

# Senate Bill 3

Sponsored by Senator COURTNEY; Senators BATES, DEVLIN, ROSENBAUM (Pre-session 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 **as introduced**.

Modifies terminology in education statutes for persons with intellectual disability. Requires individualized education programs to use new terminology.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to persons with intellectual disability; creating new provisions; amending ORS 343.035,  
3 343.923, 346.015 and 346.035; and declaring 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*] **Intellectual disability**;
- 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;
- 31 (D) Social or emotional development; or

**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 (E) Adaptive development; or
- 2 (b) A disability, in accordance with criteria established by rules of the State Board of Education,
- 3 that can be expected to continue indefinitely and is likely to cause a substantial delay in a child's
- 4 development and ability to function in society.
- 5 (5) "Early childhood special education" means instruction that is:
- 6 (a) Free, appropriate and specially designed to meet the unique needs of a preschool child with
- 7 a disability;
- 8 (b) Provided from three years of age until the age of eligibility for kindergarten; and
- 9 (c) Provided in any of the following settings:
- 10 (A) The home, a hospital, an institution, a special school, a classroom or a community child care
- 11 setting;
- 12 (B) A preschool; or
- 13 (C) A combination of a setting described in subparagraph (A) of this paragraph and a preschool.
- 14 (6) "Early intervention services" means services for preschool children with disabilities from
- 15 birth until three years of age that are:
- 16 (a) Designed to meet the developmental needs of children with disabilities and the needs of the
- 17 family related to enhancing the child's development;
- 18 (b) Selected in collaboration with the parents; and
- 19 (c) Provided:
- 20 (A) Under public supervision;
- 21 (B) By personnel qualified in accordance with criteria established by rules of the State Board
- 22 of Education; and
- 23 (C) In conformity with an individualized family service plan.
- 24 (7) "Individualized education program" means a written statement of an educational program for
- 25 a child with a disability that is developed, reviewed and revised in a meeting in accordance with
- 26 criteria established by rules of the State Board of Education for each child eligible for special edu-
- 27 cation and related services under this chapter.
- 28 (8) "Individualized family service plan" means a written plan of early childhood special educa-
- 29 tion, related services, early intervention services and other services developed in accordance with
- 30 criteria established by rules of the State Board of Education for each child eligible for services un-
- 31 der this chapter.
- 32 (9) "Instruction" means providing families with information and skills that support the achieve-
- 33 ment of the goals and outcomes in the child's individualized family service plan and working with
- 34 preschool children with disabilities in one or more of the following developmental areas:
- 35 (a) Communication development;
- 36 (b) Social or emotional development;
- 37 (c) Physical development, including vision and hearing;
- 38 (d) Adaptive development; and
- 39 (e) Cognitive development.
- 40 (10) "Mediation" means a voluntary process in which an impartial mediator assists and facili-
- 41 tates two or more parties to a controversy in reaching a mutually acceptable resolution of the
- 42 controversy and includes all contacts between a mediator and any party or agent of a party, until
- 43 such time as a resolution is agreed to by the parties or the mediation process is terminated.
- 44 (11) "Order" has the meaning given that term in ORS chapter 183.
- 45 (12) "Other services" means those services which may be provided to preschool children with

1 disabilities and to their families that are not early childhood special education or early intervention  
2 services and are not paid for with early childhood special education or early intervention funds.

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

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

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

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

14 (15)(a) "Related services" means transportation and such developmental, corrective and other  
15 supportive services as are required to assist a child with a disability to benefit from special educa-  
16 tion, including:

17 (A) Speech-language and audiology services;

18 (B) Interpreting services;

19 (C) Psychological services;

20 (D) Physical and occupational therapy;

21 (E) Recreation, including therapeutic recreation;

22 (F) Social work services;

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

25 (H) Early identification and assessment of disabilities in children;

26 (I) Counseling services, including rehabilitation counseling;

27 (J) Orientation and mobility services;

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

29 (L) Parent counseling and training.

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

32 (16) "School district" means a common or union high school district that is charged with the  
33 duty or contracted with by a public agency to educate children eligible for special education.

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

39 (18) "Special education" means specially designed instruction that is provided at no cost to  
40 parents to meet the unique needs of a child with a disability. "Special education" includes instruc-  
41 tion that:

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

44 (b) May involve physical education services, speech-language services, transition services or  
45 other related services designated by rule to be services to meet the unique needs of a child with a

1 disability.

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

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

7 **SECTION 2.** ORS 343.923 is amended to read:

8 343.923. The Department of Education shall:

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

11 (2) Supply the Department of Human Services with information, on forms developed by the De-  
12 partment of Human Services, concerning all students with moderate to severe [*retardation*] **intel-**  
13 **lectual disabilities** who are 15 years of age and older, which the Department of Human Services  
14 needs to serve and plan for their transition to adult living and work situations.

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

18 **SECTION 3.** ORS 346.015 is amended to read:

19 346.015. (1) Prior to convening a meeting to prepare an individual education plan for a child  
20 with [*mental retardation*] **an intellectual disability** or a developmental disability for whom place-  
21 ment at the school operated under ORS 346.010 may be considered, the agency that is providing the  
22 education for the child shall notify the local community developmental disabilities program. The  
23 case manager responsible for programs for children with [*mental retardation*] **intellectual disabili-**  
24 **ties** or developmental disabilities, in consultation with the Department of Human Services, shall  
25 evaluate whether the child also has needs for alternative residential care or other support services.  
26 If the evaluation determines this to be the case, but documents that community resources are not  
27 available to meet these needs, the school district may proceed with the meeting to prepare the in-  
28 dividual education plan in which placement at the school operated under ORS 346.010 may be con-  
29 sidered.

30 (2) An agency providing education under subsection (1) of this section may initiate the proce-  
31 dure in subsection (1) of this section for any child who does not have [*mental retardation*] **an in-**  
32 **tellectual disability** or a developmental disability when in the agency’s judgment a treatment or  
33 residential issue is prompting proposed placement under ORS 346.010.

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

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

41 **SECTION 4.** ORS 346.035 is amended to read:

42 346.035. For a child who is enrolled under ORS 346.010 and who has [*mental retardation*] **an**  
43 **intellectual disability** or a developmental disability, the Department of Education shall notify the  
44 community developmental disabilities program of the date of the annual review of the individual  
45 education plan of the child for the purpose of including in the review the assigned case manager’s

1 assessment of community resources that are available for treatment or residential needs the child  
2 might have.

3 **SECTION 5.** For the purpose of harmonizing and clarifying statutory law, the Legislative  
4 Counsel may substitute for words designating “retardation” or “mental retardation,” wher-  
5 ever they occur in ORS chapters 326 to 353, other words designating “intellectual  
6 disability.”

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

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

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

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