

Enrolled
House Bill 3168

Sponsored by COMMITTEE ON EDUCATION

CHAPTER

AN ACT

Relating to special education; creating new provisions; amending ORS 339.115, 339.252, 339.873, 343.035, 343.146, 343.151, 343.155, 343.165, 343.167, 343.175, 343.177, 343.287, 343.499, 343.521, 419B.220 and 419C.220; repealing ORS 343.149; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 343.035 is amended to read:

343.035. As used in this chapter unless the context requires otherwise:

(1) "Children with disabilities" means those school-age children who are entitled to a free appropriate public education as specified by ORS 339.115 and who require special education because they have been evaluated as having one of the following conditions as defined by rules established by the State Board of Education: Mental retardation, hearing impairment including difficulty in hearing and deafness, speech or language impairment, visual impairment, including blindness, deaf-blindness, emotional disturbance, orthopedic or other health impairment, autism, traumatic brain injury or specific learning disabilities.

(2) "Decision" means the decision of the hearing officer.

(3) "Determination" means the determination by the school district concerning the identification, evaluation or educational placement of a child with disabilities or the provision of a free appropriate public education to the child in a program paid for by the district.

(4) "Developmental delay" means:

(a) Delay, at a level of functioning and in accordance with criteria established by rules of the State Board of Education, in one or more of the following developmental areas: Cognitive development; physical development, including vision and hearing; communication development; social or emotional development or adaptive development; or

(b) A disability, in accordance with criteria established by rules of the State Board of Education, that can be expected to continue indefinitely and is likely to cause a substantial delay in a child's development and ability to function in society.

(5) "Early childhood special education" means free, appropriate, specially designed instruction to meet the unique needs of a preschool child with a disability, three years of age until the age of eligibility for kindergarten, where instruction is provided in any of the following settings: Home, hospitals, institutions, special schools, classrooms, and community child care or preschool settings, or both.

(6) "Early intervention services" means services for preschool children with disabilities from birth until three years of age that are:

(a) Designed to meet the developmental needs of children with disabilities and the needs of the family related to enhancing the child's development;

- (b) Selected in collaboration with the parents; and
- (c) Provided:
 - (A) Under public supervision;
 - (B) By personnel qualified in accordance with criteria established by rules of the State Board of Education; and
 - (C) In conformity with an individualized family service plan.
- (7) "Individualized education program" means a written statement of an educational program for a child with a disability that is developed, reviewed and revised in a meeting in accordance with criteria established by rules of the State Board of Education for each child eligible for special education and related services under this chapter.
- (8) "Individualized family service plan" means a written plan of early childhood special education, related services, early intervention services and other services developed in accordance with criteria established by rules of the State Board of Education for each child eligible for services under this chapter.
- (9) "Instruction" means providing families with information and skills that support the achievement of the goals and outcomes in the child's individualized family service plan and working with preschool children with disabilities in one or more of the following developmental areas: Communication development, social or emotional development, physical development, including vision and hearing, adaptive development and cognitive development.
- (10) "Mediation" means a voluntary process in which an impartial mediator assists and facilitates two or more parties to a controversy in reaching a mutually acceptable resolution of the controversy and includes all contacts between a mediator and any party or agent of a party, until such time as a resolution is agreed to by the parties or the mediation process is terminated.
- (11) "Order" has the meaning given that term in ORS chapter 183.
- (12) "Other services" means those services which may be provided to preschool children with disabilities and to their families that are not early childhood special education or early intervention services and are not paid for with early childhood special education or early intervention funds.
- (13) "Parent" means the parent, person acting as a parent or a legal guardian, other than a state agency, of the child or the surrogate parent. **"Parent" may be further defined by rules adopted by the State Board of Education.**
- (14) "Preschool children with disabilities" means all children from:
 - (a) Birth until three years of age who are eligible for early intervention services because they are experiencing developmental delay or have diagnosed mental or physical conditions that will result in developmental delay; or
 - (b) Three years of age to eligibility for entry into kindergarten who need early childhood special education services because they are experiencing developmental delay or because they have been evaluated as having one of the conditions listed for school-age children under subsection (1) of this section.
- (15) "Related services" means transportation and such developmental, corrective and other supportive services as are required to assist a child with disabilities to benefit from special education, and includes speech-language and audiology services, **interpreting services**, psychological services, physical and occupational therapy, recreation including therapeutic recreation, **social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child**, early identification and assessment of disabilities in children, counseling services including rehabilitation counseling, orientation and mobility services, [and] medical services for diagnostic or evaluation purposes[. *"Related services" also includes school health services, social work services in schools*] and parent counseling and training. **"Related services" does not include a medical device that is surgically implanted or the replacement of a medical device that is surgically implanted.**

(16) "School district" means a common or union high school district or an education service district that is charged with the duty or contracted with by a public agency to educate children eligible for special education.

(17) "Service coordination" means the activities carried out by a service coordinator to assist and enable a preschool child with disabilities and the child's family to receive the rights, procedural safeguards and services that are authorized under the state's early intervention and early childhood special education programs and to coordinate access to other services designated on the individualized family service plan.

(18)(a) "Special education" means specially designed instruction at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions and in other settings, and instruction in physical education.

(b) "Special education" also includes speech-language services, transition services or other related services designated by rule if it consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability.

(19) **"Unaccompanied homeless youth" has the meaning given that term in the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11434a(6).**

(20) **"Ward of the state" means a child who is temporarily or permanently in the custody of, or committed to, a public or private agency through the action of the juvenile court. "Ward of the state" may be further defined by rules adopted by the State Board of Education.**

SECTION 2. ORS 343.146 is amended to read:

343.146. (1) To receive special education, children with disabilities shall be determined eligible for special education services under a school district program approved under ORS 343.045 and as provided under ORS 343.221.

(2) Before initially providing special education, the school district shall ensure that a full and individual evaluation is conducted to determine the child's eligibility for special education and the child's special educational needs.

(3) Eligibility for special education shall be determined pursuant to rules adopted by the State Board of Education.

(4) [*Under rules adopted by the State Board of Education,*] Each school district shall conduct [*an evaluation every three years, or more frequently if conditions warrant or if the parent or teacher requests an evaluation*] **a reevaluation of each child with a disability in accordance with rules adopted by the State Board of Education.**

(5) If a medical or vision examination or health assessment is required as part of an initial evaluation or reevaluation, the evaluation shall be given:

(a) In the case of a medical examination, by a physician licensed to practice by a state board of medical examiners;

(b) In the case of a health assessment, by a nurse licensed by a state board of nursing and specially certified as a nurse practitioner or by a licensed physician assistant; and

(c) In the case of a vision examination, by an ophthalmologist or optometrist licensed by a state board.

SECTION 3. ORS 343.151 is amended to read:

343.151. (1) School districts shall ensure that an individualized education program is developed, **reviewed and revised** for each child with a disability, as defined in ORS 343.035, pursuant to the rules of the State Board of Education.

(2) The State Board of Education shall establish by rule the contents of an individualized education program, including transition services, and the procedures for the development, review and revision of an individualized education program. The board shall also adopt by rule standard forms for use in developing an individualized education program.

(3) Each school district shall use the individualized education program forms established by rule under subsection (2) of this section in the development, review and revision of all individualized education programs.

(4) Notwithstanding subsection (3) of this section, a school district may use alternate forms in the development, review and revision of an individualized education program if the school district submits the form to the Department of Education and the department approves the use of the alternate form.

(5) In considering whether to approve an alternate form under subsection (4) of this section, the department shall consider whether the form meets the requirements for the contents of an individualized education program adopted under subsection (2) of this section and whether the form satisfies the intent of subsection (4) of this section to reduce unnecessary or confusing paperwork. The department shall approve or disapprove an alternate form submitted under subsection (4) of this section within 10 days of receiving the alternate form.

SECTION 4. ORS 343.155 is amended to read:

343.155. The State Board of Education shall establish by rule procedures to protect the rights of every child with a disability who is eligible for special education and every child who there is a reasonable cause to believe has a disability, including:

(1) Rules providing for the participation of the parents of a child with a disability in meetings regarding the child's identification, evaluation, individualized education program, educational placement and the provision of a free appropriate public education to the child.

(2) Rules governing the procedures for the appointment of a surrogate for the parent and other rules necessary to protect the special educational rights of the child, which shall include, but need not be limited to, rules applicable whenever:

(a) No parent of the child can be identified or located after reasonable efforts [*or when*];

(b) There is reasonable cause to believe that the child has a disability and is a ward of the state;

(c) **The child is an unaccompanied homeless youth;** or

[(b)] (d) The child reaches the age of majority and has been determined not to have the ability to give informed consent regarding the child's education.

(3) Rules prescribing mediation procedures, **resolution sessions** and hearings procedures if identification, evaluation, individual education program or placement is contested.

(4) Rules prescribing when notice of procedural safeguards must be given to the parents or the child with disabilities who has reached the age of majority, the content of the notice and the language of the notice.

(5) Rules prescribing standards and procedures for disciplinary actions for behavior or misconduct of a child with a disability.

(6) Other procedural safeguards as required by law.

SECTION 5. ORS 343.165 is amended to read:

343.165. (1) A hearing shall be conducted pursuant to rules of the State Board of Education if:

(a) The parent requests a hearing to contest the determination of the school district concerning the identification, evaluation, individualized education program, educational placement or the provision of a free appropriate public education to the child; or

(b) The school district requests a hearing to obtain a decision regarding whether its identification, evaluation, individualized education program or educational placement of the child is appropriate or whether the district's proposed action is necessary to provide the child with a free appropriate public education.

(2) Notwithstanding subsection (1)(b) of this section, a school district may not request a hearing if a parent refuses consent for placement in a program providing special education and related services.

[(2)] (3)(a) **Except as provided in paragraph (b) of this subsection,** a hearing described in subsection (1) of this section must be requested within two years after the date of the act or omission that gives rise to the right to request a hearing under subsection (1) of this section.

(b) The timeline described in paragraph (a) of this subsection does not apply to a parent if the parent was prevented from requesting the hearing due to:

(A) Specific misrepresentations by the school district that it had resolved the problem forming the basis of the complaint; or

(B) The school district withholding from the parent information that the district was required to provide under this chapter.

[3] (4) The State Board of Education shall adopt rules that establish when a school district is obligated to initiate a contested case hearing to ensure that a student with disabilities is provided with a free appropriate public education.

[4] (5) The board's rules in subsection (1) of this section shall be as consistent as possible with the procedures applicable to a contested case under ORS chapter 183. However, the board's rules shall provide that:

(a) Any party to a hearing has the right to prohibit the introduction of any evidence that has not been disclosed to that party at least five business days before the hearing; and

(b) The hearing officer may prohibit the introduction of any evidence regarding evaluations and recommendations based on those evaluations that a party intends to use at the hearing, if the evidence has not been disclosed to the other party at least five business days before the hearing, unless the other party consents to the introduction of the evidence.

[5] (6) Notwithstanding subsection [(4)] (5) of this section, in an expedited hearing the evidence must be disclosed to the other party not later than two business days before the hearing.

[6] (7) The parent shall be entitled to have the child who is the subject of the hearing present at the hearing and to have the hearing open to the public.

[7] (8) [*When either party requests,*] An expedited hearing shall be held [*in a dispute over a disciplinary action for a child with a disability*] if:

(a) **In a dispute over a disciplinary action for a child with a disability**, the child's parent disagrees with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding the child's educational placement; or

(b) The school district [*maintains that it is dangerous for the child to be in the child's current educational placement during the pendency of the hearing.*] **believes that maintaining the current placement for the child is substantially likely to result in injury to the child or others.**

[8] (9) The hearing shall be conducted by an independent hearing officer appointed by the Superintendent of Public Instruction. The hearing officer:

(a) Shall not be:

[(a)] (A) An employee of a school district involved in the education or care of the child;

[(b)] (B) An employee of the Department of Education; or

[(c)] (C) A person having any personal or professional interest [*which*] **that** would conflict with the person's objectivity in the hearing.

(b) **Shall possess:**

(A) **Knowledge of, and the ability to understand, the provisions of state and federal special education laws, regulations and legal interpretations by federal and state courts;**

(B) **The knowledge and ability to conduct hearings in accordance with appropriate standard legal practice; and**

(C) **The knowledge and ability to render and write decisions in accordance with standard legal practice.**

SECTION 6. ORS 343.167 is amended to read:

343.167. (1) If the finding at the hearing held under ORS 343.165 is that the identification, evaluation and educational placement by the district are appropriate and that the child is being provided a free appropriate public education, the hearing officer shall decide in support of the determination of the district.

(2) If the finding at the hearing is that the identification, evaluation or educational placement is not appropriate or that the child is not being provided a free appropriate public education, the hearing officer shall grant appropriate relief within the hearing officer's scope of authority.

(3) In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies:

- (a) Impeded the child's right to a free appropriate public education;**
- (b) Significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the child; or**
- (c) Caused a deprivation of educational benefits.**

(4) Nothing in subsection (3) of this section shall be construed to preclude a hearing officer from ordering a school district to comply with procedural requirements.

[3] (5) The decision shall be entered not later than 45 days after the request for hearing is filed unless an extension has been granted by the hearing officer at the request of the parent or the school district. Copies of the decision shall be sent to the parent and to the school district accompanied by a statement describing the method of appealing the decision.

[4] (6) In expedited hearings conducted pursuant to ORS 343.165 [(7)] **(8)**, the State Board of Education shall adopt rules that require a [*decision within 45 days, without exceptions or extensions*] **hearing within 20 school days of the date the hearing is requested and a determination within 10 school days after the hearing.**

[5] (7) Pursuant to rules of the State Board of Education, the Superintendent of Public Instruction shall bill the school district for all reasonable costs connected with the appointment of an independent hearing officer and the conduct of a due process hearing. The district shall make payment to the Department of Education for the cost of the hearing within 30 days of receipt of the billing.

SECTION 7. ORS 343.175 is amended to read:

343.175. (1) A decision under ORS 343.165 is final unless the parent or the school district files a civil action under subsection (2) of this section.

(2) Either party aggrieved by the finding and decision of the hearing officer may commence a civil action in any court of competent jurisdiction.

(3) In any action brought under this section, the court shall receive the records from the administrative proceeding, shall hear additional evidence at the request of a party and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

(4) Any civil action brought under this section shall be commenced within [120] **90** days of the date of the hearing officer's final order.

(5) In any action or proceeding brought under ORS 343.165 or in an appeal from any action or proceeding brought under ORS 343.165, the court, in its discretion, may award reasonable attorney fees as part of costs to:

(a) The parents of a child with a disability [who is], if the parents are the prevailing party[.];

(b) A prevailing party who is the Department of Education or school district against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable or without foundation; or

(c) A prevailing party who is the Department of Education or a school district against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay or to needlessly increase the cost of litigation.

(6) Attorney fees awarded under this section shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating these fees.

(7) Attorney fees may not be awarded and related costs may not be reimbursed under this section for services performed after a written offer of settlement to a parent if:

(a) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure, or in case of an administrative hearing, more than 10 days before the hearing begins;

(b) The offer is not accepted within 10 days; and

(c) The relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(8) Notwithstanding subsection (7) of this section, attorney fees and related costs may be awarded to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(9) Attorney fees may not be awarded relating to any meeting of the individualized education program team unless the meeting is convened as a result of an administrative proceeding under ORS 343.165, or as a result of judicial action. **A resolution session is not considered a meeting convened as a result of an administrative hearing or judicial action, or an administrative hearing or judicial action.**

(10) Attorney fees may not be awarded for a mediation that is conducted before a request for a hearing under ORS 343.165.

(11) The court shall reduce the amount of attorney fees awarded under this section if:

(a) The parent unreasonably protracted the final resolution of the controversy;

(b) The amount of the attorney fees unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation and experience;

(c) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

(d) In requesting a hearing under ORS 343.165 (1)(a), the attorney representing the parent did not provide written notice to the Superintendent of Public Instruction that included:

(A) The child's name, address and school;

(B) A description of the problem and facts relating to the problem; and

(C) A proposed resolution of the problem.

(12) The court shall not reduce fees under subsection (11) of this section if:

(a) The school district unreasonably protracted the final resolution of the controversy; or

(b) The school district violated the procedural safeguards as set forth in ORS 343.146 to 343.183.

SECTION 8. ORS 343.177 is amended to read:

343.177. (1) During the pendency of any administrative or judicial proceedings concerning the identification, evaluation or educational placement of the child or the provision of a free appropriate public education to the child, the child shall remain in the then current educational program placement.

(2) Notwithstanding subsection (1) of this section, the placement of a child may be changed if:

(a) The parent consents to placement in a program provided or selected by the district at the district's expense until the proceedings referred to in subsection (1) of this section are completed if applying for initial admission to a public school;

(b) The parent and the school district agree to temporary placement in some other program;

(c) The school district orders a change in placement to an appropriate interim alternative educational setting for up to 45 **school days without regard to whether the behavior is determined to be a manifestation of the child's disability:**

(A) Due to a weapon, illegal drug or controlled substance incident[, *pursuant to rules of the State Board of Education*]; or

(B) **Because the child has inflicted serious bodily injury upon another person while at school, on school premises or at a school function under the jurisdiction of the Department of Education or school district;**

(d) A hearing officer orders a change in placement to an appropriate interim alternative educational setting for up to 45 **school** days due to the substantial likelihood of injurious behavior, pursuant to rules of the State Board of Education[.]; or

(e) **School personnel order a change in placement to an interim alternative educational setting for more than 10 school days for a child with a disability who violates a code of student conduct and the behavior that gave rise to the violation is determined not to be a manifestation of the child's disability.**

(3) If the placement of a child with a disability is changed under subsection (2)(e) of this section:

(a) The relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration as the disciplinary procedures would be applied to children without disabilities;

(b) The child continues to be entitled to a free appropriate public education under ORS 339.252, although the education may be provided in an interim alternative educational setting; and

(c) The child shall remain in the interim alternative educational setting pending the decision of a hearing officer or until the expiration of the school district's determination of duration of the change in placement under paragraph (a) of this subsection, whichever occurs first.

[3] (4) For the purposes of subsection (2)(b) of this section, a decision of a hearing officer under ORS 343.165 that agrees with the child's parents that a change of placement is appropriate shall be treated as an agreement between the school district and the parents.

SECTION 9. ORS 343.287 is amended to read:

343.287. (1) There is created a State Advisory Council for Special Education, consisting of members appointed by the Superintendent of Public Instruction. Members shall be representative of the geographic areas of this state.

(2) Members must include:

(a) Individuals with disabilities;

(b) Parents or guardians of children with disabilities **ages birth through 26**;

[c] *Educators of children with disabilities*;

(c) **Teachers**;

(d) State and local education officials, **including officials who carry out activities under part B of subchapter VI of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11431 et. seq.**;

(e) Administrators of programs for children with disabilities;

(f) Representatives of institutions of higher education that prepare personnel to work in special education and related services;

(g) Representatives of other state agencies involved in the financing or delivery of related services;

(h) Representatives of private schools and representatives of public charter schools as defined in ORS 338.005;

(i) At least one representative of [*providers*] **a vocational, community or business organization concerned with the provision of transition services to children with disabilities**;

(j) **A representative from the Department of Human Services responsible for foster care**;

[j] (k) Representatives from the **Oregon Youth Authority and Department of Corrections** [*state juvenile and adult corrections agencies*]; and

[k] (L) Other persons associated with or interested in the education of children with disabilities.

(3) A majority of the members [*must*] **shall** be individuals with disabilities or parents of children with disabilities **ages birth through 26**.

(4) The State Advisory Council for Special Education shall:

(a) Review aspects of the statewide program of education of children with disabilities and advise the Superintendent of Public Instruction and the Department of Education on such programs;

(b) Advise the Superintendent of Public Instruction and the Department of Education of unmet needs in the education of children with disabilities;

(c) Comment publicly on any rules proposed for adoption by the Department of Education concerning special education;

(d) Assist the state in developing and reporting data and evaluations concerning special education;

(e) Advise the Department of Education in developing corrective action plans to address findings identified in federal monitoring reports on special education; and

(f) Advise the Department of Education in developing and implementing policies relating to the coordination of services for children with disabilities.

(5) Out of the funds appropriated to the Department of Education, the department shall reimburse members for necessary travel and other expenses under ORS 292.495 (2).

SECTION 10. ORS 343.499 is amended to read:

343.499. (1)(a) There is created the State Interagency Coordinating Council.

(b) The Governor shall appoint members of the council from a list of eligible appointees provided by the council and agencies described in subsection (2) of this section and shall ensure that the membership of the council reasonably represents the population of this state.

(c) The Governor shall designate one member of the council to serve as the chairperson, or if the Governor chooses not to name a chairperson, the council may elect one of its members to serve as chairperson. However, any member of the council who represents the Department of Education may not serve as the chairperson of the council.

(2) The membership of the council shall be composed as follows:

(a) At least 20 percent of the council members shall be parents, including minority parents, of preschool children with disabilities or of children with disabilities who are 12 years of age or younger who have knowledge of or experience with programs for infants and toddlers with disabilities. At least one council member shall be a parent of an infant or toddler with a disability or of a child with a disability who is six years of age or younger.

(b) At least 20 percent of the council members shall be public or private providers of early intervention and early childhood special education services.

(c) At least one council member shall be a member of the Legislative Assembly.

(d) At least one council member shall be involved in [*the training and preparation of personnel for employment in early intervention and early childhood special education*] **personnel preparation.**

(e) At least one council member shall represent the Department of Human Services.

(f) At least one council member shall represent the federal Head Start program.

(g) At least one council member shall represent the Child Care Division of the Employment Department.

(h) At least one council member shall represent the Department of Education.

(i) At least one council member shall represent the Department of Consumer and Business Services.

(j) At least one council member shall represent the State Commission on Children and Families.

(k) At least one council member shall represent the Child Development and Rehabilitation Center of the Oregon Health and Science University.

(L) At least one council member shall be a member of the State Advisory Council for Special Education created under ORS 343.287.

(m) At least one council member shall be a representative designated by the state coordinator for homeless education.

(n) At least one council member shall represent the state child welfare agency responsible for foster care.

(o) At least one council member shall represent the state agency responsible for children's mental health.

(p) At least one council member shall be from the agency responsible for the state Medicaid program.

[*m*] **(q)** The council may include other members appointed by the Governor, including but not limited to one representative from the United States Bureau of Indian Affairs or, where there is no school operated or funded by the bureau, from the Indian Health Service or the tribe or tribal council.

(3) An individual appointed to represent a state agency that is involved in the provision of or payment for services for preschool children with disabilities under subsection (2)(e) and (h) to (k)

of this section shall have sufficient authority to engage in making and implementing policy on behalf of the agency.

(4) The State Interagency Coordinating Council shall:

(a) Advise the Superintendent of Public Instruction and the State Board of Education on unmet needs in the early childhood special education and early intervention programs for preschool children with disabilities, review and comment publicly on any rules proposed by the State Board of Education and the distribution of funds for the programs and assist the state in developing and reporting data on and evaluations of the programs and services.

(b) Advise and assist the represented public agencies regarding the services and programs they provide to preschool children with disabilities and their families, including public comments on any proposed rules affecting the target population and the distribution of funds for such services, and assist each agency in developing services that reflect the overall goals for the target population as adopted by the council.

(c) Advise and assist the Department of Education and other state agencies in the development and implementation of the policies that constitute the statewide system.

(d) Assist all appropriate public agencies in achieving the full participation, coordination and cooperation for implementation of a statewide system that includes but is not limited to:

(A) Seeking information from service providers, service coordinators, parents and others about any federal, state or local policies that impede timely service delivery; and

(B) Taking steps to ensure that any policy problems identified under subparagraph (A) of this paragraph are resolved.

(e) Advise and assist the Department of Education in identifying the sources of fiscal and other support for preschool services, assigning financial responsibility to the appropriate agencies and ensuring that the provisions of interagency agreements under ORS 343.511 are carried out.

(f) Review and comment on each agency's services and policies regarding services for preschool children with disabilities, or preschool children who are at risk of developing disabling conditions, and their families to the maximum extent possible to assure cost-effective and efficient use of resources.

(g) To the extent appropriate, assist the Department of Education in the resolution of disputes.

(h) Advise and assist the Department of Education in the preparation of applications and amendments thereto.

(i) Advise and assist the Department of Education regarding the transition of preschool children with disabilities.

(j) Prepare and submit an annual report to the Governor and to the United States Secretary of Education on the status of early intervention programs operated within this state.

(5) The council may advise appropriate agencies about integration of services for preschool children with disabilities and at-risk preschool children.

(6) Terms of office for council members shall be three years, except that:

(a) The representative from the State Advisory Council for Special Education shall serve a one-year term; and

(b) The representatives from other state agencies and the representative from the Legislative Assembly shall serve indefinite terms.

(7) Subject to approval by the Governor, the council may use federal funds appropriated for this purpose and available to the council to:

(a) Conduct hearings and forums;

(b) Reimburse nonagency council members pursuant to ORS 292.495 for attending council meetings, for performing council duties, and for necessary expenses, including child care for parent members;

(c) Pay compensation to a council member if the member is not employed or if the member must forfeit wages from other employment when performing official council business;

(d) Hire staff; and

(e) Obtain the services of such professional, technical and clerical personnel as may be necessary to carry out its functions.

(8) Except as provided in subsection (7) of this section, council members shall serve without compensation.

(9) The Department of Education shall provide clerical and administrative support, including staff, to the council to carry out the performance of the council's function as described in this section.

(10) The council shall meet at least quarterly. The meetings shall be announced publicly and, to the extent appropriate, be open and accessible to the general public.

(11) No member of the council shall cast a vote on any matter that would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest under state law.

SECTION 11. ORS 343.521 is amended to read:

343.521. (1) In accordance with rules of the State Board of Education, the agencies under contract with the Department of Education to provide early childhood special education or early intervention services must ensure that an individualized family service plan is developed for each preschool child with a disability, **as defined in ORS 343.035**, who is determined eligible for early childhood special education or early intervention services and for the child's family. The Department of Education or its contractors shall not be responsible for the cost of other services of the individualized family service plan that are not early childhood special education or early intervention services. *[The individualized family service plan must be developed in a meeting conducted within:]*

[(a) Forty-five calendar days from the date the child is referred for early intervention services; or]

[(b) Thirty calendar days from the time the child is determined to be eligible for early childhood special education.]

[(2) The meeting arrangements must be made with, and written notice provided to, the parents and other participants within a reasonable time prior to the meeting date. Meetings must be conducted:]

[(a) In settings and at times that are convenient to the parent; and]

[(b) In the native language of the parent or other mode of communication used by the family.]

[(3)(a) If a child is receiving early intervention services, a review of the individualized family service plan for the child and the child's family shall be conducted every six months or more frequently if conditions warrant or if the family requests such a review. If a child is receiving early childhood special education, a review of the individualized family service plan may be conducted every six months. The purpose of the periodic review is to determine:]

[(A) The degree to which progress toward achieving the goals and outcomes is being made; and]

[(B) Whether modification or revision of the goals and outcomes or services is necessary.]

[(b) The review may be carried out by a meeting or by another means that is acceptable to the parents and other participants.]

[(4) A meeting must be conducted on at least an annual basis to evaluate the individualized family service plan for a child and the child's family, and to revise its provisions as appropriate. The results of any current evaluations and other information available from the ongoing assessment of the child and family shall be used in determining what services are needed and shall be provided.]

[(5) A representative of the school district of the child shall participate in the annual meeting the year before the child enters school.]

*[(6) (2) The State Board of Education shall establish by rule the contents of an individualized family service plan **and the procedures for the development, review and revision of an individualized family service plan.***

(3) Each agency under contract with the Department of Education to provide early childhood special education or early intervention services shall use the individualized family service plan forms established by the Department of Education in the development, review and revision of individualized family service plans.

SECTION 12. ORS 339.252 is amended to read:

339.252. (1) As used in this section, “child with a disability” has the meaning given that term in ORS 343.035.

(2) A child with a disability continues to be entitled to a free appropriate public education if the child has been removed for disciplinary reasons from the child’s current educational placement for more than 10 school days in a school year.

(3) A disciplinary removal is considered a change in educational placement and the school district shall follow special education due process procedures under ORS 343.155 (5) if:

(a) The removal is for more than 10 consecutive school days; or

(b) The child is removed for more than 10 cumulative school days in a school year, and those removals constitute a pattern based on the length and total time of removals and the proximity of the removals to one another.

(4) A child with a disability shall not be removed for disciplinary reasons under subsection (3) of this section for misconduct that is a manifestation of the child’s disability, except as provided under ORS 343.177 [(2)(c) or (d)].

(5) Notwithstanding ORS 339.250 (9) and (10), a school district shall provide a free appropriate public education in an alternative setting to a child with disabilities even if the basis for expulsion was a weapon violation pursuant to ORS 339.250 (6).

(6) School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.

SECTION 13. ORS 339.873 is amended to read:

339.873. (1) A [kindergarten] **preschool** through grade 12 public school administrator, teacher, counselor or nurse may not recommend to a parent or legal guardian of a student that the student seek a prescription for a medication that is prescribed with the intent of affecting or altering the thought processes, mood or behavior of the student.

(2) Preschool through grade 12 public school teachers and other school personnel may not require a child to obtain a prescription for a substance covered by the Controlled Substances Act, 21 U.S.C. 801 et seq., as a condition of attending school, receiving an evaluation to determine eligibility for early childhood special education or special education under ORS chapter 343 or receiving early childhood special education or special education services.

[(2)] (3) Nothing in this section:

(a) Prohibits a [kindergarten] **preschool** through grade 12 public school [administrator, teacher, counselor or nurse from communicating] **teacher or other school personnel from consulting or sharing classroom-based observations** with a parent or legal guardian of a student concerning the **student’s academic and functional performance**, behavior [of the student] at school **or need for evaluation for special education or related services**; or

(b) Relieves a school district of the duty to identify, locate and evaluate students with disabilities.

SECTION 14. ORS 419B.220 is amended to read:

419B.220. [(1) As a part of the investigation, before making a child a ward of the court, a preliminary evaluation shall also be conducted to determine if the child may be eligible for special education as provided in ORS chapter 343. This preliminary evaluation of disabling conditions shall not constitute a final determination of the child’s eligibility for special education but shall be used as the basis for appointing a surrogate to protect the child’s due process rights pursuant to ORS chapter 343.]

[(2)] (1) **Upon the request of any party**, the court shall appoint a surrogate for a child [when that child is made a ward of the court if] **who is temporarily or permanently in the custody of, or committed to, a public or private agency through the action of the juvenile court if:**

(a) The court finds that the child may be eligible for special education programs because of a disabling condition as provided in ORS chapter 343[. This finding of probable eligibility shall be based on the preliminary evaluation conducted pursuant to subsection (1) of this section.];

(b) The child does not already have a surrogate appointed by a school district or other educational agency; and

(c) **The requesting party nominates a person who is willing to serve as the surrogate and who meets the requirements described in subsection (2) of this section.**

(2) A surrogate appointed under this section:

(a) **May not be an employee of the state educational agency, a school district or any other agency that is involved in the education or care of the child;**

(b) **May not have a conflict of interest that would interfere with the surrogate representing the special education interests of the child; and**

(c) **Shall have knowledge and skills that ensure that the surrogate can adequately represent the child in special education decisions.**

SECTION 15. ORS 419C.220 is amended to read:

419C.220. [(1) *As a part of the investigation, before finding a youth to be within the jurisdiction of the court, a preliminary evaluation shall be conducted to determine if the youth may be eligible for special education as provided in ORS chapter 343. This preliminary evaluation of disabling conditions does not constitute a final determination of the youth's eligibility for special education but shall be used as the basis for appointing a surrogate to protect the youth's due process rights pursuant to ORS chapter 343.*]

[(2)] (1) **Upon the request of any party, the court shall appoint a surrogate for a youth or youth offender who is temporarily or permanently in the custody of, or committed to, a public or private agency through the action of the juvenile court if:**

(a) **The court finds that the youth or youth offender may be eligible for special education programs because of a disabling condition as provided in ORS chapter 343[. This finding of probable eligibility shall be based on the preliminary evaluation conducted pursuant to subsection (1) of this section.];**

(b) **The youth or youth offender does not already have a surrogate appointed by a school district or other educational agency; and**

(c) **The requesting party nominates a person who is willing to serve as the surrogate and who meets the requirements described in subsection (2) of this section.**

(2) A surrogate appointed under this section:

(a) **May not be an employee of the state educational agency, a school district or any other agency that is involved in the education or care of the youth or youth offender;**

(b) **May not have a conflict of interest that would interfere with the surrogate representing the special education interests of the youth or youth offender; and**

(c) **Shall have knowledge and skills that ensure that the surrogate can adequately represent the youth or youth offender in special education decisions.**

SECTION 16. ORS 339.115 is amended to read:

339.115. (1) **Except as provided in ORS 339.141, authorizing tuition for courses not part of the regular school program, the district school board shall admit free of charge to the schools of the district all persons between the ages of 5 and 19 residing therein. The person whose 19th birthday occurs during the school year shall continue to be eligible for a free and appropriate public education for the remainder of the school year. [However,] A district school board may admit [other] nonresident persons, determine who is not a resident of the district and [may] fix rates of tuition for nonresidents.**

(2) **A district must admit an otherwise eligible person who has not yet attained 21 years of age prior to the beginning of the current school year if the person is:**

(a) **Receiving special education and has not yet received a regular high school diploma; or**

(b) **Shown to be in need of additional education in order to receive a diploma.**

(3) **The obligation to make a free appropriate public education available to individuals with disabilities 18 through 21 years of age who are incarcerated in an adult correctional facility applies only to those individuals who, in their last educational placement prior to their incarceration in the adult correctional facility:**

(a) **Were identified as being a child with a disability as defined in ORS 343.035; or**

(b) **Had an individualized education program as described in ORS [343.149] 343.151.**

(4) For purposes of subsection (3) of this section, "adult correctional facility" means:

- (a) A local correctional facility as defined in ORS 169.005;
- (b) A regional correctional facility as defined in ORS 169.620; or
- (c) A Department of Corrections institution as defined in ORS 421.005.

(5) An otherwise eligible person under subsection (2) of this section whose 21st birthday occurs during the school year shall continue to be eligible for a free appropriate public education for the remainder of the school year.

(6) The person may apply to the board of directors of the school district of residence for admission after the 19th birthday as provided in subsection (1) of this section. A person aggrieved by a decision of the local board may appeal to the State Board of Education. The decision of the state board is final and not subject to appeal.

(7) Notwithstanding ORS 339.133 (1), a school district shall not exclude from admission a child located in the district solely because the child does not have a fixed place of residence or solely because the child is not under the supervision of a parent, guardian or person in a parental relationship.

(8) Notwithstanding subsection (1) of this section, a school district:

(a) May for the remaining period of an expulsion deny admission to the regular school to a resident student who is expelled from another school district; and

(b) Shall for at least one calendar year from the date of the expulsion and if the expulsion is for more than one calendar year, may for the remaining period of time deny admission to the regular school program to a student who is under expulsion from another school district for an offense that constitutes a violation of a school district policy adopted pursuant to ORS 339.250 (6).

(9) A child entering the first grade during the fall term shall be considered to be six years of age if the sixth birthday of the child occurs on or before September 1. A child entering kindergarten during the fall term shall be considered to be five years of age if the fifth birthday of the child occurs on or before September 1. However, nothing in this section prevents a district school board from admitting free of charge a child whose needs for cognitive, social and physical development would best be met in the school program, as defined by policies of the district school board, to enter school even though the child has not attained the minimum age requirement but is a resident of the district.

SECTION 17. ORS 343.149 is repealed.

SECTION 18. (1) The amendments to ORS 343.165 by section 5 of this 2005 Act apply to hearings requested on or after the effective date of this 2005 Act with respect to activities occurring on or after the effective date of this 2005 Act.

(2) The amendments to ORS 343.167 by section 6 of this 2005 Act apply to:

- (a) Procedural inadequacies occurring on or after the effective date of this 2005 Act; and**
- (b) Expedited hearings held on or after the effective date of this 2005 Act.**

(3) The amendments to ORS 343.175 by section 7 of this 2005 Act apply to civil actions commenced with respect to final orders issued on or after the effective date of this 2005 Act.

(4) The amendments to ORS 343.177 by section 8 of this 2005 Act apply to changes in placement ordered on or after the effective date of this 2005 Act.

(5) The amendments to ORS 343.521 by section 11 of this 2005 Act apply to individualized family service plans developed prior to, on or after the effective date of this 2005 Act.

(6) The amendments to ORS 419B.220 and 419C.220 by sections 14 and 15 of this 2005 Act apply to surrogates appointed on or after the effective date of this 2005 Act.

SECTION 19. This 2005 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect July 1, 2005.

Passed by House June 22, 2005

Repassed by House July 15, 2005

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Chief Clerk of House

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Speaker of House

Passed by Senate July 12, 2005

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President of Senate

Received by Governor:

.....M,....., 2005

Approved:

.....M,....., 2005

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Governor

Filed in Office of Secretary of State:

.....M,....., 2005

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Secretary of State