

Enrolled Senate Bill 3

Sponsored by Senators COURTNEY, EDWARDS; Senators BATES, DEVLIN, ROSENBAUM (at the request of Libby Crawford and Katey Crawford) (Presession filed.)

CHAPTER

AN ACT

Relating to persons with intellectual disability; creating new provisions; amending ORS 343.035, 343.923, 346.015 and 346.035; 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*] **Intellectual disability**;
- (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 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; and

(c) Provided in any of the following settings:

(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, 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 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) "Special education" means specially designed instruction that is provided at no cost to parents to meet the unique needs of a child with a disability. "Special education" includes instruction that:

(a) May be conducted in the classroom, the home, a hospital, an institution, a special school or another setting; and

(b) May involve physical education services, speech-language services, transition services or other related services designated by rule 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 343.923 is amended to read:

343.923. The Department of Education shall:

(1) Pursuant to rules of the State Board of Education, require that programs for students with moderate to severe [*retardation*] **intellectual disabilities** meet program standards.

(2) Supply the Department of Human Services with information, on forms developed by the Department of Human Services, concerning all students with moderate to severe [*retardation*] **intel-**

lectual disabilities who are 15 years of age and older, which the Department of Human Services needs to serve and plan for their transition to adult living and work situations.

[(3) Implement programs for students with moderate to severe retardation under ORS 343.236 in a manner that continues the pattern of services in neighborhood and community schools which existed on July 1, 1985.]

SECTION 3. ORS 346.015 is amended to read:

346.015. (1) Prior to convening a meeting to prepare an individual education plan for a child with [*mental retardation*] **an intellectual disability** or a developmental disability for whom placement at the school operated under ORS 346.010 may be considered, the agency that is providing the education for the child shall notify the local community developmental disabilities program. The case manager responsible for programs for children with [*mental retardation*] **intellectual disabilities** or developmental disabilities, in consultation with the Department of Human Services, shall evaluate whether the child also has needs for alternative residential care or other support services. If the evaluation determines this to be the case, but documents that community resources are not available to meet these needs, the school district may proceed with the meeting to prepare the individual education plan in which placement at the school operated under ORS 346.010 may be considered.

(2) An agency providing education under subsection (1) of this section may initiate the procedure in subsection (1) of this section for any child who does not have [*mental retardation*] **an intellectual disability** or a developmental disability when in the agency's judgment a treatment or residential issue is prompting proposed placement under ORS 346.010.

(3) A child may not be placed in the school operated under ORS 346.010 unless the district superintendent or the superintendent's designee has signed a statement declaring that the district cannot provide a free appropriate public education for the child commensurate with the needs of the child as identified by the individual education plan of the child and that the school is the least restrictive environment in which the child can be educated.

(4) By rule, the State Board of Education shall determine procedures to be followed by local education agencies in carrying out this section.

SECTION 4. ORS 346.035 is amended to read:

346.035. For a child who is enrolled under ORS 346.010 and who has [*mental retardation*] **an intellectual disability** or a developmental disability, the Department of Education shall notify the community developmental disabilities program of the date of the annual review of the individual education plan of the child for the purpose of including in the review the assigned case manager's assessment of community resources that are available for treatment or residential needs the child might have.

SECTION 5. For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel may substitute for words designating "retardation" or "mental retardation," wherever they occur in ORS chapters 326 to 353, other words designating "intellectual disability."

SECTION 6. (1) An individualized education program may not use the words "retardation" or "mental retardation" to refer to a child with an intellectual disability.

(2) If an individualized education program developed, reviewed or revised before, on or after the effective date of this 2011 Act uses the words "retardation" or "mental retardation," those words shall be substituted with other words designating "intellectual disability" wherever those words occur in the individualized education program.

SECTION 7. This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.

Passed by Senate March 31, 2011

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 16, 2011

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Received by Governor:

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Approved:

.....M,....., 2011

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2011

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Kate Brown, Secretary of State