

Re: HB 4079 provision to remove 11% cap for special education funding.

Dear Chair Neron, Vice-Chairs Hudson and Wright, and Education Committee members,

I testified before this committee last year regarding concerns over the passage and implementation of SB819 and the impacts on the special education system. I submit this testimony again with concerns over the impacts the legislature may have on the system of special education in this state.

I agree in principle with the removal of the 11% funding cap for the double-basic school support of special education students. However, I would ask the committee to carefully consider the consequences if this were enacted without any incentive for districts to provide rigorous early intervening services to prevent the unnecessary entry into special education, that was of significant concern to lawmakers during the last reauthorization of IDEA, or without consideration for the difficulty in staffing special education regardless of funding levels.

- Removing the 11% cap will result in districts and school teams referring and identifying more students with disabilities. States vary widely in their identification rates, largely a result of funding formula differences, not the real disability rate in the population. In some states where funding is based on the disability category a student is identified in, the predictable pattern is that more students are subsequently found eligible in the categories that receive more money from the state. <https://www.azed.gov/sites/default/files/2023/04/SPEDFundingApril2023.pdf>
- Some statements have been made suggesting that we should remove the cap because it won't harm a student if they don't actually have a disability since they are getting "the help they need." The actual science does not support this, unless you already have privilege. While factors in what impacts a student positively or negatively are complex, research evidence indicates that placing a student in special education when the student does not actually have a disability is both a strain on limited system resources and can be harmful to the student. It also negatively impacts the most disadvantaged students disproportionately. [*Claire Raj, The Misidentification of Children with Disabilities: A Harm With No Foul, 48 Ariz. L. J. 373 \(2016\).*](#)
- School psychologists in Oregon are the primary evaluators responsible for the disability categories that comprise nearly 75% of eligible students (specific learning disability, emotional behavior disability, other health impairment and autism spectrum disorder). There are only a few hundred school psychologists serving half a million students in the K-12 general population in Oregon. With those numbers, even a 5 or 10% increase in evaluations and eligibility decisions would be overwhelming to the system. It's important to remember that not all referred and evaluated students qualify for special education, but the 15-20 hours each evaluation may take is still done. I would encourage you to get numbers from the department of education on the percentage of students who were referred and either not evaluated, or referred for initial evaluation and did not qualify.

I would urge the committee to consider additional and alternative strategies or protections to avoid these potential negative outcomes if the cap is removed. These would include:

- Incentives and flexibility for school districts to utilize funds to provide early intervening services (aka MTSS or multi-tiered systems of support) in the effort to prevent movement to higher-intensity and higher-cost services such as special education. This can also improve the probability a student will qualify if they are referred and evaluated for special education later,

when the impact on educational performance despite interventions and the need for ongoing specialized services has already been demonstrated.

- Consider strategies to increase recruitment and retention of special educators, including school psychologists, speech and language pathologists, occupational and physical therapists, assistive technology specialists, autism specialists and others. Oregon has some of the lowest pay rates for these professionals compared to other western states.
- Work with ODE to roll back some of the most significant bureaucratic requirements Oregon placed on special educators. Oregon has some of the most prescriptive evaluation, eligibility and IEP requirements of all western states. This forces teams to focus more on procedural requirements and system inputs, than on effective services and student outcomes.

Thank you in advance for your considerations in this matter,

Justin Potts, MS NCSP

School Psychologist 1999-Present

Learning Specialist, Marion County Juvenile Dept. 1994-1999

Former President of the Oregon School Psychologists Association