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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION
ODE 17-2017
CHAPTER 581
OREGON DEPARTMENT OF EDUCATION

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FILING CAPTION: Modified Diploma

EFFECTIVE DATE: 10/10/2017 THROUGH 04/08/2018

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NEED FOR THE RULE(S):

The passage of the Every Student Succeeds Act (ESSA) created areas in Oregon state law that were in conflict with federal law. To address these conflicts, the legislature enacted SB 20 in 2017 at the request of the Department of Education.

JUSTIFICATION OF TEMPORARY FILING:

The need to not disrupt educational services to students who are currently in school.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

None

AMEND: 581-022-2010

RULE TITLE: Modified Diploma

RULE SUMMARY: Changed a student who "receives" or "receiving" to "who qualifies".

RULE TEXT:

(1) Definitions. As used in this rule:

(a) "Documented history" means evidence in the cumulative record and education plans of a student that demonstrates the inability over time to maintain grade level achievement even with appropriate modifications and accommodations.

(b) "Instructional barrier" means a significant physical, cognitive or emotional barrier that impairs a student's ability to maintain grade level achievement.

(c) "Modified course" means a course that has been systematically changed or altered for a student only after reasonable alternative instructional strategies (e.g. accommodations, remediation) are exhausted.

(d) "Other services" for the purposes of this rule means:

(A) Those services paid for or provided by another agency, such as Vocational Rehabilitation or Brokerages, which may be considered in the calculation of the total number of hours that equals at least the total number of instructional hours that is required to be provided to students who are attending public high school. These "other services" are not to be

considered educational services and are not provided by or through the school district or public charter school.

(B) Those services identified in OAR 581-022-2320(4), such as school assemblies, student orientations, testing, etc, which may be considered in the calculation of the total number of hours that equals at least the total number of instructional hours that is required to be provided to students who are attending public high school. These services are provided by the school district or public charter school.

(2) On or after July 1, 2009, each district school board or public charter school governing board with jurisdiction over high school programs shall award a modified diploma only to students who have demonstrated the inability to meet the full set of academic content standards for a high school diploma even with reasonable modifications and accommodations but who fulfill all state requirements as described in this rule and all applicable local school district requirements as described in district school board policies or public charter school requirements as described in school policies. In addition, on or after July 1, 2009, a district school board or public charter school governing board may only award a modified diploma to a student who meets the eligibility criteria specified in section 3 of this rule.

(3)(a) Except as provided in paragraph (c) or (d) of this section, a school district or public charter school shall grant eligibility for a modified diploma to a student who has:

(A) A documented history of an inability to maintain grade level achievement due to significant learning and instructional barriers; or

(B) A documented history of a medical condition that creates a barrier to achievement.

(b) A student shall have the opportunity to meet the requirements of a modified diploma by the later of:

(A) Four years after starting grade nine; or

(B) The student reaching the age of 21 years, if the student is entitled to a public education until the age of 21 years under state or federal law.

(c) A student may complete the requirements for a modified diploma in less than four years if the parent/guardian or adult student gives consent.

(A) The consent must be written and must clearly state that the parent/guardian or adult student is waiving the 4 years to complete the requirements for a modified diploma.

(B) A copy of all consents must be sent to the district superintendent.

(C) Each school district must annually provide the number of consents obtained to the State Superintendent of Public Instruction.

(D) The consent may not be used to allow a student to satisfy the requirements for a modified diploma in less than three years.

(d) A school district or public charter school may not deny a student who has the documented history described in paragraph (a) of this subsection the opportunity to pursue a diploma with more stringent requirements than a modified diploma for the sole reason that the student has the documented history.

(e) Students currently engaged in the use of illegal drugs are not eligible for a modified diploma if the significant learning and instructional barriers are due to the use of illegal drugs.

(f) Students currently engaged in the illegal use of alcohol are not eligible for a modified diploma if the significant learning and instructional barriers are due to the alcohol abuse, regardless of whether that student is disabled under Section 504 on the basis of alcoholism.

(g) Notwithstanding paragraph (c) and (d) of this section, a school district or public charter school may grant eligibility for a modified diploma to a student who is no longer engaging in illegal use of drugs or alcohol if the student:

(A) Has successfully completed a supervised drug or alcohol rehabilitation program and are no longer engaged in the illegal use of drugs or alcohol; or

(B) Has been rehabilitated successfully and is no longer engaged in the illegal use of drugs or alcohol; or

(C) Is participating in a supervised rehabilitation program and is no longer engaging in the illegal use of drugs or alcohol.

(4)(a) A school district or public charter school shall determine which school teams shall decide if a student will work toward obtaining a modified diploma. A student's school team must include an adult student, parent/ guardian of the student.

- (b) A school district or public charter school may award a modified diploma to a student only upon the consent of the parent or guardian of the student or upon the consent of the adult student or emancipated minor student. A district or school must receive the consent in writing and during the school year in which the modified diploma is awarded.
- (A) If student is under 18, consent must be received from the parent or guardian.
- (B) If the student is under age 18 and emancipated, consent must be received from the student.
- (C) If the adult student is 18 or older, consent must be received from the student or guardian.
- (D) If the student is under guardianship from the courts, consent must come from the court-appointed authority.
- (c) Except as provided in subsection (e) of this section, a student's school team shall decide that a student should work toward a modified diploma no earlier than the end of the 6th grade and no later than 2 years before the student's anticipated exit from high school.
- (d) Beginning in grade five, school district and public charter schools shall annually provide information to the parents or guardians of a student taking an alternate assessment of the availability of a modified diploma and the requirements for the modified diploma.
- (e) A student's school team may formally decide to revise a modified diploma decision.
- (f) A student's school team may decide that a student who was not previously working towards a modified diploma should work toward a modified diploma when a student is less than 2 years from anticipated exit from high school if the documented history of the student described in section (3) of this rule has changed.
- (5) Unit of credit requirements for students graduating with a modified diploma:
- (a) To receive a modified diploma a student must earn 24 units of credit, between grade 9 and the end of their high school career with at least 12 of those credits to include:
- (A) English Language Arts — 3;
- (B) Mathematics — 2;
- (C) Science — 2;
- (D) Social Sciences (which may include history, civics, geography and economics (including personal finance)) — 2;
- (E) Health Education — 1;
- (F) Physical Education — 1; and
- (G) Career Technical Education, The Arts or World Languages (units may be earned in any one or a combination) — 1.
- (b) School districts and public charter schools shall be flexible in awarding the remaining 12 units of credit. These credits must be awarded to meet the needs of the individual student as specified in the education plan of the student with the expectations and standards aligned to the appropriate grade level academic content standards. These credits may include:
- (A) Additional core credits described in paragraph (a) of this section;
- (B) Professional technical education;
- (C) Electives; and
- (D) Career development.
- (c) Students may earn units of credit through regular education with or without accommodations or modifications and through modified courses.
- (d) Students shall have the option to earn credit for demonstrating proficiency. A student may be given credit for successful demonstration of knowledge and skills that meets or exceeds defined levels of performance. Students may demonstrate proficiency through classroom work or documentation of learning experiences outside of school, or through a combination of these means.
- (e) School districts and public charter schools shall ensure that students have access to needed courses, modifications and supports to pursue a modified diploma and to progress in the general education curriculum.
- (f) A school district or public charter school may not require a student to earn more than 24 units of credit to receive a modified diploma.
- (6) A school district or public charter school shall grant credit toward a modified diploma only for courses that contain substantial academic content. A school district or public charter school shall grant credit for a modified diploma through

a continuum of instruction beginning at basic skills and progressing through high level skills.

(7) A school district or public charter school shall award a regular diploma under OAR 581-022-2000 if all requirements for a regular diploma are met. Completion of one or more modified courses shall not prohibit a student from earning a regular diploma; however, required core courses taken under modified conditions must be retaken under standard conditions to be counted toward a regular diploma.

(8) A school district or public charter school shall grant credit toward a modified diploma according to individual student needs across academic content areas including applied, consumer, academic, or knowledge and skill development.

(9) Each student shall develop an education plan and build an education profile as provided under OAR 581-022-2000.

(10) A school district or public charter school shall inform the student and parent or guardian of the student if the courses in grades 9-12 have been modified for an individual student.

(11) A school district or public charter school shall provide transcripts which clearly identify modified courses that do not count toward the regular diploma but that do count toward a modified diploma.

(12) Each student shall build a collection of evidence, or include evidence in existing collections, to demonstrate extended application of the standards as defined in OAR 581-022-0102;

(13) Each student who qualifies to receive or who receives a modified diploma shall have the option of participating in the high school graduation ceremony with the members of their class receiving a high school diploma.

(14)(a) A student who qualifies for a modified diploma shall have access to instructional hours, hours of transition services and hours of other services that are designed to meet the unique needs of the student.(b) When added together, the school district or public charter school will provide a total number of hours of instruction and services to the student that equals at least the total number of instructional hours that is required to be provided to students who are attending a public high school.

(c) The total number of hours that are appropriate for a student shall be determined by the individualized education program (IEP) team if the student is eligible for special education.

(d) Based on the student's needs and performance level, the student's IEP team may decide that the student will not access the total number of hours of instruction and services required to be provided to students who are attending a public high school.

(e) The school district or public charter school may not unilaterally decrease the total number of hours of instruction and services to which the student has access regardless of the age of the student.

(f) If a student's IEP team or school team, decides that the student will not access the total number of hours of instruction and services to which the student has access the school district or public charter school shall annually:

(A) Provide the following information in writing to the adult student, parent or guardian of the student:

(i) The school district's or public charter school's duty to comply with the requirements to provide the total number of hours of instruction and services to the student; and

(ii) The prohibition against a school district's or public charter school's unilaterally decreasing the total number of hours of instruction and services to which the student has access.

(B) Obtain a signed acknowledgment from the adult student, parent or guardian of the student that the adult student, parent or guardian received the information.

(C) Include in the IEP for the student a written statement that explains the reasons the student is not accessing the total number of hours of instruction and services to which the student has access.

(g) Transition services and other services designed to meet the unique needs of the student may be provided to the student through an interagency agreement entered into by the school district if the individualized education program developed for the student indicates that the services may be provided by another agency. The school district or public charter school retains the responsibility for ensuring that the student has access to the number of service hours required to be provided to the student.

(h) An agency is not required to change any eligibility criteria or enrollment standards prior to entering into an interagency agreement with the school district.

(i) School districts and public charter schools shall ensure that students have on-site access to the appropriate resources

to achieve a modified diploma at each high school in the school district or at the public charter school.

(15)(a) The unit of credit requirements in section (5) of this rule for a modified diploma apply to all students who enter 9th grade on or after July 1, 2007.

(b) If a student entered 9th grade prior to July 1, 2007, the student's team shall decide whether the student must meet the unit of credit requirements in section (5) of this rule to receive a modified diploma or the unit of credit requirements specified by the school district or public charter school for a modified diploma when the student entered 9th grade. If a student's team decides that a student may receive a modified diploma by meeting the unit of credit requirements required by the district or school when the student entered 9th grade, a school district or public charter school may award a student who entered 9th grade prior to July 1, 2007 a modified diploma if the student meets the unit of credit requirements for a modified diploma specified by the district or school when the student entered 9th grade.

STATUTORY/OTHER AUTHORITY: ORS 329.451

STATUTES/OTHER IMPLEMENTED: ORS 329.451