

## Special Education Services in Harrisburg School District

We are proud of the quality of special education services that are provided in Harrisburg School District (HSD). Highly qualified, committed, and talented teachers, para-professionals, and administrators serve students with disabilities in the district. Our special education program is carefully coordinated with the general education program, as well as other services such as English Learner (EL) and Title 1 programs. The following underlying assumptions guide the organization and provision of special education in the district:

1. Special education is a service that should be brought to students in the typical environments in which they would be educated if they did not have a disability.
2. Students with disabilities should have exposure to the rich curricular, instructional, and social opportunities of the general education system.
3. Students with disabilities should be held to rigorous academic standards.
4. Families are essential partners in making educational decisions for students.
5. Accountability for meaningful progress is an essential component of all special education programs.

Nearly all students with disabilities in HSD are educated at their home schools. They receive a full range of appropriate special education and related services, both in the general education setting and in pull out small groups or individual instruction. A very small number of students are educated in specialized programs. This system of inclusive education is dependent upon strong working relationships between general and special education and full support from building administrators.

HSD reviews and revises its special education manual annually to ensure district policy and practice is aligned to state and federal requirements and to assist district personnel in understanding and implementing IDEA 2004 with integrity.

The manual is divided into 16 sections. Each section corresponds to a major content area in the special education process. Section 1 contains the Organization of Support Services available for all Children who attend our schools. Section 2 contains the federal and state definitions of key language in IDEA; with additional definitions found within specific sections, when appropriate, to provide further clarification of a content area. Sections 3 through 16 contain the legal requirements found in Oregon Administrative Rule (based on federal regulations), and district interpretation and guidance to assist with implementation of the legal requirements. Each section also identifies required district forms and resources to further support district personnel in the implementation of the special education process.

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## **Section 1: Organization of Support Services for all Children**

Harrisburg School District is committed to providing supports that enable all students to make significant academic progress. Throughout the district, teams of teachers work together to organize instruction in core academic areas to provide students with appropriate instruction. The progress of students who are struggling is monitored frequently and instruction is adjusted based on need. Support programs such as English Learner (EL) programs, Title I, extended academic programs, and literacy interventions are aligned so that students in need of additional instruction are identified early and are provided with differentiated instruction.

Harrisburg Elementary School monitors student's academic progress for reading, math and behavior through an RTI model consisting of Tier I, Comprehensive Core Instructions, Tier II, Comprehensive Core Instruction Differentiation (with progress monitoring) and Tier III, Targeted Instruction Intervention (with progress monitoring). See resource section of manual for RTI model K-5.

Harrisburg Middle School and Harrisburg High School monitors student progress through the Student Support Team (SST). Students may be referred to the SST team by a classroom teacher, school counselor, and/or parent. The SST team may include the student's classroom teacher(s), school counselor, special education teacher and parent. The school counselor facilitates the SST process. The SST team reviews the student's academic and behavioral concerns and discusses the options available to assist the student success in school. If the team determines that the student should be referred for a special education evaluation, the special education teacher become the case manager and begins the initial evaluation process.

\* For specific information regarding the pre-referral referral process and the Special Education Comprehensive Evaluation process, please see the Policy and Procedure manual.

## Section 2: IDEA/OAR Definitions

Oregon Administrative Rule (OAR) definitions assist district personnel and parents in understanding special education terminology used in IDEA. Several of the previous definitions found in regulation and rule were revised with the reauthorization of IDEA in 2004 and additional terminology was defined for the first time. District personnel should review the definitions listed below to ensure they have a clear understanding of the terminology and can assist parents in understanding the special education process.

### 581-015-2000 Definitions:

- (1) "**Adult student**" is a student for whom special education procedural safeguard rights have transferred as described in OAR 581-015-2325.
- (2) "**Assistive technology device**" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.
- (3) "**Assistive technology service**" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:
  - (a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
  - (b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
  - (c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
  - (d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
  - (e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and
  - (f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.
- (4) "**Children with disabilities**" or "students with disabilities" means children or students who require special education because of: autism; communication disorders; deafblindness; emotional disturbances; hearing impairments, including deafness; intellectual disabilities; orthopedic impairments; other health impairments; specific learning disabilities; traumatic brain injuries; or visual impairments, including blindness.
  - (a) "**Autism**" means a developmental disability that includes persistent deficits in social communication and social interactions across multiple contexts; restricted, repetitive patterns of behavior, interests, or activities. Characteristics are generally evident before age three, but many not become fully evident until social demands exceed limited capacities, or may be masked by learned strategies. Characteristics cause educationally and developmentally significant impairment in social, occupational, or other important areas of current functioning. The term does not apply if a child's educational performances adversely affected primarily because the child has an emotional disturbance. However a child who qualifies for special education under the category of autism spectrum disorder may also have an emotional disturbance as a secondary disability if the child meets the criteria under emotional disturbance. The term "Autism Spectrum Disorder" is equivalent to the term "autism" used in ORS343.035 and in 34 CFR §300.8.
  - (b) "**Communication Disorder**" means the impairment of speech articulation, voice, fluency, or the impairment or deviant development of language comprehension and/or expression, or the impairment of the use of a spoken or other symbol system that adversely affects educational performance. The language impairment may be manifested by one or more of the following components of language: morphology, syntax, semantics, phonology, and pragmatics.
  - (c) "**Deafblindness**" means having both hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that the child cannot be accommodated in special education programs designed solely for students having hearing or visual impairments
  - (d) "**Emotional Disturbance**" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

- (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors;
  - (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
  - (C) Inappropriate types of behavior or feelings under normal circumstances;
  - (D) A general pervasive mood of unhappiness or depression; or
  - (E) A tendency to develop physical symptoms or fears associated with personal or school problems;
  - (F) The term includes schizophrenia but does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.
- (e) "**Hearing Impairment**" means a hearing condition, whether permanent or fluctuating, that adversely affects a child's educational performance. The term includes those children who are hard of hearing or deaf.
  - (f) "**Intellectual Disability**" means significantly sub average general intellectual functioning, and includes a student whose intelligence test score is two or more standard deviations below the norm on a standardized individual intelligence test, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, and that adversely affects a child's educational performance.
  - (g) "**Orthopedic Impairment**" means a motor disability that adversely affects the child's educational performance. The term includes impairments caused by an anomaly, disease or other conditions (e.g., cerebral palsy, spinal bifida, muscular dystrophy or traumatic injury).
  - (h) "**Other Health Impairment**" means limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment, that:
    - (A) Is due to chronic or acute health problems (e.g. a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, attention deficit disorder, attention deficit hyperactivity disorder, leukemia, Tourette's syndrome or diabetes); and
    - (B) Adversely affects a child's educational performance.
  - (i) "**Specific Learning Disability**" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or do mathematical calculations. Specific learning disability includes conditions such as perceptual disabilities, brain injury, dyslexia, minimal brain dysfunction, and developmental aphasia. The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, intellectual disability, emotional disturbance, or environmental, cultural, or economic disadvantage.
  - (j) "**Traumatic Brain Injury**" means an acquired injury to the brain caused by an external physical force resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term includes open or closed head injuries resulting in impairments in one or more areas, including cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not include brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.
  - (k) "**Visual Impairment**" means a visual impairment that, even with correction, adversely affects a child's educational performance. The term includes those children who are partially sighted or blind.
- (5) "**Consent**" means that:
    - (a) The parent or adult student has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication;
    - (b) The parent or adult student understands and agrees in writing to the carrying out of the activity for which consent is sought; and the consent describes that activity and lists any records that will be released and to whom; and
    - (c) The parent or adult student understands that the granting of consent is voluntary and may be revoked at any time in accordance with OAR 581-015-2090(4) or OAR 581-015-2735.
  - (6) "**Day**" means calendar day unless otherwise indicated as:
    - (a) "Business day," which means Mondays through Fridays, other than holidays; or as
    - (b) "School day," which means any day, including partial days that children are in attendance at school for instructional purposes. The term "school day" has the same meaning for all children in school, including those with and without disabilities.

- (7) "**Department**" means the Oregon Department of Education.
- (8) "**EI/ECSE**" means early intervention/early childhood special education and refers to services or programs for preschool children with disabilities.
- (9) "**Elementary or secondary school or facility**" means a school or facility with any combination of grades K through 12.
- (10) "**Evaluation**" means procedures used to determine whether the child is disabled, and the nature and extent of the special education and related services that the child needs.
- (11) "**General education curriculum**" means the same curriculum as for children without disabilities. For preschool children with disabilities, the term means age-appropriate activities.
- (12) "**Health assessment statement**" means a written statement issued by a nurse practitioner licensed by a State Board of Nursing specially certified as a nurse practitioner, or by a physician assistant licensed by a State Board of Medical Examiners. Both a nurse practitioner and a physician assistant must be practicing within his or her area of specialty.
- (13) "**Homeless children**" (or "homeless youth") has the same meaning as in section 725 of the McKinney-Vento Act, 42 USC § 11434a(2).
- (14) "**Identification**" means the process of determining a child's disability and eligibility for special education and related services.
- (15) "**Individualized Education Program**" (IEP) means a written statement of an educational program which is developed, reviewed, revised and implemented for a school-aged child with a disability.
- (16) "**Individualized Family Service Plan**" (IFSP) is defined in OAR 581-051-2700.
- (17) "**Limited English proficient**" has the same meaning as in the Elementary and Secondary Education Act, 20 USC § 9101(25).
- (18) "**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 a time as a resolution is agreed to by the parties or the mediation process is terminated.
- (19) "**Medical statement**" means a written statement issued by a physician licensed by a State Board of Medical Examiners.
- (20) "**Native language**", when used with respect to a person who is limited English proficient, means the language normally used by that person or, in the case of a child, the language normally used by the parent of the child. For an individual with deafness, blindness, deafblindness or no written language, the term means the mode of communication normally used by the person (such as sign language, Braille, or oral communication). In direct contact with a child, the term means the language normally used by the child.
- (21) "**Parent**" means:
- (a) One or more of the following persons:
    - (A) A biological or adoptive parent of the child;
    - (B) A foster parent of the child,
    - (C) A legal guardian, other than a state agency;
    - (D) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or
    - (E) A surrogate parent who has been appointed in accordance with OAR 581-015-2320, for school-age children, or OAR 581-015-2760 for preschool children.
  - (b) Except as provided in subsection (c), if more than one party is qualified under subsection (a) to act as a parent and the biological or adoptive parent is attempting to act as the parent, the biological or adoptive parent is presumed to be the parent unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.
  - (c) If a judicial decree or order identifies a specific person under subsection (a) to act as the parent of a child or to make educational decisions on behalf of a child, then that person will be the parent for special education purposes.
- (22) "**Participating agency**" means a state or local agency, other than the school district responsible for a student's education that is financially and legally responsible for providing transition services to the student.
- (23) "**Personally identifiable**" means information that includes, but is not limited to:
- (a) The name of the child, the child's parent or other family member;

- (b) The address of the child;
  - (c) A personal identifier, such as the child's social security number or student number; and
  - (d) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.
- (24) "**Placement**" means educational placement, not social service placement by a state agency.
- (25) "**Preschool child**" means "preschool child with a disability" as defined under OAR 581-015-2700.
- (26) "**Private school**" means an educational institution or agency not operated by a public agency.
- (27) "**Public agency**" means a school district, an education service district, a state agency or institution, EI/ECSE contractor or subcontractor, responsible for early intervention, early childhood special education or special education.
- (28) "**Related services**" includes transportation and such developmental, corrective and other supportive services as are required to assist a child with a disability to benefit from special education, and includes orientation and mobility services, speech language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation including therapeutic recreation, school health services and school nurse services, counseling services, including rehabilitation counseling services, social work services in schools, parent counseling and training, school health services and medical services for diagnostic or evaluation purposes, and includes early identification and assessment of disabling conditions in children. This definition incorporates the exception for services for children with surgically implanted devices, including cochlear implants, in 34 CFR 300.34(b) and the definitions for individual related services in 34 CFR 300.34(c).
- (29) "**School age child or children**" means a child or children who have reached 5 years of age but have not reached 21 years of age on or before September 1 of the current school year.
- (30) "**School district**" means the public education agency (school district, ESD, or state agency) that is responsible by statute, rule or contract for providing education to children with disabilities.
- (31) "**Services plan**" is defined in OAR 581-015-2450.
- (32) "**Short term objectives**" means measurable intermediate performance steps that will enable parents, students and educators to gauge, at intermediate times during the year, how well the child is progressing toward the annual goals by either:
- (a) Breaking down the skills described in the goal into discrete components, or
  - (b) Describing the amount of progress the child is expected to make within specified segments of the year.
- (33) "**Special education**" means specially designed instruction that is provided at no cost to the 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 to be services to meet the Unique needs of a child with a disability.
- (34) "**Specially designed instruction**" means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction:
- (a) To address the unique needs of the child that result from the child's disability; and
  - (b) To ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children.
- (35) "**Supplementary aids and services**" means aids, services and other supports that are provided in regular education classes or other education-related settings and in extracurricular and nonacademic settings to enable children with disabilities to be educated with children without disabilities to the maximum extent appropriate.
- (36) "**Superintendent**" means the State Superintendent of Public Instruction or the designee of the State Superintendent of Public Instruction.
- (37) "**Surrogate parent**" means an individual appointed under OAR 581-015-2320 for school age children or OAR 581-015-2760 for preschool children who acts in place of a biological or adoptive parent in safeguarding a child's rights in the special education decision-making process.
- (38) "**Transition services**" means a coordinated set of activities for a student with a disability that:
- (a) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the student to facilitate the

student's movement from school to post school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(b) Is based on the individual student's needs, taking into account the student's preferences and interests; and

(c) Includes:

(A) Instruction;

(B) Related services;

(C) Community experiences;

(D) The development of employment and other post school adult living objectives; and

(E) If appropriate, acquisition of daily living skills and functional vocational evaluation; and

(d) May be special education, if provided as specially designed instruction, or related services, if required to assist a student with a disability to benefit from special education.

(39) "**Ward of the state**" means child who is in the temporary or permanent custody of, or committed to, the Department of Human Services or Oregon Youth Authority through the action of the juvenile court.

### **581-015-2400: Discipline Definitions**

For the purposes of the IDEA Discipline provisions found in OAR 581-015-2400 through 581-015-2445, the following definitions apply:

(1) "**Behavioral intervention plan**" means an individualized plan, including positive interventions, designed to assist a student to decrease inappropriate behavior and increase or teach an alternative appropriate behavior.

(2) "**Current educational placement**" means the type of educational placement of the child as described in the child's "annual determination of placement" document at the time of the disciplinary removal. It does not mean the specific location or school but the type of placement on the continuum of placement options (e.g. regular classroom with support; regular classroom with resource room support; special class; special school; home instruction, etc.).

(3) "**Disciplinary removal**" means suspension, expulsion, or other removal from school for disciplinary reasons, including removals for mental health examinations for students who threaten violence or harm in public schools under ORS 339.250(4)(b)(C). It does not include:

(a) Removals by other agencies;

(b) Removals for public health reasons (e.g. head lice, immunizations, communicable diseases, etc.);

(c) In-school suspensions if the child continues to have access to the general curriculum and to special education and related services as described in the child's IEP, and continues to participate with nondisabled children to the extent they would in their current placement; or

(d) Bus suspensions, unless the student's IEP includes transportation as a related service, the district makes no alternative transportation arrangements for the student, and the student does not attend school as a result of the bus suspension.

(4) "**Functional behavioral assessment**" means an individualized assessment of the student that results in a hypothesis about the function of a student's behavior and, as appropriate, recommendations for a behavior intervention plan.

(5) "**Suspension**" means any disciplinary removal other than expulsion.

### **581-015-2450: Definitions for parentally placed private school children**

For the purposes of OAR 581-015-2450 through 581-015-2515, the following definitions apply:

(1) "**Enrolled in a public school or ECSE program**" means enrolled in, attending, and, for children ages 7 to 18, not exempt from compulsory school attendance as a private school student.

(2) "**IDEA funds**" means federal funds allocated to the public agency under the Individuals with Disabilities Education Act.

(3) "**Private school child with a disability**" means a child with a disability or preschool child with a disability aged 3 to school-age who has been enrolled by a parent in a private school or facility, and who, if aged 7 to 18, is exempt from compulsory school attendance under ORS 339.115.

(a) This term includes school-age children who are exempt from compulsory school attendance under ORS 339.115, even if a school district permits the student to attend one or more classes pursuant to a district policy permitting partial enrollment.

- (b) This term does not include:
- (A) Children three years of age until the age of eligibility for public school who can be provided a free appropriate public education in a private preschool or child care setting selected and paid for by their parents; or
  - (B) Children who are exempt from compulsory school attendance under ORS 339.115 as a home schooled student; or
  - (C) Children who are not of compulsory school attendance age who have rejected public agency services but who are not attending a private school; or
  - (D) Children who are placed in a private school by the public agency.
- (4) "**Private school**" means a private elementary or secondary school or facility, including a private religious school. A preschool is considered a private school under this provision only if it is part of a private elementary or secondary school.
- (4) "**Public agency**" means:
- (a) For school-aged children, the school district where the private elementary or secondary school is located; and
  - (b) For children aged 3 up to school-age, the EI/ECSE contractor where the private elementary school or secondary school is located.
- (5) "**Services plan**" means a written statement that describes the special education and related services the school district will provide to a parentally-placed private school child with a disability who has been designated to receive services, including the location of services and any transportation necessary, consistent with OAR 581-015-2460. Unlike an IEP or IFSP, a service plan does not need to provide a free appropriate public education.

#### **581-015-2540: Definitions for Regional Programs**

The following definitions apply to OAR 581-015-2545 through 581-015-2565 unless otherwise indicated by the context.

- (1) "**Administrative Unit**" means the school district or ESD within each region chosen to operate the regional program through contract with the Department of Education.
- (2) "**Consultation services**" means technical assistance to or conferring with the local education agency and staff or early intervention/early childhood special education providers and staff or families to assist them to provide services to eligible children.
- (3) "**Department**" means the Oregon Department of Education.
- (4) "**Direct services**" means services provided to the child by regional specialists.
- (5) "**Eligible children**" means children with low-incidence, high need disabilities who need the services of the regional program.
- (6) "**Low incidence, high need disabilities**" means one or more of the following categories under OAR 581-015-2130 through 581-015-2180: autism spectrum disorder, deafblindness, hearing impairment, orthopedic impairment, traumatic brain injury, and vision impairment. A child with an orthopedic impairment is eligible for regional services only if determined to be severely orthopedically impaired by his/her eligibility team based on eligibility tool(s) approved by the Department.
- (7) "**Regional program**" means direct or consultative services funded through the Department provided on a single or multi-county basis that assist school districts and early intervention/ early childhood special education providers in meeting the unique needs of eligible children.
- (8) "**Services**" means early intervention services, early childhood special education and/or related services, and special education and/or related services, as defined in 581-015-2700 and OAR 581-015-2000, respectively.
- (9) "**Superintendent**" means the State Superintendent of Public Instruction.

Oregon Administrative Rule (OAR)	District Interpretation and Guidance
<p><b>Section 3: Child Find/ Referral</b></p> <p><b>581-015-2080: Child Find</b></p> <p>(1) The requirements of this rule apply to all children unless they are not longer entitled to a free appropriate public education under OAR 581-015-2040 – OAR 581-015-2050..</p> <p>(2) School districts must identify, locate, and evaluate all resident children with disabilities, regardless of the severity of the disability, who are in need of early intervention, early childhood special education, or special education services including:</p> <p>(a) Highly Mobile children with disabilities (such as migrant and homeless children);</p> <p>(b) Children who are wards of the state;</p> <p>(c) Indian preschool children who reside on reservations;</p> <p>(d) Children who are suspected of having a disability even though they are advancing from grade to grade;</p> <p>(e) Children enrolled in public charter schools;</p> <p>(f) Children who are home schooled;</p> <p>(g) Children below the age of compulsory school attendance who are not enrolled in a public or private school program; and</p> <p>(h) Children above the age of compulsory school attendance who have not graduated with a regular high school diploma.</p> <p>(3) For purposes of this rule, residency is determined in accordance with ORS Chapter 339, except for children enrolled in charter school. Residency for children enrolled in charter schools is determined in accordance with ORS chapter 338. The district in which the charter school is located is responsible for the child find for students enrolled in the charter school regardless of parental resident district.</p> <p>(4) The district in which the private school is located is responsible for conducting the child find activities for all children enrolled in the private school, in accordance with OAR 581-015-2085, regardless of the parental resident district.</p> <p><b>581-015-2085 Child Find for Children attending Private Schools</b></p> <p>(1) Each school district must locate, identify and evaluate all</p>	<p>HSD is obligated under IDEA to identify, locate, and evaluate all infants, preschoolers, and students with disabilities (birth-21) who reside in the district. When a child is located, the district must assist the parent, teacher, or whoever suspects the student has a disability with referral to the appropriate school in the district for consideration for evaluation.</p> <p>It is the responsibility of the district special education director to ensure the special education department in each building is provided information and training regarding guidelines for making referral and how to recognize characteristics of disabilities.</p> <p><b>Who can make a referral?</b></p> <p>Under Child Find, parents, classroom teachers, school administrators, counselors, or other professionals in the community who have a legitimate interest in the welfare of a child can make a referral.</p> <ul style="list-style-type: none"> <li>• <b>Parent initiated referral:</b> Parents have a right to have their child considered for evaluation for special education if they suspect their child has a disability. Most parents however, will need district assistance in understanding how to proceed with this request. This assistance should include explanation of the interventions that can be attempted before making a special education referral. However, interventions should not be presented in a way that might be viewed by the parent as a barrier to a special education evaluation. If a parent requests an evaluation, the team should meet to discuss assessment determination outlined in the SST manual. At the assessment determination meeting a team decision will be determine if a special education evaluation will be conducted or more interventions will be attempted. <i>See Student Support Team Manual for clarification and detailed steps.</i> When there is evidence of a suspected disability from sources such as a physician’s report, previous school report, therapist report, etc., the team should proceed with evaluation planning.</li> <li>• <b>SST team recommendation:</b> A student may be referred by the SST team after group and individual interventions are documented (SST form), in regular education settings, have been attempted over time and determined insufficient to bring about adequate educational or behavioral performance. In these instances, parents should be notified of these interventions.</li> </ul> <p><b>When should a referral be submitted?</b></p> <ol style="list-style-type: none"> <li>1) When a district employee or a parent suspects a disability is preventing a student from benefiting from education, an assessment determination meeting should be held to review all data and requests.</li> <li>2) When a new student enrolls from an out of state school and records in the enrollment process indicates the student has received special education services at a previous school or program. In this situation, the district personnel responsible for enrollment ask the</li> </ol>

Oregon Administrative Rule (OAR)	District Interpretation and Guidance
<p>children with disabilities who are enrolled by their parents in private, including religious, elementary and secondary schools located within the boundaries of the school district.</p> <p>(2) The child find process for parentally-placed private school children must be designed to ensure the equitable participation of parentally-placed private school children with disabilities and an accurate count of such children.</p> <p>(3) The school district's child find activities for parentally-placed private school children must be similar to, and completed within a comparable time period, to child find activities for public school children with disabilities.</p> <p>(4) The cost of implementing child find activities, including individual evaluations, may not be considered in determining whether a school district has met its obligations to spend a proportionate share under OAR 581-015-2470.</p> <p>(5) These child find requirements apply to all parentally-placed private school children, including those children who are residents of another state.</p> <p>(b) Each school district must consult with appropriate representatives of private school children with disabilities on how to carry out these activities, in accordance with OAR 581-015-2480.</p>	<p>parent and/or student whether the student has received special education services in the past. If the parent and/or student indicate the student has received special education services, the district requests documentation of eligibility and service provision from the previous district and notifies the Learning Specialist in the building and the district special education administrative specialist.</p> <p>The Learning Specialist reviews all existing information to assist in creating an appropriate program for the student. Secretaries and counselors should always review enrollment information and act immediately if there is any indication the student may have had any kind of special programming in the past.</p> <p>3) When a child is 5 years old on September 1 and is moving from an Early Childhood Special Education (ECSE) Program, they are considered a new student in the district. The child's eligibility must be checked to see that it meets all the state and federal requirements. <i>NOTE: The ECSE transition to school age District process is explained in detail in the resource section of this manual.</i></p> <p>4) When a variety of interventions have already been implemented and documented in attempt to address the student's difficulties AND the interventions have not succeeded a referral for a special education evaluation should be made. Parents should always be notified and involved in this process.</p> <p><b>To Whom is a Referral Submitted?</b> The referral should be submitted to the district special education department, Special Education Administrative Assistant to the Special Education Director for process and assigning a case manager. If a SST team recommendation or an assessment determination recommendation is submitted, the case-manager invites the parent to an evaluation planning meeting, where the referral for evaluation is considered. <b><u>Under no circumstances should the school "decide" whether to proceed with an evaluation without offering the parent an opportunity to attend the meeting to make this decision.</u></b></p> <p>Upon receipt of a recommendation, the Case Manager or support staff has three immediate tasks:</p> <ol style="list-style-type: none"> <li>1. Start a file on the student and collect all existing data to be considered by the team;</li> <li>2. Schedule and send out meeting notice to all team members, including the parents, for the evaluation planning meeting;</li> <li>3. Provide the parent with the Parents Rights for Special Education handbook.</li> </ol> <p>The Case Manager is the main contact for the parent throughout this process.</p> <p>Team decisions must be documented in writing using <i>the Evaluation Planning documents and the Prior Notice of Special Education Action</i> form or the <i>Prior Notice About Evaluation /</i></p>

Oregon Administrative Rule (OAR)	District Interpretation and Guidance
	<p><i>Consent for Evaluation</i> form plus any other needed forms for an evaluation. All requirements for Prior Notice apply, including the provision of fully informing the parent's of their Procedural Safeguard rights.</p> <p><b>What happens next?</b>  The evaluation planning team determines:</p> <ul style="list-style-type: none"> <li>• <u>Sufficient data/ No need for evaluation or special education action required at this time:</u> There is <b>sufficient</b> existing data documenting, but <b>no</b> evidence of need for evaluation for special education at this time. The Case Manager provides the parents <i>Prior Notice of Special Education Action</i> documenting the team's decision and organizes all information gathered on the student as part of the referral into a file for storage with other inactive files in the building. This file should remain easily accessible should the student be referred again at a later time.</li> <li>• <u>Sufficient data/ Special education action required at this time:</u> There is <b>sufficient</b> existing data determined by the team to be a current measure of the student's ability and performance that <b>meets all</b> eligibility criteria for a suspected disability and eligibility determination can be made, (rarely can this level of decision making occur at this point in time). An example would be if a student moved into the district with a recent evaluation and eligibility from another district with similar RTI program to HSD, or a student transitions from ECSE to school age programs with a current evaluation and eligibility in any disability category other than Developmental Delay.</li> <li>• <u>Insufficient data/ evaluation for special education required:</u> There is <b>insufficient</b> existing data determined by the team to be a current measure of the student's ability and performance and there is documented evidence of the <b>need for evaluation for special education at this time</b>. The team plans the evaluation through the <i>Evaluation Planning forms</i> and <i>Prior Notice about Evaluation / Consent for Evaluation</i> is completed (see the Evaluation section of this manual). The Case Manager must ensure that all assessments that will be conducted are documented on the consent form or Student Assessment form. <ul style="list-style-type: none"> <li>○ If parent consent is obtained at the evaluation planning meeting the team may begin evaluation (and the <i>60 school day timeline begins</i>).</li> <li>○ If consent is not obtained at the meeting, the Case Manager is responsible for following up with the parent to obtain written consent (and <i>the 60 school day timeline begins the date the parent signs consent</i>).</li> </ul> </li> </ul> <p><u>It is important to ensure that assessment does not begin until written consent has been obtained.</u> If the parent refuses to grant consent for initial evaluation, or does not respond to the districts request for consent, the district may, but is not required to, pursue the evaluation through due process or mediation. Contact the Special Education Director if this occurs.</p>

Oregon Administrative Rule (OAR)	District Interpretation and Guidance
	<p><b>What data may be used?</b>            Data collected prior to referral may be considered by the team when deciding there is either the need to further evaluate <u>or</u> that no further evaluation is necessary prior to determining if the student is eligible for special education. The IDEA specifies that the team may use information gathered during screening of all children, information gathered as part of regular instructional and curriculum planning, (which may include data from interventions conducted), and scores from the Statewide Assessment. Such data, as well as a student's documented progress in different educational programs or interventions may be very helpful in making an eligibility decision. Using this data is preferable to conducting standardized measures that may not contribute new or important information for decision making.</p>
<p><b>Required district forms:</b> The forms listed below are required at certain times or for certain actions as part of Child Find and referral for special education process. Not all forms will be required for every student. District forms may be printed from the district website or obtained from the special education staff in each building.</p> <ul style="list-style-type: none"> <li>• <i>SST team form</i></li> <li>• <i>SST File Review form</i></li> <li>• <i>Evaluation Planning</i></li> <li>• <i>OT/PT referral form;</i></li> <li>• <i>Notice of Team Meeting</i></li> <li>• <i>Minutes of Evaluation Planning Meeting;</i></li> <li>• <i>Prior Notice about Evaluation/ Consent for Evaluation;</i></li> <li>• <i>Student Assessment List</i></li> <li>• <i>Prior Notice of Special Education Action;</i></li> <li>• <i>Prior Notice and Consent for Initial Provision of Special Education;</i></li> <li>• <i>Eligibility Determination (by disability);</i></li> <li>• <i>Parents Rights for Special Education Handbook;</i></li> <li>• <i>Authorized for Release of Information form</i></li> <li>• <i>LBL-ESD Service Request</i></li> </ul>	

## Section 4: Evaluation

### 581-015-2100 Responsibility for Evaluation and Eligibility Determination

- (1) For school-age children, school districts and juvenile and adult corrections education programs are the public agencies responsible for evaluating children and determining their eligibility for special education services.
- (2) For preschool children,
  - (a) School districts are responsible for the eligibility evaluations of children for EI/ECSE services.
  - (b) Designated referral and evaluation agencies are responsible for determining the eligibility of children for EI/ECSE services.
  - (c) EI/ECSE programs are responsible for conducting any necessary evaluations other than for eligibility determination.

### 581-015-2105 Evaluation and Reevaluation Requirements

- (1) General: A public agency must conduct an evaluation or reevaluation process in accordance with this rule and 581-015-2110 before:
  - (a) Determining that a child is a child with a disability under OAR 581-015-2130 through 581-015-2180;
  - (b) Determining that a child continues to have a disability under OAR 581-015-2130 through 581-015-2180;
  - (c) Changing the child's eligibility, or
  - (d) Terminating the child's eligibility as a child with a disability, unless the termination is due to graduation from high school with a regular diploma or exceeding the age of eligibility for a free appropriate public education under OAR 581-015-2045.
- (2) Request for initial evaluation: Consistent with the consent requirements in OAR 581-015-2090, a parent or public agency may initiate a request for an initial evaluation to determine if a child is a child with a disability.
- (3) When initial evaluation must be conducted:
  - (a) An initial evaluation must be conducted to determine if a child is eligible for special education services when a public agency suspects or has reason to suspect that:
    - (A) The child has a disability that has an adverse impact

Evaluation is a process that must occur at specific times in the special education process. Under IDEA, HSD is responsible for ensuring the evaluation AND eligibility determination process is completed for all resident school-age children who have been referred for special education and related services.

HSD is also responsible for ensuring the evaluation process is completed for all resident children who have been referred for EI/ECSE services. The district meets this obligation through direct referral to the Linn-Benton-Lincoln ESD. The ESD conducts evaluation on behalf of the district for EI/ECSE age children, (birth to age 5).

The *purpose of evaluation* is to determine if the child is a child with a disability and to determine the educational needs of the child. The *focus of the evaluation* is on the student and the difficulties the student is having in school. While it is required that all criteria for the disability category being considered are addressed, this should not be the sole function of the evaluation process. It is equally important to gather comprehensive information regarding a child's educational needs for the purpose of program planning.

It is very important to understand that when we conduct an evaluation, it is an evaluation of a child—the whole child and all aspects of the child's functioning as they relate to the student's performance in school. If you find yourself saying "we are doing an LD evaluation" (or ID, Autism, or any other disability category), then the team has lost sight of the multiple purposes of the evaluation.

#### When is the district required to complete the evaluation process?

The district is required to complete the evaluation process prior to:

- Determining initial eligibility;
- Determining continuing eligibility;
- Changing a child's eligibility, (even if prior to the three year reevaluation timeline);
- Terminating eligibility, unless the termination is due to graduation from high school with a regular diploma or exceeding the age of eligibility for FAPE;
- If the district determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or ,
- If the child's parents or teacher requests a reevaluation.

The evaluation planning process must occur at least once every three. A review of existing information is required. The review of existing information, determined by the team, must be a current measure of the child's ability and performance that meets the required criteria for the disability or disabilities being considered.

Evaluation must be completed prior to providing special education and related services, unless

- on the child's educational performance; and
- (B) The child may need special education services as a result of the disability.
- (b) The public agency must designate a team to determine whether an initial evaluation will be conducted.
- (A) The team must include the parent and at least two professionals, at least one of whom is a specialist knowledgeable and experienced in the evaluation and education of children with disabilities.
- (B) The team may make this decision without a meeting. If a meeting is held, parents must be invited to participate in accordance with OAR 581-015-2190.
- (4) **Reevaluation:**
- (a) The public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with OAR 581-015-2115, subject to subsection (b) and OAR 581-015-2110(2):
- (A) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
- (B) If the child's parents or teacher requests a reevaluation.
- (b) A reevaluation for each child with a disability:
- (A) May occur not more than once a year, unless the parent and public agency agree otherwise; and
- (B) Must occur at least every three years, unless the parent and public agency agree that a reevaluation is unnecessary.
- (5) **Summary of Achievement and Performance:** For a student whose eligibility terminates due to graduation with a regular diploma or exceeding the age of eligibility, a school district must provide the student with a summary of the student's academic achievement and functional performance, including recommendations on how to assist the student in meeting the student's postsecondary goals.

**581-015-2110: General Evaluation and Reevaluation Procedures**

(1) Evaluation planning. Before conducting any evaluation or reevaluation, the public agency must conduct evaluation planning in accordance with OAR 581-015-2115.

the student has transferred into the school district with a current eligibility. There are different procedural requirements for students who move into the district from *within state* than for students who move into the district *from another state*. Complete directions for implementing these procedures are found on pages 60-61 of this manual.

**Is the evaluation process different for initial, continuing, changing, and/or terminating eligibility?**

No, the process is the same.

**What is the evaluation process?**

Evaluation is an individual student-level data collection process which includes:

- Evaluation planning; including gathering and preparing summaries of data that existed prior to referral;
- Prior Written Notice;
- Further assessment, if determined necessary, within the required timeline;
- Writing evaluation reports; and
- Preparation for Eligibility Determination.

**What is evaluation planning?**

Evaluation planning is the first step in the evaluation process. It begins with a meeting to review ALL existing information in the students file, including evaluations and information provided by the parents of the child. It should include review of current classroom-based, local, or state assessments, and classroom-based observations by teachers and related services providers.

The district team responsible for this review is the IEP team with the added requirements that one person is a specialist who is knowledgeable about the needs, evaluation, and education of children with the suspected disability, and one person qualified to conduct individual, diagnostic testing. Parents must be given the opportunity to participate in this meeting.

In addition:

- If a student is an English Learner, an EL teacher must be a member of the evaluation team;
- If a student is being considered for the low incidence disability categories of Hearing Impairment or Vision Impairment, the regional program must be included as a member on the evaluation team;
- If a student is being considered for Orthopedic Impairment, the district (Cascade Regional Program) OT/PT specialists must be included on the evaluation planning team; and,

- (2) Notice and consent.
- (a) Before conducting any evaluation or reevaluation, the public agency must provide notice to the parent in accordance with OAR 581-015-2310 that describes any evaluation procedures the agency proposes to conduct as a result of the evaluation planning process.
  - (b) Before conducting any evaluation or reevaluation, the public agency must obtain informed written consent for evaluation in accordance with OAR 581-015-2090 and 581-015-2095.
  - (c) If the public agency refuses an evaluation or reevaluation requested by the parent, the public agency must provide the parent with prior written notice under OAR 581-015-2310.
  - (d) Parents may challenge the public agency's refusal to conduct a reevaluation under OAR 581-015-2345.
- (3) Conduct of evaluation. In conducting the evaluation, the public agency must:
- (a) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent that may assist in determining:
    - (A) Whether the child is a child with a disability under OAR 581-015-2130 through OAR 581-015-2180; and
    - (B) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);
  - (b) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and
  - (c) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
- (4) Other evaluation procedures. Each public agency must ensure that:
- (a) Assessments and other evaluation materials used to assess a child under this part:
    - (A) Are selected and administered so as not to be discriminatory on a racial or cultural basis;
    - (B) Are provided and administered in the child's native

- If a student is being considered for Emotional Disturbance, Traumatic Brain Injury, or Intellectual Disability, the school psychologist from EECC may be included as a member on the evaluation team or for TBI, the TBI specialist from Cascade Regional Programs; In any of these instances, a team member may fill more than one role on the team, if qualified.

This team review should result in a determination of whether additional assessment is needed to determine:

- Whether the student meets eligibility criteria;
- The present levels of academic and functional performance of the student;
- Whether special education and related services are needed; and/or,
- For students already eligible under IDEA, whether any additions or modifications to the special education and related services are needed to meet the IEP goals and make progress in the general education curriculum.

All existing information should be documented on the *Evaluation Planning, Review of existing information and/or meeting notes*. The district must ensure that parents have the opportunity to provide input at this stage of the evaluation process. This opportunity must be documented.

#### **What happens after evaluation planning is completed?**

On the basis of the review and input from the child's parents, the team determines what additional data, if any, are needed to determine whether the child is, or continues to be, a child with a disability, and the special education and related service needs of the student.

- If the team determines no additional evaluation is needed there must be documented evidence of existing data determined to be a current measure of the child's ability and performance that meets the required criteria for the disability or disabilities being considered. *Prior Notice about Evaluation / Consent for Evaluation* indicating the team's determination that no further evaluation is needed must be provided to the parent. This notice provides the parent the right to request additional evaluation. If the parent does not request additional evaluation and the required eligibility team members are present, an eligibility determination may be made at this meeting.
- If the team determines additional evaluation is required, the specific evaluations the team determined the district will conduct are documented in detail on the *Prior Notice about Evaluation/ Consent for Evaluation form and the Student Assessment List*, which is then provided to the parent for their consent. The district must receive this signed consent back from the parent prior to conducting any evaluation. (See *Consent section of this document for specific requirements and guidance relating to Consent for evaluation and reevaluation.*)

Once written consent is received from the parent, individual evaluation is conducted as agreed upon at the evaluation planning meeting, and in accordance with the assessments documented on the written consent form.

<p>language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so;</p> <p>(C) Are used for the purposes for which the assessments or measures are valid and reliable;</p> <p>(D) Are administered by trained and knowledgeable personnel; and</p> <p>(E) Are administered in accordance with any instructions provided by the producer of the assessments.</p> <p>(b) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.</p> <p>(c) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).</p> <p>(d) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;</p> <p>(e) The evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified; and</p> <p>(f) The evaluation includes assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child.</p> <p>(5) Evaluation timelines:</p> <p>(a) Initial. An initial evaluation must be completed within 60 school days from written parent consent to the date of the meeting to consider eligibility.</p> <p>(b) Reevaluation. A reevaluation must be completed within 60 school days from written parent consent (or from the date the evaluation is initiated under OAR 581-015-2095(3)(c))</p>	<p><b>Are there general requirements for an evaluation?</b> Yes, the following requirements are part of ANY evaluation:</p> <p>1) A variety of assessment tools must be used to gather relevant educational, functional, and developmental information about the student, including information from the parent. This information assists the team in determining whether the child is a child with a disability and in the development of the child's IEP, including providing information related to enabling the child to be involved in and progress in the general education curriculum.</p> <p><i>Occasionally, community professionals such as physicians, psychologists, or a service agency have assessment results that are relevant to the evaluation. To obtain these results, the case manager must have the parent complete an Authorization to Use and/or Disclose Educational and Protected Health Information (HIPPA) unless the parent presents the evaluation summary or report directly to the team. The school will always consider any evaluation information presented by the parent. However, any evaluation from an outside source must meet the same general criteria for appropriateness of assessment tools, qualifications of the examiner, and comprehensiveness of the results if they are to be used in decision making.</i></p> <p>2) No single measure or assessment may be used for determining whether a child is a child with a disability and for determining an appropriate educational program for the child. While there are minimum requirements for each eligibility category, each evaluation is individually designed based on the unique needs of the child and the concerns brought forward at the time of referral.</p> <p>3) Technically sound instruments must be used to assess cognitive, behavioral factors, physical or developmental factors.</p> <p>4) Assessments and other evaluation materials used to assess the child must be selected and administered so as not to be discriminatory on a racial or cultural basis.</p> <p>5) Assessments must be provided and administered in the child's native language or mode of communication most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so.</p> <p><i>If a student has a multi-lingual background, an assessment of the student's relative language development in all languages must be a documented component of the evaluation. It is necessary to involve EL professionals who speak the same native language as the student being evaluated. Cultural Linguistic Evaluations are conducted by LBL-ESD, Education Evaluation and Consultation Center.</i></p> <p>6) Assessments must be used for the purposes for which they have been deemed valid and reliable, and must be administered by trained and knowledgeable personnel; and in</p>
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to the date of the meeting to consider eligibility, continuing eligibility or the student's educational needs.

- (c) Exceptions. An evaluation may be completed in more than 60 school days under the following circumstances documented in the child's educational record:
- (A) The parents of a child repeatedly fail or refuse to produce the child for an evaluation, or for other circumstances outside the school district's control.
  - (B) The student is a transfer student in the process of reevaluation and the district and the parents agree in writing to a different length of time to complete the evaluation in accordance with subsection (d);
  - (C) The district and the parents agree in writing to extend the timeline for an evaluation to determine eligibility for specific learning disabilities in accordance with OAR 581-015-2170.
- (d) Transfer students.
- (A) When a child with disabilities transfers from one school district to another school district in the same school year, the previous and current school district must coordinate any pending assessments as necessary and as expeditiously as possible to ensure prompt completion of the evaluation.
  - (B) The exception under subsection (c)(B) only applies if the current school district is making sufficient progress to ensure a prompt completion of the evaluation and the parent and current school district agree to a specific time for completion of the evaluation.

#### **581-015-2115 Evaluation Planning**

- (1) Review of existing evaluation data. As part of an initial evaluation (if appropriate) and as part of any reevaluation, the child's IEP or IFSP team, and other qualified professionals, as appropriate, must:
- (a) Review existing evaluation data on the child, including:
    - (A) Evaluations and information provided by the parents of the child;
    - (B) Current classroom-based, local, or state assessments, and classroom-based observations; and
    - (C) Observations by teachers and related services providers; and
  - (b) On the basis of that review, and input from the child's

accordance with any instructions provided by the producer of the assessments.

*Occasionally, a test can only be administered to a child in a manner that is inconsistent with what is required in the test manual. When this occurs, all deviations from the standard administration must be documented and explained in the evaluation report.*

- 7) Assessments and other evaluation materials must include those tailored to assess specific areas of educational needs and not merely those that are designed to provide a single general intelligence quotient.
- 8) Assessments must be selected and administered to ensure that if administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors the test measures).
- 9) The child must be assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

The evaluation must be comprehensive enough to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

#### **Is there a required timeline for evaluation?**

Yes, IDEA 2004 requires the following timelines:

- An initial evaluation must be completed within 60 school days from written parent consent to the date of the meeting to consider eligibility.
- A reevaluation must be completed within 60 school days from written parent consent to the date of the meeting to consider continuing eligibility, the student's educational needs, or placement.
  - *Eligibility must be reestablished every three years and CAN NOT be extended.*
  - *Evaluations must be planned so that the process is completed not only within the 60 school day evaluation timeline, but also within the 3 year continuing eligibility timeline. It is vital that case managers plan with both these timelines in mind.*

If a parent repeatedly fails or refuses to produce their child for an evaluation the case manager must clearly document efforts toward contacting the parent and working with them to evaluate the child

**Exceptions.** An evaluation may be completed in more than 60 school days only under the

<p>parents, identify what additional data, if any, are needed to determine:</p> <p>(A) Whether the child is, or continues to be, a child with a disability;</p> <p>(i) For a school-age child, under OAR 581-015-2130 through 581-015-2180; or</p> <p>(ii) For a preschool child, under OAR 581-015-2780 or 581-015-2795;</p> <p>(B) The present levels of academic achievement and related developmental needs of the child;</p> <p>(C) Whether the child needs, or continues to need, EI/ECSE or special education and related services; and</p> <p>(D) For reevaluation, whether the child needs any additions or modifications to special education and related services or, for a preschool child, any additions or modifications to ECSE services:</p> <p>(i) To enable the child to meet the measurable annual goals in the child's IEP or IFSP; and</p> <p>(ii) To participate, as appropriate, in the general education curriculum or, for preschool children, appropriate activities.</p> <p>(2) Conduct of review. The team described in subsection (1) may conduct this review without a meeting. If a public agency holds a meeting for this purpose, parents must be invited to participate in conformance with OAR 581-015-2190 or, for parents of preschool children, with OAR 581-015-2750.</p> <p>(3) Source of data. The public agency must administer tests and other evaluation materials as may be needed to produce the additional data identified under subsection (1)(b).</p> <p>(4) Requirements if additional data are not needed.</p> <p>(a) If the child's IEP or IFSP team determines that no additional data are needed to determine whether the child is or continues to be a child with a disability, and to determine the child's educational and developmental needs, the public agency must notify the child's parents:</p> <p>(A) Of that determination and the reasons for it; and</p> <p>(B) Of the right of the parents to request an assessment to determine whether, for purposes of services under this part, the child continues to be a child with a disability, and to determine the child's educational and developmental needs.</p> <p>(b) The public agency is not required to conduct an</p>	<p>following circumstances. Exceptions must be clearly documented in the child's educational record.</p> <ul style="list-style-type: none"> <li>• The student transfers into the district and was in the process of being evaluated in the previous district and the district and parents agree in writing to a different length of time to complete the evaluation. When a child with disabilities transfers from one district to another in the same school year, the previous and current district must coordinate any pending assessments as necessary and as expeditiously as possible to ensure prompt completion of the evaluation. The Case Managers needs to be diligent in ensuring the evaluation is completed within the original timeline, or within a timeline the parent and the school agree upon.</li> <li>• The district and parents agree in writing to extend the timeline for evaluation to determine eligibility for a suspected Specific Learning Disability. This decision is only appropriate if it assists the team in better decision making. It should not be used because the team simply failed to complete a timely evaluation.</li> </ul> <p>In these situations the case manager must clearly document the exception on the <i>Written Agreement Between the Parent and District</i>.</p> <p><b>Are the evaluation components the same for all disability categories?</b></p> <p>No, the required components of an evaluation differ depending on the disability (ies) being considered. As part of evaluation planning , Case Manager should facilitate team review of existing information and refer to specific OAR's for the disability(ies) category(ies) being considered to ensure the required evaluation components are addressed, either through existing information or through further assessment.</p> <p>The members of the evaluation planning team need to have the appropriate expertise to plan the evaluation procedures for the child. This may require that the Case Manager invite individuals who are not typically involved in evaluation planning to the meeting. For example, if a student is suspected of having a traumatic brain injury, it may be necessary to involve the school nurse and school psychologist or TBI specialist from LBL-ESD, Cascade Regional Program, who have special expertise in the area of traumatic brain injury.</p> <p>If a team is uncertain about a presenting problem and/or their expertise in assessing the child, the Case Manager should contact the Special Education Director.</p>
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assessment of the child unless requested to do so by the child's parents.

**OAR 581-015-2127 Developmental Delay (7/1/2019)**

(1) If a child is suspected of having a development delay, the following evaluation must be conducted:

- (a) Developmental History as defined in OAR 581-015-2000(8)
- (b) At least one norm referenced, standardized test in each area of suspected delay.
- (c) At least one additional procedure to confirm the child's level of suspected delay
- (d) At least one 20-minute observation of the child
- (e) Review of previous testing, medical data, and parent reports
- (f) Any additional assessments necessary to determine the impact of the suspected disability
  - (A) On the child's educational performance for a school-age child; or
  - (B) On the child's developmental progress for a preschool child; and
- (g) other evaluative information as necessary to determine eligibility

(2) To be eligible for special education services as a child with a development delay, the child must meet all the following minimum criteria 1.5 or more standard deviations below the mean in two or more of the developmental areas.

- (a) Cognitive development;
- (b) Physical development;
- (c) Communication development

**Developmental Delay**

The evaluation planning team should refer to the accompanying OAR (on the left) for evaluation requirements.

New eligibility category added July 1, 2019. For school age students, this disability only applies to students from ages five through nine.

(d) Social or emotional development;

(e) Adaptive development

(3) To be eligible for special education services as a child with a developmental delay, the eligibility team must also determine that:

(a) For a child age 3 to 5, the child's disability has an adverse impact on the child's developmental progress, or

(b) For a child age 5 through 9, the student's disability has an adverse impact on the student's educational performance.

(c) The child needs special education as a result of the delay.

(d) The team has considered the child's special education eligibility and determined that the eligibility is not due to a lack of appropriate instruction (phonemic awareness, phonics, vocabulary development, reading fluency/oral reading skills and reading comprehension strategies) and is not due to a lack of appropriate instruction in math and is not due to limited English proficiency, and is not due to another disability ,

**OAR 581-015-2130 Autism Spectrum Disorder (1/1/2019)**

(1) If a child is suspected of having an autism spectrum disorder, the following evaluations must be conducted:

(a) Developmental History as defined in OAR 581-015-2000(8).

(b) Information from parents and other knowledgeable individuals regarding the child's historical and current characteristics that are associated with an autism spectrum disorder, including:

(A) Deficits in social communication and social interaction across multiple contexts as manifested by deficits in social-emotional reciprocity, nonverbal communicative behaviors used for social interaction, and developing, maintaining, and understanding relationships; and

(B) Restricted, repetitive patterns of behavior, interests, or

**Autism Spectrum Disorder**

The evaluation planning team should refer to the accompanying OAR (on the left) for evaluation requirements.

New OAR 1/1/2019 includes new requirements. When a three year evaluation is required, It is required the new components in the eligibility be conducted, It is not allowable to complete a three year reevaluation with **only** with review of existing information.

activities, as manifested by stereotyped or repetitive motor movements, use of objects, or speech; insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior; highly restricted, fixated interests that are abnormal in intensity or focus; hyper- or hypo-reactivity to sensory input or unusual interest in sensory aspects of the environment.

(c) Observations. Three observations of the child's behavior; at least one of which involves direct interactions with the child, and at least one of which involves direct observation or video of the child's interactions with one or more peers in an unstructured environment when possible, or with a familiar adult. The observations must occur in multiple environments, on at least two different days, and be completed by one or more licensed professionals knowledgeable about the behavioral characteristics of autism spectrum disorder.

(d) Social Communication Assessment. Assessments conducted by a speech and language pathologist licensed by the State Board of Examiners for Speech-Language Pathology and Audiology or the Teacher Standards and Practices Commission, in reference to developmental expectations and that address the characteristics of autism spectrum disorder to develop a profile of:

(A) Functional receptive and expressive communication, encompassing both verbal (level of spoken language) and nonverbal skills;

(B) Pragmatics across natural contexts; and

(C) Social understanding and behavior, including social-emotional reciprocity

(e) Standardized Autism Identification Tool. One or more valid and reliable standardized rating scales, observation schedules, or other assessments that identify core characteristics of autism spectrum disorder.

(f) Medical Examination or Health Assessment. A medical examination or health assessment shall be completed for children age birth to five for initial eligibility determinations, and may be completed for children above age five, as determined necessary

by the team. The purpose of a medical examination or health assessment is to ensure consideration of other health and/or physical factors that may impact the child's developmental performance for a child age 3-5 or the child's educational performance for a child age 5-21. A medical diagnosis of autism spectrum disorder is not required to determine eligibility.

(g) Vision and Hearing Screening. Review existing screening, or if none conduct a new screening.

(h) Other.

(A) Any additional assessments that may include, measures of cognitive, adaptive, academic, behavioral-emotional, executive function/self-regulation, or sensory processing necessary to determine the impact of the suspected disability:

(i) On the child's developmental progress for a child age 3 to 5; or

(ii) On the child's educational performance for a child age 5 to 21.

(B) Any additional evaluations or assessments necessary to identify the child's educational needs.

(2) To be eligible as a child with an autism spectrum disorder, the child must meet all of the following minimum criteria:

(a) The team must have documented evidence that the child demonstrates a pattern of characteristics defined as all three social communication deficits, and at least two of the four restricted, repetitive patterns of behavior, interests, or activities contained in this section:

(A) Child demonstrates persistent deficits in social communication and social interaction across multiple contexts, as evidenced by the all of the following, currently or by history (examples are illustrative, not exhaustive):

(i) Deficits in social-emotional reciprocity, ranging, for example, from abnormal social approach and failure of normal back-and-forth conversation; to reduced sharing of interests, emotions, or affect; to failure to initiate or respond to social

interactions;

(ii) Deficits in nonverbal communicative behaviors used for social interaction, ranging, for example, from poorly integrated verbal and nonverbal communication; to abnormalities in eye contact and body language or deficits in understanding and use of gestures; to a total lack of facial expressions and nonverbal communication; and

(iii) Deficits in developing, maintaining, and understanding relationships, ranging, for example, from difficulties adjusting behavior to suit various social contexts; to difficulties in sharing imaginative play or in making friends; to absence of interest in peers.

(B) Restricted, repetitive patterns of behavior, interests, or activities, as evidenced by at least two of the following, currently or by history (examples are illustrative, not exhaustive):

(i) Stereotyped or repetitive motor movements, use of objects, or speech (e.g., simple motor stereotypes, lining up toys or flipping objects, echolalia, idiosyncratic phrases);

(ii) Insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior (e.g., extreme distress at small changes, difficulties with transitions, rigid thinking patterns, greeting rituals, need to take the same route or eat the same food every day);

(iii) Highly restricted, fixated interests that are abnormal in intensity or focus (e.g., strong attachment to or preoccupation with unusual objects, excessively circumscribed or perseverative interests); or

(iv) Hyper- or hypo-reactivity to sensory input or unusual interest in sensory aspects of the environment (e.g., apparent indifference to pain/temperature, adverse response to specific sounds or textures, excessive smelling or touching of objects, visual fascination with lights or movement).

(b) Characteristics are generally evident before age three, but may not have become fully evident until social demands exceed

limited capacities, or may be masked by learned strategies.

(c) The characteristics of autism spectrum disorder are not better described by another established or suspected eligibility for special education services. A child may not be eligible for special education services on the basis of an autism spectrum disorder if the child's primary disability is an emotional disturbance under OAR 581-015-2145. However, a child with autism spectrum disorder as a primary disability may also have an emotional disturbance as a secondary disability.

(3) To be eligible for special education services as a child with an autism spectrum disorder, the eligibility team must also determine that:

(a) For a child age 3 to 5, the child's disability has an adverse impact on the child's developmental progress; or

(b) For a child age 5 to 21, the student's disability has an adverse impact on the student's educational performance.

(c) The child needs special education services as a result of the disability.

(d) The team has considered the child's special education eligibility, and determined that the eligibility is not due to a lack of appropriate instruction in reading, including the essential components of reading instruction (phonemic awareness, phonics, vocabulary development; reading fluency/oral reading skills; and reading comprehension strategies); and is not due to a lack of appropriate instruction in math; and is not due to limited English proficiency

**OAR 581-015-2135: Communication Disorder**

(1) If a child is suspected of having a communication disorder, the following evaluation must be conducted:

(a) Speech-language assessment. A speech and language assessment administered by a speech and language pathologist licensed by a State Board of Examiners for Speech-Language Pathology and Audiology or the Teacher Standards and Practices Commission, including:

More specific information regarding **Communication Disorder** eligibility can be found in the appendix of this document. The evaluation planning team should refer to the accompanying OAR (on the left) for evaluation requirements

<p>(A) When evaluating syntax, morphology, semantics or pragmatics, a representative language sample and comprehensive standardized tests that assess expression and comprehension;</p> <p>(B) When a voice disorder is suspected, a voice assessment scale; and</p> <p>(C) When a fluency disorder is suspected, an observation in at least two settings;</p> <p>(b) Medical or health assessment statement. For a child suspected of having a voice disorder, a medical statement by an otolaryngologist licensed by a State Board of Medical Examiners. For other than a voice disorder, if a medical or health diagnosis is needed, a medical statement or health assessment statement describing relevant medical issues;</p> <p>(c) Hearing evaluation or screening. An evaluation or screening of the child's hearing acuity and, if needed, a measure of middle ear functioning;</p> <p>(d) Other.</p> <p>(A) An evaluation of the child's oral mechanism, if needed;</p> <p>(B) Any additional assessments necessary to determine the impact of the suspected disability:</p> <p>(i) On the child's educational performance for a school-age child; or</p> <p>(ii) On the child's developmental progress for a preschool child; and</p> <p>(C) Any additional evaluations or assessments necessary to identify the child's educational needs.</p> <p>(2) To be eligible as a child with a specific communication disorder, the child must meet the following minimum criteria:</p> <p>(a) Voice disorder:</p> <p>(A) The child demonstrates chronic vocal characteristics that deviate in at least one of the areas of pitch, quality, intensity or resonance;</p> <p>(B) The child's voice disorder impairs communication or intelligibility; and</p> <p>(C) The child's voice disorder is rated as moderate to severe on a voice assessment scale.</p> <p>(b) Fluency disorder:</p> <p>(A) The child demonstrates an interruption in the rhythm or rate of speech that is characterized by hesitations, repetitions, or prolongations of sounds, syllables,</p>	
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<p>words or phrases;</p> <ul style="list-style-type: none"> <li>(B) The child has a fluency disorder that interferes with communication and calls attention to itself across two or more settings; and</li> <li>(C) The child demonstrates moderate to severe vocal dysfluencies or the child evidences associated secondary behaviors, such as struggling or avoidance as measured by a standardized measure.</li> </ul> <p>(c) Phonological or articulation disorder:</p> <ul style="list-style-type: none"> <li>(A) The child's phonology or articulation is rated significantly discrepant as measured by a standardized test; and</li> <li>(B) The disorder is substantiated by a language sample or other evaluation(s).</li> </ul> <p>(d) Syntax, morphology, pragmatic or semantic disorder:</p> <ul style="list-style-type: none"> <li>(A) The child's language in the area of syntax, morphology, semantics or pragmatics is significantly discrepant as measured by standardized test(s) or other evaluation data; and</li> <li>(B) The disorder is substantiated by a language sample or other evaluation(s).</li> <li>(C) For a child to be eligible with a syntax, morphology, pragmatic or semantic disorder, the disorder is not the result of another disability.</li> </ul> <p>(3) For a child to be eligible for special education services as a child with a communication disorder, the eligibility team must also determine that:</p> <ul style="list-style-type: none"> <li>(a) The child's disability has an adverse impact on the child's educational performance; and</li> <li>(b) The child needs special education services as a result of the disability.</li> </ul> <p><b>581-015-2140: Deafblindness</b></p> <p>(1) If a child is suspected of having deafblindness, the following evaluation must be conducted:</p> <ul style="list-style-type: none"> <li>(a) The minimum evaluation procedures for hearing impairment and vision impairment under OAR 581-015-2150 and 581-015-2180, respectively;</li> <li>(b) If the child demonstrates inconsistent or inconclusive responses in an assessment of one sensory area, a functional assessment must be administered by a state licensed educator of the visually impaired, a state licensed</li> </ul>	<p>Evaluation of a student for <b>Deafblindness</b> requires referral to Linn Benton Lincoln, Cascade Regional Program. The evaluation planning team should refer to the accompanying OAR (on the left) for evaluation requirements</p>
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educator of the hearing impaired or an audiologist licensed by the State Board of Examiners for Speech-Language Pathology and Audiology.

- (2) To be eligible as a child with deafblindness, the child must meet one or more of the following minimum criteria:
  - (a) The child meets the minimum criteria for both vision impairment and hearing impairment under OAR 581-015-2150 and 581-015-2180, respectively; or
  - (b) The child meets the minimum criteria for either vision impairment or hearing impairment and demonstrates inconsistent or inconclusive responses in an assessment of the other sensory area; or
  - (c) The child meets the minimum criteria for either vision impairment or hearing impairment and has a degenerative disease or pathology that affects the acuity of the other sensory area.
- (3) For a child to be eligible for special education services as a child having deafblindness, the eligibility team must also determine that:
  - (a) The child's disability has an adverse impact on the child's educational performance; and
  - (b) The child needs special education services as a result of the disability.

**581-015-2145: Emotional Disturbance Eligibility Criteria**

- (1) If a child is suspected of having an emotional disturbance, the following evaluation must be conducted:
  - (a) Social-emotional evaluation. An evaluation of the child's emotional and behavioral status, including a developmental or social history, when appropriate.
  - (b) Medical or health assessment statement. A medical statement or a health assessment statement indicating whether there are any physical factors that may be affecting the child's educational performance;
  - (c) Behavior rating scales. The completion of at least two behavior-rating scales, at least one of which is a standardized behavior measurement instrument;
  - (d) Observation. An observation in the classroom and in at least one other setting by someone other than the child's regular teacher;
  - (e) Other:
    - (A) Any additional assessments necessary to determine

**Emotional Disturbance.**

The evaluation planning team should refer to the accompanying OAR (on the left) for evaluation requirements

- the impact of the suspected disability:
- (i) On the child's educational performance for a school-age child; or
  - (ii) On the child's developmental progress for a preschool child; and
- (B) Any additional evaluations or assessments necessary to identify the child's educational needs.
- (2) To be eligible as a child with an emotional disturbance, the child must meet the following minimum criteria:
- (a) The child exhibits one or more of the following characteristics over a long period of time and to a marked degree:
    - (A) An inability to learn that cannot be explained by intellectual, sensory or health factors;
    - (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
    - (C) Inappropriate types of behavior or feelings under normal circumstances;
    - (D) A general pervasive mood of unhappiness or depression; or
    - (E) A tendency to develop physical symptoms, pains, or fears associated with personal, or school problems.
- (3) For a child to be eligible for special education services as a child with an emotional disturbance, the eligibility team must also determine that:
- (a) The child's disability has an adverse impact on the child's educational performance; and
  - (b) The child needs special education services as a result of the disability;
- (4) A child who is socially maladjusted may not be identified as having an emotional disturbance unless the child also meets the minimum criteria under this rule.

**581-015-2150: Hearing Impairment**

- (1) If a child is suspected of having a hearing impairment, the following evaluation must be conducted:
- (a) Audiology assessment. An audiological assessment by an audiologist licensed by the State Board of Examiners for Speech-Language Pathology and Audiology;
  - (b) Medical or health assessment statement. A medical statement or a health assessment statement indicating that the hearing loss is sensory-neural or conductive, if the

*Adverse impact on educational performance can include, in addition to academic achievement measures, difficulty with social behavior such as acting out or failure to engage to such a degree that the student does not complete class work, is unable to remain in class due to extreme behavior despite the use of positive behavior supports, and a student's failure to attend school due to emotional problems such as phobias, anxiety, or depression.*

Assessment for students suspected of having a **Hearing Impairment** require the involvement of the Linn Benton Lincoln ESD Cascade Regional Program. The Speech/Language Pathologist should provide leadership and be involved in these evaluations. The evaluation planning team should refer to the accompanying OAR (on the left) for evaluation requirements

conductive loss has been determined to be untreatable by a physician;

(c) Other:

(A) Any additional assessments necessary to determine the impact of the suspected disability:

(i) On the child's educational performance for a school-age child; or

(ii) On the child's developmental progress for a preschool child; and

(B) Any additional evaluations or assessments necessary to identify the child's educational needs.

(2) To be eligible as a child with a hearing impairment, the child must meet one of the following minimum criteria:

(a) The child has a pure tone average loss of 25 dbHL or greater in the better ear for frequencies of 500 Hz, 1000 Hz, and 2000 Hz, or a pure tone average loss of 35 dbHL or greater in the better ear for frequencies of 3000 Hz, 4000 Hz, and 6000 Hz; or

(b) The child has a unilateral hearing impairment with a pure tone average loss of 50 dbHL or greater in the affected ear for the frequencies 500 Hz to 4000 Hz; and

(c) The loss is either sensorineural or conductive if the conductive loss has been determined to be currently untreatable by a physician.

(3) For a child to be eligible for special education services as a child with a hearing impairment, the eligibility team must also determine that:

(a) The child's disability has an adverse impact on the child's educational performance; and

(b) The child needs special education services as a result of the disability.

**581-015-2155: Intellectual Disability**

(1) If a child is suspected of having intellectual disability, the following evaluation must be conducted:

(a) Intelligence test. An individually administered standardized intelligence test meeting the reliability and validity standards of the American Psychological Association and administered by a licensed school psychologist, a psychologist licensed by the State Board of Psychological Examiners, or other individual assigned by a school district who has the training and experience to administer

**Intellectual Disability** evaluations are conducted under the leadership and with the involvement of a School Psychologist. The evaluation planning team should refer to the accompanying OAR (on the left) for evaluation requirements

- and interpret individually administered intelligence tests;
- (b) Adaptive behavior scale. The administration of a valid adaptive behavior scale;
- (c) Medical or health assessment statement. A medical statement or a health assessment statement indicating whether there are any sensory or physical factors that may be affecting the child's educational performance;
- (d) Developmental history. A developmental history of the child;
- (e) Other:
  - (A) Any additional assessments necessary to determine the impact of the suspected disability:
    - (i) On the child's educational performance for a school-age child; or
    - (ii) On the child's developmental progress for a preschool child; and
  - (B) Any additional evaluations or assessments necessary to identify the child's educational needs.
- (2) To be eligible as a child with intellectual disability, the child must meet all of the following minimum criteria:
  - (a) The child's intelligence test score is 2 or more standard deviations below the mean;
  - (b) The child has deficits in adaptive behavior coexistent with the child's impairment in intellectual functioning;
  - (c) The child's developmental level or educational achievement is significantly below age or grade norms; and
  - (d) The child's developmental or educational problems are not primarily the result of sensory disabilities or other physical factors.
- (3) For a child to be eligible for special education services as a child with intellectual disability, the eligibility team must also determine that:
  - (a) The child's disability has an adverse impact on the child's educational performance; and
  - (b) The child needs special education services as a result of the disability.

**OAR 581-015-2160: Orthopedic Impairment**

- (1) If a child is suspected of having an orthopedic impairment, the following evaluation must be conducted:
  - (a) Medical or health assessment statement. A medical

Evaluations for students who may qualify as having an **Orthopedic Impairment** are conducted with the involvement of the LBL-ESD Cascade Regional Program's Physical Therapist and Occupational Therapist. The evaluation planning team should refer to the accompanying OAR



calendar days;

(b) Other:

(A) Any additional assessments necessary to determine the impact of the suspected disability:

(i) On the child's educational performance for a school-age child; or

(ii) On the child's developmental progress for a preschool child; and

(B) Any additional evaluations or assessments necessary to identify the child's educational needs.

(2) To be eligible as a child with an other health impairment, the child must meet all of the minimum criteria:

(a) The child exhibits limited strength, vitality or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment;

(b) The child's limited strength, vitality or alertness is due to a chronic or acute health problem; and

(c) The child's condition is permanent or expected to last for more than 60 calendar days.

(3) For a child to be eligible for special education services as a child with an other health impairment, the eligibility team must also determine that:

(a) The child's disability has an adverse impact on the child's educational performance; and

(b) The child needs special education services as a result of the disability.

**581-015-2170: Specific Learning Disability**

(1) If a child is suspected of having a specific learning disability, the following evaluation must be conducted:

(a) Academic assessment. An assessment of the child's academic achievement toward Oregon grade-level standards;

(b) Review. A review of cumulative records, previous IEPs or IFSPs and teacher collected work samples;

(c) Observation. An observation of the child in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty, which must consist of:

(A) Information from an observation by a qualified

**Specific Learning Disability** The evaluation planning team should refer to the accompanying OAR (on the left) for evaluation requirements

professional in routine classroom instruction and monitoring of the child's performance before the child was referred for an evaluation; or

(B) An observation conducted by a qualified professional (who is a member of the evaluation team) of the child's academic performance in a regular classroom after the child has been referred for an evaluation and parent consent obtained; or

(C) For a child who is less than school age or out of school, an observation in an age-appropriate environment.

(d) Progress monitoring data, including:

(A) Data that demonstrate that before, or as part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and

(B) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress that is directly linked to instruction.

(e) For a student evaluated using a response to intervention model as part of a comprehensive evaluation process to determine if the child has a specific learning disability, the evaluation must include documentation of:

(A) The type, intensity, and duration of scientific, research-based instructional intervention(s) provided in accordance with the district's response to intervention model;

(B) The student's rate of progress during the instructional intervention(s);

(C) A comparison of the student's rate of progress to expected rates of progress.

(D) Progress monitoring on a schedule that:

(i) Allows a comparison of the student's progress to the performance of peers;

(ii) Is appropriate to the student's age and grade placement;

(iii) Is appropriate to the content monitored; and

(iv) Allows for interpretation of the effectiveness of intervention.

(f) For a student evaluated using a model that is based on the student's strengths and weaknesses, the evaluation must

include an assessment of the student's strengths and weaknesses in classroom performance and academic achievement, relative to age, Oregon grade-level standards, or intellectual development.

(g) Other:

- (A) If needed, a developmental history;
- (B) If needed, an assessment of cognition, fine motor, perceptual motor, communication, social or emotional, and perception or memory if the child exhibits impairment in one or more these areas;
- (C) If needed, a medical statement or health assessment indicating whether there are any physical factors that may be affecting the child's educational performance; and
- (D) Any other assessments required to determine the impact of the suspected disability:
  - (i) On the child's educational performance for a school-age child; or
  - (ii) On the child's developmental progress for a preschool child.

(2) For consideration of eligibility in the area of specific learning disabilities, the eligibility team must include:

- (a) A group of qualified professionals and the parent;
- (b) The child's regular classroom teacher or, if the child does not have a regular classroom teacher, a regular classroom teacher qualified to teach a child of his or her age, or, for a child of less than school age, a preschool teacher; and
- (c) A person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or other qualified professional.

(3) To be eligible as a child with a specific learning disability, the child must meet the following minimum criteria:

- (a) The child does not achieve adequately for the child's age or to meet Oregon grade-level standards in one or more of the following areas when provided with learning experiences and instruction appropriate for the child's age or Oregon grade-level standards:
  - (A) Basic reading skills;
  - (B) Reading fluency skills;
  - (C) Reading comprehension;
  - (D) Mathematics calculation;

**Note:** *The eligibility team must include the child's regular classroom teacher. A regular education teacher who is not the child's own teacher would only be appropriate to consider as a team member if the child did not have a regular classroom teacher.*

- (E) Mathematics problem-solving;
  - (F) Written Expression;
  - (G) Oral expression; or
  - (H) Listening comprehension.
- (b) For a student evaluated using a response to intervention model, in relation to one or more of the areas in subsection (3)(a), the student does not make sufficient progress to meet age or Oregon grade-level standards based on the student's response to scientific, research-based intervention.
- (c) For a student evaluated using a model that is based on the student's strengths and weaknesses, in relation to one or more of the areas in subsection (3)(a), the student exhibits a pattern of strengths and weaknesses in classroom performance, academic achievement, or both, relative to age, Oregon grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability.
- (d) The child's rate of progress in subsection (3)(b) or pattern of strengths and weaknesses in subsection (3)(c) is not primarily the result of:
- (A) A visual, hearing, or motor impairment; mental retardation or emotional disturbance;
  - (B) Cultural factors;
  - (C) Environmental or economic disadvantage; or
  - (D) Limited English proficiency.
- (4) For a child to be eligible for special education services as a child with a specific learning disability, the eligibility team must also determine that:
- (a) The child's disability has an adverse impact on the child's educational performance; and
  - (b) The child needs special education services as a result of the disability.
- (5) The eligibility team must prepare an evaluation report and written statement of eligibility documenting its findings, including:
- (a) The evaluation data considered in determining the child's eligibility;
  - (b) A determination of whether the child meets the minimum criteria for a specific learning disability;
  - (c) The relevant behavior, if any, noted during the observation

of the child and the relationship of that behavior to the child's academic functioning;

- (d) The educationally relevant medical findings, if any;
- (e) If the child participated in a response to intervention process, documentation that the parents were notified in a timely manner about: the state's policies regarding the amount and nature of student performance data that would be collected, and the general education services that would be provided, as part of the response to intervention process; strategies for increasing the child's rate of learning; and the parent's right to request an evaluation.
- (f) The determination of the team concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and
- (g) A determination of whether the primary basis for the suspected disability is:
  - (A) A lack of appropriate instruction in reading or math; or
  - (B) Limited English proficiency;
- (h) A determination of whether the child's disability has an adverse impact on the child's educational performance;
- (i) A determination of whether, as a result of the disability, the child needs special education services; and
- (j) The signature of each member of the team indicating agreement or disagreement with the eligibility determination.

**581-015-2175: Traumatic Brain Injury**

- (1) If a child is suspected of having a traumatic brain injury, the following evaluation must be conducted:
  - (a) Medical or health assessment statement. A medical statement or a health assessment statement indicating that an event may have resulted in a traumatic brain injury as defined in subsection (2)(A);
  - (b) Psychological assessment. A comprehensive psychological assessment using a battery of instruments intended to identify deficits associated with a traumatic brain injury administered by a licensed school psychologist, a psychologist licensed by a State Board of Psychological Examiners, or other individuals who have

If the team is considering **Traumatic Brain Injury**, contact LBL-ESD Cascade Regional Program TBI Consultant for assistance and guidance. The evaluation planning team should refer to the accompanying OAR (on the left) for evaluation requirements

the training and experience to administer and interpret the tests within the battery;

(c) Other.

(A) Other assessments including, but not limited to, motor assessments if the child exhibits motor impairments; communication assessments if the child exhibits communication disorders; and psychosocial assessments if the child exhibits changed behavior.

These assessments must be completed by educators knowledgeable in the specific area being assessed;

(B) Other information relating to the child's suspected disability, including pre-injury performance and a current measure of adaptive ability;

(C) An observation in the classroom and in at least one other setting;

(D) Any additional assessments necessary to determine the impact of the suspected disability:

(i) On the child's educational performance for a school-age child; or

(ii) On the child's developmental progress for a preschool child; and

(E) Any additional evaluations or assessments necessary to identify the child's educational needs.

(2) To be eligible as a child with a traumatic brain injury, the child must meet all of the following minimum criteria:

(a) The child has an acquired injury to the brain caused by an external physical force;

(b) The child's condition is permanent or expected to last for more than 60 calendar days;

(c) The child's injury results in an impairment of one or more of the following areas:

(A) Communication;

(B) Behavior;

(C) Cognition, memory, attention, abstract thinking, judgment, problem-solving, reasoning, and/or information processing;

(D) Sensory, perceptual, motor and/or physical abilities.

(3) For a child to be eligible for special education services as a child with a traumatic brain injury, the eligibility team must also determine that:

(a) The child's disability has an adverse impact on the child's educational performance; and

- (b) The child needs special education services as a result of the disability.
- (4) Students with brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma, are not eligible under the category of traumatic brain injury but may be eligible under a different category under this rule.

**581-015-2180: Vision Impairment**

- (1) If a child is suspected of having a vision impairment, the following evaluation must be conducted:
  - (a) Medical statement. A medical statement by an ophthalmologist or optometrist licensed by a State Board of Examiners indicating whether the child has a vision impairment;
  - (b) Vision assessment. An assessment by a teacher of the visually impaired to identify the child's educational and compensatory needs, including a functional assessment of the child's residual visual acuity or field of vision.
  - (c) Other: Any additional assessments necessary to determine the impact of the suspected disability:
    - (A) On the child's educational performance for a school-age child; or
    - (B) On the child's developmental progress for a preschool child.
- (2) To be eligible as a child with a vision impairment, the child must meet one or more of the following minimum criteria:
  - (a) The child's residual acuity is 20/70 or less in the better eye with correction;
  - (b) The child's visual field is restricted to 20 degrees or less in the better eye;
  - (c) The child has an eye pathology or a progressive eye disease which in the opinion of the ophthalmologist is expected to reduce either residual acuity or visual field according to the criteria stated in subsections (2)(a) or (b); or
  - (d) The assessment results of a licensed ophthalmologist or optometrist are inconclusive, and the child demonstrates inadequate use of residual vision.
- (3) For a child to be eligible for special education services as a child with vision impairment, the eligibility team must also determine that:
  - (a) The child's disability has an adverse impact on the child's

Evaluation of a student suspected of having a **Vision Impairment** requires referral to the LBL-ESD Cascade Regional Program. The evaluation planning team should refer to the accompanying OAR (on the left) for evaluation requirements.

educational performance; and

- (b) The child needs special education services as a result of the disability.

**581-015-2305: Independent Educational Evaluation**

- (1) A parent of a child with a disability or suspected disability has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the school district.
- (a) "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of the child.
- (b) "Public expense" means that the school district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.
- (2) If a parent requests an independent educational evaluation at public expense, the school district must provide information to parents about where an independent educational evaluation may be obtained, and the school district criteria applicable for independent educational evaluations.
- (3) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation, the qualifications of the examiner, and cost, must be the same as the criteria the school district uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.
- (a) Except for the criteria in subsection (3), a school district may not impose conditions, or timelines related to obtaining an independent education evaluation at public expense.
- (b) The school district must provide parents an opportunity to demonstrate that unique circumstances justify an independent education evaluation that does not meet the district's criteria.
- (4) If a parent requests an independent education evaluation at public expense, the school district must, without unnecessary delay, either:
- (a) Ensure that an independent educational evaluation is provided at public expense unless the school district demonstrates in a hearing under OAR 581-015-2345 that

**What is an Independent Educational Evaluation?**

An Independent Educational Evaluation (IEE) is a procedural safeguard right under the IDEA that must be made available to parents at no cost. *IF* the district has already conducted an evaluation and the parent disagrees with the results of the evaluation:

- The district must respond to a parent request for an IEE by either assisting the parent in securing an IEE or by filing a due process hearing request. If the district requests due process and the final decision is that the district's evaluation is appropriate, the parent may still request an IEE, but *in this situation* the district is not obligated to pay for the evaluation.
- Parent requests for an IEE should be forwarded to the Special Education Director immediately. The district office has information that will be provided to the parent about where an IEE may be obtained.
- An IEE must address the concerns of the parent related to the student's identification, eligibility, educational needs, or placement in a similar way to the district evaluation the parent is disputing.
- An IEE must be conducted by individuals who are licensed or certified to conduct the specific evaluations required. IEE results must be considered by the district in providing FAPE to the student as long as the IEE meets the criteria necessary for making these determinations.

<p>the evaluation obtained by the parent did not meet school district criteria in accordance with (3); or</p> <p>(b) Initiate a due process hearing under OAR 581-015-2345 to show that its evaluation is appropriate.</p> <p>(5) If the school district initiates a hearing and the final decision is that the school district's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.</p> <p>(6) If the parent requests an independent educational evaluation, the school district may ask why the parent disagrees with the public evaluation. The parent may, but is not required, to provide an explanation. The school district may not unreasonably delay either providing the independent education evaluation at public expense or initiating a due process hearing to defend the public evaluation.</p> <p>(7) If the parent obtains an independent educational evaluation at public expense or shares with the district an evaluation obtained at private expense, the results of the evaluation:</p> <p>(a) Must be considered by the school district, if it meets the district's criteria, in any decision made with respect to the provision of a free appropriate public education to the child; and</p> <p>(b) May be presented by any party as evidence at a due process hearing.</p> <p>(8) If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.</p> <p>(9) A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.</p>	
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**Required district forms:** The forms/documents listed below are required at certain times or for certain actions as part of evaluation for special education. Not all forms will be required for every student. District forms are found in the resource section under forms or obtained from the district special education administrative specialist.

- *Notice of Team Meeting*
- *Minutes of Evaluation/ Reevaluation Planning Meeting;*
- *Evaluation Planning*
- *Prior Notice about Evaluation/ Consent for Evaluation;*
- *Student Assessment List*
- *Prior Notice of Special Education Action;*
- *Prior Notice and Consent for Initial Provision of Special Education (only for initial evaluations/eligibility);*
- *Eligibility Determination(by disability);*

- *Parents Rights for Special Education Handbook;*
- *Authorization to Use and/or Disclose Educational and Protected Health Information*
- *LBL-ESD Cascade Regional Program Service Request form*
- *LBL-ESD Educational Evaluation and Consultation Center Service Request form*

## Section 5: Prior Notice and Consent

### 581-015-2315: Notice of Procedural Safeguards

- (1) School districts must give parents a copy of the Notice of Procedural Safeguards at a minimum only one time per year, except that a copy must be given to the parents:
  - (a) Upon initial referral or parent request for evaluation;
  - (b) Upon request by a parent; and
  - (c) Also to the child, at least a year before the child's 18th birthday.
- (2) The procedural safeguards notice must include all of the content provided in the Notice of Procedural Safeguards published by the Department in the following areas:
  - (a) Independent educational evaluations;
  - (b) Prior written notice;
  - (c) Parental consent;
  - (d) Access to educational records;
  - (e) Mediation, complaints and due process hearings;
  - (f) The child's placement during pendency of due process proceedings;
  - (g) Procedures for students who are subject to placement in an interim alternative educational setting;
  - (h) Requirements for unilateral placement by parents of children in private school at public expense;
  - (i) Civil actions, including the time period for filing such actions;
  - (j) Attorney's fees; and
  - (k) Transfer of rights at age of majority.
- (3) The Notice of Procedural Safeguards must be written in language understandable to the general public.
- (4) The Notice of Procedural Safeguards must be provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
- (5) If the native language or other mode of communication of the parent is not a written language, the school district shall take steps to ensure:
  - (a) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
  - (b) That the parent understands the content of the notice; and
  - (c) That there is written evidence that the district has met

Parents of a child with a disability have guaranteed rights under the IDEA. The IDEA gives parents the right to participate in decisions about their children throughout the special education process, including the right to participate in meetings dealing with the identification, evaluation, and educational placement of their child, and the provision of a free appropriate public education. These parental rights are clearly explained in a written notice referred to as the *Notice of Procedural Safeguards: Parents' Rights for Special Education*

### When should we give Notice of Procedural Safeguards?

IDEA requires that you give parents of students with a disability written notice of their procedural safeguards rights one time each school year. In addition, a copy must also be given to parents:

- upon initial referral, or parent request for evaluation;
- upon receipt of a formal complaint or due process hearing request;
- when a decision is made to take a disciplinary action that constitutes a change of placement;
- when a parent provides the district with written notice that they are unilaterally revoking consent for special education services, and,
- upon parent request.
- The district must also provide a copy of the Procedural Safeguards to the student at least one year prior to the student's 18<sup>th</sup> birthday. This should occur at the same IEP meeting when the student and parent are notified that rights will transfer in one year.

We use the Oregon Department of Education (ODE) Procedural Safeguards document that is provided to districts. ODE provides a written Notice of Procedural Safeguards for children K-21. Translations are available in Spanish, Russian, Vietnamese, and Chinese on the ODE website at: <http://www.ode.state.or.us/search/results/?id=261>

Whenever you give parents a copy of the Parental Rights book, it must be documented.

these requirements.

**581-015-2310: Prior Written Notice**

- (1) Prior written notice must be given to the parent of a child, and to the adult student after rights have transferred, within a reasonable period of time before a school district proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child.
- (2) Prior written notice must be given after a decision is made and a reasonable time before that decision is implemented.
- (3) The content of the prior written notice must include:
  - (a) A description of the action proposed or refused by the school district;
  - (b) An explanation of why the district proposes or refuses to take the action;
  - (c) A description of any other options that the IEP team considered and reasons why those options were rejected;
  - (d) A description of each evaluation procedure, assessment, test, record, or report the school district used as a basis for the proposed or refused action;
  - (e) A description of any other factors that are relevant to the school district's proposal or refusal; and
  - (f) A statement that the parents of a child with a disability have procedural safeguards, and if it is not an initial referral for evaluation, the means by which a copy of the Notice of Procedural Safeguards may be obtained;
  - (g) Sources for parents to contact to obtain assistance in understanding their procedural safeguards.
- (4) The prior notice must be:
  - (a) Written in language understandable to the general public; and
  - (b) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
- (5) If the native language or other mode of communication of the parent is not a written language, the school district must take steps to ensure that:
  - (a) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;

**What is Prior Written Notice?**

Prior written notice is a “procedural safeguard right”. It is given to the parent so they have documentation of the decisions made, the factors considered in making the decisions, and the reasons for those decisions. Because parents do not actively give consent for each decision in the special education process, it is very important that prior written notices be provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. Prior written notice must be provided to the parent within a reasonable period of time before the district proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, educational placement, or provision of a Free Appropriate Public Education to the child.

**What are the different types of Prior Written Notice?**

- Prior Written Notice About Evaluation/ Consent for Evaluation;
- Prior Written Notice for the Initial Provision of Special Education; and,
- Prior Written Notice of Special Education Action.

**Under what circumstances must a Prior Written Notice be provided?**

- Any time you want to conduct evaluation procedures that are individual to the student and not listed on their IEP as a measure of progress, *Prior Notice about Evaluation/ Consent for Evaluation* must be provided to the parent;
- When you refuse to evaluate a student for special education, or after consideration of a referral, you decide not to evaluate a student for special education, *Prior Notice of Special Education Action* must be provided to the parent;
- When eligibility is initially determined, (which includes a student who moves to Oregon with eligibility from another state who is subsequently found eligible for special education in Oregon); or, if a student was previously eligible for special education in Oregon and eligibility was terminated and the student is determined eligible again, *Prior Notice and Consent for the Initial Provision of Special Education Services* must be provided to the parent;
- If the team proposes to initiate a change or refuses to initiate a change to a student's IEP, it is considered a change in FAPE and *Prior Notice of Special Education Action* must be provided to the parent. “Change in FAPE” is interpreted to mean adding a service, removing a service, or changing the amount or frequency of a service on the IEP.
- When the team changes a student's placement, *Prior Notice of Special Education Action* must be provided to the parent.
- When a parent provides written notice to the district that they are unilaterally revoking their

- (b) The parent understands the content of the notice; and
  - (c) There is written evidence that the requirements in subsections (5)(a) and (b) of this rule has been met.
- (6) If the proposed action requires prior written notice and written consent, the district may give notice at the same time it requests consent.

**581-015-2090: Consent**

- (1) Consent for initial evaluation:
- (a) The school district must provide notice under OAR 581-015-2310 and obtain informed written consent from the parent or adult student before conducting an initial evaluation to determine if a child qualifies as a child with a disability under OAR 581-015-2130 through 581-015-2180.
    - (A) Consent for initial evaluation may not be construed as consent for the initial provision of special education and related services.
    - (B) The school district must make reasonable efforts to obtain the informed consent from a parent for an initial evaluation to determine a child's eligibility for special education services.
  - (b) If a parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for an initial evaluation, or does not respond to a request for consent for an initial evaluation, or revokes consent for the reevaluation, the school district may, but is not required to, pursue the initial evaluation of the child using mediation or due process hearing procedures. A district does not violate its child find obligations if it declines to pursue the evaluation using these procedures.
  - (c) Consent for initial evaluation for a child who is a ward of the state may be obtained under OAR 581-015-2095(2).
- (2) Consent for initial provision of services:
- (a) A school district must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.
  - (b) The school district must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.
  - (c) If a parent or adult student does not respond or refuses to consent for initial provision of special education and

consent for the provision of special education and related services the Case Manager must contact the Special Education Director immediately. As this is a new process under IDEA (effective January 1, 2009), The Special Education Director will complete the required processes and notice to parents in all of these circumstances.

The notice must be given to the parent after a decision is made but before the decision is implemented. The IDEA is silent as to a specific timeframe between provision of prior notice and implementation of change. The Case Manager must use his/her best judgment and consideration of the following: If there is strong consensus by the team, the change may be implemented immediately following the decision and provision of notice. If there is any concern expressed, or the parent appears hesitant, the team should provide as much as 10 school days between the prior notice and implementation of the change to allow the parent to consider the district's proposal or refusal and respond.

**What must the prior written notice include?**

- The following content areas must be addressed when *Prior Written Notice* is provided:
- A description of the action that is being proposed, or refused and initiated or changed by the team;
  - An explanation of why the team is proposing, or refusing the action;
  - A description of any other options the team considered and reasons why those options were rejected;
  - A description of each evaluation procedure, assessment, test, record, or report the team used as a basis for the proposed or refused action;
  - A description of any other factors that are relevant to the team's proposal or refusal;
  - A statement that parents of a child with a disability have procedural safeguard rights, and if it is not an initial referral for evaluation, the means by which the parent may obtain a copy;
  - Sources the parent may contact to obtain assistance in understanding their procedural safeguards.

The district must provide Prior Written Notice in the parents' native language or other mode of communication (unless it is clearly not feasible to do so), and at a level understandable to the general public. The entire form's content must be translated into the parents' native language. Form translations are available on the ODE website at: <http://www.ode.state.or.us/search/page/?=817>

- If the native language or other mode of communication of the parent is not a written language, you must be sure that:
- The notice is translated orally or by other means to the parent in their native language or other mode of communication (such as sign language);
  - The parent understands the content of the notice; and

related services, the school district may not seek to provide special education and related services to the child by using mediation or due process hearing procedures.

(d) If a parent or adult student refuses to grant consent for initial provision of special education and related services, or does not respond to a request to provide such consent, or revokes consent for the initial provision of special education or related services;

(A) The school district will not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide the child with the special education and related services for which the school district requests consent; and

(B) The school district is not required to convene an IEP meeting or develop an IEP for the child for the special education and related services for which the school district requests such consent.

(e) If, at any time subsequent to the initial provision of special education and related services, the parent or adult student revokes consent in writing for the continued provision of special education and related services, the school district

(A) May not continue to provide special education and related services to the student, but must provide prior written notice in accordance with OAR 581-015-2310 before ceasing the provision of special education and related services

(B) Is not required to amend the student student's education records to remove any references to the student's receipt of special education and related services because of revocation of consent.

(3) Consent for reevaluation:

(a) A school district must obtain informed parent consent before conducting any reevaluation of a child with a disability, except as provided in subsections (b) and OAR 581-015-2095.

(b) If a parent refuses to consent to the reevaluation or revokes consent for the reevaluation, the school district may, but is not required to, pursue the reevaluation by using mediation or due process hearing procedures. A district does not violate its child find obligations if it declines to pursue the reevaluation using these

- You clearly document this has occurred.

#### **When is Consent required?**

Informed written parent consent is required prior to any evaluation and prior to the initial provision of special education services.

- Consent for Evaluation: You must provide *Prior Written Notice* and make reasonable efforts to obtain informed written consent from the parent before you conduct an evaluation to determine or continue eligibility for special education and related services.

If the parent does not provide consent, or does not respond to a request for consent for an initial evaluation, the district may, but is not required to, pursue the initial evaluation using mediation or due process. The district does not violate its child find obligations if it decides not to pursue the evaluation. *Always consult with the Special Education Director if a parent refuses to give consent for initial evaluation.*

If the district is attempting to evaluate for the purpose of continuing eligibility and the parent does not respond to a request for consent, the district must clearly document the attempts made to gain consent and then may move forward with evaluation EXCEPT for personality and/or intelligence testing. *Always consult with the Special Education Director if a parent refuses to give consent for reevaluation prior to going forward with any evaluation.*

- Consent for Initial Provision of Special Education Services (often referred to as Consent for Initial Placement into Special Education):

The school must provide Prior Written Notice and make reasonable efforts to obtain informed written consent from the parent before the initial provision of special education and related services to the child. This includes students who move into Oregon with an eligibility from another state and are found eligible for special education services in Oregon for the first time, and students whose eligibility was previously terminated and are re-referred and found eligible. In most cases the Consent for Initial Provision of Special Education services completed after the Eligibility determination meeting.

*Note: Initial placement into special education should not be confused with the annual placement determination for a student who is receiving special education and related services, is based on an IEP, and for which consent is not required.*

In all situations when attempting to obtain informed written consent for evaluation or initial provision of special education services from the parent, district personnel must clearly document all reasonable measures made to obtain consent. Reasonable measures include telephone calls, copies of consent documents sent to the parents and responses received, and records of visits made to the parent's home. At least one of the contacts should include a certified letter so that there is documentation the parent received the request for consent.

procedures.

(4) Revocation of consent:

(a) A parent or adult student may revoke consent at any time before the completion of the activity or action for which they gave consent .

(A) A parent or adult student may revoke consent for an evaluation or reevaluation that has not yet been conducted

(B) A parent or adult student may revoke consent for provision of special education services in writing at any time before or during the provision of those services.

(b) If a parent or adult student revokes consent, that revocation is not retroactive.

(5) Other consent requirements:

(a) The school district must document its reasonable efforts to obtain parent consent in accordance with OAR 581-015-2195(3).

(b) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent does not respond to a request for consent:

(A) The school district may not use mediation or due process hearing procedures to seek consent; and

(B) The school district is not required to consider the child as eligible for special education services.

(c) A refusal to consent to one service or activity may not be used to deny the parent or child any other service, benefit, or activity of the school district, except as provided in this rule.

**581-015-2095: Exceptions to Consent**

(1) Written parent or adult student consent is not required before:

(a) Reviewing existing data as part of an evaluation or a reevaluation;

(b) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children; or

(c) Conducting evaluation tests, procedures or instruments that are identified on a child's IEP as a measure for

If the parent does not respond, or refuses to consent for initial provision of special education and related services, the district may not seek to provide services to the child by using mediation or due process. In this case, we are not considered to be in violation of the requirement to make available a free appropriate public education to the child. *If a parent does not respond, or refuses to consent for initial provision of special education and related services, contact the Special Education Director immediately.*

**Are there times when consent for evaluation is not required?**

Yes, consent is not required:

- For the review of existing data but is preferred ;
- For assessments that are given to all students;
- For assessments that are already listed on the student's IEP as tools for measuring progress; or,
- If the district has made reasonable effort to obtain consent for evaluation and the parent has failed to respond (and the evaluation that consent is being requested for is not an intelligence or personality test).

Consent is also not required when a hearings officer determines the need for evaluation of a student.

**Who is responsible for obtaining consent?**

The Case Manager is responsible for obtaining informed written parent consent prior to evaluation for new referrals. The Case Manager is responsible for obtaining informed written parent consent prior to evaluation for reevaluations.

Informed parent consent means the parent understands what they are giving their consent for. When completing the consent form, acronyms and jargon may not be used. When completing the content sections of the consent form use straightforward, simple language that reflects the team's decisions.

The test(s) the district is requesting parent consent for must be described sufficiently so the parent understands what skills or functions the test assesses. *Always write out the full name of an assessment on the consent form or include the Student Assessment List form. Using the Student Assessment List is preferred.* If the test name includes a description of the skill or function that is being assessed it is not necessary to provide a description of the assessment on the consent form. If the name of the assessment does not describe the skill or function being assessed, include a brief description of the assessment on the consent form.

*For example, "The Woodcock-Johnson Psycho-Educational Battery" is the full name of an assessment. In this case the name does not describe what the test assesses so a brief*

- determining progress; or
- (d) Conducting a screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation.
- (2) Consent for initial evaluation for wards of the state: If a child is a ward of the state and is not residing with the child's parent, the public agency is not required to obtain informed written consent from the parent for an initial evaluation to determine whether the child is a child with a disability if:
- (a) Despite reasonable efforts to do so, the agency cannot discover the whereabouts of the parent of the child;
  - (b) The rights of the parents of the child have been terminated in accordance with state law; or
  - (c) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.
- (3) If, after reasonable efforts to obtain parent consent, the parent does not respond, the school district may conduct a reevaluation without consent, unless the reevaluation is an individual intelligence test or test of personality. "Reasonable efforts" means that the school district has used procedures consistent with OAR 581-015-2195(3).
- (4) Written consent is not required if an administrative law judge determines under OAR 581-015-2375 that the evaluation or reevaluation is necessary to ensure that the child is provided with a free appropriate public education

*description such as "a test of cognitive ability and achievement" must accompany the name of the assessment. The "Woodcock Reading Mastery Test" is also the full name of an assessment, but in this case the name includes what skill the test is assessing so the full name of the assessment is all that would be required.*

**If a parent has given written consent, can he or she revoke consent?**

Yes:

- Parents may revoke their consent at any time before the completion of the evaluation for which they have given consent. However, revocation is not retroactive. Parents may only revoke consent for evaluation that has not yet been conducted.
- Parents may revoke their consent for initial provision of special education services before the initiation of service.
- In addition, parents may now unilaterally revoke their consent for special education and related services at any time. In this situation the parent is revoking their consent for all special education and related services. This does not apply to disagreement about a particular service on the IEP. A parent request to unilaterally revoke consent for special education and related services must be in writing. If a parent makes this written request, contact the Special Education Director immediately. *Additional guidance for this new provision is located in the resource section of this manual.*

If a parent has provided written consent for evaluation to the district and withdraws it prior to the completion of the evaluation, cease all further evaluation activities and contact the Special Education Director. At this point the district will decide:

- whether it is possible to continue to provide an education to the child without special education involvement, or in the case of reevaluation, without further testing; or,
- to pursue mediation or a Due Process hearing in order to go forward with the evaluation without parent consent.

Parents must be provided *Prior Written Notice of Special Education Action* documenting the district's decision not to continue the evaluation due to the parent's revocation of consent. In this case the district requires the notice be provided to the parent in person or sent by certified mail.

**Do these requirements apply to all resident students of the district?**

No. If a child is home schooled or parentally placed in a private school by his or her parents and the parent refuses to give consent for initial evaluation or does not respond to a request for consent, the district may not use mediation or due process to seek consent; and the district is not required to consider the child as eligible for special education services.

**Required district forms:** The forms listed below must be used under certain circumstances requiring Prior Notice and Consent. Not all forms will be required for every student. District forms may be printed from the electronic SPED system or obtained from the district special education administrative specialist.

- *Evaluation Planning*
- *Prior Notice about Evaluation/ Consent for Evaluation;*
- *Student Assessment List*
- *Prior Notice and Consent for Initial Provision of Special Education;*
- *Prior Notice of Special Education Action*
- *Notice of Team Meeting*

## Section 6: Eligibility

### 581-015-2125: Interpretation of Evaluation Data

In interpreting evaluation data for the purpose of determining if a child is a child with a disability under OAR 581-015-2130 through 581-015-2180, and the educational needs of the child, each team must:

- (1) Draw upon information from a variety of sources, including but not limited to, aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background and adaptive behavior; and
- (2) Ensure that information obtained from all these sources is documented and carefully considered.

### 581-015-2120: Determination of Eligibility

- (1) Upon completing the administration of assessments and other evaluation materials, a team must determine whether the child is a child with a disability under OAR 581-015-2130 through 581-015-2180 and the educational needs of the child.
  - (a) The team must include the parent, in accordance with OAR 581-015-2190, and two or more qualified professionals, at least one of whom is knowledgeable and experienced in the evaluation and education of children with the suspected disability. This team may be the child's IEP team.
  - (b) For a child suspected of having a specific learning disability, the team must meet the requirements of OAR 581-015-2170.
- (2) The team must prepare an evaluation report and written statement of eligibility.
  - (a) The evaluation report(s) must describe and explain the results of the evaluation conducted.
  - (b) The written statement of eligibility must include:
    - (A) A list of the evaluation data considered in determining the child's eligibility;
    - (B) A determination of whether the child meets the minimum evaluation criteria for one of the disability categories in OAR 581-015-2130 through 581-015-2180 or OAR 581-015-2795;
    - (C) A determination of whether the primary basis for the suspected disability is:

When the evaluation process is completed the Case Manager convenes a team to determine whether or not a child is or continues to be a child with a disability. This team reviews the evaluation findings to determine whether or not the student meets the criteria for a suspected disability (ies) and to determine the educational needs of the child. This decision must take place within 60 school days of the date the parent gave written consent for evaluation, or the date Prior Written Notice was provided that no additional evaluation was necessary (and can not exceed the timeline for determining continuing eligibility at least once every three years).

Prior to the meeting the Case Manager should gather all assessment results, prepare and send out a meeting notice to all required team members, and prepare the relevant eligibility form(s) by recording all required assessment information. It is expected that the evaluation summary and report is completed before the meeting date. The summary should include documentation of all sources of information being used to determine eligibility, and must explain the team's interpretation of the data.

### Who is required to participate in the eligibility determination?

A team is required to determine eligibility for special education services. For all disability categories, this team must include the parent, and two or more qualified professionals, at least one of whom is knowledgeable and experienced in the evaluation and education of children with the suspected disability. If a Specific Learning Disability is suspected, the team must also include the regular education teacher (or if the child does not have a regular education teacher, a regular classroom teacher qualified to teach students of the same age), and a person qualified to conduct individual diagnostic evaluations of children, such as a school psychologist, speech-language pathologists, or other qualified professional. This team may be the child's IEP team.

### If the criteria for a disability category are met, is the student eligible for special education services?

Not always. In addition to the student meeting the criteria for a specific disability, the team must also determine that the student needs special education services.

For example, a student may meet the eligibility criteria for Vision Impairment, but has successfully completed mobility training, is fluent in Braille, and only needs text and assignments translated in order to access and progress in the general curriculum with his nondisabled peers. In this case the team would determine the student is not eligible for special education at this time as there is no identified need for specially designed instruction; the student requires only modification to educational materials.

- (i) A lack of appropriate instruction in reading (including the essential components of reading) or math; or
  - (ii) Limited English proficiency;
  - (D) A determination of whether the child's disability has an adverse impact on the child's educational performance;
  - (E) A determination of whether, as a result of the disability, the child needs special education services; and
  - (F) The signature of each member of the team indicating agreement or disagreement with the eligibility determination.
- (c) For a child suspected of having a specific learning disability, the team's written report and documentation of determination of eligibility must meet the requirements of OAR 581-015-2170.
- (3) The team must determine a child to be eligible under this rule if the child has a disability and needs special education and related services, even though the child is advancing from grade to grade.
- (4) For a child who may have disabilities in more than one category, the team need only qualify the child under one disability category. However, the child must be evaluated in all areas related to the suspected disability or disabilities, and the child's IEP must address all of the child's special education needs.
- (5) The team may not find a child eligible for special education services if:
- (a) The determinant factor for that eligibility decision is:
    - (A) Lack of appropriate instruction in reading, including the essential components of reading instruction, or lack of appropriate instruction in math; or
    - (B) Limited English proficiency; and
  - (b) The child does not otherwise meet the eligibility criteria under OAR 581-015-2130 through 581-015-2180.
- (6) The school district must provide a copy of the evaluation report and the documentation of determination of eligibility to the parent at no cost.

**What happens if the team determines the student is not eligible for special education?**

If, as part of an initial or reevaluation, a student is found not eligible for special education services, the team must complete all eligibility paperwork documenting this decision. If the team identified the need for interventions, modifications, and/or accommodations, Section 504 eligibility may be considered at this point, however, all 504 procedures and standards must be met. The counselor or other appropriate building personnel take the responsibility for the Section 504 process.

The Case Manager must provide the parent a copy of the *Eligibility Determination, Prior Notice of Special Education Action, Evaluation Report* and any other documents related to the evaluation and eligibility decision. The Case Manager organizes the student file using the district's guidelines for IDEA files and then sends it to the District Special Education office to store the file with other inactive student files.

*Note: If a student's eligibility terminates due to graduation with a regular diploma or due to exceeding the age of eligibility for FAPE, the case manager must provide the student with a summary of the student's academic achievement and functional performance (Summary of Performance) including recommendations on how to assist the student in meeting the student's postsecondary goals. This is accomplished by updating the Present Levels of Academic and Functional Performance using the student's most current IEP and including any necessary supports or modifications that the student needs to successfully continue toward his or her post high school goal(s).*

**What happens if the team determines the student is eligible for special education?**

The case manager is responsible for arranging the IEP meeting within 30 calendar days of the eligibility determination.

The case manager must provide the parent with copies of the *Eligibility Determination, IEP Meeting Notice, and Prior Notice of Special Education Action,*

**What if a student meets eligibility requirements for more than one disability category?**

There is no requirement under the IDEA to determine multiple disabilities. When making an eligibility determination, the eligibility team should consider the disability category that most accurately describes the student's primary handicapping condition. Even though some disability categories are difficult for parents and teachers to accept, it is important to be accurate in identifying the primary disability. The nature of a student's disability relates directly to the design of appropriate instruction, transition planning, and program components. Certain disability categories provide supports to a student through community assistance and services. While the team should never choose a disability category based solely on this information, this discussion may assist the team in choosing the disability category that can

most comprehensively address the student needs. However, the team must always ensure the student meets the specific criteria for a disability category prior to determining the student eligible.

**Can eligibility be determined without the parent?**

Yes, the eligibility team may move forward with determining eligibility without the parent in attendance if the parent was provided notice sufficiently in advance to have the opportunity to attend. If the parent has been provided sufficient attempts and does not attend the eligibility determination meeting the case manager must provide the parent a copy of the evaluation report and eligibility determination.

**Note:** The eligibility team should not delay meeting to determine eligibility if the parent has been provided notice sufficiently in advance to have the opportunity to attend. The district is required to determine eligibility within 60 school days of parent consent. This timeline cannot legally be extended to accommodate parent schedules. If the parent is not in attendance at the eligibility meeting the case manager must schedule an additional time to meet with the parent to review the evaluation results and eligibility determination, to have the parent sign the eligibility document and indicate their agreement/disagreement with the team determination, and to gain consent if appropriate.

**If a medical statement is required for the disability category being considered, can the eligibility team move forward with determination without this statement?**

No. If a medical statement is required for eligibility determination, the team must have this statement prior to being able to determine eligibility. If the case manager is having difficulty obtaining the statement or the parent is unable to produce the student to the physician in order to obtain the statement the case manager should contact the Special Education Director.

**Cross Reference:** Disability specific eligibility criteria are found in the following OAR's, located in the Evaluation section of this document:

- OAR 581-015-2130: Autism Spectrum Disorder
- OAR 581-015-2135: Communication Disorder
- OAR 581-015-2140: Deafblindness
- OAR 581-015-2145: Emotional Disturbance
- OAR 581-015-2150: Hearing Impairment
- OAR 581-015-2155: Mental Retardation
- OAR 581-015-2160 Orthopedic Impairment'
- OAR 581-015-2165: Other Health Impairment
- OAR 581-015-2170 Specific Learning Disability
- OAR 581-015-2175 Traumatic Brain Injury
- OAR 581-015-2180 Vision Impairment

**Required district forms:** The forms listed below are required at certain times or for certain actions as part of Eligibility Determination for special education. Not all forms will be required for every student as part of the process. District forms may be printed from the electronic SPED system, or obtained from the special education administrative specialist.

- *Notice of Team Meeting*
- *Eligibility Determination (by disability);*
- *Summary of Evaluation Report;*
- *Notice of Special Education Action;*
- *Oregon Standard IEP;*
- *Prior Notice of Special Education Action;*
- *Prior Notice and Consent for Initial Provision of Special Education*
- *Placement Determination*

## Section 7: Parent Participation

### 581-015-2190: Parent Participation – General

- (1) School districts must provide one or both parents with an opportunity to participate in meetings with respect to the identification, evaluation, IEP and educational placement of the child, and the provision of a free appropriate public education to the child.
- (2) Meeting Notice:
  - (a) School districts must provide parents with a written notice of the meeting sufficiently in advance to ensure that one or both parents will have an opportunity to attend.
  - (b) The written notice must:
    - (A) State the purpose, time and place of the meeting and who will attend;
    - (B) Inform the parent that they may invite other individuals whom they believe have knowledge or special expertise regarding the child;
    - (C) Inform the parent that the team may proceed with the meeting even if the parent is not in attendance; and
    - (D) Inform the parent of whom to contact before the meeting to provide information if they are unable to attend.
- (3) The school district must take whatever action is necessary to ensure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.
- (4) A meeting does not include informal or unscheduled conversations involving school district personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.
- (5) Conducting a meeting without a parent in attendance: A meeting may be conducted without a parent in attendance if the school district has given the parent notice under subsection (2), or, for IEP or placement meetings, in accordance with OAR 581-015-2195.
- (6) Transfer of rights:

The district is required to provide parents an opportunity to participate in meetings held for the identification, evaluation, IEP, educational placement, and provision of a FAPE for their child. The case manager must provide parents with written notice of any meeting sufficiently in advance to ensure that one or both parents have an opportunity to attend.

*Note:* Parents do not need to be invited to every meeting a school has about a student with a disability. You can hold meetings to discuss evaluation results, formulate proposals or responses to proposals a parent makes, to discuss scheduling, curriculum, and planning for a student, or other matters.

Decisions that affect a child's special education program or placement (think of these as decisions that are documented in the student's file) cannot be made in their final form without holding the appropriate meeting with a fully formulated team, which must include the parent.

#### **Are there content requirements for written notice of a team meeting?**

Yes, the written notice must:

- State the purpose, time and place of the meeting and who will attend;
- Inform the parent that they may invite other individuals whom they believe have knowledge or special expertise regarding the child;
- Inform the parent that the team may proceed with the meeting even if the parent is not in attendance; and,
- Inform the parent of whom to contact before the meeting to provide information if they are unable to attend.
- If the student is going to be 16 during the IEP year, the student must be invited.

We must also ensure the parent understands what takes place at the meeting; including arrangement for an interpreter for parents who are deaf or whose native language is other than English.

#### **Are the parent participation requirements the same for all types of meetings?**

No, meetings regarding the identification, evaluation, and educational placement of the child, require the district to provide one or both parents the opportunity to participate. IEP meetings have the following additional parent participation requirements:

- Scheduling the meeting at a mutually agreed on time and place;
- If neither parent can attend, you must use other methods to ensure parent participation, including, but not limited to, individual or conference phone calls or home visits.

- (a) The right to parent participation transfers to an adult student under OAR 581-015-2325.
- (b) After the transfer of rights to an adult student under OAR 581-015-2325, the school district must provide written notice of meetings to the adult student and parent, if the parent can be reasonably located. A parent receiving notice of a meeting under this subsection is not entitled to attend the meeting unless invited by the adult student or by the school district.

**581-015-2195: Additional Parent Participation Requirements for IEP and Placement Meetings**

- (1) Parent Participation: School districts must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP or placement meeting or are afforded the opportunity to participate, including:
  - (a) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
  - (b) Scheduling the meeting at a mutually agreed on time and place.
- (2) Other Methods to Ensure Parent Participation: If neither parent can attend, the school district must use other methods to ensure parent participation, including, but not limited to, individual or conference phone calls or home visits.
- (3) Conducting an IEP/Placement Meeting without a Parent in Attendance: An IEP or placement meeting may be conducted without a parent in attendance if the school district is unable to convince the parents that they should attend.
  - (a) If the school district proceeds with an IEP meeting without a parent, the district must have a record of its attempts to arrange a mutually agreed on time and place such as:
    - (A) Detailed records of telephone calls made or attempted and the results of those calls;
    - (B) Copies of correspondence sent to the parents and any responses received; and
    - (C) Detailed records of visits made to the parent's home or place of employment and the results of those visits.
  - (b) The Department considers school district attempts to convince parents to attend sufficient if the school district:
    - (A) Communicates directly with the parent and arranges a mutually agreeable time and place, and sends written notice required under OAR 581-015-2190(2) to confirm

**Do parent participation rights transfer to the student when rights transfer at the age of majority?**

Yes. Parent participation rights transfer to the student at the age of majority. After rights transfer to the adult student the district must provide written notice of meetings to the adult student and parent, if the parent can be located.

*Note:* In this case a parent receiving notice of a meeting is not entitled to attend the meeting unless invited by the adult student or by the school.

**Can a meeting be conducted without a parent?**

Yes, under certain circumstances. A meeting for the purpose of identification, eligibility, or placement of the child may be conducted without a parent in attendance if you have given the parent notice sufficiently in advance to allow the parent the opportunity to attend.

An IEP meeting may be conducted without a parent in attendance if:

- The school is unable to convince the parents that they should attend. In this situation, you must have a record of the attempts to arrange a mutually agreed upon time and place. These attempts should include detailed records of telephone calls made or attempted and the results of those calls; copies of all correspondence sent to the parents and any responses received; and detailed records of visits made to the parent's home or place of employment and the results of those visits.  
Your attempts to convince parents to attend are considered sufficient if you have communicated directly with the parent and arranged a mutually agreeable time and place, and sent written notice to confirm this arrangement; or if you send written notice proposing a time and place for the meeting and state in the notice that the parent may request a different time and place, and confirm the parent received the notice.
- You have arranged a mutually agreed upon time and place with the parent, the parent notifies you at the last minute that they are unable to attend, and rescheduling the meeting at a time the parent can attend will cause you to go over the 365 day timeline. In this situation explain to the parent that IDEA requires you to hold an IEP every 365 days and that rescheduling the meeting will result in exceeding the timeline. Ask the parent if they can participate via phone. If they are unable to participate via phone, explain to the parent the district's obligation to continue with the meeting without their attendance due to the IDEA requirement to meet every 365 days and let them know the IEP will not be finalized until they have had a chance to give input. If the parent becomes agitated or upset that the meeting is scheduled to continue, contact the Special Education Director.

The case manager should clearly document on the meeting notice all communication regarding the scheduling/rescheduling of meetings with the parent.

this arrangement; or

(B) Sends written notice required under OAR 581-015-2190(2) proposing a time and place for the meeting and states in the notice that the parent may request a different time and place, and confirms that the parent received the notice.

(c) "Sufficient attempts" may all occur before the scheduled IEP or placement meeting, and do not require the scheduling of multiple agreed-upon meetings unless the team believes this would be in the best interest of the child.

(4) Considering Transition: If a purpose of the meeting is to consider postsecondary goals and transition services for a student, the written notice required by OAR 581-015-2190(2) must also:

(a) Indicate this purpose;

(b) Indicate that the school district will invite the student; and

(c) Identify any other agency that will be invited to send a representative in accordance with OAR 581-015-2210(2)(b).

(5) The school district must give the parent a copy of the IEP at no cost to the parent. If the parent does not attend the IEP meeting, the school district must ensure that a copy is provided to the parent.

(6) When conducting IEP team meetings and placement meetings, the parent of a child with a disability and a school district may agree to use alternative means of meeting participation, such as video conferences and conference calls.

### **Parental or Guardian Request to Record IEP Meetings**

The Individual Education Program (IEP) team must know how to respond to request to record IEP meetings to keep the IEP progress on track and to respect the rights of both parents/guardians and other team members.

Parents/guardians have the right to record an IEP meeting if it will help them understand the proceedings. Parents/guardians also have the right to record an IEP meeting if there are parental or guardian disabilities or language barriers.

The IEP team must tell parents or guardians that they must put their request to record in writing. This request give the district a written record of the request and allows the district to prepare to record the meeting as well.

Parents/guardian must use their own equipment to make the records.

If the parents/guardians choose to record the IEP meeting, the district will do the same with the district's own equipment.

Prior to the recording of the IEP meeting, the district representative will issue a statement to all parties present stressing the importance of confidentiality in the proceedings therein and requesting that the names of any students and/or staff who may be peripheral to the issues involved, not be specifically mentioned in order to protect their right to privacy.

With the written consent of the parent/guardian and the district, a member of an IEP team may be excused from an IEP meeting in the following situations:

1. The attendance of the member is not necessary because the members' area of curriculum or service will not be discussed or modified at the meeting; or
2. When the meeting will involve modification or discussion of the member's area of curriculum or service, the member submits, to the parent/guardian and the IEP team, written input into the development of the IEP before the meeting begins

If the district audiotapes or videotapes the IEP meeting, the school district will keep the tape(s) as part of the student's educational record. The tape(s) will be given the same measure of confidentiality as any other educational record.

**581-015-2320: Surrogate Parents**

- (1) School districts must ensure that the rights of a child with a disability, or suspected of having a disability, are protected by appointing a surrogate parent not more than 30 days after a determination by the district that the child needs a surrogate because:
  - (a) No parent (as defined in OAR 581-015-2005(20)) can be identified or located after reasonable efforts;
  - (b) The child is a ward of the state and there is reasonable cause to believe that the child has a disability; or
  - (c) The child is an unaccompanied homeless youth.
- (2) The school district may not appoint a surrogate solely because the parent or adult student to whom rights have transferred is uncooperative or unresponsive to special education needs.
- (3) Each school district must have a method for determining whether a child needs a surrogate parent and for assigning a surrogate parent to the child. The school district must ensure that each person approved to serve as a surrogate:
  - (a) Is not an employee of the school district or the Department or any other agency that is involved in the education or care of the child;
  - (b) Is free of any personal or professional interest that conflicts with representing the child's special education interests; and
  - (c) Has knowledge and skills that ensure adequate representation of the child in special education decisions.
- (4) For an unaccompanied homeless youth, appropriate staff of emergency shelters, independent living programs and street outreach programs may be appointed as a temporary surrogate parent without regard to subsection (3)(a) until a surrogate can be appointed that meets all of the requirements of subsection (3).
- (5) An appointed surrogate parent has all of the special education rights and procedural safeguards available to the parent.
- (6) A surrogate is not considered an employee of a school district solely on the basis that the surrogate is compensated from public funds.
- (7) The duties of the surrogate parent are to:
  - (a) Protect the special education rights of the child;
  - (b) Be acquainted with the child's disability and the child's special education needs;
  - (c) Represent the child in all matters relating to the

**Surrogate Parents**

**How does IDEA 2004 define "parent"?**

Under IDEA, "parent" means one or more of the following persons:

- o A biological or adoptive parent of the child;
- o A foster parent of the child;
- o A legal guardian, other than a state agency;
- o An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare;
- o A surrogate parent who has been appointed in accordance with OAR 581-01502320

**When should the district consider the appointment of a surrogate parent?**

IDEA requires the district to appoint a surrogate parent not more than 30 days after determination that the child needs a surrogate because:

- o No parent can be identified or located after reasonable efforts;
- o The child is a ward of the state and there is reasonable cause to believe that the child has a disability; or,
- o The child is an unaccompanied homeless youth.

The district may not appoint a surrogate solely because the parent is uncooperative or unresponsive to special education needs. Be familiar with the definition of "parent" in OAR 581-015-2005(20) when beginning to consider the need for appointment of a surrogate.

**How is a surrogate selected?**

There are specific requirements a person must meet to be considered for the role of a surrogate parent. The district must ensure that any person being considered:

- Is not employed by the district, the Oregon Department of Education, or any other agency that is involved in the education or care of the child, including DHS;
- Is free of any personal or professional interest that conflicts with representing the child's special education interests; and,
- Has knowledge and skills that ensure adequate representation of the child in special education decisions.

For an unaccompanied homeless youth, appropriate staff of emergency shelters, independent living programs and street outreach programs may be appointed as a temporary surrogate parent until a surrogate can be appointed that meets all of the above requirements.

- identification, evaluation, IEP and educational placement of the child; and
- (d) Represent the child in all matters relating to the provision of a free appropriate public education to the child.
- (8) A surrogate has the same rights granted to a parent in a hearing under OAR 581-015-2360, and the procedures regarding hearings in OAR 581-015-2340 through 581-015-2385 apply.
- (9) A parent, or an adult student to whom rights have transferred, may give written consent for a surrogate to be appointed.
- (a) When a parent or an adult student requests that a surrogate be appointed:
- (A) The parent or adult student retains all parental rights to receive notice under OAR 581-015-2190, 581-015-2195, 581-015-2310, and 581-015-2315 and all of the information provided to the surrogate.
- (B) The surrogate, alone, is responsible for all matters relating to the special education of the child unless the parent or adult student revokes consent for the surrogate's appointment.
- (b) The parent or adult student may revoke consent at any time by providing a written request to revoke the surrogate's appointment.
- (10) The school district may change or terminate the appointment of a surrogate when:
- (a) The person appointed as surrogate is no longer willing to serve;
- (b) Rights transfer to the adult student or the child graduates with a regular diploma;
- (c) The child is no longer eligible for special education services;
- (d) The legal guardianship of the child is transferred to a person who is able to carry out the role of the parent;
- (e) A foster parent is identified who can carry out the role of parent under OAR 581-015-2000(20);
- (f) The parent, who previously could not be identified or located, is now identified or located;
- (g) The appointed surrogate is no longer eligible;
- (h) The child moves to another school district; or
- (i) The child is no longer a ward of the state or an unaccompanied homeless youth.
- (11) A person appointed as surrogate will not be held liable for

#### **What does a surrogate parent do?**

The duties of the surrogate parent are to protect the special education rights of the child by understanding the child's disability and special education needs. The surrogate parent represents the child in all matters relating to the identification, evaluation, IEP and educational placement of the child; and the provision of a free appropriate public education. An appointed surrogate parent has all of the special education rights and procedural safeguards available to the parent. However, a person appointed as surrogate can not be held liable by the district for actions they take in good faith or on behalf of the parent in protecting the special education rights of the child.

Surrogate parents do not have any parental rights other than participation in the special education process. For example, unless a surrogate parent has been given other parental rights by a court or the actual parent of the student, the surrogate may not perform many typical parental duties.

#### **Can a parent request the appointment of a surrogate?**

Yes, a parent may give written consent for a surrogate to be appointed. When a parent requests the district appoint a surrogate, the surrogate alone is responsible for all matters relating to the special education of the child unless the parent revokes consent for the surrogate's appointment. *The parent retains all parental rights to receive notice and all information provided to the surrogate.* The parent may revoke consent at any time by providing a written request to the district to revoke the surrogate's appointment.

#### **Once a surrogate is appointed can the district change the surrogate?**

Yes, the school district may change or terminate the appointment of a surrogate if any of the following situations occur:

- The person the district appointed as a surrogate is no longer willing to serve in this role;
- Procedural safeguard rights have transferred at the age of majority to the student; or the student graduates with a regular diploma;
- The student moves to the district from another district;
- The student is no longer eligible for special education services;
- The legal guardianship of the student transfers to a person who is able to carry out the role of the parent;
- A foster parent is identified who can carry out the role of parent;
- The parent, who previously could not be identified or located, is now identified or located;
- The surrogate the district appointed is no longer eligible (for example: they are now employed by the district);

actions taken in good faith on behalf of the parent in protecting the special education rights of the child.

- The student has moved and is no longer a resident of the district; or,
- The student is no longer a ward of the state or an unaccompanied homeless youth.

**How do I go about having a Surrogate appointed?**

First, using the above criteria, determine there is a need for a surrogate. Foster children who are not in a placement with a pre-adoptive parent will always require a surrogate. If you have a question about other children, such as an unaccompanied youth or a student living with relative, contact an administrator in the Student Services Office. You will be asked to complete a form that gives background about the student (the *Surrogate Parent Program* form) and his or her placement. The person who desires to be appointed surrogate also fills out an application (*Surrogate Parent Program* application) that documents that he or she does not have any conflicts of interest and is familiar with the IDEA. These forms may be obtained from the Special Education Administrative Specialist.

**Required district forms:** The forms listed below are required at certain times for parent participation. Not all forms will be required for every student. District forms may be printed from the district website, our electronic SPED system, or obtained from the special education staff or counselor in each building.

- *Notice of Team Meeting*
- *Prior Notice of Special Education Action;*
- *Surrogate parent forms*

**Additional Resources:**

- Surrogate Parents : Q & A: <http://www.ode.state.or.us/pubs/faq/sped/surrogateqanda.pdf>
- Forms and guidance can be found in the resource section of this manual.

<b>Section 8: IEP Development</b>	
<p><b>581-015-2215: Oregon Standard IEP</b></p> <p>(1) Each school district must use the Oregon Standard IEP form in the development, review and revision of all IEPs, unless an alternate form is approved under subsection (4).</p> <p>(2) A school district may use an alternate form in the development, review and revision of IEPs if the Department approves the alternate form.</p> <p>(3) Criteria for approval. The criteria for approval of alternate forms includes, but is not limited to:</p> <p>(a) Whether the alternate form meets the requirements for the contents of an IEP under OARs 581-015-2200, 581-015-2205, 581-015-2330, and 581-015-2065; and</p> <p>(b) Whether use of the alternate form will reduce unnecessary or confusing paperwork.</p> <p>(4) Approval process.</p> <p>(a) Within 10 days of the established date of submission of the alternate form for approval, the Department will decide:</p> <p>(A) Whether the alternate form is approved or disapproved; and</p> <p>(B) Any conditions that apply to the use of the alternate form.</p> <p>(b) A school district may ask for a reconsideration of the decision within 30 days of receiving the Department's decision in subsection (3). The Department will issue a written response to the district of the reconsideration within 30 days of receiving the request.</p> <p>(c) If a school district changes or modifies the approved alternate form, the district must submit the form for approval before its use.</p> <p>(d) The decisions of the Department under this rule are final.</p> <p><b>581-015-2210: IEP Team</b></p> <p>(1) School districts must ensure that the IEP Team for each child with a disability includes the following participants:</p> <p>(a) One or both of the child's parents, except as provided in OAR 581-015-2195;</p> <p>(b) The child where appropriate;</p> <p>(c) At least one regular education teacher of the child, if the child is or may be participating in the regular education</p>	<p>IDEA entitles students with disabilities a Free Appropriate Public Education (FAPE). This means the district is required to provide students with disabilities an education that is designed to meet their unique needs at no cost to the parent. The district makes this offer of FAPE through the IEP. The IEP describes the special education and related services the student requires in order to access, participate, and progress in the general curriculum, and to prepare for successful post school outcomes.</p> <p>As defined in IDEA, special education means specially designed instruction. This is instruction that is adapted in content, methodology, and/or delivery of instruction to meet the unique educational needs of students and to ensure access to the general curriculum, so students with disabilities can meet the educational standards of the district that apply to all children.</p> <p><b>Who is responsible for ensuring an IEP is developed for a student?</b></p> <p>The case manager assigned to the student facilitates the development, review, and revision of an IEP.</p> <p><b>When is an IEP required to be in place?</b></p> <p>If initial eligibility has just been established an IEP must be developed within 30 calendar days of the eligibility determination. For all other students with disabilities, an IEP must be in place at the beginning of each school year. The IEP must be in affect before special education and related services are provided, with implementation expected to begin as soon as possible after the IEP is developed. Special education services, modifications, and supports must be provided in accordance with the IEP.</p> <p>Once an IEP has been developed and as long as the student continues to be eligible for special education services, the IEP must be reviewed and revised at least once every 365 days.</p> <p><b>Are there other times when an IEP meeting may be called other than the annual review?</b></p> <p>Yes. There are circumstances when an IEP meeting may be requested outside the required annual review:</p> <ul style="list-style-type: none"> <li>• Parent request: Parents can request an IEP meeting if they believe the IEP is not being implemented, is no longer effective in meeting the students needs, or if they would like the team to consider revising any aspect of the child's current special education and related services.</li> <li>• Student has meet annual goal prior to review date and the goals need to be adjusted.</li> <li>• Inadequate progress: If the student is not making adequate progress toward the annual IEP goals the IEP team should reconvene to review and revise the IEP as appropriate. The</li> </ul>

- environment, consistent with section (4) of this rule;
- (d) At least one special education teacher of the child or, if appropriate, at least one special education provider of the child;
  - (e) A representative of the school district, who may also be another member of the team, who is:
    - (A) Qualified to provide, or supervise the provision of, specially designed instruction;
    - (B) Knowledgeable about the general education curriculum;
    - (C) Knowledgeable about district resources; and
    - (D) Authorized to commit district resources and ensure that services set out in the IEP will be provided.
  - (f) An individual who can interpret the instructional implications of the evaluation results (who may also be another member of the team);
  - (g) Other individuals, including related services personnel as appropriate, invited by:
    - (A) The parent, whom the parent determines to have knowledge or special expertise regarding the child; or
    - (B) The school district, whom the school district determines to have knowledge or special expertise regarding the child; and
  - (h) Transition services participants, as described in section (2) of this rule.
- (2) If a purpose of the meeting will be consideration of the postsecondary goals for the student and the transition services needed to assist the student in reaching those goals:
- (a) The school district must invite the student. If the student does not attend the meeting, the school district must take other steps to ensure that the student's preferences and interests are considered.
  - (b) To the extent appropriate, with consent of the parents or adult student, the school district must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.
- (3) IEP team attendance:
- (a) A member of the IEP team described in subsection (1)(c) through (1)(f) is not required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the school district agree in writing that the attendance of

- team should consider the need for additional evaluation as part of this process. The case manager is responsible for recognizing this situation exists and convening a meeting. When the required IEP progress report is completed, if the case manager indicates the student is not making adequate progress toward annual goals, an IEP meeting must be held to revise the IEP.
- New student to the district: If a student enrolls in the district as a student with a disability the student's current IEP must be reviewed to determine if the IEP can be implemented exactly as written. An IEP meeting should be called to revise the IEP, if needed.
  - Disciplinary action: If the student is subject to disciplinary action an IEP meeting may need to be held to consider behavioral supports for the student.
  - Teacher request: Any member of the IEP team may request an IEP meeting if the individual believes the student's special education and related services need to be revised to ensure the provision of FAPE.
  - Schedule change: If a student's schedule changes in a way that affects the special education and related services to be provided to the student as described on the current IEP, the IEP should be revised to ensure the provision of FAPE continues for the student.
  - Frequent or prolonged absence: If a student is absent frequently, or for a prolonged period of time due to illness or family situation, an IEP meeting should be called to address the student's current needs.
  - New information: If the parent provides new information to the district, the IEP should be reviewed and revised, if appropriate, to ensure the continued provision of FAPE.
- Are there required IEP team members?**
- Yes, IEP teams must include the following participants:
- One or both of the child's parents,
  - The child where appropriate (a required member beginning with the first IEP in effect when the child turns 16);
  - The regular education teacher of the child, if the child is or may be participating in the regular education environment. The role of the regular education teacher of the child is to assist in the determination of supplementary aids and services, program modifications and supports for school personnel that will be provided for the child; and appropriate positive behavioral interventions and supports, and other strategies for the child.
  - At least one special education teacher of the child or, if appropriate, at least one special education provider of the child;
  - The District Representative, (who may also be another member of the team). To serve in the role of district representative a person must be:
    - (A) Qualified to provide, or supervise the provision of, special education;
    - (B) Knowledgeable about the general education curriculum;
    - (C) Knowledgeable about district resources; and
    - (D) Authorized to commit district resources and ensure that services set out in the IEP

the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed at the meeting.

(b) A member of the IEP team described in subsection (1)(c) through (1)(f) may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of curriculum or related services, if:

(A) The parent and school district consent in writing to the excusal; and

(B) The member submits, in writing to the parent and the IEP team, input into the development of the IEP before the meeting.

(4) The regular education teacher of the child must participate as a member of the IEP team, to the extent appropriate, in the development, review, and revision of the child's IEP, including assisting in the determination of:

(a) Supplementary aids and services, program modifications and supports for school personnel that will be provided for the child; and

(b) Appropriate positive behavioral interventions and supports, and other strategies for the child.

#### **581-015-2200: Content of IEP**

(1) The individualized education program (IEP) must include:

(a) A statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum.

(b) A statement of measurable annual goals, including academic and functional goals (and, for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of short-term objectives) designed to:

(A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum, and

(B) Meet each of the child's other educational needs that result from the child's disability.

(c) A description of how the child's progress toward meeting the annual goals will be measured and when periodic

will be provided.

- An individual who can interpret the instructional implications of the evaluation results (who may also be another member of the team).

In addition to the required members of an IEP team, other individuals may be invited by the parent or the district because they are determined to have knowledge or special expertise regarding the child. The district may invite related service providers or may choose to involve those individuals by obtaining written input to IEP development.

Additional IEP team members if the student is of transition age: If a purpose of the IEP meeting is consideration of postsecondary goals and transition services needed to assist the student in reaching those goals the district must invite the student. If the student does not attend the meeting, the district must take other steps to ensure that the student's preferences and interests are considered.

To the extent appropriate and with consent of the parents or adult student, the district must also invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

#### **Can a required IEP team member be excused from attending the meeting?**

Yes. There are specific situations when an IEP team member may be excused:

- A required member of the IEP team may be excused from attending an IEP meeting, in whole or in part, if the parent and an authorized official of the district (the team's "District Representative") agree in writing that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed at the meeting. The agreement must be documented, using the *Agreement between Parent and District* form. The parent must be notified and sign the agreement PRIOR to the meeting.
- A required member of the IEP team may also be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of curriculum or related services, if the member submits written input into the development of the IEP to the parent and the team, before the meeting. The parent and an authorized official of the district (the team's "District Representative") must agree to the excusal in writing using the *Agreement between Parent and District* form. In this case, the decision to excuse a team member must be made well in advance of the meeting so the team member's written input can be obtained. . The parent must be notified and sign the agreement PRIOR to the meeting.
- The requirement to obtain a written agreement only applies to the team members that are identified in the law as required team members.

reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

- (d) A statement of the specific special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child:
    - (A) To advance appropriately toward attaining the annual goals;
    - (B) To be involved and progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and
    - (C) To be educated and participate with other children with disabilities and non-disabled children;
  - (e) The projected dates for initiation of services and modifications and the anticipated frequency, amount, location and duration of the services and modifications described in subsection (1)(d) of this rule.
  - (f) An explanation of the extent, if any, to which the child will not participate with non-disabled children in the regular class and activities described in subsection (1)(d) of this rule.
  - (g) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district-wide assessments of student achievement that are needed for the child to participate in the assessment.
    - (A) A child may not be exempt from participation in State or district-wide assessment, including extended and juried assessments, because of a disability, unless the parent has requested an exemption under OAR 581-022-0612.
    - (B) If the IEP team determines that the child must take an alternate assessment in any area instead of a regular State or district-wide assessment, a statement of why the child cannot participate in the regular assessment, and why the alternate assessment selected is appropriate for the child.
- (2) For the purposes of transition, the IEP must include:

#### **What are the process and content requirements for development of an IEP?**

There are specific content requirements in IDEA that must be addressed as part of IEP development. The IEP form allows documentation of the IEP team's decisions regarding each of the required content areas. In Oregon, all districts must use the Oregon Standard IEP, developed by the Oregon Department of Education. There are two parts to the Oregon Standard IEP; Part A: Guidelines for Use; and, Part B: the IEP form itself. The guidelines assist the case manager as he/she facilitates team discussions for each of the content areas and helps ensure the completed IEP is a comprehensive offer of FAPE to the student. The IEP form is used to document the IEP team's decisions in each area. Our district uses an electronic form of the Oregon Standard IEP.

A child coming from ECSE has an Individualized Family Service Plan (IFSP). The IFSP is very similar to an IEP, as IDEA requires an IFSP meet the same content requirements as an IEP. The IFSP will be helpful when creating the child's first IEP for school age programs. *Do not "use" the IFSP as an initial school aged IEP.*

The process of developing an IEP begins with the case manager arranging a mutually agreed upon time and place for the IEP meeting with the parent. Once the date and time for the meeting have been arranged, a *Notice of Team Meeting* is prepared and sent to the parent, and to the required and invited team members. If the student is, or will turn 16 during the time the IEP being developed will be in effect the student must be invited and the meeting notice must indicate that transition needs and services will be addressed.

The case manager is usually the facilitator of the IEP meeting. The case manager is responsible for the development of an agenda which includes decision points and a timeline to accomplish the development of the IEP at the meeting. Copies of any materials needed by the team should be available for all participants at the meeting.

Prior to the IEP meeting, the case manager should summarize the current information on the student's performance in school. The summary should be written in language that is understandable to the general public. Do not use acronyms, test scores in isolation, or jargon that will be difficult for team members to understand, particularly the parent and student, if attending. This summary will be the foundation used for the development of the present level of academic and functional performance, the first content area addressed by the IEP team.

The IEP team considers the academic, functional, and developmental strengths and needs of the student based on recent evaluation, current performance, and information provided by the parent and other team members, as appropriate.

This information is used to determine the specially designed instruction, related services, modifications, and accommodations provided to the student; and the needed support(s) to personnel provided on behalf of the student to ensure FAPE. The team determines the

- (a) Beginning not later than the first IEP to be in effect when the child turns 16, or younger, if determined appropriate by the IEP team, and updated annually thereafter:
  - (A) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; and
  - (B) The transition services (including courses of study) needed to assist the child in reaching those goals.
- (b) Beginning at least one year before a student reaches age 18, or when the district obtains actual knowledge that within one year the student will marry or become emancipated before age 18, a statement that the district has informed the student that procedural rights will transfer to the student upon age 18, marriage or emancipation, whichever occurs first.

**581-015-2205: IEP Team Considerations and Special Factors**

- (1) In developing, reviewing and revising the child's IEP, the IEP team must consider:
  - (a) The strengths of the child;
  - (b) The concerns of the parents for enhancing the education of their child;
  - (c) The results of the initial or most recent evaluation of the child; and
  - (d) The academic, developmental, and functional needs of the child.
- (2) In developing, reviewing and revising the child's IEP, the IEP team must consider the following special factors:
  - (a) The communication needs of the child; and
  - (b) Whether the child needs assistive technology devices and services.
- (3) In developing, reviewing and revising the IEP of children described below, the IEP team must consider the following additional special factors:
  - (a) For a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies to address that behavior;
  - (b) For a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;

amount and frequency for each area of specially designed instruction, related service, modification, accommodation, or support for personnel requires to so that the student will make progress in the general curriculum and on the goals and objectives stated on the student's IEP.

The IEP team is also responsible for considering whether the student needs extended school years services (ESY). ESY services are special education and related services provided to a student with a disability beyond the normal school year and in accordance with the student's IEP. The purpose of ESY services is to maintain the student's learning skills or behavior, not the teaching of new skills or behaviors. ESY services must be made available if the IEP team determines services are necessary for the provision of a FAPE. ESY services, including the amount, frequency, and location must be documented on the Service Summary of the IEP under Specially Designed Instruction.

There are additional content requirements that must be addressed if a student is 16, or is going to turn 16 during the period the IEP being developed will be in effect. These additional requirements assist in ensuring that older students' educational programs are aligned with their preferences, interests, and goals. The IEP team reviews the students' current performance and transition assessment results to assist them in developing appropriate postsecondary goals, a course of study to be followed for the school year, and the needed transition services that will assist the student in successfully reaching their goals.

Once specially designed instruction and related and supporting services have been completed, the IEP team determines if, based on the unique needs of the student, he or she must be removed from participating in the general education environment and with nondisabled peers for any period of time to receive FAPE. If the team determines any removal is necessary, the IEP must contain an explanation of the extent of removal and a written justification of the removal. When the IEP is completed, this decision will be used by the team to assist in determining the student's placement.

If a parent requests a privately or parentally provided accommodation be included as part of a student's IEP the case manager should contact the Special Education Director, who may choose to attend the IEP meeting where the accommodation will be discussed. (Example: the parent requests the child be allowed to have an assistance dog at school; or requests to have a private speech therapist come into the school to serve the child).

All specially designed instruction, related services, modifications, accommodations, supports for personnel and ESY services (if determined necessary by the team), must be clearly documented in the Service Summary of the IEP. The parent or any other individual involved in planning or providing the services on the IEP should be able to look at the Service Summary and clearly understand the services to be provided.

The case manager must ensure all participants in the IEP meeting are documented on the

- (c) For a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child; and
  - (d) For a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communication with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode.
- (4) If, in considering these special factors, the IEP team determines that a child needs a particular device or service (including an intervention, accommodation, or other program modification) for the child to receive free appropriate public education, the IEP team must include a statement to that effect in the child's IEP.
- (5) Nothing in OAR 581-015-2200 or this rule may be construed to require the IEP team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.

Stat. Auth.: ORS 343.041, ORS 343.045; ORS 343.055, ORS 343.151

**581-015-2220: When IEPs Must Be In Effect**

- (1) General:
  - (a) At the beginning of each school year, a school district must have in effect an IEP for each child with a disability within the district's jurisdiction.
  - (b) School districts must provide special education and related services to a child with a disability in accordance with an IEP.
- (2) Initial IEPs:
  - (a) A school district must conduct a meeting to develop an initial IEP within 30 calendar days of a determination that the child needs special education.
  - (b) As soon as possible following development of the IEP, special education and related services must be made available to the child in accordance with the child's IEP.

cover page of the IEP, by role. If a team member represented more than one role at the meeting, that team member's name should appear by each role they represented on the team. This documentation is critical as it informs school personnel (or parents) who may have questions about the IEP to know who to contact after the meeting.

The case manager must ensure the parents receive a final copy of the IEP within ten (10) school days of the meeting. All service providers, including general education teachers, must be provided a copy of those IEP sections they are responsible to implement as soon as possible. Regular classroom teachers must be informed of all relevant aspects of the student's program as indicated on the IEP such as modification(s) that must be made in instruction or evaluation. Consistent communication with regular education is essential for implementation of the IEP with integrity. Implementation of the IEP should begin as soon as possible after the IEP is developed, adhering to the dates of initiation stated in the service summary.

**What if a student transfers into the district with an IEP?**

- If a child with a disability (who had an IEP that was in effect in a previous school district *in Oregon*) transfers into the district within the same school year, the school (in consultation with the child's parents) must provide a free appropriate public education to the child (including services comparable to those described in the child's IEP from the previous district), until the district:
  - (a) Either adopts the child's IEP from the previous school district. (This determination may require involving other building personnel or service providers who will be responsible for implementing the IEP, document through Prior Notice About Special Education Action); or,
  - (b) Develops and implements a new IEP for the child.
- If a child with a disability (who had an IEP that was in effect in a previous school district *in another state*) transfers into the district within the same school year, the district (in consultation with the child's parents) must provide a free appropriate public education to the child (including services comparable to those described in the child's IEP from the previous district), until the school:
  - (a) Complete the initial evaluation referral, in Oregon, reviewing existing information determining if additional assessments are necessary. If necessary, complete the prior notices about evaluation/consent for evaluation.
  - (b) Determines the student eligible for special education services *in Oregon*; and,
  - (c) Develops and implements a new IEP that meets the requirements of the Oregon Standard IEP;
  - (d) Obtains *Prior Notice and Consent for Initial Provision of Special Education* in Oregon,

- (3) Accessibility of IEPs. Each school district must:
- (a) Ensure that the IEP is accessible to each regular education teacher, special education teacher, related service provider and other service provider who is responsible for its implementation; and
  - (b) Inform each teacher and provider described in (3)(a) of his or her specific responsibilities for implementing the child's IEP and the specific accommodations, modifications and supports that must be provided for or on behalf of the child in accordance with the IEP.

**581-015-2225: Review and Revision of IEPs**

- (1) Annual review: Each school district must ensure that the IEP Team reviews the child's IEP periodically, but at least once every 365 days, to:
- (a) Determine whether the annual goals for the child are being achieved; and
  - (b) Revise the IEP, as appropriate, to address:
    - (A) Any lack of expected progress toward the annual goals described in OAR 581-015-2200 and in the general education curriculum, if appropriate;
    - (B) The results of any reevaluation conducted under OAR 581-015-2105;
    - (C) Information about the child provided to, or by, the parents;
    - (D) The child's anticipated needs; or
    - (E) Other matters.
- (2) Agreement to amend or modify IEP
- (a) In making changes to a child's IEP between annual IEP Team meetings, the parent of a child with a disability and the school district may agree not to hold an IEP Team meeting to make these changes, and instead may develop a written document to amend or modify the child's current IEP.
  - (b) If changes are made to the child's IEP in accordance with subsection (1), the district must ensure that the child's IEP team is informed of these changes.
- (3) Amendments to IEP
- (a) Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or as provided in subsection (2) by amending the IEP rather than by redrafting the entire IEP.

**There are new requirements in IDEA 2004 about Accessible Materials. What does this mean?**

These requirements mean that the school must provide "accessible" materials for students who are blind or print disabled. For district level personnel, it means that we must make sure that materials and curricula we adopt have available alternate forms of text such as taped text, enlarged, or brailled text that allow access to the materials by print impaired children. For the IEP team, it means that the team must consider how to provide accessible materials to students.

(b) Upon request, the parent must be provided with a revised copy of the IEP with the amendments incorporated.

**OAR 581-015-2230 : Transfer Students**

- (1) In state: If a child with a disability (who had an IEP that was in effect in a previous school district in Oregon) transfers to a new district in Oregon, and enrolls in a new school within the same school year, the new school district (in consultation with the child's parents) must provide a free appropriate public education to the child (including services comparable to those described in the child's IEP from the previous district), until the new district either:
- (a) Adopts the child's IEP from the previous school district; or
  - (b) Develops, adopts and implements a new IEP for the child.
- (2) Out of state: If a child with a disability (who had an IEP that was in effect in a previous school district in another state) transfers to a new district in Oregon, and enrolls in a new school within the same school year, the new school district (in consultation with the child's parents) must provide a free appropriate public education to the child (including services comparable to those described in the child's IEP from the previous district), until the new district:
- (a) Conducts an initial evaluation (if determined necessary by the new district); and
  - (b) Develops, adopts and implements a new IEP, if appropriate, that meets applicable requirements.

**581-015-2235: School District and Participating Agency Responsibilities for Transition Services**

- (1) If a participating agency, other than the school district, fails to provide agreed-upon transition services described in the IEP of a student with a disability, the school district must, as soon as possible, initiate an IEP meeting to identify alternative strategies to meet the transition objectives for the student set out in the IEP and, if appropriate, to revise the student's IEP.
- (2) Nothing in this part relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

**581-015-2055: Assistive Technology**

- (1) School districts must ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if required as a part of the child's special education, related services or supplementary aids and services.
- (2) On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP team determines that the child needs access to those devices to receive a free appropriate public education.
- (3) School district policies govern liability, if any, for the loss or damage of assistive technology devices.
- (4) School district policies govern transfer of an assistive technology device when a child with a disability using the device ceases to attend school in the district that purchased the device. "Transfer" means the process by which a school district that has purchased an assistive technology device may sell, lease or loan the device for the continuing use of a child with a disability who is ceasing to attend school in the district.

**581-015-2060: Accessible Materials**

- (1) School districts must ensure the timely provision of print instructional materials, including textbooks that comply with the National Instructional Materials Accessibility Standards (NIMAS) for students who are blind or print disabled, in accordance with OAR 581-022-1640.
- (2) School districts must ensure the timely provision of instructional materials in accessible formats to children who need instructional materials in accessible formats, including those who are not blind or print disabled.

**581-015-2065: Extended School Year Services**

- (1) School districts must ensure that extended school year services are available as necessary to provide a free appropriate public education to a child with a disability.
- (2) Extended school year services must be provided only if the child's IEP team determines, on an individual basis, that the services are necessary for the provision of free appropriate public education to the child.
- (3) A school district may not:
  - (a) Limit extended school year services to particular categories of disability; or

- (b) Unilaterally limit the type, amount, or duration of those services.
- (4) The purpose of extended school year services is the maintenance of the child's learning skills or behavior, not the teaching of new skills or behaviors.
- (5) School districts must develop criteria for determining the need for extended school year services. Criteria must include regression and recoupment time based on documented evidence or, if no documented evidence, on predictions according to the professional judgment of the team.
- (6) For the purposes of section (5) of this rule:
  - (a) "Regression" means significant loss of skills or behaviors in any area specified on the IEP as a result of an interruption in education services;
  - (b) "Recoupment" means the recovery of skills or behaviors specified on the IEP to a level demonstrated before the interruption of education services.
- (7) For the purposes of this rule, "extended school year services" means special education and related services that:
  - (a) Are provided to a child with a disability:
    - (A) Beyond the normal school year of the school district;
    - (B) In accordance with the child's IEP; and
    - (C) At no cost to the parents of the child; and
  - (b) Meet the standards of the Department.

**581-015-2070: Nonacademic Services**

- (1) School districts must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP team, to provide nonacademic and extracurricular services and activities in a manner to afford children with disabilities an equal opportunity for participation in those services and activities.
- (2) Nonacademic and extracurricular services and activities may include meals, recess periods, counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school district, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the school district and assistance in making outside employment available.

**Required district forms:** The forms listed below are required at certain times or for certain actions as part of IEP development. Not all forms will be required for every student. District forms may be printed from the district website, our electronic SPED system, or obtained from the special education staff or counselor in each building.

- *Notice of Team Meeting;*
- *Agreement Between Parents and District;*
- *Oregon Standard IEP;*
- *Prior Notice of Special Education Action;*
- *Prior Notice and Consent for Initial Provision of Special Education*
- *Placement Determination*
- *Evaluation Planning – Review of Existing Information*

<b>Section 9: LRE/Placement</b>	
<p><b>581-015-2240: Requirement for Least Restrictive Environment</b> School districts must ensure that:</p> <ol style="list-style-type: none"> <li>(1) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled; and</li> <li>(2) Special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.</li> </ol> <p><b>581-015-2245</b> <b>Alternative Placements and Supplementary Aids and Services</b> School districts must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. The continuum must:</p> <ol style="list-style-type: none"> <li>(1) Include as alternative placements, instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions; and</li> <li>(2) Make provision for supplementary aids and services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.</li> </ol> <p><b>581-015-2250: Placement of the Child</b> School districts must ensure that:</p> <ol style="list-style-type: none"> <li>(1) The educational placement of a child with a disability: <ol style="list-style-type: none"> <li>(a) Is determined by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options;</li> <li>(b) Is made in conformity with the Least Restrictive Environment (LRE) provisions of OAR 581-015-2240 to 581-015-2255.</li> <li>(c) Is based on the child's current IEP;</li> <li>(d) Is determined at least once every 365 days; and</li> <li>(e) Is as close as possible to the child's home;</li> </ol> </li> <li>(2) The alternative placements under OAR 581-015-2245 are</li> </ol>	<p>The district is responsible for ensuring students with disabilities are educated with children who are not disabled to the maximum extent appropriate in the least restrictive environment. This means a student with disabilities is removed from the regular educational environment only if the nature or severity of his or her disability is such that education in the regular class cannot be achieved satisfactorily with the use of supplementary aids and services. The district must ensure that the educational placement of a student is as close as possible to the student's home and that the student attends the same school he or she would attend if not disabled unless the student's disability prevents this.</p> <p>Simply stated, placement is the environment in which a student's IEP goals and objectives are carried out. The placement decision must meet the student's unique needs; not the particular disability the student has, (for example, a student cannot be put into a resource room class just because he or she is learning disabled). While placement is determined by the IEP team, the specific location is determined by the district.</p> <p>Steps must also be taken to ensure that students with disabilities have access to all programs, both academic and nonacademic, that are available to non-disabled peers. These programs include but are not limited to art, music, industrial arts, consumer and homemaking arts, vocational education, physical education, counseling services, athletics, transportation, health services, and special interest groups or clubs that are sponsored by the school. Equal opportunity for participation must be provided. For example, if a deaf student has an interpreter for class activities, then an interpreter may also be needed for student government activities before school or basketball after school. This means that regular enrollment practices must allow students with disabilities to participate, and that the IEP team address the ability of the student to access these programs and services.</p> <p><b>Is Placement Determination part of the IEP process?</b> No. Placement determination is a distinct and separate process that occurs AFTER the IEP is developed and is based on the student's most current IEP. Like the IEP, Placement must be determined annually. Once the annual placement determination for a student has occurred, this placement cannot be changed without the review, and if necessary revision, of the student's IEP.</p> <p><b>Is Prior Notice and Consent required for placement?</b> When a student is found eligible for special education services <u>for the first time</u> and an IEP is developed, the case manager must obtain written parent consent for initial placement into special education (Prior Notice and Consent for Initial Provision of Special Education). This is the only time that parent consent is required for placement. Any <b>change</b> in a student's placement, or a team's refusal to initiate a change in a student's placement, even</p>

<p>available to the extent necessary to implement the IEP for each child with a disability;</p> <p>(3) Unless the child's IEP requires some other arrangement, the child is educated in the school that he or she would attend if not disabled;</p> <p>(4) In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services which he or she needs; and</p> <p>(5) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.</p> <p><b>OAR 581-015-2255 : Nonacademic Settings</b></p> <p>(1) In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities described in OAR 581-015-2070, each school district must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child.</p> <p>(2) School districts must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings.</p>	<p>if made during the annual placement review, requires Prior Written Notice of Special Education Action.</p> <p><b>Who determines placement?</b>  Placement must be determined by a team that includes the following members:</p> <ul style="list-style-type: none"> <li>• An individual knowledgeable about the child;</li> <li>• An individual knowledgeable about the meaning of evaluation data; and</li> <li>• An individual knowledgeable about the placement options.</li> </ul> <p><i>Note:</i> These team members may also be members of the IEP team if they meet the above requirements.</p> <p><b>Are there specific placement options that must be available?</b>  Yes. IDEA requires a district to provide a continuum of placement options for students with disabilities. This continuum must include:</p> <ul style="list-style-type: none"> <li>• <u>Instruction in regular class:</u> This is the least restrictive environment and the setting where most students with disabilities are placed. The assumption should be that the student "belongs" in the regular classroom and, if necessary, is pulled out for specially designed instruction <u>only</u> for the shortest amount of time deemed necessary by the team. This placement option includes provision of supplementary aids and services (such as resource room, itinerant instruction, or co-taught classes) in conjunction with instruction in the regular class;</li> <li>• <u>Instruction in special class:</u> This placement is a self-contained classroom within the regular school environment. The primary location for students in this placement is the special classroom, set up specifically to provide specially designed instruction for the student for most of the day, even if there is some inclusion in regular classes (e.g. a self-contained classroom within a building in which a student spends more than 60% of the school day);</li> <li>• <u>Instruction in special schools:</u> (these are separate schools from typical public schools, but does not include private schools that parents choose independently);</li> <li>• <u>Home instruction:</u> (but does not include students whose parents choose to home-school). There are times when tutors are used as a placement option for a student, or as a short term placement while waiting for a placement decision. When tutoring is being considered as a placement, the least restrictive environment requirements must be carefully considered. Long term tutoring as a placement should only be considered when the severity of the student's disability prevents them from attending school for any length of time. Although tutoring is usually provided in the student's home, it is sometimes advisable to conduct the tutoring sessions at a public place such as the library. If the IEP team decides to place a student on tutorial service, the school administrator takes responsibility for arranging the tutor and curriculum. The school administrator and tutor should follow the guidelines for logistics, curriculum, and communication.</li> </ul>
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- Instruction in hospitals and institutions: includes residential treatment centers.

**What must the team consider when determining placement?**

The placement team must consider many aspects of the student's educational setting when determining placement, including how close it is to the students home, benefits of the placement to the student, possible harmful effects of the placement on the student, and the reason for selecting or rejecting each placement option considered. All these considerations are documented on the *Placement Determination* form.

Placement determination must always begin with the least restrictive environment (e.g. instruction in regular class). If this option is not selected by the team, the team's considerations and reason for rejecting the option must be clearly documented and the team then begins discussion of the next placement option on the continuum; moving from least restrictive to more restrictive settings. All options along the continuum need not be discussed; when an option considered is deemed appropriate by the team the selection is made and placement consideration ceases.

Steps must also be taken by the district to make sure access is available to the non-academic programs available to nondisabled students. These programs may include, but are not limited to art, music, industrial arts, consumer and homemaking arts, vocational education, physical education, counseling services, athletics, transportation, health services and special interest groups or clubs that are sponsored by the school. The IEP team must address the ability of the student to access these programs and services and the Placement team must consider access to these programs and services when determining placement, as appropriate.

When the IEP team suspects there is a need to consider a special school, home, hospital, or institutional placement for a student, the Special Education Director must be contacted. This will assist in ensuring the student's needs for services are being fully accommodated, and that someone on the team is knowledgeable about the full range of placement options. The team begins this process with review of the student's most current evaluation and eligibility.

If a student is a resident of our district but is placed by their team in a public school in another district the attending district usually provides all of the services on a contractual basis with HSD. The ultimate responsibility, however, remains with us. Representatives from our district attend all IEP and placement meetings even when they occur in the attending district. The resident district is responsible to ensure these arrangements are specified in the contractual agreement.

**Required district forms:** The forms listed below are required at certain times or for certain actions as part of LRE consideration and placement determination. Not all forms will be required for every student as part of the process. District forms may be printed from the district website, our electronic SPED system, or obtained from the special education staff or counselor in each building.

- *Notice of Team Meeting;*
- *Agreement between Parents and District*
- *Oregon Standard IEP ;*
- *Annual Placement Determination;*
- *Prior Notice of Special Education Action;*
- *Prior Notice and Consent for Initial Provision of Special Education*

<p><b>Section 10: Free Appropriate Public Education (FAPE)</b></p>	
<p><b>581-015-2040: Free Appropriate Public Education (FAPE) and Age Ranges</b></p> <ol style="list-style-type: none"> <li>(1) School districts must provide special education and related services to all resident school-age children with disabilities, except as provided in OAR 581-015-2045. "School-age children" are children who have reached five years of age but have not yet reached 21 years of age on or before September 1 of the current school year.</li> <li>(2) An otherwise eligible person whose 21st birthday occurs during the school year is eligible for FAPE for the remainder of the school year.</li> <li>(3) The requirements of this rule also apply to children with disabilities who have been suspended or expelled from school in accordance with OAR 581-015-2410 to OAR 581-015-2440.</li> <li>(4) For purposes of this rule, residency is determined in accordance with ORS Chapter 339, except for children enrolled in charter school. For all school purposes residency for a charter school is determined in accordance with ORS chapter 338.</li> </ol> <p><b>581-015-2045: Age Limitations and Exceptions to FAPE</b></p> <ol style="list-style-type: none"> <li>(1) A district must admit an otherwise eligible student who has not yet reached 21 years of age on or before September 1 of the current school year.</li> <li>(2) A student who receives a regular high school diploma is no longer entitled to FAPE. A regular education diploma does not include an alternative degree that is not fully aligned with the state's academic standards, such as a certificate or general educational development credential (GED).</li> <li>(3) If a school district chooses to provide special education to a student with a regular high school diploma, that student remains eligible for FAPE.</li> <li>(4) The obligation to make a FAPE available to individuals with disabilities 18 through 21 years old who have been convicted as adults and are incarcerated in an adult correctional facility applies only to those individuals who, in their last educational placement before their incarceration in the adult correctional facility:</li> </ol>	<p><b>Are FAPE requirements the same for students at different ages?</b></p> <p>No. In general, the district is required to provide special education and related services to all children with disabilities enrolled in the district that have reached five years of age but have not yet reached 21 years of age on or before September 1 of the current school year. If a student turns 21 during the school year, he or she continues to be eligible for FAPE for the remainder of that school year. This requirement also applies to students with disabilities who have been suspended or expelled from school.</p> <p>If a student graduates with a regular high school diploma the district is no longer required to provide a FAPE. The school is not required to conduct reevaluation before terminating eligibility due to graduation with a regular high school diploma. However, graduation with a regular diploma is considered a change in placement and requires the case manager to provide <i>Prior Written Notice of Special Education Action</i>.</p> <p><i>Note:</i> The district may award an alternative document such as a modified diploma, extended diploma or a certificate of attendance to a student with a disability. Graduation with an alternative document, (which includes a G.E.D.) does not require an evaluation, terminate eligibility, or require <i>Written Prior Notice</i>. However, if a student who receives an alternative diploma or certificate elects to not continue in school, or if the team believes such a student no longer requires special education (including transition services), all special education procedures must be followed to terminate the student's eligibility.</p> <p><b>Who is responsible for the provision of FAPE if <u>the district</u> places a student in a private school?</b></p> <p>When <u>the district</u> places a student in a private school, the district remains responsible for ensuring FAPE to the student.</p> <p>Prior to district placement in a private school setting, the district must develop an IEP for the student. The private school may facilitate subsequent IEP meetings for the student if the district agrees to this in writing. In this case the district is still responsible to ensure that the parents and a district representative are in attendance at the meeting, as well as all other required IEP team members. In this situation, the private school is acting as an agent of the district and cannot make program changes without district agreement. The district is responsible for providing the student transportation to the private school. In this case, transportation must be documented in the service summary of the student's IEP as a related service.</p>

- (a) Were identified as being a child with a disability as defined in OAR 581-015-2000(4); or
  - (b) Had an individualized education program.
- (5) For purposes of subsection (4) of this rule,
- (a) "Adult correctional facility" means:
    - (A) A local correctional facility as defined ORS 169.005;
    - (B) A regional correctional facility as defined in ORS 169.620; or
    - (C) A Department of Corrections institution as defined in ORS 421.005;
  - (b) "Identified as being a child with a disability" means has been determined eligible or was involved in the process of determining the individual's disability and eligibility for special education and related services under OAR 581-015-2130 to OAR 581-015-2180; and
  - (c) "Last educational placement" includes juvenile correctional facilities.

**581-015-2050: Graduation**

- (1) Graduation with a regular high school diploma under OAR 581-022-1130 constitutes a change in placement, requiring written prior notice in accordance with OAR 581-015-2310.
- (2) A school district is not required to conduct a reevaluation before terminating eligibility due to graduation with a regular high school diploma.
- (3) In accordance with OAR 581-022-1130, a school district may award an alternative document as described in local school board policies to a student with a disability. Graduation with an alternative document does not terminate eligibility under OAR 581-015-2045(2), require an evaluation, or require written prior notice.

**581-015-2260: Rights of Children with Disabilities in Private Schools Placed or Referred by Public Agencies**

Each public agency must ensure that a child with a disability who is placed in or referred to a private preschool, school or facility by the public agency as a means of providing early intervention/early childhood special education (EI/ECSE) or special education and related services:

- (1) Is provided EI/ECSE or special education and related services in conformance with an IEP or IFSP, and at no cost to the parents;

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| <p>(2) Is provided an education that meets the standards that apply to education provided by the public agency (except that private school teachers do not need to be highly qualified special education teachers); and</p> <p>(3) Has all of the rights of a child with a disability who is served by the public agency.</p> |  |
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**Required district forms:** The forms listed below are required at certain times or for certain actions as part of FAPE. Not all forms will be required for every student. District forms may be printed from the district website, our electronic SPED system, or obtained from the special education staff or counselor in each building.

- Oregon Standard IEP ;
- *Prior Notice of Special Education Action*
- *Placement Determination*

<b>Section 11: Parentally Placed Private School Children</b>	
<p><b>581-015-2450: Definitions</b>            For the purposes of OAR 581-015-2450 through 581-015-2515, the following definitions apply:</p> <p>(1) <b>"Enrolled in a public school or ECSE program"</b> means enrolled in, attending, and, for children ages 7 to 18, not exempt from compulsory school attendance as a private school student.</p> <p>(2) <b>"IDEA funds"</b> means federal funds allocated to the public agency under the Individuals with Disabilities Education Act.</p> <p>(3) <b>"Private school child with a disability"</b> means a child with a disability or preschool child with a disability aged 3 to school-age who has been enrolled by a parent in a private school or facility, and who, if aged 7 to 18, is exempt from compulsory school attendance under ORS 339.115.</p> <p>(a) This term includes school-age children who are exempt from compulsory school attendance under ORS 339.115, even if a school district permits the student to attend one or more classes pursuant to a district policy permitting partial enrollment.</p> <p>(b) This term does not include:</p> <p>(A) Children three years of age until the age of eligibility for public school who can be provided a free appropriate public education in a private preschool or child care setting selected and paid for by their parents; or</p> <p>(B) Children who are exempt from compulsory school attendance under ORS 339.115 as a home schooled student; or</p> <p>(C) Children who are not of compulsory school attendance age who have rejected public agency services but who are not attending a private school; or</p> <p>(D) Children who are placed in a private school by the public agency.</p> <p>(4) <b>"Private school"</b> means a private elementary or secondary school or facility, including a private religious school. A preschool is considered a private school under this provision only if it is part of a private elementary or secondary school.</p> <p>(4) <b>"Public agency"</b> means:</p>	<p>Under the IDEA, parentally-placed private school students, (PPPS) are the <i>responsibility of the district where the private school is located</i>.</p> <p><b>What requirements must the district where the private school is located ensure?</b>            The district where the private school is located is responsible for:</p> <ul style="list-style-type: none"> <li>• the initial referral and evaluation planning;</li> <li>• conducting the evaluation and determining eligibility;</li> <li>• determining where services are to be provided and developing a services plan with a team, including the parent;</li> <li>• conducting the annual <i>Service Plan</i> review;</li> <li>• conducting reevaluations and determining continuing eligibility; and,</li> <li>• conducting timely and meaningful consultation with representatives from the private school.</li> </ul> <p>If, through the evaluation and eligibility process, a determination is made that a child is a child with a disability and needs special education and related services, the resident district (where the child lives) is responsible for making an offer of FAPE available to the child. The district where the private school is located is responsible for development and implementation of a Services Plan</p> <p><b>What is a Services Plan?</b>            A <i>Services Plan</i> describes the specific special education services the district will provide to a parentally placed private school student. It is different than an IEP in that it is not an offer of FAPE. Special education services that can be considered as part of Service Plan development are limited to those services the district has determined it will make available to private school students with disabilities, in consultation with their private school partners.</p> <p>Meetings to develop, review and revise the <i>Service Plan</i> for the student are planned and held in the same way as IEP meetings. A representative of the private school attends each meeting. If the representative cannot attend, other methods must be used to ensure participation by the private school, including individual or conference telephone calls.</p> <p><b>How does the district begin the process of determining what services to provide to private schools?</b>            Once the private schools are identified, the Special Education Director contacts representatives of the private school and parents of parentally placed private school children in these private schools to begin the consultation process.</p>

- (a) For school-aged children, the school district where the private elementary or secondary school is located;
  - (b) For children aged 3 up to school-age, the EI/ECSE contractor where the private elementary school or secondary school is located.
- (5) "**Services plan**" means a written statement that describes the special education and related services the school district will provide to a parentally-placed private school child with a disability who has been designated to receive services, including the location of services and any transportation necessary, consistent with OAR 581-015-2460. Unlike an IEP or IFSP, a service plan does not need to provide a free appropriate public education.

**581-015-2455: Provision of services for Private School Children with Disabilities**

- (1) Each public agency must provide for participation in special education and related services to private school children with disabilities who are enrolled in private schools located within the school district boundaries, to the extent consistent with the number and location of these children.
- (2) No private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school
- (3) Decisions about the services that will be provided to private school children with disabilities must be made in accordance with OAR 581-015-2460 and OAR 581-015-2480.
- (4) Special education and related services provided to private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public agency, except that private school teachers providing equitable services to private school children with disabilities do not have to meet the highly qualified special education teacher requirements.
- (5) Special education and related services must be provided to private school children with disabilities by employees of the public agency or through contract by the public agency with an individual, association, agency, organization, or other entity.
- (6) Private school children with disabilities may receive a different amount of services than children with disabilities in public schools.

**What is the consultation process?**

The consultation process is accomplished through individual or group meetings, and includes discussion and decisions on the following:

- How Child Find will be conducted, including how resident and non-resident parentally placed private school children suspected of having a disability can participate equitably;
- How evaluations, eligibility determinations, and reevaluations will be conducted;
- How parents, teachers, and private school officials will be informed of the Child Find process;
- The determination of the proportionate amount of federal funds to be expended and how the proportionate share will be calculated;
- How the consultation process will operate through the school year to ensure that students identified through Child Find can participate in special education and related services;
- How, where, and who will provide special education and related services from the district, including discussion of types of services and service delivery;
- How services will be apportioned if funds are insufficient to serve all identified students, and how and when these decisions will be made; and,
- How the district will provide written explanation if it chooses to refuse to provide services due to district and private school official's disagreement about the provision of services or the types of services.

Once the consultation process has been completed, the district obtains an attestation, signed by the representatives of each private school involved in the process that documents their participation in the process.

**What is the next step after consultation?**

After consultation, the district conducts Child Find to determine the number of students with disabilities, including non-resident students with disabilities, placed by their parents in these private schools. The district accomplishes this through written and personal surveying conducted by the ESD, and through direct contact with the private school. Private schools are given directions on proper referral procedures, including copies of the district Referral Form. The timeline for completing Child Find activities for parentally placed private school students is similar to the timeline for completing these activities for students attending district public schools.

**What if the parentally placed private school student is found not eligible for special education services?**

If the student is found not eligible for special education services the Case Manager must provide the parent a copy of the *Eligibility Determination, Prior Notice of Special Education Action*, and any other documents related to the evaluation. (The district should obtain parent consent to share all information with the private school so interventions may be developed, if

- (7) Special education and related services may be provided to parentally-placed private school children on the premises of private, including religious, schools, to the extent consistent with law.
- (8) Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be secular, neutral and nonideological.

**581-015-2460: Services Plan**

- (1) If a child with a disability is enrolled by a parent in private school and will receive special education or related services from a public agency, the public agency must:
  - (a) Initiate and conduct meetings to develop, review and revise a services plan for the child in accordance with subsection (3); and
  - (b) Ensure that a representative of the child's private school attends each meeting. If the representative cannot attend, the public agency must use other methods to ensure participation by the private school, including individual or conference telephone calls.
- (2) The services plan must describe the specific special education and related services that the public agency will provide to the child in light of the services that the public agency has determined, through the consultation process described in OAR 581-015-2480, it will make available to private school children with disabilities.
- (3) The services plan must, to the extent appropriate:
  - (a) Meet the requirements of OAR 581-015-2200 with respect to the services provided; and
  - (b) Be developed reviewed and revised consistent with OARs 581-015-2190 through 581-015-2210 and 581-015-2220(2) and (3).
- (4) Transportation:
  - (a) Public agencies are not required to provide transportation from the child's home to the private school.
  - (b) If necessary for the child to benefit from or participate in the services provided by the public agency, the public agency must provide transportation to the child:
    - (A) From the child's school or the child's home to a site other than the private school; and
    - (B) From the service site to the private school, or to the

appropriate.)

**Must the district provide transportation to parentally placed private school students with disabilities?**

The district must provide transportation to parentally placed private school students with disabilities only if it is determined necessary for the child to benefit from or participate in the services provided by the district. If determined necessary, the district must provide transportation from the child's school or the child's home to a site other than the private school; and from the service site to the private school, or to the child's home, depending on the timing of the service. However, if transportation is provided, it constitutes part of the services provided to the student. Since these services are limited by the amount of federal funds these students would generate, transportation could dramatically decrease the amount of services available to the student.

child's home, depending on the timing of the services.

**581-015-2480: Consultation with Representatives of Private School Children with Disabilities**

- (1) To ensure timely and meaningful consultation, public agencies must consult with representatives of private school children with disabilities during the design and development of special education and related services for the children, including regarding:
  - (a) The child find process, including how private school children suspected of having a disability can participate equitably, and how parents, teachers, and private school officials will be informed of the process;
  - (b) The determination of the proportionate share of IDEA funds available to serve private school children with disabilities, including the determination of how the proportionate share of funds was calculated;
  - (c) The consultation process among the public agency and representatives of private school children with disabilities, including how such process will operate throughout the school year to ensure that private school children with disabilities identified through the child find process can meaningfully participate in special education and related services;
  - (d) How, where and by whom special education and related services will be provided for private school children with disabilities, including a discussion of the types of services (including direct services and alternate service delivery mechanisms), how such services will be apportioned if funds are insufficient to serve all children, and how and when these decisions will be made; and
  - (e) How, if the public agency disagrees with the views of private school officials on the provision of services or the types of services (whether provided directly or through a contract), the public agency will provide to the private school officials a written explanation of the reasons why the public agency chose not to provide services directly or through a contract.
- (2) For the purposes of this rule, "representatives of private school children with disabilities" means representatives of parents of private school children with disabilities and private school officials or other private school representatives.

(3) The public agency makes the final decisions with respect to the services to be provided to eligible private school children.

**Required district forms:** The forms listed below are required at certain times or for certain actions when a student who is, or may be a student with disabilities is parentally placed in a private school. Not all forms will be required for every student. District forms may be printed from the district website, our electronic SPED system, or obtained from the special education staff or counselor in each building.

- *Referral for Special Education;*
- *OT/PT referral form;*
- *Parents Rights for Special Education.;*
- *Authorized for Release of Information form*
- *Prior Notice about Evaluation/ Consent for Evaluation;*
- *Notice of Team Meeting*
- *Eligibility Determination(by disability);*
- *Summary of Evaluation Report;*
- *Notice of Special Education Action;*
- *Individual Service Plan;*
- *Prior Notice of Special Education Action; or,*
- *Prior Notice and Consent for Initial Provision of Special Education*

**Additional Resources:**

Special Education for Parentally Placed Private School Children Resources: <http://www.ode.state.or.us/search/page/?id=239>

## Section 12: Transfer of Rights at the age of majority

### 581-015-2325: Transfer of Procedural Rights at Age of Majority

- (1) When a child with a disability reaches the age of majority under ORS 109.510 or 109.520, or is emancipated pursuant to ORS 419B.550 to 419B.558, the rights accorded to the child's parents under the special education laws transfer to the child. A student for whom rights have transferred is considered an "adult student" under OAR 581-015-2000.
- (2) Notwithstanding section (1) of this rule:
  - (a) Pursuant to a protective proceeding under ORS Chapter 125, the Probate Court may find the child to be incapacitated to make educational decisions and may appoint a guardian to exercise these rights.
  - (b) Under ORS 419B.220 or ORS 419C.220, the Juvenile Court may appoint a surrogate parent to exercise these rights if the child is a ward of the state.
- (3) School districts are not responsible for the costs of a protective proceeding unless the school district is the Petitioner.
- (4) Pursuant to OAR 581-015-2320(9), a child to whom rights transfer may request that a surrogate be appointed to exercise the child's special education rights.
- (5) This rule applies to all students, including students who are incarcerated in a state or local adult or juvenile correctional facility or jail.

### 581-015-2330: Notice of Transfer of Rights at Majority

- (1) The school district must provide notice to the child and the parent that rights will transfer at the age of majority. This notice must be provided at the IEP meeting and documented on the IEP:
  - (a) At least one year before the child's 18th birthday; or
  - (b) Upon actual knowledge that within a year the child will likely marry or become emancipated before age 18.
- (2) The school district must provide written notice to the child and to the parent at the time of the transfer of rights.

The parents of students with disabilities act on behalf of the student for the purpose of educational decision making until the student turns 18, which is the age of majority in Oregon. When a student reaches the age of majority, all procedural safeguard rights transfer to the student.

#### What happens when rights transfer to the student?

When rights transfer to a student at the age of majority the case manager must ensure all procedural rights are provided to the student. The student fulfills all roles formerly filled by the parent in all steps of the special education process. Prior Notice is provided to, and any consent required is granted, by the student. You should still send meeting notices to the parent, but the parent may not attend the meeting unless invited by the student or the district (as a person with knowledge or special expertise about the student). The case manager should ensure that students and parents understand this change and are prepared for the transfer.

#### Is the district required to provide notice of transfer of rights?

Yes. One year before the student's 18<sup>th</sup> birthday, or upon knowledge that within a year the student will marry or become emancipated, the district is required to provide notice that rights will transfer to the parent and student. This verbal notice must occur at an IEP meeting and must be documented that it occurred on the student's IEP. The district must also provide a copy of the Procedural Safeguards to the student at this time.

#### Are there circumstances when rights do not transfer to the student?

When a student reaches 18 years of age, all procedural safeguard rights legally transfer to the student, unless:

- A Probate Court finds the student is unable to make educational decisions for himself and appoints a guardian to act on the student's behalf to ensure the student's rights;
- The student is a ward of the state, in which case a Juvenile Court may appoint a surrogate parent to act on behalf of the student to ensure the student's rights; or,
- If rights have transferred to the student, the student may request the district appoint a surrogate to act on his or her behalf.

The district is not responsible for the cost of these proceedings unless the district is the party petitioning the court.

**Required district forms:** The forms listed below are required when rights are, or will be transferring to a student with disabilities. District forms may be printed from the district website, our electronic SPED system, or obtained from the special education staff or counselor in each building.

- Oregon Standard IEP;
- Written notice of transfer of rights at the age of majority

**Additional Resources:**

ODE Transition Toolbox: [www.ode.state.or.us/gradelevel/hs/transition/transtoolboxnews.aspx](http://www.ode.state.or.us/gradelevel/hs/transition/transtoolboxnews.aspx)

<b>Section 13: Discipline</b>	
<p><b>581-015-2400: Definitions</b>  For the purposes of OAR 581-015-2400 through 581-015-2445, the following definitions apply:</p> <p>(1) <b>"Behavioral intervention plan"</b> means an individualized plan, including positive interventions, designed to assist a student to decrease inappropriate behavior and increase or teach an alternative appropriate behavior.</p> <p>(2) <b>"Current educational placement"</b> means the type of educational placement of the child as described in the child's "annual determination of placement" document at the time of the disciplinary removal. It does not mean the specific location or school but the type of placement on the continuum of placement options (e.g. regular classroom with support; regular classroom with resource room support; special class; special school; home instruction, etc.).</p> <p>(3) <b>"Disciplinary removal"</b> means suspension, expulsion, or other removal from school for disciplinary reasons, including removals for mental health examinations for students who threaten violence or harm in public schools under ORS 339.250(4)(b)(C). It does not include:</p> <p>(a) Removals by other agencies;</p> <p>(b) Removals for public health reasons (e.g. head lice, immunizations, communicable diseases, etc.);</p> <p>(c) In-school suspensions if the child continues to have access to the general curriculum and to special education and related services as described in the child's IEP, and continues to participate with nondisabled children to the extent they would in their current placement; or</p> <p>(d) Bus suspensions, unless the student's IEP includes transportation as a related service, the district makes no alternative transportation arrangements for the student, and the student does not attend school as a result of the bus suspension.</p> <p>(4) <b>"Functional behavioral assessment"</b> means an individualized assessment of the student that results in a hypothesis about the function of a student's behavior and, as appropriate, recommendations for a behavior intervention plan.</p> <p>(5) <b>"Suspension"</b> means any disciplinary removal other than expulsion.</p>	<p>The district's Code of Conduct and disciplinary procedures are designed for use with all resident students in the district. However, when a student with a disability breaches the district's Code of Conduct, additional procedures must be followed. IDEA contains very specific requirements that districts must adhere to when disciplining students with disabilities. District personnel must be familiar with these requirements and ensure they are followed in all instances where a student with a disability is considered for disciplinary action. The discipline provisions in IDEA are complex. Case managers must ensure that building and district administrators are involved at all levels of disciplinary action decisions.</p> <p>The following steps are to be followed in all cases:</p> <ol style="list-style-type: none"> <li>1. Set up immediate expulsion hearing for student pending expulsion. This would shorten the number of days without instruction.</li> <li>2. Have students with disabilities attend part of the day for specially designed instruction listed on their IEP for amount of time listed while suspended either through class time or tutor time. Send letter home immediately with information that will include that services are willing offered for student pending expulsion hearing.</li> <li>3. For minor infractions consider in-school suspension as consequences.</li> <li>4. After the 7<sup>th</sup> day of out of school suspension the district will conduct a Functional Behavior Assessment for all students identified as requiring special education services.</li> <li>5. For students that are identified as ED or ASD the behavior plan will be reviewed after 5 days of out of school suspension.</li> </ol> <p><b>How do building personnel know which students must be given additional consideration prior to taking disciplinary action?</b>  Administrators who administer discipline, their assistants, and counselors must be kept informed of which students are receiving special education services. The case manager should provide a master list of students eligible for special education in their building to these individuals at the beginning of each school year and update it regularly.</p> <p>Building administrators should also be aware of which students are being considered for special education services but have not yet been determined eligible, as IDEA also gives protections to children who are not yet eligible for special education if the district:</p> <ul style="list-style-type: none"> <li>• Has knowledge that the child was a child with a disability;</li> <li>• If, before a behavior that precipitated disciplinary action occurred the parent of the child expressed a concern <u>in writing</u> to an administrator or teacher of the child, that the child is in need of special education;</li> <li>• The parent requested a special education evaluation of the child; or</li> </ul>

**581-015-2405: Disciplinary Removals for Up to 10 School Days for Children with Disabilities**

- (1) School districts may remove a child with a disability who violates a code of student conduct from the child's current educational placement to an appropriate interim alternative educational setting, another setting, or suspension, for up to ten school days in a school year to the same extent, and with the same notice, as for children without disabilities. These removals are not considered a change in placement.
- (2) During disciplinary removals described in section (1) of this rule:
  - (a) School districts are not required to provide access to special education and the general curriculum unless students without disabilities are provided access during this time.
  - (b) School districts are not required to determine whether the child's behavior resulting in disciplinary removal is a manifestation of the child's disability.
- (3) For the purpose of counting days of suspensions under OAR 581-015-2405 through 581-015-2445:
  - (a) Suspensions of a half day or less are counted as a half day; and
  - (b) Suspensions of more than a half-day are counted as a whole day.
- (4) For the purposes of determining "current educational placement" in subsection (1) of this rule:
  - (a) Children who received special education services in another state and are found eligible for special education in Oregon are treated as initially placed in special education in Oregon, and any days of suspension accrued in the former state are not counted toward the ten days.
  - (b) For children who move from one school district to another school district in Oregon, any days of suspension from the former district carry over to the new school district unless the school district does not have actual knowledge of the previous suspensions.

**581-015-2410: Additional Disciplinary Removals of Up to 10 School Days Each (No Pattern)**

- (1) School districts may remove a child with a disability who violates a code of student conduct from the child's current

- School personnel expressed specific concerns about a pattern of behavior demonstrated by the child directly to the Special Education Director, the principal, or other supervisory personnel of the district.

However, the district will not be considered to have had knowledge that the child was a child with a disability if the parent has not allowed an evaluation, has refused special education services; or the child has been evaluated and determined not eligible.

**What types of disciplinary actions are addressed in IDEA?**

There are three types of disciplinary removals that are addressed in IDEA:

- Disciplinary removals that do not constitute a change in placement: these are situations when cumulative days of suspension total fewer than 10 days, or situations where the cumulative days of suspension exceed 10 days but the district has determined there is not a recognizable pattern to the student's behavior and series of suspension(s).
- Disciplinary removals that constitute a change in placement: these are situations when the suspension or expulsion is for more than 10 consecutive days, or the removal is for more than 10 cumulative days and there is a recognizable pattern to the student's behavior and series of suspension(s).
- Disciplinary removals due to incidents involving weapons drugs, or injurious behavior: these are situations when a weapon or controlled substance is involved in the incident, or the student has inflicted serious bodily injury, defined as bodily injury that involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of function.

It is important to note that the definition of weapon and controlled substance is specific in IDEA, and is different than the district's definition, especially as it pertains to knives and use of alcohol or over the counter medication. Under IDEA, the definition of weapon does not include a pocket knife with a blade less than 2 ½ inches long, unless it is used as a weapon, and the term "drug" only applies to controlled substances (not alcohol or over the counter medications). These distinctions are important if the district wants to implement certain discipline provisions of IDEA, in particular, the use of an Interim Alternative Placement.

**What constitutes a "pattern"?**

The administrator and the case manager must consider the following, on a case by case basis, when determining whether there is a recognizable pattern to the student's behavior and series of suspension(s):

- Whether the student's behavior is substantially similar to his or her behavior in previous incidents that resulted in suspension; *and*,
- The length of time of each removal, the total amount of time of removal, and the proximity of one removal to another.

educational placement to an appropriate interim alternative educational setting, another setting, or suspension for additional periods of up to ten school days in a school year to the same extent, and with the same notice, as for children without disabilities, if the removals do not constitute a pattern under section (2) of this rule. These removals are not considered a change in placement.

- (2) School personnel must determine, on a case-by-case basis, whether the series of removals constitute a pattern:
- (a) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
  - (b) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of removals to one another.
- (3) Services. During removals described in section (1) of this rule:
- (a) School districts must provide services that are necessary to enable the child:
    - (A) To continue to participate in the general education curriculum, although in another setting; and
    - (B) To progress toward meeting the goals in the child's IEP.
  - (b) School personnel, in consultation with at least one of the child's teachers, determine the extent to which the services described in subsection (3)(a) of this rule are needed, and the location for delivery of those services.
  - (c) School districts are not required to determine whether the behavior resulting in removal is a manifestation of the child's disability.
- (4) The determination in subsection (2) is subject to review under OAR 581-015-2445.

**581-015-2415: Disciplinary Removals of More than 10 School Days (Pattern or Consecutive)**

- (1) A disciplinary removal is considered a change in educational placement and the school district must follow special education due process procedures if:
- (a) The removal will be for more than 10 consecutive school days (e.g. expulsion); or
  - (b) The child will be removed for more than 10 cumulative school days from their current educational placement in a school year, and those removals constitute a pattern

If there is reasonable doubt as to whether a pattern is recognizable, but not yet substantiated, the administrator should move forward as if there is a recognized pattern.

**What steps must be followed for each type of disciplinary action?**

Disciplinary removals that do not constitute a change in placement:

- On the date the suspension occurs the administrator must provide the parent written notice of the disciplinary action. This is accomplished in the letter that is always provided upon suspension.
- The student's case manager and an administrator must review the IEP and placement of the student to be sure they are complete and all services are in place. At this time an IEP meeting is not required, but must be called if changes to the IEP or placement are indicated based on the review, or if any member of the IEP team requests a meeting. If this is a second or later suspension the case manager and administrator need to start thinking about whether a pattern (see above) is developing in the student's behavior. If there is a pattern, an IEP team meeting should be held to address the behavior through positive behavior planning. If there is a pattern, the school could "use up" all of the allowable 10 days of suspension, not have an appropriate behavior support plan in place, and not be able to suspend the student while a plan is developed. It is essential to plan ahead when it a student is behaving in such a way that he or she will be suspended multiple times.

If the student is (1) suspended for the first time for more than 10 days (this would be a suspension pending expulsion), or (2) the cumulative number of days of suspension exceed 10 days but the district determined there is not a recognizable pattern to the student's behavior, the student may be suspended in the same manner as a student without disabilities. In these situations the administrator and case manager must ensure educational services are provided beginning on the 11<sup>th</sup> day of suspension. Building administrators consult with the special education teacher to determine which services are necessary to allow the student to continue to progress in the general curriculum and advance appropriately on his or her IEP goals during the time they are suspended.

Disciplinary removals that constitute a change in placement:

- On the date the suspension occurs, the administrator must provide the parent written notice of the disciplinary action and the case manager must provide a copy of the *Procedural Safeguards: Parent Rights for Special Education* (even if the parent has already been provided a copy for the school year)
- The case manager must schedule an IEP meeting to be held within 10 business days of the suspension. The purpose of this meeting is to conduct a Manifestation Determination to determine if the student's behavior is the direct result of his or her disability. A Manifestation Determination begins with a review of all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information

under OAR 581-015-2410(2).

- (2) School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a disciplinary removal under subsection (1) for a child with a disability who violates a code of conduct.
- (3) Manifestation determination. Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the school district must determine whether the child's behavior is a manifestation of the student's disability in accordance with OAR 581-015-2420.
- (4) Manifestation. If the determination under subsection (3) is that the child's behavior is a manifestation of the child's disability, the school district must:
  - (a) Return the child to the placement from which the child was removed, unless:
    - (A) The parent and school district agree to a change of placement as part of the modification of the behavioral intervention plan under subsection (4)(b);
    - (B) The school district removes the child to an interim alternative educational setting under OAR 581-015-2425 for a weapons or drug violation or for infliction of serious bodily injury; or
    - (C) The school district obtains an order from an administrative law judge under OAR 581-015-2430 allowing a change in placement to an interim alternative educational setting for injurious behavior; and
  - (b) Either:
    - (A) Conduct a functional behavioral assessment, unless the school district conducted a functional behavioral assessment before the behavior occurred that prompted the disciplinary action, and implement a behavior intervention plan; or
    - (B) If the student already has a behavior plan, review the behavioral intervention plan and modify it, as necessary, to address the behavior.
- (5) No manifestation. If the determination under subsection (3) is that the child's behavior is not a manifestation of the child's disability:
  - (a) The school district may proceed with disciplinary action applicable to children without disabilities under section (1)

provided by the parents.

This review should result in the team determining:

- (a) If the behavior was caused by, or had a direct and substantial relationship to, the child's disability; or
  - (b) If the behavior was the direct result of the school district's failure to implement the IEP. If the team determines that either (a) or (b) is applicable, the conduct must be determined to be a manifestation of the child's disability. If the basis for the team's determination is that the district did not implement the child's IEP, the district must take immediate steps to resolve the issue.
- At the same meeting as the Manifestation Determination, the team must review and revise the student's behavior plan, or if the student does not have a behavior plan in place, develop a behavior plan. (If a Functional Behavioral Assessment has not yet been conducted, this must occur prior to the development of the behavior plan). *A Prior Notice of Special Education Action* should be provided to the parent at the conclusion of the meeting, documenting the decisions of the team.
  - If the team determines the student's behavior is not a manifestation of his or her disability the student may be subject to the same disciplinary actions as a student without a disability. In these situations, the district must ensure:
    - The IEP team revises the student's IEP as appropriate to address any changes determined necessary by the team;
    - The student's placement determination is revised as appropriate;
    - Educational services are provided as necessary to allow the student to continue to progress in the general curriculum and advance appropriately on their IEP goals during the time they are removed.
    - If an expulsion hearing is held, ALL of the student's records are provided to the hearing officer.
  - If the team determines the student's behavior is a manifestation of his or her disability the district may not expel the student. In these situations the administrator and case manager must ensure:
    - The IEP team revises the student's IEP as appropriate to address any changes determined necessary by the team;
    - The student's placement determination is reviewed and revised if appropriate.

*Disciplinary removals due to incidents involving weapons, drugs, or injurious behavior that will constitute a change of placement.*

- On the date the removal occurs the administrator must notify the parents and provide the parent a copy of the *Procedural Safeguards: Parent Rights in Special Education*; (even if the parent has already been provided a copy for the school year)
- The IEP team meets to review the student's FBA and behavior plan; or, if the student does

of this rule, in the same manner and for the same duration in which the procedures would be applied to children without disabilities.

- (b) If the school district takes such action applicable to all children, the school district must:
- (A) On the date on which the decision is made to remove the student under subsection (5), notify the parents of that decision and provide the parents with notice of procedural safeguards under OAR 581-015-2315.
  - (B) Provide services to the student in an interim alternative educational setting, determined by the IEP team, in accordance with OAR 581-015-2435; and
  - (C) Provide, as appropriate, a functional behavioral assessment, and behavior intervention services and modifications that are designed to address the behavior violation so that it does not recur.
- (6) Placement pending due process hearing. If a parent requests a due process hearing because of a disagreement with the manifestation determination or any decision about placement related to the disciplinary removal in section (1) of this rule, the child remains in the interim alternative educational setting pending the decision of the administrative law judge under OAR 581-015-2445, or until the end of the disciplinary removal under subsection (1), whichever occurs first, unless the parent and school district agree otherwise.

**581-015-2420: Manifestation Determination**

- (1) In determining whether the child's behavior is a manifestation of the child's disability, the school district, the parent, and relevant members of the IEP team (as determined by the parent and the district) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:
- (a) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
  - (b) If the conduct in question was the direct result of the school district's failure to implement the IEP.
- (2) If the school district, the parent, and relevant members of the IEP team determine that either subsection (1)(a) or (b) is applicable for the child, the conduct must be determined to be a manifestation of the child's disability.

not have a behavior plan, to develop one. The plan must address the behavior that caused the removal.

- The team conducts a Manifestation Determination and revises the student's IEP as appropriate.
- The district must provide services determined by the IEP team to the student in the interim alternative educational setting,
- Within 10 school days of the decision the district must determine whether the student's behavior is a manifestation of the child's disability; and
- Provide, as appropriate, a functional behavioral assessment, behavior intervention plan, and modifications designed to address the behavior so that it does not reoccur.

*Note:* Under IDEA 2004, a district may remove a student to an interim alternative education setting for incidents involving drugs, weapons, or injurious behavior, or the district may request an expedited due process hearing to obtain an order from an administrative law judge to order a change in placement of the child to an interim alternative educational setting for not more than 45 school days for injurious behavior.

**Are there specific requirements for interim alternative educational settings?**

Yes, an interim alternative educational setting must be determined by the student's IEP team; and enable the student to continue to participate in the general curriculum, although in another setting; and progress toward achieving the goals on his or her IEP.

(3) If the basis for the team's determination is that the school district did not implement the child's IEP, the school district must take immediate steps to remedy those deficiencies.

**581-015-2425: Removal to an Interim Alternative Educational Setting by School District**

(1) Definitions:

- (a) "**Drug**" means illegal drug or controlled substance but does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or otherwise legally possessed. It does not include alcohol or tobacco.
- (b) "**Drug violation**" means the use, possession, sale or solicitation of drugs at school or a school function.
- (c) "**Serious bodily injury**" means bodily injury, which involves substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ or mental faculty.
- (d) "**Weapon**" means a weapon, device, instrument, material or substance, animate or inanimate, that is used for, or is readily capable of causing death or serious bodily injury, except that it does not include a pocket knife with a blade of less than 2 1/2 inches in length.
- (e) "**Weapon violation**" means carrying a weapon to school or to a school function or acquiring a weapon at school.

(2) School districts may remove a child with disabilities from their current educational placement to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 school days in a school year without regard to whether the behavior is determined to be a manifestation of the child's disability for:

- (a) A drug or weapon violation as defined in subsection (1); or
- (b) If the child has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the Department or a school district.

(3) A removal for a drug or weapon violation, or for inflicting serious bodily injury, is considered a change in placement.

(4) School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a

removal under subsection (2) for a child with a disability who violates a code of conduct.

- (5) For removals described in subsection (2) of this rule, school districts must:
- (a) On the date on which the decision is made to remove the student under subsection (2), notify the parents of that decision and provide the parents with notice of procedural safeguards under OAR 581-015-2315;
  - (b) Provide the services to the student in an interim alternative educational setting, determined by the IEP team, in accordance with OAR 581-015-2345;
  - (c) Within 10 school days of any decision to remove a child under subsection (2), determine whether the child's behavior is a manifestation of the child's disability in accordance with OAR 581-015-2420; and
  - (d) Provide, as appropriate, a functional behavioral assessment, and behavior intervention services and modifications that are designed to address the behavior violation so that it does not recur.
- (6) Placement pending due process hearing. If a parent requests a due process hearing because of a disagreement with the manifestation determination, removal to the interim alternative educational setting, or any decision about placement related to a disciplinary removal under section (2) of this rule, the child remains in the interim alternative educational setting pending the decision of the administrative law judge under OAR 581-015-2445, or until the end of the removal under section (2), whichever occurs first, unless the parent and school district agree otherwise.

**581-015-2430: Removal to an Interim Alternative Educational Setting by Administrative Law Judge (Injurious Behavior)**

- (1) "Injurious behavior" means behavior that is substantially likely to result in injury to the child or to others.
- (2) School districts may request an expedited due process hearing under OAR 581-015-2445 to obtain an order from an administrative law judge to order a change in placement of the child to an interim alternative educational setting for not more than 45 school days for injurious behavior.
- (3) The interim alternative educational setting must meet the requirements of OAR 581-015-2435(2).

- (4) The procedures in subsection (2) may be repeated if the school district believes that returning the child to the original placement is substantially likely to result in injurious behavior.
- (5) Nothing in this rule precludes a school district from seeking a court order to remove a child from the child's current educational placement to another placement if the district believes that the maintaining the child in the child's current educational placement is substantially likely to result in injurious behavior.

**581-015-2435: Requirements of an Interim Alternative Educational Setting**

An interim alternative educational setting under OAR 581-015-2415 and 581-015-2425 must:

- (1) Be determined by the child's IEP team; and
- (2) Enable the child to:
  - (a) Continue to participate in the general curriculum, although in another setting; and
  - (b) Progress toward achieving the goals in the child's IEP.

**581-015-2440: Protections for Children Not Yet Eligible for Special Education**

- (1) The provisions of OAR 581-015-2400 through 581-015-2435 apply to children not yet identified as children with disabilities if the school district had knowledge that the child was a child with a disability.
- (2) For the purposes of subsection (1) of this rule, a school district "had knowledge" if, before the behavior that precipitated the disciplinary action occurred:
  - (a) The parent of the child expressed a concern in writing to supervisory or administrative school personnel, or a teacher of the child, that the child is in need of special education and related services;
  - (b) The parent of the child requested a special education evaluation of the child; or
  - (c) The teacher of the child, or other school personnel, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the school district's director of special education or other supervisory personnel of the district.
- (3) Notwithstanding subsections (1) and (2) of this rule, a school district will not be considered to have had knowledge that the

child was a child with a disability if:

- (a) The parent of the child has not allowed an evaluation of the child or has refused services under OAR 581-015-2090; or
  - (b) The child has been evaluated in accordance with OAR 581-015-2090 through 581-015-2180, and the child was determined not eligible.
  - (c) The parent or adult student has revoked consent for the continued provision of special education and related services pursuant to OAR 581-015-2090(4)(a)(B) or 581-015-2735(4)(a)(B).
- (4) If the school district did not have knowledge before taking disciplinary action against the child, the district may take the same disciplinary actions as applied to children without disabilities who engaged in comparable behaviors. However:
- (a) If a special education evaluation is requested or if the school district initiates a special education evaluation, the evaluation must be conducted in an expedited manner.
  - (b) Until the evaluation is completed, the child remains in the educational placement determined by school personnel, which can include suspension, expulsion, or placement in alternative education under OAR 581-021-0071.
  - (c) If, on completion of the evaluation, the child is determined to be a child with a disability, the school district must conduct an IEP meeting to develop an IEP and determine placement and must provide special education and related services.
  - (d) The provisions of OAR 581-015-2400 through 581-015-2435 and OAR 581-015-2445 apply beginning on the date of the eligibility determination.

**Required district forms:** The forms listed below are required at certain times or for certain actions as part of the Discipline provisions in IDEA. Not all forms will be required for every student. District forms may be printed from the district website, our electronic SPED system, or obtained from the special education staff or counselor in each building.

- *Notice of Team Meeting;*
- *Functional Behavioral Assessment;*
- *Behavior Intervention Plan;*
- *Manifestation Determination;*
- *Oregon Standard IEP);*
- *Placement Determination;*
- *Prior Notice of Special Education Action;*

<b>Section 14: Home schooled students</b>	
<p><b>581-021-0029: Home Schooling for Children with Disabilities</b></p> <p>(1) The definitions in OAR 581-021-0026 apply to this rule, along with the following definitions:</p> <ul style="list-style-type: none"> <li>(a) <b>"District"</b> means the student's resident school district under 339.133</li> <li>(b) <b>"Child with a disability"</b> means a child between the ages of 7 and 18 whose parent or guardian seeks exemption from compulsory school attendance under ORS 339.030(1)(c) or (1)(d) and who meets eligibility criteria for a specific disability category under OAR 581-015-0051.</li> <li>(c) <b>"Individualized educational program"</b> (IEP) is defined under OAR 581-015-0005(11).</li> <li>(d) <b>"Privately developed plan"</b> (PDP) means an individual plan developed by a team including the parent and one or more private service providers to address the educational needs of a child with a disability. A PDP shall include individual educational goals for the student and a statement indicating how satisfactory educational progress will be determined for the student.</li> <li>(e) <b>"Satisfactory educational progress"</b> means educational progress across academic and/or developmental areas appropriate to the child's age and abilities. The student need not complete all individualized educational program or privately developed plan goals for the team to determine that the student is making satisfactory educational progress.</li> </ul> <p>(2) Notice Requirements:</p> <ul style="list-style-type: none"> <li>(a) Parents shall notify the ESD superintendent of intent to home school a child with a disability in accordance with OAR 581-021-0026(1)(f) and (4).</li> <li>(b) The ESD superintendent shall notify the district if the ESD receives notice that a parent intends to home school a child with a disability.</li> <li>(c) The district shall provide written notice to the parent that it stands ready to provide a free appropriate public education if the child enrolls in the district. This notice shall be provided annually as long as: <ul style="list-style-type: none"> <li>(A) The child remains eligible for special education; and</li> <li>(B) The child is exempt from compulsory education as a</li> </ul> </li> </ul>	<p>If parents choose to home school their child they must notify the Linn-Benton-Lincoln Education Service District (LBLESD) of their intent to home school. The ESD then notifies the district of the parents' intent. The following home school requirements apply only to students age 7-18, as this is the age range that compulsory school attendance regulations apply.</p> <p><b>Are parents who are home schooling their child required by law to have their child participate in special education services provided by the district?</b></p> <p>No, parents who are home schooling their child can elect to provide services privately.</p> <p><b>What are the district's responsibilities for home schooled students?</b></p> <p>When the district receives notice from the ESD that a parent intends to home school a child with a disability or that a child with a disability is being home schooled, the Special Education Director attempts to discover why the parent has chosen to home school, if the parent expects to have his or her child participate in special education, and if there are other factors that would affect the response of the district to the parent. The Special Education Director then provides written notice to the parent that it stands ready to provide a free appropriate public education to their child if the parent enrolls the child in the district. We provide this notice to the parent annually as long as the child remains eligible for special education, is home schooled, and is not receiving special education and related services from the district.</p> <p>If the parent elects to seek special education services, the school the student would otherwise attend is responsible for evaluation and provision of services.</p> <p>The school the student would otherwise attend offers the parent an opportunity for an IEP meeting to consider providing special education and related services to the child with a disability in conjunction with home schooling. The school is only required to develop an IEP if the IEP team determines that a free appropriate public education can be provided in conjunction with home schooling.</p> <p>Special education services are provided in the home only to the extent that special education or related services would be provided in the home if the child were not home schooled. If an IEP is developed, the child's parent must be considered as both parent and regular education teacher of the child unless the parent designates another individual as the regular education teacher.</p> <p>When the IEP team is considering the "extent of non-participation in regular education" the IEP must state the child is exempt from compulsory school attendance and regular education is</p>

<p>home schooled child; and</p> <p>(C) The child is not receiving special education and related services from the district.</p> <p>(3) Testing and Reporting Requirements:</p> <p>(a) If a child with a disability is receiving IEP services from a district and the IEP includes a provision for IEP team assessment of satisfactory educational progress, the district shall:</p> <p>(A) Complete this assessment according to the schedule identified in OAR 581-021-0026(6); and</p> <p>(B) Provide the parent with a copy of the results, including a summary statement indicating whether the child has made satisfactory educational progress in light of the child's age and disability.</p> <p>(b) If a child with a disability is receiving services under a PDP, and the PDP includes a provision for assessment of satisfactory educational progress, the PDP team shall:</p> <p>(A) Complete this assessment according to the schedule identified in OAR 581-021-0026(6); and</p> <p>(B) Provide the parent with a copy of the results, including a summary statement indicating whether the child has made satisfactory educational progress in light of the child's age and disability.</p> <p>(c) Parents who are home schooling a child with a disability shall do one of the following:</p> <p>(A) If the district has conducted an assessment under subsection (3)(a)(A), retain documentation of the child's progress under subsection (3)(a)(B) and, upon request, report this information to the ESD on the same schedule as required under OAR 581-021-0026(6); or</p> <p>(B) Ensure that the child's progress is evaluated according to a privately developed plan, and retain and report progress, upon request, on the same schedule as required by OAR 581-021-0026; or</p> <p>(C) Follow the testing and reporting requirements in OAR 581-021-0026.</p> <p>(d) Parents of a child who is not identified under OAR 581-015-0051 but who is disabled under Section 504 of the Rehabilitation Act shall comply with subsections (B) or (C), above.</p> <p>(4) If the IEP or PDP team determines that the child has not made</p>	<p>provided through home schooling.</p> <p>Satisfactory educational progress must be determined for every home schooled student. If the district develops an IEP for a home schooled student with disabilities the IEP must identify how "satisfactory educational progress" will be determined through assessment. If the school team is to complete the assessment they must provide the parent with a copy of the results, including a summary statement indicating whether the child has made satisfactory educational progress in light of the child's age and disability. It is the responsibility of the ESD to take action if it is determined the student is not making satisfactory educational progress.</p> <p><b>Is the district responsible for reevaluation of a home schooled student for continued eligibility for special education services?</b></p> <p>Yes, if the child is participating in special education services in the district in conjunction with home schooling. The district is responsible for completing the same evaluation process every three years for home schooled children with disabilities as is required for students with disabilities enrolled in the district.</p> <p>However, if the team determines that specific evaluation is necessary to continue eligibility or to determine appropriate special education and related services for the child's IEP, and the parent refuses consent for such evaluation, or refuses to make the child available, the case manager should document to the parent that the district stands ready to conduct the evaluation when the parent gives consent or makes the child available.</p> <p>If the district does not have sufficient evaluation information to determine eligibility or to develop an IEP, the district is not required to complete these activities. In this situation the district must provide written prior notice if the district terminates eligibility or services due to these circumstances.</p> <p><b>Do parent of home schooled students with disabilities have the same procedural safeguard rights under the IDEA?</b></p> <p>Parents of home schooled children with disabilities have the same procedural safeguards rights as parent of children with disabilities enrolled in the district, except for the following:</p> <ul style="list-style-type: none"> <li>• if the parent disagrees with the IEP teams evaluation regarding satisfactory educational progress, the parent is not entitled to an independent educational evaluation at public expense; and,</li> <li>• The parent may not request a due process hearing to contest a district's decision not to provide special education and related services in conjunction with home schooling.</li> </ul>
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satisfactory educational progress, the superintendent shall take the actions identified in OAR 581-021-0026 in the sequence stated.

- (5) District responsibilities for home schooled children with disabilities:
- (a) When the district receives notice that a parent intends to home school a child with a disability or that a child with a disability is being home schooled, the district shall offer, and document to the parent;
    - (A) An opportunity for the child to receive special education and related services if the child were enrolled in the district; and
    - (B) An opportunity for IEP meeting to consider providing special education and related services to the child with a disability in conjunction with home schooling.
      - (i) An IEP shall only be developed for a child with a disability if the IEP team determines that a free appropriate public education can be provided in conjunction with home schooling.
      - (ii) Services may be provided in the home only to the extent that special education or related services would be provided in the home if the child were not home schooled.
  - (b) The child's IEP team shall be convened and conducted, and an IEP developed, consistent with the requirements in OAR Division 15, with the following exceptions:
    - (A) The child's parent shall be treated as both parent and regular education teacher of the child unless the parent designates another individual as the regular education teacher;
    - (B) Under "extent of non-participation in regular education" the IEP shall state that the child is exempt from compulsory school attendance and regular education is provided through home schooling; and
    - (C) The IEP shall state how "satisfactory educational progress" will be determined for the student.
      - (i) If the IEP team determines that the testing requirements of OAR 581-021-0026 are appropriate for the child, the provisions of OAR 581-021-0026(6) shall apply to the child.
      - (ii) If the IEP team determines that the testing requirements of OAR 581-015-0026 are not

appropriate for the child, the IEP team shall identify another measure that will be used to determine whether the child has made satisfactory educational progress.

(iii) Notwithstanding subsections (i) and (ii), a parent may use a PDP to determine whether the child has made satisfactory educational progress. If so, the IEP shall indicate that satisfactory educational progress will be determined by the PDP team at parent request.

(c) Children with disabilities shall be reevaluated at least every three years in accordance with OAR 581-015-0072 through 581-015-0074 and 581-015-0701.

(A) If the team determines that specific evaluation is necessary to continue eligibility or to determine appropriate special education and related services for the child's IEP, and the parent refuses consent for such evaluation, or refuses to make the child available, the district shall document to the parent that the district stands ready to conduct the evaluation when the parent gives consent or makes the child available.

(B) If the district does not have sufficient evaluation information to determine eligibility or to develop an IEP, the district is not required to complete these activities. The district shall provide prior written notice under OAR 581-015-0075 if the district terminates eligibility or services under these circumstances.

(d) Child find:

(A) If a district suspects that a home schooled child has a disability under OAR 581-015-0051, the district shall:

(i) Obtain parent consent for initial evaluation under OAR 581-015-0039; and

(ii) Conduct an initial evaluation and determine the child's eligibility to receive special education and related services consistent with OAR 581-015-0051, 0053, 0071, 0072, 0073, and 0701.

(B) If the child is eligible, the district shall notify the parent and shall offer and document to the parent an opportunity for an IEP meeting to consider initiation of special education and related services to the child with a disability.

- (C) If the parent refuses consent, does not respond, or refuses to make the child available, the district shall document to the parent that the district stands ready to conduct the evaluation when the parent gives consent or makes the child available.
  - (D) If a parent does not respond or refuses to meet to consider initiation of special education and related services, the district has no further obligation to initiate the offer of a free appropriate public education as long as the child is exempted from compulsory education as a home schooled child.
- (6) If the district permits partial enrollment of home schooled children in its regular education program, the district shall permit children with disabilities to participate to the same extent as non-disabled children, if appropriate, whether or not the child is receiving IEP services from the district.
- (a) If the child is receiving IEP services from the district, the IEP team shall determine the appropriateness of participation and the IEP shall include necessary modifications and accommodations related to the participation. Notwithstanding subsection (5)(b)(A), if the IEP calls for participation in any part of the district's regular education program, the IEP team shall include a district regular education teacher in accordance with OAR 581-015-0066(3).
  - (b) If the child is not receiving IEP services from the district, the district shall consider the participation, and necessary modifications and accommodations for the child under Section 504 of the Rehabilitation Act.
- (7) A child who is exempt from compulsory school attendance as a home schooled child with a disability will continue to be considered an exempt home schooled child even though:
- (a) The child receives special education and related services from the district, unless these services are the equivalent of full-time enrollment in the district; or
  - (b) If the district permits partial enrollment of home schooled children and, pursuant to that policy, the child attends one or more regular education classes.
- (8) Parents of home schooled children with disabilities have the same procedural safeguards as children with disabilities enrolled in the district, except for the following:
- (a) A parent is not entitled to an independent educational

evaluation at public expense under OAR 581-015-0094 if the parent disagrees with an IEP team evaluation regarding satisfactory educational progress under this rule.

- (b) A parent may not request a due process hearing under OAR 581-015-0081 to contest a district's decision not to provide special education and related services in conjunction with home schooling.
- (c) Complaints that a school district has failed to meet any of the requirements under OAR 581-021-0029(5) or (8) may be heard under OAR 581-015-0054.

**Required district forms:** The forms listed below are required at certain times or for certain actions when a student is, or may be a student with a disability and is being home schooled. Not all forms will be required for every student. District forms may be printed from the district website, our electronic SPED system, or obtained from the special education staff or counselor in each building.

- *Prior Notice about Evaluation/ Consent for Evaluation;*
- *Evaluation Planning*
- *Agreement between Parents and the District;*
- *Minutes of Evaluation/ Reevaluation Planning Meeting;*
- *Prior Notice of Special Education Action;*
- *Prior Notice and Consent for Initial Provision of Special Education;*
- *Eligibility Determination(by disability)*
- *Individual Education Plan*
- *Notice of Team Meeting*
- *Parents Rights for Special Education;*
- *Authorized for Release of Information form*
- *Stand Ready Letter to provide services*

**Additional Resources:**

- ODE Home Schooling Resources for students with disabilities: <http://www.ode.state.or.us/search/page/?id=376>
- LBLESD Home Schooling Resources: <http://www.lblesd.k12.or.us/homeschool/index.php>

## Section 15: Public Charter Schools

### OAR 581-015-2075 Charter Schools

- (1) For all school purposes, residency for charter school children is determined in accordance with ORS chapter 338, revised 2011.
- (2) In accordance with the procedural safeguards for special education, a school district must serve resident children with disabilities attending public charter schools located in the district in the same manner as the school district serve children with disabilities in other district schools, including but not limited to:
  - (a) Identifying, locating, and evaluating students, in accordance with OAR 581-015-2100 – 581-015-2180, to determine which children enrolled in a public charter school may be in need of special education and related services
  - (b) Implementing special education and related services according to each child's individual education programs (IEP) in accordance with OAR 581-015-2200 – 581-015-2230
  - (c) Providing supplementary and related services on site in the public charter school at the same extend to which the school district has a policy or practice of providing such services on site to its other public schools.
- (3) A school district in which a public charger school is located must provide IDEA funds to those charter schools on the same basis as the school district provides IDEA funds to other public schools in the district, including proportional distribution based on relative enrollment of children with disabilities, at the same time as funds are distributed to other public schools in the district.
- (4) When a student enrolls in a public charter school, the school district is which the public charter school is located shall:
  - (a) Provide written notification of the student's enrollment to the student in which the student resides;
  - (b) Request, in accordance with applicable confidentiality provision in IDEA and OAR 581-015-0220 through 581-015-0400 and 34 CFR::300.610 through 300.620,

### What are the requirements under IDEA regarding public charter schools?

A charter school sponsored by the district is considered a school of the district when applying the legal requirements under the IDEA. If a student with disabilities attends a public charter school the district where the public charter school is located is responsible for providing any and all required special education and related services in the same manner as services are provided to students in other public schools in the district.

the student records of the student, including all information related to an individual education program developed for the student;

(c) If a student resides in another district, provide written notification to the student's parent, guardian, or person in parental relationship to provide information about:

(A) The school district's responsibility to identify, locate, and evaluate to determine a student's need for special education and related services and to provide this special education services in the public charter school; and

(B) The methods by which the school district may be contracted to answer questions or provide information related to special education and related services

(5) Each school district that receives an individual education program (IEP) under subsection (4)(b) must, in consultation with the child's parent, provide a free appropriate public education to the child, in accordance with OAR 581-015-2230(1) until the new district implements the individual education program from the previous district or develops, adopts, and implements a new IEP that meets the applicable requirements. If the information received was in effect in a previous school district in another state, the district will implement it in accordance with OAR 581-015-2230(2).

(6) When a student no longer is enrolled in a public charter school for any reason, the school district in which the public charter school is located shall notify:

(a) The school district in which the student resides to provide notice:

(A) that the student no longer is enrolled in the public charter school, and

(B) that the district will provide the student education records, including all information related to the student's individual education program if the student seeks enrollment or services from the district in which the student resides. Transfer of the information in (6)(b)(ii) is subject to the confidentiality provisions of IDEA and OAR 581-021-0230 – 581-021-0400.

- (b) The student's parent, guardian, or person in parental relationship to provide information about:
- (A) The responsibility of the school district in which the student resides to identify, locate, and evaluate students and implement services; and
  - (B) The method by which the school district in (6)(a) may be contacted to answer questions or provide information about special education and related services.
  - (C) The responsibility of the district to provide student education records, including all information related to student's individualized education program, if the student seeks enrollment or services from another school district, including the parental resident district. Transfer of student education records (6)(b)(ii) is subject to the requirements of IDEA and OAR 581-021-0230 – 581-021-0400.

**Required district forms:** The forms listed below are required at certain times or for certain actions when a student is, or may be a student with a disability and is attending a public charter school. Not all forms will be required for every student as part of the process. District forms may be printed from the district website, our electronic SPED system, or obtained from the special education staff or counselor in each building.

- *Prior Notice about Evaluation/ Consent for Evaluation;*
- *Evaluation Planning*
- *Agreement between Parents and the District;*
- *Minutes of Evaluation/ Reevaluation Planning Meeting;*
- *Prior Notice of Special Education Action;*
- *Prior Notice and Consent for Initial Provision of Special Education;*
- *Eligibility Determination(by disability);*
- *Notice of Team Meeting*
- *Parents Rights for Special Education Handbook;*
- *Authorized for Release of Information form*
- *Individual Education Plan*

**Additional Resources:**

- ODE Charter School Technical assistance documents: <http://www.ode.state.or.us/search/page/?id=1270>

## Section 16: Student Records

### 581-021-0220: Definitions

As used in OAR 581-021-0220 through 581-021-0440, the following definitions apply:

- (1) "**Attendance**" includes, but is not limited to:
  - (a) Attendance in person or by correspondence; and
  - (b) The period during which a person is working under a work-study program.
- (2) "**Directory Information**" means those items of personally identifiable information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. Directory information may include, and is not limited to, the student's name, address, telephone listing, electronic mail address, photograph, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended.
- (3) "**Disclosure**" means to permit access to or the release, transfer, or other communication of education records, or the personally identifiable information contained in those records, to any party, by any means, including oral, written, or electronic means.
- (4) "**Disciplinary action or proceeding**" means the investigation, adjudication, or imposition of sanctions by an educational agency or institution with respect to an infraction or violation of the internal rules of conduct applicable to students of the agency or institution.
- (5) "**Educational Agency or Institution**" means any public or private school, education service district, state institution, private agency or youth care center providing educational services to students birth through age 21, and through Grade 12, that receives federal or state funds either directly or by contract or subcontract with the Department under any program administered by the U.S. Secretary of Education or the Department.
- (6) "**Education Records**":
  - (a) The term means those records that are directly related to a student and maintained by an educational agency or

Student records are any and all materials that contain information directly related to a student that is retained by the district. Student records are maintained for a variety of purposes. Typically they are used as a record of the students progress in school, as documentation of the programs and services in which the student has participated, to provide critical information for educational planning, and to document student achievement. The district also maintains student records to demonstrate compliance with state and federal laws and to demonstrate accountability. Records must be maintained in ways that protect their confidentiality as well as physical safety. Safeguarding the confidentiality of student records is the responsibility of every educator in the district.

Anyone handling files with personally identifiable information must be familiar with the laws regarding keeping records safe and confidential. Case managers should familiarize themselves with the *Parent Rights for Special Education* brochure and the districts Student Record Procedures to ensure they create, maintain, and store records with integrity.

### **Are there specific requirements the district must ensure relating to student records?**

Yes, the district is responsible for ensuring:

- Student records are accessed only by qualified district personnel, the student's parent, or a representative of the parent as authorized in writing;
- Safe and confidential storage of student records from the time they are created until the time they may be destroyed in accordance with state archive rules;
- Parents are informed of where records for their child are maintained and who is responsible for maintaining them;
- Parents are informed of the method for reviewing their child's records, how they may request an amendment to their child's records and of their control of release of records for their child;
- Parents have available to them interpretation of their child's records, if necessary; and
- Records are forwarded to appropriate parties upon written request or written notification from parents.

Student records must be kept in a secure, locked receptacle; such as a locking file cabinet. Grade books, behavior referrals, notes to parents, and other records that may be created or used on a day to day basis should not be left in a place where other students or teachers can see them. The district must also ensure that a students' permanent record is kept in a secure, locked, minimum one-hour fire-safe cabinet in the district. Each building must have one individual trained in the keeping of student records.

institution or by a party acting for the agency or institution;

(b) The term does not include:

- (A) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the record, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;
- (B) Records of the law enforcement unit of an educational agency or institution, subject to the provisions of OAR 581-021-0225.
- (C) Records relating to an individual who is employed by an educational agency or institution, that are made and maintained in the normal course of business, that relate exclusively to the individual in that individual's capacity as an employee and that are not available for use for any other purpose. Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and not excepted under this subsection;
- (D) Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are:
  - (i) Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;
  - (ii) Made, maintained, or used only in connection with treatment of the student; and
  - (iii) Disclosed only to individuals providing the treatment. For the purpose of this definition, "treatment" does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution.
- (E) Records that only contain information relating to activities in which an individual engaged after he or she is no longer a student at that agency or institution;
- (F) Medical or nursing records which are made or maintained separately and solely by a licensed health

#### **Who may have access to a student's records?**

District personnel must have a "need to know" to have access to a student's records. "Need to know" is determined based on the content of the student record and the employee's role in the district. Each building must post, in locations where records are kept, a list of the individuals who may have access to records.

Parents, legal guardians, and adult students and their representatives have the right to access their student records. If a request from any of these parties is made to view records, the district must provide access within a reasonable period of time, but in no case longer than 45 days after the request is made. If the parent requests interpretation of the record a knowledgeable district official must be made available to assist the parent in understanding the content of the record(s).

#### **What if a parent requests a copy of their child's records?**

Copies of records must be provided to a parent or eligible student upon request and at no cost. Building administrators should be made aware of any requests for copies of records.

#### **Are there requirements for transferring student records?**

Yes, the requirements for transferring records are specific to the type of transfer and are as follows:

- When a student moves from school to school within the district the individual in the building who has been trained in maintaining student records gathers all records, including behavioral records, guidance and counseling records, health records, and any other educational records maintained at the building and transfers them to the appropriate school. This does not require written consent for release of records from the parent.
- When a student transfers to a school outside the district the student's new district sends a written request for records. Once this request is received the district transfers all records requested to the new district. This transfer must occur within 10 days. Transferring records to a new district does not require written consent for release of records from the parent. Since there are specific requirements for copying and retaining certain records in the district for specific periods of time, the individual in each building trained to handle student records should be the individual responsible for the transfer.
- When a student enrolls, or seeks to enroll in post secondary education or other educational programs that require student records for admission, the district may transfer the requested records to the institution making the request. This transfer does not require a signed release.

#### **Is transferring student records the same thing as releasing student records?**

No, the requirements for *release* of student records are more restrictive. With the exception of

care professional who is not employed by the educational agency or institution, and which are not used for education purposes of planning.

- (7) **"Eligible Student"** means a student who has reached 18 years of age, or a student who is attending only an institution of postsecondary education and is not enrolled in a secondary school.
- (8) **"Institution of Postsecondary Education"** means an institution that provides education to students beyond the secondary school level; "secondary school level" means the educational level (not beyond Grade 12) at which secondary education is provided.
- (9) **"Parent"** means a parent of a student and includes a natural parent, a guardian, an individual authorized in writing to act as a parent in the absence of a parent or a guardian, or a surrogate parent appointed to represent a student with disabilities. The term does not include the state if the child is a ward of the state and the student is eligible for special education services or is suspected of being eligible for special education services under state and federal law.
- (10) **"Party"** means an individual, agency, institution, or organization.
- (11) **"Permanent record"** means the educational record maintained by the educational agency or institution which includes:
- (a) Name and address of the educational agency or institution;
  - (b) Full legal name of the student;
  - (c) Student's birth date and place of birth;
  - (d) Name of parents/guardians;
  - (e) Date of entry into the school;
  - (f) Name of school previously attended;
  - (g) Courses of study and marks received;
  - (h) Data documenting a student's progress toward achievement of state standards and must include a student's Oregon State Assessment results;
  - (i) Credits earned;
  - (j) Attendance;
  - (k) Date of withdrawal from school;
  - (l) Social security number, subject to subsection (1)(j) of this rule; and
  - (m) Such additional information as the educational agency or institution may prescribe.

records designated as "Directory Information", or a request for *transfer* of records, student records may not be released to any person or agency without the written consent of the parent, adult student, or legal guardian. The release must include the name of the student, the specific records that will be disclosed, the purpose for which the information will be used, and the name of the person who will receive the information. The release must also contain a statement that the information will not be released to any other individual without the consent from the parent, adult student, or legal guardian.

Under the following circumstances, records may be disclosed without prior consent :

- To school board members during executive session;
- To authorized government agencies for audit or program evaluation purposes;
- To accrediting organizations;
- In response to a judicial order or subpoena;
- If there is a health or safety emergency that involves law enforcement, DHA, or health care professionals;
- To organizations conducting students for, or on behalf of, educational agencies or institutions to develop, administer tests, student aid programs, or to improve instruction.

The district must clearly document when a student record is released and under what circumstance(s).

*Note:* "Directory Information" is defined in the district Student Rights and Responsibilities Handbook.

**When a student leaves the district should I keep a copy of all the students' special education records?**

No, the district is only required to keep a copy of the most current eligibility, the most current IEP, and the Prior Notice and Consent for the Initial Provision of Special Education

- (12) "**Personally Identifiable Information**" includes, but is not limited to:
- (a) The student's name;
  - (b) The name of the student's parent or other family member;
  - (c) The address of the student or student's family;
  - (d) A personal identifier, such as the student's social security number or student number;
  - (e) A list of personal characteristics that would make the student's identity easily traceable; and
  - (f) Other information that would make the student's identity easily traceable.
- (13) "**Record**" means any information recorded in any way including, but not limited to, handwriting, print, tape, film, microfilm and microfiche.
- (14) "**Student**" means any individual who is or has been in attendance at an educational agency or institution and regarding whom the agency or institution maintains education records.
- (15) "**Substitute care program**" means family foster care, family group home care, parole foster care, family shelter care, adolescent shelter care and professional group care.
- [Publications: Publications referenced are available from the agency.]

**581-015-2300: Access to Student Education Records**

- (1) School districts must give parents of children with disabilities an opportunity to examine all student education records in accordance with OAR 581-021-0220 through 581-021-0440.
- (2) This provision includes all education records with respect to:
  - (a) The identification, evaluation, and educational placement of the child; and
  - (b) The provision of a free appropriate public education to the child.

**581-021-0265: Confidentiality of Student Education Records**

- (1) Each school district shall keep confidential any record maintained on a child with a disability in conformance with OAR 581-021-0220 through 581-021-0440.
- (2) Each school district shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.
- (3) One official at each school district shall assume responsibility

for ensuring the confidentiality of any personally identifiable information.

(4) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under OAR 581-015-0055 through 581-015-0606 and 581-021-0220 through 581-021-0440.

**581-021-0330: Prior Consent to Disclose Information**

(1) The parent or eligible student shall provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the student's education records, except as provided in OAR 581-021-0340.

(2) "Signed and dated written consent" under this part may include a record and signature in electronic form that:

- (a) Identifies and authenticates a particular person as the source of the electronic consent; and
- (b) Indicates such person's approval of the information contained in the electronic consent.

(3) The written consent must:

- (a) Specify the records that may be disclosed;
- (b) State the purpose of the disclosure; and
- (c) Identify the party or class of parties to whom the disclosure may be made.

(3) When a disclosure is made under section (1) of this rule:

- (a) If a parent or eligible student so requests, the educational agency or institution shall provide him or her with a copy of the records disclosed; and
- (b) If the parent of a student who is not an eligible student so requests, the agency or institution shall provide the student with a copy of the records disclosed.

(4) If a child is enrolled or is going to enroll in a private school that is not located in the child's resident school district, parent consent must be obtained before any personally identifiable information about the child is released between officials of the school district where the private school is located and the resident school district.

**581-021-0255: Transfer of Student Education Records**

(1) Within ten days of a student seeking enrollment in or services from a public or private school including an ESD, or when a student is placed in a state institution other than an institution of postsecondary education, or a private agency or youth care center (hereinafter referred to as the new educational agency), the new

educational agency must notify the public or private school, education service district, institution, agency, or youth care center in which the student was formerly enrolled (hereinafter referred to as the former educational agency), and request the student's education records.

(2) The former educational agency must transfer all requested student education records to the new educational agency no later than 10 days after receiving the request.

(3) The education records transferred to the new educational agency must include any education records relating to the particular student retained by an education service district.

(4) The educational agency must retain originals of student education records for the time periods and under the conditions described in the record retention rule, OAR 166-400-0060, except that originals shall be transferred to a new education agency upon request.

(5) When original records have been transferred to a new educational agency as required in subsection (2) of this rule, readable photocopies of the following documents must be retained by the former educational agency or institution for the time periods and under the conditions as prescribed in the record retention rule, OAR 166-400-0060:

(a) The student's permanent record as defined in subsection (11) of OAR 581-021-0220; and

(b) Such special education records as are necessary to document compliance with state and federal audits.

(6) Notwithstanding subsections (1) and (2) of this section, for students who are in substitute care programs:

(a) A school, institution, agency, facility or center shall notify the school, institution, agency, facility or center in which the student was formerly enrolled and shall request the student's education records within five days of the student seeking initial enrollment; and

(b) Any school, institution, agency, facility or center receiving a request for a student's education records shall transfer all student education records relating to the particular student to the requesting school, institution, agency, facility or center no later than five days after the receipt of the request.

**581-021-0250: An Educational Agency or Institution's Policy Regarding Student Education Records**

(1) Each educational agency or institution shall adopt a policy

regarding how the agency or institution meets the requirements of OARs 581-021-0220 through 581-021-0430.

The policy shall include:

- (a) A description of how the agency or institution annually informs parents and students of their rights, in accordance with OAR 581-021-0260;
- (b) A description of how a parent or eligible student may inspect and review education records according to OAR 581-021-0270;
- (c) A statement that personally identifiable information will not be released from an education record without the prior written consent of the parent or eligible student according to OAR 581-021-0330, except under one or more of the conditions described in OAR 581-021-0340;
- (d) A statement indicating whether the educational agency or institution has a policy of disclosing personally identifiable information under OAR 581-021-0340(1), and, if so, a specification of the criteria for determining which parties are school officials and what the agency or institution considers to be a legitimate educational interest. With respect to students with disabilities, each educational agency or institution shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who have access to personally identifiable information;
- (e) A statement that a record of disclosures will be maintained as required by OAR 581-021-0400, and that a parent or eligible student may inspect and review that record;
- (f) Specification by the educational agency or institution of the types of personally identifiable information the agency or institution has designated as directory information under OAR 581-021-0390;
- (g) A statement that the agency or institution permits a parent or eligible student to request correction of the student's education records under OAR 581-021-0300, to obtain a hearing under OAR 581-021-0310(1), and to add a statement to the record under OAR 581-021-0310(3);
- (h) A statement that the educational agency or institution, as required by OAR 581-021-0260, annually notifies parents and eligible students of their rights to review and propose amendments to the student's education records;
- (i) A statement that the educational agency or institution

maintains a permanent record on each student;

- (j) A statement that the educational agency or institution will request the social security number of a student and will include the social security number on the permanent student record only if the parent or eligible student complies with the request. The request shall include notification to the parent or eligible student that the provision of the social security number is voluntary and notification of the purposes for which the social security number will be used;
  - (k) A statement that the educational agency or institution provides for the retention of permanent records in a minimum one-hour fire-safe place in the educational agency or institution, or for keeping duplicate permanent records in a safe depository outside the building;
  - (l) A statement that the education agency or institution complies with OAR 581-021-0255 on the request for and transfer of student education records; and
  - (m) A statement that the educational agency or institution has a policy of disclosing personally identifiable information from an education record to an ESD, state regional program, or other educational agency or institution that has requested the records and in which the student seeks or intends to enroll or is enrolled or receives services from. The term "receives services" includes, but is not limited to, an evaluation or re-evaluation for purposes of determining whether a student has a disability.
- (2) For purposes of subsection (1)(l) of this rule:
- (a) "Private agency" means an agency with which the Department of Education contracts under ORS 343.961; and
  - (b) "Youth care center" means a center as defined in ORS 420.855.
- (3) The educational agency or institution shall state the policy in writing and make a copy of it available on request to a parent or eligible student.

**581-021-0260 : An Educational Agency or Institution's Annual Notification**

- (1) Each educational agency or institution shall annually notify parents of students currently in attendance, and eligible students currently in attendance, at the agency or institution of

- their rights under OAR 581-021-0220 through 581-021-0440.
- (2) The notice must inform parents and eligible students that they have a right to:
- (a) Inspect and review the student's education records;
  - (b) Request the amendment of the student's education records to ensure that they are not inaccurate, misleading, or otherwise in violation of the student's privacy or other rights;
  - (c) Consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that these rules authorize disclosure without consent;
  - (d) Pursuant to OAR 581-021-0410, file with the U.S. Department of Education a complaint under 34 CFR 101.99.64 concerning alleged failures by the agency or institution to comply with the requirements of the Family Educational Rights and Privacy Act; and
  - (e) Obtain a copy of the policy adopted under OAR 581-021-0250.
- (3) The notice must include all of the following:
- (a) The procedure for exercising the right to inspect and review education records.
  - (b) The procedure for requesting amendment of records under OAR 581-021-0300;
  - (c) Regarding disclosure of education records to school officials and teachers within the education agency whom the agency has determined to have legitimate educational interest, a specification of the criteria for determining who constitutes a school official and what constitutes a legitimate educational interest;
- (4) Each educational agency or institution shall annually notify parents and eligible students of what it considers to be directory information and the conditions for disclosure of such information as provided in OAR 581-021-0390.
- (5) Each educational agency or institution shall annually notify parents or eligible students that it forwards education records requested under OAR 581-021-0250(1)(m) and (p) within 10 days of receiving the request.
- (6) The notice provided under section (1) of this rule must also indicate the places where copies of the policy adopted under OAR 581-021-0250 are located.
- (7) An educational agency or institution may provide this notice by

any means that are reasonably likely to inform the parents and eligible students of their rights;

- (8) An agency or institution of elementary or secondary education shall effectively notify parents of students who have a primary or home language other than English.
- (9) An educational agency or institution shall effectively notify parents or eligible students who are disabled.

[Publications: Publications referenced are available from the agency.]

**581-021-0270: Rights of Inspection and Review of Education Records**

- (1) Except as limited under FERPA and IDEA, each educational agency or institution shall permit a parent, an eligible student, or a representative of a parent if authorized in writing by the parent, to inspect and review the education records of the student.
- (2) The educational agency or institution shall comply with a request for access to records:
  - (a) Within a reasonable period of time and without unnecessary delay;
  - (b) For children with disabilities under OAR 581-015-0051, before any meeting regarding an IEP, or any due process hearing, or any resolution session related to a due process hearing; and
  - (c) In no case more than 45 days after it has received the request.
- (3) The educational agency or institution shall respond to the reasonable requests for explanations and interpretations of the records.
- (4) If a parent or an eligible student so requests, the educational agency or institution shall give the parent or eligible student a copy of the student's education records pursuant to ORS 192.440, except that no copy of test protocols, test questions and answers, and other documents described in ORS 192.501(4) shall be provided unless authorized by federal law.
- (5) The educational agency or institution shall not destroy any education records if there is an outstanding request to inspect and review the records under this rule.
- (6) While an education agency or institution is not required to give an eligible student access to treatment records under the definition of "education records" in OAR 581-021-

0220(6)(b)(D), the student may, at his or her expense, have those records reviewed by a physician or other appropriate professional of the student's choice.

**581-021-0280: Fees for Copies of Education Records**

- (1) Student records are public records under ORS 192.410 through 192.505 but are exempt from disclosure except as authorized by OAR 581-021-0220 through 581-021-0440.
- (2) Unless the imposition of a fee effectively prevents a parent or eligible student from exercising the right to inspect and review the student's education records, an educational agency or institution may charge a fee for a copy of an educational record which is made for the parent or eligible student subject to section (3) of this rule.
- (3) Notwithstanding ORS 192.440(3), an educational agency or institution may not charge a fee to search for or to retrieve the education records of a student.

**581-021-0290: Limitations on the Right to Inspect and Review Records**

If the education records of a student contain information on more than one student, the parent or eligible student may inspect, review, or be informed of only the specific information about that student.

**581-021-0300: A Parent or Eligible Student's Request for Amendment of a Student's Education Records**

- (1) If a parent or eligible student believes the education records relating to the student contain information that is inaccurate, misleading, or in violation of the student's rights of privacy or other rights, he or she may ask the educational agency or institution to amend the record.
- (2) The education agency or institution shall decide whether to amend the record as requested within a reasonable time after the agency or institution receives the request.
- (3) If the educational agency or institution decides not to amend the record as requested, it shall inform the parent or eligible student of its decision and of his or her right to a hearing under OAR 581-021-0310.

**581-021-0310: Right to a Hearing to Challenge Content**

- (1) An educational agency or institution shall give a parent or

eligible student, on request, an opportunity for a hearing to challenge the content of the student's education records on the grounds that the information contained in the education records is inaccurate, misleading, or in violation of the privacy or other rights of the student.

- (2) If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall:
  - (a) Amend the record accordingly; and
  - (b) Inform the parent or eligible student of the amendment in writing.
- (3) If, as a result of the hearing, the educational agency or institution decides that the information in the education record is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall inform the parent or eligible student of the right to place a statement in the record commenting on the contested information in the record or stating why he or she disagrees with the decision of the educational agency or institution, or both.
- (4) If an educational agency or institution places a statement in the education records of a student under section (3) of this rule, the agency or institution shall:
  - (a) Maintain the statement with the contested part of the record for as long as the record is maintained; and
  - (b) Disclose the statement whenever it discloses the portion of the record to which the statement relates.

**581-021-0340: Exceptions to Prior Consent**

An educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by OAR 581-021-0330 if the disclosure meets one or more of the following conditions:

- (1) The disclosure is to school board members during executive session pursuant to ORS 332.061, or to other school officials and teachers within the educational agency whom the agency or institution has determined to have legitimate educational interests.
- (2) The disclosure is to officials of another school, school system, institution of postsecondary education, education service district, state regional program, or other educational agency that has requested the records and in which the student seeks

- or intends to enroll, or is enrolled in or receives services from the other agency or institution. The term "receives services" includes, but is not limited to, an evaluation or re-evaluation for purposes of determining whether a student has a disability.
- (3) The disclosure is, subject to the requirements of OAR 581-021-0370, to authorized representatives of:
    - (a) The Comptroller General of the United States;
    - (b) The Secretary of the U.S. Department of Education;
    - (c) State and local educational authorities; or
    - (d) The Oregon Secretary of State's Audit Division.
  - (4) The disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to:
    - (a) Determine eligibility for the aid;
    - (b) Determine the amount of the aid;
    - (c) Determine the conditions for the aid; or
    - (d) Enforce the terms and conditions of the aid;
    - (e) As used in this section, "financial aid" means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) that is conditioned on the individual's attendance at an education agency or institution.
  - (5)(a) The disclosure is to organizations conducting studies for, or on behalf of, educational agencies or institutions to:
    - (A) Develop, validate, or administer predictive tests;
    - (B) Administer student aid programs; or
    - (C) Improve instruction.
  - (b) The agency or institution may disclose information under this section only if:
    - (A) The study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization; and
    - (B) The information is destroyed when no longer needed for the purposes for which the study was conducted.
  - (c) For the purposes of this section, the term "organization" includes, but is not limited to, federal, state and local agencies, and independent organizations.
  - (6) The disclosure is to accrediting organizations to carry out their accrediting functions.
  - (7) The disclosure is to parents of a dependent student, as defined in Section 152 of the Internal Revenue Code of 1986.

- (8) The disclosure is to comply with a judicial order or lawfully issued subpoena subject to the requirements of OAR 581-021-0371.
- (9) The disclosure is related to a legal action subject to the conditions of OAR 581-021-0372.
- (10) The disclosure is in connection with a health or safety emergency, under the conditions described in OAR 581-021-0380.
- (11) The disclosure is information the educational agency or institution has designated as "directory information," under the conditions described in OAR 581-021-0390.
- (12) The disclosure is to the parent of a student who is not an eligible student or to an eligible student.
- (13) The disclosure is to a court and state and local juvenile justice agencies including, but not limited to, law enforcement agencies, juvenile departments and child protective service agencies subject to conditions described in OAR 581-021-0391.

**581-021-0350: Limitations on the Redisclosure of Information**

- (1) An educational agency or institution may disclose personally identifiable information from an education record only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior consent of the parent or eligible student. The officers, employees, and agents of a party that receives information under this section may use the information, but only for the purposes for which the disclosure was made.
- (2) Section (1) of this rule does not prevent an educational agency or institution from disclosing personally identifiable information with the understanding that the party receiving the information may make further disclosures of the information on behalf of the educational agency or institution if:
  - (a) The disclosures meets the requirements of OAR 581-021-0340; and
  - (b) The educational agency or institution has complied with the requirements in OAR 581-021-0400(2).
- (3) Section (1) of this rule does not apply to the following:
  - (a) Disclosures to parents of a dependent student under OAR 581-021-0340(7) or to an eligible student;
  - (b) Disclosures pursuant to court orders, lawfully issued subpoenas, or legal action under OAR 581-021-0340(8) or

(9);

(c) Disclosures of directory information under OAR 581-021-0340(11).

- (4) When applicable, an educational agency or institution shall inform a party to whom disclosure is made of the requirements of this rule.
- (5) If the Family Policy Compliance Office determines that a third party improperly rediscloses personally identifiable information from education records in violation of paragraph 1, the educational agency or institution may not allow that third party access to personally identifiable information from education records for at least five years.

**581-021-0360: Conditions for the Disclosure of Information to Other Educational Agencies or Institutions**

- (1) An educational agency or institution that discloses an education record under OAR 581-021-0340(2) to officials of another school or school system where the student seeks or intends to enroll shall:
- (a) Annually notify parents or eligible students that it forwards education records requested under OAR 581-021-0250(1)(m) and (p) within 10 days of receiving the request;
  - (b) Make a reasonable attempt to notify the parent or eligible student at the last known address of the parent or eligible student, unless:
    - (A) The disclosure is initiated by the parent or eligible student; or
    - (B) The annual notification of the agency or institution under §99.6 includes a notice that the agency or institution forwards education records to other agencies or institutions that have requested the records and in which the student seeks or intends to enroll;
  - (b) Give the parent or eligible student, upon request, a copy of the record that was disclosed; and
  - (c) Give the parent or eligible student, upon request, an opportunity for a hearing.
- (2) An educational agency or institution may disclose an education record of a student in attendance to another educational agency or institution if:
- (a) The student is enrolled in or receives services from the

other agency or institution; and

- (b) The disclosure meets the requirements of section (1) of this rule.

**581-021-0370: Conditions for the Disclosure of Information for Federal or State Program Purposes**

- (1) The officials listed in OAR 581-021-0340(3) shall have access to education records in connection with an audit or evaluation of federal or state supported education programs, or for the enforcement of or compliance with federal or state legal requirements which relate to those programs.
- (2) Information that is collected under section (1) of this rule must:
  - (a) Be protected in a manner that does not permit personal identification of individuals by anyone except the officials referred to in section (1) of this rule; and
  - (b) Be destroyed when no longer needed for the purposes listed in section (1) of this rule.
- (3) Section (2) of this rule does not apply if:
  - (a) The parent or eligible student has given written consent for the disclosure under OAR 581-021-0330; or
  - (b) The collection of personally identifiable information is specifically authorized by state or federal law.

**581-021-0380: Conditions for the Disclosure of Information in Health and Safety Emergencies**

- (1) An educational agency or institution shall disclose personally identifiable information from an education record to law enforcement, child protective services, and health care professionals, and other appropriate parties in connection with a health and safety emergency if knowledge of the information is necessary to protect the health and safety of the student or other individuals.
- (2) Nothing in this Act or this part shall prevent an educational agency or institution from -
  - (a) Including in the education records of a student appropriate information concerning disciplinary action taken against the student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community;
  - (b) Disclosing appropriate information maintained under paragraph (2)(a) of this section to teachers and school officials in other schools who have been determined to

have legitimate educational interests in the behavior of the student.

(3) Paragraphs (1) and (2) of this section will be strictly construed.

(4) As used in this rule, a "health or safety emergency" includes, but is not limited to, law enforcement efforts to locate a child who may be a victim of kidnap, abduction, or custodial interference and law enforcement or child protective services efforts to respond to a report of child abuse or neglect pursuant to ORS 418.750 to 418.760.

(3) Sections (1) and (4) of this rule shall be strictly construed.

**581-021-0390: Conditions for the Disclosure of Directory Information**

(1) An educational agency or institution may disclose directory information if it has given annual public notice to parents of students in attendance and eligible students in attendance at the educational agency or institution of:

- (a) The types of personally identifiable information that the educational agency or institution has designated as directory information;
- (b) A parent or eligible student's right to refuse to let the educational agency or institution designate any or all of those types of information about the student as directory information; and
- (c) The period of time within which a parent or eligible student has to notify the educational agency or institution in writing that he or she does not want any or all of those types of information about the student designated as directory information.

(2) An educational agency or institution may disclose directory information about former students without meeting the conditions in section (1) of this rule.

**581-021-0400: Recordkeeping Requirements**

(1) An educational agency or institution shall maintain a record of each request for access to and each disclosure of personally identifiable information from the education records of each student:

- (a) The agency or institution shall maintain the record with the education records of the student as long as the records are maintained;
- (b) For each request or disclosure the record must include:

- (A) The parties who have requested or received personally identifiable information from the education records;
  - (B) The date access was given; and
  - (C) The legitimate interests the parties had in requesting or obtaining the information.
- (2) If an educational agency or institution discloses personally identifiable information from an education record with the understanding authorized under OAR 581-021-0350(2), the record of disclosure required under this section must include:
- (a) The names of the additional parties to which the receiving party may disclose the information on behalf of the educational agency or institution; and
  - (b) The legitimate interests under OAR 581-021-0340 which each of the additional parties has in requesting or obtaining the information.
- (3) The following parties may inspect the record relating to each student:
- (a) The parent or eligible student;
  - (b) The school official or his or her assistants who are responsible for the custody of the records;
  - (c) Those parties authorized in OAR 581-021-0340(1) and (3) for the purposes of auditing the recordkeeping procedures of the educational agency or institution.
- (4) Section (1) of this rule does not apply if the request was from or the disclosure was to:
- (a) The parent or eligible student;
  - (b) A school official under OAR 581-021-0340(1);
  - (c) A party with written consent from the parent or eligible student; or
  - (d) A party seeking directory information.
  - (e) A party seeking or receiving the records as directed by a Federal grand jury or other law enforcement subpoena and the issuing court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

**Required district forms:** The forms listed below are required at certain times or for certain actions regarding educational records of students. Not all forms will be required for every student. District forms may be printed from the district website, our electronic SPED system, or obtained from the special education staff or counselor in each building.

- *Authorized for Release of Information form;*
- *Consent to Disclose Educational Records to Oregon's Medicaid Agency*

**Additional Resources:**

- *HSD Student Records Policies & Procedures;*
- *HSD Student Handbook;*
- *Parental Rights for Special Education brochure;*
- *Oregon Department of Education “Student Education Records”*

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