FOREWORD

Sample policies and procedures, developed by the Oregon Department of Education, Office of Special Education, are provided to assist school districts/agencies in Oregon with the development of policies and procedures for the operation of local special education programs. The sample Policies and Procedures documents are formatted with a left and right side. The left side of each page contains the Oregon Administrative Rule, Oregon Revised Statute, or Code of Federal Regulation requirements. An asterisk found at the beginning of any legal reference indicates only part of the rule applies, and is included within the citation.

The right side of the document contains the sample policies and procedures districts/agencies may choose to adopt. These samples conform to the requirements of state and federal regulation and rule listed on the corresponding left side. Specific district/agency responsibilities are arranged into separate documents and reflect only those requirements that particular agency is responsible for. For document purposes, the wording “the district” means the public agency.

For any further information, contact Tricia Clair at the Oregon Department of Education, 503-378-3598, ext. 684; tricia.clair@state.or.us.
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### Section 1: Child Find

#### OAR 581-015-0037 Child Find

1. School districts shall identify, locate and evaluate all resident children who may have a disability and need early intervention, early childhood special education, or special education services. This requirement applies to children from birth to the end of the school year in which the child turns age 21, or would no longer be entitled to a free appropriate public education under OAR 581-015-0708 to 581-015-0709.

2. The requirements of this rule apply to:
   - Highly mobile children with disabilities (such as migrant and homeless children);
   - Children who are suspected of having a disability even though they are advancing from grade to grade;
   - Private school children with disabilities, including religious school children residing in the jurisdiction of the school district;
   - Children who are home schooled;
   - Children below the age of compulsory school attendance who are not enrolled in a public or private school program; and
   - Children above the age of compulsory school attendance who have not graduated with a regular high school diploma.

3. Child find for children attending private schools, including religious schools, in the jurisdiction of the school district:
   - Activities for private school children with disabilities shall be comparable to child find activities for public school children with disabilities.
   - Each school district shall consult with appropriate representatives of private school children with disabilities on how to carry out these activities.
   - Each school district shall conduct initial child find activities for private schools located within their jurisdiction. If the school district locates a non-resident student with a possible disability, the school district shall notify the student’s resident district, and the resident district shall be responsible for determining whether to conduct an evaluation, completing the evaluation and eligibility process, and complying with all notice and consent requirements related to identification, evaluation and eligibility determinations.

4. For purposes of this rule, residency is determined in accordance with ORS 339.133 through 399.137.

[Federal Regulations: 34 CFR 300.125(a), 300.561(b), and 300.451]

#### ORS 343.517 Parent-initiated referral to determine eligibility.

1. Whenever the parent of a child believes that the child is eligible for early childhood special education or early intervention services or is concerned about the child’s developmental progress, the parent may initiate a referral to the contractor, or the designated referral and evaluation agency, in the county where the child resides.

### I. General Child Find

A. The district uses an ongoing system to locate, identify and evaluate all children birth to 21 residing within its jurisdiction, suspected of being eligible for special education. This ongoing system includes:

   1. Public awareness activities (e.g., local media resources including television, radio, or newspaper; direct contact activities in the community, including presentations at community meetings, business group meetings, and other meetings; outreach to those who may not understand English or who may live in rural or isolated areas).

   2. Before any major child find activity, the district will publish notice in newspapers or other media, or both, informing parents that confidentiality requirements apply to these activities. Circulation for this notice must be adequate to inform parents within the district’s jurisdiction.

   3. A system in each school, charter school, and public alternative school in the district to ensure that:

      a. District staff are knowledgeable of the characteristics of disabilities and appropriate referral of students suspected of having disabilities; and,

      b. Special education referrals from parents, teachers, and others are directed to appropriate special education staff.

   4. The district provides information on special education services in the district and the district’s special education referral process to facilities located in the district, including day care centers, homeless shelters, group homes, county jails, hospitals, and other facilities that serve children birth to 21 years old.

   5. The district provides information on special education services and how to make a referral to any migrant education programs operating in the district.

### II. Private School Children with Disabilities

A. The district’s child find activities for students in private schools are comparable to activities for students in the district’s public schools.
## Section 1: Child Find

| (2) Services contractors, community agencies or individuals in the community may also assist the family to initiate a referral if they believe that a child is eligible for early childhood special education or early intervention services or they are concerned about the child's developmental progress. | B. The district consults with appropriate representatives of private school children with disabilities on how to carry out these child find activities. |
| (3) Nothing in this section shall relieve school districts of the duty to identify, locate and evaluate preschool children with disabilities under ORS 343.157. | C. If, through its child find activities, the district locates a non-resident student suspected of a disability, the district notifies the student’s resident school district. |

### III. Home Schooled Children With Disabilities

| A. The district collaborates with the ESD that serves their district to ensure that the district responds promptly to information about home schooled children with suspected disabilities. | B. The district collaborates with home schooling organizations in the district’s jurisdiction and provides information about special education services in the district and how to make a referral. |
### Section 2: Records Access and Confidentiality

**OAR 581-015-0055 Confidentiality of Student Education Records**

1. Each school district shall keep confidential any record maintained on a child with a disability in conformance with OAR 581-021-0220 through OAR 581-021-0440.
2. Each school district shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.
3. One official at each school district shall assume responsibility for ensuring the confidentiality of any personally identifiable information.
4. All persons collecting or using personally identifiable information must receive training or instruction regarding the State’s policies and procedures under OAR 581-015-0055 through 581-015-0606 and OAR 581-021-0220 through 581-021-0440.

[Federal Regulation: 34 CFR 300.572]

### I. Confidentiality of Student Records

- **A.** The district designates one official to coordinate special education records and to ensure that the district provides access to and protects the confidentiality of student records.
- **B.** The district ensures that the confidentiality of personally identifiable information is protected at collection, storage, disclosure, and destruction stages.
- **C.** The district ensures that each person collecting or using personally identifiable information shall receive training or instruction regarding the policies and procedures governing confidentiality of personally identifiable information.
- **D.** The district maintains for public inspection a current listing of the names and positions of the employees who may have access to personally identifiable information and keeps a record of any authorized personnel who reviews the record that is not on the listing.
- **E.** The district provides parents or eligible students, on request, a list of the types and locations of education records collected, maintained, or used by the district.

### OAR 581-021-0230 The Rights of Parents

An educational agency or institution shall give full rights under OAR 581-021-0220 through 581-021-0420 to either parent, unless the agency or institution has been provided with evidence that there is a court order, state statute, or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes these rights.

[Federal Regulation: 34 CFR 99.4]

### OAR 581-021-0240 The Rights of Eligible Students

When a student becomes an eligible student, the rights accorded to, and consent required of, parents under OAR 581-021-0220 through 581-021-0420 transfer from the parents to the student. Nothing prevents educational agencies or institutions from giving students rights in addition to those given to parents.

[Federal Regulation: 34 CFR 99.5]

### I. Access Rights & Transfer of Rights

- **A.** For purposes of the right to examine educational records in this section, “eligible student” means a student who has reached 18 years of age or is attending an institution of postsecondary education. If an eligible student has a disability that prevents the student from exercising his or her rights, the student’s parents may continue to act on the student’s behalf if they are the legal guardian or assigned surrogate parent.
- **B.** The district will permit a parent, eligible student, or a representative of the parent or eligible student to inspect and review any educational records directly relating to the student that are maintained by the district.
- **C.** The district will comply with a request from a parent or eligible student to inspect and review any education records without unnecessary delay and:
Section 2: Records Access and Confidentiality

OAR 581-015-0606 Access to Student Education Records
(1) School districts shall give parents an opportunity to examine all student education records as discussed under OAR 581-021-0220 and 581-021-0440.
(2) A school district shall comply with a request from a parent to examine student education records without unnecessary delay and before any meeting regarding an IEP, or any due process hearing and in no case more than 45 days after the request has been made.
(3) The rights accorded to parents regarding student educational records shall transfer to the student at age of majority if other rights transfer.

[Federal Regulations: CFR 34 300.562 and 300.574(c)]

OAR 581-021-0270 Rights of Inspection and Review of Education Records
(1) Except as limited under OAR 581-021-0290, each educational agency or institution shall permit a parent, an eligible student, or a representative of a parent if authorized in writing by the parent, to inspect and review the education records of the student.
(2) The educational agency or institution shall comply with a request for access to records within a reasonable period of time, but in no case more than 45 days after it has received the request.
(3) The educational agency or institution shall respond to the reasonable requests for explanations and interpretations of the records.
(4) If a parent or an eligible student so requests, the educational agency or institution shall give the parent or eligible student a copy of the student's education records pursuant to ORS 192.440, except that no copy of test protocols, test questions and answers, and other documents described in ORS 192.501(4) shall be provided unless authorized by federal law.
(5) The educational agency or institution shall not destroy any education records if there is an outstanding request to inspect and review the records under this rule.
(6) While an education agency or institution is not required to give an eligible student access to treatment records under the definition of "education records" in OAR 581-021-0220(6)(b)(D), the student may, at his or her expense, have those records reviewed by a physician or other appropriate professional of the student's choice.

[Federal Regulation: 34 CFR 99.10]

OAR 581-021-0280 Fees for Copies of Education Records
(1) Student records are public records under ORS 192.410. through 192.505 but are exempt from disclosure except as authorized by OAR 581-021-0220 through 581-021-0440.

II. Fees
A. If requested by a parent or eligible student, the district will provide copies of the records containing the information without a fee if the district determines that a failure to provide those copies would effectively prevent the person from exercising the right to inspect and review the records.

1. The district will determine that a parent or eligible student will be effectively prevented from exercising the right to inspect and review an education record if the person cannot inspect and review the education record at the location at which it is normally maintained (or at any other location where the district offers to produce it) without incurring significant expense or personal hardship.

2. The district may charge a fee for copies of records that are made for
**Section 2: Records Access and Confidentiality**

(2) Unless the imposition of a fee effectively prevents a parent or eligible student from exercising the right to inspect and review the student's education records, an educational agency or institution may charge a fee for a copy of an educational record which is made for the parent or eligible student subject to section (3) of this rule.

(3) Notwithstanding ORS 192.440(3), an educational agency or institution may not charge a fee to search for or to retrieve the education records of a student.

[Federal Regulation: 34 CFR 99.11]

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

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

[Federal Regulation: 34 CFR 99.12]

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

A parent or eligible student if the fee does not effectively prevent the person from exercising the right to inspect and review those records.

B. The district may not charge a fee to search for or to retrieve information.

I. Records on More Than One Student

A. The district will permit a parent or eligible student to inspect and review only those portions of an education record that contain information regarding the student and will inform the parent or eligible student of any other specific information in the record regarding the student but which cannot be directly inspected or reviewed because of the confidentiality rights of other students.

I. Amendment of Records at Parent's Request

A. A parent or eligible student who believes that information in the education records is inaccurate or misleading or violates the privacy or other rights of the student may request the district to amend the information.

B. The district, upon receiving a request from a parent or eligible student, will decide whether to amend the information as requested within ten days from the date of receipt of the request.

1. The district determines that information contained in an education record is "inaccurate" if the district, after reviewing the information, concludes that it is untrue or cannot be substantiated.

2. The district determines that information contained in an education record is "misleading" if the district, after reviewing the information, concludes that a person reading the record would likely arrive at an inaccurate conclusion regarding the personal characteristics or history of the student who is the subject of the educational record.

3. The district determines that the information contained in an education record "violates the privacy or other rights of the student" if the district determines that the information contained in the education record concerning the personal characteristics or personal...
### Section 2: Records Access and Confidentiality

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<th>OAR 581-021-0310 Right to a Hearing to Challenge Content</th>
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<td>(1) An educational agency or institution shall give a parent or eligible student, on request, an opportunity for a hearing to challenge the content of the student's education records on the grounds that the information contained in the education records is inaccurate, misleading, or in violation of the privacy or other rights of the student.</td>
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<td>(2) If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall:</td>
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<td>(a) Amend the record accordingly; and</td>
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<td>(b) Inform the parent or eligible student of the amendment in writing.</td>
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<td>(3) If, as a result of the hearing, the educational agency or institution decides that the information in the education record is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall inform the parent or eligible student of the right to place a statement in the record commenting on the contested information in the record or stating why he or she disagrees with the decision of the educational agency or institution, or both.</td>
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<td>(4) If an educational agency or institution places a statement in the education records of a student under section (3) of this rule, the agency or institution shall:</td>
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<td>(a) Maintain the statement with the contested part of the record for as long as the record is maintained; and</td>
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<td>(b) Disclose the statement whenever it discloses the portion of the record to which the statement relates.</td>
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[Federal Regulation: 34 CFR 99.21]

### I. Student Records Hearing

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<td>The hearing required by OAR 581-021-0310 must meet at a minimum the following requirements:</td>
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<td>(1) The educational agency or institution shall hold the hearing within a</td>
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<th>I. Student Records Hearings Requirements:</th>
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<td>A. The district will hold the hearing within a reasonable time after it has received a request for a student records hearing.</td>
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Section 2: Records Access and Confidentiality

reasonable time after it has received the request for the hearing from the parent or eligible student.
(2) The educational agency or institution shall give the parent or eligible student notice of the date, time, and place, reasonably in advance of the hearing.
(3) The hearing may be conducted by any individual, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing.
(4) The educational agency or institution shall give the parent or eligible student a full and fair opportunity to present evidence relevant to the issues raised under OAR 581-021-0310. The parent or eligible student may, at their own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney.
(5) The educational agency or institution shall make its decision in writing within a reasonable period of time after the hearing.
(6) The decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision.

Federal Regulation: 34 CFR 99.22

OAR 581-021-0330 Prior Consent to Disclose Information
(1) The parent or eligible student shall provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the student’s education records, except as provided in OAR 581-021-0340.
(2) The written consent must:
(a) Specify the records that may be disclosed;
(b) State the purpose of the disclosure; and
(c) Identify the party or class of parties to whom the disclosure may be made.
(3) When a disclosure is made under section (1) of this rule:
(a) If a parent or eligible student so requests, the educational agency or institution shall provide him or her with a copy of the records disclosed; and
(b) If the parent of a student who is not an eligible student so requests, the agency or institution shall provide the student with a copy of the records disclosed.

Federal Regulation: 34 CFR 99.30

I. Prior Consent to Disclose Information
A. The district obtains written consent from the parent or eligible student before permitting personally identifiable information to be disclosed to anyone other than officials of participating agencies collecting or using information for the purposes of the activities described in these procedures and only where the disclosure is consistent with all applicable federal statutes.
B. The district obtains written consent from the parent or eligible student before permitting personally identifiable information to be used for any purpose other than meeting a requirement under these procedures.
C. The written consent:
1. Specifies the records that may be disclosed;
2. States the purpose of the disclosure; and,
3. Identifies the party or class of parties to whom the disclosure may be made.
Section 2: Records Access and Confidentiality

D. When a disclosure is made, the district provides a parent or eligible student a copy of the disclosed record upon request.

E. The district does not release information from education records without parent consent unless permitted under an authorized exception.

OAR 581-021-0340 Exceptions to Prior Consent
With the exception of sections (5) and (10) of this rule, an educational agency or institution shall disclose personally identifiable information from an education record of a student without the consent required by OAR 581-021-0330 if the disclosure meets one or more of the following conditions:

1. The disclosure is to school board members during executive session pursuant to ORS 332.061, or to other school officials and teachers within the educational agency whom the agency or institution has determined to have legitimate educational interests.

2. The disclosure is to officials of another school, school system, institution of postsecondary education, education service district, state regional program, or other educational agency that has requested the records and in which the student seeks or intends to enroll, or is enrolled in or receives services from the other agency or institution. The term “receives services” includes, but is not limited to, an evaluation or re-evaluation for purposes of determining whether a student has a disability.

3. The disclosure is, subject to the requirements of OAR 581-021-0370, to authorized representatives of:
   a. The Comptroller General of the United States;
   b. The Secretary of the U.S. Department of Education;
   c. State and local educational authorities; or
   d. The Oregon Secretary of State’s Audit Division.

4. The disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to:
   a. Determine eligibility for the aid;
   b. Determine the amount of the aid;
   c. Determine the conditions for the aid; or
   d. Enforce the terms and conditions of the aid;
   e. As used in this section, “financial aid” means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) that is conditioned on the individual’s attendance at an education agency or institution.

5. The disclosure is to organizations conducting studies for, or on behalf of, educational agencies or institutions to:
   A. Develop, validate, or administer predictive tests;
   B. Administer student aid programs; or
   C. Improve instruction.

I. Exceptions

A. The district will disclose personally identifiable information from a student’s educational record if the disclosure is:

1. To school officials and teachers within the district who have legitimate educational interests in the student as described in the district’s records policy;

2. To school board members during executive session;

3. To officials of another school, school system, institution of postsecondary education, education service district, state regional program, or other educational agency that has requested the records and in which the student seeks or intends to enroll, or is enrolled in or receives services from this agency. The term “receives services” includes, but is not limited to, an evaluation or reevaluation for purposes of determining whether a student has a disability;

4. To authorized representatives of government agencies;

5. To accrediting organizations to carry out their accrediting functions;

6. To parents of a dependent student, as defined in Section 152 of the Internal Revenue Code of 1986;

7. Based on a judicial order or lawfully issued subpoena. The district may disclose information under this section only if the district makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance;

8. In connection with a health or safety emergency to law enforcement, child protective services, and health care professionals, and other appropriate parties if knowledge of the information is necessary to protect the health and safety of the student or other individuals. A “health or safety emergency” includes, but is not limited to, law enforcement efforts to locate a student who may be a victim of kidnap, abduction, or custodial interference and law enforcement or
### Section 2: Records Access and Confidentiality

(b) The agency or institution may disclose information under this section only if:

(A) The study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization; and

(B) The information is destroyed when no longer needed for the purposes for which the study was conducted.

(C) For the purposes of this section, the term “organization” includes, but is not limited to, federal, state and local agencies, and independent organizations.

(6) The disclosure is to accrediting organizations to carry out their accrediting functions.

(7) The disclosure is to parents of a dependent student, as defined in Section 152 of the Internal Revenue Code of 1986.

(8) The disclosure is to comply with a judicial order or lawfully issued subpoena. The educational agency or institution may disclose information under this section only if the agency or institution makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance.

(9) The disclosure is in connection with a health or safety emergency, under the conditions described in OAR 581-021-0380.

(10) The disclosure is information the educational agency or institution has designated as “directory information”, under the conditions described in OAR 581-021-0390.

(11) The disclosure is to the parent of a student who is not an eligible student or to an eligible student.

[Federal Regulation: 34 CFR 99.31]

### OAR 581-021-0380 Conditions for the Disclosure of Information in Health and Safety Emergencies

(1) An educational agency or institution shall disclose personally identifiable information from an education record to law enforcement, child protective services, and health care professionals, and other appropriate parties in connection with a health and safety emergency if knowledge of the information is necessary to protect the health and safety of the student or other individuals.

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

(3) Sections (1) and (2) of this rule shall be strictly construed.

[Federal Regulation: 34 CFR 99.36]
### Section 2: Records Access and Confidentiality

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

1. An educational agency or institution may disclose directory information if it has given annual public notice to parents of students in attendance and eligible students in attendance at the educational agency or institution of:
   (a) The types of personally identifiable information that the educational agency or institution has designated as directory information;
   (b) A parent or eligible student’s right to refuse to let the educational agency or institution designate any or all of those types of information about the student as directory information; and
   (c) The period of time within which a parent or eligible student has to notify the educational agency or institution in writing that he or she does not want any or all of those types of information about the student designated as directory information.
2. An educational agency or institution may disclose directory information about former students without meeting the conditions in section (1) of this rule.

[Federal Regulation: 34 CFR 99.37]

**OAR 166-414-0010 Student Education Records**

22. Special Education Student Records - Records document students participating in special education programs and early intervention special education services. Records may include speech/hearing, academic, motor, occupational and/or physical therapy, vision/hearing, interdisciplinary team, and classroom observation reports; records relating to student behavior including psychological and social work reports; assessments obtained through other agencies; contact sheets; severity rating scales; test result records; physician's statements; parental consent records; educational program meeting records; request for hearing records; eligibility statements; individualized education plans (IEP); individualized family service plans (IFSP); and related correspondence and documentation. (Minimum retention:
   (a) Records documenting speech pathology and physical therapy services: Until student reaches age 21 or 5 years after last seen, whichever is longer;
   (b) All other records: 5 years after school year in which records were created;
   (c) ESD copies, if program at district level: Transfer records to home district after end of student participation;
   (d) Readable photocopies of records necessary to document compliance with State and Federal audits retained by the former educational agency or institution when a student transfers out of district: 5 years after end of school year in which original record was created).

[Federal Regulation: 34 CFR 99]

### II. Retention of Special Education Records

A. The district retains copies of the following documents for the prescribed time periods designated in State Archives Rules, including:

1. The student’s permanent record as defined in the district’s records policy; and,
2. Such special education records as are necessary to document compliance with state and federal regulations, including eligibility documents, IEPs, notices, and IEP progress reports for at least the previous five (5) years. **Note:** districts may want to retain these records for six (6) years.
3. Records documenting speech pathology and physical therapy services: until the student reaches age 21 or 5 years after last seen, whichever is longer.

B. The district discloses student records without consent to organizations conducting studies for, or on behalf of, educational agencies or institutions to develop, validate, or administer predictive tests, administer student aid programs, or improve instruction only if:

1. The study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization; and,
2. The information is destroyed when no longer needed for the purposes for which the study was conducted.
3. For the purposes of this section, the term “organization” includes, but is not limited to, federal, state, and local agencies, and independent organizations.
Section 2: Records Access and Confidentiality

34 CFR. 300.573 Destruction of information.
(a) The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.
(b) The information must be destroyed at the request of the parents. However, a permanent record of a student’s name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

[Federal Regulation: 34 CFR 300.573]

I. Destruction of Information
A. The district sends written notice to inform parents or eligible students when personally identifiable information collected, maintained, or used by the school district is no longer needed to provide educational services to the student. This notice requirement applies only to information that would otherwise be retained under the State Archives Rules.

B. The determination as to whether personally identifiable information is needed to provide educational services to a student is made by the district after careful review of the information and with the concurrence of the student’s current teacher or teachers, if the student is currently enrolled in the district.

C. The written notice sent to the parent or eligible student describes the personally identifiable information that the district intends to destroy and informs the parents that the information will be destroyed no earlier than 60 days from the date of the notice. The notice also outlines the procedure which the parent or eligible student may follow if they wish to formally object to the destruction of the records in question.

D. Upon request of the parent or eligible student, the district will destroy such personally identifiable information provided that the district may maintain a permanent record without time limitation of the student’s name, address and phone number, grades, attendance records, classes attended, grade level completed, and year completed.

E. The district will not destroy any education records if there is an outstanding request to inspect and review the records.

OAR 581-021-0250 An Educational Agency or Institution’s Policy Regarding Student Education Records
(1) Each educational agency or institution shall adopt a policy regarding how the agency or institution meets the requirements of OARs 581-021-0220 through 581-021-0430. The policy shall include:
(a) A description of how the agency or institution annually informs parents and students of their rights, in accordance with OAR 581-021-0260;
(b) A description of how a parent or eligible student may inspect and review education records under OAR 581-021-0270, including at least:
(A) The procedure the parent or eligible student must follow to inspect and review the records;
(B) A description of the circumstances in which the agency or institution believes it has a legitimate cause to deny a request for a copy of those records.

I. District’s Records Policy

See Attachment A – District Records Policy

II. Transfer of Student Records

A. The district requests the educational records from the former educational agency (public, private, state institution, ESD, agency, or youth care center) within ten (10) days of a student’s request for enrollment for educational services.

B. The district transfers the originals of all requested education records no later than ten (10) days after receipt of request from the new educational agency (public, private, state institution, ESD, agency, or youth care
Section 2: Records Access and Confidentiality

with an understanding that it may not deny access to education records;
(C) A schedule of fees (if any) to be charged for copies; and
(D) A list of the types and locations of education records maintained by the
agency or institution, and the titles and addresses of the officials responsible for
the records.
(c) A statement that personally identifiable information will not be released from
an education record without the prior written consent of the parent or eligible
student, except under one or more of the conditions described in OAR 581-021-
0340;
(d) A statement indicating whether the educational agency or institution has a
policy of disclosing personally identifiable information under OAR 581-021-
0340(1), and, if so, a specification of the criteria for determining which parties
are school officials and what the agency or institution considers to be a
legitimate educational interest. With respect to students with disabilities, each
educational agency or institution shall maintain, for public inspection, a current
listing of the names and positions of those employees within the agency who
have access to personally identifiable information;
(e) A statement that a record of disclosures will be maintained as required by
OAR 581-021-0400, and that a parent or eligible student may inspect and
review that record;
(f) Specification by the educational agency or institution of the types of
personally identifiable information the agency or institution has designated as
directory information under OAR 581-021-0390;
(g) A statement that the agency or institution permits a parent or eligible student
to request correction of the student’s education records under OAR 581-021-
0300, to obtain a hearing under OAR 581-021-0310(1), and to add a statement
to the record under OAR 581-021-0310(3);
(h) A statement that the educational agency or institution annually notifies
parents and eligible students of their rights to review and propose amendments
to the student’s education records;
(i) A statement that the educational agency or institution maintains a permanent
record on each student which includes the:
(A) Name and address of the educational agency or institution;
(B) Full legal name of the student;
(C) Student’s birth date and place of birth;
(D) Name of parents/guardians;
(E) Date of entry into the school;
(F) Name of school previously attended;
(G) Courses of study and marks received;
(H) Data documenting a student’s progress toward the Certificate of Initial
Mastery (CIM) and Certificate of Advanced Mastery (CAM), including where
appropriate, dates of achievement of CIM and CAM;
(I) Credits earned;
(J) Attendance;

C. The district, upon transfer of original records to new educational agency,
retains readable photocopies of the following documents for the
prescribed time periods designated in State Archives Rules, including:

1. The student’s permanent record as defined in the district’s records
policy; and,

2. Such special education records as are necessary to document
compliance with state and federal regulations, including eligibility
documents, IEPs, notices, and IEP progress reports for at least the
previous five (5) years. [Note: districts may want to retain these
records for six (6) years based on current Oregon case law
establishing a six (6) year statute of limitations for reimbursement
cases under the IDEA.]
Section 2: Records Access and Confidentiality

(K) Date of withdrawal from school;
(L) Social security number, subject to subsection (1)(j) of this rule; and
(M) Such additional information as the educational agency or institution may prescribe.

(j) A statement that the educational agency or institution will request the social security number of a student and will include the social security number on the permanent student record only if the parent or eligible student complies with the request. The request shall include notification to the parent or eligible student that the provision of the social security number is voluntary and notification of the purposes for which the social security number will be used;
(k) A statement that the educational agency or institution provides for the retention of permanent records in a minimum one-hour fire-safe place in the educational agency or institution, or for keeping duplicate permanent records in a safe depository outside the building;
(l) A statement that within ten days of a student seeking enrollment in or services from a public or private school including an ESD, or when a student is placed in a state institution other than an institution of postsecondary education, or a private agency or youth care center (hereinafter referred to as the new educational agency), the new educational agency shall notify the public or private school, education service district, institution, agency, or youth care center in which the student was formerly enrolled (hereinafter referred to as the former educational agency), and shall request the student’s education records;
(m) A statement that, subject to ORS 339.260, the former educational agency shall transfer all requested student education records relating to the particular student to the new educational agency no later than 10 days after receipt of the request;
(n) A statement that the education records transferred to the new educational agency shall include any education records relating to the particular student retained by an education service district;
(o) A statement that the educational agency shall retain originals of student education records for time periods and under such conditions as prescribed in OAR 166-405-0010 through OAR 166-415-0010, except that originals shall be transferred to a new education agency upon request.
(p) A statement that the educational agency or institution has a policy of disclosing personally identifiable information from an education record to an ESD, state regional program, or other educational agency or institution that has requested the records and in which the student seeks or intends to enroll or is enrolled or receives services from. The term “receives services” includes, but is not limited to, an evaluation or re-evaluation for purposes of determining whether a student has a disability; and
(q) Provision that, when original records have been transferred to a new educational agency as required in subsection (1)(o) of this rule, readable photocopies of the following documents shall be retained by the former educational agency or institution for time periods and under such conditions as...
Section 2: Records Access and Confidentiality

prescribed in OAR 166-405-0010 through OAR 166-415-0010:
(A) The student’s permanent record as defined in subsection (1)(i) of this rule; and
(B) Such special education records as are necessary to document compliance with state and federal audits.

(2) For purposes of subsection (1)(l) of this rule:
(a) “Private agency” means an agency with which the Department of Education contracts under ORS 343.961; and
(b) “Youth care center,” means a center as defined in ORS 420.855.

(1) The educational agency or institution shall state the policy in writing and make a copy of it available on request to a parent or eligible student.

[Federal Regulation: 34 CFR Part 99]

OAR 581-021-0260 An Educational Agency or Institution’s Annual Notification

(1) Each educational agency or institution shall annually notify parents of students currently in attendance, and eligible students currently in attendance, at the agency or institution of their rights under OAR 581-021-0220 through 581-021-0440. The notice must include a statement that the parent or eligible student has a right to:
(a) Inspect and review the student’s education records;
(b) Request the amendment of the student’s education records to ensure that they are not inaccurate, misleading, or otherwise in violation of the student’s privacy or other rights;
(c) Consent to disclosures of personally identifiable information contained in the student’s education records, except to the extent that these rules authorize disclosure without consent;
(d) Pursuant to OAR 581-021-0410, file with the U.S. Department of Education a complaint under 34 CFR § 99.64 concerning alleged failures by the agency or institution to comply with the requirements of the Family Educational Rights and Privacy Act; and
(e) Obtain a copy of the policy adopted under OAR 581-021-0250.

(2) Each educational agency or institution shall annually notify parents and eligible students of what it considers to be directory information and the conditions for disclosure of such information as provided in OAR 581-021-0390.

(3) Each educational agency or institution shall annually notify parents or eligible students that it forwards education records requested under OAR 581-021-0250(1)(m) and (p) within 10 days of receiving the request.

(4) The notice provided under section (1) of this rule must also indicate the places where copies of the policy adopted under OAR 581-021-0250 are located.

(5) An educational agency or institution may provide this notice by any means
Section 2: Records Access and Confidentiality

that are reasonably likely to inform the parents and eligible students of their rights;  
(6) An agency or institution of elementary or secondary education shall effectively notify parents of students who have a primary or home language other than English.

[Federal Regulation: 34 CFR 99.7]

OAR 581-021-0350 Limitations on the Redisclosure of Information

(1) An educational agency or institution may disclose personally identifiable information from an education record only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior consent of the parent or eligible student. The officers, employees, and agents of a party that receives information under this section may use the information, but only for the purposes for which the disclosure was made.

(2) Section (1) of this rule does not prevent an educational agency or institution from disclosing personally identifiable information with the understanding that the party receiving the information may make further disclosures of the information on behalf of the educational agency or institution if:
(a) The disclosures meets the requirements of OAR 581-021-0340; and
(b) The educational agency or institution has complied with the requirements in OAR 581-021-0400(2).

(3) Section (1) of this rule does not apply to disclosures of directory information under OAR 581-021-0340(10) or to disclosures to a parent or student under OAR 581-021-0340(11).

(4) Except for disclosures under OAR 581-021-0340(10) and (11), an educational agency or institution shall inform a party to whom disclosure is made of the requirements of this rule.

[Federal Regulation: 34 CFR 99.33]

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

(1) An educational agency or institution that discloses an education record under OAR 581-021-0340(2) shall:
(a) Annually notify parents or eligible students that it forwards education records requested under OAR 581-021-0250(1)(m) and (p) within 10 days of receiving the request;
(b) Give the parent or eligible student, upon request, a copy of the record that was disclosed; and
(c) Give the parent or eligible student, upon request, an opportunity for a
Section 2: Records Access and Confidentiality

<table>
<thead>
<tr>
<th>Hearing.</th>
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<tbody>
<tr>
<td>(2) An educational agency or institution may disclose an education record of a student in attendance to another educational agency or institution if:</td>
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<tr>
<td>(a) The student is enrolled in or receives services from the other agency or institution; and</td>
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<tr>
<td>(b) The disclosure meets the requirements of section (1) of this rule.</td>
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[Federal Regulation: 34 CFR 99.34]

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

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

[Federal Regulation: 34 CFR 99.35]

34 CFR 300.529 Referral to and action by law enforcement and judicial authorities.

| (a) Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability. |
| (b) (1) An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime. |
| (2) An agency reporting a crime under this section may transmit copies of the child’s special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act. |

I. Referral to and Action by Law Enforcement and Judicial Authorities

A. The district may disclose personally identifiable information or other information allowed to be disclosed under FERPA from a student’s education record to courts and state and local juvenile justice agencies including, but not limited to, law enforcement agencies when:

1. Disclosure relates to these agencies ability to serve the needs of a student prior to the student’s adjudication under ORS chapter 419C; and, |

2. The person receiving the information certifies, in writing, that they will not disclose the information to a third party other than another court or juvenile justice agency or a person or organization providing
### Section 2: Records Access and Confidentiality

**ORS 336.187 Section 7 Disclosure of Personal Information:**


(2) A public school or school district shall disclose personally identifiable information or other information allowed to be disclosed by the federal Family Educational Rights and Privacy Act from an education record of a student to:

- Courts and state and local juvenile justice agencies including, but not limited to, law enforcement agencies, juvenile departments and child protective service agencies. Disclosure under this paragraph must relate to the court’s or juvenile justice agency’s ability to serve the needs of a student prior to the student’s adjudication under ORS chapter 419C. A person to whom personally identifiable information is disclosed under this paragraph shall certify, in writing, that the person will not disclose the information to a third party other than another court or juvenile justice agency or a person or organization providing direct services to the student on behalf of a juvenile justice agency.

[Federal Regulation: 34 CFR 99.38]

**B.** If the district reports a crime committed by a student with a disability, the district will transmit a copy of the student’s special education and disciplinary records to the appropriate authorities for consideration, only if:

1. The disclosure is with consent of the parent or eligible student; or,
2. The disclosure is permitted under one of the exceptions to consent.

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### OAR 581-021-0430 The Distribution of Rules Relating to Student Records

(1) The State Board of Education shall distribute the administrative rules regarding student education records to all school districts.

(2) School districts shall make those rules available to the public schools in the district and to the public.

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### Distribution of Student Records Rules

**A.** The district makes student records rules available to the public schools in the district and to the public on request.
| 34 CFR 300.304 Full educational opportunity goal. Each SEA shall ensure that each public agency establishes and implements a goal of providing full educational opportunity to all children with disabilities in the area served by the public agency. | 1. Full Educational Opportunity Goal
A. The district has a goal of providing full educational opportunity to each school age student with a disability.
B. The district addresses this goal through the provision of free appropriate public education for eligible students. |
**Section 4: Comprehensive System of Personnel Development**

<table>
<thead>
<tr>
<th>34 CFR 300.221 Implementation of CSPD</th>
<th>I. Personnel Development</th>
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<tr>
<td>The LEA must have on file with the SEA information to demonstrate that--</td>
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<tr>
<td>(a) All personnel necessary to carry out Part B of the Act within the jurisdiction of the agency are appropriately and adequately prepared, consistent with the requirements of Secs. 300.380-300.382; and</td>
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<tr>
<td>(b) To the extent the LEA determines appropriate, it shall contribute to and use the comprehensive system of personnel development of the State established under Sec. 300.135.</td>
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<td>(see Section 11: Comprehensive System of Personnel Development; Oregon State Application, Oregon’s Policies and Procedures for the Operation of Programs Under IDEA)</td>
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A. The district uses personnel who are appropriately and adequately prepared to provide special education and related services, consistent with Teacher Standards and Practices Commission requirements.

B. The district has a plan for a comprehensive system of personnel development in the district that ensures the availability of qualified and appropriately trained personnel.

See Attachment B – District Personnel Development Policies and Procedures for Special Education

C. To the extent the district determines appropriate, the district contributes to and uses the comprehensive system of personnel development of the State established under Sec. 300.135 (see Section 11: Comprehensive System of Personnel Development; Oregon State Application, Oregon’s Policies and Procedures for the Operation of Programs Under IDEA).
### Section 5: Least Restrictive Environment

#### OAR 581-015-0059 Requirement for Least Restrictive Environment

School districts shall insure that:
1. To the maximum extent appropriate, children with disabilities are educated with children who are not disabled; and
2. The removal of children with disabilities from the regular educational environment in any way occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

[Federal Regulation: 34 CFR 300.550]

#### OAR 581-015-0061 Placement of the Child

School districts shall ensure that:
1. The educational placement of a child with a disability:
   1. Is determined by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options;
   2. Is based on the child’s current IEP;
   3. Is determined at least once every 365 days; and
   4. Is as close as possible to the child’s home.
2. The alternative placements under OAR 581-015-0060 are available to the extent necessary to implement the individualized education program for each child with a disability;
3. Unless the child’s IEP requires some other arrangement, the child is educated in the school which he or she would attend if not disabled;
4. In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services which he or she needs; and
5. A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

[Federal Regulation: 34 CFR 300.552]

#### OAR 581-015-0060 Alternative Placements and Supplementary Aids and Services

School districts shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. The continuum shall:

1. Include instruction in regular classes (with special education and related services, and/or supplementary aids and services as identified on the IEP), special classes, special schools, home instruction, and instruction in hospitals and institutions.
2. Include placement options, including instruction in regular classes, special...
**Section 5: Least Restrictive Environment**

(1) Include as alternative placements, instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions; and

(2) Make provision for supplementary aids and services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

[Federal Regulation: 34 CFR 300.551]

| Classes, special schools, home instruction, and instruction in hospitals and institutions are available to the extent necessary to implement the individualized education program for each student with a disability. |

D. Students are placed in the least restrictive environment, using the following decision making process:

1. Completion of the IEP;

2. Determining which IEP services, including instruction, can be implemented in the regular class;

3. If all IEP services cannot be provided in the regular class, identifying those that must be provided outside the regular class; however, the district will not remove a student from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum;

4. For those services that must be provided outside the regular class, identifying where, on the continuum from least to most restrictive, the services can be provided;

5. Placement is in the school the student would attend if not disabled, unless another arrangement is required for implementation of the IEP;

6. In selecting the student’s placement, the placement team considers and documents:

   a. All placement options considered, including placement options requested by the parent;

   b. Potential benefits of placement options that are considered;

   c. Any potential harmful effects on the student or on the quality of services that he or she needs; and,

   d. Modifications and services considered to reduce harmful effects, and to maintain the student in the least restrictive placement.

7. The placement team documents the placement selected, and provides a copy of the determination to the parent;

8. If the selected placement is a change from previous placement, the
Section 5: Least Restrictive Environment

district provides the parent with prior written notice of the change in placement; and,

9. If the parent requests a specific placement that the team rejects, the district provides a prior written notice of refusal.

II. Incarcerated Youth

A. The placement team may modify the student’s placement if the State has demonstrated a bona fide security or compelling penological interest that cannot be otherwise accommodated. The requirements related to least restrictive environments do not apply with respect to these modifications.

OAR 581-015-0062 Nonacademic Settings

School districts shall ensure that each student with a disability participates in nonacademic and extracurricular services and activities with children who are not disabled to the maximum extent appropriate to the needs of that student. Nonacademic and extracurricular services and activities may include meals, recess periods, counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school district, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the school district and assistance in making outside employment available.

[Federal Regulations: 34 CFR 300.306 and 300.553]
Section 6: IEP

OAR 581-015-0064 IEP Effective Dates and Implementation
(1) An IEP shall:
(a) Be written before special education is provided to a child;
(b) Be implemented as soon as possible following the meetings held under OAR 581-015-0065; and
(c) Be in effect at the beginning of each school year.
(2) The school district shall:
(a) Ensure that the IEP is accessible to each regular education teacher, special education teacher, related service provider and other service provider who is responsible for its implementation; and
(b) Inform each teacher and provider described in (2)(a) of his or her specific responsibilities for implementing the child's IEP and the specific accommodations, modifications and supports that must be provided for or on behalf of the child in accordance with the IEP.
(3) School districts:
(a) Shall provide special education and related services to a child with a disability in accordance with an IEP; and
(b) Make a good faith effort to assist the child to achieve the goals and short-term objectives listed in the IEP. However, no school district, teacher or other person shall be held accountable if, despite good faith implementation, a child does not achieve the growth projected in the annual goals and short-term objectives.
(4) Nothing in this rule limits a parent's right to ask for revisions of the child's IEP or to invoke due process procedures.

[Federal Regulations: 34 CFR 300.342 and 300.350]

OAR 581-015-0703 State IEP Forms
(1) The Department shall develop and revise, as appropriate, a standard form for the development, review and revision of an individualized education program.
(2) The Department shall periodically distribute the standard form to all school districts.
(3) Each school district shall use the form in the development, review and revision of all IEPs developed on or after September 7, 2000, unless an alternate form is approved under OAR 581-015-0704.

[ORS 343.151]
### OAR 581-015-0704 Approval of Alternate IEP Forms

1. A school district may use an alternate form in the development, review and revision of IEPs if the Department approves the alternate form.
2. The Department shall develop criteria for approval of submitted alternate forms. These criteria shall include, but not be limited to:
   - Whether the alternate form meets the requirements for the contents of an IEP under OARs 581-015-0068, 581-015-0102, and 581-015-0568; and
   - Whether use of the alternate form will reduce unnecessary or confusing paperwork.
3. The Department may establish dates for submission of the alternate form for approval.
4. Within 10 days of the established date of submission of the alternate form for approval, the Department shall decide:
   - Whether the alternate form is approved or disapproved; and
   - Any conditions that apply to the use of the alternate form.
5. The school district may ask for a reconsideration of the decision within 30 days of receiving the Department’s decision in subsection (4). The Department will issue a written response to the district of the reconsideration within 30 days of receiving the request.
6. If the school district changes or modifies the approved alternate form they must submit the form for approval prior to its use.
7. The decisions of the Department shall be final.

[ORS 343.151]

### OAR 581-015-0065 IEP Meetings and Timelines

1. A school district shall conduct a meeting to develop an initial IEP within 30 calendar days of a determination that the child needs special education.
2. A school district shall initiate and conduct meetings to review and revise as appropriate each child’s IEP periodically but at least once every 365 days:
   - To determine whether the annual goals for the child are being achieved; and
   - To revise the IEP as appropriate to address:
     - Any lack of expected progress toward the annual goals described in OAR 581-015-0068, and in the general curriculum, if appropriate;
     - The results of any reevaluation conducted under OAR 581-015-0074;
     - Existing information about the child provided to, or by, the parents;
     - The child’s anticipated needs; or
     - Other matters.
3. A school district shall conduct an IEP meeting more frequently than annually if it believes that a change in the IEP may be necessary to

### IEP Meetings

A. The district initiates and conducts IEP meetings at least annually (every 365 days) for the purpose of developing, reviewing, and revising an eligible student’s IEP.
B. IEP meetings are conducted within 30 calendar days of the determination that the student needs special education and related services.
C. Each eligible student’s IEP is reviewed and revised at least once a year to determine whether annual goals for the student are being achieved, and to make necessary revisions to address:
   1. Any lack of anticipated progress toward annual goals and/or progress in the general curriculum;
   2. Results of any reevaluation;
Section 6: IEP

ensure the provision of a free appropriate public education to the child.
(4) A parent may request a meeting at any time to review or revise the IEP if the parent believes that:
   (a) The school district has not made a good faith effort to implement the IEP;
   (b) The IEP is not effective for the child; or
   (c) There is another reason for review.
(5) In response to a parent request for an IEP meeting, the school district shall:
   (a) Hold an IEP meeting within a reasonable time; or
   (b) Provide the parent with prior written notice of the district’s refusal to hold an IEP meeting under OAR 581-015-0075.

Federal Regulation: 34 CFR 300.343

3. Information provided about the student to or by the parent; anticipated needs; and,
4. Other matters related to the student’s special education needs.

D. The district conducts an IEP meeting any time it believes that a change in the IEP may be necessary to ensure FAPE to the student.

E. Parents may request a meeting at any time to review or revise the IEP if they believe that the district has not acted in good faith in developing or implementing the IEP, if they feel that the IEP is not effective, or for any other reason for which a review would be appropriate.

F. When the parent requests a meeting the district will either:
   1. Schedule a meeting within a reasonable time, or,
   2. Provide written prior notice of the district’s refusal to hold a meeting.

G. If a participating agency fails to provide agreed upon transition services contained in the IEP, an IEP meeting is initiated for the purpose of identifying alternative strategies to meet the transition objectives and, if necessary, revising the IEP.

H. The district provides prior written notice to the parent upon completion of the IEP, and before implementation of IEP services, if:
   1. The IEP changes the provision of FAPE to the student (e.g., adding or discontinuing a special education or related service); or,
   2. The IEP team refuses a parent request for a change in the provision of FAPE to the student.

OAR 581-015-0066 IEP Team
(1) School districts shall ensure that each IEP Team meeting includes the following participants:
   (a) One or both of the child’s parents, except as provided in OAR 581-015-0067;
   (b) The child where appropriate;
   (c) At least one regular education teacher of the child, if the child is or may be participating in the regular education environment, consistent with section (3) of this rule;

I. IEP Team members
A. IEP Team members include the following:
   1. One or both of the student’s parents;
   2. The student, when appropriate;
   3. The student’s special education teacher or special education teacher.
Section 6: IEP

(d) At least one special education teacher of the child, or, if appropriate, at least one special education provider of the child;
(e) A representative of the school district, who may also be another member of the team, who is:
   (A) Qualified to provide, or supervise the provision of, special education;
   (B) Knowledgeable about the general curriculum;
   (C) Knowledgeable about district resources; and
   (D) Authorized to commit district resources and ensure that services set out in the IEP will be provided.
(f) An individual, who may also be another member of the team, who is knowledgeable about the child's disability and who can interpret the instructional implication of the evaluation results;
(g) Others invited by:
   (A) The parent, whom the parent determines to have knowledge or special expertise regarding the child; or
   (B) The school district, whom the school district determines to have knowledge or special expertise regarding the child; and
(h) Transition services participants, as described in section (2) of this rule.

(2) Transition services participants shall be as follows:
   (a) If a purpose of the meeting is the consideration of transition for a student, the school district shall invite the student. If the student does not attend the meeting, the school district shall take other steps to ensure that the student's preferences and interests are considered.
   (b) If a purpose of the meeting is the consideration of transition services for a student, the school district shall also invite a representative of any other agency that is likely to be responsible for providing or paying for transition services. If an agency invited to send a representative to a meeting does not do so, the school district shall take other steps to obtain the participation of the other agency in the planning of any transition services.

(3) The regular education teacher shall participate, to the extent appropriate, in the development, review, and revision of the child's IEP, including assisting in the determination of:
   (a) Necessary modifications to the general curriculum in the regular classroom and participation in the regular education environment.
   (b) Supplementary aids and services, program modifications or supports for school personnel that will be provided for the child; and
   (c) Appropriate positive behavioral interventions and strategies for the child.
   (4) For the purposes of section (3) of this rule, "to the extent appropriate" means:
   (a) For those portions of the child's IEP that regular education teachers may be responsible for implementing; or
   (b) When the regular education teacher's knowledge about the student or provider;
**Section 6: IEP**

about the general education curriculum is necessary for IEP team decision-making.

[Federal Regulations: 34 CFR 300.344 and 300.346]

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**OAR 581-015-0068 Content of IEP**

(1) The individualized education program shall include:

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

(b) A statement of measurable annual goals, including short-term objectives related to:

(A) Meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum; and

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

(c) A statement of the specific special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child:

(A) To advance appropriately toward attaining the annual goals;

(B) To be involved and progress in the general curriculum and to participate in extracurricular and other nonacademic activities; and

(C) To be educated and participate with other children with disabilities and nondisabled children;

(d) The projected dates for initiation of services and modifications and the anticipated frequency, location and duration of the services and modifications described in subsection (1)(c) of this rule.

(e) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and activities described in subsection

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**I. Content of the IEP**

A. The IEP for each eligible student includes:

1. A statement of the student's present levels of educational performance. The statement:

   a. Includes a description of how the disability affects the progress and involvement in the general curriculum;

   b. Describes the results of any evaluations conducted, including functional and developmental information;

   c. Is written in language that is understood by all IEP Team members, including the parents; and,

   d. Is clearly linked to the annual goal statement(s).

2. A statement of measurable annual goals, including short-term objectives. The goals and objectives are written to:

   a. Meet the student's needs that are present because of the disability, or because of behavior that interferes with the student's ability to learn, or impedes the learning of other students;
Section 6: IEP

(1)(c) of this rule.

(f) A statement of any individual modifications and accommodations in the administration of State or district-wide assessments of student achievement that are needed for the child to participate in the assessment.

(A) A child shall not be exempt from participation in State or district-wide assessment, including extended and juried assessments because of a disability, unless the parent has requested an exemption under OAR 581-022-0612.

(B) If the IEP team determines that the child will not participate in a particular State or district-wide assessment of student achievement (or part of an assessment), a statement of why that assessment is not appropriate for the child and how the child will be assessed.

(C) For the purposes of subsection (f):

(i) "General Assessment" means assessment that results in standard scoring, including the administration of at or above level benchmark testing, with or without accommodations, and/or juried assessment.

(ii) "Modification" means substantial changes in what a student is expected to learn and/or demonstrate. The changes are made to provide a student opportunities to participate meaningfully and productively in learning experiences and environments. They include changes in instructional level, content, and performance criteria.

(iii) "Accommodation" means an alteration in how a test is presented to or responded to by the person tested; it includes a variety of alterations in presentation format, response format, setting which the test is taken, timing or scheduling. The alterations do not substantially change level, content or performance criteria. The changes are made in order to provide a student equal access to learning and equal opportunity to demonstrate what is known.

(g) A statement of:

(A) How the child's progress toward the annual goals will be measured; and

(B) How the child's parents will be regularly informed, at least as often as parents are informed of their nondisabled children's progress, of:

(i) Their child's progress toward the annual goals; and

(ii) The extent to which that progress is sufficient to enable the child to achieve the goals by the annual IEP review date.

(2) For the purposes of transition, the IEP shall include:

(a) For each student with a disability beginning at age 14 (or younger, if determined appropriate by the IEP team), and updated annually, a statement of the transition service needs of the student under the applicable components of the student's IEP that focuses on the student's courses of study;

(b) For each student beginning at age 16 (or younger, if determined appropriate by the IEP team), a statement of needed transition services for the student, including, if appropriate, a statement of the interagency responsibilities or any

b. Enable the student to be involved in and progress in the general curriculum, as appropriate; and,

c. Clearly describe the anticipated outcomes, including intermediate steps, that serve as a measure of progress toward the goal.

3. A statement of the special education services, related services, supplementary aids and services, program modifications, and supports for school personnel that will be provided to the student, or on behalf of the student. These services, modifications, and supports are developed for the student to:

a. Meet the annual goals;

b. Be involved and progress in the general curriculum;

c. Be involved and participate in extracurricular and other nonacademic activities; and,

d. Be educated and participate with other students, with and without disabilities, in academic, nonacademic, and extracurricular activities.

4. For each special education service, related service, supplementary aid and service, program modification, and support for school personnel that will be provided to the student, or on behalf of the student, a description of:

a. The projected date for initiation;

b. Projected duration, or ending date;

c. The anticipated amount and frequency; and who is responsible for implementation of all or part of an IEP; and,

d. The anticipated location.

5. A statement of the extent, if any, to which the student will not participate:

a. With nondisabled students; and,
Section 6: IEP

needed linkages; and

(c) Beginning at least one year before a student reaches age 18, or when the district obtains actual knowledge that within one year the student will marry or become emancipated prior to age 18, a statement that the district has informed the student that procedural rights will transfer to the student upon age 18, marriage or emancipation, whichever occurs first.

Stat. Auth.: ORS 343.045; 343.055, and 343.195
Stats. Implemented: 343.045; 343.155

b. In regular academic, nonacademic, and extracurricular activities.

6. A statement of any individual modification and accommodations in the administration of State or district-wide assessments of student achievement, including extended and juried assessments, that are needed for the student to participate in the assessment.

7. A student will not be exempt from participation in State or district-wide assessment, including extended and juried assessments, because of a disability unless the parent requests an exemption.

8. If the team determines that a student will not participate in a general State or district-wide assessment of a student achievement (or part of an assessment). A statement of why that assessment is not appropriate for the student and how the child will be assessed.

9. A statement that describes how the student’s progress toward completion of the annual goals will be measured, and how this progress will be reported to parents at least as often as progress reports for nondisabled students are provided to parents. The progress reports will indicate:

- a. The progress made toward completion of each annual goal during that reporting period; and,
- b. The extent to which the progress will allow the student to meet the annual goals by the end of the IEP.

OAR 581-015-0568 IEP Team Considerations and Special Factors

(1) In developing, reviewing and revising the child's IEP, the IEP team shall consider:
- (a) The strengths of the child and the concerns of the parents for enhancing the education of their child;
- (b) The results of the initial or most recent evaluation of the child; and
- (c) As appropriate, the results of the child's performance on any general state or district-wide assessment programs.

(2) In developing, reviewing and revising the child's IEP, the IEP team shall consider the following special factors:
- (a) The communication needs of the child; and
- (b) Whether the child requires assistive technology devices and services.

(3) In developing, reviewing and revising the IEP of children described below,

I. IEP Team Considerations and Special Factors:

A. In developing, reviewing, and revising the IEP, the IEP team considers:

1. The strengths of the student and concerns of the parent for enhancing the education of the student;

2. The results of the initial or most recent evaluation of the student; and,

3. As appropriate, the results of the student’s performance on any general State or district-wide assessment.
Section 6: IEP

the IEP team shall consider the following additional special factors:
(a) For a child whose behavior impedes his or her learning or that of others, strategies, positive behavioral interventions, and supports to address that behavior;
(b) For a child with limited English proficiency, the language needs of the child as those needs relate to the child's IEP;
(c) For a child who is blind or visually impaired, instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child; and
(d) For a child who is deaf or hard of hearing, the child's language and communication needs, opportunities for direct communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode.
(4) If, in considering these special factors, the IEP team determines that a child needs a particular device or service (including an intervention, accommodation, or other program modification) for the child to receive free appropriate public education, the IEP team shall include a statement to that effect in the child's IEP.
(5) Nothing in OAR 581-015-0068 or this rule shall be construed to require the IEP team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.

[B. In developing, reviewing, and revising the student's IEP, the IEP team considers the following special factors:
1. The communication needs of the student; and,
2. The need for assistive technology services and/or devices.

C. As appropriate, the IEP team also considers the following special factors:
1. For a student whose behavior impedes his or her learning or that of others, strategies, positive behavioral intervention, and supports to address that behavior;
2. For a student with limited English proficiency, the language needs of the student as those needs relate to the IEP;
3. For a student who is blind or visually impaired, instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of reading and writing media, including evaluation of future needs for instruction in Braille or the use of Braille, that instruction in Braille or the use of Braille is not appropriate; and,
4. For a student who is deaf or hard of hearing, the student's language and communication needs, including opportunities for direct communication \textit{with peers and professional personnel in the student's language and communication mode}, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode.

D. In addition to the above IEP contents, the IEP for each eligible student of transition age includes:
1. Beginning at age 14, and younger if appropriate, a statement of transition service needs that focus on the student's course of study; this statement must be updated annually;
2. Beginning at age 16, and younger if appropriate, a statement of needed transition services, including a description of interagency responsibilities and linkages, if any;
3. At least one year before a student reaches the age of majority]
### Section 6: IEP

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<td>4. If identified transition service providers fail to provide any of the services identified on the IEP, the district will initiate an IEP meeting as soon as possible to address alternative strategies, and revise the IEP if necessary.</td>
<td>(student reaches the age of 18, or has married or been emancipated, whichever occurs first), a statement that the district has informed the student that all procedural rights will transfer at the age of majority; and,</td>
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### *OAR 581-015-0603 Incarcerated Youth*

... (2) For students with disabilities who are convicted as adults, incarcerated in adult correctional facilities, and otherwise entitled to FAPE:

1. Participation of students with disabilities in state and district-wide assessments; and,

2. Transition planning and transition services, for students whose eligibility will end because of their age before they will be eligible to be released from adult correctional facilities based on consideration of their sentence and eligibility for early release.

(b) The IEP team may modify the student's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated. The requirements of OAR 581-015-0068(1) relating to IEPs, and OAR 581-015-0059 relating to least restrictive environment, do not apply with respect to these modifications.

(3) For purposes of this rule, “adult correctional facility” has the meaning set forth in OAR 581-015-0601(5)(a).

[Federal Regulation: 34 CFR 300.311]

### OAR 581-015-0070 School District and Participating Agency Responsibilities for Transition Services

1. If a participating agency fails to provide agreed-upon transition services contained in the IEP of a student with a disability, the school district responsible for the student's education shall, as soon as possible, initiate an IEP meeting to identify alternative strategies to meet the transition objectives for the student set out in the IEP and, if necessary, to revise the student's IEP.

2. Nothing in this part relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to.
students with disabilities who meet the eligibility criteria of that agency.

[Federal Regulation: 34 CFR 300.348]

**OAR 581-015-0605 Extended School Year Services**

(1) School districts shall ensure that extended school year services are available as necessary to provide a free appropriate public education.

(2) Extended school year services must be provided only if the child's IEP team determines, on an individual basis, in accordance with OAR 581-015-0064 through 581-015-0070, that the services are necessary for the provision of free appropriate public education to the child.

(3) A school district may not:

(a) Limit extended school year services to particular categories of disability; or

(b) Unilaterally limit the type, amount, or duration of those services.

(4) The purpose of extended school year services is the maintenance of the child's learning skills or behavior, not the teaching of new skills or behaviors.

(5) School districts shall develop criteria for determining the need for extended school year services.

(a) Criteria shall include regression and recoupment time based on documented evidence or, if no documented evidence, on predictions according to the professional judgment of the team.

(b) Criteria may include additional factors such as:

(i) The nature and severity of the child's disability;

(ii) The child's rate of progress;

(iii) The availability of alternative resources;

(iv) The child's need to interact with children without disabilities;

(v) The areas of the child's curriculum that need continuous attention;

(vi) The child's vocational needs;

(vii) The nature of services requested (e.g. extraordinary or integral to the child's program); and

(viii) Emerging skills, or breakthrough opportunities, that would be lost without extended school year services.

(6) For the purposes of section (5) of this rule:

(a) "regression" means significant loss of skills or behaviors in any area specified on the IEP as a result of an interruption in education services;

(b) "recoupment" means the recovery of skills or behaviors specified on the IEP to a level demonstrated before the interruption of education services.

(7) For the purposes of this rule, "extended school year services" means special education and related services that:

(a) Are provided to a child with a disability:

(i) Beyond the normal school year of the school district;

(ii) In accordance with the child's IEP; and

(iii) At no cost to the parents of the child; and

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<tr>
<th>I. Extended School Year Services</th>
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<tr>
<td>A. The district makes extended school year (ESY) services available to all students for whom the IEP Team has determined that such services are necessary.</td>
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<tr>
<td>B. ESY services are:</td>
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<td>1. Provided to a student with a disability in addition to the services provided during the typical school year;</td>
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<tr>
<td>2. Identified in the student's IEP; and,</td>
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<tr>
<td>3. Provided at no cost to the parent.</td>
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<tr>
<td>C. Consideration of ESY services will not be limited to particular categories of disability, and will not be limited to a type, amount, or duration of service.</td>
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<tr>
<td>D. ESY services are available to maintain the student's skills or behavior; ESY services are not necessarily provided to teach new skills or behaviors.</td>
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<tr>
<td>E. The district has established criteria for determining the need for ESY services.</td>
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See Attachment C – District Policy for Determining the Need for ESY services.

1. This criteria includes:

a. Evidence of the student's regression and recoupment of skills and/or behavior, based on documented evidence; and, a. Predictions regarding the student's regression and recoupment of skills and/or behavior.

b. Regression means a significant loss of skills or behaviors that may result if services are interrupted.
Section 6: IEP

(b) Meet the standards of the Department.

[Federal Regulation: 34 CFR 300.309]

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<tr>
<th>c. Recoupment means the ability to recover skills and/or behavior to a level that was achieved prior to the interruption of service.</th>
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<tr>
<td>1. Additional criteria which may be used in determining the need for ESY includes:</td>
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<tr>
<td>a. The nature and severity of the disability;</td>
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<td>b. The student’s rate of progress, as evidenced through evaluation data and/or progress on the IEP;</td>
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<tr>
<td>c. Availability of alternative resources;</td>
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<td>d. The student’s need to interact with other students with and without disabilities;</td>
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<td>e. The need to provide continuing instruction and support in specific areas of the student’s curriculum;</td>
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<tr>
<td>f. The need to provide continuing instruction in support of the student’s vocational needs;</td>
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<td>g. The nature of the services requested (e.g., services that may be extraordinary or integral to the program); and,</td>
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<tr>
<td>h. Any skills that may be emerging or developing that would be lost without ESY services.</td>
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OAR 581-015-0560 Assistive Technology

(1) School districts shall ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if required as a part of the child’s special education, related services or supplementary aids and services.

(2) On a case-by-case basis, the use of school-purchased assistive technology devices in a child’s home or in other settings is required if the child’s IEP team determines that the child needs access to those devices to receive a free appropriate public education.

(3) School district policies shall govern liability, if any, for the loss or damage of assistive technology devices.

(4) School district policies shall govern transfer of an assistive technology device when a child with a disability using the device ceases to attend school in the district that purchased the device. "Transfer" means the process by which a school district that has purchased an assistive technology device may sell,
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<th>Section 6: IEP</th>
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<td>lease or loan the device for the continuing use of a child with a disability who is ceasing to attend school in the district.</td>
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[Federal Regulation: 34 CFR 300.308]
### Section 7: Procedural Safeguards

#### OAR 581-015-0039 Parental Consent

1. “Consent” means that:
   - (a) The parent 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 unless it is clearly not feasible to do so;
   - (b) The parent understands and agrees in writing to the carrying out of the activity for which consent is sought; and
   - (c) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

2. The school district shall obtain written parental consent before conducting an initial evaluation or reevaluation, and before special education placement of a student with a disability. Consent for initial evaluation may not be construed as consent for the initial special education placement.

3. Written parental consent shall also be obtained before administering individual intelligence tests and all tests of personality to a student pursuant to OAR 581-021-0030(2)(a).

4. A parent may revoke consent at any time before the completion of the activity or action for which they have given consent. If a parent revokes consent, that revocation is not retroactive. A parent may revoke consent for evaluation or reevaluation that has not yet been conducted. A parent may revoke consent for initial special education placement before the initiation of that placement.

5. If a parent refuses to grant consent in the circumstances identified in sections (2) or (3) of this rule, school districts shall follow the procedures set forth in OAR 581-015-0081(5) and (6).

6. A parent's refusal to consent to one service or activity may not be used to deny the parent or student any other service, benefit, or activity of the school district, except as provided in this rule.

[Federal Regulations: 34 CFR 300.500 and 300.505]

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#### I. Procedural Safeguards

A. The district provides procedural safeguards to:

1. Parents, guardians (unless the guardian is a state agency), or persons in parental relationship to the student;

2. Surrogate parents; and,

3. Students for who rights have transferred (called "eligible students").

#### II. Consent

A. The district obtains informed written consent from the parent or eligible student before:

1. Conducting an initial evaluation;

2. The initial placement of a student with a disability in a program providing special education and related services;

3. Conducting reevaluations; and,

4. The administration of individual intelligence tests and all tests of personality.

B. The district advises parents or eligible students that consent may be revoked at any time before the completion of the activity or action for which they have given consent. If a parent or eligible student revokes consent, that revocation is not retroactive.

C. If a parent or adult student refuses to grant consent for an evaluation or reevaluation, the district will follow the procedures set forth in OAR 581-015-0081 (2).

D. Refusal to consent to one service or activity will not be used to deny the parent or student any other service, benefit, or activity of the district except as provided in OAR 581-015-0039.

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#### OAR 581-015-0042 Exceptions to Parental Consent

1. Written parental or adult student consent is not required before:
   - (a) Reviewing existing data as part of an evaluation or a reevaluation;
   - (b) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children; or
   - (c) Conducting evaluation tests, procedures or instruments that are identified on

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#### I. Exceptions to Parental Consent

A. The district may review existing data as part of an evaluation or reevaluation without consent.

B. The district may administer a test or other evaluation that is administered to all students without consent unless, before administration of that test
Section 7: Procedural Safeguards

a student's IEP as a measure for determining progress.

(2) Informed parental consent need not be obtained for reevaluation, except under OAR 581-015-0039(3), if the school district can demonstrate that it has taken reasonable measures to obtain that consent, and the student's parent has failed to respond.

(3) For the purposes of (2) of this rule, "reasonable measures" means at least:

(a) Two separate attempts to secure consent along with providing the parent a copy of a completed prior written notice/consent for evaluation form; and

(b) Documentation of these attempts in the student's educational record.

(4) Parental consent is not required if a hearing officer determines under OAR 581-015-0088 that the evaluation, reevaluation, or initial special education placement is necessary to ensure that the student is provided with a free appropriate public education.

[Federal Regulation: 34 CFR 300.505]

OAR 581-015-0081 When Hearing May Be Requested

(1) Parent request for a due process hearing

(a) A parent may request a hearing when he or she does not agree with the identification, evaluation, educational placement of a child, or the provision of a free appropriate education to a child who may be disabled.

(b) The parent, or the attorney representing the child, shall provide notice to the Oregon Department of Education when requesting a hearing. The notice must include:

(A) The child's name and address;

(B) The name of the school the child is attending;

(C) A description of the disagreement prompting the parent's hearing request, including specific facts about the disagreement; and

(D) Any suggestion the parent has for solving the problem.

(c) Upon request, the Department shall provide a copy of a model form to assist parents in filing a request for a due process hearing.

(d) The Department may not deny or delay a parent's right to a due process hearing for failure to provide this notice.

(2) School District Requests for a Due Process Hearing:

(a) A School District request for a due process hearing regarding notification, evaluation or educational placement of a child with a disability, or the provision of a free appropriate public education to the child.

(b) If the parents of a child with a disability or suspected disability refuse consent for initial evaluation or reevaluation, a school district may request a due process hearing or mediation, if appropriate, to seek an order to conduct the evaluation or reevaluation.

(c) A school district may not request a due process hearing to
**Section 7: Procedural Safeguards**

override the parent’s refusal of consent for initial placement in special education.

(d) For a child who is currently receiving special education services, if a parent refuses to cooperate in any activity that the school district deems necessary to provide the child with a free appropriate public education, a school district may request a due process hearing or mediation, if appropriate, to seek an order that the district has complied with its obligations under state and federal special education laws.

(e) When a parent requests an independent educational evaluation or reimbursement for an independent educational evaluation or reimbursement for an independent educational evaluation, a school district shall proceed in accordance with OAR 581-015-0094.

(3) Time limitation: A special education due process hearing shall be requested within two years after the date of the act or omission that gives rise to the right to request the hearing.

(4) Information: The school district shall inform a parent of any free or low cost legal services and other relevant services available in the area if the parent requests the information. Upon request, the Department shall supply school districts with a list of free or low cost legal services and other relevant services.

**Stat. Auth.:** ORS 343.045, ORS 343.055 & ORS 343.155

**Stats. Implemented:** ORS 343.045, ORS 343.155 & 343.165


**OAR 581-015-0063 Parent Participation**

(1) School districts shall provide one or both parents with an opportunity to participate in meetings with respect to the identification, evaluation, IEP and educational placement of the student, and the provision of a free appropriate public education to the student. For IEP and placement meetings, school districts shall also follow the requirements of OAR 581-015-0067.

(2) School districts shall provide parents with a written notice of the meeting sufficiently in advance to insure that one or both parents will have an opportunity to attend. The written notice shall:

(a) State the purpose, time and place of the meeting and who will attend; and

(b) Inform the parent that they may invite other individuals who they believe

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<th>I. Parent or Eligible Student Meeting Participation</th>
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<tr>
<td><strong>A.</strong> The district provides parents or eligible students an opportunity to participate in meetings with respect to the identification, evaluation, IEP and educational placement of the student, and the provision of a free appropriate public education to the student.</td>
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| B. The district provides parents or eligible students written notice of any meeting sufficiently in advance to ensure an opportunity to attend. The written notice: |
### Section 7: Procedural Safeguards

have knowledge or special expertise regarding the student; 
(c) Inform the parent that the team may proceed with the meeting even if the parent is not in attendance; and 
(d) Inform the parent of whom to contact before the meeting to provide information if they are unable to attend.

(3) The school district shall make reasonable efforts to insure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

(4) A meeting does not include informal or unscheduled conversations involving school district personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the student's IEP. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

[Federal Regulation: 34 CFR 300.501]

### OAR 581-015-0067 Additional Parental Participation Requirements for IEP and Placement Meetings

(1) School districts schedule meetings to develop an IEP or determine placement at a mutually agreed upon time and place.

(2) If neither parent can attend, the school district shall use other methods to insure parent participation, including, but not limited to, individual or conference phone calls or home visits.

(3) An IEP or placement meeting may be conducted without a parent in attendance if the school district has:
   (a) made sufficient attempts to arrange a mutually agreeable time and place for the meeting; and
   (b) Documented these attempts in the student's educational record.

(4) For the purpose of subsection (3)(a) of this rule:
   (a) “Sufficient attempts” means:
      (A) Communicating directly with the parent to arrange a mutually agreeable time and place, and sending written notice required under OAR 581-015-0063(2), to confirm this arrangement; or
      (B) Proposing a time and place in the written notice required under OAR 581-015-0063(2), stating in the notice that the parent may request a different time and place, and confirming that the parent received the notice.
   (b) “Sufficient attempts” may all occur before the scheduled IEP or placement meeting, and does not require the scheduling of multiple agreed-upon meetings unless the team believes this would be in the best interest of the student.

(5) If a purpose of the meeting is to consider transition services for a student, the written notice required by OAR 581-015-0063(2) shall also:
   (a) Indicate this purpose;

   1. States the purpose, time, and place of the meeting and who is invited to attend;
   2. Advises that parents or eligible students may invite other individuals who they believe have knowledge or special expertise regarding the student;
   3. Advises that the team may proceed with the meeting even if they are not in attendance;
   4. Advises who to contact before the meeting to provide information if they are unable to attend; and,
   5. Indicates if one of the meeting’s purposes is to consider transition services or transition services needs. If so:
      a. Indicates that the student will be invited; and,
      b. If considering transition services, Identifies any agencies invited to send a representative.

C. The district shall take steps to ensure that one or both parents of a child with a disability are present at each IEP or placement meeting or are afforded the opportunity to participate, including:

   1. Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and,
   2. Scheduling the meeting at a mutually agreed upon time and place.

D. If neither parent can attend, the district will use other methods to ensure participation, including, but not limited to, individual or conference phone calls or home visits.

E. The district may conduct an IEP or placement meeting without the parent or eligible student if the district is unable to convince the parents that they should attend. Attempts to convince the parent to attend can be considered sufficient if the district:
   1. Communicates directly with the parent and arranges a mutually agreeable time and place and written notice is sent to confirm the arrangement; or
Section 7: Procedural Safeguards

(b) Indicate that the school district will invite the student; and
(c) Identify any other agency that will be invited to send a representative
(6) The school district shall give the parent a copy of the individualized education program at no cost to the parent. If the parent does not attend the IEP meeting, the school district shall ensure that a copy is provided to the parent.

[Federal Regulation: 34 CFR 300.501]

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<td>2.</td>
<td>Proposes a time and place in the written notice, stating that a different time and place might be requested, and confirms that the notice was received.</td>
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<td>F.</td>
<td>If the district proceeds with an IEP meeting without a parent, the district must have a record of its attempt to arrange a mutually agreed upon time and place such as:</td>
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<td>1. Detailed records of telephone calls made or attempted and the results of those calls;</td>
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<td>2. Copies of correspondence sent to the parents and any responses received; and</td>
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<td>3. Detailed records of visits made to the parent’s home or place of employment and results of those visits.</td>
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<td>G.</td>
<td>The district shall take whatever action is necessary to ensure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose language is other than English.</td>
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<td>H.</td>
<td>The right to parent participation transfers to an adult student under OAR 581-015-0101.</td>
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<td>I.</td>
<td>After the transfer of rights to an adult student, the district provides written notice of meetings to the adult student and parent, if the parent can be reasonably located. A parent receiving notice of an IEP meeting is not entitled to attend the meeting unless invite by the adult student or district.</td>
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<td>J.</td>
<td>An IEP meeting does not include:</td>
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<td>1. Informal or unscheduled conversations involving school district personnel;</td>
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<td>2. Conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the student’s IEP; or,</td>
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<td>3. Preparatory activities that district or public personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.</td>
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### OAR 581-015-0075 Prior Written Notice Required for Identification, Evaluation, or Placement or the Provision of a Free Appropriate Public Education

(1) Prior written notice shall be given to the parent of a student, and adult student, within a reasonable period of time before a school district proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the student, or the provision of a free appropriate public education to the student.

(2) Prior written notice must be given after a decision is made and a reasonable time before that decision is implemented.

(3) The content of the prior written notice shall include:
   - A description of the action proposed or refused by the school district;
   - An explanation of why the district proposed or refused to take the action;
   - A description of any options which the school district considered and reasons why those options were rejected;
   - A description of each evaluation procedure, test, record, or report which is directly relevant to the proposal or refusal;
   - A description of any other factors which are relevant to the school district's proposal or refusal; and
   - A statement that the parents of a student with a disability have procedural safeguards and the means by which a copy of the Notice of Procedural Safeguards may be obtained;

(4) The prior notice shall be:
   - Written in language understandable to the general public; and
   - Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(5) If the native language or other mode of communication of the parent is not a written language, the school district shall take steps to insure that:
   - The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;
   - A reasonable effort is made to aid the parent in understanding the content of the notice; and
   - There is written evidence that the requirements in subsections (5)(a) and (b) of this rule have been met.

[Federal Regulation: 34 CFR 300.503]
| Section 7: Procedural Safeguards | is not a written language, the school district shall take steps to ensure that:  

a. The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;  

b. A reasonable effort is made to help the parent to understand the content of the notice; and,  

C. There is written evidence that the requirements of this rule have been met. |
Section 7: Procedural Safeguards

OAR 581-015-0079 Notice of Procedural Safeguards

(1) School districts must give parents a copy of the Notice of Procedural Safeguards at a minimum:
   (a) Upon initial referral for evaluation;
   (b) Upon each notice of an IEP meeting;
   (c) Upon reevaluation of the student; and
   (d) Also to the student, at least a year before the student's 18th birthday.

(2) The procedural safeguards notice must include all of the content provided in the Notice of Procedural Safeguards published by the Department in the following areas:
   (a) Independent educational evaluations;
   (b) Prior written notice;
   (c) Parental consent;
   (d) Access to educational records;
   (e) Opportunity to initiate a due process hearing;
   (f) The student's placement during pendency of due process proceedings;
   (g) Procedures for students who are subject to placement in an interim alternative educational setting;
   (h) Requirements for unilateral placement by parents of children in private school at public expense;
   (i) Mediation;
   (j) Due process hearings, including requirements for disclosure of evaluation results and recommendations;
   (k) Civil actions;
   (l) Attorney's fees;
   (m) The complaint procedures under [OAR 581-015-0054], including a description of how to file a complaint and the timelines under those procedures; and
   (n) Transfer of rights at age of majority.

(3) The Notice of Procedural Safeguards must be provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

[Federal Regulation: 34 CFR 300.504]
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<tr>
<td>13. The complaint procedures under OAR 581-015-0050, including a description of how to file a complaint and the timelines under those procedures; and,</td>
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<td>14. Transfer of rights at age of majority.</td>
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<tr>
<td>C. The Notice of Procedural Safeguards is written in language understandable to the general public.</td>
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<td>D. The Notice of Procedural Safeguards is provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.</td>
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<td>E. If the native language or other mode of communication of the parent is not a written language, the district takes steps to ensure:</td>
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<td>1. The notice is translated orally or by other means to the parent in his or her native language or other mode of communication</td>
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<tr>
<td>2. The parent understands the content of the notice: and.</td>
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<td>3. There is written evidence that the district has met these requirements</td>
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### Section 7: Procedural Safeguards

**581-015-0093 Hearing Costs**

1. **Costs of the Proceedings:**
   - The school district shall reimburse the Department for the hearing, including pre-hearing conferences, scheduling arrangements, and other related matters.
   - The school district shall provide the parent with a written, or at the option of the parent, an electronic verbatim recording of the hearing, within a reasonable time of the close of the hearing.

2. **Attorney Fees:** Funds under Part B of the individuals with Disabilities Education Act may not be used to pay attorney fees or costs of party related to an action or proceeding under this rule.


### OAR 581-015-0094 Independent Educational Evaluation

1. **A** A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the school district.
   - "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of the student.
   - "Public expense" means that the school district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

2. If a parent requests an independent educational evaluation at public expense, the school district shall, without unnecessary delay, either:
   - Initiate a due process hearing under OAR 581-015-0081 to show that its evaluation is appropriate; or,
   - Ensure that an independent educational evaluation is provided at public expense unless the school district demonstrates in a hearing under OAR 581-015-0081 that the evaluation obtained by the parent did not meet school district criteria.

3. School district criteria for independent educational evaluations shall be the same as for school district evaluations including, but not limited to, location, examiner qualifications and cost.

### Due Process Hearings:

**Hearing Costs:**

1. The district will reimburse the Department for the hearing officer's costs related to conducting the hearing, including pre-hearing conferences, scheduling arrangements, and other related matters.

2. The district will provide the parent with a written, or at the option of the parent, an electronic verbatim recording of the hearing, within a reasonable time of the closing of the hearing.

**I. Independent Educational Evaluations**

A. If a parent requests an independent educational evaluation at public expense, the district provides information to parents about where an independent educational evaluation may be obtained, and the district criteria applicable for independent educational evaluations.

B. If a parent requests an independent educational evaluation at public expense, the district, without unnecessary delay, either:
   - Initiates a due process hearing to show that its evaluation is appropriate; or,
   - Ensures that an independent educational evaluation is provided at public expense unless the district demonstrates in a hearing that the evaluation obtained by the parent did not meet district criteria.

C. The district criteria for independent educational evaluations are the same as for district evaluations including, but not limited to, location, examiner qualifications and cost.
   - Criteria established by the district does not preclude the parent's access to an independent educational evaluation.
   - The district provides the parents the opportunity to demonstrate the unique
Section 7: Procedural Safeguards

examiner qualifications and cost. Criteria established by the school district cannot preclude the parent's access to an independent educational evaluation. (5) If the school district initiates a hearing and the final decision is that the school district's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense. (6) If a parent requests an independent educational evaluation, the school district may ask why the parent disagrees with the public evaluation. The parent may but is not required, to provide an explanation. The school district may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation. (7) If the parent obtains an independent educational evaluation, the results of the evaluation: (a) Must be considered by the school district, if it meets agency criteria, in any decision made with respect to the provision of a free appropriate public education to the student; and (b) May be presented as evidence at a due process hearing. (8) If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense. [Federal Regulation: 34 CFR 300.502]

OAR 581-015-0099 Surrogate Parents

1. School districts shall ensure that the rights of a student are protected by appointing a surrogate parent when: (a) The parent cannot be identified or located after reasonable efforts; or (b) The student is a ward of the state and there is reasonable cause to believe that the student has a disability. (2) In determining the need for a surrogate, the school district shall consider whether it is likely to take any action regarding the student which would require notice under OAR 581-015-0075 to the parents, substitute care provider, or state agency which has legal guardianship of the student. (3) Each school district shall secure nominations of persons to serve as surrogates. The school district shall ensure that each person approved to serve as a surrogate: (a) Is not an employee of the school district or the; (b) Is not an employee of any other agency involved in the education or care of the student except for an employee of a non-public agency that only provides non-education care for the student; (c) Is free of any conflict of interest that would interfere with representing the student's special education interests; and (d) Has or can acquire the necessary knowledge and skills protect the special education rights of the student. (4) An appointed surrogate parent shall have all of the special education rights

I. Surrogate Parents

A. The district ensures that the rights of a student with a disability, or suspected of having a disability, are protected by appointing a surrogate parent when: 1. The parent cannot be identified or located after reasonable efforts; 2. The student is a ward of the state and there is reasonable cause to believe that the student has a disability; or, 3. The parent or eligible student requests the appointment of a surrogate parent.

B. The district secures nominations of persons to serve as surrogates.

C. The district ensures that each person approved to serve as a surrogate:

1. Is not an employee of the district;
2. Is not an employee of any other agency involved in the education or
Section 7: Procedural Safeguards

and procedural safeguards available to the parent.

(5) A surrogate shall not be considered an employee of a school district solely on the basis that the surrogate is compensated from public funds.

(6) The duties of the surrogate parent are to:
   (a) Protect the special education rights of the student;
   (b) Be acquainted with the student’s disability and the student’s special education needs;
   (c) Represent the student in all matters relating to the identification, placement, or annual evaluation, IEP and educational placement of the student; and
   (d) Represent the student in all matters relating to the provision of a free appropriate public education to the student.

(7) A surrogate shall have the same rights granted to a parent in a hearing under OAR 581-015-0080, and the procedures regarding hearings set forth in OAR 581-015-0081 through 581-015-0091 shall apply.

(8) A parent may give written consent for a surrogate to be appointed. When a parent requests that a surrogate be appointed, the parent shall retain all parental rights to receive notice under OAR 581-015-0063, 581-015-0067, 581-015-0075, and 581-015-0079 and all of the information provided to the surrogate. The surrogate, alone, shall be responsible for all matters relating to the special education of the student unless the parent revokes consent for the surrogate’s appointment. If a parent gives written consent for a surrogate to be appointed, the parent may revoke consent at any time by providing a written request to revoke the surrogate’s appointment.

(9) A student to whom rights have transferred at age of majority may give written consent for a surrogate to be appointed. When a student requests that a surrogate be appointed, the student shall retain all rights to receive notice under OAR 581-015-0063, 581-015-0067, 581-015-0075 and 581-015-0079, and all of the information provided to the surrogate. The surrogate, alone, shall be responsible for all matters relating to the special education of the student unless the student revokes consent for the surrogate’s appointment. If a student gives written consent for a surrogate to be appointed, the student may revoke consent at any time by providing a written request to revoke the surrogate’s appointment.

(10) The school district may change or terminate the appointment of a surrogate when:
   (a) The person appointed as surrogate is no longer willing to serve;
   (b) The student reaches 21 years of age or the student’s elementary/secondary schooling is terminated;
   (c) The student is no longer eligible for special education services;
   (d) The legal guardianship of the student is transferred to a person who is able to carry out the role of the parent;
   (e) A foster parent is identified who can carry out the role of parent under OAR 581-015-0005;
   (f) The parent, who previously could not be identified or located, is now
### Section 7: Procedural Safeguards

(g) The appointed surrogate is no longer eligible; or  
(h) The student moves to another school district.  

(11) A person appointed as surrogate shall not be held liable for actions taken in good faith on behalf of the parent in protecting the special education rights of the student.  
(12) The school district shall not appoint a surrogate solely because the parent or student to whom rights have transferred is uncooperative or unresponsive to the special education needs of the student.  

[Federal Regulation: 34 CFR 300.515]

### OAR 581-015-0101 Transfer of Procedural Rights at Age of Majority

1. When a student with a disability reaches the age of majority under ORS 109.510 or 109.520, or is emancipated pursuant to ORS 419B.550 to 419B.558, the rights accorded to the student's parents under the special education laws transfer to the student.  
2. Notwithstanding section (1) of this rule:  
   (a) Pursuant to a protective proceeding under ORS Chapter 125, the Probate Court may find the student to be incapacitated to make educational decisions and may appoint a guardian to exercise these rights.  
   (b) Under ORS 419B.223, the Juvenile Court may appoint a surrogate parent to exercise these rights if the student is under wardship.  

### I. Transfer of Rights at Age of Majority

A. When a student with a disability reaches the age of majority, marries, or is emancipated, the district will transfer the rights accorded to the student's parents under the special education laws, to the student.  

B. The district provides notice to the student and the parent that rights will transfer at the age of majority. This notice is provided at an IEP meeting and documented on the IEP:  
   1. At least one year before the student's 18th birthday;
### Section 7: Procedural Safeguards

1. **School districts are not responsible for the costs of a protective proceeding unless the school district is the Petitioner.**

2. **Even after transfer of rights to the student, the school district shall provide any written prior notices and written notices of meetings required by the special education laws to the student and to the parent if the parent can be reasonably located.**

3. **After transfer of rights to the student, receipt of notice of an IEP meeting does not entitle the parent to attend the meeting unless invited by the student or the school district.**

4. **Pursuant to OAR 581-015-0099(9), a student to whom rights transfer may request that a surrogate be appointed to exercise the student's special education rights.**

5. **[Federal Regulation: 34 CFR 300.517]**

### OAR 581-015-0102 Notice of Transfer of Rights at Majority

1. **(1) The school district shall provide notice to the student and the parent that rights will transfer at the age of majority.** This notice shall be provided at the IEP meeting and documented on the IEP:
   - (a) At least one year before the student's 18th birthday; or
   - (b) More than one year before the student's 18th birthday, if the student's IEP Team determines that earlier notice will aid transition;
   - (c) Upon actual knowledge that within a year the student will likely marry or become emancipated prior to age 18.

2. **(2) The school district shall provide written notice to the student and to the parent at the time of the transfer.**

3. **(3) The Department shall include information about transfer of rights in the Notice of Procedural Safeguards required by OAR 581-015-0079.**

4. **[Federal Regulation: 34 CFR 300.517]**

### Federal Regulation: 34 CFR 300.517

2. More than one year before the student's 18th birthday, if the student's IEP Team determines that earlier notice will aid transition; or,

3. Upon actual knowledge that within a year the student will likely marry or become emancipated before age 18.

**C. The district provides written notice to the student and to the parent at the time of the transfer.**

**D. These requirements apply to all students who are incarcerated in a state or local adult juvenile correctional facility or jail.**

**E. After transfer of rights to the student, the district provides any written prior notices and written notices of meetings required by the special education laws to the eligible student and to the parent if the parent can be reasonably located.**

**F. After rights have transferred to the student, receipt of notice of an IEP meeting does not entitle the parent to attend the meeting unless invited by the student or the district.**
Section 8: Evaluation and Eligibility Procedures

OAR 581-015-0051 Criteria for Evaluation and Eligibility Determination

For the disability categories below, subsection (a) sets forth the evaluation that shall be conducted, subsection (b) sets forth the minimum criteria the child shall meet and subsection (c) sets forth the requirement that the team shall determine whether a child needs special education or EI/ECSE services.

1. Autism Spectrum Disorder:
   (a) If a child is suspected of having an autism spectrum disorder, the following evaluation shall be conducted:
      (A) A developmental profile that describes the child's historical and current characteristics that are associated with an autism spectrum disorder as described in subsection (1)(b) of this rule;
      (B) At least three observations of the child's behavior one of which involves direct interactions with the child. The observations shall 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.
      (C) An assessment of communication to address the communication characteristics of autism spectrum disorder which includes but is not limited to measures of language semantics and pragmatics completed by a speech and language pathologist licensed by a State Board of Examiners in Speech Pathology and Audiology or the Teacher Standards and Practices Commission;
      (D) A medical statement or a health assessment statement indicating whether there are any physical factors that may be affecting the child's educational performance;
      (E) An assessment using an appropriate behavior rating tool or an alternative assessment instrument that identifies characteristics associated with an autism spectrum disorder.
      (F) Assessments to determine the impact of the suspected disability:
         (i) On the child's educational performance for a school-age child; or
         (ii) On the child's developmental progress for a preschool child; and
      (G) Additional evaluations or assessments that are necessary to identify the child's educational needs.
   (b) For a child suspected of having an autism spectrum disorder, the child shall meet all of the following minimum criteria:
      (A) The team shall have documented evidence that the child demonstrates all of the behaviors in subsection (1)(b)(B). Each of these behaviors shall be:
         (i) characteristic of an autism spectrum disorder;
         (ii) inconsistent or discrepant with the child's development in other areas; and
         (iii) documented over time and/or intensity.
      (B) The child shall exhibit the following:
         (i) Impairments in communication;
         (ii) Impairments in social interaction;
         (iii) Patterns of behavior, interests, and/or activities that are restricted, repetitive, or stereotypic; and

I. Requirements for Initial Evaluation

A. The district conducts a comprehensive individualized evaluation before determining that the student is eligible for special education services, and before beginning to provide special education and related services.

B. Parents, staff, or other interested individuals can refer a student for an initial special education evaluation if there is suspicion that a student may have a disability that has an adverse impact on educational performance.

C. The district designates a team to determine whether an evaluation will be conducted. The team includes at least two professionals, at least one of whom is a specialist knowledgeable and experienced in the evaluation and education of students with disabilities, and the parent.

D. In determining what testing and/or further assessment may be necessary, the team will review existing information.

II. Requirements for Reevaluation

A. The district conducts a complete reevaluation:

   1. At least once every three years; or,
Section 8: Evaluation and Eligibility Procedures

(iv) Unusual responses to sensory experiences.

(c) For a child to be eligible for special education or EI/ECSE services as a child with an autism spectrum disorder, the child's team shall determine that:

(A) The child's disability has an adverse impact:

(i) On the child's educational performance for a school-age child; or
(ii) On the child's developmental progress for a preschool child; and

(B) The child needs special education services or, for a preschool child, EI/ECSE services, as a result of the disability.

(d) A child may not be eligible for special education services on the basis of an autism spectrum disorder if the child's primary disability is an emotional disturbance as set forth in section (4) of this rule. However, a child with autism spectrum disorder as a primary disability may also have an emotional disturbance as a secondary disability.

(2) Communication Disorder:

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

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

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

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

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

(B) For a child suspected of having a voice disorder, a medical statement by an otolaryngologist licensed by a State Board of Medical Examiners. For other than a voice disorder, if a medical or health diagnosis is needed, a medical statement or a health assessment statement describing relevant medical issues;

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

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

(E) Assessments to determine the impact of the suspected disability:

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

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

(F) Additional evaluations or assessments that are necessary to identify the child's educational needs.

(b) For a child suspected of having a specific communication disorder, the child shall meet the following minimum criteria:

(A) Voice disorder:

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

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

2. Whenever conditions warrant a reevaluation, including if the student's parent or teacher(s) requests such reevaluation.

B. When conducting a reevaluation, the IEP team reviews existing information and determines what additional assessment information, if any, is needed to address all minimum eligibility criteria of the student's eligibility category(ies).

(See Evaluation Planning and Review of Existing Information section below.)

C. If additional evaluation is determined to be necessary, the district provides the parent with prior written notice of the intent to conduct the evaluation and request consent for such evaluation.

D. With the exception of testing of intelligence or personality, if the parents fail to respond to the request for consent, the district can initiate the testing. Parent consent is obtained prior to any testing of intelligence or personality.

F. If the team determines that no further data is required, the district:

1. Provides prior written notice of this decision to the parent; and,

2. Provides parents with the reasons why no further data are required; and, informs the parents of their right to request further assessment(s) to determine if their student is eligible for special education and related services.

III. Evaluation Planning and Review of Existing Information

A. When initially evaluating, and when reevaluating a student, the IEP team, and other professionals as appropriate, review existing data and other information that is available, including information provided by the parent, and determine any additional information, if any, that the team will need to obtain in order to determine:

1. Whether or not a student is eligible under any category(ies) of disability(ies), including the need for special education and related service(s);

2. The present levels of educational performance;

3. The educational needs of the student; and,

4. In the case of reevaluation, whether any additions or modifications
### Section 8: Evaluation and Eligibility Procedures

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

(B) Fluency disorder:
(i) The child demonstrates an interruption in the rhythm or rate of speech which is characterized by hesitations, repetitions, or prolongations of sounds, syllables, words or phrases;
(ii) The child has a fluency disorder that interferes with communication and calls attention to itself across two or more settings; and
(iii) The child demonstrates moderate to severe vocal dysfluencies or the child evidences associated secondary behaviors, such as struggling or avoidance as measured by a standardized measure.

(C) Phonological or articulation disorder:
(i) The child's phonology or articulation is rated significantly discrepant as measured by a standardized test; and
(ii) The disorder is substantiated by a language sample or other evaluation(s).

(D) Syntax, morphology, pragmatic or semantic disorder:
(i) The child's language in the area of syntax, morphology, semantics or pragmatics is significantly discrepant as measured by standardized test(s); and
(ii) The disorder is substantiated by a language sample or other evaluation(s).

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

(c) For a child to be eligible for special education or EI/ECSE services as a child with a communication disorder, the child's team shall determine that:

(A) The child's disability has an adverse impact:
(i) On the child's educational performance for a school-age child; or
(ii) On the child's developmental progress for a preschool child; and

(B) The child needs special education services or, for a preschool child, EI/ECSE services, as a result of the disability.

(3) Deafblindness:
(a) If a child is suspected of having deafblindness, the child shall be evaluated using the minimum evaluation procedures in sections (5) and (11) of this rule.
(b) For a child suspected of having deafblindness, the child shall meet one or more of the following minimum criteria:
(A) The child meets the minimum criteria for both vision impairment and hearing impairment in sections (5) and (11) of this rule; or
(B) The child meets the minimum criteria for either vision impairment or hearing impairment of sections (5) or (11) of this rule and demonstrates inconsistent or inconclusive responses in an assessment of the other sensory area. If the child demonstrates inconsistent or inconclusive responses in an assessment of the other sensory area, a functional assessment must be administered by a state licensed educator of the visually impaired, a state licensed educator of the hearing impaired or an audiologist licensed by a State Board of Examiners in Speech Pathology and Audiology; or
(C) The child meets the minimum criteria for either vision impairment or hearing impairment of sections (5) or (11) of this rule and has a degenerative in the special education and related services are needed to allow the student to meet the IEP goals, and allow the student to participate in the general curriculum.

### IV. Evaluation Procedures

A. The district ensures that all tests and evaluations used for initial evaluations and reevaluations are:

1. Selected and conducted so as not to be racially or culturally discriminatory;
2. Conducted in the student's native language or other mode of communication, unless it is clearly not feasible to do so; and,
3. For students with limited English proficiency, are reflective of the student's English language skills; the assessments will measure the extent to which the student may have a disability and need special education, and not solely reflect the student's limited English proficiency.

B. The district designates trained and knowledgeable personnel to conduct the evaluation.

C. The district uses a variety of tools and measures to gather relevant functional and developmental information about the student. This includes:

1. Any information provided by the parent; and,
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(c) For a child to be eligible for special education or EI/ECSE services as a child having deafblindness, the child's team shall determine that:

(A) The child's disability has an adverse impact:
   (i) On the child's educational performance for a school-age child; or
   (ii) On the child's developmental progress for a preschool child; and
(B) The child needs special education services or, for a preschool child, EI/ECSE services, as a result of the disability.

(4) Emotional Disturbance:
(a) If a child is suspected of having an emotional disturbance, the following evaluation shall be conducted:
   (A) An evaluation of the child's emotional and behavioral status, including a developmental or social history, when appropriate;
   (B) A medical statement or a health assessment statement indicating whether there are any physical factors that may be affecting the child's educational performance;
   (C) The completion of at least two behavior rating scales, at least one of which is a standardized behavior measurement instrument;
   (D) An observation in the classroom and in at least one other setting by someone other than the child's regular teacher;
   (E) Assessments to determine the impact of the suspected disability:
      (i) On the child's educational performance for a school-age child; or
      (ii) On the child's developmental progress for a preschool child; and
   (F) Additional evaluations or assessments that are necessary to identify the child's educational needs.
(b) For a child suspected of having an emotional disturbance, the child shall meet the following minimum criteria:
   (A) The child's emotional or behavioral problems shall have existed over an extended period of time; and
   (B) The child exhibits one or more of the following:
      (i) An inability to learn at a rate commensurate with the child's intellectual, sensory-motor, and physical development;
      (ii) An inability to establish or maintain satisfactory interpersonal relationships with peers, parents, or teachers;
      (iii) A variety of excessive behaviors ranging from hyperactive and impulsive responses to depression and withdrawal;
      (iv) Inappropriate types of behavior or feelings under normal circumstances; or
      (v) A tendency to develop physical symptoms, pains, or fears associated with personal, social, or school problems.
(c) For a child to be eligible for special education services as a child with an emotional disturbance, the child's team shall determine that:
   (A) The child's disability has an adverse impact:
      (i) On the child's educational performance for a school-age child; or
      (ii) On the child's developmental progress for a preschool child; and
   (B) The child needs special education, or for a preschool child, EI/ECSE services, as a result of the disability.

2. Any information related to the student's ability to be involved in and progress in the general curriculum.

D. Assessment tools and strategies selected by the team assist in determining:

1. Whether the student has a disability and needs special education; and,
2. What the content of the IEP may be to address the special education needs.

E. Standardized tests used to evaluation a student:

1. Are validated for the purpose for which they are used;
2. Are administered by trained and knowledgeable personnel, as determined by the test producer; and,
3. If administered in a non-standardized manner, a description of the way(s) in which the variance occurred will be described in the evaluation report.

F. Tests and other evaluation measures include those that are designed to assess specific areas of educational need, not only those designed to provide a single intelligence quotient.

G. When testing students with impaired sensory, manual, or speaking skills, the tests used will accurately reflect the student's actual abilities rather than solely reflect the impairment.

H. No single evaluation tool will be used as the sole instrument in determining eligibility for special education, including the need for special education and related services.

I. Each student is assessed in all areas related to each suspected disability(ies), including, if appropriate:

1. Health;
2. Vision;
3. Hearing;
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services, as a result of the disability;
(d) A child who is socially maladjusted may not be identified as having an emotional disturbance unless the child also meets the minimum criteria under subsection (4)(b) of this rule.

Hearing Impairment:
(a) If a child is suspected of having a hearing impairment, the following evaluation shall be conducted:
(A) An audiological assessment by an audiologist licensed by a State Board of Examiners in Speech Pathology and Audiology;
(B) A medical statement or a health assessment statement indicating whether the hearing loss, if conductive, is treatable and whether the use of amplification is contra-indicated;
(C) Assessments to determine the impact of the suspected disability:
(i) On the child's educational performance for a school-age child; or
(ii) On the child's developmental progress for a preschool child; and
(D) Additional evaluations or assessments that are necessary to identify the child's educational needs.
(b) For a child suspected of having a hearing impairment, the child shall meet one of the following minimum criteria:
(A) The child has a pure tone average loss of 25 dbHL or greater in the better ear for frequencies of 500 Hz, 1000 Hz, and 2000 Hz, or a pure tone average loss of 35 dbHL or greater in the better ear for frequencies of 3000 Hz, 4000 Hz, and 6000 Hz; or
(B) The child has a unilateral hearing impairment with a pure tone average loss of 50 dbHL or greater in the affected ear for the frequencies 500 Hz to 4000 Hz; and
(C) The loss is either sensorineural or conductive if the conductive loss has been determined to be currently untreatable by a physician.
(c) For a child to be eligible for special education or EI/ECSE services as a child with a hearing impairment, the child's team shall determine that:
(A) The child's disability has an adverse impact:
(i) On the child's educational performance for a school-age child; or
(ii) On the child's developmental progress for a preschool child; and
(B) The child needs special education services or, for a preschool child, EI/ECSE services, as a result of the disability.

6. Mental Retardation:
(a) If a child is suspected of having mental retardation, the following evaluation shall be conducted:
(A) An individually administered standardized intelligence test meeting the reliability and validity standards of the American Psychological Association and administered by a licensed school psychologist, a psychologist licensed by a State Board of Psychological Examiners, or other individual assigned by a school district who has the training and experience to administer and interpret individually administered intelligence tests;
(B) The administration of a valid adaptive behavior scale;
(C) Assessments to determine the impact of the suspected disability:
(i) On the child's educational performance for a school-age child; or
(ii) On the child's developmental progress for a preschool child; and
(D) Additional evaluations or assessments that are necessary to identify the child's educational needs.

4. Social and emotional status;
5. General intelligence;
6. Academic performance;
7. Communication skills; and,

J. The evaluation is comprehensive enough to identify all the student’s special education and related service needs, whether or not these needs are commonly associated with the suspected or identified disability category(ies).

K. The district uses technically sound instruments that may assess the relative contribution of:
1. Cognitive factors;
2. Behavioral factors; and,
3. Physical or developmental factors.

L. The student is evaluated in a manner that assists in determining his or her educational needs.

M. The district completes the assessment in a reasonable period of time. Reasonable period of time means within 60 school days, unless special circumstances require a longer period. The district documents these circumstances when they apply.

V. Eligibility Determination

A. Once evaluation is completed, the district designates an eligibility team to determine whether or not the student is eligible for special education services. This team includes:

1. Two or more professionals, one of whom will be knowledgeable and experienced in evaluating and teaching students with the suspected disability; and,
2. The student’s parent.

B. The eligibility team may be the IEP team.
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(C) A medical statement or a health assessment statement indicating whether there are any sensory or physical factors that may be affecting the child's educational performance;
(D) A developmental history of the child;
(E) Assessments to determine the impact of the suspected disability:
   (i) On the child's educational performance for a school-age child; or
   (ii) On the child's developmental progress for a preschool child; and
(F) Additional evaluations or assessments that are necessary to identify the child's educational needs.

(b) For a child suspected of having mental retardation, the child shall meet all of the following minimum criteria:
   (A) The child's intelligence test score is 2 or more standard deviations below the mean;
   (B) The child has deficits in adaptive behavior coexistent with the child's impairment in intellectual functioning;
   (C) The child's developmental level or educational achievement is significantly below age or grade norms; and
   (D) The child's developmental or educational problems are not primarily the result of sensory disabilities or other physical factors.

(c) For a child to be eligible for special education services as a child with mental retardation, the child's team shall determine that:
   (A) The child's disability has an adverse impact:
      (i) On the child's educational performance for a school-age child; or
      (ii) On the child's developmental progress for a preschool child; and
   (B) The child needs special education services or, for a preschool child, EI/ECSE services, as a result of the disability.

(7) Orthopedic Impairment:
   (a) If a child is suspected of having an orthopedic impairment, the following evaluation shall be conducted:
      (A) A medical statement or a health assessment statement indicating a diagnosis of an orthopedic or neuromotor impairment or a description of the motor impairment;
      (B) A standardized motor assessment, including the areas of fine motor, gross motor and self-help, when appropriate, by a specialist knowledgeable about orthopedic or neuromotor development;
      (C) Assessments to determine the impact of the suspected disability:
         (i) On the child's educational performance for a school-age child; or
         (ii) On the child's developmental progress for a preschool child; and
      (D) Additional evaluations or assessments that are necessary to identify the child's educational needs.
   (b) For a child suspected of having an orthopedic impairment, the child shall meet all of the following minimum criteria:
      (A) The child has a motor impairment, which results in deficits in the quality, speed or accuracy of movement. These deficits must be documented by a score of two or more standard deviations below the mean in one or more of the

C. The district prepares a written eligibility statement that includes:
   1. A description of all evaluation data used in determining the student's eligibility;
   2. Determination of whether or not the student meets the eligibility criteria for one or more of the disabilities described in Oregon Administrative Rule. This determination includes documentation of:
      a. Whether the disability has an adverse impact on the student's education performance; and,
      b. Whether the student needs special education as a result of the disability.
   3. Whether the determinant factor for eligibility determination is a lack of instruction of reading or math;
   4. Whether the determinant factor for eligibility determination is limited English proficiency; and,
   5. The signature of each member of the eligibility team, indicating their agreement or disagreement with the eligibility determination. If disagreeing, the Team member(s) include a separate statement of his or her conclusions.

D. The district provides the student's parent with a copy of the evaluation report and documentation of eligibility determination.

E. For students who may be eligible in more that one disability category, the district ensures that:
   1. The student is evaluated in all the areas related to the suspected disability(ies); and,
   2. The student's IEP addresses all the special education and related service needs.

F. In addition to the above, for students with suspected specific learning disabilities:
   1. The eligibility team includes:
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three motor areas set forth in subsection (7)(a)(B) of this rule, or functional deficits in at least two of the three motor areas; and
(B) The child’s condition is permanent or is expected to last for more than 60 calendar days.
(c) For a child to be eligible for special education services as a child with an orthopedic impairment, the child’s team shall determine that:
(A) The child’s disability has an adverse impact:
(i) On the child’s educational performance for a school-age child; or
(ii) On the child’s developmental progress for a preschool child; and
(B) The child needs special education services or, for a preschool child, EI/ECSE services, as a result of the disability.

(8) Other Health Impairment:
(a) If a child is suspected of having an other health impairment, the following evaluation shall be conducted:
(A) A medical statement or a health assessment statement, indicating a diagnosis of a health impairment or a description of the impairment, and a statement that the child's condition is permanent or is expected to last for more than 60 calendar days;
(B) Assessments to determine the impact of the suspected disability:
(i) On the child's educational performance for a school-age child; or
(ii) On the child's developmental progress for a preschool child; and
(C) Additional evaluations or assessments that are necessary to identify the child's educational needs.
(b) For a child suspected of having an other health impairment, the child shall meet all of the minimum criteria:
(A) The child's condition shall be permanent or expected to last for more than 60 calendar days; and
(B) The child's condition adversely affects the school-age child's educational performance or preschool child’s developmental progress.
(c) For a child to be eligible for special education services as a child with an other health impairment, the child’s team shall determine that:
(A) The child’s disability has an adverse impact:
(i) On the child’s educational performance for a school-age child; or
(ii) On the child’s developmental progress for a preschool child; and
(B) The child needs special education services or, for a preschool child, EI/ECSE services, as a result of the disability.

(9) Specific Learning Disability:
(a) If a child is suspected of having a specific learning disability, the following evaluation shall be conducted:
(A) An observation by a team member other than the child’s regular teacher of the child’s academic performance in a regular classroom setting; or in the case of a child less than school age or out of school, an observation by a team member conducted in an age-appropriate environment;
(B) A developmental history, if needed;
(C) An assessment of intellectual ability;

2. The written evaluation report includes:
   a. Statement regarding whether the student has a specific learning disability;
   b. The basis for this determination;
   c. A description of relevant behavior that was documented during an observation of the student, including a description of the relationship of that behavior to the student’s academic functioning;
   d. If appropriate, educationally relevant medical findings; whether there is a severe discrepancy between intellectual ability and achievement and that is not correctable without special education; and,
   e. A statement of eligibility team determination regarding the effects of environmental, cultural, or economic disadvantage.

VI. Termination of Special Education Eligibility

A. Before determining that a student is no longer eligible for special education and related services, the district completes a reevaluation, except when:

1. The student becomes ineligible because of graduation with a regular high school diploma; or,

2. The student becomes ineligible due to age.
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(D) Other assessments of the characteristics of learning disabilities if the child exhibits impairments in any one or more of the following areas: cognition, fine motor, perceptual motor, communication, social or emotional, and perception or memory. These assessments shall be completed by specialists knowledgeable in the specific characteristics being assessed;

(E) A review of cumulative records, previous individualized education programs or individualized family service plans and teacher collected work samples;

(F) If deemed necessary, a medical statement or health assessment statement indicating whether there are any physical factors that may be affecting the child's educational performance;

(G) Assessments to determine the impact of the suspected disability:
   (i) On the child's educational performance for a school-age child; or
   (ii) On the child's developmental progress for a preschool child; and

(H) Additional evaluations or assessments that are necessary to identify the child's educational needs.

(b) For a child suspected of having a specific learning disability, the child shall meet all of the following minimum criteria:

(A) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in subsection (9)(b)(B) of this rule when provided with learning experiences appropriate for the child's age and ability levels;

(B) The child has a severe discrepancy between intellectual ability and achievement in one or more of the following areas:
   (i) Oral expression;
   (ii) Listening comprehension;
   (iii) Written expression;
   (iv) Basic reading skills;
   (v) Reading comprehension;
   (vi) Mathematics calculation (when appropriate, includes general readiness skills); or
   (vii) Mathematics reasoning; and

(C) The child's severe discrepancy between ability and achievement is not primarily the result of:
   (i) A visual, hearing, or motor impairment;
   (ii) Mental retardation;
   (iii) Emotional disturbance; or
   (iv) Environmental, cultural, or economic disadvantage.

(c) For a child to be eligible for special education services as a child with a specific learning disability, the child's team shall determine that:

(A) The child's disability has an adverse impact:
   (i) On the child's educational performance for a school-age child; or
   (ii) On the child's developmental progress for a preschool child; and

(B) The child needs special education services or, for a preschool child, EI/ECSE services, as a result of the disability.

(10) Traumatic Brain Injury:
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(a) If a child is suspected of having a traumatic brain injury, the following evaluation shall be conducted:
   (A) A medical statement or a health assessment statement indicating that an event may have resulted in a traumatic brain injury as defined in OAR 581-015-0005(3)(j);
   (B) A comprehensive psychological assessment using a battery of instruments intended to identify deficits associated with a traumatic brain injury administered by a licensed school psychologist, a psychologist licensed by a State Board of Psychological Examiners, or other individuals who have the training and experience to administer and interpret the tests within the battery;
   (C) Other assessments including, but not limited to, motor assessments if the child exhibits motor impairments; communication assessments if the child exhibits communication disorders; and psychosocial assessments if the child exhibits changed behavior. These assessments must be completed by educators knowledgeable in the specific area being assessed;
   (D) Other information relating to the child's suspected disability, including pre-injury performance and a current measure of adaptive ability;
   (E) An observation in the classroom and in at least one other setting;
   (F) Assessments to determine the impact of the suspected disability:
      (i) On the child's educational performance for a school-age child; or
      (ii) On the child's developmental progress for a preschool child; and
   (G) Additional evaluations or assessments that are necessary to identify the child's educational needs.

(b) For a child suspected of having a traumatic brain injury, the child's condition shall be permanent or expected to last for more than 60 calendar days.

(c) For a child to be eligible for special education services as a child with a traumatic brain injury, the child's team shall determine that:
   (A) The child's disability has an adverse impact:
      (i) On the child's educational performance for a school-age child; or
      (ii) On the child's developmental progress for a preschool child; and
   (B) The child needs special education services or, for a preschool child, EI/ECSE services, as a result of the disability.

(11) Vision Impairment:
   (a) If a child is suspected of having a vision impairment, the following evaluation shall be conducted:
      (A) A medical statement by an ophthalmologist or optometrist licensed by a State Board of Examiners indicating that the child has a vision impairment;
      (B) Assessments to determine the impact of the suspected disability:
         (i) On the child's educational performance for a school-age child; or
         (ii) On the child's developmental progress for a preschool child; and
      (C) Additional evaluations or assessments that are necessary to identify the child's educational needs, including a functional assessment of the child's residual visual acuity or field of vision.
   (b) For a child suspected of having a vision impairment, the child shall meet one or more of the following minimum criteria:
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(A) The child's residual acuity is 20/70 or less in the better eye with correction;
(B) The child's visual field is restricted to 20 degrees or less in the better eye;
(C) The child has an eye pathology or a progressive eye disease which in the opinion of the ophthalmologist is expected to reduce either residual acuity or visual field according to the criteria stated in paragraphs (11)(b)(A) or (B); or
(D) The assessment results of a licensed ophthalmologist or optometrist are inconclusive, or the child demonstrates inadequate use of residual vision.

(c) For a child to be eligible for special education services as a child with vision impairment, the child's team shall determine that:
(A) The child's disability has an adverse impact:
(i) On the child's educational performance for a school-age child; or
(ii) On the child's developmental progress for a preschool child; and
(B) The child needs special education services or, for a preschool child, EI/ECSE services, as a result of the disability.

[Federal Regulation: 34 CFR 300.7(b)]

OAR 581-015-0053 Eligibility Determination Procedures

(1) Upon completing the administration of tests and other evaluation materials, a team shall determine whether the child is a child with a disability under OAR 581-015-0051

(2) The team shall include two or more professionals, at least one of who is knowledgeable and experienced in the evaluation and education of children with the suspected disability, and the parent. This team may be the child’s IEP team.

(3) In determining eligibility for a child suspected of having a specific learning disability team shall also include:
(a) 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; and
(b) A person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or other qualified professional.

(4) The team shall prepare a written statement of eligibility that includes:
(a) All evaluation data considered in determining the child’s eligibility;
(b) A determination of whether the child meets the minimum evaluation criteria for one of the disability categories in OAR 581-015-0051 or OAR 581-015-0942;
(c) a determination of whether the primary basis for the suspected disability is:
(A) A lack of instruction in reading or math; or
(B) Limited English proficiency;
(d) A determination of whether the child’s disability has an adverse impact on the child's educational performance;
(e) A determination of whether, as a result of the disability, the child needs
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(f) The signature of each member of the team indicating agreement or disagreement with the eligibility determination.

(5) When determining eligibility for a child suspected of having a specific learning disability, the team shall prepare a written report based upon the results of the evaluation. The report shall also include statements regarding:

(a) Whether the child has a specific learning disability;
(b) The basis for the determination;
(c) The relevant behavior noted during the observation of the child;
(d) The relationship of that behavior to the child's academic functioning;
(e) The educationally relevant medical findings, if any;
(f) Whether there is a significant discrepancy between achievement and ability which is not correctable without special education; and
(g) The determination of the team concerning the effects of environmental, cultural, or economic disadvantage.

(h) Each team member shall certify either:

(A) Agreement with the report; or
(B) Disagreement, with a separate statement of conclusions.

(6) The school district shall provide a copy of the evaluation report and the documentation of determination of eligibility to the parent.

(7) The team may not determine that a child is eligible for special education services if:

(a) The determinant factor for that eligibility determination is:

(A) Lack of instruction in reading or math; or
(B) Limited English proficiency; and

(b) The child does not otherwise meet the eligibility criteria under OAR 581-015-0051.

(8) The team shall determine a child to be eligible under this rule if the child has a disability and needs special education and related services, even though the child is advancing from grade to grade.

(9) For a child who may have disabilities in more than one category, the team need only qualify the child under one disability category. However, the child shall be evaluated in all areas related to the suspected disability or disabilities, and the child's IEP shall address all of the child's special education needs.

[Federal Regulations: 34 CFR 300.7(6), 34 CFR 300.530 - 300.534, and 34 CFR 300.540 - 300.543]

OAR 581-015-0071 Evaluation Required

(1) Each school district shall conduct a full and individual initial evaluation, in accordance with OAR 581-015-0072, 0701, and 0051 before determining eligibility and before the initial provision of special education and related services to a child with a disability.

(2) An initial evaluation shall be conducted to determine if a child is eligible for
## Section 8: Evaluation and Eligibility Procedures

Special education services when an educational agency suspects or has reason to suspect that:

(a) The child may have a disability that has an adverse impact on the child's educational performance; and
(b) The child may need special education services as a result of the disability.

(3) The educational agency shall designate a team to determine whether an evaluation shall be conducted. The team shall include at least two professionals, at least one of whom shall be a specialist knowledgeable and experienced in the evaluation and education of children with disabilities, and the parent. This team may make this determination without a meeting. If a meeting is held, parents shall be invited to participate in conformance with OAR 581-015-0063.

(4) Upon request for an initial evaluation, the school district shall:

(a) Provide the parent with prior written notice under OAR 581-015-0075 of the school district's proposal to conduct an initial evaluation, and obtain written parent consent under OAR 581-015-0039; or
(b) Provide the parent with prior written notice under OAR 581-015-0075 of the school district's refusal to conduct an initial evaluation.

(5) The parent shall have the right to request a due process hearing pursuant to OAR 581-015-0081 if the parent disagrees with the educational agency's decision.

[Federal Regulation: 34 CFR 300.531]

### OAR 581-015-0072 Evaluation Procedures

Each school district shall ensure that:

(1) Tests and other evaluation materials used to assess a child:

(a) Are selected and administered so as not to be racially or culturally discriminatory;
(b) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so; and
(c) Materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.

(2) A variety of assessment tools and strategies are used to gather relevant functional and developmental information about the child, including:

(a) information provided by the parent, and
(b) information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities).

(3) The assessment tools and strategies are selected to assist the team in determining:

(a) Whether the child is a child with a disability under OAR 581-015-0051; and
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(b) The content of the child's IEP.

(4) Any standardized tests that are given to a child:
   (a) Have been validated for the specific purpose for which they are used;
   (b) Are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests; and
   (c) If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g. the qualifications of the person administering the test, or the method of test administration) must be included in the evaluation report.

(5) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient;

(6) Tests are selected and administered so as best to ensure that, if a test is administered to a child with impaired sensory, manual or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever factors the test purports to measure rather than reflecting the child's impaired sensory, manual or speaking skills, except where those skills are the factors which the test purports to measure;

(7) No single procedure is used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child;

(8) The educational agency shall designate trained and knowledgeable personnel to conduct the evaluation:

(9) The child is assessed in all areas related to the suspected disability or disabilities, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status and motor abilities; and

(10) In evaluating each child with a disability under OAR 581-015-0071–0074, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category (or categories) in which the child has been classified;

(11) The school district uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors;

(12) The school district uses assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child;

(13) The evaluation shall be completed within a reasonable period of time.
   (a) A “reasonable period of time” means within 60 school days unless special circumstances require a longer period.
   (b) “Special circumstances” are circumstances outside the school district’s control. Lack of availability of qualified staff to conduct the evaluation shall not be considered a special circumstance. School districts shall document any special circumstances.
   (c) The 60 day period shall begin on the date the parent gives written consent.
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for the evaluation or the date the evaluation is initiated under OAR 581-015-0042(2).

(d) The evaluation shall be considered completed on the date of the meeting to determine eligibility or to consider the results in reviewing the child’s IEP.

[Federal Regulation: 34 CFR 300.532]

OAR 581-015-0073 Interpretation of Evaluation Data

(1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under OAR 581-015-0051, and the educational needs of the child, each team shall:
(a) Draw upon information from a variety of sources, including but not limited to, aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background and adaptive behavior; and
(b) Ensure that information obtained from all these sources is documented and carefully considered.

[Federal Regulation: 34 CFR 300.535 ]

OAR 581-015-0074 Reevaluation

(1) Educational agencies shall ensure that a reevaluation of each child with a disability is conducted every three years, or more frequently if conditions warrant or if the child's parent or teacher requests an evaluation.
(2) As part of the reevaluation, the child’s IEP or IFSP team shall review existing data and determine what, if any, additional assessment data are needed in accordance with OAR 581-015-0701.
(3) In determining whether a child continues to have a disability, the team shall address all of the evaluation components and minimum eligibility criteria of the child’s eligibility category under OAR 581-015-0051, except as described in subsection (4).
(4) A child identified as having a specific learning disability need only have a “discrepancy” and not necessarily a “severe discrepancy” to continue eligibility.
(5) Upon a request for a reevaluation, the school district shall either:
(a) provide the parent with prior written notice of the proposed evaluation under OAR 581-015-0075 and obtain written parent consent in conformance with OAR 581-015-0039 and 0042(2); or
(b) provide the parent with prior written notice under OAR 581-015-0075 of the school district’s refusal to conduct a reevaluation.
(6) Parents may challenge a school district’s refusal to conduct a reevaluation under OAR 581-015-0081.

[ORS 343.157]
Section 8: Evaluation and Eligibility Procedures

OAR 581-015-0700 Responsibility for Evaluation and Eligibility Determination
(1) For school-age children, school districts and juvenile and adult corrections education programs shall be the public educational agencies responsible for evaluating these children and determining their eligibility for special education services.
(2) For preschool children, school districts shall be the public educational agencies responsible for evaluating these children for EI/ECSE services. The designated referral and evaluation agencies shall be the public educational agencies responsible for determining the eligibility of these children for EI/ECSE services.

[Federal Regulation: 34 CFR 300.532]

OAR 581-015-0701 Review of Existing Data and Evaluation Planning
(1) as part of an initial evaluation (if appropriate) and as part of any reevaluation, the child’s IEP or IFSP team, and other qualified professionals, as appropriate, shall:
(a) Review existing evaluation data on the child, including:
(A) Evaluations and information provided by the parents of the child;
(B) Current classroom-based assessments and observations; and
(C) Observations by teachers and related services providers; and
(b) On the basis of that review, and input from the child’s parents, identify what additional data, if any, are needed to determine:
(A) Whether the child has a particular category of disability or, in case of a reevaluation of a child, whether the child continues to have such a disability:
(i) for a school-age child, under OAR 581-015-0051, or
(ii) for a preschool child, under OAR 581-015-0943 or 0946;
(B) The present levels of performance and educational or developmental needs of the child;
(C) Whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and
(D) Whether any additions or modifications to the special education and related services or, for a preschool child, EI/ECSE services are needed:
(i) to enable the child to meet the measurable annual goals in the child’s IEP or IFSP and
(ii) to participate, as appropriate, in the general curriculum or, for a preschool child, appropriate activities.
(2) The group described in section (1) may conduct this review without a meeting. If a public agency holds a meeting for this purpose, parents shall be invited to participate in conformance with OAR 581-015-0063.
(3) The school district shall administer tests and other evaluation materials as may be needed to produce the additional data identified under subsection (1)(b).
### Section 8: Evaluation and Eligibility Procedures

(4) If the child’s IEP or IFSP team determines that no additional data are needed to determine whether the child is or continues to be a child with a disability, the public agency shall notify the child’s parents:
   (a) Of that determination and the reasons for it; and
   (b) Of the right of the parents to request an assessment to determine whether, for purposes of services under this part, the child continues to be a child with a disability.

(5) The public agency is not required to conduct the assessment described in subsection (4)(b) unless requested to do so by the child’s parents.

(6) For purposes of Section (1), “other qualified professionals” means individuals who are knowledgeable about the child’s disability and, for students with limited English proficiency, knowledgeable about the implications of the child’s language proficiency on their special education or EI/ECSE needs.

[Federal Regulation: 34 CFR 30.533]

### OAR 581-015-0702 Termination of Eligibility

(1) A school district must evaluate a child with a disability in accordance with OAR 581-015-0072 and 0701 before determining that the child is no longer a child with a disability.

(2) The evaluation described in section (1) is not required before the termination of a student’s eligibility:
   (a) due to graduation with a regular high school diploma; or
   (b) for students who are no longer eligible due to their age.

(3) A school district shall provide prior written notice under OAR 581-015-0075 when a team determines that a child is no longer eligible for special education.

[Federal Regulation: 34 CFR 300.534]
I. FAPE and Age Ranges
A. The district provides special education and related services to all resident school-age students with disabilities, except as provided below.
B. “School-age children” are children who have reached 5 years of age but have not yet reached 21 years of age on or before September 1 of the current school year.
C. The district will admit an otherwise eligible student who has not yet reached 21 years of age on or before September 1 of the current school year.
D. An otherwise eligible person whose 21st birthday occurs during the school year will continue to be eligible for FAPE for the remainder of the school year.
E. The district provides FAPE to students with disabilities who have been suspended or expelled from school in accordance with the special education discipline rules.

II. Nonacademic Services
A. The school district provides equal opportunity for students with disabilities for participation in nonacademic and extracurricular services and activities.
B. Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs, referrals to agencies, and employment of students, including both employment by the public agency and assistance in making outside employment available.

III. Interagency Agreements
A. The district enters into a written agreement with any ESD, other district, School for the Deaf, School for the Blind, or approved private school that serves as an attending program for resident students with disabilities.
B. The district enters into a written agreement with any ESD, other district, or private alternative school that serves resident students, whether or not the students are identified as students with disabilities.
Section 9: FAPE

C. These written agreements provide that:

1. The resident district retains all responsibility for ensuring provision of FAPE and that the parents and child are afforded all special education rights and procedural safeguards under federal and state law, including:

   a. Child find and initial evaluation if the resident district suspects that the child has a disability and needs special education;

   b. Initiation of IEP meetings, unless the written agreement specifies that the attending district will initiate IEP meetings;

   c. Provision of district representative at IEP meetings;

   d. Provision of IEP and placement that complies with all state and federal requirements;

   e. Provision of prior written notice and notice of procedural safeguards when required;

   f. Compliance with any stay put requirements that allow the child to remain in the present educational placement in the attending program unless the resident district and the parents agree otherwise; and,

   g. Acting as the school district of record for any special education due process hearing arising out of the student’s placement or program.

2. The attending program agrees to:

   a. Allow the child to remain in the present educational placement in the attending program during the pendency of any special education due process hearing unless the parents and resident district agree otherwise;

   b. Immediately notify the resident district superintendent or special education director if the attending program suspects that the child may have a disability and needs special education services;

   c. Immediately notify the resident district superintendent or special education director if the student, whether disabled or not, has
### Section 9: FAPE

- engaged in conduct that may lead to suspension or expulsion; and,
  - d. Immediately notify the resident district superintendent or special education director of any complaint made by the parents regarding the student’s regular or special education program at the attending program.

### OAR 581-015-0601 Age Limitations and Exceptions to FAPE

<table>
<thead>
<tr>
<th>Paragraph</th>
</tr>
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<tbody>
<tr>
<td>(1) A district must admit an otherwise eligible student who has not yet reached 21 years of age on or before September 1 of the current school year.</td>
</tr>
<tr>
<td>(2) A student who receives a regular high school diploma is no longer entitled to FAPE.</td>
</tr>
<tr>
<td>(3) If a school district chooses to provide special education to a student with a regular high school diploma, that student remains eligible for FAPE.</td>
</tr>
<tr>
<td>(4) The obligation to make a FAPE available to individuals with disabilities 18 through 21 years old who have been convicted as adults and are incarcerated in an adult correctional facility applies only to those individuals who, in their last educational placement before their incarceration in the adult correctional facility:</td>
</tr>
<tr>
<td>(a) Were identified as being a child with a disability as defined in OAR 581-015-0005(3); or</td>
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<tr>
<td>(b) Had an individualized education program.</td>
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<tr>
<td>(5) For purposes of subsection (4) of this rule,</td>
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<tr>
<td>(a) “Adult correctional facility” means:</td>
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<tr>
<td>(i) A local correctional facility as defined ORS 169.005;</td>
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<tr>
<td>(ii) A regional correctional facility as defined in ORS 169.620; or</td>
</tr>
<tr>
<td>(iii) A Department of Corrections institution as defined in ORS 421.005;</td>
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<tr>
<td>(b) “Identified as being a child with a disability” means has been determined eligible or was involved in the process of determining the individual’s disability and eligibility for special education and related services under OAR 581-015-0051; and</td>
</tr>
<tr>
<td>(c) “Last educational placement” includes juvenile correctional facilities.</td>
</tr>
<tr>
<td>(6) Until January 1, 2006, section (2) of this rule does not apply to individuals who on August 20, 1999:</td>
</tr>
<tr>
<td>(a) Were not yet 21 years old;</td>
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<tr>
<td>(b) Had received a regular high school diploma as defined in OAR 581-022-1130; and</td>
</tr>
<tr>
<td>(c) Were receiving special education or had an IEP in effect that extended past August 20, 1999.</td>
</tr>
<tr>
<td>(7) Until January 1, 2006, section (4) of this rule does not apply to 18 through 21 years old individuals with disabilities who were incarcerated in an adult correctional facility on August 20, 1999.</td>
</tr>
</tbody>
</table>
### OAR 581-015-0602 Graduation

(1) Graduation with a regular high school diploma under OAR 581-022-1130 constitutes a change in placement, requiring written prior notice in accordance with OAR 581-015-0075.

(2) A school district is not required to conduct a reevaluation before terminating eligibility due to graduation with a regular high school diploma.

(3) In accordance with OAR 581-022-1130, a school district may award an alternative document as described in local school board policies to a student with a disability. Graduation with an alternative document does not terminate eligibility, require an evaluation or require written prior notice.

### OAR 581-015-0603 Incarcerated Youth

(1) In accordance with OAR 581-015-0601 the obligation to make FAPE available to all children with disabilities does not apply with respect to certain students aged 18 through 21 incarcerated in an adult correctional facility.

(2) For students with disabilities who are convicted as adults, incarcerated in adult correctional facilities, and otherwise entitled to FAPE:

(a) the following IEP requirements do not apply:

(A) The requirements contained in OAR 581-015-0068(1)(f) relating to participation of children with disabilities in statewide and school district assessments; and

(B) The requirements in OAR 581-015-0068(2) relating to transition planning

### I. Graduation

A. A student who receives a regular high school diploma is no longer entitled to FAPE. Until January 1, 2006, this rule does not apply to individuals who on August 20, 1999:

1. Were not yet 21 years old;

2. Had received a regular high school diploma; and,

3. Were receiving special education or had an IEP in effect that extended past August 20, 1999.

B. If the district chooses to provide special education to a student with a regular high school diploma, that student remains eligible for FAPE.

C. The district provides prior written notice a reasonable time before a student with a disability graduates with a regular high school diploma.

D. The district may but is not required to conduct a reevaluation before terminating eligibility due to graduation with a regular high school diploma.

E. The district may award an alternative document as described in local school board policies to a student with a disability.

See Attachment E – Board Policy for Graduation

Graduation with an alternative document does not terminate eligibility, require an evaluation, or require written prior notice.

### I. Incarcerated Youth

A. Until January 1, 2006, the District will make FAPE available to all individuals with disabilities 18 through 21 whether or not the student was previously identified for special education purposes.

B. After January 1, 2006, the district will make FAPE available to those individuals with disabilities 18 through 21 who have been convicted as adults and are incarcerated in an adult correctional facility who have not graduated with a regular diploma, and who in their last educational placement before their incarceration in the adult
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and transition services, with respect to the students whose eligibility will end, because of their age, before they will be eligible to be released from adult correctional facilities based on consideration of their sentence and eligibility for early release.

(b) The IEP team may modify the student's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated. The requirements of OAR 581-015-0068(1) relating to IEPs, and OAR 581-015-0059 relating to least restrictive environment, do not apply with respect to these modifications.

(3) For purposes of this rule, “adult correctional facility” has the meaning set forth in OAR 581-015-0601(5)(a).

OAR 581-015-0604 Plans to Serve Student in Local or Regional Correctional Facilities

(1) A school district shall have a plan, approved by the local school board, to provide or cause to be provided appropriate education for children placed in a local or regional correctional facility located in the school district.

34 CFR 300.302 Residential placement.

If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.

34 CFR 300.305 Program options.

Each public agency shall take steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

34 CFR 300.307 Physical education.

I. Residential Placement

A. If the district places a student in a public or private residential program to provide special education and related services to a student with a disability, the district ensures that the program, including non-medical care and room and board, is provided at no cost to the parents of the student.

I. Program Options

A. The district ensures that each eligible student has available a variety of educational programs and services available to nondisabled students including art, music, industrial crafts, consumer and homemaking education, and vocational education.

I. Physical Education
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(a) General. Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE.
(b) Regular physical education. Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless--
(1) The child is enrolled full time in a separate facility; or
(2) The child needs specially designed physical education, as prescribed in the child's IEP.
(c) Special physical education. If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child shall provide the services directly or make arrangements for those services to be provided through other public or private programs.
(d) Education in separate facilities. The public agency responsible for the education of a child with a disability who is enrolled in a separate facility shall ensure that the child receives appropriate physical education services in compliance with paragraphs (a) and (c) of this section.

ORS 338.165 Special education students; payment for services.
(1) Notwithstanding ORS 338.155 (1), for purposes of this section, the "resident school district" of a student who is eligible for special education and related services shall be the school district in which the student's parent or guardian or person in parental relationship to the student reside pursuant to ORS 339.133 and 339.134.
(2) For students who attend public charter schools and are eligible for special education and related services:
   (a) The resident school district of the student shall be responsible for providing any required special education and related services to the student; and
   (b) Amounts from the State School Fund for those students shall be distributed through the resident school district pursuant to this section.
(3) Notwithstanding ORS 338.155 (2), a resident school district of a student who is eligible for special education and related services shall contractually establish, with any public charter school in which the student is enrolled, payment for provision of special education and related services to the student. If a student is enrolled in a public charter school and is eligible for special education and related services an additional amount shall be added to the ADM of the public charter school as described in ORS 327.013 (7)(a)(A). The payment per ADMw in the public charter school that is attributable to the student who is eligible for special education and related services shall equal an amount that is at least equal to:
   (a) 40 percent of the amount of the school district's General Purpose Grant per ADMw as calculated under ORS 327.013 for students who are enrolled in kindergarten through grade eight; and
   (b) 47.5 percent of the amount of the school district's General Purpose Grant per ADMw as calculated under ORS 327.013 for students who are enrolled in kindergarten through grade eight.

I. Public Charter Schools

A. The district provides all procedural safeguards to resident students with disabilities who attend public charter schools and their parents.
B. The district ensures that all resident students who attend charter schools receive FAPE.
C. The specific arrangements for providing special education and related services to charter schools within the district will be described in the charter between the district and the charter school. For students attending charter schools located outside the district, the district will enter into a contract with the charter school or chartering school district to ensure the provision of FAPE.
D. The district ensures that IEP and placement decisions for students with disabilities are made by the student's IEP/placement team.
E. For students who have been accepted to a charter school, through a lottery or other process, the charter school will be considered the student's "home school" for the purposes of determining appropriate placement and least restrictive environment.
### Section 9: FAPE

grades 9 through 12.

(4) If the resident school district is not the sponsor of a public charter school, the resident school district for each ADMw that is attributable to a student enrolled in a public charter school who is eligible for special education and related services shall transfer five percent of the amount of the school district's General Purpose Grant per ADMw as calculated under ORS 327.013 to the sponsor of the public charter school.

(5) Notwithstanding subsection (3) of this section, a school district and a public charter school may negotiate on a case-by-case basis for an alternative distribution of funds other than the distribution prescribed by subsection (3) of this section. [1999 c.200 s.21]

### 34 CFR 300.312 Children with disabilities in public charter schools.

(a) Children with disabilities who attend public charter schools and their parents retain all rights under this part…

(c) If the public charter school is a school of an LEA that receives funding under Secs. 300.711-300.714 and includes other public schools--

(1) The LEA is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity; and

(2) The LEA must meet the requirements of Sec. 300.241.
**Section 9: FAPE**

Oregon Policy on Inter-District Contracts

(a) A resident district may contract with another school district as the attending district to provide special education and related services to resident children.

(b) A resident district may contract with another school district to act as the attending district for students who may or may not be identified as eligible for special education and related services at the time of the agreement.

(c) For the purposes of these policies and procedures, school districts, corrections programs and contractors for Early Intervention/Early Childhood Special Education are considered resident districts. School districts, ESDs, the School for the Deaf and the School for the Blind may function as attending districts.

(d) For both of the cases (a) and (b) above, the resident district and the attending district shall enter into a contractual agreement with the following provisions.

1. Resident districts shall stipulate through the agreement that:
   (a) The resident district shall retain all responsibility for ensuring that the parents and the child are afforded all special education rights and procedural safeguards under federal and state law, including:
      1. Childfind, the evaluation for eligibility, for special education if the resident district suspects that a child has a disability and needs special education;
      2. Individualized education program (IEP). The attending district may initiate and conduct IEP meetings for the review of an IEP if requested to do so in writing by the resident district. A representative of the resident district shall attend all IEP meetings;
      3. Educational placement of the child;
      4. Provision of Free, Appropriate Public Education;
      5. Prior written notice to the parents when the resident district proposes or refuses to initiate the identification, evaluation, or educational placement of the child or the provision of a free, appropriate public education including change in placement if the contract is rescinded;
      6. Stay-put which allows the child to remain in his or her present educational placement at the attending district during the pendency of any education due process or judicial proceeding unless the resident district and the parents of the child agree otherwise.
      7. Otherwise.
      8. The resident district shall be the school district of record for any special education due process hearing or judicial proceeding arising out of the child’s placement or program.

2. The attending district shall stipulate through the agreement that:
   (a) Allow the child to remain in his or her present educational placement at the attending district during the pendency of any education due process or judicial proceeding unless the resident district and the parents of the child agree otherwise.
   (b) Immediately notify the resident district if the attending district suspects that...
### Section 9: FAPE

the child may have a disability and may need special education services.

(b) Immediately notify the resident district if the child, whether he or she is a special education student or not, has engaged in conduct that may lead to suspension or expulsion.

(c) Immediately notify the resident district of any complaint made by the parents of the child regarding the child’s regular or special education program at the attending district.

[ODE Memorandum # 135-1994-95 (March 13, 1995)]

### 581-015-0049 Recovery of Funds for Misclassified Children

(1) School districts shall ensure that children counted for the generation of funds provided under Part B of Public Law 94-142 is limited to eligible children.

(2) Any such funds provided for services to a child who is determined to be erroneously classified as eligible shall be recovered by the Oregon Department of Education by reducing for each appropriate school district the district’s entitlement in a subsequent year in a direct proportion to the numbers of children classified as eligible to be counted.

(3) For purposes of this rule “eligible child” or “child eligible to be counted” means a child six to twenty-one years of age inclusive, provided that such age limits shall be extended, for a school district providing early childhood education, to three to 21 inclusive, who:

(a) Is handicapped;

(b) Is receiving free public education; and

(c) Is receiving special education; and

(d) For whom an individualized educational program has been prepared.

Stat. Auth.: ORS 343
Stats. Implemented: ORS 343.243
Hist.: 1EB 269, f. & ef. 12-22-77

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Recovery of Funds for Misclassified Children:

A. The district ensures that children identified on the special education child count under Part B of the Individuals With Disabilities Education Act are limited to children who:

1. Meet eligibility requirements under OAR 581-015-0051
2. Have a current IEP
3. Are receiving a free, appropriate public education.
### Section 9: FAPE

<table>
<thead>
<tr>
<th>OAR 581-015-0607 Children with disabilities covered by Public Insurance</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) A school district may use the Medicaid or other public insurance benefits programs in which a child with disabilities participate to provide or pay for special education and related services, as permitted under the public insurance program, except as provided in subsection (2) of this section.</td>
</tr>
<tr>
<td>(2) With regard to services required to provide FAPE to a child with disabilities, the school district:</td>
</tr>
<tr>
<td>(a) May not require parents to sign up for or enroll in public insurance programs in order for their child with disabilities to receive FAPE under Part B of the IDEA</td>
</tr>
<tr>
<td>(b) May not require parents to incur an out-of-pocket expense such as the payment of the deductible or co-pay amount incurred in filing a claim for services provided pursuant to this chapter, but may pay the cost that parent otherwise would be required to pay; and</td>
</tr>
<tr>
<td>(c) May not use the child’s benefits under a public insurance program if that use would:</td>
</tr>
<tr>
<td>(A) Decrease available lifetime coverage or any other insured benefit;</td>
</tr>
<tr>
<td>(B) Result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school;</td>
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<tr>
<td>(C) Increase premiums or lead to the discontinuation of insurance; or</td>
</tr>
<tr>
<td>(D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.</td>
</tr>
<tr>
<td>(3) If a school district is unable to use a child’s public insurance for specified service required to ensure FAPE, the district may use it’s Part B funds to pay for the service.</td>
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</tbody>
</table>

### Children with Disabilities Covered By Public Insurance:

With regard to services required to provide FAPE to a child with disabilities, the district:

- A. Will not require a parent to sign up or enroll in public insurance programs in order for their child with disabilities to receive FAPE under Part B of the IDEA;
- B. Will not require parents to incur an out of pocket expense in order for their child with disabilities to receive FAPE under Part B of the IDEA; and,
- C. Will not use the child’s benefits under a public insurance program if that use would:
  
  1. Decrease available lifetime coverage or any other insured benefit;
  2. Result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the child outside the time the child is in school;
  3. Increase premiums or lead to the discontinuation of insurance; or
  4. Risk the loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.
### Section 9: FAPE

4) If the parent would incur a cost for the school district’s use of public insurance, the district may use its Part B funds to pay the cost the parents otherwise would have to pay to use the public insurance (e.g., the deductible or co-pay amounts).

5) Proceeds from public insurance will not be treated as program income for purposes of 34 CFR 80.25.

6) If a school district spends reimbursements from federal funds (e.g. Medicaid) for special education and related services those funds will not be considered “state or local” funds for purposes of the maintenance of effort provisions in this chapter.

7) Nothing in this section should be construed to alter the requirements imposed on a state Medicaid agency, or any other agency administering a public insurance program by federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, or any other public insurance program.

### OAR 581-015-0608 Children with Disabilities by Private Insurance

1) With regard to service required to provide FAPE to a child with disabilities, a school district may access a parent’s private insurance proceeds only if the parent provides informed consent consistent with this chapter.

2) Each time the school district proposes to access the parent’s private insurance proceeds, it must:
   - a) Obtain parent consent in accordance with this rule; and
   - b) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

3) If a school district is unable to obtain parental consent to use the parent’s private insurance, to ensure FAPE, the district may use its Part B funds to pay for the service.

5) To avoid financial cost to parents who otherwise would consent to use private insurance, or public insurance if the parent would incur a cost, the school district may use its Part B funds to pay the cost the parents would otherwise have to pay to use the parent’s insurance (e.g. the deductible or co-pay amounts). Proceeds from private insurance will not be treated as program income for purposes of 34 CFR 80.25.
<table>
<thead>
<tr>
<th>Section 10: Application Available to the Public</th>
<th>I. Public Inspection</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>34 CFR 76.304</strong></td>
<td>A. The district makes each special education program application, evaluation, periodic program plan, and report available to the public.</td>
</tr>
<tr>
<td>A subgrantee shall make any application, evaluation, periodic program plan, or report relating to each program available for public inspection.</td>
<td>B. The district makes all documents relating to the district's eligibility under the IDEA available to the public.</td>
</tr>
<tr>
<td><strong>34 CFR 300.242 Public information.</strong></td>
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<tr>
<td>The LEA must have on file with the SEA information to demonstrate to the satisfaction of the SEA that it will make available to parents of children with disabilities and to the general public all documents relating to the eligibility of the agency under Part B of the Act.</td>
<td></td>
</tr>
</tbody>
</table>
### Section 11: Nondiscrimination

**OAR 581-021-0045 Discrimination Prohibited**

1. **Discrimination Defined:**
   (a) "Discrimination" means any act that unreasonably differentiates treatment, intended or unintended, or any act that is fair in form but discriminatory in operation, either of which is based on age, handicap, national origin, race, marital status, religion or sex;
   
   (b) The words "District, School District" include all common and union high school districts and education service districts and all educational agencies, programs, and services under the jurisdiction of the State Board of Education, except community college districts.

2. **"General Prohibition of Discrimination":** No person in Oregon shall be subjected to discrimination in any public elementary or secondary school, educational program or service, or interschool activity where the program, service, school, or activity is financed in whole or part by monies appropriated by the Legislative Assembly.

3. **"Specific Prohibitions":** In providing programs or services to students, a school district shall not, on a discriminatory basis as defined in subsection (1)(a) of this rule:
   (a) Treat one person differently from another in determining whether such person satisfies any requirement of condition for the provision of such aid, benefit, or service;
   (b) Provide different aid, benefits, or services; or provide aids, benefits, or services in a different manner;
   (c) Deny any person such aid, benefit, or service;
   (d) Subject any person to separate or different rules of behavior, sanctions, or other treatment;
   (e) Aid or perpetuate discrimination by joining or remaining a member of any agency or organization which discriminates in providing any aid, benefit, or service to students or employees;
   (f) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

4. **"Exceptions":** These rules shall not affect attendance boundaries, limit placement of students in programs of desegregation, nor supersede any specific statutory requirement for any educational program.

[ORS 659.150-160]

**OAR 581-021-0046 Program Compliance Standards**

1. **Access to Course Offerings.** A school district shall not provide any course or otherwise carry out any of its educational programs or activities on a discriminatory basis or require or refuse participation therein by any of its students on such basis:
   (a) This section does not prohibit grouping of students in any educational program or activity by ability as assessed by objective standards of individual

### I. Discrimination Prohibited

A. The district promotes nondiscrimination and an environment free of harassment based on an individual's race, color, religion, sex, national origin, disability, marital status or age, or because of the race, color, religion, sex, national origin, disability, marital status or age of any other persons with whom the individual associates.

B. The district makes every effort to remove any indication of discrimination in:
   1. Employment;
   2. Assignment and promotion of personnel;
   3. Educational opportunities and services offered to students;
   4. Student assignment to schools and classes;
   5. Student discipline;
   6. Location and use of facilities;
   7. Educational offerings and materials; and,
   8. Accommodating the public at public meetings.

C. The superintendent appoints an individual(s) to be the district's contact for compliance issues related to the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, Title VI, Title VII, Title IX, and other civil rights or discrimination issues.

D. The district has written procedures for prompt resolution of complaints of discrimination.

See Attachment G – Procedures for Resolution of Complaints of Discrimination

E. The district has written board-adopted policy that assures equity, opportunity, and access for all students. The district will implement this policy in each school building.

See Attachment H – Board Policy Assuring Equity, Opportunity, and Access for all Students
Section 11: Nondiscrimination

(b) Where use of an objective standard of measuring skill or progress in an educational program has a discriminatory effect on persons as defined in OAR 581-021-0045, the district shall use appropriate standards which do not have such effect;

(c) This section does not prohibit separating students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball, soccer, and other sports the purpose or major activity of which involves bodily contact.

(2) Employment Assistance. A district which actively assists any agency, organization, or person in making employment available to any of its students shall assure itself that such employment is made available without discrimination.

(3) Marital Status. A district shall not discriminate against any student or exclude any student from its educational program or activity including any class or extracurricular activity on the basis of the student's marital status; however the student may request voluntarily to participate in a separate portion of the program or activity of the district.

(4) Athletics. A district, which operates or sponsors interscholastic club or intramural athletics shall provide equal athletic opportunity for members of both sexes, all age and ethnic groups, and persons with handicaps. In determining whether equal opportunities are available, the Superintendent of Public Instruction shall consider among other factors whether the selection of sports and levels of competition effectively accommodate the interests and abilities of all students.

(5) Students Unable to Attend Because of Religious Beliefs. Any student who because of his or her religious beliefs is unable to attend classes on a particular day shall be excused from attendance requirements and from any examination or other assignment on that day. The student shall make up the examination or other assignment missed because of such absence. The absence shall not be counted for the purpose of an attendance policy that may result in exclusion, failure, or reduction of grade based upon a certain number of days.

(6) Textbooks and Curriculum Material. Nothing in this rule shall be interpreted as requiring or prohibiting or abridging in any way the use of adopted textbook or curriculum material. However, where materials are found upon investigation to provide discriminatory impact on the basis of race, national origin, religion, sex, age, handicap, or marital status, there should be established resources for employees and students of the district for supplemental alternative nondiscriminatory material.

(7) Use of Appraisal and Counseling Materials. A district which uses testing or other materials for appraising or counseling students shall not use materials which discriminate on the basis of race, national origin, religion, sex, age, handicap, or marital status, or use materials which permit or require different treatment of students on such basis unless such differences cover the same occupation and interest areas and the use of such different material is shown to
Section 11: Nondiscrimination

be essential to the elimination of discrimination. Districts shall develop and use internal procedures for insuring that such materials may not discriminate.

(8) Bilingual or Linguistically Different Students. Districts shall develop and implement a plan for identifying students whose primary language is other than English and shall provide such students with appropriate programs until they are able to use the English language in a manner that allows effective and relevant participation in regular classroom instruction and other educational activities.

(9) Equal Educational Opportunity Plans. Districts shall develop and implement a plan, which assures that all students have equal opportunity to participate in the educational programs and activities and equal access to facilities in the district. Said plan shall include courses and/or components which provide students with an understanding of the pluralistic realities of their society, including multi-cultural/racial/ethnic education and equity in portraying all classes protected under ORS 659.150. Upon the request of the Superintendent of Public Instruction, districts shall submit copies of such plans and other assurances as are deemed necessary and proper.

(10) Interpretation of Rules. The Superintendent of Public Instruction may issue written interpretations concerning rules for nondiscrimination upon the written request of parties to a complaint at the district level.

[ORS 659.150-160]

OAR 581-021-0049 Hearings and Appeals

(1) Districts shall adopt written procedures for the prompt resolution of complaints of discrimination. Persons may, after exhausting local grievance procedures or 90 days (whichever occurs first) appeal in writing to the Superintendent of Public Instruction. The Superintendent shall review the local school district procedures and findings of fact to determine if proper procedures were followed and what action if any shall be taken.

[ORS 659.150-160]

OAR 581-022-1140 Equal Educational Opportunities

Each district school board shall adopt written policies, and the school district shall implement in each school, programs which assure equity, opportunity and access for all students as provided in OAR 581-021-0045 and OAR 581-021-0046.

[ORS 659.150-160]
Section 12: Discipline

OAR 581-015-0550 Definitions

For the purposes of OAR 581-015-0550 to 581-015-0559, the following definitions apply:

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

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

(3) "Disciplinary removal" means suspension, expulsion, or other removal from school for disciplinary reasons. It does not include:
   a. Removals by other agencies;
   b. Removals for public health reasons (e.g., head lice, immunizations, communicable diseases, etc.);
   c. In-school suspensions if the child continues to have access to the general curriculum and to special education and related services as described in the child's IEP, and continues to participate with nondisabled children to the extent they would in their current placement; or,
   d. Bus suspensions, unless the student's IEP includes transportation as a related service and the district makes no alternative transportation arrangements for the student.

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

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

[I. Definitions]

A. The district applies the following definitions when considering disciplinary action:

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

2. "Current educational placement" means the type of educational placement of the student as described in the student's "annual determination of placement" document at the time of the disciplinary removal. It does not mean the specific location or school but the types of placement on the continuum of placement options.

3. "Disciplinary removal" means suspension, expulsion, or other removal from school for disciplinary reasons, including removals pending completion of a risk assessment. It does not include:
   a. Removals by other agencies;
   b. Removals for public health reasons (e.g., head lice, immunizations, communicable diseases, etc.);
   c. In-school suspensions if the student continues to have access to the general curriculum and to special education and related services as described in the student's IEP, and continues to participate with nondisabled students to the extent they would in their current placement; or,
   d. Bus suspensions, unless the student's IEP includes transportation as a related service and the district makes no alternative transportation arrangements for the student, and the student does not attend school as a result of the bus suspension.

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

5. "Suspension" means any disciplinary removal other than expulsion.
### Section 12: Discipline

**OAR 581-015-0551 Disciplinary Removals for up to 10 School Days for Children with Disabilities**

1. School districts may suspend children with disabilities from their current educational placement for up to ten school days in a school year to the same extent, and with the same notice, as for children without disabilities. These removals are not considered a change in placement.

2. During disciplinary removals described in section (1) of this rule:
   - (a) School districts are not required to provided access to special education and the general curriculum unless students without disabilities are provided access during this time.
   - (b) School districts are not required to determine whether the child's behavior resulting in disciplinary removal is a manifestation of the child's disability.

3. For the purpose of counting days of suspensions:
   - (a) Suspensions of a half day or less are counted as a half day; and
   - (b) Suspensions of more than a half day are counted as a whole day.

4. For the purposes of determining "current educational placement" in subsection (1) of this rule:
   - (a) Children who received special education services in another state and are found eligible for special education in Oregon shall be treated as if initially placed in special education in Oregon, and any days of suspension accrued in the former state shall not be counted toward the ten days.
   - (b) For children who move from one school district to another school district in Oregon, any days of suspension from the former district carry over to the new school district unless:
     - (A) The new school district actually changes the child's educational placement through the IEP/placement procedures, and provides prior written notice of change in placement to the parent; or
     - (B) The school district does not have actual knowledge of the previous suspensions.

5. If a parent requests a due process hearing because they disagree with the suspension, the child shall complete the suspension and then return to their current educational placement unless the provisions of OAR 581-015-0552, 581-015-0555 or 581-015-0556 apply, or the parent and school district agree to another placement pending the hearing.

6. The Department shall provide guidance to school districts on the benefits of conducting functional behavioral assessments and developing behavioral intervention plans for students who are removed from school under this rule.

[Federal Regulations: 34 CFR 300.121 and 300.519-529]

### I. Disciplinary Removals for up to 10 School Days

A. The district may suspend students with disabilities from their current educational placement for up to ten school days in a school year to the same extent, and with the same notice, as for students without disabilities. These removals are not considered a change in placement.

B. During disciplinary removals for up to 10 school days:
   1. The district is not required to provide access to special education and the general curriculum unless students without disabilities are provided access during this time.
   2. The district is not required to determine whether the student’s behavior resulting in the disciplinary removal is a manifestation of the student’s disability.

3. The district counts days of suspension as follows:
   - a. Suspensions of a half day or less will be counted as a half day; and
   - b. Suspensions of more than a half day will be counted as a whole day.
   - c. If a student moves from another school district in Oregon, any days of suspension from the former district apply, unless the district does not have knowledge of previous suspensions.

C. If a parent disagrees with a suspension and requests a due process hearing:
   1. The district may require the student to complete the suspension before returning to their current educational placement; or,
   2. The student will return to the current educational placement after the suspension unless the student is removed to an interim alternative educational setting, or if the parent and district agree to another placement pending the hearing.
Section 12: Discipline

OAR 581-015-0552 Additional Disciplinary Removals of up to 10 School Days Each (No Pattern)
(1) School districts may suspend children with disabilities from their current educational placement for additional periods of up to ten school days in a school year to the same extent, and with the same notice, as for children without disabilities, if the removals do not constitute a pattern under section (2) of this rule. These removals are not considered a change in placement.
(2) In determining whether removals of additional periods of up to 10 school days constitute a pattern of removals from the child's current educational placement in a school year, school personnel shall consider:
(a) The length of each removal;
(b) The total time of removals; and
(c) The proximity of the removals to one another.
(3) During removals described in section (1) of this rule:
(a) School districts shall provide services that are necessary to enable the child:
   (A) To appropriately progress in the general curriculum; and
   (B) To appropriately advance toward achieving the goals in the child's IEP.
(b) The services described in subsection (a) of this rule, and the location for delivery of those services may be determined by school personnel, in consultation with the child's special education teacher, or by the child's IEP team.
(c) Within 10 business days of the first day of removal under section (1) of this rule, school districts shall hold an IEP meeting to:
   (A) Develop a plan for conducting a functional behavioral assessment unless a functional behavioral assessment has been completed on the behavior that resulted in the removal; or
   (B) If there is a behavioral intervention plan in place, to review the plan if one or more team members believe that revisions are needed.
(d) If the child's IEP team develops a plan for conducting a functional behavioral assessment under subsection (3)(c) of this rule, when the assessments are completed the school district shall hold an IEP meeting to develop and implement appropriate behavioral interventions to address the behavior.
(e) School districts are not required to determine whether the behavior resulting in removal is a manifestation of the child's disability.
(4) If a parent requests a due process hearing because they disagree with the suspension, the child shall complete the suspension and then return to their current educational placement pending the hearing unless:
(a) The provisions of OAR 581-015-0556 or 581-015-0557 apply; or
(b) The parent and school district agree to another placement.

[Federal Regulations: 34 CFR 300.121 and 300.519-529]
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E. As soon as practicable after developing a plan for conducting a functional behavioral assessment, and completing the assessments required by the plan, the school district will hold an IEP meeting to develop appropriate interventions to address the behavior and shall implement those interventions.

F. The district is not required to determine whether the behavior resulting in the disciplinary removal is a manifestation of the student’s disability.

G. Upon subsequent removals of up to ten school days that are not a pattern, the IEP team shall review the behavior intervention plan and its implementation to determine if modifications are necessary.

H. If a parent disagrees with the suspension and requests a due process hearing:
   1. The district may require the student to complete the suspension before returning to their current educational placement; and,
   2. The student will return to the current educational placement after the suspension unless the student is removed to an interim alternative educational setting or the parent and district agree to another placement pending the hearing.

OAR 581-015-0553 Disciplinary Removals of More than 10 School Days (Pattern or Consecutive)

1. A disciplinary removal is considered a change in educational placement and the school district shall follow special education due process procedures if:
   (a) The removal will be for more than 10 consecutive school days (e.g. expulsion); or
   (b) The child will be removed for more than 10 cumulative school days from their current educational placement in a school year, and those removals constitute a pattern under OAR 581-015-0552(2).

2. If a school district intends to initiate a removal under section (1) of this rule:
   (a) School districts shall:
       (A) Immediately schedule an IEP meeting for the purposes of subsection (2)(b) of this rule;
       (B) Provide notice of disciplinary action under OAR 581-021-0065(1)(for a suspension) or OAR 581-021-0070(3)(for an expulsion); and
       (C) Provide notice of procedural safeguards under OAR 581-015-0079.

I. Disciplinary Removals of More than 10 School Days (Pattern or Consecutive)

A. When a student is removed for disciplinary reasons for more than 10 school days, it is considered a change in the student’s educational placement if:
   1. The removal is for more than 10 consecutive school days; or,
   2. The removal is for more than 10 cumulative school days, and it constitutes a pattern of removals.

B. In initiating this type of removal, the district will:
   1. Immediately schedule an IEP meeting for the purpose of addressing the student’s behavior; and,
Section 12: Discipline

(b) Immediately or within 10 business days, school districts shall hold an IEP meeting to:
   (A) Develop an assessment plan unless a functional behavioral assessment has been completed on the behavior that resulted in the disciplinary removal or, if there is a behavioral intervention plan in place, to review the plan and revise as appropriate;
   (B) Determine whether the child's behavior is a manifestation of the child's disability under OAR 581-015-0554; and
   (C) Review the child's IEP and placement, and revise as appropriate.

(c) If the IEP team determines that the child's behavior is a manifestation of the student's disability under OAR 581-015-0554, the school district cannot proceed with the disciplinary action under section (1) of this rule. However:
   (A) The IEP team may review and revise the child's IEP and placement;
   (B) A school district may initiate removal to an interim alternative educational setting under OAR 581-015-0555 for a weapons or drug violation; or
   (C) A school district may seek a hearing officer removal under OAR 581-015-0556 for injurious behavior.

(d) If the IEP team determines that the child's behavior is not a manifestation of the student's disability under OAR 581-015-0554, the school district may proceed with disciplinary action under section (1) of this rule. If the school district takes such action, the school district shall:
   (A) Ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the school personnel making the final determination regarding the disciplinary action; and
   (B) Provide the services, determined by the IEP team, that are necessary to enable the child:
      (i) To appropriately progress in the general curriculum; and
      (ii) To appropriately advance toward achieving the goals in the child's IEP.

(e) If the child's IEP team develops a plan for conducting a functional behavioral assessment under subsection(2)(b)(A) of this rule, when the assessments are completed the school district shall hold an IEP meeting to develop and implement appropriate behavioral interventions to address the behavior.

(f) If a child's educational placement changes as a result of the IEP/placement reviews under subsections (2)(c) or (2)(d) of this rule, the school district shall provide prior written notice of change in placement under OAR 581-015-0075.

(3) If a parent requests a due process hearing because they disagree with the manifestation determination or any decision about placement related to the disciplinary removal in section (1) of this rule, the child shall complete any suspension under OAR 581-015-0551 or 581-015-0552 and return to their current educational placement unless:
   (a) The provisions of OAR 581-015-0555 or 581-015-0556 apply; or
   (b) The parent and school district agree to another placement pending the hearing.

2. No later than the date on which the decision to remove a student is made:
   a. Provide notice of disciplinary action for an expulsion; and,
   b. Provide notice of Procedural Safeguards to the parent.

C. Immediately or within 10 business days, the district will hold an IEP meeting to:
   1. Develop an assessment plan unless a functional behavioral assessment has been completed on the behavior that resulted in the disciplinary removal or, if there is a behavioral intervention plan in place, to review the plan and revise as appropriate;
   2. Determine whether the student's behavior is a manifestation of the student's disability; and,
   3. Review the student's IEP and placement, and revise as appropriate.

D. If the IEP team determines that the student's behavior is a manifestation of the student's disability, the district will not proceed with this type of removal. The district may:
   3. Review and revise the student's IEP and placement;
   4. For weapons or drug violations, initiate removal to an interim alternative educational setting; or,
   5. For injurious behavior, request a hearing for removal to an interim alternative educational setting.

E. If the IEP team determines that the student's behavior is not a manifestation of the student's disability, the district may proceed with disciplinary action applicable to students without disabilities in the same manner as it would be applied to students without disabilities. If the district takes such action applicable to all students, the district will:
   1. Ensure that the special education and disciplinary records of the student with a disability are transmitted for consideration by the school personnel making the final determination regarding the disciplinary action; and,
Section 12: Discipline

[Federal Regulations: 34 CFR 300.121 and 300.519-529]

<table>
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<th>2.</th>
<th>Provide the services, determined by the IEP team, that are necessary to enable the student to:</th>
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<td></td>
<td>a. Appropriately progress in the general curriculum; and,</td>
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<td>b. Appropriately advance toward achieving the goals in the student's IEP.</td>
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| 3. | As soon as practicable after developing a plan for conducting a functional behavioral assessment, and completing the assessments required by the plan, the school district will hold an IEP meeting to develop and implement appropriate behavioral interventions to address the behavior and shall implement those interventions |

| 4. | If a student's educational placement changes as a result of the IEP/placement reviews, the district will provide prior written notice of change in placement. |

| F. | If a parent disagrees with the manifestation determination or any decision about placement related to the disciplinary removal and requests a due process hearing, the student will remain in the current educational placement unless the student is removed to an interim alternative educational setting or if the parent and district agree to another placement pending the hearing. |

OAR 581-015-0554 Manifestation Determination

(1) In determining whether the child's behavior is a manifestation of the child's disability, the child's IEP team and other qualified personnel shall consider all relevant information related to the behavior subject to disciplinary action, including:
   (a) Evaluation and diagnostic results, including information from the parents;  
   (b) Observations of the child; and  
   (c) The child's IEP and placement  

(2) The child's IEP team shall determine that the child's behavior is not a manifestation of the child's disability only if:
   (a) The child's IEP and placement were appropriate in relationship to the behavior subject to the disciplinary action;  
   (b) The special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;  
   (c) The child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and  
   (d) The child's disability did not impair the ability of the child to control the behavior.

I. Manifestation Determination

A. The district will complete a manifestation determination before a student is removed for disciplinary reasons for more than 10 school days if the removal constitutes a change in the student’s educational placement. A change in placement is:
   1. A removal for more than 10 cumulative days that constitutes a pattern;  
   2. A removal for more than 10 consecutive days; or,  
   3. A removal to an interim alternative educational setting.

B. The manifestation determination will be conducted by the student's IEP team and, as appropriate, other qualified personnel. All relevant information related to the behavior subject to disciplinary action will be considered, including:
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behavior subject to disciplinary action.
(3) If the IEP team and other qualified personnel determine that any of the standards in subsection (2), of this rule, were not met, the behavior must be considered a manifestation of the child's disability.
(4) If, in conducting this review, the school district identifies deficiencies in the child's IEP or placement or with their implementation, the school district shall take immediate steps to remedy those deficiencies.
(5) If a parent requests a due process hearing to contest an IEP team's manifestation determination, the hearing officer shall determine whether the school district has applied the standards in subsection (2) of this rule.

[Federal Regulations: 34 CFR 300.121 and 300.519-529]
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<tr>
<th>OAR 581-015-0555 Removal to an Interim Alternative Educational Setting by School District (Drugs &amp; Weapons)</th>
<th>I. Removal to an Interim Alternative Educational Setting by School District (Drugs &amp; Weapons)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Definitions:</td>
<td>A. The district may remove a student with disabilities from their current educational placement to an appropriate interim alternative educational setting for the same amount of time that a student without a disability would be subject to discipline, but for not more than 45 calendar days in a school year for a drug or weapon violation. This removal is considered a change in placement.</td>
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<td>(a) “Drug” means illegal drug or controlled substance but does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or otherwise legally possessed. It does not include alcohol or tobacco.</td>
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<tr>
<td>(b) “Drug violation” means the use, possession, sale or solicitation of drugs at school or a school function.</td>
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<tr>
<td>(c) “Weapon” means a weapon, device, instrument, material or substance, animate or inanimate, that is used for, or is readily capable of causing death or serious bodily injury, except that it does not include a pocket knife with a blade of less than 2 ½ inches in length.</td>
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<tr>
<td>(d) “Weapon violation” means carrying a weapon to school or to a school function or acquiring a weapon at school.</td>
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<tr>
<td>(2) School districts may remove a child with disabilities from their current educational placement for up to 45 calendar days in a school year for a drug or weapon violation. This removal is considered a change in placement.</td>
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<tr>
<td>(3) During removals described in subsection (2) of this rule:</td>
<td>B. For the purpose of determining a drug or weapon violation, the district will apply the following definitions:</td>
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<tr>
<td>(a) School districts shall:</td>
<td>1. “Drug” means illegal drug or controlled substance but does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or otherwise legally possessed. It does not include alcohol or tobacco.</td>
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<tr>
<td>(A) Immediately schedule an IEP meeting for the purposes of subsection (3)(b);</td>
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<tr>
<td>(B) Provide notice of disciplinary action under OAR 581-021-0065(1)(for a suspension) or OAR 581-021-0070(3)(for an expulsion); and notice of the school district’s decision to remove the child to an interim alternative educational setting under this rule; and</td>
<td>2. “Drug violation” means the use, possession, sale, or solicitation of drugs at school or a school function.</td>
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<td>(C) Provide notice of procedural safeguards under OAR 581-015-0079.</td>
<td>3. “Weapon” means a weapon, device, instrument, material or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that it does not include a pocket knife with a blade of less than 2 ½ inches in length.</td>
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<tr>
<td>(b) Immediately or within 10 business days, school districts shall convene an IEP meeting to:</td>
<td>4. “Weapon violation” means carrying a weapon to school or to a school function or acquiring a weapon at school.</td>
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<tr>
<td>(A) Develop an assessment plan unless a functional behavioral assessment has been completed on the behavior that resulted in the removal or, if there is a behavioral intervention plan in place, to review the plan and revise as appropriate;</td>
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<td>(B) Determine whether the child’s behavior is a manifestation of the child’s disability under OAR 581-015-0554; and</td>
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<tr>
<td>(C) Review the child’s IEP, and revise as appropriate, and determine the specific interim alternative educational setting, consistent with the requirements of OAR 581-015-0557.</td>
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<tr>
<td>(c) If the IEP team determines that the child’s behavior is a manifestation of the student’s disability under OAR 581-015-0554, the school district cannot proceed with the disciplinary action under OAR 581-015-0553(1). However:</td>
<td>C. If a student is removed for a drug or weapon violation as defined above, the district will:</td>
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<td>(A) The school district may continue the child’s placement in the interim alternative educational setting until the end of the 45 day period;</td>
<td>1. Immediately schedule an IEP meeting (which will be convened within 10 business days of the disciplinary action);</td>
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<tr>
<td>(B) The IEP team may review and revise the child’s IEP and placement; and</td>
<td>2. No later than the date on which the decision to take action is made, the district provide the parent with notice of disciplinary action for a suspension or expulsion, and notice of the decision to remove the student to an interim alternative educational setting; and,</td>
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<td>3. Provide notice of Procedural Safeguards to the parent.</td>
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(C) A school district may seek a hearing officer removal under OAR 581-015-0556 for injurious behavior.

(d) If the IEP team determines that the student’s behavior is not a manifestation of their disability under OAR 581-015-0554, the school district may proceed with disciplinary action under OAR 581-015-0553(1). If the school district takes such action, the school district shall:

(A) Ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the school personnel making the final determination regarding the disciplinary action; and

(B) Provide the services, determined by the IEP team, that are necessary to enable the child:

(ii) To appropriately progress in the general curriculum; and

(ii) To appropriately advance toward achieving the goals in the child’s IEP.

(e) If a child’s educational placement changes as a result of the IEP/placement reviews under subsections (2)(c) or (2)(d) of this rule, the school district shall provide prior written notice of change in placement under OAR 581-015-0075.

(f) If the child’s IEP team develops a plan for conducting a functional behavioral assessment under subsection (3)(b)(A) of this rule, when the assessments are completed the school district shall hold an IEP meeting to develop and implement appropriate behavior interventions to address the behavior.

(4) If a parent requests a due process hearing because they disagree with the manifestation determination, removal to the interim alternative educational setting, or any decision about placement related to a disciplinary removal under section (1) of this rule, the child shall:

(a) Complete any suspension under OAR 581-015-0551 or 581-015-0552; and

(b) Remain in the interim alternative educational setting pending the decision of the hearing officer or for 45 calendar days, whichever occurs first; unless:

(A) The parent and school district agree otherwise; or

(B) The provisions of OAR 581-015-0556 apply.

[Federal Regulations: 34 CFR 300.121 and 300.519-529]

D. Immediately or within 10 business days, the district will convene an IEP meeting to:

1. Develop a functional behavioral assessment plan; or,

2. If a functional behavioral assessment has already been completed on the behavior that resulted in the removal, the IEP team will review the plan and revise it as needed; and,

3. Determine whether the child’s behavior is a manifestation of the child’s disability;

4. Review the child’s IEP, and revise as appropriate; and,

5. Determine the specific interim alternative educational setting which will enable the student to continue to:

   a. Progress in the general curriculum, although in another setting;

   b. Receive special education services and modifications described in the student’s IEP that will enable the student to meet IEP goals; and,

   c. Include services and modification that address the misconduct and are designed to prevent the misconduct from recurring.

E. If the IEP team determines that the student’s behavior is a manifestation of the disability, the district will not proceed with this disciplinary action, but may:

1. Continue the student’s placement in the interim alternative educational setting until the end of the 45 day period;

2. Review and revise the student’s IEP and placement; and,

3. Seek a hearing officer’s removal for injurious behavior.

F. If the IEP team determines that the student’s behavior is not a manifestation of their disability, the district may proceed with disciplinary action applicable to students without disabilities in the same manner as it would be applicable to students without disabilities. If the district takes such action applicable to all students, the district will:

1. Ensure that the special education and disciplinary records of the
Section 12: Discipline

<table>
<thead>
<tr>
<th>OAR 581-015-0556 Removal to an Interim Alternative Educational Setting by Hearings Officer (Injurious Behavior)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Definitions:</td>
</tr>
<tr>
<td>(a) &quot;Injurious behavior&quot; means behavior that is substantially likely to result in injury to the child or to others.</td>
</tr>
<tr>
<td>(b) &quot;Substantial evidence&quot; means beyond a preponderance of the evidence.</td>
</tr>
<tr>
<td>(2) School districts may request an expedited due process hearing under OAR 581-015-0559 to obtain a hearing officer's order to remove a child to an interim alternative educational setting for not more than 45 days for injurious behavior. Under these circumstances, the specific interim alternative educational setting may be determined by school personnel in consultation with the child's special education teachers, consistent with the requirements of OAR 581-015-0557, or</td>
</tr>
</tbody>
</table>

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I. Removal to an Interim Alternative Educational Setting by Hearing Officer (Injurious Behavior)

A. The district may request an expedited due process hearing to obtain a hearing officer’s order to remove a student to an interim alternative educational setting for not more than 45 days if the student is exhibiting injurious behavior. For the purpose of this request, “injurious behavior” is defined as behavior that is substantially likely to result in injury to the student or to others.

B. District personnel will determine the specific alternative educational setting in consultation with the student's special education teacher(s),
Section 12: Discipline

by the IEP team.

(3) A special education hearing officer may order a change in placement, under section (2) of this rule, if the hearing officer:

(a) Determines that the school district has demonstrated by substantial evidence that maintaining the current placement of the child is substantially likely to result in injury to the child or to others;
(b) Considers the appropriateness of the child’s current placement;
(c) Considers whether the school district has made reasonable efforts to minimize the risk of harm in the child’s current placement, including the use of supplementary aids and services; and
(d) Determines that the interim alternative educational setting meets the requirements of OAR 581-015-0557.

(4) During removals described in section (2):

(a) School districts shall:

(A) Immediately schedule an IEP meeting for the purposes of subsection (4)(b); (B) Provide notice of disciplinary action under OAR 581-021-0065(1)(for a suspension) or OAR 581-021-0070(3)(for an expulsion); notice of the school district's decision to remove the child to an interim alternative educational setting under this rule, and, if determined under subsection (2), the specific interim alternative educational placement.; and
(C) Provide notice of procedural safeguards under OAR 581-015-0079.

(b) Immediately or within 10 business days, school districts shall convene an IEP meeting to:

(A) Develop an assessment plan unless a functional behavioral assessment has been completed on the behavior that resulted in the removal or, if there is a behavioral intervention plan in place, to review the plan and revise as appropriate;
(B) Determine whether the child's behavior is a manifestation of the child's disability under OAR 581-015-0554; and
(C) Review the child's IEP, and revise as appropriate, and determine the specific interim alternative educational setting, consistent with the requirements of OAR 581-015-0557, if not already determined under subsection (2) of this rule.

(c) If the IEP team determines that the child's behavior is a manifestation of the student's disability under OAR 581-015-0554, the school district cannot proceed with the disciplinary action under OAR 581-015-0553(1). However:

(A) The school district may continue the child’s placement in the interim alternative educational setting until the end of the 45 day period; and
(B) IEP team may review and revise the child's IEP and placement.

(d) If the IEP team determines that the student's behavior is not a manifestation of their disability under OAR 581-015-0554, the school district may proceed with disciplinary action under OAR 581-015-0553(1). If the school district takes such action, the school district shall:

(A) Ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the school personnel making the decision or with the IEP team.

C. If a student is removed to an interim alternative educational setting by hearing officer for injurious behavior, the district will:

1. Immediately schedule an IEP meeting (which will be convened within 10 business days of the disciplinary action);
2. **No later than the date on which the decision to take action is made, the district provides** the parent with notice of any suspension or expulsion, if applicable, and notice of the decision to remove the student to an interim alternative educational setting; and,
3. Provide the parent with notice of procedural safeguards.

D. If the district initiates a disciplinary removal to an interim alternative educational setting, the district will, immediately or within 10 business days convene an IEP meeting to:

1. Develop a functional behavioral assessment plan; or,
2. If a functional behavioral assessment has already been completed on the behavior that resulted in the removal or, if there is a behavioral intervention plan in place, the IEP team will review the plan and revise it as needed; and,
3. Determine whether the child’s behavior is a manifestation of the child’s disability;
4. Review the child’s IEP, and revise it as appropriate; and,
5. Determine the specific interim alternative educational setting which will enable the student to continue to:
   a. Progress in the general curriculum, although in another setting;
   b. Receive special education services and modifications described in the student’s IEP that will enable the student to meet IEP goals; and,
   c. Include services and modification that address the misconduct and are designed to prevent the misconduct from recurring.

E. If the IEP team determines that the student’s behavior is a manifestation of their disability the district will not proceed with the disciplinary action,
Section 12: Discipline

final determination regarding the disciplinary action; and

(B) Provide the services, determined by the IEP team, that are necessary to enable the child:

(i) To appropriately progress in the general curriculum; and
(ii) To appropriately advance toward achieving the goals in the child’s IEP.

(e) If a child’s educational placement changes as a result of the IEP/placement reviews under subsections (4)(c) or (4)(d) of this rule, the school district shall provide prior written notice of change in placement under OAR 581-015-0075.

(f) If the child’s IEP team develops a plan for conducting a functional behavioral assessment under subsection (4)(b)(A) of this rule, when the assessments are completed the school district shall hold an IEP meeting to develop appropriate behavior interventions to address the behavior.

(5) If a parent requests a due process hearing because of a disagreement with the manifestation determination or any decision about placement, the child shall:

(a) Complete any suspension under OAR 581-015-0551 or 581-015-0552; and
(b) Remain in the interim alternative educational setting pending the decision of the hearing officer or for 45 calendar days, whichever occurs first, unless:

(A) The parent and school district agree otherwise, or
(B) The procedures in sections (2) and (3) are repeated.

(6) Nothing in this rule precludes a school district from seeking a court order to remove a child from the child’s current educational placement to another placement if the district believes that the maintaining the child in the child’s current educational placement is substantially likely to result in injurious behavior.

[Federal Regulations: 34 CFR 300.121 and 300.519-529]
**Section 12: Discipline**

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Details</th>
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</table>
| OAR 581-015-0557 Requirements of an Interim Alternative Educational Setting | An interim alternative educational setting shall:  
(1) Enable the child to continue to:  
(a) Progress in the general curriculum, although in another setting; and  
(b) Receive special education services and modifications described in the child's IEP that will enable the child to meet IEP goals; and  
(2) Include services and modifications that:  
(a) Address the misconduct; and  
(b) Are designed to prevent the misconduct from recurring. |
| OAR 581-015-0558 Protections for Children Not Yet Eligible for Special Education | (1) The provisions of OAR 581-015-0550 through 581-015-0557 apply to children not yet identified as children with disabilities if the school district had knowledge that the child was a child with a disability.  
(2) For the purposes of subsection (1) of this rule, a school district "had knowledge" if:  
(a) The parent of the child has expressed a concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to school personnel that the child is in need of special education and related services;  
(b) The behavior or performance of the child demonstrates the need for special education and related services in relation to eligibility criteria in OAR 581-015-0051;  
(c) The parent of the child has requested a special education evaluation of the child; or  
(d) The teacher of the child, or other school personnel, has expressed a concern about the behavior or performance of the child to a school district. |

**I. Interim Alternative Educational Setting**

A. The district will ensure that an interim alternative educational setting:  
1. Enables the student to continue to progress in the general curriculum, although in another setting;  
2. Ensures that the student receives special education services described in the student’s IEP that will enable the student to meet IEP goals; and  
3. Includes services and modifications that address the misconduct, and are designed to prevent the misconduct from recurring.  

**I. Protections for Children Not Yet Eligible for Special Education**

A. The district will apply these protections to a student not yet identified as a student with a disability if the district had knowledge that the student was a student with a disability. The district has such knowledge if:  
1. A parent has expressed a concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to school personnel that their student is in need of special education and related services;  
2. The behavior or performance of a student demonstrates the need for special education and related services in relation to state eligibility criteria for disabilities;  
3. The parent of a student has requested a special education evaluation of their child; or,
<table>
<thead>
<tr>
<th><strong>Section 12: Discipline</strong></th>
<th><strong>4.</strong> The teacher of the student or other school personnel have expressed a concern about the behavior or performance of the student to the district’s special education representative in accordance with the district’s special education referral system.</th>
</tr>
</thead>
</table>
| special education representative in accordance with the school district’s child find or referral system under OAR 581-015-0037(1).  
(3) Notwithstanding subsections (1) and (2) of this rule, a school district will not be considered to have had knowledge that the child was a child with a disability if:  
(a) The school district conducted a special education evaluation under OAR 581-015-0559, determined that the child was not eligible, and gave the parent prior written notice of that determination under OAR 581-015-0075; or  
(b) The school district determined that a special education evaluation was not necessary and gave the parent prior written notice of that determination under OAR 581-015-0075.  
(4) If the school district did not have knowledge, the district may treat the child as a child without a disability for the purposes of taking disciplinary action. However:  
(a) If a special education evaluation is requested or if the school district initiates a special education evaluation, the evaluation shall be conducted in an expedited manner.  
(b) Until the evaluation is completed, the child remains in the educational placement determined by school personnel, which can include suspension, expulsion, or placement in alternative education under OAR 581-021-0559.  
(c) If, on completion of the evaluation, the child is determined to be a child with a disability, the school district shall conduct an IEP meeting to develop an IEP and determine placement.  
(d) The provisions of OAR 581-015-0550 through 581-015-0557 shall apply beginning on the date of the eligibility determination.  
(Federal Regulations: 34 CFR 300.121 and 300.519-529) | **B.** The district will not be considered to have knowledge of a disability if the district:  
1. Conducted a special education evaluation in accordance with state eligibility criteria for disabilities and determined that the student was not eligible, and gave the parent prior written notice of that determination; or,  
2. Determined that there was no suspicion of a disability, and gave the parent prior written notice of the refusal to evaluate. |
| **C.** If the district did not have knowledge, the district may take the same disciplinary actions as applied to students without disabilities who engaged in comparable behaviors. However:  
1. If a special education evaluation is requested, or if the district initiates a special education evaluation, the evaluation will be conducted in an expedited manner.  
2. Until the evaluation is completed, the student will remain in the educational placement determined by school personnel, which can include suspension, expulsion, or placement in alternative education.  
3. Upon completion of the evaluation, if the student is determined to be a student with a disability, the district will conduct an IEP meeting to develop an IEP and determine placement and shall provide special education and related services.  
4. The district will apply the discipline provisions beginning on the date of the eligibility determination. |
### Section 13: Parentally Placed Private School Children

**OAR 581-015-0705 Definitions**
For the purposes of OAR 581-015-0151 to 0196 and 581-015-0706 to 0710, the following definitions apply:

1. "Enrolled in a public school or ECSE program" means enrolled in, attending, and, for children ages 7 to 18, not exempt from compulsory school attendance as a private school student.
2. "IDEA funds" means federal funds allocated to the public agency under the Individuals with Disabilities Education Act of June 4, 1997.
3. "Private school child with a disability" means:
   - a child who has been enrolled by their parent in a private school or facility who is:
     - A school-age child eligible for special education under OAR 581-015-0051 and who, if aged 7 to 18, is exempt from compulsory school attendance under ORS 339.115; or
     - B. a child aged 3 until the age of eligibility for public school who is eligible for early childhood special education under OAR 581-015-051 or as a child with a developmental delay under OAR 581-015-0942.
   - This term includes school-age children who are exempt from compulsory school attendance under ORS 339.115, even if a school district permits the student to attend one or more classes pursuant to a district policy permitting dual enrollment.
   - This term does not include:
     - A. Children three years of age until the age of eligibility for public school who can be provided a free appropriate public education in a private preschool or child care setting selected and paid for by their parents; or
     - B. Children who are exempt from compulsory school attendance under ORS 339.115 as a home schooled student; or
     - C. Children who are not of compulsory school attendance age who have rejected public agency services but who are not attending a private school; or
     - D. Children who are placed in a private school by the public agency.
4. "Public agency" means:
   - A. for school-aged children, their resident school district; and
   - B. for children aged 3 up to school age, the Department.
5. "Representatives of private school children with disabilities" means individuals selected from staff of private schools located in the public agency’s jurisdiction and parents of private school children with disabilities, and other individuals who are knowledgeable about the needs of private school children with disabilities.
6. "Service plan" means an individually developed plan that describes the special education, related services or modifications or accommodations that will be provided by the public agency for a private school child with disabilities. Unlike an IEP or IFSP, a service plan does not need to provide a free appropriate public education.

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**I. Limitation on Services**

A. The district is not required to pay for the cost of the education, including special education and related services, for a student with a disability(ies), if,
   - 1. The private school student had a free appropriate public education available to them; and,
   - 2. The parent chose to place the student in a private school.

B. Whether or not FAPE is at issue, the district includes all students with disabilities who are parentally-placed private school students in:
   - 1. The district’s special education private school student count, and,
   - 2. The population of private school students for whom the district may provide services.

**II. Consultation with Representatives of Private School Students with Disabilities**

A. The district consults, in a timely and meaningful way, with appropriate representatives of private school students with disabilities who are and have been enrolled by their parents in private schools during all phases of the development and design of the special education services to be provided to them in light of available funding, the number of private school students with disabilities, and their location to decide:
   - 1. Which students shall receive services;
   - 2. What services shall be provided;
   - 3. How and where the services shall be provided; and,
   - 4. How the services shall be evaluated.

B. The district makes the final decisions with respect to the services to be provided to eligible private school students.

See Attachment I – District Plan for Services to Eligible Private School Students
Section 13: Parentally Placed Private School Children

OAR 581-015-0151 Private Schools; Services Plan

1 If a child with a disability is enrolled by a parent in a religious or other private school and will receive special education or related services from a public agency, the public agency shall:
   a. Initiate and conduct meetings to develop, review and revise a **education** services plan for the child in accordance with OAR 581-015-0065; and
   b. Ensure that a representative of the child’s school attends each meeting. If the representative cannot attend, the public agency shall use other methods to insure participation by the private school, including individual or conference telephone calls.

2 The services plan shall describe the specific special education and related services that the public agency will provide to the child in light of the services that the public agency has determined, through the consultation process described in OAR 581-015-0171, it will make available to private school children with disabilities.

3 The services plan shall, to the extent appropriate:
   a. Meet the requirements of OAR 581-015-0068 with respect to the services provided; and
   b. Be developed reviewed and revised consistent with OARs 581-015-0063-0068 and 581-015-0568.

4 Public agencies are not required to provide transportation from the child’s home to the private school.

5 If necessary for the child to benefit from or participate in the services provided by the public agency, a private school child with a disability must be provided transportation:
   a. From the child’s school or the child's home to a site other than the private school; and
   b. From the service site to the private school, or to the child’s home, depending on the timing of the services.

[Federal Regulation: 34 CFR 300.452 and 300.454]

EDGAR 76.656 (f) The places and times that the students will receive benefits under the program.

OAR 581-015-0156 Reimbursement for Private Placement

1 If a private school child with a disability has available a free appropriate public education and the parents choose to place the child in a private school, the public agency is not required to pay for the cost of the child's education, including special education and related services, at the private school. However, the public agency shall include that child in the population whose needs are addressed as parentally placed private school children.

2 Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child and the question of financial responsibility are subject to the due process procedures under OAR 581-015-0080 through 581-015-0096.

III. Provisions for Serving Students Placed by Their Parents in Private Schools

A. District decisions about the services that are provided to private school students with disabilities are made in accordance with the districts plan for serving parentally placed private school students and their service plans.

B. The services provided to private school students with disabilities are provided by personnel meeting the same standards as personnel providing services in the district program.

C. The district may provide private school students with disabilities a different amount of services than students with disabilities attending their resident district school.

D. The district may provide services to private school students with disabilities onsite at the student's private school, including a religious school, to the extent that services can be provided in a religiously neutral setting within the private school. These services will be provided during the student’s regular school day, unless stated otherwise in the student’s service plan.

E. If a parent of a private school student with a disability requests an IEP meeting, the district will either:
   1. Hold an IEP meeting within a reasonable time; or,
   2. Provide the parent with prior written notice of the district’s refusal to hold an IEP meeting.

IV. Evaluation, Reevaluation, and Eligibility of Private School Students with Disabilities

A. The district ensures that all requirements for evaluation, reevaluation, and eligibility that apply to public school students with disabilities will be met with regard to evaluations for private school students who are suspected of having a disability.

B. Eligibility for special education and related services will be determined by the district in the same manner as for public school students with disabilities.
### Section 13: Parentally Placed Private School Children

(3) If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by public agencies.

(4) The cost of reimbursement described in paragraph (3) of this section may be reduced or denied if:

(a) At the most recent IEP or IFSP meeting that the parents attended prior to removal of the child from the public school or ECSE program, the parents did not inform the IEP or IFSP team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(b) At least ten business days (including any holidays that occur on a business day) prior to the removal of the child from the public school or ECSE program, the parents did not give written notice to the public agency of the information described in paragraph (4)(a) of this rule.

(5) The cost of reimbursement described in paragraph (3) of this section may also be reduced or denied if:

(a) Prior to the parents’ removal of the child from the public school or ECSE program, the public agency informed the parents, through the notice requirements of OAR 581-015-0075, of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or

(b) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(6) Notwithstanding the notice requirement in paragraph (4), the cost of reimbursement may not be reduced or denied for failure to provide the notice if:

(a) The parent is illiterate and cannot write in English;

(b) Compliance with paragraph (4) would likely result in physical or serious emotional harm to the child;

(c) The public agency prevented the parent from providing the notice; or

(d) The parents had not received notice of procedural safeguards under OAR 581-015-0079 informing them of this notice requirement.

[Federal Regulation: 34 CFR 300.403]
### Section 13: Parentally Placed Private School Children

OAR 581-015-0166 Public Agency Responsibility for Private School Children with Disabilities and Limitation on Services

1. No private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

2. Decisions about the services that will be provided to private school children with disabilities must be made in accordance with OAR 581-015-0171 and -0151.

3. Such special education and related services shall be provided in a religiously neutral setting.

4. The services provided to private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools or ECSE program.

5. Private school children with disabilities may receive a different amount of services than children with disabilities in public schools.

6. No private school child with a disability is entitled to any service or to any amount of a service the child would receive if enrolled in a public school.

7. Public agencies are not required to develop an IEP or IFSP that assumes a public agency placement for each private school child each year.

8. If a parent of a private school child with a disability requests an IEP or IFSP meeting, the public agency shall either:
   a. hold an IEP meeting within a reasonable time; or
   b. provide the parent with prior written notice of the public agency's refusal to hold an IEP or IFSP meeting.

[Federal Regulation: 34 CFR 300.403-462]

OAR 581-015-0171 Consultation with Representatives of Private School Children with Disabilities

1. Public agencies shall consult, in a timely and meaningful way, with appropriate representatives of private school children with disabilities, on the number of private school children with disabilities, and their location to decide:
   a. Which children shall receive services;
   b. What services shall be provided;
   c. How and where the services shall be provided; and
   d. How the services shall be evaluated.

2. This consultation shall occur before the public agency makes any decision that affects the opportunities of private school children to participate in services for parentally placed private school children.

3. Each public agency shall give appropriate representatives of private school children with disabilities a genuine opportunity to express their views regarding each matter subject to the consultation requirements in this rule.

4. The public agency shall make the final decisions with respect to the services plan.

4. The services plan will, to the extent appropriate:
   a. Address IEP content with respect to the services provided; and,
   b. Be developed, reviewed, and revised consistent with procedures for IEP team membership and parent participation.

5. The district is not required to provide transportation from the student's home to the private school.

B. If necessary for the student to benefit from or participate in the services provided by the public agency, a private school student with a disability must be provided transportation:

1. From the student’s school or the student’s home to a site other than the private school; and,

2. From the service site to the private school, or to the student's home, depending on the timing of the services.

VI. Property, Equipment, and Supplies

A. The district keeps title to and exercises continuing administrative control of all property, equipment, and supplies that the public agency acquires with IDEA funds for the benefit of private school students with disabilities.

B. The district may place equipment and supplies in a private school for a period of time needed to implement the service plan of a private school student with disabilities or for student find purposes.

C. The district ensures that the equipment and supplies placed in a private school:

1. Are used only for implementation of the service plan or for student find activities; and,

2. Can be removed from the private school without remodeling the private school facility.

D. The district will remove equipment and supplies from a private school if:

1. The equipment and supplies are no longer needed For the purposes
### Section 13: Parentally Placed Private School Children

<table>
<thead>
<tr>
<th>to be provided to eligible private school children.</th>
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<tr>
<td>[Federal Regulation: 34 CFR 300.454]</td>
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</tbody>
</table>

### OAR 581-015-0079 Evaluation, Reevaluation and Eligibility for Private School Children with Disabilities

1. Evaluations for private school children who are suspected of having a disability, and reevaluations for private school children with disabilities, shall meet all of the requirements that apply to public school children with disabilities.
2. Eligibility for special education and related services shall be determined in the same manner as for public school children with disabilities.
3. Public agencies shall reevaluate private school children with disabilities at least every three years, consistent with OAR 581-015-0074 and 581-015-0701, to determine whether the child continues to be eligible for special education, whether or not the child is receiving services under a services plan.
   - If a parent refuses an evaluation that is necessary to determine a child’s eligibility, continuing eligibility, or present level of performance for developing a service plan, the public agency shall notify the parent in writing that the public agency is prepared to complete the necessary evaluations upon parent consent or if the parent enrolls the child in a school district or ECSE program.
   - If a parent refuses a reevaluation that is necessary to determine whether the child continues to be a child with a disability, and as a result the team cannot determine the child’s continuing eligibility, the child shall no longer be considered "eligible" and shall not be counted as a private school child with a disability for the purposes of the private school child count in OAR 581-015-0706(2).
4. Upon an initial determination of eligibility, and upon any subsequent determination of eligibility, the public agency shall notify the parent in writing that the public agency will make a free appropriate public education available to the child if the child is enrolled in a school district or ECSE program.

| [Federal Regulation: 34 CFR 300.403-462] |

### OAR 581-015-0186 Property, Equipment, and Supplies

1. A public agency must keep title to and exercise continuing administrative control of all property, equipment and supplies that the public agency acquires with IDEA funds for the benefit of private school children with disabilities.
2. The public agency may place equipment and supplies in a private school for a period of time needed to implement the service plan of a private school child with disabilities or for child find purposes.
3. The public agency shall ensure that the equipment and supplies placed in a private school:
   - Are used only for the purposes identified in section (2); and
   - Removal is necessary to avoid unauthorized use of the equipment and supplies.
4. The district will not use IDEA funds for repairs, minor remodeling, or construction of private school facilities.
5. The district will not use IDEA funds for classes that are organized separately on the basis of school enrollment or religion of the students if:
   - The classes are at the same site; and,
   - The classes include students enrolled in public schools programs and students enrolled in private schools.
6. The district will not use IDEA funds to finance the existing level of instruction in a private school or to otherwise benefit the private school.
7. The district will use IDEA funds to meet the special education needs of students enrolled in private schools, but not for:
   - The needs of a private school; or,
   - The general needs of the students enrolled in the private school.
8. The district may use IDEA funds to make public school personnel available in other than public facilities:
   - To the extent necessary to implement any of the requirements related to private school students with disabilities; and,
   - If those services are not normally provided by the private school.
9. The district may use IDEA funds to pay for the services of an employee of a private school to provide services to private school students if:
### Section 13: Parentally Placed Private School Children

(b) Can be removed from the private school without remodeling the private school facility.

(4) The public agency shall remove equipment and supplies from a private school if:
   (a) The equipment and supplies are no longer needed for the purposes identified in section (2); or
   (b) Removal is necessary to avoid unauthorized use of the equipment and supplies.

(5) IDEA funds shall not be used for repairs, minor remodeling, or construction of private school facilities.

[Federal Regulation: 34 CFR 300.462]

#### OAR 581-015-0191 Separate Classes Prohibited

A public agency may not use IDEA funds for classes that are organized separately on the basis of school enrollment or religion of the students if:

1. The classes are at the same site; and
2. The classes include students enrolled in public schools or ECSE programs and students enrolled in private schools.

[Federal Regulation: 34 CFR 300.458]

#### OAR 581-015-0196 Funds and Property Not to Benefit Private Schools

1. A public agency may not use IDEA funds to finance the existing level of instruction in a private school or to otherwise benefit the private school.
2. The public agency shall use IDEA funds to meet the special education needs of students enrolled in private schools, but not for:
   (a) The needs of a private school; or
   (b) The general needs of the students enrolled in the private school.

[Federal Regulation: 34 CFR 300.459]

### X. Expenditures for Parentally Placed Private School Students

A. The district uses the following formulas for determining funds available for provision of special education and related services to private school students with disabilities:

B. In providing special education and related services to school-age private school students with disabilities, the district will spend an amount that is the same proportion of the district's total subgrant of IDEA funds as the number of school-age private school students with disabilities residing in its jurisdiction is to the total number of school-age students with disabilities in its jurisdiction.

1. In determining private school student count for school age students:
   a. The district consults with representatives of private school students in deciding how to conduct the annual count of the number of private school students with disabilities; and,
   b. Ensures that the count is conducted on December 1 of each year.

C. The district uses the student count to determine the amount that the district will spend on providing special education and related services to private school students with disabilities in the next subsequent fiscal year.

D. The district will not consider expenditures for student find activities in determining whether the school district has met its expenditure requirements for parentally placed private school students.

E. The district may include the cost of transportation in determining whether the school district has met its expenditure requirements for parentally placed private school students.
**Section 13: Parentally Placed Private School Children**

Department shall spend:
(A) An amount that is the same proportion of the Department's total IDEA fund subgrant under section 611(g) for ECSE children as the number of ECSE private school children with disabilities residing in its jurisdiction is to the total number of ECSE children with disabilities in its jurisdiction; and
(B) An amount that is the same proportion of the Department's total IDEA fund subgrant under section 619(g) of the Act as the number of ECSE private school children with disabilities residing in its jurisdiction is to the total number of ECSE children with disabilities in its jurisdiction.

(2) Private School Child Count:
(a) Each school district, for school-age children, and the Department, for ECSE children, shall:
   (A) Consult with representatives of private school children in deciding how to conduct the annual count of the number of private school children with disabilities; and
   (B) Ensure that the count is conducted on December 1 of each year.
   (b) The child count must be used to determine the amount that the school district and the Department, respectively, shall spend on providing special education and related services to private school children with disabilities in the next subsequent fiscal year.

(3) Expenditures for child find activities described in OAR 581-015-0037 may not be considered in determining whether the school district or Department, respectively, have met the requirements of section (2).

(4) School districts and the Department, respectively, are neither required to or prohibited from providing services to private school children with disabilities in excess of those required by this part, consistent with State law or local policy.

(5) The cost of the transportation described in OAR 581-015-0151(5) may be included in calculating whether the public agency has met the requirement of section (1) of this rule.

[Federal Regulation: 34 CFR 300. 453]

**OAR 581-015-0707 Complaints and Due Process Hearings for Private School Children**

(1) Due process hearing procedures do not apply to complaints that a public agency has failed to meet the requirements relating to the provision of services to and expenditures for private school children, including the provision of services indicated on the child's services plan.

(2) Due process hearing procedures do apply to complaints that a public agency has failed to meet the child find requirements, including the requirements regarding evaluation, determination of eligibility for special education services, and reevaluation.

(3) Complaints that a public agency has failed to meet any of the requirements related to private school children may be filed under OAR 581-015-0054.
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**OAR 581-015-0708 Use of Public School and Private School Personnel**

(1) A public agency may use IDEA funds to make public school personnel available in other than public facilities:
   (a) To the extent necessary to implement any of the requirements related to private school children with disabilities; and
   (b) If those services are not normally provided by the private school.

(2) A public agency may use IDEA funds of the Act to pay for the services of an employee of a private school to provide services to private school children if:
   (a) The employee performs the services outside of his or her regular hours of duty; and
   (b) The employee performs the services under public supervision and control.

[Federal Regulation: 34 CFR 300. 460-461]
### Section 14: Approved Private Schools

**OAR 581-015-0710 Rights of Children with Disabilities in Private Schools Placed or Referred by Public Agencies**

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

1. Is provided EI, ECSE or special education and related services in conformance with an IEP or IFSP, and at no cost to the parents;
2. Is provided an education that meets the standards that apply to education provided by the public agency; and
3. Has all of the rights of a child with a disability who is served by the public agency.

**Federal Regulation:** 34 CFR 300. 400-402

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**OAR 581-015-0133 Out-of-State Placements for Special Education**

1. Any educational institution located outside the state of Oregon which provides special education to Oregon students eligible for special education pursuant to a contract with an Oregon district, ESD, or the Oregon Department of Education must first be approved by the state education agency of the state in which the educational institution is located.
2. Documentation of such approval shall be maintained by the district placing children in out-of-state programs and shall be made available to the Oregon Department of Education upon request.
3. Contractual arrangements for out-of-state special education services may be made when:
   a. It is determined that no appropriate in-state placement option is available; and
   b. Such a placement is made after the development of an Individualized Education Program as specified in OAR 581-015-0064 through 581-015-0068 and 581-015-0568.
4. In the event the State does not have a formal, approved process, the school shall meet whatever requirements apply for private schools to serve publicly placed students in that state.

**Federal Regulation:** 34 CFR 300. 400-402

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**OAR 581-015-0141 Obligations of Public Agencies that Contract with Approved Private Schools for EI/ECSE Services**

For the purposes of this rule, "public agency" means school districts and other public agencies that contract to provide EI/ECSE or special education. Public agencies may contract with private schools that are approved by the Department as contractors for EI/ECSE or special education pursuant to OAR

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### I. Rights of Students

A. The district ensures that every student with a disability who is placed in or referred to a private school or facility by the district as a means of providing special education and related services:

1. Is provided special education and related services in conformance with an IEP, and at no cost to the parents;
2. Is provided an education that meets the standards that apply to education provided by the public agency; and,
3. Has all of the rights of a student with a disability who is served by the public agency.

**Federal Regulation:** 34 CFR 300. 400-402

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### I. Out-of-State Placements for Special Education

A. The district maintains documentation of approval by the Oregon Department of Education for any out-of-state programs that provide special education to district students eligible for special education and shall be made available to the Oregon Department of Education upon request. Such contractual arrangements will be made only after:

1. It has been determined that no appropriate in-state placement options are available; and,
2. An individualized educational program has been developed.

**Federal Regulation:** 34 CFR 300. 400-402

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### I. Obligations of Public Agencies

A. The district may contract with private schools that have been approved by the Oregon Department of Education.

B. The district ensures that all federal and state requirements...
## Section 14: Approved Private Schools

581-015-0126 and OAR 581-015-0131.

(1) For a child birth through age 21, the public agency shall fulfill all federal and state requirements relating to the evaluation, individualized family service plan or individualized education program development, and placement when determining whether the child shall be placed in an approved private school for EI/ECSE services. For children ages 3 through 21, the public agency also shall determine whether placement in an approved private school constitutes a free appropriate public education in the least restrictive environment for each child.

(2) A public agency that proposes to place a child with a disability in an approved private school shall ensure that:
   (a) The school-aged child is a resident of the school district under Oregon law; or
   (b) The public agency is under contract to provide early intervention or early childhood special education for children age birth through eligibility for entry into kindergarten; and
   (c) The child is eligible to receive EI/ECSE or special education services.

(3) Before the public agency places a child with a disability in an approved private school, the public agency shall initiate and conduct an individualized family service plan or individualized education program meeting that includes a representative of the approved private school and at which an individualized family service plan or individualized education program is developed based upon the needs of the child.

(4) If a representative of the approved private school is unable to attend the individualized family service plan or individualized education program meeting, the public agency shall use other methods to insure participation including, but not limited to, individual or conference telephone calls, or individual meetings.

(5) After a public agency initially places a child in an approved private school, any subsequent meetings to review or revise an individualized family service plan or individualized education program shall be the responsibility of the public agency.

(6) The public agency may request by written agreement that the approved private school initiate and conduct individualized family service plan or individualized education program meetings to review and revise an individualized family service plan or individualized education program. If the approved private school initiates and conducts these meetings, the public agency shall ensure that the parents and a representative of the public agency:
   (a) Are involved in any decision about the child’s individualized family service plan or individualized education program; and
   (b) Agree to any proposed changes in the program before those changes are implemented.

(7) The public agency shall conduct the meeting pursuant to OAR 581-015-0061 to determine the annual educational placement of a child.

(8) The public agency placing a child age 3 through 21 in an approved private school shall insure that the child and the child’s parents receive all the rights and protections as required for children with disabilities served by public

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C. The district determines whether placement in an approved private school constitutes a free appropriate public education in the least restrictive environment for each student.

1. When proposing to place a student with a disability in an approved private school, the district ensures that the school-aged student is a resident of the school district under Oregon law.

2. Before placing a student with a disability in an approved private school, the district initiates and conducts an individualized education program meeting that includes a representative of the approved private school and at which an individualized education program is developed based upon the needs of the student.

3. If a representative of the approved private school is unable to attend the individualized education program meeting, the district uses other methods to ensure participation including, but not limited to, individual or conference telephone calls, or individual meetings.

4. After the district initially places a student in an approved private school, any subsequent meetings to review or revise an individualized education program are the responsibility of the district.

5. The district may request by written agreement that the approved private school initiate and conduct individualized education program meetings to review and revise an individualized education program. If the approved private school initiates and conducts these meetings, the district will ensure that the parents and a representative of the district:
   (a) Are involved in any decision about the student’s education program; and,
   (b) Agree to any proposed changes in the program before those changes are implemented.

6. The district conducts IEP and Placement meetings following the same requirements as for students attending schools in the district.

7. The district provides all procedural safeguards to parents of students relating to the evaluation, individualized education program development, and placement are followed when determining whether the student will be placed in an approved private school for special education services.
### Section 14: Approved Private Schools

agencies as set forth in federal law and in OAR Chapter 581, Division 015.

(9) The school district where the child resides shall insure that transportation is provided to and from the approved private school.

Federal Regulation: 34 CFR 300. 400-402

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#### OAR 581-015-0711 Suspension, Revocation or Refusal to Renew Approval

The Department may suspend, revoke or refuse to renew its approval of a private school to contract with public agencies for the provision of early intervention, early childhood special education or special education services if the private school:

1. Fails to maintain the approval standards in OAR 581-015-0126;
2. Violates the rights of children with disabilities;
3. Refuses to implement corrective actions ordered by the Department after completion of a special review investigation.

[Federal Regulation: 34 CFR 300. 400-402]

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#### OAR 581-015-0712 Appeal of Denial, Suspension, Revocation or Refusal to Renew Approval

A private school may appeal the Department's denial, suspension, revocation or refusal to renew approval of a private school to contract with public agencies for the provision of early intervention, early childhood special education or special education services by requesting a contested case hearing under the provisions of ORS 183.413 through 183.470.

[Federal Regulation: 34 CFR 300. 400-402]

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#### OAR 581-015-0126 Standards for Approval of Private Schools as Contractors with Public Agencies for Early Intervention, Early Childhood Special Education or Special Education Services

Private schools that intend to provide early intervention (EI), early childhood special education (ECSE) or special education under a written contract or subcontract with the state, excluding educational agencies providing educational programs at treatment centers pursuant to ORS 581-015-0044, or with a public school for children with disabilities ages birth through 21 years shall apply annually to the Department's Office of Special Education for approval. For the purposes of this rule, "public agency" means school districts and other public agencies that contract to provide EI/ECSE or special education services.

1. The annual application shall include documentation that the private school meets:
   a. The applicable fire codes of the local or state fire marshal;
   b. Facility occupancy and use standards set forth by the appropriate local
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building inspectors;
(c) Health standards of the county health department; and
(d) The requirements set by OAR 581-022-1420 (emergency plans and safety programs), 581-022-1430 (asbestos management plans) and 581-022-1440 (infectious diseases); however, private schools providing EI/ECSE only may follow the safety requirements set by the Child Care Division of the Oregon Department of Employment.

(2) The private school shall maintain commercial general liability insurance with policy limits of at least $500,000. The private school shall provide the Department with the name of the insurance company, the number of the insurance policy and the policy limits covered by the policy.

(3) The annual application shall include assurances, on a form provided by the Department, that the private school shall:
(a) Use curriculum content, teaching practices and facilities management that do not violate the constitutional prohibition on religious entanglement;
(b) Implement the EI/ECSE or special education services as described in each child's individualized family service plan or individualized education program;
(c) Have procedures in place regarding staff hiring that require:
(i) the careful checking of personal and professional references for all potential employees;
(ii) criminal background checks in compliance with ORS 181.539, 326.603, 326.607 and 342.232 for all potential employees; however private schools providing EI/ECSE only may follow the hiring requirements set by the Child Care Division of the Oregon Department of Employment; and
(iii) regularly scheduled evaluations of the competencies of all employees to work with children;
(d) Maintain the confidentiality of student records consistent with the Family Educational Rights and Privacy Act, 34 CFR § 99 et. seq. and Oregon Administrative Rules relating to student records;
(e) Have a policy of nondiscrimination;
(f) Notify the Department and the contracting public agency of any written complaint it receives concerning the EI/ECSE or special education programs and services being provided;
(g) Initiate and convene individualized education program and individualized family service plan meetings only when this assistance is requested by a written agreement with the contracting public agency;
(h) Evaluate a child only when this assistance is requested by a written agreement with the contracting public agency;
(i) Notify the contracting public agency of the need for any change in a child's educational program and not make changes in a child's individualized education program or individualized family service plan, the EI/ECSE or special education program or services, or placement, unless the contracting public agency consents to the changes; and
(j) Comply with either paragraphs (A) or (B) or both of this subsection:
(A) For private schools providing EI/ECSE for children birth through the age of
Section 14: Approved Private Schools

eligibility for kindergarten, at least one individual, who is qualified to provide EI/ECSE and meets the requirements of OAR 581-015-1100(2) and (3), shall be available to serve the population of students described in the application; or (B) For private schools providing special education for children kindergarten through 21 years of age, at least one individual, who is qualified to provide special education and is certified according to rules established by the Teacher Standards and Practices Commission, shall be available to serve the population of students described in the application. Private schools may provide special education and related services to students with disabilities placed by public agencies by employing professionals who are licensed within their own specialties. Pursuant to OAR 584-036-0010, these personnel are not required to hold licensure from the Teacher Standards and Practices Commission. (k) Provide hours of instruction which meet state standards; (l) Grant credit toward high school graduation consistent with OAR 581-022-1130 and 581-022-1350(2) and (3); (m) Ensure that students have the opportunity to participate in district-wide and state-wide assessments of student achievement; and (n) For school-age program, meet the state curriculum standards set pursuant to OAR 581-022-1210. (4) The annual application shall include a plan, on a form provided by the Department, describing the EI/ECSE or special education program for which the private school requests approval. The plan shall include the following elements: (a) A description of the population that shall be provided EI/ECSE or special education programs or services; and (b) A description of the specific EI/ECSE or special education programs or services that the private school shall provide.

[Federal Regulation: 34 CFR 300. 400-402]

OAR 581-015-0131 Process for Approval of a Private School as a Contractor with Public Agencies

(1) A private school applying for initial approval may submit an application to the Department’s Office of Special Education at any time pursuant to OAR 581-015-0126. The private school shall be notified by the Department of its approval or denial as quickly as possible but no later than 60 days after receipt of the application. The period of approval of the private school receiving initial approval shall be from the date of notification of approval by the Department until the 15th day of August. (2) A private school applying for subsequent approval shall submit its annual application by May 1 of each year. The Department shall notify the private school of its decision to renew or deny renewal of approval within 60 days of receipt of the application. The period of approval for a private school requesting approval for the subsequent year shall be one year beginning on the 15th day of August.
**Section 14: Approved Private Schools**

(3) After a private school receives initial approval of an application, subsequent annual applications may consist of amendments to the application originally approved or an assurance on a form provided by the Department that the private school is not making any changes to the approved application.

(4) An approved private school may make major program changes only with written prior approval from the Department. A major program change consists of any change in the information contained in a private school's approved application:

(a) To request and receive approval for program changes, the private school shall submit an amendment to the current approved application describing the changes proposed and the reasons for the changes. In addition, the amendment shall describe the effect the changes will have on the children currently served under contracts with public agencies;

(b) After submitting an amendment as described in subsection (4)(a) of this rule, the private school may operate the services under the provisions of the amendment with conditional approval until the Department notifies the private school of the approval or denial of the amendment. The Department shall notify the private school of approval or denial within a reasonable period of time, but no more than 90 days after receipt of the amendment by the Department.

Federal Regulation: 34 CFR 300. 400-402]
### Section 15: Services For Home Schooled Students with Disabilities

#### OAR 581-021-0029 Home Schooling for Children with Disabilities

1. The definitions in OAR 581-021-0026 apply to this rule, along with the following definitions:
   - (a) "District" means the student's resident school district under 339.133
   - (b) "Child with a disability means a child between the ages of 7 and 18 whose parent or guardian seeks exemption from compulsory school attendance under ORS 339.030(1)(c) or (1)(d) and who meets eligibility criteria for a specific disability category under OAR 581-015-0051.
   - (c) "Individualized educational program" (IEP) is defined under OAR 581-015-0005(11).
   - (d) "Privately developed plan" (PDP) means an individual plan developed by a team including the parent and one or more private service providers to address the educational needs of a child with a disability. A PDP shall include individual educational goals for the student and a statement indicating how satisfactory educational progress will be determined for the student.
   - (e) "Satisfactory educational progress" means educational progress across academic and/or developmental areas appropriate to the child's age and abilities. The student need not complete all individualized educational program or privately developed plan goals for the team to determine that the student is making satisfactory educational progress.

2. Notice Requirements:
   - (a) Parents shall notify the ESD superintendent of intent to home school a child with a disability in accordance with OAR 581-021-0026(1)(f) and (4).
   - (b) The ESD superintendent shall notify the district if the ESD receives notice that a parent intends to home school a child with a disability.
   - (c) The district shall provide written notice to the parent that it stands ready to provide a free appropriate public education if the child enrolls in the district. This notice shall be provided annually as long as:
     - (A) The child remains eligible for special education; and
     - (B) The child is exempt from compulsory education as a home schooled student; and,
     - (C) The child is not receiving special education and related services from the district.

3. Testing and Reporting Requirements:
   - (a) If a child with a disability is receiving IEP services from a district and the IEP includes a provision for IEP team assessment of satisfactory educational progress, the district shall:
     - (A) Complete this assessment according to the schedule identified in OAR 581-021-0026(6); and
     - (B) Provide the parent with a copy of the results, including a summary statement indicating whether the child has made satisfactory educational progress in light of the child's age and disability.
   - (b) If a child with a disability is receiving services under a PDP, and the PDP

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#### I. Home Schooling for Students with Disabilities

1. **A.** When the district is informed that a resident student with disabilities is home schooled, the district provides written notice to the parent that it stands ready to provide a free appropriate public education if the student enrolls in the district.

2. **B.** This notice is provided annually as long as:
   1. The student remains eligible for special education;
   2. The student is exempt from compulsory education as a home schooled student; and,
   3. The student is not receiving special education and related services from the district.

3. **C.** The district **shall** offer an IEP meeting to consider continuation of special education and related services to the student with a disability in conjunction with home schooling.

4. **D.** An IEP will only be developed for a student with a disability if the IEP team determines that a free appropriate public education can be provided in conjunction with home schooling. Services may be provided in the home only to the extent that special education or related services would be provided in the home if the student were not home schooled.

5. **E.** The student’s IEP team will be convened, and an IEP developed, consistent with the requirements for IEP team meetings, IEP team membership, and IEP content, with the following exceptions:
   1. The student’s parent shall be treated as both parent and regular education teacher of the student unless the parent designates another individual as the regular education teacher;
   2. Under "extent of non-participation in regular education" the IEP shall state that the student is exempt from compulsory school attendance and regular education is provided through home schooling; and,
   3. The IEP will state how "satisfactory educational progress" will be determined for the student.

6. **F.** The district ensures that:
Section 15: Services For Home Schooled Students with Disabilities

includes a provision for assessment of satisfactory educational progress, the PDP team shall:
(A) Complete this assessment according to the schedule identified in OAR 581-021-0026(6); and
(B) Provide the parent with a copy of the results, including a summary statement indicating whether the child has made satisfactory educational progress in light of the child’s age and disability.
(c) Parents who are home schooling a child with a disability shall do one of the following:
(A) If the district has conducted an assessment under subsection (3)(a)(A), retain documentation of the child’s progress under subsection (3)(a)(B) and, upon request, report this information to the ESD on the same schedule as required under OAR 581-021-0026(6); or
(B) Ensure that the child’s progress is evaluated according to a privately developed plan, and retain and report progress, upon request, on the same schedule as required by OAR 581-021-0026; or
(C) Follow the testing and reporting requirements in OAR 581-021-0026.
(d) Parents of a child who is not identified under OAR 581-015-0051 but who is disabled under Section 504 of the Rehabilitation Act shall comply with subsections (B) or (C), above.
(4) If the IEP or PDP team determines that the child has not made satisfactory educational progress, the superintendent shall take the actions identified in OAR 581-021-0026 in the sequence stated.
(5) District responsibilities for home schooled children with disabilities:
(a) When the district receives notice that a parent intends to home school a child with a disability or that a child with a disability is being home schooled, the district shall offer, and document to the parent;
(A) An opportunity for the child to receive special education and related services if the child were enrolled in the district; and
(B) An opportunity for IEP meeting to consider providing special education and related services if the child were enrolled in the district; and
(b) The child’s IEP team shall be convened and conducted, and an IEP developed, consistent with the requirements in OAR Division 15, with the following exceptions:
(A) The child’s parent shall be treated as both parent and regular education teacher of the child unless the parent designates another individual as the regular education teacher;
(B) Under “extent of non-participation in regular education” the IEP shall state that the child is exempt from compulsory school attendance and regular

1. Students with disabilities who are home schooled are reevaluated at least every three years.
2. If the team determines that specific evaluation is necessary to continue eligibility or to determine appropriate special education and related services for the students IEP, and the parent refuses consent for such evaluation, or refuses to make the student available, the district will document to the parent that the district stands ready to conduct the evaluation when the parent gives consent or makes the student available.
3. If the district does not have sufficient evaluation information to determine eligibility or to develop an IEP, the district is not required to complete these activities. The district will provide prior written notice if the district terminates eligibility or services under these circumstances.

II. Testing and Reporting Requirements:

A. If a student with a disability is receiving IEP services from the district and the IEP includes a provision for IEP team assessment of satisfactory educational progress, the district:

1. Completes the assessment; and,
2. Provides the parent with a copy of the results, including a summary statement indicating whether the student has made satisfactory educational progress in light of the student’s age and disability.

III. Child Find:

A. If the district suspects that a home schooled student has a disability, the district:

1. Obtains parent consent for initial evaluation; and,
2. Conducts an initial evaluation and determines the student’s eligibility to receive special education and related services.

B. If the student is eligible, the district notifies the parent and offers an opportunity for an IEP meeting to consider initiation of special education and related services to the student with a disability.

C. If the parent refuses consent, does not respond, or refuses to make the student available, the district documents to the parent that the district
### Section 15: Services For Home Schooled Students with Disabilities

Education is provided through home schooling; and

- **(C)** The IEP shall state how "satisfactory educational progress" will be determined for the student.
  - (i) If the IEP team determines that the testing requirements of OAR 581-021-0026 are appropriate for the child, the provisions of OAR 581-021-0026(6) shall apply to the child.
  - (ii) If the IEP team determines that the testing requirements of OAR 581-015-0026 are not appropriate for the child, the IEP team shall identify another measure that will be used to determine whether the child has made satisfactory educational progress.
  - (iii) Notwithstanding subsections (i) and (ii), a parent may use a PDP to determine whether the child has made satisfactory educational progress. If so, the IEP shall indicate that satisfactory educational progress will be determined by the PDP team at parent request.

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

  - **(A)** If the team determines that specific evaluation is necessary to continue eligibility or to determine appropriate special education and related services for the child’s IEP, and the parent refuses consent for such evaluation, or refuses to make the child available, the district shall document to the parent that the district stands ready to conduct the evaluation when the parent gives consent or makes the child available.
  - **(B)** If the district does not have sufficient evaluation information to determine eligibility or to develop an IEP, the district is not required to complete these activities. The district shall provide prior written notice under OAR 581-015-0075 if the district terminates eligibility or services under these circumstances.

- **(d)** Child find:
  - **(A)** If a district suspects that a home schooled child has a disability under OAR 581-015-0051, the district shall:
    - (i) Obtain parent consent for initial evaluation under OAR 581-015-0039; and
    - (ii) Conduct an initial evaluation and determine the child's eligibility to receive special education and related services consistent with OAR 581-015-0051, 0053, 0071, 0072, 0073, and 0701.
  - **(B)** If the child is eligible, the district shall notify the parent and shall offer and document to the parent an opportunity for an IEP meeting to consider initiation of special education and related services to the child with a disability.
  - **(C)** If the parent refuses consent, does not respond, or refuses to make the child available, the district shall document to the parent that the district stands ready to conduct the evaluation when the parent gives consent or makes the child available.
  - **(D)** If a parent does not respond or refuses to meet to consider initiation of special education and related services, the district has no further obligation to initiate the offer of a free appropriate public education as long as the child is exempted from compulsory education as a home schooled child.

  - **(6)** If the district permits partial enrollment of home schooled children in its regular education program, the district will permit students with disabilities to participate to the same extent as non-disabled students, if appropriate, whether or not the student is receiving IEP services from the district.
  - **(E)** A student who is exempt from compulsory school attendance as a home schooled student with a disability will continue to be considered an exempt home schooled student by the district even though the student receives special education and related services from the district, unless these services are the equivalent of full-time enrollment in the district; or the district permits partial enrollment of home schooled students and, pursuant to that policy, the student attends one or more regular education classes.
Section 15: Services For Home Schooled Students with Disabilities

regular education program, the district shall permit children with disabilities to participate to the same extent as non-disabled children, if appropriate, whether or not the child is receiving IEP services from the district.

(a) If the child is receiving IEP services from the district, the IEP team shall determine the appropriateness of participation and the IEP shall include necessary modifications and accommodations related to the participation. Notwithstanding subsection (5)(b)(A), if the IEP calls for participation in any part of the district’s regular education program, the IEP team shall include a district regular education teacher in accordance with OAR 581-015-0066(3).

(b) If the child is not receiving IEP services from the district, the district shall consider the participation, and necessary modifications and accommodations for the child under Section 504 of the Rehabilitation Act.

(7) A child who is exempt from compulsory school attendance as a home schooled child with a disability will continue to be considered an exempt home schooled child even though:

(a) The child receives special education and related services from the district, unless these services are the equivalent of full-time enrollment in the district; or

(b) If the district permits partial enrollment of home schooled children and, pursuant to that policy, the child attends one or more regular education classes.

(8) Parents of home schooled children with disabilities have the same procedural safeguards as children with disabilities enrolled in the district, except for the following:

(a) A parent is not entitled to an independent educational evaluation at public expense under OAR 581-015-0094 if the parent disagrees with an IEP team evaluation regarding satisfactory educational progress under this rule.

(b) A parent may not request a due process hearing under OAR 581-015-0081 to contest a district’s decision not to provide special education and related services in conjunction with home schooling.

(c) Complaints that a school district has failed to meet any of the requirements under OAR 581-021-0029(5) or (8) may be heard under OAR 581-015-0054.