe-
3 cial and compensatory education programs including:

4 (1) The Oregon School for the Deaf.

5 (2) Medicaid match for administration efforts to secure Medicaid funds for services provided to
6 children with disabilities.

7 (3) Hospital programs for education services to children who are hospitalized for extended pe-
8 riods of time or who require hospitalization due to severe disabilities as described in ORS 343.261.

9 (4) [*Private agency programs*] **Day treatment programs and residential treatment programs**
10 for education services to children who are placed by the state in long term care or treatment fa-
11 cilities as described in ORS 343.961.

12 (5) Regional services provided to children with low-incidence disabling conditions as described
13 in ORS 343.236.

14 (6) Early childhood special education provided to preschool children with disabilities from age
15 three until age of eligibility for kindergarten as described in ORS 339.185, 343.035, 343.041, 343.055,
16 343.065, 343.157 and 343.455 to 343.534.

17 (7) Early intervention services for preschool children from birth until age three as described in
18 ORS 339.185, 343.035, 343.041, 343.055, 343.065, 343.157 and 343.455 to 343.534.

19 (8) Evaluation services for children with disabilities to determine program eligibility and needs
20 as described in ORS 343.146.

21 (9) Education services to children residing at state hospitals.

22 (10) Disadvantaged children program under ORS 343.680.

23 (11) Early childhood education under ORS 329.228 and 329.235.

24 (12) Child development specialist program under ORS 329.255.

25 (13) Youth care centers under ORS 420.885.

26 (14) Staff development and mentoring.

27 (15) Career and technical education grants.

28 (16) Special science education programs.

29 (17) Talented and Gifted children program under ORS 343.391 to 343.413.

30 **SECTION 6. If House Bill 2100 becomes law and House Bill 2281 does not become law,**
31 **section 75, chapter __, Oregon Laws 2011 (Enrolled House Bill 2100) (amending ORS 343.243),**
32 **is repealed.**

33 **SECTION 7. If House Bill 2100 becomes law and House Bill 2281 does not become law,**
34 **section 77, chapter __, Oregon Laws 2011 (Enrolled House Bill 2100) (amending ORS 343.961),**
35 **is repealed and ORS 343.961, as amended by section 1 of this 2011 Act, is amended to read:**

36 343.961. (1) As used in this section:

37 (a) "Day treatment program" means a public or private program that provides treatment of
38 children with a mental illness, an emotional disturbance or another mental health issue.

39 (b) "Eligible day treatment program" means a day treatment program with which the Oregon
40 Health Authority contracts for long term care or treatment. "Eligible day treatment program" does
41 not include residential treatment programs or programs that provide care or treatment to juveniles
42 who are in detention facilities.

43 (c) "Eligible residential treatment program" means a residential treatment program with which
44 the Oregon Health Authority, **the Department of Human Services** or the Oregon Youth Authority
45 contracts for long term care or treatment. "Eligible residential treatment program" does not include

1 psychiatric day treatment programs or programs that provide care or treatment to juveniles who
2 are in detention facilities.

3 (d) "Residential treatment program" means a public or private residential program that provides
4 treatment of children with a mental illness, an emotional disturbance or another mental health issue.

5 (e) "Student" means a child who is placed in an eligible day treatment program or eligible res-
6 idential treatment program by a public or private entity or by the child's parent.

7 (2) The Department of Education shall be responsible for payment of the costs of education of
8 students in eligible day treatment programs and eligible residential treatment programs by con-
9 tracting with the school district in which the eligible day treatment program or eligible [*resident*]
10 **residential** treatment program is located. The costs of education do not include transportation, care,
11 treatment or medical expenses.

12 (3)(a) The school district in which an eligible day treatment program or eligible residential
13 treatment program is located is responsible for providing the education of a student, including the
14 identification, location and evaluation of the student for the purpose of determining the student's
15 eligibility to receive special education and related services.

16 (b) A school district that is responsible for providing an education under this subsection may
17 provide the education:

18 (A) Directly or through another school district or an education service district; and

19 (B) In the facilities of an eligible day treatment program or eligible residential treatment pro-
20 gram, the facilities of a school district or the facilities of an education service district.

21 (c) When a student is no longer in an eligible day treatment program or eligible residential
22 treatment program, the responsibilities imposed by this subsection terminate and become the re-
23 sponsibilities of the school district where the student is a resident, as determined under ORS 339.133
24 and 339.134.

25 (4) A school district may request the Department of Education to combine several eligible day
26 treatment programs or eligible residential treatment programs into one contract with another school
27 district or an education service district.

28 (5) The Oregon Health Authority, **the Department of Human Services** or the Oregon Youth
29 Authority shall give the school district providing the education at an eligible day treatment program
30 or an eligible residential treatment program 14 days' notice, **to the extent practicable**, before a
31 student is dismissed from the program.

32 (6) The Department of Education may make advances to school districts responsible for provid-
33 ing an education to students under this section from funds appropriated for that purpose based on
34 the estimated agreed cost of educating the students per school year. Advances equal to 25 percent
35 of the estimated cost may be made on September 1, December 1 and March 1 of the current year.
36 The balance may be paid whenever the full determination of cost is made.

37 (7) School districts that provide the education described in this section on a year-round plan
38 may apply for 25 percent of the funds appropriated for that purpose on July 1, October 1, January
39 1, and 15 percent on April 1. The balance may be paid whenever the full determination of cost is
40 made.

41 (8) In addition to the payment methods described in this section, the Department of Education
42 may:

43 (a) Negotiate interagency agreements to pay for the cost of education in day treatment programs
44 and residential treatment programs operated under the auspices of the State Board of Higher Edu-
45 cation; and

1 (b) Negotiate intergovernmental agreements to pay for the cost of education in day treatment
2 programs and residential treatment programs operated under the auspices of the Oregon Health and
3 Science University Board of Directors.

4 **SECTION 8. If both House Bill 2100 and House Bill 2281 become law, section 1 of this 2011**
5 **Act (amending ORS 343.961) is repealed and ORS 343.961, as amended by section 231, chapter**
6 **___, Oregon Laws 2011 (Enrolled House Bill 2100), is amended to read:**

7 343.961. (1) As used in this section:

8 (a) **“Day treatment program” means a public or private program that provides treatment**
9 **of children with a mental illness, an emotional disturbance or another mental health issue.**

10 (b) **“Eligible day treatment program” means a day treatment program with which the**
11 **Oregon Health Authority contracts for long term care or treatment. “Eligible day treatment**
12 **program” does not include residential treatment programs or programs that provide care or**
13 **treatment to juveniles who are in detention facilities.**

14 [(a)] (c) **“Eligible residential treatment program” means a residential treatment program with**
15 **which the Oregon Health Authority, the Department of Human Services or the Oregon Youth Au-**
16 **thority contracts for long-term care or treatment. “Eligible residential treatment program” does not**
17 **include psychiatric day treatment programs or programs that provide care or treatment to juveniles**
18 **who are in detention facilities.**

19 [(b)] (d) **“Residential treatment program” means a public or private residential program that**
20 **provides treatment of children with a mental illness, an emotional disturbance or another mental**
21 **health issue.**

22 [(c)] (e) **“Student” means a child who is placed in an eligible day treatment program or eli-**
23 **gible residential treatment program by a public or private entity or by the child’s parent.**

24 (2) The Department of Education shall be responsible for payment of the costs of education of
25 students in **eligible day treatment programs and** eligible residential treatment programs by con-
26 tracting with the school district in which the **eligible day treatment program or** eligible residen-
27 tial treatment program is located. The costs of education do not include transportation, care,
28 treatment or medical expenses.

29 (3)(a) The school district in which an **eligible day treatment program or** eligible residential
30 treatment program is located is responsible for providing the education of a student, including the
31 identification, location and evaluation of the student for the purpose of determining the student’s
32 eligibility to receive special education and related services [*under ORS 343.035*].

33 (b) A school district that is responsible for providing an education under this subsection may
34 provide the education:

35 (A) Directly or through another school district or an education service district; and

36 (B) In the facilities of an **eligible day treatment program or** eligible residential treatment
37 program, **the facilities of** a school district or **the facilities of** an education service district.

38 (c) When a student is no longer in an **eligible day treatment program or** eligible residential
39 treatment program, the responsibilities imposed by this subsection terminate and become the re-
40 sponsibilities of the school district where the student is a resident, as determined under ORS 339.133
41 and 339.134.

42 (4) A school district may request the Department of Education to combine several **eligible day**
43 **treatment programs or** eligible residential treatment programs into one contract with another
44 school district or an education service district.

45 (5) The Oregon Health Authority, the Department of Human Services or the Oregon Youth Au-

1 thority shall give the school district providing the education at **an eligible day treatment program**
2 **or** an eligible residential treatment program 14 days' notice, to the extent practicable, before a
3 student is dismissed from the program.

4 (6) The Department of Education may make advances to school districts responsible for provid-
5 ing an education to students under this section from funds appropriated for that purpose based on
6 the estimated agreed cost of educating the students per school year. Advances equal to 25 percent
7 of the estimated cost may be made on September 1, December 1 and March 1 of the current year.
8 The balance may be paid whenever the full determination of cost is made.

9 (7) School districts that provide the education described in this section on a year-round plan
10 may apply for 25 percent of the funds appropriated for that purpose on July 1, October 1, January
11 1, and 15 percent on April 1. The balance may be paid whenever the full determination of cost is
12 made.

13 (8) In addition to the payment methods described in this section, the Department of Education
14 may:

15 (a) Negotiate interagency agreements to pay for the cost of education in **day treatment pro-**
16 **grams and** residential treatment programs operated under the auspices of the State Board of Higher
17 Education; and

18 (b) Negotiate intergovernmental agreements to pay for the cost of education in **day treatment**
19 **programs and** residential treatment programs operated under the auspices of the Oregon Health
20 and Science University Board of Directors.

21 **SECTION 9.** If both House Bill 2100 and House Bill 2281 become law, section 2 of this 2011
22 Act is amended to read:

23 **Sec. 2.** The amendments to ORS 343.961 by section [1] 8 of this 2011 Act first apply to the
24 2011-2012 school year.

25 **SECTION 10.** **This 2011 Act being necessary for the immediate preservation of the public**
26 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
27 **July 1, 2011.**

28