



# THE OREGON STATE BOARD OF EDUCATION

Provide leadership and vision for Oregon’s Public Schools and districts by enacting equitable policies and promoting educational practices that lead directly to the educational and life success of students.

**AGENDA**  
**Regular Meeting**  
**Public Service Building 251 A/B**  
**255 Capitol Street NE**  
**Salem, OR 97310**  
**Thursday, January 19, 2023**

State Board of Education meetings comply with open meeting laws and accessibility requirements. Requests for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be given to [Corey Rosenberg](#) at 503-947-5740, at least 48 hours before the meeting. You can access all board materials on our [Boardbook](#) page. Staff respectfully request that you submit email copies of written materials before or after your testimony.

**Please note: all times are approximate.**

1. **Call to Order**
  - A. **Roll Call**  
Time: 9:00 AM
  - B. **Board Member Reports**  
Time: 9:05 AM
  - C. **Break**  
Time: 10:05 AM
  - D. **Director's Report** **3**  
Time: 10:10 AM
2. **Public Comment**  
Time: 10:40 AM
  - A. The State Board of Education will accept up to 30 minutes of **virtual** public comment. Individuals must register to provide virtual comment. Written public comment received will be posted to BoardBook. **20**
3. **Consent Agenda**  
Time: 11:10 AM
  - A. Postponement of Physical Education Standards and Instructional Materials **29**
  - B. Approval of Criteria for Evaluation of Science Instructional Materials **32**
  - C. Charter School Equity Grants Technical Revision: OAR 581-017-0765 - 581-017-0777 **40**
  - D. Student Investment Account Fund Administration: OAR 581-014-0004 **47**
  - E. High School Success Fund Administration: OAR 581-013-0015 **51**
  - F. Transportation Supplemental Plan: Sherwood School District **57**
  - G. Division 22 Waiver Request: Oakridge School District **67**
  - H. 2022-2023 School Board Advisor Nomination **71**
4. **Adoptions**

|   |     |
|---|-----|
| A. State Board of Education Strategic Plan  | 74  |
| <i>Time: 11:15 AM</i>   |     |
| Corey Rosenberg, Office of the Director   |     |
| <b>5. <u>First Readings</u></b>   |     |
| A. Senate Bill 1522 Implementation: Acceptance of Credits Earned in Educational Programs: OAR 581-021-0210                      | 83  |
| <i>Time: 11:30 AM</i>   |     |
| Kara Nystrom Boulahanis and Tenneal Wetherell, Office on Enhancing Student Opportunities  |     |
| B. Senate Bills 13 and 16 Implementation: Special Education Evaluation and Eligibility Updates                                  | 126 |
| <i>Time: 11:45 AM</i>   |     |
| Kara Nystrom Boulahanis and Tenneal Wetherell, Office on Enhancing Student Opportunities  |     |
| <b>6. <u>Break for Lunch</u></b>  |     |
| <i>Time: 12:00 PM</i>   |     |
| <b>7. <u>First Readings</u></b>   |     |
| A. Oregon Administrative Rules Discrimination Updates   | 214 |
| <i>Time: 1:00 PM</i>  |     |
| Kate Hildebrandt and Karin Moscon, Government and Legal Affairs Team  |     |
| B. Updates Involving Non-Conviction Court Orders: OAR 581-053-0050, 581-021-0510, and 581-045-0584                              | 229 |
| <i>Time: 1:15 PM</i>  |     |
| Brock Dittus, Pupil Transportation and Fingerprinting   |     |
| <b>8. <u>Informational Reports</u></b>  |     |
| A. Opportunity for Feedback on Oregon ESSA Plan Minor Amendment   | 239 |
| <i>Time: 1:25 PM</i>  |     |
| Scott Nine, Office of Education Innovation and Improvement and Jennifer Patterson, Office of Teaching, Learning, and Assessment |     |
| B. Rules Advisory Committee Overview  |     |
| <i>Time: 1:55 PM</i>  |     |
| Jeremy Wartz, Office of the Director  |     |
| <b>9. <u>Adjourn</u></b>  |     |
| <i>Time: 2:25 PM</i>  |     |



January 11, 2023

Dear Agency Leaders:

I want to begin by saying thank you. Thank you for serving Oregon and the people who call our state home. Thank you for your professionalism and commitment to public service. And thank you for your partnership with my transition team as we hustled to get ready for Day One.

I am eager to get to work, and I view each of you as partners in my mission to deliver results and make everyday life better for Oregonians.

A core part of my vision for the next four years is to improve customer service for Oregonians – whether they are coming to us for a service, or we are coming to them in the wake of a disaster. That means being more efficient, more effective, and creating systems that will empower our collective 42,000 public servants to deliver for Oregonians.

So today, I am delivering a new set of expectations to you, the leaders of our state agencies. These expectations will serve as guideposts for our work together, providing us with new data that will help us break down silos and make enterprise-wide systems improvements.

To support this effort, my office will be organized with a new focus on public administration. I am hiring a talented group of experienced leaders who I expect to be partners with you in solving problems and delivering on my priorities, which as you know are housing and homelessness, behavioral health and addiction care, and education.

Finally, as Oregon's Governor, I understand that I have 42,000 employees counting on me for compassion and leadership. The pandemic was hard on workers and managers across the board – private or public, it has been tough. We all had to pivot on short notice, support each other through workforce shortages, and do our jobs while our families were facing the same uncertainty as the rest of the world. These workforce challenges are not going away, and I hope to partner with all of you as we continue to strive to make the State of Oregon a great place to live and work.

It is my pledge to all Oregonians, and to you, that I will work every day to be a partner with you in solving problems, big and small. We will not be perfect, but we will improve every year, so Oregonians can proudly say their state government was there for them.

January 11, 2023  
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I am directing the Department of Administrative Services (DAS) to provide my office with updates on our progress in meeting these new expectations quarterly beginning June 1, 2023. Please engage with DAS Director Berri Leslie throughout this process. She will help measure and manage these goals and I have asked her to be a partner with you to ensure you have what you need to be successful.

As a first step, please email Director Leslie by February 1st to confirm that you are ready and willing to work with us toward these enterprise goals.

Thank you for your commitment to Oregon, and I look forward to a great partnership.

Sincerely,

A handwritten signature in black ink, appearing to read "Tina Kotek". The signature is fluid and cursive, with the first name "Tina" and last name "Kotek" clearly distinguishable.

Governor Tina Kotek

# Oregon Agency Expectations

## **Performance Reviews for Agency Directors:**

The DAS Chief Human Resources office will complete a 360-performance evaluation, for every director who reports to the Governor, every two years. Agencies without a review in the prior 12 months will be prioritized. Agency directors who report to a board or commission should have a review completed every two years by their governing body. DAS will provide a price agreement with available vendors to facilitate this process. DAS will also provide a 360-performance template for boards and commissions to use as a model by June 1, 2023. DAS will have the price agreement and template in place by June 1, 2023. DAS will provide quarterly compliance reporting to the Governor's office.

## **Performance Feedback for Employees:**

Each agency will maintain compliance with the quarterly performance feedback meeting requirement for all employees at a quarterly performance rate of 90% completion or higher. Quarterly check ins must be documented in Workday. Agencies will comply by June 1, 2023. DAS will provide quarterly compliance reports to the Governor's office.

## **Measuring Employee Satisfaction:**

Agencies of a size to be determined by vendor recommendation will complete an anonymous annual employee satisfaction survey. All agencies will use the same DAS approved vendor and a list of approved questions from DAS. Agencies shall create an action plan to follow up on substantial findings and use the annual process to measure improvement. DAS will identify the vendor and questions by June 1, 2023. Agencies will complete the first satisfaction survey by December 31, 2023 and submit their scores to DAS by February 1, 2024. DAS will use the information to provide a roll-up report card of enterprise-wide employee satisfaction on an annual basis.

## **Supporting Strategic Planning and Measuring Agency Performance:**

Agencies are required to develop and follow a strategic plan using goals outlined by the Governor's office. Plans should be developed with agency leadership and in partnership with direct service employees, community partners, tribes, underrepresented communities, and applicable boards and commissions responsible for oversight of the organization. Plans should include a section that aligns with the agency's information technology strategy to include how modernization efforts will support the goals of the organization.

DAS will provide a list of approved vendors on price agreement to facilitate this process. DAS will also provide a template for vendors and agencies to use to support consistency and measurement across agencies. Agencies will post strategic plans with dashboards outlining progress on their public facing web sites. DAS will prepare price agreements and templates by June 1, 2023. Agencies with strategic plans completed within the last 36 months can update their plans into the new template format aligning with Governor Kotek's goals with a target completion date of December 31, 2023. Agencies with strategic plans older than 36 months should begin a new planning process, using the standardized template format, with a goal of

completing their plans by June 1, 2024. DAS will provide an annual progress report to the Governor's office.

**Managing Information Technology Progress:**

Agency CIO/IT leaders shall collaborate with Enterprise Information Services program leaders, Agency Leadership, and their policy area Assistant State CIO as it pertains to operationalizing the vision, values, and strategy of the State CIO.

Agencies of 50 FTE or larger are required to develop an information technology strategic plan. Plans should be developed with agency leadership and include how the agency aligns with the Enterprise Information Services' Strategic Framework and how modernization efforts will support the goals of the organization. EIS will provide IT Strategic Planning assistance through policy area Assistant State CIOs and their vendor partners as well as a template by June 1, 2023. IT strategic plans should be completed and submitted to EIS by December 31, 2023. The State CIO will review and approve all plans. DAS will provide an annual compliance report to the Governor's office.

**Succession Planning for the Workforce:**

Agencies are required to have an agency succession plan in place. DAS provides a succession planning toolkit to facilitate this process which can be found online at: <https://www.oregon.gov/das/HR/Pages/success-plan.aspx>. Agencies without a current plan must complete a plan by December 31, 2023. Plans should be submitted to the DAS Strategic Initiatives & Accountability Division. DAS will provide an annual compliance report to the Governor's office.

**State Government Commitment to Diversity, Equity and Inclusion:**

Agencies are required to have a Diversity, Equity, and Inclusion Plan (DEI Plan), updated every two years. Agencies without a current DEI Plan must complete an initial plan by June 1, 2023. Agencies are encouraged to adopt the strategies, goals, and implementation processes from the statewide Diversity, Equity, and Inclusion Action Plan to fit their mission. This can be used as a toolkit to guide the development and implementation of your agency's DEI Plan.

An agency's DEI Plan serves as an overarching DEI strategy tool. In addition to the DEI Plan, agencies are required to have an Affirmative Action Plan, updated annually. Both the DEI and affirmative action plans should be submitted to the DAS Affirmative Action Manager. Agencies without a current plan must complete an initial plan by June 1, 2023. The Affirmative Action Plan serves as an element of the DEI Plan and supplements the implementation to achieve both DEI and Affirmative Action goals.

DAS will provide an annual compliance report to the Governor's office.

**Additional Information:**

- Executive Order 22-11 as it relates to Affirmative Action, Equal Employment Opportunity, Diversity, Equity, and Inclusion. Direct link to executive order: [https://www.oregon.gov/gov/eo/eo\\_22-11.pdf](https://www.oregon.gov/gov/eo/eo_22-11.pdf).
- Resource: <https://youtu.be/hDXQdcQ0InU> (51 Minutes).

- Affirmative Action Plan Workshop: <https://youtu.be/AcX7vmL6pPc> (48 Minutes).

### **Agency Emergency Preparedness:**

Agencies are required to have in place and update annually their continuity of operations plan (COOP). DAS Policy [107-001-010](#) outlines COOP requirements for agencies. Additionally, the Oregon Department of Emergency Management has a Continuity of Operations Plan Toolkit available on their website. The toolkit includes a link to [FEMA's Continuity of Guidance Circular](#), which provides additional guidance on what a COOP should include. Agencies without a current plan must complete an initial plan by September 30, 2023. Plans should be submitted to the Department of Emergency Management who will report compliance annually to the Department of Administrative Services and the Governor's office.

Note: ODEM and DAS are in the process of implementing a new COOP software package. This software will provide a step-by-step guide for developing a COOP. Deadline for full implementation is June 30, 2023; agencies will be kept apprised of progress.

### **Agency Hiring Practices:**

Agencies will monitor hiring practices to ensure that the average time to fill positions does not exceed more than 50 days. Time to fill means from the day the recruitment is open to the day a job offer is made to the candidate. Executive recruitments can be excluded from this calculation given the more expansive nature of those recruitments. DAS will provide the Governor's office with a quarterly progress report to identify agency hot spots. This is intended to be both a stretch goal for agencies and an early warning indicator of a potentially struggling agency.

DAS will monitor enterprise vacancy rates and report on those rates quarterly to the Governor's office.

### **Audit Accountability:**

Agencies will work collaboratively with the Secretary of State (SOS) and ensure that all SOS and internal audit findings are resolved within the target date the agency specified in their management response to the audit recommendations, or if there is no management response, findings are to be resolved 12 months from the date the audit report is issued. Agencies will demonstrate their quarterly progress on key findings if implementation or resolutions takes longer than 12 months or they miss their targeted specified date. Unresolved audit findings should be reported to the DAS Strategic Initiatives & Enterprise Accountability Division. DAS will provide a process and template by June 1, 2023. DAS will provide an annual update to the Governor's office.

### **Developing New Employees and Managers:**

All agencies will develop new employee orientation programs and be able to demonstrate that 100% of their employees participate in their onboarding programs within 60 days of hire. Agencies will comply by December 31, 2023.

All new state employees will participate in DAS' customer service training within 60 days of hire. DAS will develop and implement this training by June 1, 2023. Agencies will be responsible for ensuring employee participation and DAS will provide quarterly reports to the

Governor's office about compliance. Agencies are expected to achieve compliance by December 31, 2023.

All agencies will ensure that every new employee participates in Uplift Oregon's benefits workshop within 30 days of hire, so that the education supports employees to make fully informed decisions when choosing their benefits. Agency onboarding systems will incorporate time for each employee to access a virtual, two-hour training ideally within 14 days of hire, or before an employee completes their benefits enrollment documents. Agencies will comply by June 1, 2023. DAS will provide quarterly performance reports.

All agencies will ensure that managers new to managing in state government complete the introductory manager training program within three months of starting their new management position. Agencies will comply by June 1, 2023. DAS will provide quarterly reports to the Governor's office about compliance.



# Oregon State Board of Education

*Update*

January 19, 2023

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# Today...

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- Gubernatorial Transition
- 2023 Legislative Session
- Gender Expansive Guidelines

# Governor Kotek Transition Update

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- **Priorities:**
  - Houselessness
  - Behavioral Health
  - Education
- **Education Staff:**
  - Pooja Bhatt, Education Initiative Director
  - Melissa Goff, Governor's Education Advisor
- **ODE Transitions:**
  - Focus on maintaining momentum and a smooth transition with a focus on early learning, early literacy, social emotional supports. improving graduation outcomes, and high accountability
  - I will retire after the Legislative session
  - The Governor will hold a national search to appoint the next ODE Director

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# 2023 Legislative Session

- **1/17: 2023 Legislative Session Began**
- **2/1: Governor's Recommended Budget**
- **2/22: March Revenue Forecast**
- **4/4: First Chamber Work Session Deadline**
  - This is the last day for policy committees to move measures introduced in their chamber (i.e. Senate bills in the Senate, House bills in the House) out of committee. The deadline does not apply to Ways & Means, Revenue, Rules, and other joint committees. 12
- **5/17: June Revenue Forecast**
- **5/19: Second Chamber Work Session Deadline**
  - This is the last day for policy committees to move measures introduced in their chamber (i.e. Senate bills in the Senate, House bills in the House) out of committee. The deadline does not apply to Ways & Means, Revenue, Rules, and other joint committees.
- **6/25: Constitutional Sine Die**

# Recent/Upcoming Testimony

- **1/17 Senate Education:** ESSER Reporting, Enrollment Update
- **1/18 House Education:** Agency Overview
- **1/19 Senate Education:** SB 215 ODE Technical Fix Bill

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# ODE LCs, Pending Governor-Elect Approval

- **HB 2280: Definition of Consent for School Policies**
- **HB 2281: District Appointed Civil Rights Coordinator**
- **SB 215: Technical Fix Bill**
- **HB 2275: Grant Consolidation Work**
- *LC 445: Racial Equity & Youth Justice Collaborative - HB 4099 (2022)*
- LC 451: Pacific Islander / Native Hawaiian Student Success Plan
- LC 454: Refugee & Immigrant Student Success Plan
- LC 439: School Based Mental Health Infrastructure
- LC 459: Professional Development for Ethnic Studies and Holocaust/Genocide
- LC 463: High School Success Updates
- LC 436: Supporting Districts with School Safety & Emergency Management
- LC 465: Secretary of State Systemic Risk Report Response
- Several funding requests through Policy Option Packages (POPs)

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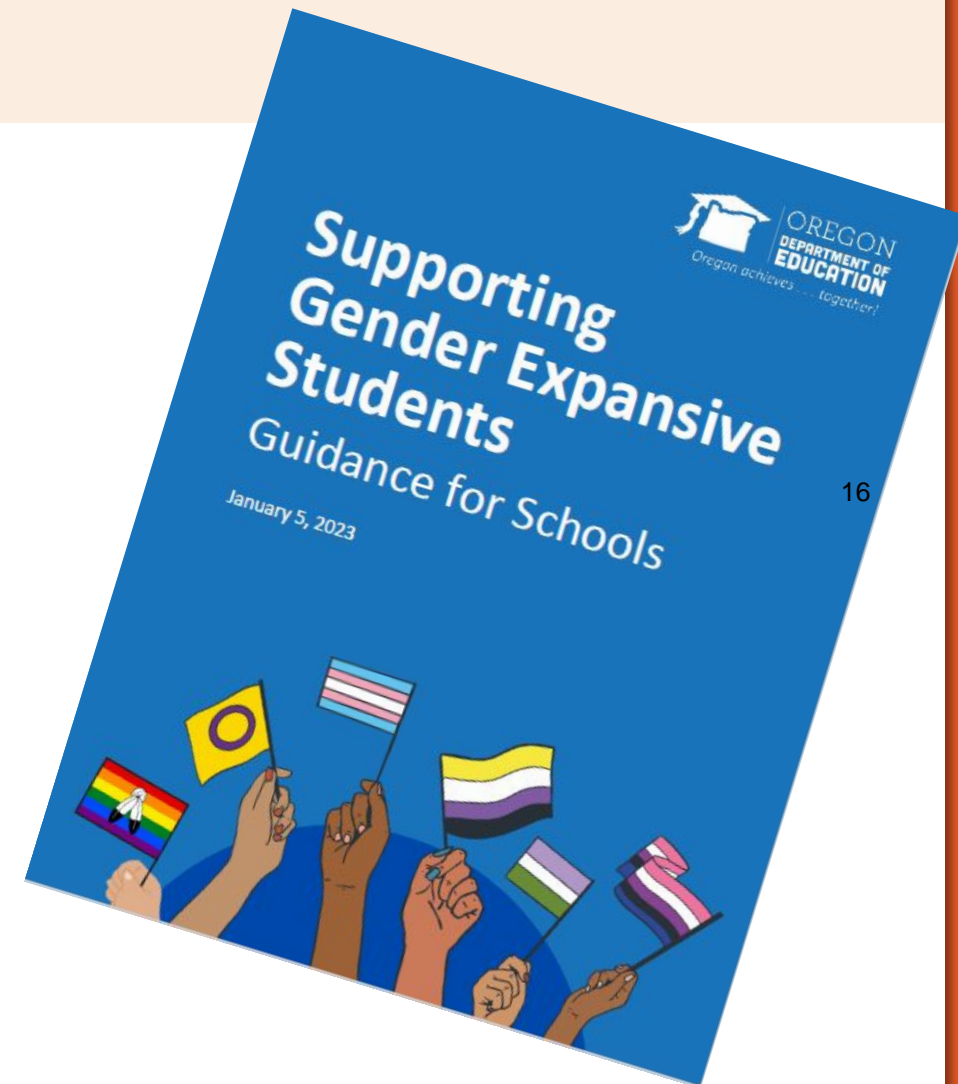
# Other Education Legislation Likely to Be Discussed...

- School funding
- School accountability: Local vs. state authority
- Regulation of online schools
- Data collection: Homeschool and private school enrollment
- Early literacy
- Early learning expansion
- School board member training
- Mental health supports
- Universal meal provisions
- Greater support and accountability for serving students with disability
- Educator workforce supports
- TSPC moving to ODE
- State support for capital improvements
- Student & staff safety

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# Gender Expansive Guidelines

- This month, ODE published *Supporting Gender Expansive Students: Guidance for Schools*.
- This guidance is grounded in the recognition, respect, affirmation, friendship, joy, belonging, and safety every human deserves - including the students, staff, and families that make-up our school communities.
- Developed in partnership with students, families, school districts, community-based organizations, and state agency partners, this guidance is grounded in the civil rights of students to be free from gender identity-based discrimination when pursuing their education.
- This guidance provides assistance to districts in fostering educational environments that are safe, free from discrimination, and aligned with state and federal laws.



# Additional Resources...

- Alongside the guidance, ODE is released and will continue to release supplemental resources aligned to the strategies and recommendations outlined in the LGBTQ2SIA+ Student Success Plan.
- These documents outline recommendations, best practices, and resources for districts to consider as they develop policies and programming to support gender expansive students.
- At the request of students and community members, there are also student- and family-facing resource documents that outline the support that can be requested and affirmed within Oregon public schools and communities.

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# Additional Resources...



**Guidance for Schools**

[Supporting Gender Expansive Students: Guidance for Schools \(PDF\)](#)



**Tools for School Staff**

[Gender-Affirming Schools Action Plan \(PDF\)](#)

[Gender-Affirming Schools Action Plan \(Word doc\)](#)

[Student Support and Safety Plan Template \(Word doc\)](#)

[Affirming Gender, Names, and Pronouns in Student Information Systems \(PDF\)](#)

[Gender Expansive Individual Education Program \(PDF\)](#)



**Tools for Students & Families**

[Gender-Affirming Care Resources \(PDF\)](#)

[FAQs about Discrimination Complaint Processes in Oregon K-12 Public Education \(PDF\)](#)

[Supporting LGBTQ2SIA+ Students in Oregon \(PDF\)](#)



**Related Resources**

[LGBTQ2SIA+ Student Success Plan Webpage](#)

[LGBTQ2SIA+ Student Success Resources Webpage](#)

[Title IX Civil Rights Webpage](#)

[Filing a Civil Rights Complaint Webpage](#)

# Questions?

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[twitter.com/ORDeptEd](https://twitter.com/ORDeptEd) | [fb.com/ORDeptEd](https://fb.com/ORDeptEd)



January 4, 2023

To: Oregon Department of Education

We are reaching out to provide input regarding OSHA's position and continued engagement in partnership with ODE and statewide workgroups to improve equitable access to SLP services in educational settings. As noted in the letter and attachments sent to ODE on 12-19-22 (see attached), OSHA is dedicated to moving this work forward to implement the recommended revisions to support a timely process.

As outlined by ODE, OSHA facilitated an all-volunteer speech-language workgroup and town halls with SLPs across the state spanning many dedicated hours to provide meaningful input. OSHA also obtained feedback from various stakeholders in community and higher education settings to ensure the eligibility revision recommendations were calibrated with the US Department of Education-IDEA (2004) in line with the SLP practice Code of Ethics and aligning with culturally responsive best practices.

As a result of our changing statewide demographics and need for equitable and culturally responsive initiatives, the impact on children, families, and professionals is significant. The documented feedback provided during the previous workgroup sessions will provide the foundational input for moving forward in a timely manner with this process. Aligning system processes and structures with an equity lens and culturally responsive practices resonate with the current ODE vision relating to OAR revisions.

OSHA established a collaborative relationship through the work with Linda Brown and acknowledges the transition impacts of new stakeholders engaged in leading and facilitating this process. Moving forward OSHA continues to advocate for continued engagement and collaboration in order to provide guidance for specifying eligibility considerations, evaluation procedures, and other technical aspects regarding SLI evaluation and eligibility.

As noted in the referenced 12-19-22 OSHA letter, we stand ready to partner with ODE to support timely progress with the alignment of the SLI eligibility to promote and support equitable educational outcomes for children-students, families, and the broader community at large. The documented comprehensive revisions (see attached) presented to ODE - Linda Brown in 2020 continues to be the revisions that OSHA supports for final consideration to be in compliance with Senate Bills 13 & 16 to the Rules Advisory Committee and the State Board in January 2023.

Sincerely,  
Ana Lia Oliva, Ed.D., MA, CCC-SLP  
OSHA President

## Speech or Language Impairment

(1) Speech or language impairment as defined under OAR 581-015-2000(4)(b)(B).

(2) If a child is suspected of having a speech or language impairment, an evaluation consistent with OAR 581-015-2110 must be conducted.

(a) The comprehensive evaluation must include the following components:

(A) A speech and/or language evaluation administered by a speech-language pathologist licensed by the Board of Examiners for Speech-Language Pathology and Audiology under ORS 681 or in the case of a student transferring in from another state, by a speech language pathologist licensed or appropriately certified in that state;

(B) A variety of least biased assessment tools and strategies to gather relevant functional, developmental, and academic information about the child;

(C) Information provided by the parent or guardian;

(D) Technically sound instruments, which may include standardized tests, functional measures, speech and language samples, functional communication checklists, criterion-referenced assessments, oral motor examination, classroom observation, classroom performance measures, dynamic assessments, reference to developmental norms, competency checklists and/or curriculum-based assessments;

(E) Medical examination.

(i) For communication disorders other than voice, such as language, speech, and/or fluency, a medical examination is not required, but may be completed if the evaluation team determines that it is necessary. Any medical examination must be conducted in accordance with OAR 581-015-2000(20).

(ii) For a child suspected of having a voice disorder, a medical examination is required to be completed by an otolaryngologist licensed under ORS chapter 677 or by the appropriate authority in another state;

(F) Information regarding hearing and vision. The child must be assessed in all areas related to the suspected disability, including, if appropriate, vision and/or audiological evaluations based on screening results; and/or

(G) Other:

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

(I) On the child's developmental progress for a preschool child (age 3 through 5);  
or

(II) On the child's educational performance for a school-age child (age 5 through 21); and

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

(3) For a child to be eligible for special education services as a child with a speech or language impairment, the eligibility team must determine that the child meets the following criteria:

(a) Presents with a communication disorder in areas such language, speech sound production, fluency, or voice, based on the evaluation components described in 581-015-2135(2); and

(b) Adversely affects a child's developmental progress (age 3 through 5) and/or educational performance (age 5 through 21) based on the evaluation components described in 581-015-2135(2). Adverse impact is determined on a case-by-case basis, depending on the unique needs of a particular child and not based only on discrepancies in age or grade performance in academic subject areas; and

(c) Needs special education or related services for the speech or language impairment in order to participate in the general education curriculum.

(4) For a child to be eligible for special education services as a child with a speech or language impairment, the eligibility team must determine that:

(a) The child has a speech or language impairment as defined in this rule; and

(b) The child is eligible for special education services in accordance with OAR 581-015-2795 and/or OAR 581-015-2120.

**Statutory/Other Authority:** ORS 343.035(1), 343.045, 343.146 & 343.157;

**Statutes/Other Implemented:** ORS 343.035(1), 343.045, 343.146, 343.157, 34 CFR 300.8, 300.304 & 300.306

#### **History:**

Renumbered from 581-015-0051, ODE 10-2007, f. & cert. ef. 4-25-07

ODE 2-2003, f. & cert. ef. 3-10-03

ODE 8-2001, f. & cert. ef. 1-29-01

ODE 11-2000, f. 5-3-00, cert. ef. 7-1-00

EB 22-1995, f. & cert. ef. 9-15-95

EB 16-1992, f. & cert. ef. 5-13-92

EB 25-1991(Temp), f. & cert. ef. 11-29-91

1EB 7-1986, f. & ef. 2-24-86

Reverted to 1EB 29-1978, f. & ef. 7-20-78

1EB 18-1983(Temp), f. & ef. 12-20-83

1EB 29-1978, f. & ef. 7-20-78

Changes discussed and rejected:

1) **Adding language to qualify the severity of the delay/disorder with a term such as "significantly discrepant."** "Significantly discrepant" was applied to specific learning disability (not Communication Disorders) in IDEA and was intentionally removed in 2004. If language is added to specify degree of severity, it naturally needs a measure by which to determine that, which leads to an inappropriate reliance on standardized tests.

2) **Defining scores for eligibility criteria to create more consistent eligibility determination across the state.** Many communication disorders (i.e., voice, dysarthria) cannot be measured by standardized tests. For many populations (i.e., cultural and racial diverse populations, multilingual students, children with hearing loss), administering standardized tests and reporting scores as valid violates norms. Adding scores would only further encourage use of violating appropriate use of standardized tests and encourage unethical misapplication of flawed scores. SLPs reported currently

feeling “hampered in” to using standardized tests rather than using evaluation best practices. Furthermore, ASHA states “As mandated by the Individuals with Disabilities Education Improvement Act (IDEA, 2004), SLPs should avoid applying a priori (theory-based) criteria (e.g., discrepancies between cognitive abilities and communication functioning, chronological age, or diagnosis) in making decisions on eligibility for services in the schools.”

([https://www.asha.org/PRPSpecificTopic.aspx?folderid=8589934980&section=Assessment#Eligibility\\_for\\_Services\\_in\\_Schools](https://www.asha.org/PRPSpecificTopic.aspx?folderid=8589934980&section=Assessment#Eligibility_for_Services_in_Schools))

3) **Specifying a specific test battery/procedure for each disorder.** SLPs shared experiences where they were pressured into using inappropriate assessment tools or using invalid scores to determine eligibility with the rules as they currently stand. This is particularly true for SLPs who serve culturally and linguistically diverse students and children with complex communication needs. Emphasizing standardized testing puts undue pressure on SLPs to use them, even if it is a misuse for a particular student. For example, “the child’s phonology or articulation is rated significantly discrepant as measured by a standardized test” meant that for students with errors in connected speech but not at the word level, SLPs were inappropriately using standardized articulation tests.

4) **Concerns regarding inclusion of the word “delay.”** SLPs that work with students K-21 struggled with the inclusion of this term and preferred disorder, until they heard input from SLPs (particularly evaluators) who work in EI/ECSE. Once we had dialogue, we were able to see how each term (disorder and delay) was needed in different settings. This points to education regarding why the term “delay” was included as the solution, not elimination of the word “delay” from the draft.

5) **Rewording (1) to eliminate repetition of impairment & disorder.** We found repetition of “disorder” and defining an impairment as a disorder unhelpful and redundant. Initially we suggested language that was cleaner and easier to interpret, but instead found a reference to the definition in OAR 581-015-2000(4)(b)(B) better than having differing definitions in the OARs. Having said that, it is evident that OAR 581-015-2000(4)(b)(B) needs significant revision in order to align with IDEA (i.e., “Communication Disorder”), current terminology (i.e., “deviant development”), and best practice (i.e., “speech sound disorder”).

6) **Restating evaluation in section (2)(a) instead of referring to [OAR 581-015-2110](#).** Decreasing redundancy is recommended over restating the information in another part of this rule.

OSHA advocates for the following:

1) ODE guidance for specifying eligibility considerations, evaluation procedures, RTI, and other technical aspects regarding SLI evaluation and eligibility, rather than codifying it in this OAR. Some excellent examples of this include:

a) Colorado: [http://www.cde.state.co.us/cdesped/sli\\_guidelines](http://www.cde.state.co.us/cdesped/sli_guidelines)

b) Connecticut: [https://portal.ct.gov/-/media/SDE/Special-Education/speech\\_language\\_2008.pdf?la=en](https://portal.ct.gov/-/media/SDE/Special-Education/speech_language_2008.pdf?la=en)

c) Kansas: [http://www.ksha.org/docs/Guidelines\\_for\\_School-Based\\_SLPs\\_Rev\\_2017.pdf](http://www.ksha.org/docs/Guidelines_for_School-Based_SLPs_Rev_2017.pdf)

OSHA stands ready to partner with ODE to develop guidelines.

2) Use of more appropriate, comprehensive, and effective mechanisms for bringing about equity and best practice, such as discussion groups, continuing education, and position statements. There was enthusiastic support for these actions and OSHA stands ready to partner with ODE in these efforts.

3) Rewording the “Communication Disorder” and the definition in [OAR 581-015-2110](#), as well as updating wording in this section to reflect current best practices for culturally and linguistically diverse children.

4) “Information regarding hearing and vision” in (F) rather than indicating a vision and hearing screening must be conducted given that more detailed information may already exist that has been considered (i.e., recent audiological evaluation) which would negate the need for a screening.

Oregon State Board of Education  
Public Testimony for 19 Nov 2023

Please accept this testimony in reference to the proposed changes to Division 15 of the Chapter 581 Oregon Administrative Rules pertaining to Special Education.

I applaud the decision to remove the requirement for a medical examination from several categories of eligibility, including Autism Spectrum Disorder, Emotional Behavior Disability, and Intellectual Disability. This former requirement often created hardships for low-income and economically-marginalized families, even when the district offered to cover the costs. Many parents could not afford to take time off work or did not have transportation available to ensure that their children attended medical appointments. Removing this requirement will increase evaluation equity for students being considered for special education.

However, I do have a few concerns about the revisions:

The Definitions section of the Division (581-015-2000) provide definitions for each disability category, and this is the section that educators use when specific definitions need to be referenced. As such, there is no need to *restate* the definition in each OAR that describes the evaluation and eligibility criteria for each disability. It is unnecessarily redundant and serves only to lengthen the text rather than add clarity.

Another unnecessary addition is the 581-015-21xx(2) statement of *Comprehensive Evaluation* under each eligibility category. The OARs already make it evaluation requirements abundantly clear in 581-015-2110 (*General Evaluation and Reevaluation Procedures*): subsections (5)(a) and (5)(b) describe that children must be assessed in all areas related to the suspected disability and that the evaluation must be sufficiently comprehensive to identify all of the student's needs. It is my concern that adding the *Comprehensive Evaluation* statement under each eligibility category is not only redundant but also causes confusion to practitioners and families who may believe that this is somehow different or additional to what is required in 581-015-2110.

Finally, there was no legislative mandate to integrate Early Intervention and Early Childhood Special Education details into the School Age Special Education OARs. During feedback sessions, when asked, ODE's stated purpose for this integration was "to improve continuity between early childhood and school systems." Beyond the reality that changing words in a document rarely impacts how a system functions, the integration of this information results in confusion for those who reference the OARs and need easy-to-access information about one

system or the other. Parsing through each element to determine what is true for EI/ECSE but not for School Age, or vice versa, is time-consuming and burdensome. It is simpler and clearer to maintain all EI/ECSE information under the current 581-015-2700 *et. seq.* than to integrate it into the 581-015-2000 *et. seq.* sections.

Thank you for taking the time to consider these concerns. I appreciate ODE's efforts to improve educational regulations and I support changes that improve clarity and/or are required by statute. However, many of the currently proposed revisions do not serve either purpose and will likely increase confusion for those who rely on the OARs as a resource. I would be happy to discuss this further. Feel free to contact me any time.

Sincerely,

A handwritten signature in black ink, appearing to read 'Karen Apgar', written in a cursive style.

Dr. Karen Apgar, NCSP  
Student Services Administrator for  
Psychological Services and Legal Compliance  
Eugene School District 4J  
541-790-7820  
[apgar\\_k@4j.lane.edu](mailto:apgar_k@4j.lane.edu)

Dear Chair Martinez Zapata, Vice Chair Scurlock, and ODE board members and advisors,

My name is Justin Potts, I'm a school psychologist, a past president of the Oregon School Psychologist Association, and for a decade have facilitated the statewide consortium for the special education side of the largest student information system in use in districts across the state. I have no affiliation with the vendor though, do not speak on their behalf, and my facilitation and development work has been volunteer except for my work specifically supporting my district.

It is currently impossible to ask a computer system to defy logic. For that matter, it's pretty hard for most humans too.

However, I fear that is what you will be presented with in today's first read of the OAR changes related to the 2019 legislative statute changes resulting from senate bill 13 and 16. These two bills made simple technical fixes effecting only a handful of rules, that we (in the state consortium) anticipated being able to incorporate into our systems by the end of the 2019-20 school year. Instead, the OESO department used the rulemaking process as a "Trojan Horse" to open nearly 90 pages of rule changes for special education, and provided little transparency about who was supporting the changes and to fix what problems. At the time, when asked by the board to go back and get more input from important stakeholders never previously included in the proposed changes, they held multiple day-long virtual feedback sessions, largely consisting of department staff reading those nearly 90 pages verbatim, and only really allowing participant feedback via chat. The result was a tabling of all changes, including those specifically need to comply with the statutory language fixes. Without having final OAR language, it was impossible to begin work on providing the change specifications to the vendor.

Now we are at take two of this effort, having waited 3 years. Despite expressed concerns about constraining changes to those specifically required by the statutory language change, the department again is proposing dozens of pages of changes to unrelated OARs, while also not addressing required changes across all applicable ODE rules. This time, while the feedback method was much improved, ODE staff still took up 65-70 percent of the time in each "input" session, carefully controlled any possible discussion, and provided information about the proposed changes that was, at best unclear and at worst misleading. This was evidenced by the feedback they received. Some participants thought they were there to approve things that were already put into law, like the expansion of developmental delay into school age or using the term emotional behavior disability instead of emotional disturbance. Other participants thought all rule areas were open for review or thought previous input from the 2020 meetings was going to be added. These misunderstandings often went uncorrected by ODE staff. The actual changes to the rules were not provided to participants until the time of the input sessions, and according to staff this was intentional, making it nearly impossible to review while also listening or participating. Participants often seemed uncertain about "what" need to change versus "how" it was being changed.

The proposed rules are duplicative in a significant number of areas, creating the potential for inconsistency and contradicting the legal standard of defining something once, and then referencing it as necessary. Other rules now create undefined new terminology directly in conflict with definitions in other sections of the rules, and in conflict with the language in federal law.

There are real downstream consequences to every change in special education rules, from districts needing to revise policies and procedures, to training requirements for staff and to the student information systems for all of the mandated paperwork. Just since 2015, with only minor changes to

statutes, the OARs for special education have added nearly 7,000 words. After the handful of changes made it through the board in early 2020 before the pandemic, the length of just 3 special education ODE forms added over 1,500 words.

My critiques are not specific to any individual, as I have found concerns around transparency and consistency in communication to be ongoing across multiple teams over the decades I have engaged in this work statewide, but has become more acute in recent years. You undoubtedly will hear logical-sounding rationales for all of the proposals, but the reality is that most of the changes do not enhance clarity or do anything to meaningfully support the provision of special education services. At worst, they create inconsistency and confusion, with the added potential for legal issues. By their own acknowledgement, staff noted that some rule changes weren't changes at all, just copy and paste from other sections in the same set of rules.

As we have seen recently, from the department's confusing documentation requirements around Covid "recovery services", to the 50 page "guidance" and additional reporting made by the department for abbreviated school days provided after the start of the school year, to the dramatically increased "general monitoring" reviews, there have been some of the most significant added demands by ODE I have experienced in my nearly 30 years as a practitioner in this state. The result has been guidance that overcomplicates practices, making simple things difficult and difficult things impossible. This all at a time where special educators are leaving the field in droves, staff professional development time is at a premium, workforce issues pervade all elements of our educational systems, and news stories continue about the lack of service delivery to students. This all while ODE staff still work from home and some seem increasingly disconnected from the practical problems we need to be solving in schools. I should also note, school psychologists and other professionals were already seeing kids in-person by the end of summer in 2020 because we still had to meet our legal requirements.

My request here is simply that the department constrain its changes to the definitions and eligibility rules to only those specifically required to comply with the technical fixes in SB 13 and SB 16 at this time, acknowledging their stated desire to do more engagements in the future. The department has already demanded that the language in the rules, once adopted, be implemented in our systems by early fall, even though they don't anticipate their own sample forms being completed by the summer. However, the more pervasive the changes being proposed, the more time it will take the consortium to analyze and provided specifications to the vendor, thus limiting the time the vendor has to make the changes. I asked the department to provide a line-item spreadsheet of each change being proposed, but this was rejected. At the risk of doing the department's work for it, I'm happy to create such a document to share with you to simplify this request. We have already spent many hours over the last 3 years on this issue, and my only hope is that we can proceed as simply and clearly as possible with the fixes that are actually required, not those that are part of some larger "wish list" of changes not yet fully reviewed.

Thank you in advance for your time and consideration,

Justin Potts, NCSP

## National School Counseling Week

The 2<sup>nd</sup> week of February – February 6-10, 2023 - is National School Counseling Week (NSCW) and is the time annually when districts and communities acknowledge and celebrate the work of school counselors. The American School Counselor Association (ASCA) provides national leadership for NSCW and the Oregon School Counselor Association (OSCA) Governing Board under the leadership of President Roberto Aguilar provides state leadership for this week of acknowledgment of the approximately 1600 school counselors in Oregon.

The OSCA Board continues its effort to educate counselors and administrators about the Oregon Statutes – OAR 581-022-2060 - mandating that school districts provide comprehensive school counseling services to all students and utilize the Oregon Framework in doing so. The Board also requests districts hire licensed school counselors to develop and implement their comprehensive school counseling program. Licensed school counselors are the one professional possessing a master's degree and prepared to provide the career and college readiness counseling, academic counseling, social-emotional learning, and student community engagement required in the statutes. As stated in the American School Counselor Association Ethical Guidelines - *All students have the right to equitable access to a school counseling program that promotes academic, career and social/emotional development and improves student outcomes for all students, including students historically and currently marginalized by the education system.*

In closing, the OSCA Board sends a heart-felt thanks to not only all school counselors but also to all certified, administrative, and classified staff for their dedication to Oregon's students. The 2023 *Mental Health America Report* reported that Oregon ranks 2nd from the bottom with regard to meeting the mental health needs of our children, adolescents, and adults. The burden for meeting these needs thus falls disproportionately on our schools. As the Oregon Education Association has documented in their report – *A Crisis In Disrupted Learning* - our schools need more school counselors, nurses, psychologists, and community mental health resources. Thank you everyone for the amazing work you are doing during these challenging times!

Respectfully Submitted,  
Gene Eakin, Ph.D  
Advocacy Chair – Oregon School Counselor Association

# Oregon State Board of Education

January 19, 2023

AGENDA ITEM: Instructional Materials Adoption Cycle

|   |  |
|---|--|
| <p><b>SUBJECT:</b> 581-011-0070 and 581-011-0071 Instructional Materials Adoption<br/><b>STAFF NAME &amp; OFFICE:</b> Alexa Pearson, Aujalee Moore, and Suzanne Hidde, Standards and Instructional Support Team, Office of Teaching, Learning &amp; Assessment (OTLA)</p> <p>The rewrite and postponed release of the National Physical Education Standards will cause a delay to Oregon’s instructional materials adoption schedule. The proposed rules revision postpones the Physical Education Instructional Materials Adoption to October 2026.</p> <p><input type="checkbox"/> New Rule<br/><input type="checkbox"/> Amend Existing Rule<br/><input type="checkbox"/> Repeal Rule</p> | <p><input type="checkbox"/> <b>First Reading</b><br/><input type="checkbox"/> <b>Presentation</b><br/><input type="checkbox"/> <b>No Presentation</b></p> <p><input checked="" type="checkbox"/> <b>Action</b><br/><input type="checkbox"/> <b>Temp Rule</b><br/><input type="checkbox"/> <b>Presentation</b><br/><input checked="" type="checkbox"/> <b>No Presentation</b></p> |
|---|--|

## BACKGROUND

There are two processes that are intertwined with the laws that govern the instructional materials adoption cycle. The first cycle is the standards revision and adoption cycle, which takes place approximately a year before instructional materials are reviewed and adopted by the SBE. It is the instructional materials timeline that drives the standards adoption cycle. OAR 581-011-0070 and 581-011-0071 impact the instructional materials adoption process, and therefore affect the standards adoption cycle.

Instructional materials are adopted by the State Board of Education on a 7-year subject matter cycle prior to October 31 each year (OAR 581-011-0070). This results in a 7-year contract with publishers for the content area proposed for adoption (ORS 337.050, OAR 581-011-0070, and OAR 581-011-0071). Once the State Board of Education has adopted the list of materials approved for adoption, school districts make the local decision to select and adopt from the list (ORS 337.050 and OAR 581-022-2355), independently adopt instructional materials using the state criteria (OAR 581-022-2350), or postpone adoption for up to two years (OAR 581-022-2360).

In January 2016, the Board adopted instructional materials criteria for Physical Education and Health Education. The contract period for the materials adopted in October 2017 runs from February 1, 2018-February 1, 2024. ODE convened educators to revise both the Physical Education and the Health Education Standards in June of 2022 and was on track to adopt instructional materials for Physical Education and Health Education before the October 31, 2024 deadline.

In fall of 2022, the National Physical Education Standards Task Force announced that there would be significant changes to the national PE standards, and that the new standards would not be released until March 2024. In order for Oregon to be aligned with the national PE standards, the Oregon PE Standards Committee recommended postponing Oregon’s standards revisions for PE until the national standards are released. This postponement will cause a delay in the instructional materials process for PE materials.

# Oregon State Board of Education

January 19, 2023

AGENDA ITEM: Instructional Materials Adoption Cycle

The proposed October 2026 deadline will provide time to incorporate changes to the Physical Education Standards to be in alignment with the National Physical Education Standards, and subsequently allow additional time to adopt materials that are inclusive of national changes.

The adoption cycle is a decision made by the Board based on ORS 337.050. Currently Health Education and Physical Education are on the same instructional materials adoption cycle, with the next contract period beginning February 1, 2025 and ending February 1, 2032. ODE recommends that the Board maintain the current cycle for Health Education to be adopted before October 31, 2024 and change the instructional materials adoption cycle for Physical Education as follows:

**Physical Education**— change the adoption cycle from occurring no later than October 31, **2024** to October 31, **2026**. The publisher contract period for Physical Education materials will then run from February 1, 2027 - February 1, 2032.

Extending the instructional materials timeline will also allow more time for more partners, such as educators, families and students to be involved in the review process, and to include any major changes made to the National Physical Education Standards. There were a limited number of instructional materials submitted for review for Physical Education during the last cycle, and it is anticipated that there will be a limited number moving forward. To ensure that there are materials recommended for district adoption that are aligned with the revised National Standards, the PE standards committee led by ODE’s Physical Education specialist recommends revising the adoption cycle to be aligned with the new Oregon Physical Education standards.

## SUMMARY OF PREVIOUS BOARD ACTION

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In 2015, revised Health & PE standards were adopted by the State Board. In January 2016, the Board adopted instructional materials criteria for Physical Education and Health Education. In 2017, the Board adopted Health and Physical Education instructional materials. A first read of the proposed revision was presented in December 2022.

## HAS THE RULE CHANGED SINCE LAST BOARD MEETING?

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- N/A; first read—hasn’t been before board
- No; same as last month
- Yes – As follows:

## POLICY ISSUE OR CONCERNS

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Postponing the Physical Education materials review process will result in a delay between currently adopted instructional materials criteria standards for the content area and the list of state-adopted instructional materials.

Districts will be off cycle for their own budgeting and materials selection process. However, many districts are already off cycle due to budget constraints and other factors, so this could bring them into

# Oregon State Board of Education

January 19, 2023

AGENDA ITEM: Instructional Materials Adoption Cycle

alignment with the state-adopted cycle. Districts that choose to remain with the current cycle can use the currently adopted instructional materials criteria adopted by the SBE in January 2016 to complete an independent adoption before September 2025.

With the revised schedule, Physical Education instructional materials adoption will overlap with the World Language and Arts adoption cycles. ODE recommends that subsequent Physical Education instructional materials adoption realign with the Health Education adoption cycle in 2032.

## EQUITY IMPACT ANALYSIS

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The instructional materials criteria for Physical Education that were adopted in January 2016 reflect substantial improvements in terms of how they prioritize equity as one of the key areas applied to instructional materials evaluation. ODE expects the revised National standards to have a greater emphasis on equity. With a revised PE adoption cycle, districts are more likely to adopt instructional materials for Physical Education that will lead to more equitable outcomes.

## FISCAL ANALYSIS

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Statewide instructional materials adoption is a process currently funded through publisher fees and supplemented by ODE General Fund when needed. This proposal would shift the costs to the 2023 - 2025 biennium. Based on historical data, physical education has had a limited number of publisher materials submitted for review; therefore, the costs should be minimal for the evaluation of materials.

Districts that choose to conduct an independent adoption will have the added costs of operating their own review process. Independently adopted materials may not have an associated cost savings resulting from statewide contracts with publishers.

## EFFECT OF A "YES" OR "NO" VOTE

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YES – ODE will present the proposed list of adopted materials for Physical Education in October 2026.

NO – ODE will present the proposed list of adopted materials for Physical Education in October 2024.

## STAFF RECOMMENDATION

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Approve    Approve next month    No recommendation at this time  
**Prompted by:**    State law changes    Federal law changes    other

## ATTACHMENTS

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# Oregon State Board of Education

January 19, 2022

AGENDA ITEM: 3.B.

|   |   |
|---|---|
| <p><b>SUBJECT:</b> Instructional Materials Adoption Criteria for Science (OAR 581-011-0065)</p> <p><b>STAFF NAME &amp; OFFICE:</b> Alexa Pearson, Aujalee Moore, Jamie Rumage, Office of Teaching, Learning, and Assessment</p> <p>Criteria for the selection and adoption of instructional materials for science were developed by the ODE Science Education Specialist, and reviewed and revised by a science criteria development committee. These criteria are being presented to the State Board of Education for approval.</p> <p><input type="checkbox"/> New Rule<br/><input type="checkbox"/> Amend Existing Rule<br/><input type="checkbox"/> Repeal Rule</p> | <p><input type="checkbox"/> <b>First Reading</b><br/><input type="checkbox"/> Presentation<br/><input type="checkbox"/> No Presentation</p> <p><input checked="" type="checkbox"/> <b>Action</b><br/><input type="checkbox"/> Temp Rule<br/><input type="checkbox"/> Presentation<br/><input checked="" type="checkbox"/> No Presentation</p> |
|---|---|

## BACKGROUND

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The State Board of Education has the responsibility of approving criteria for the evaluation and adoption of submitted instructional materials (OAR 581-011-0065). The current contracted period for instructional materials in science was established for the years 2017-2024. The current science content standards were adopted by the State Board in June 2022. The next phase in this process is for ODE to develop new adoption criteria to ensure that instructional materials align with the newly revised science standards and current instructional practices.

In 2021, members of the Standards and Instructional Support Team, along with the Assessment Team and the Office of Equity, Diversity, and Inclusion developed a foundation for consistent and cohesive criterion that is grounded in the ODE Equity Stance and applies across content areas. This framework was adopted by the State Board of Education and implemented in the 2022 mathematics instructional materials evaluation.

In October 2022, following the guidelines provided in OAR 581-011-0055, ODE staff convened a diverse committee of teachers, curriculum specialists, and other content area experts in science to review, revise, and recommend the draft criteria attached to this docket. The 2022 Science Instructional Materials Criteria Committee used ODE’s criteria framework, as well as state and nationally developed science criteria, to tailor and align Oregon’s instructional materials criteria to the adopted 2022 Oregon Science Standards.

The draft adoption criteria for science instructional materials was supported by the committee and finalized on November 8, 2022. Upon adoption by the State Board, this criteria will be used in the evaluation of K-12 science instructional materials submitted for adoption.

## SUMMARY OF PREVIOUS BOARD ACTION

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# Oregon State Board of Education

January 19, 2022

AGENDA ITEM: 3.B.

A first read of this item was presented to the Board in December 2022.

## HAS THE RULE CHANGED SINCE LAST BOARD MEETING?

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- N/A; first read—hasn't been before board
- No; same as last month
- Yes – As follows:

## POLICY ISSUE OR CONCERNS

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There are no known policy questions raised due to this request.

## EQUITY IMPACT ANALYSIS

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The review and revision of the adopted instructional materials adoption criteria is an opportunity to set a vision of what equitable teaching and learning looks like within adopted materials in K-12 science. ODE shares the vision of access and equity from the National Research Council's (NRC) Framework that describes this principle as:

***“Equity in science education requires that all students are provided with equitable opportunities to learn science and become engaged in science and engineering practices; with access to quality space, equipment, and teachers to support and motivate that learning and engagement; and adequate time spent on science. In addition, the issue of **connecting to students’ interests and experiences is particularly important for broadening participation in science.**”***  
(NRC Framework, 2012, p. 28)

The instructional materials review criteria supports the vision for equitable access to 3D science education for all Oregon students within adopted materials in our state. This vision is explicitly prioritized in Part 2 (Equitable Student Engagement and Cultural Pedagogy Criteria) of the updated science instructional materials adoption criteria. Part 2 of the updated criteria requires materials to include opportunities for student-driven learning, supported by asset-based and culturally-responsive instruction (or teaching).

## FISCAL ANALYSIS

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No fiscal impact.

## EFFECT OF A “YES” OR “NO” VOTE

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A “yes” vote will provide the Oregon Department of Education and Oregon school districts with criteria for the evaluation and adoption of science instructional materials that are aligned to the newly revised science standards.

# Oregon State Board of Education

January 19, 2022

AGENDA ITEM: 3.B.

A “no” vote will mean that the Oregon Department of Education and school districts will use previously State Board approved adoption criteria from 2016 for science instructional materials. This will result in evaluation of instructional materials using outdated criteria and standards.

## STAFF RECOMMENDATION

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Approve  Approve next month  No recommendation at this time

**Prompted by:**  State law changes  Federal law changes  other

## ATTACHMENTS

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Attachment 1: Adoption Criteria for K-12 Science Instructional Materials

## Criteria for the Review and Adoption of Instructional Materials for:

Category 1, 2, and 3: Oregon Science – Grades K-5, 6-8, and 9-12

### Legal Requirements Section

#### 1. Basal Instructional Materials Criteria

The submitted materials must make up an organized system of instruction that aligns with 2022 Oregon Science Standards, including the Science and Engineering Practices, Crosscutting Concepts, and Disciplinary Core Ideas.

*Does the program meet the above requirements for basal instructional materials?*

Yes                  No

#### 2. Equity Criteria

Submitted materials must provide models, selections, activities, and opportunities for responses, which promote respect for all people described in ORS 659.850 and OAR 581-021-0045; materials must support program compliance standards described in OAR 581-021-0046.

*Does the program meet the above requirements for equity?*

Yes                  No

#### 3. National Instructional Materials Accessibility Standard (NIMAS)

Submitted materials must include assurance from the publishers agreeing to comply with the most current NIMAS specifications regarding accessible instructional materials. NIMAS files must be submitted to the National Instructional Materials Access Center (NIMAC) by February 1, 2024.

*Does the program meet the above requirements for NIMAS?*

Yes                  No

#### 4. Digital Manufacturing Standards and Specifications for Textbooks (MSST Form B and M):

Submitted materials must include assurance from the publishers agreeing to comply with the most current manufacturing standards and specifications (MSST Form B and M).

*Does the program meet the above MSST requirements?*

Yes                  No

## Part 1: Oregon Science Baseline Criteria [K-HS]

| Criterion  | Description  | Metric 1  | Metric 2  | Metric 3   | Metric 4 |
|--|--|---|---|--|----------|
| <b>Criterion 1.1:</b><br>Alignment to Three-Dimensional (3D) Learning            | Materials reflect the 3D focus of the Oregon Science Standards to integrate the disciplinary core ideas (DCI), science and engineering practices (SEP), and crosscutting concepts (CCC) within and across grade levels and/or grade bands.   | <b>3D INTEGRATION</b><br>Materials consistently and explicitly integrate all of the disciplinary core ideas, science and engineering practices, and crosscutting concepts that meet the full intent of grade-level and/or grade-band standards by the end of instruction.   | <b>NATURE of SCIENCE</b><br>Materials explicitly align with the nature of science and the intersection of those understandings with science and engineering practices, disciplinary core ideas, and crosscutting concepts (NGSS: <a href="#">Appendix H</a> ).  | <b>TRANSDISCIPLINARY CONNECTIONS</b><br>Materials include meaningful connections across disciplines to create learning opportunities for greater depth and complexity to address relevant engineering, scientific and societal challenges (e.g. STEM, mathematics, social science, language arts, health, career connected learning).                          |          |
| <b>Criterion 1.2:</b><br>Science Phenomena & Engineering Design-Based Engagement | Materials center science phenomena and engineering design problems that drive student learning and engage students as directly as possible in authentic and relevant experiences.  | <b>CONCEPTUAL UNDERSTANDING</b><br>Phenomena and/or problems: <ul style="list-style-type: none"> <li>● target learning goals across the three dimensions;</li> <li>● connect to grade-level and/or grade-band disciplinary core ideas;</li> <li>● create shared student experiences as entry points to learning.</li> </ul> | <b>SENSE-MAKING/PROBLEM SOLVING</b><br>Materials center opportunities for students to: <ul style="list-style-type: none"> <li>● communicate their thinking through reflection and explanation;</li> <li>● apply scientific understandings to make sense of phenomena and design solutions to problems.</li> </ul> | <b>AUTHENTIC APPLICATION</b><br>Materials include meaningful contexts for students to practice key skills and build important concepts by: <ul style="list-style-type: none"> <li>● making connections to their daily lives, including to their homes, neighborhoods, and communities;</li> <li>● build upon students’ cultural funds of knowledge.</li> </ul> |          |
| <b>Criterion 1.3:</b><br>Learning Progressions & Coherent Storylines             | Materials integrate conceptual understanding linked to empirical evidence and explanations that allow students’ understanding to deepen and become more complex over time across the three dimensions (NGSS: <a href="#">Appendix E</a> , <a href="#">Appendix F</a> , and <a href="#">Appendix G</a> ). | <b>COHERENT STORYLINES</b><br>Materials explicitly identify: <ul style="list-style-type: none"> <li>● how grade-appropriate 3D learning builds within a lesson or unit;</li> <li>● how learning builds across grade levels, grade bands, and/or within a high school course(s).</li> </ul>                                  | <b>DEVELOPMENTAL PROGRESSION</b><br>Materials include multiple opportunities for students to build and apply knowledge and skills over time (i.e. lessons, units, grade level and/or grade bands) within the disciplinary core ideas, science and engineering practices, and the crosscutting concepts.           | <b>STUDENT AGENCY</b><br>Materials include opportunities for student-driven learning sequences through questions and discourse that center students’ lived experiences as they relate to the phenomenon and/or problem.  |          |

## Part 2: Equitable Student Engagement and Cultural Pedagogy Criteria [K-HS]

| Criterion  | Description  | Metric 1   | Metric 2  | Metric 3   | Metric 4 |
|--|--|--|---|--|----------|
| <b>Criterion 2.1:</b><br>Engagement & Motivation                     | Materials give opportunities for student-driven learning, and rigor is maintained across all options. Materials should focus on relevant topics, authentic contexts, and experiences, and give students the opportunity to make connections with their goals, interests, and values. | <p><b>RELEVANCE</b></p> <p>Materials include relevant topics of student interest and strategic access to authentic contexts and tools that give students the freedom to make connections to their experiences, goals, and interests. Additionally, materials support the value of science as a sensible, useful, and worthwhile subject.</p> | <p><b>COLLABORATIVE LEARNING</b></p> <p>Materials include tasks that provide students opportunities to engage in the process of learning collaboratively, as well as, opportunities to express their learning individually.</p> | <p><b>INDIVIDUAL STUDENT ADAPTABILITY</b></p> <p>Materials include instructional strategies for supporting unfinished learning from prior grade levels and extensions for students who are ready to deepen their understanding of grade-level content.</p> |          |
| <b>Criterion 2.2:</b><br>Culturally Responsive Instructional Support | Culturally responsive instruction refers to the explicit recognition and incorporation of students’ cultural knowledge, experience, and ways of being and knowing in science teaching, learning, and assessment.   | <p><b>ASSET-BASED PERSPECTIVE</b></p> <p>Materials support educators to identify, value, and maintain a high commitment to students’ experiences from their homes and communities that are leveraged as resources for science teaching and learning.</p>   | <p><b>FRAMES OF REFERENCE</b></p> <p>Materials utilize multiple frames of reference for developing and demonstrating science competence that correspond to a variety of cultural perspectives and experiences.</p>              | <p><b>INCLUSIVE CULTURAL VIEWS</b></p> <p>Materials include pathways to science competence that leverage cultural perspectives that affirm student identities and reflect knowledge of students' background experiences and social realities.</p>          |          |

### Part 3: Technical Usability Criteria [K-HS]

| Criterion   | Description  | Metric 1  | Metric 2   | Metric 3   | Metric 4  |
|---|--|---|--|--|---|
| <b>Criterion 3.1:</b><br>Supports for Teachers            | The materials include opportunities for teachers to effectively plan and utilize materials with integrity and to further develop their own understanding of the content.   | <b>SUPPORTING GUIDANCE</b><br>Materials provide teacher guidance with useful annotations and suggestions for how to utilize the student materials, visual models, and ancillary materials, with specific attention to engaging students to guide their scientific development.                      | <b>SCIENCE KNOWLEDGE FOR TEACHING</b><br>Materials contain adult-level explanations and examples of relevant science concepts so that teachers can improve their own knowledge of the subject.   | <b>HOME CONNECTION</b><br>Materials provide strategies for informing all partners—including students, parents, or caregivers—about the program and suggestions for how they can help support student progress and achievement. | <b>CONTENT EDITABILITY</b><br>Materials are designed to allow a teacher to differentiate content and varied modes of communication within lessons, tasks, or other activities for students. |
| <b>Criterion 3.2:</b><br>Supports for Students            | Materials have explicit teacher support with suggestions (routines, strategies, etc.) for how they can meet the needs of individual learners. Support materials include live updates (data sources, current events, etc.). | <b>STRATEGIES FOR SPECIAL POPULATIONS</b><br>Materials provide scaffolds to support students from special populations in their regular and active participation in scientific learning (i.e. students who are multilingual, students experiencing disabilities, and/or students identified as TAG). | <b>STUDENT DIFFERENTIATION</b><br>Materials provide extensions and/or opportunities for all students to engage with grade-level science at varied levels of complexity.  | <b>EMERGENT BILINGUAL STUDENT SUPPORT</b><br>Materials provide strategies and support for students who read, write, and/or speak in a language other than English to enable their full participation in scientific learning.   | <b>STUDENT EDITABILITY</b><br>Digital materials include resources for students that are editable and allow for communication of understanding and thinking.                                 |
| <b>Criterion 3.3:</b><br>Digital Learning Design Elements | The materials are attentive to digital design elements specific to structure, support for users, and adaptability of materials.  | <b>MATERIALS USABILITY</b><br>The organizational structure of the digital materials allows for intuitive navigation and meaningful interaction on a variety of devices.   | <b>LEARNING RESOURCES</b><br>The digital materials provide support for users in a variety of settings, including: <ul style="list-style-type: none"> <li>• Professional learning resources to support educators’ use of the materials</li> <li>• Robust supports to help families understand and utilize the materials while supporting their students at home</li> <li>• Support for students working independently.</li> </ul> | <b>MEDIA INTEGRATION</b><br>Digital and multimedia elements support, rather than distract from, intended learning outcomes and instructional content.  | <b>ADAPTABILITY OF MATERIALS</b><br>Digital materials allow teachers to adjust and adapt documents and other included resources to meet student needs.                                      |

## Part 4: Assessment Criteria [K-HS]

| Criterion   | Description   | Metric 1   | Metric 2   | Metric 3   | Metric 4  |
|---|---|--|--|--|---|
| <b>Criterion 4.1:</b><br>Formative Assessment Process   | Instructional materials incorporate the formative assessment process: <ul style="list-style-type: none"> <li>Materials employ clear learning goals and performance criteria to elicit evidence of student thinking.</li> <li>Feedback informs the teaching and learning process.</li> <li>Students have agency to monitor and adjust their own learning.</li> </ul>   | <b>CLARITY OF LEARNING GOALS</b><br>Materials are designed around clear learning goals and written in grade-appropriate, student-friendly language.  | <b>ELICITATION OF EVIDENCE</b><br>Instructional tasks and activities elicit a variety of evidence of student thinking, including opportunities for student self-assessment and reflection. | <b>INTERPRETATION OF FEEDBACK</b><br>Materials facilitate the provision of meaningful and strengths-based feedback to move learning forward. <ul style="list-style-type: none"> <li>Student-to-student</li> <li>Educator-to-student</li> <li>Student-to-educator</li> </ul>      | <b>ACTION &amp; ADJUSTMENT</b><br>Materials guide educators and students to act on feedback and determine the next steps for learning.  |
| <b>Criterion 4.2:</b><br>Performance Assessments  | Materials center science phenomena and engineering design problems that align with the depth, breadth, and cognitive demand of the standards. High-quality performance assessments: <ul style="list-style-type: none"> <li>affirm students’ funds of knowledge and interests.</li> <li>integrate the three dimensions to allow for multiple representations of thinking.</li> <li>can be iterated over time.</li> </ul> | <b>ALIGNMENT</b><br>Materials include performance tasks that show clear and full alignment to science standards and reflect the 3D focus by including the disciplinary core ideas, crosscutting concepts, and science and engineering practices. | <b>CULTURAL AFFIRMATION</b><br>Performance assessments utilize and affirm students’ interests and cultural backgrounds. Tasks are suitable for both group and individual engagement.       | <b>AUTHENTICITY</b><br>Performance assessments allow students to work with relevant science phenomena, engineering design problems, and authentic audiences.   | <b>CLARITY &amp; FEEDBACK</b><br>Performance assessments use clear scoring criteria and allow for multiple iterations of student thinking based on feedback.  |
| <b>Criterion 4.3:</b><br>Integrated Assessment System*<br><br><small>*This criterion is not required. Quality indicators are provided for evaluation if an integrated assessment system is present.</small> | Diagnostic, benchmark, and/or interim assessments are integrated into instructional materials in ways that support the learning process. Student results are interpreted relative to the performance expectations of the standards (i.e. criterion-referenced), as demonstrated by student evidence gathered in the learning environment, and recommend instructional next steps.                                       | <b>ASSESSMENT DESIGN</b><br>Diagnostic assessments are well-designed, rigorous, connected to standards, and offer multiple opportunities for demonstrations of knowledge.  | <b>DATA QUALITY</b><br>The assessment system provides clear and actionable data that allow educators to respond to specific student strengths and opportunities for growth.                | <b>RESPONSIVENESS</b><br>The assessment system is connected to resources designed to meet students’ specific opportunities for growth. Intervention and extension materials effectively accelerate student learning. (These resources serve to answer the question, “Now what?”) | <b>FAMILY ENGAGEMENT &amp; COMMUNICATION</b><br>If the assessment system provides reports and/or diagnostic information to families, those resources are accessible in multiple languages that allow families to effectively partner with their child(ren) in the learning process. |

# Oregon State Board of Education

January 19, 2023

AGENDA ITEM: 3.C.

|   |  |
|---|--|
| <p><b>SUBJECT:</b> Charter School Equity Grants/OAR 581-017-0765, -0768, -0774<br/><b>STAFF NAME &amp; OFFICE:</b> Debbie Green, Kate Pattison, Director's Office</p> <p>Permanent revisions to rules that will allow public charter schools that open the same year as a grant cycle to be eligible using similar but different data reported from the year the charter school opened.</p> <p><input type="checkbox"/> New Rule<br/><input checked="" type="checkbox"/> Amend Existing Rule<br/><input type="checkbox"/> Repeal Rule</p> | <p><input type="checkbox"/> <b>First Reading</b><br/><input type="checkbox"/> Presentation<br/><input type="checkbox"/> No Presentation<br/><input checked="" type="checkbox"/> <b>Action</b><br/><input type="checkbox"/> Temp Rule<br/><input type="checkbox"/> Presentation<br/><input checked="" type="checkbox"/> No Presentation</p> |
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## BACKGROUND

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These rules were first adopted on May 19, 2022, to support the implementation of the new Charter School Equity Grant established by HB 2166 in 2021. The first grants were awarded to charter schools in September 2022.

This grant funds charter schools with student populations composed of 65% or more of students from racial or ethnic groups that have historically experienced academic disparities or students experiencing disabilities. Grant allocations are effectively equivalent to the difference between the State School Funds the charter school generates and what is passed through by their sponsoring district according to the charter contract.

Under the current rules, a new charter school serving the eligible student population that opens in the same year of the grant cycle, will not be eligible until its third year of operation and will not be able to access grant funding until the beginning of its fourth year. With the proposed rule revisions, a new charter school serving the eligible student population that opens in the same year of a grant cycle may be eligible to apply if ODE uses different, but similar data reports to determine eligibility for the new school.

An example of the current rule with a new charter school meeting  $\geq 65\%$  of student eligibility requirements beginning operation in September 2022:

- Next grant cycle is 2023-25 biennium with an application window in March 2023.
- 2022 Spring Membership data used to determine 2023-25 eligibility pulls from the prior school year and does not include the new school.
- The new Charter School cannot apply for the grant until the 2025-27 biennium with an application window in March 2025.
- Funding begins in July 2025, the school's 4th year of operation.

# Oregon State Board of Education

January 19, 2023

AGENDA ITEM: 3.C.

The anticipated outcome of the rule revisions for a new charter school meeting  $\geq 65\%$  of student eligibility requirements beginning operation in September 2022:

- Next grant cycle is 2023-25 biennium with an application window in March 2023.
- Use 2022 Spring Membership data to determine eligibility for the 2023-25 biennium for schools that have been in operation for one or more years.
- In February 2023, newly operating schools meeting eligibility requirements in the 2022 Fall Membership data are eligible to apply.
- In April 2023, newly operating schools meeting eligibility requirements in the 2022 December Special Education Child Count are eligible to apply.
- Funding begins in July 2023 and new, eligible charter schools will first have access to grant funds in their 2nd year of operation.

Since the Spring Membership Report will not include data for schools that opened in the same year as the grant cycle, Department staff reviewed other data reports that could be used to determine eligibility for a charter school in its first year of operation. The statute includes racial or ethnic groups that have historically experienced academic disparities or students experiencing disabilities. Based on the data available, the Department proposes using Fall Membership data and Special Education Child Count data only for charter schools in their first year of operation. These data are comparable in their definitions and data rules but are collected, validated, and reported in the same school year.

Staff presented these rules to the Rules Advisory Committee on November 3, 2022, and January 5, 2023, with positive feedback. These proposed revisions have also been reviewed by current grantees and all charter leaders in Oregon through a virtual meeting and email outreach. The Department has not received any opposing feedback.

## SUMMARY OF PREVIOUS BOARD ACTION

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Temporary rules were adopted in January 2022; permanent rules were adopted in May 2022. Submitted rule revisions were presented to the board at their December 8, 2022, meeting for a first reading.

## HAS THE RULE CHANGED SINCE LAST BOARD MEETING?

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- N/A; first read—these revisions haven't been before the board
- No
- Yes – As follows:

In the definitions section 581-017-0765(1) we defined ADMw clearly as the extended weighted average daily membership. In (4) and (6) we used the language “average daily membership”. After consultation at the second RAC meeting, we changed that to ADMw for consistency in the rule language. This does not make any substantive changes to the rule with the acronym being used throughout the rule.

# Oregon State Board of Education

January 19, 2023

AGENDA ITEM: 3.C.

## POLICY ISSUE OR CONCERNS

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In the first year of the grant, the Department awarded grants to all seven (7) of the eligible public charter schools. Allocations were based on the statutory formula and exceeded the appropriation to the Department for the grant. The Department applied a prorate to the grant which lowered the total grant for each school. While these revisions may allow new public charter schools to be eligible for the grant sooner, potentially further reducing individual school allocations if the Department's appropriation for the grant is not increased, all feedback supported funding schools serving the focal groups. This rule would rarely implicate new schools every grant cycle since the threshold for eligibility is so high.

## EQUITY IMPACT ANALYSIS

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This grant supports charter schools serving higher percentages of students who have historically experienced academic disparities. The purpose of the grant is to increase academic achievement for students in the same groups that qualify the school for the grant.

Allowing new charter schools to be eligible in their first year of operation during an application window for the grant will make grant funds available to the new charter within their first three years of operation with focused money to meet the needs of students historically experiencing academic disparities and students with disabilities. This revision was prompted by a discussion with a new charter school beginning operation in September 2022, established specifically to serve these focal groups.

## FISCAL ANALYSIS

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For the upcoming 2023-25 biennium, \$4,000,000 will be appropriated for eligible charter schools. Since we already utilize a prorate if eligibility exceeds the appropriated funds, there is no fiscal impact on the fund.

## EFFECT OF A "YES" OR "NO" VOTE

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A "Yes" vote will allow charter schools serving the focal student groups to be eligible in their first year of operation and access funds in their second year. It gets the resources to the target population in a more timely manner.

A "No" vote will continue the current practice and charter schools that open in the same year of a grant cycle will not have data to determine eligibility until the next cycle. This means they will not receive these equity-focused grant funds until their fourth year of operation.

## STAFF RECOMMENDATION

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Approve  Approve next month  No recommendation at this time

**Prompted by:**  State law changes  Federal law changes  other

## ATTACHMENTS

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**Oregon State Board of Education**

**January 19, 2023**

AGENDA ITEM: 3.C.

Attachment 1: Charter School Equity Grant Rule Revisions

## Charter School Equity Grant Rules

### 581-017-0765 Charter School Equity Grant: Definitions

The following definitions apply to OAR 581-017-0765 to 581-017-0777:

- (1) "ADMw" means the extended weighted average daily membership computed as provided in ORS 327.013(1)(c).
- (2) "Charter School Equity Grant" means the grant established by ORS 327.362.
- (3) "Charter School" means a public charter school that is not a virtual public charter school, as defined in ORS 338.005.
- (4) "Fall Membership" means the data report that represents students attending public schools and programs on the first school day in October, as derived from the 1<sup>st</sup> period cumulative ADMw collection. Rules governing the Fall Membership report are contained in the most recent edition of the Oregon Student Membership Manual, published by the Oregon Department of Education.
- (5) "Racial or ethnic groups that have historically experienced academic disparities" includes American Indian and Alaska Native students, Black and African American students, Hispanic and Latino students, Native Hawaiian and Pacific Islander students, and multiracial students.
- (6) "Spring Membership" means the data report that represents students attending public schools and programs on the first school day in May, as derived from the 3<sup>rd</sup> period cumulative ADMw collection. Rules governing the Spring Membership report are contained in the most recent edition of the Oregon Student Membership Manual, published by the Oregon Department of Education.
- (7) "Students with disabilities" means students as provided in OAR 581-014-0001.
- (8) "December Special Education Child Count" means the data report that represents the requirement of school districts to count students ages 5-21 that have an Oregon Eligibility for Special Education, a current Individualized Education Plan (IEP) or Service Plan, and are receiving services on December 1.

Stat. Auth ORS 327.362

Stat. Implemented ORS 327.362

### 581-017-0768 Charter School Equity Grant: Eligibility

- (1) Public charter schools shall be eligible to receive a Charter School Equity Grant if the charter school:
  - (a) Is not a virtual public charter school;
  - (b) Has a student population of which at least 65 percent of the total student population is composed of students from the following combined student groups:
    - (A) Racial or ethnic groups that have historically experienced academic disparities; and
    - (B) Students with disabilities
- (2) Before each application cycle, the Department of Education will publish a list of public charter schools that meet the eligibility requirements of ORS 327.362.
  - (a) For public charter schools that have been in operation for one or more years, the Department will determine eligibility based on the most recent finalized Spring Membership report.
  - (b) For public charter schools that are in their first year of operation during a grant cycle year, the

Department will determine eligibility based on the most recent finalized Fall Membership report and the December Special Education Child Count report.

- (3) Each eligible charter school shall provide notice before each application cycle to the Department of their intent to apply for the grant according to the process published by the Department and within the time allowed by the Department which shall not be less than 14 days. Notice must include a copy of the charter school's contract for the provision of educational services and funding under ORS 338.155 (2) or (3).
- (a) A charter school that did not provide notice of their intent to apply may not be eligible to receive a grant in the current application cycle.

Stat. Auth. ORS 327.362

Stat. Implemented ORS 327.362

#### **581-017-0771 Charter School Equity Grant: Criteria**

- (1) The Oregon Department of Education shall establish an application and approval process to be conducted each biennium for which Charter School Equity Grant funds are available. The Department shall notify eligible applicants of the proposal process and due dates, and make available necessary guidelines and application forms.
- (2) All applications must comply with requirements of ORS 327.362 and in the form and manner prescribed by the Department of Education.
- (3) Upon approval of the grant application, the Department shall enter into a grant agreement with the eligible public charter school.

Stat. Auth. ORS 327.362

Stat. Implemented ORS 327.362

#### **581-017-0774 Charter School Equity Grant: Distribution of Funds**

- (1) The Department of Education shall determine for each year the portion of the funds available for the Charter School Equity Grant program from the Statewide Education Initiatives Account.
- (2) For purposes of establishing the amount of grant funds apportioned to eligible applicants for the upcoming school year the Oregon Department of Education will use the most current finalized ADMw from the State School Fund from the prior year at the time when the list of eligible public charter schools was published according to OAR 581-017-0768.
- (3) The Department shall determine the amount of the grant for each recipient based on the following formula: Grant Amount = the public charter school's ADMw x the difference between:
  - (a) The amount of the General Purpose Grant per ADMw for the school district that has contractually established payment for the provision of educational services to the public charter school's students under ORS 338.155 (2) or (3); and
  - (b) The amount of the General Purpose Grant per ADMw that the public charter school receives under a contract for the provision of educational services to the public charter school's students under ORS 338.155 (2) or (3).
- (4) The Department may apply a prorata to determine primary and secondary ADMw amounts.

- (5) If the sum of the amounts for each grant as determined in subsection (3) exceeds the total amount available to the Charter School Equity Grant program, the Department may prorate the amount of the grant distributed to each eligible recipient.
- (6) Funds received by a charter school under this section must be separately accounted for and may be used only to provide funding for the purposes described in the grant agreement. A grant recipient may use funds for administrative costs, including indirect costs, directly related to allowed expenditures as provided in the grant agreement. Administrative costs are limited to five percent of the total expenditures.
- (7) The Deputy Superintendent of Public Instruction shall resolve any issues arising from the administration and distribution of grant funds not specifically addressed in this rule. The Deputy Superintendent of Public Instruction's determination shall be final.

Stat. Auth. ORS 327.362

Stat. Implemented ORS 327.362

#### **581-017-0777 Charter School Equity Grant: Reporting**

- (1) Each year, a recipient of the Charter School Equity Grant must report in the manner and form required by the Department.

Stat. Auth. ORS 327.362

Stat. Implemented ORS 327.362

Adopted January 19, 2023

# Oregon State Board of Education

December 8, 2022

AGENDA ITEM: 7.E.

|  |   |
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| <p><b>SUBJECT:</b> SIA Fund Administration OAR 581-014-0004</p> <p><b>STAFF NAME &amp; OFFICE:</b> Blake Whitson and Rachael Moser, Office of Education Innovation and Improvement.</p> <p>The original SIA Fund Administration rules contained an option for recipients to request an extension to expend funds until September 30 annually. Based on the number of extensions requests received, a change was made to the rule to make the extension universal with a provision allowing recipients to opt out if they wished. Last year, ODE received three such requests to opt out of the summer extension. Given the amount of administrative time for both grantees and ODE to implement grant amendments due to the opt out, we are proposing this rule change to remove the opt out provision. All other provisions will remain the same.</p> <p><input type="checkbox"/> New Rule<br/><input checked="" type="checkbox"/> Amend Existing Rule<br/><input type="checkbox"/> Repeal Rule</p> | <p><input type="checkbox"/> <b>First Reading</b><br/><input type="checkbox"/> Presentation<br/><input type="checkbox"/> No Presentation</p> <p><input checked="" type="checkbox"/> <b>Action</b><br/><input type="checkbox"/> Temp Rule<br/><input type="checkbox"/> Presentation<br/><input checked="" type="checkbox"/> No Presentation</p> |
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## BACKGROUND

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### *History*

The Student Investment Account (SIA) was authorized in ORS 327.175 and creates a non-competitive grant program for school districts, eligible charter schools, Youth Corrections Education Programs (YCEPs) and Juvenile Detention Education Programs (JDEPs). The grants are established for two specific purposes including: (1) meeting students' mental or behavioral health needs and (2) reducing academic disparities and increasing student achievement for specific groups of students that have historically experienced academic disparities.

Grant funds must be used to: (1) increase instructional time, (2) address health and safety needs, (3) reduce class sizes or staff caseloads, (4) broaden curricular and well-rounded education opportunities, and (5) ongoing community engagement. For the 2021-23 biennium, \$892 million will be distributed to SIA grantees. In order to receive grants, districts, eligible charter schools, YCEP sites, and JDEP sites had to comply with application requirements set forth in ORS 327.185 and have a plan approved by the Oregon Department of Education.

In order to support with administering the SIA funds, ODE originally brought a temporary rule to the State Board of Education in October 2019. ODE returned to the State Board to pursue a permanent rule, which was adopted in March 2020. This established in rule a number of key pieces related to the administration of the funds including:

- How the grant funds would be distributed
- Which districts would receive floor funding grants
- What happens with funds not awarded, including unspent funds
- The allocation disbursement schedule
- The option for summer extensions
- The details and limits on administrative costs

# Oregon State Board of Education

December 8, 2022

AGENDA ITEM: 7.E.

Under the original Fund Administration rules for the Student Investment Account, grantees had to expend SIA funds by June 30 each year. Grantees could request a summer extension to expend SIA funds until September 30 each year. Given that over 70% of grants requested the summer extension, ODE pursued a rule change. In June 2021, the State Board adopted the proposed change to the rule, which created a universal summer extension for all grantees to spend SIA funds through September 30 annually with an option out provision. In 2021-22, three grantees utilized the opt out provision, with only one grantee following through with fully opting out by returning the grant amendment.

ODE is returning today with a first read of a proposed rule change to the summer extension piece of the Fund Administration rules.

### *Purpose*

ODE is proposing to remove the opt out provision for the summer extension with the Fund Administration for the SIA rules given the limited usage of the provision. This would universally provide the opportunity for all SIA grantees to continue to spend SIA funds through September 30 annually, rather than June 30 annually. This rule change would result in very little change to recipient practices given all but one grantee went through with the option to opt out of the summer extension. A grantee would still be able to end spending on June 30 if they wanted to do so, but they'd still have the flexibility to continue spending through September 30. This rule change supports a uniform process for grantees, while also reducing significant administrative burden for both grantees and ODE in executing summer opt out grant amendments.

### *Engagement*

This proposed rule change has gone through the Rules Advisory Committee (RAC) process. The original rules concept was presented at the October 6, 2022 meeting, with a first draft of the rule presented on November 3, 2022. ODE received positive feedback for this change from the RAC. Further, ODE has engaged with the one grantee that utilized the summer extension opt out provision. ODE has received no feedback that this change will have a negative impact on districts. ODE plans to present again at the January RAC meeting to see if there is any additional feedback on the proposed change.

## **SUMMARY OF PREVIOUS BOARD ACTION**

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1. The existing rule set, OAR 581-014-0004 has been before the Board previously – initially as a temporary rule in October 2019, shifting to a permanent rule in March 2020, and then adjusting with a rule change in June 2021. This is the first time that we're this new rule change to the existing rule to the Board for consideration.

## **HAS THE RULE CHANGED SINCE LAST BOARD MEETING?**

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- N/A; first read—hasn't been before board  
 No; same as last month  
 Yes – As follows:

# Oregon State Board of Education

December 8, 2022

AGENDA ITEM: 7.E.

## POLICY ISSUE OR CONCERNS

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The proposed rule change seeks to provide an update to the summer extension practice for SIA grantees, which specifically removes the opt out provision. In developing the proposed change, the Department has engaged with the district that opted out of the summer extension in the 2021-22 year as well as the RAC members this fall. ODE views this rule change as technical in nature and in line with how the majority of SIA grantees are utilizing the summer extension opportunity. ODE does not anticipate any unintended consequences or new barriers to implementation given the removal of the opt out option.

## EQUITY IMPACT ANALYSIS

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As this is a technical rule change to the Fund Administration rules to align rules with existing recipient practice there, ODE does not anticipate an equity impact with this proposed change.

## FISCAL ANALYSIS

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ODE anticipates no fiscal impact for the majority of grantees as all but one did not opt out of the universal summer extension. For the grantee that did opt out, there may be limited fiscal impact given they may need to set up a way to track access to multiple years of SIA funding simultaneously since they will no longer have the ability to opt out of the summer extension. That said, they do have the ability to ensure that they complete spending by June 30, if they choose to do so to limit this potential minimal impact.

## EFFECT OF A "YES" OR "NO" VOTE

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Voting yes to approve this rule change would remove the opt out provision of the summer extension, allowing all SIA grantees to spend funds through September 30 annually. This would remove significant administrative burden for both the grantees and ODE to execute grant amendments.

Voting no on this rule change would allow the opt out provision to remain the Fund Administration rules and create potential significant administrative burden to grantees and ODE for grantees that opt out.

## STAFF RECOMMENDATION

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Approve  Approve next month  No recommendation at this time  
**Prompted by:**  State law changes  Federal law changes  other

## ATTACHMENTS

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Attachment 1: Draft rule language

SIA Fund Administration Rule Change  
581-014-0004  
Fund Administration for Student Investment Account

- (1) For each biennium, the Oregon Department of Education will determine the amount of grant funds from the Student Investment Account to be apportioned among eligible applicants for each year of the biennium.
- (2) For purposes of establishing the amount of grant funds apportioned to eligible applicants, the Oregon Department of Education will use the most current finalized ADMw from the State School Fund from the prior year.
- (3) If a school district has an ADMw of 50 or less, it will receive an allocation based on an ADMw of 50.
- (4) If an eligible applicant does not apply for a grant from the Student Investment Account by the close of the application period, the amount of their grant funds will revert to the Student Investment Account and be reallocated within the grant award cycle. An eligible applicant that does not apply for a grant will be eligible in the next application process for the Student Investment Account.
- (5) Following approval of the grant agreement, an eligible recipient will receive payments of at least 25 percent on a quarterly basis per annual allocation. If adjustments to installment payments are required, a lower percentage may be used.
- (6)~~(a)~~ Grant recipients will be eligible for a universal extension to expend funds until September 30 each year. Any allocated funds that are not used by a grant recipient by September 30 each year will be returned to the Student Investment Account for distribution in the next biennium.  
~~(b) A Grant recipient may request to decline the universal extension to expend funds by September 30 each year. A grant recipient must notify the Department in writing by June 1 each year. Any allocated funds that are not used by a grant recipient by June 30 each year will be returned to the Student Investment Account for distribution in the next biennium.~~
- (7) Funds received by a grant recipient under this section must be separately accounted for and must be used in accordance with the recipient's grant agreement for the Student Investment Account. A grant recipient may use funds for administrative costs, including indirect costs, directly related to allowed expenditures as provided in the grant agreement. Administrative costs are limited to five percent of the total expenditures or \$500,000 annually, whichever is less. Any administrative costs incurred by a participating charter school must be accounted for within the sponsoring school district's overall limit of five percent or \$500,000, whichever is less.
- (8) The Deputy Superintendent of Public Instruction shall resolve any issues arising from the administration of the Student Investment Account grants not specifically addressed by this rule. The Deputy Superintendent of Public Instruction's determination shall be final.

## 581-013-0015

### Fund Administration

(1) For each biennium, the Oregon Department of Education shall determine the total amount of funds to be apportioned among the eligible school districts and charter schools for each year of the biennium.

(2) For each school year, the Oregon Department of Education shall determine the portion of funds available to each school district or charter school that serves students in grades 9 through 12 from the High School Graduation and College and Career Readiness Fund. In calculating the portion available to each school district and charter school, the Oregon Department of Education shall use the most current finalized extended ADMw from the State School Fund from the prior year.

(3)(a) Funds that are apportioned to a school district or charter school for a given biennium must be used **apportioned** by the school district, charter school, or ESD in that biennium. **School districts, charter schools, or ESDs will have the first two months of the following biennium to spend funds previously apportioned.** Funds that are not used by a school district, charter school, or ESD during year one of a given biennium may be carried over and used in year two of that same biennium. Any funds that are not used by a school district, charter school, or ESD at the end of a biennium will be returned to the High School Graduation and College and Career Readiness Fund and reapportioned among all school districts and charter schools in the next biennium.

~~(b) Notwithstanding subsection(a) of this rule, a school district or charter school may request an extension to spend funds apportioned during a given biennium during the first two months of the next biennium. A request must be made to the Department of Education. The Department of Education will approve the request if the where the spending aligns to the School district's or charter school's biennial plan.~~

(4) Funds received by a school district or charter school under this section must be separately accounted for and must be used in accordance with the school district or charter school's approved biennial plan.

# Oregon State Board of Education

January 19, 2023

AGENDA ITEM: 3.E.

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| <p><b>SUBJECT:</b> Universal Summer Grant Extension for HSS Fund Administration: OAR 581-013-0015</p> <p><b>STAFF NAME &amp; OFFICE:</b> Michael Lindblad and Maggie Mashia</p> <p>The Measure 98/High School Success team is trying to reduce administrative burden for over 220 High School Success recipients statewide. For the last 6 years since the passage of M98/HSS in 2016, recipients have had to formally request a summer extension to expend funds for an extra 2 months in the summer. This rule change seeks to amend the current rule to eliminate the need for recipients to file a formal request and grant a universal summer extension to all recipients. This can help summer programs as well that often help underserved students and other focal student groups.</p> <p><input type="checkbox"/> New Rule<br/><input checked="" type="checkbox"/> Amend Existing Rule<br/><input type="checkbox"/> Repeal Rule</p> | <p><input type="checkbox"/> <b>First Reading</b><br/><input type="checkbox"/> Presentation<br/><input type="checkbox"/> No Presentation</p> <p><input checked="" type="checkbox"/> <b>Action</b><br/><input type="checkbox"/> Temp Rule<br/><input type="checkbox"/> Presentation<br/><input checked="" type="checkbox"/> No Presentation</p> |
|--|---|

## BACKGROUND

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Include the following points for new OARs, OAR updates or changes.

1. History:
  - a. What prompted the rule (why do we have it?) State law? Federal law? Incident? Why are changes/amendments being proposed?
    - i. The underlying rules were put into place after the passafe of M98 in 2016. The current rule change is in response to consistens feedback from recipients and an overall desire to to reduce administrative burden through a universal summer extension for all M98/HSS recipients.
  - b. How long has the rule been in place?
    - i. 6 years.
  - c. What is the current requirement in rule or statute?
    - i. OAR 581-013-0015 b) states: "a school district or charter school may request an extension to spend funds apportioned during a given biennium during the first two months of the next biennium. A request must be made to the Department of Education. The Department of Education will approve the request if the spending aligns to the School Districts' or charter school's biennial plan."
2. Purpose
  - a. What function does the current rule hold?
    - i. The current rule requires districts to proactively request an extension. Almost all districts seek this extension, and are required by current rule to submit a request.

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AGENDA ITEM: 3.E.

- b. How long has the rule been in place?
  - i. Since 2016 when M98 was passed
- 3. Does the board have any areas of discretion or is this strictly mirroring statute?
  - a. Mirroring statute by amending a current rule
- 4. Stakeholder voice/input (individual and collective i.e., groups)
  - a. Who was involved in bringing this to the Board?
    - i. ODE Staff responsible for HSS/M98, including Director Maggie Mashia and HSS Educational Specialist Michael Lindblad, in conjunction with feedback received from recipients.
  - b. What did engagement in this process entail?
    - i. The rule change was primarily in response to the shared experiences of HSS districts/charters over the last several years. Over 98% of districts or charters requested an extension, and were therefore required to perform additional administrative work. In alignment with the Department’s continuing efforts to reduce administrative burden, ODE staff drafted this rule change and reviewed with the Rules Advisory Committee at their October and November meetings.
  - c. Who may be affected by this?
    - i. HSS/M98 recipients - any district or charter school that serves high school students
  - d. Whose voice is missing potentially?
    - i. N/A
  - e. What additional information does the Board need prior to moving forward?
    - i. N/A

## SUMMARY OF PREVIOUS BOARD ACTION

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- 1. Has this been before the board before? If so, what action did the board take?
  - a. No, this is the first reading of these proposed rule changes before the State Board of Education.

## HAS THE RULE CHANGED SINCE LAST BOARD MEETING?

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- N/A; first read—hasn’t been before board (x-first reading)
- No; same as last month
- Yes – As follows:

## POLICY ISSUE OR CONCERNS

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# Oregon State Board of Education

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These policy issues or concerns could be from the field, stakeholder groups, statements submitted during the comment period, or discussions among ODE staff. Consider the following questions:

1. Stakeholders
  - a. How have you intentionally involved stakeholders who are also members of communities affected by this rule?
    - i. The impetus of the rule change was feedback received from recipients over the last several years. Less than 1% of recipients expressed that they did not want an extension. In addition, ODE staff presented at the October and November Rules Advisory Committee meetings.
  - b. Who are the historically underserved groups affected?
    - i. None specifically
  - c. If the rule change or policy decision has tribal implications and it has been deemed appropriate by the Department's Tribal Liaison, the Deputy Superintendent, or State Board, has there been engagement or collaboration with tribes in this rule change or policy decision?
    - i. No specific Tribal Implications
  - d. How has the Oregon Department of Education modified or enhanced the rule change or policy decision to address the needs of historically underserved communities?
    - i. This rule change is mainly about an extension on funds. However, given that many state recipients operate summer programs specifically for underserved students, this could give recipients more time to support those students.
2. Negative/Positive Effects
  - a. What is the impact on the population most affected by this rule that the board should consider?
    - i. This suggested rule change is meant to primarily affect HSS recipients by reducing their administrative burden. It will also reduce the administrative burden on ODE staff, and provide breathing room for them to better focus on other efforts.
  - b. What is the impact on eliminating the opportunity or achievement gap?
    - i. This rule change is mainly about an extension to spend funds. However, M98/HSS seeks to increase equitable access and eliminate barriers for underserved or focal student groups. M98/HSS also works to increase graduation rates.
  - c. Have all the potential unintended consequences been considered?
    - i. Yes, we believe so.
  - d. Does this rule advance the 40/40/20 goals?

# Oregon State Board of Education

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AGENDA ITEM: 3.E.

- i. This rule change is only for a universal extension but M98/HSS seeks to increase 90T/Grade Rates across Oregon.
3. What are the barriers to more equitable outcomes?
  - a. None identified.

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## **EQUITY IMPACT ANALYSIS: There are no specific equity impacts.**

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The following questions are designed to examine how the proposed rule, policy or action systematically affect historically underserved students and/or communities.

1. Will historically underserved populations be impacted by this docket item?
2. Examine the potential impact of the rule changes, policy, or action on historically underserved populations in Oregon. Describe this ongoing and/or foreseeable impact, using as much detail as possible.
3. Explain how the rule change, policy, or action works toward the elimination of either (one or both):
  - a. the achievement gap
  - b. the opportunity gap

There are no direct equity impacts from this proposed rule change, as it is primarily an administrative change. However, reducing the overall administrative burden on districts allows them to focus more on other priorities, including the health and wellbeing of students. The underlying goal of M98/HSS is to increase 90T/Grade Rates across Oregon.

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## **FISCAL ANALYSIS**

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What is the fiscal impact of the proposed rule changes to the Department of Education, school districts, education service districts or schools? Use the following suggestions as a guide:

1. How does the proposed rule fit within the budget of the agency?
  - a. The budget from this rule change would remain the same, but recipients would get a universal summer extension.
2. Which units/divisions/offices will be impacted and how?
  - a. The M98/HSS home team in the Office of Education, Innovation, and Improvement. This would reduce grant extension processing work for EII, grant management, and procurement as it would negate the need for grant agreement amendments.
3. How does the proposed rule change impact school districts and ESDs?
  - a. This proposed rule change should reduce the administrative burden for ESDs who help support regional districts.
4. How does the proposed rule change impact schools and other educational institutions?

# Oregon State Board of Education

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AGENDA ITEM: 3.E.

- a. This proposed rule change will give schools within districts 2 more months to expend funds during the summer.
  
- 5. Does the proposed rule change impact other stakeholders?
  - a. This proposed rule change primarily impacts districts, schools, and ESDs that support districts.

## EFFECT OF A "YES" OR "NO" VOTE

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A yes vote adopts the two-month extension into rule, proving more time for recipients to expend funds. A no vote retains the current deadline, and requires districts to continue applying for extensions from the Department.

## STAFF RECOMMENDATION

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Approve    Approve next month    No recommendation at this time  
**Prompted by:**    State law changes    Federal law changes    other

## ATTACHMENTS

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Attachment 1: HSS Rule Change

# Oregon State Board of Education

January 19, 2023

AGENDA ITEM: Sherwood School District Supplemental Plan

|  |  |
|--|--|
| <p><b>SUBJECT:</b> Sherwood SD Supplemental Plan<br/><b>STAFF NAME &amp; OFFICE:</b> Brock Dittus, Pupil Transportation &amp; Fingerprinting</p> <p>Sherwood School District has submitted a new supplemental plan for board approval. This will change the areas in which transportation will be provided / required for students who live within the statutory minimum for transportation.</p> | <p><input type="checkbox"/> Informational Presentation</p> <p><input checked="" type="checkbox"/> Written Report</p> |
|--|--|

## BACKGROUND

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In 1991 the Oregon Legislature added a requirement, and funding, to provide transportation to school students who live a certain distance from their elementary or secondary school. The distances established coincide to the previous limit at which students were required to attend school prior to Oregon’s Compulsory School Law.

The legislature also recognized that students who live closer than these prescribed limits may also require transportation due to health or safety reasons, so ORS 327.043 allows for a “supplemental plan” that must be approved by the State Board of Education.

Other than the legislative guidance that the transportation must be for “health or safety” reasons, the State Board has traditionally allowed local school districts to determine areas within their district that require transportation within the distance limits.

In 1992, many districts submitted supplemental plans for approval from the State Board, and all were adopted. Having an approved supplemental plan does two things:

1. It allows a school district to be reimbursed as part of the transportation grant of the state school fund; and
2. It requires transportation to be provided by the district. In other words, the district can’t stop providing this transportation without the approval of a new plan.

The State Board does have the discretion to approve or not approve supplemental plans. The Pupil Transportation Unit does ensure that plans presented to the board present a health or safety reason for the plan.

A supplemental plan must be approved by the local school board prior to presentation to the State Board for approval. The Sherwood School District Board approved this supplemental plan at their meeting on January 13, 2020 and submitted the plan to ODE for approval thereafter.

The supplemental plan submitted by Sherwood School District accounts for health and safety concerns within the no-transport area, and at this time will affect approximately 461 students. Proponents and opponents of the submitted plan had the opportunity to be heard at the local level. This plan replaces the previous plan for the specified school(s).

# Oregon State Board of Education

January 19, 2023

AGENDA ITEM: Sherwood School District Supplemental Plan

## SUMMARY OF PREVIOUS BOARD ACTION

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The State Board approved Sherwood School District's original supplemental plan in 1992, with revisions in 2000, 2009, and 2012.

## POLICY ISSUE OR CONCERNS

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The Sherwood School District submitted this supplemental plan for State Board approval after the local school board adopted it during a session open to the public. ODE does not engage with stakeholders regarding these plan revisions separate from the district's public process.

In this case, Sherwood School District is updating their plan to account for 461 students who would otherwise be required to walk in dangerous conditions due to speed and/or volume of vehicle traffic, width and condition of street, lack of shoulders or sidewalks suitable to walking, poor visibility, and dangerous crossings or intersections.

## EQUITY IMPACT ANALYSIS

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ODE does not conduct a separate analysis of a supplemental plan adopted by a local school board except to verify that the supplemental plan is being submitted for health or safety reasons as required by statute.

## FISCAL ANALYSIS

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There is no fiscal analysis because supplemental plans do not usually have a significant impact on agency funds. There is no requirement for ODE to act as a result of this action. There may be a very small change in impact to the State School Fund Transportation Grant as a result of providing this transportation; however, in most cases the buses / routes that will be transporting these students will pick them up on their way in from other mandated transportation areas around the district.

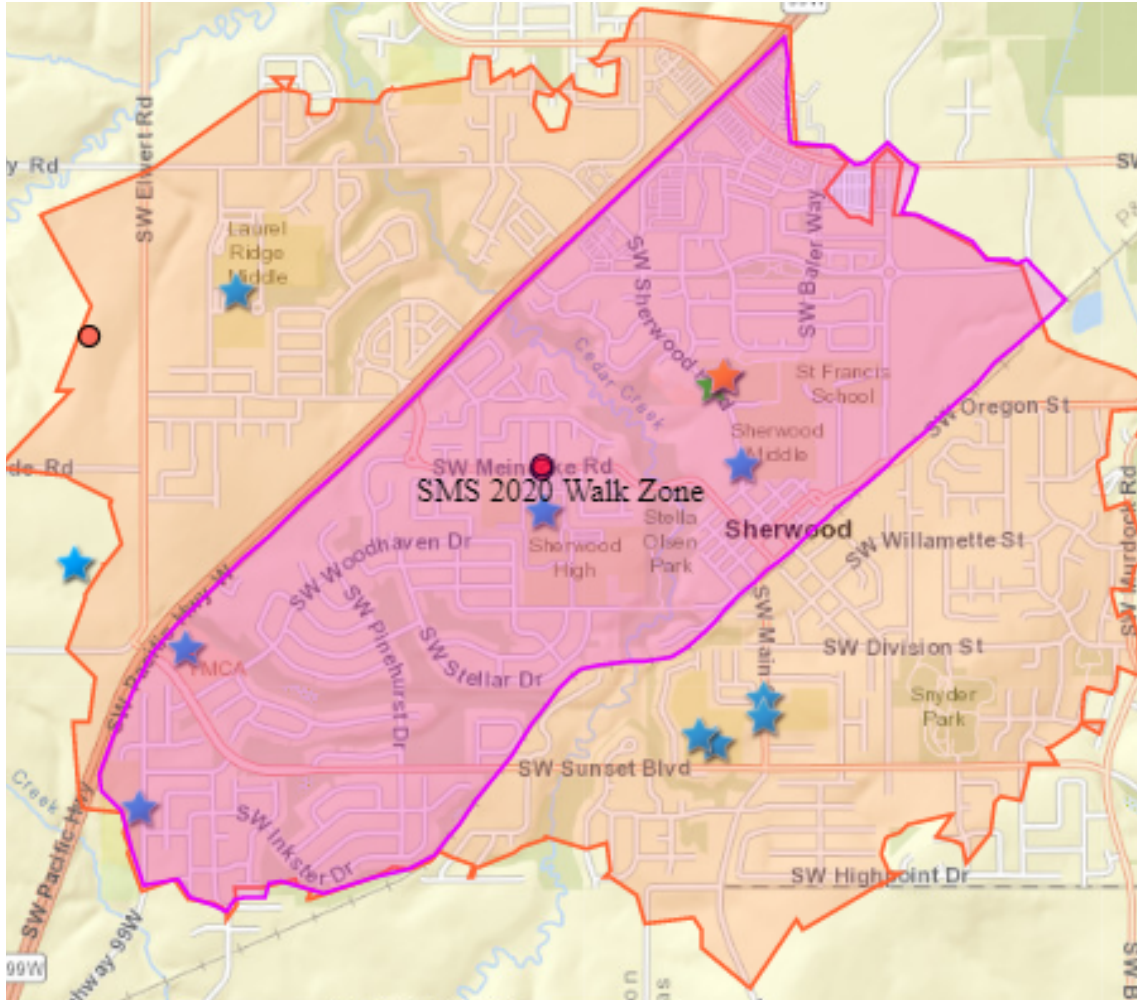
Adoption of this plan for Sherwood School District will not have an effect on any other school district, and will allow Sherwood School District to be reimbursed at their current rate for the transportation of these students as part of their transportation grant.

## ATTACHMENTS

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Attachment 1: Sherwood School District board-approved supplemental plan, 2021 revision

**Supplemental Plan for Sherwood Middle School  
(Grades K-5)  
Sherwood School District  
Revised 2021**



**HAZARDOUS CONDITIONS**

SP rail line - Double tracks, sporadic train schedule and unimproved areas near tracks.

Pacific Hwy - 4 lane highway with heavy traffic Including trucks.

**APPROXIMATE NUMBER OF STUDENTS**

**GENERAL AREA**

South of the SP Rail line within 1.5 mile walk boundary.

Area west of Pacific Hwy within 1.5 mile walk boundary

Grades 6-8 - 461

**SHERWOOD SCHOOL DISTRICT NO. 88J**

21290 SW Sherwood Blvd.

Sherwood, OR 97140

TO: Members of the School Board

FROM: Dr. Heather Cordie  
Jim Rose

DATE: February 10, 2021

RE: 2F - Supplemental Plan for Transportation

EXPLANATION: The opening of the new high school and the adjustment of elementary and middle school boundaries have resulted in the necessity to adjust the District's supplemental plan to allow busing within school walk zones when certain hazards exist.

The Sherwood School District shall provide bus service for the primary purpose of transporting students from home to school and from school to home.

Transportation to and from school will not be provided for students living within the one mile (at the elementary level) or one and one half mile (at secondary level) walk boundaries outlined in Senate Bill 814 except as provided by OAR 581-23-040.

Exceptions:

1. Special education students who require transportation to and from school, between schools, and to and from work experience locations, including but not limited to those students whose IFSP or IEP identified transportation as a related service.
2. All District students who would have to walk through or across a designated hazard.

The supplemental plans for each school are included below in "Supplementary Materials."

There is no longer a need for a supplemental plan for Archer Glen or Middleton Elementaries, as the elementary boundary adjustment eliminated the referenced hazards.

PRESENTER: Consent Agenda

SUPPLEMENTARY

MATERIALS: Exhibit 1. [New Supplemental Plan for Hawks View Elementary](#)

- Exhibit 2. [New Supplemental Plan for Ridges Elementary](#)
- Exhibit 3. [New Supplemental Plan for Sherwood Middle School](#)
- Exhibit 4. [New Supplemental Plan for Sherwood High School](#)

RECOMMENDATION: The Administration recommends approval of the transportation supplemental plan.

REQUESTED ACTION: Consent Agenda Approval



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The Sherwood School District Board of Education met in an executive session on February 10, 2021, in a hybrid meeting (in-person at the District Office Board Room) (non-public meeting).

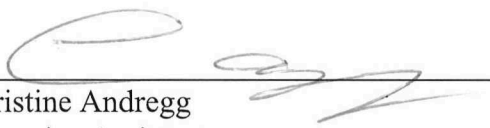
**In Attendance:** Chair Patrick Allen; Vice Chair Sue Hekker; Director Jessica Adamson; Director Michael Hiland; Director Eric Campbell; Superintendent Heather Cordie; Assistant Superintendent Gary Bennett; Executive Director of Human Resources Steve Emmert; Chief Operations Officer Jim Rose; Executive Assistant to the Superintendent Christine Andregg; and Director of Finance Phil Johanson were in attendance. No media was present.


Chair Allen called the Executive Session into order at 6:15 p.m. under ORS 192.660 (2)(d) Negotiations.

The Board met to discuss the topic of Negotiations. No action was taken.

Chair Allen adjourned the meeting at 6:52 p.m.

Submitted by:

  
Christine Andregg  
Executive Assistant

  
Patrick Allen  
Board Chair



The Sherwood School District Board of Education met in regular session on February 10, 2021, in a hybrid meeting (in-person at the District Office Board Room and remotely via Zoom), with a YouTube live stream for public viewing.

**In Attendance:** Chair Patrick Allen; Vice Chair Sue Hekker; Director Jessica Adamson; Director Michael Hiland; Director Eric Campbell; Superintendent Heather Cordie; Assistant Superintendent Gary Bennett; Executive Director of Human Resources Steve Emmert; Chief Operations Officer Jim Rose; Executive Assistant to the Superintendent Christine Andregg; ASB Representative Ainsley Holloway; Director of Facilities and Operations Ken Bell (via Zoom); Sherwood High School Principal Melissa Baran (via Zoom); Sherwood Middle School Principal Marianne Funderhide (via Zoom); Sherwood High School Archer Glen Elementary Principal Tim Smith (via Zoom); Hawks View Elementary Principal Penny Salm (via Zoom); Middleton Elementary Principal Jon Wollmuth (via Zoom); and Ridges Elementary Principal Miranda Johnson (via Zoom) were in attendance. Three additional staff members (via Zoom) were present. The meeting live stream was viewed by 104 viewers. No media was present.

**REGULAR SESSION** (7:00 p.m.)

Chair Allen called the meeting to order at 7:00 p.m. and welcomed everyone in attendance. Chair Allen led the meeting in the Pledge of Allegiance.

**CONSENT AGENDA** (7:01 p.m.)

**Financial Summary for January 2021**

**Personnel - Resignations/Leave of Absence Requests/ Retirements/Rescindment of Contract/Terminations/Layoffs/New Hires/Extra Duty Assignments/Modifications and Adjustments**

**Personnel: Temporary Employment Agreements**

**Meeting Minutes for January 2021**

**NWRESD Local Service Plan and Annual Report**

**Supplemental Plan for Transportation**

**Interdistrict Transfers**

Chair Allen called for discussion of the consent agenda; there was none.

*Director Adamson moved to approve the consent agenda; Vice Chair Hekker seconded. Motion carried 5-0.*

**REPORTS** (7:02 p.m.)

**Superintendent**

Superintendent Heather Cordie's report is attached as an addendum to the minutes.

**Associated Student Body (ASB) Representative**

Ms. Holloway provided a report to the Board. Topics including the start of the third quarter at Sherwood High School, Valentine's Day events, and the upcoming start of the fall sports season.

**SEA**

Ms. Nanci Stauffer, SEA Co-President, provided a report to the Board. She shared thanks on behalf of Association members for the Board's consideration of the request letter submitted and read in the February 3, 2021 Board Work Session.

**OSEA**

Ms. Patina Fieken, OSEA President, provided a report to the Board. She thanked the Board for listening to and considering the concerns of classified staff related to vaccine doses and the reopening timeline.

**City Council**

No report provided.

**INFORMATION AND DISCUSSION (7:08 p.m.)**

**Update on Reopening Schools**

Dr. Cordie introduced the presentation and provided an overview of the included topics. Chair Allen clarified that while the presentation would focus on the elementary reopening details, the Board was committed to reopening all levels, and that discussion of middle and high school reopening plans would be discussed at a future Board Work Session.

Mr. Rose reviewed case rate metrics and current local case rates. He additionally provided an update on the timeline for staff vaccine waves. Mr. Bennett reviewed the proposed start dates for in-person instruction at the elementary level, and also discussed proposed transition dates that would result in a calendar change; he discussed the training and tasks that staff would engage in during those transition days. Director Adamson noted her appreciation that student mental health was included in the list of training topics. Mr. Bennett presented the recommended Board actions that would be presented later in the meeting as an action item, and discussed future work and next steps.

Chair Allen thanked SEA and OSEA for their working relationship with the Board and the District. There was general Board discussion on the timeline of vaccines and opening the secondary level, appreciation for the work of staff and administrators to move forward with reopening schools,

**PUBLIC COMMENT (7:24 p.m.)**

Chair Allen called for the reading of public comment, highlighting that each comment would have a three minute time limit; that only comments with identifying information included would be read aloud; and that repeat comments would not be read multiple times. There were six submissions entered into record for public comment; all submitted comments were read aloud to the Board members by Ms. Andregg.

**ACTION ITEMS** (7:39 p.m.)

**Reopening Recommendations**

Mr. Bennett presented the Board with the following recommendations for approval:

- In addition to those already working on-site, all staff, regardless of assignment or in-person instruction status of their school level, will work on-site when they have had the opportunity to receive a full course of a vaccination, following FDA and CDC recommendations
- Grades K-1 open for in-person instruction on March 8
- Grades 2-5 open for in-person instruction on March 15
- Calendar Changes
  - Change elementary Grading Day from March 15 to March 12
  - Add elementary Professional Development days
    - February 25 and 26 (transition to in-person only)
    - March 4 and 5 (Cloud Campus and in-person)

*Director Adamson moved to approve the reopening recommendations as proposed; Director Campbell seconded. Motion carried 5-0.*

**OSBA Policy Updates (Second Read)**

Mr. Emmert presented OSBA recommended policy updates to the Board for a second read and adoption.

*Director Adamson moved to adopt the OSBA policy updates as presented; Vice Chair Hekker seconded. Motion carried 5-0.*

**ADDITIONAL ITEMS FOR DISCUSSION** (7:41p.m.)

Chair Allen called for additional discussion items.

Chair Allen adjourned the meeting at 7:41 p.m.

Submitted by:

  
\_\_\_\_\_  
Christine Andregg  
Executive Assistant

  
\_\_\_\_\_  
Patrick Allen  
Board Chair



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## Superintendent's Report

Good evening,

I have a few things to share with you this evening that are different from what we have been spending so much time on recently, which has been reopening. Since our last Board meeting, I had the opportunity to meet with my Superintendent Student Advisory Team; as a reminder, that's the group of high school students who have been invited to meet with me on a regular basis. This was actually the first opportunity we have had to meet this year; we met via Zoom. It was absolutely the highlight of 2021 so far. We talked about challenges and we talked about bright spots in our lives. It was a wonderful reminder of why we do what we do.

I have also had the opportunity to be one of the featured speakers at a recent gathering of the All-Women's Superintendent Group; all of the women superintendents in the state gather in a group that was formed relatively recently. It was a great opportunity for doors to open around mentorship, and tending to/supporting women who are very new to the role, or others who are interested in pursuing that avenue in their career, ultimately. That same week, I also had the opportunity to meet with several Sherwood School District teacher leaders. These are leaders who have reached out to me at different times to engage in mentoring and coaching conversations, and it was a wonderful day when I got to meet with three of those staff members.

Entering into those conversations and taking the time to be present with others in that way has been a great reminder about how important it is to slow down and remember the things that are really important about helping others in this work that we do.

That concludes my report, thank you.

# Oregon State Board of Education

January 19, 2023

AGENDA ITEM: 3.G.

|   |   |
|---|---|
| <p><b>SUBJECT:</b> Division 22 Waiver – Oakridge School District</p> <p><b>STAFF NAME &amp; OFFICE:</b> Susan Payne, Office of Teaching, Learning, and Assessment</p> <p>Oakridge School District is requesting a waiver of the Division 22 Standard Required Instructional Time for the 2022-23 school year.</p> | <p><input type="checkbox"/> First Reading<br/><input type="checkbox"/> Presentation<br/><input type="checkbox"/> No<br/>Presentation</p> <p><input checked="" type="checkbox"/> Action<br/><input type="checkbox"/> Temp Rule<br/><input type="checkbox"/> Presentation<br/><input checked="" type="checkbox"/> No<br/>Presentation</p> |
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## BACKGROUND

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### Division 22 Standards

The State Board of Education has established educational standards every district must implement. Those standards are set forth in OAR Chapter 581, Division 22 (“Division 22 standards”). Districts are required to report their compliance with Division 22 standards to the district school board and submit assurances of their compliance to the Department.

Included in the Division 22 standards is [OAR 581-022-2320](#), which establishes the required minimum instructional hours per year.

Districts may apply for a waiver of a Division 22 standard under OAR 581-002-3035:

(1) Waiver of a specific standard: To address an immediate concern or need, a school district may petition the State Superintendent of Public Instruction for a waiver of a specific standard. A petition shall specify the reason(s) the district is seeking the waiver and other relevant information. If it is determined that the request conforms with the intent of the standards, the State Superintendent shall recommend the waiver to the State Board. Waivers under this provision may be granted for up to one year.

### Request for Waiver

Oakridge School District is requesting a one-year waiver of the Division 22 Standard Required Instructional Time [OAR 581-022-2320](#).

# Oregon State Board of Education

January 19, 2023

AGENDA ITEM: 3.G.

In the attached request, Superintendent Doland explains the impact of the September 2022 Cedar Creek fire on the Oakridge community and on the district calendar, resulting in the loss of five instructional days due to emergency school closures.

## **SUMMARY OF PREVIOUS BOARD ACTION**

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2021-22 school year: The State Board granted a waiver of OAR 581-022-2320 Required Instructional Time to the Centennial School District for the 2021-22 school year, because of school closures due to inclement weather and staff absences from COVID-19.

2020-21 school year: The Centennial School District was previously granted a waiver of OAR 581-022-2320 Required Instructional Time by the Board for the 2020-21 school year. A cybersecurity incident, fires, and inclement weather/power outages were all factors that led to unanticipated school closures.

The State Board also granted waivers of the Division 22 standard Required Instructional Time to the North Santiam, Oakridge, Paisley, Phoenix-Talent, and Pleasant Hill School Districts. These districts were primarily impacted by forest fire.

2017-18 school year: The State Board granted waivers of the Division 22 standard Required Instructional Time to Brookings Harbor School District, Central Curry School District, and Corbett School District. Brookings Harbor School District and Central Curry School District were impacted by the Chetco Bar fire; Corbett was impacted by the Eagle Creek Fire.

2016-17 school year: The State Board adopted a temporary rule that provided some flexibility to school districts dealing with the impact of unusual snow and ice storms that winter. The temporary rule allowed districts to request permission to count towards the instructional time requirement up to 14 hours for missed instructional time resulting from emergency school closures due to adverse weather conditions and facilities failures. Twenty-six districts were granted permission under this temporary rule.

2013-14 school year: The State Board granted a waiver of the Division 22 standard Required Instructional Time to David Douglas School District.

## **EFFECT OF A “YES” OR “NO” VOTE**

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If the Board approves the waiver, Oakridge School District will have a one-year waiver for the Division 22 Standard governing required instructional time. The district will not be required to meet the instructional time standard for the 2022-23 school year and the district will not be required to report “out of compliance” on the Division 22 Assurances to the district school board or to the Department.

# Oregon State Board of Education

January 19, 2023

AGENDA ITEM: 3.G.

If the Board does not approve the waiver, Oakridge School District will have to meet the instructional time standard or report to district school board and the Department that the district is out of compliance for the 2022-23 school year. If the district reports out of compliance, ODE will ask the district to submit a corrective action plan and demonstrate an ability to be back in compliance by the following school year.

## STAFF RECOMMENDATION

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Approve  Approve next month  No recommendation at this time  
**Prompted by:**  State law changes  Federal law changes  other

## ATTACHMENTS

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Attachment 1: Letter requesting waiver from Reta Doland, Superintendent of Oakridge School District



Oakridge School District #76  
47997 W. First St., Oakridge, OR 97463  
Phone (541)782-2813, FAX (541)786-2982  
[www.oakridge.k12.or.us](http://www.oakridge.k12.or.us)

December 30, 2023

Colt Gill, Director  
Oregon Department of Education  
255 Capitol Street NE  
Salem, Oregon 97310-2320

Re: Division 22 Standard [581-022-2320](#)

Director Gill,

Thank you for the support by both you and your staff during the Cedar Creek fire that impacted the Oakridge community in September 2022.

Due to evacuation from our community on September 9, 2022. I am very concerned about our lost instruction time for this school year, The Oakridge School District re-opened on September 19, 2022. In total, 5 instructional days were lost due to the impact of wildfires in our community.

At this time, I would like to request a waiver of the instructional hour standard 581-022-2320 due to our emergency school closure for the 202-2021 school year.

Please let me know if you need additional information. I look forward to hearing from you.

Respectfully,

*Reta Doland*  
Reta Doland  
Superintendent  
Oakridge School District

# Oregon State Board of Education

January 19, 2023

AGENDA ITEM: 3.H.

|   |   |
|---|---|
| <b>SUBJECT:</b> State Board of Education School Board Advisor Nomination<br><b>STAFF NAME &amp; OFFICE:</b> Corey Rosenberg, State Board of Education Administrator | <input type="checkbox"/> <b>First Reading</b><br><input type="checkbox"/> Presentation<br><input type="checkbox"/> No<br>Presentation<br><input checked="" type="checkbox"/> <b>Action</b><br><input type="checkbox"/> Temp Rule<br><input type="checkbox"/> Presentation<br><input checked="" type="checkbox"/> No<br>Presentation |
|---|---|

## BACKGROUND

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The State Board of Education Policy and Procedures Manual states in Policy Number 102 that each year, the board may elect to have board advisors. The Board of Education selects new or reappoints advisors on a yearly basis. Advisors serve a one-year term from July 1 through June 30 and may serve more than a single term and be re-elected for consecutive terms.

The Policy and Procedure manual, with the revisions adopted by the Board on November 19, 2020, calls for the nominations of five advisors: K-12 Administrator, K-12 Teacher, K-12 Student, K-12 Elected School Board Member and an Early Learning Advisor.

The School Board advisor needs to be currently serving as a local school board member and have an interest in serving as an advisor for one year; a commitment to attend board meetings and any special board functions; and a willingness to participate in policy discussions and policy deliberation.

A vote of the full board is required.

The following nomination is being made:

- Liliana Gomez, Hermiston School District Board of Directors

## SUMMARY OF PREVIOUS BOARD ACTION

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This position was previously held by Brandy Penner, or the Newberg School Board. This is the first time Liliana Gomez has been considered for this position.

## HAS THE RULE CHANGED SINCE LAST BOARD MEETING?

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# Oregon State Board of Education

January 19, 2023

AGENDA ITEM: 3.H.

- N/A; first read—hasn't been before board
- No; same as last month
- Yes – As follows:

## POLICY ISSUE OR CONCERNS

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The Oregon School Boards Association (OSBA) has previously submitted applicants for the schoolboard advisor position. This year, Board Leadership also considered Liliana Gomez as an external candidate, and ultimately chose to bring her forth for formal consideration by the Board.

## EQUITY IMPACT ANALYSIS

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The Board is focused on efforts to enhance equity, diversity, and inclusion policies and practices at the local school board level. Having the voice of a local school board member involved in board discussions and deliberations in these efforts is paramount to setting policy as well as establishing attainable expectations.

## FISCAL ANALYSIS

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Advisors are eligible for reimbursement of actual expenses incurred in attending board meetings and board-related activities, including mileage, meals and hotels.

## EFFECT OF A "YES" OR "NO" VOTE

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A yes vote confirms the appointment. A no vote leaves the board without a local school board member advisor, and the selection committee would need to propose an alternate for consideration at a future meeting.

## STAFF RECOMMENDATION

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- Approve    Approve next month    No recommendation at this time  
**Prompted by:**    State law changes    Federal law changes    other

## ATTACHMENTS

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Attachment 1: Liliana Gomez Letter of Interest

November 17, 2022

Oregon State Board of Education:

My name is Lili Gomez, a first-generation college graduate. I was born and raised in Hermiston and went through our district's K-12 public system. Growing up, I attended Head Start through the Migrant Education Program and was an ESL student up until middle school. I know first hand the power of ancillary programs aimed at meeting a student's needs. Special programs can make an impact on the quality of life not just for the student, but for their families and their community.

Service has always been a part of my life. I am employed as a public servant, and I am also a volunteer for many roles in my community. I was recently appointed to the school board for the Hermiston School District. Hermiston is the largest school district in Eastern Oregon, and in a community where our student body is more than 50% Latino students, I am the only person of color/Latinx voice on my school board. I ran for the board position during one of the most historically challenging times to run as a school board candidate with an equity focus, and lost in the May, 2021 election. Through community outreach, my skills, my platform, my accomplishments, and the community's outcry in support of more diverse representation on our board, I was eventually appointed to our school board last month after an equally contentious application process. I will be running for this same position in May, and hope to continue on the board to represent the voice of the largest and least represented demographic in the district. COVID-19 had enormous impacts on the well being of our students. I hope to work on several needs in our district such as socio-emotional learning and mental health, as well as equitable outcomes for our students of color.

I seek the advisory position to the Oregon State Board of Education because I know that my voice, a voice from a young woman from an underrepresented community in rural Eastern Oregon is needed. This past weekend I attended the OSBA Conference, and I walked away energized and empowered to continue to do the work I have always fought to do, to empower students, families and community members to see the value of a quality and equitable education for all of our students at our school district. Now more than ever it is crucial to include voices from all over our state with similar lived experiences as the many students in our districts. Representation matters at the state level as much as it does at the local level. I hope that my presence on my board inspires students, parents and other community members from our BIPOC communities to get involved, and see that they too can serve their community as a school board member, despite the disadvantages we faced through our educational journeys. I will continue to champion issues in education and in the Hermsiton community, and work for more representation from our communities of color.

# 2022-2025 State Board of Education Strategic Plan

*This strategic plan is designed as a living document, to be reviewed and revised periodically as the work continues in a rapidly changing environment. Substantive updates and opportunities to provide feedback will be offered at the annual August State Board of Education Retreat.*

## Mission, Vision, and Values

**Mission:** The Oregon State Board of Education works on providing equitable policies and practices that lead to the educational and life success of every Oregon student.

**Vision:** An aspirational education system that honors its increasingly diverse student body and affirms every student to reach their full potential in a rapidly shifting global environment.

### Values:

The Oregon State Board of Education dedicates itself to centering **diversity, equity, and inclusion** in the work, decisions, and actions that we take, in the service of every student in the state, their academic advancement and their lifelong success.

The Oregon State Board of Education dedicates itself to challenging the status quo and rendering an **innovative, creative, adaptable, and culturally responsive** curriculum that reflects the history and evolving demographics of our state's landscape. We value and commit to an equally dignified, holistic, and inclusive student experience.

The Oregon State Board of Education dedicates itself to sharing responsibility, aiming for every student's individual academic excellence, and providing life skills that allow students to develop **self-agency**. We value engaging historically excluded **community voice** and student experience. We value and distinguish the **sovereignty of tribal nations** and the responsibility to engage in consultation on key matters of policy.

The Oregon State Board of Education dedicates itself to conducting business with **integrity, transparency, and adaptability** as the basis for equitable student access and success in public education.

# 2022-2025 State Board of Education Strategic Plan

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## Goal 1: Ensure Student Safety, Belonging, and Holistic Wellness

**Strategy 1:** The State Board of Education fully supports Department initiatives that promote student safety, belonging, and holistic wellness, and seeks additional opportunities to advance these efforts.

**Activity 1:** The Board urges regular updates, close collaboration, and additional opportunities to support these teams on the development of new and amended rules and improvements:

1. The Board urges the Department to be bold in its development and implementation of Gender Expansive Student Guidance and related rule updates, and to center students in all efforts.
2. The Board urges the Division 22 team to be bold, to explore additional options for clear and enforceable agency oversight, and to develop a process and timeline for standards review with an equity lens.
  - a. The Board supports immediate efforts to ensure the Division 22 Assurances Process is agile, interactive, and rooted in equity.
  - b. The Board supports efforts to consider how Division 22 or similar authorities can be used to more responsively address discrimination and bigotry in Oregon’s school systems

**Strategy 2:** The State Board of Education seeks opportunities to promote and uplift stories that center students’ identity, agency, belonging, collaborative-problem solving, and curiosity.

**Activity 1:** The Board partners with the ODE Director to identify and amplify within Board meetings examples of students:

1. Learning and thriving in conditions that support their identity, belonging, agency, curiosity, and collaborative problem-solving. This includes:
  - a. Flourishing through full creative expression.
  - b. Achieving holistic student success.
  - c. Leading for climate action.
  - d. Advocating for racial justice.
2. Disrupting systems that interfere in the development of their identity, belonging, agency, curiosity, and collaborative problem-solving.

**Strategy 3:** The State Board of Education commits to cooperation on joint priorities that promote student safety, belonging, and holistic wellness in Oregon’s school systems.

## 2022-2025 State Board of Education Strategic Plan

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**Activity 1:** The Board partners with the ODE Director to advocate for increased investment, collaboration, and coordination between state agencies that serve the health and education needs of Oregon's students and contribute to the climate of Oregon school systems.

**Activity 2:** The Board advocates for Transformative Social Emotional Learning (SEL) in Oregon's school systems.

1. The Board works closely with the ODE Director to:
  - a. encourage school districts to create and support the conditions for learning and thriving at the school and district level when implementing SEL.
  - b. encourage the Department to continuously review, revise, and support conditions for learning and thriving at the state level when implementing SEL.
  - c. ensure that items before the Board include the impact of that item on the development of student identity, belonging, agency, curiosity, and collaborative problem-solving.

## 2022-2025 State Board of Education Strategic Plan

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### **Goal 2: Promote Responsive, High-Quality, and Equitable Educational Environments, Access, and Opportunities**

**Strategy 1:** The State Board of Education seeks opportunities to advance Department initiatives that promote responsive, high-quality, and equitable educational environments, access, and opportunities in Oregon’s school systems.

**Activity 1:** The Board urges regular updates, close collaboration, and additional opportunities to support these teams on the development of new and amended rules and improvements.

1. The Board supports and is encouraged by the Department’s efforts to intentionally and sustainably align school improvement efforts and consolidate grants and organizational processes.
  - a. The Board supports and seeks regular updates on the implementation of the Department’s Integrated Guidance.
  - b. The Board participates in an informational presentation on “performance frameworks” within the Integrated Guidance, including Longitudinal Performance Growth Targets, progress markers, and local optional metrics.
2. The Board urges the Tribal History | Shared History team to be bold, and supports continued efforts to implement Tribal History | Shared History curriculum within schools.
  - a. The Board participates in an informational presentation on the implementation of the Tribal History | Shared History curriculum.
  - b. The Board partners with the ODE Director to explore other avenues of support for the implementation of the Tribal History | Shared History curriculum.
3. The Board supports and is encouraged by the Department’s efforts to center the social, physical, emotional, and intellectual development of students in our state assessment system.
  - a. The Board supports and seeks regular updates from the Assessment Team’s Rehumanizing Assessment effort to:
    - i. build understanding of and familiarity with the full, broad spectrum of activities that are included with the term “assessment” within educational contexts, as well as with Oregon’s state assessment system and resources,
    - ii. bring visibility and understanding to tools, practices, and professional learning resources developed by the Department to support balanced approaches to assessment; and,

## 2022-2025 State Board of Education Strategic Plan

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- iii. support district and public awareness of the different roles that assessments of and for learning play in Oregon's education systems.
- b. The Board explores other avenues of support, including the use of an OpEd or resolution, to better illustrate the complementary role that different assessment practices serve - and that no single assessment practice or approach can answer all educational questions.
- c. The Board provides thought leadership and insight into next stages of development.

### **Strategy 2:** The State Board of Education commits to cooperation on joint priorities that ensure adequate representation in Oregon's school systems

**Activity 1:** The Board partners with the ODE Director to ensure that Oregon's students are able to connect with and identify themselves in adopted instructional materials.

1. Board leadership partners with the ODE Director to review the policies that govern the adoption process for standards and instructional materials and identify opportunities to support and center underrepresented perspectives.
2. The Board partners with the ODE Director to advocate for the adoption of instructional materials for bilingual programs.
3. The Board supports all efforts to ensure instructional materials are accessible according to the National Instructional Materials Accessibility Standards (NIMAS) and Web Content Accessibility Guidelines (WCAG).

**Activity 2:** The Board partners with the ODE Director to advocate for an Instructional Materials system that is sustainable, equitable, and representative of the students it serves.

1. The Board partners with the ODE Director to advocate for expanded opportunities for disadvantaged, minority owned, woman owned, service disabled veteran owned, and emerging small businesses to submit instructional materials for consideration and adoption.
2. The Board partners with the ODE Director to advocate for additional Department capacity to support a thorough review and recentering of the instructional materials evaluation and adoption process, focusing on the needs of Oregon's students.
  - a. The Board advocates for the exploration of alternative submission methods.
  - b. The Board advocates for instructional materials evaluation committees that represent the diversity of Oregon's students.
  - c. Instructional materials adopted at both the state and local level include sufficient instruction on the histories, contributions, and perspectives of underrepresented peoples, and that teachers and administrators receive proper support with implementation of high-quality instructional materials.

## 2022-2025 State Board of Education Strategic Plan

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**Activity 3:** The Board partners with the ODE Director to support the implementation of Ethnic Studies integrated Social Science Standards for all of Oregon’s public elementary and secondary schools.

1. The Board partners with the ODE Director to advocate for the support and high-quality training needed for educators to successfully implement newly adopted ethnic studies content standards for K-12 Social Science.

**Strategy 3:** The State Board of Education commits to cooperation on joint priorities that promote responsive, high-quality, dual language integration in Oregon’s school systems.

**Activity 1:** The Board partners with the ODE Director to advocate for the advancement of compulsory dual language immersion programs statewide, as part of a multi-year Strategic Plan for Multilingual Learner Success.

1. Board leadership works closely with the ODE Director to identify the costs and benefits of dual language immersion programs, starting in districts with a substantial number of same-grade English-learners from the same language background.
2. The Board works closely with the ODE Director to advocate for a statewide inventory of:
  - a. bilingual programs, including student profiles and program type.
  - b. bilingual teachers by content area and endorsement.
3. The Board works closely with the ODE Director to develop a strong vision for the expansion of dual language immersion programs as a critical element for ensuring educational equity in Oregon’s school systems.
4. Board leadership works closely with the ODE Director and the Multilingual and Migrant Education team to support the development of a multi-year Strategic Plan for Multilingual Learner Success.
5. The Board encourages the review and revision of relevant Oregon Administrative Rules that contribute to the inequitable experiences of Multilingual Learners.
6. The Board explores other avenues of support, including the use of an OpEd or resolution, for advancing compulsory bilingual education in Oregon’s school systems.

# 2022-2025 State Board of Education Strategic Plan

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## Goal 3: Incorporate Authentic and Equitable Student & Community Engagement

**Strategy 1:** The State Board of Education fully supports Department initiatives that promote authentic and equitable student and community engagement in Oregon’s school systems, and seeks additional opportunities to advance these efforts.

**Activity 1:** The Board supports and is encouraged by the Department’s use of advisory groups to further incorporate diverse voices and perspectives into the rulemaking process.

1. The Board participates in an informational presentation on the Department’s Student Success Plans, relevant Advisory Groups, and the roles they play in the development of items that come before the Board.
2. The Board partners with the ODE Director to advocate for the establishment of the:
  - a. Native Hawaiian/Pacific Islander Student Success Plan.
  - b. Refugee and Immigrant Student Success Plan.

**Activity 2:** The Board actively promotes public comment opportunities and the inclusion of historically underserved voices in the development and review of Board items.

1. Items before the Board center potential impacts to historically underserved student populations.
2. The Board promotes opportunities for and directly solicits public comment from underserved communities, partnering with culturally specific and community based organizations and other statewide entities to publicize Board meetings and opportunities to provide comment.
3. The Board partners with the ODE Director to determine the costs and benefits of proactive translation of Board materials.
4. The Board uses and encourages presenters to use plain language when sharing their hopes, fears, and perspectives on Board items, naming student impacts and real world application.

**Strategy 2:** The State Board of Education commits to cooperation on joint priorities that incorporate authentic and equitable student and community engagement in Oregon’s school systems.

**Activity 1:** The Board embraces student agency and advocates for the integration of authentic student voice in Oregon’s school systems.

**Activity 2:** The Board advocates for the recruitment, hiring and retention of educators that reflect the racial and linguistic diversity of Oregon’s students.

## 2022-2025 State Board of Education Strategic Plan

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1. The Board offers suggestions and partnership in the pursuit of voting student members of both local school boards and the State Board of Education.
2. The Board offers support for systems that champion youth and student leadership and engagement in statewide policymaking processes.
3. The Board explores other avenues of support, including the use of an OpEd or resolution, to advocate for meaningful engagement opportunities between students and staff.

1. The Board partners with the Educator Advancement Council to monitor school district and education service district progress on meeting the goals of ORS 342.437.
2. The Board partners with the ODE Director to identify and adopt any Oregon Administrative Rules updates that assist in meeting the goals of ORS 342.427.
3. The Board explores other avenues of support, including the use of an OpEd or resolution, to advocate for increased support to Oregon’s educators.

**Activity 3:** The Board advocates for community engagement and a focus on equity when discussing safety in Oregon’s school systems.

1. The Board partners with the ODE Director to ensure that community engagement and voice are centered in discussions regarding the role of school resource officers in Oregon’s school systems.
  - a. The Board offers suggestions and partnership in the development of any legislative concepts related to school resource officers, and supports research into options and alternatives that are rooted in equity.
  - b. The Board explores other avenues of support, including the use of an OpEd or resolution, for community engagement and careful consideration of the role of school resource officers in Oregon’s school systems.
2. The Board partners with the ODE Director to ensure that comprehensive district plans on student suicide prevention for students in kindergarten through grade 12 are available and accessible to local communities.
3. The Board partners with the ODE Director to ensure that each school district has access to a Behavioral Safety Assessment team.
4. The Board partners with the ODE Director to ensure that Behavioral Safety Assessments used in local districts are an effective tool to identify, assess, and prevent acts of violence or harm to students, staff and the school community.

**Activity 4:** The Board partners with the ODE Director to advocate for the realization of the Community-Informed Recommendations for Equitable Graduation Outcomes.

1. Board leadership works closely with the ODE Director to determine which recommendations can be enacted by the Department currently, and which require additional partnership to achieve.
2. Board leadership works closely with the ODE Director and legislative sponsors to convene a work group to discuss potential next steps, centering community voice and engagement.
3. The Board works with the ODE Director to support a legislative concept that assists in updating graduation requirements and implementing the next generation of the Oregon Diploma.
4. The Board explores other avenues of support, including the use of an OpEd or resolution, to champion the role of

## 2022-2025 State Board of Education Strategic Plan

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community engagement and voice in moving this body of work forward.

**Strategy 3:** The State Board of Education honors and respects tribal sovereignty, the perspectives of Oregon’s First Nations and listens to Indigenous voices.

**Activity 1:** The Board partners with the ODE Director to ensure that Indigenous voices inform the Board.

1. The Board promotes opportunities for and directly solicits public comment from Indigenous Oregonians.
  - a. The Board partners with culturally specific and community based organizations, the nine federally recognized tribes, and other statewide entities to publicize Board meetings and opportunities to provide comment.

**Activity 2:** The Board seeks training opportunities regarding the history and experiences of Indigenous Oregonians.

1. Board members are sufficiently knowledgeable of the legal status of tribes, the legal rights of members of tribes and issues of concern to tribes.

**Activity 3:** The Board fully supports the Department’s efforts to engage tribal officials and tribal representatives in regular and meaningful consultation, collaboration, and communication on actions which may have tribal implications.

# Oregon State Board of Education

January 19, 2023

AGENDA ITEM: 5.A.

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| <p><b>SUBJECT:</b> Acceptance of credits earned in educational programs as required by Senate Bill 1522. Amendment of OAR 581-021-0210.</p> <p><b>STAFF NAME &amp; OFFICE:</b> Office of Enhancing Student Opportunities</p> <p>Currently districts must evaluate student’s transcripts under their own policies and procedures to determine what, if any, credits they will accept from educational programs under OAR 581-021-0210 which leads to inequities in which credits are accepted. This rule amendment requires school districts accept credits earned in Oregon from Youth Corrections Educational Programs (YCEP), Juvenile Detention Education Programs (JDEP), Long Term Care &amp; Treatment facilities, as well as hospital education programs, known collectively as educational programs. This change is required by sections 5 &amp; 6 of Senate Bill 1522 (2022).</p> <p><input type="checkbox"/> New Rule<br/><input checked="" type="checkbox"/> Amend Existing Rule<br/><input type="checkbox"/> Repeal Rule</p> | <p><input checked="" type="checkbox"/> <b>First Reading</b><br/><input checked="" type="checkbox"/> <b>Presentation</b><br/><input type="checkbox"/> <b>No Presentation</b></p> <p><input type="checkbox"/> <b>Action</b><br/><input type="checkbox"/> <b>Temp Rule</b><br/><input type="checkbox"/> <b>Presentation</b><br/><input type="checkbox"/> <b>No Presentation</b></p> |
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## BACKGROUND

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Include the following points for new OARs, OAR updates or changes.

1. History:
  - a. What prompted the rule (why do we have it?) State law? Federal law? Incident? Why are changes/amendments being proposed?
    - i. SB 1522 was passed in 2022, which directed the department to make these updates.
  - b. What is the current requirement in rule or statute?
    - i. Currently districts must evaluate student’s transcripts under their own policies and procedures to determine what, if any, credits they will accept from educational programs under OAR 581-021-0210.
  - c. Why is this rule being brought forward right now?
    - i. In order to fulfill the requirements of SB 1522 as well as to ensure that all of the credits students earn in Oregon educational programs are honored.
2. Purpose
  - a. What function does the current rule hold?
    - i. The current rule prescribes requirements for the acceptance of credits as well as the evaluation of credits for acceptance.
  - b. How long has the rule been in place?
    - i. The rule has been in place since 1993 and was last updated in 2010, with minor corrections in 2019 and 2022 to correct statutory or rule references.
3. Does the board have any areas of discretion or is this strictly mirroring statute?

# Oregon State Board of Education

January 19, 2023

AGENDA ITEM: 5.A.

- a. If the board does have discretion, those areas should be called out here or in the next section.
  - i. The language largely mirrors statute, but the Board has discretion on expanding the requirements for acceptance of credits from additional programs. For example, the rule could be expanded to require the acceptance of credits from out of state educational programs as well as in state programs.
4. Stakeholder voice/input (individual and collective i.e., groups)
  - a. Who was involved in bringing this to the Board?
    - i. ODE reached out to a wide range of stakeholders to get their input, through multiple methods. In particular, our outreach focused on principals, counselors, registrars, staff in YCEP, JDEP, LTCT, and Hospital programs as well as the families and students who participated in these programs and were impacted by this rule.
  - b. What did engagement in this process entail?
    - i. In addition to the Rules Advisory Committee, the engagement process included a statewide survey open to all respondents as well as engagement sessions targeted at both staff and professionals who support the evaluation of transcripts for transfer students as well as the families, caregivers, and students who have experienced YCEP, JDEP, LTCT, and Hospital programs.
  - c. Who may be affected by this?
    - i. The engagement indicated students will be impacted by this update as their credits earned in YCEP, JDEP, LTCT, and Hospital programs were often only counted as elective credit, which can delay their progress towards graduation or even derail it. With this update, students' progress toward graduation will not be impeded by a transfer back to a standard school district program from a YCEP, JDEP, LTCT, and Hospital program.
  - d. Whose voice is missing?
    - i. While we would love to hear from more students to ensure the wide range of their voices were thoroughly captured, there are limitations to our ability to access a large number of students who have experienced these programs.
  - e. What additional information does the Board need prior to moving forward?
    - i. None noted.

## SUMMARY OF PREVIOUS BOARD ACTION

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1. Has this been before the board before? If so, what action did the board take?
  - a. This has not been before the board yet.

## HAS THE RULE CHANGED SINCE LAST BOARD MEETING?

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X N/A; first read—hasn't been before board

No; same as last month

Yes – As follows:

# Oregon State Board of Education

January 19, 2023

AGENDA ITEM: 5.A.

## POLICY ISSUE OR CONCERNS

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These policy issues or concerns could be from the field, stakeholder groups, statements submitted during the comment period, or discussions among ODE staff. Consider the following questions:

1. Stakeholders
  - a. How have you intentionally involved stakeholders who are also members of communities affected by this rule?
    - i. Our outreach in community engagement particularly targeted staff, parents, caregivers, families and students who had experienced YCEP, JDEP, LTCT, and/or Hospital Programs.
  - b. Who are the historically underserved groups affected?
    - i. Students in YCEP, JDEP, LTCT, and Hospital programs are disproportionately likely to be from focal student groups, including BIPOC students, students experiencing disability, and students from low income backgrounds and are therefore disproportionately likely to be impacted by the acceptance of transfer credits.
  - c. Has there been consultation or collaboration with tribes in this rule change or policy decision?
    - i. No official tribal consultation was conducted.
  - d. How has the Oregon Department of Education modified or enhanced the rule change or policy decision to address the needs of historically underserved communities?
    - i. ODE specifically chose the updated rule language to honor the efforts of students and place the credits earned in YCEP, JDEP, LTCT, and Hospital programs as equivalent to the credits earned in standard school district programs.
2. Negative/Positive Effects
  - a. What is the impact on the population most affected by this rule that the board should consider?
    - i. The engagement indicated students will be impacted by this update as their credits earned in YCEP, JDEP, LTCT, and Hospital programs were often only counted as elective credit, which can delay their progress towards graduation or even derail it. With this update, students' progress toward graduation will not be impeded by a transfer back to a standard school district program from a YCEP, JDEP, LTCT, and Hospital program.
  - b. What possible opportunities, assets or access could this rule provide?
    - i. This may increase the number of students who attend YCEP, JDEP, LTCT, and Hospital programs that achieve a high school diploma and it may increase their rate of on time graduation as well.
  - c. What is the impact on eliminating the opportunity or achievement gap?
    - i. If the expected increase in graduation rates and on time graduation rates are seen, this would impact the opportunity gap for those students.
  - d. Have all the potential unintended consequences been considered?
    - i. No additional unintended consequences were identified.

# Oregon State Board of Education

January 19, 2023

AGENDA ITEM: 5.A.

- e. Does this rule advance the ESSA goals?
  - i. Yes, by making the path to graduation more equitable and achievable for students who attend YCEP, JDEP, LTCT, and Hospital programs.
- 3. What are the barriers to more equitable outcomes, either:
  - a. State or federally mandated? N/A
  - b. Political? N/A
  - c. Emotional? N/A
  - d. Financial? N/A
  - e. Programmatic? N/A
  - f. Language? N/A
  - g. Geography? N/A
  - h. Size? N/A

## EQUITY IMPACT ANALYSIS

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The following questions are designed to examine how the proposed rule, policy or action systematically affect historically underserved students and/or communities.

1. How are historically underserved populations impacted by this docket item?

Students in YCEP, JDEP, LTCT, and Hospital programs are disproportionately likely to be from focal student groups, including BIPOC students, students experiencing disability, and students from low income backgrounds and are therefore disproportionately likely to be impacted by the acceptance of transfer credits.

- a. Demonstrate how the rule changes, policy, or action could produce other unintended consequences not listed in the docket.

No other unintended consequences were identified.

- b. Refer to *Policy Issue or Concerns* and identify the historically underserved populations affected. Conduct a reflection and examination, which will and should answer 1a.

2. Examine the impact of the rule changes, policy, or action on historically underserved populations in Oregon. Describe this ongoing and/or foreseeable impact, using as much detail as possible.

Students who have been in a YCEP, JDEP, LTCT, and Hospital program will be impacted by this update as their credits earned in YCEP, JDEP, LTCT, and Hospital programs were often only counted as elective credit, which can delay progress towards graduation or even derail it. With this update, students' progress toward graduation will not be impeded by a transfer back to a standard school district program from a YCEP, JDEP, LTCT, and Hospital program as the credits that they earned in that program must be counted towards both core and elective credits as appropriate.

# Oregon State Board of Education

January 19, 2023

AGENDA ITEM: 5.A.

3. Explain how the rule change, policy or action works toward improving achievement, opportunities and a sense of worthiness for underserved students?

This may increase the number of students who attend YCEP, JDEP, LTCT, and Hospital programs that achieve a high school diploma and it may increase their rate of on time graduation as well. If the expected increase in graduation rates and on time graduation rates are seen, this would impact the opportunity gap for those students.

## FISCAL ANALYSIS

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What is the fiscal impact of the proposed rule changes to the Department of Education, school districts, education service districts or schools? Use the following suggestions as a guide:

1. How does the proposed rule fit within the budget of the agency?

There is no anticipated impact on ODE's budget for this rule change.

- a. Which units/divisions/offices will be impacted and how?
  - i. N/A
2. How does the proposed rule change impact school districts and ESDs?
  - a. School districts and ESDs will need to update their
3. How does the proposed rule change impact schools and other educational institutions?
  - a. Schools that have their
4. Does the proposed rule change impact other stakeholders?
  - a. This will create less work for families, caregivers, and students who experience JDEP, YCEP, LTCT, and Hospital programs.

## EFFECT OF A "YES" OR "NO" VOTE

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Explain the consequences of a Board approving or not approving the staff recommendation.

If the Board does not approve this rule update, ODE will be out of compliance with SB 1522 and students' earned credits will not be required to be honored when they transfer back to a standard school district.

## STAFF RECOMMENDATION

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Approve  Approve next month  No recommendation at this time

**Prompted by:**  State law changes  Federal law changes  other

## ATTACHMENTS

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Attachment 1: OAR 581-021-0210 Revised Language 112322

## 581-021-0210

### **Evaluating Student Transcripts**

When evaluating student transcripts, the school district shall:

(1) Accept credits and attendance completed in educational programs in this state standard Oregon schools as if they had been earned in the enrolling district consistent with OAR 581-022-2025;

(2) As used in this rule, “educational programs in this state” means an educational program that is:

(a) Provided by a school district, a public charter school, an education service district, the Youth Corrections Education Program or the Juvenile Detention Education Program in Oregon; or

(b) Funded as provided by ORS 343.243 for students in a long term care or treatment facility described in ORS 343.961 or a hospital identified in ORS 343.261;

~~(32)~~ For out-of-state transfer students, accept credits and attendance completed in standard secondary schools as if the requirements had been completed in this state consistent with OAR 581-022-2025;

~~(43)~~ For transfer students who are dependents of an active duty or deployed member in the uniformed service of the United States, accept credits and attendance as if the requirements had been completed in this state consistent with OAR 581-022-2025.

(a) For purposes of this rule, “active duty” means full-time duty status in the active uniformed service of the United States, including members of the National Guard or the military reserve forces who are on active duty orders pursuant to 10 U.S.C. 1209 and 1211 or 32 U.S.C. 502(f) Active Guard/Reserve status.

(b) For purposes of this rule, “deployed” means that period of time spanning one month prior to a service member’s departure from his or her home station on military orders through six months after return to his or her home station.

~~(54)~~ For students from private, alternative, or nonstandard public secondary schools:

(a) Determine the value of prior credits consistent with OAR 581-022-2025; and

(b) Determine the number of years of school attendance or equivalent.

~~(65)~~ Determine placement for students enrolled in kindergarten through grade 8;

~~(76)~~ Determine the value of credits obtained through home school-based courses, on-line or other distance learning methods in meeting the graduation requirements consistent with OAR 581-022-2025; and

(87) Determine the value of credits obtained in approved community college programs in meeting graduation requirements consistent with OAR 581-022-2025.

**Statutory/Other Authority:** ORS 326.051

**Statutes/Other Implemented:** ORS 326.051 & 326.565

**History:**

[ODE 44-2022, minor correction filed 08/25/2022, effective 08/25/2022](#)

[ODE 143-2019, minor correction filed 09/25/2019, effective 09/25/2019](#)

ODE 15-2010, f. & cert. ef. 11-15-10

EB 5-1994, f. & cert. ef. 4-29-94

EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93



# Update to OAR 581-021-0210

Permanent Rules - 1st Read

Presentation to the State Board of Education

January 19, 2022

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# Senate Bill 1522 (2022); Sections 5 & 6



During the 2022 short session, Section 5 & 6 of Senate Bill 1522, effective March 23, 2022, requires school districts accept credits earned in Oregon from:

- Youth Corrections Educational Programs (YCEP),
- Juvenile Detention Education Programs (JDEP),
- Long Term Care & Treatment facilities (LTCT),<sup>91</sup>
- Hospital education programs.

As a result, ODE must update OAR 581-021-0210 to align with the new requirements.

# Problem of Practice

- Currently, districts must evaluate student transcripts under their own policies and procedures to determine what, if any, credits they will accept from certain educational programs in Oregon (OAR 581-021-0210).
  - This includes Youth Corrections Educational Programs (YCEP), Juvenile Detention Education Programs (JDEP), Long Term Care & Treatment facilities (LTCT), as well as hospital education programs.
- This differs from credits earned at standard school district programs, which must be accepted as if they had been earned in the enrolling district.

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# Proposed Changes for Permanent Oregon Administrative Rules (OARs)

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# Proposed OAR Change: 581-021-0210

“...When evaluating student transcripts, the school district shall:

**(1) Accept credits and attendance completed in ~~standard~~ educational programs in this state Oregon schools as if they had been earned in the enrolling district consistent with OAR 581-022-1131;**

**(2) As used in this rule, “educational program in this state” means an educational program that is:**

**(a) Provided by a school district, an education service district, a public charter school, the Youth Corrections Education Program, or the Juvenile Detention Education Program; or**

**(b) Funded as provided by ORS 343.243 for students in a long term care or treatment facility described in ORS 343.961 or a hospital identified in ORS 343.261;...”**

# Community Engagement Activities

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## Virtual Engagement Sessions

- Coalition of Oregon School Administrators (COSA)/Oregon Association of Central Office Administrators (OACOA)
- JDEP/YCEP monthly meeting
- LTCT monthly meeting
- Hospital Programs monthly meeting
- Open Invitation Session

## Additional Targeted Engagement

- Anonymous Feedback Survey
  - Counselors
  - Principals
  - Registrars
  - FACT Oregon
  - State Advisory Council for Special Education (SACSE)
- JDEP, YCEP, LTCT, Hospital programs staff

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## Feedback Received

**Many of our youth are very mobile and not getting credit for work they have accomplished is a deterrent to their graduation goals.** Many times this mobility is not in their control as their family may have to move frequently changing schools or they may be in state custody and their placements can often change making them move schools frequently.

This would give students confidence that the work they put in at one school/program will be recognized wherever they enroll next. **This will not punish students for things that are outside of their control --** specifically, the school/program they attend.

**It implies that all good school work counts no matter where you are.** Students that have overcome hurdles aren't faced with another unintended one of credit deficiency.

Students in various programs sometimes think that their work doesn't count. This is proof that it does --- which is incredibly motivating. **It also increases the likelihood of the youth staying on track or getting back on track.**

We offer credits in LTCT and this should be the case <sup>96</sup> throughout Oregon in my opinion. **They are doing work and should reap the benefits.** Also, credits are motivating for engagement for some students.



# Questions?

We appreciate your time & consideration.

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# Special Education Evaluation & Eligibility OAR Updates

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Kara Nystrom Boulahanis, Senior Policy Strategist  
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# Background

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- In 2019, the Oregon legislature passed Senate Bills (SB) 13 & 16, which required updates to:
  - the names of eligibility categories, and
  - the requirements for medical/health examinations as well as audiological and visual assessments.
- Both SB 13 and SB 16 were designed to address barriers to special education eligibility and access.
- Updates to 13 different OARs are necessary to implement these legislative requirements.



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# Why are updates being requested now?

- During 2019 - 2020, ODE lead a community engagement process to guide rule development based on the legislative requirements and requested updates.
- This process targeted a limited array of stakeholders and resulted in a broad slate of recommended changes.
- In addition to the required changes, the updates incorporated existing Early Intervention (EI) and Early Childhood Special Education (ECSE) requirements into the existing school age eligibility and evaluation OARs.
- Based on this process, two OARs were completely revised in March 2020:
  - OAR 581-015-2150: Deaf or Hard of Hearing 100
  - OAR 581-015-2175: Traumatic Brain Injury
- Prior to making any further updates, additional engagement types were requested from ODE.



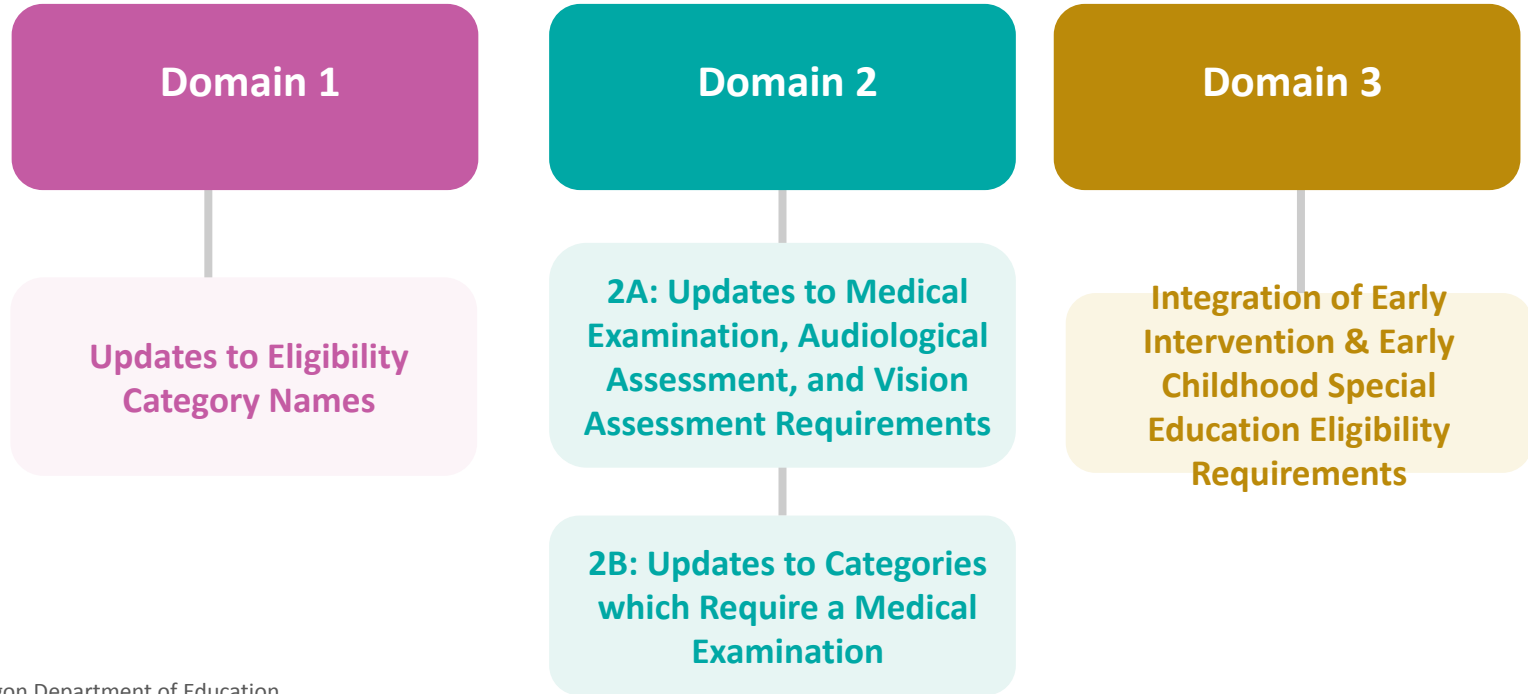
# Why are updates being requested now?

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- In Summer 2022, ODE determined it was necessary to complete the updates required by SBs 13 & 16 and resumed the OAR revision project.
- ODE decided to move a streamlined series of changes forward to community engagement.
- **The updated language was designed to address the legislative requirements, streamline the requirement for a medical examination, and integrate EI and ECSE standards into the current school age OARs. All current eligibility and evaluation criteria remain the same.**
- **This language was designed to provide a common frame for each OAR, upon which we can create additional updates in the future, in collaboration with each disability specific community, their partners, and stakeholders.**

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# Overview of Proposed Changes



# Requested OAR Updates

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Therefore, ODE is seeking to update the following administrative rules:

1. [OAR 581-015-2000 \(Definitions\)](#)
2. [OAR 581-015-2127 \(Developmental Delay\)](#)
3. [OAR 581-015-2130 \(Autism Spectrum Disorder\)](#)
4. [OAR 581-015-2135 \(Communication Disorder\)](#)
5. [OAR 581-015-2140 \(Deafblindness\)](#)
6. [OAR 581-015-2145 \(Emotional Disturbance\)](#)
7. [OAR 581-015-2150 \(Deaf or Hard of Hearing\)](#)
8. [OAR 581-015-2155 \(Intellectual Disability\)](#)
9. [OAR 581-015-2160 \(Orthopedic Impairment\)](#)
10. [OAR 581-015-2165 \(Other Health Impairment\)](#)
11. [OAR 581-015-2170 \(Specific Learning Disability\)](#)
12. [OAR 581-015-2175 \(Traumatic Brain Injury\)](#)
13. [OAR 581-015-2180 \(Visual Impairment\)](#)

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If passed by the State Board of Education, ODE plans to implement the updated rule requirements beginning August 1, 2023.



# Community Engagement Process

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# Engagement Activities Completed

- 3 Engagement Sessions were held (after work hours, during lunch hours, and before work hours)
  - Our outreach focused on special education directors, school based special education evaluation staff, special and general educators, education partners, as well as families and students who experience special education.
  - Over 125+ people attended across all three sessions and provided incredibly helpful feedback and suggestions on our draft rules.
- A survey was distributed widely, including to attendees of the engagement sessions. 105
- ODE attended the Oregon Commission on Autism Spectrum Disorder Committee on Screening and Eligibility and received feedback on January 13, 2023.

# Ongoing Engagement Activities

- In addition to today's session, ODE intends to continue gathering feedback on these rule changes throughout January and February.
  - Following the community engagement sessions held in December, ODE reached out to all attendees to provide revised draft language and request their input on the updates made in response to community engagement. This survey will remain open until 2/1/23.
  - ODE will host an Oregon Educators Association (OEA) special education committee engagement session in February 2023.
  - ODE will host an additional hearing for public comment on February 7, 2023.
  - ODE will also engage with the State Board of Education at the January 19, 2023 meeting.

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# Engagement Feedback on Required Updates

- Attendees were in favor of the updates to the names of categories, with particular appreciation for the update to emotional disturbance.
  - However, the update from Autism to Autism Spectrum Disorder was noted to be a move toward pathologizing and away from the community preferred term. Unfortunately, this nomenclature update is required by SB 13.
- Similarly, there was deep appreciation for the updates to the medical examination and addition of audiological and vision assessment options.
  - Repeatedly attendees shared how these statements acted as an unnecessary barrier to eligibility, particularly for the categories that will no longer mandate a medical examination as part of an initial or reevaluation.
  - Specifically, the lack of bilingual medical providers as well as the lack of medical providers generally in rural communities acts as a barrier to eligibility for many families, particularly families who are historically and/or currently underserved.

# Engagement Feedback on Proposed Integration

- Attendees expressed an appreciation for the integration of EI and ECSE standards into school age conceptually and found it would be useful particularly for children transitioning between EI, ECSE, and school age services.
  - However, it was also noted by some that the drafts shared during community engagement were difficult to consume due to a number of factors, including:
    - the formatting included redundant language, and
    - the proposed language significantly increased the length and complexity of the OARs, which decreased readability.
- Based on this feedback, we revised the draft OARs to decrease the length while increasing the readability of the rules. <sup>108</sup>
- Given these updates, ODE is continuing engagement activities on this rule, including providing the updated language to all community engagement attendees.

# Other Engagement Feedback

- Additional considerations were also identified, including
  - confusion between the OAR language and the use of ODE standard eligibility form;
  - the need for additional updates, beyond those included in the scope of the draft rules proposed today, including the need to increase the cultural responsiveness of the eligibility and evaluation process;
  - the need for student information systems to be updated to reflect the new OAR language; as well as,
  - the need for implementation supports such as guidance on eligibility and evaluation requirements and best practices.

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# Planning Our Pathway

Supporting the implementation of Senate Bill 13 & 16 (2019)

## Fall 2022 - Community Engagement

A broad community engagement process was completed including virtual engagement sessions as well as a survey.

## Summer 2022 – Relaunch

OESO staff determined it was necessary to complete the updates required by SB 13 & 16, reviewed prior engagement information, and developed draft language.

## Fall 2023 - Implementation

ODE will implement the rules on August 1st, 2023, and will provide implementation supports including guidance.

## Winter 2023 - Rule Revision

ODE will seek to update the rules necessary to be substantially in alignment with SBs 13 & 16 by March 2023. Additional updates to ensure alignment within and across divisions will follow.



# Questions?

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We appreciate your time & consideration.

111

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# Overview of Proposed Changes: Color Coding/Bullet Formatting

**Green** = Proposing to add **new** language

**Yellow** = **Revising** existing language

**Red** = **Removing** language entirely

- to be completed
- ✓ already in OAR

# Domain 1: Updates to Eligibility Category Titles

- to be completed
- ✓ already in OAR

## Language Updates Already in OAR:

- ✓ “deaf or hard of hearing” replaced “hearing impairment”;
- ✓ “deafblindness” replaced “deaf-blindness”;
- ✓ “orthopedic impairments”; and, “other health impairments” were called out as separate conditions; and,
- ✓ “autism spectrum disorder” replaced “autism”

## Language Updates to be Completed:

- “speech or language impairment” will replace “communication disorder”
- “emotional behavior disability” will replace “emotional disturbance”;

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# Domain 2A: Updates from SB 16

- Updates the language from **medical/health assessment statement** to **medical examination**.
- Expands individuals who will be able to complete a medical examination to include:
  - A physician licensed under ORS chapter 677 or by the appropriate authority in another state;
  - A naturopathic physician licensed under ORS chapter 685 or by the appropriate authority in another state;
  - A nurse practitioner licensed under ORS 678.375 to 678.390 or by the appropriate authority in another state; or
  - A physician assistant licensed under ORS 677.505 to 677.525 or by the appropriate authority in another state.
- Adds a **vision assessment** given by a **licensed optometrist** or by a **physician who specializes in ophthalmology** to the options for eligibility assessment.
- Adds an **audiological assessment** given by a **licensed audiologist** to the options for eligibility assessment.

# Domain 2B:

## Updates to Required Medical Examinations

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Seven (7) categories continue to require a medical or vision examination, and/or an audiological assessment as part of an initial or re-evaluation:

- Autism Spectrum Disorder
- Deafblindness
- Deaf or Hard of Hearing
- Orthopedic Impairment
- Other Health Impairment
- Traumatic Brain Injury\*
- Visual Impairment

Five (5) categories may require a medical examination as part of an initial or re-evaluation.

Three which already do not require it:

- Developmental Delay
- Specific Learning Disability
- Speech or Language Impairment\*\*

ODE is proposing to remove the requirement from two rules: 115

- Intellectual Disability
- Emotional Disability

*\*Under specific circumstances, a guided credible history statement may be substituted for a medical examination for*

*TBI* Oregon Department of Education

*\*\*Speech or language impairment retains the existing requirement for a medical exam for a voice disorder and an optional exam for all other concerns*

## Domain 3: EI-ECSE Integration

- In Oregon, special education eligibility is divided into three age ranges:
  - Early Intervention (EI): birth to 3;
  - Early Childhood Special Education (ECSE): 3 to 5; and
  - School Age special education: 5 to 21.
- EI, ECSE, and School Age special education each operate under their own rules and requirements, however many are similar or overlapping.
  - EI offers more limited eligibility options than ECSE and school age, which offer identical eligibility options.
- Current OARs do not provide a single location to determine EI and ECSE eligibility information, which can create confusion for practitioners and families.

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## Domain 3: EI-ECSE Integration

Early Intervention and Early Childhood Special Education (EI/ECSE) is included alongside school age special education in applicable eligibility categories to support:

- **Oregon's seamless system** for children and students who experience disabilities
- **IDEA Part B provisions** and requirements which apply to children and students with disabilities ages 3–21
- **The full continuum of eligibility** for each categorical disability
- **Coordinated kindergarten transition** practices for children moving from early childhood programs into school
- **2020 Oregon Secretary of State audit** recommendations to improve coordination and monitoring of kindergarten transition practices for children who experience disability

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# Domain 3: EI/ECSE Integration in Relevant Evaluation & Eligibility Categories

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## EI, ECSE, & School Age

1. ◆ OAR 581-015-2127 (**Developmental Delay**);
2. ◆ OAR 581-015-2130 (**Autism Spectrum Disorder**);
3. ◆ OAR 581-015-2140 (**Deafblindness**);
4. ◆ OAR 581-015-2150 (**Deaf or Hard of Hearing**);
5. ◆ OAR 581-015-2160 (**Orthopedic Impairment**);
6. ◆ OAR 581-015-2165 (**Other Health Impairment**);
7. ◆ OAR 581-015-2175 (**Traumatic Brain Injury**);
8. ◆ OAR 581-015-2180 (**Visual Impairment**).

## ECSE & School Age Only

1. ◇ OAR 581-015-2135 (**Speech or Language Impairment**);
2. ◇ OAR 581-015-2145 (**Emotional Behavior Disability**);
3. ◇ OAR 581-015-2155 (**Intellectual Disability**);
4. ◇ OAR 581-015-2170 (**Specific Learning Disability**);

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# Updated Proposed OAR Language

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# Proposed OAR Format

Each proposed OAR follows a similar format. That format includes:

- (1) Definition
- (2) Comprehensive Evaluation
- (3) Eligibility Criteria
- (4) Eligibility Determination



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# Example OAR: OAR 581-015-2127 Developmental Delay

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# Domain 3 Example of an Integrated Eligibility: Definition

**(1) Definition of Developmental Delay.** “Developmental Delay” means,

(a) For Early Intervention, 2 standard deviations or more below the mean in one or more of the developmental areas, or 1.5 standard deviations below the mean in two or more of the developmental areas;

(b) For Early Childhood and School Age Special Education, 1.5 standard deviations or more below the mean in two or more of the developmental areas; that

(A) For age 3 to kindergarten, adversely affects the child's developmental progress;

(B) For kindergarten to age 9, adversely affects the student's educational performance.

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(c) For the purposes of this rule, the developmental areas are: (i) Cognitive development; (ii) Physical development; (iii) Communication development; (iv) Social or emotional development; and (v) Adaptive development.

# Domain 3 Example of an Integrated Eligibility: Comprehensive Evaluation

**(2) Comprehensive Evaluation:** If a child is suspected of having a developmental delay for Early Intervention, Early Childhood or School Age Special Education services must be conducted, the following evaluation must be conducted:

(a) For Early Intervention:

(A) At least one norm-referenced, standardized test addressing the infant or toddler's level of functioning in each of the developmental areas;

(B) At least one additional procedure to confirm the infant or toddler's level of functioning in each area of suspected delay listed in this rule;

(C) At least one 20-minute observation of the infant or toddler;

(D) All evaluations and assessments of an infant or toddler must be conducted in the native language of the child, unless it is clearly not feasible to do so.

(b) For Early Childhood and School Age Special Education:

(A) Developmental History as defined in OAR 581-015-2000;

(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 functioning in each area of suspected delay;

(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 123

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

(c) For Early Intervention, Early Childhood, and School Age Special education:

(A) A review of previous testing, medical data and parent reports; and

(B) Any other evaluative information as necessary to determine eligibility.

# Domain 3 Example of an Integrated Eligibility: Eligibility Criteria

**(3) Eligibility Criteria:** To be eligible for services as a child with a developmental delay,

(a) For Early Intervention, the infant or toddler must meet one of the following minimum criteria.

(A) 2 or more standard deviations below the mean in one or more of the developmental areas; Or

(B) 1.5 or more standard deviations below the mean in two or more of the developmental areas; OR

(C) Medical Examination as defined in OAR 581-015-2000. Documentation of a medical examination which includes a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

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(b) For Early Childhood and School Age Special Education, the child must meet all of the following minimum criteria.

(A) 1.5 or more standard deviations below the mean in two or more of the developmental areas;

# Domain 3 Example of an Integrated Eligibility: Eligibility Determination

**(4) Eligibility Determination:** To be eligible for special education services as a child with a developmental delay for Early Intervention, Early Childhood or School Age Special Education services, the eligibility team must also determine that:

(A) The child has a developmental delay as defined in this rule; and

(B) The child is eligible for services in accordance with Early Intervention (OAR 581-015-2780), Early Childhood special education (OAR 581-015-2795), or School Age special education (OAR 581-015-2120).

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# Oregon State Board of Education

January 19, 2023

AGENDA ITEM: 5.B.

|  |  |
|--|--|
| <p><b>SUBJECT:</b> Special Education Evaluation &amp; Eligibility OAR Revision pursuant to Senate Bills 13 (2019) &amp; 16 (2019)</p> <p><b>STAFF NAME &amp; OFFICE:</b> Kara Nystrom Boulahanis &amp; Tenneal Wetherell, Office of Enhancing Student Opportunities</p> <p>This rule amendment would update 13 OARs related to evaluation &amp; eligibility for special education. Specifically, these revisions address the requirements of Senate Bill 13 (2019) to update the names of certain eligibility categories and the requirements of Senate Bill 16 (2019) to update the requirements for vision and audiology assessments. Additionally, these revisions ensure a consistent format and inclusion of early intervention and early childhood special education requirements in all appropriate categories.</p> <p><input type="checkbox"/> New Rule<br/><input checked="" type="checkbox"/> Amend Existing Rule<br/><input type="checkbox"/> Repeal Rule</p> | <p><input checked="" type="checkbox"/> <b>First Reading</b><br/><input checked="" type="checkbox"/> <b>Presentation</b><br/><input type="checkbox"/> <b>No Presentation</b></p> <p><input type="checkbox"/> <b>Action</b><br/><input type="checkbox"/> <b>Temp Rule</b><br/><input type="checkbox"/> <b>Presentation</b><br/><input type="checkbox"/> <b>No Presentation</b></p> |
|--|--|

## BACKGROUND

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Include the following points for new OARs, OAR updates or changes.

1. History:
  - a. What prompted the rule (why do we have it?) State law? Federal law? Incident? Why are changes/amendments being proposed?
  - b. What is the current requirement in rule or statute?
  - c. Why is this rule being brought forward right now?

In the 2019 legislative session, the Oregon legislature [revised the terms under the definition of “child with a disability”](#) in Oregon Revised Statute (ORS) 343.035 and updated [the requirements for medical, health, audiological, and vision assessment statements](#) in ORS 343.146. Those changes must be incorporated into rules adopted by the State Board of Education as authorized by ORS.

During the 2019-20 school year, ODE led a community engagement process to guide rule development based on the legislative requirements and requested updates. This process targeted a limited array of stakeholders and resulted in a broad slate of recommended changes. In addition to the required changes, the updates incorporated existing early intervention (EI) and early childhood special education (ECSE) requirements into the school age eligibility and evaluation OARs.

Based on this process, two OARs were revised in March 2020:

- OAR 581-015-2150: Deaf or Hard of Hearing
- OAR 581-015-2175: Traumatic Brain Injury

# Oregon State Board of Education

January 19, 2023

AGENDA ITEM: 5.B.

Prior to making any further updates, the State Board of Education requested that ODE conduct additional engagement opportunities. This occurrence was concurrent with the state's response to COVID-19, which significantly shifted ODE's focus throughout the 2019-20, 2020-21, and 2021-22 school years.

In Summer 2022, ODE determined it was necessary to complete the updates required by SBs 13 & 16, resumed the OAR revision project, conducted additional community engagement activities, and is prepared to bring proposed revisions to the State Board of Education.

2. Purpose
  - a. What function does the current rule hold?
  - b. How long has the rule been in place?

The OARs being updated define the evaluation and eligibility process for each of Oregon's 12 special education eligibility categories as delineated by the Individuals with Disabilities Education Act (IDEA) (2004). Note that, while the IDEA allows for states to use an additional disability category of multiple disabilities, Oregon does not use that eligibility category. Updates are also proposed to the definitions for the division (OAR 581-015-2000 Definitions). These OARs have been in place since the initial implementation of the IDEA in the 1970s, with varied updates to align with reauthorizations and revisions to the implementing regulations at the Federal level. The last reauthorization of the IDEA was in 2004, generally resulting in the most significant recent substantive changes to these rules between 2006 and 2010.

3. Does the board have any areas of discretion or is this strictly mirroring statute?
  - a. If the board does have discretion, those areas should be called out here or in the next section.

ODE is recommending revisions in three domains:

- **Domain 1 (Required): Updates to eligibility category names**
- **Domain 2 : Medical examinations**
  - **Domain 2A (Required): Updates the list of professionals who can complete medical, health, audiological, and vision assessments**
  - **Domain 2B (At the Board's Discretion): Reduces the number of eligibility categories that require a medical, health, audiological, and vision assessments**
- **Domain 3 (At the Board's Discretion): Eligibility requirements for EI/ECSE and school age populations**

Changes associated with Domain 1 and Domain 2A are not within the Board's discretion as these simply reflect changes required by statute. Changes from Domain 1 reflect updated disability category names that are already included in ORS, but have not been updated in associated OARs (i.e., speech or language impairment in place of communication disorder, emotional behavior disability in place of emotional disturbance). Changes in Domain 2A expand the list of professionals who can complete medical examinations, vision examinations, and audiological assessments as part of an initial evaluation or reevaluation.

# Oregon State Board of Education

January 19, 2023

AGENDA ITEM: 5.B.

Changes in Domain 2B and Domain 3 are within the Board's discretion as they are not explicitly required by statutory changes. Domain 2B removes the requirement for a medical examination for the following five disability categories (but a team can still choose to obtain this medical examination when they determine it necessary for an individual child): Developmental Delay, Autism Spectrum Disorder, Speech or Language Impairment, Emotional Behavior Disability, and Specific Learning Disability. ODE has heard from multiple partners that the medical statement requirement is not always needed and presents a significant barrier for some students and families. Domain 3 integrates EI/ECSE and school age eligibility requirements to support understanding of eligibility requirements across a child's entire educational career. Integrating these requirements in one rule decreases the need for people to review multiple OARs to find information about one disability category.

4. Stakeholder voice/input (individual and collective i.e., groups)
  - a. Who was involved in bringing this to the Board?
  - b. What did engagement in this process entail?
  - c. Who may be affected by this?
  - d. Whose voice is missing?
  - e. What additional information does the Board need prior to moving forward?

SB 13, which required updates to the category names, came about due to community advocacy. SB 13 emerged from *We the Deaf People*, a 2017 campaign to move to Deaf or Hard of Hearing instead of Hearing Impaired. The legislature included terminology changes in SB 13 as passed that were beyond the original campaign.

SB 16 emerged from an ODE legislative concept to address concerns repeatedly shared from the field associated with Medical Statement/Health Assessment Statements in the special education evaluation and eligibility process. This need emerged due to the lack of access many Oregonians, especially in rural areas, have to the limited medical providers who were previously able to complete these assessments.

For these proposed rules, three engagement sessions were held for anyone to attend (after work hours, during lunch hours, and before work hours) and a survey was shared for additional input. The outreach focused on special education directors, school based special education evaluation staff, special and general educators, education partners, as well as families and students who experience special education. Over 125+ people attended across all three sessions and provided incredibly helpful feedback and suggestions on our draft rules. A survey with the draft language was also distributed widely, including to attendees of the engagement sessions, requesting feedback on the proposed changes. These changes were also presented to the Rules Advisory Committee on January 5<sup>th</sup>, 2023.

ODE intends to continue gathering feedback on these rule changes throughout January and February, prior to the planned second reading before the board in March 2023.

Following the community engagement sessions held in December, ODE reached out to all attendees to provide revised draft language and request their input on the updates made in response to community engagement. This survey will remain open until 2/1/23. ODE also will host an Oregon Educators Association (OEA) special education committee engagement session in February 2023. Additionally, ODE will host an additional hearing for public comment in February 2023.

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## SUMMARY OF PREVIOUS BOARD ACTION

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1. Has this been before the board before? If so, what action did the board take?

**Yes, similar updates were before the board in March 2020 and were adopted.**

## HAS THE RULE CHANGED SINCE LAST BOARD MEETING?

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- N/A; first read—hasn't been before board
- No; same as last month
- Yes – As follows:

## POLICY ISSUE OR CONCERNS

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These policy issues or concerns could be from the field, stakeholder groups, statements submitted during the comment period, or discussions among ODE staff. Consider the following questions:

1. Stakeholders
  - a. How have you intentionally involved stakeholders who are also members of communities affected by this rule?
  - b. Who are the historically underserved groups affected?
  - c. Has there been consultation or collaboration with tribes in this rule change or policy decision?
  - d. How has the Oregon Department of Education modified or enhanced the rule change or policy decision to address the needs of historically underserved communities?

**We have utilized all methods at our disposal to connect with relevant stakeholders including direct outreach to district special education directors and our state parent advocacy organization for families of students experiencing disability, FACT Oregon, in order to ensure our outreach engaged the groups most likely to be impacted by these updates. In addition, we designed our engagement strategy to offer multiple methods and times for feedback, to allow individuals with differing schedules and differing access needs to provide feedback in the way that best worked for them. This included offering translation services, closed captioning, and other accessibility supports at each of our virtual engagement sessions.**

**Students experiencing disability as a whole are a historically excluded and underserved group, but within that there are other marginalized populations as well who experience the compounded impacts of ableism and other forms of systemic oppression, including racism.**

**These rules have been updated to decrease the number of special education eligibility types that require a medical statement in order to establish eligibility for services. Removing the requirement to obtain a medical statement when it is not necessary is designed to reduce barriers to accessing**

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**eligibility for historically marginalized groups, including BIPOC youth, youth who experience homelessness, and rural youth, all of whom are more likely to experience challenges in accessing medical care.**

2. Negative/Positive Effects
  - a. What is the impact on the population most affected by this rule that the board should consider?
  - b. What possible opportunities, assets or access could this rule provide?
  - c. What is the impact on eliminating the opportunity or achievement gap?
  - d. Have all the potential unintended consequences been considered?
  - e. Does this rule advance the ESSA goals?

**In particular, these updates are designed to make evaluation and eligibility for special education services more equitable and accessible by removing terms that have been considered pejorative as well as expanding access by honoring the medical providers students are already seeing and not requiring additional medical documentation unless the team determines it is necessary for that specific child.**

**Additionally, these updates will support students transitioning between early intervention, early childhood special education, and school age special education by clearly laying out the requirements to be eligible for service at each of those age ranges. Further, these updates may prevent unnecessary, additional reevaluations at the kindergarten transition for students graduating for early childhood services leaving additional staff time for other student support uses.**

**An unintended consequence of this rule may be to make it more challenging for districts to bill Medicaid for special education services without a medical diagnosis. However, other practitioners who are able to identify and diagnose medical disorders within the scope of their practice, such as Speech Language Pathologists and Occupational Therapists, would continue to be able to bill Medicaid.**

3. What are the barriers to more equitable outcomes, either:
  - a. State or federally mandated?
  - b. Political?
  - c. Emotional?
  - d. Financial?
  - e. Programmatic?
  - f. Language?
  - g. Geography?
  - h. Size?

**The IDEA was most recently reauthorized in 2004 and is long overdue to be reauthorized. In the almost 20 years since it was last approved, there have been significant changes in language use (e.g., while emotional disturbance is the Federal category, it is no longer preferred language in many states). Additional requirements in OAR based on the IDEA (e.g., evaluation and eligibility**

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requirements) would similarly benefit from being further updated, but timing should be carefully considered to align to needed reauthorizations.

## EQUITY IMPACT ANALYSIS

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The following questions are designed to examine how the proposed rule, policy or action systematically affect historically underserved students and/or communities.

1. How are historically underserved populations impacted by this docket item?
  - a. Demonstrate how the rule changes, policy, or action could produce other unintended consequences not listed in the docket.
  - b. Refer to *Policy Issue or Concerns* and identify the historically underserved populations affected. Conduct a reflection and examination, which will and should answer 1a.

**BIPOC students are disproportionately likely to be identified as “emotionally disturbed” in order to access special education services. While this update will not directly impact the inappropriate identification of students, it will address the harmful impacts of the label “emotional disturbance.”**

**Students who are houseless and students in rural communities are more likely to have challenges accessing medical care, particularly medical care from a physician as opposed to a nurse practitioner or other provider. This update will increase access to special education eligibility for those students by removing the unnecessary barrier of a medical examination from certain categories.**

2. Examine the impact of the rule changes, policy, or action on historically underserved populations in Oregon. Describe this ongoing and/or foreseeable impact, using as much detail as possible.

**Please see above.**

3. Explain how the rule change, policy or action works toward improving achievement, opportunities and a sense of worthiness for underserved students?

**By providing increased access to special education services for the students who need it, we expected to see growth in their achievement, the opportunities available to them, as well as to their own sense of worthiness, by providing them the individualized education program that they need in order to meet their life goals.**

## FISCAL ANALYSIS

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What is the fiscal impact of the proposed rule changes to the Department of Education, school districts, education service districts or schools? Use the following suggestions as a guide:

1. How does the proposed rule fit within the budget of the agency?
  - a. Which units/divisions/offices will be impacted and how?
2. How does the proposed rule change impact school districts and ESDs?

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3. How does the proposed rule change impact schools and other educational institutions?
4. Does the proposed rule change impact other stakeholders?

**This rule change will not have an impact on the agency budget. Districts will need to update their Student Information Systems/IEP software to reflect the updated category names and revised medical statement requirements, however since these changes are prompted by rule changes they will be completed by most providers at no cost. We are not aware of any other partner that might experience a fiscal impact of these rule updates.**

## EFFECT OF A "YES" OR "NO" VOTE

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**If the board does not approve these OARs, they will continue to be out of compliance with SB 13 (2019) and SB 16 (2019). There will not be clear, explicitly stated requirements for Early Intervention or Early Childhood Special Education evaluation and eligibility. Students are less likely to access appropriate services due to ongoing concerns with the need for a medical statement.**

## STAFF RECOMMENDATION

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Approve  Approve next month  No recommendation at this time  
**Prompted by:**  State law changes  Federal law changes  other

## ATTACHMENTS

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Attachment 1:

## 581-015-2000

### Definitions

The definitions below apply to OARs 581-015-2000–581-015-2999, unless the context indicates otherwise.

(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) "Audiological assessment" means an assessment given by an audiologist licensed under ORS chapter 681 or by the appropriate authority in another state.

(5654)(a) "Children with disabilities" or "students with disabilities" means children or students evaluated in accordance with OAR 581-015-2100 through 581-015-2180 as having autism spectrum disorder; communication disordersspeech or language impairment; deafblindness; developmental delay; emotional disturbancebehavior disability; hearing impairment, including deafnessdeaf or hard of hearing; intellectual disability; orthopedic impairment; other health impairment; specific learning disability; traumatic brain injury; or visual impairment, including blindness, and who, by reason thereof, need special education and related services.

(A) If it is determined through an appropriate evaluation in accordance with OAR 581-015-2100 through 581-015-2180, that a child has one of the disabilities identified in section (4) above, but only needs a related service and not special education, the student is not a student with a disability under this OAR.

(B) If, consistent with OAR 581-015-2000 (29), the related service required by the child is considered special education rather than a related service, the child would be determined to be a child with a disability under this OAR.

(b) The terms used in the definition of a child with a disability are defined as follows:

(A) "Autism Spectrum Disorder" means a developmental disability that includes persistent deficits in social communication and social interaction across multiple contexts; and restricted, repetitive patterns of behavior, interests, or activities. Characteristics are generally evident before age three but may 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 performance is adversely affected primarily because the child has an emotional disturbancebehavior disability. However, a child who qualifies for special education under the category of autism spectrum disorder may also have an emotional disturbancebehavior disability as a secondary disability if the child meets the criteria under emotional disturbancebehavior disability. The term "Autism Spectrum Disorder" is equivalent to the term "autism" used ~~in ORS 343.035 and~~ in 34 CFR § 300.8.

~~(B) "Communication DisorderSpeech or Language Impairment" 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) "Deaf or Hard of Hearing" means an impairment in hearing, whether permanent or fluctuating, that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification.

(i) For early intervention: This impairment in hearing must currently affect or have the potential to significantly affect an infant or toddler's developmental progress. The infant or toddler's hearing level does not need to be presently affecting their development for the infant or toddler to be eligible for early intervention services.

(ii) For early childhood and school age special education: This impairment in hearing must adversely affect the child's developmental progress (age 3 through 5) or educational performance (age 5 through 21).

(DC) "Deafblindness" means having both hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems needs that the child cannot be accommodated in special education programs designed solely for students who are deaf or hard of hearing or ~~having hearing or children with a~~ visual impairments.

(ED) "Developmental Delay" means:

(i) For early intervention, 2 standard deviations or more below the mean in one or more of the developmental areas, or 1.5 standard deviations below the mean in two or more of the developmental areas;

(ii) For early childhood and school age special education, 1.5 standard deviations or more below the mean in two or more of the developmental areas; that:

(A) For age 3 to kindergarten, adversely affects the child's developmental progress;

(B) For kindergarten to age 9, adversely affects the student's educational performance.

(iii) For the purposes of this definition, the developmental areas are: ceognitive development, physical development, communication development, social or emotional development, and addaptive development.

means 1.5 standard deviations or more below the mean in two or more of the following developmental areas for Early Childhood special education and school-aged special education (ages 3-9), that adversely affects a child's developmental progress when the child is three to kindergarten and the student's educational performance when the student is kindergarten through age nine:

- (i) Cognitive development;
- (ii) Physical development;
- (iii) Communication development;
- (iv) Social or emotional development; and
- (v) Adaptive development.

(FE) "~~Emotional Disturbance~~Behavior Disability" 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:

- (i) An inability to learn that cannot be explained by intellectual, sensory, or health factors;
- (ii) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- (iii) Inappropriate types of behavior or feelings under normal circumstances;
- (iv) A general pervasive mood of unhappiness or depression; or
- (v) A tendency to develop physical symptoms or fears associated with personal or school problems;
- (vi) The term includes schizophrenia but does not apply to children who are socially maladjusted, unless it is determined that they have an emotional behavior disability~~disturbance~~.

~~(F) "Hearing Impairment" means an impairment in hearing, whether permanent or fluctuating, that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification.~~

~~(i) For early intervention: This impairment in hearing must currently affect or have the potential to significantly affect an infant or toddler's developmental progress. The infant or toddler's hearing level does not need to be presently affecting their development for the infant or toddler to be eligible for early intervention services.~~

~~(ii) For early childhood and school age special education: This impairment in hearing must adversely affect the child's developmental progress (age 3 through 5) or educational performance (age 5 through 21). 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.~~

(G) "Intellectual Disability" means significantly subaverage 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. 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.~~

(H) "Orthopedic Impairment" means a motor disability that adversely affects the infant or toddler's development or a child's educational performance. The term includes impairments caused by an anomaly, disease or other conditions (e.g., cerebral palsy, spina bifida, muscular dystrophy or traumatic injury).~~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).~~

(I) "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:

(i) 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

(ii) Adversely affects a child's educational performance.

(J) "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 that~~ may manifest itself in ~~an the~~ imperfect ability to listen, think, speak, read, write, spell, or ~~to~~ do mathematical calculations. Specific learning disability includes conditions such as perceptual disabilities, brain injury, ~~dyslexia~~, minimal brain dysfunction, dyslexia, 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~~behavior disability, or ~~of~~ environmental, cultural, or economic disadvantage.

(K) "Speech or Language Impairment" 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.

(L) "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. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma. 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.~~

(i) For early intervention: The infant or toddler's disability does not need to be presently affecting their development for the infant or toddler to be eligible for early intervention services.

(ii) For early childhood and school age: The 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 developmental progress (age 3 to 5) or educational performance (age 5 to 21).

(M) "Visual Impairment" means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term visual impairment includes low vision, total blindness, limited visual acuity after correction, restricted visual field, and progressive eye conditions.

(765) "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 581-015-2735.

(76) "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.

(87) "Department" means the Oregon Department of Education.

(98) "Developmental History" means gathering information regarding the following: the child's prenatal and birth history, including prenatal exposure to alcohol, prescription and non-prescription medications, or other drugs; meeting of developmental milestones; socialization and behavioral patterns; health and physical/medical history; family and environmental factors; home and educational performance; trauma or significant stress experienced by the child; and the display of characteristics of any additional learning or behavioral problems.

(109) "EI/ECSE" means early intervention/early childhood special education and refers to services or programs for infants, toddlers, and preschool children with disabilities.

(110) "Elementary or secondary school or facility" means a school or facility with any combination of grades K through 12.

(124) "Evaluation" means procedures used to determine whether the child has a disability, and the nature and extent of the special education and related services that the child needs.

(132) "General education curriculum" means the same curriculum as for children without disabilities ~~(children without disabilities)~~. For preschool children with disabilities, the term means age-appropriate activities.

~~(13) "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.~~

(14) "Homeless children" (or "homeless youth") has the same meaning as in section 725 of the McKinney-Vento Act, 42 USC § 11434a (2).

(15) "Identification" means the process of determining a child's disability and eligibility for special education and related services.

(16) "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.

(17) "Individualized Family Service Plan" (IFSP) is defined in OAR 581-051-2700.

(18) "Limited English proficient" has the same meaning as in the Elementary and Secondary Education Act, 20 USC § 9101(25).

(19) "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.

(20) "Medical ~~statement~~Examination" means an examination conducted by:

(i) A physician licensed under ORS chapter 677 or by the appropriate authority in another state;

(ii) A naturopathic physician licensed under ORS chapter 685 or by the appropriate authority in another state;

(iii) A nurse practitioner licensed under ORS 678.375 to 678.390 or by the appropriate authority in another state; or

(iv) A physician assistant licensed under ORS 677.505 to 677.525 or by the appropriate authority in another state.

~~a written statement issued by a physician licensed by a State Board of Medical Examiners.~~

(21) "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~~who is deaf or hard of hearing, with blindness, with deafblindness or with 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.

(22) "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 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.

(23) "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.

(24) "Personally identifiable information" means information as defined in the Family Educational Rights and Privacy Act (FERPA), found at 34 CFR 99.3, which 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 or the child's family;

(c) A personal identifier, such as the child's social security number or student number, or biometric record; and

(d) Other indirect identifiers, such as the child's date of birth, place of birth, and mother's maiden name;

(e) Other information that alone or in combination is linked or linkable to a specific child that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the child with reasonable certainty; or

(f) Other information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

(25) "Placement" means educational placement, not social service placement by a state agency.

(26) "Preschool child" means "preschool child with a disability" as defined under OAR 581-015-2700.

(27) "Private school" means an educational institution or agency not operated by a public agency.

(28) "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.

(29) "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).

(30) "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.

(31) "Scientifically Based Research" is defined in section 9101(37) of the Elementary and Secondary Education Act of 1965, as amended ESEA.

(32) "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.

(33) "Services plan" is defined in OAR 581-015-2450.

(34) "Sheltered Workshop" is a facility in which individuals with disabilities, including intellectual or developmental disabilities, are congregated for the purpose of receiving employment services and performing work tasks for pay at the facility. A Sheltered Workshop primarily employs these individuals with the exception of service support staff. A Sheltered Workshop is a fixed site that is owned, operated, or controlled by a provider, where an individual has few or no opportunities to interact with nondisabled individuals, except paid support staff. A Sheltered Workshop is not Small Group Employment in an Integrated Employment Setting as defined in Executive Order 15-01, and is not otherwise an Integrated Employment Setting as defined in Executive Order 15-01.

(35) "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.

(36) "Special education" means specially designed instruction that is provided at no cost to 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 by rule to be services to meet the unique needs of a child with a disability.

(37) "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~~ the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

(38) "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.

(39) "Superintendent" means the State Superintendent of Public Instruction or the designee of the State Superintendent of Public Instruction.

(40) "Surrogate parent" means an individual appointed under OAR 581-015-2320 for school age children or 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.

(41) "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.

(42) "Vision examination" means an examination conducted by;

(a) A person licensed to practice optometry under ORS chapter 683 or by the appropriate authority in another state; or

(b) A physician who specializes in ophthalmology and who is licensed under ORS chapter 677 or by the appropriate authority in another state.

~~(43)~~ "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.

**581-015-2127**

**Developmental Delay**

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

(1) Definition of “Developmental Delay”. “Developmental Delay” means,

(a) For early Intervention, 2 standard deviations or more below the mean in one or more of the developmental areas or 1.5 standard deviations below the mean in two or more of the developmental areas;

(b) For early childhood and school age special education, 1.5 standard deviations or more below the mean in two or more of the developmental areas that:

(A) For age 3 to kindergarten, adversely affects the child's developmental progress;

(B) For kindergarten to age 9, adversely affects the student's educational performance.

(c) For the purposes of this rule, the developmental areas are: cognitive development, physical development, communication development, social or emotional development, and adaptive development.

(2) Comprehensive Evaluation: If a child is suspected of having a developmental delay for early intervention, early childhood or school age special education services, the following evaluation must be conducted:

(a) For early intervention:

(A) At least one norm-referenced, standardized test addressing the infant or toddler’s level of functioning in each of the developmental areas;

(B) At least one additional procedure to confirm the infant or toddler’s level of functioning in each area of suspected delay listed in this rule;

(C) At least one 20-minute observation of the infant or toddler;

(D) All evaluations and assessments of an infant or toddler must be conducted in the native language of the child, unless it is clearly not feasible to do so.

(b) For early childhood and school age special education:

(a) Developmental hHistory 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 functioning in each area 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;~~ On the child's developmental progress for birth to 5; or

(B) ~~On the child's educational performance for 5 to 21~~ On the child's developmental progress for a preschool child; and

~~(g) Other evaluative information as necessary to determine eligibility.~~

(c) For early intervention, early childhood special education, and school age special education:

(A) A review of previous testing, medical data, and parent reports; and

(B) Any other evaluative information as necessary to determine eligibility.

**(3) Eligibility Criteria:** To be eligible for services as a child with a developmental delay,

(a) For early intervention, the infant or toddler must meet one of the following minimum criteria.

(A) 2 or more standard deviations below the mean in one or more of the developmental areas;  
or

(B) 1.5 or more standard deviations below the mean in two or more of the developmental areas; or

(C) Medical examination as defined in OAR 581-015-2000. Documentation of a medical examination which includes a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

(b) For early childhood and school age special education, the child must meet the following minimum criteria:

(A) 1.5 or more standard deviations below the mean in two or more of the developmental areas;

~~(2) To be eligible for special education services as a child with a developmental delay, the child must meet all of 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;~~
- ~~(d) Social or emotional development;~~
- ~~(e) Adaptive development.~~

**(4) Eligibility Determination:** To be eligible for special education services as a child with a developmental delay for early intervention, early childhood special education, or school age special education services, the eligibility team must also determine that:

(A) The child has a developmental delay as defined in this rule; and

(B) By reason thereof, the child requires early intervention (OAR 581-015-2780), early childhood special education (OAR 581-015-2795), or school age special education (OAR 581-015-2120) services.

~~(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 services 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 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; and is not due to another disability.~~

**Autism Spectrum Disorder**

(1) Definition of “Autism Spectrum Disorder”: For early intervention, early childhood special education, and school age special education, “Autism Spectrum Disorder” means a developmental disability that includes persistent deficits in social communication and social interaction across multiple contexts; and restricted, repetitive patterns of behavior, interests, or activities. Characteristics are generally evident before age three but may 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 performance is adversely affected primarily because the child has an emotional behavior disability. However, a child who qualifies for special education under autism spectrum disorder may also have an emotional behavior disability as a secondary disability if the child meets the criteria under emotional behavior disability. The term “Autism Spectrum Disorder” is equivalent to the term “autism” used in 34 CFR § 300.8.

(2) Comprehensive Evaluation: If a child is suspected of having autism spectrum disorder, a comprehensive evaluation must be conducted for early intervention, early childhood special education or school age special education services, including the following:

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

(a) Developmental hHistory 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 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.~~ Documentation of 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 ~~, for a child age birth to 5,~~ may impact the child's developmental performance ~~for a child age 3-5 or, for a child age 5 to 21, may impact~~ 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~~ birth 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.

**(3) Eligibility Criteria:** ~~(2)~~ To be eligible as a child with ~~an~~ autism spectrum disorder for early intervention, early childhood special education, or school age special education services, 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-behavior disability](#) under OAR 581-015-2145. However, a child with autism spectrum disorder as a primary disability may also have an emotional [disturbance-behavior disability](#) as a secondary disability.

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

[\(a\) The child has autism spectrum disorder as defined in this rule; and](#)

[\(b\) By reason thereof, the child requires early intervention \(OAR 581-015-2780\), early childhood special education \(OAR 581-015-2795\), or school age special education \(OAR 581-015-2120\) services.](#)

~~(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.

**Communication Disorder Speech or Language Impairment**

**(1) Definition of "Speech or Language Impairment":** For early childhood and school age special education, "Speech or Language Impairment" 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.

**(2) Comprehensive Evaluation:** If a child is suspected of having a speech or language impairment, a comprehensive evaluation for early childhood or school age special education services must be conducted, including the following: ~~(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:

(A) When evaluating syntax, morphology, semantics or pragmatics, a representative language sample and comprehensive standardized tests that assess expression and comprehension;

(B) When a voice disorder is suspected, a voice assessment scale; and

(C) When a fluency disorder is suspected, an observation in at least two settings;

(b) ~~Medical or health assessment statement.~~ For a child suspected of having a voice disorder, documentation of a medical statement examination by an otolaryngologist licensed by a State Board of Medical Examiners. For other than a voice disorder, if a medical ~~or health diagnosis information~~ is needed, documentation of a medical examination as defined in OAR 581-015-2000 a medical statement or health assessment statement describing relevant medical issues;

(c) Hearing evaluation or screening. An evaluation or screening of the child's hearing acuity and, if needed, a measure of middle ear functioning;

(d) Other.

(A) An evaluation of the child's oral mechanism, if needed;

(B) 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

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

**(3) Eligibility Criteria:** To be eligible as a child with a specific speech or language impairment for early childhood or school age special education services, the child must meet the following criteria: ~~(2) To be eligible as a child with a specific communication disorder, the child must meet the following minimum criteria:~~

(a) Voice disorder:

(A) The child demonstrates chronic vocal characteristics that deviate in at least one of the areas of pitch, quality, intensity or resonance;

(B) The child's voice disorder impairs communication or intelligibility; and

(C) The child's voice disorder is rated as moderate to severe on a voice assessment scale.

(b) Fluency disorder:

(A) The child demonstrates an interruption in the rhythm or rate of speech that is characterized by hesitations, repetitions, or prolongations of sounds, syllables, words or phrases;

(B) The child has a fluency disorder that interferes with communication and calls attention to itself across two or more settings; and

(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.

(c) Phonological or articulation disorder:

(A) The child's phonology or articulation is rated significantly discrepant as measured by a standardized test; and

(B) The disorder is substantiated by a language sample or other evaluation(s).

(d) Syntax, morphology, pragmatic or semantic disorder:

(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

(B) The disorder is substantiated by a language sample or other evaluation(s).

(C) For a child to be eligible with a syntax, morphology, pragmatic or semantic disorder, the disorder is not the result of another disability.

**(4) Eligibility Determination:** For a child to be eligible for early childhood or school age special education services as a child with a speech or language impairment, the eligibility team must also determine that:

(a) The child has a speech or language impairment as defined in this rule; and

(b) By reason thereof, the child requires early intervention (OAR 581-015-2780), early childhood special education (OAR 581-015-2795), or school age special education (OAR 581-015-2120) services. ~~(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:~~

~~(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.~~

**(1) Definition of “Deafblindness”:** For early intervention, early childhood special education, and school age special education, “Deafblindness” means having impairments in both hearing and vision, the combination of which causes such severe communication and other developmental and educational needs that the child cannot be accommodated in special education programs designed solely for students who are deaf or are hard of hearing or have a visual impairment.

**(2) Comprehensive Evaluation:** If a child is suspected of having deafblindness, a comprehensive evaluation must be conducted for early intervention, early childhood special education, or school age special education services, including the following: ~~(1) If a child is suspected of having deafblindness, the following evaluation must be conducted:~~

(a) The minimum evaluation procedures for ~~hearing impairment~~deaf or hard of hearing and vision impairment under OAR 581-015-2150 and 581-015-2180, respectively;

(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 educator of the ~~hearing impaired~~deaf or hard of hearing or an audiologist licensed by the State Board of Examiners for Speech-Language Pathology and Audiology.

**(3) Eligibility Criteria:** To be eligible as a child with deafblindness for early intervention, early childhood special education, or school age special education services, the child must meet one or more of the following minimum criteria: ~~(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~~deaf or hard of hearing 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~~deaf or hard of hearing 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~~deaf or hard of hearing and has a degenerative disease or pathology that affects the acuity of the other sensory area.

**(4) Eligibility Determination:** To be eligible for services as a child with deafblindness for early intervention, early childhood special education, or school age special education services, the eligibility team must also determine that:

(a) The child has deafblindness as defined in this rule; and

(b) By reason thereof, the child requires early intervention (OAR 581-015-2780), early childhood special education (OAR 581-015-2795), or school age special education (OAR 581-015-2120) services.

~~(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.~~

**(1) Definition of “Emotional Behavior Disability”:** For early childhood and school age special education, “Emotional Behavior Disability” 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 behavior disability.

**(2) Comprehensive Evaluation:** If a child is suspected of having an emotional behavior disability, a comprehensive evaluation must be conducted for early childhood or school age special education services, including the following: ~~(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 examination. If medical information is needed, documentation of a~~ medical ~~statement or a health assessment statement examination~~ 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 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.

**(3) Eligibility Criteria:** To be eligible as a child with an emotional behavior disability for early childhood or school age special education services, the child must exhibit one or more of the following characteristics over a long period of time and to a marked degree: (2)(a) To be eligible as a child with an emotional disturbance, the child must meet the following minimum criteria:

~~\_(b) The child exhibits one or more of the following characteristics over a long period of time and to a marked degree:~~

(aA) An inability to learn that cannot be explained by intellectual, sensory, or health factors;

(bB) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(cC) Inappropriate types of behavior or feelings under normal circumstances;

(dD) A general pervasive mood of unhappiness or depression; or

(eE) A tendency to develop physical symptoms, or fears associated with personal, or school problems.

**(4) Eligibility Determination:** For a child to be eligible for early childhood or school age special education services as a child with an emotional behavior disability, the eligibility team must also determine that:

(a) The child has an emotional behavior disability as defined in this rule; and

(b) By reason thereof, the child requires early childhood special education (OAR 581-015-2795) or school age special education (OAR 581-015-2120) services; and

(c) A child who is socially maladjusted may not be identified as having an emotional behavior disability unless the child also meets the minimum criteria under this rule.

~~\_(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

Deaf or Hard of Hearing

**(1) Definition of "Deaf or Hard of Hearing":** ~~(1) Early Intervention (birth through two in accordance with OAR 581-015-2700(10));~~ "Deaf or hard of hearing" means an impairment in hearing, whether permanent or fluctuating, that is so severe that the ~~infant or toddler~~child is impaired in processing linguistic information through hearing, with or without amplification.

~~(a) For early intervention: this impairment in hearing must,~~ currently affecting or ~~hasve~~have the potential to significantly affect an infant or toddler's developmental ~~progress~~The progress. ~~The~~ infant or toddler's hearing level does not need to be presently affecting their development for the infant or toddler to be eligible for ~~e~~Early intervention services.

~~b) For early childhood and school age special education: this impairment in hearing must adversely affect the child's developmental progress (age 3 to 5) or educational performance (age 5 to 21).~~

**(2) Comprehensive Evaluation:** ~~If a child is suspected of being deaf or hard of hearing, a comprehensive evaluation for early intervention, early childhood special education, or school age special education services must be conducted, including the following:~~ ~~(2) Early Intervention: If an infant or toddler is suspected of being deaf or hard of hearing, a comprehensive evaluation must be conducted, including the following:~~

~~(a) Documentation of A~~an audiological assessment ~~given by an audiologist licensed under ORS chapter 681 or by the appropriate authority in another state~~as defined in OAR 581-015-2000;

~~(A) The audiological assessment must indicate whether the hearing loss is conductive hearing loss or sensorineural hearing loss.~~

~~(B) For conductive hearing loss, a medical examination as defined in OAR 581-015-2000 that documents whether the hearing loss is treatable.~~

~~(b) For conductive hearing loss, a medical examination indicating the hearing loss identified by an audiologist licensed under ORS chapter 681 or by the appropriate authority in another state and determined to be untreatable by:~~

~~(A) A physician licensed under ORS chapter 677 or by the appropriate authority in another state;~~

~~(B) A nurse practitioner licensed under ORS 678.375 to 678.390 or by the appropriate authority in another state;~~

~~(C) A physician assistant licensed under ORS 677.505 to 677.525 or by the appropriate authority in another state; or~~

~~(D) A naturopathic physician licensed under ORS chapter 685 or by the appropriate authority in another state;~~

~~(c) For sensorineural hearing loss, documentation indicating the hearing loss identified by an audiologist licensed by an appropriate state authority under ORS chapter 681 or by the appropriate authority in another state is determined to be sensorineural; and~~

~~(bd) For early intervention, a~~Any additional evaluations or assessments necessary to identify the infant or toddler's needs.

~~(c) For early childhood and school age special education: Any additional assessments necessary to determine the impact of the suspected disability:~~

~~(A) On the child's developmental progress for a preschool child (age 3 through 5); or~~

~~(B) On the child's educational performance for a school-age child (age 5 through 21); and~~

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

~~(3) Early Intervention Eligibility Criteria:~~ To be eligible as an infant or toddler who is deaf or hard of hearing for early intervention, early childhood special education, or school age special education, the infant or toddler child must meet the following criteria

~~(a) The infant or toddler child~~ must have hearing thresholds in at least one ear of 25 dBHL or greater at two or more consecutive frequencies at 500 Hz, 1000 Hz, 2000 Hz, 4000 Hz, 6000 Hz and 8000 Hz; or

~~(b) The hearing loss is due to auditory neuropathy spectrum disorder (ANS) or aural microtia/atresia, as determined by documentation of:~~

~~(A) An audiological assessment as defined by OAR 581-015-2000. given by an audiologist licensed under ORS chapter 681 or by the appropriate authority in another state;~~

~~(B) A physician licensed under ORS chapter 677 or by the appropriate authority in another state;~~

~~(C) A nurse practitioner licensed under ORS 678.375 to 678.390 or by the appropriate authority in another state;~~

~~(D) A physician assistant licensed under ORS 677.505 to 677.525 or by the appropriate authority in another state; or~~

~~(E) A naturopathic physician licensed under ORS chapter 685 or by the appropriate authority in another state.~~

~~(4) Eligibility Determination~~ Early Intervention: For an infant or toddler child to be eligible for Early intervention, early childhood special education, or school age special education services as a child n ~~infant or toddler~~ who is deaf or hard of hearing, the eligibility team must determine that:

- (a) The ~~infant or toddler~~child is deaf or hard of hearing as defined in this rule; and
- (b) By reason thereof, the child requires early intervention (OAR 581-015-2780), early childhood special education (OAR 581-015-2795), or school age special education (OAR 581-015-2120) services.The infant or toddler is eligible for Early Intervention services in accordance with OAR 581-015-2780.

~~(5) Early Childhood Special Education (age 3 through 5) and School Age (age 5 through 21); "Deaf or hard of hearing" means an impairment in hearing, whether permanent or fluctuating, that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's developmental progress (age 3 through 5) or educational performance (age 5 through 21).~~

~~(6) Early Childhood Special Education and School Age: If a child is suspected of being deaf or hard of hearing, a comprehensive evaluation must be conducted, including the following:~~

~~(a) An audiological assessment given by an audiologist licensed under ORS chapter 681 or by the appropriate authority in another state;~~

~~(b) For conductive hearing loss, a medical examination indicating the hearing loss identified by an audiologist licensed under ORS chapter 681 or by the appropriate authority in another state and determined to be untreatable by:~~

~~(A) A physician licensed under ORS chapter 677 or by the appropriate authority in another state;~~

~~(B) A nurse practitioner licensed under ORS 678.375 to 678.390 or by the appropriate authority in another state;~~

~~(C) A physician assistant licensed under ORS 677.505 to 677.525 or by the appropriate authority in another state; or~~

~~(D) A naturopathic physician licensed under ORS chapter 685 or by the appropriate authority in another state;~~

~~(c) For sensorineural hearing loss, documentation indicating the hearing loss identified by an audiologist licensed by an appropriate state authority under ORS chapter 681 or by the appropriate authority in another state is determined to be sensorineural; and~~

~~(d) Other:~~

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

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

~~(ii) On the child's educational performance for a school-age child (age 5 through 21); and~~

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

~~(7) Early Childhood Special Education and School Age: To be eligible as a child who is deaf or hard of hearing, the child must meet one of the following criteria:~~

~~(a) The child must have hearing thresholds in at least one ear of 25 dBHL or greater at two or more consecutive frequencies at 500 HZ, 1000 HZ, 2000 HZ, 4000 HZ, 6000 HZ and 8000 HZ; or~~

~~(b) The hearing loss is due to auditory neuropathy spectrum disorder (ANSO) or aural microtia/atresia, as determined by:~~

~~(A) An audiological assessment given by an audiologist licensed under ORS chapter 681 or by the appropriate authority in another state;~~

~~(B) A physician licensed under ORS chapter 677 or by the appropriate authority in another state;~~

~~(C) A nurse practitioner licensed under ORS 678.375 to 678.390 or by the appropriate authority in another state;~~

~~(D) A physician assistant licensed under ORS 677.505 to 677.525 or by the appropriate authority in another state; or~~

~~(E) A naturopathic physician licensed under ORS chapter 685 or by the appropriate authority in another state.~~

~~(8) For a child to be eligible for special education services as a child who is deaf or hard of hearing, the eligibility team must determine that:~~

~~(a) The child is deaf or hard of hearing as defined in this rule; and~~

~~(b) The child is eligible for special education services in accordance with OAR 581-015-2795 and/or OAR 581-015-2120.~~

**(1) Definition of Intellectual Disability:** For early childhood and school age special education, “Intellectual Disability” means significantly subaverage 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.

**(2) Comprehensive Evaluation:** If a child is suspected of having an intellectual disability, a comprehensive evaluation for early childhood or school age special education services must be conducted, including the following: ~~(1) If a child is suspected of having an 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 and interpret individually administered intelligence tests;

(b) Adaptive behavior scale. The administration of a valid adaptive behavior scale;

~~(c) Medical or health assessment statement examination. If medical information is needed, documentation of a medical examination as defined in OAR 581-015-2000 describing relevant medical issues or~~ 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 as defined in OAR 581-015-2000. 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 age 5 to 21; or

(ii) On the child's developmental progress for a ~~preschool~~ child age birth to 5; and

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

**(3) Eligibility Criteria:** To be eligible as a child with an intellectual disability for early childhood or school age special education services, the child must meet all of the following minimum criteria:~~(2) To be eligible as a child with an 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.

**(4) Eligibility Determination:** For a child to be eligible for early childhood or school age special education services as a child with an intellectual disability, the eligibility team must also determine that:

- (a) The child has an intellectual disability as defined in this rule; and
  - (b) By reason thereof, the child requires early childhood special education (OAR 581-015-2795) or school age special education (OAR 581-015-2120) services.
- ~~3) For a child to be eligible for special education services as a child with an 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.~~

**(1) Definition of "Orthopedic Impairment":** For early intervention, early childhood special education, and school age special education, "Orthopedic Impairment" means a motor disability that adversely affects an infant or toddler's development or a child's educational performance. The term includes impairments caused by an anomaly, disease or other conditions (e.g., cerebral palsy, spina bifida, muscular dystrophy or traumatic injury).

**(2) Comprehensive Evaluation:** If a child is suspected of having an orthopedic impairment, a comprehensive evaluation must be conducted for early intervention, early childhood special education, or school age special education services, including the following: ~~(1) If a child is suspected of having an orthopedic impairment, the following evaluation must be conducted:~~

(a) ~~Medical or health assessment statement examination.~~ A Documentation of a medical statement or a health assessment statement examination as defined OAR 581-015-2000 indicating a diagnosis of an orthopedic or neuromotor impairment or a description of the motor impairment;

(b) Motor assessment. A standardized motor assessment, including the areas of fine motor, gross motor and self-help, when appropriate, by a specialist knowledgeable about orthopedic or neuromotor development;

(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 age 3 to 21; or

(ii) On the child's developmental progress for a ~~preschool~~ child age birth to 5; and

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

**(3) Eligibility Criteria:** To be eligible as a child with an orthopedic impairment for early intervention, early childhood special education, or school age special education services, the child must meet all of the following minimum criteria:~~(2) To be eligible as a child with an orthopedic impairment, the child must meet all of the following minimum criteria:~~

(a) The child has a motor impairment that results in deficits in the quality, speed or accuracy of movement. These deficits must be documented by a score of two or more standard deviations below the mean in fine motor skills, gross motor skills, or self-help skills, or functional deficits in at least two of these three motor areas; and

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

**(4) Eligibility Determination:** To be eligible for services as a child with an orthopedic impairment for early intervention, early childhood special education, or school age special education services, the eligibility team must also determine that:

(a) The child has an orthopedic impairment as defined in this rule; and

(b) By reason thereof, the child requires early intervention (OAR 581-015-2780), early childhood special education (OAR 581-015-2795), or school age special education (OAR 581-015-2120) services.

~~(3) For a child to be eligible for special education services as a child with an orthopedic 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.~~

581-015-2165

Other Health Impairment

**(1) Definition of "Other Health Impairment":** For early childhood and school age special education, "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.

**(2) Comprehensive Evaluation:** If a child is suspected of having an other health impairment, a comprehensive evaluation must be conducted for early childhood or school age special education services, including the following: ~~(1) If a child is suspected of having an other health impairment, the following evaluation must be conducted:~~

~~(a) Medical examination. Documentation of a or health assessment statement. A medical statement or a health assessment statement examination as defined in OAR 581-015-2000, indicating a diagnosis of a health impairment or a description of the impairment, and a statement that the child's condition is permanent or is expected to last for more than 60 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 age 5 to 21; or~~

~~(ii) On the child's developmental progress for a preschool child age 3 to 5; and~~

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

**(3) Eligibility Criteria:**~~(2)~~b -To be eligible as a child with an other health impairment for early childhood or school age special education services, 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.

**(4) Eligibility Determination:** For a child to be eligible for early childhood or school age special education services as a child with an other health impairment, the eligibility team must also determine that:

(a) The child has an other health impairment as defined in this rule; and

(b) By reason thereof, the child requires early childhood special education (OAR 581-015-2795) or school age special education (OAR 581-015-2120) services.

~~(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.~~

**(1) Definition of “Specific Learning Disability”:** For early childhood and school age special education, “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 behavior disability, or environmental, cultural, or economic disadvantage.

**(2) Comprehensive Evaluation:** If a child is suspected of having a specific learning disability, a comprehensive evaluation must be conducted for early childhood or school age special education services, including the following: ~~(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 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.

**(3) Eligibility Team:** ~~(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.

**(4) Eligibility Criteria: To be eligible as a child with a specific learning disability for early childhood or school age special education services, the child must meet all of the minimum criteria: ~~(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;

(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; intellectual disability or emotional disturbance;

(B) Cultural factors;

- (C) Environmental or economic disadvantage; or
- (D) Limited English proficiency.

**(5) Eligibility Determination:** For a child to be eligible for early childhood or school age special education services as a child with a specific learning disability, the eligibility team must also determine that:

(a) The child has a specific learning disability as defined in this rule; and

(b) By reason thereof, the child requires early childhood special education (OAR 581-015-2795) or school age special education (OAR 581-015-2120) services. ~~(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.~~

**(6) Eligibility Report:** ~~(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; intellectual disability; 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.

**(1) Definition of Traumatic Brain Injury:** For early intervention, early childhood special education, and school age special education, **(1) Early Intervention (birth through two in accordance with OAR 581-015-2700(10)):** "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. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech ~~currently affecting or has the potential to significantly affect an infant or toddler's developmental progress. The infant or toddler's disability does not need to be presently affecting their development for the infant or toddler to be eligible for Early Intervention services.~~ Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma. 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.

(a) For early intervention: The impairments should currently affecting or haves the potential to significantly affect an infant or toddler's developmental progress. The infant or toddler's disability does not need to be presently affecting their development for the infant or toddler to be eligible for eEarly iIntervention services.

(b) For early childhood and school age special education: The acquired injury to the brain must adversely affects a child's developmental progress (age 3 to 5) or educational performance (age 5 to 21).

**(2) Early Intervention Comprehensive Evaluation:** ~~If an infant or toddler a child~~ is suspected of having a traumatic brain injury, a comprehensive evaluation must be conducted, including the following:

(a) A medical examination as defined in OAR 581-015-2000 or, with documentation of sufficient efforts by the Local Education Agency to obtain appropriate medical information through a medical examination and evidence that such information cannot be obtained, guided credible history interview process indicating that an event may have resulted in a traumatic brain injury ~~as defined in subsections (1) and (3);~~

~~(A) A medical examination must be conducted by:~~

~~(i) A physician licensed under ORS chapter 677 or by the appropriate authority in another state;~~

~~(ii) A naturopathic physician licensed under ORS chapter 685 or by the appropriate authority in another state;~~

~~(iii) A nurse practitioner licensed under ORS 678.375 to 678.390 or by the appropriate authority in another state; or~~

~~(iv) A physician assistant licensed under ORS 677.505 to 677.525 or by the appropriate authority in another state.~~

(~~b~~B) The guided credible history interview process is an interview facilitated by an individual familiar with the symptoms of a traumatic brain injury to thoroughly explore a family's report of a possible traumatic brain injury. The guided credible history interview process must:

(~~A~~i) Document one or more traumatic brain injuries,

(~~ii~~B) Be reported by a reliable and credible source, and

(~~iii~~C) Be corroborated by more than one reporter.

(~~b~~c) A psychological assessment. A comprehensive psychological assessment using a battery of instruments intended to identify deficits associated with a traumatic brain injury administered and interpreted by a school psychologist licensed by Oregon Teacher Standards and Practices Commission (TSPC), a psychologist or a psychologist associate licensed under Chapter 675 by the Oregon Board of Psychological Examiners (OBPE), or in the case of a student from another state an individual similarly credentialed in another state;

(~~d~~e) A developmental history as defined in OAR 581-015-2000(~~9~~); and

(~~e~~d) Other:

(A) Other assessments including, but not limited to, motor assessments if the ~~infant or toddler~~child exhibits motor impairments; communication assessments if the ~~infant or toddler~~child exhibits communication disorders; and psychosocial assessments if the ~~infant or toddler~~child exhibits changed behavior. These assessments must be completed by qualified personnel knowledgeable in the specific area being assessed;

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

(C) An observation in at least two different settings;

(i) For early childhood and school age special education: 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 developmental progress for a child age birth to 5; or

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

**(3) Eligibility Criteria:** ~~(3) Early Intervention:~~ To be eligible as an ~~infant or toddler~~a child with a traumatic brain injury for early intervention, early childhood special education, or school age special education services, the ~~infant or toddler~~child must meet all of the following criteria:

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

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

(c) The ~~infant or toddler's~~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; or

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

~~(4) Eligibility Determination:~~**(4) Early Intervention:** For an ~~infant or toddler~~ a child to be eligible for early intervention, early childhood special education, or school age special education services~~Early Intervention services~~, as a child ~~n infant or toddler~~ with a traumatic brain injury, the eligibility team must determine that:

(a) The ~~infant or toddler~~child has a traumatic brain injury as defined in this rule; and

(b) By reason thereof, the child requires early intervention (OAR 581-015-2780), early childhood special education (OAR 581-015-2795), or school age special education (OAR 581-015-2120) services.~~The infant or toddler is eligible for Early Intervention services in accordance with OAR 581-015-2780.~~

~~(5) Early Intervention:~~ 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.

~~(6) Early Childhood Special Education (age 3 through 5) and School Age (age 5 through 21):~~ "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 developmental progress (age 3 through 5) or educational performance (age 5 through 21). Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

~~(7) **Early Childhood Special Education and School Age:** If a child is suspected of having a traumatic brain injury, a comprehensive evaluation must be conducted, including the following:~~

~~(a) A medical examination or, with documentation of sufficient efforts by the Local Education Agency to obtain appropriate medical information through a medical examination and evidence that such information cannot be obtained, guided credible history interview process indicating that an event may have resulted in a traumatic brain injury as defined in subsections (6) and (8);~~

~~(A) Medical examinations must be conducted by:~~

~~(i) A physician licensed under ORS chapter 677 or by the appropriate authority in another state;~~

~~(ii) A naturopathic physician licensed under ORS chapter 685 or by the appropriate authority in another state;~~

~~(iii) A nurse practitioner licensed under ORS 678.375 to 678.390 or by the appropriate authority in another state; or~~

~~(iv) A physician assistant licensed under ORS 677.505 to 677.525 or by the appropriate authority in another state.~~

~~(B) The guided credible history interview process is an interview facilitated by an individual familiar with the symptoms of a traumatic brain injury to thoroughly explore a family's report of a possible traumatic brain injury. The guided credible history interview process must:~~

~~\_\_\_\_\_ (i) Document one or more traumatic brain injuries;~~

~~\_\_\_\_\_ (ii) Be reported by a reliable and credible source, and~~

~~\_\_\_\_\_ (iii) Be corroborated by more than one reporter.~~

~~(b) A psychological assessment. A comprehensive psychological assessment using a battery of instruments intended to identify deficits associated with a traumatic brain injury administered and interpreted by a school psychologist licensed by Oregon Teacher Standards and Practices Commission (TSPC), a psychologist or a psychologist associate licensed under Chapter 675 by the Oregon Board of Psychological Examiners (OBPE), or in the case of a student from another state an individual similarly credentialed in another state;~~

~~(c) A developmental history as defined in OAR 581-015-2000(9); and~~

~~(d) 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 related 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 developmental progress for a preschool child (age 3 through 5); or~~

~~(ii) On the child's educational performance for a school-age child (age 3 through 5); and~~

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

**(8) Early Childhood Special Education and School Age:** To be eligible as a child with a traumatic brain injury, the child must meet all of the following 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; and

(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; or

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

**(9) Early Childhood Special Education and School Age:** For a child to be eligible for special education services as a child with a traumatic brain injury, the eligibility team must determine that:

(a) The child has a traumatic brain injury as defined in this rule; and

(b) The child is eligible for special education services in accordance with OAR 581-015-2795 and/or OAR 581-015-2120.

**(10) Early Childhood Special Education and School Age:** 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.

**(1) Definition of Visual Impairment:** For early intervention, early childhood special education, and school age special education, “Visual Impairment” means an impairment in vision that, even with correction, adversely affects an infant or toddler’s development or a child’s educational performance. The term visual impairment includes low vision, total blindness, limited visual acuity after correction, restricted visual field, and progressive eye conditions.

**(2) Comprehensive Evaluation:** If a child is suspected of having a visual impairment, a comprehensive evaluation must be conducted for early intervention, early childhood special education, or school age special education services, including the following: ~~(1) If a child is suspected of having a visual impairment, the following evaluation must be conducted:~~

~~(a) Documentation of Aa vision examination examination by a person licensed to practice optometry under ORS chapter 683 or by the appropriate authority in another state or a physician who specializes in ophthalmology and who is licensed under ORS 677 or by the appropriate authority in another state as defined in OAR 581-015-2000.~~ The vision examination should indicate whether:

(A) The child has a vision impairment that is uncorrectable by medical treatment, therapy or lenses; or

(B) The vision examination results are inconclusive, and the child demonstrates inadequate use of residual vision;

(b) A functional vision assessment conducted 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; and

(c) Any additional assessments determined by the evaluation team to be necessary to determine the impact of the suspected disability:

(A) On the child's educational performance for a ~~school-age~~ child age 5 to 21; or

(B) On the child's developmental progress for a ~~preschool~~ child age birth to 5.

**(3) Eligibility Criteria & Determination:** For a child to be eligible for services as a child with a visual impairment, the eligibility team must determine that:

(a) The child has a visual impairment as defined in this rule; and

(b) By reason thereof, the child requires early intervention (OAR 581-015-2780), early childhood special education (OAR 581-015-2795), or school age special education (OAR 581-015-2120) services.

~~(2) For a child to be eligible for special education services as a child with visual impairment, the eligibility team must determine that:~~

~~(a) The child's visual impairment, even with corrections, has an adverse impact on the child's educational performance; and~~

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



# Update to OAR 581-021-0210

Permanent Rules - 1st Read

Presentation to the State Board of Education

January 19, 2022

178

# Senate Bill 1522 (2022); Sections 5 & 6



During the 2022 short session, Section 5 & 6 of Senate Bill 1522, effective March 23, 2022, requires school districts accept credits earned in Oregon from:

- Youth Corrections Educational Programs (YCEP),
- Juvenile Detention Education Programs (JDEP),
- Long Term Care & Treatment facilities (LTCT),<sup>179</sup>
- Hospital education programs.

As a result, ODE must update OAR 581-021-0210 to align with the new requirements.

# Problem of Practice

- Currently, districts must evaluate student transcripts under their own policies and procedures to determine what, if any, credits they will accept from certain educational programs in Oregon (OAR 581-021-0210).
  - This includes Youth Corrections Educational Programs (YCEP), Juvenile Detention Education Programs (JDEP), Long Term Care & Treatment facilities (LTCT), as well as hospital education programs.
- This differs from credits earned at standard school district programs, which must be accepted as if they had been earned in the enrolling district.

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# Proposed Changes for Permanent Oregon Administrative Rules (OARs)

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# Proposed OAR Change: 581-021-0210

“...When evaluating student transcripts, the school district shall:

**(1) Accept credits and attendance completed in ~~standard~~ educational programs in this state Oregon schools as if they had been earned in the enrolling district consistent with OAR 581-022-1131;**

**(2) As used in this rule, “educational program in this state” means an educational program that is:**

**(a) Provided by a school district, an education service district, a public charter school, the<sup>182</sup> Youth Corrections Education Program, or the Juvenile Detention Education Program; or**

**(b) Funded as provided by ORS 343.243 for students in a long term care or treatment facility described in ORS 343.961 or a hospital identified in ORS 343.261;...”**

# Community Engagement Activities

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## Virtual Engagement Sessions

- Coalition of Oregon School Administrators (COSA)/Oregon Association of Central Office Administrators (OACOA)
- JDEP/YCEP monthly meeting
- LTCT monthly meeting
- Hospital Programs monthly meeting
- Open Invitation Session

## Additional Targeted Engagement

- Anonymous Feedback Survey
  - Counselors
  - Principals
  - Registrars
  - FACT Oregon
  - State Advisory Council for Special Education (SACSE)
- JDEP, YCEP, LTCT, Hospital programs staff

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## Feedback Received

**Many of our youth are very mobile and not getting credit for work they have accomplished is a deterrent to their graduation goals.** Many times this mobility is not in their control as their family may have to move frequently changing schools or they may be in state custody and their placements can often change making them move schools frequently.

This would give students confidence that the work they put in at one school/program will be recognized wherever they enroll next. **This will not punish students for things that are outside of their control --** specifically, the school/program they attend.

**It implies that all good school work counts no matter where you are.** Students that have overcome hurdles aren't faced with another unintended one of credit deficiency.

Students in various programs sometimes think that their work doesn't count. This is proof that it does --- which is incredibly motivating. **It also increases the likelihood of the youth staying on track or getting back on track.**

We offer credits in LTCT and this should be the case <sup>184</sup> throughout Oregon in my opinion. **They are doing work and should reap the benefits.** Also, credits are motivating for engagement for some students.



# Questions?

We appreciate your time & consideration.

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# Special Education Evaluation & Eligibility OAR Updates

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# Background

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- In 2019, the Oregon legislature passed Senate Bills (SB) 13 & 16, which required updates to:
  - the names of eligibility categories, and
  - the requirements for medical/health examinations as well as audiological and visual assessments.
- Both SB 13 and SB 16 were designed to address barriers to special education eligibility and access.
- Updates to 13 different OARs are necessary to implement these legislative requirements.



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# Why are updates being requested now?

- During 2019 - 2020, ODE lead a community engagement process to guide rule development based on the legislative requirements and requested updates.
- This process targeted a limited array of stakeholders and resulted in a broad slate of recommended changes.
- In addition to the required changes, the updates incorporated existing Early Intervention (EI) and Early Childhood Special Education (ECSE) requirements into the existing school age eligibility and evaluation OARs.
- Based on this process, two OARs were completely revised in March 2020:
  - OAR 581-015-2150: Deaf or Hard of Hearing 188
  - OAR 581-015-2175: Traumatic Brain Injury
- Prior to making any further updates, additional engagement types were requested from ODE.



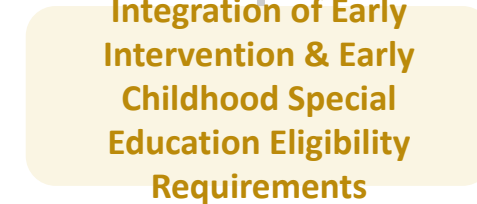
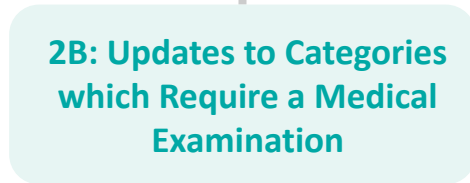
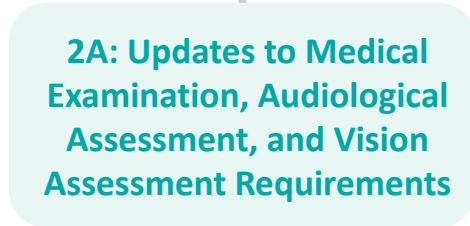
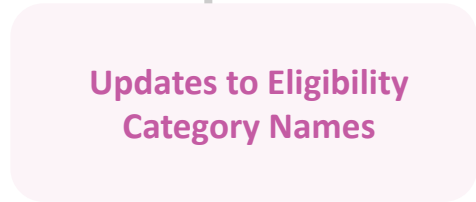
# Why are updates being requested now?

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- In Summer 2022, ODE determined it was necessary to complete the updates required by SBs 13 & 16 and resumed the OAR revision project.
- ODE decided to move a streamlined series of changes forward to community engagement.
- **The updated language was designed to address the legislative requirements, streamline the requirement for a medical examination, and integrate EI and ECSE standards into the current school age OARs. All current eligibility and evaluation criteria remain the same.**
- **This language was designed to provide a common frame for each OAR, upon which we can create additional updates in the future, in collaboration with each disability specific community, their partners, and stakeholders.**

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# Overview of Proposed Changes



# Requested OAR Updates

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Therefore, ODE is seeking to update the following administrative rules:

1. [OAR 581-015-2000 \(Definitions\)](#)
2. [OAR 581-015-2127 \(Developmental Delay\)](#)
3. [OAR 581-015-2130 \(Autism Spectrum Disorder\)](#)
4. [OAR 581-015-2135 \(Communication Disorder\)](#)
5. [OAR 581-015-2140 \(Deafblindness\)](#)
6. [OAR 581-015-2145 \(Emotional Disturbance\)](#)
7. [OAR 581-015-2150 \(Deaf or Hard of Hearing\)](#)
8. [OAR 581-015-2155 \(Intellectual Disability\)](#)
9. [OAR 581-015-2160 \(Orthopedic Impairment\)](#)
10. [OAR 581-015-2165 \(Other Health Impairment\)](#)
11. [OAR 581-015-2170 \(Specific Learning Disability\)](#)
12. [OAR 581-015-2175 \(Traumatic Brain Injury\)](#)
13. [OAR 581-015-2180 \(Visual Impairment\)](#)

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If passed by the State Board of Education, ODE plans to implement the updated rule requirements beginning August 1, 2023.



# Community Engagement Process

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# Engagement Activities Completed

- 3 Engagement Sessions were held (after work hours, during lunch hours, and before work hours)
  - Our outreach focused on special education directors, school based special education evaluation staff, special and general educators, education partners, as well as families and students who experience special education.
  - Over 125+ people attended across all three sessions and provided incredibly helpful feedback and suggestions on our draft rules.
- A survey was distributed widely, including to attendees of the engagement sessions. 193
- ODE attended the Oregon Commission on Autism Spectrum Disorder Committee on Screening and Eligibility and received feedback on January 13, 2023.

# Ongoing Engagement Activities

- In addition to today's session, ODE intends to continue gathering feedback on these rule changes throughout January and February.
  - Following the community engagement sessions held in December, ODE reached out to all attendees to provide revised draft language and request their input on the updates made in response to community engagement. This survey will remain open until 2/1/23.
  - ODE will host an Oregon Educators Association (OEA) special education committee engagement session in February 2023.
  - ODE will host an additional hearing for public comment on February 7, 2023.
  - ODE will also engage with the State Board of Education at the January 19, 2023 meeting.

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# Engagement Feedback on Required Updates

- Attendees were in favor of the updates to the names of categories, with particular appreciation for the update to emotional disturbance.
  - However, the update from Autism to Autism Spectrum Disorder was noted to be a move toward pathologizing and away from the community preferred term. Unfortunately, this nomenclature update is required by SB 13.
- Similarly, there was deep appreciation for the updates to the medical examination and addition of audiological and vision assessment options.
  - Repeatedly attendees shared how these statements acted as an unnecessary barrier to eligibility, particularly for the categories that will no longer mandate a medical examination as part of an initial or reevaluation.<sup>95</sup>
  - Specifically, the lack of bilingual medical providers as well as the lack of medical providers generally in rural communities acts as a barrier to eligibility for many families, particularly families who are historically and/or currently underserved.

# Engagement Feedback on Proposed Integration

- Attendees expressed an appreciation for the integration of EI and ECSE standards into school age conceptually and found it would be useful particularly for children transitioning between EI, ECSE, and school age services.
  - However, it was also noted by some that the drafts shared during community engagement were difficult to consume due to a number of factors, including:
    - the formatting included redundant language, and
    - the proposed language significantly increased the length and complexity of the OARs, which decreased readability.
- Based on this feedback, we revised the draft OARs to decrease the length while increasing the readability of the rules. <sup>196</sup>
- Given these updates, ODE is continuing engagement activities on this rule, including providing the updated language to all community engagement attendees.

# Other Engagement Feedback

- Additional considerations were also identified, including
  - confusion between the OAR language and the use of ODE standard eligibility form;
  - the need for additional updates, beyond those included in the scope of the draft rules proposed today, including the need to increase the cultural responsiveness of the eligibility and evaluation process;
  - the need for student information systems to be updated to reflect the new OAR language; as well as,
  - the need for implementation supports such as guidance on eligibility and evaluation requirements and best practices.

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# Planning Our Pathway

Supporting the implementation of Senate Bill 13 & 16 (2019)

## Fall 2022 - Community Engagement

A broad community engagement process was completed including virtual engagement sessions as well as a survey.

## Summer 2022 – Relaunch

OESO staff determined it was necessary to complete the updates required by SB 13 & 16, reviewed prior engagement information, and developed draft language.

## Fall 2023 - Implementation

ODE will implement the rules on August 1st, 2023, and will provide implementation supports including guidance.

## Winter 2023 - Rule Revision

ODE will seek to update the rules necessary to be substantially in alignment with SBs 13 & 16 by March 2023. Additional updates to ensure alignment within and across divisions will follow.



# Questions?

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We appreciate your time & consideration.

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# Overview of Proposed Changes: Color Coding/Bullet Formatting

**Green** = Proposing to add **new**  
language

**Yellow** = **Revising** existing language

**Red** = **Removing** language entirely

- to be completed
- ✓ already in OAR

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# Domain 1: Updates to Eligibility Category Titles

- to be completed
- ✓ already in OAR

## Language Updates Already in OAR:

- ✓ “deaf or hard of hearing” replaced “hearing impairment”;
- ✓ “deafblindness” replaced “deaf-blindness”;
- ✓ “orthopedic impairments”; and, “other health impairments” were called out as separate conditions; and,
- ✓ “autism spectrum disorder” replaced “autism”

## Language Updates to be Completed:

- “speech or language impairment” will replace “communication disorder”
- “emotional behavior disability” will replace “emotional disturbance”;

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# Domain 2A: Updates from SB 16

- Updates the language from **medical/health assessment statement** to **medical examination**.
- Expands individuals who will be able to complete a medical examination to include:
  - A physician licensed under ORS chapter 677 or by the appropriate authority in another state;
  - A naturopathic physician licensed under ORS chapter 685 or by the appropriate authority in another state;
  - A nurse practitioner licensed under ORS 678.375 to 678.390 or by the appropriate authority in another state; or
  - A physician assistant licensed under ORS 677.505 to 677.525 or by the appropriate authority in another state.
- Adds a **vision assessment** given by a **licensed optometrist** or by a **physician who specializes in ophthalmology** to the options for eligibility assessment.
- Adds an **audiological assessment** given by a **licensed audiologist** to the options for eligibility assessment.

## Domain 2B:

# Updates to Required Medical Examinations

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Seven (7) categories continue to require a medical or vision examination, and/or an audiological assessment as part of an initial or re-evaluation:

- Autism Spectrum Disorder
- Deafblindness
- Deaf or Hard of Hearing
- Orthopedic Impairment
- Other Health Impairment
- Traumatic Brain Injury\*
- Visual Impairment

Five (5) categories may require a medical examination as part of an initial or re-evaluation.

Three which already do not require it:

- Developmental Delay
- Specific Learning Disability
- Speech or Language Impairment\*\*

ODE is proposing to remove the requirement from two rules: 203

- Intellectual Disability
- Emotional Disability

*\*Under specific circumstances, a guided credible history statement may be substituted for a medical examination for*

*TBI* Oregon Department of Education

*\*\*Speech or language impairment retains the existing requirement for a medical exam for a voice disorder and an optional exam for all other concerns*

## Domain 3: EI-ECSE Integration

- In Oregon, special education eligibility is divided into three age ranges:
  - Early Intervention (EI): birth to 3;
  - Early Childhood Special Education (ECSE): 3 to 5; and
  - School Age special education: 5 to 21.
- EI, ECSE, and School Age special education each operate under their own rules and requirements, however many are similar or overlapping.
  - EI offers more limited eligibility options than ECSE and school age, which offer identical eligibility options.
- Current OARs do not provide a single location to determine EI and ECSE eligibility information, which can create confusion for practitioners and families.

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## Domain 3: EI-ECSE Integration

Early Intervention and Early Childhood Special Education (EI/ECSE) is included alongside school age special education in applicable eligibility categories to support:

- **Oregon's seamless system** for children and students who experience disabilities
- **IDEA Part B provisions** and requirements which apply to children and students with disabilities ages 3–21
- **The full continuum of eligibility** for each categorical disability
- **Coordinated kindergarten transition** practices for children moving from early childhood programs into school
- **2020 Oregon Secretary of State audit** recommendations to improve coordination and monitoring of kindergarten transition practices for children who experience disability

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# Domain 3: EI/ECSE Integration in Relevant Evaluation & Eligibility Categories

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## EI, ECSE, & School Age

1. ◆ OAR 581-015-2127 (**Developmental Delay**);
2. ◆ OAR 581-015-2130 (**Autism Spectrum Disorder**);
3. ◆ OAR 581-015-2140 (**Deafblindness**);
4. ◆ OAR 581-015-2150 (**Deaf or Hard of Hearing**);
5. ◆ OAR 581-015-2160 (**Orthopedic Impairment**);
6. ◆ OAR 581-015-2165 (**Other Health Impairment**);
7. ◆ OAR 581-015-2175 (**Traumatic Brain Injury**);
8. ◆ OAR 581-015-2180 (**Visual Impairment**).

## ECSE & School Age Only

1. ✧ OAR 581-015-2135 (**Speech or Language Impairment**);
2. ✧ OAR 581-015-2145 (**Emotional Behavior Disability**);
3. ✧ OAR 581-015-2155 (**Intellectual Disability**);
4. ✧ OAR 581-015-2170 (**Specific Learning Disability**);

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# Updated Proposed OAR Language

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# Proposed OAR Format

Each proposed OAR follows a similar format. That format includes:

- (1) Definition
- (2) Comprehensive Evaluation
- (3) Eligibility Criteria
- (4) Eligibility Determination



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# Example OAR: OAR 581-015-2127 Developmental Delay

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# Domain 3 Example of an Integrated Eligibility: Definition

**(1) Definition of Developmental Delay.** “Developmental Delay” means,

(a) For Early Intervention, 2 standard deviations or more below the mean in one or more of the developmental areas, or 1.5 standard deviations below the mean in two or more of the developmental areas;

(b) For Early Childhood and School Age Special Education, 1.5 standard deviations or more below the mean in two or more of the developmental areas; that

(A) For age 3 to kindergarten, adversely affects the child's developmental progress;

(B) For kindergarten to age 9, adversely affects the student's educational performance.

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(c) For the purposes of this rule, the developmental areas are: (i) Cognitive development; (ii) Physical development; (iii) Communication development; (iv) Social or emotional development; and (v) Adaptive development.

# Domain 3 Example of an Integrated Eligibility: Comprehensive Evaluation

**(2) Comprehensive Evaluation:** If a child is suspected of having a developmental delay for Early Intervention, Early Childhood or School Age Special Education services must be conducted, the following evaluation must be conducted:

(a) For Early Intervention:

(A) At least one norm-referenced, standardized test addressing the infant or toddler's level of functioning in each of the developmental areas;

(B) At least one additional procedure to confirm the infant or toddler's level of functioning in each area of suspected delay listed in this rule;

(C) At least one 20-minute observation of the infant or toddler;

(D) All evaluations and assessments of an infant or toddler must be conducted in the native language of the child, unless it is clearly not feasible to do so.

(b) For Early Childhood and School Age Special Education:

(A) Developmental History as defined in OAR 581-015-2000;

(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 functioning in each area of suspected delay;

(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 211

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

(c) For Early Intervention, Early Childhood, and School Age Special education:

(A) A review of previous testing, medical data and parent reports; and

(B) Any other evaluative information as necessary to determine eligibility.

# Domain 3 Example of an Integrated Eligibility: Eligibility Criteria

**(3) Eligibility Criteria:** To be eligible for services as a child with a developmental delay,

(a) For Early Intervention, the infant or toddler must meet one of the following minimum criteria.

(A) 2 or more standard deviations below the mean in one or more of the developmental areas; Or

(B) 1.5 or more standard deviations below the mean in two or more of the developmental areas; OR

(C) Medical Examination as defined in OAR 581-015-2000. Documentation of a medical examination which includes a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

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(b) For Early Childhood and School Age Special Education, the child must meet all of the following minimum criteria.

(A) 1.5 or more standard deviations below the mean in two or more of the developmental areas;

# Domain 3 Example of an Integrated Eligibility: Eligibility Determination

**(4) Eligibility Determination:** To be eligible for special education services as a child with a developmental delay for Early Intervention, Early Childhood or School Age Special Education services, the eligibility team must also determine that:

(A) The child has a developmental delay as defined in this rule; and

(B) The child is eligible for services in accordance with Early Intervention (OAR 581-015-2780), Early Childhood special education (OAR 581-015-2795), or School Age special education (OAR 581-015-2120).

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# Oregon State Board of Education

January 19, 2023

AGENDA ITEM: 7.A.

|  |  |
|--|--|
| <p><b>SUBJECT:</b> Discrimination OARs: OAR 581-021-0045, OAR 581-021-0046, OAR 581-022-2370, OAR 581-002-0001, OAR 581-002-0003</p> <p><b>STAFF NAME &amp; OFFICE:</b> Kate Hildebrandt, Director’s Office; Karin Moscon, OTLA</p> <p>Various OARs define discrimination in education and make requirements school districts must follow for creating nondiscriminatory environments and responding to complaints of discrimination. These proposed changes are designed to clarify requirements around discrimination, to better align Oregon’s rules with Federal law, and to clarify rights for students, families, school staff, and community members.</p> <p><input checked="" type="checkbox"/> New Rule<br/><input type="checkbox"/> Amend Existing Rule<br/><input type="checkbox"/> Repeal Rule</p> | <p><input checked="" type="checkbox"/> <b>First Reading</b><br/><input checked="" type="checkbox"/> <b>Presentation</b><br/><input type="checkbox"/> <b>No Presentation</b></p> <p><input type="checkbox"/> <b>Action</b><br/><input type="checkbox"/> <b>Temp Rule</b><br/><input type="checkbox"/> <b>Presentation</b><br/><input type="checkbox"/> <b>No Presentation</b></p> |
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## BACKGROUND

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Include the following points for new OARs, OAR updates or changes.

Oregon law prohibits discrimination in any elementary and secondary schools that receive federal funding. A variety of OARs help implement nondiscrimination law by prohibiting discrimination in schools, requiring certain actions to prohibit discrimination, and requiring districts to have complaint processes that address discrimination.

- [OAR 581-021-0045](#) defines discrimination and prohibits it in state funded education programs. It also defines a number of protected class categories.
- [OAR 581-021-0046](#) enumerates program compliance standards for schools in relation to discrimination, addressing topics like athletics, textbooks and curriculum materials, and dress codes.
- [OAR 581-022-2370](#) requires districts to have complaint processes, including a process that covers discrimination complaints.
- OARs [581-002-0001](#) and [581-002-0003](#) relate to ODE’s process for resolving complaints and appeals, including appeals of discrimination complaints which were first made to districts.

These changes were informed by a series of community engagements ODE conducted in Feb/Mar 2022 related to ODE’s 2016 Transgender Student Guidance. Over 500 school staff, students, families, and community members responded to a survey regarding the content of the guidance; within this survey, respondents drew attention to inequities that occur for gender expansive students in schools, including inequitable dress codes and some schools not treating gender identity as a protected class. Some of these proposed changes were also informed by engagement sessions ODE conducted in summer 2022 on the complaint and appeals process.

The proposed changes are not required by statute, but are designed based on community input to better implement discrimination law and related processes. The proposed changes are designed to:

- address community concerns brought to us during these engagement processes;

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- better align Oregon rule and federal law;
- clarify the rights of students, families, and community members; and
- address minor technical fixes needed in these rules.

## SUMMARY OF PREVIOUS BOARD ACTION

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This is the first time these current proposed changes have been before the State Board.

## HAS THE RULE CHANGED SINCE LAST BOARD MEETING?

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- N/A; first read—hasn't been before board
- No; same as last month
- Yes – As follows:

## POLICY ISSUE OR CONCERNS

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Broadly, the changes we are proposing will:

- add definitions for disability and sex, and link the definition of Latinx/a/o/e to the definitions in the Latinx Student Success Plan rules (proposed in 581-021-0045)
- require schools to issue a notice of nondiscrimination that covers all Oregon and federal protected classes, and that the notice must be available in plain language, in an accessible format, and in languages of the communities served (proposed in 581-021-0045)
- clarify prohibitions on discrimination related to dress codes, requiring that dress codes cannot discriminate and that they must be gender-affirming, culturally-affirming, and racially-affirming (proposed in 581-021-0046)
- explicitly list charter schools under nondiscrimination requirements, to clarify they are subject to these rules (proposed in 581-021-0045 and 581-002-0001)
- clarify that sexual harassment as defined in OAR 581-021-0038 is a form of discrimination covered by these discrimination rules (proposed in 581-002-0003 and 581-002-2370)
- clarify that any person who has experienced discrimination can submit a complaint of discrimination to a district, and that third parties representing such persons can also submit complaints (proposed in 581-022-2370)

Between November 2022 and January 2023, we conducted a targeted community engagement process on these proposed rules. This included:

- Open request for community engagement via email (Nov 17, 2022)
  - Directed email to ~40 community partners
  - Information spread through requests to Student Success Plan Advisory Groups
- Two open community engagement sessions (Dec 2 and Dec 12, 2022)
- Presentation to LGBTQ2SIA+ Student Success Advisory Group (Dec 2022)
- Presentation to Southern Oregon ESD GSA Advisor Affinity Group (Dec 2022)
- Presentation to ODE Rules Advisory Committee (Jan 5, 2023)
- Presentation to Latinx Student Success Advisory Group (Jan 17, 2023)

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We have received significant feedback on these proposals during our engagement sessions.

- Participants appreciated that the notice of nondiscrimination will be required to be written in plain, accessible language, and that it must be issued in languages of the community. Participants shared that this would be especially important for students and families with disabilities, and students and families that speak languages other than English at home. Some participants requested that ODE provide a sample notice of nondiscrimination and provide it translated into the most common languages, as a cost-saving measure for districts.
- Participants appreciated the updates to the dress code requirements. Participants noted that this would be especially important for girls and gender expansive students. A few participants questioned whether it would be appropriate to define gender-affirming, racially affirming, or culturally affirming either in rule or in guidance. Some participants asked us to explicitly link these requirements to the CROWN Act and to ORS 329.451(14)(a) regarding tribal regalia. We would appreciate feedback from the State Board on these matters.
- Related to the proposed language in 581-022-2370 that that third parties may submit complaints on behalf of a person, we have received mixed feedback. The majority of participants were in support of the inclusion of third parties, citing that many students and families would not have been able to submit complaints without the support of a community based organization, and that community based organizations may be able to submit complaints this way when individual students or families are too scared of retaliation to report discrimination. A few participants brought up the concern that third parties may file complaints without the permission of the party, and that there could be cases where a party did not want a complaint filed or did not want to move an investigation forward. We would appreciate feedback from the State Board on this matter.
- Participants appreciated the explicit inclusion of charter schools into these rules, noting that it would make it easier for schools, students, and families to understand that charter schools are subject to these rules.

## EQUITY IMPACT ANALYSIS

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The proposed changes are designed to positively impact all protected class students and school community members. The proposed notice of nondiscrimination requirement in 581-021-0045 is intended to make school nondiscrimination policies and procedures widely known and easily accessible, so that anyone who experiences discrimination has easy access to the correct school district staff and the correct policies. We received feedback during our community engagement sessions that the proposals to require it to be in plain language, in an accessible format, and to be available in languages of the community were particularly important to marginalized students and their families.

The proposed revisions to dress code requirements in 581-021-0046 are designed to address discrimination faced by protected class students in school dress codes. It is intended to supplement and work alongside other rules and laws like the CROWN Act and Oregon's law that allows students to wear tribal regalia at graduation. We received feedback from community members that this proposed change was particularly important for gender expansive students, for girls, and for Black students who are often disproportionately impacted by school dress codes.

# Oregon State Board of Education

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## FISCAL ANALYSIS

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The fiscal responsibilities for ODE are negligible. ODE already has experts who can support districts with technical assistance around implementing these changes, and who can provide additional guidance and best practices around preventing and addressing discrimination.

Districts may have small costs associated with these rules, because they may be required to update their policies and their website. The proposed rules for the notice of nondiscrimination will require schools to post the notice in languages spoken by the community, which may incur minor costs associated with translation services.

## EFFECT OF A "YES" OR "NO" VOTE

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If approved, the proposed changes will implement new requirements related to discrimination for school districts, including requiring schools to issue a notice of nondiscrimination (in languages of the community and in an accessible format) that covers state and federal protected classes, ensuring that school dress codes are nondiscriminatory, and ensuring that any person subject to discrimination in a school district may submit a complaint.

## STAFF RECOMMENDATION

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Approve  Approve next month  No recommendation at this time  
**Prompted by:**  State law changes  Federal law changes  other

## ATTACHMENTS

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Attachment 1: Proposed Rules (2022 Discrimination Rules Revisions Proposal\_12.28.2022)

**581-021-0045**

**Discrimination Prohibited**

(1) For purposes of this rule and OAR 581-021-0046:

**(a) “Disability” includes a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment.**

~~(b)~~ **(b) “Discrimination” means any act that that unreasonably differentiates treatment, intended or unintended, or any act that is fair in form but discriminatory in operation, either of which is based on age, disability, national origin, race, color, marital status, religion, sex, sexual orientation, or gender identity;**

~~(b)~~ **(c) “District” means:**

(A) A school district, an education service district, **a public charter school**, a Youth Corrections Education Program provider under contract with the department, a Juvenile Detention Education Program provider under contract with the department, or a program that receives moneys pursuant to ORS 343.243; and

(B) Any educational agency, program, or service under the jurisdiction of an entity described in subparagraph (A) of this paragraph.

~~(c)~~ **(d) “National origin” includes:**

(A) An individual’s or individual’s parent’s or guardian’s **actual or perceived** place of origin;

(B) Latinx/**a/o/e** and other protected class ethnicities, **including Afro-Latinx/a/o as defined in OAR 581-017-0693, Central American as defined in OAR 581-017-0693, Indigenous as defined in OAR 581-017-0693, and South American as defined in OAR 581-017-0693;**

(C) An individual’s **actual or perceived** religious or cultural ancestry that the individual associates with their personal identity;

(D) Physical characteristics that are historically associated with a place of origin, protected class ethnicity, or religious or cultural ancestry, including but not

limited to individuals who identify as Syrian, Muslim, Middle Eastern, Arab, Sikh, and Jewish; and

(E) ) An individual whose first spoken language is not English or who is not proficient in speaking English, or who is under the custody of a parent or guardian whose first spoken language is not English or who is not proficient in speaking English.

~~(d)~~ (e) “Gender identity” means an individual’s gender-related identity, appearance, expression or behavior, regardless of whether the identity, appearance, expression or behavior differs from that associated with the gender assigned to the individual at birth.

~~(e)~~ (f) “Protective hairstyle” means a hairstyle, hair color, or manner of wearing hair that includes, but is not limited to, locs, twists, and braids, regardless of whether the braids are created with extensions or styled with adornments.

**(g) “Public Charter School” means an elementary or secondary charter school offering a comprehensive instructional program operating under a written agreement entered into between a sponsor and an applicant pursuant to ORS chapter 338.**

~~(f)~~ (h) “Race” includes:

(A) Black, African American, American Indian, Alaska Native, Asian, Native Hawaiian, Pacific Islander, other protected races, and multiracial individuals; and

(B) Physical characteristics that are historically associated with race, ~~that includes, but is not limited to,~~ **including but not limited to** any natural hair, hair texture, hair type, or protective hairstyle associated with race.

**(i) “Sex” includes male (M), female (F), and non-binary (X).**

~~(g)~~ (j) “Sexual orientation” means an individual’s actual or perceived heterosexuality, homosexuality, or bisexuality.

**(k) “Sponsor” means:**

**(A) The board of the common school district or the union high school district in which the public charter school is located that has developed a written charter to create a public charter school.**

**(B) The State Board of Education pursuant to ORS 338.075.**

(2) A person in Oregon may not be subjected to discrimination in any public elementary or secondary school, educational program or service, or interschool activity where the program,

service, school, or activity is financed in whole or part by monies appropriated by the Legislative Assembly.

(3) In providing programs or services to students, a district may not, on a discriminatory basis as defined in subsection (1)(a) of this rule:

- (a) Treat one person differently from another in determining whether such person satisfies any requirement of condition for the provision of such aid, benefit, or service;
- (b) Provide different aid, benefits, or services; or provide aids, benefits, or services in a different manner;
- (c) Deny any person such aid, benefit, or service;
- (d) Subject any person to separate or different rules of behavior, sanctions, or other treatment;
- (e) Aid or perpetuate discrimination by joining or remaining a member of any agency or organization which discriminates in providing any aid, benefit, or service to students or employees;
- (f) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

**(4)(a) A district must issue notice of nondiscrimination for the purpose of notifying students, staff, and third parties that the district does not discriminate on the basis of age, disability, national origin, race, color, marital status, religion, sex, sexual orientation, and gender identity.**

**(b) Notice of nondiscrimination as required by this subsection must:**

**(A) Be continuously available on the district website, accessible either by a direct link on the front page of the website or by a direct link on the footer of every page of the website.**

**(B) Be posted in multiple locations, including but not limited to staff and student handbooks, annual publications, school board documents, bulletins, graduation announcements, catalogs, e-mail listservs, recruitment materials, and school related applications.**

**(C) Be made available in the languages of the communities served by the district.**

**(D) Be disseminated annually to staff, students, and families of students as an individual notice that is accessible and written in plain language.**

**(E) Contain:**

**(i) A statement of non-discrimination that specifies the basis for non-discrimination being age, disability, national origin, race, color, marital status, religion, sex, sexual orientation, and gender identity;**

**(ii) The contact information of staff designated to respond to questions of discrimination, including their name or title, address, email address, and telephone number; and**

**(iii) A link to or the web address for the district's discrimination complaint process and procedures.**

~~(4)~~ **(5)** This rule does not affect attendance boundaries, limit placement of students in programs of desegregation, nor supersede any specific statutory requirement for any educational program.

**Statutory/Other Authority:** ORS 326 & 659.855

**Statutes/Other Implemented:** ORS 326.051 & 659.850

**History:**

ODE 39-2021, amend filed 12/29/2021, effective 12/29/2021

ODE 11-2019, amend filed 03/25/2019, effective 03/25/2019

ODE 13-2008, f. & cert. ef. 5-23-08

1EB 11-1984, f. & ef. 4-17-84

1 EB 252, f. & ef. 9-30-76

## 581-021-0046

### Program Compliance Standards

(1) The definitions in OAR 581-021-0045 apply to this rule.

~~(1)~~ (2) Access to Course Offerings. A school district shall not provide any course or otherwise carry out any of its educational programs or activities on a discriminatory basis or require or refuse participation therein by any of its students on such basis.

(a) This section does not prohibit grouping of students in any educational program or activity by ability as assessed by objective standards of individual performance.

(b) Where use of an objective standard of measuring skill or progress in an educational program has a discriminatory effect on persons as defined in OAR 581-021-0045, the district shall use appropriate standards which do not have such effect.

(c) This section does not prohibit separating students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball, soccer, and other sports the purpose or major activity of which involves bodily contact.

~~(2)~~ (3) Employment Assistance. A district which actively assists any agency, organization, or person in making employment available to any of its students shall assure itself that such employment is made available without discrimination.

~~(3)~~ (4) Marital Status. A district shall not discriminate against any student or exclude any student from its educational program or activity including any class or extracurricular activity on the basis of the student's marital status; however the student may request voluntarily to participate in a separate portion of the program or activity of the district.

~~(4)~~ (5) Athletics. A district which operates or sponsors interscholastic club or intramural athletics shall provide equal athletic opportunity for members of both all sexes, all age and ethnic groups, and persons with disabilities. In determining whether equal opportunities are available, the Superintendent of Public Instruction shall consider among other factors whether the selection of sports and levels of competition effectively accommodate the interests and abilities of all students.

~~(5)~~ (6) Students Unable to Attend Because of Religious Beliefs. Any student who because of his or her religious beliefs is unable to attend classes on a particular day shall be excused from attendance requirements and from any examination or other assignment on that day. The student shall make up the examination or other assignment missed because of such absence. The absence shall not be counted for the purpose of an attendance policy that may result in exclusion, failure, or reduction of grade based upon a certain number of days.

~~(6)~~ **(7)** Textbooks and Curriculum Material. Nothing in this rule shall be interpreted as requiring or prohibiting or abridging in any way the use of adopted textbook or curriculum material. However, where materials are found upon investigation to provide discriminatory impact on the basis of ~~race, color, national origin, religion, sex, sexual orientation, age, disability, or marital status,~~ **age, disability, national origin, race, color, marital status, religion, sex, sexual orientation, or gender identity,** there should be established resources for employees and students of the district for supplemental alternative nondiscriminatory material.

~~(7)~~ **(8)** Use of Appraisal and Counseling Materials. A district which uses testing or other materials for appraising or counseling students shall not use materials which discriminate on the basis of ~~race, color, national origin, religion, sex, sexual orientation, age, disability, or marital status,~~ **age, disability, national origin, race, color, marital status, religion, sex, sexual orientation, or gender identity,** or use materials which permit or require different treatment of students on such basis unless such differences cover the same occupation and interest areas and the use of such different material is shown to be essential to the elimination of discrimination. Districts shall develop and use internal procedures for insuring that such materials may not discriminate.

~~(8)~~ **(9)** Bilingual or Linguistically Different Students. Districts shall develop and implement a plan for identifying students whose primary language is other than English and shall provide such students with appropriate programs until they are able to use the English language in a manner that allows effective and relevant participation in regular classroom instruction and other educational activities.

~~(9)~~ **(10)** Equal Educational Opportunity Plans. Districts shall develop and implement a plan which assures that all students have equal opportunity to participate in the educational programs and activities and equal access to facilities in the district. Said plan shall include courses and components which provide students with an understanding of the pluralistic realities of their society, including multi-cultural/racial/ethnic education and equity in portraying all classes protected under ORS ~~659.150~~ **659.550**. Upon the request of the Superintendent of Public Instruction, districts shall submit copies of such plans and other assurances as are deemed necessary and proper.

~~(10) Dress Codes. Districts may enforce an otherwise valid dress code or policy, as long the code or policy.~~

**(11) Dress Code. If a district has a formal or informal dress code policy, the policy must:**

~~(a) Provides, on a case-by-case basis, for reasonable accommodation of an individual based on the health and safety needs of the individual; and~~

~~(b)(A) Does not have a disproportionate adverse impact on members of a protected class, including age, disability, national origin, race, color, marital status, religion, sex, sexual orientation, or gender identity, to a greater extent than the policy impacts persons generally.~~

~~(B) For purposes of this paragraph, “disproportionate adverse impact” means an impact that is not appropriate or fair in consideration of the individual’s protected class status.~~

**(a) Not discriminate against members of a protected class, including age, disability, national origin, race, color, marital status, religion, sex, sexual orientation, and gender identity;**

**(b) Be gender-affirming, racially affirming, and culturally affirming;**

**(c) Provide, on a case-by-case basis, for reasonable accommodation of an individual based on the health and safety needs of the individual; and**

**(d) When revised, be revised with input from members of protected classes, including age, disability, national origin, race, color, marital status, religion, sex, sexual orientation, and gender identity.**

~~(11)~~ **(12)** Interpretation of Rules. The Superintendent of Public Instruction may issue written interpretations concerning rules for nondiscrimination upon the written request of parties to a complaint at the district level.

**Statutory/Other Authority:** ORS 326 & 659.855

**Statutes/Other Implemented:** ORS 326.051 & 659.850

**History:**

ODE 39-2021, amend filed 12/29/2021, effective 12/29/2021

ODE 13-2008, f. & cert. ef. 5-23-08

1EB 11-1984, f. & ef. 4-17-84

1 EB 252, f. & ef. 9-30-76

## 581-022-2370

### Complaint Procedures

(1) Each school district must establish a process for the prompt resolution of a complaint by:

- (a) a person who resides in the district; ~~or~~
- (b) any parent or guardian of a student who attends school in the district; **or**
- (c) **any person who alleges that they have been subjected to discrimination or a third party representing such persons**

(2) A school district's complaint procedure must:

- (a) Be in writing available at the main administrative office and, if the school district has a website, in a form available on the home page of the school district's website;
- (b) Include the name of the person, position, or office within the school district with the responsibility for responding to the complaint; and
- (c) Specify the time period during which the complaint will be addressed and a final decision issued. If the complaint procedure has multiple steps, the procedure must establish the time period for each step as well as the overall time period for completing the complaint procedure.

(3) A school district's complaint procedure may:

- (a) Distinguish between those complaints that may be appealed under OAR 581-002-0040 **and** OAR 581-002-0001 to OAR 581-002-0023, and other complaints;
- (b) Offer mediation or other alternative dispute resolution processes as an option available if all parties to the complaint agree in writing to participate;
- (c) Impose a time limitation for filing a complaint that is the later of either:
  - (A) Two years after the alleged violation or unlawful incident occurred or the complaint discovered the alleged violation or unlawful incident. For incidents that are continuing in nature, the time limitation must run from the date of the most recent incident; or
  - (B) One year after the affected student has graduated from, moved away from, or otherwise left the school district.
- (d) Include more than one but no more than four steps for addressing the complaint.

(4) The procedure for hearing and acting on complaints alleging violation of the Oregon Administrative Rules, Chapter 581, division 22 (division 22 standards), ORS 339 to 330.303 or OAR 581-021-0550 to 581-021-0570 (Restraint and Seclusion), ORS 659.850 or OAR **581-021-0038**, 581-021-0045, 581-021-0046, 581-021-0047 (Discrimination); or ORS 659.852 (Retaliation) must include the following:

(a) The point at which the district's decision is final; and

(b) A final decision in written or electronic form that addresses each allegation in the complaint and contains reasons for the district's decision and notifies the complainant that the district's decision may be appealed to the Deputy Superintendent of Public Instruction under OAR 581—002-0023.

(5) This rule applies to appeals filed with a school district on or after January 1, 2018.

**Statutory/Other Authority:** ORS 326.051 & 659.855

**Statutes/Other Implemented:** ORS 327.103 & 659.850

**History:**

ODE 11-2019, amend filed 03/25/2019, effective 03/25/2019

ODE 2-2019, minor correction filed 01/08/2019, effective 01/08/2019

Renumbered from 581-022-1650 by ODE 16-2017, , f. & cert. ef. 7-5-17

ODE 9-2017, f. 6-29-17, cert. ef. 7-1-17, Renumbered from 581-022-1941

ODE 31-2007, f. & cert. ef. 12-12-07

## 581-002-0001

### Definitions

For purposes of OAR 581-002-0001 to OAR 581-002-0023:

(1) "Department" means the Oregon Department of Education.

(2) "District" means:

**(A)** A school district, an education service district, a **public charter school**, a Youth Corrections Education Program provider under contract with the department, a Juvenile Detention Education Program provider under contract with the department, or a program that receives moneys pursuant to ORS 343.243; **and**

**(B)** Any educational agency, program, or service under the jurisdiction of an entity described in subparagraph (A) of this paragraph.

**(3)** "Public Charter School" means an elementary or secondary charter school offering a comprehensive instructional program operating under a written agreement entered into between a sponsor and an applicant pursuant to ORS chapter 338.

(4) "Sponsor" means:

**(A)** The board of the common school district or the union high school district in which the public charter school is located that has developed a written charter to create a public charter school.

**(B)** The State Board of Education pursuant to ORS 338.075.

**Statutory/Other Authority:** ORS 326.051, ORS 339.303 & ORS 659.850 to 659.855

**Statutes/Other Implemented:** ORS 659.850 to 659.855 & ORS 339.285

**History:**

ODE 11-2019, adopt filed 03/25/2019, effective 03/25/2019

## 581-002-0003

### Scope

OAR 581-002-0001 to OAR 581-002-0023 apply to appeals of complaints alleging:

(1) A violation of ORS 339.285 to 339.303 or OAR 581-021-0550 to 581-021-0570 (Restraint and Seclusion);

(2) A violation of ORS 659.850 or OAR 581-021-0045 **to 581-021-0046 (Discrimination and Program Compliance Standards for Purposes Related to Discrimination)**;

~~(3) If the entity against whom the complaint is filed is a school district, a violation of OAR 581-021-0046 (Program Compliance Standards for Purposes Related to Discrimination);~~

**(3) If the entity against whom the complaint is filed is a school district, education service district, or public charter school, a violation of OAR 581-021-0038 (Requirements Related to Sexual Harassment);**

(4) If the entity that is the subject of the complaint is a school or program operated by a school district, education service district, or public charter school, a violation of OAR 581-021-0047 (Prohibition against Using Native American Mascots);

(5) If the entity against whom the complaint is filed is a school district, an education service district, a Youth Corrections Education Program provider under contract with the department, or a program that receives moneys pursuant to ORS 343.243 (3) or (4), a violation of ORS 659.852 (Retaliation); or

(6) A violation of the Oregon Administrative Rules, chapter 581, division 022 (Division 22 Standards).

**Statutory/Other Authority:** ORS 326.051, ORS 339.303 & ORS 659.850 to 659.855

**Statutes/Other Implemented:** ORS 659.850 to 659.855 & ORS 339.285

**History:**

ODE 11-2019, adopt filed 03/25/2019, effective 03/25/2019

# Oregon State Board of Education

January 19, 2022

AGENDA ITEM: 7.B.

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| <p><b>SUBJECT:</b> Non-Conviction Court Orders / OAR 581-053-0050, 581-021-0510, and 581-045-0584</p> <p><b>STAFF NAME &amp; OFFICE:</b> Brock Dittus</p> <p>Proposed rule changes to account for situations in which no conviction visible to ODE’s fingerprinting team exists, but circumstances permit individuals ordered to use an ignition interlock device (IID) or required to register as a sex offender to qualify for driver approval or fingerprinting clearance to work with children in schools.</p> <p><input type="checkbox"/> New Rule<br/><input checked="" type="checkbox"/> Amend Existing Rule<br/><input type="checkbox"/> Repeal Rule</p> | <p><input checked="" type="checkbox"/> <b>First Reading</b><br/><input checked="" type="checkbox"/> <b>Presentation</b><br/><input type="checkbox"/> <b>No Presentation</b></p> <p><input type="checkbox"/> <b>Action</b><br/><input type="checkbox"/> <b>Temp Rule</b><br/><input type="checkbox"/> <b>Presentation</b><br/><input type="checkbox"/> <b>No Presentation</b></p> |
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## BACKGROUND

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Oregon Department of Education’s Pupil Transportation & Fingerprinting Unit reviews fingerprinting background checks for all classified employees in schools, and driving histories for driver credential applications and renewals. Certain safeguards have been codified in rule to ensure that known convictions for violations of law are accounted for when determining who may be given unsupervised access to children in a school setting, or be issued a driving approval or credential when working in pupil transportation.

Individuals with a conviction for driving under the influence of intoxicants are barred from eligibility for driver approval until they are three years free from custody, probation, and parole under OAR 581-053-0050. When such a conviction and its associated custody, probation, and parole is either older than three years, or expunged from the individual’s record, they would qualify to hold a driving credential or approval. In certain circumstances, an individual charged with operating under the influence of intoxicants might be ordered by the court as part of a diversion program to use an ignition interlock device (IID), allowing them to operate a vehicle under the condition that they verify sobriety through the device installed in their vehicle. This presents challenges to a district operation, as such a modification does not meet any established pupil transportation vehicle construction standards, and could also raise questions from those involved in a community’s schools as to why someone with such a requirement is given the responsibility of transporting school pupils.

Individuals convicted of most crimes of a sexual nature are barred from employment in a school under ORS 342.143 and may not be given unsupervised access to children in a school setting. In some cases, an individual could be required to register as a sex offender even if a disqualifying crime conviction is not visible to ODE’s fingerprinting team, usually from legal action in a jurisdiction outside of Oregon. In such a case, it is possible that ODE could issue a fingerprinting clearance without knowledge of the individual’s requirement to register as a sex offender. This could raise questions from those involved in a community’s schools as to why someone with such a requirement is given unsupervised access to children.

# Oregon State Board of Education

January 19, 2022

AGENDA ITEM: 7.B.

ODE’s Pupil Transportation & Fingerprinting unit observed both of the scenarios listed above in recent months, and suggested that such situations be recommended to the board for consideration and appropriate action. While the holiday season limited our ability to conduct stakeholder engagement, the ODE Rules Advisory Committee reviewed the suggested rule changes attached without objection.

It is important to acknowledge that whenever background checks and fingerprinting are introduced, concerns around equitable impact of law and its enforcement are raised. In consideration of this particular rule change, none of the details are necessarily connected to those broader concerns, though they remain important.

## SUMMARY OF PREVIOUS BOARD ACTION

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1. No previous action on this item.

## HAS THE RULE CHANGED SINCE LAST BOARD MEETING?

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- N/A; first read—hasn’t been before board
- No; same as last month
- Yes – As follows:

## POLICY ISSUE OR CONCERNS

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No concerns have been identified around the proposed rule changes other than those described above more broadly around matters of statute.

## EQUITY IMPACT ANALYSIS

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No negative equity impact has been identified. The proposed changes strengthen the standards for those with access to and responsibility for Oregon’s school pupils.

## FISCAL ANALYSIS

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No significant fiscal impact has been identified.

## EFFECT OF A “YES” OR “NO” VOTE

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A “Yes” vote will approve the changes to rule, clarifying how ODE will handle fingerprinting background checks and driver credential approvals.

A “No” vote will retain the current language in rule, and maintain the ability for ODE to issue credentials to individuals with the above described court orders.

# Oregon State Board of Education

January 19, 2022

AGENDA ITEM: 7.B.

## STAFF RECOMMENDATION

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Approve  Approve next month  No recommendation at this time  
*Prompted by:*  State law changes  Federal law changes  other

## ATTACHMENTS

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Attachment 1: proposed changes to OAR 581-053-0050, 581-021-0510, and 581-045-0584

# Oregon Department of Education

## Chapter 581

### Division 53

### SCHOOL BUS DRIVER TRAINING, LICENSING, AND SCHOOL BUS STANDARDS

#### **581-053-0050**

#### **Driving and Criminal Records**

(1) The Oregon Department of Education shall review the driving record of each applicant for certification or approval as a school bus or school activity driver. Applicants who have held a driver license in a state other than Oregon anytime during the preceding three-year period may be required to furnish a copy of the driving record from each state in which the applicant has held a driver license to ODE. If the driver currently holds a driver license from another state, the driving record shall be printed no more than 30 days prior to the date received by ODE.

(2) ODE shall review the criminal record of each applicant for certification or approval as a school bus or school activity driver.

(3) An applicant does not qualify as a school bus or school activity driver if the applicant:

(a) Has ever been convicted of a crime listed in ORS 342.143- (Forever Crime); or,

(b) Is currently subject to mandatory registration reporting as a sex offender in this state or any other jurisdiction; or,

(c) Has ever been convicted of a crime involving violence, threat of violence or theft. This shall not apply if the applicant or driver has been free from custody, probation and parole for the preceding three-year period from date of application; or,-

(d) Has ever been convicted of a crime involving activity in drugs or alcoholic beverages. This shall not apply if the applicant or driver has been free from custody, probation, and parole for the preceding three-year period from date of application; or,-

(e) Has had his or her driving privileges suspended by any state, within the preceding three-year period, for a cause involving the unsafe operation of a motor vehicle or because of driving record.

(f) Is required to use an ignition interlock device (IID).

(g) Has been convicted within the preceding three-year period of:

(A) Driving under the influence of intoxicants, as defined in ORS 813.010;

(B) Reckless driving, as defined in ORS 811.140;

(C) Fleeing or attempting to elude a police officer, as defined in under ORS 811.540;

(D) Failure to perform the duties of a driver involved in an accident or collision which results in injury or death of any person, as described in ORS 811.705; or

(E) An equivalent out of state conviction for any of the above.

(hf) Has had his or her driving privileges revoked or suspended as a habitual offender under ORS 809.600. This shall not apply if applicant or driver has had his or her driving privileges restored under ORS 809.660 for the preceding three years;

(ig) Has a driving record for the preceding three-year period that has an accumulation of 31 or more points based upon the following point system:

(A) Each chargeable accident shall have a value of 10 points. Applicable traffic code and preventability guidelines published by the National Safety Council and the Pupil Transportation Safety Institute may be used to determine if an accident is chargeable; and

(B) Each of the traffic violations on Table 1 shall have a value of 10 points.

(C) One point shall be subtracted from the total number of points for each full month, since the last chargeable accident or conviction, to the time of driving record check; however, all subtracted points will be reinstated if any additional qualifying convictions or chargeable accidents occur within the three-year calculation period.

[ED. NOTE: Tables referenced are available from the agency.]

[\[ED. NOTE: To view attachments referenced in rule text, click here for PDF copy.\]](#)

**Statutory/Other Authority:** ORS 327.013 & 820.100 - 820.120

**Statutes/Other Implemented:** ORS 327.013, 820.100, 820.105, 820.110 & 820.120

**History:**

ODE 40-2014, f. & cert. ef. 9-3-14

ODE 19-2012, f. & cert. ef. 6-14-12

# Oregon Department of Education

## Chapter 581

### Division 21

### SCHOOL GOVERNANCE AND STUDENT CONDUCT

#### **581-021-0510**

#### **Fingerprinting: Definitions**

As used in OAR 581-021-0510 through 581-021-0512, the following definitions apply:

(1)(a) "Conviction" means:

(A) Any adjudication in any criminal court of law, in this state or in any other jurisdiction, finding the individual committed a crime. A crime is an offense for which a sentence of imprisonment is authorized.

(B) Any adjudication in a juvenile proceeding, in this state or in any other jurisdiction, determining that the individual committed an offense, which if done by an adult, would constitute a crime listed in ORS 342.143.

(C) Any conduct which resulted in mandatory registration reporting as a sex offender in this state or any other jurisdiction or current requirement to register as a sex offender. A later court order or other action relieving the individual of the sex offender registration/reporting requirement does not affect the status of the conduct as a conviction for purposes of this rule.

(D) Any plea of guilty, no contest or nolo contendere in connection with a crime, in this state or in any other jurisdiction.

(b) Notwithstanding subsection (a) of this section, the following additional guidelines apply when determining whether a conviction exists:

(A) A conviction does not exist where a dismissal was later entered into the record in connection with a diversion or on any sort of deferred adjudication or delayed entry of judgment.

(B) A conviction does not exist where an Oregon court has expunged or otherwise removed a conviction from the record of an individual. A conviction does exist for purposes of this rule even if a crime was expunged or removed from the record of the individual under the laws of another jurisdiction if the crime would be ineligible under ORS 137.225 for expunction or removal from the record if the conviction had occurred in Oregon.

(C) A conviction does not exist where an individual was granted a full pardon by executive order of the Governor of this state. A conviction does exist for purposes of this rule even if a crime was pardoned by executive order in another jurisdiction, unless the Superintendent of Public Instruction determines that the pardon issued by the other jurisdiction is the equivalent of a full pardon by executive order in this state.

(D) Except as noted above, a conviction does not exist only where there was a judicial adjudication that the individual did not commit the offense in question, or when a conviction, adjudication or plea is

overturned by an appellate court of record and no later conviction, adjudication or plea indicating the individual committed the offense in question is on the record.

(2) “DAS” means State of Oregon, Department of Administrative Services;

(3) “Direct, unsupervised contact with students” means contact with students that provides the person opportunity and probability for personal communication or touch when not under direct supervision;

(4) “DOB” means date of birth;

(5) “FBI” means the Federal Bureau of Investigations;

(6) “Fingerprint information” means all information requested by the Oregon Department of Education for processing the fingerprint application, including the following:

(a) One properly completed fingerprint submission; and

(b) A properly completed Oregon Department of Education fingerprint based criminal history verification form.

(7) “Knowingly made a false statement” means the failure to disclose on the Oregon Department of Education fingerprint based criminal history verification form as part of the criminal records check process any of the following:

(a) A conviction of a felony;

(b) Any conviction of a misdemeanor within the previous 20 years;

(c) Any conviction of a misdemeanor that is listed in ORS 342.143 or its substantial equivalent in another jurisdiction.

(8) “LEDS” means the Law Enforcement Data System;

(9) “School District” means:

(a) A school district as defined in ORS 330.005;

(b) The Oregon School for the Deaf;

(c) An educational program under the Youth Corrections Education Program;

(d) A public charter school as defined in ORS 338.005; and

(e) An education service district.

(10) “SSF” means State School Fund;

(11)(a) “Subject individual” means:

(A) Any person hired within the last three months by a school district and not requiring licensure under ORS 342.223;

(B) Any person employed as or by a contractor into a position having direct, unsupervised contact with students and not requiring licensure under ORS 342.223;

(C) A person who is a community college faculty member providing instruction:

(i) At the site of an early childhood education program or at a school site as part of an early childhood program; or

(ii) At a kindergarten through grade 12 school site during the regular school day; and

(D) A person who is an employee of a public charter school and not requiring licensure under ORS 342.223;

(b) "Subject individual" does not include an employee hired within the last three months if the school district has on file evidence that the employee:

(A) Successfully completed a state and national criminal records check for a previous employer that was a school district or private school; and

(B) Has not resided outside the state between the two periods of employment.

**Statutory/Other Authority:** ORS 326.051

**Statutes/Other Implemented:** ORS 326.603 & ORS 326.607

**History:**

[ODE 22-2019, adopt filed 06/25/2019, effective 06/25/2019](#)

# Oregon Department of Education

## Chapter 581

### Division 45

### PRIVATE VOCATIONAL SCHOOLS

#### **581-045-0584**

#### **Definitions**

As used in OAR 581-045-0584 through 581-045-0587, the following definitions apply:

(1)(a) "Conviction" means:

(A) Any adjudication in any criminal court of law, in this state or in any other jurisdiction, finding the individual committed a crime. A crime is an offense for which a sentence of imprisonment is authorized.

(B) Any adjudication in a juvenile proceeding, in this state or in any other jurisdiction, determining that the individual committed an offense, which if done by an adult, would constitute a crime listed in ORS 342.143.

(C) Any conduct which resulted in mandatory registration reporting as a sex offender in this state or any other jurisdiction or current requirement to register as a sex offender. A later court order or other action relieving the individual of the sex offender registration/reporting requirement does not affect the status of the conduct as a conviction for purposes of this rule.

(D) Any plea of guilty, no contest or nolo contendere in connection with a crime, in this state or in any other jurisdiction.

(b) Notwithstanding subsection (a), the following additional guidelines apply when determining whether a conviction exists:

(A) A conviction does not exist where a dismissal was later entered into the record in connection with a diversion or on any sort of deferred adjudication or delayed entry of judgment.

(B) A conviction does not exist where an Oregon court has expunged or otherwise removed a conviction from the record of an individual. A conviction does exist for purposes of this rule even if a crime was expunged or removed from the record of the individual under the laws of another jurisdiction if the crime would be ineligible under ORS 137.225 for expunction or removal from the record if the conviction had occurred in Oregon.

(C) A conviction does not exist where an individual was granted a full pardon by executive order of the Governor of this state. A conviction does exist for purposes of this rule even if a crime was pardoned by executive order in another jurisdiction, unless the Superintendent of Public Instruction determines that the pardon issued by the other jurisdiction is the equivalent of a full pardon by executive order in this state.

(D) Except as noted above, a conviction does not exist only where there was a judicial adjudication that the individual did not commit the offense in question, or when a conviction, adjudication or plea is

overturned by an appellate court of record and no later conviction, adjudication or plea indicating the individual committed the offense in question is on the record.

(2) "DAS" means State of Oregon, Department of Administrative Services;

(3) "Direct, unsupervised contact with students" means contact with students that provides the person opportunity and probability for personal communication or touch when not under direct supervision;

(4) "DOB" means date of birth;

(5) "FBI" means the Federal Bureau of Investigations;

(6) "Fingerprint information" means all information requested by the Oregon Department of Education for processing the fingerprint application, including the following:

(a) One properly completed fingerprint submission; and

(b) A properly completed Oregon Department of Education fingerprint based criminal history verification form.

(7) "Knowingly made a false statement" means failure to disclose on the Oregon Department of Education fingerprint based criminal history verification form as part of the criminal records check process any of the following:

(a) A conviction of a felony;

(b) Any conviction of a misdemeanor within the previous 20 years;

(c) Any conviction of a misdemeanor that is listed in ORS 342.143 or its substantial equivalent in another jurisdiction.

(8) "LEDS" means the Law Enforcement Data System;

(9) "Private School" means a school that:

(a) Offers education in prekindergarten, kindergarten or grades 1 through 12, or any combination of those grade levels; and

(b) Provides instructional programs that are not limited solely to dancing, drama, music, religious or athletic instruction.

(10) "Subject individual" means:

(a) A person hired by a private school within the last three months to a position not requiring licensure under ORS 342.223; and

(b) Any person hired as or by a contractor into a position having direct, unsupervised contact with students and not requiring licensure under ORS 342.223.



# Opportunity for Feedback on Oregon ESSA Plan - Minor Amendment

Jennifer Patterson and Scott Nine  
December 8, 2022

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# Navigating this Presentation

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1. Setting Context
  - a. Brief History of ESEA and ESSA
  - b. Brief Review of the work that brings forward this minor amendment
2. Sharing a summary of the changes
3. Summary of next steps for ODE
4. Questions and Comments

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# Setting the Context

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# ESSA History & Background

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Elementary and Secondary Education Act (ESEA), 1965



No Child Left Behind (NCLB), 2002

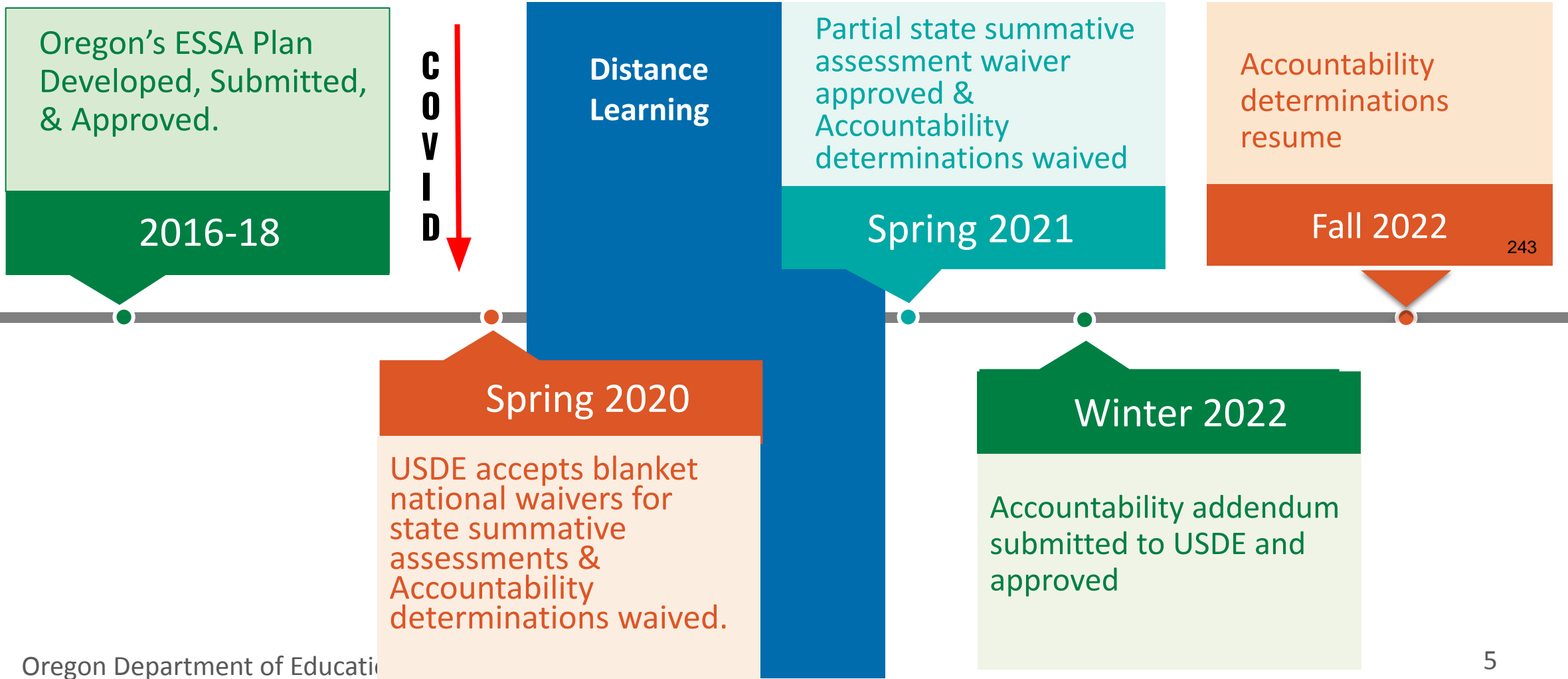


ESEA Flexibility Waiver, 2012  
Expired Aug 1, 2016



Every Student Succeeds Act (ESSA), December 10, 2015

# Recent History with ESSA



# Prior Communications & Engagement

**Vision:** Develop and strengthen partnerships to build capacity, empower voices, and make progress towards Oregon's vision to improve educational opportunities and equity, particularly with regard to our most vulnerable students and communities.

## Phase I – Reimagine Education in Oregon

- » ESSA Technical Work Groups
- » Community Forums

## Phase II – Targeted Outreach and Public Input

- » External Advisory Committee
- » Community Based Organizations
- » Communities of Color

## Phase III – Feedback and State Plan Development

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TEACHERS



COMMUNITIES



STUDENTS



ADMINISTRATORS



# Oregon's Commitments

Prioritize and  
advance equity

Extend the  
promise of a  
well-rounded  
education

Strengthen district  
systems

Foster ongoing  
engagement

# Review of the Work towards this amendment

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1. Initial Review began in September 2021
2. Focus of initial review at request of Agency Director
  - Clear deadlines or choices we need to aware of as an SEA
  - Scan for any federal policy changes based on changed administration and other state inputs
  - Surface any clear or needed changes from internal “risk review” or via changes at USED
3. Initial review presentation to Executive Leadership team in January 2022
4. Addendum needed for what data is used in federally required accountability and identification system based on pandemic impacts
5. Addendum submitted and approved in April/May of 2022
  - In addendum approval, USED named need for an amendment
6. Codifying the addendum into an amendment and very minor technical changes
7. Process steps for an amendment

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# ESSA Requirements informing Addendum

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- States must develop a single accountability system for all schools.
- States must use this system to identify schools for Comprehensive and Targeted Supports.
- Data can be specific to particular grades, but must be applied consistently across the state to all schools.
- All indicators must be valid, reliable, statewide and must be disaggregated by student group.

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# Accountability Addendum

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ODE made one-year adjustments in the Accountability Addendum:

- How we average data across multiple years
- Update to weighting of indicators and school identification criteria
- Shifting of state long term goals out by two years
- Updating the description the English learner indicator

# Note: Amendment vs Addendum

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What was the purpose of the addendum?

- One year shifts in the accountability system

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What is an amendment vs an addendum?

- An amendment is a long term change to the plan.



# Summary of Changes

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# Summary of Minor Changes for Amendment

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- **Codifying the changes to the data used for the accountability system made in the addendum**
- Update certification and licensing definitions to be in alignment with TSPC on definition of an experienced teacher
- Pg. 110 - add additional requirements on notification related to passage of HB 2631
- Delete one paragraph related to Title IV-A that is significantly no longer accurate
- Alignment with 21st century schools work with small technical change on Title IV-B

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# Required Indicators

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States must use the following Academic Indicators:

- Academic Achievement in ELA and Math (grades 3-8, 11)
- For non-high schools, a measure of student growth, or an academic indicator that allows for meaningful differentiation of schools (called the “other academic indicator”)
- For high schools, the four year cohort graduation rate and (if desired) the five-year cohort graduation rate
- Progress of English learners in achieving proficiency

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# School Quality/Student Success

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States must also include at least one indicator of school quality or student success (SQSS)

- Must be valid, reliable, comparable, and statewide.
- Must be disaggregated by student group.
- An indicator may apply only to a particular grade band, but it must be applied statewide.
- Academic Indicators must, in aggregate, have much greater weight than SQSS indicators.

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# Oregon's Current Indicators

| Type of Indicator                      | Indicator                   | Elementary and Middle Schools | High Schools (grades 9-12) | Combined Schools (K-12, 7-12) |
|--|-----------------------------|-------------------------------|----------------------------|-------------------------------|
| <b>Academic Indicators</b>             | ELA Achievement             | Yes                           | Yes                        | Yes                           |
|  | Math Achievement            | Yes                           | Yes                        | Yes                           |
|  | ELA Growth                  | Yes                           |                            | Yes                           |
|  | Math Growth                 | Yes                           |                            | Yes                           |
|  | 4-Year Graduation           |                               | Yes                        | Yes                           |
|  | ELs On Track to Proficiency | Yes                           | Yes                        | Yes                           |
| <b>School Quality/ Student Success</b> | Regular Attenders           | Yes                           | Yes                        | Yes                           |
|  | 9th Grade On-Track          |                               | Yes                        | Yes                           |
|  | 5-Year Completion           |                               | Yes                        | Yes                           |



# Next Steps

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# Timeline from now to April 2023

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1. ODE completes “redline markup” of Oregon’s ESSA plan
2. SBE feedback
3. Government to Government feedback
4. Changes posted for open comment period and shared statewide
5. ODE processes feedback
6. 30-day period for Governor review in March
7. Finalization and submission in April 2023

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# Recognition

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Federal law and the application of ODE's equity stance bring formal, legal, and moral obligations forward in how school districts, most especially Title IV recipients, and ODE Consult with the nine federally recognized Tribal nations located in the place now called Oregon.

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# Questions and Comments

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# End of Presentation

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Not for presentation  
but for reference

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# Other States

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States have great flexibility in defining their accountability system.

- Most states use some sort of overall score to identify schools.
- Many states use A-F rating.
- Some states (like Oregon) use a dashboard rather than an explicit rating of a school.

For more details see: [ECS Comparison of State ESSA Systems.](#)

# Other States' Indicators

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## Other Academic Indicator

- Almost all states use student level growth on statewide assessments, but the model varies (e.g., SGPs, Tennessee value-added)

## School Quality/Student Success

- Chronic Absenteeism ( $\frac{3}{4}$  of states, **including Oregon** )
- College/Career Readiness ( $\frac{3}{4}$  of states)
- School climate ( $\frac{1}{5}$  of states), including surveys and/or discipline rates
- Science achievement

# School Identification

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- Level 1 to 5 is assigned to each indicator for each student group.
  - At least 20 students needed over 3 years to be assigned a level
- School identifications can be made if a school or student group is rated on at least five indicators
- Schools are identified for **Comprehensive Support** if
  - Title 1 schools with a Level 1 on half or more of the indicators; OR
  - Any high school with a graduation rate below 67%
- Schools are identified for **Targeted Support** if
  - Any school where a student group is Level 1 on half or more of the indicators.

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# The Timeline of Oregon's Plan

|                       |   |
|-----------------------|---|
| May 3, 2017           | ODE submitted our state plan                  |
| June 30, 2017         | ODE received feedback from USED               |
| July 14, 2017         | ODE submitted a revised ESSA plan to USED     |
| August 30, 2017       | USED approved <a href="#">ODE's ESSA Plan</a> |
| 2017-2018 school year | Implementation began                          |



## School Improvement

### CSI Schools

- Bottom 10% (Level 1) for at least half of the indicators for all students

### TSI Schools

- Bottom 10% (Level 1) for at least half of the indicators for specific student groups

### Indicators used to identify schools:

- Regular Attenders
- ELA/Math Achievement
- ELA/Math Growth
- EL Progress to Proficiency
- 9th Grade-on-Track
- 4-Year Graduation
- 5-Year Completer



## School Improvement

Fall 2018

- First identification of CSI (94) & TSI (104) Schools

Fall  
2019

- Identification of additional TSI Schools (70)

Fall 2020

- Suspended new identification of TSI schools

Fall 2021

- Currently developing processes<sup>266</sup> for CSI / TSI schools to demonstrate improvement

Fall  
2022

- “Exit” initially identified schools
- Identify additional CSI / TSI Schools



## Continuous Improvement Plan (CIP)

- Engage stakeholders
- Apply equity lens and culturally responsive practices
- Comprehensive needs assessment
- Review of district systems
  - Instruction
  - Talent Management
  - Engagement
  - Leadership
  - Social emotional supports

2017-18

- Review & enhance data systems for data analysis
- Review structures for stakeholder engagement

2018-19

- Review state and local data
- Conduct comprehensive needs assessment and diagnostic review
- Identify priorities and build plan

Summer  
2019

- Districts submit redesigned CIP
- ODE will provide feedback/supports



## Educator Evaluations Revisions to OAR 581-022-1723

### Removed waiver requirements

Statewide assessments no longer a required measure for Student Learning and Growth (SLG) goals.

Oregon Matrix no longer required as the summative evaluation method.

### Added

Strengthening culturally responsive practices as a component of the evaluation process.

### What has not changed?

- Multiple measures inform summative evaluation
- Set two SLGs
- Use the SLG Quality Review Checklist in setting goals
- The evaluation cycle, including mid-cycle review and check-ins remains in place
- It still is a *collaborative process*



## New Admin: New Priorities

The Biden-Harris administration and Secretary Cardona are focused on:

- Reopening schools “for full-time, in-person instruction as safely and soon as possible.”
- Addressing the mental health and SEL needs of students
- Addressing funding inequities in state and local education systems
  - Proposed \$20B in funding for Title I-A, unclear what SEAs will need to demonstrate to receive funding.
- Highlighting needs of students who have been historically underserved by the system and impacted by the pandemic.



# Civil Rights Advocates Reiterate Call for Data and Testing

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December 2020: Enforce ESSA and maintain Civil Rights Principals:

- CCR Standards and Aligned Tests
- Accountability & Engagement
- Funding to historically underserved students and schools
- Clear and Transparent Data

[Letter](#)

February 2021: Reject Waivers to Annual Summative Assessments for 2020-21 SY.

Feb. 3 [Letter](#)

Feb. 3 [Press Release](#)

Feb. 23 [Response](#)