



September 2014

Inside this Brief

- **History of Special Education**
- **Why is Special Education an Issue?**
- **How Many Oregon Students Qualify for Special Education Services?**
- **Special Education in Oregon**
- **Early Intervention/Early Childhood Special Education (EI/ECSE)**
- **Special Residential Programs**
- **Hospital Programs**
- **Funding Special Education**
- **State Advisory Council for Special Education**
- **Special Education Initiatives**
- **Staff and Agency Contacts**

Legislative Committee Services
State Capitol Building
Salem, Oregon 97301
(503) 986-1813

Background Brief on ...

Special Education

Special education refers to the system that organizes the provision of education for students with disabilities. The system consists of administrative structures, a body of case law and statutes, legal processes, and specialized educational delivery systems.

For each student identified as having a disability and eligible for special education services, an Individualized Education Program (**IEP**) must be prepared by a special education committee. The IEP is legally required to include the child's teacher, a school district representative, someone familiar with the evaluation process used, and the child's parents. Under certain circumstances, the student may also participate in development of the IEP.

History of Special Education

Prior to 1973, individual states and some local school boards had laws, policies, and regulations covering the education of children with special needs. Many children were taught in general education classrooms where they failed to thrive. Little attention was given to students' special needs. Some were put into classes for the "retarded" and some were institutionalized. Children in wheelchairs were often forbidden admission to neighborhood schools due to perceived fire hazards. Some students with severe disabilities were kept at home when school districts refused to serve them.

In the late 1960s, parents and advocates of children with special needs joined to protest the lack of services for disabled students. In 1971, the Pennsylvania Association for Retarded Citizens sued for equal access to public education on behalf of 14 children with intellectual disabilities. The lawsuit, *The PARC v. Commonwealth of Pennsylvania*, was decided by the United States District Court for the Eastern District of Pennsylvania

on behalf of plaintiffs, and granted children with developmental disabilities the right to a free public education and became a precedent for future cases. The same year, the *Mills v. Board of Education* case won similar guarantees for children with disabilities in Washington, D.C.

These cases, along with other federal and state cases and an energized disabled community, inspired passage of the Vocational Rehabilitation Act in 1973. The Act codifies a number of civil rights for people with disabilities, and the portion of the Act addressing special education is commonly known as Section 504. It states that institutions receiving federal funds cannot exclude people with disabilities. Rights of individuals with disabilities were further codified in 1975 with the passage of the Education for All Handicapped Children Act (**EAHC**) was passed. This legislation and its accompanying regulations most importantly guaranteed all school-aged children a “free, appropriate, public education” in the “least restrictive environment.”

The EAHC was succeeded by and renamed the Individuals with Disabilities Education Act (**IDEA**) in 1990. IDEA amplifies and clarifies state and local responsibility for educating children with disabilities by detailing the requirements for identification, evaluation, and rights of children with disabilities. Additionally, the law grants parents significant influence over the educational programs of their children.

The reauthorized and amended IDEA was signed into law in December, 2004. The law addresses improved communication in disputes with parents, increased flexibility in IEPs, and placed increased focus on transitions from high school. In addition, it aims to better coordinate special education requirements with the No Child Left Behind Act (**NCLB**). Requirements linking special education to the general curriculum and to statewide testing programs were clarified. One identified challenge has been to align the two laws’ very different philosophical approaches, with NCLB’s focus on all children and IDEA’s focus on children with disabilities.

Why Is Special Education an Issue?

Expense:

When Congress enacted federal laws requiring special education, the federal funds appropriated were inadequate to cover the costs. Because the services are mandated costs for districts, special education services are a priority.

The costs for a single high-needs special education student can be very difficult for a small school district to absorb. Adding to the expense resulting from increasing special education enrollment, the court-ordered list of services that schools must provide for students with disabilities has also increased. For instance, the Supreme Court ruled that schools must pay for any medical services—except those provided by a medical doctor—needed for a disabled child to attend school. When the federal law was enacted, it was expected that federal funds would pay up to 40 percent of the excess costs; the current share of Oregon’s total costs, just exceeds half of the amount anticipated by the law, even with federal IDEA funds available under the federal American Recovery and Reinvestment Act of 2009.

Parental Advocacy:

A National Council on Disability report found evidence of states ignoring the federal law leaving enforcement to parents who must invoke formal complaint procedures and request due process hearings to obtain the services and supports to which their children are entitled. Some parents believe that state departments of education are biased on the side of school districts in the dispute resolution process, leading to adversarial and tense relationships between parents and school personnel. Current data in Oregon indicates a record low request for formal court hearings and an increased request for less formal resolutions such as complaint investigations and mediations.

Lack of trained specialists:

The Oregon Teacher Standards and Practices Commission (**TSPC**), the body entrusted to license teachers, historically has reported a chronic shortage of special education teachers. Special education teachers acknowledge that

state and federal paperwork requirements and other non-instructional issues are driving many from the field and discouraging others from entering it.

Over-identification of students needing special services:

Concerns have been raised that some students might be misidentified as disabled, such as children with behavioral problems, those who were never taught to read, and English language learners. Some suspect schools over-identify special education students to gain additional funding, while others question why a higher percentage of minority students are identified for special education.

How Many Oregon Students Qualify for Special Education Services?

In the 2009-2010 school year, the Oregon Department of Education (ODE) found 13 percent of Oregon students qualified for some form of special education service. The percentage of special education students has grown steadily as indicated below.

School Age Special Education Students

2004	2005	2006	2007	2008
71,393	70,824	71,834	72,051	72,838
2009	2010	2011	2012	2013
73,449	74,099	74,430	74,796	75,374

The number of Oregon students receiving special education services through the IDEA has increased from 54,952 in 1992-1993 to 75,374 in 2012-2013. Oregon has experienced fluctuations in the total school-age population over the last several years.

Special Education in Oregon

The ODE oversees the delivery of special education services to children through a number of education programs and investigates written complaints alleging violations of federal special education law.

How the Process Works

1. Parents, school personnel, or students request evaluation for eligibility for services.

If a school district refuses, it must give requesters notice of their rights.

2. Evaluation is conducted and reviewed.
3. If services are denied, the requester may ask for an independent evaluation at district expense.
4. If all agree that services are appropriate, the IEP is developed. The IEP lists any special services the child needs and includes goals the child is expected to achieve in one year.
5. When parents and school districts disagree, they may ask for an impartial hearing to resolve issues. Mediation must also be available.

Early Intervention/Early Childhood Special Education (EI/ECSE)

Children from birth to age three may receive early intervention services for delays in any one of a number of developmental areas, including cognitive, physical, communication, self-help, and psycho-social development. In addition, for very young children, eligibility for services may be determined on the basis of medical diagnosis of a condition likely to result in developmental delay.

Early childhood special education is available for children from three years to entry into public kindergarten who have disabilities that range from mild to severe. Need for services are based on identification of developmental delays or conditions such as vision impairment, intellectual disability, or autism. Services a child may receive include evaluation, speech therapy, physical therapy, vision and hearing services, and assistive technology.

Local school districts are responsible for identifying pre-school age children in need of services. The ODE contracts with education service districts to supply those services.

Special Residential Programs

Providence Child Center is a residential pediatric nursing facility that offers educational services located in Portland. It can accommodate a maximum of 58 students. House Bill 4009 (2014) made ODE responsible for education of

students at that facility and created a distinct funding stream for the facility.

The Oregon School for the Deaf (**OSD**) was established by the Legislative Assembly in 1870 as a residential program for students aged 5 to 21 who are deaf or hard of hearing. Placement at OSD is initiated by the school district in conjunction with regional services staff when the needs and services as described in the child's IEP cannot be provided locally.

The Oregon School for the Blind (**OSB**) was established by the Legislative Assembly in 1873 and served students with visual impairments whose educational needs exceeded those which a local school district and regional programs could provide. House Bill 2834 (2009) closed the OSB as of September 1, 2009.

Hospital Programs

The primary purpose of hospital programs is to provide instruction to students while they are hospitalized, either short-term or for a longer period. Services for students include tutoring during hospitalization to maintain educational goals, instruction, and related services that emphasize basic school subjects within a regular school curriculum, specially designed instruction as described in an eligible student's IEP, and instruction leading to high school completion. The students at Emanuel Head Injury Unit and Emanuel Acute Care, Shriners, and the Oregon Health & Science University are primarily children hospitalized for acute or chronic medical conditions requiring extended hospital care. The students served at the Oregon State Hospital represent young adults with serious mental health needs or developmental disabilities. The length of stay ranges from as little as 30 days to two or more years.

Funding Special Education

Special education is funded by the state, through the State School Fund (**SSF**), and with federal funds.

State School Fund

Because students with special needs are more costly to educate, the SSF formula double

weights these students. This double weighting has been in effect since the formula was created in 1991, and applies to students with mild learning impairment as well as those with severe disabilities.

The double weight was estimated to be the average cost for these students. School districts may not receive the double weight for more than 11 percent of district students without a waiver from the ODE. This is to inhibit districts from "over identifying" special education students and receiving more state aid than is warranted. However, with the increase in this population, the state average is now about 13.2 percent.

High Cost Disability Grant

Some students with disabilities require costly services, far exceeding their double weighting in the funding formula. Districts may apply for reimbursement for service costs greater than \$30,000 per student. The 2005 Legislative Assembly removed a sunset provision and made the high cost disability grant program permanent.

Federal Funds

The Maintenance of Effort requirement in the IDEA of 2004 obliges each district to meet the documentation standard of expending local and state funds for special education at the same or higher level expended the previous year. This requirement ensures that IDEA, Part B funds are used to supplement and not supplant local, state, and other federal funds. To demonstrate compliance, each district in Oregon submits certified annual expenditure reports to the ODE. An independent audit firm, under ODE contract, reviews the special education expenditure portions of these reports. The ODE must also demonstrate Maintenance of Effort each biennium.

State Advisory Council for Special Education

The State Advisory Council for Special Education (**SACSE**) was created to review aspects of statewide programs in special education and advise the State Board of Education on unmet needs. Membership

includes: individuals with disabilities; parents or guardians of children or youth with disabilities; educators; state and local education officials; administrators of programs for children; and youth with disabilities and other persons associated with or interested in special education. A majority of members must be individuals with disabilities or parents of children with disabilities.

Special Education Initiatives

In an effort to support districts in providing special education services for students, the ODE has focused on four primary initiatives:

1. Response to Intervention as a systematic way to assess student performance, design learning strategies, and refer only those students not making progress to special education;
2. Positive Behavior Support as a systematic way to determine behavioral expectations and to assure that the proper special education behavior support gets to those students who need it the most;
3. Autism Model Classrooms, pre-K-12, are being created statewide to address the service and training needs of students with autism and their families. By creating statewide direct support to students, families, and teachers, the need to move closer to services will be eliminated and families will be able to receive the necessary support in their communities; and
4. Scaling Up is a systemic district level management of implementing evidence based practices. Training includes school district leadership teams on how to ensure fidelity and sustainability of instructional practices. Oregon is one of three states selected for this work.

Staff and Agency Contacts

Richard Donovan
Legislative Committee Services
richard.donovan@state.or.us
503-986-1503

Sarah Drinkwater
Assistant Superintendent
[Oregon Department of Education](#)
503-947-5702

Sarah Drinkwater, Department of Education, assisted with the development of this document.

Committee Services provides centralized, non-partisan research and issue analysis for the Legislative Branch. Committee Services does not provide legal advice. Background Briefs are intended to give the reader a general understanding of a subject, and are based on information which is current as of the date of publication. Legislative, executive, and judicial actions subsequent to publication may affect the timeliness of the information.