

**AGENDA**  
**Regular Meeting**  
**Public Service Building 251 A/B**  
**255 Capitol Street NE**  
**Salem, OR 97310**  
**Thursday, December 7, 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**

*Time: 10:10 AM*

**2. Public Comment**

*Time: 10:40 AM*

A. The State Board of Education will hold space for virtual public comment. 3  
Individuals must register to provide virtual comment. Written public comment received will be posted to BoardBook.

**3. Consent Agenda**

*Time: 11:00 AM*

- A. Special Education Evaluation & Eligibility Rule Revision 14
- B. House Bill 4030 Recruitment and Retention Grants Rule Repeal: OAR 581-017-0780 and 581-017-0790 46
- C. Transportation Supplemental Plan Revision: Pendleton School District 77
- D. Transportation Supplemental Plan Revision: Bend La-Pine Schools 83
- E. Transportation Supplemental Plan Revision: North Clackamas School District 112
- F. Instructional Materials Accessibility: OAR 581-011-0087 and 581-022-2350 158

**4. Adoptions**

A. Board Policies and Procedures Updates 168  
*Time: 11:05 AM*

**5. First Readings**



A. Procedures Regarding Restraint and Seclusion: OAR 581-021-0556	176
<i>Time: 11:30 AM</i>	
Lisa Joy Bateman, Office of Enhancing Student Opportunities	
<b>6. Break for Lunch</b>	
<i>Time: 12:00 PM</i>	
<b>7. First Readings (continued)</b>	
A. Public Charter Schools Division 26 Revisions: OAR 581-026-0305, 581-026-0310, and 581-026-0600	196
<i>Time: 1:00 PM</i>	
Kate Pattison, Office of the Director	
B. Approval of Criteria for Evaluation of Health Education Instructional Materials	207
<i>Time: 1:30 PM</i>	
Aujalee Moore, Suzanne Hidde, Sasha Grenier, and Alexa Pearson, Office of Teaching, Learning, and Assessment	
C. Proposed Federal Appeals Process Updates	217
<i>Time: 1:50 PM</i>	
Liz Ross, Office of Teaching, Learning, and Assessment	
D. Physical Education Participation and Data: OAR 581-022-2263 and 581-022-2265	223
<i>Time: 2:10 PM</i>	
Suzanne Hidde and Susan Payne, Office of Teaching, Learning, and Assessment	
E. Break	
<i>Time: 2:20 PM</i>	
F. Alternative Transportation Reimbursement: OAR 581-023-0040	239
<i>Time: 2:25 PM</i>	
Mike Wiltfong and Vanessa Clark, Office of Finance and Information Technology and Brock Dittus, Pupil Transportation and Fingerprinting	
G. Transportation Grant: Non-Reimbursable Mileage Rate Update	274
<i>Time: 2:40 PM</i>	
Mike Wiltfong and Vanessa Clark, Office of Finance and Information Technology	
H. Consent Definition in School Sexual Harassment Policies: OAR 581-021-0038	286
<i>Time: 2:50 PM</i>	
Kate Hildebrandt, Office of the Director	
<b>8. Adjourn</b>	
<i>Time: 3:10 PM</i>	



Oregon State Board of Education  
255 Capitol Street NE  
Salem, OR 97310  
Sent via email: StateBoard.PublicEmail@ode.state.or.us

November 16, 2023

Honorable Members of the Oregon State Board of Education,

On behalf of Curriculum Associates, Inc., I am writing this letter to provide public comment regarding the proposed Instructional Materials Accessibility Rule Revisions, OAR's 581-011-0087 and 581-022-2350.

Every student has the potential for educational excellence, and Curriculum Associates is dedicated to creating accessible materials that maximize usability for students with disabilities. We strive to ensure that accessibility and accommodation support considerations are incorporated into our product development process, and we've developed a continuous improvement approach to accessibility that ensures we're always improving and learning. Our beliefs and work are aligned with the Oregon State Board of Education's efforts to address policies that ensure equitable educational opportunities for all students.

To be sure, the intent of the proposed rule revisions is critically important; however, without additional nuance and clarification, we believe it may render compliance extremely challenging, thereby leaving a significantly diminished amount of instructional materials for LEAs to choose from. To mitigate this negative impact on LEAs, their budgets, and personnel resources, we believe that addressing the following will provide publishers with the necessary language to comply with policy and ultimately, support LEAs and all students in Oregon:

- Clarity of timing for compliance and alignment with ODE's adoption schedule and approvals.
- Clarity regarding WCAG version included in each circular of information.
- Clarity on the definition of compliance and what is permissible under that definition (e.g., is "Partially Supports" with documented exceptions considered compliant?)
- Clarity on requirements for Accessibility Conformance Report (ACR) creation, including around:
  - The role of the publisher vs. that of an independent third-party auditor in the creation and maintenance of the ACR (e.g., if a third-party reviews and contributes to the ACR, and the publisher tests a broader swath of content to ensure comprehensive documentation, is that sufficient?)
  - Percent of content to be tested and selection and process of said content to ensure it is representative of the user experience and that ACRs are comprehensive in their documentation of coverage and exceptions.

- Clarity on testing methods, including manual testing and end-user testing with users of assistive technology. Requirements for ACR updates to reflect new releases/additional coverage.

Without the above addressed in the rulemaking revision process, we are concerned that the disruption of education and learning for Oregon students will be far-reaching.

Respectfully, we request that this rulemaking revision process continue with further revision and delay the currently scheduled December 7, 2023 vote. Should that delay occur, we will confirm our participation in this process and provide input and feedback as the ODE and Oregon SBOE see fit. However, we certainly defer to the expertise and needs of your Oregon school districts, leaders, professional education associations, and national accessibility groups.

As you determine your action, we hope you will consider the information provided in this letter. We understand that you have a very thoughtful and important decision to make, and it was our intention to provide our feedback appropriately. Should you have any questions, I would be happy to address them directly.

Respectfully,

*Debbie Smith*

Debbie Smith  
Vice President, Government Relations  
Curriculum Associates, Inc.

**From:** [Mary Tharp](#)  
**To:** [StateBoard Public Email](#)  
**Subject:** Student behaviors  
**Date:** Sunday, December 3, 2023 10:01:04 AM

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You don't often get email from mltharp1123@gmail.com. [Learn why this is important](#)

This is the second time I have emailed the board regarding student behaviors. I am a substitute in a school in the Willamette Valley. I taught school for over 30 years in the public school system. The federal and state mandates have literally "TIED" teachers and schools hands behind their backs. There are students that are assaulting teachers and staff and many of these assaults are serious! These misbehaving students are disrupting the education of the other students in the classroom.

I have been told that I cannot keep students in at recess, cannot remove a student that is tearing the room apart from the classroom and instead, I have to remove all the other students from the room! I know of a classroom that was out of the room for an hour and a half. I am watching aids follow students through the building while the student is tearing down bulletin boards and student work that is posted outside of classrooms. They have been told that they cannot stop the student from doing this. I cannot believe the level of disrespect students are showing adults and absolutely refusing to do what they are told to do. Do you know why? Because they KNOW they can get away with such behavior. What concerns me even more is the fact that the other students do not feel safe in this environment. No one is in charge to protect them from students that are throwing chairs, books, staplers, scissors and other dangerous items in the classroom. I feel it is our responsibility as educators to protect all the students in a classroom....including the one that is causing a problem by secluding them for whatever time it takes to have them calm down. I, by myself, can accomplish very little even though I write to you, my senator, and my congressman. But, you as a state board can make a difference by going out into the public schools and talking to teachers that are in the trenches and getting their input on this matter. I have even gone to my School Board and let them know the seriousness of the situation in their schools only to find that they are having discussions but no actions are taking place. I hope my predictions of teachers leaving the field and finding employment elsewhere does not prove to be correct.

I would appreciate it if the board would address these situations and try to assist schools with these problem behaviors.

Mary Tharp

**From:** [Jason Trout](#)  
**To:** [StateBoard Public Email](#)  
**Subject:** 4a Adoptions Operations Policy - Public Comment at Board Meetings (edits incorporated)  
**Date:** Wednesday, December 6, 2023 10:39:58 AM

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You don't often get email from jaspYRO@gmail.com. [Learn why this is important](#)

Members of the Oregon State Board of Education,

I am writing to express my concern in proposed changes to the public comment policy contained in the Agenda for December 7, 2023. Item 4a seems to cancel the First Amendment right of a parent to speak in a public forum to the State Board of Education. Although I believe that proper decorum in meetings should always be followed, the fact that the board is considering limiting speech at all is in itself unconstitutional. The constitutional guarantee of free speech cannot be controlled by the school board or any other entity. Restricting expressions of opinion of any kind no matter how offensive is still unconstitutional.

I urge the board to reconsider the proposed changes to follow legal precedents set by the Supreme Court. I would recommend the School Board contact a constitutional lawyer to consider the Board's apparent disregard of the First Amendment and desire to limit free speech because a parent may say something offensive or opposing what the Board believes. Thank you for considering my concern. I hope that the policy adopted allows for the constitutional freedoms of all citizens and not just the Board. Please do not hinder the freedom of our parents anymore and do not take away the freedoms that our country was founded on.

Jason Trout

**From:** [Jeff Myers](#)  
**To:** [StateBoard Public Email](#)  
**Subject:** Public comment submission  
**Date:** Tuesday, December 5, 2023 4:08:07 PM

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Dear Members of the Oregon State Board of Education,

I am writing to express my concern regarding the proposed changes to the public comment policy as outlined in the Board's December 7, 2023 agenda, item 4.A. Board Policies and Procedures Updates . I believe the proposed changes will infringe upon the First Amendment rights of individuals in public forums, of which public testimony to the State Board of Education is considered one.

The First Amendment to the United States Constitution safeguards freedom of speech, a cornerstone of democratic engagement. In public forums, this right is particularly crucial. The proposed policy changes, such as the expectations that language must "center and support the needs of students" and that "profanity will not be tolerated", appear to impose unconstitutional restrictions on speech.

The U.S. Supreme Court has consistently held that speech cannot be restricted based on its content in public forums. In the landmark decision *Tinker v. Des Moines Independent Community School District* (1969), the Court affirmed that speech cannot be suppressed unless it materially and substantially interferes with the operation of the school. Furthermore, in *Cohen v. California* (1971), the Court ruled that the mere public display of one offensive word was protected speech under the First Amendment.

While maintaining a respectful and productive environment is important, the constitutional guarantee of free speech does not permit broad content-based restrictions. The prohibition against profanity, as proposed, may inadvertently restrict legitimate expressions of opinion that are essential to public discourse. The U.S. Supreme Court in *Papish v. University of Missouri Curators* (1973) reiterated that the mere dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of "conventions of decency".

Additionally, the expectation that language should focus on the needs of students may unduly limit public discourse. The Supreme Court in *Rosenberger v. University of Virginia* (1995) emphasized the principle that the government may not restrict speech based on its message or viewpoint.

I respectfully urge the Board to reconsider these proposed changes in light of these legal precedents. Consulting with legal experts to ensure compliance with First Amendment rights is crucial. It is essential for a healthy democracy that public forums remain open for diverse viewpoints.

Thank you for considering my concerns. I look forward to your response and am hopeful for a policy that respects the constitutional rights of all citizens.

Sincerely,

Jeff Myers

[Save Oregon Schools](#)

**From:** [Tiffany Shireman](#)  
**To:** [StateBoard Public Email](#)  
**Cc:** [MARTINEZ-ZAPATA Guadalupe \\* STBRD](#); [Gustavo Morales](#); [SCURLOCK Jennifer \\* STBRD](#); [Libra.Forde@ode.oregon.gov](#); [Shimiko Montgomery](#); [Vicky.lopezsanchez@ode.oregon.gov](#); [cynthia.richardson@ode.oregon.gov](#)  
**Subject:** Public Comment - Proposed Policy Update  
**Date:** Wednesday, December 6, 2023 9:23:13 PM

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Some people who received this message don't often get email from [tiffanyshireman@gmail.com](mailto:tiffanyshireman@gmail.com). [Learn why this is important](#)

Good evening,

I have not yet had a chance to review the draft language that is being proposed for future public comment guidelines. However, I saw social media chatter earlier this evening regarding proposed changes that will more strongly encourage civil public commenting.

Thank you for addressing this important topic!  
Diverse opinions and viewpoints are necessary and should be welcome in all matters of public interest.

As you proceed with discussing and acting upon any proposed public commenting changes, I encourage the Board to strongly consider that you are tasked with setting the policy course for school districts that educate youth. As such, your meetings should be conducted such that youth can participate in and/or observe your meetings and ***not be subjected to language or comments that are harmful to their development or attack their individual identities.*** Likewise, the paid employees who work to coordinate and facilitate your meetings should work in an environment that is ***free from hateful or discriminatory rhetoric.***

I encourage the Board to strongly consider policy updates and protective measures that safeguard civil discourse in its meetings and limit the real harm that being subjected to racist, bigoted or otherwise hateful language can cause.

Thank you,

Tiffany Shireman  
Redland, Oregon

**From:** [JL Potts](#)  
**To:** [StateBoard Public Email](#)  
**Subject:** 3.A. Special Education Evaluation & Eligibility Rule Revision  
**Date:** Thursday, December 7, 2023 8:54:53 AM

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Dear State Board Members,

Below are my comments on the input and feedback document provided at the ODE Rules Advisory Committee on Nov 2, 2023 regarding the additional revisions/changes to the special education eligibility rules. I received no responses to that feedback from the department, and the errors pointed out have still not been corrected in the documents you received for approval today.

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This will create impacts on school districts as they will have to adjust their electronic student information systems (again) to provide the changed specifications to the vendor, receive the fixes, and put them into the systems (one district at a time). The last round of changes, not counting preparing specs and development by the vendor, but just locally for me was over 20 hours to correct the things done incorrectly due to the compressed implementation timeline of 3 months in the summer of 2023. Those changes are still creating long-lasting negative impacts to records and data integrity, and confusion for staff. What is the ODE expected implementation timeline?

The Developmental Delay OARs were changed by the department last spring to remove (without reason related to SB13 or SB16) an important exclusionary criteria for "due to another disability." However, ODE's sample DD form still includes that statement (though in grammatically incorrect phrasing). This means that districts may be at legal risk by utilizing that criteria from ODEs forms that has actually been removed from the OAR.

I will also reiterate what I stated in March, and the last time this most recent round of changes was being proposed, that duplicating the disability definitions under 581-015-2000 and then again under the specific evaluation and eligibility sections, creates the opportunity for verbiage differences. Currently, the proposed rules for Specific Learning Disability (SLD) under the definitions section (2000) is different than under the SLD criteria (2170). I informed the department and they were aware of these and other errors back before the last rule adoptions, but did not fix it. They did not simply discover these issues recently. I am not opposed to the verbiage changes to clarify age ranges (to vs through) and verbiage aligning with SB13 and SB18, but many changes have been made that were not required under those statutes or under IDEA, such as introducing a concept of comprehensive evaluations under each category. There are additional errors/discrepancies in the rules, statutes and forms that are not included in these fixes. Each time the department makes these changes, it significantly impacts what happens on the ground and there will be business impacts for all the private vendors providing the software and systems.

I would request going forward that ODE create a special education rules committee for any future "optional" rule revisions. It is confounding that the department would justify so many rule changes as due to the requirements of SB13/16 (which only changed a handful of terms) but yet refuse to consider rule adoptions as a result of SB819 (abbreviated school day) which was a 13 page statutory change, leaving districts on their own to interpret what compliance looks like.

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Thank you for your consideration  
Justin Potts

Oregon State Board of Education meeting  
Mary Miller virtual public comment - public comment board policies and procedures  
December 7, 2023

**Virtual testimony video clip**



**Written testimony**

*Good morning chair, vice chair and members of Oregon's state board of education. For the record my name is Mary Miller. I am the Independent Women's Network Western Oregon chapter chair. Thank you for the opportunity to speak today.*

*I am here to sound the alarm about this board's frankly tyrannical and illegal abuse of power in attempting to adopt new board policies and procedures restricting the speech of Oregon parents providing public comment at Oregon state board of education meetings.*

*If adopted, the board would be allowed to silence and remove parents by claiming parents' comments—and I quote—"cause harm to anyone else's identity" and "don't center and support the needs of students".*

*Let that sink it. The board chair could cut the mic by claiming a parent isn't supporting the needs of students.*

*For example...*

*If a parent criticizes the board's lax student discipline policies that are causing dramatic increases in student violence, the board chair could silence the parent by claiming they aren't supporting the needs of violent students.*

*Or, if a parent criticizes the board's explicit sex ed curriculum requirements that are causing dramatic increases in students seeking dangerous genital mutilation procedures, the board chair could call the parent a "transphobe" and silence the parent by claiming they are "harming someone's identity".*

*This is fascist stuff, folks.*

*And it is rules for thee and not for me. The board wants these speech restrictions on parents but not on themselves or their invited guests from the Oregon Department of Education.*

*What brought this rule change on? I've reviewed past board meeting recordings and found no rude comments from parents. However the board chair herself was quoted in the Oregonian in September as having called parents—and I quote—"a cadre of bad actors".*

*Ironically, those causing the grave harm to students' identity and not supporting the needs of students are the board and the ODE themselves.*

*It's frankly disgusting that the board is fraudulently claiming this policy is to protect students when in fact its true purpose is to protect the board and their bad ideas from public debate.*

*These policy changes need to be scrapped and the board should be ashamed of themselves for trying to push unconstitutional speech restrictions on parents.*

*Thank you.*

## **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.

(5)(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; speech or language impairment; deafblindness; developmental delay; emotional behavior disability; deaf 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 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, 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 behavior disability. However, a child who qualifies for special education under the category of 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.

(B) "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).

(C) "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 have a visual impairment.

(D) "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

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

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

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

(E) "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:

(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.

(F) "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.

(G) "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).

(H) "Other Health Impairment" means limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that:

(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.

(I) "Specific Learning Disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in 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, 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 behavior disability, or of environmental, cultural, or economic disadvantage.

(J) "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.

(K) "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. 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. 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).

(L) "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.

(6) "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.

(7) "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.

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

(9) "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.

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

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

(12) "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.

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

(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 Examination" means an examination conducted by:

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

(b) A naturopathic physician licensed under ORS chapter 685 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; or

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

(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 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 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 postschool 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) 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 through 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, a comprehensive evaluation must be conducted for early intervention, early childhood special education or school age special education services, including the following:

(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) At least one 20-minute observation of the child;

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

- (i) On the child's developmental progress for birth to 5; or
  - (ii) On the child's educational performance for 5 to 21.
- (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: 1.5 or more standard deviations below the mean in two or more of the developmental areas;
- (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.

## [581-015-2130](#)

### **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:

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

(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. Documentation of a medical examination shall be completed for children age birth to five for initial eligibility determinations, and may be completed for children **above**-age five **and above**, as determined necessary by the team. The purpose of a medical examination 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 or, for a child age 5 to 21, may impact the child's educational performance. 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 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: To be eligible as a child with 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 behavior disability under OAR 581-015-2145. However, a child with autism spectrum disorder as a primary disability may also have an emotional behavior disability as a secondary disability.

(4) Eligibility Determination: To be eligible for services as a child with 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.

## 581-015-2150

### **Deaf or Hard of Hearing**

(1) Definition of "Deaf or Hard of Hearing": "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.

(a) 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.

(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:

(a) Documentation of an audiological assessment 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 early intervention, 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) Eligibility Criteria: To be eligible as an infant or toddler a child who is deaf or hard of hearing for early intervention, early childhood special education, or school age special education, the child must meet 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 documentation of an audiological assessment as defined by OAR 581-015-2000.

(4) Eligibility Determination: For a child to be eligible for early intervention, early childhood special education, or school age 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) 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.

## [581-015-2170](#)

### **Specific Learning 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, deaf or hard of hearing, 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:

(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: 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:

(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; deaf or hard of hearing; intellectual disability or emotional ~~disturbance~~behavior disability;

(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.

(6) Eligibility Report: 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; deaf or hard of hearing; intellectual disability; emotional ~~disturbance~~ behavior disability; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and

(g) A determination of whether the primary basis for the suspected disability is:

(A) A lack of appropriate instruction in reading or math; or

(B) Limited English proficiency;

(h) A determination of whether the child's disability has an adverse impact on the child's educational performance;

(i) A determination of whether, as a result of the disability, the child needs special education services; and

(j) The signature of each member of the team indicating agreement or disagreement with the eligibility determination.

## 581-015-2175

### **Traumatic Brain Injury**

(1) Definition of Traumatic Brain Injury: For early intervention, early childhood special education, and school age special education, "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. 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 affect or have 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.

(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) Comprehensive Evaluation: If 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;

(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) Document one or more traumatic brain injuries,

(B) Be reported by a reliable and credible source, and

(C) Be corroborated by more than one reporter.

(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) A developmental history as defined in OAR 581-015-2000; and

(e) 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** or **speech or language impairment**; and psychosocial assessments if the 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 child's suspected disability, including pre-injury performance and a current measure of adaptive ability;

(C) An observation in at least two different settings. 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: To be eligible as a child with a traumatic brain injury for early intervention, early childhood special education, or school age special education services, 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.

(4) Eligibility Determination: For a child to be eligible for early intervention, early childhood special education, or school age 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) 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.

# Oregon State Board of Education

## December 2023

AGENDA ITEM: Special Education Evaluation & Eligibility OAR Revision

<p><b>SUBJECT:</b> Special Education Evaluation &amp; Eligibility OAR Updates</p> <p><b>STAFF NAME &amp; OFFICE:</b> Sarah Soltz, &amp; Tenneal Wetherell, Office of Enhancing Student Opportunities</p> <p>ODE updated all 13 special education evaluation and eligibility rules in Spring 2023 to align with the requirements of Senate Bills 13 (2019) and 16 (2019). After the updates were passed, ODE identified a group of minor language changes that were necessary for clarity or correction in order to ensure the rules were able to be implemented as intended.</p> <p><input type="checkbox"/> New Rule <input checked="" type="checkbox"/> Amend Existing Rule <input type="checkbox"/> Repeal Rule</p>	<p><input type="checkbox"/> First Reading <input type="checkbox"/> Presentation <input type="checkbox"/> No Presentation</p> <p><input checked="" type="checkbox"/> Action <input type="checkbox"/> Temp Rule <input type="checkbox"/> Presentation <input checked="" type="checkbox"/> No Presentation</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?
  - 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

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

# Oregon State Board of Education

## December 2023

AGENDA ITEM: Special Education Evaluation & Eligibility OAR Revision

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.

*These updates were completed in March 2023, with all 13 eligibility and evaluation rules having been updated. However, as the rules moved to implementation, the team identified minor language or grammatical errors in 6 of the 13 updated rules. These minor changes are being brought to the Board in order to ensure the rule implementation is in alignment with the engagement and notice provided to the community.*

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). 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 in March 2023.

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.

**These changes are simple grammatical and language updates to align with intent.**

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?

For the updates completed in March 2023, extensive community engagement was conducted, which included three engagement sessions that 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

# Oregon State Board of Education

## December 2023

AGENDA ITEM: Special Education Evaluation & Eligibility OAR Revision

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.

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. ODE also hosted an Oregon Educators Association (OEA) special education committee engagement session in February 2023. Additionally, ODE hosted an additional hearing for public comment in February 2023.

*The updates being proposed were brought forward by multiple community members' engagement with the Department including email outreach and direct engagement with the experts who support the special education evaluation & eligibility process.*

### 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, all 13 evaluation and eligibility rule updates were approved by the Board in March 2023.**

### 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?

**The Department utilized all methods at our disposal to connect with relevant stakeholders during the Winter 2023 rule update process 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**

# Oregon State Board of Education

## December 2023

AGENDA ITEM: Special Education Evaluation & Eligibility OAR Revision

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.

*Since the update, the Department has been in close contact with special education technical systems which provide IEP systems to districts as well as with the providers who implement the special education evaluation and eligibility process to identify the needed minor updates to ensure the rules function as intended.*

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.

In March 2023 the rules were 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 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. *The current proposed updates do not have a significant impact on underserved and marginalized populations, however.*

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?

*The most important update included in the new proposed rules, is the change to Developmental Delay to ensure that it is available as an eligibility category through age 9 instead of to age 9. This ensures that students are able to access the supports they need without being potentially inappropriately labeled as they are still growing and maturing into school age eligibility.*

*The other language changes do not change the substance of the rule, they merely clarify and align to the existing requirements.*

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?

# Oregon State Board of Education

## December 2023

AGENDA ITEM: Special Education Evaluation & Eligibility OAR Revision

- 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 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.

***While the March 2023 updates were expected to address the harmful impacts of the label “emotional disturbance and increase access to special education eligibility for those students by removing the unnecessary barrier of a medical examination from certain categories which would impact BIPOC, houseless, and rural youth in particular, these updates are merely expected to ensure that the impact is alignment with the intended impacts of the March 2023 updates.***

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?

***While the March 2023 updates were expected to have an impact, these rule updates are merely expected to ensure that the impact is in alignment with the intended impacts of those updates.***

### 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:

# Oregon State Board of Education

## December 2023

AGENDA ITEM: Special Education Evaluation & Eligibility OAR Revision

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?
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 language, 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, the rules will continue to have minor grammatical and language errors that impact the implementation of the rules as intended.*

### 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 581-015-2000

Attachment 2: OAR 581-015-2127

Attachment 3: OAR 581-015-2139

Attachment 4: OAR 581-015-2150

Attachment 5: OAR 581-015-2170

Attachment 6: OAR 581-015-2175

**581-017-0780**

**Education Staff Retention and Recruitment Grants**

(1) ~~The following definitions apply to this rule:~~

~~(a) "ADMw" is Average Daily Membership weighted as calculated per ORS 327.013 and does not include extended ADMw per ORS 327.013(1)(c).~~

~~(b) "Charter School" is a public charter school organized and operated per ORS Chapter 338.~~

~~(c) "Department" is the Oregon Department of Education, or the Educator Advancement Council.~~

~~(d) "District" or "School District" is a public school district organized and operated per ORS Chapter 332.~~

~~(e) "Education Staff Retention and Recruitment Grants" or "Grant" are the grants established by OR Laws Chapter 116 Sections 7-10 (2022).~~

~~(f) "Eligible Recipient" is a Charter School, School District, ESD, or a consortia thereof.~~

~~(g) "EGMS" is the Department's Electronic Grant Management System.~~

~~(h) "ESD" or "Education Service District" is an education service district organized and operated under ORS Chapter 334.~~

(2) ~~The funds appropriated to the Grant will be distributed to ESDs, Districts, and Charter Schools as follows:~~

~~(a) Any funds to be disbursed to school personnel organizations will be subtracted from the total amount of funds allocated under Oregon Laws Chapter 116 Section 7 (2022).~~

~~(b) The remaining amount of funds will be split with 95% of the funds allocated to Districts and Charter Schools and 5% of the funds allocated to ESDs.~~

~~(c) The Districts and Charter Schools allocation shall be distributed as follows:~~

~~(A) The ADMw for Districts shall be adjusted such that no district receives less than 91 ADMw for purposes of this formula;~~

~~(B) The ADMw for Charter Schools shall be adjusted such that no Charter School receives less than 91 ADMw for purposes of this formula;~~

~~(C) The adjusted ADMw for Districts and Charter Schools shall be totaled;~~

~~(D) The allocation for Districts and Charter Schools shall be divided by the total adjusted ADMw to obtain a Funding Per ADMw amount; and~~

~~(E) The Funding Per ADMw amount shall be multiplied by the individual organization's adjusted ADMw to determine the total allocation for that organization.~~

~~(d) The ESD allocation shall be distributed as follows:~~

- ~~(A) The ADMw for ESDs shall be adjusted such that no ESD receives less than 1,737 ADMw for purposes of this formula;~~
- ~~(B) The adjusted ADMw for ESDs shall be totaled;~~
- ~~(C) The allocation for ESDs shall be divided by the total adjusted ADMw to obtain a Funding Per ADMw amount; and~~
- ~~(D) The Funding Per ADMw amount shall be multiplied by the individual ESD's adjusted ADMw to determine the total allocation for that ESD.~~
- ~~(3) The application process for the Education Staff Retention and Recruitment Grants shall be as follows:~~
- ~~(a) The Department shall post an application form on its website available to all Eligible Recipients.~~
- ~~(b) The Department shall open the application period at a date to be determined by the Department.~~
- ~~(c) Eligible Recipients shall submit an application no later than May 31, 2022.~~
- ~~(d) The application form shall include the following:~~
- ~~(A) Name of applicant;~~
- ~~(B) Department's institution identification number of applicant;~~
- ~~(C) Name and contact information of the person who will be the grant manager;~~
- ~~(D) Name and contact information of the person authorized to sign the grant agreement;~~
- ~~(E) A description of how the Eligible Recipient's personnel had significant participation in developing the Eligible Recipient's proposed plan;~~
- ~~(F) A brief description of the Eligible Recipient's proposed plan;~~
- ~~(G) A brief description of how the Eligible Recipient's proposed plan aligns with guidance published by the Department; and~~
- ~~(H) Signature of person authorized to sign applications agreeing to the terms of the grant.~~
- ~~(e) The Department shall review and approve all applications.~~
- ~~(f) If the Department determines that an application is incomplete or insufficient, the Department shall notify the Eligible Recipient.~~
- ~~(g) The Eligible Recipient shall have until a date to be determined by the Department to complete the application or correct any deficiencies.~~
- ~~(h) If the Eligible Recipient does not submit the revised application by the required date, the Eligible Recipient may not receive any grant funds.~~

~~(i) If there are Eligible Recipients that do not submit an approved application, any funds allocated to those Eligible Recipients will be redistributed on a pro-rated basis to Eligible Recipients that submitted an approved application.~~

~~(4) Eligible Recipients shall execute a Grant Agreement with the Department before receiving any grant funds.~~

~~(5) Once the grant agreement is executed, the Department shall distribute through the Department's EGMS system 85% of the grant funds.~~

~~(6) Grant funds shall be expended in accordance with the Eligible Recipient's plan as submitted and approved in their application.~~

~~(7) By May 1, 2023, Eligible Recipients shall submit a narrative report to the Department, on a template provided by the Department, that:~~

~~(a) Provides a description of how the Eligible Recipient used the funds to implement the plan proposed in the application including any subsequent changes made to the plan by the Eligible Recipient.~~

~~(b) Provides what types of school personnel were directly impacted through the grant funding;~~

~~(c) Provides measurable impacts of the grant funding; and~~

~~(d) Provides other information as required by the Department.~~

~~(8) By May 1, 2023, Eligible Recipients shall submit necessary financial reporting to track the expenditure of funds received by the Eligible Recipient to provide details on specific expenses and ensure that all expenditures comply with (6) above.~~

~~(9) The Department shall review all reports submitted by Eligible Recipients.~~

~~(10) If an Eligible Recipient's financial reporting indicates expenditures are outside of the approved plan or any changes described in (7)(a) above, the Department may:~~

~~(a) Require additional documentation and explanation for the expense;~~

~~(b) Disallow the expense to be reimbursed using grant funds and require the Eligible Recipient to provide additional eligible expenses; or~~

~~(c) Reduce the remaining grant funds to be disbursed to the Eligible Recipient by the amount of the disallowed expense.~~

~~(11) The Department's determinations of eligible expenses shall be final.~~

~~(12) If the Department approves all expenses in the expense report, the Eligible Recipient may request the remaining 15% of funds to be provided through EGMS.~~

~~(13) Eligible Recipients shall expend all grant funds by June 30, 2023.~~

~~(14) Eligible Recipients shall submit claims for all remaining funds in EGMS by July 31, 2023.~~

~~(15) Eligible Recipients shall submit financial reports in compliance with (8) above for all remaining expenditures by July 31, 2023.~~

~~(16) All reports shall be submitted electronically to the Department using templates and means established by the Department.~~

~~(17) If an Eligible Recipient fails to provide any required reports, the Department may require the Eligible Recipient to repay all grant funds.~~

~~(18) These rules are repealed on January 1, 2024.~~

#### **581-017-0790**

#### **Substitute Training Cost Reimbursement Grants**

~~(1) The following definitions apply to this rule:~~

~~(a) "ADMw" is Average Daily Membership weighted as calculated per ORS 327.013 and does not include extended ADMw per ORS 327.013(1)(c).~~

~~(b) "Department" is the Oregon Department of Education.~~

~~(c) "Direct Relationship" means a relationship where the ESD or District directly employs a Substitute Teacher or Instructional Assistant, or contracts with a third-party provider, not an ESD or District, for the Substitute Teacher's or Instructional Assistant's services.~~

~~(d) "District" or "School District" is a public school district organized and operated per ORS Chapter 332.~~

~~(e) "EGMS" is the Department's Electronic Grant Management System.~~

~~(f) "ESD" or "Education Service District" is an education service district organized and operated under ORS Chapter 334.~~

~~(g) "Instructional Assistant" means any staff employed by a district, education service district, public charter school, or private third party who assists with preparation of curriculum, assessment, and direction of learning in class, in small groups, in individual situations, online, in the library, and in guidance and counseling. The terms "substitute instructional assistant," "educational assistant," and "substitute educational assistant" have the same meaning as "Instructional Assistant".~~

~~(h) "Required Training" means:~~

~~(A) Any training required by the state to maintain a credential or license;~~

~~(B) Any training required by school district policy in order to maintain employment in that district;~~

~~(C) Any other training approved by the Department.~~

~~(i) "Substitute Teacher" or "Substitute" means any staff employed by a school district, education service district, public charter school, or private third party who is employed to take the place of a probationary or contract teacher who is temporarily absent.~~

~~(j) "Substitute Training Grant" means the Substitute Teacher and Instructional Assistant Training Cost Reimbursement Grants established by Oregon Laws Chapter 116 Sec. 10-12 (2022).~~

- ~~(2) Districts and ESDs shall apply for the Substitute Training Grant as follows:~~
- ~~(a) Districts and ESDs will apply using the correct form as posted on the Department's website.~~
- ~~(b) The District application form shall include:~~
- ~~(A) The number of Instructional Assistants in a Direct Relationship with the District;~~
- ~~(B)(i) The number of Substitute Teachers in a Direct Relationship with the District; or~~
- ~~(ii) The name of the ESD that provides Substitute Teachers to the District; and~~
- ~~(C) Any additional information required by the Department to administer the Substitute Training Grant.~~
- ~~(c) The ESD application form shall include:~~
- ~~(A) The number of Instructional Assistants in a Direct Relationship with the ESD;~~
- ~~(B) The number of Substitute Teachers in a Direct Relationship with the ESD;~~
- ~~(C) The names of all Districts the ESD contracts with to provide Substitute Teachers; and~~
- ~~(D) Any additional information required by the Department to administer the Substitute Training Grant.~~
- ~~(d) The Department shall open the application period at a date to be determined by the Department.~~
- ~~(e) Districts and ESDs shall submit an application by a date to be determined by the Department.~~
- ~~(f) The Department shall review and approve all applications.~~
- ~~(g) If the Department determines that an application is incomplete or insufficient, the Department shall notify the District or ESD.~~
- ~~(h) The District or ESD shall have until a date to be determined by the Department to complete the application or correct any deficiencies.~~
- ~~(i) If the District or ESD does not submit the revised application by the required date, the District or ESD may not receive any grant funds.~~
- ~~(3) Once all applications have been submitted and approved, the Department will calculate a total number of Instructional Assistants and Substitute Teachers from the applications.~~
- ~~(4) The grant funds will be divided by that number to calculate an amount of funds per position.~~
- ~~(5) The Department shall allocate the funds as follows:~~
- ~~(a) To each individual District or ESD that applied by multiplying the amount of funds per position by the number of Instructional Assistants and Substitute Teachers in a Direct Relationship with that ESD or District; and~~

~~(b) Reserve 5% of the grant funds to be provided to an individual District or ESD as determined by the Department.~~

~~(6) Districts and ESDs shall execute a Grant Agreement with the Department before receiving any grant funds.~~

~~(7) Districts and ESDs shall distribute the funds to Substitutes and Instructional Assistants to reimburse them for Eligible Costs incurred taking Required Trainings.~~

~~(8) Eligible Costs include:~~

~~(a) Tuition or registration costs of Required Training;~~

~~(b) Travel expenses incurred to attend a Required Training outside of a District or ESD where a Substitute Teacher or Instructional Assistant normally works. Travel expenses will be reimbursed according to State of Oregon Department of Administrative Services travel policies;~~

~~(c) Reimbursement for time taken to attend Required Training. Time will be reimbursed at the Substitute Teacher's or Instructional Assistant's current wage rate.~~

~~(9) Substitute Teachers and Instructional Assistants may submit Eligible Costs incurred from April 15, 2022 through June 30, 2023 for reimbursement.~~

~~(10) Districts and ESDs may not retain any percentage of the funds to cover their costs associated with administering the grants.~~

~~(11) The Department may allow Districts and ESDs to submit Eligible Costs directly to the Department for Required Training provided by the District or ESD to Substitute Teachers or Instructional Assistants. The Department may require additional information from the District or ESD to ensure that any funds received by the District or ESD go to covering costs of training.~~

~~(12) Districts and ESD may submit costs for review by the Department. The Department may make individual determinations as to whether the costs submitted are reimbursable. The Department's determination shall be final.~~

~~(13) Districts and ESDs shall keep all documentation needed to verify the request for reimbursement of Eligible Costs for Required Trainings for 6 years. Districts and ESDs shall provide the documentation to the Department upon request.~~

~~(14) Districts and ESDs shall submit reimbursement requests to the Department on a form provided by the Department.~~

~~(15) Districts and ESDs shall submit corresponding claims to the Department through the Department's EGMS.~~

~~(16) Substitute Teachers and Instructional Assistants must submit all reimbursement requests to Districts and ESDs by June 30, 2023.~~

~~(17) Districts and ESDs shall submit final reimbursement requests and corresponding EGMS claims to the Department by July 31, 2023.~~



# Oregon State Board of Education

October 19, 2023

AGENDA ITEM: 581-017-0780, -0790 Rule Repeal

<p><b>SUBJECT:</b> 581-017-0780, -0790</p> <p><b>STAFF NAME &amp; OFFICE:</b></p> <p>HB 4030 created two new grants, the Educator Retention and Recruitment Grant (Educator Retention Grant), and the Substitute Teacher and IA Training Reimbursement Grant (Substitute Training Grant). These grants have ended and no longer operational. The rules need to be repealed.</p> <p><input type="checkbox"/> New Rule <input type="checkbox"/> Amend Existing Rule <input checked="" type="checkbox"/> Repeal Rule</p>	<p><input type="checkbox"/> First Reading <input type="checkbox"/> Presentation <input type="checkbox"/> No Presentation</p> <p><input checked="" type="checkbox"/> Action <input type="checkbox"/> Temp Rule <input type="checkbox"/> Presentation <input checked="" type="checkbox"/> No Presentation</p>
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## BACKGROUND

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In the 2022 short session, the legislature passed HB 4030 which provided one-time funds to address problems with the education workforce. Within the bill, there were two grant programs. The Educator Retention Grant provided \$78.2 million to districts, ESDs, and charter schools to address teacher retention and recruitment problems. The Substitute Training Grant provided \$19.5 million to districts to cover the costs of mandatory trainings that substitutes are required to take to be allowed to work in the district. Both of these grants were one-time funds and ended on June 30, 2023.

The Educator Retention Grant went out to 265 grantees (190 school districts, 77 charter schools, and 18 ESDs). Each recipient had to submit an application for the grant. In the application, they had to identify some long-standing problems of practice and then describe the strategies they would use to address those problems of practice. Additionally, grant recipients had to identify how they meaningfully involved their staff in the development of the grant application.

Once the applications were approved, grant funds were distributed to recipients to implement the previously identified strategies to address their problems of practice. Each recipient could use the funds to implement multiple strategies. The top three strategies implemented by number of recipients were:

- Retention and Recruitment Bonuses – 220 recipients
- Addressing the community and culture of the workplace – 120 recipients
- Providing additional professional learning – 112 recipients.

Recipients spent \$74.5 million of the grant funds. Moving forward many recipients reported that they would not be able to sustain the work provided by the grant, since there are no other funds to sustain and move the work forward. Some recipients looked to their Regional Educator Networks to look for ways to sustain the work started by the grant. However, for most, they did not have additional funds to sustain the work started by this one-time grant.

The Substitute Training Grant’s goal was to reimburse substitute teachers and instructional assistants costs to complete training required by districts before being able to work for each district. Historically substitutes paid for any tuition costs for these trainings and were not paid for their time to complete these trainings. The Substitute Training Grant was designed to cover those costs.

# Oregon State Board of Education

October 19, 2023

AGENDA ITEM: 581-017-0780, -0790 Rule Repeal

The Substitute Training Grant was not as successful as the Educator Retention Grant. There were several barriers to full participation. First, there is a complicated relationship between districts, third party staffing agencies, and individual substitutes. This led to the following barriers:

- Third party staffing agencies did not engage with this grant early, despite several attempts to reach out to them;
- Districts and third party staffing agencies were not in alignment regarding participation in this grant; and
- Substitutes did not necessarily receive information about this grant in a timely manner.

Another barrier was ODE was only able to transfer reimbursement funds to districts rather than directly to substitutes or third party staffing agencies. The grant was voluntary for district participation which meant that if a district chose to not participate, then those substitutes would not be able to receive reimbursement or grant funds. ODE does not have the capacity to provide direct payments to over 7,000 substitutes across the state. Districts gave several reasons for not participating:

- Districts did not have the staff to support the grant and were overwhelmed with the number of grants being offered;
- Districts were not provided with any administrative costs to cover the work to implement the grant which meant they could not hire additional staff to help implement the grant; and
- Districts did not have funds to sustain these payments after the one-time funds ended.

In the end, 85 school districts and ESDs applied for the grant. 106 claims were submitted by 50 grantees. They spent almost \$3 million providing reimbursements to their substitute teachers and instructional assistants for training costs.

Under HB 4030, these grants expire on January 1, 2024. That means the underlying statutory authority for our administrative rules expires. The repeal of OAR 581-017-0780 and -0790 is to remain in compliance with applicable statutory authority.

There has not been extensive community engagement on these rules because all of the grant recipients and other partners have been notified that the grants have ended. , There are no more opportunities to obtain grant funds, and the repeal of the rules is to align with the expiration of the statute. Also, when presented to the Rules Advisory Committee, there were no questions and everyone understood the purpose of this request.

## SUMMARY OF PREVIOUS BOARD ACTION

---

1. This is the second read of the rules. There were no concerns from the Rules Advisory Committee or the Board on moving forward with repeal. It is important to remember that there are no further opportunities for districts to access these funds as the grants have closed.

## HAS THE RULE CHANGED SINCE LAST BOARD MEETING?

---

# Oregon State Board of Education

October 19, 2023

AGENDA ITEM: 581-017-0780, -0790 Rule Repeal

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

## **POLICY ISSUE OR CONCERNS**

---

There are no policy issues or concerns with this requested repeal.

## **EQUITY IMPACT ANALYSIS**

---

The repeal of the rules does not have an impact on historically marginalized communities.

## **FISCAL ANALYSIS**

---

There are no continuing fiscal impact to grant recipients or small businesses.

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

---

If the Board votes yes to repeal of these rules, they will remove rules that no longer have any authority or impact. If the Board votes no to the repeal of these rules, then the rules will remain "on the books" even though the underlying statute has sunset and the grants have ended.

## **STAFF RECOMMENDATION**

---

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 581-017-0780

Attachment 2: HB 4030 Grants Final Report



# Final Report: HB 4030 (2022) Grants

**Michael Elliott, School Finance and Facilities Managing Director**

Sarah Hackett, Education Staff Retention Grants Administrator

Michelle Merfeld, Substitute Reimbursement Grant Administrator

October 19, 2023

56



# Education Staff Recruitment and Retention Grant

57

# Retention and Recruitment Grant

**Purpose:** Provide funding to support retention and recruitment of recruiting and retaining personnel in education, with a priority on personnel in high-need specialties and including personnel who are licensed or classified.

**Total Funds Appropriated: \$78,162,971**

**Funds Awarded to School Districts,  
Charter Schools, and ESDs:  
\$78,127,971\***

\*ODE provided a \$35,000 grant to Oregon School Personnel Association for recruitment conferences/trainings.

Types of Grantees	#
School Districts	190
Charter Schools	77
Education Service Districts	18
<b>Total Grantees</b>	<b>265</b>

58

# Retention and Recruitment Grant Timeline



59

# Education Staff Retention and Recruitment Grant Applications

---

Included:

- Problem(s) of Practice (POP) Grantees planned to address
- How education staff were involved in identifying their Problem(s) of Practice
- How the proposed spending will build on efforts for retention and recruitment made with other funding sources, and
- The key action steps to take to implement these strategies, including the key partners and existing projects or initiatives.

60

# Root Causes of Common Problems of Practice

Cause Code Type	Percent
Salaries	9.4%
Competition	8.5%
Rural	5.0%
Workload	5.0%
Undervalued	4.0%
Time	3.8%
Underprepared	3.5%
New Staff	3.3%
Small Pool	3.3%
Conditions	3.1%

19% of applicants did not cite a root cause in their problem of practice.

Analyzing the causes that were stated, salaries and competition for qualified candidates were identified as the most common causes. <sup>61</sup>

Applicants also described many compensation related problems, including a lack of affordable housing, childcare, and staff feeling undervalued. Particularly for classified staff, applicants described that wages are far less than needed to meet the cost of living in their communities.

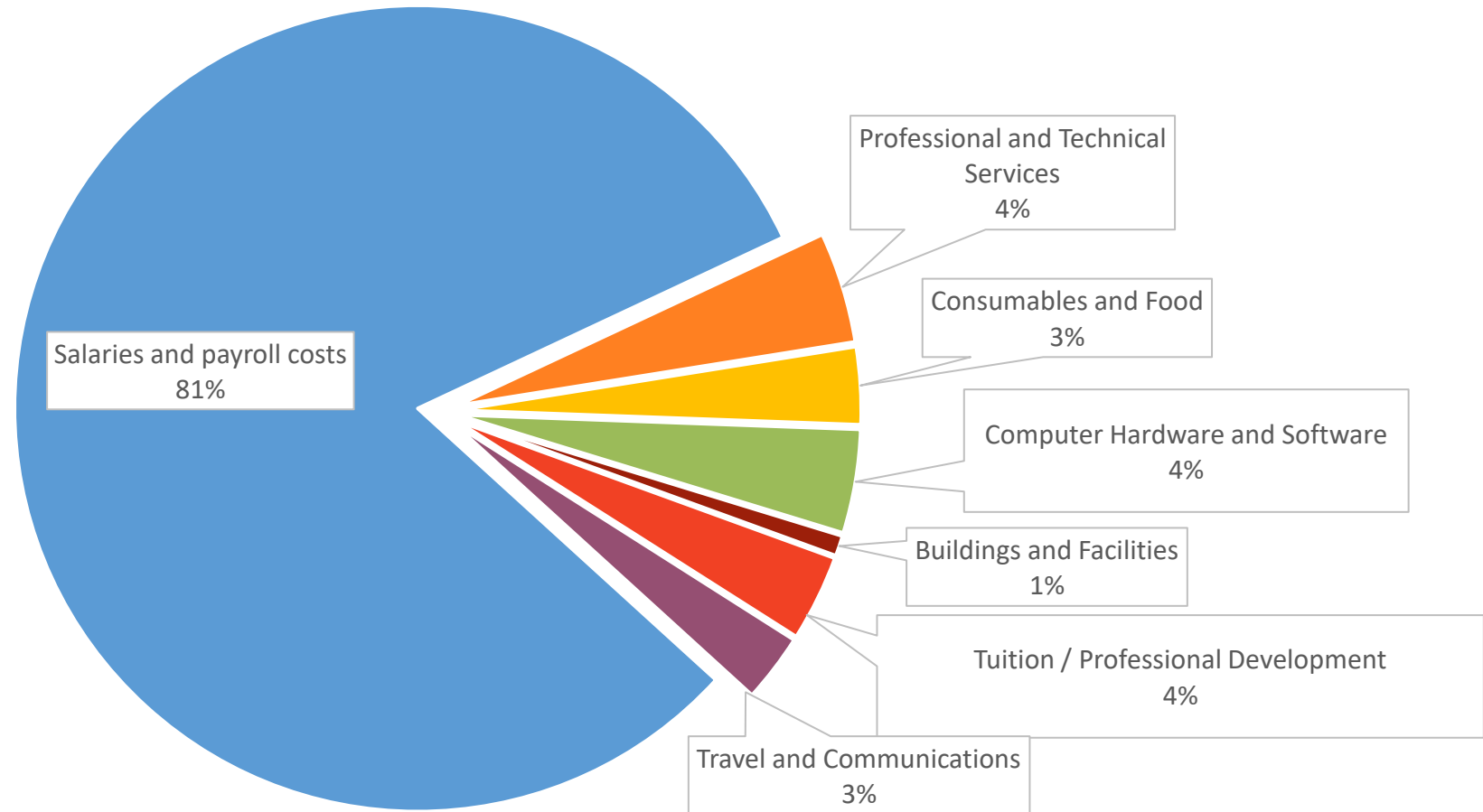
# Retention and Recruitment Grant Spending

---

**265 Grantees**  
**(School District, ESDs, and Charter Schools)**  
**spent \$74,487,068 to support local efforts to retain and**  
**recruit licensed and classified K-12 personnel**

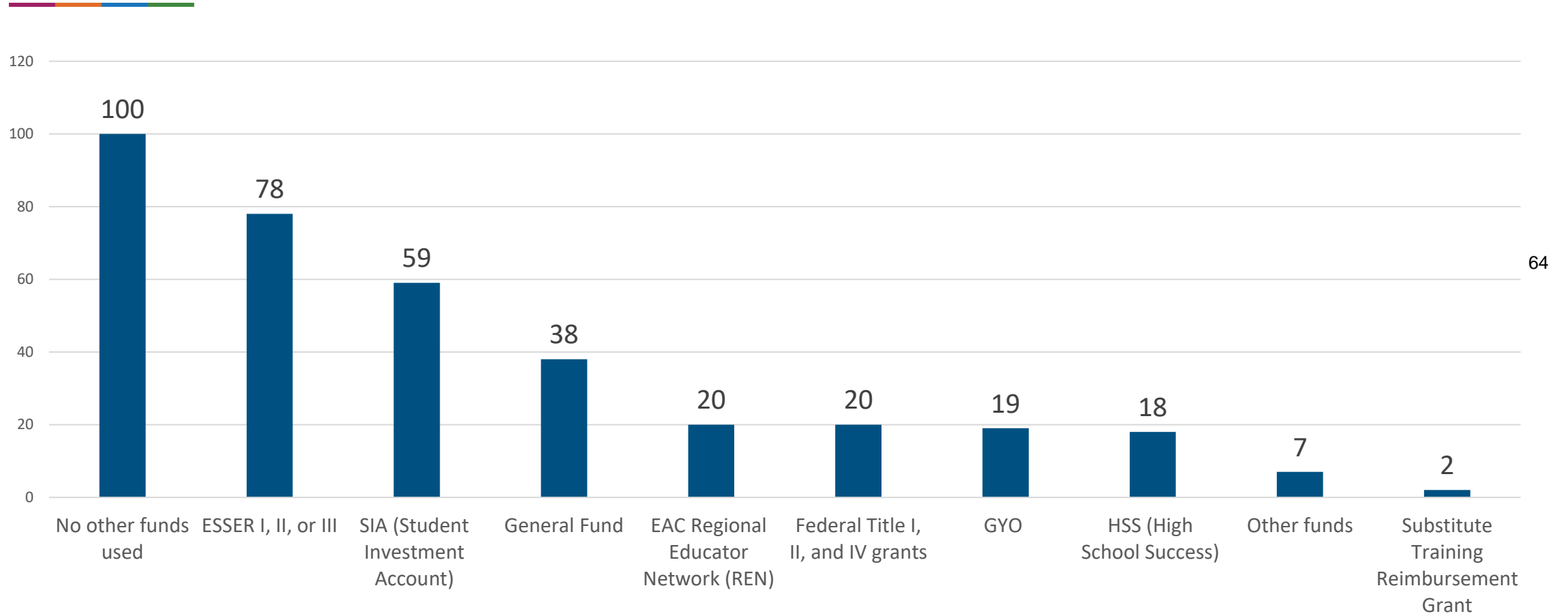
62

# Retention and Recruitment Grant Expenditures by Service or Commodity

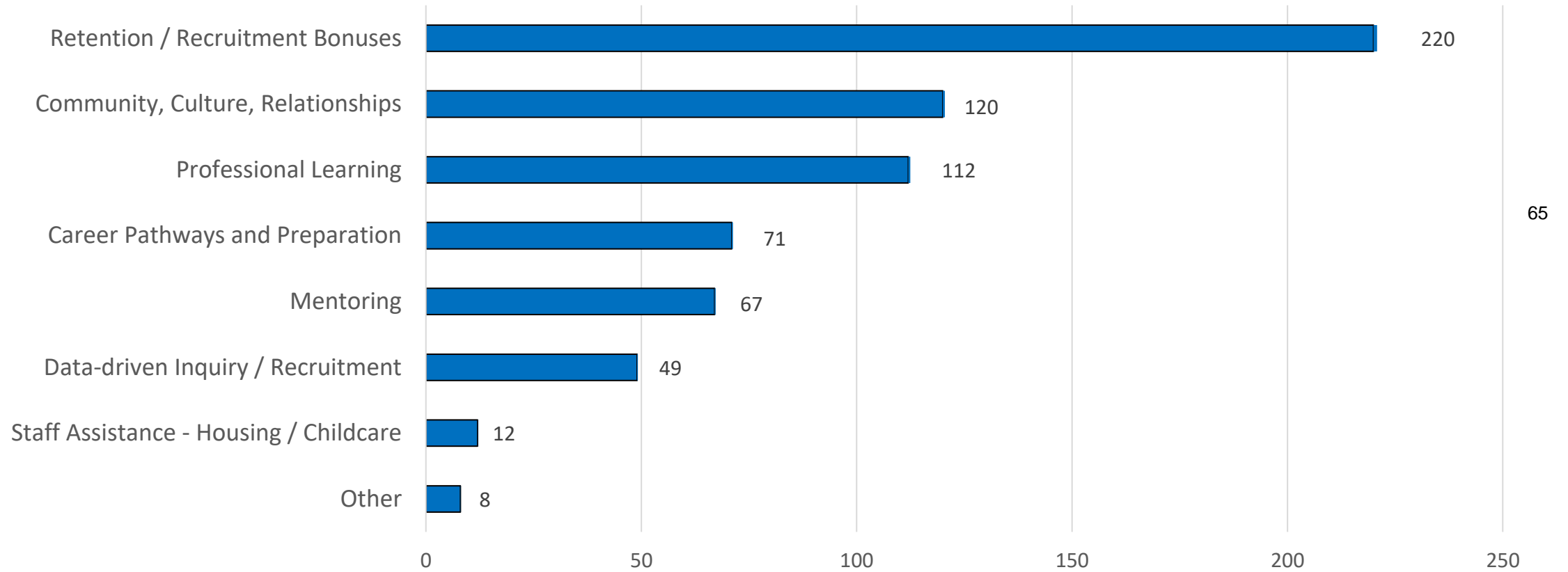


63

# Other Funds Used With Retention and Recruitment Grant



# Retention and Recruitment Grant - Expenditures by Strategy



# Ability to Sustain Retention and Recruitment Grant Efforts

---

Most Grantees reported that they would not be able to sustain the efforts they made through this grant, particularly for retention or recruitment bonuses.

Grantees noted that leveraging ESSER funds end after 2024.

---

66

## Some efforts grantees may be able to sustain:

- Working through local REN to identify additional funding sources
- EAC Grow-Your-Own/Teacher Partnership Pathway Grants (GYO)
- Local contributions to continue sponsored staff meals and celebrations
- Mentorship programs but with fewer hours and/or collaboration with local ESDs



# Substitute and IAs Training Reimbursement Grant

67

# Substitute and IAs Training Reimbursement Grant

**Purpose:** Provide funding to reimburse substitute teachers and instructional assistants for trainings they are required to take.

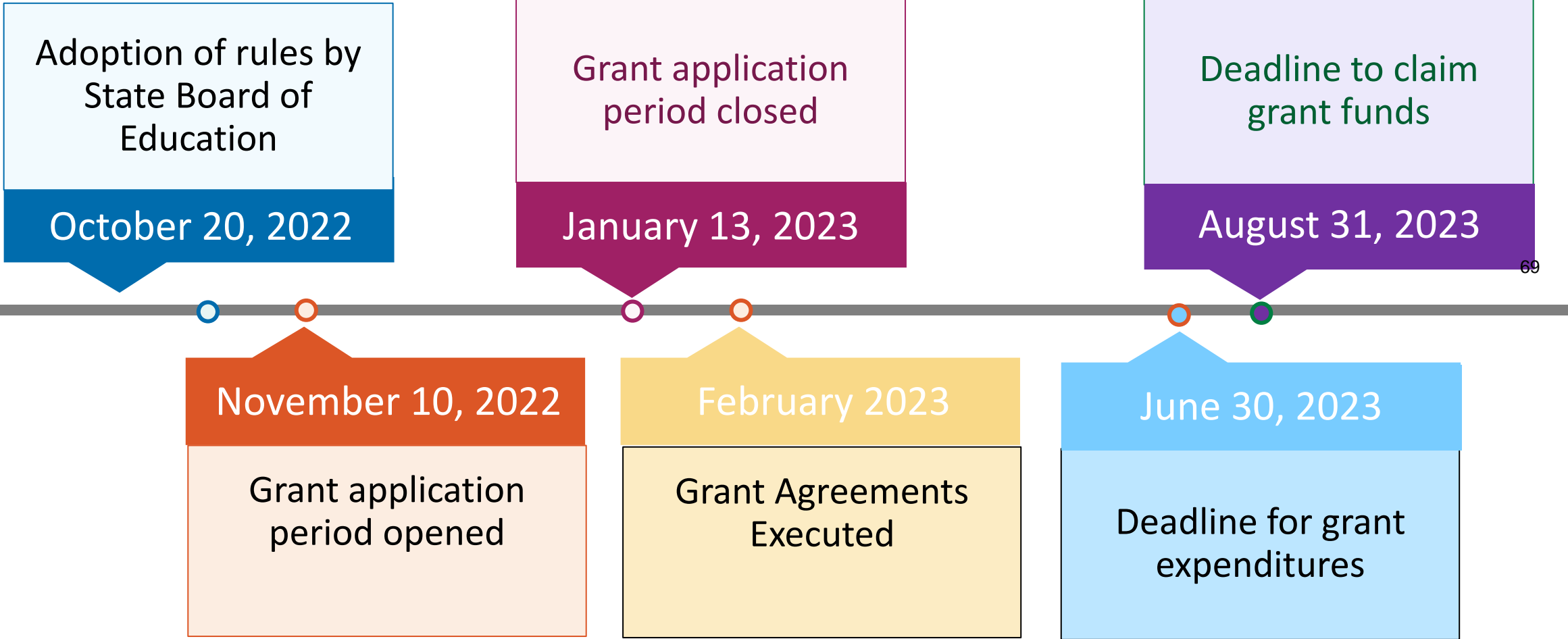
**Total Funds Appropriated: \$19.5 million**

**Funds Awarded to School Districts and ESDs: \$16,087,622**

Types of Grantees	#
School Districts	77
Education Service Districts	8
<b>Total Grantees</b>	<b>85</b>

68

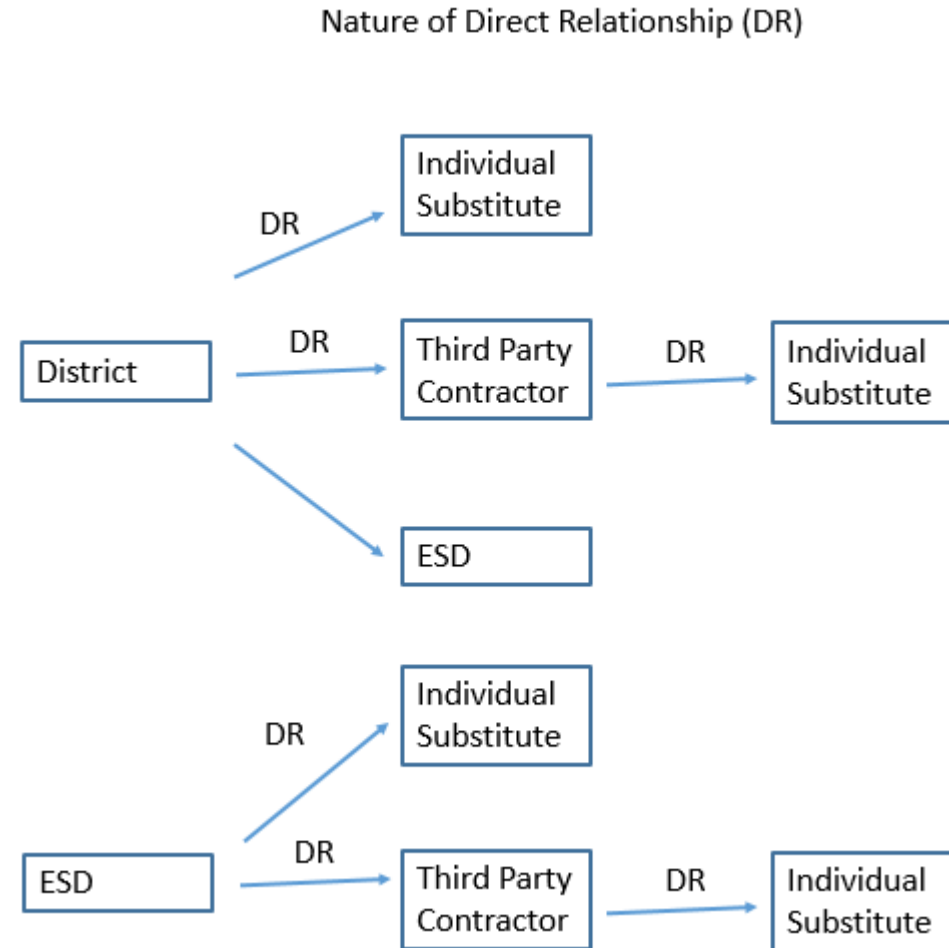
# Substitute and IAs Training Reimbursement Grant Timeline



# Substitute and IAs Training Reimbursement Grant

## Nature of Direct Relationship

- Substitute teachers and instructional assistants can have a complex employment relationship with districts and ESDs
- Districts and ESDs cannot retain any of the funds as administrative costs



70

# Substitute and Instructional Assistant Training Reimbursement Grant

## Eligible Expenses

Districts and ESDs may use grant funds to reimburse substitutes and instructional assistants for incurred expenses related to required trainings; either required by the state to maintain a license or certification or required by a district or ESD to maintain employment. Eligible expenses include:

- Tuition
- Costs of training
- Travel expenses related to training hosted outside of the district where a substitute teacher or instructional assistant normally works
- Time spent to complete the trainings
- Conference fees
- Other trainings depending on need and available funds

**Districts and ESDs may cover their costs to provide training to individual substitute teachers and instructional assistants for required training.**

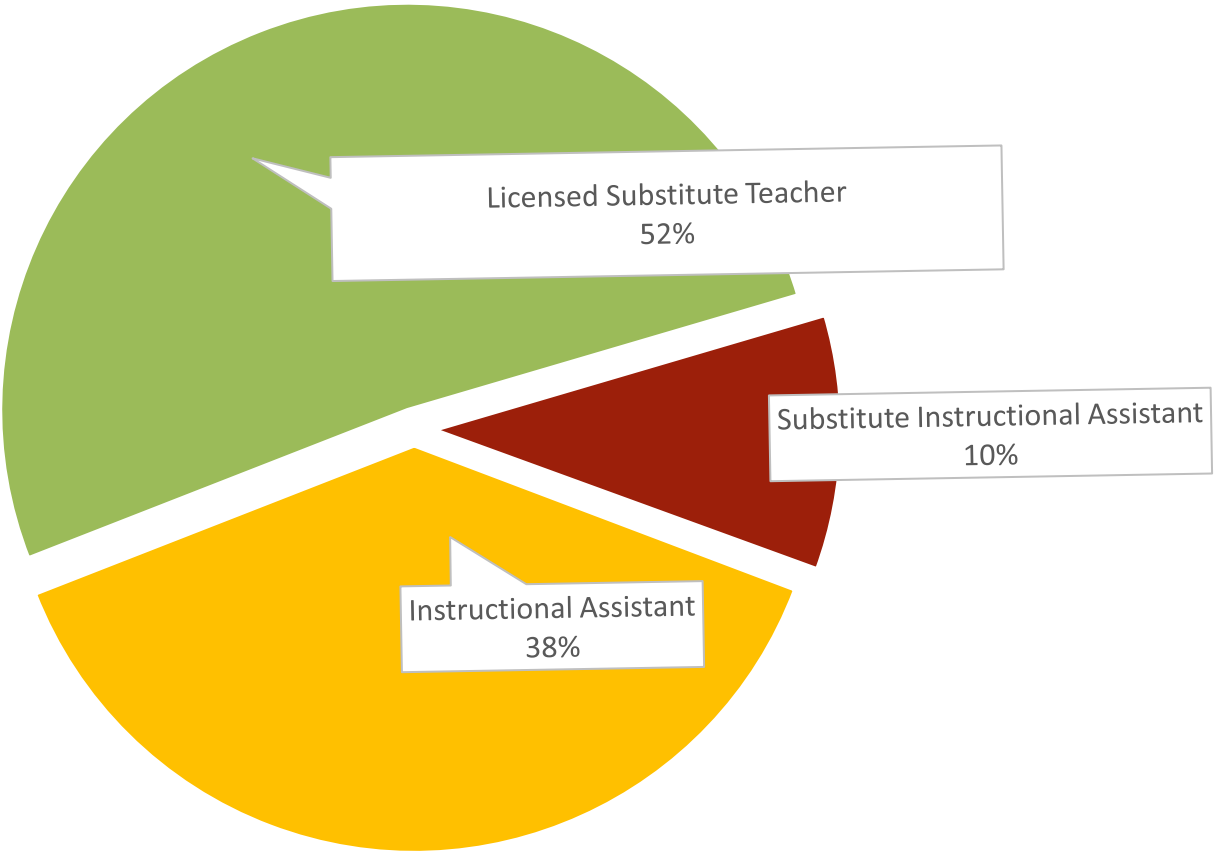
# Substitute and IA Training Reimbursement Grant Spending

---

**85 Grantees**  
**(School Districts and ESDs)**  
**110 Total Claims by 53 Districts/ESDs**  
**spent \$3,059,341 to reimburse Substitute Teachers**  
**and Instructional Assistants for Training Costs.**

72

# Types of Employees Reimbursed



# Expenditures by Employee Type

## Sub Training Grant Expenditures by Employee Type

Employee Type	Tuition Cost	Time Cost	Travel Cost	Total Expenses
Licensed Substitute	\$ 196,075.53	\$ 1,420,719.30	\$ 1,066.80	\$ 1,617,861.63
Instructional Assistant (IA)	\$ 104,059.34	\$ 995,965.00	\$ 12,729.01	\$ 1,112,753.35
Substitute IA	\$ 25,762.31	\$ 245,876.40	\$ 1,639.80	\$ 273,278.51
n/a	\$ 6,426.78	\$ 48,327.31	\$ 693.19	\$ 55,447.28
<b>Grand Total</b>	<b>\$ 332,323.96</b>	<b>\$ 2,710,888.01</b>	<b>\$ 16,128.80</b>	<b>\$ 3,059,340.77</b>

74

# Substitute and IAs Training Reimbursement Grant Feedback from Districts and ESDs

- “At this time, I have no intention to apply for a couple of reasons. The first reason being the **inordinate amount of different grant opportunities** presented to districts. It’s fantastic that there are plentiful opportunities for grants. However, the reality is (at least for the District’s I serve), it’s becoming **cumbersome and daunting at the same time to manage the grants** from applying, to receiving the funds, planning for the funds in the budget and then reporting<sup>75</sup> on how the funds were spent. The **minimal return on investment makes it difficult to pursue the funds**. Secondly, because of the amount of federal funds the Districts have available to spend, and the cost that either District has had to expend at this point, is minimal. Again based on the minimal return on investment, the choice has been made to pass on these grant opportunities.” *(emphasis added)*

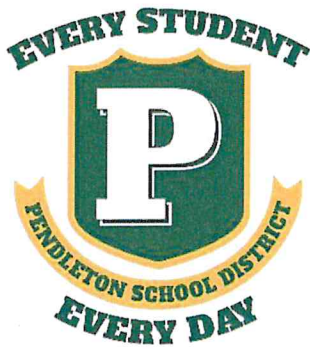
# Thank You



Michael Elliott, School Finance and Facilities Managing Director

[Michael.S.Elliott@ode.oregon.gov](mailto:Michael.S.Elliott@ode.oregon.gov)

76



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**Kevin Headings**  
Superintendent

**Michelle Jones**  
Director of Business Services

**Matt Yoshioka**  
Director of Curriculum,  
Instruction & Assessment

**Julie Smith**  
Director of Special Programs

**Angela Lattin**  
Principal  
Pendleton Early Learning Center

**Sherri Kilgore**  
Principal  
McKay Creek Elementary

**Ronda Smith**  
Principal  
Sherwood Heights Elementary

**Kevin Dinning**  
Principal  
Washington Elementary

**Piper Kelm**  
Principal  
Sunridge Middle School

**Patrick Dutcher**  
Principal  
Pendleton High School

**Board of Education**  
Beth Harrison, Chair  
Patrick Gregg, Vice-Chair  
Dale Freeman  
Julie Muller  
Mason Murphy  
Preston Eagleheart  
Ryan Lehnert

November 7, 2023

Brock Dittus  
Operations & Policy Analyst, Performing Duties of Unit Manager  
Pupil Transportation & Fingerprinting Unit  
Oregon Department of Education

77

Dear Brock,

The School Board of the Pendleton School District 16R, at the November 7, 2023 meeting, passed a motion declaring the Washington walk zone area south and north of where Hwy. 30 and Hwy. 11 meet and overlap as unsafe for students to walk to school and authorized First Student to transport students from this area to school.

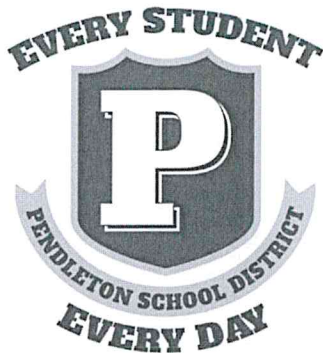
As this zone is within the one-mile limit of Washington Elementary School, the district requests approval for this supplemental plan as reimbursable mileage for home-to-school transportation service, effective November 7, 2023.

A copy of the motion and map are included. Please take this request for approval and let me know if there is more I need to do.

Sincerely,

Michelle Jones  
Director of Business Services

Attachments: Map of Area Declared as Hazardous  
Copy of board motion



## Memorandum

Date: November 7, 2023

To: Board of Directors of the Pendleton School District 16R 78

From: Matt Yoshioka, Director of Curriculum, Instruction and Assessment (student transportation)

Subject: Unsafe areas for students who live within the "walk" to school zones

**Background:** The First Student and PSD policy for determining which students receive transportation services is that all students who reside within one mile of K-8 schools and 1.5 miles of PHS walk to school. However, there are a few areas where students are not safe to walk to school within the walk zone.

- Area south and north of Hwy. 30 (aka SE Court Ave.) from where Hwy 11 meets Hwy. 30 near "The Saddle Restaurant" to where they diverge again (SE Frazer Ave). Students who live within a mile of Washington School in this area would have to cross Hwy. 30/11 and/or the railroad tracks to get to school.
  - Bus stops added are located at Phantom Cycles shop, Pillars Motel, SE Court Ave & SE 20th St. near Hal's Hamburgers.

**Recommendation:** Matt Yoshioka, Director of Student Transportation, recommends the school board declare the area described in the Washington School "walk zone" as hazardous and unsafe for students to walk to school, authorize First Student to transport students who live in this area, and have the district submit a supplemental plan to ODE to qualify the student transportation from this area as "reimbursable mileage."

**Motion:** I move to declare the Washington walk zone area south and north of where Hwy. 30 and Hwy. 11 meet and overlap as unsafe for students to walk to school from; authorize First Student to transport students from this area to school and submit a supplemental plan to ODE for mileage reimbursement.

Motion for Approval:

Made by

*Patrick O'Connell*

Seconded by

*Ryan Lehnert*

Motion for Rejection:

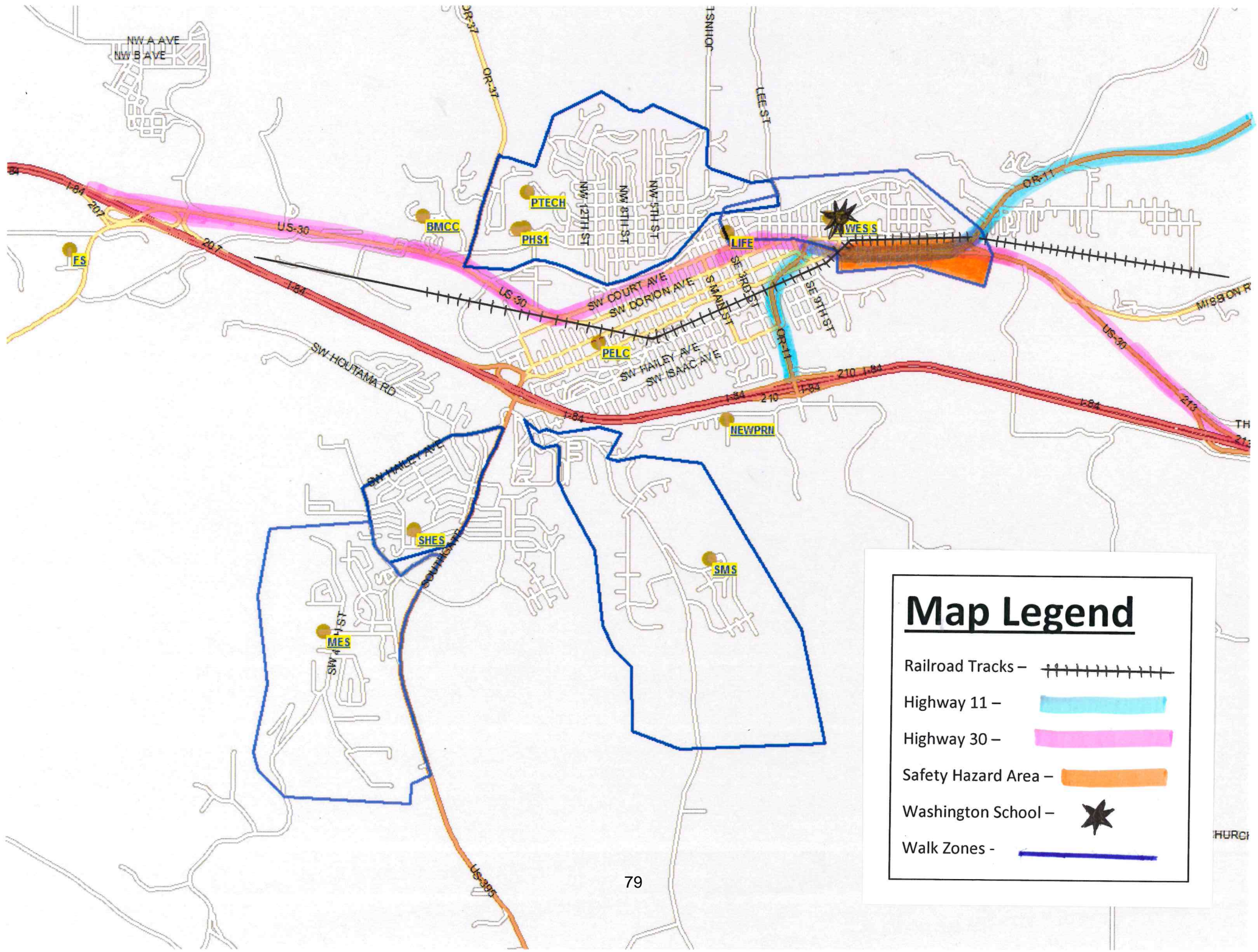
Made by \_\_\_\_\_

Seconded by \_\_\_\_\_







Motion for Further Consideration:

Made by \_\_\_\_\_

Seconded by \_\_\_\_\_



## Map Legend

- Railroad Tracks – 
- Highway 11 – 
- Highway 30 – 
- Safety Hazard Area – 
- Washington School – 
- Walk Zones - 

# Oregon State Board of Education

## December 7, 2023

AGENDA ITEM: Supplemental Plan Revisions for North Clackamas SD, Pendleton SD, and Bend-La Pine

<p><b>SUBJECT:</b> Supplemental Plan Revisions for North Clackamas SD, Pendleton SD, and Bend-La Pine SD</p> <p><b>STAFF NAME &amp; OFFICE:</b> Brock Dittus, Pupil Transportation &amp; Fingerprinting</p> <p>Each of the above districts have 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 within each of these districts.</p>	<p><input type="checkbox"/> <b>Informational Presentation</b></p> <p><input checked="" type="checkbox"/> <b>Written Report</b></p>
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### 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 District Boards approved these supplemental plans at their regular meetings and submitted the plan to ODE for approval thereafter.

The supplemental plans submitted by these school districts account for attendance boundary changes within the no-transport area. Proponents and opponents of the submitted plan had the opportunity to be heard at the local level. These plans replace the previous plan.

# Oregon State Board of Education

**December 7, 2023**

AGENDA ITEM: Supplemental Plan Revisions for North Clackamas SD, Pendleton SD, and Bend-La Pine

## **SUMMARY OF PREVIOUS BOARD ACTION**

---

The State Board approved Pendleton School District’s original supplemental plan in 1992, with revisions in 1994 and 1995.

The State Board approved North Clackamas School District’s original supplemental plan in 1993, with revisions in 1994, 2010, 2014, and 2017.

The State Board approved Bend-La Pine School District’s original supplemental plan in 1992, with revisions in 1999, 2001, 2003, 2005, 2010, 2015, and 2016.

## **POLICY ISSUE OR CONCERNS**

---

The School Districts submitted a supplemental plan for State Board approval after the local school boards adopted them during sessions open to the public. ODE does not engage with stakeholders regarding these plan revisions separate from the district’s public process.

In this case, the districts are updating their plans to account for 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**

---

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**

---

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 these plans will not have an effect on any other school district, and will allow the districts 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: Request for Approval of Pendleton SD Supplemental Plan

Attachment 2: Map with Legend of Unsafe Walk Area for Pendleton SD

Attachment 3: Board Motion for Pendleton SD Supplemental Plan

# **Oregon State Board of Education**

**December 7, 2023**

AGENDA ITEM: Supplemental Plan Revisions for North Clackamas SD, Pendleton SD, and Bend-La Pine

Attachment 4: Supplemental Plan 1-2 North Clackamas

Attachment 5: North Clackamas Transportation Supplemental Plan Addendum

Attachment 6: North Clackamas SD Local Board Approval

Attachment 7: Bend-La Pine SD Supplemental Plan



Administrative School District No. 1  
Bend-La Pine Schools  
RESOLUTION NO. 1958

**Approval of Supplemental Transportation Plans**

WHEREAS a hazard exists to students attending and potentially walking to the schools listed below and illustrated on the attached maps; and

WHEREAS, the State of Oregon will support transportation services for elementary students who live within one mile of an elementary school and secondary students who live within one and one half miles of a middle or high school when significant safety hazards are present; then

WHEREAS, the approximate number of students affected by the plans is as follows:

School	Approximate Affected students
Bend High School - REMOVED #1 & #2	-18
Caldera High School	39
La Pine High School	1
Mountain View High School - REMOVED	-46
La Pine Middle School	3
Cascade Middle School	1
Bear Creek Elementary School - REMOVED	-1
Ensworth Elementary - REMOVED	-43
High Lakes Elementary - REMOVED #2	- 4
High Lakes Elementary	11
Juniper Elementary	6
La Pine Elementary	3
Ponderosa Elementary - REVISED #1	5
Ponderosa Elementary	24
R.E. Jewell Elementary - REVISED #1	26
Rosland Elementary	0
Silver Rail Elementary	15
W.E. Miller Elementary	16

BE IT RESOLVED the Board of Directors of Administrative School District No. 1 (Bend-La Pine Schools) hereby approves the attached supplemental transportation plans.

Moved by: Kina Chadwick

Seconded by: Shirley Olson

Yes votes: 7 No votes: 0

Dated this 14 day of November, 2023

Signed:   
Chair

  
Vice Chair

Attest: Janet Bojanowski  
Board Secretary



Remove

Improvements  
10/9/23

Supplemental Plan for: Bend High School Hazard 1

Bend-LaPine School District

Resolution Date:

Approximated number of Students: 38 Date Counted: 7/31/18

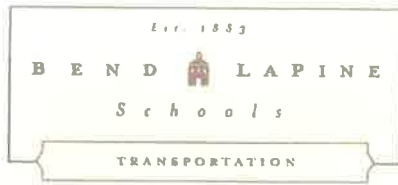
Elementary Schools have 1 mile walk boundary. Hazard Boundaries are outlined in Red.  
Secondary Schools have 1.5 mile walk boundary. Hazard Boundaries are outlined in Red.

Hazard Condition:

Fast moving traffic with multiple lanes and unsafe crossing conditions on the Parkway, NE 3rd Ave and NE Greenwood Ave.

General Area Description:





Remove

Supplemental Plan for: Bend High School Hazard 2

Bend-LaPine School District

Resolution Date:

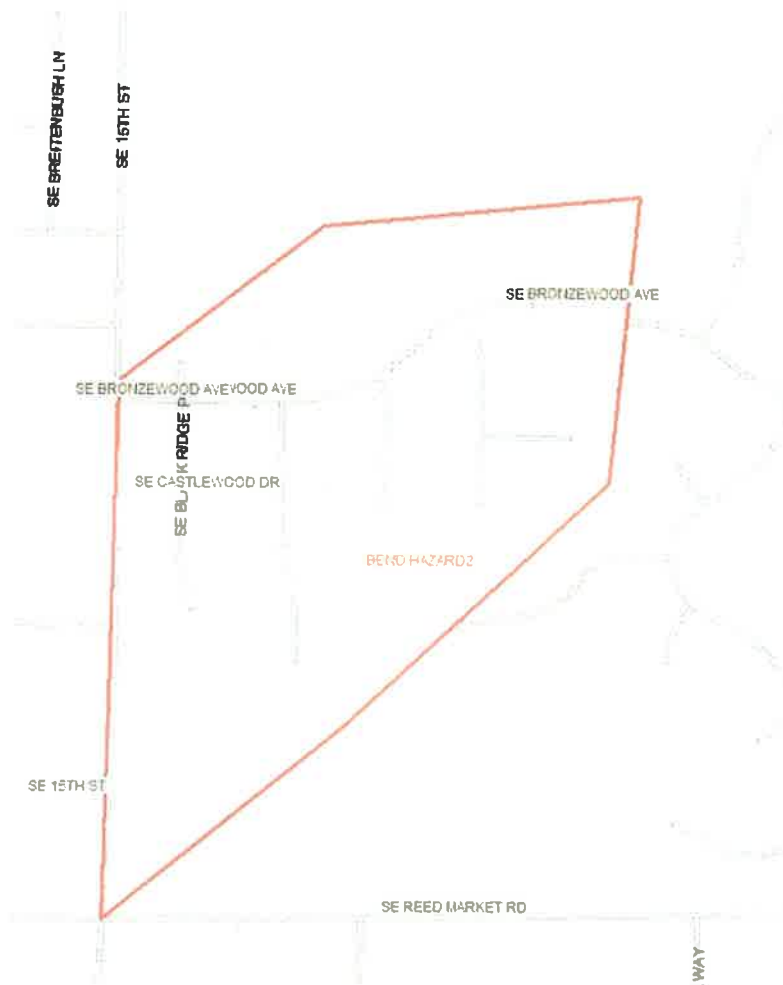
Approximated number of Students: 0 Date Counted: 7/31/18

Elementary Schools have 1 mile walk boundary. Hazard Boundaries are outlined in Red.  
Secondary Schools have 1.5 mile walk boundary. Hazard Boundaries are outlined in Red.

Hazard Condition:

Fast moving traffic on NE 15th Ave. Traffic moves at 40 MPH . Unsafe crossing conditions

General Area Description:



Improvements  
10/9/23



**Supplemental Plan for: Caldera Hazard**

**Bend-LaPine School District**

**Resolution Date: 20/21**

**Approximated number of Students: 13      Date Counted: 9/29/23**

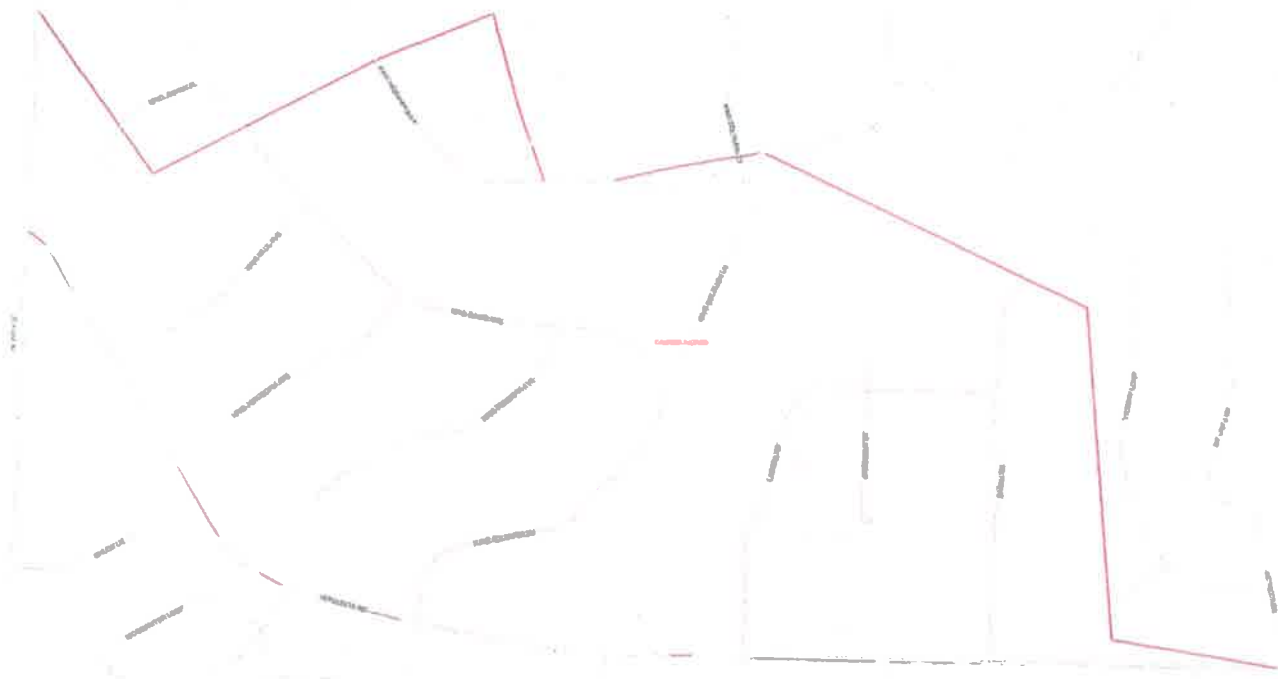
**Elementary Schools have 1 mile walk boundary. Hazard Boundaries are outlined in Red.  
Secondary Schools have 1.5 mile walk boundary. Hazard Boundaries are outlined in Red.**

**Hazard Condition:**

**High traffic and speeds with no shoulder to walk on**

**General Area Description:**

**North of Ferguson and between 15th and 27st st**





Supplemental Plan for: **Caldera Hazard 1**

Bend-LaPine School District

Resolution Date: 20/21

Approximated number of Students: 21      Date Counted: 9/29/23

Elementary Schools have 1 mile walk boundary. Hazard Boundaries are outlined in Red.  
Secondary Schools have 1.5 mile walk boundary. Hazard Boundaries are outlined in Red.

Hazard Condition:

High traffic and speeds with no shoulder to walk on.

General Area Description:

South of Knott Rd From China Hat to Tekampe RD and North and south portions of Knott Rd from Tekampe to Richard Rd.





Supplemental Plan for: **Caldera Hazard 2**

**Bend-LaPine School District**

Resolution Date: **20/21**

Approximated number of Students: **6**      Date Counted: **9/29/23**

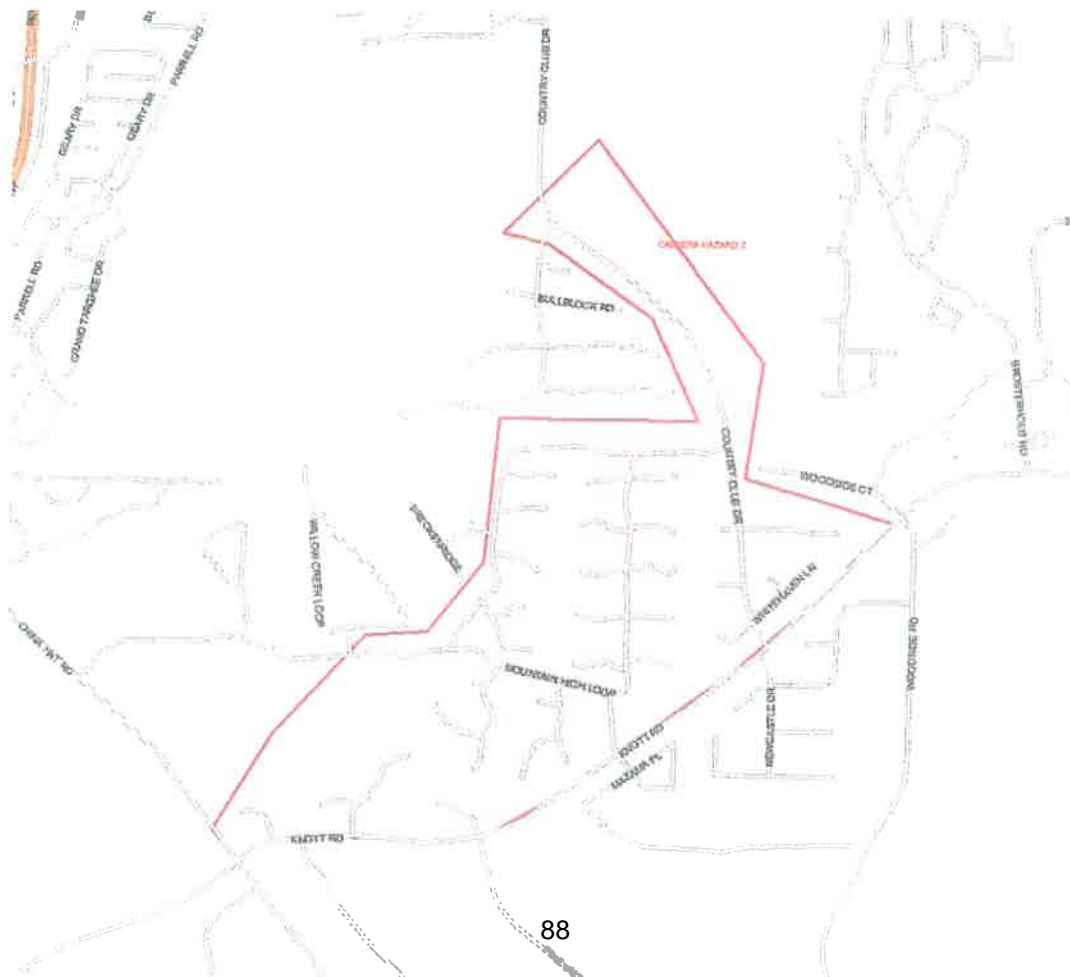
Elementary Schools have 1 mile walk boundary. Hazard Boundaries are outlined in Red.  
Secondary Schools have 1.5 mile walk boundary. Hazard Boundaries are outlined in Red.

Hazard Condition:

High traffic and speeds with no shoulder to walk on.

General Area Description:

North of Knott Rd From China Hat to just east of Country Club Dr





Supplemental Plan for: **LaPine High School Hazard Boundary 1**

Bend-LaPine School District

Resolution Date: 2/9/10 #1751

Approximated number of Students: 1      Date Counted: 6/26/18

Elementary Schools have 1 mile walk boundary. Hazard Boundaries are outlined in Red.  
Secondary Schools have 1.5 mile walk boundary. Hazard Boundaries are outlined in Red.

*Revised - see  
new Hazard # 1  
10/6/23*

Hazard Condition:

Heavy Traffic no side walks or crosswalks

General Area Description:

East of Huntington between Caldwell Dr and Findley Dr.





Supplemental Plan for: Lapine Hazard 4 High

Bend-LaPine School District

Resolution Date: 9/29/22

Approximated number of Students: 1 Date Counted: 9/29/23

Elementary Schools have 1 mile walk boundary. Hazard Boundaries are outlined in Red.  
Secondary Schools have 1.5 mile walk boundary. Hazard Boundaries are outlined in Red.

Hazard Condition:

No safe path to cross Huntington

General Area Description:

East side of Huntington Rd and North of Memorial Ln





Delite

Supplemental Plan for: Mountain View High School

Bend-LaPine School District

Resolution Date:

Approximated number of Students: 46 Date Counted: 10/09/2023

Elementary Schools have 1 mile walk boundary. Hazard Boundaries are outlined in Red.

Secondary Schools have 1.5 mile walk boundary. Hazard Boundaries are outlined in Red.

Hazard Condition:

No Sidewalks on part of the roads. Some students would need to cross over canal that does not have a walk path to separate them from vehicles

General Area Description:

North of Empire and West of Purcell







Supplemental Plan for: Cascade Middle School Hazard 2

Bend-LaPine School District

Resolution Date:

Approximated number of Students: 1 Date Counted: 10/12/2022

Elementary Schools have 1 mile walk boundary. Hazard Boundaries are outlined in Red.

Secondary Schools have 1.5 mile walk boundary. Hazard Boundaries are outlined in Red.

Hazard Condition:

No current sidewalks

55 MPH road that is heavily travelled

General Area Description:

Neighborhood development along side S. Century Dr.





Deleted  
10/9/23

Supplemental Plan for: Bear Creek Elementary Hazard 2

Bend-LaPine School District

Resolution Date:

Approximated number of Students: 1 Date Counted: 10/09/23

Elementary Schools have 1 mile walk boundary. Hazard Boundaries are outlined in Red. Secondary Schools have 1.5 mile walk boundary. Hazard Boundaries are outlined in Red.

Hazard Condition:

Hazard 2= The intersection of SE 15th St @SE Wilson Ave is heavily travelled and there is no crosswalk provided

General Area Description:

Hazard 2= South of SE Wilson St to SE Reed Market Rd and East of SE 15th St to SE 9th St





*Delete*

Supplemental Plan for: Ensworth Elementary Hazard 1  
Bend-LaPine School District

Resolution Date:

Approximated number of Students **43** , Date Counted: 10/09/23

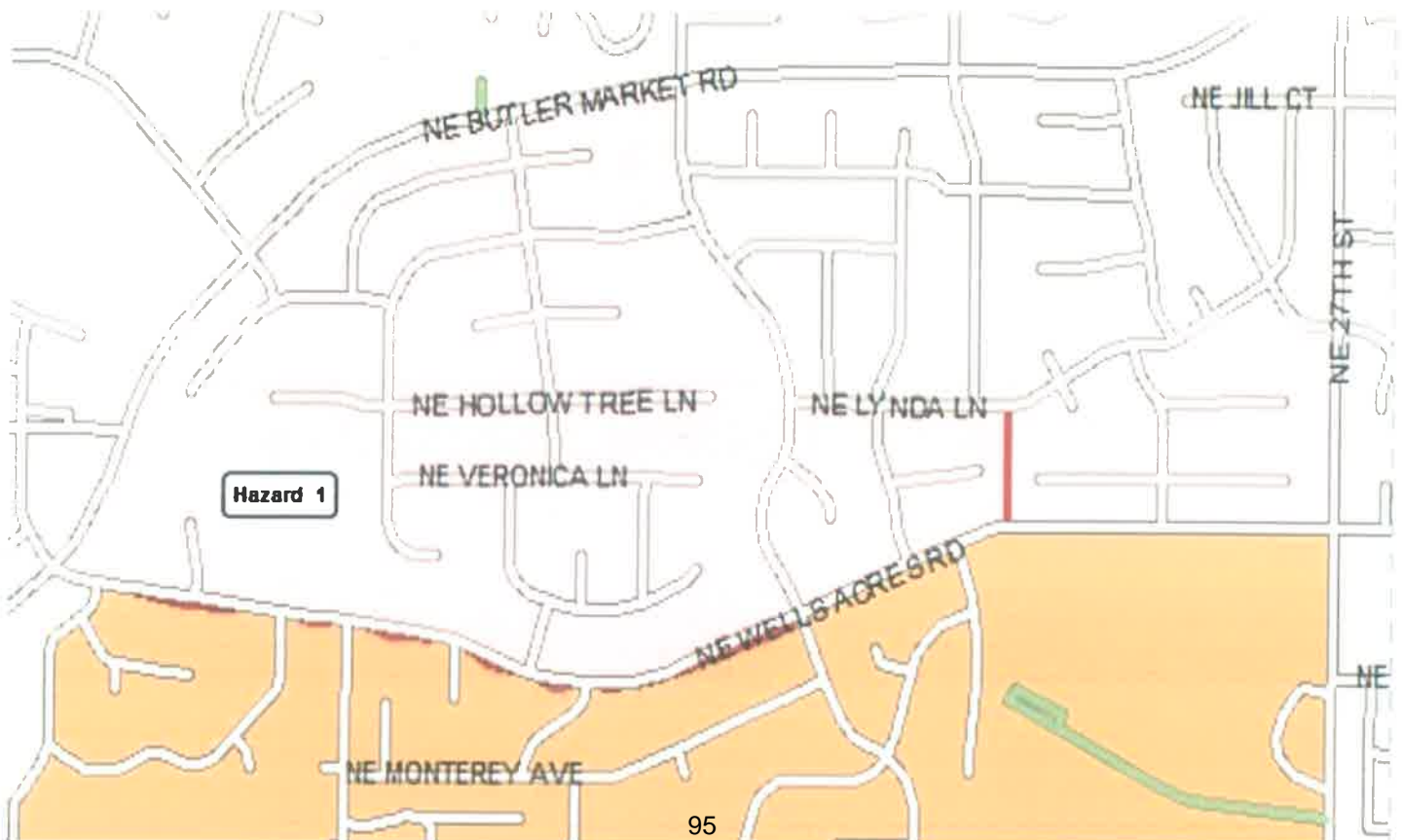
Elementary Schools have 1 mile walk boundary. Hazard Boundaries are outlined in Red. Secondary Schools have 1.5 mile walk boundary. Hazard Boundaries are outlined in Red.

Hazard Condition:

Hazard 1 = Students need to cross Wells Acres Rd heavily travelled posted speed 25MPH usually driven faster. No marked cross-walks at intersections

General Area Description:

All areas north and including Wells Acres Rd from Butler Market Rd to NE 27th St  
NE Huettl Ln and Wells Acres Rd



Delete  
10/19/23



Supplemental Plan for: High Lakes Elementary Hazard 2

Bend-LaPine School District

Resolution Date:

Approximated number of Students: 84 Date Counted: 06/22/18

Elementary Schools have 1 mile walk boundary. Hazard Boundaries are outlined in Red.  
Secondary Schools have 1.5 mile walk boundary. Hazard Boundaries are outlined in Red.

Hazard Condition:

Students must cross Shevlin Park Dr, which is a heavily traveled, 35 MPH zone.

General Area Description:

Neighborhood East of Mt Washington and North of Shevlin Park Dr. and west of College Way.





Supplemental Plan for: HIGH LAKES HAZARD 3

Bend-LaPine School District

Resolution Date: 11/7/23

Approximated number of Students: 0 Date Counted: 11/7/2

Elementary Schools have 1 mile walk boundary. Hazard Boundaries are outlined in Red.  
Secondary Schools have 1.5 mile walk boundary. Hazard Boundaries are outlined in Red.

Hazard Condition:

High traffic area and high speeds.

General Area Description:

Area north of Shevlin Park rd and East of Mt Washington





Supplemental Plan for: **HIGH LAKES HAZARD 4**

Bend-LaPine School District

Resolution Date: **11/7/23**

Approximated number of Students: **11**      Date Counted: **11/7/23**

Elementary Schools have 1 mile walk boundary. Hazard Boundaries are outlined in Red.

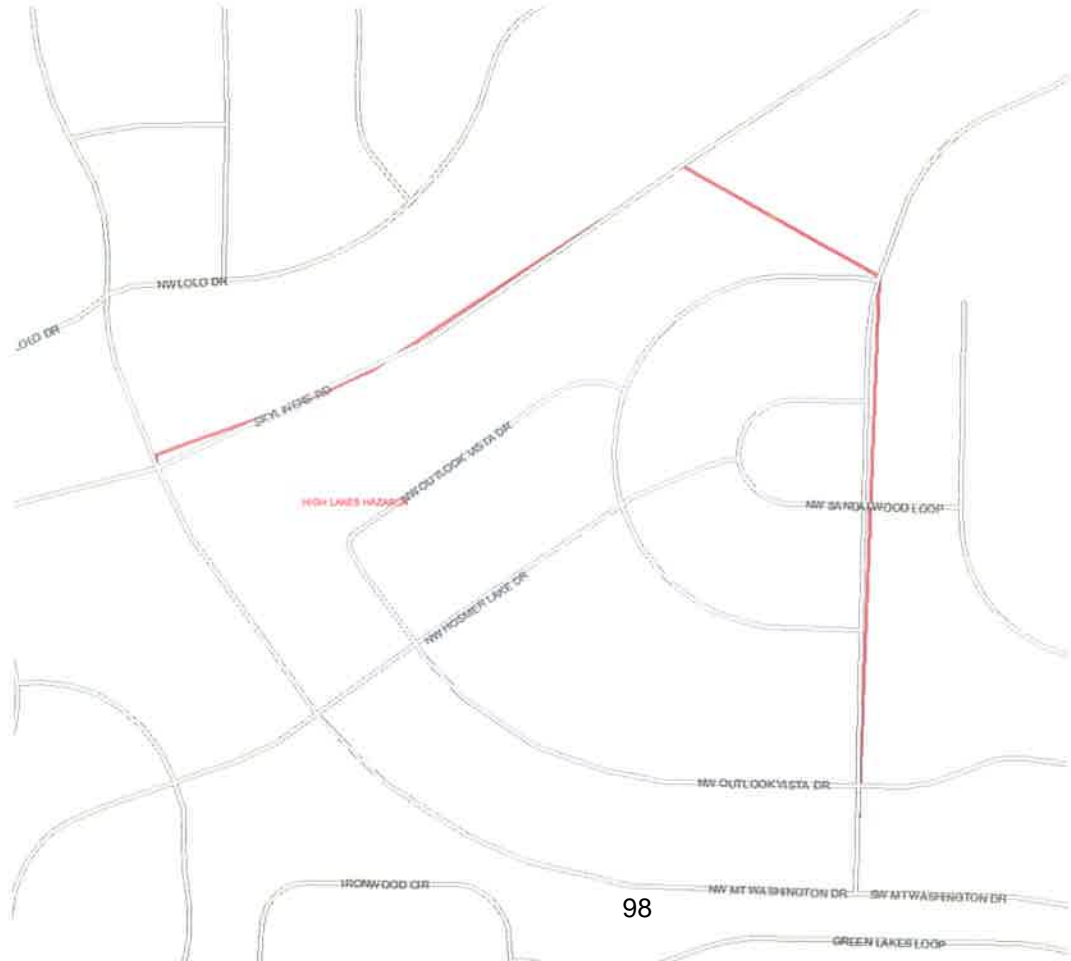
Secondary Schools have 1.5 mile walk boundary. Hazard Boundaries are outlined in Red.

Hazard Condition:

High traffic area and high speeds.

General Area Description:

Area South of Skyliners Rd and East of Mt Washington









Supplemental Plan for: Ponderosa Hazard 1

Bend-LaPine School District

Resolution Date:

Approximated number of Students: 5 Date Counted: 10/09/2023

Elementary Schools have 1 mile walk boundary. Hazard Boundaries are outlined in Red.

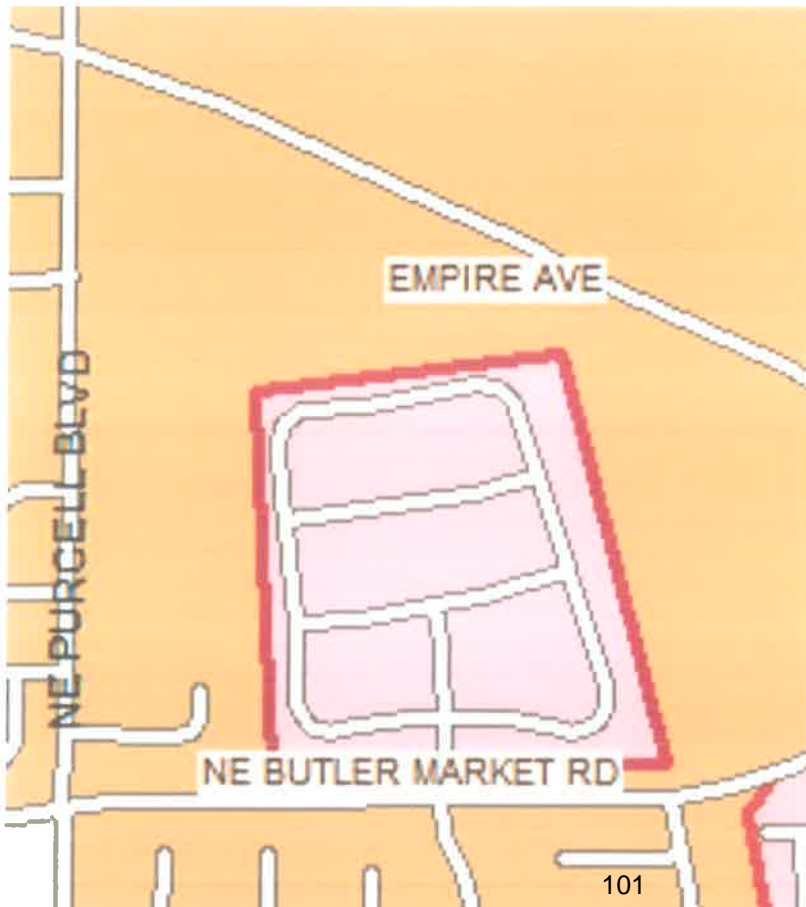
Secondary Schools have 1.5 mile walk boundary. Hazard Boundaries are outlined in Red.

Hazard Condition:

No sidewalk or walk path on Butler Market speed 35 miles per hour

General Area Description:

Butler Market Between 27th and Purcell Blvd. Private neighborhood





Supplemental Plan for: Ponderosa Hazard 3

Bend-LaPine School District

Resolution Date:

Approximated number of Students: 22 Date Counted: 10/06/202

Elementary Schools have 1 mile walk boundary. Hazard Boundaries are outlined in Red.

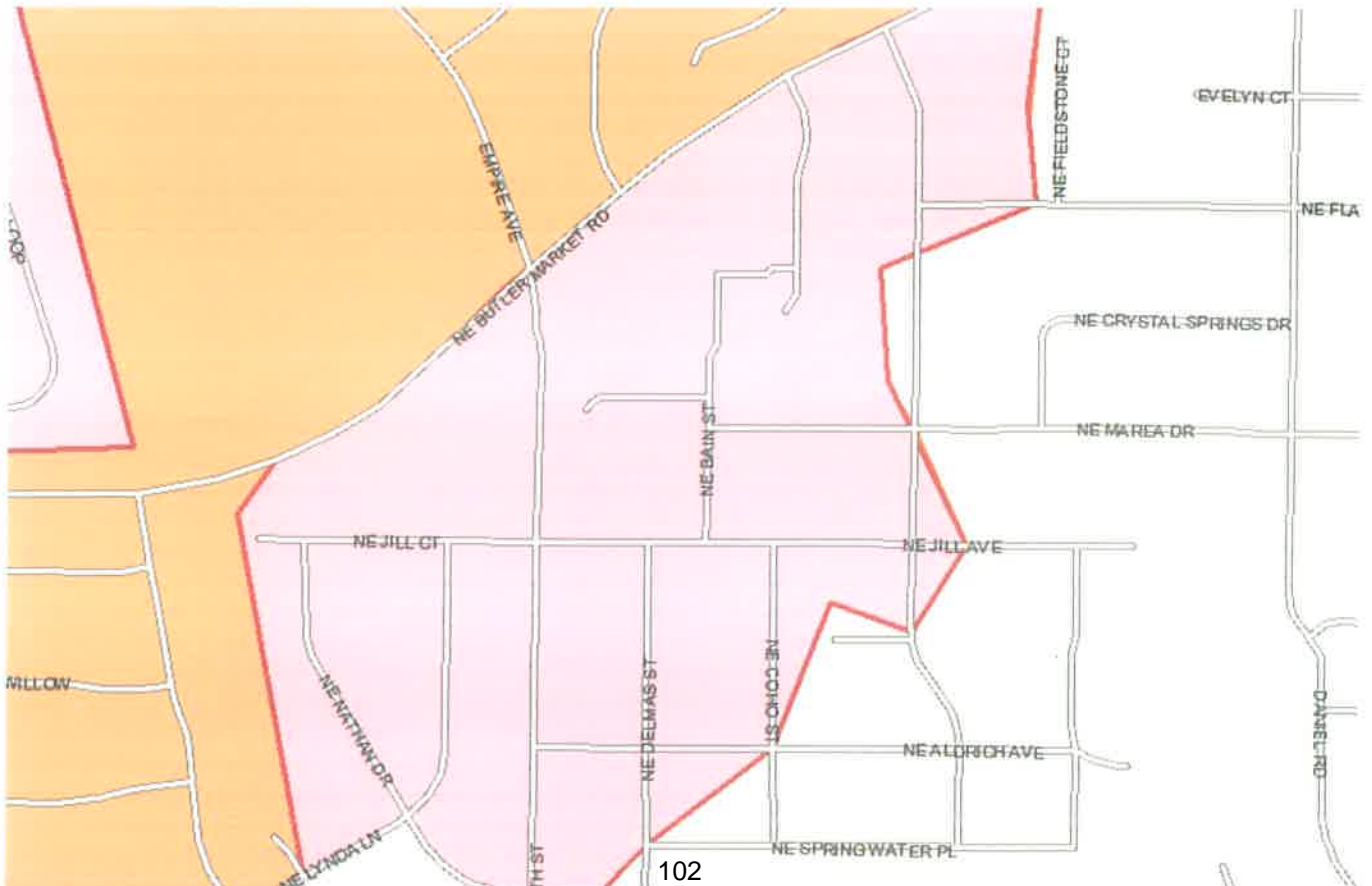
Secondary Schools have 1.5 mile walk boundary. Hazard Boundaries are outlined in Red.

Hazard Condition:

Heavily trafficked muliti lane round about at Empire and Butler Market is the only cross walk.

General Area Description:

Neighborhoods south of Butler Market both east and west of 27th st





Supplemental Plan for: Ponderosa Hazard 4

Bend-LaPine School District

Resolution Date:

Approximated number of Students: 2 Date Counted: 10/06/2023

Elementary Schools have 1 mile walk boundary. Hazard Boundaries are outlined in Red.

Secondary Schools have 1.5 mile walk boundary. Hazard Boundaries are outlined in Red.

Hazard Condition:

High Speeds of 45MPH on Deschutes Market

General Area Description:

East of Deschutes Market RD South of Yeoman RD to just North of Montecello DR





*Revised*

Supplemental Plan for: RE Jewell Elementary School Hazard 1

Bend-LaPine School District

Resolution Date:

Approximated number of Students: 0 Date Counted: 10/09/23

Elementary Schools have 1 mile walk boundary. Hazard Boundaries are outlined in Red.  
Secondary Schools have 1.5 mile walk boundary. Hazard Boundaries are outlined in Red.

Hazard Condition:

Busy roads with no safe walk path. Blind curves with high speeds.

General Area Description:

Country Club south of Parr Ln and north of Rail Road track





Supplemental Plan for: Rosland Elementary School Hazard 2

Bend-LaPine School District

Resolution Date:

Approximated number of Students: 0 Date Counted: 11/06/2023

Elementary Schools have 1 mile walk boundary. Hazard Boundaries are outlined in Red.  
Secondary Schools have 1.5 mile walk boundary. Hazard Boundaries are outlined in Red.

Hazard Condition:

Busy main roads with no sidewalks or shoulder to walk on.

General Area Description:

East side of Huntington South of Burgess Rd West of Hwy 97





Supplemental Plan for: Silver Rail Hazard 2

Bend-LaPine School District

Resolution Date:

Approximated number of Students: 15 Date Counted: 11/6/23

Elementary Schools have 1 mile walk boundary. Hazard Boundaries are outlined in Red.

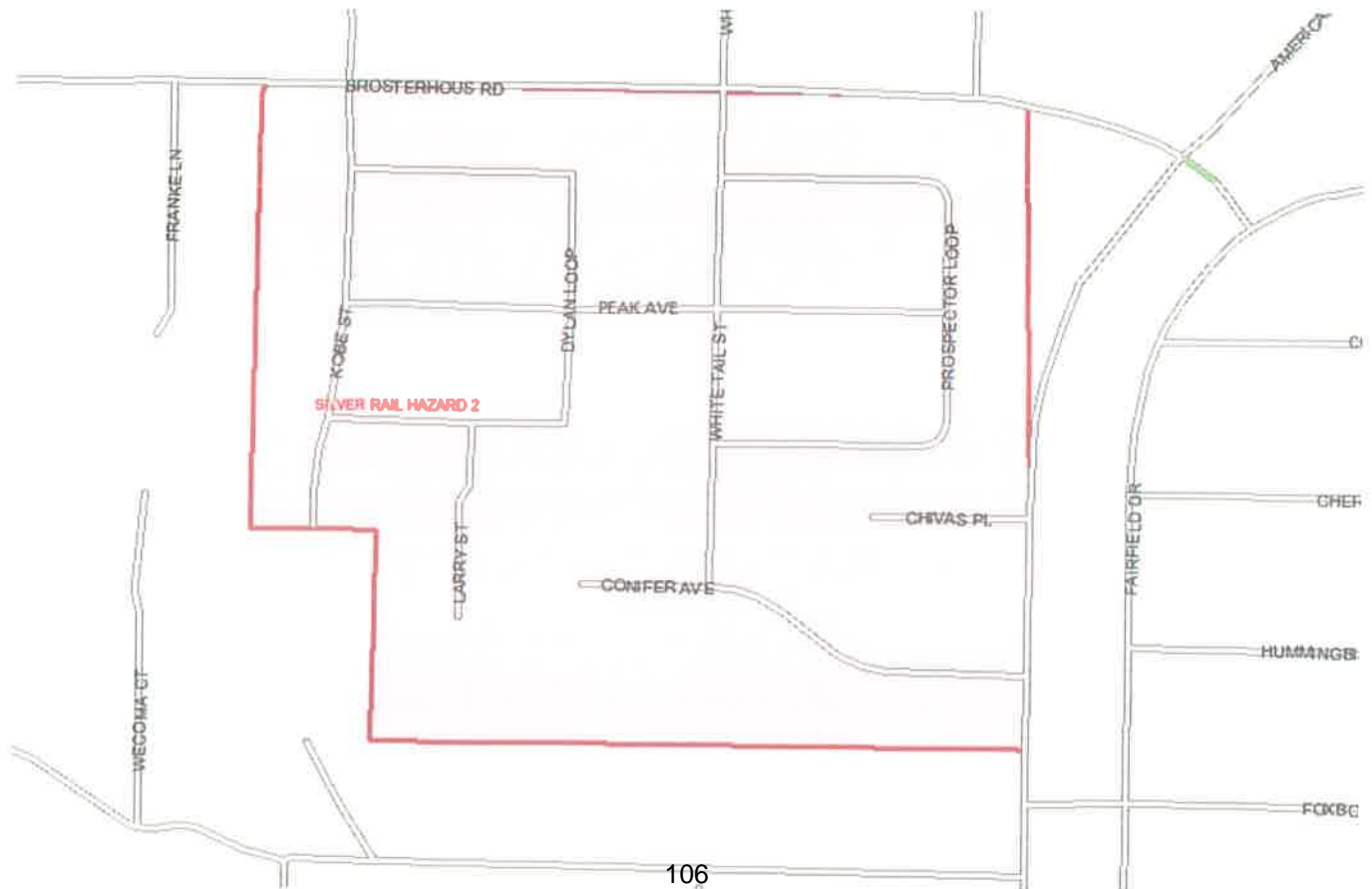
Secondary Schools have 1.5 mile walk boundary. Hazard Boundaries are outlined in Red.

Hazard Condition:

No safe crosswalk and high traffic area.

General Area Description:

Brosterhaus Between Kobe and American Ln.





Supplemental Plan for: Miller Hazard

Bend-LaPine School District

Resolution Date:

Approximated number of Students: 16 Date Counted: 11/6/23

Elementary Schools have 1 mile walk boundary. Hazard Boundaries are outlined in Red.

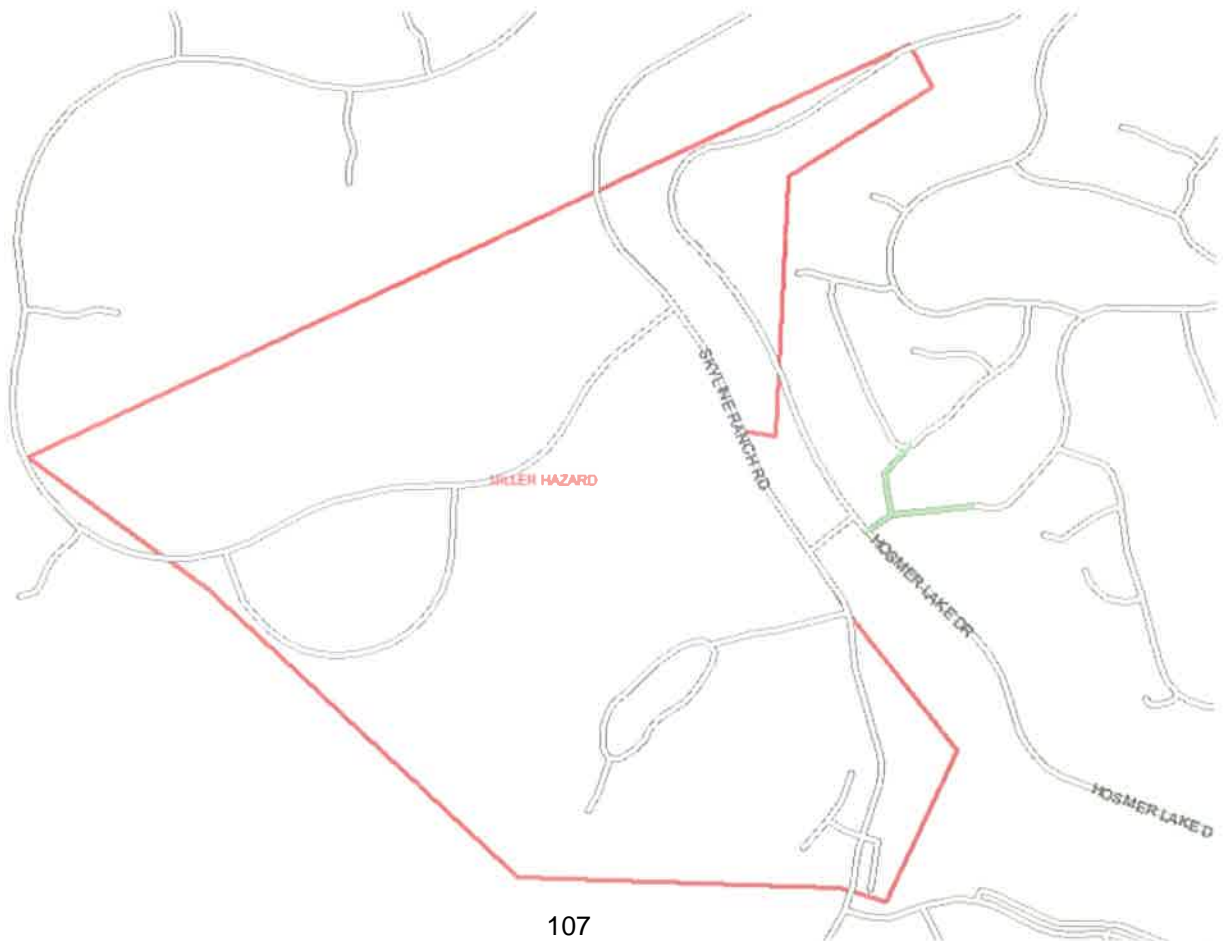
Secondary Schools have 1.5 mile walk boundary. Hazard Boundaries are outlined in Red.

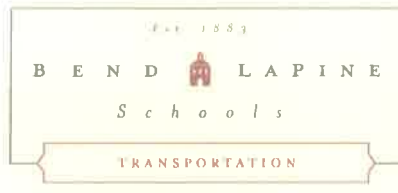
Hazard Condition:

No safe walk paths high traffic and speed road.

General Area Description:

Skyliner Ranch RD from just north of Cartwright Ct. to Searcy Ct.





Delete -  
No longer a school

Supplemental Plan for: SKYLINE HIGH SCHOOL

Bend-LaPine School District

Resolution Date:

Approximated number of Students:                      Date Counted: 8/1/18

Elementary Schools have 1 mile walk boundary. Hazard Boundaries are outlined in Red.  
Secondary Schools have 1.5 mile walk boundary. Hazard Boundaries are outlined in Red.

Hazard Condition:

Open Enrollment

General Area Description:

# Oregon State Board of Education

December 7, 2023

AGENDA ITEM: Supplemental Plan Revisions for North Clackamas SD, Pendleton SD, and Bend-La Pine

<p><b>SUBJECT:</b> Supplemental Plan Revisions for North Clackamas SD, Pendleton SD, and Bend-La Pine SD</p> <p><b>STAFF NAME &amp; OFFICE:</b> Brock Dittus, Pupil Transportation &amp; Fingerprinting</p> <p>Each of the above districts have 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 within each of these districts.</p>	<p><input type="checkbox"/> Informational Presentation</p> <p><input checked="" type="checkbox"/> Written Report</p>
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## 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 District Boards approved these supplemental plans at their regular meetings and submitted the plan to ODE for approval thereafter.

The supplemental plans submitted by these school districts account for attendance boundary changes within the no-transport area. Proponents and opponents of the submitted plan had the opportunity to be heard at the local level. These plans replace the previous plan.

# Oregon State Board of Education

**December 7, 2023**

AGENDA ITEM: Supplemental Plan Revisions for North Clackamas SD, Pendleton SD, and Bend-La Pine

## **SUMMARY OF PREVIOUS BOARD ACTION**

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The State Board approved Pendleton School District’s original supplemental plan in 1992, with revisions in 1994 and 1995.

The State Board approved North Clackamas School District’s original supplemental plan in 1993, with revisions in 1994, 2010, 2014, and 2017.

The State Board approved Bend-La Pine School District’s original supplemental plan in 1992, with revisions in 1999, 2001, 2003, 2005, 2010, 2015, and 2016.

## **POLICY ISSUE OR CONCERNS**

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The School Districts submitted a supplemental plan for State Board approval after the local school boards adopted them during sessions open to the public. ODE does not engage with stakeholders regarding these plan revisions separate from the district’s public process.

In this case, the districts are updating their plans to account for 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 these plans will not have an effect on any other school district, and will allow the districts 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: Request for Approval of Pendleton SD Supplemental Plan

Attachment 2: Map with Legend of Unsafe Walk Area for Pendleton SD

Attachment 3: Board Motion for Pendleton SD Supplemental Plan

# **Oregon State Board of Education**

**December 7, 2023**

AGENDA ITEM: Supplemental Plan Revisions for North Clackamas SD, Pendleton SD, and Bend-La Pine

Attachment 4: Supplemental Plan 1-2 North Clackamas

Attachment 5: North Clackamas Transportation Supplemental Plan Addendum

Attachment 6: North Clackamas SD Local Board Approval

Attachment 7: Bend-La Pine SD Supplemental Plan

**ADDENDUM TO TRANSPORTATION SUPPLEMENTAL PLAN**  
**(Walk Zone)**

**DISCUSSION**  
Agenda Item #5  
June 8, 2023

**SUPERINTENDENT'S RECOMMENDATION:**

Approval of the 2023 Addendum to the [Transportation Supplemental Walk Zone Plan](#).

**REASON FOR BOARD CONSIDERATION:**

The safety of our students as they come to school is our first consideration. The last comprehensive analysis and submission of a Walk Zone Supplement Plan was in 2017. The district needs to periodically review the safety of the walk zone and transportation areas. There have been two major roadway improvements since our last update to our plan.

**BUDGET IMPACT/SOURCE OF FUNDS:**

To receive the full 70% reimbursement from the state for transportation expenses, the district must have all transportation provided in the walk zones documented and approved by the NCSD Board. Any bus stops within the walk zone without documented hazards do not receive state reimbursement. The average cost to transport within the walk zone without a documented hazard is approximately \$700 per student per year.

**BACKGROUND:**

The Supplemental Walk Zone Plan documents the analysis of hazards in school walk zones that may require a bus stop for safety. The plan identifies the areas for recommended bus service within a one-mile walking distance from each elementary and middle school and a 1.5-mile distance from each high school. The walk zones have been evaluated for safe walking conditions, including speed and volume of vehicles, width, and condition of the street, shoulders and sidewalks, visibility, crossings, intersections, and any other potential hazards.

The Supplemental Walk Zone Plan is submitted to the Oregon Department of Education for approval and funding (70% of expense) for transportation services. The analysis of walk zones is based on a process and criteria approved by the North Clackamas School Board. That criteria assist in evaluating safe walking conditions, including speed and volume of vehicles, width, and condition of the street, shoulders and sidewalks, visibility, crossings, intersections, and any other potential hazards.

The Walk Zone Supplemental Plan is the product of an 18-month process, including nine months of physical evaluation of our walk zones by the Transportation Department, comprehensive review by an Advisory Committee composed of all stakeholder groups, and extensive community engagement efforts, including PTO meetings at the schools most heavily impacted by recommended changes.

This addendum to the Walk Zone Supplemental Plan includes changes that reflect the following:

- Reducing transportation bus stops in areas with recent road and walkway improvements for approximately 34 students who now have a safe walk path to Ardenwald Elementary School.
- Reducing transportation bus stops in areas with recent road and walkway improvements, including a crosswalk added through a Safe Routes to School Grant, for approximately 18 students who now have a safe walk path to Lot Whitcomb Elementary School.

Each of the recommended changes above has been thoroughly reviewed, physically walked, and analyzed using the same board-adopted criteria. Families who will be potentially impacted have all received notification about these potential changes and this board agenda item in their preferred language. Families are invited to share any concerns that they have with the Transportation Department.

**ATTACHMENTS:**

2023 NCSD Supplemental Walk Zone Plan

**PRESENTER / STAFF CONTACT:**

Cindy Detchon, Assistant Superintendent of Operations

Kathy Calkins, Director of Transportation

James Prichard, Assistant Director of Transportation

# North Clackamas Schools

## Supplemental Walk Zone Plan

2023 update

### Introduction:

The Supplemental Walk Zone Plan (Plan) documents the analysis of hazards in school walk zones that may require a bus stop for safety. The Plan reports the areas within a one mile walking distance from each elementary and middle school and 1.5 mile walking distance from each high school. The walk zones have been evaluated for safe walking conditions including speed and volume of vehicles, width and condition of the street, shoulders and sidewalks, visibility, crossings, intersections, and any other potential hazards.

The Supplemental Walk Zone Plan is submitted to the Oregon Department of Education for approval and funding (70% of expenses) for transportation services. The analysis of walk zones is based on a process and criteria approved by the North Clackamas School Board.

All walk zone analyses and documentation were completed by Transportation Services' Safety and Training Department.

## Introduction and History

In accordance with state law, the North Clackamas School District (NCSD) provides transportation for students in Kindergarten through 8th grade who live more than 1 mile from their school, and for students 9th through 12th grade who live more than 1.5 miles from their school. NCSD may provide transportation within these 1 mile and 1.5 mile areas when there are specific health and safety reasons for providing transportation.

The state reimburses 70% of the approved transportation expenses. The funding rules require that districts provide a Supplemental Plan to be approved by the State Board of Education in order to receive this reimbursement for students who live closer than the prescribed distances to the school.

In the fall and winter of the 2008/2009 school year, the Transportation Department conducted an in-depth review of the walking areas for schools in the North Clackamas School District. This review was done with the intent of updating the NCSD's Supplemental Plan.

In the school year 2015/2016 North Clackamas School District reviewed its evaluation process and criteria used to evaluate hazards in the walk zones. With extensive community engagement and critical review by the Transportation Department, the process and criteria were updated, clarified and approved by the School Board. During the community meetings several hazards were identified and bus stops were put in place to alleviate immediate safety concerns.

## Walk Zone Project Milestones:

Note: each milestone includes communications

1. PLANNING
  - a. The District formed the project plan and organized resources: Transportation Specialist, Project Facilitator, Communications, and an Advisory Committee.
  - b. The Transportation Department conducted the initial research and analysis based on plan review, data on student safety, input from bus drivers, and research of other models from other districts.
2. COMMUNITY CONSENSUS ON PROCESS AND CRITERIA TO EVALUATE WALK ZONES
  - a. The Transportation Department conducted a process analysis and redesign of all of the components of the walk zone decision making including: parent request form and process, walk zone evaluation criteria, evaluation process, training required for evaluator, and website.
  - b. Multiple community meetings allowed stakeholders to provide input to the improved process design resulting in refining the walk zone evaluation criteria and process improvements.
  - c. Board provided input and parameters for the walk zone evaluation process and criteria
  - d. Board approved redesigned walk zone evaluation process and criteria following community input.
3. PHYSICAL ANALYSIS OF WALK ZONES USING APPROVED PROCESS AND CRITERIA
  - a. Trained Transportation Specialist completed analysis of the walk zones and resulting impact using the approved walk zone evaluation process and criteria.
  - b. The first draft of the North Clackamas Schools Transportation Supplemental Plan for Walk Zones was completed.
4. ADVISORY COMMITTEE REVIEW AND REVISIONS
  - a. The Walk Zone Advisory Committee comprehensively reviewed the plan and provided direction for changes.
  - b. Principals were invited to review the plan and provide feedback for their schools.
  - c. The Advisory Committee recognized a lower average age of elementary students due to school structure shift of 6th grade to the middle schools. This impacted the thresholds for scoring.
5. COMMUNITY ENGAGEMENT REVIEW AND REVISIONS
  - a. The Walk Zone Advisory Committee conducted multiple community engagement meetings at all high school feeder groups and personalized PTO meetings at schools with significant impact.
  - b. Additional areas of concern were identified to direct a more in-depth evaluation by the Transportation Specialist.
  - c. Final adjustments were made by the Advisory Committee based on in-depth analysis and feedback.

6. FINAL REVISIONS, APPROVAL AND COMMUNICATION
  - a. Advisory Committee completed the final Supplemental Plan.
  - b. The School Board reviewed and approved the plan.
  - c. Supplemental Walk Zone Plan will be submitted to Oregon Department of Education for approval
  - d. Communications to all families impacted upon final ODE approval.

## Walk Zone Evaluation Methodology

A point system, based upon others used throughout the state by other districts, was developed to allow objective decision-making on roadways throughout our district. This system assigns points to the following hazard criteria as outlined below:

1. **USABLE WIDTH OF SHOULDERS:**

This is the area usable for students to walk on for the road in question. A measuring wheel was used to measure from the fog line (or edge of road when there was no fog line) to the edge of the available walk space. This could be a bike lane or a dirt surface. Points vary from 0-10 with 0 points being a raised sidewalk, and 10 points being a walk space of 0'-3'.

2. **CONDITION OF ROAD SHOULDER:**

This is the condition of that usable area for students to walk on for the road in question. We reached a conclusion by a visual check of the condition of the usable walk space at the worst location on the road in question. Points vary from 0-8 with 0 points being a raised sidewalk and the points increase as conditions worsen, with 8 being a shoulder restricted by culverts, with no available walk space or private property.

3. **VOLUME OF TRAFFIC:**

A vehicle count was taken for the road in question over a minimum of a 15 minute period. The total count of vehicles divided by the number of minutes that the road was observed to determine the average vehicle count per minute. This took place within one hour prior to the start of school, and/or within one hour after the end of school, when children would be walking on the road in question. Points vary from 0 for less than five cars per minute to 5 points for 25 or more cars per minute.

4. **AVERAGE VEHICLE SPEED:**

A radar gun was used for a minimum of 15 minutes to determine the average vehicle speed for the road in question. We also documented the actual posted speed of the road in question. Radar was done within one hour prior to the start of school, and/or within one hour after the end of school, when children would be walking on the road in question. Points vary from 0 for less than 25 MPH to 7 points for 55 MPH or more.

5. **TYPE OF STREET:**

Roads are designated by Clackamas County. Points vary from 0 to 7. One point is credited for areas with lighted intersections for crossing or has crossing guards.

6. **TYPE OF COMMUNITY:**

The points are as follows: (1) for Urban, (2) for Suburban, and (3) for Rural.

- a. An Urban area is generally safer due to improved walking areas, more marked crosswalks at intersections, traffic control signals, heavy population, and a faster response time for emergency services.
- b. A Suburban area would be relatively safe due to more residential areas, with some businesses intermixed. There could be less chance of having sidewalks or marked crosswalks, and roads may be narrower with limited shoulder area.
- c. Rural areas are generally less safe, due to deteriorating or unimproved walk areas, culverts, limited crosswalks, less population, and a slower response time for emergency services.

**7. TERRAIN FEATURES AFFECTING MOTORIST VISIBILITY:**

The points varied from 0 to 6, with 0 points being the best visibility of 1000' or more and 6 points being the worst visibility of less than 500'. The section of the road in question with the least visibility was measured taking into consideration hills, curves, etc. Using a vehicle mounted distance measuring instrument (DMI) and traveling at the posted speed limit, we measured from where we first saw a pedestrian to where the pedestrian was actually located.

**8. WIDTH OF ROAD:**

The points varied from 0 to 6, with 0 points given to a width of over 45' and 6 points given to a width of less than 16'. We measured from fog line or edge of road, (not including the shoulder of the road, when there was no fog line) to fog line.

**9. OTHER CONDITIONS:**

The points varied from 1 to 5 with 5 indicating a high risk. This includes specific identifiable items not covered elsewhere on the evaluation. For example: lack of school signs, unmarked crosswalks across minor arterials in the walk area, secluded or isolated areas, or heavy commercial traffic in the area.

## Hazard Formula

The hazard threshold is established by adding the points from the hazard criteria, (above) numbers 1 thru 8, to get a score. The methodology for number 9 is only used for additional hazards not covered by numbers 1 thru 8 and is not part of establishing the base for the hazard threshold.

The hazard threshold is the score that indicates a hazard that should be addressed through a bus stop. The hazard threshold for elementary school students is 26 to address a low average age due to all day kindergarten and a K-5 structure. The hazard threshold for middle school students is 27. A score of **26 points** or more automatically establishes a hazard area for elementary and **27 points** middle school students.

For high school students, the hazard threshold is **32 points**. (An additional 5 points is allowed for high school students.) A score of **32 points** and above automatically establishes a hazard area for high school students.

# Evaluation Process for Transportation in Walk Zones

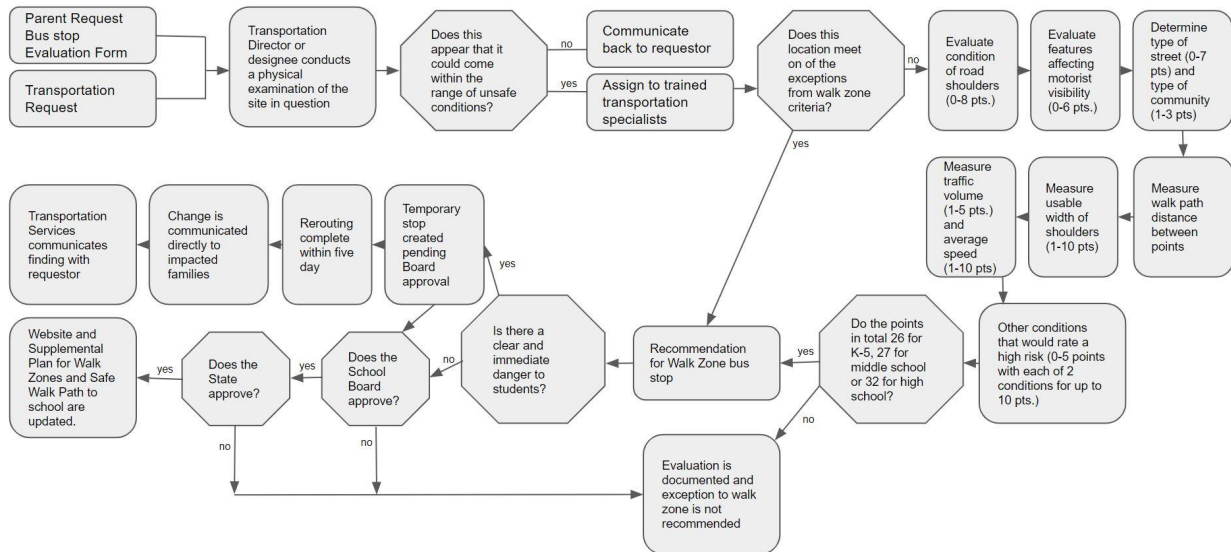
Name of Evaluator \_\_\_\_\_ Date of Observation \_\_\_\_\_

Affected School \_\_\_\_\_ Approximate Number of Affected Students \_\_\_\_\_

Name of Street Evaluated \_\_\_\_\_ Between \_\_\_\_\_ and \_\_\_\_\_

## North Clackamas School District general exceptions to walk zone for all schools:

- Any student in the district who would be required to cross or walk an extended length along a freeway, highway, expressway, or major arterial, as designated by the county, or railroad tracks.
- The average vehicle speed is 50mph or more.
- Any student in the district who would be required to walk through a secluded area deemed unsafe (e.g. remote areas, forested areas, extremely poor lighting, or areas with no means of escape may be considered unsafe).
- Student is required to walk past the home of a registered predatory sex offender
- Temporary hazards are created by construction, weather events, and other events beyond the district's control, until such hazard is removed.
- Based on a thorough evaluation by a trained transportation specialist, (see process and evaluation criteria)
  - Any K-5 school student that would have to walk along or cross a road that scores 26 points or greater using the approved District criteria.
  - Any middle school student that would have to walk along or cross a road that scores 27 points or greater using the approved District criteria.
  - Any high school student that would have to walk along or cross a road that scores 32 points or greater using the approved District criteria.



The process above is used when an area is identified for evaluation. Additionally, the Transportation Department will send the updated plan to the School Board and state for approval periodically.

This process is based on the following assumptions:

1. We plan for safe busing or safe walk paths to school.
2. We are responsive to input from our families and drivers.
3. We use a consistent and fair process of evaluation.
4. We are in compliance with State laws and regulations.

# Evaluation Form for Walk Zones

## MEASUREMENTS:

Distance between above points \_\_\_\_\_ miles. Average grade \_\_\_\_\_ % Distance to school from furthest of above points \_\_\_\_\_ miles; from nearest \_\_\_\_\_ miles.

## CRITERIA EVALUATION: Directions – for each section, check the points assigned

1. Usable width of shoulders (past fog line or 12" per lane)			
Points	Side	Side	Width
10			0-3 ft. or at X-ing >7'
8			4-6 ft.
6			7-10'
3			Non-X-ing >10'
0			Raised Sidewalk

2. Condition of Road Shoulders			
Points	Side	Side	
8			Restricted by culverts
7			Heavy growth of weeds/underbrush
6			Muddy / Poor drainage
5			Numerous chuckholes
4			Gravel or dirt surface
3			Paved surface
2			Sidewalk even with road or bike path
1			Separated paved surface
0			Raised sidewalk

Observed on wet \_\_\_ or dry \_\_\_ day

3. Volume of Traffic	
Points	Vehicles / minute
5	25+
4	20-24
3	15-19
2	10-14
1	5-9
0	0-4

4. Average Vehicle Speed (Posted speed: _____)		Observation time and duration: _____ to _____ am _____ to _____ pm
Points	MPH	
10	45-49	
8	40-44	
3	35-39	
2	30-34	
1	25-29	
0	<25	

5. Type of Street	
Points	
7	Major arterial
6	Minor arterial
4	Collector
2	Connector
0	Local

6. Type of Community	
Points	
3	Rural
2	Suburban
1	Urban

7. Terrain Features Affecting Motorist Visibility	
Points	Visibility
6	<500'
5	500-599'
4	600-699'
3	700-799'
2	800-899'
1	900-999'
0	1000+'

8. Width of Road (not counting shoulders)	
Points	
6	<16'
5	16-20'
4	21-24'
3	25-30'
2	31-35'
1	36-45'
0	>45'

9. Other unsafe conditions (1-5 points each)	
Additional unsafe considerations beyond the general exclusions. This is at the discretion of the trained transportation specialist who is evaluating the location. In this category, the evaluator can identify 2 different conditions with ratings up to 5 points each. Example: extremely hazardous intersections, accident rate, crime rate in an area (data from police).	
Points	Description:
Points	Description:

	Comments (include description of intersections; if deemed hazardous include in section 9):
--	--

Final Points \_\_\_\_\_ Is this location recommended for transportation: **yes / no** Describe reasons for decision on following page.

(Threshold for Transportation in Walk Zone: K-5: 26 or higher; MS: 27 or higher; HS: 32 or higher)

Board approved 1/14/16

## Planned Support for Approved Supplemental Plan

The Transportation Department recognizes that changes as large as those in this proposal require a significant amount of support following implementation. To support this Supplemental Plan, the Transportation Department will:

1. Create school walking plan maps that conform to the guidance provided by the Manual on Uniform Traffic Control Devices published by the Federal Highway Administration and the School Trip Safety Program Guidelines published by the Institute of Transportation Engineers. Each map will include:
  - a. Streets
  - b. The school
  - c. Existing traffic controls, including lights and stop signs
  - d. Marked crosswalks
  - e. Location of adult crossing guards and student safety patrols
  - f. Designated routes for the students
  - g. A letter to send home explaining the map including any specific local information and a signature form to be returned to the school signed by a parent or guardian.
2. Create a list of “most wanted” improvements to the walking area for the local government agencies. This improvement list would focus on both the areas where students currently walk and areas that are deemed hazardous.
3. Work with schools to ensure proper training and attire for adult crossing guards and student safety patrols to ensure conformity with the standards outlined in the Manual on Uniform Traffic Control Devices, the Oregon Supplement to the Manual on Uniform Traffic Control Devices, and the Oregon Department of Education.
4. Work with schools to support the “Safe Routes to School” efforts. The goals of the Safe Routes to School program are to promote walking and bicycling to school, encourage a healthy and active lifestyle at an early age, facilitate the planning, development, and implementation of projects and activities that will improve safety and reduce traffic, fuel consumption and air pollution within two miles of the school. This would include support of National Walk to School day in October, the walking school bus, grant efforts, and the 5 “E’s” (Engineering, Enforcement, Encouragement, Education, and Evaluation).

## Restricted Roads in North Clackamas School District:

Updated and adopted by the School Board August 2021

Due to safety reasons, does not expect students to cross at the following list of roads / streets / barriers with or without load lights:

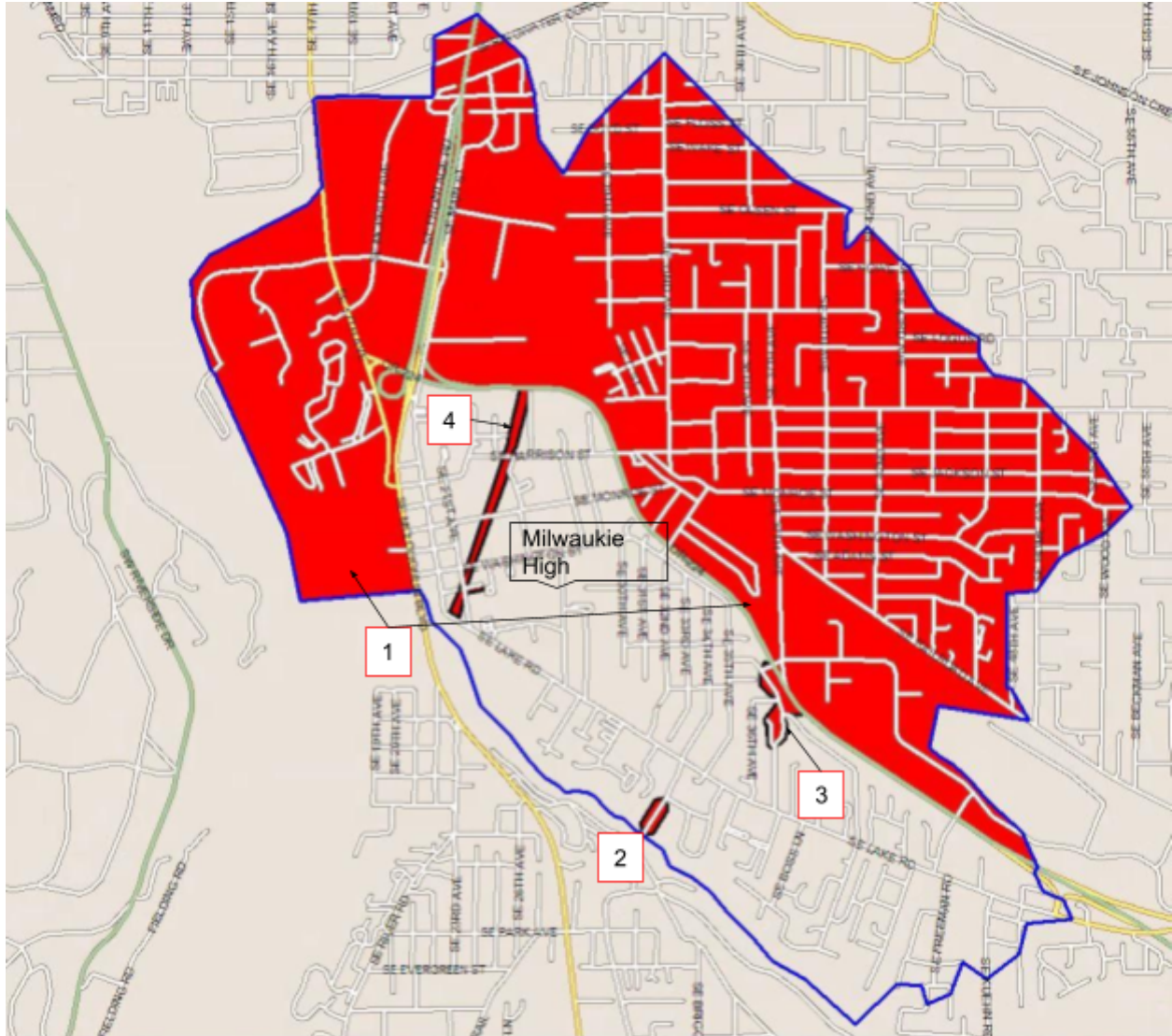
1. SE 82nd Ave.
2. Interstate 205
3. HWY 212
4. HWY 224
5. Rail lines (either Trimet light rail or Union Pacific lines)
6. SE McLoughlin Blvd. - high school may cross at lighted intersections
7. SE 82nd Dr.
8. SE Sunnyside Rd. - high school may cross at lighted intersections
9. SE King Rd.: SE 42nd Ave. to SE 82nd Ave.
10. SE 42nd Ave.: SE King Rd. to SE Harrison St.
11. SE Harrison St.: Hwy 224 to SE 42nd Ave.
12. SE Monroe St.: Hwy 224 to SE 37th Ave.

For the following roads, K-5 students are not expected to cross on their own to get to the bus stop. Students may cross with the safety of bus load lights. This applies to the entire length of the road or street unless otherwise noted:

1. SE Johnson Creek Blvd.
2. SE River Rd.
3. S Springwater Rd.
4. SE Oatfield Rd.
5. SE Webster Rd.
6. SE Roots Rd.
7. SE Lake Rd. Hwy 224 and SE 43rd Ave.
8. SE Thiessen Rd.
9. SE Idleman Rd.
10. SE Jennings Ave. between SE Webster Rd. and SE Oatfield Rd.
11. SE 122nd Ave. between SE Spring Mountain Rd. and SE Hubbard Rd.
12. SE Clackamas Rd. between SE Johnson Rd. and SE McKinley Ave.

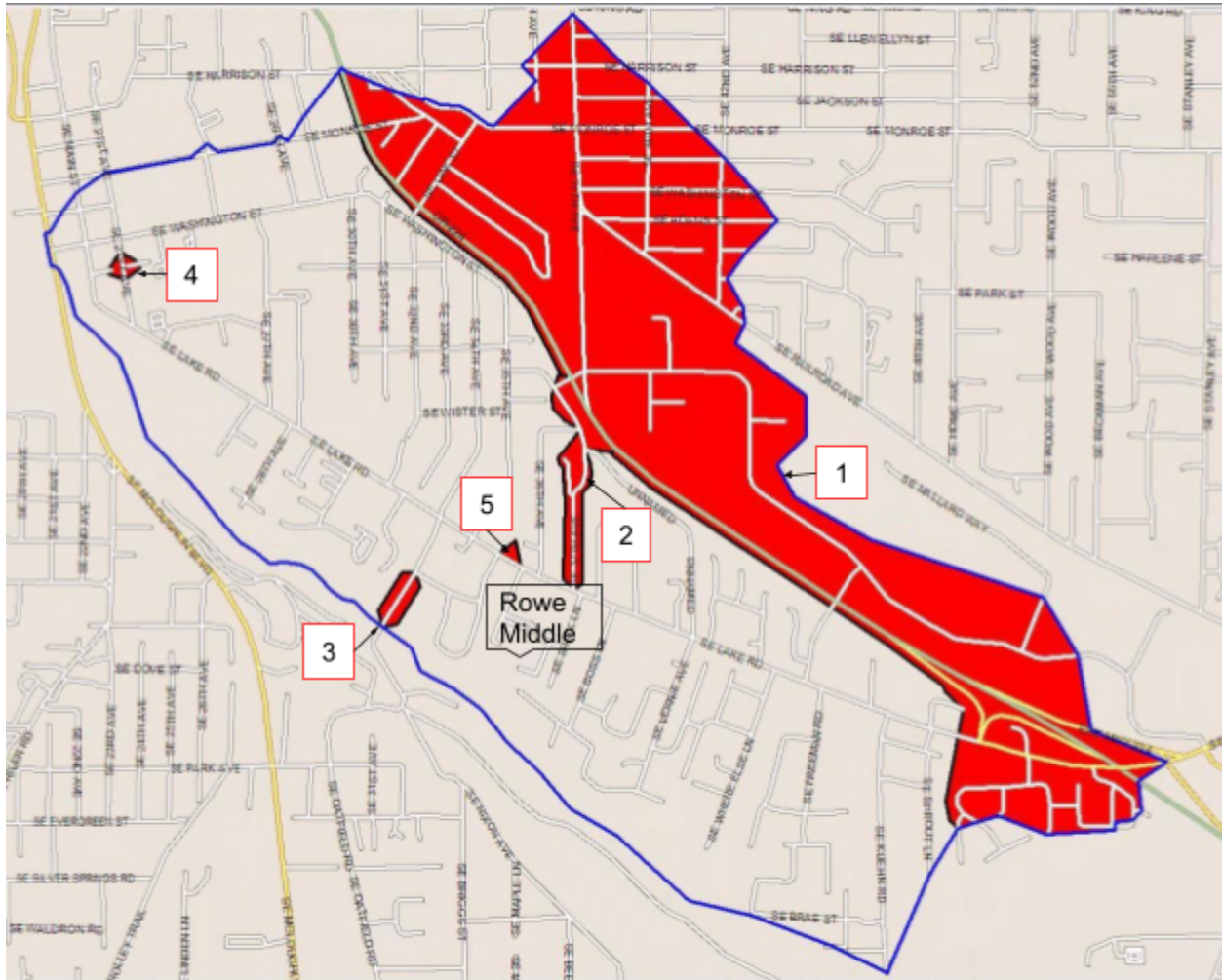
# Milwaukie High & associated feeder schools

Milwaukie High:



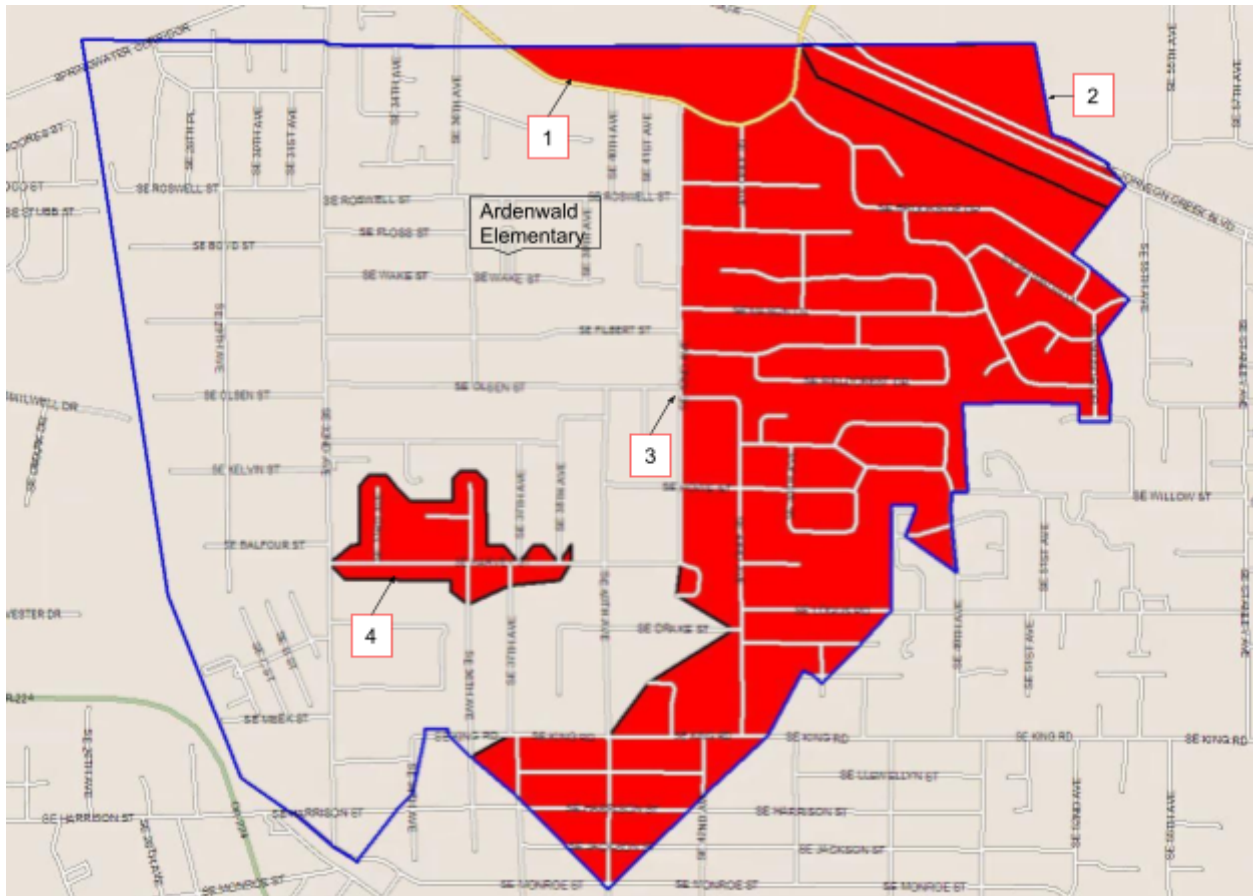
1. Hazard area - Unsafe to walk along or cross SE McLoughlin Blvd. and Hwy 224.
2. Hazard area - Unsafe to walk along SE Oatfield Rd.
3. Hazard area - Unsafe to walk along SE 37th Ave. by Kehrl Dr.
4. Hazard area - Unsafe to cross rail tracks.

## Rowe Middle:



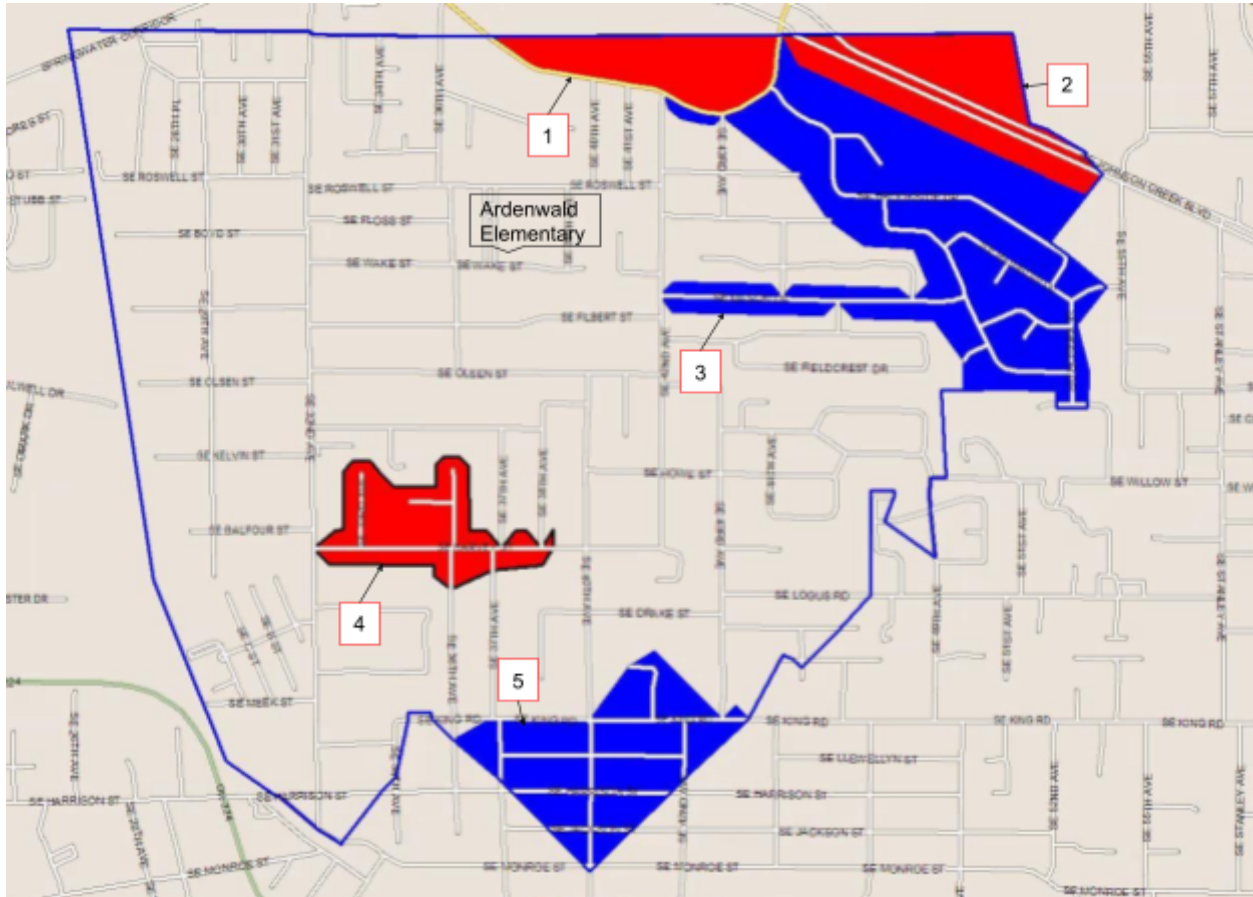
1. Hazard area - Unsafe to walk along or cross Hwy 224.
2. Hazard area - Unsafe to walk along SE 37th Ave. north of SE Lake Rd.
3. Hazard area - Unsafe to walk along SE Oatfield Rd. south of SE Guilford Dr.
4. Hazard area - Unsafe to cross railroad tracks
5. Hazard area - Unsafe to walk on the north side of SE Lake Rd. between Rowe access and SE Guilford Dr.

## Ardenwald Elementary - 2017 current:



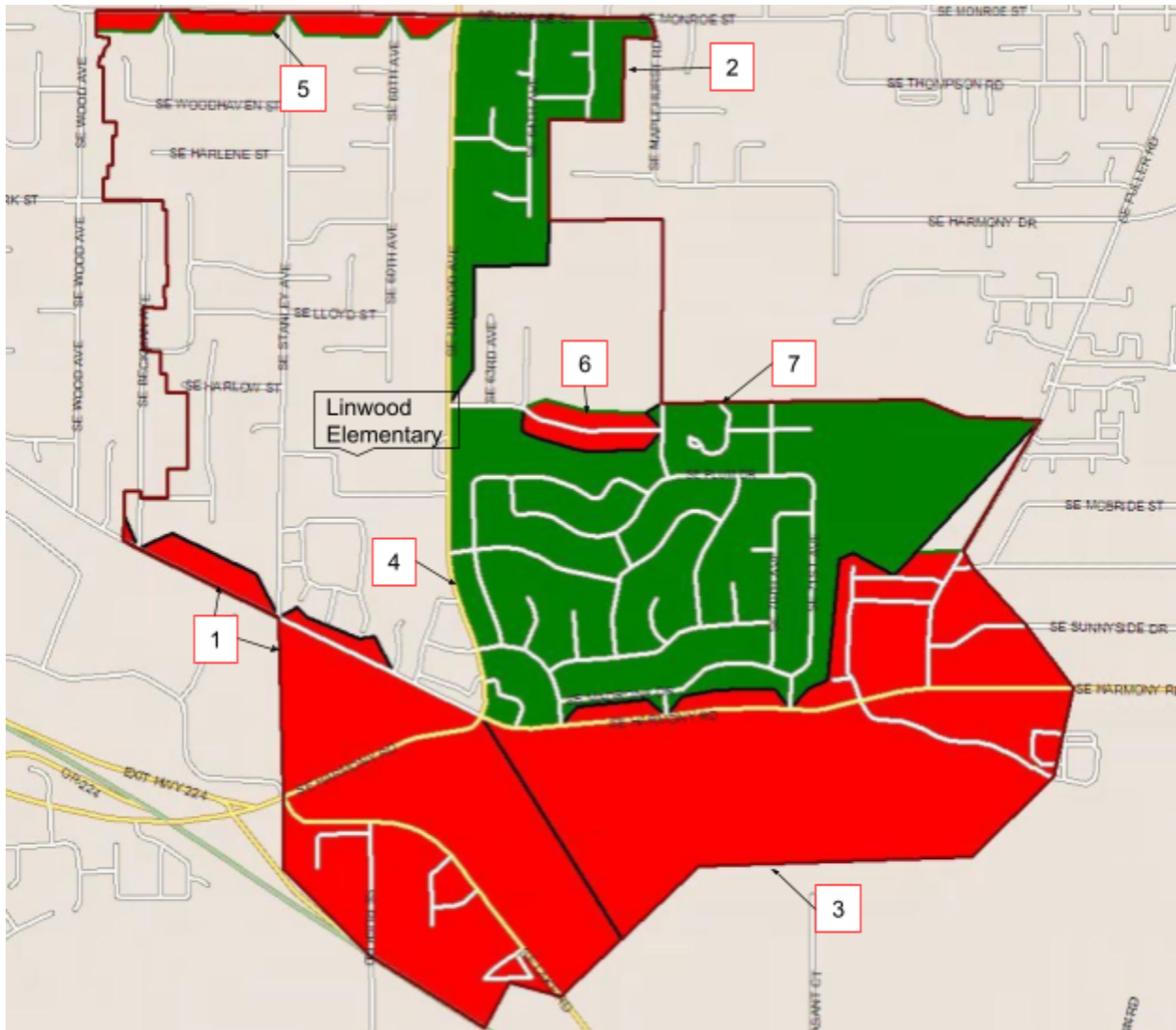
1. Hazard area - Unsafe to cross SE Johnson Creek Blvd.
2. Hazard area - Unsafe to walk along SE Johnson Creek Blvd.
3. Hazard area - Unsafe to cross SE 42nd Ave.
4. Hazard area - Unsafe to walk along SE Harvey St. between SE 32nd Ave. and 3855 SE Harvey St.

## Ardenwald Elementary - 2023 proposal:



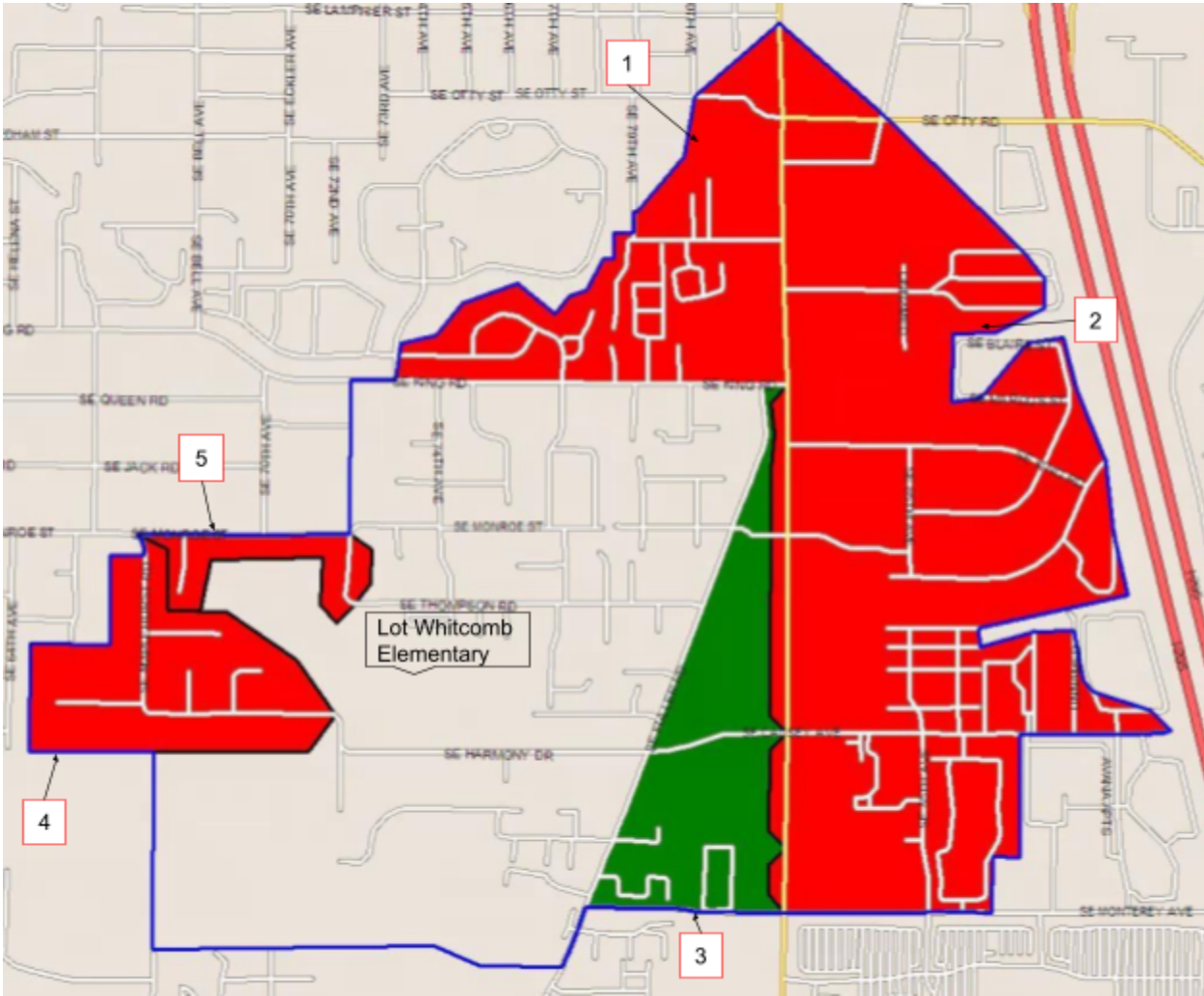
1. Hazard area - Unsafe to cross or walk along SE Johnson Creek Blvd.
2. Hazard area - Unsafe to cross or walk along SE Johnson Creek Blvd.
3. Hazard area - Unsafe to cross or walk along SE Mason Ln.
4. Hazard area - Unsafe to walk along SE Harvey St. between SE 32nd Ave. and 3855 SE Harvey St. Please see the City of Milwaukie's [Harvey Street Improvement Plan](#).
5. Hazard area - Unsafe to cross or walk along SE King Rd.

## Linwood Elementary:



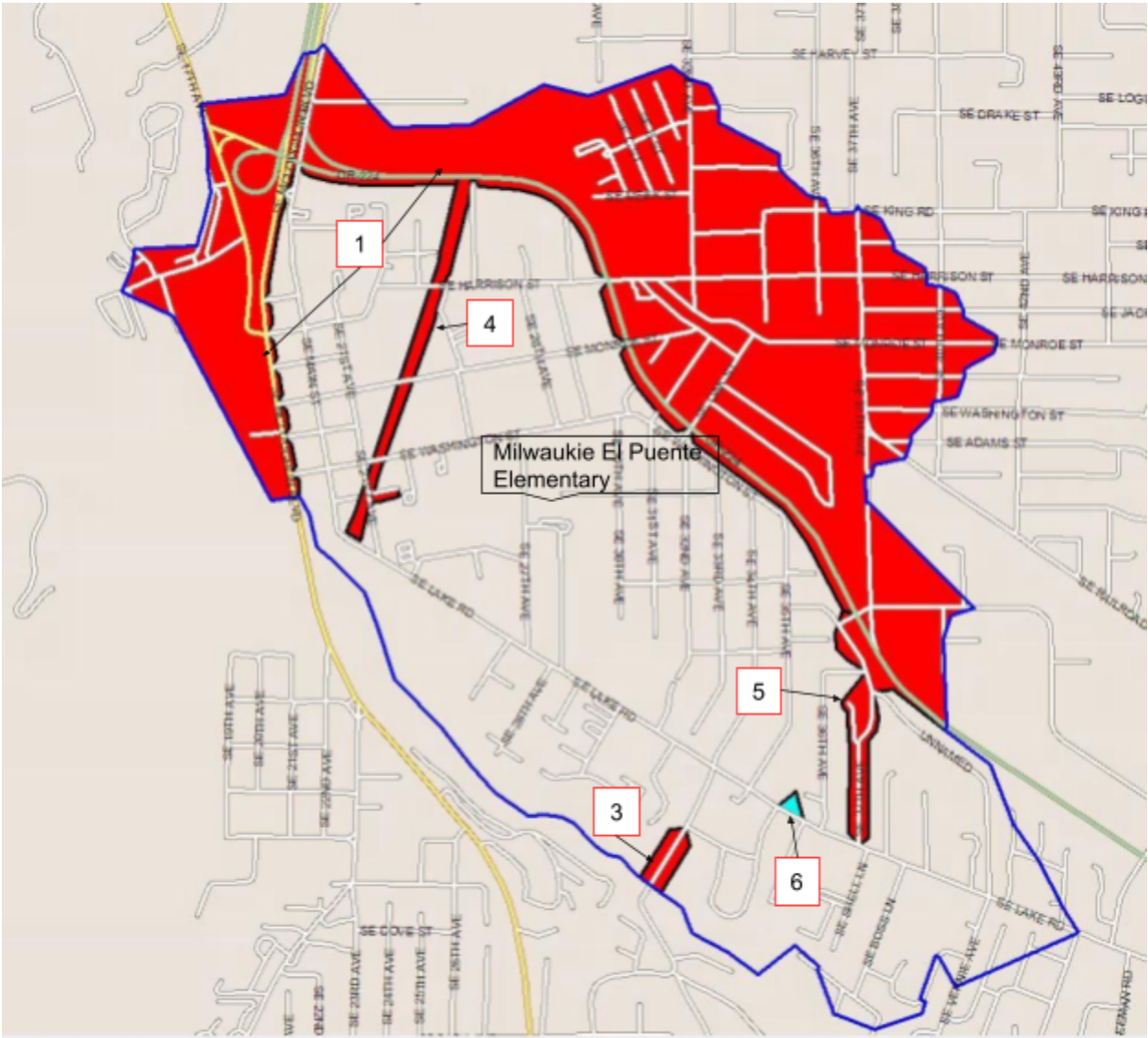
1. Hazard area - Unsafe to walk along SE Railroad Ave and unsafe to cross rails.
2. Hazard area eliminated with SE Linwood Ave improvements
3. Hazard area - Unsafe to walk along SE Harmony Rd. between Cedar Crest Dr. and Fuller Rd. and includes SE Fuller Rd. due to unlit conditions, poor visibility and secluded areas.
4. Hazard area eliminated with SE Linwood Ave improvements
5. Hazard area - Unsafe to walk along SE Monroe St.
6. Hazard area - Unsafe to walk along SE Furnberg St. between SE 64th Ave and SE 67th Ave.
7. Hazard area eliminated with SE Linwood Ave improvements

Lot Whitcomb Elementary:



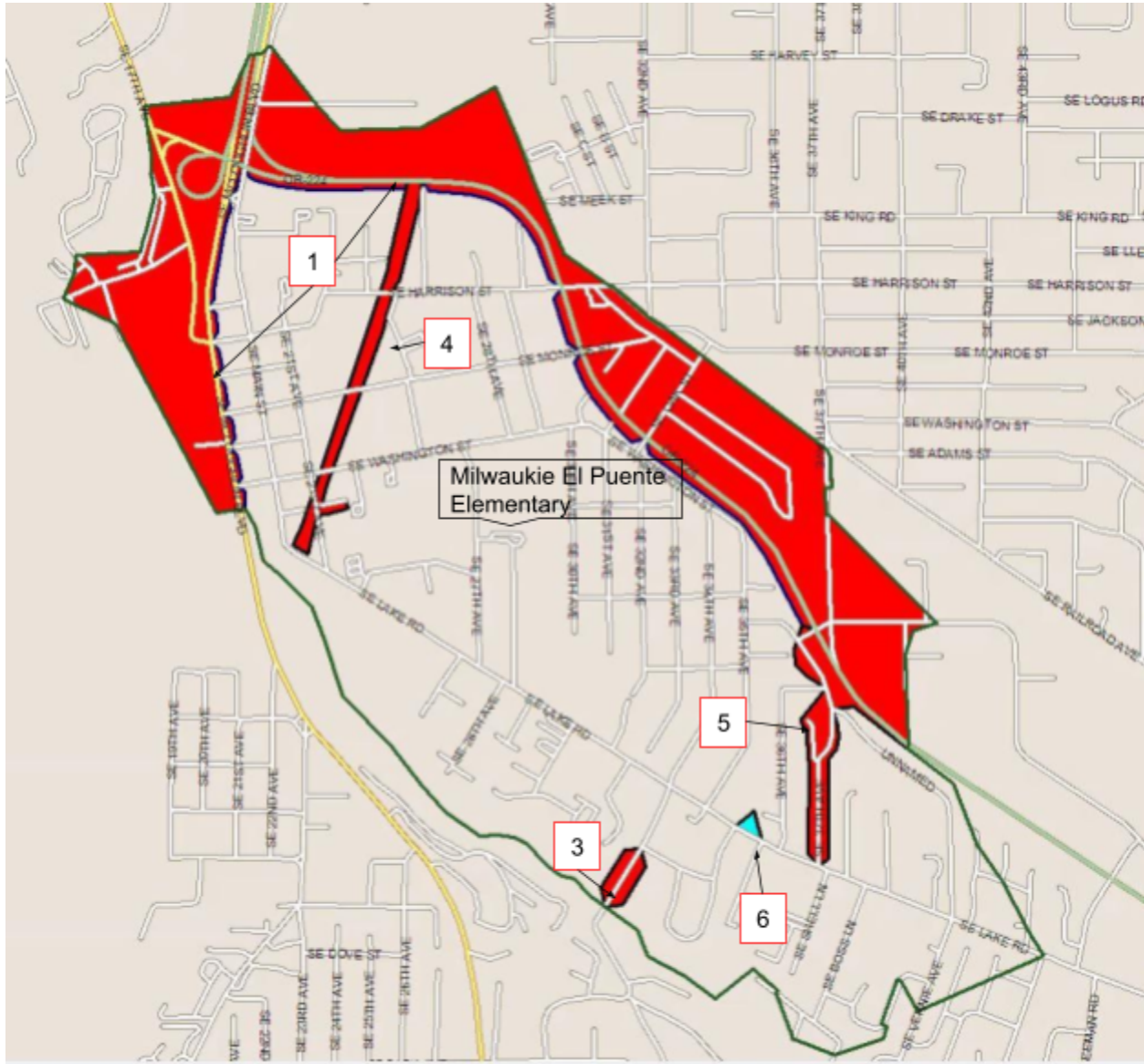
- 1. Hazard area - Unsafe to cross SE King Rd.
- 2. Hazard area - Unsafe to walk along or cross SE 82nd Ave.
- 3. Hazard area eliminated with SE Fuller Rd. improvement
- 4. Hazard area - Unsafe to walk along SE Maplehurst Rd.
- 5. Hazard area - Unsafe to walk along SE Monroe Ave. Please see Clackamas County's [Monroe Street Neighborhood Improvements](#).

Milwaukie El Puente Elementary (Bilingual Program):



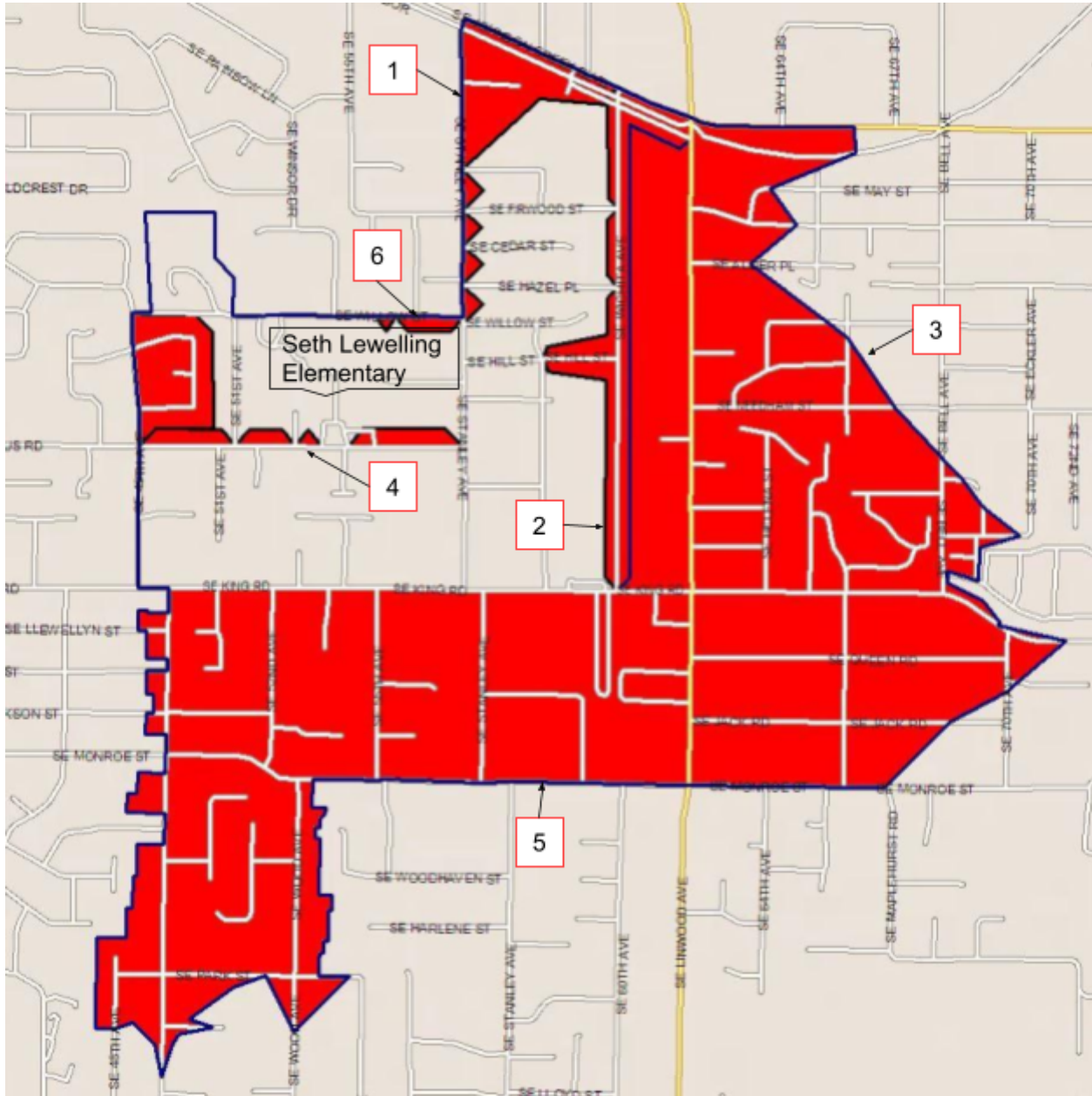
- 1. Hazard area - Unsafe to cross SE McLoughlin Blvd. and Hwy 224
- 2. Hazard area eliminated with SE Lake Rd. improvements
- 3. Hazard area - Unsafe to walk along SE Oatfield Rd. south of SE Guilford Dr.
- 4. Hazard area - Unsafe to cross railroad tracks
- 5. Hazard area - Unsafe to walk along SE 37th St. from SE Lake Rd. to SE Edison St.
- 6. Hazard area - Unsafe to walk on the north side of SE Lake Rd. between Rowe access and SE Guilford Dr.

## Milwaukie El Puente Elementary:



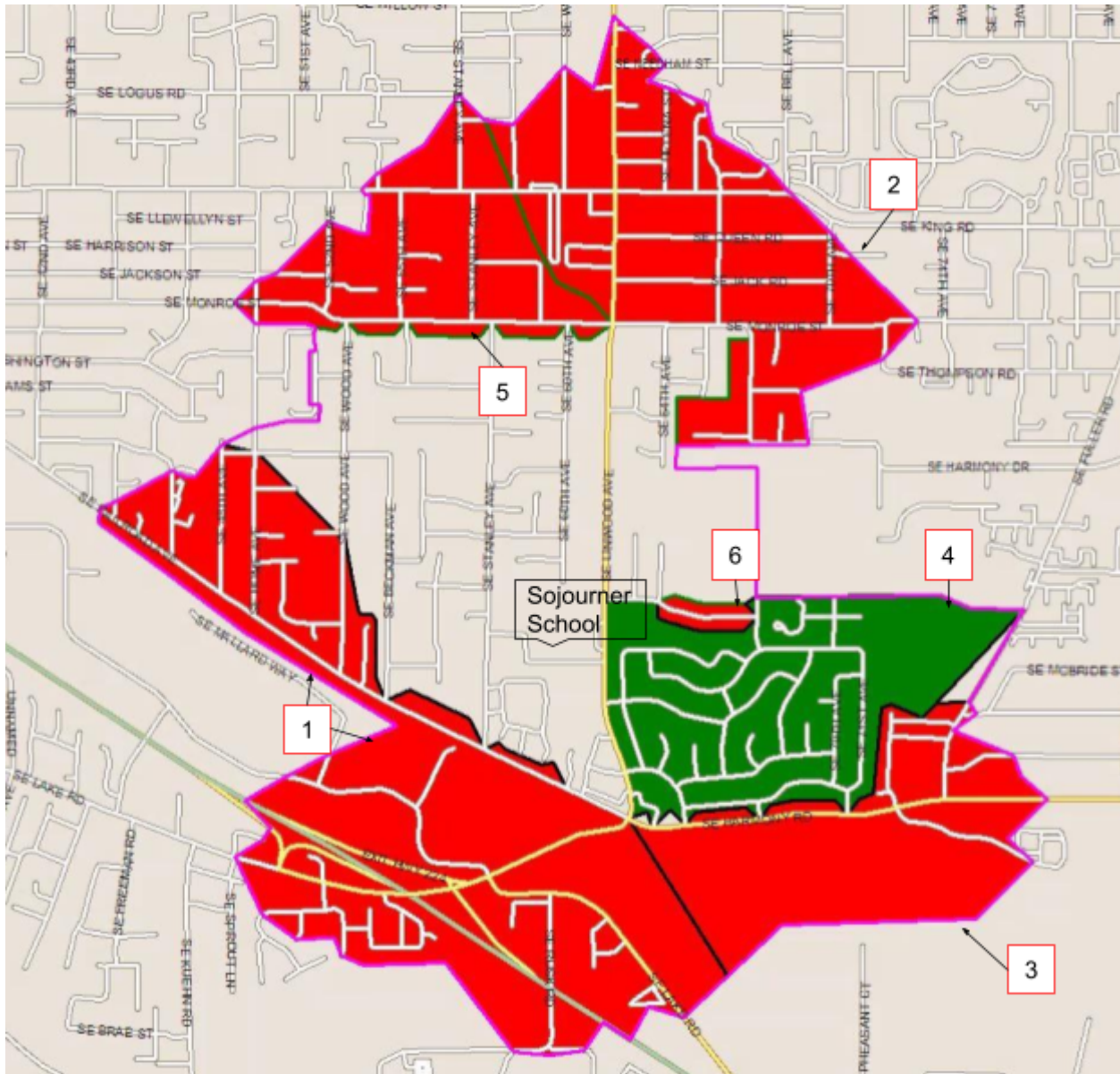
1. Hazard area - Unsafe to cross SE McLoughlin Blvd. and Hwy 224
2. Hazard area eliminated with SE Lake Rd. improvements
3. Hazard area - Unsafe to walk along SE Oatfield Rd. south of SE Guilford Dr.
4. Hazard area - Unsafe to cross railroad tracks
5. Hazard area - Unsafe to walk along SE 37th St. from SE Lake Rd. to SE Edison St.
6. Hazard area - Unsafe to walk on the north side of SE Lake Rd. between Rowe access and SE Guilford Dr.

## Seth Lewelling Elementary:



1. Hazard area - Unsafe to walk on SE Stanley Ave. north of SE Firwood St.
2. Hazard area - Unsafe to walk on SE Wichita Ave.
3. Hazard area - Unsafe to walk along or cross SE Linwood Ave.
4. Hazard area - Unsafe to walk on the north side of SE Logus Rd.
5. Hazard area - Unsafe to cross SE King Rd.
6. Hazard area - Unsafe to walk along SE Willow St.
7. Hazard area - Unsafe to walk along SE 49th Ave. between SE Logus Rd. and SE Rockwood St.

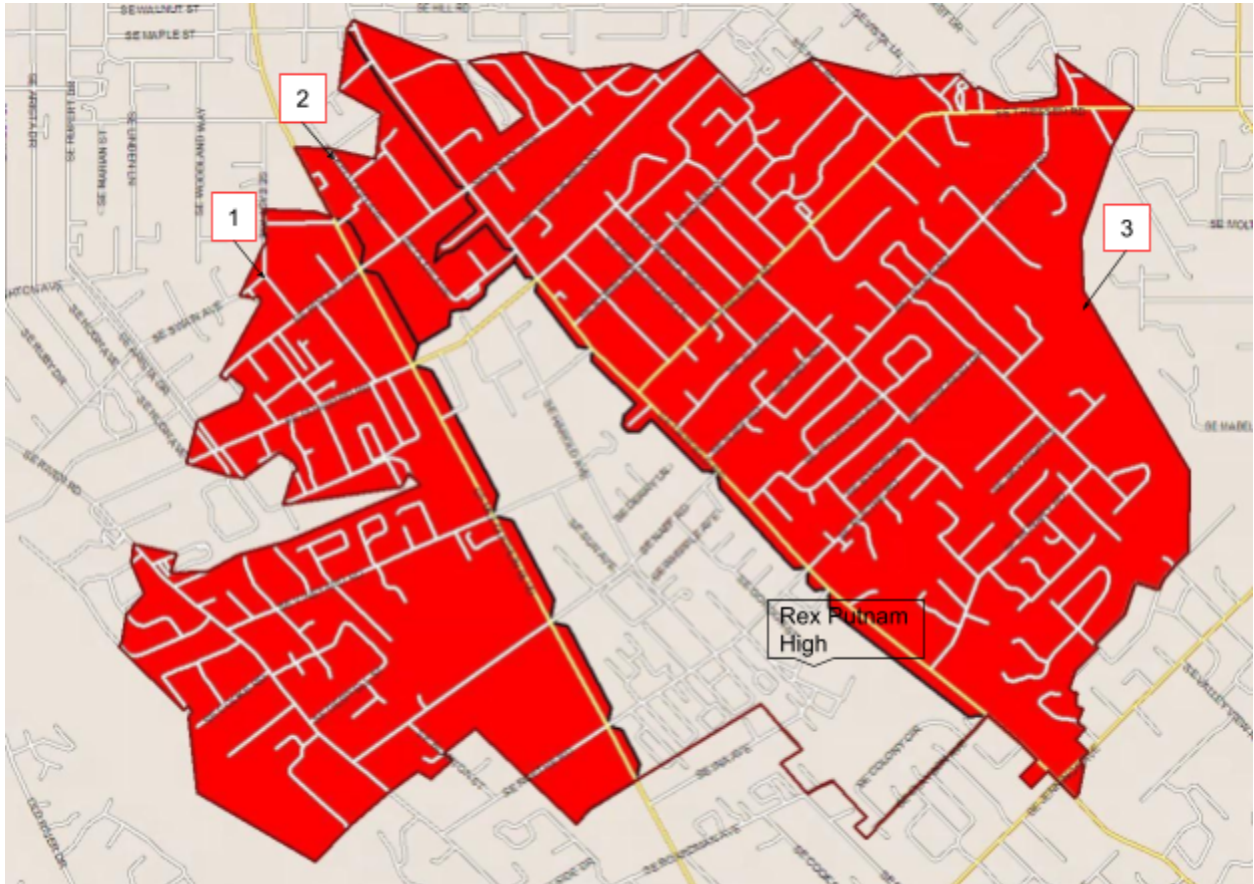
## Sojourner School:



1. Hazard area - Unsafe to walk along SE Railroad Ave and unsafe to cross rails.
2. Hazard area - Unsafe to walk along SE Monroe St. and unsafe to cross SE King Rd.
3. Hazard area - Unsafe to walk along SE Harmony Rd. between Cedar Crest Dr. and Fuller Rd. and includes SE Fuller Rd. due to unlit conditions, poor visibility and secluded areas.
4. Hazard area eliminated with SE Linwood Ave. improvements
5. Hazard area - Unsafe to walk along SE Monroe St. and unsafe to cross SE King Rd.
6. Hazard area - Unsafe to walk along SE Furnberg St. between SE 64th Ave and SE 67th Ave.
7. Hazard area eliminated with SE Linwood Ave improvements

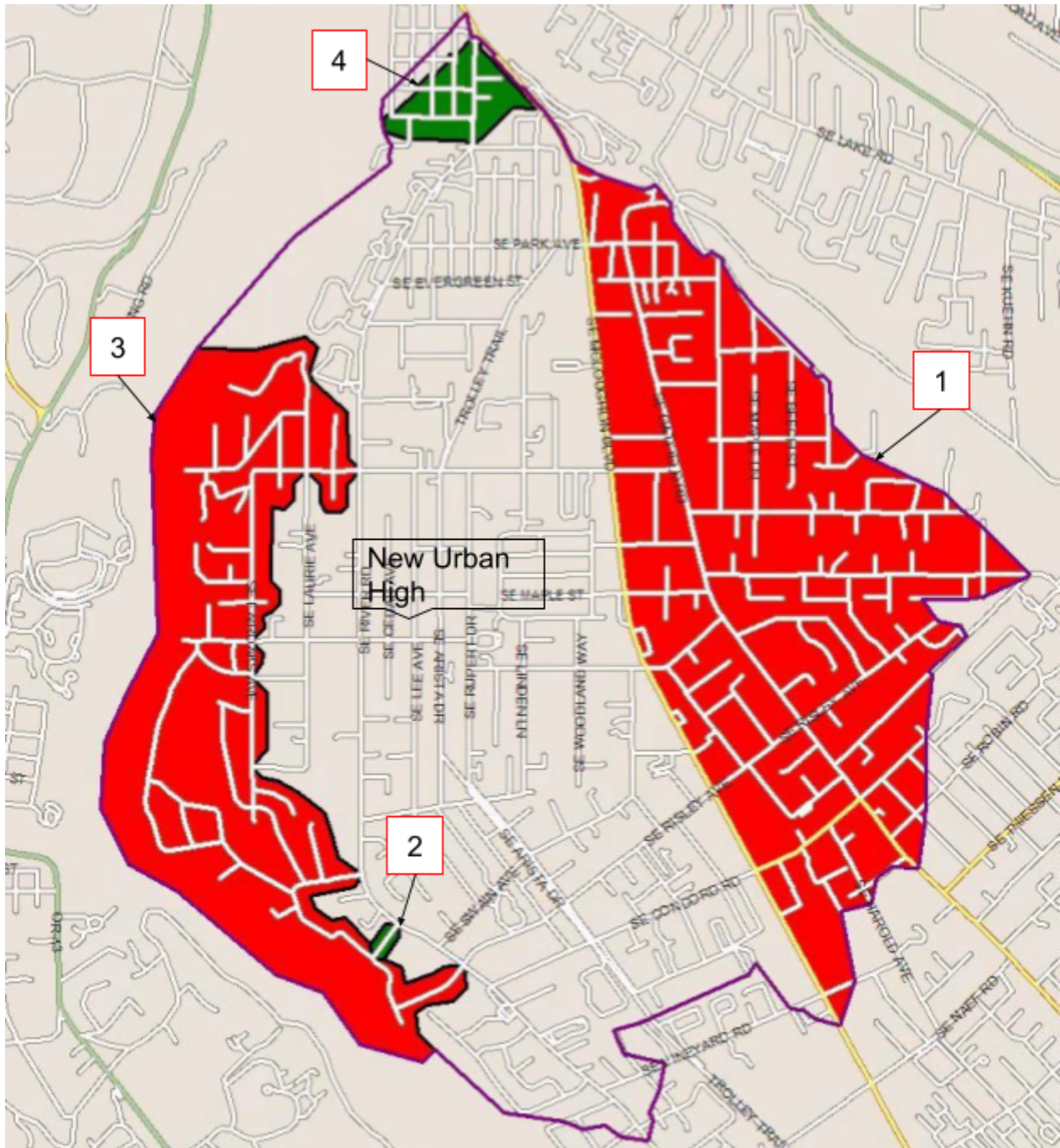
# Putnam High & associated feeder schools

## Putnam High:



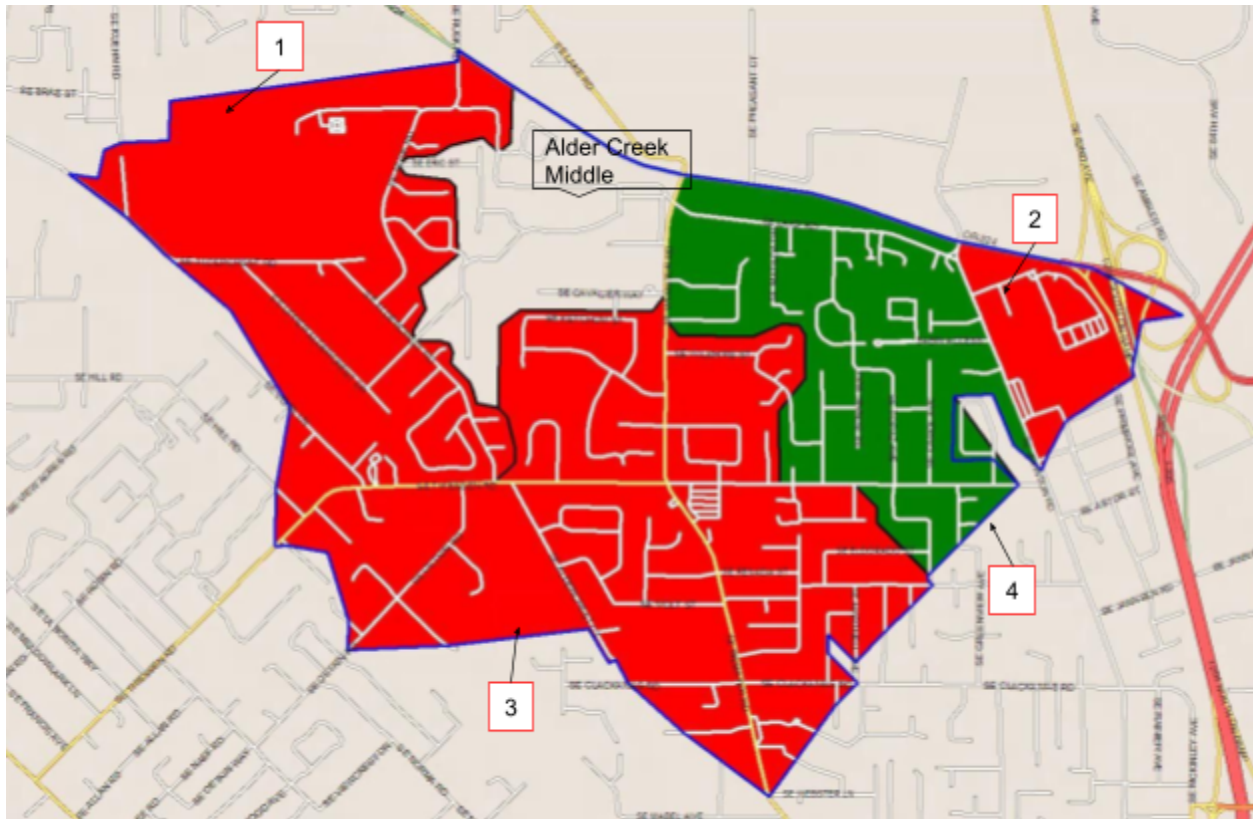
1. Hazard area - Unsafe to walk along or cross SE McLoughlin Blvd.
2. Hazard area - Unsafe to walk along SE Oatfield Rd.
3. Hazard area - Unsafe to walk along or cross SE Oatfield Rd.

## New Urban High:



1. Hazard area - Unsafe to walk along or cross SE McLoughlin Blvd.
2. Hazard area eliminated as buses can't access SE Oak Shore Ln.
3. Hazard area - - Unsafe to walk along SE Courtney Ave. west of SE Laurie Ave., along SE Fair Oaks ave., and SE River Forest Rd.
4. Hazard area eliminated with River Road and SE 22nd Ave. SAFE improvements.

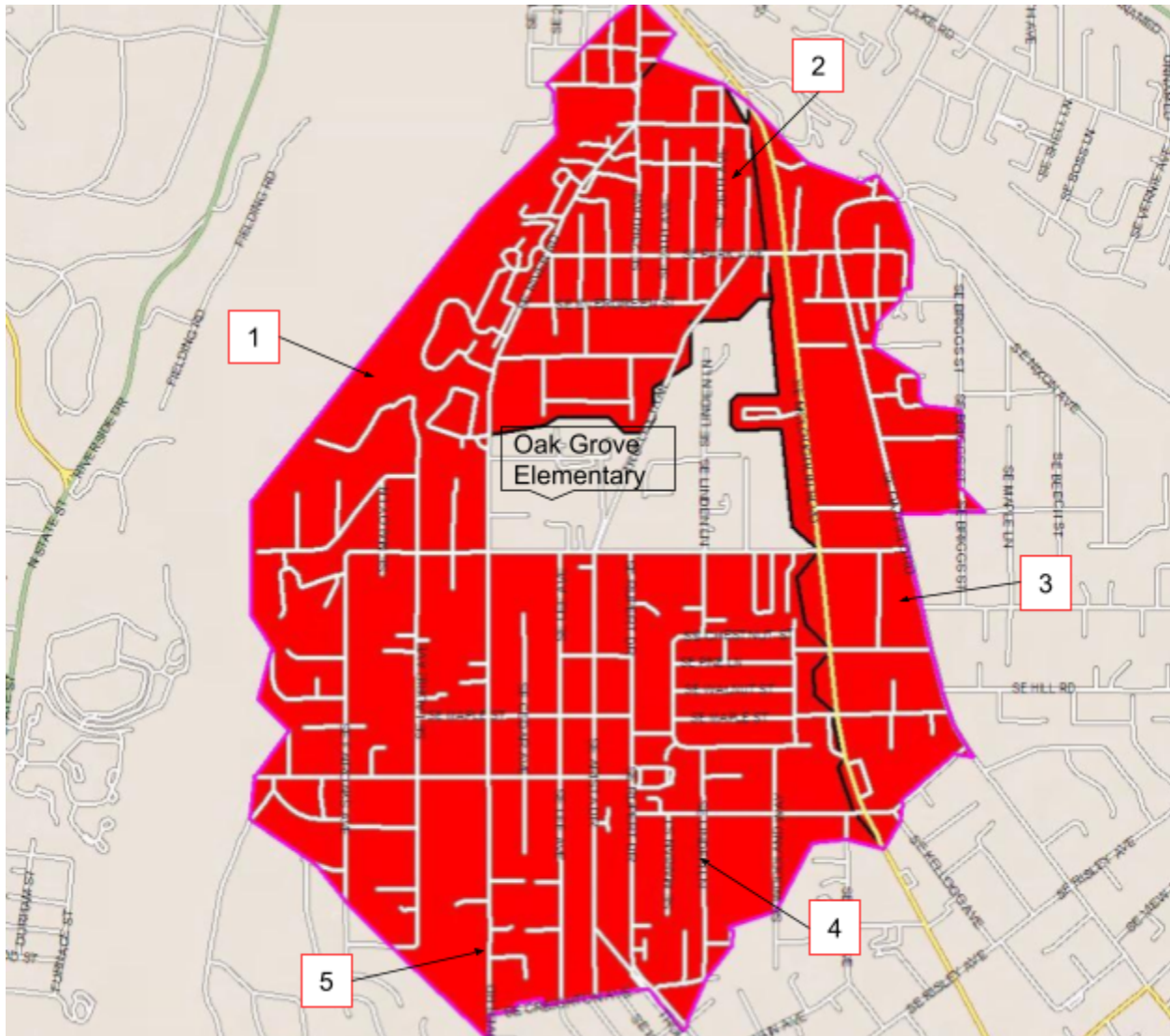
## Alder Creek Middle:



1. Hazard area - Unsafe to walk along SE Rusk Rd. and SE Aldercrest Rd.
2. Hazard area - Unsafe to cross SE Johnson Rd. near Hwy. 224
3. Hazard area - Unsafe to walk along SE Webster Rd. south of SE Cavalier St. and along SE Thiessen Rd.
4. Hazard eliminated with lighted crosswalks and improvements on SE Webster Rd.

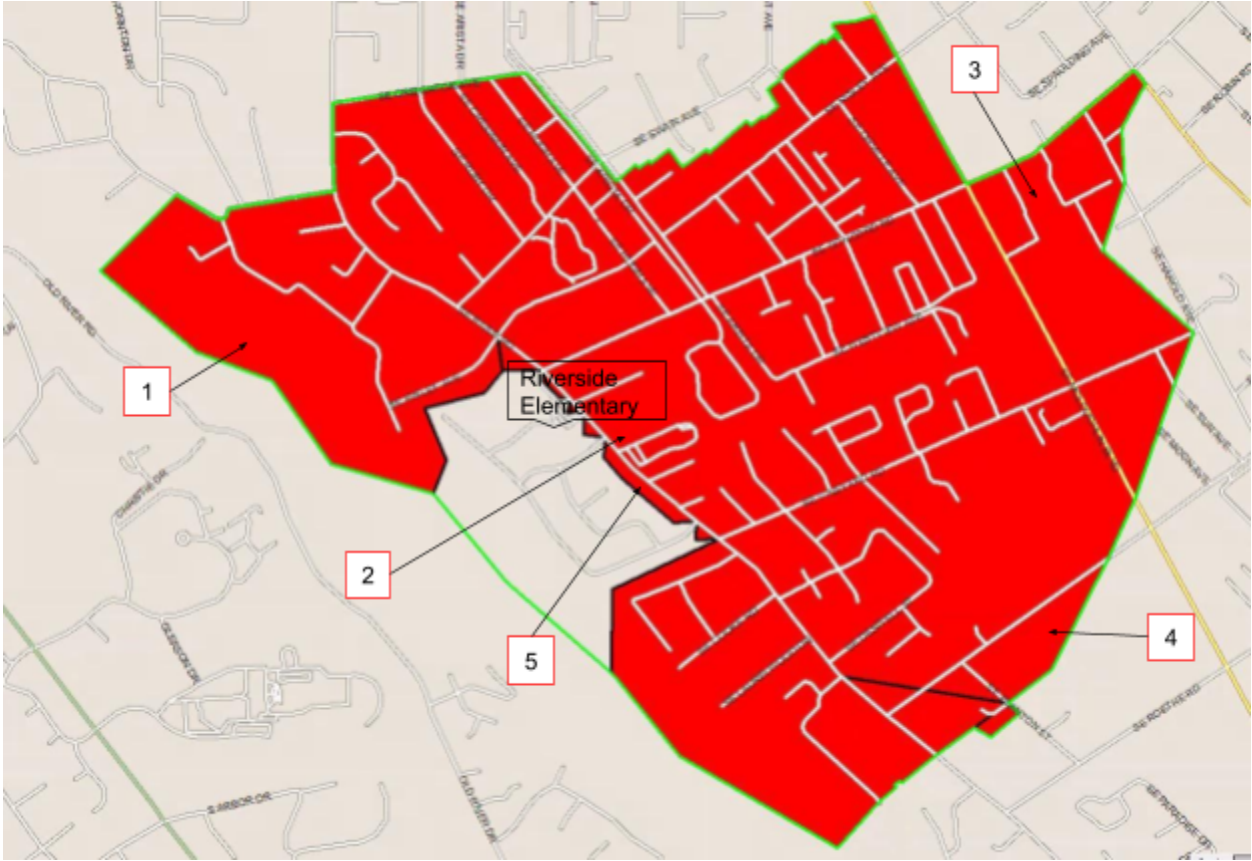


## Oak Grove Elementary:



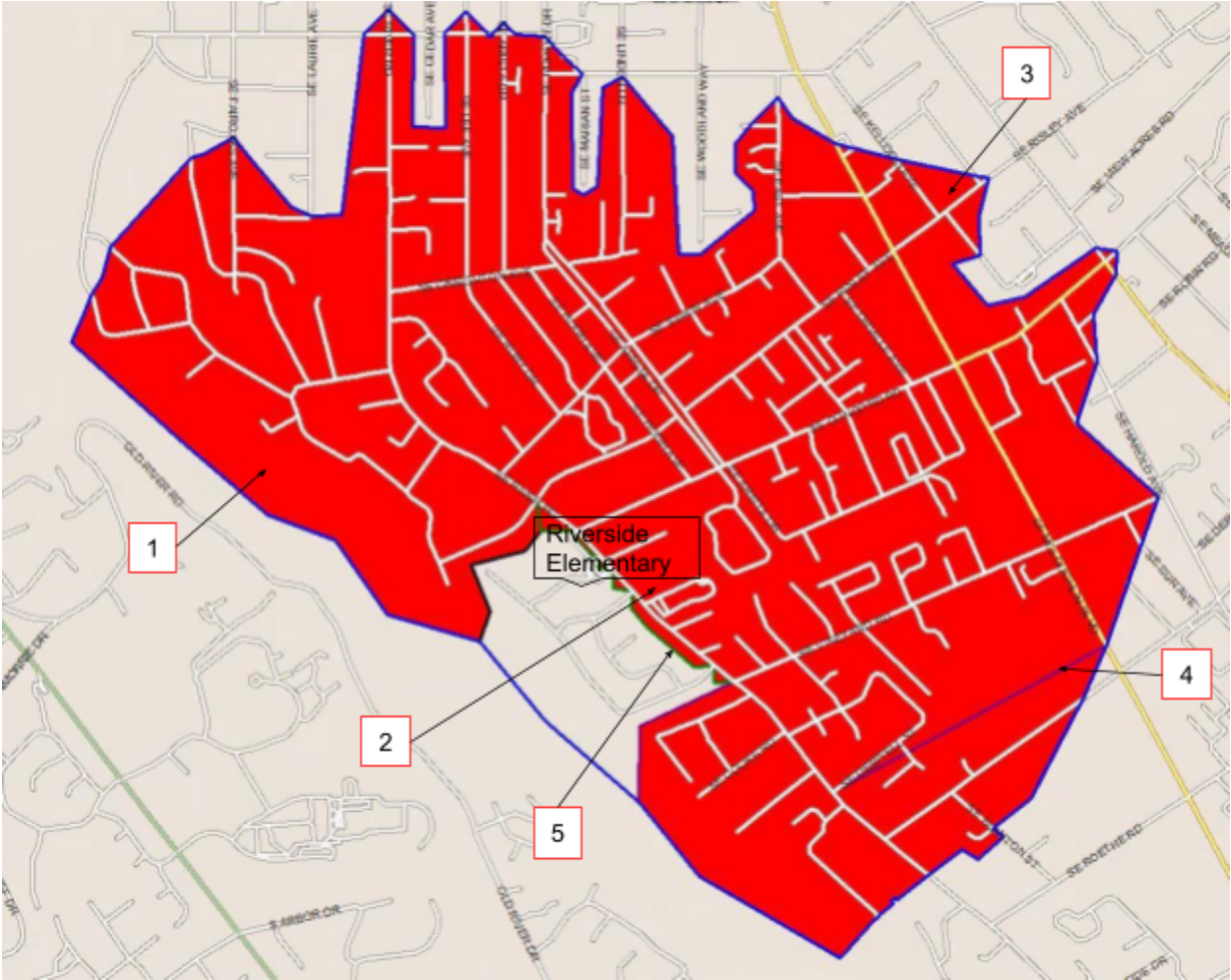
1. Hazard area - Unsafe to walk along SE River Rd.
2. Hazard area - Unsafe to walk along SE River Rd. and secluded areas along the Trolley Trail.
3. Hazard area - Unsafe to walk along or cross SE McLoughlin Blvd.
4. Hazard area - (Funneling Amendment) Only one place to safely cross SE Courtney Ave.
5. Hazard area - Unsafe to walk along west side of SE Linden Ln. Additional funneling amendment area

Riverside Elementary:



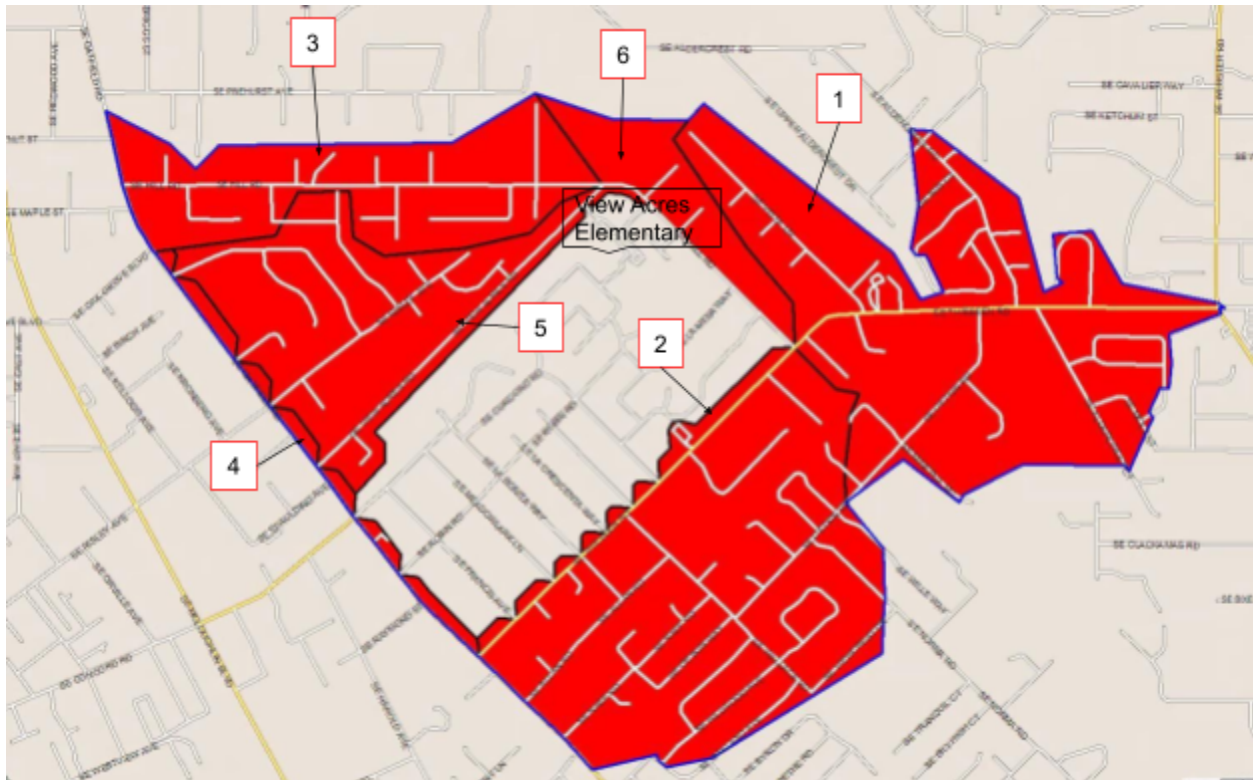
- 1. Hazard area - Unsafe to walk along SE River Rd. south of SE Creighton Ave.
- 2. Hazard area - Unsafe to walk along SE Concord Rd. between SE River Rd. and SE Arista Dr.
- 3. Hazard area - Unsafe to walk along or cross SE McLoughlin Blvd.
- 4. Hazard area - Unsafe to walk along SE River Rd. south of SE Vineyard Rd. and SE Vineyard Wy.
- 5. Hazard area - Unsafe to walk along the west side of SE River Rd. from SE Risley Ave. to SE Vineyard Rd.

Riverside Elementary (Bilingual Program):



- 1. Hazard area - Unsafe to walk along SE River Rd. south of SE Creighton Ave.
- 2. Hazard area - Unsafe to walk along SE Concord Rd. between SE River Rd. and SE Arista Dr.
- 3. Hazard area - Unsafe to walk along or cross SE McLoughlin Blvd.
- 4. Hazard area - Unsafe to walk along SE River Rd. south of SE Vineyard Rd. and SE Vineyard Wy.
- 5. Hazard area - Unsafe to walk along the west side of SE River Rd. from SE Risley Ave. to SE Vineyard Rd.

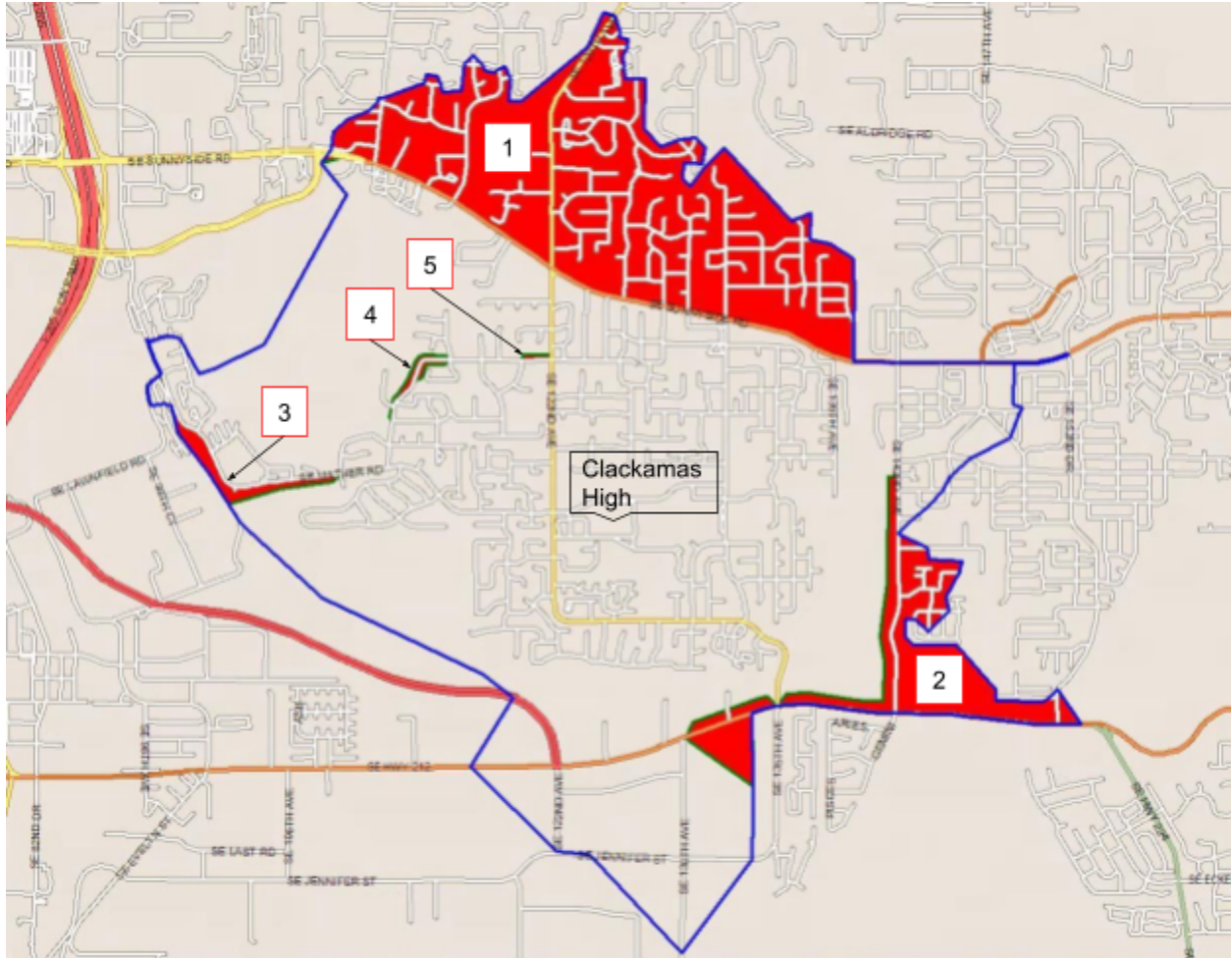
## View Acres Elementary:



1. Hazard area - Unsafe to walk along SE Thiessen Rd.
2. Hazard area - Unsafe to walk along SE Thiessen Rd.
3. Hazard area - Unsafe to walk along SE Hill Rd. west of SE View Acres Rd.
4. Hazard area - Unsafe to walk along SE Oatfield Rd.
5. Hazard area - Unsafe to walk along SE View Acres Rd.
6. Hazard area - Unsafe to walk along northeast side of SE Hill Rd.

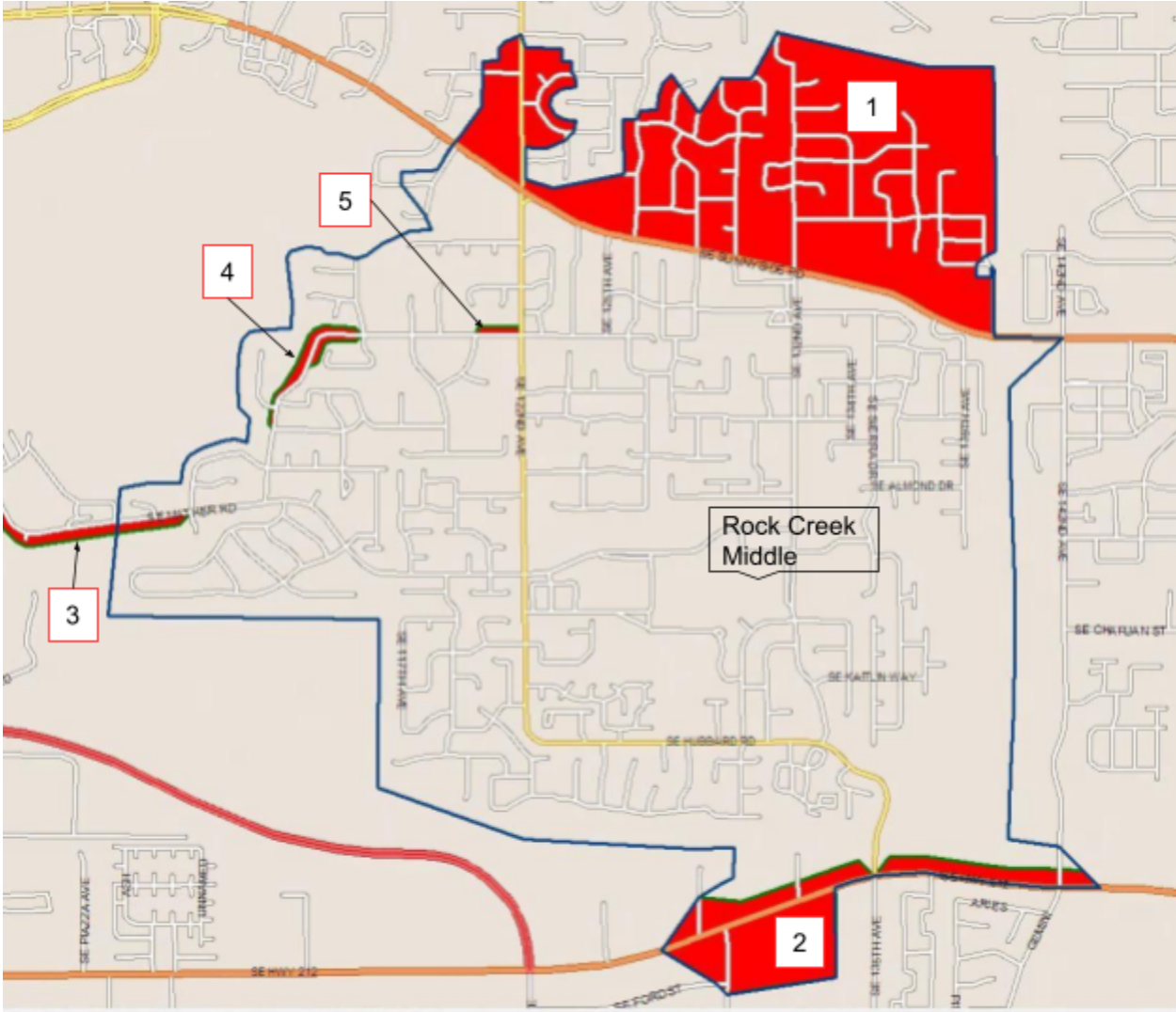
# Clackamas High & associated feeder schools

Clackamas High:



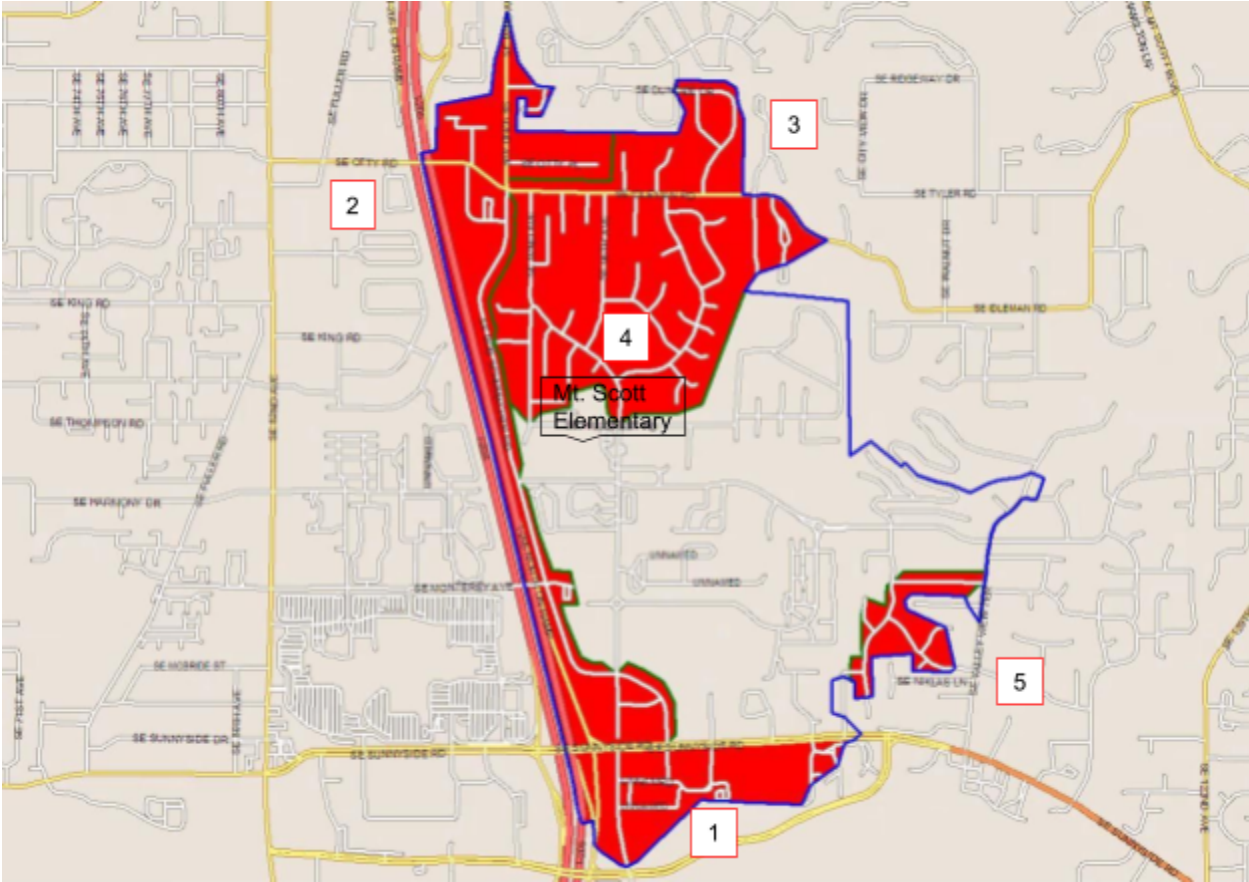
1. Hazard area - Unsafe to cross SE Sunnyside Rd.
2. Hazard area - Unsafe to walk along or cross Hwy 212/224
3. Hazard area - Unsafe to walk along the south and west sides of SE Mather Rd.
4. Hazard area - Unsafe to walk along designated stretch of SE Mather Rd.
5. Hazard area - Unsafe to walk along designated stretch of SE Mather Rd. due to **culvert**. Students may cross to the other side of SE Mather Rd. to avoid this section.

Rock Creek Middle:



- 1. Hazard area - Unsafe to cross SE Sunnyside Rd.
- 2. Hazard area - Unsafe to walk along or cross Hwy 212/224
- 3. Hazard area - Unsafe to walk along the south and west sides of SE Mather Rd.
- 4. Hazard area - Unsafe to walk along designated stretch of SE Mather Rd.
- 5. Hazard area - Unsafe to walk along designated stretch of SE Mather Rd. due to culvert. Students may cross to the other side of SE Mather Rd. to avoid this section.

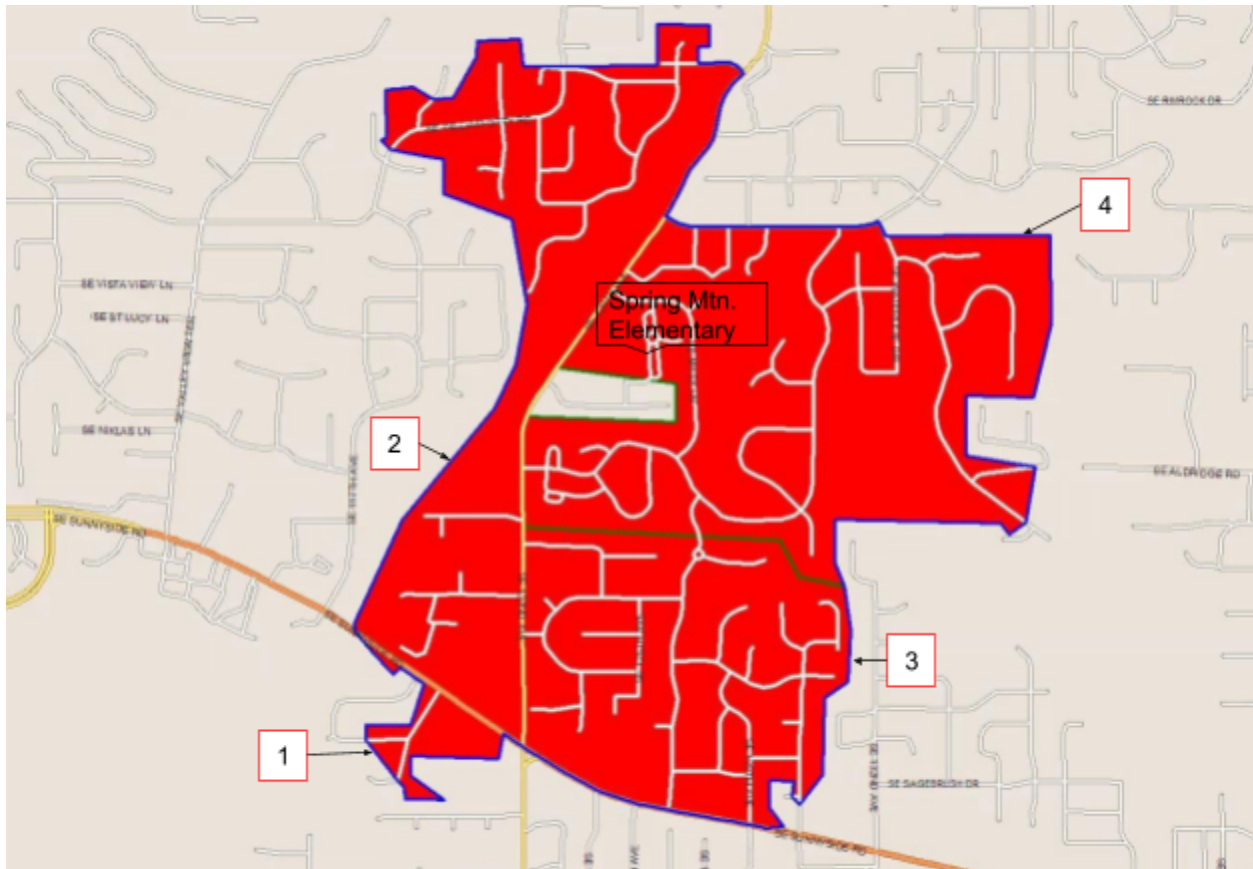
# Mount Scott Elementary:



- 1. Hazard area - Unsafe to cross SE Sunnyside Rd.
- 2. Hazard area - Unsafe to walk along SE Bob Schumacher Rd.
- 3. Hazard area - Unsafe to walk along SE Idleman Rd.
- 4. Hazard area - Unsafe to walk along SE 92nd Ave. and SE Stevens Wy. north of SE Hillcrest Rd.
- 5. Hazard area - Unsafe to walk along SE Vista View Ln. and SE 108th Ave. south of SE Vista View Ln.

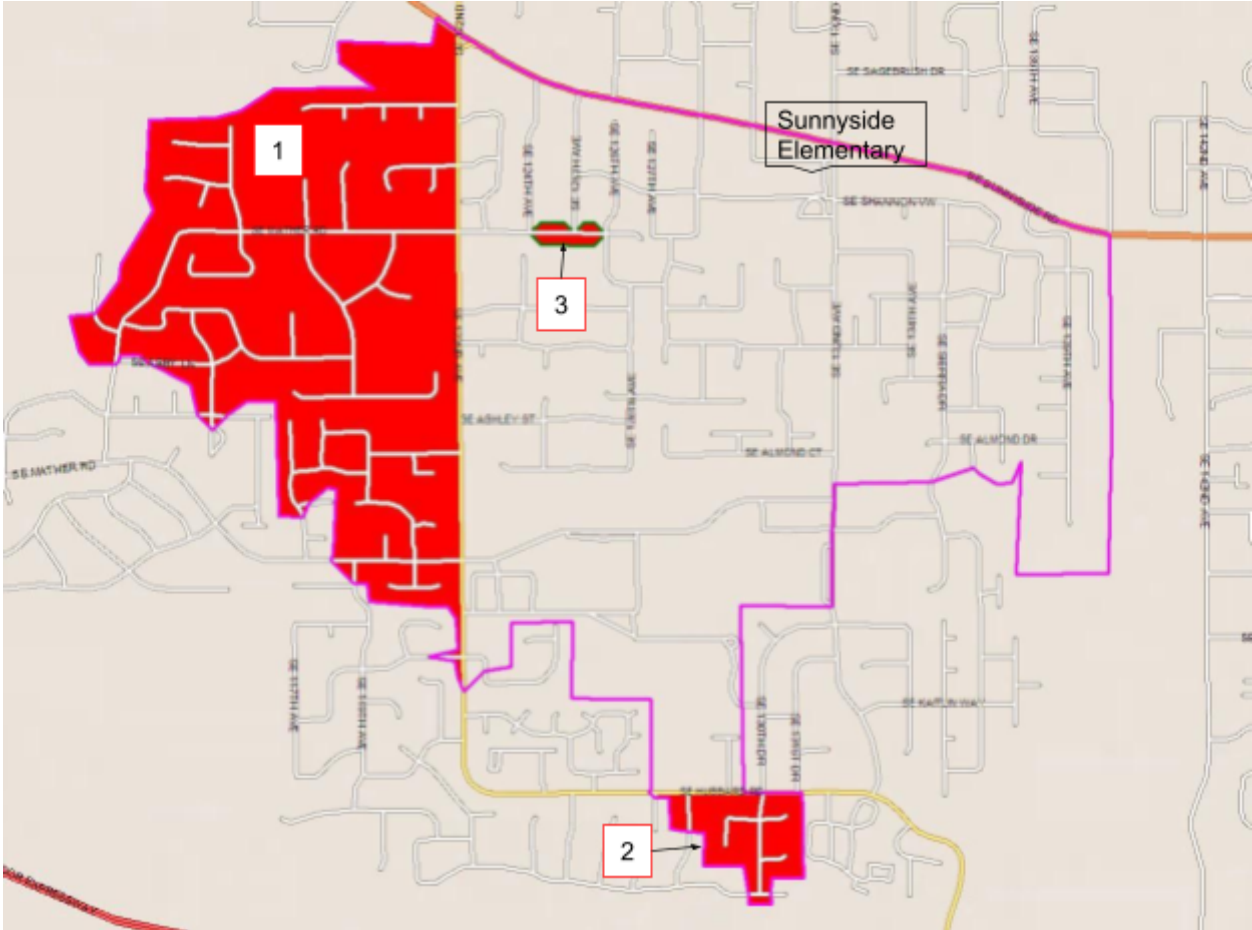


## Spring Mountain Elementary:



1. Hazard area - Unsafe to cross SE Sunnyside Rd.
2. Hazard area - Unsafe to cross SE 129th Ave.
3. Hazard area - The steepness of the hills makes it unsafe to walk to school
4. Hazard area - The steepness of the hills makes it unsafe to walk to school

# Sunnyside Elementary:

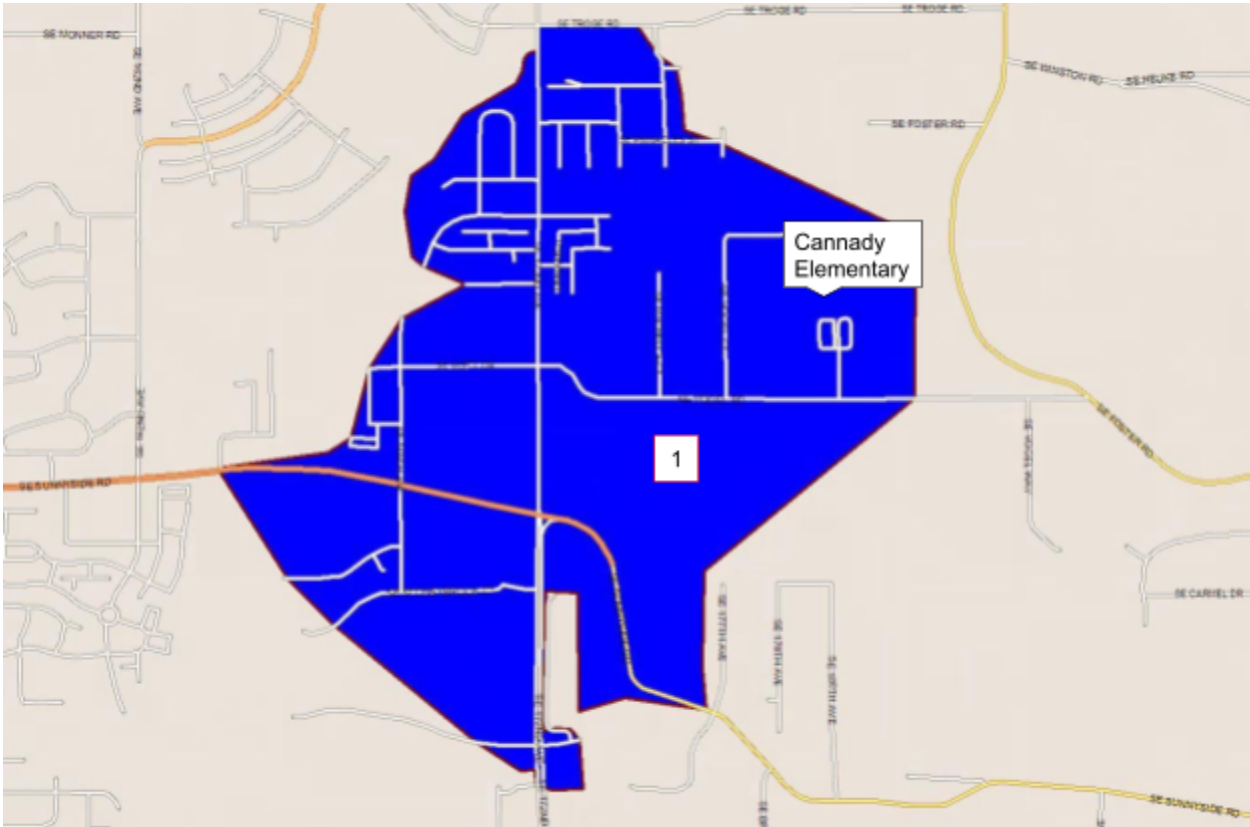


- 1. Hazard area - Unsafe to cross SE 122nd Ave.
- 2. Hazard area - Unsafe to cross SE Hubbard Rd.
- 3. Hazard area - Unsafe to walk along SE Mather Rd. between SE 124th Ave and SE 126th Ave.



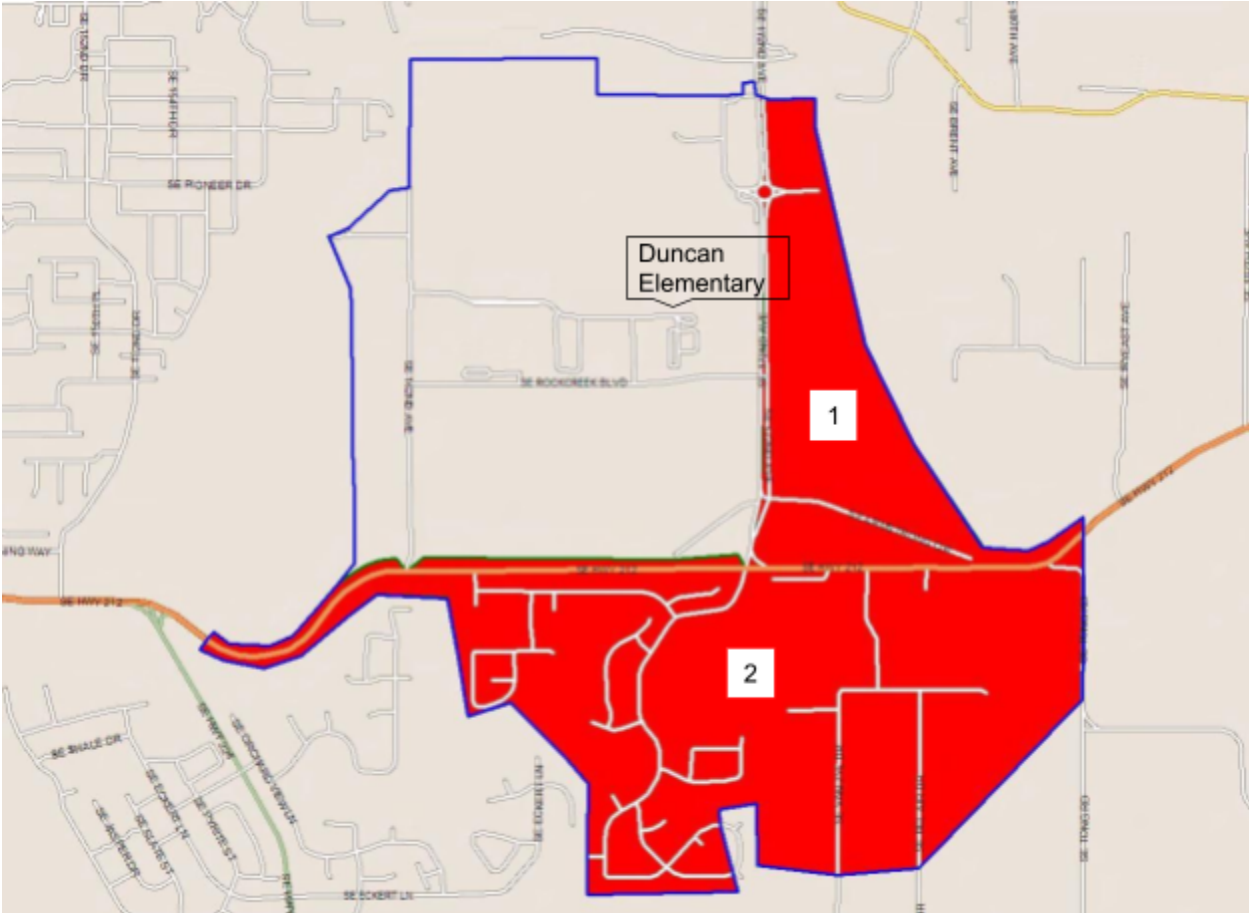


Cannady Elementary:



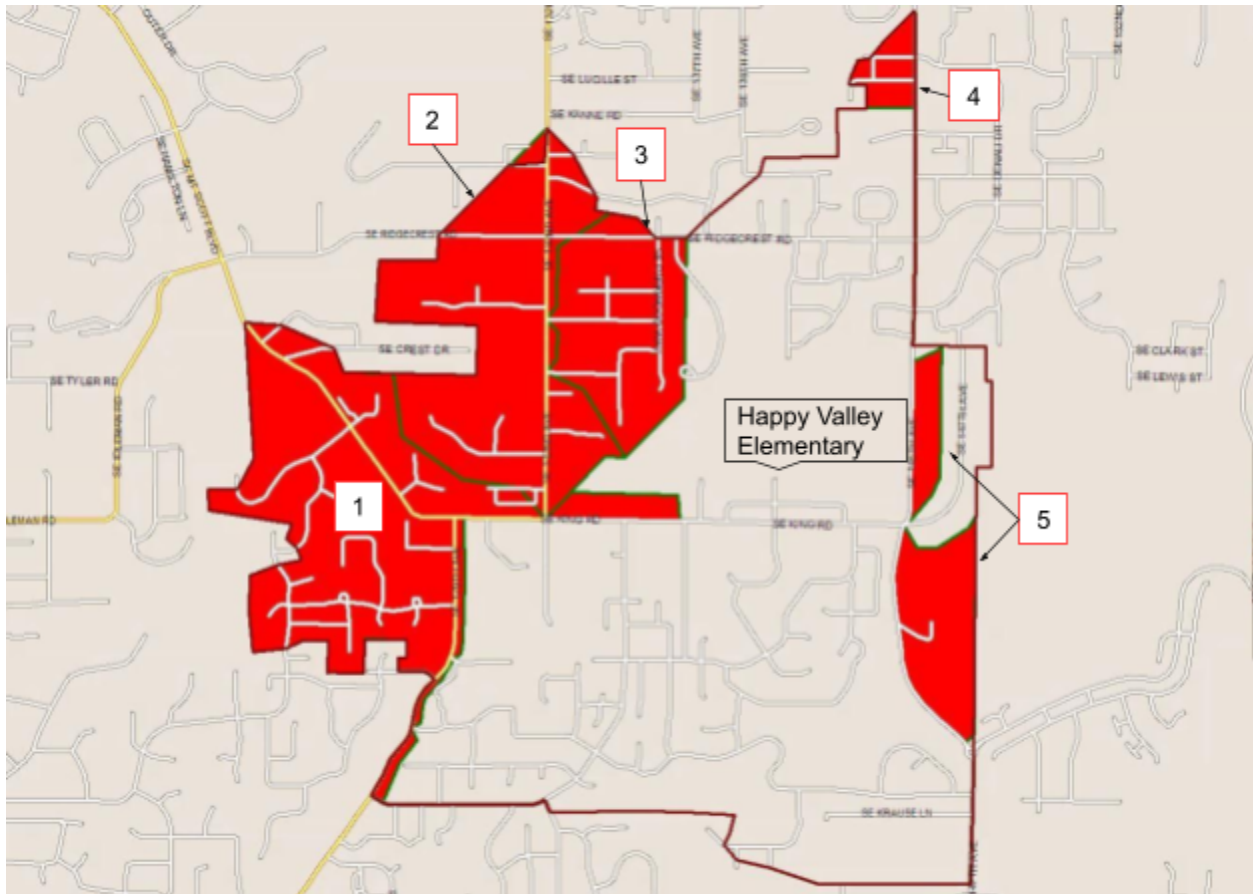
- 1. **Hazard area - Unsafe to walk along SE Vogel Rd.** - this effectively makes all students within the attendance boundary eligible for transportation.

Duncan Elementary:



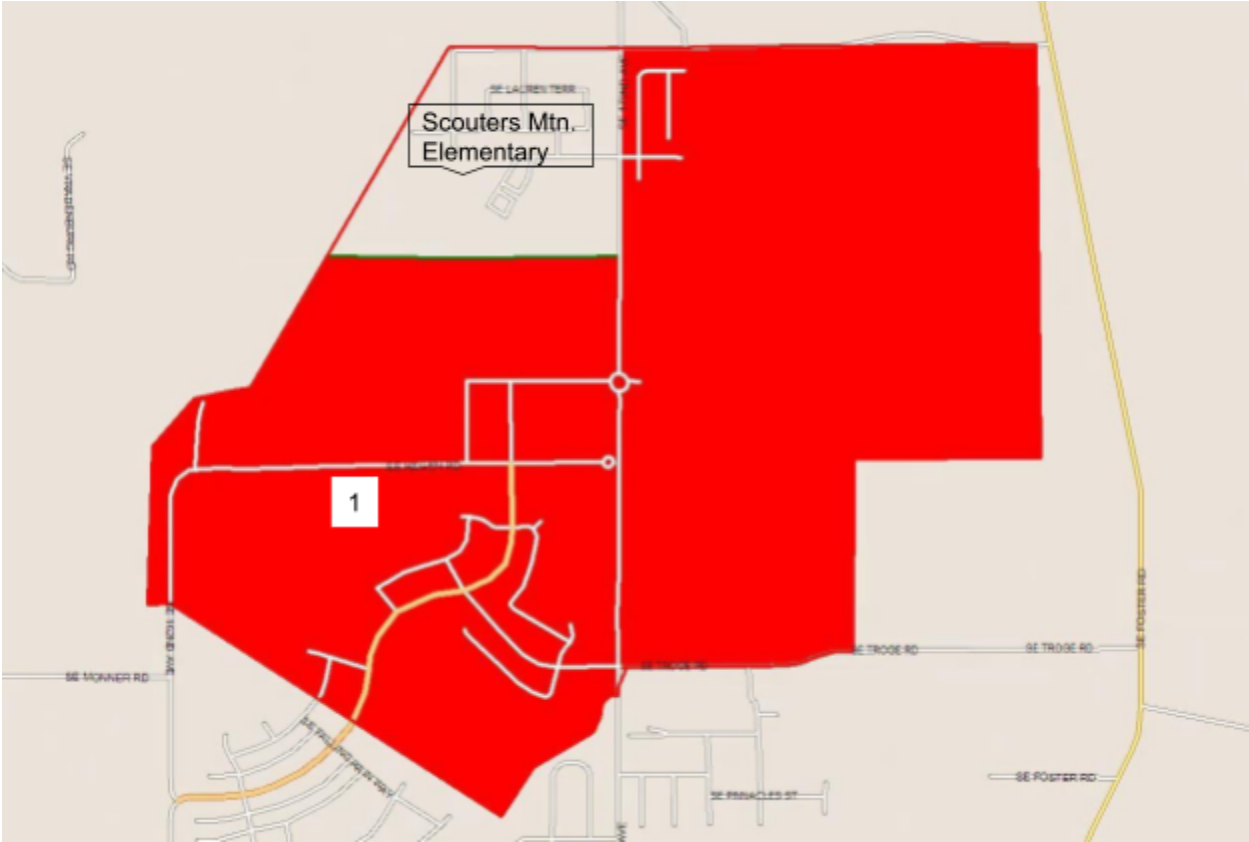
- 1. Hazard area - Unsafe to cross SE 172nd Ave.
- 2. Hazard area - Unsafe to walk along or cross Hwy 212

## Happy Valley Elementary:



1. Hazard area - Unsafe to walk along north side of SE King Rd. west of SE Regina Ct. and unsafe to walk along SE 129th Ave.
2. Hazard area - Unsafe to walk on SE 132nd Ave. north of SE King Rd.
3. Hazard area - Unsafe to walk through Happy Valley Park (unlit paths, unsafe boardwalk through marshland)
4. Hazard area - Unsafe to walk along west side of SE 145th Ave between SE Wyler St. and SE Carmichael Ct.
5. Hazard area - Unsafe to walk along east side of SE 145th Ave. between Happy Valley Preschool and SE Scouts Mountain Rd.

Scouters Mountain Elementary:



1. Hazard area - Unsafe to walk along or cross SE 172nd Ave.

**NORTH CLACKAMAS SCHOOL DISTRICT 12  
CLACKAMAS COUNTY, OREGON  
MINUTES — BOARD OF DIRECTORS MEETING  
June 22, 2023  
Zoom/YouTube**

***Open Session***

With due notice having been given and a quorum present, Chair Mitzi Bauer convened open session at 6:31 p.m. with the following members present:

Mitzi Bauer	–	Chair
Jena Benologa	–	Vice Chair
Orlando Perez	–	Director
Tory McVay	–	Director
Steven Schroedl	–	Director
Kathy Wai	–	Director
Libra Forde	–	Director
Donna Collingwood	–	Board Secretary

Also present were Ivonne Dibblee, Tiffany Shireman, Matt Makara, Michelle Riddell, Petra Callin, Khaliyah Williams-Rodriguez and Tammy O’Neill.

Jena Benologa read the Native Land Acknowledgement. Tory McVay led the Pledge of Allegiance. Mitzi Bauer provided a statement regarding the death of a student at Clackamas High School.

R22/23-90

**Minutes** – Tory McVay moved, Kathy Wai seconded the motion to approve the minutes of the regular Board Meeting held June 8, 2023.

Motion passed unanimously, 7-0.

R22/23-91

**Consent Agenda** – Tory McVay moved, Steven Schroedl seconded the motion to adopt the consent agenda as recommended:

**Employment Changes** - Approve employment changes as listed, with a copy of the list made as part of the official minutes, as recommended by the Executive Director of Human Resources:

- Licensed terminations

**North Clackamas Education Association Collective Bargaining Agreement**

**2023-2025** - Approve the NCEA Collective Bargaining Agreement, July 1, 2023 to June 30, 2025. Association members ratified the tentative agreement on June 16, 2023.

**North Clackamas Administrators Association (NCAA) Employment Agreement 2023-2025** - Approve the North Clackamas Administrators Association Employee Agreement for July 1, 2023 through June 30, 2025.

**Addendum to Transportation Supplemental Plan (Walk Zone)** - Approve the 2023 Addendum to the Transportation Supplemental Walk Zone Plan.

**Travel Request -**

- Grant permission for 20 students from Rex Putnam High School to travel to LaPine, Oregon, August 6-10, 2023.

**Travel Request -**

- Grant permission for 22 students from Clackamas High School to travel to Tillamook, Oregon, July 23-27, 2023.

Motion passed unanimously, 7-0.

**Board Reports** - Board members made brief personal statements and reports on activities and events they had attended.

R22/23-92

**2023-2024 Organizational Resolution for the Required Designations, Authorizations and Appointments** - Tory McVay moved, Steven Schroedl seconded the motion to approve the designations, authorizations, and appointments as identified in items A. through I. on the Organizational Resolution for the Required Designations, Authorizations, and Appointments for Fiscal Year 2023-24.

Motion passed unanimously. 7-0.

R22/23-93

**Comprehensive Sexuality Education Plan Update** - Tory McVay moved, Steven Schroedl seconded the motion to approve the District's Comprehensive Sexuality Education Plan.

Motion passed unanimously. 7-0.

There being no further business to come before the Board, the meeting adjourned at 7:00 p.m.

**Approved July 6, 2023**

# Oregon State Board of Education

## December 7, 2023

AGENDA ITEM: Supplemental Plan Revisions for North Clackamas SD, Pendleton SD, and Bend-La Pine

<p><b>SUBJECT:</b> Supplemental Plan Revisions for North Clackamas SD, Pendleton SD, and Bend-La Pine SD</p> <p><b>STAFF NAME &amp; OFFICE:</b> Brock Dittus, Pupil Transportation &amp; Fingerprinting</p> <p>Each of the above districts have 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 within each of these districts.</p>	<p><input type="checkbox"/> Informational Presentation</p> <p><input checked="" type="checkbox"/> Written Report</p>
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### 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 District Boards approved these supplemental plans at their regular meetings and submitted the plan to ODE for approval thereafter.

The supplemental plans submitted by these school districts account for attendance boundary changes within the no-transport area. Proponents and opponents of the submitted plan had the opportunity to be heard at the local level. These plans replace the previous plan.

# Oregon State Board of Education

**December 7, 2023**

AGENDA ITEM: Supplemental Plan Revisions for North Clackamas SD, Pendleton SD, and Bend-La Pine

## **SUMMARY OF PREVIOUS BOARD ACTION**

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The State Board approved Pendleton School District's original supplemental plan in 1992, with revisions in 1994 and 1995.

The State Board approved North Clackamas School District's original supplemental plan in 1993, with revisions in 1994, 2010, 2014, and 2017.

The State Board approved Bend-La Pine School District's original supplemental plan in 1992, with revisions in 1999, 2001, 2003, 2005, 2010, 2015, and 2016.

## **POLICY ISSUE OR CONCERNS**

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The School Districts submitted a supplemental plan for State Board approval after the local school boards adopted them during sessions open to the public. ODE does not engage with stakeholders regarding these plan revisions separate from the district's public process.

In this case, the districts are updating their plans to account for 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 these plans will not have an effect on any other school district, and will allow the districts 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: Request for Approval of Pendleton SD Supplemental Plan

Attachment 2: Map with Legend of Unsafe Walk Area for Pendleton SD

Attachment 3: Board Motion for Pendleton SD Supplemental Plan

# **Oregon State Board of Education**

**December 7, 2023**

AGENDA ITEM: Supplemental Plan Revisions for North Clackamas SD, Pendleton SD, and Bend-La Pine

Attachment 4: Supplemental Plan 1-2 North Clackamas

Attachment 5: North Clackamas Transportation Supplemental Plan Addendum

Attachment 6: North Clackamas SD Local Board Approval

Attachment 7: Bend-La Pine SD Supplemental Plan

<b>Name</b>	<b>Form Field 1</b>	<b>SD/ESD/Org</b>
David Wallace	director@coburgcharter.org	Coburg Community Charter School
Dean Richards	dean.richards@bend.k12.or.us	Bend La Pine School
Jeff Myers	myers.j@icloud.com	Beaverton School District
Lance L Dixon	lance.dixon@npowdersd.org	North Powder SD 8J
Lea Patten	beachscene@msn.com	Siuslaw 97J
Michael Cantino	mcantino@nwresd.k12.or.us	Northwest Regional Education Service [
Tess Misa	beckyr@easystreet.net	Hood River County School District OES
		Eugene 4J
		Central 13J
		Hermiston
Gayl Bowser	gaylbowser@gmail.com	none
Tim Collins	Collins19@gresham.k12.or.us	Gresham-Barlow SD
Karen Holt	karen.holt@hoodriver.k12.or.us	Hood River County School District
Matthew Bergdall	mbergdall@oregoncharter.org	Oregon Charter Academy
		Siuslaw
Sharon Weinstock	Sharon.weinstock@mheducation.com	McGraw Hill

<b>Role</b>	<b>Other</b>	<b>Questions</b>
District Administrator		no
District Curriculum Leader		No
Parent/Community Member		I am fine with the changes as-is
District Administrator		
Other	Retired. anc	SEE "FEEDBACK" below.
Other		Statewide Blind-Technology Specialist
Other		Special Edu Not at this time
Other	Retired FT 1	No
District Curriculum Leader		
Teacher		
Teacher		no
Other		I think this is very clear. I imagine
District Administrator		No questions or confusion.
Other	Assistive Te	No
District Curriculum Leader		No
Parent/Community Member		who will be the independent 3rd p
Publisher of Instructional Materials		-Please clarify what is meant for t

**Feedback**

I believe it makes sense for the responsibility to be placed on the  
I think this is a good rule change. We have been working with our IT

I firmly believe that each student should be taught in the manner in which  
There are some helpful new success criteria in WCAG 2.1 that would be  
This is a great way to move forward with publishers to improve  
I heartily support this change of the statute and would say it's overdue.  
This would help a lot for when we are reviewing curricula!

Does this rule have the potential to create a new service-Independent  
I fully support the requirement that all digital materials meet accessibility  
This is an excellent proposal. The reports should be formatted the same  
No  
rural areas can differ from inner city school requirements even  
-Given the time necessary for publishers to audit and potentially

**I support the proposed**

Strongly agree  
Strongly agree  
Strongly agree  
Strongly agree  
Strongly agree  
Strongly agree  
Strongly agree  
Strongly agree  
Strongly agree  
Strongly agree  
Strongly agree  
Strongly agree  
Agree  
Agree  
Agree

Questions (Div 22)	Feedback (Div 22)	I support the proposed rule change to 58
	I don't know that a 3rd party is	Agree
no	This is a good rule change	Strongly agree
I am fine with these additions	I recently filed a complaint reg	Strongly agree
		Strongly agree
PLEASE SEE "FEEDBACK" I	PLEASE SEE "FEEDBACK" I	Strongly agree
		Strongly agree
		Strongly agree
This wording is confusing to n	Why is an accessibility report	Strongly disagree
		Strongly agree
	Including this rule language e	Strongly agree
no		Strongly agree
Does this rule have the potential to create a new service-Ind		Strongly agree
No questions or confusion.	Again, I fully support the requi	Strongly agree
No		Strongly agree
Who are the third parties that complete these for publishers'		Agree
who will be the independent 3rd party in/out state, costs, ba		Agree
-How does this requirement di-	Given the time necessary for	Agree

1-022-2350

# Oregon State Board of Education

December 7, 2023

AGENDA ITEM: Instructional Materials Accessibility (OAR 581-011-0087 & 581-022-2350)

<p><b>SUBJECT:</b> Instructional Materials Accessibility (OAR 581-011-0087 &amp; 581-022-2350)</p> <p><b>STAFF NAME &amp; OFFICE:</b> Aujalee Moore, Office of Teaching, Learning, and Assessment</p> <p>ODE proposes to revise current policy to require publishers of adopted digital instructional materials to provide an up-to-date, complete, and accurate Accessibility Conformance Report (ACR) that has been completed by a third-party and includes manual verification of testing.</p> <p><input type="checkbox"/> New Rule <input checked="" type="checkbox"/> Amend Existing Rule <input type="checkbox"/> Repeal Rule</p>	<p><input type="checkbox"/> First Reading <input type="checkbox"/> Presentation <input type="checkbox"/> No Presentation</p> <p><b>X Action</b> <input type="checkbox"/> Temp Rule <input type="checkbox"/> Presentation <b>XNo</b> <b>Presentation</b></p>
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## BACKGROUND

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In Oregon, instructional materials may include “a hardbound or a softbound book or books, or sets or kits of print and non-print materials, including electronic and internet or web-based materials or media” ([OAR 581-011-0050](#)). School districts must ensure the timely provision of instructional materials in accessible formats to children who need instructional materials in accessible formats, and districts are required to ensure the timely provision of print instructional materials that comply with the National Instructional Materials Accessibility Standard (NIMAS). Since 2020, there has been an increase in the adoption and implementation of digital instructional materials as the core component of instruction. As the instructional materials market has continued to evolve, so do accessibility standards. Since digital instructional materials are increasingly present in K-12 public schools, a rule revision is necessary to ensure that the administrative rules related to accessibility of instructional materials include reference to digital accessibility standards.

## SUMMARY OF PREVIOUS BOARD ACTION

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This proposed rule revision was presented to the Board in October 2023. Previously, the most recent revision to OAR 581-022-2350 was conducted in 2012, and the most recent revision to OAR 581-011-0087 was conducted in 2010.

## 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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# Oregon State Board of Education

December 7, 2023

AGENDA ITEM: Instructional Materials Accessibility (OAR 581-011-0087 & 581-022-2350)

Under current policy, the Oregon Department of Education requires publishers of adopted instructional materials to assure they are compliant with the National Instructional Materials Accessibility Standard (NIMAS). Materials independently adopted by districts are also required to adhere to NIMAS. While the NIMAS adequately addresses accessibility standards for print materials, they do not include standards for digital instructional materials that are not presented in a static format.

Although accessibility standards are required to be adhered to for both print and digital materials, current policy does not include reference to the Web Content Accessibility Guidelines (WCAG) which are required for digital content under Section 508 of the Rehabilitation Act (29 U.S.C. 794d). To accurately report alignment to the WCAG, an Accessibility Conformance Report (ACR) is necessary. An ACR describes how the item(s) will fully address the accessibility requirements outlined in the most current version of WCAG, and includes a description of the evaluation methods used to validate for conformance.

As a recommended policy solution, ODE proposes that OAR 581-011-0087 and OAR 581-022-2350 be amended to require adopted instructional materials to include an up-to-date, complete, and accurate ACR.

- The proposed revision of OAR 581-011-0087 would require all **publishers that submit materials to ODE for evaluation** to provide an up-to-date, complete, and accurate ACR that has been completed by a third party and includes manual verification of testing prior to adoption by the State Board of Education.
- The proposed revision of OAR 581-022-2350 would require that all **independently adopted** digital instructional materials include an up-to-date, complete, and accurate ACR before being implemented with students.

This rule revision was originally requested by the Oregon Accessible Educational Materials Cohort that is facilitated by the National Center on Accessible Educational Materials for Learning (AEM Center) in response to concerns about the accessibility of instructional materials being implemented in Oregon classrooms. It has been reported by Oregon educators, district administrators, and ESDs that vendors of instructional materials are providing assurance that the materials are accessible without providing an ACR as evidence. However, districts are experiencing issues with accessibility upon implementation. Inaccessible materials may lead to delays in providing students with timely access to alternative formats which is a violation of a student's civil rights. Districts and ESDs are faced with difficulties obtaining the ACR from vendors without a requirement from ODE.

At this time, ODE currently does not require or collect an ACR from publishers of instructional materials that are adopted by the State Board of Education. Additionally, the requirements for independent adoption of instructional materials is limited to NIMAS which do not appropriately address digital accessibility standards. OAR 581-011-0087 and OAR 581-022-2350 do not include reference to the WCAG or the ACR.

Upon receiving the request from the field, an extensive engagement period was conducted from August 2022-August 2023. The engagement period included eight in-person feedback sessions with Oregon special education coordinators, special education teachers, assistive technology specialists, occupational therapists, vocational rehabilitation specialists, curriculum specialists, IT specialists, and individuals with expertise in technical accessibility standards spanning from early childhood education to workforce

# Oregon State Board of Education

December 7, 2023

AGENDA ITEM: Instructional Materials Accessibility (OAR 581-011-0087 & 581-022-2350)

transitions. In addition to in-person feedback sessions, asynchronous feedback was collected via a survey that was sent to Oregon educators and administrators, community members, and publishers of instructional materials. The feedback received in the survey from seventeen respondents was in support of the proposed revision for both rules. The National Center on Accessible Educational Materials for Learning (CAST) and State Instructional Materials Review Association were also consulted as the rule language was developed, and both organizations are in support of the revision.

Feedback from the engagement period highlighted that students experiencing disabilities have been historically underserved by educational systems; this revision will support districts in meeting the requirements necessary to ensure equitable access to educational opportunities. District representatives also noted that the requirements around accessibility, which are set at the national level, are not changing. The proposed rule language is intended to provide policy language that requires publishers to provide complete and accurate information about the current accessibility standards and guidelines. ODE is not increasing the expectation for districts; the proposed rule change reinforces and supports the expectation for publishers to provide districts with information regarding digital accessibility.

Since the first read of the requested rule revision, ODE and the State Board of Education received public comment requesting further clarification about the proposed policy revision. ODE offers the following analysis:

- The requested rule revision language accounts for a rapidly evolving environment related to technical accessibility standards. Since 2020, there have been several versions of the Web Content Accessibility Guidelines (WCAG) established. The rule language allows ODE to provide nuanced information about the expectations related to digital accessibility each year in the Circular of Information, ODE's bid for publishers to submit materials annually. This ensures that the rule language does not need to be revised each time a new version of WCAG is published, and ODE can remain responsive to evolving digital accessibility standards to ensure that adopted instructional materials meet the needs of students on IEPs and 504 plans.
- The Circular of Information will include the requested information such as WCAG version, required compliance levels, timing for compliance, and information about requirements for the third-party evaluation. An example of this is provided by the Texas Education Agency (TEA) in their [2024 Proclamation](#) (pg 18-19).

## EQUITY IMPACT ANALYSIS

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In Oregon, protected classes include individuals with disabilities. To ensure equitable educational opportunities, policies must consider the needs of students with disabilities. Accessible digital content provides an equitable experience for those with visual, auditory, physical, speech, cognitive and neurological disabilities or impairments. Many students accessing digital materials need to use assistive devices, so digital and online content must be built properly for those devices to access all the information correctly. Adherence to the most up-to-date accessibility standards is necessary to ensure timely access to educational content for all students in a classroom setting.

The proposed rule changes would provide districts with the information necessary to procure accessible instructional materials that include the specific accessibility supports that the students they serve need. For example, if a district serves students who require audio description as an alternate format outlined in

# Oregon State Board of Education

**December 7, 2023**

AGENDA ITEM: Instructional Materials Accessibility (OAR 581-011-0087 & 581-022-2350)

their IEP, they will have information about whether audio descriptions are consistently provided prior to purchasing the program. This information allows districts to verify the assurances made by publishers when selecting their instructional materials.

Lastly, accessibility makes for a better experience for everyone regardless of disability status. An accessible and flexible digital program, for example, will help individuals with slow internet connections or temporary injuries, such as a broken arm, access the content with equivalent ease of use as their peers.

## **FISCAL ANALYSIS**

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The proposed revision does not fiscally impact the Oregon Department of Education (ODE). No additional funding or staffing is required from ODE.

Many publishers have ACR available, and would not be fiscally impacted. However, publishers that do not currently have the report available would incur a cost. The approximate cost of the report varies based on the technical complexity of each program as well as the quantity of content that needs to be reported on. During engagement, it was reported that the cost is not anticipated to present a barrier for organizations that need to generate the ACR.

The proposed rule change requires that materials adopted through the independent adoption process include an ACR that remains on file at the district office. This rule does not include the third-party requirement so as to not negatively impact districts that are independently adopting materials generated at the local level and would not have a corresponding publisher to provide the report.

This proposed rule change may fiscally benefit districts by preventing them from procuring materials that do not meet accessibility standards. Inaccessible materials require remediation by the district, or a contracted party, which often is time consuming and costly. By providing information about accessibility before procurement of the materials, districts may save money on the remediation process.

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

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YES – OAR 581-011-0087 & 581-022-2350 will be revised to require an Accessibility Conformance Report be provided for future instructional materials adoption.

NO – Rules will remain the same and ODE will not require Accessibility Conformance Reports for future instructional materials adoptions.

## **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**

**December 7, 2023**

AGENDA ITEM: Instructional Materials Accessibility (OAR 581-011-0087 & 581-022-2350)

Attachment 1: Accessibility Conformance Report Feedback Spreadsheet

## Operations Policy #8: Public Comment at Board Meetings

### Overview

The State Board of Education values public input. The public comment process provides space for testimony on items before the Board, or issues that may need attention. It does not allow opportunity for dialogue between the speaker, Board, or Director nor does it replace existing complaints processes. It does allow the State Board of Education to actively listen to and reflect on public feedback. Any Board member may request that the Chair and/or ODE Director respond to public comment received. The Board has no supervisory authority and will not hear complaints concerning individual personnel. Complaints about individual ODE employees should be submitted to the Deputy Superintendent's office as a personnel matter.

The Board holds this public comment space with care for Oregon's students at the forefront of mind. The Board is here to provide an example to youth in both agreement and disagreement. The following should be understood:

- Clear and kind language - the Board expects language that centers and supports the needs of students.
- No place for bias or hate - the Board will not tolerate profanity or language that minimizes or causes harm to anyone else's identity. If such language occurs, the speaker will forfeit the remainder of their time, be removed from the meeting, and be provided an alternate space to observe.
- No place for violence or threats - the Board will take any threats or threatening language seriously and will follow-up with law enforcement as appropriate.

### Written Public Comment

Members of the public are encouraged to submit written comments or testimony in advance to [StateBoard.PublicEmail@ode.oregon.gov](mailto:StateBoard.PublicEmail@ode.oregon.gov), or by mail to the State Board of Education, 255 Capitol Street NE, Salem, OR 97310.

- To comment on an item currently under consideration by the Board, clearly label the subject line as “Public comment:” followed by the agenda item referred to. Agenda items can be found on BoardBook.
- To raise an issue to the attention of the Board, clearly label the subject line as “Raise an issue to the Board.”
- All written public comment will be made available to the members of the Board and the public, and will be posted to BoardBook.
- Please note that submitting written comments prior to the meeting allows the Board more time to review and consider.
- Written comments will be accepted until the evening before a regular meeting.

### **Direct Public Comment**

In the public notice for each regular meeting, the Board will share the specific medium for public comment. Such opportunities will be by advanced registration only. Each public notice will include registration information and specify whether public comment opportunities will be in-person or virtual.

- The Board encourages all speakers providing comments on an agenda item to review materials posted to BoardBook in advance of the meeting.
- Each person providing public comment will have a total of three minutes. Unused time cannot be transferred to other speakers. The Board requests that speakers providing virtual public comment share both their audio and video.
- The Board will try to hear as many as possible within the public comment period on the agenda. The Board will prioritize comments from students and current educators.
- Individuals unable to provide comments during the meeting will be invited to submit written comments afterwards.
- If an interpreter is required, please notify the Board Administrator at least 48 hours in advance.

## Operations Policy #8: Public Comment at Board Meetings

### Overview

The State Board of Education values public input. The public comment process provides space for testimony on items before the Board, or issues that may need attention. ~~allows members of the public to provide testimony on items before the Board, or to raise issues to the attention of the Board and Agency Director.~~ It does not allow ~~for an~~ opportunity for dialogue between the speaker, Board, or Director ~~during the meeting,~~ nor does it replace existing complaints processes. It does allow the State Board of Education to actively listen to and reflect on public feedback, ~~and~~ Any Board member may request that the Chair and/or ODE Director respond to public comment received. The Board may ask the ODE Director staff to respond to public comments or questions raised during the public comment period after the meeting. Submitters may offer objective criticism of state operations and programs, but the Board, ~~since it~~ has no supervisory authority ~~and,~~ will not hear complaints concerning individual personnel. Complaints about individual ODE employees should be submitted to the Deputy Superintendent's office as a personnel matter.

The Board holds this public comment space with care for Oregon's students at the forefront of mind. The Board is here to provide an example to youth in both agreement and disagreement. The following should be understood:

- Clear and kind language - the Board expects language that centers and supports the needs of students.
- No place for bias or hate - the Board will not tolerate profanity or language that minimizes or causes harm to anyone else's identity. If such language occurs, the speaker will forfeit the remainder of their time, be removed from the meeting, and be provided an alternate space to observe.
- No place for violence or threats - the Board will take any threats or threatening language seriously and will follow-up with law enforcement as appropriate.

### Written Public Comment

Members of the public are encouraged to submit written comments or testimony in advance to [StateBoard.PublicEmail@ode.oregon.gov](mailto:StateBoard.PublicEmail@ode.oregon.gov), or by mail to the State Board of Education, 255 Capitol Street NE, Salem, OR 97310.

- [To comment on an item currently under consideration by the Board, clearly label the subject line as “Public comment:” followed by the agenda item referred to. Agenda items can be found on BoardBook.](#)
  - [To raise an issue to the attention of the Board, clearly label the subject line as “Raise an issue to the Board.”](#)
  - [All written public comment will be made available to the members of the Board and the public, and will be posted to BoardBook.](#)
  - [Please note that submitting written comments prior to the meeting allows the Board more time to review and consider.](#)
- [Written comments will be accepted until the evening before a regular meeting. In order to avoid opening up the public comment period, the Board will not entertain testimony on a proposed rule after the public comment period has closed on the agenda.](#)
- [Public comments or testimony submitted the morning of the Board meeting will be posted to BoardBook within 48 business hours.](#)

### Direct Public Comment

[The guidelines below for public input emphasize respect and consideration of others: In the public notice for each regular meeting, the Board will share the specific medium for public comment. Such opportunities will be by advanced registration only. Each public notice will include registration information and specify whether public comment opportunities will be in-person or virtual. For certain meetings, members of the public may register in advance to provide verbal public comment. These opportunities allow for both in-person and virtual testimony on items before the Board](#)

- [A sign-up sheet will be placed by the room entrance and each name will be called upon by the Board’s Executive Officer. The Board encourages all speakers providing comments on an agenda item to review materials posted to BoardBook in advance of the meeting.](#)
- [The Board’s Executive Officer will read off the names of the speakers who signed up to testify. Individuals called will come up to the testimony table](#)

Commented [1]: comment(s)

~~and will have three minutes to testify, unless otherwise stated. Each person providing public comment will have a total of three minutes. Unused time cannot be transferred to other speakers. The Board requests that speakers providing virtual public comment share both their audio and video.~~

- ~~Please begin by stating your name for the record.~~ The Board will try to hear as many as possible within the public comment period on the agenda. The Board will prioritize comments from students and current educators.
- ~~Each person providing public comment will have a total of three minutes; when your time is up, a buzzer will sound. The Board respectfully asks that you conclude your comments at that time. Individuals unable to provide comments during the meeting will be invited to submit written comments afterwards.~~
- ~~Taking more time reduces others ability to provide public comments.~~
- ~~Those providing public comment may submit written testimony before or at the meeting.~~
- If an interpreter is required, please notify the Board Administrator at least 48 hours in advance.

**Commented [2]:** Consider language stating that the period may be extended at the discretion of the chair.

## **From Oregon Administrative Rules - Policy #10:**

### 1. Public Comment at Board Meetings:

The State Board of Education values public input. The role of the State Board of Education is to actively listen to and reflect on public comments. Each person wishing to address the Board must sign-up individually for the Public Comment period on the agenda. A sign-up sheet will be placed by the boardroom entrance and each name will be called upon by the Board's Executive Officer. Public Comment allows the Board and Deputy Superintendent to hear issues of interest, but does not allow an opportunity for dialogue between the speaker, Board or Deputy Superintendent. The Board may ask staff to respond to public comments or questions raised during the public comment period.

The guidelines below for public input emphasize respect and consideration of others:

- A sign-up sheet will be placed by the room entrance and each name will be called upon by the
- Board's Executive Officer.
- The Board's Executive Officer will read off the names of the speakers who signed up to testify. Individuals called will come up to the testimony table and will have three minutes to testify, unless otherwise stated.
- Please begin by stating your name for the record.
- Each person providing public comment will have a total of three minutes; when your time is up, a buzzer will sound. The Board respectfully asks that you conclude your comments at that time.
- Taking more time reduces others ability to provide public comments.
- Those providing public comment may submit written testimony before or at the meeting.
- If an interpreter is required, please notify the Board Officer at least 48 hours in advance.

Complaints about individual employees should be directed to the Deputy Superintendent's office as a personnel matter.

## **From Meeting Protocol - Policy #103:**

### C. Public Comment<sup>1</sup>

The role of the State Board of Education is to actively listen to and reflect on public comments. Each person wishing to address the Board must sign-up individually for the public comment period on the agenda. Persons or groups wishing to appear before the board may be given a reasonable opportunity to do so; there will be time allotted on each agenda for public comment. A sign-up sheet for those who wish to offer comments or testimony on any item will be available at the meeting. The board may impose such time limitations on any appearance as it may deem appropriate. Written testimony may also be submitted to the board administrator. The public comment period is not to be used as a vehicle for immediate resolution of problems, but is a method to bring important issues to the board's attention. Speakers may offer objective criticism

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<sup>1</sup> State Board of Education Policy Manual, 1997, policy code BDDDB

of state operations and programs, but the board will not hear complaints concerning individual personnel; persons with such complaints will be directed to the appropriate process for the disposition of personnel complaints. Public Comment allows the Board and Deputy Superintendent to hear issues of interest, but does not allow an opportunity for dialogue between the speaker, Board or Deputy Superintendent. The Board may ask staff to respond to public comments or questions raised during the public comment period.

The guidelines below for public input emphasize respect and consideration of others and will be used by Board staff:

- A sign-up sheet will be placed by the room entrance and each name will be called upon by the Board Chair or administrator.
- The Board Chair or administrator will read off the names of the speakers who signed up to testify. Individuals called will come up to the testimony table and will have three minutes to testify, unless otherwise stated.
- Please begin by stating your name for the record.
- Each person providing public comment will have a total of three minutes; when your time is up, a buzzer will sound. The Board respectfully asks that you conclude your comments at that time. Taking more time reduces others ability to provide public comments.
- Those providing public comment may submit written testimony before or at the meeting.
- If an interpreter is required, please notify the Board Officer at least 48 hours in advance.

Complaints about individual employees should be directed to the Deputy Superintendent's office as a personnel matter.

## **From Adoption of Administrative Rules - Policy #108:**

### **D. Public Comment at Board Meetings:**

The State Board of Education values public input. The role of the State Board of Education is to actively listen to and reflect on public comments. Each person wishing to address the Board must sign-up individually for the Public Comment period on the agenda. A sign-up sheet will be placed by the boardroom entrance and each name will be called upon by the Board's Executive Officer. Public Comment allows the Board and Deputy Superintendent to hear issues of interest, but does not allow an opportunity for dialogue between the speaker, Board or Deputy Superintendent. The Board may ask staff to respond to public comments or questions raised during the public comment period.

The guidelines below for public input emphasize respect and consideration of others:

- A sign-up sheet will be placed by the room entrance and each name will be called upon by the
- Board's Executive Officer.
- The Board's Executive Officer will read off the names of the speakers who signed up to testify. Individuals called will come up to the testimony table and will have three minutes to testify, unless otherwise stated.
- Please begin by stating your name for the record.

- Each person providing public comment will have a total of three minutes; when your time is up, a buzzer will sound. The Board respectfully asks that you conclude your comments at that time.
- Taking more time reduces others ability to provide public comments.
- Those providing public comment may submit written testimony before or at the meeting.
- If an interpreter is required, please notify the Board Officer at least 48 hours in advance.

Complaints about individual employees should be directed to the Deputy Superintendent's office as a personnel matter.

# Oregon State Board of Education

December 7, 2023

AGENDA ITEM: 581-021-0556: Procedures Regarding Restraint and Seclusion

<p><b>SUBJECT:</b> 581-021-0556: Procedures Regarding Restraint and Seclusion</p> <p>Tenneal Wetherell, Chief of Staff, ODE Lisa Joy Bateman, School Age District Support Specialist, Office of Enhancing Student Opportunities</p> <p><a href="#">SB 1024</a> amends ORS <a href="#">339.294</a> and OAR <a href="#">581-021-0556</a> <a href="#">SB 1024</a> - Modifies provisions regarding retention of records of incidents involving the use of restraints or seclusion of children in care and students in public education programs. SB 1024 additionally requires additional reporting processes for serious bodily injury or death of a student or personnel that occurs in relation to the use of restraint or seclusion.</p> <p><input type="checkbox"/> New Rule <input checked="" type="checkbox"/> Amend Existing Rule <input type="checkbox"/> Repeal Rule</p>	<p><input checked="" type="checkbox"/> <b>First Reading</b> <input checked="" type="checkbox"/> Presentation <input type="checkbox"/> No Presentation</p> <p><input type="checkbox"/> <b>Action</b> <input type="checkbox"/> Temp Rule <input type="checkbox"/> Presentation <input type="checkbox"/> No Presentation</p>
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## BACKGROUND

The Oregon legislature passed several bills related to restraint and seclusion during the 2023 legislative session, namely Senate Bills (SB) 283, 577, 790, and 1024.

- [SB 283](#) - Establishes the Safe School Culture Grant program to develop a network of instructors who are certified in nonviolent crisis intervention methods to ensure that at least one school district or education service district (ESD) staff member is certified for every 50 students in the school district or ESD.
  - Temporary Rule [581-017-XXXX](#) Safe School Culture Grant: Distribution Formula
- [SB 577](#) - Modifies language in ORS 339.250: Duty to Comply. This modifies when the use of force upon a minor child or student is justifiable and not criminal, further banning corporal punishment in schools and by parents.
- [SB 790](#) - Modifies definition of “abuse” for purposes of child abuse to include violations around the use of restraint and seclusion on students.
- [SB 1024](#) - Modifies provisions regarding retention of records of incidents involving the use of restraints or seclusion of children in care and students in public education programs. SB 1024 additionally requires ODE to have a process for receiving written reports of Serious Bodily Injury or Death of Personnel that occurs in relation to the use of restraint or seclusion within 24 hours of its occurrence.
  - Draft Rule 581-021-0556 (attached).

## History

OAR 581-021-0556 (Procedures Regarding Restraint and Seclusion) was first developed following the adoption of [HB 2939](#) (2011). It was later revised in October of 2019, as necessary under [SB 963](#), which changed the restraint and seclusion statutes in Oregon public education programs.

# Oregon State Board of Education

December 7, 2023

AGENDA ITEM: 581-021-0556: Procedures Regarding Restraint and Seclusion

In the 2023 session, the Legislature passed Senate Bill 1024, which has an effective date of January 1, 2024. SB 1024 introduces requirements regarding the preservation and disclosure of records related to incidents of restraint or seclusion in public education programs.

## **Purpose**

Under SB 1024, a public education program must preserve all records associated with an incident of restraint or seclusion, including audio or video recordings. Public education programs are required to keep these records in their original format and may not alter them in any way. A required debriefing meeting must occur within two days of any incident involving restraint or seclusion; under SB 1024, the public education program must review any preserved audio or video recordings during the required debriefing meeting.

## Disclosure to Parents or Guardians

Following an incident involving the use of restraint or seclusion, the parent must receive immediate, written notification of the existence of a record. Upon request from a student's parent or guardian, the public education program must disclose the records preserved under this section. To the extent feasible without changing the record's meaning, the program should redact or segregate personally identifiable information (PII) of other students from the disclosed record. If it is not possible to do so without altering the record's meaning, the program should provide access to the record to the parent or guardian in its original format without any changes.

## Disclosure to the Department of Human Services

If the incident of restraint or seclusion is being investigated by the Department of Human Services (DHS) as suspected child abuse, the public education program must, upon request, disclose to DHS or its representative any relevant records. These records should be provided in their original format without any alterations. Public education programs' adherence to these requirements ensures proper preservation of records and enables the appropriate disclosure of records related to incidents of restraint or seclusion, as required.

## Serious Bodily Injury or Death of a Student

SB 1024 adds the requirement that if serious bodily injury or death of a student occurs in relation to the use of restraint or seclusion, oral notification of the incident must be provided immediately to a parent or guardian of the student and to DHS. This is in addition to the already required written notification of the incident that must be provided within 24 hours of the incident to DHS.

## Serious Bodily Injury or Death of Personnel of the Public Education Program

SB 1024 adds the Superintendent of Public Instruction to the list of individuals who must be notified if serious bodily injury or death of personnel of the public education program occurs in relation to the use of restraint or seclusion. Written notification of the incident must be provided within 24 hours of the incident to the district superintendent, to the Superintendent of Public Instruction and, if applicable, to the union representative for the affected party.

# Oregon State Board of Education

December 7, 2023

AGENDA ITEM: 581-021-0556: Procedures Regarding Restraint and Seclusion

## Proposed Draft Rule and Board Discretion

The proposed revision to OAR 581-021-0556 was drafted to reflect the requirements of SB 1024, as described above. The Board does not have discretion over those elements. However, the proposed draft rule introduces additional discretionary elements to the minimum requirements of SB 1024, as described above. Specific items under Board discretion include:

1. **Definition of “immediately”:** SB 1024 requires that school districts notify the parent or guardian of the existence of records concerning restraint or seclusion immediately. The board exercises discretion in deciding the timing and method for the immediate, written notification of records concerning incidents of restraint or seclusion. The proposed draft rule precisely defines the term “immediate” to ensure sufficient clarity that enables school district adherence to all notification timelines.
2. **Parental Notification:** The board also has discretion in determining parental participation requirements in section 4. This section includes specific provisions regarding parental involvement in the mandatory debrief meeting, scheduled within two days of any incident. Moreover, the parent or guardian retains the right to request an additional meeting if unable to attend the required debriefing within two school days of the restraint or seclusion incident. SB 1024 does not require this additional opportunity for parental participation.
3. **Definition of “disclose”:** The term “disclose” is further defined in this rule to guarantee compliance and alignment with the Family Educational Rights and Privacy Act (FERPA). FERPA applies to all educational institutions that receive federal funding, which includes most K-12 schools and postsecondary institutions and is designed to protect the privacy of students.

## Has the agency provided an opportunity to receive feedback on these temporary rules?

There has been significant public voice and input on this rule, as it is a small part of a suite of changes affecting implementation of restraint and seclusion for children in care and in public education programs in Oregon. The Oregon legislature passed several bills related to restraint and seclusion during the 2023 legislative session, including Senate Bills (SB) 283, 577, 790, and 1024. ODE staff have been working statewide on implementation.

This engagement process included initial engagement sessions during the Fall of 2023 with the following groups:

- 175+ special education directors
- superintendents and principals
- COSA Fall Special Education Conference participants
- X - formerly known as Twitter - users through a shared link to give input on the draft rule
- Oregon Education Association
- ODE Office of Indian Education
- Oregon’s Federally-Designated Parent Organizations: FACT and CODSN
- ODE Rules Advisory Committee

Individuals provided input and feedback on an initial draft and a second version of the rule using [this survey](#). Furthermore, ODE staff presented the draft rule to ODE’s Rules Advisory Committee on November 7, 2023 and received further feedback from participants. ODE has reviewed all feedback received related to this proposed draft rule and has, accordingly, made substantial changes to the draft

# Oregon State Board of Education

## December 7, 2023

AGENDA ITEM: 581-021-0556: Procedures Regarding Restraint and Seclusion

before the Board today. ODE will also continue to solicit input as we develop the permanent rule for adoption in February 2024.

### SUMMARY OF PREVIOUS BOARD ACTION

OAR 581-021-0556 (Procedures Regarding Restraint and Seclusion) was first developed following the adoption of [HB 2939](#) in 2011.

It was later revised in October of 2019, as necessary under [SB 963](#), which changed the restraint and seclusion statutes in Oregon public education programs.

In the 2023 session, the Legislature passed Senate Bill 1024, which has an effective date of January 1, 2024. SB 1024 introduces requirements regarding the preservation and disclosure of records related to incidents of restraint or seclusion in public education programs which required updates to OAR 581-021-0556.

This is the first read of this proposed draft rule subsequent to the passage of SB 1024.

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

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

### POLICY ISSUE OR CONCERNS

The major feedback that ODE received on this proposed draft rule centered on definitions of terms, parental involvement, and student confidentiality. The below chart summarizes key policy issues or concerns ODE heard from the field, ODE's Rules Advisory Committee, partners, and from individual members of the public through statements submitted during the ongoing engagement process for DRAFT OAR 581-021-0556.

Feedback Received DRAFT Rule Revision 581-021-0556	
<i>Policy Issue or Concern Raised</i>	<i>Action on Feedback Received</i>
<b>Definitions:</b> <ol style="list-style-type: none"><li><b>Timelines</b> - Draft definition of "immediately".</li><li><b>Records Disclosure (photos, audio, video)</b> Draft definition of "disclose".</li></ol>	<b>Addressed in Rule and Guidance</b> <ul style="list-style-type: none"><li>Adjusted draft rule to include definitions of both "immediately" and "disclose" consistent with input received.</li><li>Ensured that ODE's revised restraint and seclusion guidance and sample forms addressed issues raised.</li></ul>

# Oregon State Board of Education

December 7, 2023

AGENDA ITEM: 581-021-0556: Procedures Regarding Restraint and Seclusion

<p><b>Parental Involvement</b></p> <ul style="list-style-type: none"> <li>● Feedback on an initial version of the draft OAR noted that it would be helpful for the rule to more clearly articulate that the parent has the right to attend the debriefing meeting.</li> <li>● Initial feedback also shared concerns about addressing instances where the parent could not attend the debriefing meeting that is statutorily required to occur within two days.</li> </ul>	<p><b>Addressed in Rule and Guidance</b></p> <ul style="list-style-type: none"> <li>● Added section 4 (a) to include language that the parent or guardian of the student must be invited to attend the debriefing meeting.</li> <li>● Added section 4 (d) to include that the parent or guardian has the right to request another meeting in the event they were unable to attend the debriefing meeting that was required to be held within two school days of the restraint or seclusion incident.</li> <li>● Ensured that ODE’s revised restraint and seclusion guidance and sample forms addressed issues raised.</li> </ul>
<p><b>Student Confidentiality</b></p> <p>ODE received input that making a copy of a video available to parents is concerning when other students are involved. Due to privacy laws, the other students’ parents could claim the public education program violated their child’s right to confidentiality under FERPA by showing the video to other parents. One commenter shared that it “is a real sticky mess that districts are liable for with no clear support for protection against lawsuits from ODE or the state government.”</p>	<p><b>Addressed in Rule</b></p> <p>ODE revised the language in the proposed draft OAR to reflect its understanding of FERPA’s protections for eligible students.</p> <p>When a video is an education record of multiple students, in general, FERPA requires the educational agency or institution to allow, upon request, an individual parent of a student (or the student if the student is an eligible student) to whom the video directly relates to inspect and review the video. FERPA generally does not require the educational agency or institution to release copies of the video to the parent or eligible student. (<a href="#">FAQs on Photos and Videos under FERPA   Protecting Student Privacy</a> and <a href="#">If a video is an education record for multiple students, can a parent of one of the students or the eligible student view the video?   Protecting Student Privacy</a>)</p>

## EQUITY IMPACT ANALYSIS

ODE seeks to proactively navigate equity initiatives that interrupt and eliminate harmful power dynamics that are endemic in Oregon’s education system. Our initiatives are driven by deep and ongoing engagement with the lived experiences of our students and families so that we can provide intentional structures, practices, and policies that uphold their intersecting identities, honor their strengths, and meet their needs. Our mission is to create an equitable education system centered in justice, relationships, and healing to ensure that every student can achieve their highest potential.

# Oregon State Board of Education

December 7, 2023

AGENDA ITEM: 581-021-0556: Procedures Regarding Restraint and Seclusion

Students with disabilities and students from other historically underserved groups tend to experience a higher rate of restraint and seclusion in public education programs than other student groups. For example, according to the newly released [Civil Rights Data](#) (November 15, 2023), during the 2021-22 school year, approximately 52,800 K-12 students were restrained and/or placed in seclusion at schools nationally. Students with disabilities were subjected to restraint and seclusion at rates that far exceeded those of other students. Specifically, students with disabilities protected by and served through the Individuals with Disabilities Education Act (IDEA) represented 14 percent of students enrolled in public schools nationally yet represented 81 percent of all students restrained and 75 percent of all students secluded. African American/Black students represented 15 percent of students enrolled in public schools nationally yet represented 21 percent of all students restrained and 19 percent of all students secluded. Finally, boys represented 51 percent of students enrolled in public schools nationally yet represent 83 percent of all students restrained and 82 percent of all students secluded.

These disparities raise the question as to whether restraint or seclusion are being imposed in discriminatory ways. The disproportionate use of restraint and seclusion may violate federal laws that prohibit discrimination, including the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 (Section 504). The use of restraint or seclusion on students has been prone to misapplication and abuse. The misuse of restraint and seclusion exacerbates existing inequities.

The updated rule, corresponding guidance, and sample forms provide further clarity and assistance to the field regarding when restraint and seclusion are appropriate techniques to implement with students. This additional clarity could reduce overall incidences of restraint and seclusion, thus leading to a corresponding reduction in opportunity gaps, access gaps, worthiness gaps and other inequities for both students with disabilities and students from groups that systems have historically and currently marginalized and underserved.

## **FISCAL ANALYSIS**

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Restraint and seclusion requirements in ORS already require Department FTE to support effective implementation. Department staff is prioritizing this content to assure implementation best practices. Associated implementation activities include revising Oregon Administrative Rules, revising ODE's Restraint and Seclusion Technical Assistance Manual, updating sample forms, and developing and providing statewide professional development.

Public education programs will need to update their school board policies and professional development on this topic to comply with this rule and other associated recently passed legislation. Public education programs will be required to comply with the annual reporting requirements on Serious Bodily Injury within the Oregon Restraint and Seclusion Incidents Collection, as well as the new associated immediate reporting requirements.

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

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If the Board approves these recommendations, there will be more specific guidance to the field regarding implementation of restraint and seclusion statutes in Oregon public education programs.

# Oregon State Board of Education

December 7, 2023

AGENDA ITEM: 581-021-0556: Procedures Regarding Restraint and Seclusion

If the Board rejects the recommendations, then the Department will craft a revised version of the rules for future Board consideration. In this situation, the Department will not be able to give more specific guidance on areas of the law requiring further clarification until revised rules are in place.

## 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 OAR 581-021-0556: Procedures Regarding Restraint and Seclusion

[Senate Bill 1024](#)

DRAFT: 581-021-0556

Procedures Regarding Restraint and Seclusion

(1) Each entity that has jurisdiction over a public education program must establish procedures for the public education program to follow after an incident involving the use of restraint or seclusion.

(2) Following an incident involving the use of restraint or seclusion, the following must be provided to a parent or guardian of the student:

(a) Verbal or electronic notification of the incident by the end of the school day when the incident occurred.

(b) Written documentation of the incident within 24 hours of the incident that provides:

(A) A description of the restraint or seclusion, including:

(i) The date of the restraint or seclusion;

(ii) The times when the restraint or seclusion began and ended; and

(iii) The location of the restraint or seclusion.

(B) A description of the student's activity that prompted the use of restraint or seclusion.

(C) The efforts used to de-escalate the situation and the alternatives to restraint or seclusion that were attempted.

(D) The names of the personnel of the public education program who administered the restraint or seclusion.

(E) A description of the training status of the personnel of the public education program who administered the restraint or seclusion, including any information that may need to be provided to the parent or guardian under subsection (3) of this rule.

(c) Timely notification of a debriefing meeting to be held and of the parent's or guardian's right to attend the meeting.

(d) Immediate, written notification of the existence of ~~of a record described in subsection (9) of this section~~ any records related to an incident of restraint or seclusion, including photos or audio or video recording.

(e) For purposes of this subsection, "immediate" means to act as soon as possible without undue delay, but in no case later than within 24 hours of the incident.

(3) If the personnel of the public education program who administered the restraint or seclusion had not received training from a program approved by the Department of Education, as required and in accordance with OAR 581-021-0563, the administrator of the public education program shall ensure that a parent or guardian of the student and the district superintendent or, if the public education program is 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, the person who oversees the administration of the program, receive written notification of:

(a) The lack of training; and

(b) The reason the restraint or seclusion was administered by a person without training.

(4) A debriefing meeting related to the use of restraint or seclusion must be held within two school days of the incident

~~(a) and~~ The parent or guardian of the student must be invited to attend.

(b) The meeting must include all personnel of the public education program who were involved in the incident, and any other appropriate personnel.

(c) Written notes must be taken of the debriefing meeting, and a copy of the written notes must be provided to a parent or guardian of the student.

(d) The parent or guardian has the right to request another meeting in the event they were unable to attend the debriefing meeting that was required to be held within two school days of the restraint or seclusion incident.

(5) If a student is involved in five incidents in a school year involving restraint or seclusion, a team consisting of personnel of the public education program and a parent or guardian of the student must be formed for the purposes of reviewing and revising the student's behavior plan and ensuring the provision of any necessary behavioral supports.

(6) If serious bodily injury or death of a student occurs in relation to the use of restraint or seclusion,  
(a) Oral notification of the incident must be provided immediately to a parent or guardian of the student and to the Department of Human Services; and

(b) Written notification of the incident must be provided to the Department of Human Services within 24 hours of the incident.

(7) If serious bodily injury or death of personnel of the public education program occurs in relation to the use of restraint or seclusion, written notification of the incident must be provided to the following individuals within 24 hours of the incident:

(a) The district superintendent, to the Superintendent of Public Instruction and, if applicable, the union representative for the affected party; or

(b) If the public education program is 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, the person who oversees the administration of the program and, if applicable, the union representative for the affected party.

(8) A public education program shall maintain a record of each incident in which injuries or death occurs in relation to the use of restraint or seclusion.

(9)(a) A public education program shall preserve, and may not destroy, any records related to an incident of restraint or seclusion, including an audio or video recording. The records must be preserved in the original format and without any alteration.

(b) The public education program shall review any audio or video recording preserved under this subsection in its original format and without any alteration at the debriefing meeting required to be held within two school days of the incident. The parent or guardian must be invited to the debriefing meeting at which the audio or video recording will be reviewed. The audio or video shall be reviewed in its entirety.

~~described in subsection (4) of this section.~~

(10)(a) At the request of a student's parent or guardian, a public education program shall disclose records preserved under this section to the parent or guardian. To the extent practicable without altering the meaning of the record, the public education program shall segregate or redact from a record disclosed under this paragraph any personally identifiable information of other students. If the public education program is unable to segregate or redact personally identifiable information of other students without altering the meaning of the record, the public education program shall disclose the record to the student's parent or guardian in its original format and without any alteration.

(b) If the department is investigating the incident of restraint or seclusion as suspected child abuse, at the request of the department, the public education program shall disclose to the department or the

department's designee any records preserved under this section that are relevant to the department's investigation. The public education program shall disclose any record under this paragraph in its original format and without any alteration.

10 (c) For purposes of this subsection, "disclose" means to inform the student's parent or guardian that the record exists; that the record in its original format and without alteration will be available for review by the parent or guardian privately and in the debriefing meeting; and that a copy of the record will be provided to the student's parent or guardian upon request in its original and unaltered form except to the extent that a redaction is needed to protect the personally identifiable information of another student.

~~(9)~~(11) Pursuant to ORS 161.205 and 339.250, an individual who is a teacher, administrator, school employee or school volunteer may use reasonable physical force upon a student when and to the extent the application of force is consistent with ORS 339.285 to 339.303 and OAR 581-021-0553.

~~(12)~~ (10) District school boards shall adopt written policies to implement restraint and seclusion procedures consistent with and as indicated in ORS 339.285 to 339.308 and OARs 581-021-0550 to 581-021-0570, and shall inform teachers, administrators, school employees and school volunteers of those policies.

Statutory/Other Authority: ORS. 326.051

Statutes/Other Implemented: ORS 339.285 - 339.303

History:

[ODE 145-2019, amend filed 10/24/2019, effective 10/24/2019](#)

[ODE 11-2019, amend filed 03/25/2019, effective 03/25/2019](#)

ODE 15-2014, f. & cert. ef. 3-4-14

ODE 13-2014, f. & cert. ef. 2-19-14

ODE 12-2012, f. 3-30-12, cert. ef. 5-1-12



OAR 581-021-0556

186

# Procedures Regarding Restraint and Seclusion

Tenneal Wetherell and Lisa Joy Bateman

# The 2023 Legislative Session

## Enacted Restraint and Seclusion Legislation



Oregon Department of Education

- [SB 283](#) - Establishes the Safe School Culture Grant program to develop a network of instructors who are certified in nonviolent crisis intervention methods to ensure that, for every 50 students in a school district or an education service district (ESD), at least one staff person of the district or ESD is certified.
- [SB 577](#) - Modifies language in ORS 339.250: Duty to Comply. This modifies when the use of force upon a minor child or student is justifiable and not criminal, further banning corporal punishment in schools and by parents.<sup>187</sup>
- [SB 790](#) - Modifies definition of “abuse” for purposes of child abuse to include violations around the use of restraint and seclusion on students.
- [SB 1024](#) - Modifies provisions regarding retention of records of incidents involving the use of restraints or seclusion of children in care and students in public education programs.

# Why OAR 581-021-0556

## Procedures Regarding Restraint and Seclusion?

[SB 1024](#) amends ORS [339.294](#) and requires updates to OAR [581-021-0556](#).

Under SB 1024, a public education program must preserve all records associated with an incident of restraint or seclusion, including audio or video recordings. Public education programs are required to keep these records in their original format and may not alter them in any way. A required debriefing meeting must occur within two days of any incident involving restraint or seclusion; under SB 1024, the public education program must review any preserved audio or video recordings during the required debriefing meeting.

188

### **Existing Requirements Prior to SB 1024:**

- Verbal or electronic parent/guardian notification of the incident by the end of the school day when the incident occurred.
- Written documentation of the incident within 24 hours and timely notification of a debriefing meeting to be held and of the parent's or guardian's right to attend.
- The debriefing meeting must be held within two school days of the incident. The debrief meeting must include all personnel of the public education program who were involved in the incident and any other appropriate personnel. Written meeting notes must be taken. A copy of the written meeting notes must be provided to the parent or guardian.

# Discretion to Adopt

The proposed revisions align with SB 1024 requirements. The Board lacks discretion over mandated changes due to statutory elements. However, additional discretionary elements are introduced beyond SB 1024's minimum requirements.

## 1. Definition of “Immediately”:

- Board discretion in determining timing and method for parent/guardian notification.
- Clarity in the term “immediate” aids school districts in adhering to notification timelines.

189

## 2. Parental Participation:

- Board discretion in defining parental involvement, exceeding SB 1024 requirements.
- Provisions for debrief meeting and parent-requested additional meetings within two school days post-incident.

## 3. Definition of “Disclose”:

- Further definition aligns with FERPA.
- Ensures compliance with FERPA’s student privacy protection.

# Equity Impact: Restraint & Seclusion in Education

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## **Disproportionate Impact:**

- Students with disabilities and historically underserved groups experience higher rates of restraint and seclusion in public schools.
- Data shows alarming disparities in the use of these measures among different student demographics.
- Disproportionate use may violate federal anti-discrimination laws (ADA and Section 504).
- Misuse of these techniques exacerbates existing inequities.

190

## **Role of Updated Rules and Guidance:**

- New rules, guidance, and forms aim to clarify appropriate use of restraint and seclusion.
- Clarity could reduce these incidents, bridging gaps in opportunity and access for marginalized student groups.

While this rule does not explicitly require inclusive practices, the Department requires approved training programs to prevent restraint and seclusion to include components that take into account different communication styles within various communities, such as implicit bias awareness, trauma-informed approaches, and inclusive language and communication.

# Rule Revision 581-021-0556

The engagement process included initial engagement sessions during the Fall of 2023 with the following groups:

- 175 + special education directors
- Oregon superintendents and principals
- COSA Fall Special Education Conference participants
- X - formerly known as Twitter - users through a shared link to give input on the draft rule
- Oregon Education Association
- ODE Office of Indian Education
- Oregon's Federally-Designated Parent Organizations: FACT and CODSN
- ODE Rules Advisory Committee

191

Rule has changed substantially, due to engagement feedback. Individuals gave input and feedback on the first draft of the rule and a second version using [this survey](#).

# DRAFT Rule 581-021-0556

<p><b>Definitions:</b></p> <ol style="list-style-type: none"> <li>1. <b>Timelines</b> - Draft definition of “immediately”.</li> <li>2. <b>Records Disclosure (photos, audio, video)</b> Draft definition of “disclose”.</li> </ol>	<p><b>Addressed in Rule and Guidance</b></p> <ul style="list-style-type: none"> <li>• Adjusted draft rule to include definitions of both “immediately” and “disclose” consistent with input received.</li> <li>• Ensured that ODE’s revised restraint and seclusion guidance and sample forms addressed issues raised.</li> </ul>
<p><b>Parental Involvement</b></p> <ul style="list-style-type: none"> <li>• Feedback on an initial version of the draft OAR noted that it would be helpful for the rule to more clearly articulate that the parent has the right to attend the debriefing meeting.</li> <li>• Initial feedback also shared concerns about addressing instances where the parent could not attend the debriefing meeting that is statutorily required to occur within two days.</li> </ul>	<p><b>Addressed in Rule and Guidance</b></p> <ul style="list-style-type: none"> <li>• Added section 4 (a) to include language that the parent or guardian of the student must be invited to attend the debriefing meeting..</li> <li>• Added section 4 (d) to include that the parent or guardian has the right to request another meeting in the event they were unable to attend the debriefing meeting that was required to be held within two school days of the restraint or seclusion incident.</li> <li>• Ensured that ODE’s revised restraint and seclusion guidance and sample forms addressed issues raised.</li> </ul>

# DRAFT Rule 581-021-0556

## Student Confidentiality

ODE received input that making a copy of a video available to parents is concerning when other students are involved. Due to privacy laws, the other students' parents could claim the public education program violated their child's right to confidentiality under FERPA by showing the video to other parents. One commenter shared that it "is a real sticky mess that districts are liable for with no clear support for protection against lawsuits from ODE or the state government."

## Addressed in Rule

ODE revised the language in the proposed draft OAR to reflect its understanding of FERPA's protections for eligible students.

When a video is an education record of multiple students, in general, FERPA requires the educational agency or institution<sup>193</sup> to allow, upon request, an individual parent of a student (or the student if the student is an eligible student) to whom the video directly relates to inspect and review the video. FERPA generally does not require the educational agency or institution to release copies of the video to the parent or eligible student. ([FAQs on Photos and Videos under FERPA | Protecting Student Privacy](#) and [If a video is an education record for multiple students, can a parent of one of the students or the eligible student view the video? | Protecting Student Privacy](#))

# DRAFT Rule 581-021-0556

As this is a update of a rule resulting from new legislation, ODE is grateful to be presenting to the State Board of Education. We plan to continue engagement and consider ongoing feedback during the rulemaking process.

Engagement on draft rule revision 581-021-0556	Start Date of Sept 14 - present
Rules Advisory Committee: Presentation	Nov 2 <span style="float: right;">194</span>
State Board of Education: 1 <sup>st</sup> Reading	Dec 7 - Today
Scheduled Proposed OAR Hearing	Dec 8
Rules Advisory Committee: Follow-up	Jan 4
State Board of Education: 2 <sup>nd</sup> Read/Possible Adoption	Feb 15
Rules filed with Secretary of State; Effective Date	Feb 2024 <span style="float: right;">9</span>



# Questions?

195

## 2023 Public Charter Schools OAR Revisions

10/27/2023 KP

### [581-026-0100](#)

#### Development and Execution of a Charter

- (1) The State Board or a school district board that approve a proposal will be considered the sponsor of the public charter school defined in the proposal.
- (2) An applicant whose proposal has been approved by the sponsor must, in cooperation with the sponsor, prepare and execute a charter that addresses, at a minimum, the information that is included in the proposal and:
  - (a) State any reasonable pre-opening requirements or conditions for the public charter school to ensure they meet all health, safety, and other legal requirements prior to opening and are prepared to open smoothly;
  - (b) State how the public charter school shall receive any state and federal funds distributed to districts other than the negotiated percentage of the charter school rate as required by ORS 338.155;
  - (c) Establish the performance standards under which the public charter school will be evaluated, using objective and verifiable measures of student achievement as the primary measure of school quality;
  - (d) Define the sources of academic data that will form the evidence base for ongoing and renewal evaluation;
  - (e) Include expectations for appropriate access, education support services, and coordination with the district in which the public charter school is located for students who may qualify for additional education services; and
  - (f) Include clear, measurable performance standards to judge the effectiveness of mission-specific performance measure and metrics that credibly demonstrate the public charter school's success in fulfilling its mission and serving its students.
- (3) Notwithstanding subsection (2), an applicant and sponsor may agree to change elements of the proposal prior to including them in the charter and may agree to exclude elements of the proposal from the charter or to include new elements in the charter by mutual agreement of the school district board and the applicant.
- (4) An initial charter may be in effect for no more than five years and may be renewed by the sponsor.
- (5) The first renewal of a charter must be for the same number of years as the initial charter.
- (6) Subsequent renewals of a charter must be for a minimum of five years but may not exceed 10 years.
- (7) A sponsor and the charter school governing body may amend a charter at any time by joint agreement.
- (8) A public charter school must submit a copy of the executed or amended charter to the Oregon Department of Education.**
  - (a) Upon executing an initial charter the public charter school must also submit to the Oregon Department of Education evidence of the charter school's governing board state and federal nonprofit status.**

Statutory/Other Authority: ORS 326.051

Statutes/Other Implemented: Ch. 200 & OL 1999 (SB 100)

History:

[ODE 30-2018, amend filed 09/26/2018, effective 09/26/2018](#)

Renumbered from 581-020-0311, ODE 10-2014, f. & cert. ef. 2-19-14

ODE 13-2000, f. & cert. ef. 5-3-00

### [581-026-0305](#)

#### Virtual Public Charter School Student Enrollment

- (1) As used in this rule:
  - (a) "Notice" means a written notice that is mailed, faxed, e-mailed or personally delivered by the party required to provide the notice.
  - (b) "Parent" means parent, legal guardian or person in parental relationship as defined in ORS 339.133.
  - (c) "Reside in a school district" means the school district in which the student's parent resides.

## 2023 Public Charter Schools OAR Revisions

- (d) "School district" means a school district in which more than three percent of the students who reside in the school district are enrolled in one or more virtual public charter schools.
- (e) "Student" means a student who seeks to enroll in a virtual public charter school on or after August 2, 2011.
- (f) "Virtual public charter school" is as that term is defined in OAR 581-026-0300.
- (2) A parent must provide notice to the school district in which the parent resides that the parent intends to enroll a student in a virtual public charter school. Upon receiving the notice, a school district may choose to do nothing further until receiving notice the student is enrolled in the school or if more than three percent of the students who reside in the school district are enrolled in virtual public charter schools not sponsored by the district, the district must provide notice to the parent that the district:
- (a) Approves the student for enrollment in the virtual public charter school; or
- (b) Does not approve the student for enrollment in the virtual public charter school.
- (3) A school district that does not approve a student for enrollment in a virtual public charter school must provide the parent and student the following:
- (a) and provide a copy of this rule and OAR 581-026-0310, to the student
- (b) and a list of two or more other online options available to the student, and
- (c) The percentage of students in the school district that attend virtual public charter schools that are not sponsored by the school district, based on the most recent calculation at the time the intent to enroll was received by the district.
- (34) If a parent does not receive a notice of approval or disapproval from a school district under subsection (2) of this rule within 1410 days of sending the notice of intent to enroll to the district, the student shall be deemed approved for enrollment by the district.
- (45) A parent may appeal a decision of a school district to not approve a student for enrollment to the State Board of Education pursuant to OAR 581-026-0310.
- (56) A virtual public charter school may only enroll a student if the school receives evidence the student's parent has notified the resident school district of the student's intent to enroll in the school. A school shall consider any of the following as evidence the resident school district received adequate notice:
- (a) A copy of the notice of intent to enroll sent to the district by the parent;
- (b) A notice of approval for enrollment from the district; or
- (c) A copy of a final order issued by the Superintendent pursuant to OAR 581-026-0310 that finds that the student is approved for enrollment in the school.
- (67) A virtual public charter school shall send a list of students to each school district in which a student who is enrolled in the school resides. The list shall be sent monthly when the virtual school is in session.
- (a) The first list of the school year must be sent on or before the fifteenth day of school for the virtual public charter school.
- (a)(b) Lists must minimally include the student identification number, address, grade and must be in a tabular data format compatible with widely used spreadsheet software, allowing for organized data presentation and manipulation through rows and columns.
- (78) If a school district chooses to not approve a student for enrollment in a virtual public charter school under this section, the district must have a policy that at a minimum includes the following:
- (a) The ~~annual, semiannual or other~~ dates that the school district used to calculate whether or not three percent or more of the students who reside within the district are enrolled in a virtual public charter school.
- (b) The description of the data used by the school district to calculate the number of students who reside in the district and the number of students who are enrolled in virtual public charter schools. A school district is only required to use data that is reasonably available to the district including but not limited to:
- (A) The number of students enrolled in the schools of the school district;
- (B) The number of students enrolled in virtual and non-virtual public charter schools located in the school district;
- (C) The number of students enrolled in virtual public charter schools not sponsored by the district;

## 2023 Public Charter Schools OAR Revisions

(D) The number homeschooled students who reside within the district and who have registered with an education service district; and

(E) The number of students enrolled in private schools located within the school district.

Statutory/Other Authority: ORS 338.025

Statutes/Other Implemented: ORS 338.125

History:

Renumbered from 581-020-0342, ODE 10-2014, f. & cert. ef. 2-19-14

ODE 19-2011, f. & cert. ef. 12-15-11

ODE 11-2011(Temp), f. & cert. ef. 8-23-11 thru 2-19-12

### [581-026-0310](#)

#### **Virtual Public Charter School Student Enrollment Appeal Procedure**

(1) The State Board of Education delegates to the Superintendent of Public Instruction or designee all administrative functions necessary or reasonable in order to conduct a timely appeal process. This delegation includes issuing a final order. An order issued by the Superintendent or designee shall be considered an order in other than a contested case under ORS 183.484.

(2) A parent may appeal a decision of a school district to not approve enrollment of a student in a virtual public charter school under OAR 581-026-0305 by sending a notice of appeal in writing by mail, fax or e-mail or by personally delivering a copy to the Superintendent of Public Instruction. The notice must be received by the Superintendent within 10 days of the date on which the parent received notice from the district, the district did not approve enrollment of a student in a virtual public charter school. The parent must also provide a copy of the notice of appeal and any other supporting documents included with the notice to the school district prior to sending the notice of appeal to the Superintendent or within 24 hours of when the parent sent or delivered the notice of appeal to the Superintendent.

(3) The notice of appeal must include:

(a) The parent and student's name and contact information.

(b) The name of the resident school district.

(c) The name of the virtual public charter school in which the student wants to enroll.

(d) A copy of the notice of intent to enroll provided by the parent to the school district.

(e) A copy of the notice of disapproval of enrollment received by the parent from the school district.

(f) The reason for the appeal and any supporting documents including evidence the parent would like considered as part of the appeal.

(4) A school district upon receiving a notice of appeal from a parent may file a reply to the notice with the Superintendent. The reply must be received by the Superintendent within 10 days of when the school district received a copy of the notice of appeal from the parent. The school district shall provide a copy of the reply and any supporting documents included with the reply to the parent.

(5) The Superintendent shall overturn the decision of the school district to not approve the enrollment of the student if the Superintendent determines that:

(a) The school in which the student intends to enroll is not a virtual public charter school.

(b) The resident school district does not have more than three percent of the resident students of the district enrolled in virtual public charter schools not sponsored by the district.

(c) The parent did not receive the notice of disapproval from the district within **1410** days of when the parent sent the district the notice of intent to enroll.

(6) The Superintendent may consider the following in deciding whether to uphold or overturn a decision of the school district to not approve the enrollment of a student:

(a) The health and safety of the student.

## 2023 Public Charter Schools OAR Revisions

- (b) The student's educational needs and interests.
- (c) The availability of other online options to the student.
- (d) Any other information that the Superintendent deems relevant to the decision.
- (7) The Superintendent shall issue a final order within ~~30~~14 days of receiving the notice of appeal from the parent. The Superintendent shall send a copy of the final order to the parent, the school district and the virtual public charter school.

Statutory/Other Authority: ORS 338.025

Statutes/Other Implemented: ORS 338.125

History:

Renumbered from 581-020-0343, ODE 10-2014, f. & cert. ef. 2-19-14

ODE 19-2011, f. & cert. ef. 12-15-11

ODE 11-2011(Temp), f. & cert. ef. 8-23-11 thru 2-19-12

### [581-026-0400](#)

#### Process to Renew Charter

- (1) A public charter school governing body must request renewal of the charter (contract) by the sponsor in writing at least 180 days before expiration of the charter.
- (2) When a sponsor has received a written request from a public charter school governing body, the sponsor must schedule and hold a public hearing on the renewal request within 45 days from the receipt of the request for renewal.
- (3) Within 30 days after the public hearing, the sponsor must either:
  - (a) Renew the charter; or
  - (b) State in writing the reasons for denying the renewal of the charter.
- (4)(a) A sponsor must base its decision to renew or not renew a charter on a good faith evaluation of whether the charter school:
  - (A) Is in compliance with state and federal laws;
  - (B) Is in compliance with the terms of the prior charter;
  - (C) Is meeting or working toward meeting the student performance goals and agreements specified in the charter or any other written agreements between the sponsor and the public charter school governing body;
  - (D) Is fiscally stable and evidence that a sound financial management system described in the proposal submitted under ORS 338.045 and incorporated into the written charter was used; and
  - (E) Is in compliance with any renewal criteria specified in the previous charter, if any.
- (b) As used in this section, "good faith evaluation" means an evaluation of all criteria required by this section resulting in a conclusion that a reasonable person would come to who is informed of the law and the facts before that person.
- (5) The sponsor must base the evaluation described in subsection (4) of this rule primarily on a review of the public charter school's annual performance reports, annual audit of accounts and annual site visit and review as required by ORS 338.095 and any other information mutually agreed upon by the public charter school governing body and the sponsor.
- (6)(a) If the sponsor renews the charter, the sponsor and public charter school governing body shall negotiate in good faith a new charter within 90 days after the date on which the sponsor approved the renewal of the charter, unless both parties agree to an extension of time.
- (b) If the sponsor and the charter school governing body have not executed a new charter agreement within 90 days after the date on which the sponsor approved the renewal of the charter or an alternative date agreed to by both parties, the expiring charter shall remain in effect until a new charter is negotiated.

## 2023 Public Charter Schools OAR Revisions

(c) As used in this section, "negotiate in good faith" means to negotiate with an honest exchange of the facts of the matters under consideration with a view to obtaining agreement of each of the parties involved.

(7) If the sponsor does not renew the charter, the public charter school governing body may address the reasons for nonrenewal and resubmit its request to the sponsor within 30 days after the date on which the sponsor notified the public charter school governing body of the decision not to renew the charter. If a sponsor receives a revised request under this section, the sponsor shall review the request using the process required by subsections (2) to (6) of this rule. A public charter school governing board may only submit a revised request once under this section unless otherwise specified by the sponsor.

(8) Notwithstanding subsections (1) to (7) of this rule, a sponsor and a public charter school governing body may agree in the charter of the school to a timeline for renewing the charter that is different from the timeline required by subsections (1) to (7) of this rule.

(9) The State Board of Education delegates to the Superintendent of Public Instruction or designee all administrative functions necessary or reasonable in order to determine if the charter of a school sponsored by the state board should be renewed. The Superintendent or designee shall follow the procedures and timelines required by this rule. This delegation to the Superintendent or designee includes, but is not limited to:

(a) Determining the form, contents, and timelines of the renewal;

(b) Determining the records required for determining the renewal and ordering the production of those records from the public charter school governing body and establishing timelines for the production of those records;

(c) Requiring the charter school governing body to respond to written or oral inquiries related to the sponsorship;

(d) Delegating the sponsorship function to Department of Education staff or a hearings officer to conduct a hearing and to issue a proposed order; and

(e) Issuing a final order.

(10) If the sponsor does not renew the charter based on the revised request for renewal submitted under subsection (7) of this rule, the public charter school governing body may:

(a) If the sponsor is a school district, appeal the decision of the sponsor to the State Board of Education under OAR 581-026-0405.

(b) If the sponsor is the State Board of Education, seek judicial review of the final order under ORS 183.484.

[\(11\) A public charter school must submit a copy of the renewed charter to the Oregon Department of Education.](#)

Statutory/Other Authority: ORS 338.025

Statutes/Other Implemented: ORS 338.065

History:

Renumbered from 581-020-0359, ODE 10-2014, f. & cert. ef. 2-19-14

ODE 35-2013, f. & cert. ef. 12-18-13

ODE 11-2010, f. & cert. ef. 6-30-10

Reverted to ODE 9-2008, f. & cert. ef. 3-21-08

ODE 15-2009(Temp), f. & cert. ef. 12-10-09 thru 6-8-10

ODE 9-2008, f. & cert. ef. 3-21-08

### [581-026-0600](#)

Public Charter School Facility Location

(1) As used in this rule:

(a) "Written notice" means written notice that is mailed, faxed, e-mailed or personally delivered by the party required to provide the written notice.

## 2023 Public Charter Schools OAR Revisions

(b) "Primary physical address of the public charter school" means the physical location of the public charter school campus located within the boundaries of the sponsoring district or the district in which the public charter school originally applied under ORS 338.045.

(c) "School-~~or facility~~" means a physical location that is owned, leased, or otherwise used by the public charter school where students receive instruction or educational services. As used in this rule, "school-~~or facility~~" or "tutoring or testing facility" does not include the student's home.

(2)(a) For public charter schools sponsored by a school district that establish schools or testing or tutoring facilities and facilities that are not located at the primary physical address of the charter school, the district shall retain all responsibility assigned to a sponsor by ORS Chapter 338 and OAR 581-026-0005 to 0515.

(b) Except as provided in subsection (2)(a) of this rule, if a public charter school is sponsored by the State Board of Education, the district in which the primary physical address of the public charter school is located shall retain the responsibilities assigned to a district by ORS 338.155 to 338.165 and described in a contract between the district and the public charter school.

(3) The public charter school must maintain student records, board records, employment records, and other school records at the primary physical address of the public charter school.

(4) The board of a school district that is not the sponsoring school district of the public charter school may file a complaint with the Superintendent of Public Instruction pursuant to Ch. 163, OL 2023 ORS 332.158(3) against the public charter school if:

(a) The public charter school opens or operates a school or tutoring or testing facility within the boundaries of that district; and

(b) The public charter school did not comply with the provisions of Ch. 163, OL 2023 ~~provide written notice to the district school board of use of the school or facility prior to the first day on which students will attend classes in the school or receive instruction at the facility; and~~

~~(c) The public charter school or facility was not already in operation on January 1, 2016.~~

(5) The complaint must be in writing and may be delivered by mail, fax or e-mail or by personally delivering a copy to the Superintendent of Public Instruction and must contain:

(a) The name of the school district making the complaint;

(b) The name and contact information of a member of the board or district staff person who will act as primary contact for the complaint;

(c) The name of the public charter school operating the school or tutoring or testing facility;

(d) The primary physical address of the public charter school operating the school or tutoring or testing facility;

(e) The physical address of the school or tutoring or testing facility being operated by the public charter school in the offended district; and

(f) A brief statement explaining the facts underlying the complaint.

(6) The school district board must provide written notice of the complaint by mail, fax, e-mail or personal delivery to the public charter school and the sponsoring district on the same date the complaint is provided to the superintendent.

(7) Upon receipt of the complaint the superintendent shall schedule a contested case hearing pursuant to ORS 183.413 to 183.470.

(8) Upon a finding that the public charter school has not complied with the provisions of Ch. 163, OL 2023 ~~operated a school or facility in the school district without providing the board of the school district written notice:~~

~~(a) The superintendent shall withhold State School Fund moneys due to the public charter school under ORS 338.155.~~

~~(b) The superintendent shall withhold moneys until the written notice is provided by the public charter school to the district school board, and a copy of the written notice is provided to the public charter school's sponsoring district and the superintendent.~~ (a) The superintendent may withhold SSF moneys due to the public charter school under ORS 338.155.

## 2023 Public Charter Schools OAR Revisions

(b) If the superintendent withholds moneys pursuant to paragraph (a) of this subsection, the superintendent shall withhold the moneys until the charter school governing body is in compliance or other date determined by the superintendent.

Statutory/Other Authority: ORS 338.025

Statutes/Other Implemented: ORS 332.158 & ch. 338

History:

[ODE 30-2018, amend filed 09/26/2018, effective 09/26/2018](#)

ODE 37-2016, f. & cert. ef. 7-18-16

# Oregon State Board of Education

December 7, 2023

AGENDA ITEM: Charter School Rules

<p><b>SUBJECT:</b> Public Charter Schools Division 26 Revisions: OAR 581-026-100, -0305, -0310, -0400 and -0600</p> <p><b>STAFF NAME &amp; OFFICE:</b></p> <p>OAR revisions to align timelines and requirements from new laws that passed in 2023. These OARs update virtual public charter school enrollment and appeal timelines and requirements for districts based on HB 3204. There are some revisions to align the rules with new language from SB 767. The Department also recommends updating requirements to ensure accurate reporting and data on charter school contracts.</p> <p><input type="checkbox"/> New Rule <input checked="" type="checkbox"/> Amend Existing Rule <input type="checkbox"/> Repeal Rule</p>	<p><input checked="" type="checkbox"/> <b>First Reading</b> <input checked="" type="checkbox"/> <b>Presentation</b> <input type="checkbox"/> <b>No Presentation</b></p> <p><input type="checkbox"/> <b>Action</b> <input type="checkbox"/> <b>Temp Rule</b> <input type="checkbox"/> <b>Presentation</b> <input type="checkbox"/> <b>No Presentation</b></p>
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## BACKGROUND

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During the 2023 legislative session, two bills passed that change requirements and timelines for public charter schools. These laws require OAR revisions to ensure alignment with new statutory language.

### HB 3204 – Virtual Public Charter School Enrollment and Appeals: OAR 581-026-0305 & -0310

Since 2011, students who wish to enroll in a virtual public charter school must provide notice of their intent to their resident district. If the district has more than 3% of their student population already enrolled in virtual public charter schools not sponsored by the district, the district may have a policy to deny the student enrollment. Districts that deny enrollment must calculate their percent regularly and provide specific information to the family. Families may appeal district denials to the State Board. ODE processes these appeals and issues final orders upholding or overturning district decisions.

The 2023 law requires school districts that deny enrollment to provide information about the percentage based on the most recent calculation at the time the intent to enroll was received. The law also specifies that a district must calculate at least twice a year. And finally, the law now includes shorter timelines for the district to respond to notices (from 14 days to 10 days) and for the Department to issue final orders (from 30 days to 14 days).

The proposed rule revisions align the timelines and requirements from the new law into the OAR. In addition, the Department recommends adopting rule language that requires virtual public charter schools to submit monthly enrollment reports to districts in a standard format and within the first month of the school year. This will support districts in accurate and timely calculations.

# Oregon State Board of Education

December 7, 2023

AGENDA ITEM: Charter School Rules

## **SB 767 – Public Charter School Facility Location: OAR 581-026-0600**

Since 2015, public charter schools have been able to operate a “school or facility” in other district boundaries. This practice is most typical with virtual public charter schools, but more non-virtual charter schools have been opening additional facilities or proposing to open new schools in other districts. The previous law did not differentiate between virtual and non-virtual. The previous law only required notice to be provided to the other district. A non-sponsor district could file a complaint with ODE and funding for the charter school could be withheld until the charter school has provided notice.

The 2023 law differentiates between virtual and non-virtual public charter schools. Virtual public charter schools are still required to provide written notice to the non-sponsoring district, but are now limited to operating “tutoring or testing facilities.” Non-virtual public charter schools may open “schools” in non-sponsor district boundaries, but are now required to receive written permission from the non-sponsor district. The law includes some scenarios where charter schools chartered or operating prior to specific dates may be exempt from the new requirement for written permission. It also requires that notice or permission must be provided upon each subsequent renewal. Further, the 2023 law allows the Superintendent of Public Instruction to withhold State School Fund moneys from the public charter school upon a complaint from a district and finding the charter school is not compliant with the requirements of the law.

The proposed rule revisions align the current OARs with the new language from the law and refer to the new law to minimize duplication.

## **Public Charter School Contracts and Nonprofit Status Submitted to ODE: OAR 581-026-0100 & -0400**

Public charter schools are approved by a sponsor for a specific contract term between three and ten years. The charter contract is the legal document that establishes a public charter school and authorizes the nonprofit to operate a public school in Oregon. The Oregon Department of Education is required to submit data to the US Department of Education annually that includes the start and end dates for each charter contract. When a public charter school is initially established and applies to the Department for an institution ID, the Department requires the charter contract to be submitted with the application. After the initial contract, most public charter schools do not send charter contracts upon renewal to ODE until staff make a formal request.

This proposed rule revision is intended to help elevate the importance of submitting charter contracts to the Department upon initial approval and at each renewal.

In addition, some public charter schools have not complied with the requirement to be organized as an Oregon and federal nonprofit corporation. It is the responsibility of the charter school governing board and the charter school sponsor to ensure compliance with this requirement. While it is rare for a public charter school to fail to comply or to lose its status, it can cause legal challenges for the charter school and sponsor district.

The proposed rule revision is intended to help ensure that this important formation requirement is met by each public charter school at least at the time of initial approval.

# Oregon State Board of Education

December 7, 2023

AGENDA ITEM: Charter School Rules

## Engagement

Department staff conducted a rulemaking engagement session on October 17, 2023. Of the 76 people who registered, 39 people participated in the meeting and discussed rule concepts. Feedback was overall supportive or neutral toward ODE’s rule concepts. Questions were raised about whether adding the new requirements in OAR 518-026-0100 and -0400 may create new opportunities for a sponsor to penalize a charter school if they do not comply with the submissions in a timely manner. One participant requested additional definitions regarding the charter school facility location.

## SUMMARY OF PREVIOUS BOARD ACTION

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This is the first time these proposed rule revisions have been to 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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These proposed rules raise three policy direction questions:

- 1. Should the rules further define “tutoring or testing facility”?**
  - a. Only a small percentage of engagement session participants were in favor of adding a definition. However, no suggestions were provided in support of a definition.
  - b. Many virtual public charter schools do not want any definition that may narrow how “tutoring or testing facility” can be interpreted.
  - c. ODE staff have not added a definition.
- 2. Should the rules attempt to clarify the conditions and exemptions for non-virtual charter schools locating a school in a non-sponsoring district boundary?**
  - a. The statute includes multiple layers of subparagraphs that describe the conditions that exempt certain non-virtual public charter schools from the requirement to receive written permission. One advocate has requested additional rule language to clarify these exemptions.
  - b. ODE staff have not added additional language to avoid duplicating the language from statute. After attempts to add language for clarity, the concern was that any additional language will add more layers and increase complexity.
- 3. Do the intended benefits of including explicit requirements for charter schools to submit documents to the Department outweigh the potential for penalization?**
  - a. It could be possible for a public charter school to be found out of compliance with state law for failure to submit a charter contract.

# Oregon State Board of Education

December 7, 2023

AGENDA ITEM: Charter School Rules

- b. Adding this requirement may not change behavior and may still require ODE staff to annually request updated documents.

## EQUITY IMPACT ANALYSIS

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### **SB 767 – Public Charter School Facility Location: OAR 581-026-0600**

The revised law and OAR will ensure that families denied enrollment in virtual public charter schools will get information faster so students can continue education faster.

### **HB 3204 – Virtual Public Charter School Enrollment and Appeals: OAR 581-026-0305 & -0310**

Equity impacts will vary by community. This law and OAR do safeguard a district from having a new charter school sponsored by a different district opening in their boundary without their permission.

### **Public Charter School Contracts and Nonprofit Status Submitted to ODE: OAR 581-026-0100 & -0400**

Improved data accuracy.

## FISCAL ANALYSIS

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No significant impact on the Department, school districts, or public charter schools.

## EFFECT OF A “YES” OR “NO” VOTE

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“YES” – OARs will be revised to align with laws from the 2023 session and public charter schools will be required to submit charter contracts and nonprofit documents to ODE.

“NO” – OARs will be out of alignment with laws from the 2023 session and public charter school will not be required to submit charter contracts or nonprofit documents to ODE.

## 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: [Public Charter Schools Division 26 Revisions: OAR 581-026-100, -0305, -0310, -0400 and -0600v](#)

# Oregon State Board of Education

December 7, 2023

AGENDA ITEM: Instructional Materials Adoption Criteria for Health Education (OAR 581-011-0065)

<p><b>SUBJECT:</b> Instructional Materials Adoption Criteria for Health Education(OAR 581-011-0065) <b>STAFF NAME &amp; OFFICE:</b> Alexa Pearson, Aujalee Moore, Suzanne Hidde, Sasha Grenier Office of Teaching, Learning, and Assessment</p> <p>Criteria for the selection and adoption of instructional materials for Health Education were developed by the ODE Health Education Specialist and Comprehensive Sexuality Specialist, and reviewed and revised by a health education criteria development committee. These criteria are being presented to the State Board of Education for approval.</p> <p><input type="checkbox"/> New Rule <input type="checkbox"/> Amend Existing Rule <input type="checkbox"/> Repeal Rule</p>	<p><input checked="" type="checkbox"/> <b>First Reading</b> <input checked="" type="checkbox"/> <b>Presentation</b> <input type="checkbox"/> <b>No</b> <b>Presentation</b></p> <p><input type="checkbox"/> <b>Action</b> <input type="checkbox"/> <b>Temp Rule</b> <input type="checkbox"/> <b>Presentation</b> <input type="checkbox"/> <b>No</b> <b>Presentation</b></p>
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## 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 health education was established for the years 2018-2025. The current health education content standards were adopted by the State Board in October 2023. The next phase in this process is for ODE to develop new adoption criteria to ensure that instructional materials align with the newly revised 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 and 2023 science instructional materials evaluation.

In October 2023, 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 health education to review, revise, and recommend the draft criteria attached to this docket. The 2023 Health Education Instructional Materials Criteria Committee used ODE’s criteria framework, as well as state and nationally developed health education criteria, to tailor and align Oregon’s instructional materials criteria to the adopted 2023 Oregon Health EducationStandards.

The draft adoption criteria for health instructional materials was supported by the committee and finalized on November 16, 2023. Upon adoption by the State Board, this criteria will be used in the evaluation of K-12 health education instructional materials submitted for adoption.

## SUMMARY OF PREVIOUS BOARD ACTION

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# Oregon State Board of Education

December 7, 2023

AGENDA ITEM: Instructional Materials Adoption Criteria for Health Education (OAR 581-011-0065)

The last criteria was presented in 2017. This is the first read for the updated criteria.

## 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 health education. Health Education works to center students' cultures, interests, values, and identities as they learn how to live healthy, safe, and flourishing lives as young people and adults, in relationships with one another, in communities, and in the world.

Health education is a cornerstone of educational equity. Health Education supports young people to gain age-appropriate knowledge and skills that foster healthy behaviors, empowered decision-making, and a holistic understanding of their role in promoting individual, family, and community safety and well-being. The Health Education Standards intentionally support instruction that affirms historically and currently underserved and underrepresented student populations to ensure an equitable opportunity for all students to feel included and to receive health information that is relevant to their individual and community identities, and develop skills that will serve them throughout their lives. The Health Education Standards reflect the goals of Every Student Succeeds Act (ESSA), the ODE Equity Stance and the Student Success Act (SSA) plans. Research shows that when health education is comprehensive, inclusive, skills-based, and scaffolded across grades it leads to improved school climate, individual academic achievement, and long lasting intergenerational benefits.

The instructional materials review criteria supports this vision for equitable access to health 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 health 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).

The Oregon Department of Education recognizes that student health and safety are the cornerstone of education and that all students are entitled to a high-quality educational experience, including instructional materials that are free from discrimination or harassment based on perceived race, color, religion, gender identity, sexual orientation, disability, or national origin, and without fear or hatred, racism or violence.

# Oregon State Board of Education

**December 7, 2023**

AGENDA ITEM: Instructional Materials Adoption Criteria for Health Education (OAR 581-011-0065)

## **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 Health education instructional materials that are aligned to the newly revised Health education standards.

A “no” vote will mean that the Oregon Department of Education and school districts will use previously State Board approved adoption criteria from 2017 for health education 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 Health Education Instructional Materials

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

Category 1, 2, and 3: Oregon Health– Grades K-5, 6-8, and 9-10

### Legal Requirements Section

#### 1. Basal Instructional Materials Criteria

The submitted materials must make up an organized system of instruction that provides opportunities for teaching the 2023 Health Education Standards, includes the eight topic areas, and addresses all dimensions of health (physical, mental, social, emotional, and environmental),

*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, 2025.

*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 Health Education Baseline Criteria [K-HS]

Criterion	Description	Metric 1	Metric 2	Metric 3	Metric 4
<b>Criterion 1.1</b> Alignment to Health Education Standards	Materials and instructional practices include regular opportunities to implement the Health Education standards throughout grade levels, including coverage of the topic-areas.	<p><b>Topic Areas</b></p> <p>Materials cover all topic areas included in the Oregon Health Education Standards , scaffolded across K-12, using language and approaches that are inclusive of race, gender, ability, and sexual orientation.</p> <p>Materials are comprehensive and define health as multidimensional, impacted by socio-ecological factors, and changing throughout the lifespan.</p>	<p><b>Skills-based</b></p> <p>Materials reflect skills-based instruction included in the Oregon Health Education Standards, to equip and empower students to make informed and critical decisions that impact their health and well-being throughout their lives.</p>	<p><b>Research-based and medically accurate</b></p> <p>Materials are grounded in medical and scientific accuracy and supported by peer-reviewed research and leading medical and public health professional organizations.</p> <p>Materials use qualitative and quantitative local, state and national data and studies to inform instruction.</p>	<p><b>Knowledge and skill progression</b></p> <p>Materials progress with rigor across the grades in both depth of knowledge and skill development.</p>
<b>Criterion 1.2:</b> Strengths-based approach	Adopts a strengths-based approach, centering on both individual and systemic protective factors that enrich and advance health and well-being, while refraining from value judgments regarding health choices, behaviors, and status.	<p><b>Self-efficacy</b></p> <p>Materials emphasize the development of critical thinking and positive skill building that empowers learners to make the best decisions for themselves based on their own values and goals.</p>	<p><b>Promoting Positive Norms and Behaviors</b></p> <p>Materials build on students' sense of self-worth and avoid fear- or shame-based instruction that rely on scare tactics, stereotypes, and/or disparaging messages about student, family, and community identities and health decisions.</p> <p>Materials promote positive individual and social health enhancing behaviors and social norms, beyond risk reduction, that support and encourage healthy and safe interactions, relationships, and help young people to thrive.</p>	<p><b>Community and Peer Connections</b></p> <p>Materials encourage students to identify their own individual, family, and community strengths, values, goals, and resources.</p>	<p><b>Trauma-informed</b></p> <p>Materials provide opportunities for educators to create safer learning environments, approach sensitive subjects with care, acknowledge that students may have personal experiences with the topic, and maximize opportunities for individual and collective wellness and healing.</p>

Criterion	Description	Metric 1	Metric 2	Metric 3	Metric 4
<b>Criterion 1.3:</b> Health literacy and analysis	Materials support a conceptual understanding of health literacy through knowledge and skills, and inspire critical analysis of a variety of cultural, historical, societal, and individual factors that influence health behavior.	<b>Active Health Literacy</b> Materials help students to access, comprehend, synthesize, and apply information that impacts their health.	<b>Data and Medical Accuracy Analysis</b> Materials include opportunities for students to analyze current data, trends, and information related to health outcomes and social determinants of health.	<b>Cultural Influences</b> Materials inspire critical analysis of a variety of family, cultural, societal, and individual factors that influence health behavior.	
<b>Criterion 1.4</b> Comprehensive Sexuality Education and Violence/Abuse Prevention	Materials include comprehensive sexuality education which refers to sexuality as a normal part of human development that provides space for each student to consider their own personal, familial, and cultural values, health history, and goals, while maintaining privacy.	<b>Inclusive</b> Materials include strengths-based sexuality education that is affirming and inclusive of historically and currently excluded, underserved, and underrepresented communities and the lived experiences of students.	<b>Comprehensive</b> Materials refer to sexuality as a multidimensional and positive part of human development that changes throughout the lifespan.  Materials present a comprehensive range of sexual and reproductive health practices that is not limited to abstinence and is communicated without value judgments.	<b>Violence/Abuse Prevention</b> Materials include skill development opportunities to identify and respond to unsafe situations, accurately name body parts, define and promote consent, communicate boundaries, practice getting help from a trusted adult, analyze societal causes of violence, and emphasize that people are not to blame for the violence and abuse they experience.	<b>Age-Appropriate</b> Materials address age-appropriate instruction on healthy relationships, bodies, sexuality, and violence/abuse prevention in every grade covered.

## 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> Engagement & Motivation	Materials give opportunities for rigorous student-driven learning. Materials should focus on relevant topics, provide authentic contexts and experiences, be research-based, and give students the opportunity to make connections with their goals, interests, and values.	<b>RELEVANCE</b> Materials include topics that are relevant and interesting to students and provide 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 health education as an essential, useful, and worthwhile subject.	<b>COLLABORATIVE LEARNING</b> Materials include tasks that provide students opportunities to engage in the process of learning collaboratively, and opportunities to express their learning individually.	<b>INDIVIDUAL STUDENT ADAPTABILITY</b> Materials include instructional strategies to support prior grade-level learning and extensions for students who are ready to deepen their understanding of grade-level content.	
<b>Criterion 2.2:</b> Culturally Responsive Instructional Support	Culturally responsive instruction refers to the explicit recognition and integration of students’ cultural knowledge, experience, and ways of being and knowing in teaching, learning, and assessment.	<b>ASSET-BASED PERSPECTIVE</b> Materials empower educators to identify, value, and maintain a high commitment to students’ experiences from their homes and communities that are leveraged as resources for health education teaching and learning.	<b>FRAMES OF REFERENCE</b> Materials utilize multiple frames of reference for developing and demonstrating health skills that correspond to a variety of cultural perspectives and experiences.	<b>INCLUSIVE CULTURAL VIEWS</b> Materials include pathways to developing health knowledge and skills that leverage cultural perspectives that affirm student identities and reflect knowledge of students’ background experiences and social realities.	

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

Criterion	Description	Metric 1	Metric 2	Metric 3	Metric 4
<b>Criterion 3.1:</b> 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.	<p><b>SUPPORTING GUIDANCE</b></p> <p>Materials provide teacher guidance, including useful annotations and suggestions on effectively using student materials, visual models, and ancillary materials. The focus is on actively engaging students to enhance their health knowledge and skill development.</p>	<p><b>HEALTH EDUCATION KNOWLEDGE FOR TEACHING</b></p> <p>Materials contain adult-level explanations, examples, and resources for relevant health education concepts, so that teachers can improve their own knowledge of the subject.</p>	<p><b>HOME CONNECTION</b></p> <p>Materials provide strategies for engaging all partners—including students, parents, or caregivers—about the program and suggestions for how they can help support student progress and achievement.</p>	<p><b>CONTENT EDITABILITY</b></p> <p>Materials are designed to allow a teacher to differentiate content and vary modes of communication within lessons, tasks, or other activities for students.</p>
<b>Criterion 3.2:</b> 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.).	<p><b>STRATEGIES FOR SPECIAL POPULATIONS</b></p> <p>Materials provide scaffolds to support students from special populations in their regular and active participation in health learning (i.e. students who are multilingual, students experiencing disabilities, and/or students identified as TAG).</p>	<p><b>STUDENT DIFFERENTIATION</b></p> <p>Materials provide extensions and/or opportunities for all students to engage with grade-level health education at varied levels of complexity.</p>	<p><b>EMERGENT BILINGUAL STUDENT SUPPORT</b></p> <p>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 learning.</p>	<p><b>STUDENT EDITABILITY</b></p> <p>Digital materials include resources for students that are editable and allow students to show their understanding and comprehension.</p>

Criterion	Description	Metric 1	Metric 2	Metric 3	Metric 4
<p><b>Criterion 3.3:</b> Digital Learning Design Elements</p> <p><small>*This criterion is not required. Quality indicators are provided for evaluation if digital components are present.</small></p>	<p>The materials are attentive to digital design elements specific to structure, support for users, and adaptability of materials.</p>	<p><b>MATERIALS USABILITY</b></p> <p>The organizational structure of the digital materials allows for intuitive navigation and meaningful interaction on a variety of devices.</p>	<p><b>LEARNING RESOURCES</b></p> <p>The digital materials provide support for users in a variety of settings, including:</p> <ul style="list-style-type: none"> <li>Professional learning resources to support educators’ use of the materials and content.</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>	<p><b>MEDIA INTEGRATION</b></p> <p>Digital and multimedia elements support, rather than distract from, intended learning outcomes and instructional content.</p>	<p><b>ADAPTABILITY OF MATERIALS</b></p> <p>Digital materials allow teachers to adjust and adapt documents and other included resources to meet student needs.</p>

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

Criterion	Description	Metric 1	Metric 2	Metric 3	Metric 4
<p><b>Criterion 4.1:</b> Formative Assessment Process</p>	<p>Instructional materials incorporate the formative assessment process:</p> <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>	<p><b>CLARITY OF LEARNING GOALS</b></p> <p>Materials are designed around clear learning goals and written in grade-appropriate, student-friendly language.</p>	<p><b>ELICITATION OF EVIDENCE</b></p> <p>Instructional tasks and activities elicit a variety of evidence demonstrating student thinking, including opportunities for student self-assessment and reflection.</p>	<p><b>INTERPRETATION OF FEEDBACK</b></p> <p>Materials facilitate the provision of meaningful and strengths-based feedback to move learning forward.</p> <ul style="list-style-type: none"> <li>Student-to-student</li> <li>Educator-to-student</li> <li>Student-to-educator</li> </ul>	<p><b>ACTION &amp; ADJUSTMENT</b></p> <p>Materials guide educators and students to act on feedback and determine next steps for learning.</p>
<p><b>Criterion 4.2:</b> Performance Assessments</p>	<p>Materials focus on health issues that affect personal, interpersonal and societal health and well-being, and align to the depth, breadth, and cognitive demand of the standards.</p>	<p><b>ALIGNMENT</b></p> <p>Materials include performance tasks that are comprehensive, inclusive, aligned with health education standards, and reflect the eight topic areas.</p>	<p><b>CULTURAL AFFIRMATION</b></p> <p>Performance assessments utilize and affirm students’ interests and cultural backgrounds. Tasks are suitable for both group and individual engagement.</p>	<p><b>AUTHENTICITY</b></p> <p>Performance assessments allow students to work with relevant health issues that affect personal, interpersonal and societal health and well-being.</p>	<p><b>CLARITY &amp; FEEDBACK</b></p> <p>Performance assessments use clear scoring criteria and allow for multiple iterations of student thinking based on feedback.</p>

Criterion	Description	Metric 1	Metric 2	Metric 3	Metric 4
<p><b>Criterion 4.3:</b> Integrated Assessment System*</p> <p><small>*This criterion is not required. Quality indicators are provided for evaluation if an integrated assessment system is present.</small></p>	<p>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.</p>	<p><b>ASSESSMENT DESIGN</b></p> <p>Diagnostic assessments are well-designed, rigorous, connected to standards, and offer multiple opportunities to demonstrate knowledge and/or skills.</p>	<p><b>DATA QUALITY</b></p> <p>The assessment system provides clear and actionable data that allow educators to respond to specific student strengths and opportunities for growth.</p>	<p><b>RESPONSIVENESS</b></p> <p>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?”)</p>	<p><b>FAMILY ENGAGEMENT &amp; COMMUNICATION</b></p> <p>If the assessment system provides reports and/or diagnostic information to families, those resources are accessible in multiple languages, allowing families to effectively partner with their child(ren) in the learning process.</p>

# Oregon State Board of Education

December 7, 2023

AGENDA ITEM: Federal Appeals Process

<p><b>SUBJECT:</b> Federal ESEA Program Appeals Process (Permanent Rule) <b>STAFF NAME &amp; OFFICE:</b> Liz Ross, Director Federal Systems, Office of Teaching, Learning, and Assessment</p> <p>The Oregon Department of Education (the Department) Federal Systems Team administers formula and competitive federal programs under the Every Student Succeeds Act, the Bipartisan Safer Communities Act, and the American Rescue Plan-Homeless Children and Youth programs. Federal law requires that ODE provide grant recipients who are aggrieved by the Department’s final action under its administration of these programs with the right to request a hearing. This rule establishes such a process.</p> <p><input checked="" type="checkbox"/> New Rule <input type="checkbox"/> Amend Existing Rule <input type="checkbox"/> Repeal Rule</p>	<p><input checked="" type="checkbox"/> <b>First Reading</b> <input checked="" type="checkbox"/> <b>Presentation</b> <input type="checkbox"/> <b>No Presentation</b></p> <p><input type="checkbox"/> <b>Action</b> <input type="checkbox"/> <b>Temp Rule</b> <input type="checkbox"/> <b>Presentation</b> <input type="checkbox"/> <b>No Presentation</b></p>
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## BACKGROUND

1. History: Section 432 of the General Education Provisions Act (GEPA), codified at 20 USC 1231b-2(a), provides Local Education Agencies (LEAs) “aggrieved by the final action” of a State Education Agency (SEA) with the right to “request a hearing” alleging a violation of the laws applicable to the respective federal program being administered by the SEA. The same federal statute then goes on to require: “Within thirty days after it receives such a request, the [SEA] shall hold a hearing on the record and shall review such final action. No later than ten days after the hearing, the [SEA] shall issue its written ruling, including reasons therefor.” (See also 34 CFR 76.401.)

As Oregon’s SEA, the Oregon Department of Education (the Department) administers Oregon’s formula and competitive federal programs under the Elementary and Secondary Education Act, including:

- Title I, Part A (Improving the Academic Achievement of the Disadvantaged)
- Title I, Part C (Migrant Education Program)
- Title I, Part D (Prevention and Intervention Programs for Neglected, Delinquent or At Risk Youth), Subpart 2,
- Title II, Part A (Preparing, Training, and Recruiting High-Quality Teachers, Principals, or Other School Leaders),
- Title III, Part A (Language Instruction for English Learners and Immigrant Students)
- Title IV, Part A (Student Success and Academic Achievement),
- Title IV, Part B (Nita M. Lowey’s 21st Century Community Learning Centers and After School Safety and Enrichment for Teens Programs)
- Title V, Part B (Rural Low Income Schools),
- McKinney-Vento Homeless Education and,

# Oregon State Board of Education

December 7, 2023

AGENDA ITEM: Federal Appeals Process

- Foster Care Student Educational Stability.

In addition to the grants administered under ESEA, Oregon administers the Stronger Connections Grant authorized under the Bipartisan Safer Communities Act, and the American Rescue Plan-Homeless Children and Youth programs. As a result, the programs listed above are subject to the federal requirements described above.

2. Purpose: This proposed rule establishes the process for applicants, or grantees (including districts and ESDs) that are aggrieved by a final action under the Department’s administration of the federal grants program to request a hearing, as required under federal law.
3. Does the board have any areas of discretion or is this strictly mirroring statute? No, the board does not have any areas of discretion.
4. Stakeholder voice/input (individual and collective i.e., groups): This rule is a technical rule that establishes a hearing process that meets the requirements under both governing federal and state law. As such, the Department has little discretion in shaping the process, meaning there is little room to consult with impacted groups and apply their input.

## SUMMARY OF PREVIOUS BOARD ACTION

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1. The state board adopted emergency temporary rules for Title I-C in April 2023 and rules for the remaining title programs in June 2023. The temporary rules expired and ODE is bringing forth proposed permanent rules that outline a singular process for all ESSA title programs.

## 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:

These are permanent rules that establish a singular appeals process for grantees who apply for funds under the Elementary and Secondary Education Act, the American Rescue Plan-Homeless Children Youth Program, and the Bipartisan Safer Communities Act. Previous emergency rules were established and did not include all Title programs.

## POLICY ISSUE OR CONCERNS

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This is a technical rule that establishes a hearing process that meets the requirements under both governing federal and state law. As a result, the Department has little discretion in shaping the process, meaning there is little room to consider policy issues or consult with impacted groups and apply their input.

# Oregon State Board of Education

December 7, 2023

AGENDA ITEM: Federal Appeals Process

One minor policy issue the Department considered in developing this temp rule was whether to retain authority for issuing the final order following the hearing or grant that authority to the Administrative Law Judge presiding over the hearing. Due to considerations around timeline and the Department’s capacity, the Department chose to grant this authority to the Administrative Law Judge.

## EQUITY IMPACT ANALYSIS

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Any final action taken by the Department against an applicant or grantee of federal funds as part of its administration of the Federal Education Program will have a direct impact on the students and families served by that applicant or grantee. The Department strives always to ensure its actions advance equity and opportunity for historically underserved populations. The hearing process established by this rule affords LEAs administering a local or regional program funded through these programs the opportunity to appeal a final action taken by the Department that the LEA believes adversely affects the LEA, and by extension, the students it serves. As such, the rule plays an essential part in ensuring due process in the Department’s administration of Oregon’s Federal Education Program under ESEA, Bipartisan Safer Communities Act, and the ARP-HCY programs.

## FISCAL ANALYSIS

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Should an applicant or grantee exercise its right to request a hearing under the process established by this rule, these costs would be borne by the specific Program that is aggrieved. Costs would be covered using non-federal funds.

Applicants or grantees choosing to exercise their right to request a hearing under this rule would be responsible for bearing the associated costs. Costs must be covered using non-federal funds.

## EFFECT OF A “YES” OR “NO” VOTE

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A Board vote approving this rule would result in the immediate creation of a process by which aggrieved applicants or grantees could request a hearing contesting a final action by the Department under its administration of Federal Education Program, thereby complying with federal requirements.

A Board vote rejecting this temp rule would mean that the Department would remain out of compliance with the federal requirement to provide aggrieved applicants or grantees with the right to request a hearing.

## STAFF RECOMMENDATION

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Approve  Approve next month  No recommendation at this time  
**Prompted by:**  State law changes  Federal law changes  other (*out of compliance with existing federal law*)

## ATTACHMENTS

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**Oregon State Board of Education**

**December 7, 2023**

AGENDA ITEM: Federal Appeals Process

Attachment 1: Federal Appeals Process rules

# Oregon State Board of Education

## December 7, 2023

### AGENDA ITEM: Federal Appeals Process

OAR XXX-XXX-XXXX

- (1) The appeal procedures required by this rule apply to appeals of Department of Education “the Department” decisions affecting local education agencies participating in the following federal programs:
  - (a) Title I, Part A of the Elementary and Secondary Education Act;
  - (b) Title I, Part C of the Elementary and Secondary Education Act;
  - (c) Title I, Part D, Subpart 2, of the Elementary and Secondary Education Act;
  - (d) Title II, Part A of the Elementary and Secondary Education Act;
  - (e) Title III, Part A of the Elementary and Secondary Education Act;
  - (f) Title IV, Part A of the Elementary and Secondary Education Act;
  - (g) Title IV, Part B of the Elementary and Secondary Education Act;
  - (h) Title V, Part B of the Elementary and Secondary Education Act;
  - (i) McKinney-Vento Homeless Education;
  - (j) Stronger Connections Grant authorized under the Bipartisan Safer Communities Act; and
  - (k) American Rescue Plan-Homeless Children Youth Programs I and II
  - (l) Other “applicable programs” as defined in 20 U.S.C. 1221(c)(1).
  
- (2) A local education agency subject to these rules may appeal the following:
  - (a) The disapproval, in whole or in part, of a new application for participation or an application for renewed participation;
  - (b) A failure to approve a new application for participation or an application for renewed participation;
  - (c) The withholding of participation or funding under an applicable program;
  - (d) The failure to provide funds in amounts that accord with the requirements of specific laws and regulations;
  - (e) An order, in accordance with a final State audit resolution determination, to repay misspent or misapplied Federal funds; and
  - (f) The termination of further assistance.
  
- (3) The Department shall notify the local education agency (Appellant) in writing of the grounds upon which the Department based its action identified in subsection (2) of this rule. The notice must also state the procedures for requesting an appeal of the action. Notice means a letter sent by certified mail, return receipt (or the equivalent private delivery service) or by email, that describes an action or taken by the Department. The notice is considered to be received by the Appellant when it is delivered, or sent by email. If the notice is undeliverable, it is considered to be received by the Appellant five days after being sent to the Appellant’s last known mailing address, facsimile number, or email address.
  
- (4) A request for appeal of an action identified in subsection (2) of this rule must be in writing and must be made by the Appellant affected by such action. The Department must receive the request for appeal no later than 30 calendar days from the date the Appellant received the notice of Department action. The request for appeal must allege in pleadings, affidavits, and supporting documents that the Department violated State or Federal law, rules, regulations, or guidelines governing the federal program. The Department shall deny any request for appeal that fails to:
  - (a) State the nature of the Appellant’s interest;

# Oregon State Board of Education

December 7, 2023

AGENDA ITEM: Federal Appeals Process

(b) Assert the facts showing how the Appellant is adversely affected or aggrieved by the Department's action; and

(c) Allege that the Department violated State or Federal law, rules, regulations, or guidelines governing the federal program.

(5) For appeals under sections 2(a) and 2(b) of this rule, a hearing on the record will be conducted by an impartial panel designated by the Oregon Department of Education. The impartial panel will conduct the hearing entirely on the basis of documentation submitted unless:

(a) The impartial panel determines, after reviewing all appropriate submissions, that an evidentiary hearing is needed to resolve a material factual issue in dispute.

(b) The impartial panel determines, after reviewing all appropriate submissions, that oral argument is needed to clarify the issues in the case.

(c) At the party's request—if after consultation with the parties—the impartial panel determines that an evidentiary hearing or an oral argument is needed.

(d) The procedures described in section (4) of this rule do not apply to the review conducted by the impartial panel under this section.

(6) Appeals under sections 2(c), 2(d), 2(e), and 2(f) of this rule shall be conducted as a contested case hearing under ORS 183.411 to 183.471 and the Attorney General's Model Rules of Procedure under the Administrative Procedure Act in effect on January 1, 2012. The hearing shall be conducted by and under the control of the Administrative Law Judge of the Office of Administrative Hearings that is assigned to the case and must be held within 30 days of the date of receipt by the Department of the request for appeal. The Administrative Law Judge may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious, or immaterial matter.

(a) The Appellant bears the burden of proof to show that the Department's action identified in subsection (1) of this rule constitutes a violation of State or Federal law, rules, regulations, or guidelines governing the Federal Education Program.

(b) Evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible. Irrelevant, immaterial or unduly repetitious evidence shall be excluded.

(c) As soon as practicable after the hearing, but in no case later than five calendar days after the hearing, the Administrative Law Judge shall prepare a proposed order and serve the proposed order on the Department and the Appellant.

(d) No later than ten calendar days after the hearing, the Department shall either adopt the proposed order or prepare a new final order.

20 USC 1231b-2

34 CFR 76.401

# Oregon State Board of Education

## MEETING DATE

AGENDA ITEM:

<p><b>SUBJECT:</b> OAR 581-022-2263 Physical Education Requirements &amp; OAR 581-022-2265 Report on PE Data</p> <p><b>STAFF NAME &amp; OFFICE:</b> Suzanne Hidde and Susan Payne, Office of Teaching, Learning and Assessment</p> <p>With the passage of House Bill 3199, OAR 581-022-2263 and OAR 581-022-2265 need to be updated to align with the new legislation.</p> <p><input type="checkbox"/> New Rule <input checked="" type="checkbox"/> Amend Existing Rule <input type="checkbox"/> Repeal Rule</p>	<p><input checked="" type="checkbox"/> <b>First Reading Presentation</b> <input type="checkbox"/> <b>No Presentation</b></p> <p><input type="checkbox"/> <b>Action</b> <input type="checkbox"/> <b>Temp Rule Presentation</b> <input type="checkbox"/> <b>No Presentation</b></p>
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### BACKGROUND

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The instructional time requirements for Physical Education (PE) were originally passed in 2007 to provide equitable opportunities for all students to learn motor skills and benefit from the physical, cognitive and social benefits gained in PE. The statute was revised in 2017 to provide a phase in period, with full implementation at all grades K-8 to be achieved by the 2022-23 school year. The Report on PE Data rule has been included in the Division 22 Standards since 2007 and the PE Requirements rule was added in 2019.

During the 2023 legislative session [House Bill 3199](#) amended ORS 329.496 Physical Education requirements, and ORS 329.498 Data related to physical education data reporting requirements, effective July 1, 2023. There are two significant changes in ORS 329.496. First, the weekly time requirement for grades 6 through 8 was reduced from 225 minutes to 150 minutes per week. Second, the new weekly minimum of 150 minutes is calculated as an average over the duration of the school year. ORS 329.498 was amended to align with the changes made to ORS 329.496.

OAR 581-022-2263 Physical Education Requirements and OAR 581-022-2265 Report on PE Data need to be updated to reflect the new minutes requirements for grades 6 through 8.

### SUMMARY OF PREVIOUS BOARD ACTION

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The PE Data rule was adopted by the Board in 2007 and the PE Requirements rule was adopted by the Board in 2019.

### 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

## MEETING DATE

AGENDA ITEM:

### POLICY ISSUE OR CONCERNS

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ODE staff has been supporting districts with implementation of the PE instructional minutes requirement over a number of years. Concerns and challenges that ODE has heard from the field include:

- Inadequate facility space to provide the required minutes
- Lack of funding to support hiring licensed PE teachers
- Limited time during the school day to fit the minutes into the schedule
- Competing priorities for time during the school day
- No other content areas have instructional time requirements
- There is a lack of consistency in providing equitable amounts of PE instruction from school to school and district to district.

The statutory change addresses the unique scheduling challenges that many districts face at grades 6–8 and provides greater flexibility by allowing districts to average the number of weekly minutes over the course of the school year. Also, the legislature has provided funding to support this statute since 2007 in the form of Physical Education Expansion K-8 (PEEK-8) grants. The grants include funding that can be used to hire licensed PE teachers, and to provide Professional Development to assist school districts to be in compliance with the statute.

### EQUITY IMPACT ANALYSIS

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The proposed rule changes will reflect the current statute, which mandates equitable time requirements for every student across the state to receive physical education. Physical education has a positive impact on students' physical, mental, and social-emotional health and well-being, as well as academic achievement. Furthermore, historically marginalized and underserved students will receive the same opportunities to participate in physical education classes as their peers.

### FISCAL ANALYSIS

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There is no foreseeable fiscal impact from updating these rules.

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

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A "yes" vote will result in the rules being in alignment with the statute.

A "no" vote will result in the rules being out of alignment with the statute, which will cause confusion about the physical education instructional time requirements for both school districts and the public.

### STAFF RECOMMENDATION

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# Oregon State Board of Education

## MEETING DATE

AGENDA ITEM:

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: Report on PE Data draft rule

Attachment 2: PE Requirements draft rule

CREATED BY SH and SP 9/27/23

581-022-2265

Report on PE Data

(1) The following definitions apply to this rule:

(a) "Additional facilities" means the added space to the school needed to provide the minimum number of minutes of physical education instruction per week.

~~(b) "Number of minutes" means the number of minutes of physical education instruction that is actually provided to all students kindergarten through grade 8 each school week.~~

~~(b)(e)~~ "Physical capacity" means the space, indoors and out, available at the school to provide the prescribed number of minutes ~~per~~ at a class size that promotes effective practices consistent with the outcomes expected of the instructional programs.

(2) ~~Districts shall submit to t~~The Department of Education; ~~shall collect from school districts:~~

(a) The number of minutes of physical education instruction that are actually provided to all students in kindergarten through grade 8 ~~each school week~~ in each public school within the district; as calculated on a weekly basis or an average weekly basis as prescribed by ORS 329.496;

(b) The physical capacity of public schools to provide students in kindergarten through grade 5 with at least 150 minutes of physical education during each school week and to provide students in grades 6 through 8 with at least an average of 150 minutes during each school week as calculated over the duration of a school year.~~225 minutes of physical education during each school week;~~ and

(c) The additional facilities required by public schools to provide physical education to students for the minimum number of minutes as described in paragraph (b) of this subsection.

(3) ~~The department shall collect~~Districts shall submit the data described in paragraph (2) of this section:

(a) Annually, for data described in paragraph (2)(a) of this section.

(b) Whenever a public school increases or decreases the school's physical capacity to provide students with physical education, for data described in paragraph (2)(b) and (c) of this paragraph.

(4) Prior to February 1 of each odd-numbered year, the Department shall report to the Legislative Assembly on the data collected under this rule for the prior two school years.

**Statutory/Other Authority:** ORS 326.051

Statutes/Other Implemented: ORS 329.498

CREATED BY SH and SP 9/27/23

581-022-2263

### Physical Education Requirements

(1) For purposes of this section, “district” means a school district, education service district, or public charter school.

~~(2)(a) Districts shall ensure that each public school student in kindergarten through grade eight will receive physical education throughout the entire school year.~~

(2)(a) Every public school student in kindergarten through grade five, and every public school student in grade six at a school that teaches kindergarten through grade six, shall participate in physical education for the entire school year for at least 150 minutes during each school week, or at least 120 minutes during each school week if the school on average holds classes four days a week over the course of the school year. -

~~(b)(A) Except as provided in subparagraph (C) of this paragraph, districts shall ensure that each public student in kindergarten through grade five will receive:~~

~~(i) For the 2019-2020 school year, at least 120 minutes of physical education each school week if the school on average holds classes five days a week over the course of the school year, or at least 100 minutes of physical education each school week if the school on average holds classes four days a week over the course of the school year.~~

~~(ii) For each school year subsequent to the 2019-2020 school year, at least 150 minutes of physical education each school week if the school on average holds classes five days a week over the course of the school year, or at least 120 minutes of physical education each school week if the school on average holds classes four days a week over the course of the school year.~~

(b) Except as provided by paragraph (a) of this subsection, ~~students~~ every public school student in grades six through eight shall participate in physical education for at least ~~[225 minutes during each school week]~~ an average of 150 minutes during each school week, as calculated over the duration of a school year, or at least an average of 120 minutes during each school week, as calculated over the duration of a school year, if the school on average holds classes four days a week over the course of the school year. -

~~(B) Except as provided in subparagraph (C) of this paragraph, districts shall provide each public student in grade six through grade eight with:~~

~~(i) For the 2021-2022 school year, at least 180 minutes of physical education each school week if the school on average holds classes five days a week over the course of the school year, or at least 144 minutes of physical education each school week if the school on average holds classes four days a week over the course of the school year.~~

~~(ii) For each school year subsequent to the 2022 school year, at least 225 minutes of physical education each school week if the school on average holds classes five days a week over the course of the school year, or at least 180 minutes of physical education each school week if the school on average holds classes four days a week over the course of the school year.~~

~~(C) Districts shall provide each public student in grade six with the number of physical education minutes required by subparagraph (A) of this paragraph if the student attends a public school teaching students in kindergarten through grade six.~~

~~(c) Notwithstanding the time requirements of paragraph (b) of this subsection, for weeks during which the number of minutes that a public school provides instruction is less than the number of minutes that the school provides instruction during a week where the school provides instruction for every usual school hour, the time requirements specified in paragraph (b) of this subsection may be reduced by the percentage of the time requirements specified in paragraph (b) of this subsection that correlates to the percentage of minutes that the school did not provide instruction. For purposes of this paragraph, "provide instruction" means "provide instruction during usual school hours."~~

(c) Notwithstanding the time requirements of paragraphs (a) and (b) of this subsection, districts may reduce physical education minutes by a percentage that correlates to the percentage of minutes that the school did not provide instruction during school weeks when there were: (A) scheduled school closures, including closures for holidays, inservice days and days scheduled for parent-teacher conferences; (B) unscheduled school closures, including closures for inclement weather and emergencies; (C) out-of-school activities that occur during usual school hours, including field trips and outdoor school programs.

(d) Notwithstanding the time requirements of paragraphs (a) and (b) of this subsection, if a district receives a waiver pursuant to OAR 581-022-~~2320~~4920 of the requirement to provide a minimum of teach 900 hours of instructional time annually for kindergarten through grade eight, the time requirements of paragraphs (a) and (b) of this subsection may be reduced by the percentage of the time requirements specified in paragraphs (a) and (b) of this subsection that correlates to the percentage of instructional time for which the district receives the waiver.

~~(3)(a) Districts are not required to comply with the time requirements established by subsection (1)(b) of this rule for school years during the biennium in which the total amounts appropriated or allocated to the State School Fund and available for distribution to districts are less than the amounts determined to be needed to be distributed to districts from the State School Fund under the tentative budget prepared pursuant to ORS 291.210. After the beginning of the biennium, a district may cease to comply with the time requirements established by subsection (1)(b) of this rule if the amounts appropriated or allocated to the State School Fund and available for distribution to districts are less than the amounts determined to be needed to be distributed to districts from the State School Fund, as calculated under ORS 291.210.~~

~~(b) In any biennia in which the total amounts appropriated or allocated to the State School Fund and available for distribution to districts are less than the amounts determined to be needed to be distributed to districts from the State School Fund under the tentative budget prepared pursuant to ORS 291.210, the Oregon Department of Education shall provide notice to each district as soon as practicable after making the determination that they are not required to comply with the time requirements established by subsection (1)(b) of this rule.~~

(3) Districts must comply with the requirements of ORS 329.496.

~~(4) Nothing in this rule affects the duties described in OAR 581-022-2265.~~

**Statutory/Other Authority:** ORS 326.051

Statutes/Other Implemented: ORS 329.496 & 2017 OL Ch. 301 Sec. 2



# Physical Education Requirements & Report on PE Data Rules Revision

229

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# PE Instructional Minutes

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The intention of Physical Education Requirements for grades K-8 is to provide equitable opportunities for all students to learn motor skills and benefit from the **physical, cognitive, social, and mental health benefits** gained in PE.

HB 3199 **reduces the instructional minutes requirements** for physical education in grades 6-8 and **allows districts to average** the minutes over the school year.



# HB 3199

6-8 PE Requirements	Minutes per week	Time during the school year
Prior to June 2023	225 per week	Every week for the entire year
<b>REVISED</b> 2023-24 SY and beyond	An average of 150 minutes	Calculated over the duration of the school year

231

# HB 3199 Implications for OARs

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## Changes to Statute:

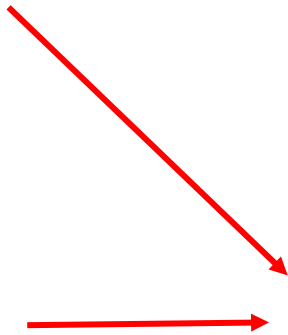
ORS 329.496 Physical Education participation - minutes requirements for grades K-8

ORS 329.498 Data related to physical education

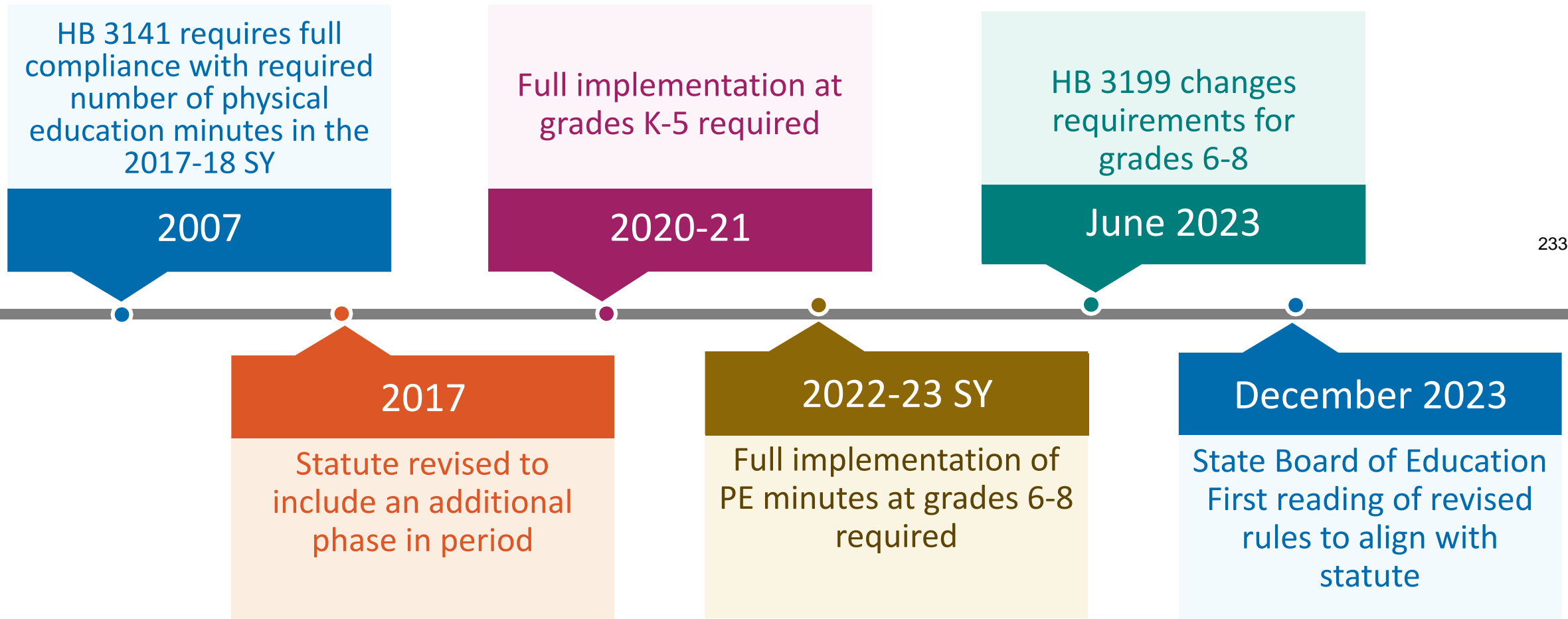
## Rule Changes Needed

[OAR 581-022-2263](#) Physical Education Requirements

[OAR 581-022-2265](#) Report on PE Data



# PE Requirements Historical Context



# Engagement & Communication

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## June 2023:

- Districts were notified of revisions to the statute via Division 22 Standards Assurances communications
- Updated information and guidance posted to ODE Division 22 Standards and Physical Education web pages.

## October 2023:

- Rules Advisory Committee: no substantive feedback received



# 581-022-2263 Physical Education Requirements

## Proposed Rule Changes

### Alignment to revised statute

- Removed phase-in requirements for the 2019-20 and 2021-22 school years
- Section (2)(a) and (b): Updated the number of minutes required for grades 6-8 and how they are calculated to mirror requirements in ORS 329.496, including proration for 4-day school weeks

235

### Clarity

- Section (2)(c) revised for clarity; included language from the statute to describe situations when districts can prorate weekly minutes
- Section (2)(d): Minor changes in language to improve clarity
- Removed section (3): districts not required to comply if State School Fund is underfunded - this is in statute

### Added

- District must comply with the requirements of ORS 329.496

# 581-022-2265 Report on PE Data

## Proposed Rule Changes

### Alignment to Statute

- Updated the number of minutes required for grades 6-8 and how they are calculated to mirror requirements in ORS 329.496

236

### Clarity

- Replaced “The Department of Education shall collect” to “Districts shall submit” for clarity and to differentiate between this rule and the PE Requirements rule

# Next Steps

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- January 4, 2024 - Rules Advisory Committee Rules at a Glance
- February 15, 2024 - 2nd read for the State Board of Education
- Notify districts that the rules have been updated
- Continue providing support to districts as they work to become compliant with these rules



# Thank You!



238

# Oregon State Board of Education

December 7, 2023

AGENDA ITEM: Transportation Grant – Alternative Transportation (2023 HB 3014)

<p><b>SUBJECT: Transportation Grant 581-023-0040</b></p> <p><b>STAFF NAME &amp; OFFICE:</b> Mike Wiltfong   Office of Finance and Information Technology Vanessa Clark   Office of Finance and Information Technology Brock Dittus   Pupil Transportation Unit</p> <p>The 2023 HB 3014 added Alternative Transportation as a reimbursable expense under the Transportation Grant when districts have an approved supplemental plan and/or waiver. This rule revision adds to the current rule to describe the process and requirements for school districts to add Alternative Transportation and receive reimbursements under the Transportation Grant.</p> <p><input type="checkbox"/> New Rule <input checked="" type="checkbox"/> Amend Existing Rule <input type="checkbox"/> Repeal Rule</p>	<p><input checked="" type="checkbox"/> <b>First Reading</b> <input checked="" type="checkbox"/> <b>Presentation</b> <input type="checkbox"/> <b>No Presentation</b></p> <p><input type="checkbox"/> <b>Action</b> <input type="checkbox"/> <b>Temp Rule</b> <input type="checkbox"/> <b>Presentation</b> <input type="checkbox"/> <b>No Presentation</b></p>
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## BACKGROUND

### History & Purpose

The Transportation Grant is one of the subgrants of the State School Fund. It provides school districts a reimbursement of a percentage of their costs for transporting students for academic purposes.

This rule defines approved costs under the grant and how the reimbursements are calculated. This rule is being updated to include Alternative Transportation, which was added through HB 3014 (2023).

### Revision to the Rule

House Bill 3014 (2023) adds a new category to the Transportation Grant: Alternative Transportation. This new category includes Active Transportation (such as walking or bicycling groups) and Public Transportation. The costs associated with providing Alternative Transportation are reimbursable when:

- The school district has a supplemental plan and waiver approved by the State Board of Education,
- The school district demonstrates that adding Alternative Transportation will cost the same or less than their projected transportation costs without adding it.

Additionally, Alternative Transportation may only be reimbursed up to 5% of the district’s total Transportation Grant expenses.

The State Board of Education will be responsible for approving requests from school districts for supplemental plans and/or waivers (ORS 327.043) to allow the addition of Alternative Transportation. School districts will be required to submit:

- A request for waiver from requirement to transport according to OAR chapter 581, division 53.
- A written narrative of the supplemental plan’s changes (or its content if submitting for the first time).
- A map with a visual representation of the affected areas within each school’s walk distances.
- Evidence of local school board approval.

# Oregon State Board of Education

December 7, 2023

AGENDA ITEM: Transportation Grant – Alternative Transportation (2023 HB 3014)

Additionally, for reimbursement related to public transportation, school districts will be required to demonstrate their good faith efforts to hire, train, and retain sufficient staff to operate their bus routes, including competitive wages and hiring practices consistent with applicable collective bargaining agreements. School districts who had supplemental plans and/or waivers allowing the use and reimbursement of public transit passes during the 2022-23 school year will continue to be allowed to use public transit passes without additional action.

## Engagement

Throughout September and October 2023, ODE (Oregon Department of Education) staff engaged with school district personnel to determine how best to support the implementation of Alternative Transportation. ODE staff presented on this topic at the Oregon Association of School Business Officials roundtable meeting and at the Chart of Accounts Committee meeting. These groups were asked for input around estimating and tracking expenses, and claiming these expenses under the Transportation Grant. ODE staff also reached out via email to the witnesses who provided testimony on the bill at committee hearings during the 2023 Legislative Session. ODE staff also brought this topic to the Rules Advisory Committee (RAC) at their November 2023 meeting. The RAC recommended that school districts conduct community engagement to ensure that their plans are aligned to community. The Department added to the draft rules a requirement that school districts document their community engagement efforts as part of the development of their request for a waiver and/or supplemental plan.

ODE staff did not conduct engagement with community members, families, or other school district and education service district staff on these updates. This bill makes Alternative Transportation an option for school districts and leaves room for local decision making in how it might be implemented at the local level. We believe it will be important for school districts to engage with their communities around the types of Alternative Transportation that will best meet the needs of the students and families they serve. Due to the broad leeway in how this could be implemented locally, ODE focused engagement efforts on the business aspects of the grant.

## SUMMARY OF PREVIOUS BOARD ACTION

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This is the first time this topic has been brought before the Board.

## HAS THE RULE CHANGED SINCE LAST BOARD MEETING?

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N/A; first read—first time before the Board

## POLICY ISSUE OR CONCERNS

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Prior to the passage of HB 3014, there were existing concerns related to the provision of and funding for pupil transportation that prompted the drafting of the bill:

- Some school districts face difficulties in recruiting and retaining staff for providing transportation to their students,
- Some school districts created alternative transportation programs, but the Transportation Grant did not have a mechanism to fund these types of transportation,

# Oregon State Board of Education

December 7, 2023

AGENDA ITEM: Transportation Grant – Alternative Transportation (2023 HB 3014)

- Two school districts were granted waivers that allowed the use of public transportation as an alternative to transportation provided by the school district, but there were no guidelines to ensure equity of access to the use of public transportation as a viable alternative to school busses or Type 10 vehicles.

In addition to these concerns related to transporting students, there is also the potential for increased reimbursement through the Transportation Grant to reduce the funding available for the State School Fund General Purpose Grant, since they come from the same pool of funding.

House Bill 3014 attempts to resolve the concerns described above by explicitly creating a mechanism to fund Alternative Transportation options. The bill also seeks to balance the resolution of these concerns with funding concerns by capping the amount allowed to be spent on Alternative Transportation to a total of no more than 5% of any given school district's total Transportation Grant, and requiring that the planned addition of Alternative Transportation does not exceed the cost of the school district's planned transportation without adding Alternative Transportation.

## EQUITY IMPACT ANALYSIS

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Pupil transportation is a critical component of ensuring that students have equitable access to education by supporting daily attendance. These rule changes provide an operational framework for school districts to request the addition of Alternative Transportation as a reimbursable expense under their Transportation Grant. The addition of Alternative Transportation provides flexibility to school communities around the transportation services school districts provide to their students. This flexibility may allow school districts to better support the needs of their students through options such as walking and biking buses, or public transportation passes.

## FISCAL ANALYSIS

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The Transportation Grant is funded through the State School Fund, managed by staff on the School Finance team, and supported with data collected by the Pupil Transportation Unit. These two teams are working together to integrate Alternative Transportation into existing structures that will have only minor impacts on their workflows after the initial implementation phase. Additionally, the Department is using existing data collection processes for school districts to submit their expenses for reimbursement when they add Alternative Transportation to avoid additional work for school district staff.

The Transportation Grant provides a percent reimbursement of the actual cost of transporting students for academic purposes. For the 2021-22 school year, the total reimbursed through the Transportation Grant was just under \$261 million. Because the Transportation Grant does not have a maximum reimbursement limit, care must be taken to ensure that growth of this grant does not outpace growth in funding of the overall State School Fund.

House Bill 3014 addresses this through subsections (4) and (5). Subsection (4) requires that school districts provide a comparison of the cost of providing transportation services with or without Alternative Transportation. Subsection (5) requires that the State Board of Education only approve the

# Oregon State Board of Education

December 7, 2023

AGENDA ITEM: Transportation Grant – Alternative Transportation (2023 HB 3014)

addition of Alternative Transportation when the cost is the same as or less than it would be without Alternative Transportation, or that the school district demonstrates that the additional cost would be paid with funds other than the Transportation Grant from the State School Fund.

One consideration in the addition of Alternative Transportation is whether this will have an impact on school transportation professionals. While a nationwide shortage of school bus drivers persists, language from House Bill 3014 refers to good faith efforts by school districts to recruit and retain driver staff. The Department also recognizes that recruitment and retention methods of increased wages and/or benefits remain a reimbursable expense from the State School Fund’s Transportation Grant, and should be considered in the assessment of the cost of the district’s transportation plans alongside other practical factors such as driver training timelines, etc. The use of public transit passes as part of Alternative Transportation will only be allowed as a reimbursable expense when school districts demonstrate these good faith efforts.

## EFFECT OF A “YES” OR “NO” VOTE

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Newly implemented statute directs ODE to add Alternative Transportation as an option under the Transportation Grant.

- If the Board approves these rule revisions, ODE staff will move forward with the process of registering the rules with the Secretary of State. The rules will provide a reference for school districts that aim to implement Alternative Transportation.
- If the Board does not approve these rule revisions, ODE will consider the feedback and take appropriate action to revise the rules before bringing the topic back to the Board. School districts will not have administrative direction as to the processes required to request Alternative Transportation as a reimbursable expense under their Transportation Grant until rules are adopted.

## STAFF RECOMMENDATION

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**Approve:**  Approve next month   
**Prompted by:**  State law changes

## ATTACHMENTS

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Attachment 1: HB 3014 – Draft Rules (revisions to OAR 581-023-0040)

# HB 3014 - Draft Rules

## [581-023-0040](#)

### Approved Transportation Costs for Payments from the State School Fund

(1) Definitions for the purpose of this rule:

(a) “Elementary School Student” means, notwithstanding any other OAR or statute, pupils attending a school offering only an elementary curriculum, any combination of grades K through 8;

(b) “Secondary School Student” means, notwithstanding any other OAR or statute, pupils attending a school offering any secondary curriculum for grades 9, 10, 11, or 12. Additionally, all students attending a school designated by the local school board through board action as a junior high school or middle school may be considered secondary students;

(c) “Local School Board” means, notwithstanding any other OAR or statute, the local school board for the district in which the student’s legal residence is physically located. Local school boards are not required to provide transportation for students who have requested and received approval to attend a school other than that designated by the local school board for students living in their specified attendance area;

(d) “Manufacturer’s Rated Capacity” means the number of students to be used in the calculations specified in paragraph (5)(n)(B) of this rule and described below:

(A) Buses transporting only elementary students will have a passenger capacity as stated on the manufacturer’s identification plate;

(B) Buses transporting only high school students, grades 9 through 12 will have a passenger capacity based on two students for each 39 inch bus seat;

(C) Buses transporting mixed groups from grades K–12 (in any combination) or groups of only junior high or middle school students will have a passenger capacity based on 2.5 students for each 39-inch bus seat.

EXAMPLE: A bus with a manufacturer’s passenger capacity stated on the identification plate of 72 would have the following ratings: elementary — 72, high school only — 48, mixed groups — 60, middle school and junior high school — 60.

(e) “Mile(s) from School” means the distance a student lives from school, measured from the closest, reasonable, and prudent point between the school property identified by the local board for that pupil’s attendance and the property where the pupil lives. The distance will be measured

over the shortest practicable route on maintained public roadways or over existing pedestrian facilities or pedestrian facilities capable of meeting the requirements listed in ORS 332.405(4);

(f) "Patron" means any individual, organization, or entity that is able to use student transportation services except for charter schools (as defined in ORS 338) or a public agency (described in ORS 339.133(4), ORS 327.527, ORS 327.540 or ORS 327.390) if the school or agency reimburses school districts up to one hundred percent (100%) of incurred transportation costs pursuant to ORS 338.145, 339.133(4), ORS 327.527, ORS 327.540 or 327.390.

(g) "Supplemental Plan" means a plan adopted by local school board resolution identifying groups or categories of students who live within the 1 and 1.5 mile limitations and require transportation based on health or safety reasons, including special education. Supplemental plan approvals may be ordered by the State Board of Education or its designated representatives. The State Board shall have the right of final review of any actions regarding supplemental plans. Appeals will be directed to the State Board for final consideration. The Plan must include the following:

(A) The approximate number of students to be transported based on the plan;

(B) The health or safety reasons cited for providing transportation;

(C) The local board resolution specifying the supplemental plan as submitted; and

(D) Any additional information or documentation supporting the supplemental plan deemed appropriate locally.

(h) "Alternative Transportation," and "Active Transportation costs" have the definitions given in ORS 327.033.

(2) Approved transportation costs shall include those costs incurred in transporting pupils to and from instructional programs during the regularly scheduled school term within the limitations specified by ORS 327.006 and 327.033. Approved transportation costs may include costs incurred in transporting students participating in extended school year programs eligible for funding from the State School Fund.

(3) Approved transportation costs shall include those district expenditures associated with:

(a) Home-to-school transportation of elementary school pupils who live at least one mile from school;

(b) Home-to-school transportation of secondary school pupils who live at least one and one-half miles from school;

(c) Transportation of pupils between educational facilities either within or across district boundaries, if the facilities are used as part of the regularly-scheduled instructional program approved by the Board;

(d) Transportation of pupils for in-state field trips when such represents an extension of classroom activities for instructional purposes, and shall include out-of-state destinations within 100 miles of the Oregon border;

(e) Transportation of pupils home to school for whom a supplemental plan has been approved by the State Board of Education in addressing safety, health, and special education needs;

(f) Transportation of preschool children in Early Childhood Special Education Services having an Individual Family Service Plan requiring transportation and preschool children receiving Early Intervention Services under the authority of ORS 343.533.

(g) School to home transportation following extended school day instructional programs for:

(A) Elementary school pupils who live at least one mile from school;

(B) Secondary school pupils who live at least one and one-half miles from school.

(h) For the 2020-21 school year, maintaining an adequate level of pupil transportation services while school districts are administering Comprehensive Distance Learning in response to the COVID-19 pandemic.

(4) Approved transportation costs shall exclude those district expenditures associated with transportation for the following unless the school program is required under provisions of the Individuals with Disabilities Education Act, ORS 343.533 or 339.010 through 339.090 and 339.250:

(a) Pupils living within the limits prescribed in ORS 327.006(2) for whom no supplemental plan has been approved by the State Board;

(b) Activity trips other than for instructional purposes;

(c) Athletic trips;

(d) School lunch purposes;

(e) Summer school;

(f) Adult education;

(g) Evening school;

- (h) Preschool and/or nursery school;
  - (i) Board and room in lieu of transportation associated with field trips;
  - (j) Transportation facility and staff costs other than those directly related to approved pupil transportation activities.
- (5) The computation shall be made as follows:
- (a) Pupil Transportation Salaries;
  - (b) Pupil Transportation Supplies, Equipment, Repairs, and Maintenance;
  - (c) All contracted Transportation;
  - (d) Travel of Pupil Transportation Personnel;
  - (e) Employee Benefits on Pupil Transportation Salaries;
  - (f) Pupil Transportation Insurance;
  - (g) Payments in Lieu of Transportation;
  - (h) Other Expenses of Pupil Transportation;
  - (i) Payments to Other Districts for Pupil Transportation;
  - (j) Leases and Rentals;
  - (k) Depreciation:
    - (A) Depreciation of Garage, but this shall not include land;
    - (B) Depreciation of Buses that are used at least 50% for reimbursable mileage.
    - (C) Shall include the costs to the district to retrofit, repower, or to replace as defined in ORS 468A.795, school buses for the purpose of reducing or eliminating diesel engine emissions. These costs:
      - (i) Shall not include the costs paid with moneys received from the state by a school district from the Clean Diesel Engine Fund that are described in 468A.801 (2)(a); and

(ii) Shall include costs to paid with moneys received from the state as allowed by the Environmental Mitigation Trust Agreement as defined in ORS 468A.801 (2)(c).

(l) Total of subsections (5)(a) through (k) of this rule;

(m) Deduct (if cost is included in detail above):

(A) Payments Received from Other Districts and from Patrons for reimbursable transportation;

(B) Non-reimbursable Transportation Costs:

(i) For 2019 – 20:

(I) Number of miles at \$2.66 per mile for all school buses and school activity vehicles having a manufacturers' designed passenger capacity of greater than 20 persons including the driver, or

(II) Number of miles at \$1.33 per mile for all school buses and school activity vehicles having a manufacturers' designed passenger capacity of 20 or less including the driver.

(ii) For 2020 – 21:

(I) Number of miles at \$2.70 per mile for all school buses and school activity vehicles having a manufacturers' designed passenger capacity of greater than 20 persons including the driver, or

(II) Number of miles at \$1.36 per mile for all school buses and school activity vehicles having a manufacturers' designed passenger capacity of 20 or less including the driver.

(iii) For 2021 – 22:

(I) Number of miles at \$2.86 Per mile for all school buses and school activity vehicles having a manufacturers designed passenger capacity of greater than 20 persons including the driver, or

(II) Number of miles at \$1.43 per mile for all school buses and school activity vehicles having a manufacturers' designed passenger capacity of 20 or less including the driver.

(iv) For 2022 – 23:

(I) Number of miles at \$2.96 Per mile for all school buses and school activity vehicles having a manufacturers designed passenger capacity of greater than 20 persons including the driver, or

(II) Number of miles at \$1.49 per mile for all school buses and school activity vehicles having a manufacturers' designed passenger capacity of 20 or less including the driver.

(v)(I) Those local school board certified marginal costs attributable to services provided to students who are not eligible for home-to-school transportation under section 3, calculated and documented as follows: Documentation maintained by local district shall include: bus and route identification, school(s) being served, number of eligible students on board, number of ineligible students on board;

(II) Calculation of marginal costs shall be as follows: District Cost Per Mile of bus operation divided by the total number of students transported on each bus to derive an average cost per student. The cost per student multiplied by the number of ineligible students and the number of miles transported provides the amount for deduction. Example: Cost per student = district cost per bus mile - number of students on bus; Total Deduction = cost per student x ineligible students x number of miles transported.

(III) No deduction will be made for transportation inside prescribed limits if the local board certifies student demographics would require student bus rides to or from school of more than one hour if the bus is routed in a manner making it accessible to the number of eligible students living outside the prescribed mileage limit equal to 130 percent of the bus manufacturer's rated capacity; or

(IV) The local school board certifies that buses are routed in a manner to serve at least the number of eligible students living outside the prescribed mileage limits equal to 130 percent of the bus manufacturer's rated passenger capacity; and

(V) In either of the aforementioned situations, no additional costs have been incurred by the district for the identified service.

(C) State and Federal Receipts for Transportation, except those apportioned under ORS 327.006 or third party Medicaid payments for transportation, if used to support expenditures in subsections (5)(a) through (I) of this rule;

(D) Rental or Lease Payments from Private Contractors;

(E) The percentage of transportation facility depreciation commensurate with the percentage of the total district fleet value based upon purchase price (see subsection (6)(k) of this rule) represented by non-pupil transportation equipment. Examples of nonpupil transportation equipment would include the following: lawnmowers, tractors, backhoes, trucks, pickups, cars, trailers, snow blowers, etc.

(n) Total Deductions ((5)(m)(A)+(m)(B)+(m)(C)+(m)(D)+ (m)(E));

(o) Approved Cost ((5)(I) minus (5)(n)).

(6) In the above computation, the following definitions apply:

(a) Pupil Transportation Salaries. Salaries and wages paid school bus drivers, assistants to driver, and that portion of salaries paid mechanics and other bus maintenance employees, supervisors of transportation, secretarial and clerical assistants, and persons assigned transportation oversight and coordination responsibilities attributable to the transportation program and documented through position descriptions and payroll records. No school district General Administration salaries may be included in this area;

(b) Pupil Transportation Supplies, Equipment, Repairs, and Maintenance. Costs of fuel, oil, lubricants, tires, tire repair, batteries, vehicle diagnosis and repair equipment identified as capital expenditures in the "Program Budget Manual," vehicle repair parts and supplies, repair of vehicles by other than the school district, garage maintenance and operation, and garage equipment repair and maintenance;

(c) All Contracted Transportation. Payments to parents and independent public or private contractors for transporting pupils from home to school, between educational facilities and for non-reimbursable activities enumerated in paragraph (6)(l)(B) of this rule; and fares to public carriers for transporting pupils from home to school and between educational facilities:

(A) If a district retains ownership of buses and garages and contracts for the operation of the transportation system with provision in the contract for lease or rental of the buses and garages, the contracted transportation cost shown should reflect the gross bid including the lease or rental payment. The lease or rental payment shall be deducted in the computation as reported in paragraph (5)(n)(D) of this rule;

(B) If the district retains ownership of buses and garages and participates in a transportation cooperative or consortium through an intergovernmental agreement, depreciation apportionment provided under ORS 327.033 will be disbursed directly to the district. No depreciation component is approved for cooperative-owned buses or garages.

(d) Travel of Pupil Transportation Personnel. Meals, lodging, mileage, per diem and other travel expenses of pupil transportation personnel, and private car mileage if paid to bus drivers for travel to and from the point where school bus is parked if other than the central garage. The same travel expenses plus tuition or registration are included for attendance at Department of Education sponsored or presented pupil transportation training programs and seminars;

(e) Employee Benefits on Pupil Transportation Salaries. The district's contributions for employee benefits including social security and retirement, employee health insurance, workers' compensation, and unemployment insurance;

(f) Pupil Transportation Insurance. Payments for public liability and property damage, medical care, collision, fire and theft, and insurance on garages and shops;

(g) Payments in Lieu of Transportation. Payments for pupils' board and room in lieu of transportation, consistent with ORS 332.405(2);

(h) Other Expenses of Pupil Transportation. District-paid fees for school bus drivers' physical examinations; interest on bus or garage contracts payable including lease-purchase agreements if capitalized (see subsection (6)(k) of this rule);

(i) Payments to Other In-State or Out-of-State Districts for Transportation. Payments to other districts for approved pupil transportation costs;

(j) Leases and Rentals. Rental or lease payments for the use of land or buildings used for approved pupil transportation. Rental or lease payments for buses operated by district personnel for approved pupil transportation.

NOTE: Only those leases which do not contain an option to purchase or application of rentals to purchase should be included in subsection (5)(j) of this rule. See subsection (6)(k) of this rule as to the proper treatment of other lease-purchase agreements.

(k) Depreciation. For purposes of computing depreciation, capitalized cost is defined to include the unit cost of the asset, exclusive of interest, for such assets purchased outright, by conventional contract, or by lease-purchase agreement if such agreement contains any provision to acquire ownership at the end of the agreement by application of a portion of the rentals paid or a terminal payment. The computation of the capitalized cost and the depreciation shall be according to the following:

(A) Portions of Garages and Other Buildings Used for Approved Pupil Transportation:

(i) Outright purchase (including purchase by conventional contract). For each outright purchase or purchase by conventional contract, each district shall report to the Oregon Department of Education, on the forms provided, the unit cost of the garage or other building purchased and the dollar amount of interest payments associated with such purchase. The purchase of land shall not be included in the Garage Depreciation. The capitalized value shall represent the unit cost, exclusive of interest. Depreciation shall be computed at an annual rate of four percent;

(ii) Lease-purchase agreements. For each lease-purchase agreement, the district shall report to the Oregon Department of Education, on the forms provided, the dollar amount of the agreement, the interest payments contained in the agreement, and the schedule of such interest payments contained in the agreement. Land shall not be included in the lease purchase agreement for the purpose of reimbursement. Subsequent to July 1, 1975, the capitalized value shall represent the lease-purchase price less any interest payments contained in the agreement. Depreciation shall be computed at an annual rate of four percent.

(B) Buses and Other Vehicles Used for Approved Pupil Transportation:

(i) Outright purchase (including purchase by conventional contract). For each outright purchase or purchase by conventional contract, each district shall report to the Oregon Department of

Education, on the forms provided, the unit cost of the vehicle(s) purchased and the dollar amount of interest payments associated with such purchase. The capitalized value shall represent the unit cost, exclusive of interest. Depreciation shall be computed at an annual rate of ten percent;

(ii) Lease-purchase agreements. For each lease-purchase agreement, the district shall report to the Oregon Department of Education, on the forms provided, the dollar amount of the agreement, any applicable trade-in value, the dollar amounts of interest payments contained in the agreement, and the schedule of such interest payments contained in the agreement. The capitalized value of the vehicles shall represent the lease-purchase price including the trade-in allowance less interest payments contained in the agreement. Depreciation shall be computed at an annual rate of ten percent;

(iii) Lease agreements. If the district is leasing its buses under a lease agreement, the district shall report the annual lease cost. A lease agreement as used in this paragraph means an agreement whereby the lessor retains title to the buses being leased to the lessee school district and the title to the buses is never received by the lessee. Under such a lease agreement, the use of the buses by the lessee is limited by the term of the lease. If there is an auxiliary agreement either written or oral whereby at the end of the lease term, the title of the buses shall pass to the lessee school district, the agreement is not a lease agreement as described in this paragraph but is a lease-purchase agreement as outlined in subparagraph (ii) of this paragraph. The lease payment made by a school district obtaining the use of buses pursuant to a lease as defined in this paragraph shall be used in the computation of the reimbursement in place of the depreciation set forth in subparagraphs (i) and (ii) of this paragraph.

(C) Deductions:

(i) Payments Received from Other Districts and from Patrons. Money received from other school districts, parents, guardians, or students for transportation if paid in support of expenditures listed in subsections (5)(a) through (l) of this rule;

(ii) Nonreimbursable Transportation Costs. Actual bus mileage of excludable trips shall include the actual mileage in district owned or contracted buses for transportation for activity trips, athletic trips, school lunch purposes, summer school, adult education, evening school, nursery school, and any other nonreimbursable purposes. Such mileage shall be deducted at the rate indicated in subsection (5)(m)(B) of this rule. The rate of deduction may be reviewed periodically by the State Board of Education and adjusted accordingly;

(iii) State and Federal Receipts for Transportation. All state and federal receipts for transportation expenditures, exclusive of funds apportioned under ORS 327.006 and 327.033, that have been included in subsection (5)(a) through (l) of this rule;

(iv) Rental or Lease Payments from Private Contractors. Payments received from private contractors for the use of district owned buses and garages in the operation of the pupil

transportation system by the private contractor. This item must be shown as Revenue Code 1930 in the school district audit and the gross payments to the contractor must be included in subsection (5)(c) of this rule.

(7) Each district shall maintain a record, by purpose, of total pupil transportation miles and shall submit a report of such to the Oregon Department of Education on the form provided. The accuracy of such records shall be certified by the district clerk.

(8) If an education service district offers a special service under the provisions of section (4) of ORS 334.175, including home-to-school transportation that would qualify for reimbursement under the provisions of ORS 327.006 if provided by a local school district, the following procedure in crediting the transportation expenditure to the local district may be employed:

(a) The education service district shall compute approved home-to-school transportation costs as provided in section (4) of this rule;

(b) The approved costs so determined shall be billed to and paid by each of the local school districts. The expenditure shall be accounted for by the local district as a transportation expenditure paid to another education agency;

(c) The audited district expenditure shall be recognized by the State Superintendent of Public Instruction in computing the local district's entitlement under ORS 327.006;

(d) If the education service district reimburses the local district the difference between that portion billed and that paid under ORS 327.006, such reimbursement — if derived from property tax sources by education service district resolution — shall not be deducted by the state in determining the local district's approved costs. The local district shall account for the education service district reimbursement as other general receipts are accounted for from the education service district.

(9) For purposes of computing board and room entitlement for a district operating a dormitory under provisions of ORS 327.006, the state assumes responsibility for its proportionate share of costs associated with the provision of food, facilities, staff, operation, and maintenance necessary to provide students with safe and healthy living conditions. The state does not assume responsibility for costs associated with recreation or entertainment of students. The approved cost against which the computation is made for state liability shall not exceed the limit stated in ORS 332.405. In addition, the state will assume its proportionate share of the cost of field trips as defined in subsection (3)(c) of this rule.

(10) The computation of approved expenditures for board and room entitlement shall be made as follows:

(a) Salaries;

- (b) Operation:
  - (A) Utilities;
  - (B) Supplies;
  - (C) Other Operational Costs.
- (c) Maintenance:
  - (A) Upkeep;
  - (B) Replacement.
- (d) Fixed Charges:
  - (A) Employee Benefits;
  - (B) Other Fixed Charges.
- (e) Food;
- (f) Operation of Buses and Other Vehicles — Supplies, Repairs and Maintenance;
- (g) Depreciation:
  - (A) Dormitory;
  - (B) Buses and Other Vehicles.
- (h) Total Expenditures (Sum of subsections (10)(a) through (g) of this rule);
- (i) Deductions (subtract if cost is included in cost above):
  - (A) Payments Received from Other Districts and from Patrons;
  - (B) Nonreimbursable Transportation Costs as indicated in subsection (5)(m)(B) of this rule;
  - (C) State and Federal Receipts for Transportation, except those apportioned under ORS 327.006, 327.033, or third party Medicaid payments, if used to support expenditures in subsections (10)(a) through (g) of this rule;
  - (D) Federal School Lunch, Breakfast, and Milk Reimbursements;

(E) Sales of Food.

(j) Total Deductions (sum (10)(i)(A) + (i)(B) + (i)(C) + (i)(D) + (i)(E));

(k) Approved Cost ((10)(h) minus (10)(j) of this rule).

(11) The items included in the board and room entitlement computation are defined as follows:

(a) Salaries. Salaries and wages paid dormitory personnel, including the dormitory manager, cooks, custodians, and other personnel directly concerned with operation of the dormitory, and that portion of salaries paid secretarial and clerical assistants and other personnel attributable to the dormitory program;

(b) Operation:

(A) Utilities. Heat for buildings, water and sewage, electricity, telephone, and other utilities necessary for the operation of the dormitory;

(B) Supplies. Custodial supplies, supplies for care of grounds, linens, and other supplies necessary for the operation of the dormitory including food services. Purchase of food is included in subsection (11)(e) of this rule;

(C) Other Operational Costs. Contracted custodial services, window washing, laundry or linen services, etc., necessary for the operation of the dormitory.

(c) Maintenance:

(A) Upkeep. Expenditures associated with maintaining the existing dormitory facilities in a safe, healthy, and efficient condition, including supplies and materials for upkeep of dormitory grounds and the dormitory building. Costs associated with maintenance of recreational or entertainment facilities are excluded;

(B) Replacement of Equipment. Expenditures associated with replacing equipment necessary to the safe, healthy, and efficient operation of the dormitory. Replacement of equipment used for recreational or entertainment purposes are excluded.

(d) Fixed Charges:

(A) Employee Benefits. Expenditures for dormitory employees' benefits including social security and retirement, employee health insurance, workers' compensation, and unemployment insurance;

(B) Other Fixed Charges. Expenditures for property insurance, liability insurance, rental of land and buildings for purposes associated with operation of the dormitory, and other fixed charges directly attributable to operation of the dormitory.

(e) Food. Expenditures for food necessary for the operation of the dormitory;

(f) Operation of Buses and Other Vehicles — Supplies, Repairs, and Maintenance. Expenditures for fuel, oil, lubricants, tires, tire repair, batteries, vehicle repair parts and supplies, repair of vehicles by other than the school district, garage maintenance and operation, and garage equipment repair and maintenance necessary for the operation of buses utilized for purposes stated in section (3) of this rule and of other vehicles necessary for the operation of the dormitory;

(g) Depreciation:

(A) Dormitory. For purposes of computing dormitory depreciation, capitalized cost is defined as the unit cost of the asset (including the cost of original equipment), exclusive of interest, plus the cost of substantial improvements or remodeling. The purchase of land shall not be included. Costs associated with providing recreational or entertainment facilities are not included. Depreciation shall be computed at an annual rate of four percent;

(B) Buses and Other Vehicles. Depreciation for buses used for approved pupil transportation and that portion of other vehicles necessary for operation of the dormitory shall be computed in accordance with the formula and definition stated in paragraph (6)(k)(B) of this rule.

(h) Total. Sum of subsections (10)(a) through (g) of this rule;

(i) Deductions:

(A) Payments Received from Other Districts and from Patrons. Money received from other school districts, parents, guardians, or students for transportation or room and board if paid in support of expenditures listed in subsections (10)(a) through (f) of this rule;

(B) Nonreimbursable Transportation Costs. Costs for nonreimbursable transportation according to the formula and definition stated in paragraph (6)(l)(B) of this rule;

(C) State and Federal Receipts for Transportation. All state and federal receipts for transportation or room and board expenditures exclusive of funds apportioned under ORS 327.006 that have been included in subsections (10)(a) through (f) of this rule;

(D) Federal School Lunch, Breakfast, and Milk Reimbursements. All federal receipts for school lunch, breakfast, and milk expenditures that have been included in subsections (10)(a) through (f) of this rule;

(E) Sales of Food. Money received from teachers, students, or other individuals from food sales for which the expenditures are included in subsections (10)(a) through (f) of this rule.

(12) Beginning with the 2024-25 school year, school districts may request a waiver and/or supplemental plan to include Alternative Transportation as a reimbursable expense under their Transportation Grant. In order to include Alternative Transportation costs as a reimbursable expense, school districts must:

(a) submit a proposed or revised supplemental plan for their district that includes explanations of the alternative transportation methods to be used.

(b) Demonstrate that the inclusion of Alternative Transportation will result in Transportation Grant expenses that are equal to or less than planned expenses without Alternative Transportation, or demonstrate that costs exceeding this amount will be paid from a source other than the transportation grant from the State School Fund.

(c) Document the local community engagement that was conducted to develop the plan for Alternative Transportation.

(d) School districts shall resubmit their supplemental plans and/or waivers for the inclusion of Alternative Transportation to be reauthorized by the State Board of Education every two years.

(e) Notwithstanding subsections (12)(a-d) of this section, a school district that, prior to the effective date of this 2023 Act, had been receiving reimbursement for costs incurred in providing transit passes under a supplemental plan or a waiver shall continue to receive reimbursement under the terms and conditions the school district was receiving reimbursement prior to the effective date of this 2023 Act unless the State Board of Education and the school district agree otherwise.

(13) Approved Alternative Transportation costs shall include costs identified in or aligned with the plan presented in their request for a waiver and/or supplemental plan that has been approved by the State Board of Education.

(a) The Department may reimburse estimated Alternative Transportation costs during the school year the costs are incurred based on estimates provided by the school district, and then reconcile to actual costs the following school year.

(b) The Department may not reimburse Alternative Transportation costs that exceed 5% of the school district's total Transportation Grant for the concurrent school year.

~~(1213)~~ Such items of expenditure as may be questionable in applying the policy stated in this administrative rule shall be resolved by the State Superintendent of Public Instruction and such determination shall be final.

| (~~13~~14) Apportionment of the State School Fund for 2001–02 and subsequent years.



# Alternative Transportation HB 3014 (2023)

258

Mike Wiltfong | School Finance & Facilities Administrator

Brock Dittus | Pupil Transportation Acting Manager

Vanessa Clark | State School Fund Program Manager

# What is the Transportation Grant?

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- Provides a percent reimbursement of actual expenses to transport students for academic purposes (70, 80, or 90% based on cost per ADMr)
- Largest of the State School Fund subgrants
  - \$260,968,078 for the 2021-2022 SY
- ORS 327.006 Defines Parameters for Grant
- OAR 581-023-0040 Defines approved costs

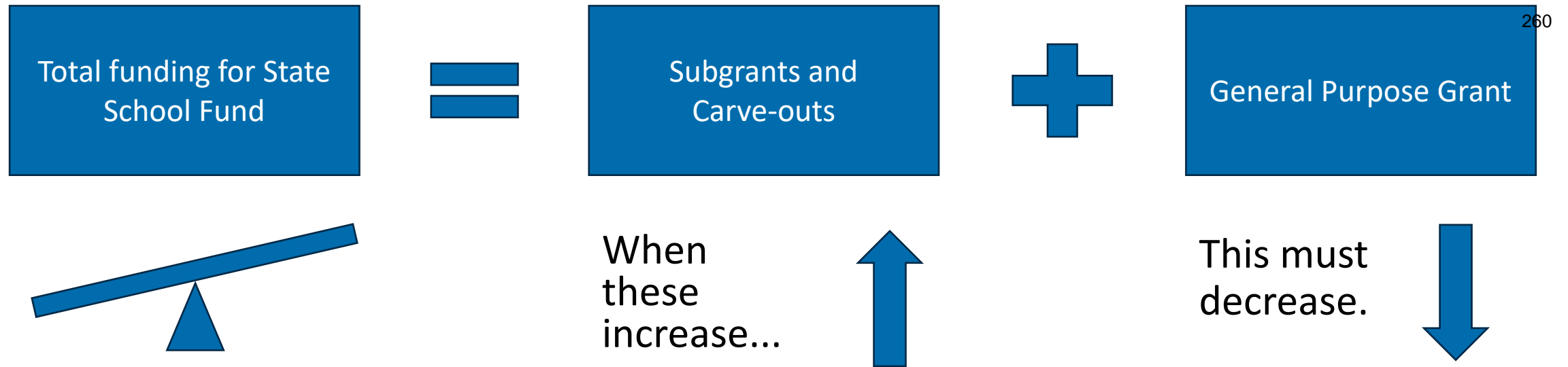
259



# How is it funded?

The Transportation Grant is funded through the State School Fund (SSF) and is the largest of the subgrants and carve-outs distributed through the SSF.

The General Purpose Grant is the main grant funded through the SSF.



# What type of costs does the grant cover?

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## [OAR 581-023-0040](#)

- Transportation of students:
  - Home-to-school
  - Between educational facilities
  - In-state field trips where it is an extension of class activities
- Pupil Transportation operations costs:
  - Salaries & benefits
  - Supplies, equipment, repairs, and maintenance
  - Contracted services
  - Depreciation of assets

# Waivers and Supplemental Plans

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- Supplemental Plans provide a way to account for health or safety concerns within the statutorily established walk zones (1 mile for elementary, 1.5 miles for secondary)
- Supplemental Plans establish a basis for reimbursement for such expenses
- Waivers request exception from the requirements of rule for driver & vehicle requirements when another form of transportation is preferred. Historically this has accounted for use of transit systems for secondary students, which would otherwise be outside the allowable scope of OAR Chapter 581 Division 53
- Historical precedent for existing waivers granted in perpetuity

262



# HB 3014 (2023)

263

# Background

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- Ongoing challenges with hiring/retaining bus drivers – shortages in Oregon and other states
- Districts continue to struggle with providing enough resources and routes for need 264
- There is need to find creative solutions outside of existing practices
- HB 3014 provides additional options that are already in practice in some districts, but aren't necessarily eligible for reimbursement from the Transportation Grant
  - Walking/biking bus
  - Public Transit passes – historical precedent for Eugene and Portland

# Engagement

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- September and October 2023
  - Oregon Association of Business Officials roundtable meeting
  - Chart of Accounts Committee meeting
  - Email engagements with interested individuals and organizations
- November and December 2023
  - Rules Advisory Committee meeting
  - Continued engagement with K-12 partners and advocates
  - State Board of Education meeting

265

# Overview of bill

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- Adds Alternative Transportation to the Transportation Grant
  - Includes Active Transportation and Public Transportation
- Limits funding from the State School Fund to be spent on Alternative Transportation
- Maintains pre-existing waivers and/or supplemental plans that allow school districts to include public transit passes



266



# Proposed Rules & Program Guidance

267

# Proposed Rules (page 1)

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- (12) Beginning with the 2024-25 school year, school districts may request a waiver and/or supplemental plan to include Alternative Transportation as a reimbursable expense under their Transportation Grant. In order to include Alternative Transportation costs as a reimbursable expense, school districts must:
- (a) submit a proposed or revised supplemental plan for their district that includes explanations of the alternative transportation methods to be used.
  - (b) Demonstrate that the inclusion of Alternative Transportation will result in Transportation Grant expenses that are equal to or less than planned expenses without Alternative Transportation, or demonstrate that costs exceeding this amount will be paid <sup>268</sup> from a source other than the transportation grant from the State School Fund.
  - (c) Document the local community engagement that was conducted to develop the plan for Alternative Transportation.
  - (d) School districts shall resubmit their supplemental plans and/or waivers for the inclusion of Alternative Transportation to be reauthorized by the State Board of Education every two years.
  - (e) Notwithstanding subsections (12)(a-d) of this section, a school district that, prior to the effective date of this 2023 Act, had been receiving reimbursement for costs incurred in providing transit passes under a supplemental plan or a waiver shall continue to receive reimbursement under the terms and conditions the school district was receiving reimbursement prior to the effective date of this 2023 Act unless the State Board of Education and the school district agree otherwise.

# Proposed Rules (page 2)

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- (13) Approved Alternative Transportation costs shall include costs identified in or aligned with the plan presented in their request for a waiver and/or supplemental plan that has been approved by the State Board of Education.
- (a) The Department may reimburse estimated Alternative Transportation costs during the school year the costs are incurred based on estimates provided by the school district, and then reconcile to actual costs the following school year.
- (b) The Department may not reimburse Alternative Transportation costs that exceed 5% of the school district's total Transportation Grant for the concurrent school year.

269

# Program Guidance



## Pupil Transportation Departments

- Oregon Pupil Transportation Association (OPTA)
- Forms, and process outline will be available on ODE website

## Finance & Business Managers

- Oregon Association of School Business Officials (OASBO)
- Program Budget and Accounting Manual (PBAM) to include program guidance
- Use of existing data collections (Estimate of Membership & Revenues and Actual Expenditures collections)

# Timeline & Next Steps

**Sept & Oct 2023**



Initial engagement with community partners

**Nov & Dec 2023**



Introduce draft rules to Rules Advisory Committee and State Board of Education

**Jan & Feb 2024**



Continued engagement with RAC, SBE, and public input

**Mar - June 2024**



School districts can begin requesting waivers and/or supplemental plans to implement Alternative Transportation

**School Year 2024-25**



School districts can begin implementing Alternative Transportation

271



# Questions

272

# Thank you!

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273

**581-023-0040**

**Provision (5)**

(5) The computation shall be made as follows:

(a) Pupil Transportation Salaries;

(b) Pupil Transportation Supplies, Equipment, Repairs, and Maintenance;

(c) All contracted Transportation;

(d) Travel of Pupil Transportation Personnel;

(e) Employee Benefits on Pupil Transportation Salaries;

(f) Pupil Transportation Insurance;

(g) Payments in Lieu of Transportation;

(h) Other Expenses of Pupil Transportation;

(i) Payments to Other Districts for Pupil Transportation;

(j) Leases and Rentals;

(k) Depreciation:

(A) Depreciation of Garage, but this shall not include land;

(B) Depreciation of Buses that are used at least 50% for reimbursable mileage.

(C) Shall include the costs to the district to retrofit, repower, or to replace as defined in ORS 468A.795, school buses for the purpose of reducing or eliminating diesel engine emissions. These costs:

(i) Shall not include the costs paid with moneys received from the state by a school district from the Clean Diesel Engine Fund that are described in 468A.801 (2)(a); and

(ii) Shall include costs to paid with moneys received from the state as allowed by the Environmental Mitigation Trust Agreement as defined in ORS 468A.801 (2)(c).

(l) Total of subsections (5)(a) through (k) of this rule;

(m) Deduct (if cost is included in detail above):

(A) Payments Received from Other Districts and from Patrons for reimbursable transportation;

(B) Non-reimbursable Transportation Costs:

~~(i) For 2019 — 20:~~

~~(I) Number of miles at \$2.66 per mile for all school buses and school activity vehicles having a manufacturers' designed passenger capacity of greater than 20 persons including the driver, or~~

~~(II) Number of miles at \$1.33 per mile for all school buses and school activity vehicles having a manufacturers' designed passenger capacity of 20 or less including the driver.~~

~~(ii) For 2020 – 21:~~

~~(I) Number of miles at \$2.70 per mile for all school buses and school activity vehicles having a manufacturers' designed passenger capacity of greater than 20 persons including the driver, or~~

~~(II) Number of miles at \$1.36 per mile for all school buses and school activity vehicles having a manufacturers' designed passenger capacity of 20 or less including the driver.~~

~~(iii) For 2021 – 22:~~

(I) Number of miles at \$2.86 Per mile for all school buses and school activity vehicles having a manufacturers designed passenger capacity of greater than 20 persons including the driver, or

(II) Number of miles at \$1.43 per mile for all school buses and school activity vehicles having a manufacturers' designed passenger capacity of 20 or less including the driver.

~~(iv) For 2022 – 23:~~

~~(I) Number of miles at \$2.96 Per mile for all school buses and school activity vehicles having a manufacturers designed passenger capacity of greater than 20 persons including the driver, or~~

~~(II) Number of miles at \$1.49 per mile for all school buses and school activity vehicles having a manufacturers' designed passenger capacity of 20 or less including the driver.~~

~~(iii) For 2023 – 24:~~

~~(I) Number of miles at \$3.18 per mile for all school buses and school activity vehicles having a manufacturers' designed passenger capacity of greater than 20 persons including the driver, or~~

~~(II) Number of miles at \$1.60 per mile for all school buses and school activity vehicles having a manufacturers' designed passenger capacity of 20 or less including the driver.~~

~~(iv) For 2024 – 25:~~

~~(I) Number of miles at \$3.29 per mile for all school buses and school activity vehicles having a manufacturers' designed passenger capacity of greater than 20 persons including the driver, or~~

~~(II) Number of miles at \$1.65 per mile for all school buses and school activity vehicles having a manufacturers' designed passenger capacity of 20 or less including the driver.~~

(v)(I) Those local school board certified marginal costs attributable to services provided to students who are not eligible for home-to-school transportation under section 3, calculated and documented as

follows: Documentation maintained by local district shall include: bus and route identification, school(s) being served, number of eligible students on board, number of ineligible students on board;

(II) Calculation of marginal costs shall be as follows: District Cost Per Mile of bus operation divided by the total number of students transported on each bus to derive an average cost per student. The cost per student multiplied by the number of ineligible students and the number of miles transported provides the amount for deduction. Example: Cost per student = district cost per bus mile - number of students on bus; Total Deduction = cost per student x ineligible students x number of miles transported.

(III) No deduction will be made for transportation inside prescribed limits if the local board certifies student demographics would require student bus rides to or from school of more than one hour if the bus is routed in a manner making it accessible to the number of eligible students living outside the prescribed mileage limit equal to 130 percent of the bus manufacturer's rated capacity; or

(IV) The local school board certifies that buses are routed in a manner to serve at least the number of eligible students living outside the prescribed mileage limits equal to 130 percent of the bus manufacturer's rated passenger capacity; and

(V) In either of the aforementioned situations, no additional costs have been incurred by the district for the identified service.

(C) State and Federal Receipts for Transportation, except those apportioned under ORS 327.006 or third party Medicaid payments for transportation, if used to support expenditures in subsections (5)(a) through (l) of this rule;

(D) Rental or Lease Payments from Private Contractors;

(E) The percentage of transportation facility depreciation commensurate with the percentage of the total district fleet value based upon purchase price (see subsection (6)(k) of this rule) represented by non-pupil transportation equipment. Examples of nonpupil transportation equipment would include the following: lawnmowers, tractors, backhoes, trucks, pickups, cars, trailers, snow blowers, etc.

(n) Total Deductions ((5)(m)(A)+(m)(B)+(m)(C)+(m)(D)+ (m)(E));

(o) Approved Cost ((5)(l) minus (5)(n)).

# Oregon State Board of Education

December 7, 2023

AGENDA ITEM: Transportation Grant – Non-reimbursable Mileage Rate Update

<p><b>SUBJECT:</b> Transportation Grant – Non-Reimbursable Mileage Rate Update 581-023-0040</p> <p><b>STAFF NAME &amp; OFFICE:</b> Mike Wiltfong   Office of Finance and Information Technology Vanessa Clark   Office of Finance and Information Technology</p> <p>This rule includes a yearly non-reimbursable mileage rate. The current rule lists a rate for the years 2019-20, 2020-21, 2021-22, and 2022-23. This rule change updates the rule to remove the years 2019-20 and 2020-21, and to add a rate for the years 2023-24 and 2024-25.</p> <p><input type="checkbox"/> New Rule <input checked="" type="checkbox"/> Amend Existing Rule <input type="checkbox"/> Repeal Rule</p>	<p><input checked="" type="checkbox"/> <b>First Reading</b> <input checked="" type="checkbox"/> Presentation <input type="checkbox"/> No Presentation</p> <p><input type="checkbox"/> <b>Action</b> <input type="checkbox"/> Temp Rule <input type="checkbox"/> Presentation <input type="checkbox"/> No Presentation</p>
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## BACKGROUND

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The Transportation Grant is one of the subgrants of the State School Fund. It provides school districts with a reimbursement of a percentage of their costs for transporting students for academic purposes. This rule defines approved costs under the grant and how reimbursements are calculated. One of the areas defined in this rule is the non-reimbursable mileage rate.

School districts often provide transportation services for students for non-academic purposes, such as athletics or other activity trips that are not related to student coursework. These non-academic trips are not reimbursable under the Transportation Grant, but most often, school districts use the same staff and equipment to provide these services. In order to deduct the cost of these trips from reimbursable expenses, a non-reimbursable mileage rate is set which intends to account for the cost of fuel, staffing, supplies, and equipment maintenance. School districts report their non-reimbursable mileage, and the non-reimbursable mileage rate is used to deduct these costs from their total transportation expenses.

The non-reimbursable mileage rate is increased annually to account for inflation. Department staff calculate and update this rate in rule once per biennium. The current rule lists a rate for the years 2019-20, 2020-21, 2021-22, and 2022-23. This rule change updates the rule to remove the years 2019-20 and 2020-21, and to add a rate for the years 2023-24 and 2024-25.

Since we are maintaining a consistent practice and only updating the specific rate amount based on a calculation, we did not conduct community engagement on this update.

## SUMMARY OF PREVIOUS BOARD ACTION

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This is the first time this update has been brought before the Board.

# Oregon State Board of Education

December 7, 2023

AGENDA ITEM: Transportation Grant – Non-reimbursable Mileage Rate Update

## 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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This is a routine update to account for inflation. At this time, Department staff are not aware of any policy issues related to this update.

## EQUITY IMPACT ANALYSIS

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The non-reimbursable mileage rate aims to capture the costs of non-academic trips to deduct those expenses from the Transportation Grant. Doing this ensures that funds from the State School Fund are used to support students' academic needs, while also allowing school districts to use the same pupil transportation equipment for additional uses, such as athletic trips. While raising the rates due to inflation means higher deductions from the Transportation Grant, it keeps the grant focused on its purpose and increases equitable access to funding across the state.

## FISCAL ANALYSIS

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The Transportation Grant is funded through the State School Fund, managed by staff on the School Finance team, and supported with data collected by the Pupil Transportation Unit. The State School Fund is funded by the Legislature at a specific amount per biennium and that funding is split between the two years of the biennium. There are several subgrants and carve-outs that are funded by the State School Fund and that reduce the amount that is distributed to school districts and education service districts as the General Purpose Grant of the State School Fund. The Transportation Grant is the largest of these subgrants – for the 2021-22 school year it reimbursed school districts nearly \$261 million.

The Transportation grant provides a percent reimbursement of the actual cost of transporting students for academic purposes. Because the Transportation Grant does not have a maximum reimbursement limit, care must be taken to ensure that growth of this grant does not outpace growth in funding of the overall State School Fund. The non-reimbursable mileage rate serves to keep the Transportation Grant's focus on supporting student transportation for academic purposes.

Historically, the non-reimbursable mileage rate has been updated using Consumer Price Index (CPI) data from the Bureau of Labor Statistics. The annual average CPI growth is used as a basis for inflation and the non-reimbursable mileage rate is set to match this growth percentage. For the 2023-24 school year, a full year of CPI data is available to use to match the growth percentage from the past year and set a new rate. For the 2024-25 school year, six months of CPI data are available, so an estimated growth percentage is used in an attempt to match that growth. The growth percentage used to set the 2023-24 rate is approximately 7.5% and the growth percentage used to set the 2024-25 rate is approximately

# Oregon State Board of Education

December 7, 2023

AGENDA ITEM: Transportation Grant – Non-reimbursable Mileage Rate Update

3.5%. The 2023-24 growth percentage was higher due to higher than usual inflation in the year preceding.

The specific data set used as a basis is the Consumer Price Index for All Urban Consumers in the Pacific region. This regional data set is used in an attempt to capture the inflation that is most relevant to Oregon’s school communities. The “all items” category is used rather than a fuel specific category because transportation services in school districts tend to contract for fuel rates, meaning that their price is a little steadier than what average consumers see at the gas station. Additionally, there are other cost factors that the non-reimbursable mileage rate captures, such as wear and tear on vehicles, insurance, etc. For these reasons, the “all items” category ends up being a better fit for capturing the actual inflation that school districts see in their transportation expenses.

Using this methodology matches the way that we have historically set these rates, which maintains consistency for school districts. While increasing the non-reimbursable mileage rate means a higher deduction from the amount eligible for reimbursement under the Transportation Grant, it maintains the focus of the Transportation Grant on supporting student transportation for academic purposes.

## EFFECT OF A “YES” OR “NO” VOTE

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The non-reimbursable mileage rate is a required component of the calculation of the Transportation Grant under the State School Fund.

- If the Board approves this rule revision, the rate will be updated and available to be used in the Transportation Grant calculation.
- If the Board does not approve this rule revision, the non-reimbursable mileage rate will be out of date. Using an older rate in the Transportation Grant calculation would mean that non-reimbursable mileage is deducted at a rate lower than needed to cover non-academic trips.

## STAFF RECOMMENDATION

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Approve  Approve next month  No recommendation at this time

**Prompted by:**  State law changes  Federal law changes  other: regularly scheduled rate update to account for inflation

## ATTACHMENTS

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Attachment 1: 2023 Update to Non-Reimbursable Mileage Rule (draft of rule revision)



# Transportation Grant: Non-Reimbursable Mileage Rate Update

280

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# What is the Transportation Grant?

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- Provides a percent reimbursement of actual expenses to transport students for academic purposes (70, 80, or 90% based on cost per ADMr)
- Largest of the State School Fund subgrants
  - \$260,968,078 for the 2021-2022 SY
- ORS 327.006 Defines Parameters for Grant
- OAR 581-023-0040 Defines approved costs

281



# What types of costs does the grant cover?

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## Reimbursable Trips:

- Home-to-school
- Between educational facilities
- In-state field trips where it is an extension of classroom activities

## Non-Reimbursable Trips:

- Athletics
- Activity trips (not part of classroom instruction)
- Transportation for students that the district is not required to transport

282

# Non-Reimbursable Mileage Rate

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Allows school districts to use the same equipment, staff, and supplies to support transportation that is not reimbursable under the Transportation Grant.



Used to deduct the expenses for non-reimbursable trips.



Updated annually using Consumer Price Index trend data.

# Transportation Grant Rule Change

- **Proposed Rule Changes**

- Removing 2019-20 and 2020-21 non-reimbursable mileage rates
- Adding non-reimbursable mileage rates for 2023-24 and 2024-25

(iii) For **2023 – 24**:

(I) Number of miles at \$**3.18** per mile for all school buses and school activity vehicles having a manufacturers designed passenger capacity of greater than 20 persons including the driver, or

(II) Number of miles at \$**1.60** per mile for all school buses and school activity vehicles having a manufacturers' designed passenger capacity of 20 or less including the driver.

284

(iv) For **2024 – 25**:

(I) Number of miles at \$**3.29** per mile for all school buses and school activity vehicles having a manufacturers designed passenger capacity of greater than 20 persons including the driver, or

(II) Number of miles at \$**1.65** per mile for all school buses and school activity vehicles having a manufacturers' designed passenger capacity of 20 or less including the driver.

# Thank you!

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285

# Oregon State Board of Education

December 7, 2023

AGENDA ITEM: HB2280: Consent Definition

<p><b>SUBJECT:</b> Consent Definition, OAR 581-021-0038</p> <p><b>STAFF NAME &amp; OFFICE:</b> Kate Hildebrandt, Director's Office</p> <p>House Bill 2280 updated the definition of consent for school district sexual harassment policies. The definition was updated to better align with the definition required to be taught in comprehensive sexuality education and health education rules and standards.</p> <p><input type="checkbox"/> New Rule <input checked="" type="checkbox"/> Amend Existing Rule <input type="checkbox"/> Repeal Rule</p>	<p><input checked="" type="checkbox"/> <b>First Reading</b> <input checked="" type="checkbox"/> <b>Presentation</b> <input type="checkbox"/> <b>No Presentation</b></p> <p><input type="checkbox"/> <b>Action</b> <input type="checkbox"/> <b>Temp Rule</b> <input type="checkbox"/> <b>Presentation</b> <input type="checkbox"/> <b>No Presentation</b></p>
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## BACKGROUND

ORS 342.700-708 was originally adopted in 2018. It created a requirement for school districts to adopt sexual harassment policies which define sexual harassment and require schools to respond to reports of sexual harassment by providing supportive measures and conducting an investigation. At the time the legislation was passed, Title IX's sexual harassment provisions were in debate at the federal level, and Oregon's intention was to create a similar state-level statute to secure rights for students if Title IX's sexual harassment protections changed. OAR 581-021-0038 has gone through several updates since it was passed. It was last updated in 2020, in response to a legislative change. The 2020 rulemaking process included several discretionary updates to the rule, including a robust discussion on parental notification and a clarification on the sexual harassment definition.

The currently proposed rule changes are in response to House Bill 2280, which modified the definition of consent in ORS 342.700-704. Prior to House Bill 2280, the statute did not explicitly define consent. A definition of consent was implied by defining sexual assault as "[a]ssault when sexual contact occurs without a person's consent because the person is under the influence of drugs or alcohol, is unconscious or is pressure through physical force, coercion, or explicit or implied threats." (ORS 342.704(3)(b)(C)).

This implied definition of consent in ORS 342.704 was out of alignment with required instruction on consent in Oregon's comprehensive sexuality education standards. [OAR 581-002-2050 – Human Sexuality Education](#) defines "consensual" in (1)(e) as "the presence of a 'yes' when 'no' is a viable option" and defines "non-consensual" in (1)(m) as "any sexual act that is inflicted upon a person who is unable to grant consent or that is unwanted and compelled through the use of physical force, manipulation, threats, or intimidation."

House Bill 2280, which was sponsored by ODE, aligns the definition in school district sexual harassment policies with Oregon's comprehensive sexuality education rules and standards. The statute now reads:

- (b) "Without consent" means an act performed:
  - (A) Without the knowing, voluntary and clear agreement by all parties to participate in the specific act; or
  - (B) When a person who is a party to the act is:
    - (i) Incapacitated by drugs or alcohol;

# Oregon State Board of Education

December 7, 2023

AGENDA ITEM: HB2280: Consent Definition

- (ii) Unconscious; or
- (iii) Pressured through physical force, coercion or explicit or implied threats to participate in the act.

In developing the definition, ODE consulted with our health and sexuality education program, partners at OHA, nonprofit sexual violence advocacy groups, and education partners prior to proposing the bill.

The proposed rule changes are simply to align OAR 581-021-0038 with the updated statute. While the board does have discretion to propose additional changes above and beyond the law, none are proposed at this time.

## SUMMARY OF PREVIOUS BOARD ACTION

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This is the first time this rule change has been before the 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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The previous misalignment in definitions between sexual harassment policies and classroom instruction on healthy relationships was potentially extremely harmful to students. The mismatch set students up for confusion and harm when they were taught one definition of consent in the classroom, but schools then used a different definition of consent in their policies. Students and families could have reported sexual harassment to their school because they had been taught that a behavior was nonconsensual, only to find that their school dismissed the report because it did not meet the standard for sexual harassment or sexual assault. This could lead to exacerbated experiences of trauma for students and their families or even experiences of [institutional betrayal](#). These experiences, in turn, may lead to students to suffer a decrease in their grades, an increase in absences, or even to drop out of school.

Much of the community engagement on the definition itself occurred prior to ODE's proposal of the bill. ODE staff:

- Reviewed previous complaints involving sexual harassment and sexual assault, along with reports made to ODE's complaints and appeals team and civil rights teams;
- Consulted with state partners, including ODE and OHA experts, on the proposed update; and
- Consulted with community sexual assault advocacy organizations to determine possible impact.

Since the passage of the bill, community engagement has focused on understanding and implementation:

# Oregon State Board of Education

December 7, 2023

AGENDA ITEM: HB2280: Consent Definition

- The updated definition was shared with district admin and Title IX Coordinators during Fall 2023 civil rights trainings and Title IX trainings, August-October (approximately 300 attendees for in-person and virtual trainings across the state)
- An open engagement session was held in September with Oregon Title IX Coordinators
- An open engagement session was held in October with the Comprehensive Sex Ed Advisory Group
- In conversations with educational partners, ODE continues to promote awareness of the new definition.

ODE has received additional suggestions for technical assistance and support that we are planning to provide:

- During session, ODE received a request from a school district to provide guidance on investigating and assessing consent in alignment with this new definition. ODE has done so throughout Fall Title IX trainings and will continue to do so, including developing specific webinars and workshops on consent that will highlight the new definition.
- Plan to provide webinars in alignment with upcoming Title IX changes (expected Spring 2024) that will highlight the new definition, along with continuing to provide 1-on-1 technical support.
- During the RAC presentation, ODE received a suggestion to make sure update is shared with school counselors; will connect with ODE school counseling staff to determine best venue for sharing update.

We welcome additional suggestions for how to continue to provide support, especially to districts, students, and families.

## **EQUITY IMPACT ANALYSIS**

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Sexual harassment and assault severely impacts historically marginalized and underserved groups.

- Girls and gender expansive individuals are more likely to experience sexual violence than boys. According to the [2020 Oregon Student Health Survey](#), 24.4% of 11<sup>th</sup> grade girls have been pressured in sexual activity and 9.2% have been physically forced to have sex. 5.7% of 11<sup>th</sup> grade boys have been pressured into sexual activity and 1.7% have been physically forced to have sex. For gender diverse 11<sup>th</sup> graders, 38% have been pressured into sexual activity and 22.7% have been physically forced to have sex.
- Sexual violence also has a disproportionate impact of women of color. According to the 2016/2017 [National Intimate Partner and Sexual Violence Survey](#), 29% of Black women, 43.7% of American Indian or Alaskan Native women, and 48% of Multiracial women reported experience rape in their lifetime compared to 28% of White women.
- Individuals with disabilities are more likely to experience sexual violence than people without disabilities. Individuals with intellectual disabilities, for example, are [seven times more likely to experience sexual assault than individuals without disabilities](#).

This update will allow more students to have the option of seeking justice and support from their school district after sexual violence. Because sexual violence disproportionately impacts historically underrepresented student populations, this means that more students of color, students with disabilities, LGBTQ2SIA+ students, and other marginalized students will have access to these options.

# Oregon State Board of Education

December 7, 2023

AGENDA ITEM: HB2280: Consent Definition

## FISCAL ANALYSIS

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Minimal additional costs are expected. School districts may have to devote additional staff time to responding to and investigating sexual harassment complaints, since slightly more incidents may now fall under the policy.

Fiscal impact on ODE is not anticipated. ODE already employs a Title IX and Civil Rights Specialist who could implement this bill and provide information and support to districts. There are no reporting requirements for ODE or districts in this bill.

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## 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 Rules OAR 581-021-0038\_HB 2280 (2023)\_11.29.2023

Edits prepared by KH, 11.29.2023

581-021-0038

Minimum Requirements for School District Sexual Harassment Policies

(1) For purposes of this rule:

(a) "District" includes school district, education service district, and public charter school.

(b)(A) "Sexual harassment" includes:

(i) A demand or a request for sexual favors in exchange for benefits.

(ii) Unwelcome conduct of a sexual nature that is physical, verbal, or nonverbal and that:

(I) Interferes with a student's educational activity or program;

(II) Interferes with a school or district staff member's ability to perform their job; or

(III) Creates an intimidating, offensive, or hostile environment.

(iii) Assault, when sexual contact occurs without ~~a person's~~ consent. ~~because the person is:~~

~~(i) Under the influence of drugs or alcohol;~~

~~(ii) Unconscious; or~~

~~(iii) Pressured through physical force, coercion or explicit or implied threats.~~

(B) "Sexual harassment" does not include:

(i) Conduct that is necessary because of a job duty of a school or district staff member or because of a service required to be provided by a contractor, agent, or volunteer, if the conduct is not the product of sexual intent.

(ii) A person finding another person, or another person's actions, offensive because of that other person's sexual orientation or gender identity.

(c) "Third party" means a person who is not a student or a school or district staff member and who is:

(A) On or immediately adjacent to school grounds or district property;

(B) At a school-sponsored or district-sponsored activity or program; or

(C) Off school grounds or district property if a student or a school or district staff member acts toward the person in a manner that creates a hostile environment for the person in an environment described in subparagraphs (A) and (B) of this paragraph.

**(c) “Without consent” means an act performed:**

**(A) Without the knowing, voluntary and clear agreement by all parties to participate in the specific act; or**

**(B) When a person who is a party to the act is:**

**(i) Incapacitated by drugs or alcohol;**

**(ii) Unconscious; or**

**(iii) Pressured through physical force, coercion or explicit or implied threats to participate in the act.**

(2) It is the policy of the Oregon State Board of Education that all students, staff members, and other persons in Oregon schools are entitled to learn and work in an environment that is free of harassment. To that end, sexual harassment will not be tolerated in Oregon schools.

(3) School districts shall adopt policies that meet the requirements set forth in subsection (5) of this rule that address the sexual harassment of:

(a) Students by school and district staff members or by other students;

(b) School and district staff members by students or by other staff members; and

(c) Third parties.

(4) Policies adopted pursuant to this rule must be:

(a) Published in the school or district student handbook;

(b) Published on the school or district website;

(c) Made available at each school office and at the district office;

(d) Posted on a sign in all schools teaching a grade between grade 6 and 12, on a sign that is at least 8.5 by 11 inches in size; and

(e) Made available upon request to students, parents of students, school and district staff members, and third parties.

(5) A policy adopted pursuant to this rule must include, but is not limited to, the following requirements:

(a) A statement of the district’s commitment to eliminate sexual harassment;

(b) All students and school and district staff are subject to the policy;

(c) One or more definitions for the types of harassment covered by the policy;

- (d) Examples of the kinds of harassing behaviors covered by the policy;
- (e) The name and position of each employee responsible for accepting and managing complaints of harassment covered by the policy and how to contact the employee or employees;
- (f) A requirement that when a school or district staff member becomes aware of behavior that may violate the policy, the staff member shall report the behavior to a district official, and a requirement that the district official shall take any action necessary to ensure that the impacted person is protected and to promote a nonhostile work and learning environment, including:
  - (A) Providing resources and support measures to the impacted person; and
  - (B) Taking any action that is necessary to remove the potential future impact on the impacted person, provided that the action is not retaliatory against the impacted person or the staff member who reported the behavior;
- (g) The initiation of a complaint, reporting of behavior, or participation in an investigation, in good faith about behavior that may violate the policy may not adversely affect:
  - (A) The educational assignments or educational environment of a student or other person initiating the complaint, reporting the behavior, or participating in the investigation;
  - (B) Any terms or conditions of employment or of work or educational environment of a school or district staff member or other person initiating the complaint, reporting the behavior, or participating in the investigation;
- (h) A requirement that students who initiate a complaint or otherwise report harassment covered by the policy or who participate in an investigation may not be disciplined for violations of the district's drug and alcohol policies that occurred in connection with the reported prohibited conduct and that were discovered because of the report or investigation, unless the student gave another person alcohol or drugs without the person's knowledge and with the intent of causing the person to become incapacitated and vulnerable to the prohibited conduct.
- (i) When a student, staff member, or third party files a complaint under the policy, the district must provide notice as required by subsection (6) to:
  - (A) Each reporting person;
  - (B) If appropriate, any impacted person who is not a reporting person;
  - (C) Each reported person; and
  - (D) Where applicable, a parent or legal guardian of a reporting person, impacted person, or reported person;
- (j) Each person receiving notice under paragraph (i) of this subsection shall be notified when the investigation is initiated and is concluded, and whether a violation of the policy was found to

have occurred following the investigation, to the extent allowable under state and federal student confidentiality laws;

(k) All complaints about behavior that may violate the policy shall be investigated;

(l) Identification of the means the district will use to investigate incidents of harassment covered by the policy;

(m) Procedures to address sexual harassment of students or school or district staff members by third parties;

(n) Standards for determining whether a hostile environment exists;

(o) Remedial action the district will take to stop harassment covered by the policy and prevent reoccurrence; and

(p) Prohibition of retaliation against persons who initiate a complaint or otherwise report harassment covered by the policy or who participate in an investigation or other related activities

(6) Written notification required under subsection (5)(i) must include, but is not limited to:

(a) Name and contact information for all persons designated by the district to receive complaints;

(b) The rights of the person;

(c) Information about the privacy rights of the person and legally recognized exceptions to those privacy rights for internal complaint processes and services available through the school or school district;

(d) Information about the complaint process, including any applicable timelines;

(e) Notice that civil and criminal remedies that are not provided by the school or district may be available to the person through the legal system, and that those remedies may be subject to statutes of limitation;

(f) Information about services available to the person through the district, including any counseling services, nursing services, or peer advising;

(g) Information about and contact information for support services available to the person, including:

(A) For the reporting person, state and community-based resources for persons who have experienced sexual harassment; or

(B) For the reported persons, information about and contact information for state and community-based mental health services;

(h) Notice of the prohibitions of discipline as described in subsection (5)(h); and

(i) Notice of prohibition of retaliation;

(7) The Department of Education will provide technical assistance, including assistance in the development of appropriate training, to districts upon request in the development of appropriate sexual harassment policies as required by this rule.