



Disability Rights Oregon

TO: House Committee on Education
FROM: Disability Rights Oregon
DATE: February 5, 2024
RE: **HB 4079 - Support**

Chair Neron, Vice-Chairs Hudson and Wright and Members of the Committee,

My name is Ben Gurewitz, I am a public policy advocate for Disability Rights Oregon. Disability Rights Oregon wants to thank Chair Neron for bringing forward this important piece of legislation. In Oregon, the State School Fund provides an extra weight for students who qualify for special education, which is two times the per student funding level. However, school districts will not receive additional funding for more than 11% of a school district's population.

The Individuals with Disabilities Education Act (IDEA) requires that School Districts identify and locate students who need special education services and provide them with the appropriate services. 42 USC 1412(a)(3); 34 CFR 300.111. School districts have a core legal obligation to identify, to locate, and to evaluate any student they suspect may need special education services. School districts and other educational providers may not simply wait for students or their families to seek special education assistance.

The Current Fiscal Scheme, Arbitrarily Capping Funds for Students in Special Education at 11% of the Student Body, Frustrates Efforts to Make Sorely Needed Improvements in Special Education

According to the US Department of Education, the national average of students with disabilities was 15% in 2022, and in Oregon the statewide percentage of students with disabilities was consistent with the national average at 15%.¹ Based on this data alone, if each school district's special education funding is capped that level designated for providing special education services to 11% of students, we know that at least 19,000 students (about the seating capacity of Madison Square Garden) statewide are not receiving funding to support the special education services that they are entitled to.²

¹ Or. Dep't Ed., *Statewide Annual Report Card, School Year 2022-23*, at 76 available at <https://www.oregon.gov/ode/schools-and-districts/reportcards/Documents/rptcd2023.pdf>.

² 11% of the statewide student population in 2022-23 would be 60,762, but school districts reported 79,998 students enrolled in special education in that year.

Disability Rights Oregon is concerned that once a school district has reached the 11% cap in special education enrollment, districts no longer have an incentive to go out of their way to fulfill IDEA requirement to identify and assess students for having a disability, even if there are students who exhibit signs of having a disability. Over time, there has been a continuous increase in identification of students in Special Education. In the wake of the pandemic, there has been a dramatic uptick in the need for mental and behavioral health services. Schools must fulfill their responsibility of identifying students and getting them the services that students are entitled to.

An arbitrary funding limit, recognizing no students in special education as in need of services beyond the 11% mark, likely violates numerous provisions of federal special education law. For instance, a state funding program may use criteria that create financial incentives to place children in more restrictive environments. *See, e.g.*, 20 U.S.C.A. § 1412(a)(5)(B)(i); 34 CFR 300.114(b). School districts lacking funding to support students with disabilities may choose to find cheaper, more restrictive options in dealing with students in special education. For instance, a school might illegally choose to suspend or remove a student with high needs from school, if it faces budget challenges in paying for greater staffing to support the needs of students with disabilities. In 2018, an investigation by the United States Department of Education concluded that a similar policy in the State of Texas which instituted an 8% special education cap, violated federal law.

Increased, Necessary Funding to School Districts Must Be Paired with Greater Accountability for Success for Students with Disabilities

For too long, little has been given to school districts, and little has been demanded from them. DRO wants to encourage this body to continue to think through how the Oregon Department of Education can continue to monitor the flow of funding and ensure that districts are appropriately spending special education funding on services that directly impact students. We must ensure that with increased funding, the Department of Education must hold the district accountable for providing high quality special education services that enable all students to reach their fullest potential.

In repeated audits of the Department of Education, the Secretary of State's office routinely notes that students with disabilities are poorly served by local school districts and that ODE's supervision of school districts is typically ineffective. Local school district "services generally do not meet ODE's standards of adequacy to address children's needs."³ "[A] lack of intervention by ODE, despite significant problems at the school and district level, has been a larger problem than infringement on local control."⁴ ODE's supervision of school districts has "not gone beyond checkbox oversight of" districts. *Id.*

³ Or. Sec. of State, Report 2020-24, ODE Can Better Support Students Experiencing Disabilities Through Improved Coordination and Monitoring of Services, June 2020, at <http://records.sos.state.or.us/ORSOSWebDrawer/Recordhtml/7359912>.

⁴ Or. Sec. of State, Report 2022-16, State Leaders and Policymakers Must Address Persistent System Risks to Improve K-12 Equity and Student Success, May 2022, at 5 available at <http://records.sos.state.or.us/ORSOSWebDrawer/Recordhtml/8794669>

The Legislature should explore strong steps to ensure that this badly needed funding is used to benefit students with disabilities, to improve special education offerings, and that district-level compliance with the basic legal requirements improves. Prior spending efforts by the Legislature that contained highly flexible standards around earmarked spending often resulted in uses of new funding that had little to do with benefiting students with disabilities.

About Disability Rights Oregon

Since 1977 Disability Rights Oregon has been the State's Protection and Advocacy System.⁵ We are authorized by Congress to protect, advocate, and enforce the rights of people with disabilities under the U.S. Constitution and Federal and State laws, investigate abuse and neglect of people with disabilities, and "pursue administrative, legal, and other appropriate remedies".⁶ We are also mandated to "educate policymakers" on matters related to people with disabilities.⁷

If you have any questions regarding DRO's position on this legislation, please call Ben Gurewitz at 971-806-7908 or email him at bgureiwtz@droregon.org.

⁵ See ORS 192.517.

⁶ See 42 U.S.C. § 15041 et seq; 42 U.S.C. § 10801 et seq.

⁷ See 42 U.S. Code § 15043(a)(2)(L).