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DIVISION 22

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DIVISION 1

PROCEDURAL RULES

581-001-0000

Notice of Proposed Rule

Prior to the adoption, amendments or repeal of any rule, the State Board of Education shall give notice of the proposed adoption, amendment or repeal:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days prior to the effective date of the rule to be adopted;

(2) By mailing, at least 28 days before the effective date of the rule, a copy of the notice to persons on the State Board of Education's mailing list established pursuant to ORS 183.335(7);

(3) Persons who wish to be placed on the State Board of Education's mailing list may request in writing that the Department mail to the person copies of its notice of proposed rulemaking;

(4) By mailing a copy of the notice to the following persons, organizations or publications:

- (a) Associated Press;
- (b) Chancellor's Office, State Department of Higher Education;
- (c) Confederation of Oregon School Administrators;
- (d) Established student and parent organizations that have submitted mailing addresses;
- (e) Education Service Districts;
- (f) Oregon Community College Association;
- (g) Oregon Education Association;
- (h) Oregon Education Policy and Planning;
- (i) Oregon Federation of Teachers;
- (j) Oregon School Boards Association;
- (k) Oregon School Employees Association; and
- (l) Capitol Press Room.

Stat. Auth.: ORS 183.335 & 183.341(4)

Stats. Implemented: ORS 183.335

Hist.: IEB 206, f. 12-5-75, ef. 12-26-75; Renumbered from 581-061-0040, 4-1-76; IEB 8-1980, f. & ef. 4-17-80; IEB 15-1984, f. & ef. 9-27-84; EB 11-1994, f. & cert. ef. 10-3-94

581-001-0002

Authorization for Employee to Appear on Behalf of Agency in Certain Hearings

In contested case hearings authorized by ORS 326.603 and OAR 581-053-0006, an officer or employee of the Department may represent the Department if the Attorney General so consents to such representation.

Stat. Auth.: ORS 183.450(7) & 183.450(8)

Stats. Implemented: ORS 183.450(7)

Hist.: EB 1-1995, f. & cert. ef. 1-24-95

581-001-0005

Model Rules of Procedure

Pursuant to the provisions of ORS 183.341, the State Board of Education adopts the Attorney General's Model Rules of Procedure under the Administrative Procedure Act in effect on December 1, 1994, except for special education due process hearings authorized under ORS 343.165, which shall be heard in accordance with rules of the State Board of Education implementing the federal law, Individuals with Disabilities Education Act, in effect as of December 1, 1994.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the Department of Education.]

Stat. Auth.: ORS 183

Stats. Implemented: ORS 183.341

Hist.: IEB 2, f. 12-22-58; IEB 125, f. 11-4-71, ef. 11-15-71; IEB 160, f. 11-2-73, ef. 11-25-73; Renumbered from 581-061-0035, 4-1-76; IEB 222, f. 3-22-76, ef. 4-1-76; IEB 14-1978, f. & ef. 4-3-78; IEB 7-1980, f. & ef. 4-17-80; IEB 20-1981(Temp), f. 12-29-81, ef. 12-31-81; IEB 11-1982, f. & ef. 3-24-82; IEB 2-1984, f. 2-17-84, ef. 5-8-84; IEB 22-1986, f. & ef. 7-14-86; EB 2-1995, f. & cert. ef. 1-24-95; ODE 2-2006(Temp), f. & cert. ef. 2-14-06 thru 8-1-06; Administrative correction 8-22-06

581-001-0053

Parking Rules (OSSB and OSSD)

(1) There shall be no charge to employees of the Oregon State Schools for the Blind and Deaf for parking automobiles at those schools or for using bicycle racks provided by the Department.

(2) The Department may issue parking permits to other employees who wish to park at either of the schools. The parking rate for such permits will be one-half of the O rider permits issued for the Pringle site rounded to the nearest half dollar.

(3) The Department provides parking for official business only, unless other arrangements are expressly made for employees (during working hours), visitors, commercial service, and state-owned vehicles. Persons who fail to comply with this rule shall forfeit their parking privileges, and be subject to the enforcement provisions specified in OAR 581-023-0052(12). The Department may provide the following types of additional parking:

(a) Specially marked or designated free parking for the temporary use of individuals with handicaps visiting state offices. Vehicles occupying such spaces shall bear the appropriate identifying plate or decal sticker issued by the Motor Vehicles Division;

(b) Time-limited free spaces for use by persons transacting business in state offices. No state employee shall abuse this class of parking;

(c) Free spaces designated for commercial loading and service vehicle use only.

(4) Provisions for safety and enforcement set forth in OAR 581-001-0052(11) and (12) shall apply as well to parking facilities at the Oregon State Schools for the Blind and Deaf.

(5) Effective date of these amendments shall be September 1, 1988.

Stat. Auth.: ORS 98, 276 & 591

Stats. Implemented: ORS 276.591 & 276.595

Hist.: IEB 19-1981(Temp), f. & ef. 12-23-81; IEB 8-1982, f. & ef. 3-24-82; IEB 13-1986, f. 4-25-86, ef. 4-28-86; EB 33-1988, f. 8-3-88, cert. ef. 9-1-88

581-001-0100

Audit Adjustments and Appeals

(1) Any audit exception involving overpayment or underpayment for any program funded through the Oregon Department of Education shall be adjusted in a succeeding year, either by withholding the amount of overpayment, or by payment of funds due the recipient, unless the State Superintendent of Public Instruction agrees to an alternative method of adjustment.

(2) If the recipient disputes the Department's determination of an audit exception, the recipient may appeal to the State Superintendent of Public Instruction in the manner provided for a contested case under ORS 183.413 to 183.470.

Stat. Auth.: ORS 183 & 326

Stats. Implemented: ORS 326.111

Hist.: IEB 9-1982, f. & ef. 3-24-82

581-001-0105

Establishing Fees for Public Records

(1) The Oregon Department of Education may charge a fee of twenty-five (25) cents per page for supplying copies of public records on request.

(2) The Department may charge an additional fee reasonably calculated to provide reimbursement for costs incurred in locating, compiling, editing or otherwise processing such records to make them available for inspection, and for costs incurred in locating, compiling, editing or otherwise processing such records to make them available for inspection, and for costs of conveying such records to the requester. Employee time required for such purposes shall be billed at a rate not to exceed cost of employee time to the Department.

(3) No additional fee will be charged for providing records in an alternative format to individuals with vision or hearing impairments when required by the Americans with Disabilities Act.

(4) A Deputy Superintendent may reduce or waive fees when:

(a) The time spent making the records available was negligible;

or

(b) Supplying the requested records is within the normal scope of Department activity; or

(c) Payment would make extreme financial hardship upon requester.

Stat. Auth.: ORS 326.325

Stats. Implemented: ORS 192.440

Hist.: IEB 16-1985, f. & ef. 7-3-85; EB 13-1994, f. & cert. ef. 10-3-94

581-001-0110

Confidentiality and Inadmissibility of Mediation Communications

(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS

40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Mediations Excluded. Sections (6)–(10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;

(c) Mediation in which the only parties are public bodies;

(d) Mediation involving two or more public bodies and a private party if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential;

(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation.

(6) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)–(d), (j)–(l) or (o)–(p) of section (9) of this rule.

(7) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in sections (8)–(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) Written Agreement. Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondiscoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an "agreement to mediate." [Form not included. See ED. NOTE.]

(9) Exceptions to confidentiality and inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may

be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS Chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation.

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

(A) A request for mediation; or

(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation; or

(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712; or

(D) A strike notice submitted to the Employment Relations Board.

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

(A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege; or

(B) Attorney work product prepared in anticipation of litigation or for trial; or

(C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency; or

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation; or

(E) Settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the State Superintendent, Associate Superintendent or designee determines that dis-

closure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under ORS 30.402 or state or federal law requires the terms to be confidential.

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

[ED. NOTE: Forms referenced are available from the agency.]

Stat.S., Auth. ORS 36.224

Stats. Implemented: ORS 36.224, 36.228, 36.230 & 36.232

Hist.: ODE 7-2001, f. & cert. ef. 1-29-01

581-001-0115

Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications

(1) This rule applies to workplace interpersonal disputes, which are disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials. This rule does not apply to disputes involving the negotiation of labor contracts or matters about which a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed.

(2) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(3) Nothing in this rule affects any confidentiality created by other law.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c) or (h)–(j) of section (7) of this rule.

(6) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in section (7) of this rule, mediation communications in mediations involving workplace interpersonal disputes are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced into evidence by the parties or the mediator in any subsequent proceeding so long as:

(a) The parties to the mediation and the agency have agreed in writing to the confidentiality of the mediation; and

(b) The person agreeing to the confidentiality of the mediation on behalf of the agency:

(A) Is neither a party to the dispute nor the mediator; and

(B) Is designated by the agency to authorize confidentiality for the mediation; and

(C) Is at the same or higher level in the agency than any of the parties to the mediation or who is a person with responsibility for human resources or personnel matters in the agency, unless the agency head or member of the governing board is one of the persons involved in the interpersonal dispute, in which case the Governor or the Governor's designee.

(7) Exceptions to confidentiality and inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(e) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS Chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(f) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(g) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(h) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(i) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(j) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(8) The terms of any agreement arising out of the mediation of a workplace interpersonal dispute are confidential so long as the parties and the agency so agree in writing. Any term of an agreement that requires an expenditure of public funds, other than expenditures of \$1,000 or less for employee training, employee counseling or purchases of equipment that remain the property of the agency, may not be made confidential.

(9) When a mediation is subject to section (6) of this rule, the agency will provide to all parties to the mediation and to the mediator a copy of this rule or an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Auth.: ORS 36.224

Stats.: Implemented: ORS 36.230(4)
Hist: ODE 7-2001, f. & cert. ef. 1-29-01

581-001-0125**Administration of Intergovernmental Agreements**

(1) For purposes of the rule:

(a) "Agreement to Agree" (ATA) is a written agreement between the Department and a public entity that contains contractual provisions, which can be used in certain future Intergovernmental Agreements between the parties through either incorporation by reference or attachment. Examples of an Agreement to Agree include, but are not limited to:

(A) A non-binding Price Agreement between the Department and a public entity under which the Department may issue purchase orders that create a binding agreement; and

(B) A document of understanding between the Department and a public entity, which identifies potential tasks or services the Department may request the public entity to perform, but are not specifically identified until the Department issues a purchase order or work order that creates a binding agreement.

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

(c) "Direct services" are services provided directly to children.

(d) "Local services" are those delivered within the boundaries of a school district, education service district, or community college district. Current examples include early intervention/early childhood, education of children in hospital programs, and educating children in long-term care or treatment programs.

(e) "Non-direct services" are all other services provided by school districts, education service districts, and community college districts that are not direct services.

(f) "Non-geographic services" are those delivered across more than one region but not across the entire state. Current examples include TESA and Early Intervention/Early Childhood Special Education.

(g) "Regional services" are those delivered within the four zones Education Service Districts they have established as the communications network. Current examples include educating children with disabilities in regional programs.

(h) "Request for Proposals" (RFP) is a solicitation document issued by the Department calling for proposals on specific activities.

(i) "Request for Qualifications" (RFQ) is a solicitation document issued by the Department to develop a list of pre-qualified service providers. Entities that successfully demonstrate they meet the qualifications will enter into Agreements to Agree.

(j) "Statewide services" are those delivered around the entire state. Current examples include administering Student Leadership Centers and the Oregon Public Education Network (OPEN).

(2) By March 31 of each odd-numbered year, the Department will issue Requests for Qualifications for educational services mandated by federal statute or by state legislative direction. These RFQs will be issued to education service districts, school districts, and community college districts in specific areas of the state depending on whether the services to be provided are considered Local, Regional, Non-geographic, or Statewide.

(3) The Department will enter into Agreements to Agree with all entities that have submitted responses to Requests for Qualification that meet the criteria established for specific services.

(4) Not later than 30 days of the end of the legislative session, the Department will issue Requests for Proposals for services likely to be funded by the Oregon Legislative Assembly or the federal government in the upcoming biennium. These RFPs will be issued to entities that have entered into an Agreement to Agree with the Department.

(5) The specific criteria for each RFP will be developed by Department staff having expertise in the content area. Selection criteria will be included in the RFP.

(6) Responses to Requests for Proposals will be evaluated by a team of Department staff having expertise in the content area and expertise in the technical aspects of procurement. The team will score each proposal and retain all documentation of the process for future review.

(7) Following evaluation of proposals, the Department will award an intergovernmental agreement to the successful proposer.

(8) If the Department and the selected ESD/SD are unable to reach an agreement, the Department reserves the right to open the pro-

cess for broader competition including non-governmental entities. All proposing entities will be required to comply with state and federal requirements.

(9) Any organization submitting a proposal has the right to protest the Department's decision in the manner and on the timeline indicated in each RFP. To resolve protests, the Department will follow the procedures outlined in OAR 137-030-0104(4) and (6).

(10) If unanticipated circumstances arise that are detrimental to the fulfillment of a contract's provisions, the Department reserves the right to choose a provider and negotiate an intergovernmental agreement outside of the process outlined above. Such situations may include, but are not limited to, unexpected termination of an agreement by the current provider or termination of an agreement by the Department where children's health or safety is at risk. Determination of whether such a situation exists will be determined by a Department Deputy Superintendent.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 326.051

Hist.: ODE 33-2004, f. & cert. ef. 10-15-04

DIVISION 5**MINIMUM PAY FOR SUBSTITUTE TEACHERS****581-005-0001****Minimum Pay for Substitute Teachers**

(1) This rule does not apply to substitute teachers represented in a bargaining unit in the school district by which they are employed.

(2) The minimum pay for a substitute teacher shall be \$116.75 per day during the period July 1, 1998 through June 30, 1999.

(3) For districts with no salary scale, the minimum salary for a substitute teacher employed for more than ten consecutive days in any one assignment for the same teacher is to be \$137.36 per day during the period July 1, 1998 to June 30, 1999.

(4) This rule shall be repealed June 30, 1999.

Stat. Auth.: ORS 342.610

Stats. Implemented: ORS 342.610

Hist.: 1EB 12-1978, f. 4-3-78, ef. 7-1-78; 1EB 3-1979, f. 3-30-79, ef. 7-1-79; 1EB 6-1980, f. & ef. 4-17-80; 1EB 9-1981, f. 4-1-81, ef. 7-1-81; 1EB 14-1982, f. 5-13-82, ef. 7-1-82; 1EB 4-1983, f. 5-3-83, ef. 7-1-83; 1EB 8-1984, f. 4-13-84, ef. 7-1-84; 1EB 12-1985, f. 3-29-85, ef. 7-1-85; 1EB 20-1986, f. 5-20-86, ef. 5-23-86; 1EB 36-1986, f. & ef. 8-7-86; EB 8-1987, f. & ef. 5-12-87; EB 25-1988, f. & cert. ef. 5-25-88; EB 17-1989, f. & cert. ef. 5-15-89; EB 33-1990, f. & cert. ef. 7-10-90; EB 9-1991, f. & cert. ef. 7-15-91; EB 20-1992, f. & cert. ef. 6-23-92; EB 23-1993, f. & cert. ef. 7-30-93; EB 8-1994, f. & cert. ef. 6-28-94; EB 21-1995, f. & cert. ef. 9-15-95; EB 15-1996, f. & cert. ef. 9-26-96; EB 5-1997, f. & cert. ef. 6-9-97; ODE 16-1998, f. & cert. ef. 10-12-98

DIVISION 10**REORGANIZATION****581-010-0200****Minimum Standards and Definitions Pertaining to Objectives of Reorganization**

(1) Definitions. The following definitions apply to the application of ORS 330.535 and 330.543 and this rule unless the context indicates otherwise.

(a) "Adversely Affect" means to cause any effect which diminishes educational opportunity for students;

(b) "Affected District" means a school district existing prior to reorganization which by the proposed reorganization will be significantly impacted, directly, or indirectly, in any one of the following areas:

- (A) Utilization of facilities;
- (B) Programs;
- (C) Operational costs;
- (D) Revenues;
- (E) Assessed valuation per student;
- (F) Levying authority;
- (G) Tax rates.

(c) "Assets" means all property, both real and personal, owned by or accruing to a school district;

(d) "Average Operational Revenues Per Student" means revenues available for Net Operating Expenditures as defined in ORS 327.006 and computed according to OAR 581-023-0041, divided by the district's Average Daily Membership as defined in ORS 327.006;

(e) "Committee" means the education service district board for the county in which the proposed school district is located. In any county where there is no education service district, "committee" means the governing body of the county. Where a proposed reorganization involves territory in two or more counties, a request for preparation of a reorganization plan shall initially be made to the committee for the county having the greatest number of affected students;

(f) "Contemplated Reorganization" means a reorganization plan:

(A) Which includes all or a portion of the area affected by the proposed reorganization; and

(B) Which the Committee has decided to develop, has under-development, or has adopted but which has not yet been approved by the voters.

(g) "Curricular program" means the following instructional programs:

(A) Grades Kindergarten–6 means art, health education, language arts, mathematics, music, physical education, science and social studies;

(B) Grades 7–8 means Fine and/or applied arts, health education, language arts, mathematics, physical education, science and social studies;

(C) Grades 9–12 means career development, global studies, government, health education, language arts, mathematics, personal finance and economics, physical education, science, U.S. history, and applied arts, fine arts or foreign language.

(h) "More Effectively Coordinated Programs" means a determination by the Committee and upon de novo review by the State Board of Education, that, considering the standards set forth in section (2) of this rule, the overall coordination of curricular and extracurricular programs within both the affected district(s) and the proposed district will be more effective as a result of reorganization;

(i) "More Efficient and Economical Administration" means a determination by the Committee and upon de novo review by the State Board of Education, that, considering the standards set forth in section (2) of this rule, the overall cost of providing public education to all students affected by the plan of reorganization will not increase as a result of reorganization;

(j) "School Facilities" means real and personal property, which shall include school buildings, administrative offices, warehouses, garages, buses, computers, audiovisual equipment and other property which may be owned or leased by the school district;

(k) "Significant Impact" means any impact that would diminish a district's ability to provide students such physical facilities, instructional materials, curricular programs and school personnel as may be required by federal law, state law, and administrative rules adopted by the State Board of Education;

(l) "Substantially Equal" means a standard indicating similarity to the extent that no deviation shall be allowed which would deprive any affected student of such physical facilities, instructional materials, curricular programs and school personnel as are required in order for a district to be deemed standard;

(m) "Superior" means a standard indicating qualitative or quantitative improvement over the existing programs.

(2) "Standards": The plan shall be deemed to provide for a satisfactory school district system pursuant to ORS 330.565 if it appears probable the proposed reorganization meets the requirements of ORS 330.090(4) and will achieve all of the objectives of reorganization described in ORS 330.543(1) and this rule. Such requirements of ORS 330.090(4) and the objectives of reorganization are subject to the following minimum standards:

(a) The proposed district shall offer a curricular program for kindergarten through grade twelve which shall:

(A) Meet all state standards for public schools; and

(B) Be substantially equal to or superior to the program which would be available in the affected district or districts in the absence of reorganization.

(b) Reorganization shall not adversely affect individual curricular programs in the affected district(s);

(c) The proposed district shall in a more cost effective manner, administer support services including counseling, health, food, maintenance and transportation than what would be provided in the absence of reorganization;

(d) Reorganization shall not adversely affect administration of support services within the affected district(s);

(e) The proposed district shall in a more cost effective manner administer the existing school facilities within the proposed district than what would be provided in the absence of reorganization;

(f) Reorganization shall not adversely affect the efficient and economical administration of existing school facilities in the affected districts;

(g) Utilization of existing school facilities and projected facilities in the proposed district shall:

(A) Conform with applicable federal, state and local laws and regulations relating to fire, health and safety;

(B) Provide appropriate facilities to assure handicapped students substantially equal or superior educational opportunities to those which would be provided in the absence of reorganization;

(C) Provide physical facilities to assure equal educational opportunity for both sexes.

(h) The proposed district shall provide coordination of curricular, extracurricular, athletic, and community programs and services superior to the coordination which would have existed in the absence of reorganization;

(i) Reorganization shall not adversely affect the coordination of curricular, extracurricular, athletic, and community programs within the affected district(s);

(j) Reorganization shall provide more efficient and economical administration with respect to social and economic community centers and with respect to natural geographic features within the proposed district(s) and affected district(s) as compared to what would be provided in the absence of reorganization;

(k) Reorganization shall provide integrated, nonsegregated education in the proposed and affected districts, which shall include programs to encourage and support affected children of all races and national origins to learn together and acquire the skills and attributes of citizenship;

(l) Any existing affirmative or remedial programs or services offered to students within the affected districts shall be substantially equal to those available to students within the affected districts as a result of reorganization;

(m) Reorganization shall not result in violation of ORS 659.150 or OAR 581-021-0045;

(n) Reorganization shall not result in an increase in tax rates on taxable property in the proposed or affected district(s) where such increase will have a significant impact on any affected district;

(o) Reorganization shall not result in an increase in assessed value per student in the proposed or affected district(s) where such increase will have a significant impact on any affected district;

(p) Reorganization shall not result in a reduction in assessed value per student where such reduction would have a significant impact on any affected district(s);

(q) Reorganization shall not result in a reduction in operational revenues per student where such reduction would have a significant impact on any affected district(s);

(r) In the case of a reorganization which results in a new district having an indebtedness or liability (whether or not immediately payable) which is more than 20 percent of the projected first year's operating budget of the new district, the new district shall not receive its share of assets and shall not operate until adequate provision has been made, as determined by the Committee and State Board of Education, for payment of such indebtedness or liability as it becomes due. Such provision may be in the form of a tax base or authorization for the issuance of bonds. The "indebtedness or liability" referred to in this subsection includes, but is not limited to prior debt service costs or funding of a retirement system established pursuant to ORS Chapter 239 (TRFA);

(s) When the reorganization combines two or more districts into one district, the duties of administrators shall be reviewed, and, if necessary, redistributed, to obtain maximum operating efficiency within affected districts;

(t) When reorganization involves detachment from an existing district, administrative efficiency of the existing district shall not be adversely affected by the reorganization;

(u) If by reason of the application of ORS 330.660(1)(b) or otherwise, reorganization results in a district having an excess number of employees, then:

(A) The reduction in probationary and permanent teacher staff shall be governed by ORS 342.934 of the Fair Dismissal Law, except to the extent such may be in conflict with any valid and applicable provision of an individual or collective bargaining contract; and

(B) Reduction of other employees shall be governed by any applicable and valid individual or collective bargaining contract.

(v) If the provisions of ORS 330.660(1)(b) are inapplicable to those employees who, immediately prior to the date on which the new district comes into existence, spent the majority of their on-duty time in the buildings assigned to the new district in the reorganization, shall become employees of the new district, effective ensuing July 1, unless their employment with the former district terminates prior to that date. Unless otherwise agreed by the new district and such employees or their respective collective bargaining representatives, their employment status as regards permanency (for instance, whether a permanent teacher, probationary teacher, temporary employee) shall be subject to the same rights, or lack thereof, as applied immediately prior to the date on which the new district came into existence. In such cases, unless agreed otherwise between the new district and said employees or their respective collective bargaining representatives, for a period of one year, the salary rates and employee benefits while employed shall remain unchanged. The provision does not refer to membership or receipt of benefits from a retirement system established under ORS Chapter 239 (TRFA);

(w) As determined by legal descriptions and maps, reorganization shall not result in a noncontiguous district;

(x) Reorganization shall not result in a school district having fewer than 20 children, as determined by the most recent enrollment report to the Oregon Department of Education and projected enrollment for the two forthcoming years;

(y) Reorganization shall not affect any other contemplated reorganization.

Stat. Auth.: ORS 330
Stats. Implemented: ORS Repealed
Hist.: IEB 9-1985, f. & ef. 2-5-85; IEB 27-1986, f. & ef. 7-18-86

DIVISION 11

TEXTBOOK ADOPTION

581-011-0050

Definitions

(1) Instructional material for purposes of Oregon law is defined as any organized system which constitutes the major instructional vehicle for a given course of study, or any part thereof.

(2) A major instructional vehicle may include such instructional items as a hardbound or a softbound book or books, or sets or kits of print and nonprint materials, including electronic and internet or web-based materials or media.

(3) Basal instructional programs may be adopted by the State Board of Education.

Stat. Auth.: ORS 337
Stats. Implemented: ORS 337.035
Hist.: IEB 215, f. 1-29-76, ef. 2-25-76; ODE 10-2001, f. & cert. ef. 5-15-01; ODE 28-2001, f. & cert. ef. 12-20-01

581-011-0055

Guidelines for the Selection of Instructional Materials Criteria Committees

(1) Instructional materials criteria committees shall be appointed by and work under the supervision of the Oregon Department of Education.

(2) A criteria committee in each subject area for which state adoptions are planned shall be appointed the year preceding a state adoption. The committee shall recommend categories and draft criteria

to be used in evaluating the instructional materials submitted for basal consideration.

(3) Committees shall conduct committee work in time to present the final draft of the criteria to the State Board of Education by the Board's January meeting in the year of the adoption.

(4) Each committee shall be chaired by the Department of Education specialist in the particular subject area for which criteria are being developed. In the event that there is not a staff specialist in a particular subject field, the Department shall obtain a specialist to serve as chair.

(5) Each committee shall include no less than five members selected from among Oregon classroom teachers, curriculum specialists, and others having experience and expertise in the subject area under consideration.

(6) Travel, lodging, and meal expenses for committee meetings are to be reimbursed from the State Instructional Materials Services budget.

Stat. Auth.: ORS 337
Stats. Implemented: ORS 337.035
Hist.: IEB 215, f. 1-29-76, ef. 2-25-76; IEB 245, f. & ef. 9-23-76; EB 1-1992, f. & cert. ef. 2-21-92; EB 5-1996, f. & cert. ef. 3-29-96

581-011-0060

Guidelines for Criteria Development by Committees

Criteria committees shall develop criteria which provide assistance for judgmental determination by evaluation committees and the State Board of Education. These criteria shall include, but not be limited to, the major concepts of the common curriculum goals established by the State Board of Education for Oregon schools; the criteria shall require instructional materials to provide fair treatment of all people and reflect our multicultural society.

Stat. Auth.: ORS 337
Stats. Implemented: ORS 337.035
Hist.: IEB 215, f. 1-29-76, ef. 2-25-76; IEB 245, f. & ef. 9-23-76; EB 1-1992, f. & cert. ef. 2-21-92

581-011-0065

Approval of Criteria for Evaluation of Instructional Materials

(1) Criteria Committees, under the direction of the Department of Education staff, shall develop criteria to be submitted to the State Board of Education in the fall of the year preceding the adoption year.

(2) The State Board of Education shall review the criteria which will be used in the evaluation of instructional materials submitted for adoption. The Board will adopt the criteria no later than its January meeting in the adoption year.

Stat. Auth.: ORS 337.030, 337.035, 337.060, 337.065, 337.075 & 337.260
Stats. Implemented: ORS 337.035
Hist.: IEB 215, f. 1-29-76, ef. 2-25-76; IEB 245, f. & ef. 9-23-76; EB 21-1992, f. & cert. ef. 6-23-92; EB 5-1996, f. & cert. ef. 3-29-96; ODE 10-2001, f. & cert. ef. 5-15-01

581-011-0066

Appointment of Committees to Evaluate Instructional Materials for State Adoption

(1) ORS 337.050 requires the State Board of Education to adopt a list of textbooks and instructional materials for each grade and subject field in the standard curriculum for which, in its judgment, such materials are required.

(2) The Board, therefore, directs that educators who are knowledgeable of the grade level and subject area of materials to be reviewed be appointed to committees to evaluate instructional materials submitted by publishers, and delegates to the Superintendent of Public Instruction the responsibility for appointment of such committees. No fewer than three-fourths of the membership of each committee shall be comprised of classroom teachers currently employed in Oregon public schools.

(3) The committee membership should reflect the size and geographic diversity of school districts throughout Oregon as well as the racial and ethnic diversity of Oregon students and teachers. The committee members shall be chosen from a pool of names solicited from local districts, educational service districts, and other interested organizations including appropriate subject matter professional organizations.

(4) The committees shall determine the degree to which the submitted materials meet the Board's criteria as adopted under OAR 581-011-0065. Based on the scores received, the Department of Education

will present to the Board a recommended list of basal instructional materials for adoption.

(5) The rosters of committee appointees will be available from the Office of the State Instructional Materials Services of the Department of Education.

Stat. Auth.: ORS 337.050
Stats. Implemented: ORS 337.035
Hist.: EB 5-1993, f. & cert. ef. 2-11-93; EB 5-1996, f. & cert. ef. 3-29-96

581-011-0067

Compensation for Evaluators of Submitted Instructional Materials

(1) OAR 581-011-0066 provides for appointment of committees whose task is to evaluate submitted basal instructional materials.

(2) Committee members are to receive meal and travel (and lodging where appropriate) reimbursement at state rates for expenses incurred in attending evaluation sessions at the state level.

(3) In addition, an honorarium is to be given each participant who completes all the duties assigned including attending the training sessions, attending the presentations, working on the evaluations, completing the criteria checklists and comment sheets, and participating in any assigned committee meetings for drafting annotations for the adopted list or selecting the list of materials to be recommended to the Board. The honorarium is to be determined based on current Department of Education fees paid for similar tasks.

Stat. Auth.: ORS 337.050
Stats. Implemented: ORS 337.035
Hist.: EB 16-1993, f. & cert. ef. 4-30-93; EB 5-1996, f. & cert. ef. 3-29-96

581-011-0070

State Board of Education Ratification or Rejection of Textbooks

(1) The State Board of Education shall adopt instructional materials by rule at its October meeting each year.

(2) The adoption period consists of the seven-year period following adoption of a textbook list by the State Board of Education in accordance with the provisions of ORS 337.050.

Stat. Auth.: ORS 337
Stats. Implemented: ORS 337.035, 337.050 & 337.055
Hist.: 1EB 215, f. 1-29-76, ef. 2-25-76; 1EB 245, f. & ef. 9-23-76; EB 5-1996, f. & cert. ef. 3-29-96; ODE 8-1998, f. & cert. ef. 6-23-98

581-011-0071

Instructional Materials Adopted by the State Board of Education

The State Board of Education hereby adopts by reference basal instructional materials for middle school and high school health and science. The materials are adopted in the following subjects and categories for the adoption cycle beginning July 1, 1995, and ending June 30, 2001:

- (1) Health:
 - (a) Health — Grades 6–8;
 - (b) Health — Grades 9–10.
- (2) Science:
 - (a) Integrated Science — Grades 6–8;
 - (b) Integrated Science — Grades 9–10.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 337
Stats. Implemented: ORS 337.050
Hist.: 1EB 1-1983, f. 2-14-83, ef. 2-15-83; 1EB 6-1983, f. 5-10-83, ef. 5-11-83; 1EB 12-1983, f. & ef. 11-3-83; 1EB 1-1984, f. & ef. 1-20-84; 1EB 9-1984, f. & ef. 4-13-84; EB 1-1989, f. & cert. ef. 1-23-89; EB 14-1989, f. & cert. ef. 4-19-89; ED 1-1990, f. & cert. ef. 1-19-90; EB 14-1994, f. & cert. ef. 10-3-94; EB 17-1994, f. & cert. ef. 12-15-94

581-011-0072

Instructional Materials Adopted by the State Board of Education

(1) The State Board of Education adopts by reference “State-Adopted Instructional Materials for the Social Sciences, 1999–2005,” listing basic instructional materials in the following categories:

- (a) Social Science, Grades K–5;
- (b) Social Science, Grades 6–8;
- (c) Civics, Grades 9–12;
- (d) Economics, Grades 9–12;
- (e) Geography, Grades 9–12;
- (f) U.S. History, Grades 9–12;
- (g) World History, Grades 9–12.

(2) The recommended materials referred to in section 1 of this rule are adopted for the adoption cycle beginning July 1, 1999, and ending June 30, 2005.

(3) The State Board of Education adopts by reference “Social Sciences Instructional Materials — Contract Years 2005–2011” for the following categories:

- (a) Social Sciences, Grades K–5/6;
- (b) Social Sciences, Grades 6–8;
- (c) Civics, Grades 9–12;
- (d) Economics, Grades 9–12;
- (e) Geography, Grades 9–13;
- (f) U.S. History, Grades 9–12;
- (g) World History, Grades 9–12.

(4) The recommended materials referred to in section 3 of this rule are adopted for the adoption cycle beginning July 1, 2005, and ending June 30, 2011.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 337.055
Stats. Implemented: ORS 337.050
Hist.: 1EB 6-1985, f. 1-30-85, ef. 1-31-85; 1EB 13-1985, f. 6-17-85, ef. 7-1-85; 1EB 11-1986, f. 3-21-86, ef. 3-24-86; 1EB 14-1986, f. 4-25-86, ef. 4-28-86; 1EB 19-1986, f. 5-20-86, ef. 5-23-86; EB 1-1991, f. & cert. ef. 1-24-91; ODE 18-1998(Temp), f. & cert. ef. 11-9-98 thru 5-8-99; ODE 1-1999, f. & cert. ef. 1-12-99; ODE 34-2004, f. & cert. ef. 12-16-04

581-011-0073

Instructional Materials Adopted by the State Board of Education

(1) The State Board of Education hereby adopts by reference basal instructional materials on the official list of language arts publications. The recommended materials are adopted in the following categories for the adoption cycle beginning July 1, 1994, and ending June 30, 2000: Language Arts:

- (2) Language Arts:
 - (a) Integrated Reading/Writing — Grades K–5;
 - (b) Handwriting — Grades 1–4;
 - (c) Literature — Grades 6–8;
 - (d) Literature — Grades 9–10;
 - (e) American Literature — High School;
 - (f) Written Composition — Grades 6–8;
 - (g) Written Composition — Grades 9–10.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 337.050
Stats. Implemented: ORS 337.050
Hist.: EB 2-1987, f. & ef. 2-5-87; EB 6-1987, f. & ef. 4-6-87; EB 1-1988, f. & cert. ef. 1-12-88; EB 27-1993, f. & cert. ef. 9-29-93

581-011-0074

Instructional Materials Adopted by the State Board of Education

The State Board of Education hereby adopts by reference basal instructional materials for elementary school health and science and elementary school, middle school, and high school mathematics, “State Adopted Instructional Materials, 1996–2002” dated January 19, 1996. The materials are adopted in the following subjects and categories for the adoption cycle beginning July 1, 1996, and ending June 30, 2002.

- (1) Health: Health — Grades 3–5.
- (2) Science: Science — Grades 3–5.
- (3) Mathematics:
 - (a) Mathematics — Grades K–5;
 - (b) Mathematics — Grades 6–8;
 - (c) Mathematics — Grades 8–10.

(4) Integrated Health, Math and Science: Integrated Health, Math and Science — Grades K–5.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 337.050
Stats. Implemented: ORS 337.050
Hist.: EB 25-1995, f. & cert. ef. 11-6-96; EB 1-1996, f. & cert. ef. 1-29-96

581-011-0075

Proposal (BID) Forms

(1) Instructional materials proposals submitted by publishers must be on forms supplied by the Department of Education. A separate continuation sheet must be used for each subject category on which a proposal is submitted. Proposal forms will be provided by the State Instructional Materials Services, Department of Education, Salem, Oregon. Samples submitted and specifications set forth in the proposals shall conform exactly with the instructional materials which the company will be able to deliver.

(2) The continuation sheets shall specify the subject, category, and company name and shall list the author and exact title of each item of instructional material (including series title, if any), grade level, date

of copyrights and prices. Each continuation sheet shall also contain the following explanation of terms which are considered a part of the proposal:

(a) The wholesale price at depository is the price at which the instructional materials will be furnished to the State Board of Education and to school districts at the wholesale depository, or wholesale depositories, maintained in the state;

(b) The retail price (list price) is the price at which the instructional materials will be furnished to the general public;

(c) The wholesale price at publishers is the price at which the instructional materials will be furnished to the State Board of Education and to school districts f.o.b. at the place of publication;

(d) On both the proposal and contract the wholesale at publisher price and the wholesale at depository price shall be the same thus requiring the publisher to pay the freight to transport the contracted materials to the Oregon depository.

(3) The bid forms shall contain such other information and requirements as the Department of Education determines are necessary.

Stat. Auth.: ORS 337.030, 337.035, 337.060, 337.065, 337.075 & 337.260
Stats. Implemented: ORS 337.060
Hist.: IEB 215, f. 1-19-76, ef. 2-25-76; IEB 245, f. & ef. 9-23-76; EB 21-1992, f. & cert. ef. 6-23-92

581-011-0076

Instructional Materials Adopted by the State Board of Education (Second Language)

The State Board of Education hereby adopts by reference basal instructional materials for elementary and secondary second languages, "State Adopted Instructional Materials in Second Languages, 1997-2003." The recommended materials are adopted in the following categories for the adoption cycle beginning July 1, 1997 and ending June 30, 2003:

(1) Elementary Second Languages (Grades K-5), American Sign Language, French, German, Japanese, Spanish;

(2) Secondary Second Languages (Grades 6-12), First and Second Year Programs, American Sign Language, French, German, Japanese, Spanish;

(3) Advanced Secondary Second Languages (Grades 6-12), Third Year Programs, American Sign Language, French, German, Japanese, Spanish.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 337.050
Stats. Implemented: ORS 337.050
Hist.: EB 16-1996, f. & cert. ef. 11-1-96

581-011-0077

Instructional Materials Adopted by the State Board of Education, 2000-2006

(1) The State Board of Education adopts by reference "State-Adopted Instructional Materials for English, 2000-2006" listing basal instructional materials in the following categories:

(a) English, Grades K-2/3;

(b) English, Grades K-5;

(c) English, Grades 6-8;

(d) English, Grades 9-12.

(2) The recommended materials are adopted for the adoption cycle beginning July 1, 2000 and ending June 30, 2006.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 337.050
Stats. Implemented: ORS 337.050
Hist.: ODE 26-1999, f. & cert. ef. 11-1-99

581-011-0078

Instructional Materials Adopted by the State Board of Education, 2001-2007

(1) The State Board of Education adopts by reference "State-Adopted Instructional Materials for Health, 2001-2007" listing instructional materials in the following categories:

(a) Health — Grades K-5/6;

(b) Health — Grades 6-8; and

(c) Health — Grades 9-12.

(2) The recommended materials are adopted for the adoption cycle beginning July 1, 2001 and ending June 30, 2007.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 337.050
Stats. Implemented: ORS 337.050

Hist.: ODE 26-2000(Temp), f. & cert. ef. 10-24-00 thru 4-20-01; ODE 28-2000, f. & cert. ef. 12-11-00

581-011-0079

Instructional Materials for Science Adopted by the State Board of Education, 2002-2008

(1) The State Board of Education adopts by reference "State-Adopted Instructional Materials for Science, 2002-2008" listing instructional materials in the following categories:

(a) Science, Grades K-5/6;

(b) Science, Grades 6-8;

(c) Biology, Grades 9-12;

(d) Chemistry, Grades 9-12;

(e) Earth Science, Grades 9-12;

(f) Integrated Science, Grades 9-12;

(g) Physical Science, Grades 9-12;

(h) Physics, Grades 9-12.

(2) The recommended materials are adopted for the adoption cycle beginning July 1, 2002 and ending June 30, 2008.

[Publications referenced are available from the agency.]
Stat. Auth.: ORS 337.050
Stats. Implemented: ORS 337.050
Hist.: ODE 27-2001, f. & cert. ef. 11-7-01

581-011-0080

Contract Forms

The contract entered into by the State Board of Education with publishers whose instructional materials have been adopted by the State Board of Education shall be on a form furnished by the State Instructional Materials Services of the Department of Education. The contract shall require the publisher to maintain at least one depository to be designated by the Board, where such instructional materials may be purchased, and to furnish such instructional materials according to law and the conditions named in the proposal. The contract shall contain such other information and requirements as the Department of Education determines are necessary.

Stat. Auth.: ORS 337.030, 337.035, 337.060, 337.065, 337.075 & 337.260
Stats. Implemented: ORS 337.090
Hist.: IEB 215, f. 1-29-76, ef. 2-25-76; IEB 245, f. & ef. 9-23-76; IEB 2-1978, f. & ef. 1-20-78; IEB 1-1984, f. & ef. 1-20-84; EB 21-1992, f. & cert. ef. 6-23-92

581-011-0085

Independent Adoptions

(1) Upon prior notice to the State Board of Education (Board), the district school board of any school district may adopt independently instructional materials for use in place of or in addition to those adopted by the Board, provided they meet the guidelines and criteria established by the Board. Such district adoptions shall be known as independent adoptions.

(2) The Board delegates to the State Superintendent of Public Instruction the authority to receive from the school districts their notifications of independent adoptions of instructional materials.

(3) In order to give proper notification that an independent adoption is being made, the administrative head of the district must send to the State Superintendent of Public Instruction, prior to placing the instructional materials into use in the local schools, a notification, approved by the local school board. The notification shall include the following information:

(a) The subject, category, and grade level(s) in which the instructional materials will be used;

(b) The title of the instructional materials;

(c) The publisher of the instructional materials;

(d) The copyright date of the instructional materials;

(e) The date on which the local school board approved the independent adoption;

(f) The date on which the district intends to install the instructional materials for use in the school system; and

(g) A statement that a completed criteria checklist showing the degree to which the instructional materials meet the criteria established by the State Board of Education is on file in the district office. (Criteria checklists for the specific subject/category are available from the State Instructional Materials Services, Department of Education, Salem, Oregon.)

(4) Independent adoptions are valid only for the period ending with the close of the current state adoption period for the subject area identified.

Stat. Auth.: ORS 337.050(2) & 337.141

Stats. Implemented: ORS 337.141

Hist.: 1EB 215, f. 1-29-76, ef. 2-25-76; 1EB 245, f. & ef. 9-23-76; 1EB 19-1982, f. & ef. 11-23-82; EB 2-1991, f. & cert. ef. 2-28-91; EB 21-1991(Temp), f. 10-30-91, cert. ef. 11-1-91; EB 30-1991, f. & cert. ef. 12-18-91; ODE 10-2001, f. & cert. ef. 5-15-01

581-011-0086

Substitutions of New Editions of State-Adopted Instructional Materials

(1) The State Board of Education may approve the request of a publisher to substitute a more recent edition of any officially adopted textbook or item of instructional material in addition to of the edition or item adopted by the board.

(2) In order to meet the qualifications for approval, a new edition of a state-adopted text must:

(a) Be submitted by the publisher to the State Superintendent of Public Instruction, Department of Education, with a letter of request indicating the category of the adopted edition, title, author, copyright date of substitution edition, and copyright date of adopted edition. The publisher must state that the text will be supplied to Oregon schools at the contract price of the originally adopted edition. A list of the nature of the changes between the two editions must be enclosed with the letter.

(b) Be supplied in addition to, rather than in place of, the adopted edition. School districts cannot be required to use a substituted edition of a state-adopted text; both editions must be available for distribution in the state. However, in the event the substitution contains only minor copyright revisions, the board may determine that it is not necessary for the originally adopted edition to be available for distribution.

(c) Be compatible with the previous edition in pagination, illustrations, content, etc., to the degree that the texts may be easily used interchangeably in the classroom.

Stat. Auth.: ORS 337.050(2) & 337.141

Stats. Implemented: ORS 337.050

Hist.: EB 30-1991, f. & cert. ef. 12-18-91; EB 5-1996, f. & cert. ef. 3-29-96

581-011-0090

Assessment of Submission Fees

The following provisions shall govern the payment and collection of submission fees required of publishers who submit instructional materials for adoption. These rules are established pursuant to ORS 337.065.

(1) The fee, the retail price or \$50 whichever is greater, will be levied for each title or item of instructional material which is submitted by the publisher for review and possible adoption by the State Board of Education. An "item of instructional material" as used in this subsection is a component, set or kit of instructional materials packaged and sold as a unit. The publisher will indicate on the submission forms and the official proposal forms furnished by the State Instructional Materials Services only the item(s) proposed for adoption.

(2) No fee will be required for teacher's editions of instructional materials which contain the same textual material as students' content for teacher use even though they may be evaluated in conjunction with the basic instructional program to support its strength. However, in those instances in which a teacher's guide in itself constitutes the basic program, the fee will be charged.

(3) An item of instructional material which is submitted in multiple forms (e.g., hardback, softback, electronic, loose-leaf or broken into several parts which are produced as separate units — unless these parts are submitted for adoption at separate grade levels) which contain the same content and are evaluated essentially as one item will be assessed only one fee for the most costly format. If the materials are submitted as a set or kit for a continuous sequence of grades, a separate fee will be charged for each grade encompassed. If an item of instructional material is submitted in more than one category, a separate submission form and official proposal form must be completed for each category. A separate fee will be assessed for each category.

(4) Official forms for submission of instructional materials by publishing companies for consideration for adoption shall carry instructions and provide columns for entering the retail price and the fee to be paid for each item. Such fees will be checked for accuracy by the staff of the State Instructional Materials Services on receipt of the forms, and the company will be billed for the amount due. The publisher's materials are approved for evaluation for adoption upon receipt

of the correct fee. No fees will be refunded once the evaluation has been completed except in cases of fees miscalculation.

Stat. Auth.: ORS 337.030, 337.035, 337.060, 337.065, 337.075 & 337.260

Stats. Implemented: ORS 337.065

Hist.: 1EB 215, f. 1-29-76, ef. 2-25-76; 1EB 245, f. & ef. 9-23-76; EB 21-1992, f. & cert. ef. 6-23-92; EB 5-1996, f. & cert. ef. 3-29-96

581-011-0095

Submission of Instructional Materials

The following rules are in effect between publishers and their representatives and members of the State Board of Education:

(1) No materials may be considered by the Board unless delivered at least 60 days prior to the adoption date.

(2) All publishers are required to prepare briefs which include documentation and analysis on their submitted instructional materials showing how they conform to the criteria adopted by the State Board of Education for the review and selection of instructional materials. Forms for preparing such briefs are available from the State Instructional Materials Services, Department of Education. Completed briefs must be submitted to appropriate evaluation committee members and Department of Education staff as directed by the State Instructional Materials Services.

Stat. Auth.: ORS 337.030, 337.035, 337.060, 337.065, 337.075 & 337.260

Stats. Implemented: ORS 337.065

Hist.: 1EB 215, f. 1-29-76, ef. 2-25-76; 1EB 245, f. & ef. 9-23-76; EB 21-1992, f. & cert. ef. 6-23-92

581-011-0117

Criteria for the Selection and Adoption of Instructional Materials

(1) The State Board of Education adopts by reference the **1996–2003 Criteria for the Selection and Adoption of Basal Instructional Materials** for the following:

(a) Elementary Second Languages — Grades K–5 in Spanish, French, German, Japanese and American Sign Language;

(b) First and Second Year Secondary Second Language Programs — Grades 6–12 in Spanish, French, German, Japanese and American Sign Language;

(c) Third Year Secondary Second Language Programs — Grades 6–12 in Spanish, French, German, Japanese and American Sign Language.

(2) The State Board of Education adopts by reference the 1995–2001 Criteria for the Adoption of Basal Instructional Materials for the following:

(a) Health — Grades 6–8;

(b) Health — High School;

(c) Integrated Science — Grades 6–8;

(d) Integrated Science — High School.

(3) The State Board of Education adopts by reference the 1996–2002 Criteria for the Adoption of Basal Instructional Materials for the following:

(a) Mathematics — Grades K–5;

(b) Mathematics — Grades 6–10;

(c) Mathematics — Grades 8–10;

(d) Health — Grades 3–5;

(e) Science — Grades 3–5;

(f) Integrated Mathematics, Science, and Health — Grades K–5.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 337.035

Stats. Implemented: ORS 337.035

Hist.: 1EB 3-1982, f. & ef. 1-26-82; EB 31-1987, f. & ef. 12-10-87; EB 1-1994, f. & cert. ef. 2-4-94; EB 3-1995, f. & cert. ef. 1-24-95; EB 1-1996, f. & cert. ef. 1-29-96

581-011-0118

Criteria for Selection and Adoption of Instructional Materials for the Arts, 2005–2012

The State Board of Education adopts by reference the Criteria for the Selection and Adoption of Instructional Materials for the Arts in the following categories:

(1) Visual Art Education — Grades K–5/6;

(2) Visual Art Education — Grades 6–8;

(3) Music Education — Grades K–5/6;

(4) Music Education — Grades 6–8; and

(5) Visual/Performing Arts — Grades 9–12.

Stat. Auth.: ORS 337.035

Stats. Implemented: ORS 337.035

Hist.: 1EB 1-1984, f. & ef. 1-20-84; EB 34-1989, f. & cert. ef. 12-20-89; EB 1-1997, f. & cert. ef. 3-12-97; ODE 1-1998, f. & cert. ef. 2-27-98; ODE 2-2005, f. & cert. ef. 2-14-05

581-011-0119

Criteria for Adoption of Instructional Materials 1999–2006

(1) The State Board of Education adopts by reference the Criteria for the Adoption of Instructional Materials for English/Language Arts in the following categories:

- (a) Category 1, English/Language Arts — Grades K–5/6;
- (b) Category 2, English/Language Arts — Grades 6–8; and
- (c) Category 3, English/Language Arts — Grades 9–12.

(2) The State Board of Education adopts by reference the Criteria for the Adoption of Instructional Materials for English as a Second Language in the following categories:

- (a) Category 1, English as a Second Language — Grades K–5/6;
- (b) Category 2, English as a Second Language — Grades 6–8;

and

- (c) Category 3, English as a Second Language — Grades 9–12.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 337.035

Stats. Implemented: ORS 337.035

Hist.: 1EB 1-1986, f. 1-7-86, ef. 1-8-86; EB 1-1993, f. & cert. ef. 1-13-93; ODE 9-1999, f. & cert. ef. 2-12-99; ODE 3-2006, f. & cert. ef. 2-14-06

581-011-0120

Instructional Materials Adopted by the State Board of Education (Elementary Arts)

(1) The State Board of Education hereby adopts by reference “State Adopted Instructional Materials in the Arts, Grades K–5, 1998–2004” listing basal instructional materials for the following:

- (a) Elementary Art — Grades K–5;
- (b) Elementary Music — Grades K–5.

(2) The recommended materials are adopted for the adoption cycle beginning July 1, 1998 and ending June 30, 2004.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 337.050

Stats. Implemented: ORS 337.050

Hist.: EB 14-1997, f. & cert. ef. 10-31-97

581-011-0125

1998 Criteria for Selection and Adoption of Instructional Materials

The State Board of Education adopts by reference the 1998–2005 Criteria for the Selection and Adoption of Instructional Materials for the following:

- (1) Social Science — Grades K–5;
- (2) Social Science — Grades 6–8;
- (3) Civics — Grades 9–12;
- (4) Economics — Grades 9–12;
- (5) Geography — Grades 9–12;
- (6) U.S. History — Grades 9–12;
- (7) World History — Grades 9–12.

Stat. Auth.: ORS 337.035

Stats. Implemented: ORS 337.035

Hist.: ODE 1-1998, f. & cert. ef. 2-27-98

581-011-0130

Criteria for Adoption of Instructional Materials (Health 2000–2007)

The State Board of Education adopts by reference the Criteria for the Adoption of Instructional Materials for the following:

- (1) Health — Grades K–5/6;
- (2) Health — Grades 6–8; and
- (3) Health — Grades 9–12.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 337.035

Hist.: ODE 1-2000, f. & cert. ef. 2-1-00

581-011-0135

Criteria for Adoption of Instructional Materials 2001–2008

The State Board of Education adopts by reference the Criteria for the Adoption of Instructional Materials for Science in the following categories:

- (1) Science — Grades K–5/6;
- (2) Science — Grades 6–8;
- (3) Biology — Grades 9–12;
- (4) Chemistry — Grades 9–12.
- (5) Earth Science — Grades 9–12;
- (6) Integrated Science — Grades 9–12;
- (7) Physical Science — Grades 9–12;

(8) Physics — Grades 9–12.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 337.035

Hist.: ODE 3-2001, f. & cert. ef. 1-29-01

581-011-0140

Criteria for Adoption of Instructional Materials — Mathematics 2002–2009

The State Board of Education adopts by reference the Criteria for the Adoption of Instructional Materials for Mathematics in the following categories:

- (1) Mathematics — Grades K–5/6;
- (2) Mathematics — Grades 6–8; and
- (3) Mathematics — Grades 9–12.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 337.035

Hist.: ODE 4-2002, f. 1-25-02, cert. ef. 1-28-02

581-011-0145

Instructional Materials for Mathematics Adopted by the State Board of Education, 2003–2009

(1) The State Board of Education adopts by reference “State-Adopted Instructional Materials for Mathematics, 2003–2009” listing instructional materials in the following categories:

- (a) Mathematics — Grades K–2/3;
- (b) Mathematics — Grades K–5/6;
- (c) Mathematics — Grades 6–8; and
- (d) Mathematics — Grades 9–12.

(2) The recommended materials are adopted for the adoption cycle beginning July 1, 2003 and ending June 30, 2009.

[Publications: Publications referenced are available from the Agency]

Stat. Auth.: ORS 337.050

Stats. Implemented: ORS 337.050

Hist.: ODE 23-2002, f. & cert. ef. 11-15-02

581-011-0210

Instructional Materials Adopted by the State Board of Education

(1) The State Board of Education adopts by reference “State-Adopted Instructional Materials for the Arts, 2006–2012,” listing basic instructional materials in the following categories:

- (a) Visual Art Education, Grades K–5/6;
- (b) Visual Art Education, Grades 6–8;
- (c) Music Education, Grades K–5/6;
- (d) Music Education, Grades 6–8; and
- (e) Visual/Performing Arts, Grades 9–12.

(2) The recommended materials referred to in section 1 of this rule are adopted for the adoption cycle beginning July 1, 2006, and ending June 30, 2012.

Stat. Auth.: ORS 337.050

Stats. Implemented: ORS 337.050

Hist.: ODE 9-2005, f. & cert. ef. 11-2-05

DIVISION 15

SPECIAL EDUCATION

581-015-0005

Definitions

The definitions below apply to Oregon Administrative Rules 581-015-0015 through 581-015-0296, unless the context indicates otherwise.

(1) “Adult student” is a student for whom special education procedural safeguard rights have transferred as described in OAR 581-015-0101.

(2) “Assistive technology device” means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability.

(3) “Assistive technology service” means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:

(a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child’s customary environment;

(b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

(c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and

(f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.

(4) "Children with disabilities" means children who require special education because of: autism; communication disorders; deaf-blindness; emotional disturbances; hearing impairments, including deafness; mental retardation; orthopedic impairments; other health impairments; specific learning disabilities; traumatic brain injuries; or visual impairments, including blindness.

(a) "Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction that adversely affects a child's educational performance. Other characteristics that may be associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. Essential features are typically but not necessarily manifested before age three. Autism may include autism spectrum disorders such as but not limited to autistic disorder, pervasive developmental disorder — not otherwise specified, and Asperger's syndrome. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance. However, a child who qualifies for special education under the category of autism may also have an emotional disturbance as a secondary disability if the child meets the criteria under emotional disturbance.

(b) "Communication Disorder" means the impairment of speech articulation, voice, fluency, or the impairment or deviant development of language comprehension and/or expression, or the impairment of the use of a spoken or other symbol system that adversely affects educational performance. The language impairment may be manifested by one or more of the following components of language: morphology, syntax, semantics, phonology, and pragmatics.

(c) "Deafblindness" means having both hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that the child cannot be accommodated in special education programs designed solely for students having hearing or visual impairments.

(d) "Emotional Disturbance" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

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

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

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

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

(E) A tendency to develop physical symptoms or fears associated with personal or school problems;

(F) The term includes schizophrenia but does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.

(e) "Hearing Impairment" means a hearing condition, whether permanent or fluctuating, that adversely affects a child's educational performance. The term includes those children who are hard of hearing or deaf.

(f) "Mental Retardation" means significantly subaverage general intellectual functioning, and includes a student whose intelligence test score is two or more standard deviations below the norm on a standardized individual intelligence test, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, and that adversely affects a child's educational performance.

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

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

(A) Is due to chronic or acute health problems (e.g. a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, attention deficit disorder, attention deficit hyperactivity disorder, leukemia, or diabetes); and

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

(i) "Specific Learning Disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or do mathematical calculations. Specific learning disability includes [such] conditions such as perceptual disabilities, brain injury, dyslexia, minimal brain dysfunction, and developmental aphasia. The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, mental retardation, emotional disturbance, or environmental, cultural, or economic disadvantage.

(j) "Traumatic Brain Injury" means an acquired injury to the brain caused by an external physical force resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term includes open or closed head injuries resulting in impairments in one or more areas, including cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not include brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

(k) "Visual Impairment" means a visual impairment that, even with correction, adversely affects a child's educational performance. The term includes those children who are partially sighted or blind.

(5) "Consent" is defined in 581-015-0039.

(6) "Day" means calendar day unless otherwise indicated as:

(a) "Business day," which means Mondays through Fridays, other than holidays; or as

(b) "School day," which means any day, including partial days that children are in attendance at school for instructional purposes. The term "school day" has the same meaning for all children in school, including those with and without disabilities.

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

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

(9) "Evaluation" means procedures used to determine whether the child is disabled, and the nature and extent of the special education and related services that the child needs.

(10) "General curriculum" means the same curriculum as for non-disabled children. For preschool children with disabilities, the term means appropriate activities.

(11) "Health assessment statement" means a written statement issued by a nurse practitioner licensed by a State Board of Nursing specially certified as a nurse practitioner, or by a physician assistant licensed by a State Board of Medical Examiners. Both a nurse practitioner and a physician assistant shall be practicing within his or her area of specialty.

(12) "Identification" means the process of determining a child's disability and eligibility for special education and related services under OAR 581-015-0051.

(13) "Individualized Education Program" (IEP) means a written statement of an educational program which is developed, reviewed, revised and implemented.

(14) "Mediation" means a voluntary process in which an impartial mediator assists and facilitates two or more parties to a controversy in reaching a mutually acceptable resolution of the controversy and includes all contacts between a mediator and any party or agent of a party, until such a time as a resolution is agreed to by the parties or the mediation process is terminated.

(15) "Medical statement" means a written statement issued by a physician licensed by a State Board of Medical Examiners.

(16) "Native language" with reference to a person of limited English-speaking ability means the language normally used by that person or, in the case of a child, the language normally used by the parent of the child. For an individual with deafness, blindness, deafblindness or no written language, the term means the mode of communication normally used by the person (such as sign language, Braille, or oral communication). In direct contact with a child, the term means the language normally used by the child.

(17) "Order" has the meaning given in ORS 183.310 to 183.550.

(18) "Parent" means: a natural or adoptive parent of the child; a person acting as a parent; a legal guardian, other than a state agency; a surrogate parent; or an adult student to whom rights have transferred. A foster parent may be treated as a parent without being appointed as a surrogate parent if:

(a) Parental rights have been terminated by court order; and

(b) The foster parent:

(A) Has an ongoing long-term relationship with the child;

(B) Is willing to make educational decisions; and

(C) Has no interest that would conflict with the interests of the child.

(19) "Participating agency" means a state or local agency, other than the school district responsible for a student's education, that is financially and legally responsible for providing transition services to the student.

(20) "Personally identifiable" means information that includes, but is not limited to:

(a) The name of the child, the child's parent or other family member;

(b) The address of the child;

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

(d) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

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

(22) "Preschool child" means "preschool child with a disability" as defined under OAR 581-015-0900.

(23) "Private school" means an educational institution or agency not operated by a public agency. A private school may be approved as a contractor with public agencies for certain early intervention or special education programs as described in OARs 581-015-0126 and 581-015-0131.

(24) "Public agency" means a school district, an education service district, a state agency or institution, EI/ECSE contractor or sub-contractor, responsible for early intervention, early childhood special education or special education.

(25) "Regular school year" means the time in which pupils are normally enrolled in an annual period exclusive of any distinct extra or special session, such as separate summer sessions.

(26) "Related services" includes transportation and such developmental, corrective and other supportive services (including orientation and mobility services, speech language and audiology services, psychological services, physical and occupational therapy, recreation including therapeutic recreation, counseling services, including rehabilitation counseling services, social work services in schools, parent counseling and training, school health services and medical services) as are required to assist a child with a disability to benefit from special education, and includes early identification and assessment of disabling conditions in children. Medical services shall be for diagnostic and evaluation purposes only.

(27) "School age child or children" means a child or children who have reached 5 years of age but have not reached 21 years of age on or before September 1 of the current school year.

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

(29) "Short term objectives" means measurable intermediate performance steps that will enable parents, students and educators to gauge, at intermediate times during the year, how well the child is progressing toward the annual goals by either:

(a) Breaking down the skills described in the goal into discrete components; or

(b) Describing the amount of progress the child is expected to make within specified segments of the year.

(30) "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 in the classroom, instruction in the home and instruction in hospitals, institutions, special schools, and other settings. The term includes specially designed instruction in physical education, speech language services, vocational education, travel training, and orientation and mobility services.

(31) "Specially designed instruction" means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction:

(a) To address the unique needs of the child that result from the child's disability; and

(b) To ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children.

(32) "Supplementary aids and services" means aids, services and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with children without disabilities to the maximum extent appropriate.

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

(34) "Surrogate parent" means an individual who acts in place of a parent in safeguarding a child's rights in the special education decision-making process when: the parent cannot be identified or located after reasonable efforts; there is reasonable cause to believe that the child has a disability and is a ward of the state; or at the request of a parent or adult student.

(35) "Transition services" means a coordinated set of activities for a student with a disability that:

(a) Is designed within an outcome-oriented process, that promotes movement from school to post school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(b) Is based on the individual student's needs, taking into account the student's preferences and interests; and

(c) Includes:

(A) Instruction;

(B) Related services;

(C) Community experiences;

(D) The development of employment and other post school adult living objectives; and

(E) If appropriate, acquisition of daily living skills and functional vocational evaluation; and

(d) May be special education, if provided as specially designed instruction, or related services, if required to assist a student with a disability to benefit from special education.

Stat. Auth.: ORS 343.041, 343.045, 343.055 & 343.155

Stats. Implemented: ORS 343.045 - 343.155, CFR § 300.7, 300.13, 300.16, 300.17 & 300.18

Hist.: 1EB 8-1978, f. & cf. 3-3-78; 1EB 35-1978, f. & cf. 10-5-78; 1EB 18-1979(Temp), f. & cf. 11-15-79; 1EB 5-1980, f. 2-22-80, cf. 2-23-80; 1EB 18-1983(Temp), f. & cf. 12-20-83; 1EB 5-1985, f. 1-30-85, cf. 1-31-85; EB 39-1988(Temp), f. & cert. ef. 11-15-88; EB 18-1989, f. & cert. ef. 5-15-89; EB 28-1989(Temp), f. & cert. ef. 10-16-89; EB 3-1990, f. & cert. ef. 1-26-90; EB 25-1991(Temp), f. & cert. ef. 11-29-91; EB 16-1992, f. & cert. ef. 5-13-92; EB 9-1993, f. & cert. ef. 3-25-93; EB 18-1994, f. & cert. ef. 12-15-94; EB 22-1995, f. & cert. ef. 9-15-95; ODE 10-2000, f. & cert. ef. 5-3-00; ODE 2-2003, f. & cert. ef. 3-10-03

581-015-0015

Standards for Home, Hospital, Institutional or Other Regularly Scheduled Instruction

(1) School districts may provide home, hospital, institutional, or other regularly scheduled instruction to any eligible student with a disability.

(2) Funding: School districts that provide home, hospital, institutional, or other regularly scheduled instruction under section (1) of this rule may claim state school funding under OAR 581-023-0100.

(3) Criteria for Placement: School districts that propose to place a student with a disability in a home, hospital, institutional, or other

regularly scheduled program shall ensure that the following criteria are met:

(a) The student must be enrolled as a resident student of the school district;

(b) The home, hospital, institutional, or other regularly scheduled program shall be appropriate to the unique educational needs of the student;

(c) The student shall meet the minimum criteria established by the State Board of Education for determining eligibility to receive special education as set forth in OAR 581-015-0051.

Stat. Auth.: ORS 343.041, 343.045 & 343.055

Stats. Implemented: ORS 343.261

Hist.: IEB 1 87, f. 3-6-75, ef. 3-25-75; Renumbered from 581-022-0155; IEB 248, f. & ef. 9-23-76; EB 11-1995, f. & cert. ef. 5-25-95

581-015-0016

School Programs in State-Operated Hospitals and Training Centers

(1) For purposes of this rule:

(a) "Patient" means a school age child who is admitted to a state-operated hospital or training center;

(b) "School district" means the school district in which the state-operated hospital or training centers is located.

(2) All patients admitted to state operated hospitals and training centers are eligible to receive educational services.

(3) Educational services in state operated hospitals need not commence until a patient's hospital stay is expected to last five schools days or longer and the hospital staff has determined the patient is medically able to receive educational services.

(4) The school district contracting to provide the education program shall develop or implement an existing individualized education program that meets all applicable state and federal requirements for patients who meet eligibility criteria under OAR 581-015-0051.

(5) The primary purpose of the school program for patients in state-operated hospitals is to maintain the patients' educational programs. For patients working toward a GED, the school program staff shall continue the student's work in that program.

(6) The hospital or training center shall:

(a) Provide classroom space and facilities necessary to carry out the educational program for each patient;

(b) Coordinate with the school program in developing each patient's educational and medical treatment needs; and

(c) Assume responsibility for the transportation, care, treatment, and medical costs of each patient.

(7) All teachers in hospital or training center school programs shall have appropriate teacher certification under rules of the Teacher Standards and Practices Commission. At least one teacher or supervisor in the school program serving the hospital or training center shall have special education certification appropriate to the age and disability of patients served.

(8) The Department shall monitor each program for compliance with applicable state and federal requirements.

(9) The State Superintendent of Public Instruction shall ensure that the school district contracting to provide the educational program meets the following requirements:

(a) The program is operated under a written agreement with the Department of Education;

(b) Each nondisabled student has a personalized educational plan that includes goals, services, timeline, and assessment of progress;

(c) Information pertaining to the educational programs is provided to the Department in an accurate and timely manner;

(d) The educational program is developed and implemented in conjunction with the medical treatment program.

Stat. Auth.: ORS 343

Stats. Implemented: ORS 343.261

Hist.: EB 28-1987, f. & ef. 11-19-87; EB 15-1990, f. & cert. ef. 4-5-90; ODE 2-2003, f. & cert. ef. 3-10-03

581-015-0017

School Programs in Private Hospitals

(1) For purposes of this rule:

(a) "Patient" means a school age child;

(b) "Specialized intensive treatment" means that the hospital maintains special facilities, equipment, and staff;

(c) "School district" means the school district in which the private hospital is located.

(2) Private hospitals not including psychiatric facilities may submit an application for approval of a school program to the State Superintendent of Public Instruction. The application submitted shall include verification that:

(a) The hospital admits patients from throughout the state;

(b) The hospital provides specialized intensive treatment that is unique and generally not available in local community hospitals;

(c) The hospital provides services to patients who have severe, low incidence types of disabling conditions including but not limited to burns, orthopedic impairments, and head injuries, but not including drug and alcohol problems;

(d) The hospital admits patients who can be expected to be hospitalized for five days or more or readmitted frequently; and

(e) The facility is licensed as a hospital under OAR 333-500-0010(1)(a).

(3) Approval of the application by the State Superintendent of Public Instruction establishes the hospital program's eligibility to receive state funds.

(4) All patients are eligible to receive educational services. Educational services need not commence until a patient's hospital stay is expected to last five school days or longer and the hospital staff has determined the patient is medically able to receive educational services.

(5) The school district contracting to provide the education program shall develop or implement an existing individualized education program that meets all applicable state and federal requirements for patients who meet eligibility criteria for a disability under OAR 581-015-0051.

(6) The primary purpose of the school program for hospitalized patients is to maintain the patient's educational programs. For patients working toward a GED, the school program staff shall continue the student's work in that program.

(7) The hospital shall:

(a) Provide classroom space and facilities necessary to carry out the educational program for each patient;

(b) Coordinate with the school program in developing each patient's educational and medical treatment needs; and

(c) Assume responsibility for the transportation, care, treatment, and medical costs of each patient.

(8) All teachers in the hospital school program shall have appropriate teacher certification under rules of the Teacher Standards and Practices Commission. At least one teacher or supervisor in the school program serving the hospital shall have special education certification appropriate to the age and disability of patients served.

(9) Upon initial application or approval of a school program in a private hospital the Oregon Department of Education shall review the application, inspect the school program facility and confer with hospital authorities as necessary. The Department will then advise the private hospital whether the school program is approved or disapproved and under what conditions; if approved, the date upon which funds will be available for operation of the school program, and the effective date and length of the approval. The hospital may reapply for approval at the expiration of each approval period.

(10) The Department shall monitor each program for compliance with applicable state and federal requirements.

(11) The State Superintendent of Public Instruction shall ensure that the school district contracting to provide the educational program meets the following requirements:

(a) The program is operated under a written agreement with the Department of Education;

(b) Each nondisabled child has a personalized educational plan that includes goals, services, timelines, and assessment of progress;

(c) Information pertaining to the educational programs is provided to the Department in an accurate and timely manner; and

(d) The educational program is developed and implemented in conjunction with the medical treatment program.

Stat. Auth.: ORS 343

Stats. Implemented: ORS 343.261

Hist.: EB 29-1987, f. & ef. 11-19-87; EB 16-1990, f. & cert. ef. 4-5-90; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03

581-015-0033

Provision of Special Education Required

School districts shall provide special education to any eligible handicapped child residing within the jurisdictional boundaries of the

school district unless the child is receiving appropriate instruction and services in a state or regional program, facility, or institution.

Stat. Auth.: ORS 343

Stats. Implemented: ORS 343.221, 343.045 & 343.155

Hist.: 1EB 6-1978, f. 2-2-78, ef. 2-3-78

581-015-0035

Criteria for Approving School District Special Education Programs

(1) School districts operating or initiating special education programs shall have their programs approved by the State Superintendent of Public Instruction in order to qualify such programs for state reimbursement. As part of this process districts shall subscribe to the following:

(a) Special education instructional programs in the district shall include a continuum of services to meet the individual special education needs of all resident children with disabilities, including resident children with disabilities enrolled in public charter schools.

(b) Special education shall be established and conducted as an integral part of the district's regular school program;

(c) Children who require special education have the same rights and privileges provided to other students.

(2) In addition the school district shall have on file with the Oregon Department of Education a set of assurances and Department-approved policies and procedures that ensure district compliance with requirements set forth in Oregon Revised Statutes and Oregon Administrative Rules for the education of children with disabilities.

Stat. Auth.: ORS 343

Stats. Implemented: ORS 343.221

Hist.: 1EB 208, f. 12-19-75, ef. 1-16-76; Renumbered from 581-022-0175; 1EB 248, f. & ef. 9-23-76; 1EB 269, f. & ef. 12-22-77; 1EB 48-1978, f. & ef. 11-17-78; ODE 2-2003, f. & cert. ef. 3-10-03

581-015-0037

Child Find

(1) School districts shall identify, locate and evaluate all resident children who may have a disability and who may need early intervention, early childhood special education, or special education services. The requirements of this rule apply to all preschool and school age children unless these children are no longer entitled to a free appropriate public education under OAR 581-015-0600 to 581-015-0602.

(2) The requirements of this rule apply to all resident children, including:

(a) Highly mobile children with disabilities (such as migrant and homeless children);

(b) Children who are suspected of having a disability even though they are advancing from grade to grade;

(c) Private school children with disabilities, including religious school children residing in the jurisdiction of the school district;

(d) Children enrolled in public charter schools;

(e) Children who are home schooled;

(f) Children below the age of compulsory school attendance who are not enrolled in a public or private school program; and

(g) Children above the age of compulsory school attendance that has 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:

(a) Activities for private school children with disabilities shall be comparable to child find activities for public school children with disabilities.

(b) Each school district shall consult with appropriate representatives of private school children with disabilities on how to carry out these activities.

(c) 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.

Stat. Auth.: ORS 343.041, 343.045 & 343.055

Stats. Implemented: ORS 343.045, 343.155 & 343.157

Hist.: 1EB 269, f. & ef. 12-22-77; 1EB 14-1983, f. 11-23-83, ef. 11-25-83; EB 11-1995, f. & cert. ef. 5-25-95; ODE 16-2000, f. & cert. ef. 5-23-00; ODE 2-2003, f. & cert. ef. 3-10-03

581-015-0038

Census and Data Reporting

(1) School districts shall report to the Department all resident children with disabilities who have been identified, located and evaluated and are receiving early intervention, early childhood special education or special education from a public or private educational program on December 1 of each school year.

(2) If no children have been identified, located, and evaluated as being disabled, school districts shall report this fact.

(3) Each school district shall consult with representatives of private school children in deciding how to conduct the annual count of the number of private school children with disabilities.

(4) School districts shall report to the Department additional data as required by the Department for the preparation of reports to federal or state agencies. The Department shall notify school districts of additional data needed to meet the requirements of federal or state law and the applicable reporting dates.

Stat. Auth.: ORS 343.041 & 343.055

Stats. Implemented: ORS 343.045, 343.155 & 343.157

Hist.: ODE 2-2000, f. & cert. ef. 2-1-00

581-015-0039

Consent

(1) "Consent" means that:

(a) The parent or adult student has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication;

(b) The parent or adult student understands and agrees in writing to the carrying out of the activity for which consent is sought; and the consent describes that activity and lists any records that will be released and to whom; and

(c) The parent or adult student understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

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

(3) The parent or adult student's written consent shall also be obtained before administering individual intelligence tests and all tests of personality to a child pursuant to OAR 581-021-0030(2)(a).

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

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

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

Stat. Auth.: ORS 343.041, 343.045 & 343.055

Stats. Implemented: ORS 343.164, 343.045 & 343.155

Hist.: 1EB 269, f. & ef. 12-22-77; 1EB 37-1978, f. & ef. 10-5-78; EB 9-1993, f. & cert. ef. 3-25-93; EB 11-1995, f. & cert. ef. 5-25-95; ODE 16-1999, f. & cert. ef. 9-24-99; ODE 2-2003, f. & cert. ef. 3-10-03

581-015-0042

Exceptions to Consent

(1) Written parent 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 a child's IEP as a measure for determining progress.

(2) If the school district can demonstrate that it has taken reasonable measures to obtain written consent, and the parent or adult student has failed to respond, written consent need not be obtained for reevaluation, except under OAR 581-015-0039(3). "Reasonable measures" means that the school district has used procedures consistent with OAR 581-015-0067(3).

(3) Written consent is not required if a hearing officer determines under OAR 581-015-0088 that the evaluation or reevaluation is necessary to ensure that the child is provided with a free appropriate public education.

Stat. Auth.: ORS 343

Stats. Implemented: ORS 343.164

Hist.: ODE 16-1999, f. & cert. ef. 9-24-99; ODE 2-2003, f. & cert. ef. 3-10-03

581-015-0044

Criteria for Funding of Educational Programs for Children Placed by State Agencies for Psychiatric Day and Residential Treatment

(1) Eligibility Guidelines:

(a) For the purpose of determining eligibility for funding under this rule, the following definitions shall apply:

(A) "Long-term" means 90 days or longer;

(B) "Treatment program" means the treatment services provided by a private nonprofit or public agency and provided under contract with the Department of Human Services. Intermediate care facilities are excluded from this definition;

(C) "Education program" means those activities provided under contract between a school district or education service district and the Department of Education, which provide a public education to school-aged children in a treatment program;

(D) "Psychiatric day treatment programs" are those defined in OAR 581-032-1110(68);

(E) "Psychiatric residential treatment facility" is defined in OAR 309-034-1110(69).

(F) "Resident district" means the resident district as defined under ORS 343.283;

(G) "Contracting school district" means the school district, the education service district or a program under the auspices of the State Board of Higher Education that contracts with the Department of Education for the provision of educational services at the agency.

(H) "State agencies" means the Department of Human Resources and the Oregon Youth Authority.

(b) The purposes of the education program shall be as follows:

(A) To serve children placed for needs other than educational;

(B) To serve children who require schooling in a protected environment in order to protect the health and safety of themselves and/or others; and

(C) To extend the treatment process into the school day in order to fully implement the treatment plan.

(c) An agency may offer several different treatment programs serving different populations. For the purposes of determining eligibility for funding and funding levels for education programs, each program will be considered separately. Temporary shelter programs, which would not otherwise meet the definition of long-term provided in this rule, shall be considered eligible for funding only when they are attached to an eligible treatment program and the children served are primarily awaiting placement in such programs;

(d) To be eligible for an education program, a treatment program shall meet all of the following:

(A) Have a letter of approval from the Office of Mental Health and Addiction Services certifying that the psychiatric day treatment program or psychiatric residential treatment facility meets standards for day and residential treatment services for children (OAR 581-032-1120), or provides long-term residential treatment of children placed by the Department of Human Services;

(B) Meet state licensing requirements for a private child-caring agency and serve seven or more children;

(C) Be operated by a nonprofit corporation or a political subdivision of the state;

(D) Demonstrate through client admissions, staff hiring practices, and client access to services that it meets requirements for ORS 659.150 relating to the prevention of discrimination; and

(E) Demonstrate through curriculum content, teaching practices, and facilities management that the constitutional requirements regarding no religious entanglement are met.

(e) The State Superintendent of Public Instruction shall be responsible for approving the educational program under this rule.

(A) The State Superintendent of Public Instruction shall ensure that the school district contracting to provide the educational program meets the requirements in subsection (B).

(B) The district shall ensure that the program is operated in compliance with a written agreement with the Department that specifies the following services to be provided:

(i) Each child who is not a child with a disability under OAR 581-015-0051 has a personalized educational plan that includes assessment, goals, services, and timelines;

(ii) Information pertaining to students and educational programs is provided to the Department in an accurate and timely manner;

(iii) Children have opportunities to be educated in the least restrictive environment; and

(iv) The education program is developed and implemented in conjunction with the care/treatment program.

(f) Final determinations concerning the eligibility of care/treatment programs for education funding shall be made at the discretion of the State Superintendent of Public Instruction.

(2) Funding Guidelines:

(a) For the purpose of determining funding under this rule, the following definitions shall apply:

(A) "Average daily membership" means the membership of a school as defined in ORS 327.006(2);

(B) "Net operating expenditure" means the sum of expenditures as defined in ORS 327.006(6), divided by the average daily membership of the school district or in the case of an ESD, its districts, which contract for education services offered in the program;

(C) "Service level factors" means:

(i) 1.75 times the contracting district's average net operating expenditure divided by the average daily membership for students under 14 years of age and all Psychiatric Day Treatment Programs;

(ii) 2.00 times the contracting district's average net operating expenditure divided by the average daily membership for students 14 years of age and older in psychiatric residential facilities.

(b) A formula will be employed to reflect the needs of the population served and shall identify funds available for the development of an approved contract:

(A) The formula is: (Service level factors) x (the contracting district's average net operating expenditure) divided by (the average daily membership) x (average daily membership as specified in the contract with the Department of Human Services or Oregon Youth Authority) = ODE contracted amount;

(B) The factor shall represent an equitable division of funds available to the Department for programs eligible under these criteria.

(c) A special needs fund shall be established at the Oregon Department of Education which will be up to five percent of the total monies made available for this program:

(A) Individual applications may be made to this fund to cover unexpected, emergency expenses;

(B) Funds not utilized under this subsection for the first year of the biennium shall be carried forward to the next fiscal year.

(3) Funding Procedures: Upon receipt of an application of a treatment program for funding under this rule, the Department shall:

(a) Within a reasonable time determine if the treatment program meets the criteria set forth in this rule;

(b) If necessary, request additional funding or a limitation for funding from the State Legislature; and

(c) Fund the program only when funds are forthcoming.

(4) Resident District Obligations for special education services in Psychiatric Day Treatment Programs and Psychiatric Residential Treatment Facilities:

(a) The resident district is responsible for the provision and/or payment of daily transportation to and from a psychiatric day treatment education program in which a resident student is enrolled:

(A) The resident district may directly transport or contract for transportation services with the agency, an adjacent school district, an education service district or a private carrier as long as the subcontractor is operating under the provision of ORS 801.455, 801.460, and 820.100 through 820.150, or is exempt from these regulations by operating under the Public Utility Commission, ORS Chapter 767, or city regulations included in ORS Chapter 221;

(B) Subject to agreement with the parent or guardian, the resident district may reimburse a parent or guardian for the transportation of a child at the per mile rate established by that district;

(C) Transportation shall be provided by the resident district even though the education calendar of the psychiatric day treatment program differs from that of the resident district;

(D) The resident district is responsible for the provision and/or payment of transportation when it is required by the Individualized Education Program or the Personalized Education Plan for the purpose of least restrictive environment and transition services.

(b) The resident district may claim reimbursement for transportation costs under ORS 327.035 and 343.281;

(c) The resident district shall participate in all individualized education program or personalized education plan meetings involving its students.

(5) Due Process Hearings:

(a) The school district with which Oregon Department of Education contracts to educate children under ORS 343.961 is the "school district" for the purposes of carrying out the procedures required by ORS 343.165 to 343.175;

(b) The issues of the hearing shall not include the placement by the Department of Human Services or Oregon Youth Authority for long-term care or treatment;

(c) Costs for the hearings officer in due process proceedings that are in excess of the contracted educational program budget shall be paid by the Oregon Department of Education;

(d) The Oregon Department of Education and the Department of Human Services or Oregon Youth Authority, respectively, shall be parties to such proceedings and will be responsible to provide additional services ordered by a hearings officer that are beyond the funding provided to the contracted educational program.

Stat. Auth.: ORS 343.961

Stats. Implemented: ORS 343.961

Hist.: 1EB 23-1986, f. & ef. 7-14-86; EB 7-1988, f. & cert. ef. 1-15-88; EB 22-1990, f. & cert. ef. 5-18-90; EB 10-1991(Temp), f. & cert. ef. 7-15-91; EB 31-1991, f. & cert. ef. 12-18-91; ODE 2-2003, f. & cert. ef. 3-10-03

581-015-0048

Compliance Monitoring

School districts involved in the education of children with disabilities shall be monitored by the Department on a regular basis to ensure compliance with the requirements of the Individuals with Disabilities Education Act, Oregon Revised Statutes, and Oregon Administrative Rules. Monitoring procedures may include district self-assessment, data collection, analysis and reporting, on-site visits, review of policies and procedures, review of the development and implementation of IEPs, improvement planning, and auditing federal fund use.

Stat. Auth.: ORS 343.041, 343.045 & 343.055

Stats. Implemented: ORS 343.065

Hist.: 1EB 15-1983, f. 11-23-83, ef. 11-25-83; EB 6-1993, f. & cert. ef. 2-11-93; EB 11-1995, f. & cert. ef. 5-25-95; ODE 2-2003, f. & cert. ef. 3-10-03

581-015-0049

Recovery of Funds for Misclassified Children

(1) School districts shall ensure that children identified on the special education child count under Part B of the Individuals with Disabilities Education Act are limited to eligible children.

(2) For purposes of this rule, an "eligible child" means a child aged three through school-age who:

(a) Is determined to be a child with a disability under OAR 581-015-0051;

(b) Has a current IEP or IFSP that provides for special education and related services that is being implemented; and

(c) Is receiving free public education.

(3) For the purposes of this rule, an "ineligible child" means a child for whom one or more of the requirements in subsection (2) is not met.

(4) The Department shall recover funds for ineligible children included on a district's special education child count by reducing that district's Part B award for the year in which the child was counted, in direct proportion to the numbers of children classified as eligible to be counted.

Stat. Auth.: ORS 343

Stats. Implemented: ORS 343.243

Hist.: 1EB 269, f. & ef. 12-22-77; ODE 2-2003, f. & cert. ef. 3-10-03

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.

(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

(iv) Unusual responses to sensory experiences.

(c) For a child to be eligible for special education services as a child with an autism spectrum disorder, the eligibility team shall determine that:

(A) The child's disability has an adverse impact on the child's educational performance; and

(B) The child needs special education services as a result of the disability.

(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.

(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

(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 that 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 a 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 services as a child with a communication disorder, the eligibility team shall determine that:

(A) The child's disability has an adverse impact on the child's educational performance; and

(B) The child needs special education services as a result of the disability.

(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 disease or pathology that affects the acuity of the other sensory area.

(c) For a child to be eligible for special education services as a child having deafblindness, the eligibility team shall determine that:

(A) The child's disability has an adverse impact on the child's educational performance; and

(B) The child needs special education services as a result of the disability.

(4) 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.

(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 and 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 eligibility team shall determine that:

(A) The child's disability has an adverse impact on the child's educational performance; and

(B) The child needs special education services as a result of the disability;

(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.

(5) 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 contraindicated;

(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.

(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 services as a child with a hearing impairment, the eligibility team shall determine that:

(A) The child's disability has an adverse impact on the child's educational performance; and

(B) The child needs special education services as a result of the disability.

(6) 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) 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.

(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 eligibility team shall determine that:

(A) The child's disability has an adverse impact on the child's educational performance; and

(B) The child needs special education services as a result of the disability.

(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.

(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 that results in deficits in the quality, speed or accuracy of movement. These deficits must be documented by a score of two or more standard deviations below the mean in one or more of the 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 eligibility team shall determine that:

(A) The child's disability has an adverse impact on the child's educational performance; and

(B) The child needs special education services as a result of the disability.

(8) Other Health Impairment:

(a) If a child is suspected of having another 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.

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

(b) For a child suspected of having another health impairment, the child shall meet all of the minimum criteria:

(A) The child exhibits limited strength, vitality or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment;

(B) The child's limited strength, vitality or alertness is due to a chronic or acute health problem; and

(C) The child's condition is permanent or expected to last for more than 60 calendar days.

(c) For a child to be eligible for special education services as a child with another health impairment, the eligibility team shall determine that:

(A) The child's disability has an adverse impact on the child's educational performance; and

(B) The child needs special education services as a result of the disability.

(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;

(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.

(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.

(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) A child identified as having a specific learning disability need only exhibit a "discrepancy" and not necessarily a "severe discrepancy" to continue eligibility.

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

(A) The child's disability has an adverse impact on the child's educational performance; and

(B) The child needs special education services as a result of the disability.

(10) Traumatic Brain Injury:

(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; subsection (b)(A);

(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.

(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 shall meet all of the following minimum criteria:

(A) The child has an acquired injury to the brain caused by an external physical force;

(B) The child's condition shall be permanent or expected to last for more than 60 calendar days;

(C) The child's injury results in an impairment of one or more of the following areas:

- (i) Communication;
- (ii) Behavior;

(iii) Cognition, memory, attention, abstract thinking, judgment, problem-solving, reasoning, and/or information processing;

(iv) Sensory, perceptual, motor and/or physical abilities.

(c) For a child to be eligible for special education services as a child with a traumatic brain injury, the eligibility team shall determine that:

(A) The child's disability has an adverse impact on the child's educational performance; and

(B) The child needs special education services as a result of the disability.

(d) Students with brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma, are not eligible under the category of traumatic brain injury but may be eligible under a different category under this rule.

(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.

(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:

(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 eligibility team shall determine that:

(A) The child's disability has an adverse impact on the child's educational performance; and

(B) The child needs special education services as a result of the disability.

Stat. Auth.: ORS 343.045, 343.155 & 343.157

Stats. Implemented: ORS 343.157, 343.227, 343.045, 343.155, 20 USC § 1401(a) & 34 CFR 300.7(b)

Hist.: IEB 29-1978, f. & ef. 7-20-78; IEB 18-1983(Temp), f. & ef. 12-20-83; IEB 7-1986, f. & ef. 2-24-86; EB 25-1991(Temp), f. & cert. ef. 11-29-91; EB 16-1992, f. & cert. ef. 5-13-92; EB 22-1995, f. & cert. ef. 9-15-95; ODE 11-2000, f. 5-3-00, cert. ef. 7-1-00; ODE 8-2001, f. & cert. ef. 1-29-01; ODE 2-2003, f. & cert. ef. 3-10-03

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.

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

(b) For a child suspected of having a specific learning disability, the 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.

(2) The team shall prepare a written statement of eligibility.

(a) The written statement of eligibility shall include:

(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 581-015-0942;

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

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

(ii) 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 special education services; and

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

(b) For a child suspected of having a specific learning disability, the team's written report and documentation of determination of eligibility 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:

(i) Agreement with the report; or

(ii) Disagreement, with a separate statement of conclusions.

(3) 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.

(4) 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.

(5) The team may not find a child eligible for special education services if:

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

(A) Lack of instruction in reading or math; or

(B) Limited English proficiency.

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

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

Stat. Auth.: ORS 343.045, 343.155 & 343.157

Stats. Implemented: ORS 343.035, 343.157, 343.227, 34 CFR 300.7(6), 34 CFR 300.530 - 300.534 & 34 CFR 300.540 - 300.543

Hist.: EB 22-1995, f. & cert. ef. 9-15-95; ODE 12-2000, f. 5-3-00, cert. ef. 5-3-00; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03

581-015-0054

Procedures for Complaints as Required by IDEA Regulations

(1) An organization or individual, including an organization or individual from another state, may file with the State Superintendent of Public Instruction a written, signed complaint that the Department of Education, or a sub grantee, including but not limited to a regional program, an education service district or a local education agency is violating or has violated the Individuals with Disabilities Education Act or regulations under that Act.

(2) If a complaint alleges violations outside the scope of the Individuals with Disabilities Education Act, the complainant shall be informed of alternative procedures that are available to address the complainant's allegations.

(3) The complaint must allege a violation that occurred not more than one year before the date that the complaint is received by the Department unless the violation occurred within three years of the date the complaint is received by the Department and:

(a) A longer period is reasonable because the violation is continuing; or

(b) The complainant is requesting compensatory services.

(4) The complaint must include the facts on which the complaint is based. If the facts as alleged by the complainant constitute a violation of the Individuals with Disabilities Education Act:

(a) The Superintendent shall send a copy of the complaint to the responsible division within the state department, local educational agency or sub grantee and request it to respond to the allegations. The Superintendent (or designee) may also initiate attempts to resolve the complaint through mediation or alternative dispute resolution, including local resolution.

(b) The respondent shall furnish any information or documents requested by the Superintendent within ten business days of its receipt of the complaint from the Superintendent unless another time period is specified by the Superintendent. At the same time, the respondent shall send a copy of any narrative response to the complainant. If the complainant does not otherwise have access to confidential information in the response, the respondent shall provide the complainant with the non-confidential portion(s) of the response.

(5) The Superintendent shall give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint or the narrative response submitted by the respondent.

(6) The Superintendent shall investigate the allegations of the complaint to the extent necessary to resolve the matter and at the Superintendent's discretion may:

(a) Conduct an on-site investigation; and

(b) Conduct interviews and review documents as deemed necessary.

(7) If a written complaint is received that is also the subject of a due process hearing under OAR 581-015-0081, or contains multiple issues of which one or more are part of that hearing, the Superintendent shall set aside any part of the complaint that is being addressed in the due process hearing, until the conclusion of the hearing. Any issue in the complaint that is not a part of the due process hearing shall be resolved using the time limit and procedures in this rule.

(8) If an issue raised in a complaint has previously been decided in a due process hearing involving the same parties, the hearing decision is binding and the Superintendent must inform the complainant to that effect. A complaint alleging a school district's failure to implement a due process decision must be resolved by the Superintendent.

(9) The Superintendent shall issue a written decision that addresses each allegation in the complaint and contains findings of fact, conclusions, and reasons for the Department's final decision. The decision shall be issued within 60 days of receipt of the complaint or amended complaint, unless exceptional circumstances related to the complaint require an extension. Exceptional circumstances include but are not limited to an extension requested or agreed to by the complainant to pursue local resolution or mediation.

(10) If the Superintendent finds a violation, the Superintendent's written decision shall include any necessary corrective action to be undertaken as well as any documentation to be supplied by any party to ensure that the corrective action has occurred. If the decision is that a school district has failed to provide appropriate services, the Superintendent shall address:

(a) How to remediate the failure to provide those services, including, as appropriate, compensatory education, monetary reimbursement or other corrective action appropriate to the needs of the child; and

(b) Appropriate future provision of services for all children with disabilities.

(11) Parties may seek judicial review of the final order under ORS 183.484. Judicial review may be obtained by filing a petition for review within 60 days of service of the final order with the Marion County Circuit Court or with the Circuit Court for the County where the party resides.

(12) Corrective action ordered by the Superintendent shall be taken within 30 days of the date of the decision, unless another time period is specified by the Superintendent.

(13) At any time during the pendency of the complaint, if the Superintendent determines that there is a strong likelihood that the respondent has significantly breached the Individuals with Disabilities Education Act and that delay may cause irreparable harm, the Superintendent may order interim relief.

(14) If the respondent refuses to voluntarily comply with a plan of correction when so ordered, the Superintendent may take one or more of following actions:

- (a) Disapprove in whole or part, the respondent's application for federal funding;
- (b) Withhold or terminate further assistance to the respondent for an approved project;
- (c) Suspend payments, under an approved project, to a respondent;
- (d) Order, in accordance with a final state audit resolution determination, the repayment of specified federal funds; and
- (e) Withhold all or part of a district's basic school support in accordance with ORS 327.103.

(15) Before the Superintendent denies or withholds funding or orders reimbursement as provided in Section (14) of this rule, the Superintendent shall notify the respondent of its right to request a hearing in accordance with ORS 183.415.

- (a) The hearing request must be made to the Superintendent within 30 days of receiving notice;
- (b) The Superintendent shall appoint a hearings officer who will conduct the hearing in accordance with ORS 183.413 to 183.470;
- (c) The burden of proof at the hearing is on the Department;
- (d) The Superintendent's decision shall be final, subject to appeal to the United States Secretary of Education or the Oregon Court of Appeals.

(16) No person shall suffer retaliation or discrimination for having filed or participated in this complaint procedure. Any person who believes that she or he has suffered retaliation or discrimination may file a complaint under this rule with the Superintendent.

Stat. Auth.: ORS 326

Stats. Implemented: ORS 343.041

Hist.: 1EB 28-1980, f. & ef. 12-23-80; EB 26-1987(Temp), f. & ef. 11-17-87; EB 22-1988, f. & cert. ef. 5-24-88; EB 32-1988, f. & cert. ef. 8-3-88; EB 44-1990, f. & cert. ef. 9-12-90; EB 35-1992(Temp), f. & cert. ef. 11-24-92; EB 8-1993, f. & cert. ef. 3-25-93; ODE 15-1999, f. & cert. ef. 9-24-99, Renumbered from 581-001-0010; ODE 29-2000, f. & cert. ef. 12-11-00; ODE 2-2003, f. & cert. ef. 3-10-03

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 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 581-021-0220 through 581-021-0440.

Stat. Auth.: ORS 343.041, 343.045 & 343.055

Stats. Implemented: ORS 343.045 & 343.155

Hist.: 1EB 261, f. 6-2-77, ef. 6-3-77; 1EB 10-1978, f. & ef. 3-3-78; EB 11-1995, f. & cert. ef. 5-25-95; ODE 4-2000, f. & cert. ef. 2-1-2000

581-015-0057

Advanced Payment to School Districts for Special Education Programs

(1) In accordance with ORS 343.670, the Department may make advance payments to a school district or education service district that operates a special education program approved by the State Superintendent of Public Instruction.

(2) Advance payments paid by the Oregon Department of Education to the school or education service district shall be made quarterly.

(3) The first three advance payments shall be calculated either upon the district's reimbursement for the prior year or the district's estimated costs for special education for the coming school year, at the discretion of the Department.

(4) The fourth payment shall be based upon the district's approved reimbursement for the current claim less the three advance payments.

(5) In no event will the fourth payment be remitted until the Department has completed the final auditing of a district's claim.

Stat. Auth.: ORS 343

Stats. Implemented: ORS 343.281

Hist.: 1EB 269, f. & ef. 12-22-77; 1EB 14-1979, f. 10-4-79, ef. 10-5-79; ODE 2-2003, f. & cert. ef. 3-10-03

581-015-0059

Requirement for Least Restrictive Environment

School districts shall ensure that:

(1) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled; and

(2) Special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if 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.

Stat. Auth.: ORS 343.041, 343.045 & 343.055

Stats. Implemented: ORS 343.045 & 343.155

Hist.: 1EB 269, f. & ef. 12-22-77; EB 11-1995, f. & cert. ef. 5-25-95; ODE 2-2003, f. & cert. ef. 3-10-03

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 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.

Stat. Auth.: ORS 343.041, 343.045 & 343.055

Stats. Implemented: ORS 343.045 & 343.155

Hist.: 1EB 269, f. & ef. 12-22-77; EB 11-1995, f. & cert. ef. 5-25-95; ODE 31-1999, f. 12-13-99, cert. ef. 12-14-99

581-015-0061

Placement of the Child

School districts shall ensure that:

(1) The educational placement of a child with a disability:

(a) 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;

(b) Is made in conformity with the Least Restrictive Environment (LRE) provisions of OAR 581-015-0059 to 581-015-0062.

(c) Is based on the child's current IEP;

(d) Is determined at least once every 365 days; and

(e) 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 that 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.

Stat. Auth.: ORS 343.041, 343.045 & 343.055

Stats. Implemented: ORS 343.045 & 343.155

Hist.: 1EB 269, f. & ef. 12-22-77; EB 11-1995, f. & cert. ef. 5-25-95; ODE 31-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 2-2003, f. & cert. ef. 3-10-03

581-015-0062

Nonacademic Settings

(1) School districts shall take steps to provide nonacademic and extracurricular services and activities in a manner to afford children with disabilities an equal opportunity for participation in those services and activities. School districts shall ensure that each child with a disability participates with nondisabled children in those services and activities to the maximum extent appropriate to the needs of that child.

(2) 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 pro-

vide assistance to individuals with disabilities, and employment of students, including both employment by the school district and assistance in making outside employment available.

Stat. Auth.: ORS 343.041, 343.045 & 343.055

Stats. Implemented: ORS 343.045, 343.155, 34 CFR 300.306 & 34 CFR 300.553

Hist.: 1EB 269, f. & ef. 12-22-77; EB 11-1995, f. & cert. ef. 5-25-95; ODE 31-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 8-2004(Temp), f. & cert. ef. 5-11-04 thru 10-15-04; ODE 9-2004, f. & cert. ef. 7-9-04

581-015-0063

Parent and Adult Student 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 child, and the provision of a free appropriate public education to the child. 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 ensure 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;

(b) Inform the parent that they may invite other individuals who they believe have knowledge or special expertise regarding the child;

(c) Inform the parent that the team may proceed with the meeting even if the parent is not in attendance;

(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 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 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 child'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.

(5) The right to parent participation transfers to an adult student under OAR 581-015-0101.

(6) After the transfer of rights to an adult student under OAR 581-015-0101, the school district shall provide 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 invited by the adult student or by the school district.

Stat. Auth.: ORS 343.041 & 343.055

Stats. Implemented: ORS 343.164

Hist.: ODE 17-1999, f. & cert. ef. 9-24-99; ODE 2-2003, f. & cert. ef. 3-10-03

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.

Stat. Auth.: ORS 343.041, 343.045 & 343.155

Stats. Implemented: ORS 343.045 & 343.155

Hist.: 1EB 269, f. & ef. 12-22-77; EB 11-1995, f. & cert. ef. 5-25-95; ODE 32-1999, f. 12-13-99, cert. ef. 12-14-99

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:

(a) To determine whether the annual goals for the child are being achieved; and

(b) To revise the IEP as appropriate to address:

(A) Any lack of expected progress toward the annual goals described in OAR 581-015-0068, and in the general curriculum, if appropriate;

(B) The results of any reevaluation conducted under OAR 581-015-0074;

(C) Existing information about the child provided to, or by, the parents;

(D) The child's anticipated needs; or

(E) 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 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.

Stat. Auth.: ORS 343.041, 343.045 & 343.055

Stats. Implemented: ORS 343.045 & 343.155

Hist.: 1EB 269, f. & ef. 12-22-77; EB 11-1995, f. & cert. ef. 5-25-95; ODE 32-1999, f. 12-13-99, cert. ef. 12-14-99

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;

(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 implications of the evaluation results;

(g) Other individuals, including related services personnel as appropriate, 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 about the general education curriculum is necessary for IEP team decision-making.

Stat. Auth.: ORS 343.041, 343.045, 343.055, CFR 300.344, CFR 300.346(d) & Federal Register 12477, 12583

Stats. Implemented: ORS 343.045 & 343.155

Hist.: IEB 269, f. & ef. 12-22-77; EB 9-1993, f. & cert. ef. 3-25-93; ODE 32-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 2-2003, f. & cert. ef. 3-10-03

581-015-0067

Additional Parent and Adult Student Participation Requirements for IEP and Placement Meetings

(1) Parent Participation: School districts shall take steps to ensure that one or both of the parents of a child with a disability are present at each IEP or placement meeting or are afforded the opportunity to participate, including:

(a) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(b) Scheduling the meeting at a mutually agreed on time and place.

(2) Other Methods to Ensure Parent Participation: 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) Conducting an IEP/Placement Meeting without a Parent in Attendance: An IEP or placement meeting may be conducted without a parent in attendance if the school district is unable to convince the parents that they should attend.

(a) If the school district proceeds with an IEP meeting without a parent, the district must have a record of its attempts to arrange a mutually agreed on time and place such as:

(A) Detailed records of telephone calls made or attempted and the results of those calls;

(B) Copies of correspondence sent to the parents and any responses received; and

(C) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(b) The Department considers school district attempts to convince parents to attend sufficient if the school district:

(A) Communicates directly with the parent and arranges a mutually agreeable time and place, and sends written notice required under OAR 581-015-0063(2), to confirm this arrangement; or

(B) Sends written notice required under OAR 581-015-0063(2), proposing a time and place for the meeting and states in the notice that the parent may request a different time and place, and confirms that the parent received the notice.

(c) "Sufficient attempts" may all occur before the scheduled IEP or placement meeting, and do not require the scheduling of multiple agreed-upon meetings unless the team believes this would be in the best interest of the child.

(4) Considering Transition: If a purpose of the meeting is to consider transition services or transition services needs for a student, the written notice required by OAR 581-015-0063(2) shall also:

(a) Indicate this purpose;

(b) Indicate that the school district will invite the student; and

(c) If considering transition services identify any other agency that will be invited to send a representative.

(5) 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.

(6) The right to parent participation under this rule transfers to an adult student under OAR 581-015-0101.

Stat. Auth.: ORS 343.041, 343.045 & 343.055

Stats. Implemented: ORS 343.045 & 343.155

Hist.: IEB 269, f. & ef. 12-22-77; EB 9-1993, f. & cert. ef. 3-25-93; EB 11-1995, f. & cert. ef. 5-25-95; ODE 17-1999, f. & cert. ef. 9-24-99; ODE 2-2003, f. & cert. ef. 3-10-03

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 non-disabled children.

(d) The projected dates for initiation of services and modifications and the anticipated frequency, amount, 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 non-disabled children in the regular class and activities described in subsection (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, including extended and juried assessments 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 general 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 non-disabled 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 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, which ever occurs first.

Stat. Auth.: ORS 343.045, 343.055 & 343.195

Stats. Implemented: ORS 343.045 & 343.155

Hist.: 1EB 269, f. & ef. 12-22-77; EB 9-1993, f. & cert. ef. 3-25-93; ODE 32-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 2-2003, f. & cert. ef. 3-10-03

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.

Stat. Auth.: ORS 343.045, 343.055 & 343.195

Stats. Implemented: ORS 343.045, 343.155 & 343.195

Hist.: EB 9-1993, f. & cert. ef. 3-25-93; ODE 32-1999, f. 12-13-99, cert. ef. 12-14-99

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 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.

Stat. Auth.: ORS 343.045, 343.155 & 343.157

Stats. Implemented: ORS 343.164, 343.157, 343.045, 343.155, 20 USC § 1401(a)(1)(A), 20 USC § 1412(5)(c) & 20 USC § 1415(6)

Hist.: 1EB 269, f. & ef. 12-22-77; EB 22-1995, f. & cert. ef. 9-15-95; ODE 12-2000, f. 5-3-00, cert. ef. 5-3-00

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

(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 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.

Stat. Auth.: ORS 343.045, 343.155, 343.157 & 343.164

Stats. Implemented: ORS 343.164, 343.157, 343.045, 343.155 & 20 USC § 1412(5)(c)

Hist.: 1EB 269, f. & ef. 12-22-77; EB 22-1995, f. & cert. ef. 9-15-95; ODE 12-2000, f. 5-3-00, cert. ef. 5-3-00

581-015-0073

Interpretation of Evaluation Data

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:

(1) 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

(2) Ensure that information obtained from all these sources is documented and carefully considered.

Stat. Auth.: ORS 343.04, 343.155 & 343.157

Stats. Implemented: ORS 343.157, 343.045, 343.155 & 20 USC § 1412(5)(c) 20 USC § 1414(a)(5)

Hist.: 1EB 269, f. & ef. 12-22-77; EB 22-1995, f. & cert. ef. 9-15-95; ODE 12-2000, f. 5-3-00, cert. ef. 5-3-00

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) 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.

(5) Parents may challenge a school district's refusal to conduct a reevaluation under OAR 581-015-0081.

Stat. Auth.: ORS 343.157 & 343.173

Stats. Implemented: ORS 343.157, 343.173 & 20 USC § 1412(5)(c)

Hist.: 1EB 269, f. & ef. 12-22-77; EB 22-1995, f. & cert. ef. 9-15-95; ODE 12-2000, f. 5-3-00, cert. ef. 5-3-00; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03

581-015-0075

Prior Written Notice

(1) Prior written notice shall be given to the parent of a child, and to the adult student after rights have transferred, 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 child, or the provision of a free appropriate public education to the child.

(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) A description of the action proposed or refused by the school district;

(b) An explanation of why the district proposed or refused to take the action;

(c) A description of any options that the school district considered and reasons why those options were rejected;

(d) A description of each evaluation procedure, test, record, or report which is directly relevant to the proposal or refusal;

(e) A description of any other factors that is relevant to the school district's proposal or refusal; and

(f) A statement that the parents of a child with a disability have procedural safeguards and the means by which a copy of the Notice of Procedural Safeguards may be obtained;

(g) Sources for parents to contact to obtain assistance in understanding their procedural safeguards.

(4) The prior notice shall be:

(a) Written in language understandable to the general public; and

(b) 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 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) The parent understands the content of the notice; and

(c) There is written evidence that the requirements in subsections (5)(a) and (b) of this rule has been met.

(6) If the proposed action requires prior written notice and written consent, the district may give notice at the same time it requests consent.

Stat. Auth.: ORS 343.045, 343.155 & 343.157

Stats. Implemented: ORS 343.157, 343.227, 343.045, 343.155, 20 USC § 1401(a) & 34 CFR 300.7(b)

Hist.: 1EB 18-1979(Temp), f. & ef. 11-15-79; 1EB 5-1980, f. 2-22-80, ef. 2-23-80; EB 28-1989(Temp), f. & cert. ef. 10-16-89; EB 3-1990, f. & cert. ef. 1-26-90; EB 11-1995, f. & cert. ef. 5-25-95; ODE 18-1999, f. & cert. ef. 9-24-99; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04

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 child; and

(d) Also to the child, at least a year before the child'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 child'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 581-015-0050, 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 written in language understandable to the general public.

(4) 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.

(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 ensure:

- (a) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
- (b) That the parent understands the content of the notice; and
- (c) That there is written evidence that the district has met these requirements.

Stat. Auth.: ORS 343.055

Stats. Implemented: ORS 343.041

Hist.: ODE 19-1999, f. & cert. ef. 9-24-99; ODE 2-2003, f. & cert. ef. 3-10-03

581-015-0080

Notice of Hearing, Hearing Rights, and Pre-Hearing Conference

(1) Upon receipt of a written request by a parent, or the school district for a hearing regarding the identification, evaluation, individualized education program, educational placement of the child or the provision of a free appropriate public education to a child, the Superintendent shall:

(a) Appoint a hearings officer, in accordance with OAR 581-015-0096, to conduct the hearing.

(b) Provide the parent with a copy of the Notice of Procedural Safeguards, which includes a statement of hearing rights;

(c) Inform the parties that mediation is available at no cost to the parents or school district; and

(d) Inform the parent of any free or low-cost legal services and other relevant services.

(2) Notice of Hearing:

(a) The hearing officer shall provide a notice to the parties of the hearing. The notice shall be served by registered or certified mail.

(b) The hearing notice shall include:

(A) A statement of the time and place of the hearing;

(B) A statement of the authority and jurisdiction under which the hearing is to be held;

(C) A reference to the particular sections of the statutes and rules involved;

(D) A short and plain statement of the matters asserted or charged;

(E) A statement that mediation is available to the parties at no cost from the Department;

(F) A statement of hearing rights as described in subsection (3).

(3) Due Process Hearing Rights: Parties to a due process hearing conducted under OAR 581-015-0080 (Notice of Hearing, Hearing Rights, and Pre-Hearing Conference) or OAR 581-015-0550 through 581-015-0559 (Discipline for Students with Disabilities) have the following rights:

(a) During the pendency of any due process hearing or judicial appeal, the child shall remain in the present educational placement unless:

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

(B) If applying for initial admission to a public school, the parent consents to the child's placement in a program provided or selected by the district at the district's expense until all proceedings are completed;

(C) The school district orders a change in placement to an appropriate interim alternative educational setting for up to 45 days due to a weapon, illegal drug, or controlled substance incident; or

(D) The hearing officer orders a change in placement to an appropriate interim alternative educational setting for up to 45 days due to the substantial likelihood of injurious behavior.

(b) Any party to a hearing has the right to:

(A) Be accompanied and advised by counsel and by individuals who have special knowledge or training with respect to the problems of children with disabilities;

(B) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(C) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least 5 business days before the hearing;

(D) Obtain a written or, at the option of the parents, electronic verbatim record of the hearing at no cost to the parents; and

(E) Obtain a written or, at the option of the parents, electronic findings of fact and hearing decision at no cost to the parents.

(c) The parent involved in a hearing has the right to:

(A) Have the child present who is the subject of the hearing; and

(B) Open the hearing to the public.

(d) The parent may seek reimbursement from court for attorney fees if the parent prevails at the administrative hearing.

(4) Pre-Hearing Conference: The hearing officer shall require the parties to appear in person or by telephone for a pre-hearing conference for the purpose of:

(a) Identifying the issues to be resolved;

(b) Establishing the length of the hearing;

(c) Deciding whether the hearing record will be a written or electronic verbatim record; and

(d) Reviewing the parties' hearing rights and procedures; and

(e) Notifying the parties of the availability of mediation services through the Department.

Stat. Auth.: ORS 343.041, 343.045 & 343.055

Stats. Implemented: ORS 343.155, 343.045 & 343.055

Hist.: 1EB 18-1979(Temp), f. & ef. 11-15-79; 1EB 5-1980, f. 2-22-80, ef. 2-23-80; EB 28-1989(Temp), f. & cert. ef. 10-16-89; EB 29-1989(Temp), f. & cert. ef. 10-16-89; EB 3-1990, f. & cert. ef. 1-26-90; EB 9-1992, f. & cert. ef. 4-7-92; EB 11-1995, f. & cert. ef. 5-25-95; ODE 20-1999, f. & cert. ef. 9-24-99; ODE 2-2003, f. & cert. ef. 3-10-03

581-015-0081

When Hearing May Be Requested

(1) Parent Requests for a Due Process Hearing.

(a) A parent may request a due process 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, which remains confidential, shall 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 may request a due process hearing regarding identification, 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 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, 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 a 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, 343.055 & 343.155

Stats. Implemented: ORS 343.045, 343.155 & 343.165

Hist.: 1EB 269, f. & ef. 12-22-77; 1EB 18-1979(Temp), f. & ef. 11-15-79; 1EB 5-1980, f. 2-22-80, ef. 2-23-80; EB 28-1989(Temp), f. & cert. ef. 10-16-89; EB 3-1990, f. & cert. ef. 1-26-90; EB 9-1992, f. & cert. ef. 4-7-92; EB 9-1993, f. & cert. ef. 3-25-93; ODE 20-1999, f. & cert. ef. 9-24-99; ODE 2-2003, f. & cert. ef. 3-10-03

581-015-0084

Failure to Appear at a Hearing

(1) When a parent, having requested a hearing, fails to appear at the specified time and place, the hearings officer shall enter a decision which supports the school district action.

(2) The decision supporting the school district's action shall set forth the material on which the action is based, or the material shall be attached to and made a part of the decision.

Stat. Auth.: ORS 343.041, 343.045 & 343.055

Stats. Implemented: ORS 343.045, 343.155 & 343.165

Hist.: 1EB 269, f. & ef. 12-22-77; 1EB 18-1979(Temp), f. & ef. 11-15-79; 1EB 5-1980, f. 2-22-80, ef. 2-23-80; EB 11-1995, f. & cert. ef. 5-25-95

581-015-0085

Subpoenas and Depositions

(1) Subject to section (2) of this rule, a hearing officer may upon request by either party issue subpoenas to compel the attendance of witnesses. Attorneys for either party may also issue subpoenas consistent with the Oregon Administrative Procedures Act.

(2) Before issuing subpoenas to the requesting party, the hearing officer may require a showing of need, general relevancy and the evidence to be given by the witness to be within the reasonable scope of the proceedings.

(3) On petition of any party, the hearing officer may order the testimony of any material witness to be taken by deposition in the manner prescribed by ORS Chapter 45 for depositions in civil cases. The petition shall include:

(a) The name and address of the witness whose testimony is desired;

(b) A showing of materiality of the testimony; and

(c) A request for an order that the testimony of the witness be taken before an officer named in the petition for that purpose.

(4) If the hearing officer issues an order for the taking of a deposition and the witness resides in this state and is unwilling to appear, the hearings officer may issue a subpoena as provided in section (1) of this rule requiring the witness's appearance before the officer taking the deposition.

(5) Any witness appearing pursuant to subpoena, other than parties or officers or employees of the school district, shall be tendered fees and mileage as prescribed by law in civil actions. The party requesting the subpoena shall be responsible for service of the subpoena and tendering the fees and mileage to the witness.

(6) Depositions shall only be allowed to perpetuate testimony of witnesses who would be unavailable at the time of the hearing.

Stat. Auth.: ORS 343.041, 343.045 & 343.055

Stats. Implemented: ORS 343.045, 343.155 & 343.165

Hist.: 1EB 269, f. & ef. 12-22-77; 1EB 18-1979(Temp), f. & ef. 11-15-79; 1EB 5-1980, f. 2-22-80, ef. 2-23-80; EB 11-1995, f. & cert. ef. 5-25-95; ODE 2-2003, f. & cert. ef. 3-10-03

581-015-0086

Conduct of Hearing

(1) The hearing shall be conducted by and shall be under the control of the hearing officer appointed under OAR 581-015-0080.

(2) At the discretion of the hearing officer, the hearing shall be conducted in the following manner:

(a) Statement and evidence of the school district in support of its action;

(b) Statement and evidence of the parents disputing the school district action;

(c) Rebuttal testimony.

(3) The hearing officer, counsel or other representatives of the parties, and the parents if the parents are not represented, shall have the right to question or cross-examine any witnesses.

(4) The hearing may be continued with recesses as determined by the hearing officer.

(5) The hearing officer may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious or immaterial matter.

(6) Exhibits shall be marked, and the markings shall identify the person offering the exhibits. The exhibits shall be preserved by the Superintendent as part of the record of the proceedings.

(7) Each hearing shall be conducted at a time and place that is reasonably convenient to the parents and child involved.

Stat. Auth.: ORS 343

Stats. Implemented: ORS 343.045, 343.155 & 343.165

Hist.: 1EB 269, f. 12-22-77, ef. 12-22-77; EB 28-1989(Temp), f. & cert. ef. 10-16-89; EB 3-1990, f. & cert. ef. 1-26-90; ODE 2-2003, f. & cert. ef. 3-10-03

581-015-0087

Evidence

(1) Evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible, except written evidence which has not been disclosed to both parties at least five days before the hearing.

(2) Upon objection by a party the hearings officer may exclude evidence which the hearing officer finds to be irrelevant, immaterial, or unduly repetitious.

(3) Evidence objected to may be received by the hearings officer with rulings on its admissibility or exclusion to be made at the time a final order is issued.

Stat. Auth.: ORS 343.041, 343.045 & 343.055

Stats. Implemented: ORS 343.045, 343.155 & 343.165

Hist.: 1EB 269, f. & ef. 12-22-77; 1EB 18-1979(Temp), f. & ef. 11-15-79; 1EB 5-1980, f. 2-22-80, ef. 2-23-80; EB 17-1990, f. & cert. ef. 4-5-90; EB 11-1995, f. & cert. ef. 5-25-95

581-015-0088

Decision of Hearing Officer

(1) The decision of the hearing officer in a contested case shall be made pursuant to ORS 343.167.

(2) The decision shall be entered not later than 45 days after the request for hearing is filed unless a specific extension has been granted by the hearing officer at the request of a party.

(3) A copy of the hearing decision shall be sent to the parent and school district accompanied by a statement describing the method of appealing the decision.

(4) The hearing officer shall submit a copy of the findings and hearing decision to the State Advisory Council for Special Education.

(5) The hearing officer shall write the hearing decision in such a manner so that personally identifiable information shall not be disclosed. No student or parent names shall be used.

(6) The hearing findings and decision shall be made available to the public.

Stat. Auth.: ORS 343.041, 343.045 & 343.055

Stats. Implemented: ORS 343.045, 343.167 & 343.175

Hist.: 1EB 269, f. & ef. 12-22-77; 1EB 18-1979(Temp), f. & ef. 11-15-79; 1EB 5-1980, f. 2-22-80, ef. 2-23-80; EB 28-1989(Temp), f. & cert. ef. 10-16-89; EB 3-1990, f. & cert. ef. 1-26-90; EB 9-1993, f. & cert. ef. 3-25-93; EB 11-1995, f. & cert. ef. 5-25-95; ODE 2-2003, f. & cert. ef. 3-10-03

581-015-0091

Informal Disposition

Nothing contained herein shall be construed to preclude any system of consultations or conferences with parents that is used by school districts with regard to identification, evaluation or educational placement of a child with a disability. Such conferences or consultations, however, shall not be held in lieu of a hearing requested under OAR 581-015-0081 if one is requested. A request for a hearing shall not preclude informal disposition of the matter by stipulation, agreed settlement or consent order.

Stat. Auth.: ORS 343.041, 343.045 & 343.055

Stats. Implemented: ORS 343.045, 343.155 & 343.165

Hist.: 1EB 269, f. & ef. 12-22-77; EB 11-1995, f. & cert. ef. 5-25-95

581-015-0093

Hearing Costs

(1) Costs of the Proceedings:

(a) The school district shall reimburse the Department for the hearing officer's costs related to conducting the hearing, including pre-hearing conferences, scheduling arrangements, and other related matters.

(b) 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 a party related to an action or proceeding under this rule.

Stat. Auth.: ORS 343.045, 343.055 & 343.155

Stats. Implemented: ORS 343.045, 343.155 & 343.167

Hist.: EB 28-1989(Temp), f. & cert. ef. 10-16-89; EB 3-1990, f. & cert. ef. 1-26-90; EB 9-1992, f. & cert. ef. 4-7-92; ODE 2-2003, f. & cert. ef. 3-10-03

581-015-0094

Independent Educational Evaluation

(1) A parent of a child with a disability or suspected disability has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the school district.

(a) "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 child.

(b) "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 provide information to parents about where an independent educational evaluation may be obtained, and the school district criteria applicable for independent educational evaluations.

(3) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation, the qualifications of the examiner, and cost, must be the same as the criteria the school district uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

(a) Except for the criteria in subsection (3), a school district may not impose conditions, or timelines related to obtaining an independent education evaluation at public expense.

(b) The school district shall provide parents an opportunity to demonstrate that unique circumstances justify an independent education evaluation that does not meet the district's criteria.

(4) If a parent requests an independent education evaluation at public expense, the school district shall, without unnecessary delay, either:

(a) 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 in accordance with (3); or

(b) Initiate a due process hearing under OAR 581-015-0081 to show that its evaluation is appropriate.

(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 the 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 education 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 criteria, in any decision made with respect to the provision of a free appropriate public education to the child; 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.

Stat. Auth.: ORS 343.041, 343.045 & 343.055

Stats. Implemented: ORS 343.173, 343.045 & 343.155

Hist.: 1EB 269, f. & ef. 12-22-77; 1EB 18-1979(Temp), f. & ef. 11-15-79; 1EB 5-1980, f. 2-22-80, ef. 2-23-80; EB 28-1989(Temp), f. & cert. ef. 10-16-89; EB 3-1990, f. & cert. ef. 1-26-90; EB 11-1995, f. & cert. ef. 5-25-95; ODE 21-1999, f. & cert. ef. 9-24-99; ODE 2-2003, f. & cert. ef. 3-10-03

581-015-0095

Mediation When a Hearing Has Been Requested

(1) When a parent or school district requests a due process hearing under OAR 581-015-0081, the Department shall offer mediation at no cost to the parties to resolve issues related to the hearing request.

(2) Mediation:

(a) Must be voluntary on the part of the parties;

(b) Cannot be used to deny or delay a parent's right to a due process hearing under OAR 581-015-0081, or other procedural safeguards; and

(c) Must be conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(3) The Department shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services. If a mediator is not selected on a random or rotation basis from this list, both parties shall be involved in selecting the mediator and agree with the selection.

(4) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

(5) An agreement reached by the parties to the dispute in the mediation process must be set forth in a written mediation agreement. The parties may jointly ask the hearing officer to enter the mediation agreement as an order binding upon the parties, and the hearing officer may do so, at his or her discretion.

(6) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings. The parties to the mediation process may be required to sign a confidentiality pledge before the mediation begins.

(7) Notwithstanding subsection (6), a mediation communication relating to abuse is not confidential to the extent that the participant in the mediation to whom the communication is made is required to report the communication under state abuse reporting laws.

(8) An individual who serves as a mediator:

(a) May not be an employee of:

(A) Any school district;

(B) The Department of Corrections;

(C) The Department of Education.

(b) Must not have a personal or professional conflict of interest.

(9) A person who otherwise qualifies as a mediator is not an employee under subsection (8)(a) of this rule solely because he or she is paid by the Department to serve as a mediator.

(10) The Department or school district may request parents who are reluctant to use the mediation process to meet with a neutral party who would explain the benefits of the mediation process and encourage the parents to use the process. This meeting shall occur at a time and location convenient to the parents and at no cost to the parents. The Department or school district may not deny or delay a parent's right to a due process hearing if the parent fails to participate in this meeting.

(11) Nothing in this rule precludes parents and school district representatives from using mediation or other alternative dispute resolution at school district expense to resolve disputes when a due process hearing has not been requested.

Stat.: Auth.: ORS 343.055

Stats.: Implemented: ORS 343.041

Hist.: ODE 22-1999, f. & cert. ef. 9-24-99

581-015-0096

Criteria for Impartial Hearings Officers

(1) A hearings officer appointed to conduct a hearing regarding the identification, evaluation, educational placement of a child, or the provision of a free appropriate public education to a child who may have a disability shall:

(a) Not be employed by the Department or a school district; and

(b) Not have a professional or personal interest that would conflict with his or her objectivity in the hearing.

(2) For purposes of section (1)(a) of this rule, a person who otherwise qualifies to conduct a hearing is not an employee of the Department or school district solely because the person is paid by the Department or school district to serve as a hearings officer.

(3) Hearings officers shall be selected from persons who have:

(a) Completed workshops for hearings officers sponsored by the Department or by appropriate professional organizations;

(b) Completed continuing legal education courses covering issues involved in the hearing; or

(c) Had experience handling hearings of an equivalent complexity.

(4) The Oregon Department of Education shall keep a list of the persons serving as hearings officers which shall include a statement of the qualifications of each of those individuals.

Stat. Auth.: ORS 343.041, 343.045 & 343.055

Stats. Implemented: ORS 343.165, 343.155 & 343.045

Hist.: IEB 269, f. & ef. 12-22-77; EB 28-1989(Temp), f. & cert. ef. 10-16-89; EB 3-1990, f. & cert. ef. 1-26-90; EB 11-1995, f. & cert. ef. 5-25-95; ODE 33-1999, f. 12-13-99, cert. ef. 12-14-99

581-015-0097

Procedural Rules for Due Process Hearings

If the Department uses the state Hearing Officer Panel for due process hearings, then the OAR 137-003-0501 through 137-003-0700 apply to the extent consistent with federal law. The Department's inter-agency agreement with the Hearing Officer Panel will identify delegations of authority and the application of the rules in this section.

Stat. Auth.: ORS 343.041, 343.045 & 343.055

Stats. Implemented: ORS 343.164, 343.045 & 343.155

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

581-015-0099

Surrogate Parents

(1) School districts shall ensure that the rights of a child with a disability, or suspected of having a disability, are protected by appointing a surrogate parent when:

(a) The parent cannot be identified or located after reasonable efforts; or

(b) The child is a ward of the state and there is reasonable cause to believe that the child has a disability.

(2) The school district shall not appoint a surrogate solely because the parent or adult student to whom rights have transferred is uncooperative or unresponsive to special education needs.

(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 Department;

(b) Is not an employee of any other agency involved in the education or care of the child except for an employee of a non-public agency that only provides non-education care for the child;

(c) Is free of any conflict of interest that would interfere with representing the child's special education interests; and

(d) Has knowledge and skills that ensure adequate representation of the child in special education decisions.

(4) An appointed surrogate parent shall have all of the special education rights 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 child;

(b) Be acquainted with the child's disability and the child's special education needs;

(c) Represent the child in all matters relating to the identification, evaluation, IEP and educational placement of the child; and

(d) Represent the child in all matters relating to the provision of a free appropriate public education to the child.

(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, or an adult student to whom rights have transferred, may give written consent for a surrogate to be appointed.

(a) When a parent or an adult student requests that a surrogate be appointed, the parent or adult student 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.

(b) The surrogate, alone, shall be responsible for all matters relating to the special education of the child unless the parent or adult student revokes consent for the surrogate's appointment.

(c) The parent or adult student may revoke consent at any time by providing a written request to revoke the surrogate's appointment.

(9) 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) Rights transfer to the adult student or the child graduates with a regular diploma;

(c) The child is no longer eligible for special education services;

(d) The legal guardianship of the child 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 identified or located;

(g) The appointed surrogate is no longer eligible;

(h) The child moves to another school district; or

(i) The child is no longer a ward of the state.

(10) 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 child.

Stat. Auth.: ORS 343.041, 343.045 & 343.055

Stats. Implemented: ORS 343.155 & 343.045

Hist.: IEB 18-1979(Temp), f. & ef. 11-15-79; IEB 5-1980, f. 2-22-80, ef. 2-23-80; EB 9-1992, f. & cert. ef. 4-7-92; EB 11-1995, f. & cert. ef. 5-25-95; ODE 23-1999, f. & cert. ef. 9-24-99; ODE 2-2003, f. & cert. ef. 3-10-03

581-015-0101

Transfer of Procedural Rights at Age of Majority

(1) When a child 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 child's parents under the special education laws transfer to the child. A student for whom rights have transferred is considered an "adult student" under 581-015-0005.

(2) Notwithstanding section (1) of this rule:

(a) Pursuant to a protective proceeding under ORS Chapter 125, the Probate Court may find the child 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 child is under wardship.

(3) School districts are not responsible for the costs of a protective proceeding unless the school district is the Petitioner.

(4) Pursuant to OAR 581-015-0099(8), a child to whom rights transfer may request that a surrogate be appointed to exercise the child's special education rights.

(5) This rule applies to all students, including students who are incarcerated in a state or local adult or juvenile correctional facility or jail.

Stat. Auth.: ORS 343.055

Stats. Implemented: ORS 343.155

Hist.: ODE 24-1999, f. & cert. ef. 9-24-99; ODE 2-2003, f. & cert. ef. 3-10-03

581-015-0102

Notice of Transfer of Rights at Majority

(1) The school district shall provide notice to the child 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 child's 18th birthday; or

(b) More than one year before the child's 18th birthday, if the child's IEP Team determines that earlier notice will aid transition;

(c) Upon actual knowledge that within a year the child will likely marry or become emancipated prior to age 18.

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

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

Stat. Auth.: ORS 343.055

Stats. Implemented: ORS 343.155

Hist.: ODE 25-1999, f. & cert. ef. 9-24-99

Hearing Under Section 504 of the Rehabilitation Act

581-015-0108

Definitions

The following definitions apply to OAR 581-015-0109:

(1) "Student with a disability under Section 504" means any student who:

(a) Has a physical or mental impairment that substantially limits one or more major life activities;

(b) Has a record of such an impairment; or

(c) Is regarded as having such an impairment.

(2) As used in section (1) of this rule:

(a) "Physical or mental impairment" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; endocrine; any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities;

(b) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working;

(c) "Has a record of such impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities;

(d) "Is regarded as having an impairment" means:

(A) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation;

(B) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others towards such impairment;

(C) Has none of the impairments defined in subsection (2)(a) of this rule but is treated by a school district as having such an impairment.

(3) "Qualified student with a disability under Section 504" means a student with a disability under Section 504 who is:

(a) Of an age during which non-disabled persons are provided educational services;

(b) Of any age during which it is mandatory under state law to provide such services to students with disabilities; or

(c) To whom a state is required to provide a free appropriate public education under the Individuals with Disabilities Education Act.

(4) "School District" means a school district as defined in ORS 343.153.

Stat. Auth.: ORS 326 & 323.055

Stats. Implemented: ORS 343.041

Hist.: EB 7-1987(Temp), f. & ef. 5-11-87; EB 24-1988, f. & cert. ef. 5-24-88; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03

581-015-0109

Procedures for a Hearing under Section 504 of the Rehabilitation Act of 1973

(1) The parent or guardian of a qualified student with a disability under section 504 may file a written request for a hearing with the State Superintendent of Public Instruction with respect to actions regarding the identification, evaluation, provision of a free appropriate education, or education placement of the student with the disability under Section 504, which the parent or guardian alleges to be in violation of Section 504 of the Rehabilitation Act of 1973, Public Law 93-112, or any amendment thereof. In such event, the Superintendent shall conduct a hearing.

(2) The school district involved in the hearing shall be responsible for the costs of the hearing.

(3) The parties shall be entitled to the procedural rights under OAR 581-015-0080 with the exceptions of the stay-put provision in OAR 581-015-0080(3)(f)(A) and the right to obtain at no cost a written or electronic verbatim record of the hearing in OAR 581-015-0080(3)(f)(B)(iv), both of which shall not apply to a hearing under this rule.

(4) Nothing in this rule is meant to prevent the parties from also seeking due process remedies under the Individuals with Disabilities Education Act as set forth in OAR 581-015-0080 through 581-015-0093 and 581-015-0096.

Stat. Auth.: ORS 326 & 343.055

Stats. Implemented: ORS 343.041

Hist.: EB 7-1987(Temp), f. & ef. 5-11-87; EB 24-1988, f. & cert. ef. 5-24-88; EB 24-1990, f. & cert. ef. 5-18-90; EB 9-1993, f. & cert. ef. 3-25-93; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03

State Training Centers

581-015-0111

Educational Programs of Students Attending State Training Centers

School districts operating educational programs, under contract with the Department, for students with disabilities attending state train-

ing centers must comply with all federal and state laws and regulations governing the provision of special education to students with disabilities including, but not limited to, those relating to the identification, evaluation, individualized education program, and educational placement of the student; the provision of a free appropriate public education to the student; procedural safeguards available to the student; and the confidentiality of student education records.

Stat. Auth.: ORS 343.055, 343.475 & 343.975

Stats. Implemented: ORS 343.975

Hist.: EB 19-1993, f. & cert. ef. 4-30-93

581-015-0115

Monitoring of Educational Programs at State Training Centers

The Superintendent shall conduct school improvement visits of educational programs at state training centers on a regularly scheduled basis and at other times as necessary.

Stat. Auth.: ORS 343.045, 343.055 & 343.975

Stats. Implemented: ORS 343.975

Hist.: EB 242, f. & ef. 8-27-76; EB 20-1993, f. & cert. ef. 4-30-93

Children in Private Schools Placed by a Public Agency

581-015-0126

Standards for Approval of Private Schools as Contractors with Public Agencies

(1) Private schools that intend to provide early intervention (EI), early childhood special education (ECSE) or special education under a written agreement with a public agency, shall apply annually to the Department's Office of Special Education for approval.

(2) 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 building inspectors;

(c) Health standards of the county health department; and

(d) The requirements set by:

(A) OAR 581-022-1420 (emergency plans and safety programs);

(B) OAR 581-022-1430 (asbestos management plans); and

(C) OAR 581-022-1440 (infectious diseases).

(D) In place of requirements (A), (B), and (C) above, private schools providing EI/ECSE services only may submit documentation that the private school meets the safety requirements set by the Child Care Division of the Oregon Department of Employment.

(e) 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, the policy limits covered by the policy, and the effective term of the policy.

(3) The annual application shall include assurances, on a form provided by the Department, that the private school:

(a) Uses curriculum content, teaching practices and management practices that do not violate the constitutional prohibition on religious entanglement;

(b) Implements the EI/ECSE or special education services as described in each child's individualized family service plan or individualized education program;

(c) Has procedures in place regarding staff hiring and evaluation that require:

(A) The careful checking of personal and professional references for all potential employees;

(B) Criminal background checks in compliance with ORS 181.539, 326.603, 326.607 and 342.232 for all potential employees;

(C) A regular schedule of staff evaluations of the competencies of all employees to work with children;

(D) In place of requirements (A), (B) and (C) above, private schools providing EI/ECSE services only may follow the hiring and evaluation requirements set by the Child Care Division of the Oregon Department of Employment.

(d) Maintains 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) Has a policy of nondiscrimination;

(f) Notifies 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) Notifies the contracting public agency of the need for any change in a child's educational program and does 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

(h) Initiates and convenes individualized education program and individualized family service plan meetings only when this assistance is requested by a written agreement with the contracting public agency;

(i) Evaluates a child only when this assistance is requested by a written agreement with the contracting public agency;

(j) Provides licensed staff in compliance with either paragraphs (A) or (B) or both of this subsection:

(A) EI/ECSE: For private schools providing EI/ECSE for children preschool children, 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) School Age: For private schools providing special education for school age children, at least one individual qualified to provide special education and licensed 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) Provides hours of instruction that meet state standards;

(l) Grants credit toward high school graduation consistent with OAR 581-022-1130 and 581-022-1350(2) and (3);

(m) Ensures that students have the opportunity to participate in district-wide and state-wide assessments of student achievement; and

(n) For school-age programs, meets 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 to 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 provides.

(5) This rule does not apply to public agencies providing educational programs at treatment centers under ORS 581-015-0044.

(6) Private alternative schools registered under OAR 581-021-0072 do not need to be approved under this rule if the contracting school district is providing the special education and related services identified in the child's IEP.

Stat. Auth.: ORS 343.041 & 343.055

Stats. Implemented: ORS 343.041 & 343.221

Hist.: IEB 28-1978, f. & ef. 7-20-78; EB 18-1994, f. & cert. ef. 12-15-94; ODE 18-2000, f. & cert. ef. 5-23-00; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04; ODE 10-2004, f. & cert. ef. 8-4-04

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) 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.

(3) The Department shall accept a private school's annual application for the subsequent approval 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.

(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.

Stat. Auth.: ORS 343.041 & 343.055

Stats. Implemented: ORS 343.041 & 343.221

Hist.: IEB 28-1978, f. & ef. 7-20-78; EB 40-1988(Temp), f. & cert. ef. 11-15-88; EB 20-1989, f. & cert. ef. 5-15-89; EB 18-1994, f. & cert. ef. 12-15-94; ODE 18-2000, f. & cert. ef. 5-23-00; ODE 2-2003, f. & cert. ef. 3-10-03

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.

Stat. Auth.: ORS 343.041

Stats. Implemented: ORS 343.155

Hist.: EB 22-1991, f. & cert. ef. 10-30-91; ODE 18-2000, f. & cert. ef. 5-23-00

581-015-0141

Obligations of Public Agencies that Contract with Approved Private Schools

(1) 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 581-015-0126 and 581-015-0131.

(2) 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.

(3) 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.

(4) Before the public agency places a child with a disability in an approved private school:

(a) 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.

(b) 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 ensure 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 ensure that the child and the child's parents receive all the rights and protections as required for children with disabilities served by public agencies as set forth in federal law and in OAR 581, division 015.

(9) The school district where the child resides shall ensure that transportation is provided to and from the approved private school.

Stat. Auth.: ORS 343.041 & 343.055

Stats. Implemented: ORS 343.041 & 343.221

Hist.: 1EB 40-1978, f. & ef. 10-5-78; EB 18-1994, f. & cert. ef. 12-15-94; ODE 16-2000, f. & cert. ef. 5-23-00; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03

Children in Private Schools Enrolled by Their Parents

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.

Stat. Auth.: ORS 343.041, 343.045 & 343.055

Stats. Implemented: ORS 343.155

Hist.: 1EB 28-1978, f. & ef. 7-20-78; EB 11-1995, f. & cert. ef. 5-25-95; ODE 16-2000, f. & cert. ef. 5-23-00

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.

(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.

Stat. Auth.: ORS 343.041, 343.045 & 343.055

Stats. Implemented: ORS 343.155

Hist.: 1EB 28-1978, f. & ef. 7-20-78; EB 11-1995, f. & cert. ef. 5-25-95; ODE 16-2000, f. & cert. ef. 5-23-00

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) 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.

(4) Private school children with disabilities may receive a different amount of services than children with disabilities in public schools.

(5) 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.

(6) Public agencies are not required to develop an IEP or IFSP that assumes a public agency placement for each private school child each year.

(7) 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.

Stat. Auth.: ORS 343.041, 343.055 & CFR § 76.650

Stats. Implemented: ORS 343.155

Hist.: 1EB 28-1978, f. & ef. 7-20-78; 1EB 25-1980, f. & ef. 11-7-80; EB 12-1995, f. & cert. ef. 5-25-95; ODE 16-2000, f. & cert. ef. 5-23-00; ODE 30-2000, f. & cert. ef. 12-11-00

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 to be provided to eligible private school children.

Stat. Auth.: ORS 343.041, 343.045 & 343.055

Stats. Implemented: ORS 343.041, 343.055 & CFR § 76.650

Hist.: 1EB 28-1978, f. & ef. 7-20-78; EB 13-1995, f. & cert. ef. 5-25-95; ODE 16-2000, f. & cert. ef. 5-23-00

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:

(a) Are used only for the purposes identified in section (2); and

(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.

Stat. Auth.: ORS 343.041, 343.045 & 343.055

Stats. Implemented: ORS 343.155

Hist.: 1EB 28-1978, f. & ef. 7-20-78; EB 11-1995, f. & cert. ef. 5-25-95; ODE 16-2000, f. & cert. ef. 5-23-00

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.

Stat. Auth.: ORS 343.041, 343.045 & 343.055

Stats. Implemented: ORS 659.150

Hist.: 1EB 28-1978, f. & ef. 7-20-78; EB 11-1995, f. & cert. ef. 5-25-95; ODE 16-2000, f. & cert. ef. 5-23-00

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.

Stat. Auth.: ORS 343.041, 343.045 & 343.055

Stats. Implemented: ORS 343.155

Hist.: 1EB 28-1978, f. & ef. 7-20-78; EB 11-1995, f. & cert. ef. 5-25-95; ODE 16-2000, f. & cert. ef. 5-23-00

581-015-0291

Definitions for Regional Programs

The following definitions apply to OAR 581-015-0292 through 581-015-0296 unless otherwise indicated by the context.

(1) "Regional program" means direct or consultative services funded through the Department provided on a single or multi-county basis that assist school districts and early intervention/ early childhood special education providers in meeting the unique needs of eligible children.

(2) "Consultation services" means technical assistance to or conferring with the local education agency and staff or early intervention/early childhood special education providers and staff or families to assist them to provide services to eligible children.

(3) "Superintendent" means the State Superintendent of Public Instruction.

(4) "Administrative Unit" means the school district or ESD within each region chosen to operate the regional program through contract with the Department of Education.

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

(6) "Direct services" means services provided to the child by regional specialists.

(7) "Eligible children" means children with low-incidence, high need disabilities who need the services of the regional program.

(8) "Low incidence, high need disabilities" means one or more of the following categories under OAR 581-015-0051: autism spectrum disorder, deafblindness, hearing impairment, orthopedic impairment, and vision impairment. A child with an orthopedic impairment is eligible for regional services only if determined to be severely orthopedically impaired by his/her eligibility team based on eligibility tool(s) approved by the Department.

(9) "Services" means early intervention services, early childhood special education and/or related services, and special education and/or related services, as defined in OARs 581-015-0900 and 581-015-0005, respectively.

Stat. Auth.: ORS 343.236(3)

Stats. Implemented: ORS 343.236

Hist.: EB 27-1988, f. & cert. ef. 6-9-88; EB 10-1996, f. & cert. ef. 6-26-96; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03

581-015-0292

Administration of Regional Programs

(1) The Superintendent may provide services to eligible children on a regional basis to the extent possible with funds allocated for this purpose:

(a) The Superintendent shall determine the number of regions and their boundaries;

(b) The Superintendent shall select a local school district, education service district, and/or county school district to serve as the Administrative Unit in each region;

(c) The Superintendent may designate a Department employee to give general coordination to regional programs;

(d) The Superintendent may appoint an advisory committee to provide policy direction for regional programs. This committee shall report to the State Board of Education through the regional program coordinator.

(2) The Administrative Unit shall provide general management to the regional program by:

(a) Preparing a regional plan that will include administrative structure, provision of direct and consultation services to eligible children, their families and staff, inservice activities, supervision of instruction, subcontracting and budget;

(b) Serving as fiscal agent for the region including arrangement of subcontracts; preparation of budgets for the receipt of local, state, and federal funds; provision of reports regarding child data, progress, and services; and the management of all fiscal functions including but not limited to, business services;

(c) Selecting, hiring, and directing regional employees using funds granted for that purpose and making employee benefits consistent with other district employees;

(d) Appointing a regional coordinator who will give general direction to the regional program and act as liaison to the Department; and

(e) Appointing a Regional Advisory Council to provide advice to the Administrative unit on program and policy direction.

(3) The Regional Advisory Council shall consist of seven to eleven members representing each county in the region. At least one person must represent each of the following categories:

(a) Superintendent of an education service district or local school district;

(b) Special education supervisor or teacher of an education service district or local school district;

(c) Individual who supervises or provides early intervention or early childhood special education services;

(d) Director on board of an education service district or local school district;

(e) Individual with a disability or parent of an eligible child.

(f) Regular education teacher or building administrator.

(4) The Administrative Unit governing board shall request names from each education service district, school district, county school district, and early intervention and early childhood special education program in the area served by the regional program and make appointments to the council.

Stat. Auth.: ORS 343.236(3)

Stats. Implemented: ORS 343.236

Hist.: EB 27-1988, f. & cert. ef. 6-9-88; EB 10-1996, f. & cert. ef. 6-26-96

581-015-0293

Eligibility for Regional Services

(1) The determination of a child's eligibility for services as a child with autism spectrum disorder, deafblindness, hearing impairment, orthopedic impairment, or vision impairment shall be the responsibility of:

(a) The resident school district for children who are at the age of eligibility for kindergarten through age 21 in accordance with OAR 581-015-0051; or

(b) The designated referral and evaluation agency for children who are at the age of eligibility for:

(A) Early intervention, from birth until the age of three in accordance with OAR 581-015-0946; and

(B) Early childhood special education, from the age of three until eligible for kindergarten in accordance with OAR 581-015-0942.

(2) Regional programs may assist the local district or designated referral and evaluation agency in evaluating and/or determining eligibility when the local district or the designated referral and evaluation agency does not have a person trained and experienced in the area of the suspected disability(ies).

(3) A child who is found eligible for services as a child with autism spectrum disorder, deafblindness, hearing impairment, or vision impairment shall be eligible for regional services if the child needs regional program services.

(4) A child who is found eligible for services as a child with orthopedic impairment shall be eligible for regional services if the child is determined to be severely orthopedically impaired by his/her

eligibility team based on eligibility tool(s) approved by the Department, and needs regional program services.

Stat. Auth.: ORS 343.236(a)

Stats. Implemented: ORS 343.236

Hist.: EB 27-1988, f. & cert. ef. 6-9-88; EB 10-1996, f. & cert. ef. 6-26-96; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03

581-015-0294

Referral for Regional Services

In referring a child to the regional program, the district or early intervention/early childhood special education program shall provide the regional coordinator with the following information:

(1) A request for regional services;

(2) A statement of a child's eligibility in one of the following categories, if previously determined: autism spectrum disorder; deafblindness, hearing impairment, orthopedic impairment, vision impairment; or

(3) A statement from the child's eligibility team for a child who is severely orthopedically impaired, including eligibility tool(s) approved by the Department, if previously determined; and

(4) Additional information as the regional coordinator or other regional program representative may request.

Stat. Auth.: ORS 343.236(a)

Stats. Implemented: ORS 343.236

Hist.: EB 27-1988, f. & cert. ef. 6-9-88; EB 10-1996, f. & cert. ef. 6-26-96; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03

581-015-0295

Individualized Educational Program/Individualized Family Service Plan

(1) An eligible child shall have an individualized educational plan (IEP) developed in accordance with OAR 581-015-0068 or an individualized family service plan (IFSP) in accordance with OAR 581-015-0970.

(2) The IEP/IFSP shall be developed by an appropriately constituted team in accordance with OAR 581-015-0981 for children from birth to age two, OAR 581-015-0980 for children from age three to kindergarten, and OAR 581-015-0066 for school-age children. A designated regional program staff shall be included in the development of the IEP/IFSP.

(3) The IEP/IFSP shall serve as the basis for determining the child's unique developmental or educational needs and the extent and nature of services to be provided, including services provided by the regional program.

Stat. Auth.: ORS 343.236(a)

Stats. Implemented: ORS 343.236

Hist.: EB 27-1988, f. & cert. ef. 6-9-88; EB 10-1996, f. & cert. ef. 6-26-96

581-015-0296

Regional Program Services

(1) The resident school district shall maintain the primary responsibility for the education of an eligible school age child, and shall be responsible for all costs beyond the fiscal capacity of the regional program that result from the full implementation of the child's IEP.

(2) The Department, through its contractors and subcontractors, shall maintain the primary responsibility for early intervention and early childhood special education services for eligible children from birth until eligible for kindergarten, and shall be responsible for all costs beyond the fiscal capacity of the regional program which result from full implementation of the child's IFSP.

(3) Eligible children may receive one or more of the following regional services based upon the child's needs according to the IEP or IFSP and available resources of the regional program and agreement of the resident school district or EI/ECSE contractor:

(a) Direct services to the child as determined in the IEP/IFSP by an itinerant specialist up to full-time instruction in a self-contained classroom operated by the regional program;

(b) Consultation to providers of the child's educational or early intervention/early childhood special education program and/or the parents;

(c) Participation in developing the student's IEP or IFSP;

(d) Recommendations for classroom activities, materials, equipment, adaptations and modifications to instruction, and/or assessment;

(e) Evaluation and interpretation of assessment information;

(f) Audiological management;

(g) Inservice for staff and parents; and

(h) Provision of certain related services.

(4) Teachers and therapists employed by the regional program to serve eligible children shall hold the appropriate special education or appropriate state licensure.

(5) Regional programs shall be in compliance with all applicable statutes and administrative rules pertaining to the education of children with disabilities.

Stat. Auth.: ORS 343.236(a)

Stats. Implemented: ORS 343.236

Hist.: EB 27-1988, f. & cert. ef. 6-9-88; EB 10-1996, f. & cert. ef. 6-26-96; ODE 2-2003, f. & cert. ef. 3-10-03

Children in Other Educational Programs

581-015-0301

Youth Corrections Education and Juvenile Detention Education Programs

(1) Definitions:

(a) "Youth Corrections Education Program" means the provision of educational services to youths in youth correction facilities of the Oregon Youth Authority, and includes secure regional youth facilities, regional accountability camps, residential academies and satellites, camps and branches of those facilities.

(b) "Juvenile Detention Education Program" means the provision of educational services to youths lodged overnight who receive educational services on consecutive days within a detention facility.

(2) Youth Corrections Education Program: The following administrative rules shall apply to education programs for youth housed in Oregon Youth Authority youth correctional facilities:

(a) Special Education Rules, OARs 581-015-0005, 581-015-0033 through 581-015-0042, 581-015-0048 through 581-015-0109, and 581-015-0550 through 581-015-0704;

(b) School Improvement and Professional Development Rules, OARs 581-020-0005 through 581-020-0200;

(c) School Governance and Student Conduct, OARs 581-021-0037 through 581-021-0440;

(d) Standards for Public Elementary and Secondary Schools, OARs 581-022-0102 through 581-022-0413, 581-022-0606, 581-022-0610, 581-022-0705, 581-022-1020 through 581-022-1210, 581-022-1310 through 581-022-1340, 581-022-1420, 581-022-1440, 581-022-1520, 581-022-1610 through 581-022-1670, 581-022-1710 through 581-022-1730;

(e) Funds to State and Local Agencies to Provide Employment and Training Services Under the Workforce Investment Act (formerly the Job Training Partnership Act (JPTA), OARs 581-060-0010 through 581-060-0020;

(f) Teacher Standards and Practices Commission Rules.

(3) Juvenile Detention Education Program: All rules applicable to education programs for OYA youth correction facilities, as set out in sections (1) of this rule, apply to educational programs for juvenile detention facilities.

(a) Students may not be suspended or expelled from juvenile detention education programs.

(b) Juvenile directors and the school district or education service district responsible for the education of students in a juvenile detention education program under contract with the Department will sign a letter of agreement establishing each agency's areas of responsibility and duties.

Stat. Auth.: ORS 343

Stats. Implemented: ORS 343.980(1)

Hist.: EB 3-1997, f. & cert. ef. 4-25-97; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03

581-015-0415

Required Days of Instruction

The Department shall schedule and provide an annual school year consisting of a minimum 220 days of actual classroom instruction (time students are present for a major portion of a scheduled school day, engaged in learning experiences related to Department goals and under guidance of teachers). Up to five days of temporary closure due to extraordinary conditions may be counted toward the 220 days, subject to the Superintendent's approval.

Stat. Auth.: ORS 343

Stats. Implemented: ORS 343.980

Hist.: IEB 255, f. & ef. 12-20-76; EB 3-1997, f. & cert. ef. 4-25-97

581-015-0505

Education Programs for Children at Residential Youth Care Centers

The purpose of this rule is to ensure that districts meet the provisions outlined in ORS 336.580.

(1) Definitions — For the purposes of this rule, the following definitions shall apply:

(a) "Consultation" means scheduled opportunities for the residential youth care center director and the education representative of the district, or its contractor, to share information and concerns about the behavioral characteristics, learning styles, educational needs, and level of educational support for the children residing at the residential youth care center in order to develop, review, and agree upon the education plan;

(b) "Residential youth care center" means a community program defined in ORS 420.855 and operated by a private agency. Residential youth care centers where resident children receive educational services funded under ORS 343.961 are not included under the provisions of this rule;

(c) "Least restrictive environment" means serving a child in the educational setting in which the child can reasonably be expected to learn while maintaining integration in the local community;

(d) "District" means the school district in which the residential youth care center is located;

(e) "Open entry-open exit" means that the education program shall provide opportunities for students to make progress in obtaining school credits or otherwise meeting their educational goals even though they may enroll or exit at any time during the school year.

(2)(a) The school district in which the residential youth care center is located is responsible for developing a plan which meets the provisions outlined in ORS 336.580. The district may contract this responsibility to another school district or ESD. The delivery of educational services may be provided by the residential youth care center;

(b) The plan must be developed by the district or its contractor after consultation with the residential youth care center director and shall address behavioral characteristics, learning styles, and educational needs of the children pursuant to OAR 581-022-0602;

(c) The plan for an education program shall provide for open entry-open exit and shall provide opportunities for students to earn school credits in accordance with OARs 581-022-0317 and 581-023-0008, opportunities for earning a GED when appropriate, or appropriate skill development to ensure educational progress. A continuum of educational services shall be available which assure placement of children in the least restrictive environment in which they can reasonably be expected to be successful until they are exempted from compulsory attendance or receive a high school diploma or an equivalent;

(d) The plan shall be approved annually by the school district board in which the youth care center is located.

(3) The local school board shall provide for a process for resolving differences including the opportunity for an impartial hearing. This process shall include reasonable timelines.

(4) It is the responsible district's obligation to insure compliance with sections (2) and (3) of this rule. If the district does not comply directly or through its contractor, the State Superintendent shall find the district deficient and shall apply the penalty provided in ORS 327.103.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 336.580

Hist.: EB 9-1988(Temp), f. & cert. ef. 2-17-88; EB 29-1988, f. & cert. ef. 7-5-88; ODE 2-1998, f. & cert. ef. 2-27-98

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 type 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, 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 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.

Stat. Auth.: ORS 343.041, 343.045 & 343.155

Stats. Implemented: ORS 343.045 - 343.155

Hist.: ODE 35-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 2-2003, f. & cert. ef. 3-10-03

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 provide 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 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.

Stat. Auth.: ORS 343.041, 343.045 & 343.155

Stats. Implemented: ORS 343.045 - 343.155

Hist.: ODE 35-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 2-2003, f. & cert. ef. 3-10-03

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) As soon as practicable after developing a plan for conducting a functional behavioral assessment under subsection (3)(c) of this rule, and completing the assessments required by the plan, the school district shall hold an IEP meeting to develop appropriate behavioral interventions to address the behavior and shall implement those interventions.

(e) School districts are not required to determine whether the behavior resulting in removal is a manifestation of the child's disability.

(f) 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.

(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 581-015-0555 or 581-015-0556 apply; or

(b) The parent and school district agree to another placement.

Stat. Auth.: ORS 343.041, 343.045 & 343.155

Stats. Implemented: ORS 343.045 - 343.155

Hist.: ODE 35-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 2-2003, f. & cert. ef. 3-10-03

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; and

(B) Not later than the date on which the decision to remove a student under section (1) is made:

(i) Provide notice of disciplinary action under OAR 581-021-0065(1) (for a suspension) or 581-021-0070(3) (for an expulsion); and
(ii) Provide notice of procedural safeguards under OAR 581-015-0079.

(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 applicable to children without disabilities under section (1) of this rule, in the same manner in which it would be applied to children without disabilities. If the school district takes such action applicable to all children, 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) As soon as practicable after developing a plan for conducting a functional behavioral assessment under subsection (2)(b)(A) of this rule, and completing the assessments required by the plan, the school district shall hold an IEP meeting to develop appropriate behavioral interventions to address the behavior and shall implement those interventions.

(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 of a disagreement 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.

Stat. Auth.: ORS 343.041, 343.045 & 343.155

Stats. Implemented: ORS 343.045 - 343.155

Hist.: ODE 35-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 2-2003, f. & cert. ef. 3-10-03

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 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.

Stat. Auth.: ORS 343.041, 343.045 & 343.155

Stats. Implemented: ORS 343.045 - 343.155

Hist.: ODE 35-1999, f. 12-13-99, cert. ef. 12-14-99

581-015-0555

Removal to an Interim Alternative Educational Setting by School District (Drugs & Weapons)

(1) Definitions:

(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.

(b) "Drug violation" means the use, possession, sale or solicitation of drugs at school or a school function.

(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 1/2 inches in length.

(d) "Weapon violation" means carrying a weapon to school or to a school function or acquiring a weapon at school.

(2) School districts may remove a child with disabilities from their current educational placement to an appropriate interim alternative educational setting for the same amount of time that a child 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.

(3) During removals described in subsection (2) of this rule:

(a) School districts shall:

(A) Immediately schedule an IEP meeting for the purposes of subsection (3)(b); and

(B) Not later than the date on which the decision to take that action is made:

(i) Provide notice of disciplinary action under OAR 581-021-0065(1) (for a suspension) or 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

(ii) 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.

(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;

(B) The IEP team may review and revise the child's IEP and placement; and

(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) applicable to children without disabilities, in the same manner in which it would be applied to children without disabilities. If the school district takes such action applicable to all children, 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 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) As soon as practicable after developing a plan for conducting a functional behavioral assessment under subsection (3)(b)(A) of this rule, and completing the assessments required by the plan, the school district shall hold an IEP meeting to develop appropriate behavior interventions to address the behavior and shall implement those interventions.

(4) If a parent requests a due process hearing because of a disagreement 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.

(5) In reviewing a decision to place the child in an interim alternative educational setting for a drug or weapon violation, the hearings officer shall apply the standards in OAR 581-015-0556(3).

Stat. Auth.: ORS 343.041, 343.045 & 343.155

Stats. Implemented: ORS 343.045 - 343.155

Hist.: ODE 35-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 2-2003, f. & cert. ef. 3-10-03

581-015-0556

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

(1) Definitions:

(a) "Injurious behavior" means behavior that is substantially likely to result in injury to the child or to others.

(b) "Substantial evidence" means beyond a preponderance of the evidence.

(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 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); and

(B) Not later than the date on which the decision to take that action is made:

(i) Provide notice of disciplinary action under OAR 581-021-0065(1) (for a suspension) or 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

(ii) 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) applicable to children without disabilities, in the same manner in which it would be applied to children without disabilities. If the school district takes such action applicable to all children, 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 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) As soon as practicable after developing a plan for conducting a functional behavioral assessment under subsection (4)(b)(A) of this rule, and completing the assessments required by the plan, the school district shall hold an IEP meeting to develop appropriate behavior interventions to address the behavior and shall implement those interventions.

(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.

Stat. Auth.: ORS 343.041, 343.045 & 343.155

Stats. Implemented: ORS 343.045 - 343.155

Hist.: ODE 35-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 2-2003, f. & cert. ef. 3-10-03

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.

Stat. Auth.: ORS 343.041, 343.045 & 343.155

Stats. Implemented: ORS 343.045 - 343.155

Hist.: ODE 35-1999, f. 12-13-99, cert. ef. 12-14-99

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 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 take the same disciplinary actions as applied to children without disabilities who engaged in comparable behaviors. 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 581-021-0071.

(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 and shall provide special education and related services.

(d) The provisions of OAR 581-015-0550 through 581-015-0557 shall apply beginning on the date of the eligibility determination.

Stat. Auth.: ORS 343.041, 343.045 & 343.155

Stats. Implemented: ORS 343.045 - 343.155

Hist.: ODE 35-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 2-2003, f. & cert. ef. 3-10-03

581-015-0559

Expedited Due Process Hearings in Disciplinary Actions

(1) When either party requests, an expedited due process hearing shall be held in a dispute over a disciplinary action for a child with a disability if:

(a) 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 (placement prior to removal to the interim alternative educational setting) during the pendency of the hearing.

(2) Expedited due process hearings must:

(a) Meet the requirements of OAR 581-015-0080 through 581-015-0093; except that

(A) The time period identified in OAR 581-015-0080 for disclosing evidence to the other party shall be two business days; and

(B) The written decision shall be mailed to the parties within 30 days of the public agency's receipt of the request for the hearing, however the hearing officer may grant an extension of no more than 15 days if the hearing officer finds substantial justification for this extension.

(b) Be conducted by a due process hearing officer who satisfies the requirements of OAR 581-015-0096.

Stat. Auth.: ORS 343.041, 343.045 & 343.155

Stats. Implemented: ORS 343.045 - 343.155

Hist.: ODE 35-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 2-2003, f. & cert. ef. 3-10-03

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, lease or loan the device for the continuing use of a child with a disability who is ceasing to attend school in the district.

Stat. Auth.: ORS 343.041, 343.045 & 343.223

Stats. Implemented: ORS 343.45 & 343.155

Hist.: ODE 34-1999, f. 12-13-99, cert. ef. 12-14-99

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, 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, consider strategies, positive behavioral interventions, and supports to address that behavior;

(b) For a child with limited English proficiency, consider 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, provide for 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, consider the child's language and communication needs, opportunities for direct communication with peers and professional personnel in the child's language and 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.

Stat. Auth.: ORS 343.041, 343.045 & 343.155

Stats. Implemented: ORS 343.045 & 343.155

Hist.: ODE 32-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 2-2003, f. & cert. ef. 3-10-03

581-015-0600

Free Appropriate Public Education (FAPE) and Age Ranges

(1) School districts shall provide special education and related services to all resident school-age children with disabilities, except as provided in OAR 581-014-0601. "School-age children" are children who have reached five years of age but have not yet reached 21 years of age on or before September 1 of the current school year.

(2) An otherwise eligible person whose 21st birthday occurs during the school year shall continue to be eligible for FAPE for the remainder of the school year.

(3) The requirements of this rule also apply to children with disabilities who have been suspended or expelled from school in accordance with OAR 581-015-0552 to 581-015-0558.

(4) For purposes of this rule, residency is determined in accordance with ORS 339.133 through 339.137.

Stat. Auth.: ORS 343.055

Stats. Implemented: SB 363, Sec. 1 & 2, amending ORS 399

Hist.: ODE 3-2000, f. & cert. ef. 2-1-00

581-015-0601

Age Limitations and Exceptions to FAPE

(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.

(2) A student who receives a regular high school diploma is no longer entitled to FAPE.

(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.

(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:

(a) Were identified as being a child with a disability as defined in OAR 581-015-0005(4); or

(b) Had an individualized education program.

(5) For purposes of subsection (4) of this rule:

(a) "Adult correctional facility" means:

(A) A local correctional facility as defined 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.

(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

(c) "Last educational placement" includes juvenile correctional facilities.

(6) Until January 1, 2006, section (2) of this rule does not apply to individuals who on August 20, 1999:

(a) Were not yet 21 years old;

(b) Had received a regular high school diploma as defined in OAR 581-022-1130; and

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

Stat. Auth.: ORS 343.055

Stats. Implemented: SB 363, Sec. 1 & 2, amending ORS 399

Hist.: ODE 3-2000, f. & cert. ef. 2-1-00; ODE 2-2003, f. & cert. ef. 3-10-03

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.

Stat. Auth.: ORS 343.055

Stats. Implemented: SB 363, Sec. 1 & 2, amending ORS 399

Hist.: ODE 3-2000, f. & cert. ef. 2-1-00

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 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).

Stat. Auth.: ORS 343.055

Stats. Implemented: SB 363, Sec. 1 & 2, amending ORS 399

Hist.: ODE 3-2000, f. & cert. ef. 2-1-00

581-015-0604

Plans to Serve Student in Local or Regional Correctional Facilities

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.

Stat. Auth.: ORS 343.055
 Stats. Implemented: SB 363, Sec. 1 & 2, amending ORS 399
 Hist: ODE 3-2000, f. & cert. ef. 2-1-00

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:

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

(B) The child's rate of progress;

(C) The availability of alternative resources;

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

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

(F) The child's vocational needs;

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

(H) 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:

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

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

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

(b) Meet the standards of the Department.

Stat. Auth.: ORS 343.055

Stats. Implemented: SB 363, Sec. 1 & 2, amending ORS 399

Hist: ODE 3-2000, f. & cert. ef. 2-1-00

581-015-0606**Access to Student Education Records**

(1) School districts shall give parents of children with disabilities an opportunity to examine all student education records in accordance with this rule and OAR 581-021-0220 through 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.

Stat. Auth.: ORS 343.055

Stats. Implemented: SB 363 Sec. 1 & 2, amending ORS 399

Hist: ODE 4-2000, f. & cert. ef. 2-1-00; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03

581-015-0607**Children with Disabilities Covered by Public Insurance**

(1) A school district may use the Medicaid or other public insurance benefits programs in which a child with disabilities participates 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.

(2) With regard to services required to provide FAPE to a child with disabilities, the school district:

(a) May not require parents 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) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this chapter, but may pay the cost that the parent otherwise would be required to pay; and

(c) May not use the child's benefits under a public insurance program if that use would:

(A) Decrease available lifetime coverage or any other insured benefit;

(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;

(C) Increase premiums or lead to the discontinuation of insurance; or

(D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

(3) If a school district is unable to use a child's public insurance for a specified service required to ensure FAPE, the district may use its Part B funds to pay for the service.

(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.

Stat. Auth.: ORS 343.041, 343.045 & 343.055

Stats. Implemented: ORS 343.164, 343.045 & 343.155

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

581-015-0608**Children with Disabilities Covered by Private Insurance**

(1) With regard to services 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.

(4) 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 otherwise would have to pay to use the parent's insurance (e.g., the deductible or co-pay amounts).

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

Stat. Auth.: ORS 343.041, 343.045 & 343.055

Stats. Implemented: ORS 343.164, 343.045 & 343.155

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

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.

Stat. Auth.: ORS 343.041, 343.045, 343.055 & 343.157

Stats. Implemented: ORS 343.155

Hist.: ODE 12-2000, f. 5-3-00, cert. ef. 5-3-00

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.

(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).

(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.

Stat. Auth.: ORS 343.041, 343.045, 343.055 & 343.157

Stats. Implemented: ORS 343.155

Hist.: ODE 12-2000, f. 5-3-00, cert. ef. 5-3-00

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.

Stat. Auth.: ORS 343.041, 343.045, 343.055 & 343.157

Stats. Implemented: ORS 343.155

Hist.: ODE 12-2000, f. 5-3-00, cert. ef. 5-3-00

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.

Stat. Auth.: ORS 343.155 - 343.183

Stats. Implemented: ORS 343.155 - 343.183

Hist.: ODE 17-2000, f. & cert. ef. 5-23-00

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:

(a) Whether the alternate form meets the requirements for the contents of an IEP under OARs 581-015-0066, 581-015-0068, 581-015-0102, 581-015-0568 and 581-015-0605; and

(b) 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:

(a) Whether the alternate form is approved or disapproved; and

(b) 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.

Stat. Auth.: ORS 343.155 - 343.183

Stats. Implemented: ORS 343.155 - 343.183

Hist.: ODE 17-2000, f. & cert. ef. 5-23-00; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03

581-015-0705

Definitions for Parentally Placed Private School Children

For the purposes of OAR 581-015-0038 to 0196 and 581-015-0706 to 581-015-0709, 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) A child who has been enrolled by their parent in a private school or facility who is:

(A) 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 581-015-0051 or as a child with a developmental delay under 581-015-0942.

(b) 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.

(c) 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.

Stat. Auth.: ORS 343.055 & 343.157

Stats. Implemented: ORS 343.055

Hist.: ODE 16-2000, f. & cert. ef. 5-23-00; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03

581-015-0706

Expenditures for Parentally Placed Private School Children

(1) Formulas for determining funds available for provision of special education and related services to private school children with disabilities:

(a) For school-age children: Each school district shall spend an amount that is the same proportion of the school district's total subgrant of IDEA funds as the number of school-age private school children with disabilities residing in its jurisdiction is to the total number of school-age children with disabilities in its jurisdiction.

(b) For private school children with disabilities aged 3 up to school-age, the 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 (1).

(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.

Stat. Auth.: ORS 343.055 & 343.157

Stats. Implemented: ORS 343.055

Hist.: ODE 16-2000, f. & cert. ef. 5-23-00; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03

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.

Stat. Auth.: ORS 343.055 & 343.157

Stats. Implemented: ORS 343.055

Hist.: ODE 16-2000, f. & cert. ef. 5-23-00

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.

Stat. Auth.: ORS 343.055 & 343.157

Stats. Implemented: ORS 343.055

Hist.: ODE 16-2000, f. & cert. ef. 5-23-00

581-015-0709

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.

(a) 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.

(b) 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.

Stat. Auth.: ORS 343.055 & 343.157

Stats. Implemented: ORS 343.055
Hist.: ODE 16-2000, f. & cert. ef. 5-23-00

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.

Stat. Auth.: ORS 343.055 & 343.157

Stats. Implemented: ORS 343.055

Hist.: ODE 18-2000, f. & cert. ef. 5-23-00

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; or

(3) Refuses to implement corrective actions ordered by the Department after completion of a special review investigation.

Stat. Auth.: ORS 343.055 & 343.157

Stats. Implemented: ORS 343.055

Hist.: ODE 18-2000, f. & cert. ef. 5-23-00

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

Stat. Auth.: ORS 343.055 & 343.157

Stats. Implemented: ORS 343.055

Hist.: ODE 18-2000, f. & cert. ef. 5-23-00

Special Education Programs for Disadvantaged Children

581-015-0750

Disadvantaged Children

(1) To qualify for funds from the Disadvantaged Children Program, established pursuant to ORS 343.650 through 343.680, the school district shall submit to the Oregon Department of Education:

(a) By August 1 of each year an annual application which presents the goals, activities and budget for the district program;

(b) By August 1 of each year an annual evaluation report measuring the success of the project in reaching its projected goals for the previous project year; and

(c) By December 31 of each year an annual fiscal report summarizing project expenditures for the previous project year.

(2) Funds provided under the Disadvantaged Children Program shall be authorized to meet the needs of disadvantaged children as defined in ORS 343.650; however, these funds shall not be used to supplant local funding responsibilities.

Stat. Auth.: ORS 343

Stats. Implemented: ORS 343.650 - 343.680

Hist.: 1EB 16-1980, f. & ef. 6-9-80

Talented and Gifted

581-015-0805

Definitions

The following definitions apply to OARs 581-015-0811 through 581-015-0825 unless the context requires otherwise:

(1) "Talented and gifted children": those children, as defined in ORS 343.395, who require special educational programs or services, or both, beyond those normally provided by the regular school program;

(2) "Parent": A natural or adoptive mother or father, a legally appointed guardian or, if the child has attained the age of majority, the individual student.

(3) "School district": The same meaning as in ORS 330.005 and also includes, where appropriate, an education service district or a consortium of school districts submitting a joint written plan and application to serve talented and gifted children.

(4) "Case study": The information concerning a student used for the selection and placement of the student.

(5) "Selection team": A committee responsible for developing individual case studies and selecting students for placement in programs for the talented and gifted.

(6) "Written plan": The district goals and plan for identifying students and developing services and programs, the timeline for implementation and plan for evaluating progress toward achieving the goals.

(7) "Application": A one-year request for state funds by a school district that specifies goals for the program or service, and goals for students.

Stat. Auth.: ORS 343.045, 343.055 & 343.391 - 343.43

Stats. Implemented: ORS 343.411

Hist.: 1EB 21, f. 1-19-60; 1EB 47, f. 3-4-60; 1EB 21-1978, f. 6-19-78, ef. 6-20-78; 1EB 13-1979, f. 9-21-79, ef. 10-2-79; ODE 2-2003, f. & cert. ef. 3-10-03

581-015-0811

District Plans

(1) In any biennium in which the legislature appropriates funds for Talented and Gifted Education, each district shall submit a written plan to the State Superintendent of Public Instruction pursuant to ORS 343.391 to 343.404 to be eligible for a talented and gifted program grant.

(2) The plan may be submitted as part of the first year application for state fund.

(3) The State Superintendent shall notify each school district within 60 days of the submission date as to the plan's approval, disapproval, or need for revision.

Stat. Auth.: ORS 343.045, 343.407 & 343.409

Stats. Implemented: ORS 343.411

Hist.: 1EB 13-1979, f. 9-21-79, ef. 10-2-79; ODE 2-2003, f. & cert. ef. 3-10-03

581-015-0816

Application for Grants

(1) In any biennium in which the legislature appropriates funds for Talented and Gifted Education, applications for grants for state reimbursement shall be submitted on or before the first Friday in March of each school year on a form provided by the Department.

(2) The application shall address the standards prescribed in ORS 343.397 and 343.399 and criteria for applications prescribed in OAR 581-015-0820.

(3) The State Superintendent of Public Instruction may reopen the application period if approved applications do not require the disbursement of all available funds.

(4) The State Superintendent of Public Instruction shall notify school districts of the approval or disapproval of their applications within 90 days of the submission date.

Stat. Auth.: ORS 343.399 & 343.409

Stats. Implemented: ORS 343.411

Hist.: 1EB 13-1979, f. 9-21-79, ef. 10-2-79; 1EB 4-1981, f. & ef. 2-5-81; EB 26-1991, f. & cert. ef. 11-29-91; ODE 2-2003, f. & cert. ef. 3-10-03

581-015-0820

Selection of Applications and Allocation of Funds

(1) In any biennium in which the legislature appropriates funds for Talented and Gifted Education, the State Advisory Committee for Talented and Gifted Education shall review all applications and submit in rank order its recommendations for approval to the State Superintendent of Public Instruction; its decisions shall be based on the point system described in section (2) of this rule and according to priorities set by the State Superintendent for types of programs or categories of students.

(2) The State Advisory Committee shall use the following point system when evaluating grant applications:

(a) A statement of the school district's present level of special educational programs and services for talented and gifted students and

a rationale for the proposed programs and services to be developed and disseminated through the grant project, including how the proposed project addresses the State Superintendent's priorities (5 points);

(b) A description of how the current and proposed programs conform to the district's written plan (5 points);

(c) District policies and procedures for determining student eligibility that demonstrate compliance with OARs 581-015-0835 and 581-022-0403(1) (5 points);

(d) A description of the proposed project, including:

(A) Individual student assessment and evaluative procedures as described in OAR 581-022-0403(2) and tools that will be used to determine the need for programs and services (10 points);

(B) Justification of the purposes and goals of the programs and services to be developed through the project in terms of the student assessment and evaluative procedures and tools used, and the expected outcomes or results for students (25 points);

(C) The organization and operations of the project including management responsibilities and a project timeline (10 points).

(e) A description of the resources and facilities to be used to conduct the project including staffing, materials, equipment and other resources and the justification for the sufficiency of these resources to conduct the project (10 points);

(f) A description of the products to be disseminated and training to be provided through the project. Products may include, but are not limited to, program guides, curriculum materials, and video productions (10 points);

(g) An evaluation design that demonstrates the effectiveness of the project in terms of student learning and organizational effectiveness and efficiency (10 points);

(h) A detailed budget for the project including local and state funds and a justification statement for expenditures (10 points).

(3) Grants will be awarded on an approved cost basis:

(a) The following classes of budgeted costs will be approvable expenditures and may be used to calculate approved program costs:

(A) Costs of personnel and direct service to students;

(B) Costs for contracted direct services to students, such as mentor arrangements, transportation costs, instructional services from private agencies for students;

(C) Supplies and materials purchased for use with students or by program personnel in the development of instruction for students;

(D) Capital expenditures for equipment and materials to be used in the instructional program for identified students;

(E) Inservice training costs for program staff in the development of skills and abilities directly related to the instructional program. Awareness training costs for general staff may also be included.

(b) The approved program cost basis for allocating state funds shall be a percentage arrived at by the ratio of state funds available for any fiscal year in proportion to the total of the approved program costs submitted by applicant districts.

(4) The State Superintendent shall select projects to receive state funds from the rank order list provided by the State Advisory Committee; such projects shall comply with ORS 343.397 through 343.409.

(5) In the case where federal funds are made available for state administered programs, the Department of Education may award these funds to school districts for special projects using the following guidelines:

(a) Awards will be made on a competitive basis, using the procedures and criteria described in sections (1), (2), and (4) of this rule;

(b) Approvable costs will include those items listed in Subsection (3)(a) of this rule, and also may include the costs of identification, professional services, printing and other costs judged to be integral to the proposed project;

(c) Grants will be awarded on a matching basis.

Stat. Auth.: ORS 343.399 & 343.409

Stats. Implemented: ORS 343.411

Hist.: 1EB 21, f. 1-19-60; 1EB 47, f. 3-4-60; 1EB 21-1978, f. 6-19-78, ef. 6-20-78; 1EB 12-1979(Temp), f. & ef. 9-5-79; 1EB 13-1979, f. 9-21-79, ef. 10-2-79; 1EB 21-1979, f. & ef. 11-15-79; 1EB 12-1980, f. & ef. 5-5-80; 1EB 3-1981, f. & ef. 2-5-81; EB 27-1991, f. & cert. ef. 11-29-91; ODE 2-2003, f. & cert. ef. 3-10-03

581-015-0825

Quarterly Payments and Accounting for Grants

(1) Districts receiving grants shall be reimbursed by the Oregon Department of Education, in four quarterly installments, and shall be

notified of the amount of the first payment at least 30 days prior to that payment

(2) Beginning with the second quarter and each quarter thereafter, districts receiving grants shall report to the Department of Education, on a form provided by the Department, their expenditures of grant funds and any balances unexpended or unencumbered.

(3) If the State Superintendent determines after any quarterly accounting that any portions of the grant awarded to a school district or the district matching funds for an approved project have not been spent or encumbered for that program, such portions shall be recovered by reducing the district's ensuing quarterly payments.

Stat. Auth.: ORS 345

Stats. Implemented: ORS 343.411

Hist.: 1EB 21, f. 1-19-60; 1EB 47, f. 3-4-60; 1EB 21-1978, f. 6-19-78, ef. 6-20-78; 1EB 13-1979, f. 9-21-79, ef. 10-2-79; ODE 2-2003, f. & cert. ef. 3-10-03

Early Intervention and Early Childhood Special Education Programs

581-015-0900

Definitions — EI/ECSE Program

For the purposes of OAR 581-015-0910 to 581-015-1125, the definitions in this rule and 581-015-0005 apply.

(1) "Assessment" means the ongoing procedures used by appropriate qualified personnel throughout the period of a child's eligibility.

(2) "Communication" means receptive or expressive language development.

(3) "Contractor" means the agency designated by the Department to administer the provision of EI and ECSE within selected service areas.

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

(5) "Designated referral and evaluation agency" means the agency in each county designated to be the referral point for parents and others who suspect that a child may need early intervention or early childhood special education, and to be responsible for assuring that all referred children suspected of having a disability receive evaluation for potential eligibility for early intervention and early childhood special education.

(6) "Early childhood special education (ECSE)" means free, 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 public school, including instruction in physical education, speech-language services, travel training, and orientation and mobility services. Instruction is provided in any of the following settings: home, hospitals, institutions, special schools, classrooms, and community childcare or preschool settings, or both.

(7) "Early intervention and early childhood special education assistants" means individuals who implement program activities under the direct supervision of the professional personnel.

(8) "Early intervention and early childhood special education specialists" means professionals who implement or coordinate the implementation of individualized family service plans.

(9) "Early intervention (EI)" 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;

(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.

(d) At no cost to parents; and

(e) Meet all applicable state requirements.

(10) "Educational records" means those records that are:

(a) Directly related to a student; and

(b) Maintained by a primary contractor or subcontractor.

(11) "Evaluation" means the procedures used by qualified personnel to determine:

(a) A child's initial eligibility for EI or ECSE services;

(b) A child's continuing eligibility for EI or ECSE services; and

(c) The nature and extent of the EI services or ECSE and related services that the child needs.

(12) "Independent educational evaluation (IEE)" means an evaluation conducted by a qualified examiner who is not employed by the Department, the contractor, or subcontractor responsible for the child in question.

(13) "Individualized family service plan (IFSP)" means a written plan of early childhood special education, related services, early intervention services, and other services developed in accordance with criteria established by the State Board of Education for each child eligible for services under this chapter.

(14) "Informed clinical opinion" means the acquisition and interpretation of multiple sources of information as part of the evaluation and assessment process. This includes evaluation and assessment results, observation reports, previous testing results, medical data, parent reports, and other evaluative information. A review of this information is used in forming a determination regarding current developmental status and the need for EI.

(15) "Instruction" means providing families with information and skills that support the achievement of the goals and outcomes in the child's IFSP 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.

(16) "Monitoring" means activities carried out by the Department and its contractors which measure the subcontractor's compliance with state and federal mandates for the provision of EI and ECSE.

(17) "Natural environment" means settings that are natural or normal for the child's age peers who have no disability.

(18) "Other services" means those services that may be provided to preschool children with disabilities and to their families that are not EI or ECSE services and are not paid for with EI or ECSE funds.

(19) "Parent" means a parent of a preschool child with disabilities and includes a natural or adoptive parent of a child, legal guardian, other than a state agency, an individual acting as a parent in the absence of a parent or guardian, or a surrogate parent who has been appointed in accordance with OAR 581-015-0935. A foster parent may be treated as a parent without being appointed as a surrogate parent if:

- (a) Parental rights have been terminated by court order; and
- (b) The foster parent:

(A) Has an ongoing or intended long-term relationship with the child;

- (B) Is willing to make educational decisions; and

(C) Has no interest that would conflict with the interests of the child.

(20) "Periodic review" means a review of the IFSP for a child and the child's family. An EI or ECSE program or parent may request a review of the IFSP.

(21) "Physical development" means gross or fine motor development.

(22) "Preschool child with disabilities" means all children from:

- (a) Birth until three years of age who are eligible for EI services under OAR 581-015-0946(3); or
- (b) Three years of age to eligibility for public school who are eligible for ECSE services under OAR 581-015-0943.

(23) "Professional Development Plan" means a written document specifying the name of the employee, the position, current qualifications, current deficits, an accounting of steps to be taken to rectify deficits including timelines, persons responsible, and the final date by which the plan will be complete.

(24) "Public agencies" means school districts and public agency subcontractors for EI and ECSE.

(25) "Related services" includes transportation and such developmental, corrective, and other supportive services, including orientation and mobility services, speech language and audiology services, psychological services, physical and occupational therapy, recreation including therapeutic recreation, counseling, social work services, parent counseling and training, school health services and medical services, as may be required to assist children with disabilities, three years of age until the age of eligibility for public school, to benefit from special education or early childhood special education and includes early identification and assessment of disabling conditions. Medical services shall be for diagnostic and evaluation purposes only.

(26) "Related services personnel" means professionals who consult, supervise, train staff, design curriculum, or implement related services.

(27) "Service coordination" means the activities carried out by a service coordinator to assist and enable an eligible child and the child's family to receive the rights, procedural safeguards and services that are authorized under the state's EI program and to coordinate access to other services designated on the IFSP.

(28) "Subcontractor" means the agency or agencies selected by the contractor to provide services for EI and ECSE.

(29) "Supervision" means the activities carried out by the Department and its primary contractors to oversee the provision of EI and ECSE services.

(30) "Supervisors" means professionals who supervise and train staff, design curriculum, and administer EI or ECSE programs.

(31) The following words are defined in OAR 581-015-0005:

- (a) "Assistive technology device";
- (b) "Assistive technology service";
- (c) "Children with disabilities";
- (d) "Autism";
- (e) "Communication disorder";
- (f) "Deafblindness";
- (g) "Emotional disturbance";
- (h) "Hearing impairment";
- (i) "Mental retardation";
- (j) "Orthopedic impairment";
- (k) "Other health impairment";
- (l) "Specific learning disability";
- (m) "Traumatic brain injury";
- (n) "Visual impairment";
- (o) "Consent";
- (p) "Day";
- (q) "Department";
- (r) "General curriculum";
- (s) "Health assessment statement";
- (t) "Identification";
- (u) "Individualized education program (IEP)";
- (v) "Mediation";
- (w) "Medical statement";
- (x) "Native language";
- (y) "Order";
- (z) "Participating agency";
- (aa) "Personally identifiable information";
- (bb) "Placement";
- (cc) "Private school";
- (dd) "Regular school year";
- (ee) "School district";
- (ff) "Short term objectives";
- (gg) "Special education";
- (hh) "Specially designed instruction";
- (ii) "Supplementary aids and services";
- (jj) "Superintendent"; and
- (kk) "Surrogate parent."

Stat. Auth.: ORS 343.465 - 343.534

Stats. Implemented: ORS 343.475

Hist: EB 23-1992, f. & cert. ef. 6-23-92; EB 4-1995, f. & ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04

581-015-0910

Establishment of Service Areas

(1) The Department shall establish service areas for the provision of EI and ECSE to ensure the provision of services to preschool children with disabilities.

(2) The service areas shall be designated by the Department and they may include multiple counties.

Stat. Auth.: ORS 343.465 - 343.534

Stats. Implemented: ORS 343.475

Hist.: EB 23-1992, f. & cert. ef. 6-23-92; ODE 24-2000, f. & cert. ef. 10-16-00

581-015-0920

Selection of Contractor

(1) The Department shall select a contractor to provide administration and coordination of EI and ECSE in the selected service area.

(2) The contractor shall be selected using criteria developed by the Department which include:

- (a) Geographic location;
- (b) Previous experience in the administration of special education, early intervention, or related programs; and
- (c) Expressed willingness to administer the EI and ECSE program in their area in compliance with the applicable state and federal requirements.

(3) The contractor shall administer the EI and ECSE programs under a contract from the Department. The contract for administration shall include requirements for the following:

- (a) Staffing expectations for the administration of the area program;
 - (b) Necessary reports to the Department;
 - (c) Development of an area service plan;
 - (d) Fiscal responsibility for the administration of contractor funds and the distribution of funds to subcontractors;
 - (e) Selection and monitoring of subcontractors including the designated referral and evaluation agency;
 - (f) Coordination of technical assistance to EI and ECSE programs in the contractor's service area;
 - (g) Assurances that written agreements exist between agencies to assure interagency coordination in each county of the designated service area;
 - (h) Assurances that a continuum of alternative placements is available to meet the needs of preschool children with disabilities enrolled in ECSE;
 - (i) Criteria for supervision of services provided by the contractor when no local subcontractor is available or appropriate; and
 - (j) Such other requirements as are determined necessary by the Department to assure the provision of EI and ECSE services as authorized by ORS 343.465 to 343.534.
- (4) The contract shall include timelines, criteria, and procedures to be used by the Department for withholding funds or terminating the contract for failure to comply with contract requirements.

Stat. Auth.: ORS 343.465 - 343.534

Stats. Implemented: ORS 343.475

Hist.: EB 23-1992, f. & cert. ef. 6-23-92; ODE 24-2000, f. & cert. ef. 10-16-00

581-015-0930

Role of Local Interagency Coordinating Council (LICC)

(1) Each contractor, in conjunction with subcontractor(s), shall solicit the advice and assistance of the local interagency coordinating council (LICC) in each county within the contractor's service area, regarding:

- (a) Identification of service needs;
- (b) Coordination of services with other agency services;
- (c) Procedures for resolving local disputes; and
- (d) Development of local interagency agreements.

(2) The recommendations from each LICC shall be used by the contractor and subcontractor in developing a plan for services required by the Department. This plan will include components described in section (1) of this rule, and be presented in a format provided by the Department, and shall include:

- (a) A written description of the process used in assisting each LICC in the development of their recommendations;
- (b) The contractor's and subcontractor's proposal for implementing the recommendations from the LICC in each county;
- (c) Recommendations from the LICC that the contractor and subcontractor(s) does not propose to implement, and the reason for that decision; and

(d) A written description of the process used to resolve disagreements between the LICC and the contractor and subcontractor(s).

(3) When there is unresolved conflict over the service plan, and recommendations from the LICC the Department will:

- (a) Investigate the conflict; and
- (b) Make the final decision regarding plan approval and implementation.

(4) The contractor(s) shall provide, within available funds, fiscal and other support for the LICC to perform the functions described in this rule. The LICC shall submit an annual budget to the contractor(s) to demonstrate the use of the funds.

(5) The LICC shall collaborate with other agencies and programs in planning and implementing services for young children and their families in the local community.

Stat. Auth.: ORS 343.465 - 343.534

Stats. Implemented: ORS 343.507

Hist.: EB 23-1992, f. & cert. ef. 6-23-92; ODE 24-2000, f. & cert. ef. 10-16-00

581-015-0935

Surrogate Parents for EI/ECSE

(1) Each contractor or subcontractor serving a child participating in EI or ECSE shall ensure that the rights of the child are protected by appointing a surrogate parent when:

(a) The parent cannot be identified or located after reasonable efforts; or

(b) The child is a ward of the state and there is reasonable cause to believe that the child has a disability.

(2) In determining the need for a surrogate, the contractor or subcontractor shall consider whether it is likely to take any action regarding the child that would require notice under OAR 581-015-0940 to the parents.

(3) Each contractor or subcontractor shall secure nominations of persons to serve as surrogates. The contractor or subcontractor shall ensure that each person approved to serve as surrogate:

(a) Is not an employee of the contractor or subcontractor or any state agency;

(b) Is not an employee of any other agency involved in the early intervention, education or care of the child except for an employee of a non-public agency that only provides non-education care for the child;

(c) Does not provide EI/ECSE services to the child or to any family members of the child;

(d) Is free of any conflict of interest that would interfere with representing the child's early intervention or special education interests; and

(e) Has the necessary knowledge and skills to protect the special education rights of the child.

(4) An appointed surrogate parent shall have all of the special education rights and procedural safeguards available to the parent.

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

(6) The duties of the surrogate parent are to:

(a) Protect the early intervention or special education rights of the child;

(b) Be acquainted with the child's disability and the child's EI or ECSE needs; and

(c) Represent the child in all matters relating to the identification, evaluation and assessment, IFSP services, or the provision of a free appropriate public education to the child receiving ECSE and any other EI/ECSE rights.

(7) A surrogate shall have the same rights granted to a parent in a hearing under OAR 581-015-1030 if the identification, evaluation, IFSP or placement of the child is contested.

(8) A parent may give written consent for a surrogate to be appointed. When a parent requests that a surrogate be appointed, the parent retains all parental rights to receive notice under OAR 581-015-0940 and ORS 343.521(20) and all of the information provided to the surrogate. The surrogate, alone, will be responsible for all matters relating to the special education of the child 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) The contractor or subcontractor may change or terminate the appointment of a surrogate when:

(a) The person appointed as surrogate is no longer willing to serve;

(b) The child's EI or ECSE is terminated;

(c) The child is no longer eligible for EI or ECSE services;

(d) The legal guardianship of the child 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 581-015-0900;

(f) The appointed surrogate is no longer eligible;

(g) The child moves to another subcontractor area; or

(h) The child is no longer a ward of the state.

(10) 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 child.

(11) The contractor or subcontractor shall not appoint a surrogate solely because the parent is uncooperative or unresponsive to the EI or ECSE needs of the child.

Stat. Auth.: ORS 34, CFR 300.514, 343.155 & 343.045

Stats. Implemented: ORS 343.475 & 343.531

Hist.: EB 12-1993, f. & cert. ef. 3-25-93; EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04

581-015-0937

Exceptions to Parental Consent

(1) Parental 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 a child's IFSP as a measure for determining progress.

(2) For children age three and above, if the contractor or subcontractor demonstrate reasonable measures to obtain parental consent for reevaluation under OAR 581-015-0939(2) and the child's parents have failed to respond, then parental consent need not be obtained.

(3) For the purposes of (2) of this rule, "reasonable measures" means the contractor or subcontractor has used procedures consistent with OAR 581-015-0966(3).

(4) Parental consent is not required if a hearing officer determines under OAR 581-015-0088 that the evaluation or reevaluation is necessary to ensure that the child is provided with appropriate EI services, or for children in ECSE, a free appropriate public education.

Stat. Auth.: ORS 343.475

Stats. Implemented: ORS 343.475, 343.495 & 343.513 - 343.533

Hist.: ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03

581-015-0938

Parent Consent for EI

(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;

(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;

(d) The parent understands 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 revokes consent, the revocation is not retroactive. A parent may revoke consent for evaluation or reevaluation that has not yet been conducted.

(2) The contractor or subcontractor shall obtain written parental consent before conducting an initial evaluation or reevaluation.

(3) Written parental consent shall also be obtained prior to the provision of EI services described in the IFSP. The parents of a child eligible for EI services shall determine whether they, their child, or other family members shall accept or decline any EI services, and may decline such a service after first accepting it, without jeopardizing other EI services. If the parents do not provide consent for a particular EI service or withdraw consent after first providing it, that service shall not be provided. The EI services for which parental consent is obtained shall be provided.

(4) If consent is not given, the contractor or subcontractor shall make reasonable efforts to ensure that the parent:

(a) Is fully aware of the nature of the evaluation and assessment or the services that would be available; and

(b) Understands that the child will not be able to receive the evaluation and assessment or services unless consent is given.

(5) If a parent of a child who has been identified as having a disability or who is suspected of having a disability refuses to grant consent for an initial evaluation of the child, the Department may request a hearing under OAR 581-015-1030.

Stat. Auth.: ORS 343.475

Stats. Implemented: ORS 343.475

Hist.: EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04

581-015-0939

Parent Consent for ECSE

(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;

(b) The parent understands and agrees in writing to the carrying out of the activity for which consent is sought and the consent describes that activity and lists any records that will be released and to whom;

(c) The parent understands that the granting of consent is voluntary on the part of the parent; and

(d) The parent understands 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 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 ECSE placement before the initiation of that placement.

(2) The contractor or subcontractor shall obtain written parental consent before conducting an initial ECSE evaluation or reevaluation, and before ECSE placement of a child with a disability. Consent for initial evaluation may not be construed as consent for the initial ECSE placement.

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

(4) If a parent refuses to grant consent for an evaluation or reevaluation, the Department of Education shall follow the procedures set forth in OAR 581-015-1030.

(5) A parent's refusal to consent to one service or activity may not be used to deny the parent or child any other service, benefit, or activity of the contractor or subcontractor, except as provided in this rule.

Stat. Auth.: ORS 343.475

Stats. Implemented: ORS 343.475

Hist.: EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03

581-015-0940

Prior Written Notice and Notice of Procedural Safeguards (EI/ECSE Program)

(1) Prior written notice shall be given to the parent or surrogate parent a reasonable time before the contractor or subcontractor initiates or changes, or refuses to initiate or change, the identification, evaluation, placement of the child; or

(a) The provision of appropriate EI services if the child is from birth to age three; or

(b) The provision of a free appropriate public education to the child if the child is three years of age to eligibility for public school.

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

(3) The content of the prior written notice shall include:

(a) A description of the action proposed or refused by the contractor or subcontractor;

(b) An explanation of why the contractor or subcontractor proposed or refused to take the action;

(c) A description of any options that the contractor or subcontractor considered and reasons why those options were rejected;

(d) A description of each evaluation procedure, test, record, or report which is directly relevant to the proposal or refusal;

(e) A description of any other factors that are relevant to the contractor's or subcontractor's proposal or refusal;

(f) A statement that the parents of a child with a disability have procedural safeguards and the means by which a copy of the Notice of Procedural Safeguards may be obtained;

(g) Sources for parents to contact to obtain assistance in understanding their procedural safeguards; and

(h) For children in EI, a statement of the complaint procedures under OAR 581-015-0054, including a description of how to file a complaint and the timelines under those procedures.

(4) The prior notice shall be:

(a) Written in language understandable to the general public; and

(b) 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 contractor or subcontractor 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) The parent understands the content of the notice; and
- (c) There is written evidence that the requirements in subsections (5)(a) and (b) of this rule have been met.

(6) If a parent is deaf or blind, or has no written language, the mode of communication shall be that normally used by the parent (such as sign language, Braille, or oral communication).

(7) If the proposed action requires prior written notice and written consent, the contractor or subcontractor may give notice at the same time it requests consent.

(8) Notice of Procedural Safeguards: Contractors and subcontractors shall provide notice of Procedural Safeguards as described in OAR 581-015-0079.

Stat. Auth.: ORS 343.465 - 343.534

Stats. Implemented: 34 CFR 300.504 - 505, ORS 343.521, 343.527 & 343.531

Hist.: EB 23-1992, f. & cert. ef. 6-23-92; EB 4-1995, f. & cert. ef. 1-24-95; EB 27-1995, f. & cert. ef. 12-11-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 8-2001, f. & cert. ef. 1-29-01; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03; ODE 1-2004, f. & cert. ef. 1-15-04

581-015-0941

ECSE Evaluation

(1) When evaluating children suspected of being eligible for ECSE, school districts shall ensure that the procedures in OAR 581-015-0070 to 0074, and 581-015-0700 are followed by the agency(ies) conducting the evaluation.

(2) In addition, the following evaluation shall be conducted:

(a) A review of existing evaluation data by following the procedures in OAR 581-015-0701; and

(b) For a child suspected of having any of the following disabilities, an evaluation in all areas of the suspected disability following OAR 581-015-0051:

- (A) Autism spectrum disorder;
- (B) Communication disorder;
- (C) Deafblindness;
- (D) Emotional disturbance;
- (E) Hearing impairment;
- (F) Mental retardation;
- (G) Orthopedic impairment;
- (H) Other health impaired;
- (I) Specific learning disability;
- (J) Traumatic brain injury;
- (K) Visual impairment.

(c) If no categorical disability area is suspected, then an evaluation for determining a developmental delay as follows:

(A) At least one norm referenced, standardized test in each area of suspected delay;

(B) At least one additional procedure to confirm the child's level of functioning in each area of suspected delay;

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

(D) Review of previous testing, medical data, and parent reports; and

(E) Other evaluative information as necessary to determine eligibility.

Stat. Auth.: ORS 343.465 - 343.534

Stats. Implemented: ORS 343.475

Hist.: EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03

581-015-0943

ECSE Eligibility

(1) Upon completing the administration of tests and other evaluation materials, the designated referral and evaluation agency shall determine, through a team, whether a child is eligible for ECSE services by following the procedures in this rule.

(2) The team shall include two or more professionals, at least one of whom is knowledgeable and experienced in the evaluation and education of children with the suspected disability, and the parents. The team may be the child's IFSP team.

(3) In determining eligibility for a child suspected of having a specific learning disability, the team shall also include:

(a) The child's preschool teacher or, if the child does not have a preschool teacher, a preschool 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 psychologist, speech-language pathologist, or other qualified personnel.

(4) For a child suspected of being eligible for ECSE services, the child shall meet the following minimum criteria:

(a) The child meets the minimum criteria for one of the disability categories in OAR 581-015-0051; or

(b) The child has a developmental delay of 1.5 standard deviations or more below the mean in two or more of the developmental areas listed in OAR 581-015-0946(3)(c)(A)-(E).

(5) For a child to be eligible for ECSE services, as a child with a developmental delay, the child's team shall determine that:

(a) the child's disability has an adverse impact on the child's developmental progress; and

(b) The child needs ECSE services.

(6) The team shall prepare an evaluation report and 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 criteria for ECSE as described in (4) of this part;

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

(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 developmental progress;

(e) A determination of whether, as a result of the disability the child needs ECSE services; and

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

(7) When determining eligibility for a child suspected of having a specific learning disability, the team shall prepare a written report following the procedures in OAR 581-015-0053(5).

(8) The team may not determine that a child is eligible for ECSE services if:

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

(A) Lack of instruction in reading or math; or

(B) Limited English proficiency.

(b) The child does not otherwise meet the eligibility criteria under this rule.

(9) For a child who may have disabilities in more than one category, the team need only qualify the child for ECSE services under one disability category, however;

(a) The child shall be evaluated in all areas of suspected disability; and

(b) The child's IFSP shall address all of the child's special education needs.

(10) The team shall give the parents a copy of the eligibility statement and evaluation report.

(11) The contractor or subcontractor shall notify the child's resident school district upon determination of eligibility for ECSE services.

Stat. Auth.: ORS 343.465 - 343.534

Stats. Implemented: 34 CFR 300.128-133, 34 CFR 300.531-543 & ORS 343.513

Hist.: EB 4-1995, f. & cert. ef. 1-24-95; EB 27-1995, f. & cert. ef. 12-11-95; ODE 24-2000, f. & cert. ef. 10-16-00

581-015-0945

EI Evaluation

(1) When evaluating children suspected of being eligible for EI services, school districts shall ensure that the procedures in OAR 581-015-0071, 0072(1)-(8), and 0074 are followed by the agency(ies) conducting the evaluation. In addition, the evaluation shall:

(a) Be conducted by a team representing two or more disciplines or professions, including persons who are knowledgeable about the child;

(b) Assess the child's level of functioning in all the following areas: cognitive development, physical development including vision and hearing, communication development, social or emotional development, and adaptive development;

(c) Be based on informed clinical opinion; and

(d) Be completed in time to conduct the initial IFSP meeting within 45 calendar days from the date of referral.

(2) For a child suspected of being eligible for EI, the following evaluation shall be conducted:

(a) A review of existing evaluation data by following the procedures in OAR 581-015-0701; and

(b) For a child suspected of having autism spectrum disorder, deafblindness, hearing impairment, orthopedic impairment, or visual impairment, an evaluation in all areas of the suspected disability following OAR 581-015-0051; or

(c) A diagnosis of a physical or mental condition as described under in OAR 581-015-0946(3)(b); or

(d) An evaluation for determining a developmental delay as follows:

(A) At least one norm-referenced, standardized test addressing the child's level of functioning in each of the following areas:

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

(B) At least one additional procedure to confirm the child's level of functioning in each area of suspected delay listed in subsection (2)(d) of this rule;

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

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

(E) Other evaluative information as necessary to determine eligibility.

Stat. Auth.: ORS 343.465 - 343.534

Stats. Implemented: ORS 343.475

Hist.: EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03

581-015-0946

EI Eligibility

(1) Upon completing the administration of tests and other evaluation materials, the designated referral and evaluation agency shall determine, through a team, whether a child is eligible for EI services by following the procedures in this rule.

(2) The team shall include individuals from two or more disciplines, including persons who are knowledgeable about the child, and the child's parents.

(3) For a child suspected of being eligible for EI services, the child shall meet the following minimum criteria:

(a) The child meets the minimum criteria for one of the following disability categories in OAR 581-015-0051: autism spectrum disorder, deafblindness, hearing impairment, orthopedic impairment, or visual impairment; or

(b) The child has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay, as documented by a physician licensed by a State Board of Medical Examiners; or

(c) The child experiences a developmental delay and as a result needs EI services. Developmental delay means two standard deviations or more below the mean in one or more of the following developmental areas, or 1.5 standard deviations below the mean in two or more of the developmental areas:

- (A) Cognitive development;
- (B) Physical development;
- (C) Communication development;
- (D) Social or emotional development;
- (E) Adaptive development.

(4) The team shall prepare an evaluation report and 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 criteria for EI as described in (3) of this part;

(c) A determination of whether:

- (A) As a result of the disability, the child needs EI services; or
- (B) The child's disability has a high probability of resulting in developmental delay as documented by a physician.

(d) The signature of each member of the team signifying his or her concurrence or dissent.

(5) For a child who may have disabilities in more than one category, the team need only qualify the child for EI services under one disability category, however:

(a) The child shall be evaluated in all areas of development and areas of suspected disability; and

(b) The child's IFSP shall address all of the child's early intervention needs.

(6) The team shall give the parents a copy of the eligibility statement and evaluation report.

(7) The contractor or subcontractor shall notify the child's resident district upon determination of eligibility for EI services.

(8) Children found eligible under this rule shall be eligible for regional services if they also meet criteria under OAR 581-015-0051 for vision impairment, hearing impairment, autism spectrum disorder, or severe orthopedic impairment.

Stat. Auth.: ORS 343.513

Stats. Implemented: 34 CFR 303.300 - 323 & ORS 343.513

Hist.: EB 4-1995, f. & cert. ef. 1-24-95; EB 27-1995, f. & cert. ef. 12-11-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 8-2001, f. & cert. ef. 1-29-01; ODE 2-2003, f. & cert. ef. 3-10-03

581-015-0949

Provision of EI Services Before an Evaluation and Assessment Are Completed

Early intervention services for an eligible child and the child's family may begin before the completion of the evaluation and assessment process described in OAR 581-015-0945 if the following conditions are met:

(1) Parental consent for evaluation and services is obtained;

(2) An interim IFSP is developed that includes:

(a) The name of the service coordinator who will be responsible for implementation of the interim IFSP and coordination with other agencies and persons; and

(b) The EI services that have been determined to be needed immediately by the child and the child's family; and

(c) The evaluation and assessment are completed within the 45 calendar days as required in OAR 581-015-0945(1)(d).

Stat. Auth.: ORS 343.465 - 343.534

Stats. Implemented: ORS 343.475

Hist.: EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 6-2003, f. & cert. ef. 4-29-03, cert. ef. 4-30-03

581-015-0955

Termination of Eligibility

(1) A school district must evaluate a child with a disability in accordance with OAR 581-015-0072, 0074, and 0701 before determining that the child is no longer a child with a disability.

(2) The contractor or subcontractor shall provide written notice under OAR 581-015-0940 when a team determines that a child is no longer eligible for EI or ECSE services.

Stat. Auth.: ORS 343.475

Stats. Implemented: ORS 343.475, 343.495 & 343.513 - 343.533

Hist.: ODE 24-2000, f. & cert. ef. 10-16-00

581-015-0960

EI and ECSE Transition

(1) Transition from EI to ECSE or other services:

(a) Before a child reaches the age of eligibility for ECSE, the school district shall obtain parental consent for initial evaluation under OAR 581-015-0939 and conduct an initial evaluation under 581-015-0941.

(b) With the approval of the child's family and in accordance with OAR 581-015-0968, a transition meeting shall be held at least 90 calendar days, and at the discretion of the parties, up to six months before the child's third birthday and shall include:

(A) Discussions with and training of parents regarding future services, placements and other matters related to the child's transition;

(B) Procedures to prepare the child for changes in service delivery, including steps to help the child adjust to and function in a new setting;

(C) A review of the child's program options for the period from the child's third birthday through the remainder of the school year; and

(D) With parental consent, the transmission of information about the child to the early childhood special education subcontractor or other service provider, if different than the child's early intervention subcontractor including;

(i) Evaluation and assessment information; and

(ii) Copies of IFSPs that have been developed and implemented.
(c) For children eligible for ECSE services under OAR 581-015-0943, contractors or subcontractors shall initiate and conduct an IFSP meeting on or before the child's third birthday to:

(A) Review and revise the IFSP;

(B) Determine placement; and

(C) Obtain parent consent for initial placement in special education. This is the initial consent for placement in special education for school-age students.

(2) Transition from ECSE to School-age Special Education Services:

(a) Before a child reaches the age of eligibility for public school, the district shall:

(A) For children previously eligible with a developmental delay and suspected of having a disability under OAR 581-015-0051, conduct an evaluation and determine eligibility for school age special education services; or

(B) For children previously eligible in a disability category under OAR 581-015-0051, continue the child's eligibility for school age special education services. The school district may conduct a reevaluation and reconsider eligibility for special education services.

(b) The school district and contractor or subcontractor shall hold a meeting during the year before the child is eligible to enter public school:

(A) To determine steps to support the child's transition from ECSE to public schooling or other educational setting; and

(B) For a child eligible for school age special education services, to develop an IEP that is in effect at the beginning of the school year.

Stat. Auth.: ORS 343.465 - 343.534

Stats. Implemented: ORS 343.521

Hist.: EB 23-1992, f. & cert. ef. 6-23-92; EB 4-1995, f. & cert. ef. 1-24-95; Administrative Correction 12-1-97; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04

581-015-0962

Independent Education Evaluation

(1) Any parent of a preschool child with disabilities three years of age through the age of eligibility for public school may request an independent education evaluation at the expense of:

(a) The school district if the parent disagrees with an evaluation obtained by the school district; or

(b) The contracting agency if the parent disagrees with an evaluation obtained by the contractor or subcontractor.

(2) Agencies from (1)(a) and (b) of this rule shall follow the procedures in OAR 581-015-0094 when responding to a parent request for an independent education evaluation.

Stat. Auth.: ORS 343.475

Stats. Implemented: ORS 343.475, 343.495 & 343.513 - 343.533

Hist.: ODE 24-2000, f. & cert. ef. 10-16-00

581-015-0964

Parent Participation — EI/ECSE Program

(1) For a child under age three, contractors or subcontractors shall provide parents with an opportunity to participate in meetings with respect to the identification, evaluation, IFSP, placement of the child and the provision of appropriate EI services and transition to ECSE or other services. For IFSP meetings, contractors and subcontractors shall also follow requirements of OAR 581-051-0966.

(2) For a child age three and older, contractors or subcontractors shall provide parents with an opportunity to participate in meetings with respect to the identification, evaluation, IFSP, placement of the child, the provision of a free appropriate public education and transition to school age or other services. For IFSP and placement meetings, contractors and subcontractors shall also follow requirements of OAR 581-015-0966.

(3) Contractors or subcontractors shall provide parents and other participants with a written notice of the meeting sufficiently in advance to ensure that parents and others will have an opportunity to attend. The written notice shall:

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

(b) Inform the parents that they or the agency may invite other individuals who they believe have knowledge or expertise regarding the child;

(c) Inform the parents of a child age three or older that the team may proceed with the meeting even if the parent is not in attendance; and

(d) Inform the parents of whom to contact before the meeting to provide information if they are unable to attend.

(4) The contractor or subcontractor shall take whatever action is necessary to ensure that the parents understand the proceedings at a meeting, including:

(a) For a child under age three, conducting the meeting in the native language of the family or other mode of communication used by the family unless it is clearly not feasible to do so; and

(b) For a child age three and over, arranging for an interpreter for parents who are deaf or whose native language is other than English.

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

Stat. Auth.: ORS 343.475

Stats. Implemented: ORS 343.475, 343.495 & 343.513 - 343.533

Hist.: ODE 24-2000, f. & cert. ef. 10-16-00; ODE 8-2001, f. & cert. ef. 1-29-01; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04

581-015-0966

Additional Parental Participation Requirements for IFSP and Placement Meetings — EI/ECSE Program

(1) For a child under age three:

(a) Contractors or subcontractors shall schedule IFSP meetings in settings and at times that are convenient to families;

(b) If neither parent can attend, the contractor or subcontractor shall use other methods to ensure parent participation, including, but not limited to, individual or conference phone calls or home visits; and

(c) The contents of the IFSP shall be fully explained to the parents and informed written consent obtained from the parents before the provision of EI services described in the plan.

(2) For a child age three and older:

(a) Contractors or subcontractors shall take steps to ensure that one or both of the parents of a child with a disability are present at each IFSP or placement meeting or are afforded the opportunity to participate, including:

(A) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(B) Scheduling the meeting at a mutually agreed on time and place.

(C) If neither parent can attend, the contractor or subcontractor shall use other methods to ensure parent participation, including, but not limited to, individual or conference phone calls or home visits.

(b) An IFSP or placement meeting may be conducted without a parent in attendance if the contractor or subcontractor is unable to convince the parents that they should attend. If the contractor or subcontractor proceeds with an IFSP or placement meeting without a parent in attendance, the contractor or subcontractor must have a record of its attempts to arrange a mutually agreed on time and place, such as:

(A) Detailed records of telephone calls made or attempted and the results of those calls;

(B) Copies of correspondence sent to the parents and any responses received; and

(C) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(c) The Department considers contractor or subcontractor attempts to convince parents to attend sufficient if the contractor or subcontractor:

(A) Communicates directly with the parent and arranges a mutually agreeable time and place, and send written notice required under OAR 581-015-0964 to confirm this arrangement; or

(B) Sends written notice required under OAR 581-015-0964, proposing a time and place for the meeting and stating in the notice that the parent may request a different time and place, and confirms that the parent received the notice.

(C) "Sufficient attempts" may all occur before the scheduled IEP or placement meeting, and do not require the scheduling of multiple agreed-upon meetings unless the team believes this would be in the best interest of the child.

(3) The contractor or subcontractor shall give the parent a copy of the IFSP at no cost to the parent. If the parent does not attend the IFSP meeting, the contractor subcontractor shall ensure that a copy is provided to the parent.

Stat. Auth.: ORS 343.475

Stats. Implemented: ORS 343.475, 343.495 & 343.513 - 343.533

Hist.: ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03

581-015-0968

IFSP Meeting Procedures and Timelines

(1) Contractors or subcontractors shall conduct a meeting to develop an initial IFSP within:

(a) Forty-five calendar days from the date the child is referred for EI services; and

(b) Thirty calendar days from the date the child is determined eligible for ECSE services.

(2) Contractors or subcontractors shall initiate and conduct a meeting to review and revise the IFSP every 365 days to:

(a) Determine whether the annual goals for the child are being achieved; and

(b) Revise the IFSP as appropriate to address:

(A) Any lack of expected progress toward the annual goals and appropriate activities;

(B) The results of any reevaluation;

(C) Existing information about the child provided to, or by, the parents;

(D) The child's anticipated needs; or

(E) Other matters.

(3) For a child under age three:

(a) Contractors or subcontractors shall initiate and conduct a review of the IFSP, with the participation of the child's parents consistent with OAR 581-015-0964 and 0966, every six months or more frequently if conditions warrant or if the family requests such a review.

(b) The purpose of this review is to determine:

(A) The degree to which progress on major outcomes or annual goals is being made; and

(B) Whether revision of major outcomes or goals or services is needed.

(c) This review may be carried out by a meeting or by another means that is acceptable to the parents and other participants. However, if IFSP revisions are necessary, an IFSP meeting shall be conducted.

(4) Contractors or subcontractors shall initiate and conduct, with the approval of the child's family, an IFSP meeting to plan the child's transition to ECSE services or other preschool services at least 90 calendar days, and at the of the parties, up to six months, before the child's third birthday.

(5) For children eligible for ECSE services under OAR 581-015-0943, contractors or subcontractors shall initiate and conduct an IFSP meeting on or before the child's third birthday in accordance with OAR 581-015-0960.

(6) Contractors or subcontractors shall conduct an IFSP meeting if they believe that a change in the IFSP may be necessary to ensure the provision of appropriate EI services for a child under age three or a free appropriate public education to a child over age three.

(7) A parent may request a meeting at any time to review or revise the IFSP.

(8) In response to a parent request for IFSP meeting, the contractor or subcontractor shall hold an IFSP meeting within a reasonable time.

Stat. Auth.: ORS 343.475

Stats. Implemented: ORS 343.475, 343.495 & 343.513 - 343.533

Hist.: ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 15-2003, f. & cert. ef. 8-14-03; ODE 1-2004, f. & cert. ef. 1-15-04

581-015-0970

IFSP Content

(1) Contractors or subcontractors shall use IFSP forms and directions published by the Oregon Department of Education.

(2) Oregon Department of Education IFSP forms shall combine the content requirements for IEPs under: Part B of IDEA; IFSPs under Part C of IDEA; and IFSPs under ORS 343.521.

(a) Part B of IDEA;

(b) IFSPs under Part C of IDEA; and

(c) IFSPs under ORS 343.521.

(3) Each individualized family service plan shall contain:

(a) A statement of the child's present level of development, including how the child's disability affects the child's participation in appropriate activities for the child's age. For a child under age three, the statement must include present levels of physical development including vision, hearing and health status, cognitive development, communication development, social development and adaptive development. The statement shall be based on professionally acceptable objective criteria.

(b) A statement of major outcomes or annual goals and short-term objectives expected to be achieved for the child and family related to:

(A) Meeting the child's needs that result from the child's disability to enable the child to participate in appropriate activities;

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

(c) For a child under age three, a statement of the specific early intervention services to be provided for the child and to the family to advance toward attaining the major outcomes or annual goals.

(d) For a child age three, a statement of early childhood 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 personnel that will be provided for the child:

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

(B) To participate in appropriate activities and to participate in extracurricular and other nonacademic activities; and

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

(e) With concurrence of the family, a statement of the family's resources, priorities, concerns and goals related to enhancing the development of the child.

(f) The projected dates for initiation of services and modifications and the anticipated frequency, location, intensity, method and duration of the services and modifications described in subsection (3)(d) of this rule and the payment arrangements, if any.

(g) The name of the service coordinator from the profession, including service coordination, most immediately relevant to the child's or family's needs (or who is otherwise qualified to carry out all applicable EI/ECSE responsibilities) responsible for coordinating the involvement of the family and agencies in implementing early intervention and other services. The contractor or subcontractor may:

(A) Assign the same service coordinator who was appointed at the time that the child was initially referred for evaluation; or

(B) Appoint a new service coordinator.

(h) For a child under age three:

(A) The natural environments in which early intervention services will be provided; and

(B) A justification of the extent, if any, to which services will not be provided in a natural environment.

(i) For a child age three and older, 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 (3)(d) of this rule.

(j) A statement of:

(A) How the progress toward major outcomes or annual goals will be measured, including the criteria, procedures and timelines used to determine:

(i) The degree to which progress toward achieving the outcomes or goals is being made; and

(ii) Whether revisions of the outcomes or goals or services are necessary.

(B) For a child age three and older, 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 major outcomes or annual goals; and

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

(k) The steps to be taken to support the transition of the child from early intervention services to early childhood special education or other appropriate services, in accordance with OAR 581-015-0960, 581-015-0964, and 581-015-0968.

(l) The steps to be taken to support the transition of the child from early childhood special education to public schooling or other educa-

tion setting, in accordance with OAR 581-015-0960, 581-015-0964 and 581-015-0968.

(m) A statement of other services, such as medical services, that the child may need but are not early intervention or early childhood special education services including the funding sources used in paying for those services or the steps to be taken to secure those services through public or private sources. This provision does not apply to routine medical services (e.g., immunizations, and “well-baby” care) unless a child needs those services and the services are not otherwise available or being provided.

Stat. Auth.: ORS 343.465 - 343.534

Stats. Implemented: ORS 343.521

Hist.: EB 23-1992, f. & cert. ef. 6-23-92; EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04

581-015-0972

IFSP Team Consideration and Special Factors

(1) In developing, reviewing and revising the child’s IFSP, the IFSP team shall consider:

(a) The strengths of the child and the concerns of the parents for enhancing the development of their child; and

(b) The results of the initial or most recent evaluation of the child.

(2) For children age three and older, in developing, reviewing and revising the child’s IFSP the IFSP 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) For children age three and older, in developing, reviewing and revising the IFSP of children described below, the IFSP team shall consider the following additional special factors:

(a) For a child whose behavior impedes his or her development or that of others, consider strategies, positive behavioral interventions and supports to address that behavior;

(b) For a child or family with limited English proficiency, consider the language needs of the child and the family as those needs relate to the child’s IFSP;

(c) For a child who is blind or visually impaired, instruct the child in pre-literacy or readiness activities related to the use of Braille unless the IFSP determines, after an evaluation of the child, that this instruction is not appropriate for the child;

(d) For a child who is deaf or hard of hearing, consider the child’s language and communication needs, including developmental level, full range of needs, and opportunities for direct instruction and direct communications with peers and professional personnel in the child’s language and communication mode.

(4) If, in considering these special factors, the IFSP team determines that a child needs a particular device or service (including intervention, accommodation or other program modification) for the child to receive free appropriate public education, the IFSP team shall include a statement to that effect in the child’s IFSP.

(5) Nothing in OAR 581-015-0970 or this rule shall be construed to require the IFSP team to include information under one component of a child’s IFSP that is already contained under another component of the child’s IFSP.

Stat. Auth.: ORS 343.041, 343.045 & 343.055

Stats. Implemented: ORS 343.164, 343.045 & 343.155

Hist.: ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04

581-015-0980

Participants for IFSP Team Meetings and Reviews

(1) Each initial and annual IFSP meeting shall include the following participants:

(a) The child’s parents;

(b) The child’s EI or ECSE specialist, and as appropriate, persons who will be providing services to the child or family;

(c) A representative of the contractor or subcontractor who may be another member of the team and who is:

(A) Qualified to provide or supervise the provision of EI or ECSE services to meet the unique needs of children with disabilities;

(B) Knowledgeable of typical child development and appropriate activities for infants and young children; and

(C) Knowledgeable about the availability of resources.

(d) For a child eligible for EI services, the service coordinator who is responsible for implementation of the IFSP and may be the child’s EI specialist;

(e) For a child who is eligible for ECSE services, the child’s preschool teacher if the child is or may be participating in a regular preschool;

(f) Family members and/or advocates as requested by the parents;

(g) Other individuals, including related services personnel as appropriate, invited by the parent, primary contractor, or subcontractor who have knowledge or special expertise regarding the child;

(h) An individual, who may be another member of the team who:

(A) Was involved in conducting the evaluation of the child;

(B) Is knowledgeable about the child’s disability; and

(C) Can interpret the developmental or instructional implications of the evaluation.

(i) A representative of the school district in which the child resides during the year before the child enters school.

(2) The regular preschool teacher shall participate, to the extent appropriate, in the development, review and revision of the child’s IFSP, including assisting in the determination of:

(a) Necessary modifications to appropriate preschool activities in the classroom and participation in the preschool environment;

(b) Supplementary aids and services, program modifications or supports for preschool personnel that will be provided for the child; and

(c) Appropriate positive behavioral interventions and strategies for the child.

(3) For the purposes of section (2), “to the extent appropriate” means:

(a) For those portions of the child’s IFSP that the regular preschool teacher may be responsible for implementing; or

(b) When the regular preschool teacher’s knowledge about the child or about appropriate activities is necessary for IFSP team decision-making.

(4) Each review shall include the participants in subsections (1)(a), (b), (d) and, if feasible to do so (f) of this rule. When the review indicates any changes in the IFSP, then the individualized meeting shall follow all IFSP procedural requirements.

(5) For the purposes of subsection (1)(h), if such an individual is unable to attend the meeting, arrangements must be made for the person’s involvement through other means, including:

(a) Participating in a telephone conference call;

(b) Having a knowledgeable authorized representative attend the meeting; or

(c) Making pertinent records available at the meeting.

Stat. Auth.: ORS 343.465 - 343.534

Stats. Implemented: ORS 343.521

Hist.: EB 23-1992, f. & cert. ef. 6-23-92; EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04

581-015-0990

Implementation of the IFSP

(1) An IFSP shall:

(a) Be written before EI services or ECSE and related services are provided to the child;

(b) Begin as soon as possible following the meeting; and

(c) Be provided year round for children receiving EI services, unless agreed to otherwise by the parents; or

(d) Be in effect by the child’s third birthday and at the beginning of the school year for children receiving ECSE services.

(2) If a child’s third birthday occurs during the summer, the child’s IFSP team shall determine when services begin under the IFSP.

(3) Contractors and subcontractors shall:

(a) Ensure that the IFSP is available to each regular preschool teacher, EI/ECSE specialist, 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 IFSP and the specific accommodations, modifications and supports that must be provided for on behalf of the child in accordance with the IFSP.

(4) Contractors or subcontractors shall:

(a) Provide EI or ECSE and related services to a child with a disability in accordance with an IFSP; and

(b) Make a good faith effort to assist the child to achieve the goals and short-term objectives listed in the IFSP. However, no contractor, subcontractor, teacher, specialist, provider 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.

(5) Nothing in this rule limits a parent's right to ask for revisions of their child's IFSP or to invoke due process procedures.

Stat. Auth.: ORS 343.465 - 343.534

Stats. Implemented: ORS 343.521

Hist.: EB 23-1992, f. & cert. ef. 6-23-92; EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04

581-015-0995

Natural Environments in EI

Contractors or subcontractors shall ensure that, to the maximum extent appropriate to the needs of the child and family, EI services are provided in natural environments, including the home and community settings in which children without disabilities participate.

Stat. Auth.: ORS 343.475

Stats. Implemented: ORS 343.475, 343.495 & 343.513 - 343.533

Hist.: ODE 24-2000, f. & cert. ef. 10-16-00

581-015-1000

Placement and Least Restrictive Environment in ECSE

(1) Contractors or subcontractors shall ensure that:

(a) The placement of a child with a disability 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; and

(b) To the maximum extent appropriate to the needs of the child, ECSE services are provided in the least restrictive environment as defined in OAR 581-015-0059, including home and community settings in which children without disabilities participate.

(2) Each child's placement shall be:

(a) Determined at least every 365 days;

(b) Based on the IFSP; and

(c) As close as possible to the child's home.

(3) Unless the IFSP of a child with a disability requires some other arrangement, the child shall be educated in the public school or public program, if any, that he or she would attend if not disabled.

(4) The contractor shall ensure that a continuum of alternative placements is available to meet the needs of preschool children with disabilities for special education and related services.

(a) The continuum shall include placements in the home, hospitals, institutions, special schools, classrooms, and community childcare or preschool settings.

(b) The continuum shall provide for supplementary services to be provided in conjunction with regular preschool placement.

(5) In determining the least restrictive environment, the team shall consider the continuum of alternative placements and the following:

(a) Modifications needed to implement the child's IFSP;

(b) The level of support needed by the child;

(c) Any potential harmful effect on the child or on the quality of services which he or she needs;

(d) A child with a disability shall not be removed from education in age appropriate classrooms or settings solely because of needed modifications.

(6) The team shall ensure that, to the maximum extent appropriate to the needs of that child, ECSE services are provided in settings in which children without disabilities participate, including nonacademic services and activities.

Stat. Auth.: ORS 343.465 - 343.534

Stats. Implemented: ORS 343.475

Hist.: EB 23-1992, f. & cert. ef. 6-23-92; EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03

581-015-1002

Free Appropriate Public Education (FAPE) for ECSE

(1) Contractors and subcontractors shall provide ECSE and related services to all resident children from three years of age until the age of eligibility for public school.

(2) The requirements of this rule also apply to children with disabilities who have been suspended or expelled from preschool in accordance with OAR 581-015-0552 to 581-015-0558.

(3) For purposes of this rule, residency is determined in accordance with ORS 339.133 through 339.137.

(4) For purposes of this rule, "school district" means contractors or subcontractors.

Stat. Auth.: ORS 343.055

Stats Implemented: Senate Bill 363, Sections 1 & 2, amending ORS 399

Hist: ODE 24-2000, f. & cert. ef. 10-16-00

581-015-1003

Extended Year Services for ECSE

(1) Contractors and subcontractors shall ensure that extended year services are available as necessary to provide a free appropriate public education to children eligible for ECSE services.

(2) Extended year services must be provided only if the child's IFSP team determines, on an individual basis, in accordance with OAR 581-015-0966 through 0990, that services are necessary for the provision of free appropriate public education to the child.

(3) A contractor or subcontractor may not:

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

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

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

(5) Contractors or subcontractors shall develop criteria for determining the need for extended year services. The criteria shall include:

(a) Regression and recoupment time based on documented evidence; or

(b) If no documented evidence, on predictions according to the professional judgment of the team.

(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 IFSP as a result of an interruption in ECSE services; and

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

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

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

(A) Beyond the normal service year of the contractor or subcontractor;

(B) In accordance with the child's IFSP; and

(C) At no cost to the parents of the child.

(b) Meet the standards of the Oregon Department of Education.

Stat. Auth.: ORS 343.475

Stats. Implemented: ORS 343.475, 343.495 & 343.513 - 343.533

Hist.: ODE 24-2000, f. & cert. ef. 10-16-00

581-015-1005

Assistive Technology for ECSE

(1) Contractors or subcontractors shall follow the rules and procedures in OAR 581-015-0560 to ensure that assistive technology devices or assistive technology services, or both, are available to preschool children with a disabilities age three through the age of eligibility for public school, if required as a part of the child's special education, related services or supplementary aids and services.

(2) For the purposes of this rule, "school district" means contractors or subcontractors.

(3) For the purposes of this rule, "IEP" means IFSP.

Stat. Auth.: ORS 343.475

Stats. Implemented: ORS 343.475, 343.495 & 343.513 - 343.533

Hist.: ODE 24-2000, f. & cert. ef. 10-16-00

581-015-1008

Discipline of Children with Disabilities for ECSE

Contractors or subcontractors shall follow the rules and procedures in OAR 581-015-0550 through 0559 for discipline of children with disabilities age three through the age of eligibility for public school with the following definition exceptions:

(1) "General curriculum" means appropriate activities engaged in by typical children of the same age;

(2) "IEP" means IFSP; and

(3) "Day" means calendar days excluding weekends, holidays, and ECSE program vacation days.

(4) "School district" means contractors or subcontractors.
 Stat. Auth.: ORS 343.475
 Stats. Implemented: ORS 343.475, 343.495 & 343.513 - 343.533
 Hist.: ODE 24-2000, f. & cert. ef. 10-16-00; ODE 8-2001, f. & cert. ef. 1-29-01; ODE 2-2003, f. & cert. ef. 3-10-03

581-015-1010

Confidentiality of Records for Preschool Children with Disabilities

Contractors and subcontractors shall follow the rules and procedures in OAR 581-015-0055 for confidentiality of records for preschool children with disabilities with the following exception: "School district" means contractors or subcontractors.

Stat. Auth.: ORS 343.465 - 343.534
 Stats. Implemented: ORS 343.485
 Hist.: EB 23-1992, f. & cert. ef. 6-23-92; ODE 24-2000, f. & cert. ef. 10-16-00

581-015-1020

Mediation

(1) A parent, contractor, or subcontractor may request mediation by the Department to resolve a dispute regarding eligibility or appropriateness of services for any child referred for, or determined eligible for EI or ECSE.

(2) When a parent, contractor or subcontractor requests a due process hearing under OAR 581-015-1030, the Department shall offer mediation at no cost to the parties to resolve issues related to the hearing request. The parties shall follow the mediation procedures in OAR 581-015-0095 when a hearing has been requested.

(3) For the purposes of this rule, "school district" means contractors and subcontractors.

Stat. Auth.: ORS 343.465 - 343.534
 Stats. Implemented: ORS 343.531
 Hist.: EB 23-1992, f. & cert. ef. 6-23-92; EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00

581-015-1030

Due Process Hearings

OAR 581-015-0080 through 0093, and 581-015-0096 shall apply for EI and ECSE programs with the following exceptions:

(1) "School District" means contractors and subcontractors;

(2) Parents may not seek reimbursement or attorney fees under OAR 581-015-0080(3)(f)(D) for EI hearings;

(3) If a parent disagrees with their child's initial placement in an ECSE program, any previous EI services shall not be considered stay put for the child; and

(4) The Department shall submit a copy of the hearing decision to the State Advisory Council for Special Education and the State Early Intervention Coordinating Council.

Stat. Auth.: ORS 343.465 - 343.534
 Stats. Implemented: ORS 343.531
 Hist.: EB 23-1992, f. & cert. ef. 6-23-92; EB 4-1995, f. & cert. ef. 1-24-95; EB 10-1996, f. & cert. ef. 6-26-96; ODE 24-2000, f. & cert. ef. 10-16-00

581-015-1045

Census and Data Reporting

Contractors and subcontractors shall follow the rules and procedures in OAR 581-015-0038 for reporting to the Department all resident preschool children with disabilities with the following definition exception: "School district" means contractors or subcontractors.

Stat. Auth.: ORS 343.475
 Stats. Implemented: ORS 343.475, 343.495 & 343.513 - 343.533
 Hist.: ODE 24-2000, f. & cert. ef. 10-16-00

581-015-1051

Preschool Children with Disabilities Covered by Public Insurance — ECSE

(1) A contractor or subcontractor may use the Medicaid or other public insurance benefits programs in which a preschool child participates 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.

(2) With regard to services required to provide FAPE to a preschool child with disabilities, the contractor or subcontractor:

(a) May not require parents to sign up for or enroll in public insurance programs in order for their child to receive FAPE under Part B of the IDEA;

(b) May not require parents to incur an out-of-pocket expense such as the payment of deductible or co-pay amount incurred in filing

a claim for services provided pursuant to this chapter, but may pay the cost that the parent otherwise would be required to pay; and

(c) May not use a child's benefits under a public insurance program if that use would:

(A) Decrease available lifetime coverage or any other insured benefit;

(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 receiving ECSE services;

(C) Increase premiums or lead to the discontinuation of insurance; or

(D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

(3) If a contractor or subcontractor is unable to use a child's public insurance for a specified service required under this chapter, to ensure FAPE the contractor or subcontractor may use its Part B funds to pay for the service.

(4) If the parent would incur a cost for the contractor or subcontractor's use of public insurance, the contractor or subcontractor 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 contractor or subcontractor 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.

Stat. Auth.: ORS 343.041, 343.045 & 343.055
 Stats. Implemented: ORS 343.164, 343.045 & 343.155
 Hist.: ODE 2-2003, f. & cert. ef. 3-10-03

581-015-1052

Preschool Children with Disabilities Covered by Private Insurance

(1) With regard to services required to provide FAPE to a preschool child with disabilities, a contractor or subcontractor may access a parent's private insurance proceeds only if the parent provides informed consent consistent with this chapter.

(2) Each time the contractor or subcontractor 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 public agency is unable to obtain parental consent to use the parent's private insurance, to ensure FAPE, the public agency may use its Part B funds to pay for the service.

(4) 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 public agency may use its Part B funds to pay the cost the parents otherwise would have to pay to use the parent's insurance (e.g., the deductible or co-pay amounts.).

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

Stat. Auth.: ORS 343.041, 343.045 & 343.055
 Stats. Implemented: ORS 343.164, 343.045 & 343.155
 Hist.: ODE 2-2003, f. & cert. ef. 3-10-03

581-015-1090

Health and Safety

EI and ECSE services may be provided to eligible children in a variety of settings including, but not limited to, home, hospitals, institutions, special schools, classrooms, and community child care, or preschool settings. If services are provided in any setting other than the family home, the contractor shall assure that each subcontractor meets all applicable state and local requirements including:

(1) The applicable state health, and safety regulations;

(2) Assurances that the subcontractor has policies or procedures in place regarding staff hiring that include careful checking of personal

and professional references for all potential employees, with regularly scheduled evaluations to evaluate the employee's competence to work with young children;

(3) The provision of adequate space to assure the full participation of all children, regardless of ability or mobility; and

(4) The applicable personnel standards outlined in OAR 581-015-1100.

Stat. Auth.: ORS 343.465 - 343.534

Stats. Implemented: ORS 343.475

Hist.: EB 23-1992, f. & cert. ef. 6-23-92; ODE 24-2000, f. & cert. ef. 10-16-00

581-015-1100

Personnel Standards

(1) Personnel employed to provide EI or ECSE services shall include:

- (a) Supervisors;
- (b) EI and ECSE specialists;
- (c) Related services personnel; and
- (d) EI and ECSE assistants.

(2) Supervisors shall possess a minimum of a masters degree in early childhood, special education or a related field, and have three years experience with infants, toddlers, young children, and families. Supervisors are required to hold a TSPC administrative endorsement or authorization as an Early Childhood Supervisor. Supervisors shall have a professional development plan based on the content of the EI/ECSE competencies. If authorization is required, it shall be completed within 12 months of employment.

(3) EI and ECSE specialists shall possess a minimum of a baccalaureate degree in early childhood, special education or a related field. Specialists shall have a professional development plan based on the content of the EI/ECSE competencies. If authorization is required, it shall be completed within 12 months of employment. Specialists are required to hold one of the following:

- (a) TSPC licensure or endorsement in EI/ECSE;
- (b) TSPC licensure or endorsement in related field; or
- (c) Authorization as an Early Childhood Specialist.

(4) Related services personnel shall possess a minimum of a baccalaureate degree and a valid license necessary to practice in Oregon. Related services personnel who also provide service coordination as outlined in OAR 581-015-1120 are required to have:

- (a) TSPC licensure in their area of discipline; or
- (b) State licensure in their area of discipline; and
- (c) A professional development plan based on the content of the EI/ECSE competencies.

(5) EI and ECSE assistants shall be at least 18 years old, have a high school diploma or equivalent, experience working with young children. EI/ECSE assistants shall have a professional development plan based on the content of the EI/ECSE competencies.

Stat. Auth.: ORS 343.041, 343.055 & 343.221

Stats. Implemented: ORS 343.041

Hist.: EB 23-1992, f. & cert. ef. 6-23-92; EB 10-1997, f. & cert. ef. 6-26-97; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03

581-015-1105

Authorization of Early Childhood Specialist

(1) This rule establishes an alternative to Teacher Standards and Practices Commission (TSPC) licensure or endorsements for individuals to serve as Early Childhood Specialists for Programs. Individuals with TSPC issued endorsements in EI/ECSE or a related field are not covered by sections (4)-(12).

(2) Responsibilities of the Early Childhood Specialist may include but are not limited to:

- (a) Coordination of EI/ECSE services to children and their families;
- (b) Assessment of children in EI/ECSE programs;
- (c) Development and implementation of IFSP;
- (d) Development and implementation of data collection systems;
- (e) Provision of Consultation and support, as necessary, to families and staff;
- (f) Training of instructional assistants;
- (g) Compliance with procedural safeguards; and
- (h) Provision of specialized instruction.

(3) Early Childhood Specialists shall possess a minimum of a bachelor degree in early childhood education, special education or a related field.

(4) Individuals without a TSPC endorsement in EI/ECSE or a related field shall successfully demonstrate competency at the specialist level in the following areas, which are described in the document, "Competencies for Professionals Working in EI/ECSE in Oregon":

- (a) Typical/Atypical Childhood Development;
- (b) Assessment;
- (c) Family;
- (d) Service Delivery;
- (e) Program Management;
- (f) Service Coordination;
- (g) Research;
- (h) Professional Development Values/Ethics.

(5) Candidates for the Early Childhood Specialist authorization shall complete an application and portfolio that documents their mastery level of each component within the competency areas listed in section (4) of this rule.

(6) The candidate shall submit the application and portfolio to the Oregon Department of Education for review. Specialist employed on or after October 1, 1998, must complete the authorization within 12 months of employment. The Office of Special Education shall convene a panel at least two times per year to review the candidate's portfolio. The panel shall consist of a minimum of three professionals representing the Oregon Department of Education, higher education, and EI/ECSE service providers. The panel will recommend approval or non-approval of the Early Childhood Specialist authorization for the candidate to the State Superintendent of Public Instruction.

(7) The Superintendent shall approve or deny the candidate's application considering the recommendation of the panel:

(a) Each approved candidate shall receive authorization from the Department as an Early Childhood Specialist;

(b) Each nonapproved candidate shall receive notice from the Department. The notice shall include the reasons for denial and the right of appeal to the State Board of Education.

(8) If a candidate is unable to complete the authorization process within a 12-month period, the EI/ECSE contractor shall request a waiver from the Oregon Department of Education for up to one year to allow for the candidate's completion of the authorization process.

(9) Initial authorization shall be valid for a period of three years. Subsequent authorization shall be valid for a period of five years.

(10) Applicant renewal of the Early Childhood Specialist authorization shall include the following:

- (a) For initial renewal, a minimum of two years experience between issuance of initial authorization and renewal application;
- (b) For subsequent renewal, a minimum of three years experience between previous renewal and current application.
- (c) Written verification by the applicant's supervisor documenting:

(A) Completion of a minimum of 75 Professional Development Units for initial reauthorization or a minimum of 125 Professional Development Units for subsequent reauthorization;

(B) Completion of a Professional Development Plan developed with the applicant's supervisor; and

(C) Development of a new Professional Development Plan developed with the applicant's supervisor.

(11) The Department shall deny or revoke authorization of an Early Childhood Specialist under any of the following conditions:

(a) The individual has been convicted of any of the crimes listed in ORS 342.143, or the substantial equivalent of any of those crimes if the conviction occurred in another jurisdiction or in Oregon under a different statutory name or number; or

(b) The individual has made a false statement as to the conviction of a crime.

(12) The Department may deny or revoke authorization for an Early Childhood Specialist if the individual is charged with a breach of professional responsibilities, which is verified by his/her immediate supervisor.

(13) Individual whose authorization has been revoked shall receive notice from the Department. The notice shall include the reasons for denial and the right of appeal to the State Board of Education.

(14) All specialists employed by EI/ECSE contractors or subcontractors shall have a professional development plan based on the content of the EI/ECSE Competencies as listed in section (4) of this rule.

(15) A temporary waiver may be requested by the EI/ECSE contractor when an emergency arises due to a misassignment or unsuccessful

successful recruitment efforts. The request for the waiver shall be submitted to the Oregon Department of Education and shall include:

- (a) Documentation of efforts to employ personnel who meet the required competencies;
- (b) The name, position, and qualifications of the employed personnel;
- (c) A copy of the professional development plan as described in section (13) of this rule; and
- (d) Assurances that the plan will be implemented.

Stat. Auth.: ORS 329.255 & 329.275

Stats. Implemented: ORS 343.465 - 343.534

Hist.: EB 15-1997, f. & cert. ef. 12-29-97; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 8-2003, f. 6-9-03, cert. ef. 6-10-03

581-015-1106

Authorization of Early Childhood Supervisor

(1) This rule establishes an alternative to a Teacher Standards and Practices Commission (TSPC) administrative license for individuals to serve as Early Childhood Supervisors for Programs. Individuals with a TSPC issued administrative license and who hold a masters degree in early childhood education, special education or a related field with three years of experience working with infants, toddlers, young children and families are not covered by sections (4) through (12) of this rule.

(2) Responsibilities of the Early Childhood Supervisor may include but are not limited to:

- (a) Oversight of EI/ECSE services;
- (b) Supervision and training of personnel in EI/ECSE programs;
- (c) Serving as administrative representative at IFSP meetings;
- (d) Facilitating meetings with personnel and families; and
- (e) Facilitating interagency collaboration.

(3) Early Childhood Supervisors shall possess a minimum of a master's degree in early childhood education, special education or a related field.

(4) Individuals without a TSPC administrative license shall successfully demonstrate competency at the supervisor level in the following areas, which are described in the document, "Competencies for Professionals Working in EI/ECSE in Oregon":

- (a) Typical/Atypical Childhood Development;
- (b) Assessment;
- (c) Family;
- (d) Service Delivery;
- (e) Program Management;
- (f) Service Coordination;
- (g) Research;
- (h) Professional Development Values/Ethics.

(5) Candidates for the Early Childhood Supervisor authorization shall complete an application and portfolio that documents their mastery level of each component within the competency areas listed in section (4) of this rule.

(6) The candidate shall submit the application and portfolio to the Oregon Department of Education for review. Supervisors employed on or after October 1, 1998, must complete the authorization within 12 months of employment. The Office of Special Education shall convene a panel at least two times per year to review the candidate's portfolio. The panel shall consist of a minimum of three professionals representing the Oregon Department of Education, higher education, and EI/ECSE service providers. The panel will recommend approval or non-approval of the Early Childhood Supervisor authorization for the candidate to the State Superintendent of Public Instruction.

(7) The Superintendent shall approve or deny the candidate's application considering the recommendation of the panel:

- (a) Each approved candidate shall receive authorization from the Department as an Early Childhood Supervisor;
- (b) Each non-approved candidate shall receive notice from the Department. The notice shall include the reasons for denial and the right of appeal to the State Board of Education.

(8) Initial authorization shall be valid for a period of three years. Subsequent authorization shall be valid for a period of five years.

(9) Applicants renewal of the Early Childhood Supervisor authorization shall include the following:

- (a) For initial renewal, a minimum of two years experience between issuance of initial authorization and renewal application;
- (b) For subsequent renewal, a minimum of three years experience between previous renewal and current application.

(c) Written verification by the applicant's supervisor documenting:

- (A) Completion of a minimum of 75 Professional Development Units for initial reauthorization or a minimum of 125 Professional Development Units for subsequent reauthorization;
- (B) Completion of a Professional Development Plan developed with the applicant's supervisor; and
- (C) Development of a new Professional Development Plan developed with the applicant's supervisor.

(10) The Department shall deny or revoke authorization of an Early Childhood Supervisor under any of the following conditions:

- (a) The individual has been convicted of any of the crimes listed in ORS 342.143, or the substantial equivalent of any of those crimes if the conviction occurred in another jurisdiction or in Oregon under a different statutory name or number; or
- (b) The individual has made a false statement as to the conviction of a crime.

(11) The Department may deny or revoke authorization for an Early Childhood Supervisor if the individual is charged with a breach of professional responsibilities, which is verified by his/her immediate supervisor.

(12) Individuals whose authorization has been revoked shall receive notice from the Department. The notice shall include the reasons for denial and the right of appeal to the State Board of Education.

(13) All supervisors employed by EI/ECSE contractors or subcontractors shall have a professional plan based on the content of the EI/ECSE competencies as listed in section (4) of this rule.

(14) A temporary waiver may be requested by the EI/ECSE contractor when an emergency arises due to a misassignment or unsuccessful recruitment efforts. The request for the waiver shall be submitted to the Oregon Department of Education and shall include:

- (a) Documentation of efforts to employ personnel who meet the required competencies;
- (b) The name, position, and qualifications of the employed personnel;
- (c) A copy of the professional development plan as described in section (13) of this rule; and
- (d) Assurances that the plan will be implemented.

Stat. Auth.: ORS 329.255 & 329.275

Stats. Implemented: ORS 343.465 - 343.534

Hist.: EB 15-1997, f. & cert. ef. 12-29-97; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 8-2003, f. 6-9-03, cert. ef. 6-10-03; ODE 14-2003, f. & cert. ef. 8-14-03

581-015-1110

Compliance Monitoring

Contractors and subcontractors involved in the education of preschool children with disabilities shall be monitored by the Department of Education on a regular basis as specified in Oregon's federally approved special education policies and procedures and Part C application to ensure compliance with the requirements of the Individuals with Disabilities Education Act, Oregon Revised Statutes, and Oregon Administrative Rules. Monitoring procedures may include program self-assessment, data collection, analysis and reporting, on-site visits, review of policies and procedures, review of the development and implementation of IFSPs, improvement planning, and auditing federal fund use.

Stat. Auth.: ORS 343.475

Stats. Implemented: ORS 343.475

Hist.: EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03

581-015-1120

Service Coordination

(1) For a child under age three, the contractor or subcontractor shall:

- (a) Provide service coordination as an EI service; and
- (b) Appoint a service coordinator as soon as possible when a referral is received.

(2) For a child age three and older, contractors and subcontractors may provide service coordination as an ECSE service.

(3) The service coordinator shall:

- (a) Coordinate all services across agency lines by serving as a single point of contact in helping parents obtain the services and assistance they need;
- (b) Assist parents of eligible children in gaining access to EI services and other services identified in the IFSP;

- (c) Facilitate the timely delivery of available services;
- (d) Continuously seek the appropriate services in situations necessary to benefit the development of each child being served for the duration of the child's eligibility;
- (e) Coordinate the performance of evaluation and assessments;
- (f) Facilitate and participate in the development, review, and evaluation of IFSPs;
- (g) Assist families in identifying available service providers;
- (h) Coordinate and monitor the delivery of available services;
- (i) Inform families of the availability of advocacy services;
- (j) Coordinate with medical and health providers; and
- (k) Facilitate the development of a transition plan to ECSE services or other early childhood service, if appropriate.

Stat. Auth.: ORS 343.095

Stats. Implemented: ORS 343.475

Hist.: EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00

581-015-1125

Private Placement for ECSE

Contractors or subcontractors shall follow the rules and procedures in OAR 581-015-0151, 0156, 0166, 0171, 0186, 0191, 0196, 0705, 0706, 0707, 0708, and 0709 for ECSE children placed by their parents in private schools.

Stat. Auth.: ORS 343.475

Stats. Implemented: ORS 343.475, 343.495 & 343.513 - 343.533

Hist.: ODE 24-2000, f. & cert. ef. 10-16-00

DIVISION 16

OREGON SCHOOL FOR THE BLIND AND OREGON SCHOOL FOR THE DEAF

581-016-0520

Definitions

The following definitions apply to OAR 581-016-0520 through 581-016-0560, unless the context indicates otherwise:

- (1) Board: The State Board of Education;
- (2) OSB: The Oregon School for the Blind;
- (3) OSD: The Oregon School for the Deaf;
- (4) Superintendent: The State Superintendent of Public Instruction.

(5) EIP: An individualized education program as defined in OAR 581-015-0005(8).

Stat. Auth.: ORS 346.010

Stats. Implemented: ORS 346.010

Hist.: 1EB 264, f. & ef. 7-5-77; EB 36-1990, f. & cert. ef. 7-10-90; EB 2-1994, f. & cert. ef. 4-29-94

General Placement Policy

581-016-0526

General Placement

(1) It is the policy of the State Board of Education (Policy 8100) that any student with a vision or hearing impairment shall be served whenever possible in the student's home community if appropriate. It is the intent that all local agencies having interest in the student collaborate to offer services locally. A referral shall be made to OSB or OSD only when local programs are unable to provide a free appropriate public education consistent with the needs of the student as identified in the student's IEP.

(2) A student may be referred to OSB and OSD if the student:

- (a) Has been determined to be eligible for special education services by the resident district under OAR 581-015-0051;
- (b) Is visually or auditorily impaired to the extent that services needed to implement the IEP as described in OAR 581-016-0536(8)(f)(A) through (D) are not available in the local district with regional program support;
- (c) Is a legal resident of the State of Oregon;
- (d) Regarding consent:
 - (A) Has the consent of a parent(s), guardian or surrogate if the student is under age 18; or
 - (B) Has given his or her consent, if over age 18; or
 - (C) Has the consent of a court-appointed guardian if one is appointed and the student is over age 18.

(e) Has not completed the school year in which the student turns age 21.

(3) OSB and OSD may act as evaluation and diagnostic centers for a student with visual or hearing impairments when requested to do so by the student's resident school district or the student's parents, or when additional assessment information is needed prior to a placement decision.

Stat. Auth.: ORS 346

Stats. Implemented: ORS 346.015

Hist.: 1EB 24-1986, f. & ef. 7-11-86; EB 36-1990, f. & cert. ef. 7-10-90; EB 2-1994, f. & cert. ef. 4-29-94

581-016-0536

Procedures for Referral and Placement

(1) The resident school district or the regional program shall contact the director of OSB or OSD to request a multidisciplinary team meeting to determine placement.

(2) The director or designee of OSB or OSD shall send the placement procedure packet to the district contact person and set a mutually agreed upon date, place and time for a meeting to determine placement.

(3) The district contact person shall obtain parent consent to send the following records to OSB or OSD and shall send the records for review to the director of OSB or OSD at least three working days prior to the multidisciplinary team meeting:

- (a) The current vision report (OSB) or current audiological report (OSD);
- (b) The current and previous medical, behavior, psychological, health immunization, and educational records, including previous IEPs, multidisciplinary team decisions and eligibility statements;
- (c) The current statement of eligibility;
- (d) The current IEP; and
- (e) The signed parent consent for release of information.

(4) If the student is eligible for special education as mentally retarded or developmentally disabled, the resident school district shall contact the local mental health program case manager, who, in consultation with a Children's Services Division caseworker, shall review the IEP to determine if the student has need for residential care as part of the education program:

(a) If the student needs residential care or other support services as part of the education program, but community resources are not available as documented by the local community mental health program case manager, the resident school district shall proceed with the placement process;

(b) In cases where the student does not need residential care as a part of the education program, but needs other educational services provided by OSB or OSD, the resident school district shall proceed with the placement process.

(5) The resident school district is responsible for conducting the multidisciplinary team meeting to determine the student's placement.

(6) Participants in the placement meeting shall include persons knowledgeable about the student, the meaning of the evaluation data and placement options. The multidisciplinary team shall consist of:

(a) The student's parent(s), guardian, or surrogate if the student is under age 18 or has a court-appointed guardian, or alternatively the student, if the student is over age 18 and does not have a court-appointed guardian;

- (b) The student, when appropriate;
- (c) The resident school district representative;
- (d) The regional program representative who is knowledgeable about the student's disability;

(e) The director or designee from OSB or OSD who has knowledge about services that can be provided by the special schools and has the authority to commit resources for services;

(f) The local mental health case manager for students eligible for mental retardation or developmentally disabled services;

(g) Other representatives from the student's local placement; and

(h) Other persons with pertinent information about the student.

(7) The multidisciplinary placement team shall designate a member to complete the placement form.

- (8) When determining placement, the multidisciplinary team shall:
 - (a) Base its decision on the student's current IEP;
 - (b) Consider documented information from a variety of sources;

(c) Address the variety of educational programs and services available to students without disabilities;

(d) Review opportunities to participate in nonacademic and extracurricular services and activities with students without disabilities;

(e) Consider any potential harmful effects on the student or on the quality of services provided to the student;

(f) Consider the following factors:

(A) The services needed to implement the IEP which may include, but are not limited to, areas such as academics; self-help, social, interpersonal, independent living, orientation and mobility skills; vocational training; and language development;

(B) A learning environment in which there is ample opportunity for the student to have meaningful communication with other students and teachers and exposure to cultural factors related to the student's disability;

(C) The student's need for direct instruction in an alternative communication system; and

(D) The extent of curriculum and instructional adaptations needed.

(g) Determine whether the student needs additional services and specialized educational resources available at OSB or OSD that are not available at the local placement options;

(h) Consider the impact on the student regarding the length of daily transportation for each placement option considered;

(i) Compare the instructional time available at local placement options to implement the student's IEP with the instructional time available at OSB or OSD; and

(j) Document the placement options considered and the rationale for rejection or acceptance.

(9) Within 14 calendar days of the multidisciplinary team meeting, the resident school district shall submit the following documents to the Assistant Superintendent for Special Schools for the Oregon Department of Education:

(a) The eligibility statement;

(b) The placement meeting notes;

(c) The parental consent for release of information;

(d) A letter of placement recommendation from the regional program and the resident school district; and

(e) A written statement from the local community mental health program case manager regarding the availability of local residential services, when appropriate.

(10) The Assistant Superintendent for Special Schools for the Oregon Department of Education shall send written notification of the multidisciplinary team's placement decision to the parent(s), guardian or surrogate, the resident school district, the regional program, and OSB or OSD. Placement shall begin after written notification is received by the parent(s) and the resident school district.

(11) Prior to the student's enrollment at OSB or OSD, the school shall review the student's file to insure that the documents identified in section (3) of this rule have been received.

Stat. Auth.: ORS 346

Stats. Implemented: ORS 346.015

Hist.: 1EB 24-1986, f. & ef. 7-11-86; EB 36-1990, f. & cert. ef. 7-10-90; EB 2-1994, f. & cert. ef. 4-29-94

581-016-0537

General Obligations

OSB and OSD are subject to the rules contained in Division 15 of this chapter including, but not limited to, the requirements for identifying and determining eligibility of students with handicapping conditions, development of IEPs, placement of students and the provision of a free, appropriate education.

Stat. Auth.: ORS 346

Stats. Implemented: ORS 346.010

Hist.: EB 37-1990, f. & cert. ef. 7-10-90

581-016-0538

Resident School District Responsibility

(1) When a student is placed at OSB/OSD the student's resident school district remains responsible for assuring that the student receives a free appropriate education in accordance with ORS 343.221, OAR 581-015-0005(20) and 581-015-0061.

(2) A representative of the child's resident school district shall attend the student's IEP meetings while the student is placed at OSB or OSD.

(3) In those cases where OSB or OSD cannot within the resources allocated provide all of the services requested the child's IEP, the resident district may elect to provide these services if in so doing OSB or OSD would become an appropriate placement.

(4) At the time of placement, OSB, OSD and the resident district shall determine by written agreement those services for which the resident district shall remain responsible.

Stat. Auth.: ORS 346

Stats. Implemented: ORS 346.015

Hist.: EB 35-1990, f. & cert. ef. 7-10-90

581-016-0541

Termination of Placement and Revocation of Consent

(1) The student's placement at OSB or OSD shall be determined annually by the student's multidisciplinary team and shall be terminated when:

(a) The student has completed the school year in which the student turns age 21;

(b) The student graduates from the program;

(c) A multidisciplinary team, which includes those individuals set forth in OAR 581-016-0536(6), determines that:

(A) An appropriate program can be provided at the local or regional level;

(B) OSB or OSD is no longer the appropriate placement for the student.

(d) It is required as the result of a due process hearings officer or court's decision.

(2) If a parent, guardian or surrogate, student over the age of 18 without a court-appointed guardian, or educational staff question the appropriateness of the student's placement at OSB or OSD, the resident school district shall convene a multidisciplinary team with all of the individuals set forth in OAR 581-016-0536(6). The multidisciplinary team shall determine the appropriate placement for the student. This meeting shall occur prior to any change in placement for the student.

Stat. Auth.: ORS 346

Stats. Implemented: ORS 346.015

Hist.: 1EB 24-1986, f. & ef. 7-11-86; EB 30-1988, f. & cert. ef. 7-5-88; EB 36-1990, f. & cert. ef. 7-10-90; EB 2-1994, f. & cert. ef. 4-29-94

581-016-0560

Placement Appeal Procedures — OSB and OSD

A parent, guardian or surrogate may challenge the child's placement, denial of placement, or transfer in the manner provided in ORS 343.165 to 343.177.

Stat. Auth.: ORS 346

Stats. Implemented: ORS 346.015

Hist.: 1EB 264, f. & ef. 7-5-77; 1EB 19-1979, f. & ef. 11-15-79; 1EB 17-1982, f. & ef. 8-13-82; EB 36-1990, f. & cert. ef. 7-10-90

Program Standards for the Oregon School for the Deaf

581-016-0700

Goals for Education

To the extent appropriate, each student at the Oregon School for the Deaf shall have the opportunity to function as effectively as possible in six life roles as set forth in OAR 581-022-0201.

Stat. Auth.: ORS 343 & 346

Stats. Implemented: ORS 346.010

Hist.: EB 31-1989, f. & cert. ef. 11-2-89

581-016-0710

High School Requirements for Graduation

In order for a student to graduate from the Oregon School for the Deaf (OSD), he/she must attain a certain number of units, master essential learning skills, meet competencies, and maintain/attain attendance minimums. Three different diplomas/certificates are available, depending on the goals and abilities of each student. A modified diploma or certificate of Individual Educational Program (IEP) completion may be awarded according to OAR 581-022-0415.

(1) To receive a diploma the student must:

(a) Complete 22 units as specified OAR 581-022-0316;

(b) Meet all OSD-required competencies in language, reading, and mathematics; and

(c) Maintain required attendance.

(2) To receive a modified diploma the student must:

- (a) Complete 22 units of modified course work as agreed upon in the IEP;
- (b) Have satisfactory progress in school; and
- (c) Maintain required attendance.
- (3) To receive a certificate of IEP completion the student must complete the IEP goals. The certificate may be issued even if the student has not completed 22 units and has not maintained the required days of attendance.

Stat. Auth.: ORS 343 & 346
Stats. Implemented: ORS 346.010
Hist.: EB 31-1989, f. & cert. ef. 11-2-89

581-016-0720

Essential Learning Skills

The Oregon School for the Deaf shall offer a planned program of instruction which ensures the opportunity for students to obtain the essential learning skills identified in the common curriculum goals as set forth by the State Board of Education and in accordance with each learner's intellectual and physical abilities. The school shall:

- (1) Establish an individualized instruction/activity program for each child;
- (2) Provide for the inclusion of all appropriate learning goals;
- (3) Increase the application of all appropriate essential learning skills as students acquire mastery; and
- (4) Provide appropriate curricula, instruction, and activities in order for students to make necessary progress toward attainment of the essential learning skills.

Stat. Auth.: ORS 343 & 346
Stats. Implemented: ORS 346.010
Hist.: EB 31-1989, f. & cert. ef. 11-2-89

581-016-0730

Career and Vocational Education

The Oregon School for the Deaf shall provide a continuum of career and technical instructional program to include career awareness, career exploration, career guidance, job sampling, and work experience.

Stat. Auth.: ORS 343 & 346
Stats. Implemented: ORS 346.010
Hist.: EB 31-1989, f. & cert. ef. 11-2-89

581-016-0740

Special Provisions

The Oregon School for the Deaf shall provide instruction which is uniquely designed for the hearing impaired and for accompanying handicaps such as vision impairment, autism, mental retardation, orthopedic impairment, learning disability, emotional disturbance, and other health impairments; and for special abilities (i.e., talented and gifted).

Stat. Auth.: ORS 343 & 346
Stats. Implemented: ORS 346.010
Hist.: EB 31-1989, f. & cert. ef. 11-2-89

581-016-0750

Curriculum

(1) The Oregon School for the Deaf (OSD) instructional program shall instruct all students in grades K/1–8 in the areas of art, health education, language arts (including reading and writing), mathematics, physical education, science, and social studies (including geography and history). The program shall:

- (a) Provide students with the knowledge and skills necessary for successful progress in high schools;
- (b) Provide opportunities for high school students to meet requirements for graduation; and
- (c) Offer electives at the high school level in vocational education, art, and a foreign language.

(2) In addition to the academic program, OSC shall provide instruction in these areas:

- (a) Compensatory skills such as:
 - (A) Typing/Keyboarding;
 - (B) Signing and fingerspelling;
 - (C) Leadership;
 - (D) Handwriting; and
 - (E) Use of auditory, visual, and physical aids.
- (b) Self-help and skills of daily living;
- (c) Arts, crafts, and hobbies;
- (d) Orientation and mobility (for deaf/blind);
- (e) Adaptive physical education;

- (f) Career, prevocational, and technical skills;
- (g) Language/Communication development;
- (h) Related services:
 - (A) Speech pathology and audiology;
 - (B) Psychological services;
 - (C) Physical therapy;
 - (D) Occupational therapy; and
 - (E) Medical diagnostic services and health care.

Stat. Auth.: ORS 343 & 346
Stats. Implemented: ORS 346.010
Hist.: EB 31-1989, f. & cert. ef. 11-2-89

581-016-0760

Required Days of Instruction

The Oregon School for the Deaf shall provide a program of instructional hours or days equivalent to the requirements for public schools as set forth in OAR chapter 22.

Stat. Auth.: ORS 343 & 346
Stats. Implemented: ORS 346.010
Hist.: EB 31-1989, f. & cert. ef. 11-2-89

581-016-0770

Equal Educational Opportunities

The Oregon School for the Deaf shall assure equality of opportunity for all students as provided in OAR 581-021-0045 and 581-021-0046, and ORS 359.150.

Stat. Auth.: ORS 343 & 346
Stats. Implemented: ORS 346.010
Hist.: EB 31-1989, f. & cert. ef. 11-2-89

581-016-0780

Personnel

(1) Teachers, specialists, and administrators must hold valid Oregon certificates and be assigned in accordance with the individual certificate, school policies, program goals, and applicable statutes and administrative rules.

(2) Related service providers shall meet state licensure requirements in their fields of specialty.

(3) The Oregon School for the Deaf shall hire staff in compliance with state personnel rules and Department policy.

(4) All staff will be required to meet sign language requirements established in the communication policy.

Stat. Auth.: ORS 343 & 346
Stats. Implemented: ORS 346.010
Hist.: EB 31-1989, f. & cert. ef. 11-2-89

581-016-0790

Daily Class Size

(1) The Oregon School for the Deaf shall maintain class sizes and teacher assignments which promote effective learning consistent with the outcomes expected of each Individualized Educational Program (IEP).

- (2) In determining class size, the following shall be considered:
 - (a) The teacher-student ratio of each class;
 - (b) The total number of students assigned per teacher;
 - (c) The severity of students' needs;
 - (d) The support staff available to each teacher;
 - (e) The nature of the instructional program in relation to the teacher's professional preparation; and
 - (f) The appropriateness of instructional facilities and equipment.

Stat. Auth.: ORS 343 & 346
Stats. Implemented: ORS 346.010
Hist.: EB 31-1989, f. & cert. ef. 11-2-89

581-016-0800

Educational Materials

The Oregon School for the Deaf shall provide textbooks and other instructional materials and equipment which contribute to the attainment of general and Individualized Educational Program (IEP) goals and which are appropriate to each child's capabilities.

Stat. Auth.: ORS 343 & 346
Stats. Implemented: ORS 346.010
Hist.: EB 31-1989, f. & cert. ef. 11-2-89

581-016-0810

Individual Student

To ensure each student's educational progress, the Oregon School for the Deaf shall:

(1) Record and maintain records of assessment results, classroom, work, behavior, and other evaluative information for identifying each student's progress and needs related to:

- (a) Attainment of general learner goals;
- (b) Attainment of Individualized Educational Program (IEP) goals; and
- (c) General educational progress in personal, social, and vocational areas.

(2) Adapt instruction and curriculum when the needs, interests, and learning styles of each student indicate an adaptation is needed; and

(3) Report educational progress to parents and students at least annually on:

- (a) Attainment of general learner goals;
- (b) Attainment of IEP goals; and
- (c) General progress in personal, social, vocational, and living skills development, when appropriate.

Stat. Auth.: ORS 343 & 346
Stats. Implemented: ORS 346.010
Hist.: EB 31-1989, f. & cert. ef. 11-2-89

581-016-0820

Instructional Program

To ensure continual improvement of instructional programs, the Oregon School for the Deaf shall review assessment data and other evaluative information to identify levels of performance, to recognize deficiencies and to plan needed improvement. The school shall:

- (1) Identify program needs by:
 - (a) Periodically reviewing assessment results and other evaluative information; and
 - (b) Conducting program evaluation periodically in all curriculum areas stated in OAR 581-016-0603.
- (2) Implement program improvements as identified;
- (3) Provide appropriate staff-related development activities;
- (4) Report results of information stated above to the Department of Education; and
- (5) Provide a media program to enhance each student's instructional program that:
 - (a) Is coordinated to support the general goals of the school and Individualized Educational Programs;
 - (b) Has appropriate facilities, materials, and equipment which support program goals; and
 - (c) Is developed, implemented, coordinated, and maintained by personnel provided for that purpose.

Stat. Auth.: ORS 343 & 346
Stats. Implemented: ORS 346.010
Hist.: EB 31-1989, f. & cert. ef. 11-2-89

581-016-0830

Related and Support Services

The Oregon School for the Deaf shall provide those related services which may be specified in a student's Individualized Educational Program (IEP) in order for him/her to have access to educational program; i.e., such services as:

- (1) Speech pathology and audiology;
- (2) Psychological services;
- (3) Physical therapy;
- (4) Occupational therapy;
- (5) Medical diagnostic services and specific health care; and
- (6) Counseling and guidance.

Stat. Auth.: ORS 343 & 346
Stats. Implemented: ORS 346.010
Hist.: EB 31-1989, f. & cert. ef. 11-2-89

581-016-0840

Emergency Plans and Safety Programs

The Oregon School for the Deaf shall maintain a comprehensive safety program for all employees and students as set forth in OAR 581-022-0706 and 581-022-0707.

Stat. Auth.: ORS 343 & 346
Stats. Implemented: ORS 346.010
Hist.: EB 31-1989, f. & cert. ef. 11-2-89

581-016-0850

Operating Policies and Procedures

The Oregon School for the Deaf shall:

(1) Keep copies of operating policies, procedures, and rules adopted pursuant to ORS 332.107, and shall make such information available upon request;

(2) Use a process of management planning in the areas of staffing, instruction, and facility maintenance and construction;

(3) Maintain and make available upon request evidence of compliance with these standards; and

(4) Review and evaluate current policies and practices periodically in order to gain/maintain school accreditation.

Stat. Auth.: ORS 343 & 346
Stats. Implemented: ORS 346.010
Hist.: EB 31-1989, f. & cert. ef. 11-2-89

581-016-0860

Records and Reports

A student record policy will be maintained by the Oregon School for the Deaf consistent with that set forth in OAR 581-022-0717.

Stat. Auth.: ORS 343 & 346
Stats. Implemented: ORS 346.010
Hist.: EB 31-1989, f. & cert. ef. 11-2-89

581-016-0870

Support Services

(1) Pupil transportation services: The Oregon School for the Deaf shall cooperate with local school districts in accordance with local school district responsibilities under ORS 343.283. Transportation shall be provided in accordance with ORS 346.042 and 346.045.

(2) Food Services: The Oregon School for the Deaf shall provide meals which are nutritious and take into account particular preparation and content which are consistent with the needs of students enrolled.

(3) Maintenance and custodial services: The Oregon School for the Deaf shall maintain buildings and grounds to provide conditions conducive to the health and safety of students, employees, and the general public.

(4) Facilities: The Oregon School for the deaf shall provide physical facilities which are appropriate to the instructional/activity program and which provide barrier-free access to all students and employees.

(5) Equipment and materials: The Oregon School for the Deaf shall provide furniture, equipment, and materials which support the general and child-specific goals of the school.

(6) Residential services: The Oregon School for the Deaf shall:

(a) Provide care, training, and assessments in the areas of living skills, play and recreational skills, social skills, and behavior management for all residential students, in a safe, clean living and learning environment;

(b) Instruct students in the planned Individualized Educational Program (IEP) assigned by the multidisciplinary team;

(c) Provide all students with social and recreational opportunities to meet the lease restrictive environment guidelines as stated in PL 94-142;

(d) Maintain a consistent 24-hour (school week) program for all residential students, that supports and is coordinated with the in-class educational program;

(e) Provide parents with written student development progress reports periodically.

(7) Parent liaison services: The Oregon School for the Deaf shall provide for the liaison between the school and parents and other related agencies to assure:

- (a) Appropriate communication;
- (b) Advocacy for the students; and
- (c) Involvement of the family in the educational process.

Stat. Auth.: ORS 343 & 346
Stats. Implemented: ORS 346.010
Hist.: EB 31-1989, f. & cert. ef. 11-2-89

581-016-0880

Statewide Educational Resource

The Oregon School for the Deaf may extend its services to other hearing impaired children and the general public by:

- (1) Conducting student assessments at the request of the local school district or regional program;
- (2) Providing summer enrichment experiences;
- (3) Providing consultative services to families and local school district and regional personnel; and

(4) Providing information to the general public regarding the education of the hearing impaired.

Stat. Auth.: ORS 343 & 346
Stats. Implemented: ORS 346.010
Hist.: EB 31-1989, f. & cert. ef. 11-2-89

Program Standards for the Oregon School for the Blind

581-016-0890

Goals for Education

To the extent appropriate, each student at the Oregon School for the Blind shall have the opportunity to function as effectively as possible in six life roles as set forth in OAR 581-022-0201.

Stat. Auth.: ORS 343 & 346
Stats. Implemented: ORS 346.010
Hist.: EB 31-1989, f. & cert. ef. 11-2-89

581-016-0900

Certificate Requirements

(1) The Oregon School for the Blind shall award a certificate of successful completion of program requirements as determined by the Individual Education Plan (IEP).

(2) The Oregon School for the Blind shall award a certificate of attendance for those students attending the school for a portion of their public education as determined by the IEP.

Stat. Auth.: ORS 343 & 346
Stats. Implemented: ORS 346.010
Hist.: EB 31-1989, f. & cert. ef. 11-2-89

581-016-0910

Special Provisions

The Oregon School for the Blind shall provide instruction which is uniquely designed for the visually impaired and for accompanying handicaps such as hearing impairment, autism, mental retardation, orthopedic impairment, learning disability, emotional disturbance, and other health impairments.

Stat. Auth.: ORS 343 & 346
Stats. Implemented: ORS 346.010
Hist.: EB 31-1989, f. & cert. ef. 11-2-89

581-016-0920

Curriculum

In developing an instruction program for handicapped students, the Oregon School for the Blind shall include:

- (1) Academics:
 - (a) Language Communication Development;
 - (b) Math;
 - (c) Social Studies;
 - (d) Science; and
 - (e) Study Skills.
- (2) Compensatory skills such as:
 - (a) Typing;
 - (b) Braille reading and writing;
 - (c) Large print reading;
 - (d) Handwriting;
 - (e) Use of visual, auditory and physical aids;
 - (f) Social skills; and
 - (g) Computer.
- (3) Self-help and skills of daily living.
- (4) Adaptive arts, crafts, and music.
- (5) Orientation and mobility.
- (6) Adaptive physical education.
- (7) Career, prevocational, and technical skills.
- (8) Augmentative communication.

Stat. Auth.: ORS 343 & 346
Stats. Implemented: ORS 346.010
Hist.: EB 31-1989, f. & cert. ef. 11-2-89

581-016-0930

Required Instruction

The Oregon School for the Blind shall provide of instructional hours equivalent to the requirements for public schools as set forth in OAR chapter 22.

Stat. Auth.: ORS 343 & 346
Stats. Implemented: ORS 346.010
Hist.: EB 31-1989, f. & cert. ef. 11-2-89

581-016-0940

Equal Educational Opportunities

The Oregon School for the Blind shall assure equality of opportunity for all students as provided in OAR 581-021-0045 and 581-021-0046, and ORS 359.150.

Stat. Auth.: ORS 343 & 346
Stats. Implemented: ORS 346.010
Hist.: EB 31-1989, f. & cert. ef. 11-2-89

581-016-0950

Personnel

All professional personnel must meet the requirements for employment as outlined in State Board of Education Policy 8500.

Stat. Auth.: ORS 343 & 346
Stats. Implemented: ORS 346.010
Hist.: EB 31-1989, f. & cert. ef. 11-2-89

581-016-0960

Career and Vocational Instruction

The Oregon School for the Blind shall provide the opportunity for students to experience a continuum of career and vocational instructional programs including career awareness, career exploration, job sampling, and work experience.

Stat. Auth.: ORS 343 & 346
Stats. Implemented: ORS 346.010
Hist.: EB 31-1989, f. & cert. ef. 11-2-89

581-016-0970

Daily Class Size

(1) The Oregon School for the Blind shall maintain class sizes and teacher assignments which promote effective learning consistent with the outcomes expected of each individualized educational program.

- (2) In determining class size, the following shall be considered:
 - (a) The teacher-student ratio of each class;
 - (b) The total number of students assigned per teacher;
 - (c) The severity of students' needs;
 - (d) The support staff available to each teacher;
 - (e) The nature of the instructional program in relation to the teacher's professional preparation; and
 - (f) The appropriateness of instructional facilities and equipment.

Stat. Auth.: ORS 343 & 346
Stats. Implemented: ORS 346.010
Hist.: EB 31-1989, f. & cert. ef. 11-2-89

581-016-0980

Educational Materials

The Oregon School for the Blind shall provide textbooks and other instructional materials and equipment which contribute to the attainment of general and Individual Education Plan (IEP) goals and which are appropriate to each child's capabilities as set forth in State Board of Education Policy 8300.

Stat. Auth.: ORS 343 & 346
Stats. Implemented: ORS 346.010
Hist.: EB 31-1989, f. & cert. ef. 11-2-89

581-016-0990

Individual Student

To ensure each student's educational progress, the Oregon School for the Blind shall:

- (1) Record and maintain records of assessment results, classroom work, behavior, and other evaluative information for identifying each student's progress and needs related to:
 - (a) Attainment of individual Education Plan (IEP) goals; and
 - (b) General educational progress in personal, social, and vocational areas.
- (2) Meet the needs and interests of each child through adaptation of curriculum and instruction.
- (3) Report educational progress to parents and students at least annually on:
 - (a) Attainment of general learner goals;
 - (b) Attainment of IEP goals;
 - (c) General educational progress in personal, social and vocational development, when appropriate.
- (4) Where appropriate, provide opportunity for instruction and/or activities in:
 - (a) Public school programs;
 - (b) Community college;

(c) Vocational settings; and
 (d) Community programs.
 Stat. Auth.: ORS 343 & 346
 Stats. Implemented: ORS 346.010
 Hist.: EB 31-1989, f. & cert. ef. 11-2-89

581-016-1000
Instructional Program

To ensure continual improvement of instructional programs, the Oregon School for the Blind shall review assessment data and other evaluative information to identify levels of performance, to recognize deficiencies and to plan needed improvement. The school shall:

- (1) Identify program needs by:
 - (a) Periodically reviewing assessment results and other evaluative information; and
 - (b) Conducting program evaluations periodically in all curriculum areas stated in OAR 581-016-0603.
- (2) Establish an individualized instruction/activity program for each student.
- (3) Provide for the inclusion of all appropriate Individual Education Plan (IEP) goals.
- (4) Provide appropriate curriculum, instruction and activities to allow students to make necessary progress toward attainment of the IEP goals.
- (5) Implement program improvements as identified.
- (6) Provide appropriate staff-related development activities.
- (7) Report results of information stated above to the Oregon Department of Education.
- (8) Provide a coordinated program of media services and technology:
 - (a) That supports the general instructional goals of the school and IEPs; and
 - (b) Is developed, implemented, and coordinated by personnel provided for that purpose.
- (9) Provide appropriate facilities, materials, and equipment.
 Stat. Auth.: ORS 343 & 346
 Stats. Implemented: ORS 346.010
 Hist.: EB 32-1989, f. & cert. ef. 11-2-89

581-016-1010
Related Services

The Oregon School for the Blind shall provide those related services which may be specified in a student's Individual Education Plan (IEP) in order for him/her to have access to educational programs; i.e., such services as:

- (1) Speech pathology and audiology;
- (2) Psychological services;
- (3) Physical therapy;
- (4) Occupational therapy;
- (5) Medical diagnostic services and specific health care;
- (6) Counseling and guidance;
- (7) Transportation;
- (8) Transition; and
- (9) Recreation.
 Stat. Auth.: ORS 343 & 346
 Stats. Implemented: ORS 346.010
 Hist.: EB 32-1989, f. & cert. ef. 11-2-89

581-016-1020
Emergency Plans and Safety Programs

The Oregon School for the Blind shall maintain a comprehensive safety program for all employees and students as set forth in OAR 581-022-0706 and 581-022-0707.

Stat. Auth.: ORS 343 & 346
 Stats. Implemented: ORS 346.010
 Hist.: EB 32-1989, f. & cert. ef. 11-2-89

581-016-1030
Operating Policies and Procedures

The Oregon School for the Blind shall:

- (1) Keep copies of operating policies, procedures, and rules adopted pursuant to ORS 332.107, and shall make such information available upon request.
- (2) Use a process of management planning in the areas of staffing, instruction, and facility maintenance and construction.
- (3) Maintain and make available upon request evidence of compliance with these standards.

Stat. Auth.: ORS 343 & 346
 Stats. Implemented: ORS 346.010
 Hist.: EB 32-1989, f. & cert. ef. 11-2-89

581-016-1040
Records and Reports

A student record policy will be maintained by the Oregon School for the Blind consistent with that set forth in OAR 581-022-0717.

Stat. Auth.: ORS 343 & 346
 Stats. Implemented: ORS 346.010
 Hist.: EB 32-1989, f. & cert. ef. 11-2-89

581-016-1050
Support Services

(1) Pupil transportation services: The Oregon School for the Blind shall cooperate with local school districts in accordance with the local school district responsibilities under ORS 343.283. Transportation shall be provided in accordance with ORS 346.042 and 346.045.

(2) Food services: The Oregon School for the Blind shall provide meals which are nutritious and meet the dietary needs of the students enrolled.

(3) Maintenance and custodial services: The Oregon School for the Blind shall maintain buildings and grounds to provide conditions conducive to the health and safety of students, employees, and the general public.

(4) Facilities: The Oregon School for the Blind shall provide physical facilities which are appropriate to the instructional/activity program and which provide barrier-free access to all students and employees.

(5) Equipment and materials: The Oregon School for the Blind shall provide furniture, equipment, and materials which support the general and child-specific goals of the school.

(6) Residential program: The Oregon School for the Blind residential program shall provide care, training and assessments in the areas of living skills, play and recreational skills, social skills, and behavior management for all Oregon School for the Blind residential students.

Stat. Auth.: ORS 343 & 346
 Stats. Implemented: ORS 346.041
 Hist.: EB 32-1989, f. & cert. ef. 11-2-89

DIVISION 19

PREKINDERGARTEN

581-019-0005
Definitions

The following definitions apply to OARs 581-019-0010 through 581-019-0035.

(1) "Advisory Committee" means the Oregon Department of Education advisory committee for the prekindergarten program and the parent education program established by Chapter 684, Oregon Laws 1987.

(2) "Applicant" means a public or private nonsectarian organization which applies for prekindergarten funds.

(3) "Approved Prekindergarten Programs" means those programs which are recognized by the Department as meeting the minimum program rules to be adopted by the State Board of Education.

(4) "At-Risk" means a child at least three years of age and not eligible for kindergarten whose family circumstances would qualify that child for eligibility under the federal Head Start Program.

(5) "Contractor" means an applicant which has been awarded state funds under the prekindergarten program, and which has entered into a contract with the Department of Education to provide a prekindergarten program. Contractors may be local public or private organizations which are nonsectarian in their delivery of services.

(6) "Department" means the Department of Education.

(7) "Eligible Child" means an at-risk child who is not a participant in a federal, state, or local program providing like comprehensive services and may include children who are eligible under rules adopted by the State Board of Education.

(8) "Family" means all persons living in the same household who are:

(a) Supported by the income of the parent(s), caretaker(s) or guardian(s) of the child enrolling in the prekindergarten program; and

(b) Related to the parent(s), caretaker(s) or guardian(s) by blood, marriage, or adoption.

(9) "Handicapped Children" means children who are of the age served by the prekindergarten program of their residence and who require special education in order to obtain the education of which they are capable, because of mental, physical, emotional, or learning problems. These groups include but are not limited to those categories that have traditionally been designated: mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired children.

(10) "Nonsectarian" means that no aspect of prekindergarten services will include any religious orientation.

(11) "Prekindergarten" means those programs which provide comprehensive health, education, and social services in order to maximize the potential of three- and four-year-old children. The "State Prekindergarten Programs" means the statewide administrative activities carried out within the Department of Education to allocate, award, and monitor state funds appropriated to create or assist local prekindergarten programs.

Stat. Auth.: ORS 684

Stats. Implemented: ORS 329.175 & 329.195

Hist.: EB 10-1988, f. & cert. ef. 2-24-88

581-019-0010

Use of Grant Funds by Grantees

(1) A minimum of 2.5 percent of the total grant shall be used for staff development.

(2) Start-up costs may be allocated to assist in limited funding of "one-time" costs needed to start new programs, or to add children to existing programs.

(3) Contractors shall use grant funds to serve Oregon residents.

(4) Contractors must have established appropriate internal fiscal controls and fund accounting procedures to assure the proper disbursement of, and accounting for, all funds provided.

Stat. Auth.: ORS 684

Stats. Implemented: ORS 329.175 & 329.195

Hist.: EB 10-1988, f. & cert. ef. 2-24-88

581-019-0015

Eligibility Criteria for Contract Applicants

(1) Public or private nonsectarian organizations or consortia of organizations are eligible to apply for funding as a prekindergarten program.

(2) No person in any prekindergarten program shall be subjected to discrimination as defined in ORS 659.150(1).

Stat. Auth.: ORS 684

Stats. Implemented: ORS 329.175 & 329.195

Hist.: EB 10-1988, f. & cert. ef. 2-24-88

581-019-0020

Proposal Review and Contract Award

(1) Funds shall be awarded on a competitive basis. Subject to available funds, continuation grants shall be awarded on the basis of satisfactory performance.

(2) An applicant must make formal response using forms issued and established by the Department.

(3) The advisory committee will review the proposals and recommend to the State Superintendent of Public Instruction which proposals should be funded or rejected. The review committee may recommend alterations in the proposals. The committee will prioritize the proposals to the extent practicable, regionally based on percentages of unmet needs in order to distribute funds as widely as possible throughout the state.

(4) The final decisions regarding the prekindergarten program proposals will be made by the State Superintendent of Public Instruction.

(5) The Department shall notify successful applicants and shall provide to each of them a contract for signature. This contract must be signed by an official with authority to bind the applicant and must be returned to the Department prior to the award of any funds under this program.

(6) Any applicant not receiving funding may appeal for review to the State Board of Education. Such appeal must be in writing within 15 days of the date of the notice of nonfunding.

Stat. Auth.: ORS 684

Stats. Implemented: ORS 329.175, 329.190 & 329.195

Hist.: EB 10-1988, f. & cert. ef. 2-24-88

581-019-0025

Program Design

(1) Funds appropriated shall be used to establish and maintain new or expanded prekindergarten programs and shall not be used to supplant federally supported Head Start programs.

(2) Programs shall serve the eligible children and provide all components as specified in the federal Head Start Performance Standards (U.S. Department of Health and Human Services, Administration for Children, Youth, and Families, **45 CFR 1304**).

(3) Programs shall provide for staff qualifications and training, facilities and equipment, transportation and fiscal management.

(4) Programs shall coordinate with each other and with federal Head Start programs to insure efficient delivery of services and prevent overlap.

(5) Programs shall provide developmentally appropriate educational services which are consistent with the unique physical, social, emotional, and cognitive needs of young children. Developmentally appropriate programs are both age appropriate and individually appropriate.

(6) Requirements for program design shall be based on a model of comprehensive services to participating children. These include educational services, health services (including medical, dental, nutrition, and mental health), parent involvement, and social services to families. Parents shall be given the opportunity to be involved in every aspect of the planning and implementation of services. Specific program requirements are contained in the program requirements publication available from the Department dated January 21, 1988.

[Publications: The publications referenced are available from the agency.]

Stat. Auth.: ORS 684

Stats. Implemented: ORS 329.175 & 329.195

Hist.: EB 10-1988, f. & cert. ef. 2-24-88

581-019-0030

Eligibility Criteria for Children Served

(1) Children must be at least three years old on or before September 1 of their entrance year, and not eligible for kindergarten.

(2) At least 80 percent of the children served shall be eligible according to Head Start federal regulations at **45 CFR 1305.4**.

(3) No less than ten percent of the total number of enrollment opportunities in the state of Oregon shall be available for handicapped children. See **45 CFR 1305.5**.

(4) Up to 20 percent of the children served need not qualify according to Head Start regulations.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 684

Stats. Implemented: ORS 329.175 & 329.195

Hist.: EB 10-1988, f. & cert. ef. 2-24-88

581-019-0035

Suspected Abuse

Any employee of the prekindergarten program having reasonable cause to believe that any child with whom the employee comes into contact in his/her official capacity has suffered abuse or neglect, shall report or cause a report to be made in the manner required in ORS 418.755.

Stat. Auth.: ORS 684

Stats. Implemented: ORS 329.175 & 329.195

Hist.: EB 10-1988, f. & cert. ef. 2-24-88

Parent Education

581-019-0050

Definitions

(1) "Advisory Committee" means the Oregon Department of Education advisory committee for the prekindergarten program and the parent education program established by Chapter 684, Oregon Laws 1987.

(2) "Applicant" means a public or private nonsectarian organization which applies for parent education funds.

(3) "At-Risk Children" means children between 0 and eight years of age who are assessed by the criteria in OAR 581-019-0075.

(4) "Contractor" means an applicant which has been awarded state funds under the parent education program. Contractors may be local public or private organizations which are nonsectarian in their delivery of services.

(5) "Department" means the Department of Education.

(6) "Eligible Family" means any family with an at-risk child.

(7) "Family" means all persons living in the same household who are:

(a) Supported by the income of the parent(s), caretaker(s) or guardian(s);

(b) Related to the parents(s), caretakers or guardian(s) by blood or marriage or adoption.

(8) "Nonsectarian" means that no aspect of parent education program services will include any religious orientation.

(9) "Parent Education" means the statewide administrative activities carried out within the Department of Education to allocate, award, and monitor state funds appropriated to assist local parent education programs.

Stat. Auth.: ORS 684

Stats. Implemented: ORS 329.175 & 329.195

Hist.: EB 11-1988, f. & cert. ef. 2-24-88

581-019-0055

Use of Grant Funds

(1) Contractors shall use grant funds to serve Oregon residents.

(2) Contractors must have established appropriate internal fiscal controls and fund accounting procedures to assure the proper disbursement of, and accounting for, all funds provided.

Stat. Auth.: ORS 684

Stats. Implemented: ORS 329.175 & 329.195

Hist.: EB 11-1988, f. & cert. ef. 2-24-88

581-019-0060

Eligibility Criteria For Contract Applicants

(1) Public or nonsectarian organizations or consortia of organizations are eligible to apply for funding as a parent education program.

(2) No person in any parent education program shall be subjected to discrimination as defined in ORS 659.150(1).

(3) Applicants shall identify targeted groups, outreach methods, program components, and the qualifications of instructional staff.

Stat. Auth.: ORS 684

Stats. Implemented: ORS 329.175 & 329.195

Hist.: EB 11-1988, f. & cert. ef. 2-24-88

581-019-0065

Proposal Review and Contract Award

(1) Funds shall be awarded on a competitive basis. Subject to available funds, continuation grants may be awarded on the basis of satisfactory performance.

(2) An applicant must make formal response using forms issued and established by the Department.

(3) The advisory committee will review the proposals and recommend to the State Superintendent of Public Instruction which proposals should be funded or rejected. The review committee may recommend alterations in the proposals. The committee will prioritize the proposals to the extent practicable, regionally based on percentages of unmet needs in order to distribute funds as widely as possible throughout the state.

(4) The final decisions regarding the parent education proposals will be made by the State Superintendent of Public Instruction.

(5) The Department shall notify successful applicants and shall provide to each of them a contract for signature. This contract must be signed by an official with authority to bind the applicant and must be returned to the Department prior to the award of any funds under this program.

(6) Any applicant not receiving funding may appeal for review to the State Board of Education. Such appeal must be in writing and mailed within 15 days of the date of the notice of nonfunding.

(7) Funds appropriated for the program shall be used to establish and maintain new or expanded parent education programs and shall not be used to supplant any existing programs.

Stat. Auth.: ORS 684

Stats. Implemented: ORS 329.175, 329.190 & 329.195

Hist.: EB 11-1988, f. & cert. ef. 2-24-88

581-019-0070

Program Design

(1) Programs shall provide parents with information on child development, discipline, communication, and strategies for preparing their children for school success. Programs may include a support element.

(2) Programs shall be conducted at times and with conditions appropriate for adult learners.

(3) Programs shall develop and use a system to impart parenting skills and information that reflect the needs of the population served and in keeping with the parent education program requirements established by the Department of Education.

(4) Programs shall demonstrate coordination with existing community resources including public schools, local Head Start programs, local health and welfare agencies, community colleges, and any other local parent education/support programs.

(5) Programs shall complete formative and summative self-evaluations in accordance with requirements established by the Department of Education.

(6) Programs may charge families for services based on their ability to pay. Programs will be required to document how fee schedules are established and how funds are used.

Stat. Auth.: ORS 684

Stats. Implemented: ORS 329.175 & 329.195

Hist.: EB 11-1988, f. & cert. ef. 2-24-88

581-019-0075

Targeting of Services to Families

Programs must target families whose children ages 0-8 are at-risk of experiencing difficulty in school based on the following criteria:

(1) Single, step and dual career families;

(2) Low-income families;

(3) Families for whom English is a second language;

(4) Families who have experienced high mobility (e.g., military, migrant);

(5) Families whose children have high absenteeism in school;

(6) Families with a disruptive family environment (e.g., prison parent, chemically abusing parents);

(7) Families whose children have been assessed as developmentally at risk;

(8) Families with handicapped children as defined by ORS 343.227;

(9) Minority families; and

(10) Families of adolescent parents.

Stat. Auth.: ORS 684

Stats. Implemented: ORS 329.175 & 329.195

Hist.: EB 11-1988, f. & cert. ef. 2-24-88

581-019-0078

Collect Data

Programs must collect data which documents the numbers of families served in each of the criteria categories listed in OAR 581-019-0075.

Stat. Auth.: ORS 684

Stats. Implemented: ORS 329.175 & 329.195

Hist.: EB 11-1988, f. & cert. ef. 2-24-88

581-019-0080

Suspected Abuse

If employees of the parent education program, in their official capacity, have reasonable cause to believe any child of a parent participant has suffered abuse or neglect, they shall report or cause a report to be made in the manner required in ORS 418.755.

Stat. Auth.: ORS 684

Stats. Implemented: ORS 329.175 & 329.195

Hist.: EB 11-1988, f. & cert. ef. 2-24-88

Tax Credits for Student-Parent Programs and Child Development Programs

581-019-0100

Tax Credits for Student-Parent Programs and Child Development Programs

(1) The purpose of this rule is to define child development and student-parent programs that may qualify for tax credits authorized by ORS 315.234, including requirements for substantiation and use of contributions. The credit applies to tax years beginning on or after January 1, 1991, and before December 31, 2001.

(2) For the purposes of this rule, an approved child development program means a program which consists of an education component and a model day care component and which substantially meets the following standards:

DIVISION 20

SCHOOL IMPROVEMENT AND PROFESSIONAL DEVELOPMENT

581-020-0005

Pertaining to School Improvement and Professional Development

A School Improvement and Professional Development Program has been established to encourage the following:

- (1) The development of educational goals for individual schools and school districts;
- (2) The assessment of the educational progress of school programs and students;
- (3) The expansion of professional growth and career opportunities for Oregon teachers; and
- (4) The restructuring of the school workplace to provide teachers with responsibilities and authority commensurate with their status as professionals.

Stat. Auth.: ORS 896

Stats. Implemented: ORS 329.695

Hist.: EB 8-1988, f. & cert. ef. 1-15-88

581-020-0010

Definitions

The following definitions apply to OARs 581-020-0005 through 581-020-0050 unless the context requires otherwise:

(1) "Administrator" includes all persons whose duties require administrative certificates.

(2) "Educational goals" means a set of goals for educational performance, as formulated by site committees and local communities, and adopted by district school boards, according to provisions of ORS 336.705 through 336.780, to encourage greater accountability between schools and the community, and better to assess the effectiveness of educational programs, including the professional growth and career opportunity programs, described in ORS 336.705–780.

(3) "Index of teacher and learning conditions" means the system for the collection and analysis of relevant educational data by schools, districts, and the state for the purpose of assessing the educational effectiveness of schools and programs.

(4) "School Improvement and Professional Development Program" means a formal plan submitted by a school district and approved by the Department of Education according to criteria specified in ORS 336.705–780.

(5) "School district" means a school district, an education service district, a state-operated school, or any legally constituted combination of such entities that submits an application under ORS 336.720.

(6) "Building site committee" means a 21st Century Schools Council as described in OAR 581-020-0130.

(7) "Teacher" means all certificated employees in the public schools or employed by an education service district who have direct responsibility for instruction, coordination of educational programs or supervision of teachers, and who are compensated for their services from public funds. "Teacher" does not include a school nurse as defined in ORS 342.455 or a person whose duties require an administrative certificate.

Stat. Auth.: ORS 336.705 - 336.780

Stats. Implemented: ORS 329.575 & 329.704

Hist.: EB 8-1988, f. & cert. ef. 1-15-88; EB 9-1990, f. & cert. ef. 1-30-90; ODE 9-1998, f. & cert. ef. 6-23-98

581-020-0015

Eligibility

A school district, an education service district, a state-operated school, or a combination of such entities may submit an application to the Department of Education to receive a School Improvement and Professional Development grant.

Stat. Auth.: ORS 336 & 896

Stats. Implemented: ORS 329.695

Hist.: EB 8-1988, f. & cert. ef. 1-15-88; EB 9-1990, f. & cert. ef. 1-30-90

581-020-0020

Grant Application

(1) Except for state-operated schools, the school district in its application shall certify that its proposal has been approved by the school board and is consistent with existing district policies, rules, and contracts bargained under ORS 243.650 to 243.782.

(a) Offers a minimum of one full credit of sequential coursework in child development and parenthood education;

(b) Implements a curriculum on the realities of being a parent, interaction of work and family responsibilities, normal growth and development of infants and young children, discipline and guidance of children, children's safety, healthy prenatal care, and healthy parent-child relationships;

(c) Utilizes instructors with coursework in home economics education, early childhood education or a related field which provides knowledge and understanding of the above curriculum areas;

(d) Provides supervised child care center experiences with young children;

(e) Provides an on-site child development facility which meets health and safety standards and does not accommodate more than 30 full-time equivalent spaces for children;

(f) Maintains appropriate adult-child ratios to assure adequate supervision and optimal learning opportunities for children.

(3) For the purposes of this rule, an approved student-parent program means an educational program which consists of education for the student-parent, day care for the student-parent's child and which substantially meets the following standards:

(a) Provides a comprehensive high school program;

(b) Provides individual and group counseling services in the areas of personal and career development;

(c) Implements curriculum in life skills instruction in meeting basic needs, management of personal resources, interpersonal relationships, sexuality, and family interaction;

(d) Implements curriculum in child development and includes curriculum on the realities of being a parent, interaction of work and family responsibilities, normal growth and development of infants and young children, discipline and guidance of children, children's safety, healthy prenatal care, healthy parent-child relationships;

(e) Offers nutrition information and health services;

(f) Conducts an on-site child care center for the children of the student-parents;

(g) Provides transportation for student-parents and their children;

(h) Coordinates services with community social service agencies, and makes students aware of such services;

(i) Provides career and vocational assessment and planning.

(4) Donations for purposes under this rule shall be used to support, expand, or improve student-parent or child development programs within the district. Donations must not be used to supplant local school district, state, or federal funding. Donations must be credited to the year in which they are received. The credit is allowable only for contributions made after the date of the Department of Education approval.

(5) Approved school district student-parent and child development/parenthood education programs must provide a copy of the receipts for an eligible donation to the Oregon Department of Education and to the donor. The receipt must specify the following:

(a) The school district number and name;

(b) An indication that the contribution was made to either the child development program or the student-parent program;

(c) Date the program was certified by the Department of Education;

(d) The dollar amount of the contribution;

(e) Name and address of the contributor; and

(f) The date the contribution was made.

(6) Programs which most closely meet or exceed the standards in sections (2) and (3) of this rule will be considered for approval by the Department. Approval of programs will be accomplished through a Request for Proposal (RFP) process. Up to 20 student-parent and up to 20 child development/parenthood education programs will be approved. Once selected, each program is considered approved through December 31, 2001. Only school districts, education service districts, and district consortia are eligible to apply.

Stat. Auth.: ORS 315.234 & 329.385

Stats. Implemented: ORS 315.234, 329.385, 329.395, 329.415 & 329.425

Hist.: EB 23-1991(Temp), f. 10-30-91, cert. ef. 11-1-91; EB 3-1993, f. & cert. ef. 1-13-93; EB 28-1995, f. & cert. ef. 12-11-95

(2) The administration of grant programs under this rule shall be consistent with existing district policies, rules, and contracts bargained under ORS 243.650 to 243.782.

(3) The deadline for applications submitted by districts under ORS 336.705–336.780 shall be April 1 preceding the school year for which they are proposed. The Department of Education shall review all applications and shall approve or reject them no later than June 1 of the school year for which they are proposed.

(4) Distribution of grants-in-aid money through the School Improvement and Professional Development Program shall begin in the 1988–89 school year. Districts that qualify for grants under ORS 336.705–780 shall receive \$1,000 per year per each full-time equivalent teacher deemed eligible for this program.

(5) Subject to ORS 291.232 to 291.260, the State Superintendent of Public Instruction shall distribute grants-in-aid to eligible school districts so that at least three-quarters of the allocation due to each eligible district is received no later than February 1 of each fiscal year and the remainder when all required reports are filed with the Department of Education. If underpayments or overpayments result, adjustments shall be made in the following year.

(6) Grants under this program shall be effective for one or two years (fiscal year, July 1–June 30) and are renewable. Grants may be renewed subject to the evaluation, reapplication, approval by the Oregon Department of Education, and the legislative appropriation of funds.

(7) Nothing in this section is intended to make grants under this rule subject to collective bargaining.

Stat. Auth.: ORS 336 & 896

Stats. Implemented: ORS 329.709

Hist.: EB 8-1988, f. & cert. ef. 1-15-88; EB 9-1990, f. & cert. ef. 1-30-90

581-020-0025

Professional Growth, Career Opportunities, and Instructional Improvement

To be eligible for funding a district application shall define and provide a process by which eligible teachers are selected by a building site committee to receive additional professional growth and career opportunities which may include, but are not limited to, service as a mentor teacher, supervision and instruction of student teachers, either in the classroom or as an adjunct faculty member at a school of education, curriculum development, service on a site committee, reimbursement for academic course work, opportunities for research in a teacher's field or fields, programs to encourage peer observation and assistance programs, additional sabbaticals and other programs designed to encourage professional growth:

(1) All teachers in good standing shall be eligible for advance professional growth and career opportunities, according to criteria established by the building site committees. Those criteria shall include demonstration of the following:

- (a) Mastery of teaching skills and subject matter knowledge;
- (b) A commitment to personal and professional growth as a teacher;
- (c) Active collaboration on professional matters with other faculty; and
- (d) Active involvement in school and community affairs.

(2) In applying for such opportunities, teachers shall describe how such opportunities will further the goals of the schools in which the teachers are employed.

(3) Administrators may be eligible for additional professional growth and career opportunities according to criteria established by the building site committee, provided that their proposals are directly linked to enhancing their role as instructional leaders within their schools.

(4) Mini-grants for professional growth and career opportunities may be given for a period of time not to exceed one year.

(5) In exchange for assuming additional responsibilities a teacher approved for a professional growth and career opportunity shall be given the choice of receiving additional release time or additional compensation or a combination of both. However, release time shall not be used if to do so increases the work load of other teachers regularly employed by the school district.

Stat. Auth.: ORS 336 & 896

Stats. Implemented: ORS 329.695

Hist.: EB 8-1988, f. & cert. ef. 1-15-88; EB 9-1990, f. & cert. ef. 1-30-90

581-020-0030

Application

To be eligible for funding, a district's application shall include the following:

(1) A description of a process to formulate and adopt district and individual school building educational goals so that such goals reflect input from a wide range of citizens in the community.

(2) A description of how the district will formulate and use indexes of teaching and learning conditions to measure progress according to those goals. The indexes of teaching and learning conditions may include, but are not limited to, such indicators as:

- (a) Class size and teaching loads;
- (b) A profile of the teaching and administrative personnel, including such characteristics as years of experience, rate of turnover and absenteeism;
- (c) The frequency and nature of teacher misassignments;
- (d) The socioeconomic status of the community;
- (e) The ability and willingness of a school district to provide financial support for the schools;
- (f) Measures of student progress as measured on school district or state assessments, or both;
- (g) Attendance and drop out rates;
- (h) Student conduct and disciplinary actions;
- (i) Measure of student success in vocational, college, and other postsecondary programs; and
- (j) Student expectations and attitudes toward learning.

(3) A description of how the proposed program will address the identified needs for professional growth and career opportunities of teachers in the district.

(4) Certification by the school district that none of the moneys received through ORS 336.705–336.780 shall be used to replace expenditures for existing programs for professional growth and career opportunities.

(5) A description of how the district will evaluate the effectiveness of its School Improvement and Professional Development grant, using educational goals and an index of teaching and learning conditions.

Stat. Auth.: ORS 336 & 896

Stats. Implemented: ORS 329.709

Hist.: EB 8-1988, f. & cert. ef. 1-15-88; EB 9-1990, f. & cert. ef. 1-30-90

581-020-0050

Evaluation

(1) A teacher or administrator who receives a grant under this program shall submit a written evaluation report to the building site committee. The building site committee may require additional evaluative information.

(2) The building site committee who receives a mini-grant under this program shall submit a written evaluation report to the local district superintendent to be included in an evaluation report to the Oregon Department of Education.

Stat. Auth.: ORS 336 & 896

Stats. Implemented: ORS 329.735

Hist.: EB 8-1988, f. & cert. ef. 1-15-88; EB 9-1990, f. & cert. ef. 1-30-90

581-020-0055

Professional Development Centers

(1) To administer ORS 336.705 to 336.780, the Department of Education shall dedicate a portion of its funds, not to exceed ten percent of the total appropriate for purposes of ORS 336.705 to 336.780 to provide for the establishment of professional development centers to:

- (a) Assist school districts, teachers, site committee members, and other to formulate school improvement and professional development goals;
- (b) Assist school districts, teachers, site committee members, and other to formulate and use indices of teaching and learning conditions;
- (c) Provide additional professional growth and career opportunities for teachers; and
- (d) Carry out other purposes of ORS 336.705–336.780.

(2) Contracts under this program shall be effective for one year and are renewable. Contracts may be renewed subject to the evaluation, reapplication, and approval by the Oregon Department of Education, and the legislative appropriation of funds.

(3) No contract monies shall be used to purchase capital items.

(4) No contract monies shall be used to replace expenditures for school improvement and professional growth opportunities.

Stat. Auth.: ORS 336
Stats. Implemented: ORS 329.695
Hist.: EB 4-1990, f. & cert. ef. 1-26-90

Beginning Teacher Support Program

581-020-0060

Pertaining to Beginning Teacher Support Program

The State Board of Education shall establish a beginning teacher support program to provide eligible beginning teachers in the state with continued and sustained support from a formally assigned mentor teacher. The legislative assembly finds that:

(1) The quality of teaching in the public schools is of vital importance to the future of Oregon;

(2) Oregon has a special interest in insuring that the induction of beginning teachers into their profession is conducive to their professional growth and development; and

(3) The formal assignment of mentor teachers who have demonstrated mastery of teaching skills and subject matter knowledge should substantially improve the induction and professional growth of beginning teachers in the state as well as provide mentor teachers with additional and valuable opportunities to enhance their own professional growth.

Stat. Auth.: ORS 336 & 342
Stats. Implemented: ORS 329.795
Hist.: EB 18-1988, f. & cert. ef. 3-16-88; EB 9-1990, f. & cert. ef. 1-30-90;

581-020-0065

Definitions

The following definitions apply to OARs 581-020-0060 through 581-020-0090 unless the context requires otherwise:

(1) "Beginning Teacher" means a teacher who:

(a) Possesses a teaching certificate issued by the Teacher Standards and Practices Commission;

(b) Is employed at least half time, primarily as a classroom teacher, by a school district; and

(c) Has taught fewer than 90 consecutive days, or 180 days total, as a certificated teacher in any public, private, or state-operated school.

(2) "District" means a school district, an education service district, a state-operated school, or any legally constituted combination of such districts.

(3) "Formal Assistance" means a program provided by a mentor teacher to a beginning teacher that includes, but is not limited to, direct classroom observation and consultation; assistance in instructional planning and preparation; support in implementation and delivery of classroom instruction; and other assistance intended to enhance the professional performance and development of the beginning teacher.

(4) "Mentor Teacher" means a teacher who:

(a) Possesses a basic or standard teaching, personnel service, or administrative certificate issued by the Teacher Standards and Practices Commission;

(b) Is employed at the time of selection under contract primarily as a classroom teacher by a school district in this state;

(c) Has successfully taught for three or more years as a certificated teacher in any public school;

(d) Has been selected and trained as described in ORS 342.794; and

(e) Has demonstrated mastery of teaching skills and subject matter knowledge.

(5) "Teacher" means a certificated employee of a common or union high school district, an employee of an education service district or a state-operated school who has direct responsibility for instruction, coordination of educational programs or supervision of teachers and who is compensated for services from public funds. "Teacher" does not include a school nurse as defined in ORS 342.455 or a person whose duties require an administrative certificate.

(6) "Active Teachers" and "Classroom Teachers" means all teachers who provide direct instruction to students.

Stat. Auth.: ORS 336 & 342
Stats. Implemented: ORS 329.795
Hist.: EB 18-1988, f. & cert. ef. 3-16-88; EB 9-1990, f. & cert. ef. 1-30-90

581-020-0070

Eligibility

The State Board of Education shall establish a beginning teacher support program to provide eligible beginning teachers in this state with continued and sustained support from a formally assigned mentor teacher.

(1) Any district is eligible to apply to participate in the beginning teacher support program. Grants may be subject to application, evaluation, approval by the Oregon Department of Education, and the legislative appropriation of funds.

(2) Two or more districts may operate jointly a beginning teacher support program if they meet all requirements of this rule.

(3) Educational consortia established for approved teacher education programs pursuant to rules of the Teacher Standards and Practices Commission are eligible to operate a beginning teacher support program to serve beginning teachers in a participating school district if:

(a) All moneys received as grants-in-aid for the beginning teacher support program are administered by the participating school district to provide direct services to beginning teachers; and

(b) All other requirements of this rule are met.

(4) To the extent practicable, school districts may coordinate with institutions of higher education in the design, implementation and evaluation of mentorship programs.

Stat. Auth.: ORS 336 & 342
Stats. Implemented: ORS 329.795
Hist.: EB 18-1988, f. & cert. ef. 3-16-88; EB 9-1990, f. & cert. ef. 1-30-90

581-020-0075

Grant Application

Each district that wishes to participate in the beginning teacher support program shall submit a formal application to the Department of Education no later than October 1 of each school year, according to rules of the State Board. By that date, districts shall inform the department of:

(1) The names of all eligible beginning teachers employed by the district and a description of their teacher assignments and extracurricular duties;

(2) The names of mentor teachers selected by a district and a description of their teaching assignments and the endorsement area in which they are certified to teach;

(3) A description of the content and calendar of the proposed beginning teacher support program. The program must provide a minimum of 90 hours of direct contact between mentor teachers and beginning teachers, including observation of or assistance with classroom teaching, or both, during the school day;

(4) A description of the amount and nature of each eligible beginning teacher's classroom and extracurricular duties and assurance that these duties are not unreasonable for a beginning teacher;

(5) A certification that no eligible beginning teacher is or may be misassigned outside the teacher's endorsement area, except as provided for by rules of the Teacher Standards and Practices Commission; and

(6) A description of the process by which mentor teachers are selected including a description of the level of participation of classroom teachers and building administrators in the selection process.

Stat. Auth.: ORS 336 & 342
Stats. Implemented: ORS 329.800
Hist.: EB 18-1988, f. & cert. ef. 3-16-88; EB 9-1990, f. & cert. ef. 1-30-90

581-020-0080

Funding

(1) Subject to ORS 291.232 to 291.260, the Superintendent of Public Instruction shall distribute grants-in-aid to eligible districts to offset the costs of beginning teacher support programs. A qualifying district shall receive annually \$3,000 for each beginning teacher approved for support.

(2) The Superintendent of Public Instruction shall distribute at least three-fourths of the allocation due to each eligible district no later than February 1 of each fiscal year and the remainder when all required final reports are filed with the Department of Education. If underpayments or overpayments result, adjustments shall be made in the following year.

(3) If the funds are insufficient for all eligible proposals, the department shall award grants on a competitive basis taking into

consideration school district size and geographic location. Grants may be subject to application, evaluation, approval by the Oregon Department of Education, and the legislative appropriation of funds.

(4) Notwithstanding section (1) of this rule, if a participating district hires a beginning teacher after its program has been approved, the district shall be eligible to receive, for each beginning teacher in addition to those named in the application, a grant-in-aid that is pro-rated to the remaining length of the school year, and reimbursement for any additional actual costs incurred by the district for training the mentor teacher, if all other requirements of ORS 336.705 to 336.780, 342.782 to 342.798 and 348.120 to 348.135 are met and if funds are available.

(5) In the event the employment of a beginning teacher terminates prior to end of the school year, the district shall return to the Superintendent of Public Instruction whichever is the lesser:

(a) \$3,000 minus actual costs incurred by the district as a result of participation in this program; or

(b) \$3,000 minus the number of days the beginning teacher was employed times 1/180 times \$3,000.

Stat. Auth.: ORS 336 & 342

Stats. Implemented: ORS 329.805

Hist.: EB 18-1988, f. & cert. ef. 3-16-88; EB 36-1988, f. & cert. ef. 8-5-88; EB 9-1990, f. & cert. ef. 1-30-90; EB 25-1990(Temp), f. & cert. ef. 5-18-90

581-020-0085

The Selection, Nature and Extent of Duties of Mentor Teachers

The selection, nature and extent of duties of mentor teachers shall be determined by the school district. The following guidelines shall apply:

(1) No teacher shall be designated as a mentor teacher unless willing to perform in that role;

(2) No mentor teacher shall participate in the evaluation of beginning teachers for purposes of actions taken under ORS 342.805 to 342.955;

(3) Each mentor teacher shall complete successfully a training workshop provided by the Oregon Department of Education or approved according to criteria established by the Department of Education while participating in the beginning teacher support program;

(4) The grant received for each beginning teacher may be used by the district to compensate teachers who act as mentor teachers in addition to their regular duties or to compensate other individuals assigned duties to provide release time for teachers acting as mentor teachers; and

(5) If a mentor teacher receives additional release time to support a beginning teacher, it is expected that the total workload of other teachers regularly employed by the school district should not increase in any substantial manner.

Stat. Auth.: ORS 336 & 342

Stats. Implemented: ORS 329.815

Hist.: EB 18-1988, f. & cert. ef. 3-16-88; EB 9-1990, f. & cert. ef. 1-30-90

581-020-0090

Violation and Penalty

A district that is determined by the Department of Education to be in violation of one or more of the requirements of OAR 581-020-0060 through 581-020-0085 may be required to refund all grants-in-aid moneys distributed under the above OARs. The amount of penalty shall be determined by the State Board of Education.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 329.805

Hist.: EB 18-1988, f. & cert. ef. 3-16-88

581-020-0100

Pertaining to 21st Century Schools

The 21st Century Schools Program has been established to encourage:

(1) The restructuring of school operations and formal relationships among teachers, administrators, and local citizens, including but not limited to modifications of the following:

(a) The length and structure of the school day and the school year;

(b) Curriculum requirements;

(c) Graduation requirements;

(d) The certification, assignment, and formal responsibilities of teachers, administrators, and other school personnel;

(e) State statutes and rules and local policies and agreements relating to educational practices, with the exception of those that affect health, safety, or constitutional rights under state or federal law;

(f) The formal and informal relationships between school districts, and other entities including community colleges, four-year colleges and universities, businesses, and other institutions; and

(g) The integration of traditional services to grades kindergarten through 12 with public and privately sponsored social services, such as early childhood education, day care, and assistance for teenage parents and other at-risk youth.

(2) Educators, school districts, and local citizens to establish measurable goals for educational attainment and increased expectations for student performance, including but not limited to improvement in such performance measures as:

(a) Student dropout rates;

(b) District, state, and national standardized tests and other assessments of student learning and educational progress;

(c) The extent and nature of parental involvement in school activities;

(d) Student conduct and disciplinary actions;

(e) Student expectations and attitudes towards learning; and

(f) Student success in college, vocational, and other postsecondary programs.

Stat. Auth.: ORS 840

Stats. Implemented: ORS 329.555

Hist.: EB 5-1990, f. & cert. ef. 1-26-90

581-020-0105

Definitions

The following definitions apply to OARs 581-020-0100 through 0135 unless the context requires otherwise:

(1) "Administrator" includes all persons whose duties require administrative certificates.

(2) "Building site committee" means a 21st Century Schools Council as described in OAR 581-020-0130.

(3) "Department" means the Department of Education.

(4) "District planning committee" means a body composed of teachers, administrators, school board members, and public members, constituted under OAR 581-020-0125, for the purpose of sponsoring programs submitted and approved under the 21st Century Schools Program.

(5) "School district" means a school district, an education service district, a state-operated school, or any legally constituted combination of such entities that sponsors an eligible program and submits an application under OAR 581-020-0125.

(6) "State Board" means the State Board of Education.

(7) "Teacher" means all certificated employees of a school district who have direct responsibility for instruction, coordination of educational programs, or supervision of teachers and who are compensated for their services from public funds. "Teacher" does not include a school nurse, as defined in ORS 342.455, or a person whose duties require an administrative certificate.

Stat. Auth.: ORS 840

Stats. Implemented: ORS 329.575 & 329.704

Hist.: EB 5-1990, f. & cert. ef. 1-26-90; ODE 9-1998, f. & cert. ef. 6-23-98

581-020-0110

Eligibility

(1) Any district school board is eligible to submit an application for the 21st Century Schools Program.

(2) Applications may be made on behalf of the following:

(a) An individual school building;

(b) Two or more school buildings within a district;

(c) All school buildings within a district; or

(d) A consortium consisting of two or more school districts.

Stat. Auth.: ORS 840

Stats. Implemented: ORS 329.565

Hist.: EB 5-1990, f. & cert. ef. 1-26-90

581-020-0115

Application

(1) All applications for the 21st Century Schools Program shall be submitted to the Department of Education, and shall contain the following:

(a) A letter of support from the school board, and the exclusive representative of teachers in the buildings affected if waiver of a collective bargaining obligation over mandatory subjects of collective bargaining, a right or obligation under a collective bargaining contract

or any right under ORS 243.650 to 243.782, 342.513, 342.545, 342.553, 342.608, 342.610, 342.613 or 342.650 is required;

(b) An abstract of the nature and objectives of the project and a description of the changes projected to occur in the school or district, or any combination thereof, as a result of the proposal;

(c) A description of the goals and major activities to be carried out as part of the project, including but not limited to the nature and extent of the restructuring of school operations and formal relationships as described in OAR 581-020-0100. The application shall also describe the process used to identify the goals and major activities of the project;

(d) A list of the major student learning and educational outcomes that are projected to occur as a result of the project, including but not limited to:

(A) The length and structure of the school day and the school year;

(B) Curriculum requirements;

(C) Graduation requirements;

(D) The certification, assignment, and formal responsibilities of teachers, administrators, and other school personnel;

(E) State statutes and rules and local policies and agreements relating to educational practices, with the exception of those that affect health, safety, or constitutional rights under state or federal law;

(F) The formal and informal relationships between the school district; and other entities including community colleges, four-year colleges and universities, businesses, and other institutions;

(G) The integration of traditional services to grades kindergarten through 12 with public and privately sponsored social services, such as early childhood education, day care, and assistance for teenage parents and other at-risk youth;

(H) Student dropout rates;

(I) District, state, and national standardized tests and other assessments of student learning and educational progress;

(J) The extent and nature of parental involvement in school activities;

(K) Student conduct and disciplinary actions;

(L) Student expectations and attitudes towards learning; and

(M) Student success in college, vocational, and other post-secondary programs.

(e) A description of all statutes and rules to be modified or waived to complete the activities of the project. For each provision, the application shall include a statement describing why the modification or waiver is warranted;

(f) A description of all district rules and agreements that are to be modified or waived. All such provisions shall be approved by a majority vote of each building site committee, the affirmative vote of at least two-thirds of the certificated teachers in the affected school buildings and the approval of the local district school board, and the exclusive representative of the teachers if waiver of a collective bargaining obligation over mandatory subjects of collective bargaining, a right or obligation under a collective bargaining contract or any right under ORS 243.650 to 243.782, 342.513, 342.545, 342.553, 342.608, 342.610, 342.613, 342.650;

(g) A budget plan for the project and additional anticipated sources of funding, if any, including private grants and contributions;

(h) A description of the process by which data will be collected and assessed to measure student learning and other educational performance attributable to the project;

(i) Letters expressing support and a willingness to participate from community colleges and other postsecondary institutions, where appropriate;

(j) The number of school years for which approval is sought. The period shall be no less than three years and no more than five years; and

(k) A description of how the district intends to share and disseminate to other school districts those practices that prove effective.

(2) Applications shall contain all the components of section (1) of this rule to be eligible for approval.

(3) The application may also contain written statements of support from parents, citizens, local businesses, and other interested individuals and organizations.

(4) A district shall submit its application to the Department of Education.

(5) Within 60 days districts submitting applications and the public will be given an opportunity to comment on the applications.

(6) No later than 90 days after receipt of an application by the Department of Education, the State Board of Education shall approve or deny any application submitted under this Act.

(7) Along with its annual report, a district may submit proposed amendments to its approved program describing additional statutes, rules, or local policies and agreements that it proposes to waive. Such amendments must be accompanied by a statement of support from the local school board, the exclusive representative of teachers if waiver of a collective bargaining obligation over mandatory subjects of collective bargaining, a right or obligation over mandatory subjects of collective bargaining, a right or obligation under a collective bargaining contract or any right under ORS 243.650 to 243.782, 342.513, 342.545, 342.553, 342.608, 342.610, 342.613 or 342.650 is required, and each building site committee involved in the project. The advisory committee may recommend approval of such amendments upon a finding of satisfactory progress by the district and a determination that all other provisions of this Act have been met.

(8) A district may terminate its application by submitting to the board a request for termination that has been approved by the school board, the exclusive representative of teachers if waiver of a collective bargaining obligation over mandatory subjects of collective bargaining, a right or obligation under a collective bargaining contract or any right under ORS 243.650 to 243.782, 342.513, 342.545, 342.553, 342.608, 342.610, 342.613, or 342.650 is required, and the building site committees.

(9) Applications under this program shall be effective for the period of time identified in the application and are renewable. Applications may be renewed subject to reapplication, evaluation, and the approval by the Board of Education.

Stat. Auth.: ORS 840, OL 1989

Stats. Implemented: ORS 329.575 & 329.704

Hist.: EB 5-1990, f. & cert. ef. 1-26-90; EB 13-1993(Temp), f. 3-25-93, cert. ef. 3-26-93; EB 24-1993, f. & cert. ef. 7-30-93; ODE 9-1998, f. & cert. ef. 6-23-98

581-020-0120

State Advisory Committee

(1) The School Improvement and Professional Development Advisory Committee, appointed by the State Board of Education under ORS 336.730, shall propose rules, for adoption by the State Board, to govern the submission and approval of applications for the 21st Century Schools Program.

(2) The advisory committee shall review all applications submitted under this Act and recommend applications for approval by the State Board including but not limited to the following criteria:

(a) The existence of significant, measurable, and achievable goals based on student performance;

(b) The extent to which the district has demonstrated the need for the requested modifications and waiver of specified statutes and rules and local policies and agreements;

(c) The extent to which the application proposes significant changes in the structure of school operations and the formal relationships among teachers, administrators, and public citizens, as described in OAR 581-020-0100;

(d) The clarity of purpose and values underlying the proposal;

(e) Evidence of thoroughness in identifying, developing, and projecting implementation of the proposed activities;

(f) Evidence of potential transferability of the proposed activities and practices that are judged to be successful;

(g) A determination that modification or waiver of statutes and rules and local policies and agreements will not be detrimental to the health, safety, or constitutional rights of students, teachers, administrators, or the public under state or federal law; and

(h) A demonstration of support and commitment from all parties to support and faithfully implement the proposal.

(3) The advisory committee may suggest modifications in submitted applications, subject to the approval of the school board, the exclusive representative of teachers and each building site committee involved in the project.

(4) The State Board shall consider the recommendations of the advisory committee and make the final decisions on approval of the applications, using the criteria contained in section (2) of this rule. Before making these decisions, the State Board shall allow opportunity for comment by persons submitting the applications and by the public.

Stat. Auth.: ORS 840
 Stats. Implemented: ORS 329.700
 Hist.: EB 5-1990, f. & cert. ef. 1-26-90

581-020-0125

District Planning Committee

(1) If more than one school building is part of an application, the building site committees may elect to establish a district planning committee to facilitate the development of its application. A district planning committee constituted under this Act shall consist of:

- (a) Administrators and at least one school board member to be chosen by the school board;
- (b) Teachers, chosen by the exclusive representative, in a number equal to those appointed under subsection (1)(a) of this rule; and
- (c) At least three public members, chosen jointly by the other members of the committee.

(2) To participate in the 21st Century Schools Program, and prior to submission of an application by the school board, a school district shall have accomplished the following:

(a) Identified the school building or buildings and, if appropriate, the school district or districts on whose behalf the application is submitted;

(b) Established, in each school building affected by the proposal, a building site committee;

(c) Agreed, at the direction of the building site committees and, if applicable, the district planning committee, upon the following:

(A) The major activities to be carried out as part of the project, including but not limited to the nature and extent of the restructuring of school operations and formal relationships;

(B) The specified measure of student learning and educational outcomes for each building affected by the application; and

(C) The process by which each building site committee and, where applicable, the district planning committee will collect data and assess the progress and final performance of its program.

(3) The local district school board shall be responsible for submitting the application and certifying that all appropriate requirements have been met.

Stat. Auth.: ORS 840
 Stats. Implemented: ORS 329.705
 Hist.: EB 5-1990, f. & cert. ef. 1-26-90

581-020-0130

21st Century Schools Council

(1) Each school site shall establish a 21st Century Schools Council (site council). The duties of the site council shall include, but not be limited to:

(a) The development of plans to improve the professional growth of the school's staff;

(b) The improvement of the school's instructional program;

(c) The development and coordination of plans for the implementation of programs under Oregon's Education Act for the 21st Century at the school; and

(d) The administration of grants-in-aid for the professional development of teachers and classified district employees.

(2) Members of the site council shall include licensed and classified staff from the building, parents of students attending the school, the building administrator or the administrator's designee, and any other members as determined to be appropriate by the site council, including but not limited to community members, students and business leaders. Site council composition shall be as follows:

(a) Neither parents nor teachers shall make up a majority of the site council;

(b) At least one member shall be a classified employee of the district;

(c) One member shall be the building administrator or the administrator's designee.

(3) Members shall be selected for the site council as follows:

(a) Licensed staff shall elect their representatives to the site council;

(b) Classified staff shall elect their representative(s) to the site council;

(c) Parents shall be selected by a process to be defined by the local school board; and

(d) Other representatives shall be selected by the council.

(4) If a school council cannot meet the requirements for composition as described in this rule or determines that the needs of the school require a different composition, the district school board may establish the school site council in a manner that best meets the needs of the district.

(5) All site council meetings shall be subject to the open meeting law pursuant to ORS 192.610 to 192.690.

(6) Nothing in this rule shall interfere with the duties, responsibilities and rights of duly elected district school boards.

Stat. Auth.: ORS 840
 Stats. Implemented: ORS 329.575 & 329.704
 Hist.: EB 5-1990, f. & cert. ef. 1-26-90; ODE 9-1998, f. & cert. ef. 6-23-98

581-020-0135

Evaluation and Annual Reports

(1) Each district that receives approval for a project under the 21st Century Schools Program shall submit an annual report to the advisory committee appointed under ORS 336.730 and to the local community. The report shall include specific data that reflect the nature and extent of changes in student learning and other performance as described in its application.

(2) If, based upon these annual reports, the advisory committee determines that a district's progress is unsatisfactory, the advisory committee may recommend to the State Board that the district be placed on probation for a one-year period. During the probationary year, the district shall be eligible for special assistance from the Department of Education. During the probationary year, the district shall also prepare a contingency plan in the event it is ordered to terminate its project prematurely.

(3) If, after the probationary period described in section (2) of this rule, the district's progress is still unsatisfactory in the judgment of the advisory committee, the advisory committee may recommend that the State Board terminate the project and implement its plan for returning to compliance with previously waived statutes, rules, and local policies and agreements.

Stat. Auth.: ORS 840
 Stats. Implemented: ORS 329.600
 Hist.: EB 5-1990, f. & cert. ef. 1-26-90

581-020-0200

School Facility Improvement Grants

(1) Any school district, which for purposes of this rule includes a common or union high school district, an education service district or any combination thereof, may apply for a School Facility Improvement Grant to construct or maintain public school facilities. No school district may submit more than one application on behalf of the individual school district and one application in conjunction with other school districts.

(2) Grant applications shall be submitted to the State Superintendent of Public Instruction by May 31. The application shall state:

(a) The specific purpose of the grant which may include, for new or existing facilities:

- (A) Land acquisition;
- (B) Planning and design;
- (C) Construction;
- (D) Remodeling;
- (E) Reduction of energy consumption;
- (F) Alternation;
- (G) Furnishing and equipping;
- (H) Repair;
- (I) Replacement; and
- (J) Other capital maintenance, but shall not include cleaning.

(b) The need for the construction or maintenance, including documentation of applicable factors such as:

(A) Age of the facility for which maintenance or construction is proposed;

(B) The degree of overcrowding;

(C) The absence of facilities necessary to accomplish the educational goals of the district and state;

(D) Deterioration of existing facilities which has the potential of affecting the health and safety of students;

(E) Damage or destruction of existing facilities due to natural disaster;

(F) Compliance with the Americans with Disabilities Act; and

(G) How the construction or maintenance will facilitate implementation of the educational goals of House Bill 3565 enacted by the 1991 Legislative Assembly.

(c) The amount requested and how the grant monies, if awarded, shall be matched with local funds. Grants shall be matched by at least one local dollar from the grant applicant for every four state dollars;

(d) The time period when the grant funds will be needed, including a statement of any detrimental effect that may be caused by delay; or in the alternative, a statement that the time period is flexible.

(3) Grants shall not exceed \$500,000 in any biennium to any school district.

(4) In addition, a combination of districts may submit a joint grant application in an amount not to exceed \$500,000.

(5) A district or combination thereof may apply in subsequent bienniums for additional grants for the same facility.

(6) Grants will be screened on the following criteria:

(a) Age of the school facilities;

(b) Degree of overcrowding;

(c) Potential student health and safety concerns due to deterioration of school facilities or natural disasters;

(d) Reduction of energy consumption; and

(e) The need for additional, new, replacement, or updated facilities in order to:

(A) Comply with the American with Disabilities Act; or

(B) Accomplish educational goals for the district and state, specifically the goals set forth in HB 3565.

(7) In the event that meritorious grant applications exceed the amount of grant funds available, the Superintendent of Public Instruction shall place all of the applications, which contain the information required under section (2) of this rule and which are judged meritorious by the criteria set forth in section (6) of this rule, in a pool from which applications will be selected on a random basis. Applications shall be ranked in order of their selection and grants shall be awarded in numerical order up to a total of \$5 million.

(8) The Superintendent of Public Instruction shall award School Facility Improvement Grants from funds appropriated to the School Facility Improvement Fund subject to availability of funding. If the amount of funding is less than \$5 million, grant awards will be reduced on a pro rata basis. Notification of grant awards shall be made within 45 days after the closing date for grant applications.

(9) The decision of the Superintendent shall be final.

Stat. Auth.: ORS 327.300 - 327.330

Stats. Implemented: ORS 327.300, 327.310, 327.320 & 327.330

Hist.: EB 3-1994, f. & cert. ef. 4-29-94; EB 9-1994(Temp), f. & cert. ef. 6-28-94

581-020-0301

Public Charter School Proposal Review and Approval Process

(1) An applicant must submit proposals to the local school district board and the State Board of Education.

(2) Upon receipt of a proposal from an applicant, the school district board will ensure that the proposal addresses all of the required components as set out in Chapter 200, Oregon Laws 1999 (Enrolled Senate Bill 100 Section 6, subsection (2)(a)-(x)). Within 15 business days of the receipt of a proposal, the school district will notify the applicant as to the completeness of the proposal. Proposals that minimally address or leave out any of the required components are not complete and may be returned to the applicant. A proposal that included, for example, a reprinting of the charter school statutes as its response to a required component, would minimally address that component and would not be complete. A proposal that addressed a required component based on an incorrect budget assumption or in a manner that is unsatisfactory to the local school district would nonetheless be complete.

(3) Within 60 days of the notification to the applicant of the school district's receipt of a complete proposal, the school district board must hold a public hearing on the proposal in accordance with Oregon public meeting laws (ORS 192.610 through 192.695, 192.710, and 192.990).

(4) The school district board must evaluate the proposal in good faith using the following criteria:

(a) Demonstrated, sustainable support for the public charter school by teachers, parents, students and other community members, including comments received at the public hearing held under section (3) above;

(b) Evidence of financial stability, including a proposed budget;

(c) Capability of the applicant, in terms of support and planning, to provide students with comprehensive instructional programs;

(d) Capability of the applicant, in terms of support and planning, to provide academically low achieving students with comprehensive instructional programs;

(e) The extent that the proposal addresses the components required in Chapter 200, Oregon Laws 1999 (Enrolled Senate Bill 100, Section 6, subsection (2)(a)-(x)), including any additional components or information required under local school district board policy;

(f) Whether the value of the public charter school is outweighed by any directly identifiable, significant and adverse impact on the quality of the public education of students residing in the school district where the public charter school is located;

(g) Whether there are arrangements for any special education and related services for children with disabilities pursuant to Chapter 200, Oregon Laws 1999 (Enrolled Senate Bill 100, Section 21); and

(h) Whether there are alternative arrangements for students and for teachers and other school employees who choose not to attend or who choose not to be employed by the public charter school.

(5) Within 30 days of the public hearing, the district school board must either approve or deny the proposal. Written notice of the decision must be sent to applicants. Such notice must include reasons and suggestions for remediation for all proposals that are denied.

(6) An applicant may revise and resubmit the proposal to the district school board.

(7) The local school board must approve or disapprove the revised proposal within 20 days of receipt.

(8) The applicant must forward a copy of the written notice of approval to the State Board of Education.

(9) An applicant whose proposal is not approved by the local school board may request a review of that decision by the State Board of Education under the procedure set out in OAR 581-020-0330.

Stat. Auth.: ORS 3263.051

Stats. Implemented: Ch. 200, OL 1999 (SB 100)

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

581-020-0311

Development and Execution of a Charter

(1) School district boards that approve a proposal will be considered the sponsor of the public charter school defined in the proposal.

(2) An applicant whose proposal has been approved by the sponsor must, in cooperation with the sponsor, prepare and execute a charter that addresses, at a minimum, the information that is included in the proposal.

(3) Notwithstanding subsection (2), an applicant and sponsor may agree to change elements of the proposal prior to including them in the charter and may agree to exclude elements of the proposal from the charter or to include new elements in the charter.

(4) Executed charters may be in effect for no more than five years and may be renewed by the sponsor.

(5) A sponsor and the charter school governing body may amend a charter at any time by joint agreement.

Stat. Auth.: ORS 3263.051

Stats. Implemented: Ch. 200, OL 1999 (SB 100)

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

581-020-0321

Charter School Development Timelines

(1) School district boards may develop timelines, policies and procedures for receiving, evaluating and approving or disapproving proposals within the parameters set out in Chapter 200, Oregon Laws 1999 (Enrolled Senate Bill 100 Section 7).

(2) School district board timelines, policies and procedures for receiving, evaluating and approving or disapproving proposals may require coordination of charter proposal development with the district's budgeting, student enrollment or operational timelines as necessary to demonstrate that the proposed charter school would meet the requirements of Chapter 200, Oregon Laws 1999 (Enrolled Senate Bill 100, section 7, subsection (2)(f)).

(3) Upon request from a school district, the State Board of Education may extend any timeline required in ORS Chapter 200, Oregon Laws 1999, (Enrolled Senate Bill 100) if the school district can demonstrate good cause for the extension.

Stat. Auth.: ORS 3263.051

Stats. Implemented: Ch. 200, OL 1999 (SB 100)

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

581-020-0331**Appeal Process**

(1) An applicant whose proposal to start a public charter school is not approved may request the State Board of Education review the decision of the school district board.

(2) The State Board of Education delegates to the Superintendent of Public Instruction or designee all administrative functions necessary or reasonable in order to conduct review. This delegation to the Superintendent includes, but is not limited to:

(a) Determining the form, contents and timelines of the petition for review;

(b) Determining the records required for review and ordering the production of those records from either the applicant or school district board and establishing timelines for the production of those records;

(c) Requiring the applicant or school district board to respond to written or oral inquiries related to board review;

(d) Determining the manner, means, scope and timelines by which mediation will take place, consistent with ORS 338.075(2)(a);

(e) Determining the manner, means and content of recommendations if any, to the applicant and school district board regarding revisions to the application;

(f) Determining at any time during the review process to reject a review request if in the judgment of the Superintendent, the applicant fails to reasonably comply with the administrative review processes of the Superintendent; and

(g) Negotiate, if determined by the Superintendent to be appropriate, the terms of a proposed written charter that contains terms consistent with tentative agreements reached with the applicant during the review process.

(3) At the conclusion of the administrative review process the Superintendent shall recommend in writing to the State Board to:

(a) Reject a proposal to start a public charter school if the proposed charter school fails to meet the requirements of ORS 338; or

(b) Sponsor the public charter school upon the terms in the proposal or upon such other terms specified.

(4) The State Board will consider the recommendation of the Superintendent and any other information it deems relevant and determine based on the requirements of ORS 338 to reject the proposal to have the State Board sponsor the public charter school or agree to sponsor the public charter school.

(5) The decision of the State Board rejecting a proposal to sponsor the public charter school will be based on substantial evidence in the record and will be made within 75 days of receipt by the State Board of the Superintendent's recommendation, unless extended for good cause.

(6) This rule is retroactive to November 1, 1999.

Stat. Auth.: ORS 326.051

Stats. Implemented: Ch. 200 OL 1999 (SB 100)

Hist.: ODE 13-2000, f. & cert. ef. 5-3-00; ODE 10-2002, f. & cert. ef. 4-12-02; ODE 5-2004(Temp), f. & cert. ef. 3-15-04 thru 9-1-04; Administrative Correction 9-28-04

581-020-0341**Procedure to Waive Certain Provisions of the Charter School Law**

(1) A public charter school may petition the State Board of Education for a waiver of any provision of ORS 388. The written petition must specify the reason(s) the charter school is seeking the waiver and any other relevant information.

(2) The public charter school must notify the sponsor if a waiver under this section is being considered. Waivers granted by the State Board to a charter school may require amending the charter under the provisions of OAR 581-020-0311(5).

(3) The State Board of Education, upon receipt of a waiver petition, will review the petition and may grant the waiver upon a showing that approving the waiver would:

(a) Promote the development of programs by providers;

(b) Enhance the equitable access by underserved families to the public education of their choice;

(c) Extend the equitable access to public support by all students; or

(d) Permit the development of high quality programs of unusual cost.

(4) The State Board of Education may not waive any review provision under the Act or any provision under ORS 338.115(1)(a)-(o).

Stat. Auth.: ORS 326.051

Stats. Implemented: Ch. 200, OL 1999(SB 100)

Hist.: ODE 13-2000, f. & cert. ef. 5-3-00; ODE 10-2002, f. & cert. ef. 4-12-02; ODE 5-2003(Temp), f. & cert. ef. 4-2-03 thru 9-15-03; Administrative correction 11-13-03

581-020-0345**Timeline Extensions**

Consistent with ORS 326.111, the State Board of Education delegates to the Superintendent of Public Instruction or the Superintendent's designee the authority to grant extensions of timelines pursuant to ORS 338.055(8).

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 326.111

Hist.: ODE 22-2000(Temp), f. & cert. ef. 7-27-00 thru 1-22-01; ODE 4-2001, f. & cert. ef. 1-29-01

581-020-0350**Charter School Revolving Loan Fund**

(1) The Superintendent of Public Instruction is authorized to loan funds interest free from the Public Charter School Development Fund to assist in the start up and other initial operating expenses of charter schools created under ORS Chapter 338.

(2) Loans applications must be made on forms provided by the Department of Education. The Department of Education may require a loan fee to defer the expenses incurred in processing loan applications. The Superintendent or his/her designee will review and approve loan applications.

(3) Completed loan applications must identify the person or legal entity that will guarantee the loan. Prior to distributing funds, the Department of Education must receive a properly executed instrument guaranteeing the loan.

(4) Loan proceeds may be distributed to the charter school sponsor for the benefit of the charter school or directly to the charter school. Funds will be distributed to the charter school sponsor for the benefit of the charter school if the sponsor guarantees the loan. Funds may be distributed directly to a charter school only if the loan is guaranteed by a person or legal entity other than the sponsor.

(5) Loans will be limited to a maximum of \$25,000.

(6) Money loaned to a charter school must be used to support the start-up or other initial operating expenses of a charter school that meets the purposes of the charter granted under ORS 338.065.

(7) The term of a loan will not exceed the term of the charter that was approved establishing the charter school. In no event will the term of a loan exceed five years.

(8) Repayment of the amount loaned to the charter school will be deducted in equal amounts over the term of the loan from the charter school's portion of the sponsor's State School Fund allocation. Such funds will be repaid to the Public Charter School Development fund.

(9) If a charter school is terminated under the provisions of ORS 338.105, any outstanding loan from the Public Charter School Development Fund will become due in full upon termination or following the terminated charter school's final allocation from the State School Fund, which ever is later.

(10) If a charter school defaults on a loan, the person or legal entity guaranteeing the loan will be liable for repayment of the loan.

(11) Priority for awarding loans shall be to those public charter schools serving at-risk youth.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 338.185

Hist.: ODE 6-2001, f. & cert. ef. 1-29-01

581-020-0380**Process for Sponsor to Terminate Charter**

(1) A sponsor may terminate a charter for failure to:

(a) Meet the terms of the approved charter or any requirement of ORS Chapter 338, unless waived by the State Board of Education;

(b) Meet the requirements for student performance as established in the approved charter;

(c) Correct any violation of a federal or state law described in ORS 338.115;

(d) Maintain insurance as described in the approved charter; or

(e) Maintain financial stability.

(2) A sponsor intending to terminate an approved charter must:

(a) Notify the public charter school governing body in writing at least 60 calendar days prior to the proposed effective date of the termination;

(b) Include in the notification the grounds for the termination; and

(c) Deliver the notice to the business address of the charter school.

(3) The governing body of a public charter that has received notice from the sponsor of the sponsor's intent to terminate the charter may request a hearing by the sponsor. Such a request must be made in writing and be delivered to the business address of the sponsor. Within 30 days of receiving the request for a hearing, the sponsor must provide the public charter school with the opportunity for a hearing on the proposed termination.

(4) If the sponsor reasonably believes that a public charter school is endangering the health or safety of the students enrolled in the public charter school, the sponsor may act to immediately terminate the approved charter and close the public charter school without providing the notice requirements set out in section (3) of this rule.

(5) The governing body of a public charter that is closed under the provisions of section four (4) of this rule may request a hearing by the sponsor. Such a request must be made in writing and be delivered to the business address of the sponsor. Within 10 days of receiving the request for a hearing, the sponsor must provide the public charter school with the opportunity for a hearing on the termination.

(6) Nothing in this rule should be construed as limiting the ability of a sponsor and a public charter school to include in the charter a procedural requirement for alternative dispute resolution prior to invoking the termination process.

Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 338.105
Hist.: ODE 19-2002, f. & cert. ef. 8-2-02

581-020-0385

Process to Appeal Decision by Sponsor to Terminate Charter

(1) A public charter school governing body may request the State Board of Education review the decision to terminate a charter. Any notice of a request for State Board review must be made in writing and be delivered to the State Board of Education and the business address of the sponsor.

(2) The State Board of Education delegates to the Superintendent of Public Instruction or designee all administrative functions necessary or reasonable in order to conduct a timely review. This delegation to the Superintendent includes, but is not limited to:

(a) Determining the form, contents, and timelines of the petition for review;

(b) Determining the records required for review and ordering the production of those records from either the public charter school governing body or school district board and establishing timelines for the production of those records;

(c) Requiring the public charter school governing body or school district board to respond to written or oral inquiries related to board review;

(d) Delegating the review function to a hearings officer to hold a hearing under ORS 183.310 through 183.550 and issue a proposed order; and

(e) Issuing a final order that may be appealed under the provisions of ORS 183.484.

(3) The State Board, or its designee, will where possible, issue its final order within 60 days from the sponsor's notification of intent to terminate as required in ORS 338.105(2). If it is not possible to issue the final order within 60 days, the charter school shall remain open pending issuance of the final order.

(4) The governing body of a public charter school that is closed under the provisions of ORS 338.105(4) may request the State Board of Education, or its designee, to review the decision of the sponsor to terminate the charter and close the public charter school. The State Board of Education, or its designee, will hold a hearing within 10 days of receiving the request for review. The review under this section will be accomplished under the provisions of section (2) of this rule and under the timelines set out in ORS 338.105(4) and, to the extent practicable, Section 3 of this rule.

Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 338.105
Hist.: ODE 19-2002, f. & cert. ef. 8-2-02

581-020-0390

Process for Charter School Governing Body to Terminate Charter and Dissolve Public Charter School

The governing body of a public charter school may only terminate, dissolve or close an operating public charter school at the end of

a semester. The governing body must provide the sponsor with notice of the intent to terminate the charter, and close and dissolve the public charter school, at least 180 days before the proposed date of termination, closure and dissolution. Such notice must be made in writing and be delivered to the business address of the sponsor.

Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 338.105
Hist.: ODE 19-2002, f. & cert. ef. 8-2-02

581-020-0395

Distribution of Assets of a Terminated or Dissolved Public Charter School

(1) Assets of a terminated, closed or dissolved public charter school that were obtained with public funds will be given to the State Board of Education. The State Board of Education, at its discretion, may disburse these assets to school districts or to other public charter schools.

(2) Assets of a terminated, closed or dissolved public charter that were obtained with grant funds will be disbursed according to the terms of the grant. If the grant is absent any reference to ownership or distribution of assets, assets of a terminated, closed or dissolved public charter school will be disbursed according to the provision set out in section (1) of this rule.

Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 338.015
Hist.: ODE 19-2002, f. & cert. ef. 8-2-02

581-020-0500

OVSD Definition

(1) The Oregon Virtual School District shall undertake efforts for a sustainable framework for K-12 virtual learning that enhances student achievement by providing resources with guidelines for delivery. Resources may include, but are not limited to, digital instructional content, complete courses, materials for teacher implementation, online communication systems for instruction and teacher professional development and training.

(2) The OVSD Framework is based on the legislative direction of an equitable opportunity for all students' access to online resources, without regard to social and economic status. Resources are intended to be available for all School Districts and students for the purpose of enriching student Education. A sustainable framework includes the components of creating standards while developing online instructional resources. OVSD resources are available to support public education providers to implement online instruction to enhance distance learning and supplement classroom instruction. Participation in the OVSD program is voluntary for Oregon Educational Service Districts, School Districts and Schools.

Stat. Auth.: ORS 319.840, 326.051
Stats. Implemented: ORS 319.840
Hist.: ODE 14-2006, f. 10-23-06, cert. ef. 10-24-06

581-020-0505

Online School Definition

Public school, public instructional program, or ESD, providing learning opportunities for publicly enrolled students via the Internet or other electronic network. Instruction should satisfy Oregon content, teaching standards and accreditation rules. Online programs and schools are governed by their school district guidelines for operations and education delivery.

Stat. Auth.: ORS 319.840, 326.051
Stats. Implemented: ORS 319.840
Hist.: ODE 14-2006, f. 10-23-06, cert. ef. 10-24-06

581-020-0510

Oregon Teacher

Teaching CORE classes in Oregon requires State licensure as well as teaching in the content area of approval as outlined by NCLB. This applies to all public schools and is defined in OAR 584-005-0005 #74, 584-005-0005 #21 and ORS 342.120 for Charter School instruction. All instructors must be licensed by the Teachers Standards and Practices Commission and highly qualified as defined by TSPPC.

Stat. Auth.: ORS 319.840, 326.051
Stats. Implemented: ORS 319.840
Hist.: ODE 14-2006, f. 10-23-06, cert. ef. 10-24-06

581-020-0515

Oregon Classroom Content

(1) Content should be aligned with Oregon's Common Curriculum Goals, Content Standards, and Essential Learning Skills. Adoption of content for instruction is governed by school Districts subject to Oregon Revised Statutes and Oregon Administrative Rules.

(2) OVSD will offer content aligned with state standards. The use of OVSD resources requires districts to conform to OAR division 22 Standards for public elementary and secondary schools.

Stat. Auth.: ORS 319.840, 326.051

Stats. Implemented: ORS 319.840

Hist: ODE 14-2006, f. 10-23-06, cert. ef. 10-24-06

581-020-0520

Required School District Guidelines for Digital Instruction

Public Providers of online learning using OVSD resources must adopt guidelines in the following areas.

(1) Student/Teacher Ratio. Online learning providers are required to have guidelines in place for reasonable student to instructor ratios that allow for regular, individualized interaction with instructors.

(2) Student Teacher Interaction. Online learning providers are required to have guidelines in place for reasonable student to instructor communication that allow for, individualized interaction with instructors as needed. Communication includes, but is not limited to, electronic mail, online discussion groups, telephone interaction and face to face discussions between teacher and student.

(3) Timeframe for Teacher Response to Student Questions. Online learning providers are required to have guidelines in place for the time and process that teachers will provide prompt response to student inquiries and requests for assistance.

(4) Student Standards. Online learning providers are required to have guidelines in place for student conduct and acceptable use of public school resources in the delivery of online instruction. The administrative implementation is governed by individual school district guidelines.

(5) Type of Courses. Courses offered are governed by individual school district guidelines, including, but not limited to, courses meeting requirements for high school diploma, electives as well as supplementary instruction. An example of supplementary instruction could be Advanced Placement preparation instruction.

(6) Amount of Credit Allowed. The amount of online instruction, and the corresponding credit, provided to a student is under the jurisdiction of the resident school district. Districts must accept transfer grades by accredited institutions.

(7) Student Eligibility for Courses. When applying towards credit the student's resident school district sets the eligibility requirements for district purchased online teaching services. Individual private purchase of courses by an Oregon resident is at the discretion of the parent or guardian and subject to resident school district guidelines for credit towards graduation. Use of Digital Courses and Content are subject to School District guidelines.

(8) Teacher Professional Development. Online Learning Providers are required to have policies for Teacher professional development. Teachers need to have appropriate training for the delivery of online instruction. Providers receiving public support must maintain Oregon teaching licensure for all teachers consistent with TSPC professional development requirements.

Stat. Auth.: ORS 319.840, 326.051

Stats. Implemented: ORS 319.840

Hist: ODE 14-2006, f. 10-23-06, cert. ef. 10-24-06

DIVISION 21

SCHOOL GOVERNANCE AND STUDENT CONDUCT

School Governance

581-021-0020

District School Board Proceedings

Questions of school officers and others concerning the proper administration of the school laws and rules of the Oregon State Board of Education shall be submitted to the Superintendent of the respective county. If the Superintendent is not prepared to answer any question of law submitted to him, he may submit the same in writing to the Superintendent of Public Instruction, giving all the essential facts and

stating the point of inquiry in the form of a direct question. The Superintendent of Public Instruction shall answer all such inquiries, securing an opinion of the Attorney General when necessary.

Stat. Auth.: ORS 326

Stats. Implemented: ORS 326.310

Hist.: 1EB 118, f. 11-28-67, ef. 12-25-67; 1EB 134, f. 7-5-72, ef. 7-15-72

581-021-0022

Student Evaluation

The district shall develop policies to assure that a students' academic grade reflects his/her academic achievement in that course. Absenteeism or misconduct shall not be a sole criterion for the reduction of grades.

Stat. Auth.: ORS 326.051(1)(b)

Stats. Implemented: ORS 339.280

Hist.: EB 17-1991, f. & cert. ef. 9-9-91

581-021-0023

Mercury Elimination Policy

(1) Definitions:

(a) "Mercury-added instructional material" means an item or product containing intentionally added elemental mercury or mercury compound(s) used for educational purposes.

(b) "Mercury compound" means a substance consisting mercury chemically combined with another element or combinations of elements, e.g. mercury oxide (HgO).

(c) "Elemental mercury" means the silvery-white liquid metal with atomic number of 80 and an atomic mass of 200.57 represented by chemical symbol Hg.

(2) All Oregon school districts must:

(a) Prohibit the purchase of elemental mercury, mercury compounds and mercury-added instructional materials;

(b) Eliminate all elemental mercury and mercury compounds that are maintained for education purposes, for example, vials of liquid mercury and samples of mercury compounds contained in chemistry class;

(c) Eliminate the use of mercury-added instructional materials; and

(d) Eliminate the use of items and products containing elemental mercury or mercury compounds, as those items and products are replaced at the end of their normal useful lives with cost-effective mercury-free alternatives.

(3) As instructional materials, items and products containing elemental mercury and mercury compounds are replaced; school districts should work with the Oregon Department of Environmental Quality in the proper disposal of materials, items and products.

Stat. Auth.: ORS 326.051(b)

Stats. Implemented: ORS 326.051(g)

Hist.: ODE 2-2004, f. & cert. ef. 1-15-04

581-021-0026

Examination of Children Instructed by Parent, Legal Guardian or Private Teacher

(1) The following definitions and abbreviations apply to OAR 581-021-0026 unless otherwise specified within the rule:

(a) "Approved Tests" Tests approved for assessment of satisfactory progress by home school students are the two most recent versions of the following tests;

(A) California Achievement Test;

(B) Comprehensive Tests of Basic Skills;

(C) Iowa Tests of Basic Skills/Tests of Achievement and Proficiency;

(D) Metropolitan Achievement Battery;

(E) Stanford Achievement Test Battery.

(b) "Child" means a person between ages 7 and 18 whose parent or parents seek exemption from compulsory school attendance under ORS 339.030(1)(c) or (1)(d).

(c) "Education Service District" means the education service district that contains the school district of which the child is a resident.

(d) "Department" means the Oregon Department of Education;

(e) "Neutral person" means an individual selected by the parent or guardian of the child to be taught at home who has no relationship by bloodline or marriage to the child;

(f) "Notification" means written notice containing:

(A) The child's and the parent's name, address, telephone number (optional), and e-mail address (optional);

(B) The child's birth date; and
(C) The name of the school the child is presently attending, or last attended, or if child has not attended school, the name of the public school district in which the child resides.

(g) "Order" means to provide formal written notice.

(h) "Parent" is the natural parent or legal guardian of a child whom the parent desires to be exempted from compulsory attendance under the provisions of ORS 339.030(1)(c) or (1)(d).

(i) For the purposes of OAR 581-021-0026 only, "Qualified person" is an individual who:

(A) Holds a current personnel service license or teaching license from Oregon Teacher Standards and Practices Commission; or

(B) Has been licensed by the Oregon Board of Psychologist Examiners; or

(C) Has met the publisher's qualifications for purchase, and has purchased at least one test from the list set forth in section (1)(a) of this rule; or

(D) Provides evidence of satisfactory completion of a graduate course in which test administration and interpretation is included in the objective; or

(E) Has previously qualified as a tester pursuant to paragraph (1)(i) of this rule, and has during the previous year administered at least one test from the list set forth in section (1)(a) of this rule.

(j) "Superintendent" is the executive officer of the education service district (ESD).

(2) The State Superintendent and the Oregon Department of Education shall make available a list of the test publishers and their addresses.

(3) The Department shall make available a list of persons qualified to administer tests under this rule, such list to be updated by July 1 of each year. To be placed on the list, an applicant shall submit to the State Superintendent of Public Instruction evidence that satisfies any one of the requirements stated in subsection (1)(i)(A) through (E) of this rule.

(4) When a child is taught or is withdrawn from a public or private school to be taught by a parent, legal guardian or private teacher, as provided in ORS 339.030(1)(c) or (d), the parent, legal guardian or private teacher must notify the education service district in writing within 10 days of such occurrence. In addition, when a child who is taught by a parent, legal guardian or private teacher moves to a new education service district, the parent shall notify the new education service district in writing within 10 days of such occurrence of their intent to continue home schooling.

(a) The ESD must acknowledge in writing receipt of any notification from a parent, legal guardian or private teacher within 90 days of having record of such notification.

(b) The ESD must also notify at least annually, school districts of home schooled students who reside in the school district.

(5) Children in grades 3, 5, 8, and 10, being taught as provided in section (4) of this rule, shall be examined no later than August 15 in accordance with the following procedures:

(a) The parent or legal guardian shall select an examination from the list of approved tests provided in subsection (1)(a) above and arrange to have the examination administered to the child by a neutral qualified person as defined in subsections (1)(e) and (i) above.

(A) If the child was withdrawn from public or private school, the first examination shall be administered to the child at least 18 months after the date on which the child was withdrawn from public or private school.

(B) If the child never attended public or private school, the first examination shall be administered to the child prior to the end of grade three.

(b) The person administering the examination shall:

(A) Score or provide for the scoring of the examination; and

(B) Report the results of the examination to the parent or legal guardian.

(c) Upon request of the superintendent of the education service district, the parent or legal guardian shall submit the results of the examination to the education service district.

(6) Testing for grade levels 3, 5, 8, and 10 shall occur in the third, fifth, eighth, and tenth year ending August 15. The first year is defined as when the child is seven on September 1, or earlier at the parent's discretion.

(7) Test score results shall be evaluated as follows:

(a) If the composite test score of the child places the child below the 15th percentile based on national norms, the child shall be given an additional examination within one year of when the first examination was administered.

(b) If the composite test score of the child on the second examination shows a declining score, then the child shall be given an additional examination within one year of when the second examination was administered and the superintendent of the education service district may:

(A) Allow the child to continue to be taught by a parent, legal guardian or private teacher; or

(B) Place the education of the child under the supervision of a person holding a teaching license who is selected by the parent or legal guardian at the expense of the parent or legal guardian.

(c) If the composite test score of the child continues to show a declining score, the superintendent of the education service district may:

(A) Allow the child to continue under the educational supervision of a licensed teacher selected by the parent or legal guardian, at the expense of the parent or legal guardian, and require that the child be given an additional examination within one year of when the last examination was administered;

(B) Allow the child to be taught by a parent, legal guardian or private teacher and require that the child be given an additional examination within one year of when the last examination was administered; or

(C) Order the parent or legal guardian to send the child to school for a period not to exceed 12 consecutive months as determined by the superintendent.

(d) If the parent or legal guardian of the child does not consent to placing the education of the child under the supervision of a licensed teacher who is selected by the parent or legal guardian, then the superintendent of the education service district may order the child to school for a period not to exceed 12 consecutive months as determined by the superintendent.

(e) If the composite test score of the child on an examination is equal to or greater than the percentile score on the prior test, the child may be taught by a parent, legal guardian or private teacher and for the next examination be examined pursuant to subsection (5) of this section.

(8) Procedures for homeschooling students with disabilities are set out in OAR 581-021-0029.

(9) A test administrator shall certify that the administrator is qualified and neutral as defined in this rule with respect to a child being tested.

(10) All costs for the test instrument, administration, and scoring are the responsibility of the parent.

(11) The parent of a child who turns seven after September 1 shall not be required to provide notice of intent to home school that child until the beginning of the next school year.

(12) Violation of ORS 339.020 or the requirements of ORS 339.035 is punishable as set out in ORS 339.990.

Stat. Auth.: ORS 339.030 & 339.035

Stats. Implemented: ORS 339.035

Hist.: 1EB 8-1986, f. 3-12-86, ef. 3-17-86; 1EB 10-1986, f. 3-21-86, ef. 3-24-86; EB 6-1992(Temp), f. & cert. ef. 2-25-92; EB 26-1992, f. & cert. ef. 7-28-92; EB 33-1992(Temp), f. & cert. ef. 10-29-92; EB 14-1993, f. & cert. ef. 3-25-93; EB 12-1996, f. 7-26-96, cert. ef. 11-1-96; ODE 19-2000, f. & cert. ef. 5-23-00

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 child; 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 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 to the child with a disability in conjunction with home schooling.

(i) An IEP shall only be developed for a child with a disability if the IEP team determines that a free appropriate public education can be provided in conjunction with home schooling.

(ii) 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 child were not home schooled.

(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 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 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.

Stat. Auth.: ORS 339

Stats. Implemented: ORS 339.035

Hist.: 1 EB 29-1986, f. & ef. 7-23-86; ODE 19-2000, f. & cert. ef. 5-23-00

581-021-0030

Limitation on Administration and Utilization of Tests in Public Schools

(1) Tests shall be considered as instruments that are means to assist decision-making on the part of parents, the public, school boards and the professional staff, rather than ends unto themselves. Tests may be used as follows in addition to other uses specified in local policies:

(a) To assist in making decisions about the effectiveness of school programs;

(b) To assist in determining the attainment of specified educational outcomes;

(c) To provide information to the students about themselves, to parents, and to the school staff which may assist them in making programmatic decisions of benefit to the student.

(2) Tests of intelligence, ability, achievement or aptitude shall not be used as sole criterion for placement of students in educational groups or tracks:

(a) Before administering individual intelligence tests (as opposed to group intelligence tests) and all tests of personality to children in public schools, districts shall inform parents as to the purpose of testing; and the parents' written permission shall be obtained. In homes where the predominant language spoken is not English, the communications on the purpose of testing should be in the language spoken in the home;

(b) When a school district believes it is not feasible to comply with subsection (2)(a) of this rule, it may petition the Department of Education for a waiver in accordance with the procedure contained in the State Standards for Oregon Public Schools.

Stat. Auth.: ORS 326 & 336

Stats. Implemented: 20 U.S.C. 1232h

Hist.: 1EB 141, f. 10-5-72, ef. 10-15-72; 1EB 173, f. 7-1-74, ef. 9-1-74; 1EB 226, f. & ef. 6-4-76; 1EB 16-1982, f. 8-4-82, ef. 8-5-82

581-021-0033

Interscholastic Activities Eligibility Requirement for Home School Students

(1) A home school student may participate in interscholastic activities in his or her resident district's attendance area if the student meets all of the requirements of ORS 339.460 and:

(a) Achieves a composite test score that is not less than the 23rd percentile on any of the annual achievement tests listed in OAR 581-021-0026; and

(b) Submits the student's composite test score to the district prior to participation in an interscholastic activity.

(2) Notwithstanding subsection (1)(b) of this rule, any public school student who chooses to be home schooled may participate in interscholastic activities while awaiting test score results.

(3) A school district may adopt alternative requirements, in consultation with the parent or legal guardian of a home school student, that a student must meet to participate in interscholastic activities, including but not limited to a requirement that a student submit a portfolio of work samples to a school district committee for review to determine whether a student is eligible to participate in interscholastic activities.

Stat. Auth.: ORS 339.460

Stats. Implemented: ORS 339.460

Hist.: EB 15-1991(Temp), f. & cert. ef. 8-29-91; EB 2-1992, f. & cert. ef. 2-21-92; ODE 19-2000, f. & cert. ef. 5-23-00

581-021-0034

Administration of Interscholastic Activities

(1) The following definitions apply to this rule unless otherwise indicated in the context:

(a) "Student": A person of school age enrolled or seeking enrollment in an Oregon public school or a person who is home schooled and who meets the eligibility requirements of OAR 581-021-0033;

(b) "Interscholastic Activity": A public school activity with optional student participation which complements the curriculum, encourages students' physical, academic or social development, is supervised by school personnel and generally is conducted outside the instructional day. Interscholastic activity does not include those activities which utilize school facilities as authorized under ORS 332.172;

(c) "Organization": Any voluntary state or national body which administers an interscholastic activity for Oregon public schools and which is not chartered or otherwise regulated by the Department of Education;

(d) "State Board": Oregon State Board of Education;

(e) "Department": Oregon Department of Education.

(2)(a) An organization may apply to the State Board for approval to administer interscholastic activities by submitting:

(A) The application forms provided by the Department;

(B) A statement of the organization's purpose, including its charter, constitution, and bylaws;

(C) The organization's most recent set of financial statements; and

(D) The organization's academic and behavioral standards for student participation.

(b) Any change in documents required by subsection (a) of this section shall be submitted to the Department within 30 days of the change.

(3) To gain approval, the applicant organization must submit all required information and assure that the organization will:

(a) Comply with state and federal laws relating to Oregon public school students and administrative rules of the State Board;

(b) Not discriminate as discrimination is defined in ORS 659.150; and

(c) Complement, through its actions and activities, the State Board functions as defined in ORS 326.051(1)(a).

(4) Approval shall be for five school years, beginning with July 1 of the application year and ending on June 30 of the fifth year.

(5) Review of the organization's approved status may be ordered at anytime by the State Superintendent of Public Instruction or the State Board, and shall be ordered by the State Superintendent upon receipt of a written complaint alleging violation of section (3) of this rule.

(6)(a) An organization's authority to administer interscholastic programs may be revoked or suspended by the State Board or its designee if it is determined that the organization has not met the provisions of section (3) of this rule;

(b) No suspension or revocation shall be effective until the organization has had opportunity for a hearing under the provisions of ORS Chapter 183.

(7) Any final determination of an organization which determines a student to be ineligible to participate in interscholastic activities is appealable to the State Superintendent under procedures set forth at OAR 581-021-0035. "Final determination" is defined at OAR 581-021-0035(1).

(8) The Department shall maintain a list of those organizations approved by the State Board to administer interscholastic activities in Oregon public schools.

(9) Notwithstanding subsection (4) of this rule, interscholastic activity organizations that are approved by the state board on or after June 15, 2006 are approved until June 30, 2007.

Stat. Auth.: ORS 326, 339.030 & 339.035

Stats. Implemented: ORS 326.051 & 339.430

Hist.: EB 13-1988, f. & cert. ef. 3-15-88; EB 26-1992, f. & cert. ef. 7-28-92; ODE 13-2006(Temp), f. & cert. ef. 6-16-06 thru 12-11-06

581-021-0035

Appeal of Ineligibility Decisions

(1) A student or the student's parent or guardian may appeal from a final determination that he or she is ineligible to participate in interscholastic activities by making a written complaint to the State Superintendent of Public Instruction as provided herein. As used in OAR 581-021-0034 and 581-021-0035, "final determination" means:

(a) A conclusive ineligibility ruling by a school district or, if the school district has empowered a voluntary association to make such rulings, a conclusive ineligibility ruling by a voluntary association described in 339.430; or

(b) A delay of longer than 14 working days between a written request for an eligibility determination and a ruling described in subsection (1)(a) of this rule.

(2) The complaint shall state:

(a) The name and address of the person making the complaint and the name of the student(s) affected by the delay or denial;

(b) That the person is a student who has been determined to be ineligible, or a parent, guardian or person in a parental relationship to the student;

(c) An allegation that the determination of ineligibility is in violation of a state or federal law or an administrative rule of the State Board of Education;

(d) The authority from whose decision the appeal is brought; and

(e) The relief requested.

(3) The State Board shall designate the State Superintendent of Public Instruction to cause appropriate notices of hearing to be served and the matter heard as a contested case pursuant to ORS 183.310 to 183.550. The hearing shall be held in the county where the school district is located or a site mutually agreed upon by the parties.

(4) Final orders issued under section 3 of this rule may be appealed according to the provisions of ORS 183.482.

(5) When the school or school district, or voluntary association described in ORS 339.430, has been found to have determined a student to be ineligible to participate in interscholastic activities in violation of a state or federal law or an administrative rule of the State Board of Education, the State Superintendent of Public Instruction shall issue an order requiring the school or school district to permit the student to participate in interscholastic activities. Within such time as required by the Superintendent following the date of the Superintendent's Order, the school or school district shall notify the State Superintendent of Public Instruction of the district's compliance with the order. The State Superintendent of Public Instruction may order appropriate sanctions for noncompliance.

Stat. Auth.: ORS 326 & 404

Stats. Implemented: ORS 339.430

Hist.: 1EB 8-1983(Temp), f. & ef. 9-2-83; 1EB 4-1984, f. & ef. 3-7-84; EB 14-1988, f. & cert. ef. 3-15-88; EB 34-1988, f. & cert. ef. 8-3-88; ODE 9-2002, f. & cert. ef. 4-12-02

581-021-0037

Administration of Prescription and Nonprescription Medication to Students

(1) As used in this rule, definitions of terms shall be as follows:

(a) "Designated staff" means the school staff person who is designated by the building level school administrator, either the principal or head teacher, to administer nonprescription or prescription medication pursuant to district policy and procedure;

(b) "Instruction from physician, physician assistant or nurse practitioner" means a written instruction for the administration of a prescription medication to a student which shall include:

(A) Name of student;

(B) Name of medication;

(C) Dosage;

(D) Route;

(E) Frequency of administration; and

(F) Other special instruction, if any.

(c) The prescription medication label prepared by a pharmacist at the direction of a physician, physician assistant or nurse practitioner will meet the requirements for a written instruction if it contains the information listed in (A) through (F) above;

(d) "Instruction from the student's parent or guardian" means a written instruction for the administration of a nonprescription medication to a student which shall include:

(A) Name of student;

(B) Name of medication;

(C) Dosage;

(D) Route;

(E) Frequency of administration;

(F) Other special instructions; and

(G) Signature of parent or guardian.

(e) "Student self-medication" means students must be able to administer medication to him or herself without requiring a trained school staff member to assist in the administration of the medication;

(f) "Training" means yearly instruction to be provided to designated school staff on the administration of prescription and nonprescription medications, based on requirements set out in guidelines approved by the Department of Education, including discussion of applicable district policies, procedures and materials;

(g) "Nonprescription medication" means only commercially prepared, nonalcohol-based medication to be taken at school that is necessary for the child to remain in school. This shall be limited to eyes, nose and cough drops, cough suppressants, analgesics, decongestants, antihistamines, topical antibiotics, anti-inflammatories and antacids that do not require written or oral instructions from a physician. Nonprescription medication does not include dietary food supplements;

(h) "Physician" means a doctor of medicine or osteopathy or a physician assistant licensed to practice by the Board of Medical Examiners for the State of Oregon, or a nurse practitioner with prescriptive authority licensed by the Board of Nursing for the State of Oregon, or a dentist licensed by the Board of Dentistry for the State of Oregon, or an optometrist licensed by the Board of Optometry for the State of Oregon, or a naturopathic physician licensed by the Board of Naturopathy for the State of Oregon. "Physician" also may include individuals licensed in the categories set out above by comparable licensing agencies in adjoining states;

(i) "Prescription medication" means any noninjectable drug, chemical compound, suspension or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by a student under the written direction of a physician. Prescription medication does not include dietary food supplements;

(j) "Age appropriate guidelines" means the student must be able to demonstrate the ability, developmentally and behaviorally, to self-medicate with permission from parent (guardian), building administrator and in the case of a prescription medication a physician.

(2) Each school district shall adopt policies and procedures that provide for:

(a) The administration of prescription and nonprescription medication to students by trained school personnel; and

(b) Student self-medication including age appropriate guidelines.

(3) Policies and procedures shall:

(a) Include a process to designate, train and supervise appropriate staff;

(b) Permit designated staff to administer prescription medication under the written permission from the student's parent or guardian and instruction from a physician, physician assistant or nurse practitioner if, because of its prescribed frequency, the medication must be given during school hours;

(c) Permit designated staff to administer nonprescription medication under the written permission and instruction from the student's parent or guardian; and

(d) Permit student self-medication.

(4) Policies and procedures related to administration of prescription and nonprescription medication and student self-medication must discuss:

(a) Safe storage, handling, monitoring supply and disposing of medications;

(b) Record keeping and reporting of medication administration, including errors in administration;

(c) Emergency medical response for life threatening side effects and allergic reactions; and

(d) Student confidentiality.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 339.870

Hist.: ODE 3-1998(Temp), f. & cert. ef. 2-27-98 thru 8-25-98; ODE 6-1998, f. & cert. ef. 4-23-98; ODE 10-1999, f. & cert. ef. 2-12-99; ODE 8-2005, f. & cert. ef. 3-23-05

581-021-0038

Minimum Requirements for School District Sexual Harassment Policies

(1) It is the policy of the Oregon State Board of Education that all employees and students in public schools are entitled to work and study in an environment that is free of harassment. To that end, sexual harassment will not be tolerated in Oregon schools.

(2) School district boards shall adopt policies that meet the requirements set out in sections (7) and (8) of this rule that discuss the sexual harassment of:

(a) Students by staff and other students; and

(b) Staff by students and other staff.

(3) "Sexual harassment of students by staff and other students" includes:

(a) A demand for sexual favors in exchange for benefits; or

(b) Unwelcome conduct of a sexual nature that has the purpose or effect of unreasonably interfering with a student's educational performance or that creates an intimidating, offensive or hostile educational environment.

(4) "Sexual harassment of staff by students and other staff" includes:

(a) A demand of sexual favors in exchange for benefits; or

(b) Unwelcome conduct of a sexual nature that has the purpose or effect of unreasonably interfering with a staff person's ability to perform his or her job or that creates an intimidating, offensive or hostile work environment.

(5) School district board adopted policies shall be made available to students, parents of students and staff.

(6) School districts shall post their board adopted sexual harassment policies on a sign in all grade 6 through 12 schools. Such signs shall be at least 8.5 by 11 inches in size.

(7) District policies regarding sexual harassment of students by staff or other students shall include at a minimum, but are not limited to, the following requirements:

(a) All staff and students are subject to the school district board adopted policies;

(b) All complaints about behavior that may violate this policy shall be investigated;

(c) The initiation of a complaint in good faith about behavior that may violate this policy shall not adversely affect the educational assignments or study environment of the student; and

(d) The student who initiated the complaint and the student's parents shall be notified when the investigation is concluded.

(8) District policies regarding sexual harassment of staff by students or other staff shall include at a minimum, but are not limited to, the following requirements:

(a) All staff and students are subject to the school district board adopted policies;

(b) All complaints about behavior that may violate this policy shall be investigated;

(c) The initiation of a complaint in good faith about behavior that may violate this policy shall not adversely affect any terms or conditions of employment or work environment of the staff complainant; and

(d) The staff member who initiated the complaint shall be notified when the investigation is concluded.

(9) School districts are encouraged to address the following topics in their sexual harassment policies:

(a) The school district's commitment to eliminate sexual harassment;

(b) Definition of all types of harassment covered by the policy;

(c) Examples of the kinds of harassing behaviors covered by the policy;

(d) Procedures to address sexual harassment of students or staff by third parties. "Third party" means a person who is not directly subject to district control (i.e. a person who is not a student or an employee of the district) when the person is engaged in a school sponsored activity.

Examples of third parties include but are not limited to audiences at interdistrict or intradistrict athletic competitions or other school events, service contractors, school visitors, and employees of businesses or organizations participating in cooperative work programs with the district.

(e) Identification of the kinds of activities and sites where prohibited conduct could occur;

(f) Standards for determining whether a hostile environment exists;

(g) Identification of the means the school district will use to investigate incidents of harassment;

(h) Remedial action the school district will take to stop the harassment and prevent recurrence;

(i) The name and position of the employee(s) responsible for accepting and managing complaints of harassment and how to contact the individual(s);

(j) A requirement that staff report harassment about which they become aware; and

(k) Prohibition of retaliation against persons who report harassment or participate in related activities.

(10) The Department of Education will provide technical assistance, including assistance in the development of appropriate training, to school districts upon request in the development of appropriate sexual harassment policies as required by this rule.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 342.700 - 342.708

Hist.: ODE 14-1999, f. & cert. ef. 8-13-99

Equal Employment and Educational Opportunity

581-021-0041

Form and Protocol for Sports Physical Examinations

The State Board of Education adopts by reference the form entitled "School Sports Pre-Participation Examination June 2004" that must be used to document the physical examination and the document entitled "School Sports Pre-Participation Examination Protocol June 2004" that sets out the protocol for conducting the physical examination.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 336.479

Hist.: ODE 24-2002, f. & cert. ef. 11-15-02; ODE 29-2004(Temp), f. & cert. ef. 9-15-04 thru 2-25-05; ODE 4-2005, f. & cert. ef. 2-14-05

581-021-0042

Appeals from Voluntary Organization Decisions Regarding Interscholastic Activities

Except as provided in OAR 581-021-0035 and 581-021-0045, the following rule applies to appeals from decisions concerning interscholastic activities by voluntary organizations authorized to administer interscholastic activities.

(1) A decision of a voluntary organization concerning interscholastic activities that adversely affects or aggrieves a person or entity may be appealed by such person or entity to the State Board of Education (Board). Appeal may be brought only after exhaustion of internal review by the voluntary organization.

(2) The appeal shall be brought by making written complaint to the State Superintendent of Public Instruction (Superintendent) as provided herein within thirty (30) days from the date of the decision except for appeals regarding decisions made in 2005 which shall be brought within 120 days from the date of the decision. A petitioner has the right to demand a hearing be held as soon as practicable if the appeal is brought within 10 days from the date of the decision being appealed. The complaint shall be deemed made when deposited for delivery by first class mail or when deposited for delivery by an equivalent service.

(3) The complaint shall state:

(a) The name and address of the person or entity making the complaint, who is designated the petitioner; the relation of the petitioner to the dispute; and how the decision adversely affects or aggrieves the petitioner.

(b) The decision by a voluntary organization upon which appeal is brought;

(c) A statement of the facts surrounding the dispute;

(d) A statement setting forth the ground(s) of appeal; and

(e) The relief requested.

(4) The Board delegates the Superintendent as hearing officer, to cause appropriate notices of hearing to be served upon the voluntary organization and the petitioner, to engage in all administrative functions necessary or reasonable and to render a final order in the appeal. The matter shall be heard as a contested case pursuant to ORS 183.310 to 183.502.

(5) The hearing shall be held in the county within Oregon mutually agreed upon by the parties, or if the parties are unable to agree, a site determined by the Superintendent.

(6) Any authority delegated to the Superintendent may be assigned by the Superintendent to a designee hearing officer, except a hearing officer will issue a proposed order and the Superintendent shall issue all final orders.

(7) At any time prior to the rendering of the final order, the Superintendent, or the hearing officer, may remand the matter back to the voluntary organization for proceedings consistent with the order of remand.

(8) The Superintendent may reverse or modify a decision of a voluntary organization if the petitioner establishes that the decision of the voluntary organization was in error. A decision of a voluntary organization is in error when the decision violates federal or state constitutions or laws; rules of the Board; the voluntary organization's own rules in a manner that if not done in error would alter the decision; or, if there is no rational basis for the decision. The Superintendent will consider the voluntary organization's interpretations of its rules, policies or standards unless such interpretation is not reasonable, as determined by the Superintendent. Review of the decision of the voluntary association will not be confined to the record of the voluntary association if to do so would deprive the petitioner of an opportunity to provide evidence relevant to the appeal.

(9) In addition to the requirements of paragraph (8), for appeals brought concerning ORS 339.430(3) the Superintendent may reverse or modify a decision of a voluntary organization if the decision is inconsistent with or failed to consider all the criteria established by the rules of the voluntary organization and approved by the board under ORS 339.430(3).

(10) Where the voluntary organization has been found to have made a decision in error, the Superintendent shall issue an order to the voluntary organization directing it to provide relief as set forth in the order. Within such time as required by the Superintendent following the date of the order, the voluntary organization shall inform the Superintendent regarding its compliance with the order. The Superintendent may order appropriate sanctions for noncompliance, except in the case of a timely appeal from the order.

(11) Final orders issued under this rule may be appealed according to the provisions of ORS 183.482.

(12) This rule is retroactive to September 1, 2005.

Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 326.051
Hist.: ODE 1-2006, f. & cert. ef. 1-20-06

581-021-0044

Delegation of Authority

The State Board of Education delegates the authority to hear and enter final orders in complaints filed under ORS 339.430(3) to the Superintendent of Public Instruction or the Superintendent's designee.

Stat. Auth.: ORS 339.430
Stats. Implemented: ORS 339.430
Hist.: ODE 7-2000(Temp), f. & cert. ef. 2-17-00 thru 8-15-00; ODE 20-2000, f. & cert. ef. 5-23-00; ODE 4-2006(Temp), f. & cert. ef. 2-14-06 thru 8-1-06; Administrative correction 8-22-06

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 activ-

ity 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.

Stat. Auth.: ORS 326 & 659
Stats. Implemented: ORS 326.051 & 659.150
Hist.: IEB 252, f. & ef. 9-30-76; IEB 11-1984, f. & ef. 4-17-84

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 performance;

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

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

(2) 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 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 multicultural/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 non-discrimination upon the written request of parties to a complaint at the district level.

Stat. Auth.: ORS 326 & 659

Stats. Implemented: ORS 326.051 & 659.150

Hist.: 1EB 252, f. & ef. 9-30-76; 1EB 11-1984, f. & ef. 4-17-84

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. In making this determination, the Superintendent may decide:

(a) No substantial evidence exists for the charges of discrimination, and no further action will be taken;

(b) Discrimination may exist, and conciliation will be attempted to reach agreement by both parties.

(2)(a) If conciliation fails to resolve the parties' differences within 30 days, the Superintendent shall promptly establish a date for a hearing on the complaint. Said hearing shall be conducted within 30 days of failure of conciliation unless both parties agree to an extension of the period. The hearing shall be conducted in accordance with provisions of Oregon's Administrative Procedures Act;

(b) In conducting a hearing required by this rule, the Superintendent of Public Instruction shall determine if a local district is in compliance with the provisions of ORS 659.150.

(3) When a complaint of discrimination has been appealed to the Superintendent of Public Instruction, and the district has been found not to be in compliance with ORS 659.150, the Superintendent of Public Instruction shall issue an order requiring compliance within 30 days. If the district does not comply within 30 days, the Superintendent of Public Instruction shall order appropriate remedies which may include:

(a) Withholding of all or part of each quarterly payment of the basic school support fund due the district under ORS 327.095;

(b) Daily fines assessed against the district;

(c) Forbidding the district to participate in interschool activities;

(d) Other appropriate remedies.

(4) The Superintendent of Public Instruction shall report such action to the Oregon Board of Education at its next regular meeting.

(5) Notwithstanding sections (1) and (3) of this rule, in discrimination matters alleging a denial of participation in season athletic activities wherein adherence with the local district's grievance proce-

dures would prejudice the interest of complainant, either party may shorten the applicable timelines set forth in this rule by serving notice by first class mail upon the other party and the Superintendent of Public Instruction in substantially the following form:

In the Matter of the NOTICE OF Discrimination Complaint MODIFICATION OF TIME of _____

You are hereby notified that timelines set forth in OAR 581-021-0049 for this matter are hereby modified for the reason set forth in OAR 581-021-0049(5). Upon the third day from the postmark of this notice OAR 581-021-0049 shall be modified as follows:

1. In Section (1) "90 days" shall be "10 days."

2. In Section (3) "30 days" shall be "10 days."

In the event that more than one party shall serve the above notice, the notice postmarked first shall control the applicable timeline.

Stat. Auth.: ORS 659

Stats. Implemented: ORS 326.051 & 659.150

Hist.: 1EB 252, f. & ef. 9-30-76; 1EB 11-1984, f. & ef. 4-17-84

Student Conduct and Discipline

581-021-0050

Minimum Standards for Student Conduct and Discipline

(1) School district boards shall prepare written rules of pupil conduct and discipline that shall include, but not necessarily be limited to, the following topics:

(a) Assembly of students;

(b) Dress and grooming;

(c) Motorized and nonmotorized vehicles;

(d) Search and seizure;

(e) Attendance;

(f) Freedom of expression;

(g) Alcohol, drugs, and tobacco;

(h) Student records;

(i) Discipline, suspension, and expulsion.

(2) School district rules pertaining to these topics shall include statements on student rights, responsibilities, and conditions which create a need for these rules.

Stat. Auth.: ORS 339

Stats. Implemented: ORS 339.240

Hist.: 1EB 132, f. 5-19-72, ef. 6-1-72; 1EB 230, f. & ef. 6-4-76; 1EB 252, f. & ef. 9-30-76; EB 26-1989(Temp), f. & cert. ef. 9-8-89; EB 18-1990, f. & cert. ef. 4-5-90

581-021-0055

Standards of Conduct

(1) Students shall comply with the written rules of the school district board, pursue the prescribed course of study, submit to the lawful authority of teachers and school officials, and conduct themselves in an orderly fashion.

(2) Students shall be liable to discipline, suspension, or expulsion for misconduct, including but not limited to:

(a) Theft;

(b) Disruption of the school;

(c) Damage or destruction of school property;

(d) Damage or destruction of private property on school premises or during a school activity;

(e) Assault or threats of harm;

(f) Unauthorized use of weapons or dangerous instruments;

(g) Unlawful use of drugs, narcotics, or alcoholic beverages;

(h) Persistent failure to comply with rules of the lawful directions of teachers or school officials.

Stat. Auth.: ORS 339

Stats. Implemented: ORS 339.250

Hist.: 1EB 132, f. 5-19-72, ef. 6-1-72; 1EB 230, f. & ef. 6-4-76

581-021-0059

Model Programs for Disruptive Students

(1) The purpose of this rule is to establish a two-year pilot program by which school district boards may adopt a program to address the problems of disruptive students in schools.

(2) Definitions — For the purpose of this rule, the following definitions shall apply:

(a) "School district" means the school district where the student is attending school.

(b) "Serious offense" means a violation of school district policies and procedures on:

(A) Alcohol or drugs;

(B) Arson;

(C) Assault;

- (D) Firearms;
- (E) Extortion;
- (F) Harassment;
- (G) Intimidation or menacing;
- (H) Knives;
- (I) Reckless endangering;
- (J) Sexual harassment;
- (K) Theft;
- (L) Vandalism; or
- (M) Weapons.

(c) "Disruptive student" means a student who has been found to have committed a serious offense as defined in the rule, while on the school property, at a school sponsored activity or at an interscholastic activity sponsored by a voluntary organization approved by the State Board of Education.

(3) Pilot programs developed under this rule shall be established in not more than five school districts and may include, but not be limited to, the following:

- (a) Counseling services, including rehabilitation counseling;
- (b) Social work services; and
- (c) A parent counseling and training class that may be provided by a county or program provider.

(4) A School district may apply to the Department of Education to be a pilot program. The application shall include, but not be limited to:

- (a) A timeline for the implementation of the pilot program;
- (b) A description of services provided to students and their parents who participate in the pilot program;
- (c) Policy and procedures for selection of students and parents who will participate in the pilot program;
- (d) Program services that are appropriate to meet the students' and parents' needs.

(5) The school district shall report the progress of their pilot program to the Department of Education. The first report shall be December, 1998 with subsequent reports March 1999, July 1999, December 1999 and June 2000.

(6) If a student is expelled for a serious offense, the school district may require the parents and the student to participate in appropriate program services to assist the student and parents to address problems with the student's disruptive behavior and to help the student to benefit from their educational setting.

(7) Pilot programs may be monitored by the Department of Education.

(8) Students in special education and the parents of the students shall be exempted from this program.

Stat. Auth.: ORS 326.051
Stats. Implemented: Ch. 613, Sec. 1 & 2, 1997 OL
Hist.: ODE 2-1998, f. & cert. ef. 2-27-98

581-021-0060

Discipline Procedures, Prohibition of Corporal Punishment

(1) School district boards shall establish fair and reasonable procedures for discipline, suspension, or expulsion.

(2) No student in Oregon shall be subjected to corporal punishment in any public elementary or secondary school. A school administrator is not authorized to waive the prohibition against corporal punishment based upon the request of a parent or guardian.

Stat. Auth.: ORS 339
Stats. Implemented: ORS 339.250
Hist.: 1EB 132, f. 5-19-72, ef. 6-1-72; 1EB 259, f. 1-31-77, ef. 2-1-77; EB 27-1989(Temp), f. & cert. ef. 9-8-89; EB 19-1990, f. & cert. ef. 4-5-90

581-021-0061

Corporal Punishment Defined

(1) Corporal punishment is any act which willfully inflicts or willfully causes the infliction of physical pain on a student.

(2) Corporal punishment does not include the use of reasonable physical force by a school administrator, teacher, school employee, or volunteer as necessary to maintain order or to prevent a student from harming him/herself, other students, and school staff property.

(3) Corporal punishment does not include physical pain or discomfort resulting from or caused by:

- (a) Training for or participation in athletic competition voluntarily engaged in by a student;
- (b) Recreational activity voluntarily engaged in by a student;

(c) Physical exertion shared by all students in a teacher directed class activity, which may include, but is not limited to, physical education exercises, field trips, or vocational education projects; or

(d) Physical restraint or the use of aversive techniques as part of a behavior management program in a student's individual education program which has been signed by the parent and is carried out according to district procedures.

Stat. Auth.: ORS 339
Stats. Implemented: ORS 339.250
Hist.: ED 25-1989(Temp), f. & cert. ef. 9-8-89; EB 20-1990, f. & cert. ef. 4-5-90

581-021-0065

Suspension

(1) Students may be suspended when such suspension contains within its procedures the elements of prior notice (OAR 581-021-0075), specification of charges, and an opportunity for the student to present his or her view of the alleged misconduct. The suspending official shall notify the student's parent or guardian of the suspension, the conditions for reinstatement, and appeal procedures, where applicable. These procedures may be postponed in emergency situations relating to health and safety.

(2) Emergency situations shall be limited to those instances where there is a serious risk that substantial harm will occur if suspension does not take place immediately.

(3) School district boards shall provide students suspended under emergency conditions with the rights outlined in section (1) of this rule as soon as the emergency condition has passed.

(4) In all suspensions ordered by the executive officer of the school district or designated representative, the district school board shall have the right of final review if the action is not taken by the school board itself.

(5) School district boards shall limit suspension to a specific maximum number of days. That maximum shall not exceed ten school days.

(6) School district boards or designated representatives shall specify the methods and conditions, if any, under which the student's school work can be made up. Students shall be allowed to make up school work upon their return from the suspension if that work reflects achievement over a greater period of time than the length of the suspension. For example, the students shall be allowed to make up final, mid-term, and unit examinations, without an academic penalty, but it is within the districts' discretion as to whether the students may be allowed to make up daily assignments, laboratory experiments, class discussions or presentations.

(7) In special circumstances a suspension may be continued until some specific pending action occurs, such as a physical or mental examination, or incarceration by court action.

Stat. Auth.: ORS 339.240
Stats. Implemented: ORS 339.240, 339.250 & 339.260
Hist.: 1EB 132, f. 5-19-72, ef. 6-1-72; 1EB 230, f. & ef. 6-4-76; EB 18-1991, f. & cert. ef. 9-9-91; EB 11-1996, f. & cert. ef. 6-26-96

581-021-0070

Expulsion

(1) A school district board may expel, or delegate authority to a hearings officer to expel, a student provided the student is not expelled without a hearing unless the student's parent(s) or guardian, or the student, if 18 years of age, waives the right to a hearing. Waiver may take place by the parent or the student, if 18 years of age, notifying the school district in writing of waiver of the right to a hearing. Waiver may also take place by the parent, or the student, if age 18 or over, failing to appear after notice, at the place and time set for the hearing:

(a) If the school board acts to expel, the hearing may be conducted by a hearings officer designated by the board. In cases where the hearings officer is conducting the expulsion hearing for the board, the hearings officer shall provide to the board the findings as to the facts, the recommended decision and whether or not the student is guilty of the conduct alleged. This material shall be made available at the same time to the parent or guardian, and to the student, if age 18 or over;

(b) If the authority to expel a student is delegated to a hearings officer, the parent, or student, if age 18 or over, shall have the right upon appeal to a board review of the decision. If the decision is appealed to the board for review, the board shall be provided findings as to the facts and the decision of the hearings officer. This material shall be made available at the same time to the parent or guardian, and

to the student, if age 18 or over. When appealed, the board will affirm, modify, or rescind the decision of the hearings officer.

(2) Student expulsion hearings shall be conducted pursuant to ORS 332.061.

(3) Expulsion hearing policies or rules shall contain provisions for the following:

(a) Notice to the student and to the parent or guardian shall be given by personal service or certified mail of the charge or charges and the specific facts that support the charge or charges. The notice shall include the statement of intent to consider the charges as reason for expulsion. Where notice is given by personal service, the person serving the notice shall file a return of service. Where notice is given by certified mail to a parent of a suspended student the notice shall be placed in the mail at least five days before the date of the hearing;

(b) Where the student or the student's parent cannot understand the spoken English language, an interpreter shall be provided by the district;

(c) The student may be represented by counsel or other persons;

(d) The student shall be permitted to introduce evidence by testimony, writings, or other exhibits;

(e) The student shall be permitted to be present and hear the evidence presented by the district;

(f) Strict rules of evidence shall not apply to the proceedings. However, this provision shall not limit the hearings officer's control of the hearing;

(g) The hearings officer or the student may make a record of the hearing.

Stat. Auth.: ORS 339

Stats. Implemented: ORS 339.240, 339.250 & 339.260

Hist.: 1EB 132, f. 5-19-72, ef. 6-1-72; 1EB 212, f. 1-20-76, ef. 2-25-76; 1EB 230, f. & ef. 6-4-76; 1EB 262, f. 6-2-77, ef. 6-3-77

581-021-0071

District Information for Parents and Students Regarding the Availability of Alternative Education Programs

(1) The following definitions apply to this rule:

(a) "Erratic attendance" means the student is frequently absent to the degree that he/she is not benefiting from the educational program;

(b) "Notification" means written notice, by personal service or certified mail, to the parent or guardian and student as required by ORS 339.250(6).

(2) District school boards shall adopt policies and procedures for notification to students and parents, or guardians of the availability of appropriate and accessible alternative programs. This notification shall be provided in the following situations:

(a) Upon the occurrence of a second or any subsequent occurrence of a severe disciplinary problem within a three-year period;

(b) When the district finds a student's attendance pattern to be so erratic that the student is not benefiting from the educational program;

(c) When the district is considering expulsion as a disciplinary alternative;

(d) When a student is expelled pursuant to subsection (3) of ORS 339.250; and

(e) When an emancipated minor, parent, or legal guardian applies for a student's exemption from compulsory attendance on a semiannual basis as provided in ORS 339.030(5).

(3) The notification must include but is not limited to the following:

(a) Student action which is the basis for consideration of alternative education;

(b) Listing of alternative programs available to this student for which the district would provide financial support in accordance with ORS 339.620 except that when notice is given in accordance with subsection (2)(e) of this rule the district shall not be obligated to provide financial support;

(c) The program recommended for the student based on student's learning styles and needs;

(d) Procedures for enrolling the student in the recommended program; and

(e) When the parent or guardian's language is other than English, the district must provide notification in manner that the parent or guardian can understand.

(4) The district shall inform all parents or guardians of the law regarding alternative education and educational services available to

students by such means as a statement in the student/parent handbook, notice in the newspaper, or an individual letter to a parent.

(5) District school boards shall adopt a procedure for parents or guardians to request establishment of alternative programs within the district.

(6) District school boards shall not approve the enrollment of a pupil in a private alternative program unless the private alternative program meets all requirements of OAR 581-021-0045.

Stat. Auth.: ORS 339

Stats. Implemented: ORS 339.250

Hist.: EB 35-1987, f. & ef. 12-11-87; EB 26-1990, f. & cert. ef. 5-18-90

581-021-0072

Registration of Private Alternative Programs/Schools

(1) For the purposes of ORS 336.635(1), all private alternative education programs/schools receiving public school funds must comply with Private Alternative Education Standards established by the Oregon State Board of Education and register with the Oregon Department of Education annually by September 30. New private alternative education programs/schools developed or contracted with during the school year must register with the Oregon Department of Education prior to receiving public school funds.

(2) All registered private alternative education programs/schools must renew registration annually by September 30. The Oregon Department of Education shall distribute registration forms annually by June 1 to private alternative programs/schools currently registered with the Department.

(3) The Department may monitor the procedure used by the private alternative program/school for reporting Full Time Equivalent (FTE) student enrollment for the purposes of basic school support.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 336.615 - 336.665

Hist.: EB 27-1990, f. & cert. ef. 5-18-90; ODE 2-1998, f. & cert. ef. 2-27-98; ODE 16-2003, f. & cert. ef. 8-26-03

581-021-0075

Distribution

(1) School district boards, or designated representatives, shall attempt to give widest possible distribution to their rules of pupil conduct and discipline in order that students may understand the expectations of the district.

(2) School districts shall make reasonable attempts to give a copy of their current rules to each student, and a copy of the current rules shall be posted in a prominent place in the schools of the district.

(3) School districts shall make these rules available to the general public upon request.

Stat. Auth.: ORS 339

Stats. Implemented: ORS 336.635

Hist.: 1EB 132, f. 5-19-72, ef. 6-1-72

581-021-0076

Exemption from Compulsory Attendance

(1) As used in this rule:

(a) "School" means any public school, education service district program, community college, college, university, public alternative program, registered private alternative program, technical or vocational school or training program, or being taught by a parent or private teacher pursuant to ORS 339.035;

(b) "Semiannual" means prior to the next vacation or reentry time in the school year but a minimum of two times per year;

(c) "Full-time work" means employment for 30 or more hours per week;

(d) "Full-time school" means attending an educational program for a period of time defined as one FTE under OAR 581-023-0005; enrolling in a community college, college or university for a minimum of 12 credit hours per term; receiving 20 hours of instruction per week in a technical or vocational school or training program; or being taught an equivalent period of time by a parent or private teacher pursuant to ORS 339.035;

(e) "Emancipated minor" means any child who is an emancipated minor or who has initiated the procedure for emancipation under ORS 109.550 to 109.565 (339.030(5));

(f) "Part-time work and part-time school" means a combination of work/education activities equivalent to 30 hours per week of involvement.

(2) The school district may grant exemption from compulsory attendance to the parent or legal guardian of a child who is 16 or 17 years of age or an emancipated minor, provided the child is:

- (a) Employed full time;
- (b) Employed part time and enrolled in a school part time; or
- (c) Enrolled full time in a school.

(3) The request for exemption shall be in writing including documentation of the child's employment by the employer or enrollment status by the school. Additionally, the school shall request notification when the child's employment or the child's enrollment status is terminated.

(4) When considering a request for exemption from compulsory attendance, a school district shall conduct an interview that shall include, but need not be limited to, the following:

- (a) Attendance by the child and the parent or legal guardian or the emancipated minor;
- (b) Attendance by a school counselor or school administrator;
- (c) Consideration of the reasons for the request; and
- (d) Review of the following information about the child or emancipated minor:

- (A) Credit for graduation;
- (B) Grades;
- (C) Current handicapping status, if applicable;
- (D) Prior handicapping status, if applicable;
- (E) Results of standardized tests;
- (F) Teacher evaluations;
- (G) Counselor appraisal;
- (H) Immediate plans;
- (I) Short-range and career goals; and
- (J) Other relevant information.

(5) If the exemption from compulsory attendance is granted, the school district shall give the child and the parent or legal guardian the following information in writing:

- (a) Alternative programs of instruction or instruction combined with counseling are available, as provided in ORS 339.250(6) and (7);
- (b) The exemption is granted for a limited time, must be renewed on a semiannual basis and will be reviewed by the school district on a certain date; and
- (c) The district shall notify the parent of the need to reapply for an exemption by a specific date or return the student to school until the child attains a high school diploma, GED, or the age of 18.

(6) The rule is effective July 1, 1990.

Stat. Auth.: ORS 339

Stats. Implemented: ORS 339.030

Hist.: EB 28-1990, f. & cert. ef. 5-18-90

581-021-0077

Compulsory Attendance Notices and Citation

(1) Definitions for purposes of this rule:

(a) "Parent" means parent, guardian or other person having control of a minor child who has not completed the 12th grade or is not otherwise legally exempt from compulsory attendance under ORS 339.030.

(b) "Student" means a minor between the ages of 7 and 18 who has not completed the 12th grade, and who is not exempt from compulsory attendance under ORS 339.030.

(c) "Superintendent" means the superintendent of a public school district or the superintendent's designee.

(d) "Attendance supervisor" means an official appointed under ORS 339.040.

(e) "Regular attendance" means attendance which does not include more than eight unexcused one-half day absences, or the equivalent thereof, in any four-week period in which the school is in session.

(2) Notice of Attendance Supervisor. When an attendance supervisor determines a parent has failed to enroll his or her child and to maintain such child in regular attendance at a public school, the attendance supervisor shall give written notification to the parent within 24 hours of being informed of the failure. The notice may be served personally or by certified mail.

(a) The notice shall state that the student must appear at the public school on the next school day following receipt of the notice and maintain regular attendance for the remainder of the school year.

(b) The attendance officer, at the time the notice is served to the parent, shall notify the district superintendent, principal or other appropriate school official.

(3) Notice of Superintendent. If the parent receiving the notice of the attendance supervisor does not comply with that notice, the attendance officer, within three days of knowledge of such noncompliance, shall notify the superintendent. Upon notification by the attendance officer, the superintendent may issue a citation as set forth in **Attachment A** of this rule.

(4) Prior to issuing the citation set forth in **Attachment A**, the superintendent, by personal service or certified mail, shall serve the parent written notification that:

- (a) States that the student is required to regularly attend a full-time school;
- (b) Explains that the failure to send the student and to maintain the student in regular attendance is a Class C violation;
- (c) States that the superintendent may issue a citation;
- (d) Requires the parent and the student to attend a conference with a designated school official; and
- (e) Is written in the native language of the parent or guardian of the student.

(5) The superintendent shall schedule the conference described in section (4)(d) of this rule. If the parent does not attend the conference or fails to send the child to public school after the conference, the superintendent may issue a citation provided by the Department of Education in the form set forth as **Attachment A** which is incorporated by reference into this rule. The citation shall be served in person.

[ED. NOTE: Attachments referenced are available from the agency.]

Stat. Auth.: ORS 8.665, 153.110 - 153.310, 153.990, 339.010 - 339.090, 339.925 & 339.990

Stats. Implemented: ORS 339.090, 339.925, 339.990 & 8.665

Hist.: EB 33-1993(Temp), f. & cert. ef. 11-15-93; EB 4-1994, f. & cert. ef. 4-29-94; ODE 8-2000(Temp), f. 2-23-00, cert. ef. 2-23-00 thru 8-20-00; ODE 21-2000, f. & cert. ef. 5-23-00

581-021-0100

School Traffic Patrols

(1) School traffic patrols will be operated in accordance with the guidelines described in the **Oregon Traffic Patrol Manual** published by the Oregon Department of Education.

(2) Upon a school district request, staff assigned to the School Traffic Patrol Program will distribute equipment supplied by the Oregon Highway Division; staff will also provide help for existing patrols, and help establish and train new patrols.

(3) A school district may request that section (1) of this rule be waived and that the district be allowed to operate a school traffic patrol in accordance with district guidelines. The State Superintendent of Public Instruction may approve such a waiver upon submission of evidence that by following district guidelines, school traffic patrols can be operated as efficiently and with no reduction in student safety as compared to guidelines in **Oregon Traffic Patrol Manual**.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 336

Stats. Implemented: ORS 339.660

Hist.: EB 9-1987, f. & ef. 5-12-87

581-021-0110

Tobacco Free Schools

(1) For the purpose of this rule "tobacco" is defined to include any lighted or unlighted cigarette, cigar, pipe, bidi, clove cigarette, and any other smoking product, and spit tobacco, also known as smokeless, dip, chew, and snuff, in any form.

(2) No student, staff member, or school visitor is permitted to smoke, inhale, dip, or chew or sell tobacco at any time, including non-school hours

(a) In any building, facility, or vehicle owned, leased, rented, or chartered by the school district, school, or public charter school; or

(b) On school grounds, athletic grounds, or parking lots.

(3) No student is permitted to possess a tobacco product:

(a) In any building, facility, or vehicle owned, leased, rented, or chartered by the school district, school, or public charter school; or

(b) On school grounds, athletic grounds, or parking lots.

(4) By January 1, 2006, school districts must establish policies and procedures to implement and enforce this rule for students, staff and visitors.

(5) For purposes of this rule, the term "school district" includes the Oregon School for the Deaf (OSD) and the Oregon School for the Blind (OSB). The Oregon School for the Deaf and the Oregon School for the Blind must establish, in cooperation with the Oregon Department of Education, policies and procedures to implement and enforce this rule for students, staff and visitors by June 30, 2006.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 326.051

Hist.: ODE 30-2004, f. 9-15-04, cert. ef. 9-20-04; ODE 8-2006, f. & cert. ef. 2-21-06

581-021-0200

Standard Education for Oregon Students

A Standard Education for Oregon Students is comprised of:

(1) Common Curriculum Goals. The Common Curriculum Goals consist of:

(a) Essential Learning Skills. The Essential Learning Skills are those skills essential to learning and necessary for understanding in the subject matter areas. The skills are: Reading, writing, speaking, listening, mathematics, reasoning and study skills;

(b) Common Knowledge and Skills. The Common Knowledge and Skills consists of facts, concepts, principles, rules, procedures and methods of inquiry associated with the following subject matter areas:

- (A) English Language Arts;
- (B) Mathematics;
- (C) Health Education;
- (D) Science Education;
- (E) Physical Education;
- (F) Social Studies;
- (G) Music;
- (H) Art;
- (I) Personal Finance;
- (J) Second Language and Culture (proposed);
- (K) Career Education.

(2) Professional — Technical Education. Occupational preparation which blends the interests and aptitudes of students with the skills and experience needed to become employed, sustain economic independence and enter advanced education and training.

(3) Education Programs Mandated by State or Federal Law and Selected Other State Requirements Presently Constituted:

(a) The approximately 30 programs mandated by state statutes are in two categories, instruction and support. They include a diverse range of requirements such as protection of trees and shrubs, commemorating women in history, providing free textbooks, programs for talented and gifted students, transportation and properly maintained buildings and grounds;

(b) The three federally mandated programs are: The Asbestos Hazard Emergency Act of 1986, as amended; The Individuals With Disabilities Act, PL 101-476, that all children with disabilities have an opportunity for a free appropriate public education; The Family Education Rights and Privacy Act, PL 93-380, as amended by PL 93-568, that imposes certain requirements and restrictions on the release of student records;

(c) The following state requirements contained in OAR 581, division 022:

- (A) Goals for Elementary and Secondary Education;
- (B) Graduation Requirements;
- (C) Education of Talented and Gifted;
- (D) Required Days of Instruction;
- (E) Required Instructional Time;
- (F) Kindergarten Programs;
- (G) Standardization;
- (H) Alternative Education Program;
- (I) Special Education Program;
- (J) Library Media Skills Instruction.

(4) Character Education. Character Education is the process of helping students develop and practice the core ethical values that our diverse society shares and holds important. These values include, but are not limited to, respect, responsibility, caring, trustworthiness, justice and fairness, and civic virtue and citizenship.

(5) Student Activities under the auspices of the secondary schools, which include the following:

- (a) Student Government;
- (b) Preparation of School Publications; e.g., newspaper, yearbook, literary magazine;
- (c) Drama;
- (d) Performing Music/Dance Groups;

(e) Interscholastic Athletics;

(f) Intramurals;

(g) Rally Squad/Dance Team/Flag Line;

(h) Competitive Speech and Debate;

(i) Instruction program-related clubs or organizations; e.g., Distributive Education Club of America, Future Business Leaders of America, Future Farmers of America, Home Economics Related Occupations, Vocational Industrial Clubs of America.

(6) International Understanding. International Understanding represents the knowledge, skills and attitudes needed to live effectively in a world possessing limited natural resources and characterized by ethnic diversity, cultural pluralism and an increased interdependence. Such knowledge, skills and attitudes are developed through broad exposure to international content in all subject areas and through learning a second language.

(7) Support Services Necessary to Provide a Standard Education for Oregon Students:

(a) Student Services:

(A) Improving attendance;

(B) Counseling;

(C) Providing health services;

(D) Treating speech and hearing impaired students;

(E) Providing library, audio/video, television and computer learning.

(b) Staff Services:

(A) Measuring student achievement;

(B) Developing curriculum and training staff.

(c) Administrative Services:

(A) Administering the district and individual schools;

(B) Planning, research, processing of data.

(d) Business Services:

(A) Budgeting, payroll, inventory, internal audit;

(B) Buying and storing of supplies;

(C) Printing.

(e) Transportation Services:

(A) Providing home-to-school transportation for both regular and special students;

(B) Transporting students to co-curricular activities.

(f) Food Services: Offering students nutritional lunches and breakfasts;

(g) Operation and Maintenance Services: Keeping buildings, equipment and grounds safe, working and in good condition.

Stat. Auth.: ORS 326.400, 326.410 & 336.067

Stats. Implemented: ORS 336.067

Hist.: EB 3-1991, f. & cert. ef. 2-28-91; EB 7-1993, f. & cert. ef. 2-11-93

581-021-0210

Evaluating Student Transcripts

When evaluating student transcripts, the school district shall:

(1) Accept credits and attendance completed in standard Oregon schools as if they had been earned in the enrolling district;

(2) For out-of-state transfer students, accept credits and attendance completed in standard secondary schools as if the requirements had been completed in this state;

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

(a) Determine the value of prior credits; and

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

(4) Determine placement for students enrolled in Grades K/1 through 8;

(5) Determine the value of credits obtained through correspondence courses in meeting the graduation requirements; and

(6) Determine the value of credits obtained in approved community college programs in meeting graduation requirements.

Stat. Auth.: ORS 326.565

Stats. Implemented: ORS 326.565

Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-1994, f. & cert. ef. 4-29-94

581-021-0211

Procedures to Make the Certificate of Initial Mastery Available to Transfer Students, Private and Home Schooled Students and Migrant Students

(1) Students transferring to an Oregon public school from a public school in another state or country, from a private school in Oregon,

another state or country or from home schooling may receive a Certificate of Initial Mastery from the student's resident Oregon public school district if the student meets all of the state and local requirements for the CIM applicable to them. Students who meet the requirements for Migrant Education under IASA Title 1C are specifically included in this section.

(a) The student's resident public school district must provide the student with a reasonable opportunity to participate in all activities applicable and appropriate for the student that are required to obtain a CIM, including but not limited to state assessments and work samples.

(b) The school district must evaluate a transfer student's educational records and other student work, if any, and score, where appropriate, student produced work samples for purposes of meeting CIM requirements.

(c) The school district will award a CIM to the transfer student meeting the requirements set out in OAR 581-022-1110, Certificate of Initial Mastery Requirements.

(2) Students who are private schooled under ORS 339.030(1)(a) or home schooled under ORS 339.030(1)(c)-(d) may obtain a CIM from the student's resident public school district if they meet all of the requirements for the CIM applicable to them, including any additional local school district CIM requirements.

(a) The private or home-schooled student's resident school district will, upon request, develop with the student and the student's parent or guardian a plan for the student to obtain a CIM. The plan must ensure that the student has the opportunity to meet the CIM requirements set out in OAR 581-022-1110 including:

(A) The opportunity to participate in the appropriate state administered assessment;

(B) The opportunity for the student's work samples to be appropriately scored; and

(C) The opportunity to meet all locally assessed CIM requirements and additional school district CIM requirements, if any.

(b) Upon submission of appropriate documentation indicating that the student has met all of the state and local CIM requirements, the private or home schooled student's resident school district will award the student a CIM as provided in OAR 581-022-1110(1).

(c) School districts are not required to provide private or home schooled students who do not meet CIM requirements with the additional services or alternative educational options as provided in ORS 329.485(5) and OAR 581-022-1110(5) unless the student is enrolled in the public school district.

(d) School districts and ESDs may charge a reasonable fee for administering and scoring state assessments and work samples.

(e) For purposes of the school and district report cards as provided under ORS 329.105 and OAR 581-022-1060, scores received by private and home schooled students who are exempt from compulsory public school attendance requirements under ORS 339.030 will not be made part of nor have any effect on the school's or district's assessment results.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 329.456

Hist.: ODE 13-2001, f. & cert. ef. 5-15-01

581-021-0220

Definitions

As used in OAR 581-021-0220 through 581-021-0440, the following definitions apply:

(1) "Attendance" includes, but is not limited to:

(a) Attendance in person or by correspondence; and

(b) The period during which a person is working under a work-study program.

(2) "Directory Information" means those items of personally identifiable information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. Directory information may include, and is not limited to, the student's name, address, telephone listing, photograph, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended.

(3) "Disclosure" means to permit access to or the release, transfer, or other communication of education records, or the personally identifiable

information contained in those records, to any party, by any means, including oral, written, or electronic means.

(4) "Disciplinary action or proceeding" means the investigation, adjudication, or imposition of sanctions by an educational agency or institution with respect to an infraction or violation of the internal rules of conduct applicable to students of the agency or institution.

(5) "Educational Agency or Institution" means any public or private school, education service district, state institution, private agency or youth care center providing educational services to students birth through age 21, and through Grade 12, that receives federal or state funds either directly or by contract or subcontract with the Department under any program administered by the U.S. Secretary of Education or the Department. "Educational agency or institution" does not include those programs specifically excluded under **34 CFR § 99.1**, Table 99-A.

(6) "Education Records":

(a) The term means those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution;

(b) The term does not include:

(A) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the record, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;

(B) Records of the law enforcement unit of an educational agency or institution, subject to the provisions of OAR 581-021-0225.

(C) Records relating to an individual who is employed by an educational agency or institution, that are made and maintained in the normal course of business, that relate exclusively to the individual in that individual's capacity as an employee and that are not available for use for any other purpose. Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and not excepted under this subsection;

(D) Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are:

(i) Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;

(ii) Made, maintained, or used only in connection with treatment of the student; and

(iii) Disclosed only to individuals providing the treatment. For the purpose of this definition, "treatment" does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution.

(E) Records that only contain information relating to activities in which an individual engaged after he or she is no longer a student at that agency or institution;

(F) Medical or nursing records which are made or maintained separately and solely by a licensed health care professional who is not employed by the educational agency or institution, and which are not used for education purposes of planning.

(7) "Eligible Student" means a student who has reached 18 years of age, or a student who is attending only an institution of postsecondary education and is not enrolled in a secondary school.

(8) "Institution of Postsecondary Education" means an institution that provides education to students beyond the secondary school level; "secondary school level" means the educational level (not beyond Grade 12) at which secondary education is provided.

(9) "Parent" means a parent of a student and includes a natural parent, a guardian, an individual authorized in writing to act as a parent in the absence of a parent or a guardian, or a surrogate parent appointed to represent a student with disabilities. The term does not include the state if the child is a ward of the state and the student is eligible for special education services or is suspected of being eligible for special education services under state and federal law.

(10) "Party" means an individual, agency, institution, or organization.

(11) "Personally Identifiable Information" includes, but is not limited to:

(a) The student's name;

(b) The name of the student's parent or other family member;

(c) The address of the student or student's family;

(d) A personal identifier, such as the student's social security number or student number;

(e) A list of personal characteristics that would make the student's identity easily traceable; and

(f) Other information that would make the student's identity easily traceable.

(12) "Record" means any information recorded in any way including, but not limited to, handwriting, print, tape, film, microfilm and microfiche.

(13) "Student" means any individual who is or has been in attendance at an educational agency or institution and regarding whom the agency or institution maintains education records.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 326.565 & 34 CFR § 99.3

Stats. Implemented: ORS 326.565

Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-1994, f. & cert. ef. 4-29-94; EB 20-1995, f. & cert. ef. 7-25-95

581-021-0225

Records of Law Enforcement Units

(1) "Law enforcement unit" means any individual, office, department, division, or other component of an educational agency or institution, such as a unit of commissioned police officers or noncommissioned security guards, that is officially authorized or designated by that agency or institution to:

(a) Enforce any local, state, or federal law, or refer to appropriate authorities a matter for enforcement of any local, state, or federal law against any individual or organization other than the agency or institution itself; or

(b) Maintain the physical security and safety of the agency or institution.

(2) A component of an educational agency or institution does not lose its status as a law enforcement unit if it also performs other, non-law enforcement functions for the agency or institution, including investigation of incidents or conduct that constitutes or leads to a disciplinary action or proceedings against the student.

(3) Records of a law enforcement unit means those records, files, documents, and other materials that are:

(a) Created by a law enforcement unit;

(b) Created for a law enforcement purpose; and

(c) Maintained by the law enforcement unit.

(4) Records of a law enforcement unit does not mean:

(a) Records created by a law enforcement unit for a law enforcement purpose that are maintained by a component of the educational agency or institution other than the law enforcement unit; or

(b) Records created and maintained by a law enforcement unit exclusively for a nonlaw enforcement purpose, such as a disciplinary action or proceeding conducted by the educational agency or institution.

(5) Nothing in this rule prohibits an educational agency or institution from contacting its law enforcement unit, orally or in writing, for the purpose of asking that unit to investigate a possible violation of, or to enforce, any local, state, or federal law.

(6) Education records, and personally identifiable information contained in education records, do not lose their status as education records and remain subject to the Act, including the disclosure provisions of OAR 581-021-0330, while in the possession of the law enforcement unit.

(7) This rule neither requires nor prohibits the disclosure by an educational agency or institution of its law enforcement unit records.

Stat. Auth.: ORS 326.565 & 34 CFR § 99.8

Stats. Implemented:

Hist.: EB 20-1995, f. & cert. ef. 7-25-95

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.

Stat. Auth.: ORS 326.565 & 34 CFR § 99.4

Stats. Implemented: ORS 326.565

Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-1994, f. & cert. ef. 4-29-94

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.

Stat. Auth.: ORS 326.565 & 34 CFR § 99.5

Stats. Implemented: ORS 326.565

Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-1994, f. & cert. ef. 4-29-94

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, 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;

(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 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 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.

(3) 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.

Stat. Auth.: ORS 326.565 & 34 CFR § 99.6

Stats. Implemented: ORS 326.565 & 326.575

Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-1994, f. & cert. ef. 4-29-94; EB 20-1995, f. & cert. ef. 7-25-95; EB 12-1997(Temp), f. & cert. ef. 8-28-97; ODE 4-1998, f. & cert. ef. 2-27-98; ODE 10-1998, f. & cert. ef. 6-23-98

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 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.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 326.565 & 34 CFR § 99.7

Stats. Implemented: ORS 326.565

Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-1994, f. & cert. ef. 4-29-94; EB 20-1995, f. & cert. ef. 7-25-95

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.

Stat. Auth.: ORS 192.440, 192.501(4), 326.565 & 34 CFR § 99.10

Stats. Implemented: ORS 326.565

Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-1994, f. & cert. ef. 4-29-94; EB 20-1995, f. & cert. ef. 7-25-95

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.

(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 educational records of a student.

Stat. Auth.: ORS 192.410 - 192.505, 326.565 & 34 CFR § 99.11
Stats. Implemented: ORS 326.565
Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-1994, f. & cert. ef. 4-29-94

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.

Stat. Auth.: ORS 326.565 & 34 CFR § 99.12
Stats. Implemented: ORS 326.565
Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-1994, f. & cert. ef. 4-29-94

581-021-0300

A Parent or Eligible Student's Request for Amendment of a Student's Education Records

(1) If a parent or eligible student believes the education records relating to the student contain information that is inaccurate, misleading, or in violation of the student's rights of privacy or other rights, he or she may ask the educational agency or institution to amend the record.

(2) The education agency or institution shall decide whether to amend the record as requested within a reasonable time after the agency or institution receives the request.

(3) If the educational agency or institution decides not to amend the record as requested, it shall inform the parent or eligible student of its decision and of his or her right to a hearing under OAR 581-021-0310.

Stat. Auth.: ORS 326.565 & 34 CFR § 99.20
Stats. Implemented: ORS 326.565
Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-1994, f. & cert. ef. 4-29-94

581-021-0310

Right to a Hearing to Challenge Content

(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.

(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:

(a) Amend the record accordingly; and

(b) Inform the parent or eligible student of the amendment in writing.

(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.

(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:

(a) Maintain the statement with the contested part of the record for as long as the record is maintained; and

(b) Disclose the statement whenever it discloses the portion of the record to which the statement relates.

Stat. Auth.: ORS 326.565 & 34 CFR § 99.21
Stats. Implemented: ORS 326.565
Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-1994, f. & cert. ef. 4-29-94

581-021-0320

Minimum Requirements for the Conduct of a Hearing

The hearing required by OAR 581-021-0310 must meet at a minimum the following requirements:

(1) The educational agency or institution shall hold the hearing within a 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.

Stat. Auth.: ORS 326.565 & 34 CFR § 99.22
Stats. Implemented: ORS 326.565
Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-

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.

Stat. Auth.: ORS 326.565 & 34 CFR § 99.30
Stats. Implemented: ORS 326.565
Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-1994, f. & cert. ef. 4-29-94; EB 20-1995, f. & cert. ef. 7-25-95

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)(a) 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.

(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.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 326.565 & 34 CFR § 99.31

Stats. Implemented: ORS 326.565

Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-1994, f. & cert. ef. 4-29-94; EB 20-1995, f. & cert. ef. 7-25-95

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.

Stat. Auth.: ORS 326.565 & 34 CFR § 99.33

Stats. Implemented: ORS 326.565

Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-1994, f. & cert. ef. 4-29-94

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 hearing.

(2) An educational agency or institution may disclose an education record of a student in attendance to another educational agency or institution if:

(a) The student is enrolled in or receives services from the other agency or institution; and

(b) The disclosure meets the requirements of section (1) of this rule.

Stat. Auth.: ORS 326.565 & 34 CFR § 99.34

Stats. Implemented: ORS 326.565

Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-1994, f. & cert. ef. 4-29-94; EB 20-1995, f. & cert. ef. 7-25-95

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.

Stat. Auth.: ORS 326.565 & 34 CFR § 99.35

Stats. Implemented: ORS 326.565

Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-1994, f. & cert. ef. 4-29-94

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.

Stat. Auth.: ORS 326.565, 336.187 & 34 CFR § 99.36

Stats. Implemented: ORS 336.187 & 326.565

Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-1994, f. & cert. ef. 4-29-94

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.

Stat. Auth.: ORS 326.565 & 34 CFR § 99.37

Stats. Implemented: ORS 326.565

Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-1994, f. & cert. ef. 4-29-94; EB 20-1995, f. & cert. ef. 7-25-95

581-021-0400

Recordkeeping Requirements

(1) An educational agency or institution shall maintain a record of each request for access to and each disclosure of personally identifiable information from the education records of each student:

(a) The agency or institution shall maintain the record with the education records of the student as long as the records are maintained;

(b) For each request or disclosure the record must include:

(A) The parties who have requested or received personally identifiable information from the education records;

(B) The date access was given; and

(C) The legitimate interests the parties had in requesting or obtaining the information.

(2) If an educational agency or institution discloses personally identifiable information from an education record with the understanding authorized under OAR 581-021-0350(2), the record of disclosure required under this section must include:

(a) The names of the additional parties to which the receiving party may disclose the information on behalf of the educational agency or institution; and

(b) The legitimate interests under OAR 581-021-0340 which each of the additional parties has in requesting or obtaining the information.

(3) The following parties may inspect the record relating to each student:

(a) The parent or eligible student;

(b) The school official or his or her assistants who are responsible for the custody of the records;

(c) Those parties authorized in OAR 581-021-0340(1) and (3) for the purposes of auditing the recordkeeping procedures of the educational agency or institution.

(4) Section (1) of this rule does not apply if the request was from or the disclosure was to:

(a) The parent or eligible student;

(b) A school official under OAR 581-021-0340(1);

(c) A party with written consent from the parent or eligible student; or

(d) A party seeking directory information.

Stat. Auth.: ORS 326.565 & 34 CFR § 99.32

Stats. Implemented: ORS 326.565

Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-1994, f. & cert. ef. 4-29-94

581-021-0410

Filing a Federal Complaint

(1) A person may file a written complaint with the Family Policy Compliance Office, U.S. Department of Education, regarding an alleged violation under the Family Educational Rights and Privacy Act. The office's address is: Family Policy Compliance Office, U.S. Department of Education, Washington, D.C. 20202.

(2) A timely complaint under section (1) of this rule is defined as an allegation of a violation of the Family Educational Rights and Privacy Act that is submitted to the Family Policy Compliance Office within 180 days of the date of the alleged violation or of the date that the complainant knew or reasonable should have know of the alleged violation.

(3) The Family Policy Compliance Office extends the time limit in section (2) of this rule if the complainant shows that he or she was prevented by circumstances beyond the complainant's control from submitting the matter within the time limit, or for other reasons considered sufficient by the Family Policy Compliance Office.

Stat. Auth.: ORS 326.565 & 34 CFR § 99.63 & 99.64

Stats. Implemented: ORS 326.565

Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-1994, f. & cert. ef. 4-29-94

581-021-0420

Civil Action

Any person claiming to be aggrieved by the reckless disclosure of personally identifiable information from a student's education records, as prohibited by OAR 581-021-0220 through 581-021-0440, may file a civil action in circuit court pursuant to ORS 30.864.

Stat. Auth.: ORS 30.864 & 326.565

Stats. Implemented: ORS 326.565

Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-1994, f. & cert. ef. 4-29-94

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.

Stat. Auth.: ORS 326.565

Stats. Implemented: ORS 326.565

Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-1994, f. & cert. ef. 4-29-94

581-021-0440

Effective Date of Student Education Records Rules

OARs 581-021-0220; 581-021-0250, 581-021-0260; 581-021-0270; 581-021-0330; 581-021-0340; 581-021-0360; 581-021-0390; and 581-021-0440 shall go into effect August 14, 1995.

Stat. Auth.: ORS 326.565 & CFR § 99.37

Stats. Implemented: ORS 326.565

Hist.: EB 31-1993(Temp), f. 10-6-93, cert. ef. 11-6-93; EB 5-1994, f. & cert. ef. 4-29-94; EB 20-1995, f. & cert. ef. 7-25-95

DIVISION 22

STANDARDS FOR PUBLIC ELEMENTARY AND SECONDARY SCHOOLS

581-022-0102

Definitions

The following definitions apply to OARs 581-022-0102 through 581-022-0805, unless otherwise indicated by context:

(1) "Applied Arts": Those areas of study related to the design and fabrication of functional objects and/or the acquisition of practical skills (e.g., business education, home economics, industrial arts, vocational education).

(2) "Assessment": Systematic gathering of data with the purpose of appraising and evaluating children's social, physical, emotional, and intellectual development. Activities may include testing to obtain and organize information on student performance in specific subject areas.

(3) "Career Development": The exploration of personal interests and abilities with regard to career selection, and the development of tentative career goals.

(4) "Career Education": A process for improving educational programs to enhance student understanding of and preparation for work and continuing career development.

(5) "Career Endorsement": An endorsement that acknowledges attainment of technical knowledge and skills that leads to industry certification. Career endorsements may be linked to existing industry certifications offered by workforce or postsecondary institutions or developed jointly by the school district and appropriate next step partner.

(6) "Career Learning Frameworks": Planning tools that integrate learning in a career context used to guide the development of a student's education plan and learning experiences. The frameworks may be used to guide the development of career-focused programs. The frameworks describe a broad grouping of careers and related educational requirements, knowledge and skills and concepts, and suggested applications within the broad career path.

(7) "Career-Related Learning Experiences": Structured student activities in the community, the workplace, or in school that connect academic content and career-related learning to real life applications. These experiences extend, reinforce and support classroom learning. They include, but are not limited to:

(a) Workplace mentoring;

(b) Workplace simulations;

(c) School-based enterprises;

(d) Structured work experiences;

- (e) Cooperative work and study programs;
- (f) On-the-job training;
- (g) Apprenticeship programs;
- (h) Service learning; and
- (i) Field-based investigations.
- (8) "Career-Related Learning Standards": A demonstration of knowledge and skill in personal management, problem solving, teamwork, communication, career development, and employment foundations.
- (9) "Certificate of Advanced Mastery (CAM)": Recognition of student attainment of the following requirements:
 - (a) Develop an education plan and build an education profile;
 - (b) Meet the performance standard for extended application through a collection of evidence;
 - (c) Meet the performance standard for career-related knowledge and skills;
 - (d) Participate in career-related learning experiences as outlined in the education plan;
 - (e) Meet specific Certificate of Initial Mastery performance standards in English, mathematics, science, and social sciences through CIM assessment options.
- (10) "Collection of Evidence": Evidence collected by the student that demonstrates their ability to apply what they know and can do to new situations and problems. This collection of evidence will be assessed as a whole, against a standard (set of sufficiency and proficiency criteria).
- (11) "Common Curriculum Goals": The knowledge and skills expected of all students as a result of their educational experience; defined by the state as:
 - (a) The Essential Learning Skills that consist of selected skills in reading, writing, mathematics, listening, speaking, study skills and reasoning (including critical thinking and scientific method); and
 - (b) The Common Knowledge and Skills in instructional programs as adopted by the State Board of Education.
- (12) "Common Knowledge and Skills in Instructional Programs": Facts, concepts, principles, rules, procedures and methods of inquiry associated with specific subject matter areas as adopted by the State Board of Education.
- (13) "Common School District": A school district other than a union high school district formed primarily to provide education in all or part of grades K through 12 to pupils residing within the district (ORS 330.005(2)(b)). See section (20) of this rule.
- (14) "Community Partnerships": Collaborations to network resources to assist students to meet state and local standards and prepare students for post high school transitions. These partnerships include parents, students, business, education, government and community-based organizations.
- (15) "Compliance Indicator": Statement of the action taken by a local district which can be accepted as evidence that the district is in compliance with the intent of a particular state standard.
- (16) "Conditionally Standard School": A school that fails to meet the standards but has submitted a plan of correction, approved by the district school board, to the State Superintendent.
- (17) "Course Goals": Statements describing the knowledge and skills students are expected to acquire as a result of having completed a course, elementary unit, or grade level.
- (18) "Diploma": The document issued by school districts attesting to the holder's having:
 - (a) Demonstrated competencies the district school board has adopted for graduation;
 - (b) Completed the state required 22 units of credit and any additional units of credit the district school board specifies;
 - (c) Completed the requirements for developing an education plan and education profile, building a collection of evidence to demonstrate extended application, demonstrating career-related knowledge and skills, and participating in career-related learning experiences (as defined in 581-022-1130, sections (3)–(6));
 - (d) Completed 12 school years of educational experience beginning with grade 1, or the equivalent as authorized by district school board policies adopted in conformance with these rules.
- (19) "District": A common or union high school district (ORS 332.002(2)).
- (20) "District Goals": Statements related to State Board of Education goals (OAR 581-022-0201) which describe the local district and community's expectations for student learning.
- (21) "District School Board": The board of directors of a common school district or a union high school district (ORS 332.002(1)).
- (22) "Education Plan": A formalized plan and a process that involves student activities in planning, monitoring, and managing their own learning as well as their personal and career development in grades 7–12. Through this process students create an education plan for pursuing their own learning in addressing their personal and career interests and post-high school goals and to connect them to activities that will help them achieve their goals and successfully transition to next steps.
- (23) "Education Profile": Documentation of the student's progress and achievement toward CIM, CAM, and graduation requirements, goals and other personal accomplishments that are identified in the student's education plan.
- (24) "Education Record": has the same meaning as in OAR 581-021-0220(5).
- (25) "Elementary School": Any combination of grades K through 8.
- (26) "Essential Learning Skills": Skills that are not unique to any one subject area and which students must learn in order to help them acquire other knowledge and skills. They consist of selected skills in reading, writing, mathematics, listening, speaking, study skills and reasoning (including critical thinking and scientific method), as adopted by the State Board of Education.
- (27) "Extended Application Standard": The application and extension of knowledge and skills in new and complex situations related to the student's personal and career interests and post-high school goals.
- (28) "Global Studies": An area of study for learning about the people and cultures of the world through history, geography and other social studies disciplines.
- (29) "High School": Any combination of grades 10 through 12 in districts providing a junior high school containing grade 9; any combination of grades 9 through 12 organized as a separate unit; grades 9 through 12 housed with grades K through 12; grades 7 or 8 through 12, if approved by the Oregon Department of Education.
- (30) "Identification Team" referred to as the "Team": A team of at least two district staff who carry out district identification procedures and determine the identification of students under OAR 581-022-0403.
- (31) "Junior High School": A secondary school composed of one or more of grades 7, 8, and 9 organized separately from other grades and approved by the Oregon Department of Education.
- (32) "Kindergarten": A planned program that provides activities designed to foster the physical, social, emotional, and cognitive development of young children (ORS 336.092 and 336.095).
- (33) "Middle School": An organizational unit composed of any combination of grades 5, 6, 7, and 8 organized separately from other elementary grades and identified as a middle school with the Oregon Department of Education.
- (34) "Next steps": The education and/or career choices students make after leaving high school, which may include the workforce, community colleges, four-year colleges and universities, private career schools, apprenticeships, and the military.
- (35) "Nonstandard School": A school which fails to meet the standards, and which within ninety days of the State Superintendent's notification of deficiencies, fails to submit a plan of correction or adhere to a plan of correction approved by the State Superintendent (ORS 327.103).
- (36) "Parent": Has the same definition as in Oregon Revised Statute 343.035(11).
- (37) "Planned Course Statement": Course title, course overview, course goals (including essential learning skills, career-related goals and common curriculum goals as set forth in OARs 581-022-0420 and 581-022-0425) and, where appropriate, graduation competence assigned to the course for verification.
- (38) "Potential": As used in OAR 581-022-0403(e), the demonstrated capacity to perform at or above the 97th percentile as determined by the team.
- (39) "Professional Technical Education": Organized educational programs and support services for occupational preparation and applied academics which blends the interests and aptitudes of youth

and adults with the skills and experiences needed for individuals to sustain economic independence, be productive members of society, and enter advanced education and training. Programs at the middle school focus upon understanding technology and the role of work in one's life, the secondary level is organized around families of related occupations, and postsecondary programs provide advanced technical preparation.

(40) "Program": A planned series of interrelated activities or services contributing to the attainment of a goal or set of goals.

(41) "Program Evaluation": A process for making judgments about the philosophy, goals, methods, materials and outcomes of a program to guide program improvement.

(42) "Program Goals" (instructional): Statements describing what students are expected to learn in each district instructional program in any combination of grades K through 12.

(43) "Program Goals" (support): Statements describing program outcomes which support the entire learning system, or one or more of its components, usually stated in terms of services to be performed.

(44) "Program Needs Identification": Procedures, which specify and rank the differences between actual and desired outcomes leading to the consideration of program revision.

(45) "School District": A common or union high school district (ORS 332.002(2)). For the purposes of OARs 581-022-0403, 581-022-0404, and 581-022-0406, school district has the same meaning as in Oregon Revised Statute 343.395(5).

(46) "Standard School": A school, which is in compliance with all of the standards.

(47) "State Standards": State Board division 22 Administrative Rules for public elementary and secondary schools.

(48) "Student Activity Funds": All money raised or collected by and/or for school-approved student groups, excluding money budgeted in the general fund (referred to as "co-curricular funds" in the Department of Education's Program Budget Manual, 1980 edition).

(49) "Talented and Gifted Students": Those children defined in Oregon Revised Statute 343.395(7).

(50) "Union High School District": A school district, other than a common school district, formed in accordance with ORS 335.210 to 335.485 (330.005(2)(d)).

(51) "Unit of Credit": Certification of a student's successful completion of classroom or equivalent work (e.g., independent study, work experience, research) in a course of at least 130 clock hours, or equivalent as set out in OAR 581-022-1131.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 326.011

Hist.: 1EB 19-1980, f. 6-17-80, ef. 7-1-80; 1EB 4-1986, f. 1-23-86, ef. 2-1-86; EB 8-1989, f. & cert. ef. 1-27-89; EB 6-1995, f. & cert. ef. 1-24-95; ODE 7-1999, f. & cert. ef. 1-15-99; ODE 12-2002, f. & cert. ef. 4-15-02; ODE 4-2003, f. & cert. ef. 3-14-03

Curriculum Requirements

581-022-0405

Career Education

Each school district shall implement plans for career education Grades K through 12, with goals for each instructional program and, where applicable, goals for support programs.

Stat. Auth.: ORS 326

Stats. Implemented: ORS 326.051

Hist.: 1EB 19-1980, f. 6-17-80, ef. 9-1-81; EB 4-1989, f. & cert. ef. 1-23-89

Plan of Instruction

581-022-0413

Prevention Education Programs in Drugs and Alcohol

The statutory authority for this rule is ORS 326.010 and Chapter 1076, 1989 Oregon Session Laws:

(1) Each school district shall develop a plan for a drug and alcohol prevention program which shall include:

(a) Drug and alcohol prevention instruction as an integral part of the district's comprehensive health education program. In addition, at least annually, all senior high school students shall receive age-appropriate instruction about drug and alcohol prevention:

(A) The age-appropriate curriculum for this instruction shall:

(i) Emphasize prevention;

(ii) Be reviewed and updated annually to reflect current research; and

(iii) Be consistent with State Board adopted Health Education Common Curriculum Goals.

(B) Basic information shall include:

(i) The effects of alcohol, tobacco, and other drug use;

(ii) All laws relating to the use, especially by minors, of alcohol and other illegal drugs; and

(iii) The availability of school and community resources.

(C) The instructional program shall include activities which will assist students in developing and reinforcing skills to:

(i) Understand and manage peer pressure;

(ii) Understand the consequences of consuming alcohol and other drugs;

(iii) Make informed and responsible decisions; and

(iv) Motivate students to adopt positive attitudes towards health and wellness.

(b) A public information program for students, parents, and district staff; and

(c) Policies, rules, and procedures which:

(A) Include a philosophy statement relating to drug-free schools;

(B) Define the nature and extent of the district's program, including a plan to access and use federal funds;

(C) State that alcohol, tobacco, and other drug use by student is illegal and harmful;

(D) In accordance with OAR 581-021-0050 and 581-021-0055, indicate the consequences for using and/or selling alcohol and other drugs, including the specific rule of the school as it relates to law enforcement agencies;

(E) Describe the district's intervention and referral procedures, including those for drug-related medical emergencies;

(F) Indicate clearly that the school district's jurisdiction includes all school sponsored events including student activities; and

(G) Are reviewed and updated annually beginning with the 1990-91 school year.

(2) The district's drug and alcohol prevention and intervention program shall be approved by the school district board after consultation from parents, teachers, school administrators, local community agencies, and persons from the health or alcohol and drug service community who are knowledgeable of the latest research information.

(3) Staff development in the district shall:

(a) Inform all staff of the district plan and their responsibilities within that plan; and

(b) Provide drug and alcohol prevention education to all staff.

Stat. Auth.: ORS 326

Stats. Implemented: ORS 336.067 & 336.235

Hist.: EB 30-1989, f. & cert. ef. 10-24-89

Assessment and Evaluation

581-022-0606

District Improvement Plan

Each district shall:

(1) Identify school and district needs for improvement of student achievement at the district and school levels by conducting self-evaluations that include a review of test results and other evaluative information (e.g., at a minimum demographics, other student performance data, student access to and utilization of educational opportunities and staff characteristics).

(2) Based on the self-evaluation described in section (1) of this rule, develop and implement a written improvement plan for the district and each school to include, where appropriate, plans for:

(a) Continuous short-term and long-term staff development;

(b) Programs and policies to achieve a safe educational environment; and

(c) Local efficiencies and efforts to make better use of resources.

(3) Revise and update the district improvement plan on a biennial basis.

(4) Annually review and report test results and progress on the district improvement plan to the community.

(5) Maintain copies of the school and district improvement plans as a public record.

(6) Submit the district improvement plan to the Department of Education when requested.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 326.051

Hist.: 1EB 19-1980, f. 6-17-80, ef. as follows: Section (1) 9-1-80; Sections (2), (4), (5) 9-1-81; Section (3) 7-1-80; 1EB 26-1980, f. 11-7-80, ef. as follows: Sections (1) and

(3) 9-1-81; Sections (2), (4) and (5) 9-1-82; 1EB 21-1986, f. & ef. 7-2-86; EB 38-1990, f. & cert. ef. 7-10-90; EB 15-1996, f. & cert. ef. 9-26-96

581-022-0610

State Tests

(1) The school district shall administer achievement tests provided by the Oregon Department of Education at specific grade levels. The results of these tests shall be used to satisfy the requirements specified in OAR 581-022-1670 and 581-022-0606 and as a method to evaluate compliance with OAR 581-022-1210.

(2) School districts may administer state assessments prior to March 1 of a school year, if the assessments test mathematics problem solving skills or writing skills and are administered as part of the statewide assessment in grades 5 or 8, by submitting a written request to the Associate Superintendent of the Office of Assessment and Evaluation before November 1 of the same school year. The written request must state the rationale for administering the assessments prior to March 1.

Stat. Auth.: ORS 326

Stats. Implemented: ORS 326.051

Hist.: 1EB 2-1985, f. 1-4-85, ef. 1-7-85; EB 14-1990(Temp), f. & cert. ef. 3-5-90; ODE 6-2002(Temp), f. & cert. ef. 2-15-02 thru 6-30-02; ODE 16-2002, f. & cert. ef. 6-10-02

581-022-0612

Exception of Students with Disabilities from State Assessment Testing

(1) For the purposes of this rule a "student with a disability" is a student identified under the Individuals with Disabilities Education Act, consistent with OAR 581-015-0051, or a student with a disability under Section 504 of the Rehabilitation Act of 1973.

(2) A public agency shall not exempt a student with a disability from participation in the Oregon State Assessment System or any district wide assessments to accommodate the student's disability unless the parent has requested such an exemption.

Stat. Auth.: ORS 326.051 & 343.045

Stats. Implemented: ORS 329.485 & 659.150

Hist.: ODE 3-2002(Temp), f. & cert. ef. 1-25-02 thru 6-30-02; ODE 14-2002, f. & cert. ef. 5-15-02

Support Programs

581-022-0705

Health Services

(1) The school district shall maintain a prevention oriented health services program for all students which provides:

(a) Health care and space that is appropriately supervised and adequately equipped for providing first aid, and isolates the sick or injured child from the student body;

(b) Communicable disease control, as provided in Oregon Revised Statutes;

(c) Health screening information, including required immunizations and TB certificates, when required by ORS 433.260 and 431.110 and OAR 333-019-0405;

(d) Services for students who are medically fragile or have special health care needs;

(e) Integration of school health services with school health education programs and coordination with health and social service agencies, public and private;

(f) Vision and hearing screening;

(g) Compliance with OR-OSHA Bloodborne Pathogens Standards for all persons who are assigned to job tasks which may put them at risk for exposure to body fluids (ORS 1910-1030); and

(h) Policy and procedures for medications, as per ORS 339.870.

(2) School districts shall adopt policies and procedures which consider admission, placement and supervision of students with communicable diseases, including but not limited to Hepatitis B (HBV), Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS) (OAR 333-019-0015).

(3) School districts which employ nurses to provide health services shall employ persons currently licensed to practice as Registered Nurses or Nurse Practitioners in Oregon:

(a) School districts may employ Licensed Practical Nurses, providing that their practice is supervised by a Registered Nurse or Nurse Practitioner with the above stated qualifications;

(b) Job descriptions shall reflect assignments complying with the Oregon State Board of Nursing (OSBN) Scope of Practice Adminis-

trative Rules for all levels of licensed providers, OAR 851-450-0000 to 0010 and 851-050-0000 and 0005; and

(c) If school districts employ Registered Nurses or Nurse Practitioners who are not licensed by Teacher Standards and Practices Commission as school nurses, the district shall not designate such personnel as "school nurse" by job title as per ORS 342.475 and 342.495.

(4) Each school shall have, at a minimum, at least one staff member with a current first aid card for every 60 students enrolled, or an emergency response team per building consisting of no less than six persons who hold current first aid/CPR cards and who are trained annually in the district and building emergency plans.

(5) The school district shall have policies and/or administrative procedures concerning employees with communicable diseases, including but not limited to Hepatitis B (HBV), Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS).

(6) Each school building must have a written plan for response to medical emergencies; such plan should be articulated with general emergency plans for buildings and districts as required by OAR 581-022-1420.

Stat. Auth.: ORS 326 & 342

Stats. Implemented: ORS 326.051

Hist.: 1EB 19-1980, f. 6-17-80, ef. 9-1-80; 1EB 16-1981 (Temp), f. & ef. 11-3-81; 1EB 12-1982, f. & ef. 3-24-82; EB 21-1988, f. & cert. ef. 4-26-88; EB 17-1996, f. & cert. ef. 11-1-96

Administration

581-022-0803

Kindergarten Programs

(1) By July 1, 1989, the district school board of every common school district shall provide kindergarten facilities and programs free of charge to all kindergarten-age children residing in the district.

(2) Kindergarten programs are to be considered as an integral part of the public school system of Oregon.

(3) Kindergarten programs may be operated singly by the district, or jointly with other districts or Education Service Districts.

(4) Districts may contract their kindergarten programs with public or private providers that conform to standards adopted by the State Board of Education.

(5) District requests for an extension of the kindergarten requirement beyond July 1, 1989 shall be for reasons for extreme financial hardship, and shall be submitted to the State Superintendent on forms provided by the Department of Education. Such requests shall not be submitted prior to December 1 of the year preceding the school year for which the extension is requested:

(a) All requests shall address the following factors but shall not be limited thereto:

(A) The district has been required to reduce programs and/or personnel since July 1, 1986 in order to maintain required educational programs;

(B) The district's tax rate, audited per pupil expenditure and assessed value per pupil for the last three years as compared to the state average of districts of like size and type for each of these factors;

(C) The district's unemployment rate in the last three fiscal years as compared to the county/metropolitan service area average as reported by the State of Oregon Employment Department;

(D) The district's percentage of students participating in the free and reduced-fee school lunch programs during the last three years as compared to the state average;

(E) The district's ability to provide appropriate facilities to accommodate a kindergarten program;

(F) The district's attempts since July 1, 1985 to obtain voter approval of a levy which would have funded kindergarten programs.

(b) All requests must be accompanied by a plan of correction with related school board resolutions and administrative plans including schedules and activities for implementing kindergarten programs in the ensuing school year;

(c) School districts not providing kindergarten programs by July 1, 1989 and for which extensions have not been granted shall be considered "nonstandard schools" (ORS 327.103(3));

(d) School districts to which extensions are granted shall be considered "conditionally standard schools" (ORS 327.103(3)).

(6) For each request received, the State Superintendent shall propose a recommendation to the State Board of Education based on the data submitted by the requesting district.

(7) The State Board of Education may, upon review of the Superintendent's recommendations and data submitted by requesting districts, grant an extension of one year for reasons of extreme financial hardship.

Stat. Auth.: ORS 336
Stats. Implemented: ORS 326.051
Hist.: EB 12-1988, f. & cert. ef. 3-3-88

581-022-0807

Standardization

A school, to be standard, must provide acceptable educational opportunities for all Oregon students regardless of where they live:

(1) Local school districts shall cooperate with procedures to verify compliance with state standards, to collect information about schools, to identify exemplary performance, and to promote school improvement.

(2) Methods of verifying compliance and identifying practices or conditions needing improvement shall include:

(a) Assurances of the district school board designated chief administrative officer;

(b) Review of district materials through Department of Education desk audit;

(c) On-site review of practices or conditions; and

(d) Other methods selected by the Superintendent of Public Instruction.

Stat. Auth.: ORS 326
Stats. Implemented: ORS 326.051
Hist.: IEB 3-1985, f. 1-4-85, ef. 1-7-85

581-022-1020

State Goals for Elementary and Secondary Education

Oregon's system of K–12 education plays a key role in preparing students to function effectively in a rapidly changing world. To successfully prepare students for the futures they choose to pursue, the State Board of Education identifies seven goals for Oregon's K–12 educational system:

(1) To insure that all Oregon students, regardless of linguistic background, culture, race, gender, capability, or geographic location, have access to a quality education in a safe, motivating environment;

(2) To hold all Oregon students to rigorous academic standards and expect them to succeed;

(3) To provide Oregon students with opportunities to demonstrate their achievement in knowledge and skills;

(4) To encourage parental and community involvement in their student's education;

(5) To develop in Oregon students lifelong academic skills to prepare them for an everchanging world;

(6) To develop in Oregon students the core ethical values that our diverse society shares and holds important, including but not limited to, respect, responsibility, caring, trustworthiness, justice and fairness, and civic virtue and citizenship; and

(7) To equip Oregon students with the knowledge and skills necessary to pursue the future of their choice and to prepare students to function effectively in various life roles.

Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 326.011, 329.015, 329.025, 329.035 & 336.067
Hist.: EB 9-1997, f. & cert. ef. 6-26-97

581-022-1030

Local District Goals

Each school district shall maintain a coordinated K–12 program designed to improve student achievement, based on district goals adopted by the district school board and consistent with the goals adopted by the State Board in OAR 581-022-1020. To acknowledge their mutual responsibilities for the education of all students, local district goals should be developed and revised cooperatively by the school district and the community.

Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 329.045
Hist.: EB 7-1997, f. & cert. ef. 6-9-97

581-022-1060

School and District Performance Report Criteria

(1) The Superintendent of Public Instruction will annually collect data from schools and school districts on student performance, student

behavior and school characteristics and will annually produce a performance report for each school and school district.

(2) The Superintendent will notify the public and the media by January 30 of each year that school and district performance reports are available at each school and school district and at the Department of Education website and office. The Superintendent will include in the notice that Consolidated District Improvement Plans and School Improvement Plans as required in ORS 329.095 are available from the school and school district offices.

(3) By March 31 of each year, school districts shall send a copy of the state provided school and school district performance report to the parent(s) or guardian(s) of each child enrolled in a public school in the school district.

(4) School performance reports will include grades assigned by the Superintendent, based on valid scoring scales, in each of the following categories:

- (a) Student Performance;
 - (b) Student Behavior; and
 - (c) School Characteristics.
- (5) School grades shall be reported as:
- (a) Exceptional;
 - (b) Strong;
 - (c) Satisfactory;
 - (d) Low; or
 - (e) Unacceptable.

(6) Criteria for a school grade in Student Performance will include both overall performance and improvement in performance as measured by: Statewide assessment.

(7) Criteria for a school grade in Student Behavior will include performance as measure by:

- (a) Student dropout rate; and
- (b) Student attendance rate.

(8) Criteria for a school grade in School Characteristics will include performance as measured by: Percentage of students participating in statewide assessment.

(9) The school performance report will also include an overall grade based on a composite of the three categorical grades listed in section (4) of this rule and will be explained on the performance reports.

(10) A school receiving any grade of "Low" or "Unacceptable" shall file its revised school improvement plan with the Superintendent, the school board and the 21st Century Schools Council for the school by June 30 following the report.

(11) School performance reports may include information other than that listed in section (4). Such information will not be part of the calculation of the school grade in individual categories or of the overall grade.

(12) School district performance reports will be developed and must include the overall rating of each school in the district. The district performance report may include information other than that listed in section (4).

(13) School and school districts may include information in addition to that listed in section (4) in their locally prepared and distributed school and school district performance reports.

Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 329.045
Hist.: ODE 36-1999, f. 12-13-99, cert. ef. 12-14-99

581-022-1110

Certificate of Initial Mastery Requirements

(1) Each district school board shall award a Certificate of Initial Mastery (CIM) to students who:

(a) Achieve all grade 10 performance standards in the academic content standard areas of English, mathematics, science, and the social sciences, and additional local district CIM requirements, if any, as defined by district school board policy; and

(b) Demonstrate proficiency in the areas of second language, the arts, and physical education based on performance standards as defined in district school board policy.

(2) School districts shall ensure that students have the opportunity to demonstrate the ability to learn, think, retrieve information, use technology and work effectively as individuals, and as individuals in groups.

(3) Requirements for the CIM will be implemented according to the following schedule for implementation of the state performance

standards for student achievement on the state assessment system in English, mathematics, science and social science, and local district performance standards in the arts, second language and physical education:

- (a) 1998-1999 — English, mathematics;
- (b) 1999-2000 — English, mathematics, science;
- (c) 2000-2001 — English, mathematics, science;
- (d) 2001-2002 — English, mathematics, science, the arts;
- (e) 2002-2003 — English, mathematics, science, the arts, second language;
- (f) 2003-2004 — English, mathematics, science, the arts, second language, social science, physical education.

(4) School districts shall administer all state assessments that are offered in English, mathematics, and science at grades 3, 4, 5, 6, 7, 8 and high school. School districts may administer state assessments in social sciences.

(5) School districts shall offer additional services or alternative public education options to students who do not meet the standards or who exceed all of the standards at any benchmark level. If after one year, the student, for whom such services or options were made available, has not yet met all standards, the school district, with the consent of the parents, shall make an appropriate placement as described in ORS 329.485(5).

(6) School districts shall award an alternative certificate specifying benchmarks and standards achieved to those students who, having received appropriate additional services and for whom alternative learning options were made available, do not meet the standards required for the CIM.

(7) School districts that have been granted timeline waivers under OAR 581-022-1920 must document both on awarded CIM certificates and student's records, the requirements that have been waived.

(8) Each school district board is authorized to grant individual students a waiver in accordance with ORS 329.487. Students receiving such a waiver may receive a CIM if all non-waived requirements are met. Districts must document both on awarded CIM certificates and in the students' records the requirements that have been waived.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 329.075, 329.465 & 329.485

Hist.: EB 2-1997, f. & cert. ef. 3-27-97; ODE 15-2001(Temp), f. & cert. ef. 7-13-01 thru 1-2-02; ODE 29-2001, f. & cert. ef. 12-20-01; ODE 17-2002, f. & cert. ef. 6-10-02; ODE 5-2005(Temp), f. & cert. ef. 3-15-05 thru 9-1-05, Administrative correction 9-21-05; ODE 5-2006, f. & cert. ef. 2-14-06

581-022-1111

Requesting an Alternative to State Assessment Testing Procedures for Meeting Grade Level Performance Standards

(1) A student in grades 3 through 12 may request a juried assessment, an accommodation to the statewide CIM Benchmark assessment procedures, when he or she has mastered the standards for one or more assessed content areas, but is unable to demonstrate mastery through related statewide assessments.

(2) Each school district shall develop a process for reviewing information and pursuing requests.

(3) The school district shall review each case, determine the merits, and make appropriate recommendations.

(4) A request for a juried assessment, to the Oregon Department of Education must include the following:

(a) A body of student work that demonstrates the student's mastery of the content and performance standards;

(b) Two individual teacher evaluations of the student work that confirm that the work demonstrates mastery; plus

(c) A letter from the district superintendent or designee to the Oregon Department of Education requesting a formal review by an impartial Review Panel.

(5) An impartial review panel will be established by the Oregon Department of Education to consider requests and make decisions regarding each request.

(6) The Review Panel will inform the student, parent and school district of their decision to accept or deny the request in writing within 45 days.

(7) The review panel will be made up of members from outside the requesting student's district(s) of enrollment and attendance and will include the following:

(a) One educator who is a content specialist for grade and content area(s) covered by the request;

(b) One educator knowledgeable about the unique characteristics of the requesting student such as disability, English proficiency, assistive device use etc.;

(c) One district test coordinator or assessment specialist knowledgeable about measuring academic performance; and

(d) One Department of Education Assessment Specialist knowledgeable in the content covered by the request.

(8) The costs for the Review Panel shall be the responsibility of the district except for the ODE staff.

(9) If denied, the parent and student may submit a request to the State Superintendent for reconsideration of the decision.

(10) The decision of the State Superintendent to accept or deny the request will be final.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 329.075, 329.465 & 329.485

Hist.: ODE 25-2000, f. & cert. ef. 10-16-00; ODE 3-2005, f. & cert. ef. 2-14-05

581-022-1115

Alternative Certificate

(1) Students who do not receive a Certificate of Initial Mastery (CIM) as defined in OAR 581-022-1110, Certificate of Initial Mastery Requirements, shall, upon graduation or upon request when exiting high school without a diploma, receive from the school district a Certificate of Achievement that represents the student's progress toward achieving CIM performance standards in each applicable content area.

(2) Data documenting progress toward achievement of the CIM requirements shall be a part of the student's permanent record, as defined by OAR 581-021-0250.

(3) School districts may include additional information demonstrating student achievement.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 329.447 & 329.465

Hist.: ODE 11-1998, f. & cert. ef. 6-23-98

581-022-1120

Certificate of Advance Mastery Requirements

(1) By September 1, 2006, school districts shall:

(a) Develop a process that provides each student the opportunity to develop an education plan and build an education profile in grades 7-12 with adult guidance that is reviewed and updated periodically (at least annually) and supported by a Comprehensive Guidance Program as defined in OAR 581-022-1510.

(b) Make available to students the career learning frameworks (i.e. arts and communications, business and management, health services, human resources, industrial and engineering, and natural resource systems) as tools to guide students in the development of their education plans and learning experiences.

(c) Develop opportunities for community and business partnerships that support the student requirements in section (3)(a)-(f) of this rule.

(d) Develop career-related learning experience opportunities for students that may include school based, work-based, or community-based experiences that connect to the student's education plan.

(e) Assist students in connecting post high school opportunities with their career goals identified in the education plan, including: four-year colleges and universities, community colleges, workforce, apprenticeships, the military, private career schools and others.

(f) Prior to the 2008-2009 school year, school districts shall demonstrate continued progress toward implementation of the Certificate of Advanced Mastery including section (1)(a)-(e) of this rule.

(2) Upon adoption of the performance standard for extended application (3)(c) and career-related learning standards (3)(d) by the State Board of Education, school districts shall determine if students meet the performance standard by using assessment tools based upon criteria approved by the State Board of Education.

(3) Beginning September 1, 2008, each school district board shall award a Certificate of Advanced Mastery (CAM) to students who:

(a) Develop an education plan in which the student:

(A) Identifies personal and career interests;

(B) Identifies tentative educational and career goals and post high school next steps (i.e. college, workforce, military, apprenticeship, other);

(C) Set goals to prepare for transitions to next steps identified in (3)(a)(B);

(D) Designs, monitors and adjusts a course of study that meets the interest and goals of the student as described in subsections (A), (B) and (C) of section (3)(a) of this rule that includes but is not limited to:

- (i) Appropriate coursework and learning experiences;
- (ii) Identified career-related learning experiences; and
- (iii) Identified extended application opportunities.
- (b) Develop an education profile in which the student:
 - (A) Monitors progress and achievement toward standards;
 - (i) CIM academic standards;
 - (ii) Career-related learning standards;
 - (iii) Extended application standard; and
 - (iv) Other standards where appropriate (e.g. PASS, industry standards).

(B) Documents other personal accomplishments determined by the student or school district.

(C) Reviews progress and achievement in subsection (A) and (B) of section (3)(b) of this rule at least annually.

(c) Demonstrate proficiency in extended application through a collection of evidence based on performance standards as adopted by the State Board of Education;

(d) Demonstrate proficiency in career-related learning standards in the following areas: personal management, problem solving, communication, teamwork, employment foundations, and career development based on performance standards as adopted by the State Board of Education.

(e) Participate in career-related learning experiences in which the student:

(A) Identifies career-related learning experiences in the education plan related to personal and career interests and goals;

(B) Identifies expectations for learning and the academic and career-related learning standards the student is preparing to meet;

(C) Reflects on the learning experience to determine if expectations in section (3)(e)(B) have been met; and

(D) Meets any additional local district requirements.

(f) Achieve specific Certificate of Initial Mastery (CIM) performance standards in English, mathematics, and science as follows:

- (A) Meet the CIM knowledge and skill test in reading;
- (B) Meet the CIM work sample requirements in speaking;
- (C) Meet the CIM work sample requirements in writing; and
- (D) Meet the CIM work sample requirements or the CIM knowledge and skills test in mathematics, and science.

Stat. Auth.: ORS 329.475

Stats. Implemented: ORS 329.007, 329.035, 329.075, 329.447, 329.475, 329.485 & 329.855

Hist.: ODE 2-1999, f. & cert. ef. 1-12-99; ODE 12-2002, f. & cert. ef. 4-15-02; ODE 6-2005(Temp), f. & cert. ef. 3-15-05 thru 9-1-05, Administrative correction 9-21-05; ODE 5-2006, f. & cert. ef. 2-14-06

581-022-1130

Diploma Requirements

(1) Each district school board with jurisdiction over high school programs shall award diplomas to all students who fulfill all state requirements as described in sections (2)–(8) of this rule and all local school district requirements as described in district school board policies. A school district may award an alternative document to a student who has met some but not all of the graduation requirements:

(2) Unit of Credit Requirements:

(a) Each student shall earn a minimum of 22 units of credit to include at least:

(A) Language Arts — 3 (shall include the equivalent of one unit in Written Composition);

(B) Mathematics — 2;

(C) Science — 2;

(D) Social Sciences 3 — (including history, civics, geography and economics (including personal finance);

(E) Health Education — 1;

(F) Physical Education — 1;

(G) Applied Arts, Fine Arts or Second Language — 1 (one unit shall be earned in any one or a combination).

(b) A district school board with a three-year high school may submit through the waiver process alternative plans to meet unit requirements;

(c) A district school board may increase the number of units required in specific areas, and may increase or decrease the number

of elective units; however, the total units of credit required for graduation shall not be less than 22;

(d) A school district may grant high school credit for courses taken prior to grade 9 if students taking pre-grade 9 courses are required to meet performance criteria that are equivalent to the performance criteria for students taking the same high school courses;

(e) Course syllabi shall be written for courses in grades 9 through 12 and shall be available to students, staff, parents, the district school board and other interested individuals.

(3) Each student shall develop an education plan and build an education profile (as defined in OAR 581-022-1120, section (3)(a) and (b));

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

(5) Each student shall demonstrate career-related knowledge and skills in the following areas: personal management, problem solving, communication, teamwork, employment foundations, and career development; and

(6) Each student shall participate in career-related learning experiences outlined in the education plan (as defined in OAR 581-022-1120, section (3)(e)).

(7) Students graduating in the 2006–2007 school year, and thereafter, must meet the requirements in section (3)–(6) of this rule.

(8) Attendance Requirements:

(a) Twelve school years shall be required beginning with grade 1, except when the school district adopts policies providing for early or delayed completion of all state and school district credit and performance requirements;

(b) The district school board may adopt policies for alternative learning experiences, such as credit by examination and credit for off-campus experiences;

(c) With any modification of the attendance requirements for graduation, school district staff shall consider age and maturity of students, access to alternative learning experiences, performance levels, school district guidelines and the wishes of parents and guardians.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 326.051 & 339.280

Hist.: EB 2-1997, f. 3-27-97, cert. ef. 9-1-97; ODE 12-2002, f. & cert. ef. 4-15-02

581-022-1131

Credit Options

(1) A school district shall grant credit for work satisfactorily completed in any district school, including an alternative education program as defined in ORS 336.615 and 336.625, provided the method for accruing credit is described in the student's personal education plan and the student either:

(a) Successfully completes classroom or equivalent work (e.g., required and elective courses, supervised independent study, career-related learning experiences, project based learning) in a course of at least 130 clock hours in accordance with OAR 581-022-0102;

(b) Successfully completes a unit of credit where performance-based criteria acceptable to the school district are identified;

(c) Demonstrates competency or mastery of subject as defined by the school district by any one or more of the following as approved by the district:

(A) Successfully passes an appropriate exam;

(B) Provides sample of work or other evidence which demonstrates equivalent knowledge or skill; and

(C) Provides documentation of prior learning activities or experiences (e.g., certification of training, letters, diplomas, awards, etc.); or

(d) Successfully completes a combination of the requirements set out in subsections (1)(a)–(c) of this section.

(2) A school district may grant credit for work satisfactorily completed in a GED preparation course of study, however, a school district shall not use the GED Tests or Sub Tests for the purposes of grade placement or promotion, as measures of student progress in instructional programs, as means of awarding academic credit (e.g., Carnegie units), or as a means of awarding alternative credentials to currently enrolled high school students.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 326.051

Hist.: ODE 4-2003, f. & cert. ef. 3-14-03

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 581-021-0046.

Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 659.150
Hist.: EB 1-1997, f. & cert. ef. 3-12-97

581-022-1210

District Curriculum

(1) Each school district shall provide a planned K–12 instructional program.

(2) The planned K–12 instructional program shall include the following:

(a) Common Curriculum Goals and academic content standards to include:

- (A) English;
- (B) Mathematics;
- (C) Science;
- (D) Social Science (including history, geography, economics and civics);

- (E) The Arts;
- (F) Second Languages;
- (G) Health Education; and
- (H) Physical Education.

(b) Additional Common Curriculum Goals for:

- (A) Health Education;
- (B) Physical Education; and
- (C) Technology.

(c) Essential Learning Skills, as contained in the Common Curriculum Goals and academic content standards; and

(d) Career-related learning standards, as contained in the Common Curriculum Goals and academic content standards.

(3) The school district shall also provide instruction in other areas identified in OAR 581, division 022, including:

- (a) Infectious diseases, including AIDS/HIV and Hepatitis B;
- (b) Prevention education in drugs and alcohol; and
- (c) Emergency plans and safety programs.

(4) The school district is also accountable to provide instruction in compliance with requirements set forth in ORS Chapter 336, Conduct of Schools Generally.

Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 329.045
Hist.: EB 6-1997, f. & cert. ef. 6-9-97; ODE 7-2005(Temp), f. & cert. ef. 3-15-05 thru 9-1-05; Administrative correction 9-21-05; ODE 5-2006, f. & cert. ef. 2-14-06

581-022-1310

Identification of Academically Talented and Intellectually Gifted Students

Each school district shall have local district policies and procedures for the identification of talented and gifted students as defined in ORS 343.395(7)(a) and (b):

(1) Districts shall make efforts to identify students from ethnic minorities, students with disabilities, and students who are culturally different or economically disadvantaged.

(2) A team shall make the final decisions on the identification of students using the information collected under sections (3) and (4) of this rule. No single test, measure or score shall be the sole criteria. A record of the team's decision, and the data used by the team to make the decision, shall become part of the education record for each student considered.

(3) Districts shall collect behavioral, learning and/or performance information and include the information in all procedures for the identification of students.

(4) The following measures and criteria for identifying the intellectually gifted and the academically talented shall be used by the team:

(a) Intellectually gifted students shall score at or above the 97th percentile on a nationally standardized test of mental ability; and

(b) Academically talented students shall score at or above the 97th percentile on a test of total reading or a test of total mathematics from a nationally standardized test battery or a nationally standardized test of reading or mathematics.

(5) Despite a student's failure to qualify under subsections (4)(a) and (b) of this rule, districts, by local policies and procedures, shall identify students who demonstrate the potential to perform at the 97th percentile.

(6) School districts may identify additional students who are talented and gifted as defined in ORS 343.395(7)(c), (d), and (e) as determined by local district policies and procedures.

Stat. Auth.: ORS 343.391 - 343.413
Stats. Implemented: ORS 326.051
Hist.: EB 18-1996, f. & cert. ef. 11-1-96

581-022-1320

Rights of Parents of Talented and Gifted Students

In carrying out the requirements of OAR 581-022-1310 and 581-022-1330, the school district shall:

(1) Inform parents at the time of the identification of the child and the programs and services available.

(2) Provide an opportunity for the parents to provide input to and discuss with the district the programs and services to be received by their child.

(3) The parents may, at any time, request the withdrawal of their child from programs and services provided under OAR 581-022-1320. The school district shall notify parents of identified students of this right.

(4) Parents shall be informed of their right to file a complaint under OAR 581-022-1940.

Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 343.391 - 343.413
Hist.: EB 18-1996, f. & cert. ef. 11-1-96

581-022-1330

Programs and Services for Talented and Gifted Students

(1) Each school district shall have a written plan for programs and services.

(2) The instruction provided to identified students shall address their assessed levels of learning and accelerated rates of learning.

(3) Assessments for the development of an appropriate academic instructional program shall include the information used by the team for identification purposes and also may include one or more of the following:

(a) An academic history which may include grades, portfolio assessment records or other progress records and achievement information that demonstrates the student's level of learning and rate of learning;

(b) Other evaluation methods such as formal tests or informal assessment methods designed by teachers to determine the student's instructional level and rate of learning related to specific academic programs;

(c) Student interest, style, and learning preferences information from inventories or interviews; and

(d) Other measures determined by the school district to be relevant to the appropriate academic instructional program for the student.

Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 343.391 - 343.413
Hist.: EB 18-1996, f. & cert. ef. 11-1-96

581-022-1340

Special Education for the Handicapped

Each school district shall provide an educational program for all resident handicapped children eligible under ORS Chapter 343. The program shall be carried out in accordance with all applicable Oregon Administrative Rules.

Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 343.041
Hist.: EB 18-1996, f. & cert. ef. 11-1-96

581-022-1350

Alternative Education Programs

(1) In order to provide innovative and more flexible ways of educating children, school districts may establish new alternative education options within the public school system.

(2) School districts shall adopt policies and procedures for the approval and annual evaluation of alternative education programs under ORS 336.615–336.665 (Alternative Education Programs) that receive public funds. Approval and annual evaluation of such programs shall provide that:

(a) All students receive adequate instruction in state common curriculum goals and academic content standards to meet state benchmarks and performance standards;

(b) All required Oregon Statewide Assessments are administered;

(c) The results of student performance on state assessments are reported annually to students, parents and the school district;

(d) Any private alternative program/school is registered with the Oregon Department of Education under the provisions of OAR 581-021-0072;

(e) The program complies with all rules and statutes applicable to public schools including:

(A) ORS 181.539, 326.603, 326.607 and 342.232 (criminal background checks);

(B) ORS 337.150, 339.141, 339.147 and 339.855 (tuition and fees);

(C) ORS 659.850 and 659.155 (discrimination);

(D) Health and safety statutes and rules; and

(E) Any statute, rule or school district policy that is specified in the contract between the school district board and the private alternative program/school.

(f) The program/school complies with federal law; and

(g) The contract between a school district and a private alternative education program/school must state that non-compliance with a rule or statute under this rule (OAR 581-022-1350) may result in the termination of the contract.

(h) The private alternative education program/school's annual statement of expenditures is reviewed in accordance with ORS 336.635(2);

(i) The private alternative education program/school is in compliance with its contract(s) with the district(s); and

(j) The private alternative education program/school enhances the ability of the district and its students to achieve district and state standards.

(3) School districts shall adopt policies and procedures to approve placing a student in district approved public alternative education programs and district approved private alternative education programs/schools. Such policies and procedures must ensure that:

(a) Students placed in alternative education programs are those whose educational needs and interests are best served by participation in such programs and will include but not be limited to those students identified under ORS 339.250(9) and OAR 581-022-1110(5) (Certificate of Initial Mastery Requirements);

(b) Placement of a student in a public or private alternative education program be made only if the program has been determined by the district, according to district policy, to best serve the student's educational needs and interests, within district and state academic standards;

(c) Placement in a public or private alternative education program be made with the approval of the student's resident school district and attending school district; and

(d) Payment to private alternative education providers be the actual cost of the program or an amount at least equivalent to 80 percent of the district's estimated current years' average per student net operating expenditure, whichever is lesser.

(4) School districts shall adopt policies and procedures for students, parents or guardians of students residing in the district to request the establishment of alternative education programs with the district.

(5) A school district shall adopt policies and procedures for notification of students, parents or guardians of students of:

(a) The law regarding alternative education programs;

(b) The availability of existing alternative education programs; and

(c) The procedures to request the establishment of new alternative education programs.

(6) School districts shall include opportunities for participation by educators, community members, and parents or guardians in the development of policies and procedures under this rule.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 336.625, 336.635 & 336.645

Hist.: EB 18-1996, f. & cert. ef. 11-1-96; ODE 2-1998, f. & cert. ef. 2-27-98; ODE 4-2003, f. & cert. ef. 3-14-03

581-022-1362

Expanded Options – Purpose

The purpose of the program created by ORS Chapter 340 otherwise known as Expanded Options is to:

(1) Create a seamless education system for students enrolled in grades 11 and 12 to:

(a) Have additional options to continue or complete their education;

(b) Earn concurrent high school and college credits; and

(c) Gain early entry into post-secondary education.

(2) Promote and support existing accelerated college credit programs, and support the development of new programs that are unique to a community's secondary and postsecondary relationships and resources.

(3) Allow eligible students who participate in the Expanded Options Program to enroll full-time or part-time in an eligible post-secondary institution.

(4) Provide public funding to the eligible post-secondary institutions for educational services to eligible students to offset the cost of tuition, fees, textbooks, equipment and materials for students who participate in the Expanded Options Program.

Stat. Auth.: ORS 340.574

Stats. Implemented: ORS 340.574

Hist.: ODE 12-2006, f. & cert. ef. 5-24-06

581-022-1363

Expanded Options – Definitions

Definitions to be used in carrying out the components of OAR 581-022-1362 through 581-022-1370:

(1) "Expanded Options Program" means

(a) The program created in ORS Chapter 340.

(2) "Accelerated college credit program" means a program, agreement or plan that is intended to provide access for public high school students to a post-secondary course, including, but not limited to:

(a) Dual credit technical preparation programs, such as two-plus-two;

(b) Advanced placement; and

(c) International Baccalaureate.

(3) "At-risk student" means:

(a) A student who qualifies for a free or reduced lunch program; or

(b) A student who meets state or federal thresholds for poverty as indicated by eligibility for services under any or all of the following title sections of the No Child Left Behind Act of 2001; PL 107-110:

(A) Title IA Improving Academic Achievement of the Disadvantaged;

(B) Title IC Education of Migratory Children;

(C) Title ID Prevention and Intervention Programs for Children and Youth Who are Neglected, Delinquent, or At-Risk;

(D) Title III Language Instruction of Limited English Proficient and Immigrant Students;

(E) Title X Education of Homeless Children and Youth Program.

(4) "Duplicate course" means a course with a scope that is identical to the scope of another course.

(5) "Eligible post-secondary course" means

(a) Any nonsectarian course or program offered through an eligible post-secondary institution if the course or program may lead to high school completion, a certificate, professional certification, associate degree or baccalaureate degree.

(b) "Eligible post-secondary course" does not include a duplicate course offered at the student's resident school.

(c) "Eligible post-secondary course" includes:

(A) Academic and professional technical courses; and

(B) Distance education courses.

(d) The provisions of Section 5 "Eligible post secondary course", subsections (a) through (c), do not apply to any post-secondary courses in which a student is enrolled in addition to being enrolled full-time in the student's resident school district. For purposes of the Expanded Options Program, a student is considered full-time if the student attends classes for credit in the secondary school for all available hours of instruction.

(6) "Eligible post-secondary institution" means:

(a) A community college;

(b) Institutions in the Oregon University System (University of Oregon, Oregon State University, Portland State University, Oregon Institute of Technology, Western Oregon University, Southern Oregon University, Eastern Oregon University); and

(c) The Oregon Health and Sciences University.

(7) “Eligible student” means

(a) A student who is enrolled in an Oregon public school and who:

(A) Is in grade 11 or 12 or who is 16 years of age or older at the time of enrollment in a course under the Expanded Options Program;

(B) Has developed an educational learning plan consistent with OAR 581-022-1130(3), Diploma Requirements; and

(C) Has not successfully completed four years of high school; or

(D) Who has completed course requirements for graduation, but not received a diploma.

(b) “Eligible student” does not include a foreign exchange student enrolled in a school under a cultural exchange program.

(8) “Extreme financial distress” means a decline in financial resources that would substantially impact the educational program the district offers to all students.

(9) “Individualized education program” means a written statement of an educational program for a child with a disability as described in OAR 581-015-0068, Special Education — Content of IEP.

(10) “Related Services” includes transportation and such developmental, corrective and other supportive services as are required to assist a student with a disability to benefit from special education and is consistent with OAR 581-015-0005, Special Education — Definitions.

(11) “Special Education” means specially designed instruction consistent with OAR 581-015-0005, Special Education — Definitions, to meet the unique needs of a student with a disability by adapting, as appropriate, the content, methodology, or delivery of instruction to address the unique needs of the student that result from the student’s disability and to ensure access of the student to the general curriculum.

Stat. Auth.: ORS 340.574

Stats. Implemented: ORS 340.574

Hist.: ODE 12-2006, f. & cert. ef. 5-24-06

581-022-1364

Expanded Options — Requirements for Oregon Public School Districts

Each school district shall:

(1) Prior to February 1 of each year, notify all high school students and the students’ parents or guardians of the Expanded Options Program as described in OAR 581-022-1365, Expanded Options — Annual Notice.

(2) Establish a process to identify dropouts as described in OAR 581-022-1365, Expanded Options — Annual Notice.

(3) Negotiate a financial agreement with any eligible post-secondary institution consistent with OAR 581-022-1368 State School Fund, Expenditures, Request for Waiver (2).

(4) Enter into an agreement with an eligible post-secondary institution that accepts a student for enrollment in an eligible post-secondary course that is a non-tuition course or noncredit course pursuant to ORS 640.030 for the payment of the actual associated instructional costs.

(5) Review with the student and the student’s parent or guardian the student’s current status toward meeting all state and school district graduation requirements and the applicability of the proposed eligible post-secondary course with respect to fulfilling the student’s remaining graduation requirements.

(6) Prior to an eligible student’s beginning an eligible post-secondary course, notify the student of the number and type of credits the student will be granted upon successful completion of the course.

(a) School district boards shall have policies and procedures to award diploma credits to eligible students for eligible post-secondary courses completed under the Expanded Options Program. Those policies and procedures shall be consistent with OAR 581-022-1131, Credit Options.

(7) Establish an appeals process adopted by the local school district board to resolve disputes by the eligible students regarding number or type of credits the school district will grant or has granted for a particular eligible post-secondary course. The appeals process adopted by the school district board shall be consistent with OAR 581-022-1940, Appeals and Complaints.

(8) Be responsible for providing any special education and related services to participating students following state and federal law, and consistent with OAR 581-015-0005, Special Education.

(a) The resident school district of an eligible student participating in the Expanded Options Program shall be responsible for providing any required special education and related services to the student.

(b) A student who requires special education and related services shall be considered, for school purposes, a resident in the school district pursuant to ORS 339.133 and 339.134.

(9) Each school year, award no more than 330 quarter credit hours to eligible students per enrollment of 1,000 students or proportional credit hours as established in OAR 581-022-1366, Annual Credit Hour Cap; or elect to exceed this quarter hour cap following the stipulations indicated in OAR 581-022-1366, Annual Credit Hour Cap.

(10) Apply credits granted to an eligible student to be counted toward high school graduation requirements and subject area requirements of the state and local school district consistent with OAR 581-022-1130, Diploma Requirements.

(11) Include in the student’s education record evidence of successful completion of each eligible post-secondary course and credits granted.

(12) Include in the student’s education record that the credits were earned at an eligible post-secondary institution.

(13) Each fiscal year, expend per student participating in the Expanded Options Program a minimum of 50 percent of the school district’s general purpose grant per extended ADMw as outlined in OAR 581-022-1366, Expanded Options — Annual Credit Hour Cap, unless the school district has been granted a waiver by the Superintendent of Public Instruction, or the superintendent’s designee, pursuant to OAR 581-022-1368 State School Fund, Expenditures, Request for Waiver.

(14) Provide the following data to the Department of Education on an annual basis in the format and timeline as determined by the Department of Education:

(a) Types of accelerated college credit programs offered,

(b) Number of high school credits earned under the Expanded Options Program,

(c) Number of college credits earned under the Expanded Options Program,

(d) Estimated college tuition cost savings for participating students,

(e) Number of students who had dropped out of high school but returned to high school to participate in the Expanded Options Program and earned a diploma,

(f) Number of participating students categorized by ethnicity and financial status,

(g) Number of participating talented and gifted students,

(h) Rural school district designation,

(i) If the individual district is classified as a small school district, the number of eligible students who wish to participate than are allowed under the respective credit hour caps established in OAR 581-022-1366, Annual Credit Hour Cap. Each school district may:

(15) Provide transportation services to eligible students who attend eligible post-secondary institutions within the boundaries of the school district pursuant to ORS 327.043.

(a) Any transportation costs incurred by a school district under this section shall be considered approved transportation costs for purposes of ORS 327.013(8).

(16) Determine which eligible post-secondary courses are duplicate courses to courses offered in the resident school district.

(a) School district boards shall have policies and procedures to determine duplicate course status consistent with 581-022-1363, Definitions.

(17) Request a waiver from the Superintendent of Public Instruction or the superintendent’s designee of the requirement to expend per student participating in the Expanded Options Program a minimum of 50 percent of the school district’s general purpose grant per extended ADMw, if the school district meets the conditions as described in 581-022-1368, State School Fund, Expenditures, Request for Waiver.

Stat. Auth.: ORS 340.574

Stats. Implemented: ORS 340.574

Hist.: ODE 12-2006, f. & cert. ef. 5-24-06

581-022-1365

Expanded Options – Annual Notice

(1) Prior to February 1 of each year, beginning with the 2005-06 school year, each school district must notify all high school students

and the students' parents or guardians of the Expanded Options Program. The notification process must:

(a) Ensure that all at-risk students and their parents are notified about the Expanded Options Program; and

(b) Identify high school students who have dropped out of school and provide those students with information about the Expanded Options Program by sending information about the program to the last known address of the family of the student. It shall be a priority for school districts to provide information about the Expanded Options Program to high school students who have dropped out of school.

(2) The notice must include, but is not be limited to, the following:

(a) Definitions of "eligible student," "eligible post-secondary institution," and "eligible post-secondary course;"

(b) Purposes of the Expanded Options Program;

(c) Financial arrangements for tuition, textbooks, equipment and materials;

(d) Available transportation services;

(e) Effects of enrolling in the Expanded Options Program on the eligible student's ability to complete the required high school graduation requirements;

(f) Consequences of not maintaining satisfactory academic progress as defined by the eligible post-secondary institution, such as by failing or not completing an eligible post-secondary course;

(g) Participation in the Expanded Options Program is contingent on acceptance by an eligible post-secondary institution;

(h) Eligible students may not enroll in eligible post-secondary courses for more than the equivalent of two academic years, and eligible students who first enroll in grade 12 may not enroll in eligible post-secondary courses for more than the equivalent of one academic year;

(i) A student who has graduated from high school may not participate in the Expanded Options Program;

(j) An eligible student who has completed course requirements for graduation but has not received a diploma may participate;

(k) Notice(s) of any other program(s), agreement(s) or plan(s) in effect that provide access for public high school students to post-secondary courses;

(l) The district's responsibility for providing any required special education and related services to the student;

(m) The number of quarter credit hours that may be awarded each school year to eligible students by the resident high school;

(n) The district board's process for selecting eligible students to participate in the Expanded Options Program if the school district has not chosen to exceed the credit hour cap and has more eligible students who wish to participate than are allowed by the cap;

(o) Information about program participation priority for at-risk students;

(p) Exclusion of duplicate courses as determined by the resident school district;

(q) The process for a student to appeal the district's duplicate course determination to the Superintendent of Public Instruction or the Superintendent's designee;

(r) Exclusion of post-secondary courses in which a student is enrolled if the student is also enrolled full time in the resident secondary school; and

(s) Exclusion of foreign exchange students enrolled in a school under a cultural exchange program.

Stat. Auth.: ORS 340.574

Stats. Implemented: ORS 340.574

Hist.: ODE 12-2006, f. & cert. ef. 5-24-06

581-022-1366

Expanded Options — Annual Credit Hour Cap

(1) The number of quarter credit hours that may be awarded by a high school under the Expanded Options Program is limited to an amount equal to the number of students in grades 9 through 12 enrolled in the high school multiplied by a factor of 0.33. For example, the cap for a high school with 450 students in grades 9 through 12 would be 148.5 ($450 \times 0.33 = 148.5$).

(2) For districts with more than one high school, the caps must be established separately for each high school.

(3) School districts may choose to exceed both the individual high school level cap(s) and the aggregate district level cap established under this rule.

(4) School districts choosing not to exceed the cap(s) established under this rule are required to establish a process for selecting eligible students for participation in the program. The process must give priority for participation to students who are "at risk" as defined in OAR 581-022-1363 Expanded Options — Definitions.

Stat. Auth.: ORS 340.574

Stats. Implemented: ORS 340.574

Hist.: ODE 12-2006, f. & cert. ef. 5-24-06

581-022-1367

Expanded Options — Responsibilities of Eligible Students

Each eligible student shall:

(1) Maintain satisfactory academic progress as defined by the eligible post-secondary institution.

(2) By March 1 of each year, notify the resident school district of intent to enroll in eligible post-secondary courses during the following school year.

(3) In cooperation with an advisory support team (may include the student, student's parent or guardian and a teacher or a counselor), develop an educational learning plan consistent with OAR 581-022-1130, Section (3) Diploma Requirements, which may include:

(a) Short-term and long-term learning goals and proposed activities,

(b) Relationship of the eligible post-secondary courses proposed under the Expanded Options Program and the student's learning goals.

(4) Acknowledge that participation in the Expanded Options Program is contingent on acceptance by an eligible post-secondary institution.

(5) Provide the school district with authorization to obtain a copy of grades in from each post-secondary institution for each eligible post-secondary course taken for credit or non credit that may lead to high school completion, a certificate, professional certification, associate degree or baccalaureate degree under the Expanded Options Program.

(6) Acknowledge that all textbooks, fees, equipment and materials provided and paid for under Expanded Options Program are the property of the resident school district.

(7) Be ineligible for any state student financial aid under ORS 348.040 to 348.280 and 348.505 to 348.695.

(8) Not enroll for more than the equivalent of two academic years.

(a) If first enrolled in grade 12, may not enroll in post-secondary courses for more than the equivalent of one academic year.

(b) If first enrolled in the middle of the school year, the time of participation shall be reduced proportionately.

(c) If enrolled in a year-round program and begins each grade in the summer session, summer sessions are not counted against the time of participation. Each eligible student may:

(9) Apply to an eligible post-secondary institution to enroll in eligible post-secondary courses offered by the eligible post-secondary institution.

(10) Apply to the resident school district for reimbursement for any textbooks, fees, equipment or materials purchased by the student that are required for an eligible post-secondary course.

(11) Appeal to the Superintendent of Public Instruction or the superintendent's designee a duplicate course designation by the resident school district.

(a) The superintendent or the superintendent's designee shall issue a decision on the appeal within 30 days of receipt of the appeal.

(b) If the superintendent or the superintendent's designee fails to issue a decision within 30 days of receipt of the appeal, the course shall be deemed to not be a duplicate course.

(A) The student may then enroll in the course under the Expanded Options Program, if the course and the student meet all other eligibility requirements.

Stat. Auth.: ORS 340.574

Stats. Implemented: ORS 340.574

Hist.: ODE 12-2006, f. & cert. ef. 5-24-06

581-022-1368

Expanded Options — State School Fund, Expenditures, Request for Waiver

(1) An eligible student enrolled in an eligible post-secondary course at an eligible post-secondary institution shall continue to be considered a resident pupil of the student's school district for purposes

of calculation of the State School Fund grant under ORS 327.006 to 327.133 and 327.731.

(2) A school district shall negotiate a financial agreement with any eligible post-secondary institution that accepts a student for enrollment in an eligible post-secondary course for the payment of actual tuition, fees and other required instructional costs associated with the enrollment of the student in eligible post-secondary courses.

(3) In addition to any financial agreement entered into under Section (2), the resident school district of the eligible student shall enter into an agreement with an eligible post-secondary institution that accepts a student for enrollment in an eligible post-secondary course that is a nontuition course or noncredit course for the payment of the actual instructional costs associated with the student's attending the eligible post-secondary course at the institution.

(4) The amount of each school district's general purpose grant per extended ADMw as calculated under ORS 327.013 shall be determined each fiscal year by the Department of Education and made available to all school districts and, upon request, to any eligible post-secondary institution.

(5) Each fiscal year, a school district shall expend per student participating in the Expanded Options Program a minimum of 50 percent of the school district's general purpose grant per extended ADMw. Expenditures that qualify under this paragraph include amounts expended on tuition, fees, textbooks, equipment and materials required for an eligible post-secondary course.

(6) A school district may request a waiver from the Superintendent of Public Instruction or the superintendent's designee of the requirements of Section (5) of this rule. The superintendent or the superintendent's designee shall grant the waiver if:

(a) Compliance with the requirements of Section (5) would cause the school district extreme financial distress; or

(b) The school district offers dual credit technical preparation programs, such as two-plus-two programs, advanced placement or International Baccalaureate programs and other accelerated college credit programs, and:

(A) The programs offered by the school district serve all qualified applicants of existing programs; and

(B) There are no charges to at-risk students.

(7) Nothing in this section shall prohibit an eligible post-secondary institution from receiving additional state funding that may be available under any other law.

Stat. Auth.: ORS 340.574

Stats. Implemented: ORS 340.574

Hist.: ODE 12-2006, f. & cert. ef. 5-24-06

581-022-1369

Expanded Options — Report to Legislative Committees and Joint Boards

The Department of Education shall annually report on the Expanded Options Program to the Joint Boards of Education and the House and Senate committees relating to education. The report shall include:

(1) Types of accelerated college credit programs offered;

(2) Number of high school credits earned under the Expanded Options Program;

(3) Number of college credits earned under the Expanded Options Program;

(4) Estimated college tuition cost savings for participating students;

(5) Number of students who had dropped out of high school but returned to high school to participate in the Expanded Options Program and earned a diploma;

(6) Number of participating students categorized by ethnicity and financial status;

(7) Number of participating talented and gifted students;

(8) The level of participation in the Expanded Options Program by rural communities;

(9) The number of students living in rural communities who participated in the Expanded Options Program;

(10) Number of appeals of students regarding duplicate course designation to the Superintendent of Public Instruction or the superintendent's designee and the disposition of the students' appeals;

(11) Number of small school districts with more eligible students who wish to participate than are allowed under the respective credit

hour caps established in OAR 581-022-1366 (1361), Expanded Options Annual Credit Hour Cap;

(12) Number of waivers of requirements granted under the provisions of OAR 581-022-1368, Expanded Options State School Fund, Expenditures, Request for Waiver, and the reasons for issuance of the waivers;

(13) Recommendations for changes to the Expanded Options Program to better serve students, including changes to the age limit restrictions for eligible students;

(14) Recommendations for funding changes to better serve students who wish to participate in the Expanded Options Program.

Stat. Auth.: ORS 340.574

Stats. Implemented: ORS 340.574

Hist.: ODE 12-2006, f. & cert. ef. 5-24-06

581-022-1370

Expanded Options — Alternative Programs

(1) Notwithstanding ORS Chapter 340, any program, agreement or plan in effect on January 1, 2006, that provides access for public high school students to a post-secondary course is not affected by this chapter and may be continued or renewed at the discretion of the parties to the program, agreement or plan.

(2) Any new program, agreement or plan that is developed after January 1, 2006, and that is intended to provide access for public high school students to a post-secondary course may be initiated at the discretion of a school district and a post-secondary institution.

Stat. Auth.: ORS 340.574

Stats. Implemented: ORS 340.574

Hist.: ODE 12-2006, f. & cert. ef. 5-24-06

581-022-1420

Emergency Plans and Safety Programs

The school district shall maintain a comprehensive safety program for all employees and students which shall:

(1) Include plans for responding to emergency situations.

(2) Specify general safety and accident prevention procedures with specific instruction for each type of classroom and laboratory.

(3) Provide instruction in basic emergency procedures for each laboratory, shop and studio, including identification of common physical, chemical, and electrical hazards.

(4) Require necessary safety devices and instruction for their use.

(5) Require that an accident prevention inservice program for all employees be conducted periodically and documented.

(6) Provide assurance that each student has received appropriate safety instruction.

(7) Provide for regularly scheduled and documented safety inspections which will assure that facilities and programs are maintained and operated in a manner which protects the safety of all students and employees.

(8) Require reports of accidents involving school district property, or involving employees, students or visiting public, as well as prompt investigation of all accidents, application of appropriate corrective measures, and monthly and annual analyses of accident data and trends.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 336.071

Hist.: EB 18-1996, f. & cert. ef. 11-1-96

581-022-1430

Asbestos Management Plans

(1) The statutory authority for this rule is the Asbestos Hazard Emergency Response Act of 1986 as amended by Public Law 100.368 and subsequent rule published in the Friday, October 30, 1987, Federal Register (40 CFR Part 763).

(2) Any public and private school that acquires or leases a school building after October 12, 1988 shall submit an Asbestos Management Plan to the Department of Education prior to occupancy.

(3) The Management Plan shall include all the elements contained in 40 CFR §763.93(e).

(4) General local education agency responsibilities (as stated in 40 CFR §763.84). Each local education agency shall:

(a) Ensure that the activities of any persons who perform inspections, reinspections, and periodic surveillance, develop and update management plans, and develop and implement response actions, including operations and maintenance, are carried out in accordance with Subpart E (40 CFR 763);

(b) Ensure that all custodial and maintenance employees are properly trained as required by Subpart E (40 CFR 763) and other applicable federal and/or state regulations (e.g., the Occupational Safety and Health Administration asbestos standard for construction, the EPA worker protection rule);

(c) Ensure that workers and building occupants, or their legal guardians, are informed at least once each school year about inspections, response actions, and post-response action activities, including periodic reinspection and surveillance activities that are planned or in progress; or

(d) Ensure that short-term workers (e.g., telephone repair workers, utility workers, or exterminators) who may come in contact with asbestos in a school are provided information regarding the locations of Asbestos Containing Building Material (ACBM) and suspected ACBM assumed to be Asbestos Containing Material (ACM);

(e) Ensure that warning labels are posted in accordance with §763.95;

(f) Ensure that management plans are available for inspection and notification of such availability has been provided as specified in the management plan under §763.93(g);

(g)(A) Designate a person to ensure that requirements of this section are properly implemented; and

(B) Ensure that the designated person receives adequate training to perform duties assigned under this section. Such training shall provide, as necessary, basic knowledge of:

- (i) Health effects of asbestos;
- (ii) Detection, identification, and assessment of ACM;
- (iii) Options of controlling ACBM;
- (iv) Asbestos management programs;

(v) Relevant federal and state regulations concerning asbestos, including those in Subpart E (40 CFR 763) and those of the Occupational Safety and Health Administration, U. S. Department of Labor, the U. S. Department of Transportation and the U. S. Environmental Protection Agency.

(h) Consider whether any conflict of interest may arise from the interrelationships among accredited personnel and whether that should influence the selection of accredited personnel to perform activities under this subpart.

Stat. Auth.: ORS 363 & PL 100.368
Stats. Implemented: 40 CFR Part 763
Hist.: EB 18-1996, f. & cert. ef. 11-1-96

581-022-1440

Infectious Diseases Including Acquired Immune Deficiency Syndrome (AIDS), Human Immunodeficiency Virus (HIV), and Hepatitis B and C

(1) Each school district shall teach an age-appropriate plan of instruction focusing on infectious diseases, including Acquired Immune Deficiency Syndrome (AIDS), Human Immunodeficiency Virus (HIV), and Hepatitis B and C as an integral part of the health education and other subjects, throughout its elementary, middle, and senior grade levels. In addition, the plan shall provide for instruction, at least annually, for all students grades 6–12 on AIDS, HIV, and Hepatitis B and C.

(a) The plan of instruction required by this rule shall be developed cooperatively by parents, teachers, school administrators, local health department staff, other community representatives, and persons from the medical community who are knowledgeable of the latest scientific information and effective education strategies.

(b) Local school boards shall approve the plan of instruction and require that it be reviewed and updated biennially in accordance with new scientific information and effective education strategies.

(c) Any parent may request that his/her child be excused from the portion of the instructional program required by this rule under the procedures set forth in ORS 336.052(2) or OAR 581-022-0415.

(2) The plan of instruction shall include information and skills-based teaching strategies:

(a) That promotes abstinence for school-age youth and mutually monogamous relationships for adults as the safest and mostly responsible sexual behaviors;

(b) That is designed to allay those fears concerning HIV that are scientifically groundless;

(c) About contraceptive and other disease reduction measures that reduce the risk of exposure to HIV, Hepatitis B and C and other sexually transmitted infections;

(d) About responsible sexual behaviors that may reduce or eliminate exposure to HIV, Hepatitis B and C and other sexually transmitted infections;

(e) About the high risks of contracting HIV, Hepatitis B and C and other infectious diseases through sharing of needles or syringes for injecting drugs including steroids, for tattooing, and body-piercing; and

(f) Is culturally and gender sensitive.

(3) Each school district shall designate a staff person as the district infectious disease/HIV prevention contact person to facilitate communication between the Mental Health and Addiction Services, Department of Human Services, Health Services, Oregon Department of Education, and district teaching staff regarding up-to-date information, staff development needs, effective educational strategies and other opportunities.

Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 336.455
Hist.: EB 18-1996, f. & cert. ef. 11-1-96; EB 2-1997, f. & cert. ef. 3-27-97; ODE 25-2002, f. & cert. ef. 11-15-02

581-022-1510

Guidance and Counseling

(1) District Guidance and Counseling. Each school district shall provide a coordinated guidance and counseling program to support the educational and career development of students. The district shall:

(a) Adopt guidance and counseling program goals which assist students to:

- (A) Develop decision-making skills;
- (B) Obtain information about self;
- (C) Understand the educational opportunities and alternatives available to them;
- (D) Establish tentative career and educational goals;
- (E) Accept increasing responsibility for their own actions;
- (F) Develop skills in interpersonal relations; and
- (G) Utilize school and community resources.

(b) Specify instructional, guidance and counseling activities for the achievement of the goals;

(c) Assign guidance and counseling responsibilities to each school and to the appropriate personnel; and

(d) Evaluate guidance and counseling programs for all grades.

(2) School Guidance and Counseling. Each school shall provide a guidance and counseling program which:

(a) Specifies goals including those assigned to the school district program;

(b) Identifies staff responsibilities and instructional, guidance and counseling activities to achieve guidance program goals;

(c) Identifies each student's guidance and counseling needs;

(d) Assists each student to develop an educational plan in grades 9–12 which identifies a tentative career goal and reviews the student's progress at least annually; and

(e) Assigns each student to a certificated staff member for individual support and advice.

(3) Guidance Staff Assignments. Each school district shall maintain a guidance staff which promotes effective guidance practices consistent with the district's expected guidance program outcomes. In determining staffing for the program, the following shall be considered:

(a) The number of students assigned to a certificated counselor;

(b) The number of aides or clerical staff assigned to the guidance program; and

(c) The extent to which the staffing pattern varies from general statewide practices.

Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 326.051
Hist.: EB 18-1996, f. & cert. ef. 11-1-96

581-022-1520

Media Programs

(1) School District Media Services: The school district shall provide a coordinated media program. The district shall:

(a) Adopt Program goals for:

(A) Media instruction for all grade levels; and

(B) Support services.

(b) Provide appropriate instructional facilities, materials, equipment, and services which support the school district, program and course goals;

(c) Assign responsibilities to certificated media specialists and other personnel for the development, implementation, maintenance, and supervision of media services;

(d) Organize media services and materials required for the achievement of district and building media program goals; and

(e) Evaluate district and school media programs.

(2) School Media Services: The school district shall provide in each school a media program consistent with district, program and course goals which:

(a) Provides an organized media center with materials, equipment and services supervised by appropriate certificated personnel;

(b) Identifies instructional activities designed to achieve media skills goals; and

(c) Includes instruction that addresses the ability of each student to:

(A) Locate and retrieve organized print and nonprint media;

(B) Use media to record and express ideas and knowledge; and

(C) Listen to, view, interpret and analyze media materials.

(3) In determining whether the assignment of certificated media and other staff is appropriate, the following shall be considered:

(a) The district, program and course goals of the media services program;

(b) The number of schools, students and staff to be served;

(c) The access students and staff have to media services defined in the media program;

(d) The number, certification and training of personnel assigned to media program responsibilities including specialists, teachers and aides;

(e) The extent to which staffing patterns vary from general statewide practice; and

(f) The extent to which the media program enables students to attain instructional goals.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 326.051

Hist.: EB 18-1996, f. & cert. ef. 11-1-96

581-022-1530

Auxiliary Services

(1) Pupil Transportation Services: Pupil transportation provided by the school district shall comply with all applicable Oregon Revised Statutes and Oregon Administrative Rules.

(2) School Food Services: A school district operating a reimbursed student food service program shall comply with State Board of Education and State Health Division rules.

(3) Custodial Services: The school district shall maintain buildings and grounds to provide conditions conducive to health and safety of all persons and in accordance with all applicable Oregon Revised Statutes and Oregon Administrative Rules.

(4) Facilities: The school district shall provide physical facilities which are appropriate to instructional and support program activities.

(5) Equipment and Materials: The school district shall provide furniture, equipment and materials appropriate to instructional and support program activities.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 326.051

Hist.: EB 18-1996, f. & cert. ef. 11-1-96

581-022-1610

Operating Policies and Procedures

The school district shall:

(1) Keep copies of operating policies, procedures and rules adopted pursuant to ORS 332.107, and shall make such information available upon request.

(2) Use a process of management planning in the areas of staffing, instruction, facility maintenance and construction.

(3) Maintain and make available upon request evidence of compliance with the standards.

(4) By January 15 of each school year, report to the community the district's status in relation to the state standards.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 326.051

Hist.: EB 18-1996, f. & cert. ef. 11-1-96

581-022-1620

Required Instructional Time

(1) Each school district shall annually adopt and implement a school calendar which provides its students at each grade level with the following minimum number of instructional hours:

(a) Grades 9–12 — 990 hours;

(b) Grades 4–8 — 900 hours;

(c) Grades 1–3 — 810 hours;

(d) Grade K — 405 hours;

(e) A district unable to meet minimums for a particular grade level, e.g., when Grade 9 is part of a 7–9 configuration, should utilize the request for a waiver process set forth in OAR 581-022-0802.

(2) There shall be no fewer than 265 consecutive calendar days between the first and last instructional day of each school year at each grade level.

(3) No student shall be required to exceed the following number of instructional hours per day:

(a) Grades 9–12 — 7 hours;

(b) Grades 4–8 — 6.5 hours;

(c) Grades K–3 — 6 hours.

(4) School assemblies, student orientations, testing, parent-teacher conferences, and other instructionally related activities involving students directly may be included in the required instructional hours. However, transportation to and from school, passing times between classes, noninstructional recess and lunch periods shall not be included. Passing time is defined as those minutes between segments of the program that are apparent in the school's daily schedule.

(5) When approved by a local school board, annual instructional hour requirements stated in section (1) of this rule may be reduced as follows:

(a) Up to a total of 30 hours to accommodate staff development activities, pupil transportation schedules, or other local program scheduling arrangements;

(b) Up to a total of 14 hours of emergency school closures due to adverse weather conditions and facility failures.

(6) Student and staff activities related to the opening and closing of the school year, grade reporting, program planning, staff meetings, and other classroom and building management activities shall not be counted as instructional time or in the reductions provided for in subsection (5)(a) of this rule.

(7) For multiple shift programs, this rule applies to each shift (i.e., each student must have access to the minimum annual required hours of instruction).

(8) The instructional time requirement for twelfth-grade students may be reduced by action of a local school board for an amount of time not to exceed 30 hours of instructional time.

Stat. Auth.: ORS 326.011 & 326.051

Stats. Implemented: ORS 326.051

Hist.: EB 18-1996, f. & cert. ef. 11-1-96

581-022-1630

Daily Class Size

(1) The school district shall maintain class sizes and teacher assignments which promote effective practices consistent with the outcomes expected of each instructional program.

(2) In determining class sizes the following shall be considered:

(a) The teacher-student ratio of each class;

(b) The total number of students assigned per teacher;

(c) The number of subject preparations or grades per teacher;

(d) The support staff available to each teacher;

(e) The nature of the subjects taught in relation to each teacher's professional preparation;

(f) The appropriateness of instructional facilities and equipment;

(g) The course goals applicable to the particular class; and

(h) The extent to which class size varies from general statewide practice.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 326.051

Hist.: EB 18-1996, f. & cert. ef. 11-1-96

581-022-1640

Instructional Materials

For each program and course in grades K–12, each school district, on a cycle established by the State Board of Education, shall select and provide students with free appropriate instructional and

resource materials. The school district process for selecting and adopting instructional materials shall include opportunities for citizen and parent involvement. These materials shall contribute to the attainment of district, program, and course or grade level goals and reflect recent knowledge, trends, and technology in the field. Sufficient quantities shall be available to accommodate the number of students who will be using them at any one time.

Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 337.150
Hist.: EB 18-1996, f. & cert. ef. 11-1-96; ODE 11-1998, f. & cert. ef. 6-23-98

581-022-1650

Postponement of Purchase of State-Adopted Instructional Materials

If a district seeks to postpone regular purchase of state-adopted materials as required by ORS 337.120, it shall submit an application to the Department which shall include:

- (1) The reason for seeking postponement;
- (2) The subjects or categories for which postponement is sought;
- (3) The projected dates for purchase and implementation of new instructional materials which shall not be later than one year from the beginning of the school year following the state adoption;
- (4) Identification of the instructional materials to be used during the postponement;
- (5) Assurance that the postponement will not delay future purchases in other subject areas; and
- (6) Local school board approval of the application and the date of such approval.

Stat. Auth.: ORS 337.120
Stats. Implemented: ORS 337.120
Hist.: EB 18-1996, f. & cert. ef. 11-1-96

581-022-1660

Records and Reports

(1) Required Records and Reports: The school district shall provide all records and reports required by the Oregon Department of Education.

(2) Student Activity Funds: The school district shall prescribe the purposes for which student activity funds may be obtained and used and the role of students in management and expenditure of funds.

(3) Education Records of Students: The school district shall maintain education records of students according to the provisions of OARs 581-021-0210 through 581-021-0440.

(4) ESD Annual Report: Pursuant to the requirements and review schedule as set out in OAR 581-024-0228 and ORS 334.125 (9), all school districts shall cooperate with their education service district in:

- (a) Annually reviewing specific school district operations for purposes of achieving economies and efficiencies; and
- (b) Preparing and submitting an annual report concerning the results of the annual review to the State Board of Education.

Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 334.125(9)
Hist.: EB 18-1996, f. & cert. ef. 11-1-96; ODE 3-1999, f. & cert. ef. 1-12-99

581-022-1670

Individual Student Assessment, Recordkeeping, and Reporting

Each district shall:

(1) Assess and record each student's progress in all subject areas of instruction, including the Common Curriculum Goals:

- (a) Instruments and/or strategies used to determine student progress may assess multiple goals;
- (b) Results from the assessment instruments and/or strategies may be used as a record of achievement level; and
- (c) Records of student performance may be kept in teacher grade books, student folders, portfolios, or similar devices.

(2) Assist teachers in adapting instruction and curriculum to meet the needs and learning rates of all students in attaining the goals of the subject area.

(3) Annually report progress towards completion of graduation requirements to parents of students in grades 9–12.

(4) Report at least annually on student progress in each subject area of instruction to parents or guardians of all students in grades K-12 including, but not limited to, the following:

- (a) Information on progress in each subject area (e.g., grades, checklists, folders, etc.) including major goals used to determine such information;

(b) Upon request from a parent or guardian, specific evidence of student progress on the goals of a subject area and

(c) Student scores on all state and local assessments required under OAR 581-022-1110 and 581-022-1120, indicating any of the requirements that have been waived for the school district or the individual and the time periods for the waiver.

(5) Maintain student records under the student's legal name or establish a cross-reference system to locate the student's records by use of the student's legal name.

Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 326.051
Hist.: EB 18-1996, f. & cert. ef. 11-1-96; ODE 18-2002, f. & cert. ef. 6-10-02

581-022-1680

Interscholastic Activity Organizations

A school district shall allow only those organizations to administer interscholastic activities within the district which have been approved by the State Board of Education under procedures of OAR 581-021-0034.

Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 326.051 & 339.430
Hist.: EB 18-1996, f. & cert. ef. 11-1-96

581-022-1710

Personnel

(1) Teachers, specialists, and administrators must hold valid Oregon certificates and be assigned in accordance with the individual certificate, district policies, program goals and applicable statutes and administrative rules.

(2) Any school district employing teacher aides shall follow applicable Oregon Administrative Rules.

Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 326.051
Hist.: EB 18-1996, f. & cert. ef. 11-1-96

581-022-1720

Personnel Policies

(1) The school district shall adopt and implement personnel policies which address:

- (a) Affirmative action;
- (b) Staff development;
- (c) Equal employment opportunity;
- (d) Evaluation procedures; and
- (e) Employee communication system.

(2) The evaluation procedures required in section (1) of this rule shall include:

(a) Job descriptions, and performance standards which include but are not limited to items stated in the job descriptions;

(b) A preevaluation interview which includes but is not limited to the establishment of performance goals for the teacher, based on the job description and performance standards;

(c) An evaluation based on written criteria which include the performance goals; and

(d) A post-evaluation interview in which:

(A) The results of the evaluation are discussed with the teacher; and

(B) A written program of assistance for improvement is established, if one is needed to remedy the problem.

(3) Personnel policies shall be accessible to any school employee and notice of their availability to the general public shall be published:

(a) A current copy shall be accessible in each school office and library; and

(b) Any organization which represents employees of the district shall be furnished a copy and revisions as they are made.

(4) Bonded Employees: All employees responsible for funds, fees or cash collections shall be bonded in compliance with Oregon Revised Statutes and Oregon Administrative Rules.

(5) Employees for whom a teaching certificate is not required: The school district shall give to each such employee an individual written notice of reasonable assurance of continued employment as required by ORS 332.554.

Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 326.051
Hist.: EB 18-1996, f. & cert. ef. 11-1-96

581-022-1730**Fingerprinting of Subject Individuals in Positions Not Requiring Licensure as Teachers, Administrators, Personnel Specialists, School Nurses**

(1) Definitions of terms shall be as follows:

(a) "Subject individual" means:

(A) Any person newly hired after December 31, 1993 by a school district or an education service district into a position having direct, unsupervised contact with students and not requiring licensure under either ORS 342.120 to 342.200 or 342.455;

(B) Any person newly hired after December 31, 1993 as or by a contractor into a position having direct, unsupervised contact with students and not requiring licensure under either ORS 342.120 to 342.200 or 342.455;

(C) Any person included above unless the current employer has on file evidence from a previous employer documenting a successfully completed Oregon and FBI criminal records check. The Oregon Department of Education or the Teacher Standards and Practices Commission verification of a previous check shall be acceptable only in the event the employer can demonstrate records are not otherwise available. Additional evidence that the employee has not resided outside the state between the two periods of time working in the district shall be maintained;

(D) An individual currently employed by a school district either part time or full time, which, has direct, unsupervised contact with children.

(b) "Direct, unsupervised contact with students" means contact with students that provides the person opportunity and probability for personal communication or touch when not under direct supervision;

(c) "Fee" means the total charges assessed the local school district's State School Fund by the Department of Education for processing each fingerprint card submitted. The fee amount and distribution shall be as follows:

(A) Oregon State Police (OSP) — \$28;

(B) Federal Bureau of Investigation (FBI) — \$24;

(C) Oregon Department of Education — \$10;

(D) TOTAL — \$62.

(d) "Information to be required" means all information requested by the Oregon Department of Education for processing the fingerprint application, including the following:

(A) One properly completed FBI fingerprint cards #USGPO 1990-262-201-2000; and

(B) A properly completed Department of Education form #581-2283.

(e) For purposes of criminal background checks pursuant to ORS 326.603 and 326.607, conducted in relation to individuals subject to such criminal background verification, the following definitions of "conviction" of a crime applies:

(A) Any adjudication in any criminal court of law, in this state or in any other jurisdiction, finding the individual committed a crime. A crime is an offense for which a sentence of imprisonment is authorized.

(B) Any adjudication in a juvenile proceeding, in this state or in any other jurisdiction, determining that the individual committed an offense, which if done by an adult, would constitute a crime listed in ORS 342.143.

(C) Any conduct which resulted in mandatory registration reporting as a sex offender in this state or any other jurisdiction. A later court order or other action relieving the individual of the sex offender registration/reporting requirement does not effect the status of the conduct as a conviction for purposes of this rule.

(D) Any plea of guilty, no contest or nolo contendere in connection with a crime, in this state or in any other jurisdiction.

(E) A conviction exists for purposes of this rule, regardless of whether a dismissal was later entered into the record in connection with a diversion or on any sort of deferred adjudication or delayed entry of judgment.

(F) A conviction exists for purposes of this rule even if a crime was expunged or removed from the record of the individual under the laws of another jurisdiction if the crime would be ineligible under ORS 137.225 for expunction or removal from the record if the conviction had occurred in Oregon. A conviction does not exist where an Oregon court has expunged or otherwise removed a conviction from the record of an individual.

(G) A conviction does not exist, except as noted above, only where there was a judicial adjudication that the individual did not commit the offense in question, or when a conviction, adjudication or plea is overturned by an appellate court of record and no later conviction, adjudication or plea indicating the individual committed the offense in question is on the record.

(H) This rule is expressly made retroactive to June 1, 2002.

(f) "Applicant" means a subject individual for whom fingerprint cards and other required information have been submitted to the Oregon Department of Education for a criminal history check and review;

(g) "Newly hired" means the employment of a person after application or request for a position having direct, unsupervised contact with students without regard to that person's current or previous employer; and

(h) "School district" means a taxing district providing public elementary or secondary education, or any combination thereof, within the state; an education service district; the Oregon School for the Blind; the Oregon School for the Deaf; and an educational program under the Juvenile Corrections Education Program.

(2) School districts and education service districts shall adopt and implement local board policy related to fingerprint collection and processing which shall:

(a) Specify the criteria for determining which staff positions will warrant consideration for subject individuals as defined in this rule. The local districts shall publish a list of those positions affected;

(b) Specify the format used to notify subject individuals that fingerprinting and criminal record checks are required by law and that any action resulting from those checks may be appealed as a contested case;

(c) Provide a clear statement of district response to notification by the Superintendent of Public Instruction or the State Board of Education regarding persons who have either been convicted, or have made a false statement as to the conviction of any of the crimes prohibiting employment that are listed in section (9) of this rule;

(d) Specify that subject individuals may begin to carry out terms of a contract or employment on a probationary basis pending the return of criminal record checks by the FBI;

(e) Identify that employment shall be offered prior to collecting fingerprint cards for submission to the Department of Education and that fees may be collected from the applicant. The applicant may request that the amount of the fee be withheld from the amount otherwise due the individual, and the school district shall withhold the amount only upon the request of the subject individual; and

(f) Identify a procedure that ensures the integrity of fingerprint collection and will prevent any possible compromise of the process.

(3) Fingerprints may be collected by one of the following:

(a) Employing school district staff;

(b) Contracted agent of employing school district;

(c) Local or state law enforcement agency.

(4) School districts and education service districts shall send to the Department of Education for purposes of a criminal records check any information, including fingerprints for each subject individual defined in this rule:

(a) Immediately following offer and acceptance of employment or contract;

(b) Subject individuals described in section (1)(a)(D) of this rule whose birth month is January, February, or March shall submit by January 1, 1997;

(c) Subject individuals described in section (1)(a)(D) of this rule whose birth month is April, May, or June shall submit by January 1, 1998;

(d) Subject individuals described in section (1)(a)(D) of this rule whose birth month is July, August, or September shall submit by January 1, 1999; and

(e) Subject individuals described in section (1)(a)(D) of this rule whose birth month is October, November, or December shall submit by January 1, 2000.

(5) The Department of Education shall request criminal information from the Department of State Police in the manner prescribed by law and may charge the school district a fee not to exceed the actual cost of acquiring and furnishing the information.

(6) The Oregon Department of Education shall review the criminal records of subject individual upon the district's submission of the required FBI and state forms and the State Superintendent of Public

Instruction or designee shall issue a statement of criminal history status and related impact on employment or contract qualification. The Superintendent of Public Instruction or designee shall also notify the school district if the subject individual has made a false statement as to conviction of a crime.

(7) The Oregon Department of Education shall not provide copies of criminal records to anyone except as provided by law. The subject individual may inspect his or her personal criminal records under the supervision of properly certified LEDS (Law Enforcement Data Systems) personnel at the Department of Education.

(8) Subject individuals who refuse to consent to the criminal records check or refuse to be fingerprinted shall be terminated from employment or contract status by the district.

(9) Subject individuals who have been convicted of any of the crimes listed in ORS 342.143, or the substantial equivalent of any of those crimes if the conviction occurred in another jurisdiction or in Oregon under a different statutory name or number, or have made a false statement as to the conviction of a crime, shall be refused continued employment or have employment terminated upon notification from the Superintendent of Public Instruction. The crimes listed in ORS 342.143 (1995 Replacement Part) are:

- (a) ORS 163.095 — Aggravated Murder;
- (b) ORS 163.115 — Murder;
- (c) ORS 163.185 — Assault in the First Degree;
- (d) ORS 163.235 — Kidnapping in the First Degree;
- (e) ORS 163.355 — Rape in the Third Degree;
- (f) ORS 163.365 — Rape in the Second Degree;
- (g) ORS 163.375 — Rape in the First Degree;
- (h) ORS 163.385 — Sodomy in the Third Degree;
- (i) ORS 163.395 — Sodomy in the Second Degree;
- (j) ORS 163.405 — Sodomy in the First Degree;
- (k) ORS 163.408 — Unlawful Sexual Penetration in the Second Degree;
- (l) ORS 163.411 — Unlawful Sexual Penetration in the First Degree;
- (m) ORS 163.415 — Sexual Abuse in the Third Degree;
- (n) ORS 163.425 — Sexual Abuse in the Second Degree;
- (o) ORS 163.427 — Sexual Abuse in the First Degree;
- (p) ORS 163.435 — Contributing to the Sexual Delinquency of a Minor;
- (q) ORS 163.445 — Sexual Misconduct;
- (r) ORS 163.465 — Public Indecency;
- (s) ORS 163.515 — Bigamy;
- (t) ORS 163.525 — Incest;
- (u) ORS 163.547 — Child Neglect in the First Degree;
- (v) ORS 163.575 — Endangering the Welfare of a Minor;
- (w) ORS 163.670 — Using Child in Display of Sexually Explicit Conduct;
- (x) ORS 163.675 — Sale of Exhibition of Visual Reproduction of Sexual Conduct by Child;
- (y) ORS 163.680 — Paying for Viewing Sexual Conduct Involving a Child;
- (z) ORS 163.684 — Encouraging Child Sex Abuse in the First Degree;
- (aa) ORS 163.686 — Encouraging Child Sex Abuse in the Second Degree;
- (bb) ORS 163.687 — Encouraging Child Sex Abuse in the Third Degree;
- (cc) ORS 163.688 — Possession of Materials Depicting Sexually Explicit Conduct of a Child in the First Degree;
- (dd) ORS 163.689 — Possession of Materials Depicting Sexually Explicit Conduct of a Child in the Second Degree;
- (ee) ORS 164.325 — Arson in the First Degree;
- (ff) ORS 164.415 — Robbery in the First Degree;
- (gg) ORS 166.005 — Treason;
- (hh) ORS 166.087 — Abuse of Corpse in the First Degree;
- (ii) ORS 167.007 — Prostitution;
- (jj) ORS 167.012 — Promoting Prostitution;
- (kk) ORS 167.017 — Compelling Prostitution;
- (ll) ORS 167.062 — Sadomasochistic Abuse or Sexual Conduct in Live Show;
- (mm) ORS 167.065 — Furnishing Obscene Materials to Minors;
- (nn) ORS 167.070 — Sending Obscene Materials to Minors;

(oo) ORS 167.075 — Exhibiting an Obscene Performance to a Minor;

(pp) ORS 167.080 — Displaying Obscene Materials to Minors;

(qq) ORS 167.087 — Disseminating Obscene Materials;

(rr) ORS 167.090 — Publicly Displaying Nudity or Sex for Advertising Purposes;

(ss) ORS 475.995 — Distribution of Controlled Substance to Minors;

(tt) ORS 475.999 — Manufacture or Delivery of controlled Substance to Minor or Student Within 1,000 Feet of School.

(10) Subject individuals who have been convicted of any of the crimes listed in ORS 161.405 of an attempt to commit any of the crimes listed in section (9) of this rule shall be refused continued employment or have employment terminated upon notification from the Superintendent of Public Instruction.

(11) Evaluations of crimes shall be based on Oregon laws in effect at the time of conviction, regardless of the jurisdiction in which the conviction occurred.

(12) Prior to making a determination that results in a notice and opportunity for hearing, the Superintendent of Public Instruction may cause an investigation to be undertaken. Subject individuals and districts shall cooperate with the investigation and may be required to furnish oral or written statements by affidavit or under oath. If the Superintendent of Public Instruction determines through investigation that a violation of this rule has not occurred, a written decision explaining the basis for the decision will be provided to the subject individual.

(13) Applicants may appeal a determination that prevents their employment or eligibility to contract with a school district as a contested case under ORS 183.413 to 183.470 to the Oregon Superintendent of Public Instruction.

(14) Contested case appeals may be informally resolved through procedures specified in ORS.

(15) Only cards and forms approved by the Department of Education will be accepted. The Department of Education will return any incomplete or incorrectly completed fingerprint cards and associated forms without taking any other action.

(16) The Department of Education shall maintain a record of all properly submitted fingerprint cards. The record shall include at least the following:

- (a) Card sequence number;
- (b) District submitting the cards;
- (c) Date cards and Department form received;
- (d) Date completed card sent to Oregon State Police;
- (e) Date denial or probationary approval sent to district;
- (f) Date FBI card returned to Department; and
- (g) Date denial or final approval sent to district.

Stat. Auth.: ORS 326.603

Stats. Implemented: ORS 326.603

Hist.: EB 18-1996, f. & cert. ef. 11-1-96; ODE 12-1998(Temp), f. & cert. ef. 6-23-98 thru 12-19-98; ODE 4-1999, f. & cert. ef. 1-12-99; ODE 29-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 13-2003(Temp), f. & cert. ef. 7-1-03 thru 12-15-03; ODE 3-2004, f. & cert. ef. 1-15-04; ODE 9-2006, f. & cert. ef. 2-21-06

581-022-1732

Fingerprinting of Subject Individuals Employed by Private Schools in Positions Not Requiring Licensure as Teachers, Administrators, Personnel Specialists, School Nurses

(1) Definitions of terms shall be as follows:

(a) "Subject individual" means: A person employed by a Private School in a position having direct, unsupervised contact with students and not requiring licensure under either ORS 342.120 to 342.200 or 342.455;

(b) "Direct, unsupervised contact with students" means contact with students that provides the person opportunity and probability for personal communication or touch when not under direct supervision;

(c) "Fee" means the total charges assessed. Fees shall be paid to the Oregon Department of Education with submission of fingerprint cards and associated form. The fee amount and distribution shall be as follows:

- (A) Oregon State Police (OSP) — \$28;
- (B) Federal Bureau of Investigation (FBI) — \$24;
- (C) Oregon Department of Education — \$10;
- (D) TOTAL — \$62.

(d) "Information to be required" means all information requested by the Oregon Department of Education for processing the fingerprint application, including the following:

(A) One properly completed FBI fingerprint cards #USGPO 1990-262-201-2000; and

(B) A properly completed Department of Education form #581-2283-C.

(e) "Convictions of crimes prohibiting employment, contract or assignment by a contractor" means, notwithstanding any other statutes or Oregon administrative rule, conviction of a crime listed in ORS 342.143, or making a false statement as to the conviction of a crime;

(f) "Applicant" means a subject individual for whom fingerprint cards and other required information have been submitted to the Oregon Department of Education for a criminal history check and review;

(g) "Private School" means a school that is registered with the Oregon Department of Education under ORS 345.515.

(2) The Department of Education shall request criminal information from the Department of State Police in the manner prescribed by law and may charge the private school a fee not to exceed the actual cost of acquiring and furnishing the information.

(3) The Oregon Department of Education shall review the criminal records of subject individual upon the private school's submission of the required FBI and state forms and the State Superintendent of Public Instruction or designee shall issue a statement of criminal history status. The Superintendent of Public Instruction or designee shall notify the private school if the subject individual has made a false statement as to conviction of a crime.

(4) The Oregon Department of Education shall not provide copies of criminal records to anyone except as provided by law. The subject individual may inspect his or her personal criminal records under the supervision of properly certified LEDS (Law Enforcement Data Systems) personnel at the Department of Education.

(5) The Superintendent of Public Instruction or designee shall notify the private school if the subject individual has been convicted of a crime listed in ORS 342.143, or the substantial equivalent of any of those crimes if the conviction occurred in another jurisdiction or in Oregon under a different statutory name or number. The crimes listed in ORS 342.143 (1995 Replacement Part) are:

- (a) ORS 163.095 — Aggravated Murder;
- (b) ORS 163.115 — Murder;
- (c) ORS 163.185 — Assault in the First Degree;
- (d) ORS 163.235 — Kidnapping in the First Degree;
- (e) ORS 163.355 — Rape in the Third Degree;
- (f) ORS 163.365 — Rape in the Second Degree;
- (g) ORS 163.375 — Rape in the First Degree;
- (h) ORS 163.385 — Sodomy in the Third Degree;
- (i) ORS 163.395 — Sodomy in the Second Degree;
- (j) ORS 163.405 — Sodomy in the First Degree;
- (k) ORS 163.408 — Unlawful Sexual Penetration in the Second Degree;

(l) ORS 163.411 — Unlawful Sexual Penetration in the First Degree;

- (m) ORS 163.415 — Sexual Abuse in the Third Degree;
- (n) ORS 163.425 — Sexual Abuse in the Second Degree;
- (o) ORS 163.427 — Sexual Abuse in the First Degree;
- (p) ORS 163.435 — Contributing to the Sexual Delinquency of a Minor;

- (q) ORS 163.445 — Sexual Misconduct;
- (r) ORS 163.465 — Public Indecency;
- (s) ORS 163.515 — Bigamy;
- (t) ORS 163.525 — Incest;
- (u) ORS 163.547 — Child Neglect in the First Degree;
- (v) ORS 163.575 — Endangering the Welfare of a Minor;
- (w) ORS 163.670 — Using Child in Display of Sexually Explicit Conduct;

(x) ORS 163.675 — Sale of Exhibition of Visual Reproduction of Sexual Conduct by Child;

(y) ORS 163.680 — Paying for Viewing Sexual Conduct Involving a Child;

(z) ORS 163.684 — Encouraging Child Sex Abuse in the First Degree;

(aa) ORS 163.686 — Encouraging Child Sex Abuse in the Second Degree;

(bb) ORS 163.687 — Encouraging Child Sex Abuse in the Third Degree;

(cc) ORS 163.688 — Possession of Materials Depicting Sexually Explicit Conduct of a Child in the First Degree;

(dd) ORS 163.689 — Possession of Materials Depicting Sexually Explicit Conduct of a child in the Second Degree;

(ee) ORS 164.325 — Arson in the First Degree;

(ff) ORS 164.415 — Robbery in the First Degree;

(gg) ORS 166.005 — Treason;

(hh) ORS 166.087 — Abuse of Corpse in the first Degree;

(ii) ORS 167.007 — Prostitution;

(jj) ORS 167.012 — Promoting Prostitution;

(kk) ORS 167.017 — Compelling Prostitution;

(ll) ORS 167.062 — Sadomasochistic Abuse or Sexual Conduct in Live Show;

(mm) ORS 167.065 — Furnishing Obscene Materials to Minors;

(nn) ORS 167.070 — Sending Obscene Materials to Minors;

(oo) ORS 167.075 — Exhibiting an Obscene Performance to a Minor;

(pp) ORS 167.080 — Displaying Obscene Materials to Minors;

(qq) ORS 167.087 — Disseminating Obscene Materials;

(rr) ORS 167.090 — Publicly Displaying Nudity or Sex for Advertising Purposes;

(ss) ORS 475.995 — Distribution of Controlled Substance to Minors;

(tt) ORS 475.999 — Manufacture or Delivery of controlled Substance to Minor or Student Within 1,000 Feet of School.

(6) Subject individuals who have been convicted of any of the crimes listed in ORS 161.405 of an attempt to commit any of the crimes listed in section (5) of this rule shall be refused continued employment or have employment terminated upon notification from the Superintendent of Public Instruction.

(7) Only cards and forms approved by the Department of Education will be accepted. The Department of Education will return any incomplete or incorrectly completed fingerprint cards and associated forms without taking any other action. The Department of Education will return fingerprint cards and associated forms without appropriate fees without taking any other action.

(8) The Department of Education shall maintain a record of all properly submitted fingerprint cards. The record shall include at least the following:

- (a) Card sequence number;
- (b) Name of Private School submitting the cards;
- (c) Date cards and Department form received;
- (d) Date incomplete card returned to the school (only if applicable);
- (e) Date completed card sent to Oregon State Police;
- (f) Date private school was notified of state police record or lack of record;
- (g) Date FBI card returned to Department;
- (h) Date private school was notified of FBI record or lack of record.

Stat. Auth.: ORS 326.603

Stats. Implemented: ORS 326.603 & SB 956 (1997)

Hist.: EB 16-1997, f. & cert. ef. 12-29-97; ODE 29-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 13-2003(Temp), f. & cert. ef. 7-1-03 thru 12-15-03; Administrative correction 8-2-04; ODE 9-2006, f. & cert. ef. 2-21-06

581-022-1735

Athlete Agents Permits

(1) Definitions:

(a) "Agent Contract" means an agreement in which a student athlete authorizes a person to negotiate or solicit on behalf of the student athlete a professional sports services contract or an endorsement contract.

(b) "Athlete Agent" means an individual who enters into an agency contract with a student athlete or, directly or indirectly, recruits or solicits a student athlete to enter into an agency contract. Athlete agent includes an individual who represents to the public that the individual is an athlete agent.

(c) "Athlete Agent" does not include a spouse, parent, sibling, grandparent or legal guardian of the student athlete or an individual acting solely on behalf of a professional sports team or professional sports organization.

(d) "Athlete director" means an individual responsible for administering the overall athletic program of an educational institution or if an educational institution has separately administered athletic programs for male students and female students, the athletic program for males or athletic program for females, as appropriate.

(e) "Contact" means communication, direct or indirect, between an athlete agent and a student athlete, to recruit or solicit the student athlete to enter into an agency contract.

(f) "Endorsement Contract" means an agreement under which a student is employed or receives consideration to use on behalf of the other party, any value that the student athlete may have because of publicity, reputation, fame or following obtained because of athletic ability or performance.

(g) "Educational Institution" means any elementary school, secondary school, college, university or other educational institution.

(h) "Intercollegiate sport" means a sport played at the collegiate level for which eligibility requirements for participation by a student athlete are established by a national association for the promotion or regulation of collegiate athletics.

(i) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public body, as defined in ORS 174.109, or any other legal or commercial entity.

(j) "Professional Sports Services Contract" means an agreement under which an individual is employed or agrees to render services as a player on a professional sports team with a sports organization or as a professional athlete.

(k) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(l) "Resignation" means registration as an athlete agent pursuant to ORS 702.005 to 702.063 and 702.991.

(m) "State" means a state of the United States, the District of Columbia, Puerto Rico, The United States, Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

(n) Means an individual who engages in, is eligible to engage in or may be eligible, in the future, to engage in any intercollegiate sport. "Student Athlete" does not include an individual who:

(A) Is permanently ineligible to participate in a particular intercollegiate sport;

(B) Is not a student athlete for the purposes of that sport.

(2) Civil Action:

(a) By acting as an athlete agent in Oregon, nonresident individual appoints the Department of Education as the individuals agent for service of process in any civil action in Oregon related to the individual's acting as an athlete agent in Oregon.

(b) The department may issue subpoenas for any material that is relevant to the administration of ORS 702.005 to 702.063 and 702.991.

(3) Certificate of Registration, application, and revocation process: except as otherwise provided in subsection (a) of this section, an individual may not act as an athlete agent in Oregon without holding a certificate of registration issued under this section or section (5).

(a) Before being issued a certificate of registration, an individual may act as an athlete agent in Oregon for all purposes except signing an agency contract if:

(A) A student athlete or another person acting on behalf of the student athlete initiates communication with the individual; and

(B) Within seven days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in Oregon.

(b) An agency contract resulting from conduct in violation of this section is void and the athlete agent shall return any consideration received under the contract.

(c) Except as otherwise provided in subsection (d) of this rule, the Department of Education (department) shall issue a certificate of registration to an individual who complies with ORS 702.017(1) and (2) or whose application has been accepted under ORS 702.017(3).

(d) The department may refuse to issue a certificate of registration if the department determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant fitness to act as an athlete agent. In making the determination, the department may consider whether the applicant has:

(A) Been convicted of a crime that if committed in Oregon, would be a crime involving moral turpitude or a felony;

(B) Made a materially false, misleading, deceptive or fraudulent representation in the application or as an athlete agent;

(C) Engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;

(D) Engaged in prohibited conduct;

(E) Had a registration of licensure as an athlete agent suspended, revoked or denied or been refused renewal of registration or licensure as an athlete agent in any state;

(F) Engage in conduct the consequence of which was that a sanction, suspension or declaration or ineligibility to participate in an inter-scholastic or intercollegiate athletic event was imposed on a student athlete or educational institution; or

(G) Engaged in conduct that significantly, adversely reflects on the applicant's credibility, honesty or integrity.

(e) An athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the department. The application for renewal must be signed by the applicant under penalty of perjury and must contain current information on all matters required in an original registration.

(f) An individual who has submitted an application for renewal of registration or licensure in another state, in lieu of submitting an application for renewal in the form prescribed pursuant to subsection (e) of this section, may file a copy of the application for renewal and a valid certificate of registration or licensure from the other state. The department shall accept the application for renewal for the other state as an application for renewal in Oregon if the application to the state if it:

(A) Was submitted in the other state within the preceding six months and the applicant certifies that the information contained in the application for renewal is current;

(B) Contains information substantially similar to or more comprehensive that are required in an application for renewal submitted in Oregon; and

(C) Was signed by the applicant under penalty of perjury.

(g) A certificate of registration or renewal of a registration is valid for two years.

(h) The department may suspend, revoke or refuse to renew a certificate of registration or licensure only after proper notice and an opportunity for a hearing.

(4) Contents of Application Form:

(a) An applicant for registration shall submit an application for registration to the Department of Education in a form prescribed by the department and if requested by the department, shall allow the department to take fingerprints for a criminal record check conducted pursuant to ORS 702.022.

(b) The application must be in the name of an individual and except as otherwise provided in subsection (c) of this section, signed or otherwise authenticated by the applicant under penalty of perjury. The application must state or contain:

(A) The name of the applicant and the address of the applicant's principal place of business;

(B) The name of the applicant's business or employer, if applicable;

(C) Any business or occupation engaged in by the applicant for the five years preceding the date of submission of the application;

(D) A description of the applicant's:

(i) Formal training as an athlete agent;

(ii) Practical experience as an athlete agent; and

(iii) Educational background relating to the applicant's activities as an athlete agent.

(E) The names and addresses of three individuals not related to the applicants who are willing to serve as references;

(F) The name, sport and last known team for each individual for whom the applicant acted as an athlete agent during the five years preceding the date of submission of the application;

(G) The names and addresses of all persons who are:

(i) With respect to the athlete agent's business if the business is not a corporation, the partners, members, officers, managers, associates or profit sharers of the business; and

(ii) With respect to a corporation employing the athlete agent, the officers, directors and any shareholder of the corporation having an interest of five percent or more.

(H) Whether the applicant or any person named pursuant to paragraph (G) of this subsection has been convicted of a crime that, if committed in Oregon, would be a crime involving moral turpitude or a felony and identify the crime;

(I) Whether there has been any administrative or judicial determination that the applicant or any person named pursuant to paragraph (G) of this subsection has made a false, misleading, deceptive or fraudulent representation;

(J) Whether there has been any denial of an application for suspension or revocation of a refusal to renew the registration or licensure of the applicant or any person named pursuant to paragraph (G) of this subsection as an athlete agent in any state;

(K) Any sanction, suspension or disciplinary action taken against the applicant or any person named pursuant to paragraph (G) of this subsection arising out of occupational or professional conduct; and

(L) Any instance in which the conduct of the applicant or any person named pursuant to paragraph (G) of this subsection resulted in the imposition of a sanction, suspension or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student athlete or educational institution.

(c) An individual who has submitted an application for and holds a certificate of registration or licensure as an athlete agent in another state may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to subsection (b) of this section. The department shall accept the application and the certificate from the other state as an application for registration in Oregon if the application to the other state if it:

(A) Was submitted in the other state within the preceding six months and the applicant certifies that the information contained in the application is current;

(B) Contains information substantially similar to or more comprehensive than that required in an application submitted in Oregon; and

(C) Was signed by the applicant under penalty of perjury.

(5) The Department of Education may issue a temporary certificate of registration while an application for registration or renewal of registration is pending.

(6) Fees: An application for registration or renewal of registration must be accompanied by a fee in the following amount:

(a) \$250 for an initial application for registration;

(b) \$150 for an application for registration based upon a certificate of registration or licensure issued by another state;

(c) \$150 for an application for renewal of registration; or

(d) \$150 for an application for renewal of registration based upon an application for renewal of registration or licensure submitted in another state.

(7) Prohibited acts:

(a) An athlete agent may not intentionally:

(A) Initiate contact with a student athlete unless registered under ORS 702.005 to 702.063 and 702.991;

(B) Refuse or fail to retain or permit inspection of the records required to be retained by section (11) of this rule;

(C) Fail to register when required by ORS 702.012;

(D) Provide materially false or misleading information in an application for registration or renewal of registration;

(E) Predate or postdate an agency contract; or

(F) Fail to notify a student athlete before the student athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student athlete ineligible to participate as a student athlete in that sport.

(b) An athlete agent may not furnish anything of value to the student athlete before the student athlete enters into an agency contract.

(c) An athlete agent may not, with the intent to induce a student athlete to enter into an agency contract, furnish anything of value to any individual other than the student athlete or another registered athlete agent.

(d) An athlete agent may not, with the intent to induce a student athlete to enter into an agency contract, give any materially false or misleading information or make a materially false promise or representation.

(8) Agency Contracts:

(a) An agency contract must be in a record, signed or otherwise authenticated by the parties.

(b) An agency contract must state or contain:

(A) The amount and method of calculating the consideration to be paid by the student athlete for services to be provided by the athlete agent under the contract and any other consideration the athlete agent has received or will receive from any other source for entering into the contract or for providing the services;

(B) The name of any person not listed in the application for registration or renewal of registration that will be compensated because the student athlete signed the agency contract;

(C) A description of any expenses that the student athlete agrees to reimburse;

(D) A description of the services to be provided to the student athlete;

(E) The duration of the contract; and

(F) The date of execution.

(c) An agency contract must contain, in close proximity to the signature of the student athlete, a conspicuous notice in boldfaced type in capital letters stating:

WARNING TO THE STUDENT ATHLETE: IF YOU SIGN THIS CONTRACT, YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT ATHLETE IN YOUR SPORT. IF YOU HAVE AN ATHLETIC DIRECTOR, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, OR BEFORE YOU PARTICIPATE IN ANY INTERSCHOLASTIC OR INTERCOLLEGIATE SPORTS EVENT, WHICHEVER OCCURS FIRST. YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.

(d) An agency contract that does not conform to this section is voidable by the student athlete. If a student athlete voids an agency contract, the student athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student athlete to enter into the contract.

(e) The athlete agent shall give a record of the signed or otherwise authenticated agency contract to the student athlete at the time of execution.

(f) The amendments to ORS 702.047 by section 12 of this 2005 Act apply to agency contracts entered into on or after the effective date of this 2005 Act.

(9) Time constraints on agency contracts:

(a) Within 72 hours after entering into an agency contract or before the next scheduled athletic event in which the student athlete may participate, whichever occurs first, the athlete agent shall give notice in a record of the existence of the contract to the athletic director of the educational institution at which the student athlete is enrolled or the athlete agent has reasonable grounds to believe the student athlete intends to enroll.

(b) Within 72 hours after entering into an agency contract or before the next athletic event in which the student athlete may participate, whichever occurs first, the student athlete shall inform the athletic director of the educational institution at which the student athlete is enrolled that the student athlete has entered into an agency contract.

(10) Student rights:

(a) A student athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within 14 days after the contract is signed.

(b) The right of a student to cancel a contract under this section may not be waived.

(c) If a student athlete cancels an agency contract, the student athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student athlete to enter into the contract.

(11) Recordkeeping requirements:

(a) An athlete agent shall retain the following records for a period of five years:

(A) The name and address of each individual represented by the athlete agent;

(B) Any agency contract entered into by the athlete agent; and

(C) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student athlete to enter into an agency contract.

(b) Records required by subsection (a) of this section to be retained are open to inspection by the Department of Education during normal business hours of the athlete agent.

(12) Educational damages and actions:

(a) An educational institution shall have a cause of action against an athlete agent or a former student athlete for damages caused by a

violation of ORS 702.005 to 702.063 and 702.991. In an action under this section, the court may award to the prevailing party costs and reasonable attorney fees.

(b) For the purposes of this section, damages of an educational institution include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student athlete, the educational institution was injured by a violation of ORS 702.005 to 702.063 and 702.991 or was penalized, disqualified or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference or by reasonable self-imposed disciplinary action taken to mitigate sanctions likely to be imposed by such an organization.

(c) A cause of action under this section does not accrue until the educational institution discovers or by the exercise of reasonable diligence would have discovered the violation by the athlete agent or former student athlete.

(d) Any liability of the athlete agent or the former student athlete under this section is several and not joint.

(e) ORS 702.005 to 702.063 and 702.991 do not restrict rights, remedies or defenses of any person under law or equity.

(13) Civil Penalties:

(a) The Department of Education may assess a civil penalty against an athlete agent not to exceed \$25,000 for a violation of ORS 702.005 to 702.063.

(b) Civil penalties under subsection (a) of this section shall be imposed in the manner provided in ORS 183.745.

(c) All civil penalties recovered under this section shall be paid into the State Treasury and credited to the General Fund and are available for general governmental expenses.

(14) Penalties:

(a) An athlete agent who violates ORS 702.032 is guilty of a Class C felony.

(b) Violation of the athlete agent's 72-hour notice requirement provided under section (9)(a) of this rule is a Class C felony.

(c) It is a Class A misdemeanor for any person to conduct business as an athlete agent in the State of Oregon unless the person has a valid certificate of registration issued pursuant to ORS 702.012 or section (6) of this rule.

(d) It is a Class A misdemeanor for any person to represent to another person by verbal claim, advertisement, letterhead, business card or any other means that the person is an athlete agent unless the person has a valid certificate of registration issued pursuant to ORS 702.012 or section (6) of this 2005 Act.

(15) In applying and construing ORS 702.005 to 702.991, the courts and the Department of Education shall give consideration to the need to promote uniformity of the law with respect to its subject matter among states that have enacted the Uniform Athlete Agents Act.

(16) Fingerprint request and destruction:

(a) The Department of Education may request and the Department of State Police shall furnish to the Department of Education, information on an individual that the Department of State Police possesses in the central bureau of criminal identification, including but not limited to manual or computerized information required for purposes of issuing a certificate of registration to an athlete agent under ORS 702.012 and 702.017 or a temporary certificate of registration to an athlete agent under section (5) of this rule.

(b) After furnishing the information obtained under subsection (a) of this section, the Department of State Police shall conduct a nationwide criminal records check of the individual through the Federal Bureau of Investigation, including records of fingerprints, and report the results to the Department of Education.

(c) The Federal Bureau of Investigation shall either return or destroy the fingerprint cards used to conduct the criminal records check and shall not keep any record of the fingerprints. However, if the federal bureau policy authorizing return or destruction of the fingerprint cards is changed, the Department of Education shall not send the cards to the federal bureau, but shall continue to process the information through other available resources.

(d) If the Federal Bureau of Investigation returns the fingerprint cards to the Department of State Police, the Department of State Police shall return the fingerprint cards to the Department of Education. The Department of Education shall destroy the fingerprint cards and shall not keep any facsimiles or other material from which a fingerprint can be reproduced.

(e) For purposes of receiving the information described in this section, the Department of Education is considered to be a designated agency as defined in ORS 181.010.

Stat. Auth.: Ch. 1079, OL 1999

Stats. Implemented: Ch. 1079, OL 1999

Hist.: ODE 28-1999(Temp), f. & cert. ef. 11-5-99 thru 5-20-00; ODE 14-2000, f. & cert. ef. 5-3-00; ODE 6-2006, f. & cert. ef. 2-14-06

581-022-1910

Exemptions

(1) The school district may excuse students from a state required program or learning activity, where necessary, to accommodate students' disabilities or religious beliefs:

(a) Approval of the exemption shall be based upon and shall include:

(A) A written request from the student's parent or guardian or the student, if the student is 18 years of age or older or a legally emancipated minor, listing the reasons for the request and a proposed alternative for an individualized learning activity which substitutes for the period of time exempt from the program and meets the goals of the learning activity or course being exempt;

(B) An evaluation of the request and approval by appropriate school personnel (the alternative should be consistent with the student's educational progress and career goals as described in OARs 581-022-1670 and 581-022-1510).

(b) Following approval by the district school board, and upon completion of the alternative, credit shall be granted to the student.

(2) The school district may approve and grant credit to a student for the alternative to a state required program or learning activity if the procedures in section (1) of this rule are followed.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 326.051

Hist.: EB 18-1996, f. & cert. ef. 11-1-96

581-022-1920

Waivers

School districts may request four types of waivers as follows:

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

(2) Waiver or extension of timeline: A school district may request from the State Board of Education a waiver of or extension of any timeline for program implementation required under ORS Chapter 329.

(a) The request must address the following criteria:

(A) The need for the waiver or extension and a plan to fully implement the program within the proposed extension;

(B) The means that the district will use to measure its progress towards full implementation of the underlying purpose of the program;

(C) Failure to grant the waiver or extension will create a significant hardship for the district that would place the district in an inequitable position with regard to other districts.

(b) Waivers or extensions under this provision may be granted for up to five years.

(3) 21st Century Schools Waiver: A school district may request a waiver of any state statute, rule or local policy or agreement relating to educational practices, that limit the ability of the school to implement district or school improvement plans, with the exception of those that affect health, safety or constitutional rights under state or federal law. The request for a 21st Century Schools Waiver must be made on the appropriate application form available from the Department of Education. Waivers under this provision may be granted for periods not to exceed five years.

(4) Educational Flexibility Partnership Demonstration Act (Ed-Flex) Waiver:

(a) This federal Act allows school districts to request a waiver of statutory or regulatory requirements under the following federal programs or Acts:

(A) Elementary and Secondary Education Act (ESEA) Title I, Helping Disadvantaged Children Meet High Standards;

(B) ESEA Title II, Eisenhower Professional Development;

- (C) ESEA Title IV, Safe Drug Free Schools;
- (D) ESEA Title VI, Innovative Education Program Strategies;
- (E) ESEA Title VII, Part C — Emergency Immigrant Education;
- (F) Carl D. Perkins Vocational and Applied Technology Education Act.

(b) The application must demonstrate that the school district, if the waiver is granted, will still meet the underlying purposes of the federal statutory requirements. The request of an Ed-Flex Waiver must be made on the appropriate application form available from the Department of Education. Waivers under this provision may be granted for periods not to exceed five years.

Stat. Auth.: ORS 326

Stats. Implemented: ORS 326.051, 329.077 & 329.555

Hist.: EB 2-1997, f. & cert. ef. 3-27-97; ODE 11-2002, f. & cert. ef. 4-12-02

581-022-1930

Pilot Programs

To implement Oregon's Educational Act for the 21st Century, school districts may choose to propose and initiate pilot programs to determine the effectiveness of innovations in instruction, school structure or governance.

(1) If the proposed pilot program can be implemented within existing regulations, rules and statutes, school districts may implement such programs without notifying or obtaining approval from ODE; and

(2) If the proposed pilot program cannot be implemented within existing regulations, rules and statutes, school districts must obtain a waiver of such regulations, rules and statutes under the 21st Century Schools Program waiver process as defined in ORS 329.555–329.605 and OAR 581-022-1920.

Stat. Auth.: ORS 329.051

Stats. Implemented: ORS 329.075

Hist.: EB 7-1997, f. & cert. ef. 6-9-97

581-022-1940

Appeals and Complaints

(1) General Complaint Procedure. Each school district shall implement a process for the prompt resolution of a complaint by a person who resides in the district or any parent or guardian of children attending school in the district. Unless specifically provided by state or federal law or administrative rule, the decision of the district shall be final.

(2) Standard Complaint Procedure. If the complaint alleges a violation of standards of the rules in OAR 581, division 022, the complainant may direct an appeal to the State Superintendent of Public Instruction, after exhausting local procedures or after 45 days from filing a written complaint with the school district, whichever occurs first. The appeal shall be in writing and shall contain:

(a) The name and address of the person bringing the appeal, and the district in which that person resides;

(b) The name and address of the district which is alleged to have violated standards; and

(c) A brief statement indicating which standard the district is alleged to have violated and how the district is alleged to have violated it.

(3) Upon receipt of the appeal the State Superintendent shall determine whether a violation of standards has been properly alleged and the requirements of section (2) of this rule have been satisfied.

(a) If the State Superintendent determines that the facts of complaint, if true, would be a violation of a standard, the appeal shall be accepted and the procedures listed in this rule in the following sections shall be applied;

(b) If the State Superintendent determines that the complaint, even if true, would not violate a standard, the appeal shall not be accepted. In either case, the State Superintendent shall give notice of the determination by certified mail to the complainant and the school district.

(4) Within 30 days of receipt of notice of the State Superintendent's acceptance of the appeal, the district shall submit a written report with the State Superintendent which shall include:

(a) A statement of facts;

(b) A statement of district action, if any, taken in response to the complaint, or if none was taken, the reason(s) therefore;

(c) A stipulation, if one was reached, of the settlement of the complaint; and

(d) A list of any complaints filed with another agency by the party, concerning the subject of the appeal.

(5) The State Superintendent may for good cause extend the time for the filing of a report by the district.

(6) Upon receipt of the district's report, the State Superintendent shall investigate the allegations of the complaint to the extent necessary and at the State Superintendent's discretion may:

(a) Authorize an on-site investigation; and

(b) Conduct interviews and review documents as deemed necessary.

(7) At any time during the appeal the parties may agree to settle the matter(s) at issue. The party bringing the appeal may at any time file a written request that the appeal be withdrawn. When such a request is received the State Superintendent shall terminate all further action regarding the appeal.

(8) The State Superintendent shall issue a written decision within 60 days of receiving the district's report that addresses each allegation in the complaint and contains reasons for the State Superintendent's decision as to whether or not the district is deficient. If the schools of the district are not open during the 60-day period due to summer vacation, the decision shall be issued within 60 days after the beginning of the school year.

(9) If a deficiency is found, the State Superintendent's written decision shall include any necessary corrective action to be undertaken by the district as well as any documentation to be supplied to ensure that the corrective action has occurred.

(10) If a deficiency is not corrected, the provisions of ORS 327.103 shall apply.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 327.103 & 326.051

Hist.: EB 18-1996, f. & cert. ef. 11-1-96

DIVISION 23

SCHOOL FINANCE

581-023-0006

Student Accounting Records and State Reporting

(1) The following definitions and abbreviations apply to this rule:

(a) "Active roll" means the list of students enrolled and attending the school or program during the current school year;

(b) "ADA" means average daily attendance;

(c) "ADM" means average daily membership;

(d) "Alternative program" means any private or public alternative program providing instruction or instruction combined with counseling under ORS 336.635;

(e) "Day in session" means a scheduled day of instruction during which students are under the guidance and direction of teachers;

(f) "Department" means the Oregon Department of Education;

(g) "Full school day" means the length of time a school or program is normally in session during the day in compliance with OAR 581-022-0503;

(h) "FTE" means full-time equivalency;

(i) "Inactive roll" means the list of students enrolled for purposes of credit but not attending the school or program. Includes students attending private alternative or Job Corps programs, students withdrawn after ten consecutive days' absence and students served on a tutorial basis outside the classroom;

(j) "Instruction" for purposes of reimbursement of alternative programs means accountable activities as defined in OAR 581-023-0008;

(k) "Instructional unit" means a school or other organizational arrangement which provides instruction of a given type or types;

(l) "Intermediate group" means instruction provided by an alternative program approved by a school district to a class of six to 15 students;

(m) "Large group" means instruction provided by an alternative program approved by a school district to a class of 16 or more students;

(n) "Regular school program" means that which is offered to comply with the standards adopted by the State Board of Education and compulsory school attendance law. This does not include summer school, adult education, or prekindergarten programs;

(o) "Small group" means instruction provided by an alternative program approved by the school district to a class of two to five students;

(p) "Superintendent" means the State Superintendent of Public Instruction;

(q) "Tutorial" means instruction provided by an alternative program approved by a school district to one student.

(2) Instructions pertaining to the maintenance of student accounting records and state reporting shall be published by the Department.

(3) Each school district and ESD shall:

(a) Permanently maintain accounting records of student enrollment, attendance, membership, resident/nonresident status, and such other student information as may be required, for each student enrolled in regular school programs operating during the regular school year. Such records shall utilize uniform definitions of each student measure as stated in this rule;

(b) Designate the residency for school purposes, subject to the provisions of ORS 327.006 and 339.133 of each student enrolled in the district;

(c) Have in operation an attendance accounting system which is adequately controlled and enables the district's chief administrator to certify in writing the accuracy of reported data;

(d) Report enrollment, attendance, membership, and such other information as the Superintendent may require, within 10 days of the end of the December 31, March 31, and June 30 reporting periods. Reports for the period ending September 30 shall be submitted no later than November 15;

(e) Retain daily source records of enrollment, membership and attendance for a period of no less than two years. Records, whether paper or electronic, must be maintained in an accessible format; and

(f) Utilize the following enrollment codes for recording entry, re-entry, and withdrawal of students during the regular school year.

(A) Original entries:

(i) E1 — any student who has not previously, during the current year, entered any school in the United States;

(ii) E2 — any student who has been enrolled during the current school year in a school in another state and who has not previously, during the current school year, been enrolled in any school in Oregon.

(B) Re-entries:

(i) R1 — students received from another room in the same school;

(ii) R2 — students received from a public school in the same school district;

(iii) R3 — students received from a public school in the state but outside the local school district;

(iv) R4 — students re-entering after withdrawal or discharge;

(v) R5 — students received from a nonpublic school in the state.

(C) Withdrawals (or losses). Codes are recommended but not required:

(i) W1 — students transferred to another room or classroom in the same building;

(ii) W2 — students transferred to another public school in the same local district;

(iii) W3 — students transferred to a nonpublic school in the same local district;

(iv) W4 — students moved out of the local school district or state;

(v) W5 — students quitting school after passing compulsory attendance age;

(vi) W6 — students issued work permits;

(vii) W7 — students graduated early;

(viii) W8 — students withdrawn because of other reasons;

(ix) W — the total of W1 through W8.

(D) If a school district adopts a year-round schedule incorporating a track system in which one or more tracks are scheduled to cross school years (July 1 through June 30) the enrollment code shall be expanded to include:

(i) R9 — students received from a different grade level within the same district;

(ii) W9 — students transferred to a different grade level within the same district;

(iii) The use of the R9 and W9 codes shall be limited to those students who change grades within a track during the school year. A W9 entry shall be counted as a day of membership.

(4) Students shall be entered and withdrawn from the district roll as follows:

(a) A student shall be entered on the district active roll utilizing the appropriate E or R code on the first day of the student's actual attendance. A student with an excused absence of less than ten days at the beginning of the school year may be counted in membership prior to the first day of attendance if the status has been verified by contact with the parent or guardian. A student participating in the program of more than one instructional unit shall be entered on the active roll of that instructional unit in which 50 percent or more of the student's time is scheduled and the student shall not be entered on the roll of other instructional units;

(b) A student whose withdrawal status can be determined within ten days shall be marked as a withdrawal on the school day following that determination. A student must be withdrawn from the active roll on the day following the tenth consecutive full day of absence but may be retained on the inactive roll at the district's option. A student must be present for at least one-half day in order to restart the count of consecutive days' absence. Under no circumstances shall a student who is absent for the first ten days at the beginning of the school year be counted in membership prior to the first day of school attendance.

(5) Membership and attendance accounting in instructional units scheduled to operate a full school day shall be recorded as follows:

(a) A full-time equivalency (FTE) for each student on the active roll shall be determined. Students participating in more than one-half of the full-day program shall be given an FTE of 1.0. Students participating in one-half or less of the full-day program shall be given an FTE of .5. The FTE computation of students placed in community college programs by the local school district shall include time spent in the community college program:

(A) Kindergarten students shall be assigned an FTE of 1.0. The Department shall adjust the total days membership of kindergarten students reflecting the permissible percentage as stated in statute;

(B) Students participating in district supervised work-study programs may be credited as 1.0 FTE. If a student is released for work during school hours and the district assumes no supervisory responsibility for the time involved, that time shall not be counted as participation in the full-day program when determining the student's FTE.

(b) Membership of each student for the quarter shall be computed as follows: student FTE times days present plus student FTE times days absent equals total days membership of the student. The day upon which a student is marked as a W (except W9) shall not be counted as a day of membership. A student not scheduled to attend daily shall be marked present or absent only on the days the student is scheduled to attend;

(c) Total days membership of the instructional unit shall be the total of days membership of all students on the active roll of the instructional unit as computed in subsection (b) of this section. The computation of total days membership of the instructional unit shall yield subtotals indicating grade placement and resident/nonresident status of student membership;

(d) The Department shall compute the ADM and ADA of resident students, nonresident students, and attending students for each instructional unit reporting and derive totals of such data for each local school district in the state, subject to the following procedures:

(A) ADM is the total days membership of an instructional unit during a specific reporting period divided by the number of days the instructional unit was in session during that reporting period. The ADM of groups of instructional units having varying lengths of terms shall be the sum of the ADMs obtained for the individual instructional units. If a district school board adopts a class schedule that operates throughout the year under the provisions of ORS 336.012 for all or any instructional units in the district, the computation shall be made so that the resulting ADM will not be higher or lower than if the local board had not adopted such a schedule;

(B) ADA is the total days attendance of an instructional unit during a specific reporting period divided by the number of days the instructional unit was in session during that reporting period. The ADA of groups of instructional units having varying lengths of terms shall be the sum of the ADAs obtained for the individual instructional units. If a district school board adopts a class schedule that operates throughout the year under the provisions of ORS 336.012 for all or any instructional units in the district, the computation shall be made so that

the resulting ADA will not be higher or lower than if the local board had not adopted such a schedule.

(6) Students enrolled in programs operating less than the full school day and nonpublic school students attending public schools part time shall be accounted for as follows:

(a) The ADM of students enrolled in schools under provisions of ORS 336.135 and students enrolled in nonpublic schools or taught by private teacher or parent under ORS 339.035 shall be computed by multiplying total hours of instruction given all students during the reporting period by .167 and dividing the product by 55 for the October 1 to December 31 quarterly report and by 175 for the June 30 annual report;

(b) The ADM of students receiving tutorial instruction provided by certified district staff shall be computed by dividing total number of hours of tutorial instruction given (not to exceed 5 hours per week for a single student) by 55 for the October 1 to December 31 quarterly report and by 175 for the June 30 annual report;

(c) The computation of ADM for each less than full-time program listed shall yield subtotals for resident and nonresident students;

(d) The ADM of students enrolled in less than full-time programs shall be reported to the Department for the quarter ending December 31 and for the year ending June 30.

(e) No more than five day's membership may be claimed for any student enrolled in any combination of programs during a one-week period.

(f) Kindergarten ADM will be adjusted by the Department to reflect the permissible percentage as stated in statute.

(7) Students enrolled in alternative education programs under ORS 336.635 shall be accounted for as follows:

(a) The ADM of students enrolled in alternative programs scheduled to operate a full school day may be computed either on the basis of membership (section (5) of this rule) or on the basis of actual attendance (section (7)(b) of this rule);

(b) Equivalent ADM of students enrolled in alternative programs scheduled to operate less than full time shall be computed as follows:

(A) Equivalent ADM of students enrolled in large group instruction shall be computed by multiplying total hours of instruction given all students during the reporting period by a factor of .167 and dividing the product by 55 for the October 1 to December 31 quarterly report and by 175 for the June 30 annual report;

(B) Equivalent ADM of students enrolled in intermediate group instruction shall be computed by multiplying the total hours of instruction given all students during the reporting period by a factor of .222 and dividing the product by 55 for the October 1 to December 31 quarterly report and by 175 for the June 30 annual report;

(C) Equivalent ADM of students enrolled in small group instruction shall be computed by multiplying the total hours of instruction by a factor of .333 and dividing the product by 55 for the October 1 to December 31 quarterly report and by 175 for the June 30 annual report;

(D) Equivalent ADM of students receiving individual instruction shall be computed by multiplying the total number of hours of tutorial instruction given by a factor of 1.0 and dividing the product by 55 for the October 1 to December 31 quarterly report and by 175 for the June 30 annual report;

(E) Case management services (not limited to student contact) may be counted as large group instruction and constitute up to ten percent of equivalent ADM if specifically authorized by contract with the resident school district;

(F) Documented time in supervised work experience programs, supervised community service activities and supervised independent study, if performed as a part of the instructional programs designed to fulfill the student's educational goals, may be counted as large group instruction;

(G) Over any 20-day period, no more than 20 equivalent membership days may be claimed for any student receiving a combination of instructional services under paragraph (7)(b)(A), (B), (C) or (D) of this rule. Equivalent membership days for any student is equal to the hours of instruction given multiplied by the factor appropriate for the size of the instructional group.

(c) Students attending alternative programs part day and attending the home high school part day shall be reported by the home high school only, taking account of the total time spent in the alternative program and the home high school when determining FTE under section (5) of this rule;

(d) Students attending private alternative programs only, shall not be reported by the instructional unit placing the student for purposes of reporting membership or attendance.

(8) Each private alternative program shall:

(a) Maintain accounting records of student attendance, size of group attended, resident school district and such other student information as may be required by the contracting school district for each student attending the private alternative program;

(b) Report student name, dates served and hours served by group size to resident school district no less than twice yearly, once for the October 1 through December 31 period and an annual report ten days after the close of the school year; and

(c) Retain student attendance records for a period of no less than two years.

(9) Students in the following programs are not eligible to be counted in the resident average daily membership for purposes of ORS 327.013(7)(a):

(a) Students enrolled in special education programs under ORS 343.261, 343.961, and 346.010.

(b) Children enrolled in early intervention and early childhood special education programs under ORS 343.533;

(c) Students not receiving a free public education;

(d) Students in summer school programs;

(e) Students in adult education classes.

(10) Rules governing the reporting of students identified as dropouts are contained in the most recent edition of the Oregon Dropout Reporting Manual, published by the Oregon Department of Education. The State Board of Education adopts the procedures in this publication to govern the reporting of dropouts by school districts.

(11) For the purposes of dropout reporting, the following shall apply:

(a) A student is considered enrolled when the student is present at school and attends more than half of a school day;

(b) Acceptable alternative programs are those programs providing activities meeting OAR 581-023-0008 and provided by public school districts, ESDs, community colleges or private alternative programs registered with the Oregon Department of Education under OAR 581-021-0072;

(c) An absence, explained or unexplained becomes a withdrawal after an absence of 10 consecutive days. A student must be present for at least one-half day in order to restart the count of consecutive days absence;

(d) Standards for excused absences must be developed by local districts. Policies shall clearly define excused and unexcused absences and ensure the health and safety of the child. Parents shall be informed of the policies at enrollment. Policy should address the documentation required.

(12) The Superintendent shall prescribe the applicable student accounting procedures for any programs or specific situations not covered by the provisions of this rule.

(13) This rule is effective beginning with the 1996-97 school year.

Stat. Auth.: ORS 326.310 & 327.125

Stats. Implemented: ORS 325.125

Hist.: 1EB 1-1981, f. 2-5-81, ef. 7-1-81; 1EB 14-1985, f. 7-3-85, ef. 7-5-85; 1EB 28-1986, f. & ef. 7-18-86; EB 17-1987, f. & ef. 8-4-87; EB 18-1987(Temp), f. & ef. 8-4-87; EB 33-1987, f. & ef. 12-11-87; EB 38-1988, f. & cert. ef. 9-22-88; EB 30-1992, f. & cert. ef. 10-14-92; EB 6-1996, f. & cert. ef. 4-25-96

581-023-0008

Accountable Activities for Alternative Education Programs

Accountable activities for purposes of ORS 339.253 are defined as one or more of the following as approved by the school district by contract:

(1) Tutorial Instruction;

(2) Small group instruction;

(3) Large group instruction;

(4) Personal growth and development instruction;

(5) Counseling and guidance;

(6) Computer assisted instruction;

(7) Vocational training;

(8) Cooperative work experience and/or supervised work experience;

(9) Instructional activities provided by institutions accredited by the Northwest Association of Schools and Colleges;

(10) Supervised community service activities performed as part of the instructional program; and

(11) Supervised independent study in accordance with a student's educational goals.

Stat. Auth.: ORS 339

Stats. Implemented: ORS 327.125 & 336.625

Hist.: EB 34-1987, f. & ef. 12-11-87

581-023-0009

Small High School Grants

(1) For purposes of this rule, "small school district" and "small high school" are as defined in Chapter 670, Oregon Laws 2001.

(2) For fiscal years 2001–02 and 2002–03, the department shall award a base grant to each small school district with one or more small high schools that is equal to \$200 per ADM in grades 9–12 of each small high school in the small school district. The Department of Education will distribute the grants no later than October 15 in each of the two fiscal years.

(3) For fiscal years 2001–02 and 2002–03, the department may annually award a needs grant to each small school district with one or more small high schools based on the financial needs of the district as described in Chapter 670, Oregon Laws 2001.

(4) Small school districts with small high schools may apply for a portion of the approximately \$1 million to be distributed as needs grants each year.

(5) Grant applications must be received at the Department of Education no later than July 16, 2001 for a 2001–02 fiscal year grant and by January 15, 2002 for a 2002–03 fiscal year grant.

(6) The Department of Education will distribute the grants no later than October 15 in each of the two fiscal years. Any moneys remaining after awarding base grants and needs grants shall be divided per ADM among all small school districts with small high schools and added to the amount of each small school district's base grant. Any necessary adjustments will be made on May 15 of the fiscal year, with final adjustment to be made in the following year.

(7) The Department of Education will convene a task force, including, but not limited to Department and school district staff, to advise the department on the equitable distribution of funds.

(8) The task force will assign equal weight to the following three criteria for determining the financial needs of the district:

(a) The number of ADM in the small school district with smaller high schools receiving a greater preference;

(b) Whether ADMw in the small school district has declined in the past three years and the degree to which the enrollment is declining;

(c) The ratio of licensed staff to students in the small school district in the previous two years, adjusted to reflect the need for lower staffing ratios in smaller high schools.

(9) In addition, the task force will consider the following criteria in determining the distribution of funds:

(a) The fund balance and percentage of funds available to the small school district at the end of the fiscal year according to the district's most recent audit. Districts with significant fund balances as compared to annual expenditures may receive lower preference; districts with fund balances greater than 40% of annual expenditures will not be considered;

(b) The resources projected to be available to the small school district from an education service district for the fiscal year. Districts with ESD support greater than \$1,000 per ADMw will receive a lower preference;

(c) Extraordinary circumstances affecting a district's capacity to provide instructional services; and

(d) The task force will give preference to requests for funding for high school instructional programs.

(10) The State Superintendent of Public Instruction shall resolve any issues arising from the administration of the small high schools grants not specifically addressed by this rule and the Superintendent's determination shall be final.

(11) This rule will be repealed on June 30, 2003.

Stat. Auth.: ORS 327.013 & SB 519 2001

Stats. Implemented: ORS 327.013

Hist.: ODE 20-2001(Temp), f. & cert. ef. 10-15-01 thru 4-4-02; ODE 30-2001, f. & cert. ef. 12-20-01

581-023-0015

Additional Remote Small School Weighting

(1) Qualifications for remote small school status for school districts organized in a manner other than 1 through 8 and 9 through 12:

(a) When grades 1–12 are located in the same building or in adjacent buildings, the Department of Education shall consider these schools to be organized on a 1–8 and 9–12 basis for small school correction purposes;

(b) In school districts where grades 1–12 or portions thereof are located in geographically separated buildings, the Department of Education shall consider these schools to be organized for small school correction purposes in the same manner as the school district boards considers these schools to be organized.

(2) To measure distances for remote small school qualification and calculation of additional weighted average daily membership the Department shall use the following criteria:

(a) From the closest, reasonable and prudent access point of an elementary school to the closest, reasonable and prudent access point of the nearest elementary school over the shortest practicable route on maintained public roadways; and

(b) From the closest, reasonable and prudent access point of a high school to the closest, reasonable and prudent access point of the nearest high school over the shortest practicable route on maintained public roadways.

(3) The additional weighting for each school qualifying as a remote small school shall be calculated based on the applicable formula stated in ORS 327.077.

(4) Questions regarding the administration of the remote small school weighting not specifically addressed by this rule shall be resolved by the State Superintendent of Public Instruction and the Superintendent's determination shall be final.

(5) The provisions of this administrative rule shall apply to the apportionment of the State School Fund for 1995–96 and subsequent years.

Stat. Auth.: ORS 327

Stats. Implemented: ORS 327.077 & 327.125

Hist.: IEB 118, f. 11-28-67, ef. 12-25-67; IEB 134, f. 6-26-72, ef. 7-15-72; IEB 211, f. 1-19-76, ef. 2-11-76; IEB 267, f. & ef. 11-8-77; IEB 42-1978, f. 10-31-78, ef. 11-1-78; IEB 1-1979, f. & ef. 1-30-79; IEB 11-1980, f. & ef. 5-5-80; IEB 10-1982, f. & ef. 3-24-82; IEB 20-1982, f. & ef. 11-23-82; EB 6-1996, f. & cert. ef. 4-15-96

581-023-0018

Resident Enrollment and Resident Average Daily Membership by County Lines

To provide a basis for budgeting purposes and for final distribution of the Common School Fund and the County School Fund to the school districts, the following procedure shall be followed:

(1) Each school district with territory lying in more than one county (joint districts) shall report to the Oregon Department of Education the resident enrollment by county lines as of December 31 and June 30 of each year. Resident enrollment is defined as the sum of E1 + E2 + R3 + R5 (as defined in OAR 581-023-0006) for pupils who are legal residents of the school district, regardless of where they may attend school. Such reports shall be due within 15 days after the close of the respective quarters.

(2) The Department of Education will then prorate by county the resident average daily membership (ADM — As defined in ORS 327.006) of the joint districts in the same proportion as the district's resident enrollment is prorated between counties.

(3) By March 15 the Department of Education will certify to each Education Service District (ESD) or county school district the December 31 report of resident ADM by county lines. These data are to be used for purposes of budgeting each district's share of estimated receipts from the Common School Fund and the County School Fund.

(4) By November 1, the Department of Education will certify to each ESD or county school district the June 30 report of resident ADM by county lines. These data are to be used for purposes of final distribution to the districts of the Common School Fund and the County School Fund.

Stat. Auth.: ORS 326 & 327

Stats. Implemented: ORS 327.125 & 327.420

Hist.: IEB 234, f. & ef. 6-18-76; IEB 12-1981, f. 5-22-81, ef. 7-1-81

581-023-0019**School Census**

(1) By January 1 of each year, the Center for Population Research and Census certifies to the Oregon Department of Education and to the administrative office of each county an estimate of the population of each county between the ages of 4 and 20, as of October 25 of the previous year. This census is used as the basis for the apportionment of the distributable income account of the Common School Fund to the counties by the Division of State Lands, and also as the basis for determining the amount of the County School Fund mandated levy by the administrative office of each county.

(2) In order to satisfy statutory references to “school age children” or “school census,” an estimated census for all common (unified and elementary) school districts shall be computed in the following manner:

(a) The Department of Education shall prorate the annual estimated school census of the state to each education service district or county school district in the same proportion as each education service district’s or county school district’s resident average daily membership (as defined in ORS 327.006) for the previous June 30 bears to the total resident average daily membership of the state. This census is certified by the Department of Education to each education service district or county school district by January 31 of each year;

(b) Each education service district or county district shall then prorate this school census to the common school districts within its jurisdiction according to the plan approved by the Superintendent of Public Instruction prior to January 1, 1973. Such distribution is to be reported by the education service district or county school district to the districts and the Department of Education by March 15 of each year. This district census is used only for satisfaction of the above mentioned statutory references, and is not used for the distribution of any funds.

Stat. Auth.: ORS 326 & 327

Stats. Implemented: ORS 326.355

Hist.: 1EB 234, f. & ef. 6-18-76; 1EB 14-1985, f. 7-3-85, ef. 7-5-85

581-023-0022**Funding for Youth Corrections and Juvenile Detention Education Programs**

(1) The following definitions shall apply for purposes of calculating the State School Fund distribution to the Youth Corrections Education Program and Juvenile Detention Education Program:

(a) “Statewide Average General Purpose Grant per ADMw” means the aggregate general-purpose grants for all school districts divided by total ADMw for all school districts;

(b) “ADM” means average daily membership as calculated based on the procedures and definitions in OAR 581-023-0006.

(2) If in any fiscal year the General Purpose Grant cannot be calculated as a result of temporary changes to the State School Fund distribution formula, the General Purpose Grant per ADMw shall be the same amount as in the last fiscal year that this factor was calculated.

(3) The amount of the distribution from the State School Fund shall be calculated using the following formulas:

(a) For the Youth Corrections Education Program, the amount shall be equal to the product of the Youth Corrections Education Program ADM times 2.0 times Statewide Average General Purpose Grant per ADMw.

(b) For the Juvenile Detention Education Program, the amount shall be equal to the product of the Juvenile Detention Education Program ADM times 1.5 times Statewide Average General Purpose Grant per ADMw.

(4) Based on estimates of the distribution calculated in section (3) of this rule, funds shall be transferred to the Youth Corrections and Juvenile Detention Education Program approximately 35 percent on the 15th day of each of the months of July and October, 15 percent on the 15th day of January, and the balance on April 15.

(5) Adjustments to reflect actual Youth Correction Education Program ADM, Juvenile Detention Education Program ADM, and the actual Statewide Average General Purpose Grant per ADMw shall be made on May 15 of the subsequent fiscal year.

Stat. Auth.: ORS 420.405

Stats. Implemented: ORS 327.026

Hist.: EB 9-1995, f. & cert. ef. 4-27-95; EB 6-1996, f. & cert. ef. 4-25-96; EB 8-1997, f. & cert. ef. 6-9-97; ODE 14-1998(Temp), f. & cert. ef. 6-29-98 thru 12-25-98; ODE 12-1999, f. & cert. ef. 6-24-99; ODE 26-2001, f. & cert. ef. 11-7-01

581-023-0035**Budgeting and Accounting for Schools**

Rules governing the budgeting and accounting systems for schools and the school systems of accounts are contained in Chapter 2 of the Program Budgeting and Accounting Manual, 2002 Edition, published by the Oregon Department of Education. The State Board of Education adopts this publication to govern budgeting and accounting systems for schools.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 326.051 & 327.125

Stats. Implemented: ORS 294.356 & 327.125

Hist.: 1EB 163, f. 2-20-74, ef. 3-15-74; 1EB 234, f. & ef. 6-18-76; 1EB 23-1980(Temp), f. & ef. 9-2-80; 1EB 27-1980, f. & ef. 11-7-80; EB 12-1987, f. & ef. 7-10-87; ODE 5-1999, f. & cert. ef. 1-12-99; ODE 5-2001, f. & cert. ef. 1-29-01; ODE 3-2003, f. & cert. ef. 3-10-03

581-023-0037**Audit Statement of Revenue and Expenditure Accounts by Fund**

(1) Following the end of each fiscal year, each school district shall complete or have completed forms provided by the Department of Education for the purpose of summarizing district revenues and expenditures by fund for the fiscal year ending June 30.

(2) The data so prepared shall be audited and incorporated as part of the district’s financial report.

Stat. Auth.: ORS 327

Stats. Implemented: ORS 327.125 & 327.137

Hist.: 1EB 17-1978, f. 4-21-78, ef. 5-4-78

581-023-0038**Audit Requirements for School Food and Nutrition Services**

(1) Following the end of each fiscal year, each school district participating in the federally funded School Food and Nutrition Services shall complete forms provided by the Oregon Department of Education for the purpose of summarizing district revenues and expenditures of their nonprofit school food service.

(2) The data included in the form shall be audited and incorporated as part of the district’s financial report which is submitted to the Department of Education.

(3) If a district’s food and nutrition services account demonstrates the net cash resources exceeds three months average expenditures, the Department will request a corrective action plan to reduce the excess cash resources.

Stat. Auth.: ORS 326 & 327

Stats. Implemented: ORS 327.137

Hist.: EB 39-1990, f. & cert. ef. 7-10-90

581-023-0040**Approved Transportation Costs for Payments from the State School Fund**

(1) Definitions for the purpose of this rule:

(a) “Elementary School Student” means, notwithstanding any other OAR or statute, pupils attending a school offering only an elementary curriculum, any combination of grades K through 8;

(b) “Secondary School Student” means, notwithstanding any other OAR or statute, pupils attending a school offering any secondary curriculum for grades 9, 10, 11, or 12. Additionally, all students attending a school designated by the local school board through board action as a junior high school or middle school may be considered secondary students;

(c) “Mile(s) from School” means the distance a student lives from school, measured from the closest, reasonable, and prudent point between the school property identified by the local board for that pupil’s attendance and the property where the pupil lives. The distance will be measured over the shortest practicable route on maintained public roadways or over existing pedestrian facilities or pedestrian facilities capable of meeting the requirements listed in ORS 332.405(4);

(d) “Supplemental Plan” means a plan adopted by local school board resolution identifying groups or categories of students who live within the 1 and 1.5 mile limitations and require transportation based on health or safety reasons, including special education. Supplemental plan approvals may be ordered by the State Board of Education or its designated representatives. The State Board shall have the right of final review of any actions regarding supplemental plans. Appeals will be directed to the State Board for final consideration. The Plan must include the following:

(A) The approximate number of students to be transported based on the plan;

(B) The health or safety reasons cited for providing transportation;

(C) The local board resolution specifying the supplemental plan as submitted; and

(D) Any additional information or documentation supporting the supplemental plan deemed appropriate locally.

(e) “Local School Board” means, notwithstanding any other OAR or statute, the local school board for the district in which the student’s legal residence is physically located. Local school boards are not required to provide transportation for students who have requested and received approval to attend a school other than that designated by the local school board for students living in their specified attendance area;

(f) “Bus Manufacturer’s Rated Capacity” means the number of students to be used in the calculations specified in paragraph (5)(n)(B) of this rule and described below:

(A) Buses transporting only elementary students will have a passenger capacity as stated on the manufacturer’s identification plate;

(B) Buses transporting only high school students, grades 9 through 12 will have a passenger capacity based on two students for each 39 inch bus seat;

(C) Buses transporting mixed groups from grades K-12 (in any combination) or groups of only junior high or middle school students will have a passenger capacity based on 2.5 students for each 39-inch bus seat.

EXAMPLE: A bus with a manufacturer’s passenger capacity stated on the identification plate of 72 would have the following ratings: elementary — 72, high school only — 48, mixed groups — 60, middle school and junior high school — 60.

(2) Approved transportation costs shall include those costs incurred in transporting pupils to and from instructional programs during the regularly scheduled school term within the limitations specified by ORS 327.006 and 327.033. Approved transportation costs may include costs incurred in transporting students participating in extended school year programs eligible for funding from the State School Fund.

(3) Approved transportation costs shall include those district expenditures associated with:

(a) Home-to-school transportation of elementary school pupils who live at least one mile from school;

(b) Home-to-school transportation of secondary school pupils who live at least one and one-half miles from school;

(c) Transportation of pupils between educational facilities either within or across district boundaries, if the facilities are used as part of the regularly-scheduled instructional program approved by the Board;

(d) Transportation of pupils for in-state field trips when such represents an extension of classroom activities for instructional purposes, and shall include out-of-state destinations within 100 miles of the Oregon border;

(e) Transportation of pupils home to school for whom a supplemental plan has been approved by the State Board of Education in addressing safety, health, and special education needs;

(f) Transportation of preschool children in Early Childhood Special Education Services having an Individual Family Service Plan requiring transportation and preschool children receiving Early Intervention Services under the authority of ORS 343.533.

(g) School to home transportation following extended school day instructional programs for:

(A) Elementary school pupils who live at least one mile from school;

(B) Secondary school pupils who live at least one and one-half miles from school.

(4) Approved transportation costs shall exclude those district expenditures associated with transportation for the following unless the school program is required under provisions of the Individuals with Disabilities Education Act, ORS 343.533 or 339.010 through 339.090 and 339.250:

(a) Pupils living within the limits prescribed in ORS 327.006(2) for whom no supplemental plan has been approved by the State Board;

(b) Activity trips other than for instructional purposes;

(c) Athletic trips;

(d) School lunch purposes;

(e) Summer school;

(f) Adult education;

(g) Evening school;

(h) Preschool and/or nursery school;

(i) Board and room in lieu of transportation associated with field trips;

(j) Transportation facility and staff costs other than those directly related to approved pupil transportation activities.

(5) The computation shall be made as follows:

(a) Pupil Transportation Salaries;

(b) Pupil Transportation Supplies, Equipment, Repairs, and Maintenance;

(c) All contracted Transportation;

(d) Travel of Pupil Transportation Personnel;

(e) Employee Benefits on Pupil Transportation Salaries;

(f) Pupil Transportation Insurance;

(g) Payments in Lieu of Transportation;

(h) Other Expenses of Pupil Transportation;

(i) Payments to Other Districts for Pupil Transportation;

(j) Leases and Rentals;

(k) Depreciation:

(A) Depreciation of Garage;

(B) Depreciation of Buses.

(l) Total of subsections (5)(a) through (k) of this rule;

(m) Deduct (if cost is included in detail above):

(A) Payments Received from Other Districts and from Patrons for reimbursable transportation;

(B) Nonreimbursable Transportation Costs:

(i) For 2003–04:

(I) Number of miles @ \$1.80 per mile for all school buses and school activity vehicles having a manufacturers’ designed passenger capacity greater than 20 persons including driver; or

(II) Number of miles @ \$.90 per mile for all school activity vehicles having a manufacturers’ designed passenger capacity 20 or less including driver; or

(ii) For 2004–05:

(I) Number of miles @ \$1.85 per mile for all school buses and school activity vehicles having a manufacturers’ designed passenger capacity greater than 20 persons including driver; or

(II) Number of miles @ \$.925 per mile for all school activity vehicles having a manufacturers’ designed passenger capacity 20 or less including driver; or

(iii) For 2005–06:

(I) Number of miles @ \$1.89 per mile for all school buses and school activity vehicles having a manufacturers’ designed passenger capacity greater than 20 persons including driver; or

(II) Number of miles @ \$.945 per mile for all school activity vehicles having a manufacturers’ designed passenger capacity 20 or less including driver; or

(iv) For 2006–07:

(I) Number of miles @ \$1.93 per mile for all school buses and school activity vehicles having a manufacturers’ designed passenger capacity greater than 20 persons including driver; or

(II) Number of miles @ \$.965 per mile for all school activity vehicles having a manufacturers’ designed passenger capacity 20 or less including driver; or

(v)(I) Those local school board certified marginal costs attributable to services described in section (4)(a) of this rule, calculated and documented as follows: Documentation maintained by local district shall include: bus and route identification, school(s) being served, number of eligible students on board, number of ineligible students on board;

(II) Calculation of marginal costs shall be as follows: District Cost Per Mile of bus operation divided by the total number of students transported on each bus to derive an average cost per student. The cost per student multiplied by the number of ineligible students and the number of miles inside the limits provides the amount for deduction. Example: Cost per student = district cost per bus mile – number of students on bus; Total Deduction = cost per student x ineligible students x number of miles inside limit.

(III) No deduction will be made for transportation inside prescribed limits if the local board certifies student demographics would require student bus rides to or from school of more than one hour if the bus is routed in a manner making it accessible to the number of eli-

gible students living outside the prescribed mileage limit equal to 130 percent of the bus manufacturer's rated capacity; or

(IV) The local school board certifies that buses are routed in a manner to serve at least the number of eligible students living outside the prescribed mileage limits equal to 130 percent of the bus manufacturer's rated passenger capacity; and

(V) In either of the aforementioned situations, no additional costs have been incurred by the district for the identified service.

(C) State and Federal Receipts for Transportation, except those apportioned under ORS 327.006 or third party medicaid payments for transportation, if used to support expenditures in subsections (5)(a) through (l) of this rule;

(D) Rental or Lease Payments from Private Contractors;

(E) The percentage of transportation facility depreciation commensurate with the percentage of the total district fleet value based upon purchase price (see subsection (6)(k) of this rule) represented by nonpupil transportation equipment. Examples of nonpupil transportation equipment would include the following: lawnmowers, tractors, backhoes, trucks, pickups, cars, trailers, snowblowers, etc.

(n) Total Deductions ((5)(m)(A)+(m)(B)+(m)(C)+(m)(D)+(m)(E));

(o) Approved Cost ((5)(l) minus (5)(n)).

(6) In the above computation, the following definitions apply:

(a) Pupil Transportation Salaries. Salaries and wages paid school bus drivers, assistants to driver, and that portion of salaries paid mechanics and other bus maintenance employees, supervisors of transportation, secretarial and clerical assistants, and persons assigned transportation oversight and coordination responsibilities attributable to the transportation program and documented through position descriptions and payroll records. No school district General Administration salaries may be included in this area;

(b) Pupil Transportation Supplies, Equipment, Repairs, and Maintenance. Costs of gasoline, oil, lubricants, tires, tire repair, batteries, vehicle diagnosis and repair equipment identified as capital expenditures in the "Program Budget Manual," vehicle repair parts and supplies, repair of vehicles by other than the school district, garage maintenance and operation, and garage equipment repair and maintenance;

(c) All Contracted Transportation. Payments to parents and independent public or private contractors for transporting pupils from home to school, between educational facilities and for nonreimbursable activities enumerated in paragraph (6)(l)(B) of this rule; and fares to public carriers for transporting pupils from home to school and between educational facilities;

(A) If a district retains ownership of buses and garages and contracts for the operation of the transportation system with provision in the contract for lease or rental of the buses and garages, the contracted transportation cost shown should reflect the gross bid including the lease or rental payment. The lease or rental payment shall be deducted in the computation as reported in paragraph (5)(n)(D) of this rule;

(B) If the district retains ownership of buses and garages and participates in a transportation cooperative or consortium through an intergovernmental agreement, depreciation apportionment provided under ORS 327.033 will be disbursed directly to the district. No depreciation component is approved for cooperative-owned buses or garages.

(d) Travel of Pupil Transportation Personnel. Meals, lodging, mileage, per diem and other travel expenses of pupil transportation personnel, and private car mileage if paid to bus drivers for travel to and from the point where school bus is parked if other than the central garage. The same travel expenses plus tuition or registration are included for attendance at Department of Education sponsored or presented pupil transportation training programs and seminars;

(e) Employee Benefits on Pupil Transportation Salaries. The district's contributions for employee benefits including social security and retirement, employee health insurance, workers' compensation, and unemployment insurance;

(f) Pupil Transportation Insurance. Payments for public liability and property damage, medical care, collision, fire and theft, and insurance on garages and shops;

(g) Payments in Lieu of Transportation. Payments for pupils' board and room in lieu of transportation, consistent with ORS 332.405(2);

(h) Other Expenses of Pupil Transportation. District-paid fees for school bus drivers' physical examinations; interest on bus or garage

contracts payable including lease-purchase agreements if capitalized (see subsection (6)(k) of this rule);

(i) Payments to Other In-State or Out-of-State Districts for Transportation. Payments to other districts for approved pupil transportation costs;

(j) Leases and Rentals. Rental or lease payments for the use of land or buildings used for approved pupil transportation. Rental or lease payments for buses operated by district personnel for approved pupil transportation.

NOTE: Only those leases which do not contain an option to purchase or application of rentals to purchase should be included in subsection (5)(j) of this rule. See subsection (6)(k) of this rule as to the proper treatment of other lease-purchase agreements.

(k) Depreciation. For purposes of computing depreciation, capitalized cost is defined to include the unit cost of the asset, exclusive of interest, for such assets purchased outright, by conventional contract, or by lease-purchase agreement if such agreement contains any provision to acquire ownership at the end of the agreement by application of a portion of the rentals paid or a terminal payment. The computation of the capitalized cost and the depreciation shall be according to the following:

(A) Portions of Garages and Other Buildings Used for Approved Pupil Transportation:

(i) Outright purchase (including purchase by conventional contract). For each outright purchase or purchase by conventional contract, each district shall report to the Oregon Department of Education, on the forms provided, the unit cost of the garage or other building purchased and the dollar amount of interest payments associated with such purchase. The capitalized value shall represent the unit cost, exclusive of interest. Depreciation shall be computed at an annual rate of four percent;

(ii) Lease-purchase agreements. For each lease-purchase agreement, the district shall report to the Oregon Department of Education, on the forms provided, the dollar amount of the agreement, the interest payments contained in the agreement, and the schedule of such interest payments contained in the agreement. Subsequent to July 1, 1975, the capitalized value shall represent the lease-purchase price less any interest payments contained in the agreement. Depreciation shall be computed at an annual rate of four percent.

(B) Buses and Other Vehicles Used for Approved Pupil Transportation:

(i) Outright purchase (including purchase by conventional contract). For each outright purchase or purchase by conventional contract, each district shall report to the Oregon Department of Education, on the forms provided, the unit cost of the vehicle(s) purchased and the dollar amount of interest payments associated with such purchase. The capitalized value shall represent the unit cost, exclusive of interest. Depreciation shall be computed at an annual rate of ten percent;

(ii) Lease-purchase agreements. For each lease-purchase agreement, the district shall report to the Oregon Department of Education, on the forms provided, the dollar amount of the agreement, any applicable trade-in value, the dollar amounts of interest payments contained in the agreement, and the schedule of such interest payments contained in the agreement. The capitalized value of the vehicles shall represent the lease-purchase price including the trade-in allowance less interest payments contained in the agreement. Depreciation shall be computed at an annual rate of ten percent;

(iii) Lease agreements. If the district is leasing its buses under a lease agreement, the district shall report the annual lease cost. A lease agreement as used in this paragraph means an agreement whereby the lessor retains title to the buses being leased to the lessee school district and the title to the buses is never received by the lessee. Under such a lease agreement, the use of the buses by the lessee is limited by the term of the lease. If there is an auxiliary agreement either written or oral whereby at the end of the lease term, the title of the buses shall pass to the lessee school district, the agreement is not a lease agreement as described in this paragraph but is a lease-purchase agreement as outlined in subparagraph (ii) of this paragraph. The lease payment made by a school district obtaining the use of buses pursuant to a lease as defined in this paragraph shall be used in the computation of the reimbursement in place of the depreciation set forth in subparagraphs (i) and (ii) of this paragraph.

(l) Deductions:

(A) Payments Received from Other Districts and from Patrons. Money received from other school districts, parents, guardians, or stu-

dents for transportation if paid in support of expenditures listed in subsections (5)(a) through (l) of this rule;

(B) Nonreimbursable Transportation Costs. Actual bus mileage of excludable trips shall include the actual mileage in district owned or contracted buses for transportation for activity trips, athletic trips, school lunch purposes, summer school, adult education, evening school, nursery school, and any other nonreimbursable purposes. Such mileage shall be deducted at the rate indicated in subsection (5)(m)(B) of this rule. The rate of deduction may be reviewed periodically by the State Board of Education and adjusted accordingly;

(C) State and Federal Receipts for Transportation. All state and federal receipts for transportation expenditures, exclusive of funds apportioned under ORS 327.006 and 327.033, that have been included in subsection (5)(a) through (l) of this rule;

(D) Rental or Lease Payments from Private Contractors. Payments received from private contractors for the use of district owned buses and garages in the operation of the pupil transportation system by the private contractor. This item must be shown as Revenue Code 1930 in the school district audit and the gross payments to the contractor must be included in subsection (5)(c) of this rule.

(7) Each district shall maintain a record, by purpose, of total pupil transportation miles and shall submit a report of such to the Oregon Department of Education on the form provided. The accuracy of such records shall be certified by the district clerk.

(8) If an education service district offers a special service under the provisions of section (4) of ORS 334.175, including home-to-school transportation that would qualify for reimbursement under the provisions of ORS 327.006 if provided by a local school district, the following procedure in crediting the transportation expenditure to the local district may be employed:

(a) The education service district shall compute approved home-to-school transportation costs as provided in section (4) of this rule;

(b) The approved costs so determined shall be billed to and paid by each of the local school districts. The expenditure shall be accounted for by the local district as a transportation expenditure paid to another education agency;

(c) The audited district expenditure shall be recognized by the State Superintendent of Public Instruction in computing the local district's entitlement under ORS 327.006;

(d) If the education service district reimburses the local district the difference between that portion billed and that paid under ORS 327.006, such reimbursement — if derived from property tax sources by education service district resolution — shall not be deducted by the state in determining the local district's approved costs. The local district shall account for the education service district reimbursement as other general receipts are accounted for from the education service district.

(9) For purposes of computing board and room entitlement for a district operating a dormitory under provisions of ORS 327.006, the state assumes responsibility for its proportionate share of costs associated with the provision of food, facilities, staff, operation, and maintenance necessary to provide students with safe and healthy living conditions. The state does not assume responsibility for costs associated with recreation or entertainment of students. The approved cost against which the computation is made for state liability shall not exceed the limit stated in ORS 332.405. In addition, the state will assume its proportionate share of the cost of field trips as defined in subsection (3)(c) of this rule.

(10) The computation of approved expenditures for board and room entitlement shall be made as follows:

- (a) Salaries;
- (b) Operation:
 - (A) Utilities;
 - (B) Supplies;
 - (C) Other Operational Costs.
- (c) Maintenance:
 - (A) Upkeep;
 - (B) Replacement.
- (d) Fixed Charges:
 - (A) Employee Benefits;
 - (B) Other Fixed Charges.
- (e) Food;

(f) Operation of Buses and Other Vehicles — Supplies, Repairs and Maintenance;

(g) Depreciation:

- (A) Dormitory;
- (B) Buses and Other Vehicles.

(h) Total Expenditures (Sum of subsections (10)(a) through (g) of this rule);

(i) Deductions (subtract if cost is included in cost above):

- (A) Payments Received from Other Districts and from Patrons;
- (B) Nonreimbursable Transportation Costs as indicated in subsection (5)(m)(B) of this rule;

(C) State and Federal Receipts for Transportation, except those apportioned under ORS 327.006, 327.033, or third party medicaid payments, if used to support expenditures in subsections (10)(a) through (g) of this rule;

- (D) Federal School Lunch, Breakfast, and Milk Reimbursements;
- (E) Sales of Food.

(j) Total Deductions (sum (10)(i)(A) + (i)(B) + (i)(C) + (i)(D) + (i)(E));

(k) Approved Cost ((10)(h) minus (10)(j) of this rule).

(11) The items included in the board and room entitlement computation are defined as follows:

(a) Salaries. Salaries and wages paid dormitory personnel, including the dormitory manager, cooks, custodians, and other personnel directly concerned with operation of the dormitory, and that portion of salaries paid secretarial and clerical assistants and other personnel attributable to the dormitory program;

(b) Operation:

(A) Utilities. Heat for buildings, water and sewage, electricity, telephone, and other utilities necessary for the operation of the dormitory;

(B) Supplies. Custodial supplies, supplies for care of grounds, linens, and other supplies necessary for the operation of the dormitory including food services. Purchase of food is included in subsection (11)(e) of this rule;

(C) Other Operational Costs. Contracted custodial services, window washing, laundry or linen services, etc., necessary for the operation of the dormitory.

(c) Maintenance:

(A) Upkeep. Expenditures associated with maintaining the existing dormitory facilities in a safe, healthy, and efficient condition, including supplies and materials for upkeep of dormitory grounds and the dormitory building. Costs associated with maintenance of recreational or entertainment facilities are excluded;

(B) Replacement of Equipment. Expenditures associated with replacing equipment necessary to the safe, healthy, and efficient operation of the dormitory. Replacement of equipment used for recreational or entertainment purposes are excluded.

(d) Fixed Charges:

(A) Employee Benefits. Expenditures for dormitory employees' benefits including social security and retirement, employee health insurance, workers' compensation, and unemployment insurance;

(B) Other Fixed Charges. Expenditures for property insurance, liability insurance, rental of land and buildings for purposes associated with operation of the dormitory, and other fixed charges directly attributable to operation of the dormitory.

(e) Food. Expenditures for food necessary for the operation of the dormitory;

(f) Operation of Buses and Other Vehicles — Supplies, Repairs, and Maintenance. Expenditures for gasoline, oil, lubricants, tires, tire repair, batteries, vehicle repair parts and supplies, repair of vehicles by other than the school district, garage maintenance and operation, and garage equipment repair and maintenance necessary for the operation of buses utilized for purposes stated in section (3) of this rule and of other vehicles necessary for the operation of the dormitory;

(g) Depreciation:

(A) Dormitory. For purposes of computing dormitory depreciation, capitalized cost is defined as the unit cost of the asset (including the cost of original equipment), exclusive of interest, plus the cost of substantial improvements or remodeling. Costs associated with providing recreational or entertainment facilities are not included. Depreciation shall be computed at an annual rate of four percent;

(B) Buses and Other Vehicles. Depreciation for buses used for approved pupil transportation and that portion of other vehicles necessary for operation of the dormitory shall be computed in accordance

with the formula and definition stated in paragraph (6)(k)(B) of this rule.

(h) Total. Sum of subsections (10)(a) through (g) of this rule;

(i) Deductions:

(A) Payments Received from Other Districts and from Patrons. Money received from other school districts, parents, guardians, or students for transportation or room and board if paid in support of expenditures listed in subsections (10)(a) through (f) of this rule;

(B) Nonreimbursable Transportation Costs. Costs for nonreimbursable transportation according to the formula and definition stated in paragraph (6)(l)(B) of this rule;

(C) State and Federal Receipts for Transportation. All state and federal receipts for transportation or room and board expenditures exclusive of funds apportioned under ORS 327.006 that have been included in subsections (10)(a) through (f) of this rule;

(D) Federal School Lunch, Breakfast, and Milk Reimbursements. All federal receipts for school lunch, breakfast, and milk expenditures that have been included in subsections (10)(a) through (f) of this rule;

(E) Sales of Food. Money received from teachers, students, or other individuals from food sales for which the expenditures are included in subsections (10)(a) through (f) of this rule.

(12) Such items of expenditure as may be questionable in applying the policy stated in this administrative rule shall be resolved by the State Superintendent of Public Instruction and such determination shall be final.

(13) Apportionment of the State School Fund for 2001–02 and subsequent years.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 327.013 & 820.100 - 820.120

Stats. Implemented: ORS 327.013 & 820.100 - 820.120

Hist.: 1EB 177, f. 10-2-74; 1EB 181, f. 1-17-75, ef. 7-1-75; 1EB 209, f. 12-5-75, ef. 1-16-76; 1EB 220, f. 2-17-76, ef. 3-15-76; 1EB 233, f. 6-11-76, ef. 6-18-76; 1EB 4-1978, f. 1-27-78, ef. 1-27-78; 1EB 10-1980, f. & ef. 5-5-80; 1EB 6-1981, f. 3-2-81, ef. 3-3-81; 1EB 4-1982, f. & ef. 2-10-82; 1EB 15-1982, f. 8-4-82, ef. 8-5-82; 1EB 17-1983, f. 11-23-83, ef. 11-25-83; 1EB 1-1985, f. 1-4-85, ef. 1-7-85; 1EB 5-1986, f. 1-30-86, ef. 2-1-86; 1EB 4-1987, f. & ef. 2-20-87; 1EB 32-1987, f. & ef. 12-10-87; 1EB 42-1988, f. & ef. 11-15-88; 1EB 3-1992, f. & ef. 2-21-92; 1EB 21-1993, f. & ef. 6-2-93; 1EB 4-1997, f. & ef. 4-25-97; ODE 9-2000, f. & ef. 4-5-00; ODE 25-2001, f. & ef. 11-7-01; ODE 9-2003, f. & ef. 6-13-03; ODE 10-2006, f. & ef. 2-21-06

581-023-0041

Computation of Net Operating Expenditures

(1) The computation of “net operating expenditures” under ORS 327.006 shall be made as follows, using accounts as herein defined for the General Fund and subject to such items of exclusion as are stated in this rule.

(a) Instruction (K–12, regular school year):

(A) Regular Programs (function 1100 except functions 1113, 1122, 1132, and 1140) – \$____;

(B) Special Programs (function 1200) – \$____;

(C) Total Approved Instruction ((a)(A) + (B)). – \$____(a).

(b) Supporting Services:

(A) Students (function 2100) – \$____;

(B) Instructional Staff (function 2200) – \$____;

(C) General Administration (function 2300) – \$____;

(D) School Administration (function 2400) – \$____;

(E) Business (functions 2510, 2520, 2540, and 2570); \$____;

(F) Central (function 2600) – \$____;

(G) Total Approved Supporting Services ((b)(A) + (B) + (C) + (D) + (E) + (F)) – \$____(b).

(c) Subtotal ((a) + (b)) – \$____(c);

(d) Tuition and Services Receipts (revenue code 1310 + revenue code 1940) – \$____(d);

(e) Approved Net Operating Expenditures for Resident Pupils (c) minus (e)(d)) – \$____(e).

(2) The following expenditure items are excluded from the computation:

(a) Co-curricular expenditures, instruction functions only;

(b) All capital outlay expenditures;

(c) Job Training Partnership Act (J.T.P.A.) or ESEA funded expenditures;

(d) Expenditures for programs operated under 343.261; and 343.961.

(e) Expenditures for programs operated under 343.455; and 343.534.

(f) Indian Education funded expenditures.

(3) Approved expenditures by function/object used in the computation shall be restricted to the General Fund;

(4) Approved function and object codes used in the computation are defined in the **Program Budgeting and Accounting Manual, 2000 Edition**, published by the Oregon Department of Education.

(5) Questions regarding approvable items in the administration of this rule shall be resolved by the State Superintendent of Public Instruction and the Superintendent’s determination shall be final.

(6) The provisions of this administrative rule shall apply to all statutory references to ‘net operating expenditures.’ Any change made in the accounting system by the State Board of Education shall be reflected by corresponding adjustments in functions and object codes stated in the rule.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 327

Stats. Implemented: ORS 327.006(6) & 327.008

Hist.: 1EB 16-1979, f. 11-8-79, ef. 11-9-79; 1EB 22-1980, f. & ef. 7-15-80; 1EB 14-1985, f. 7-3-85, ef. 7-5-85; 1EB 22-1987, f. 10-16-87, ef. 7-1-88; ODE 23-2001, f. & cert. ef. 11-7-01

581-023-0050

Rules for Implementation of Child Development Specialist Programs and State Reimbursement for Costs of Such Programs

(1) The district school board of every school district operating elementary schools may make the services of a Child Development Specialist available to the children and their families residing in attendance areas of the schools:

(a) Priority shall be given to programs for the primary grades, including kindergarten;

(b) Services may be made available to children four years of age or younger and their families.

(2) Each program, to be approved, shall be developmentally appropriate and include:

(a) A prevention program encompassing the early identification of developmental problems and the building of positive attitudes towards self and others;

(b) Training, role identification, job responsibilities and objectives of a Child Development Specialist position in relation to the school staff;

(c) A program designed to provide consultative services for families to assist in understanding child development and the uniqueness of individuals;

(d) Community resource utilization in planning and operation of the program.

(3) Indicators of a Quality Child Development Specialist Program:

(a) The specialist shall be a member of the school staff and shall be responsible for the promotion of each child’s total developmental progress;

(b) The specialist shall help children and their families develop positive attitudes toward themselves and others, the specialist shall utilize teacher in-service training, parent and family training, and individual and small group counseling with children;

(c) The specialist shall be committed to encouraging communication among influential persons in each child’s environment;

(d) The specialist shall focus on the developmentally appropriate practices that insure the identification of the child’s talents and strengths:

(A) When such talents and strengths are identified, the child’s specific needs shall be addressed;

(B) The identification process shall include observation of the child in various settings, involvement of families and school staff, counseling interviews with the child, collection of relevant data and assistance from individuals or agencies who may interact with the child.

(4) Responsibilities of the Child Development Specialist:

(a) Assure developmentally appropriate assessment of learning and developmental levels for each child;

(b) Design programs and strategies to assist each child in his/her individual growth and development;

(c) Identify and utilize the strengths of each child, with assistance from school staff, families, and community members to create a positive learning experience;

(d) Be a resource to the teacher in designing classroom procedures or materials based upon the identified talents, strengths, and needs of each child;

(e) Provide training for staff and families to understand their role and responsibility related to children's talents and strengths, individual differences, and self-esteem;

(f) Work with staff and families to identify and meet special needs of children.

(5) Individuals contracted as Child Development Specialists shall hold a Personnel Services Certificate, a Personnel Services Certificate of Accomplishment as issued by Teacher Standards and Practices Commission or be approved to serve in that capacity by the State Board of Education. When selecting a Child Development Specialist, requirement of a master's degree is recommended, but training or experiences to meet the following competencies shall be required:

(a) Observing and analyzing behaviors of children in their environments;

(b) Establishing counseling and supporting relationships which assist children and their families with home, school, and community issues;

(c) Understanding and communicating the results from developmentally appropriate assessment and screening procedures to staff, children, and their families;

(d) Working collaboratively in schools, agencies and the community;

(e) Identifying and coordinating resources and making appropriate referrals;

(f) Planning, coordinating, and consulting with others to provide educational programs in such areas as: Classroom guidance, life career roles, personal safety, conflict management, self-esteem, decision making, communication skills, parenting skills, and interpersonal relationships;

(g) Utilizing interpersonal skills such as: leadership, communication, group interaction, family counseling, individual counseling, and sensitivity to confidentiality;

(h) Developing and implementing a building plan and individual child action plan;

(i) Recognizing and developing the talents and strengths and positive characteristics of children;

(j) Utilizing growth and development concepts in providing services to the program population.

(6) Each district shall have goals and measurable objectives for the Child Development Specialist Program based upon identified needs.

(7) School districts planning to offer the services of a Child Development Specialist shall have a program plan as described in this OAR filed with and approved by the Oregon Department of Education.

(8) The local district evaluation process shall be based upon the goals stated in ORS 343.125 as well as the goals of the district's program.

(9) An annual written evaluation report, based upon both outcomes and activities, shall be provided to the Department of Education by June 15.

(10) School districts maintaining approved Child Development Specialist programs for which reimbursement is being claimed, shall file a verified claim for the costs incurred with the Superintendent of Public Instruction following the close of each fiscal quarter.

(11) If the application for reimbursement is approved by the Superintendent of Public Instruction, the district shall be reimbursed the amount claimed, in accordance with ORS 343.135(2).

Stat. Auth.: ORS 343.125 - 343.145

Stats. Implemented: ORS 329.255 & 329.265

Hist.: 1EB 199, f. 7-1-75, ef. 9-1-75; 1EB 18-1981, f. & ef. 12-23-81; EB 11-1992, f. & cert. ef. 4-7-92

581-023-0060

State Superintendent's Approval of Bonded Debt for Nonstandard and Conditionally Standard School Districts

The State Superintendent of Public Instruction shall approve additional bonded indebtedness for a nonstandard or conditionally standard school district as described in ORS 328.205 when:

(1) The purpose of the revenues is listed under ORS 328.280(1) and is included in the district's plan to correct the deficiencies causing the nonstandard or conditionally standard status.

(2) The district demonstrates that in contracting for bonded indebtedness it will not impair or delay its efforts in becoming a standard district.

Stat. Auth.: ORS 328.205

Stats. Implemented: ORS 328.205

Hist.: EB 6-1991, f. & cert. ef. 4-3-91

581-023-0100

Eligibility Criteria for Student Weighting for Purposes of State School Fund Distribution

(1) The following definitions apply to this rule:

(a) "Average Daily Membership" or "ADM" means the membership defined in ORS 327.006(3) and OAR 581-023-0006;

(b) "Days in Session" means number of days of instruction during which students are under the guidance and direction of teachers;

(c) "Department" means the Oregon Department of Education;

(d) "Language Minority Student" means:

(A) Individuals whose native language is not English; or

(B) Individuals who come from environments where a language other than English is dominant; or

(C) Individuals who are Native Americans or Native Alaskans and who come from environments where a language other than English has had a significant impact on their level of English proficiency.

(e) "Superintendent" means the State Superintendent of Public Instruction;

(f) "Weighted Average Daily Membership" or "ADMw" means the ADM plus an additional amount or weight as described in ORS 327.013, subject to the limitations imposed by Section (4)(a), Chapter 780, Oregon Laws 1991.

(2) Pursuant to ORS 327.013(7)(a)(A) the resident school districts shall receive one additional ADM or "weight" for children with disabilities who comprise up to 11 percent of the district's ADM. The Department will calculate the percentage of children with disabilities on the basis of resident counts of students eligible for weighting from the Special Education Child Count and the resident ADM:

(a) To be eligible, a student must be in the ADM of the school district and meet the following criteria:

(A) The student must be eligible for special education having been evaluated as having one of the following conditions: Mental retardation, hearing impairment including difficulty in hearing and deafness, speech or language impairment, visual impairment, serious emotional disturbance, orthopedic or other health impairment, autism, traumatic brain injury or specific learning disabilities; and

(B) The student must be between the ages 5 and 21 and generate federal funding for purposes of special education.

(b) Districts may apply for an exception to the 11 percent ceiling. Applications are to be made on forms provided by the Department. Upon receipt of the application the Superintendent may conduct a complete review of a district's special education records. The Superintendent shall develop a process for conducting such reviews which will include the following elements:

(A) Comparison of district claims with those submitted by other districts;

(B) Participation of school district and education service district staff in the review. No district staff shall be asked to review claims submitted by the employing district.

(c) After considering the recommendations of the review committee the Superintendent may allow all or a portion of the requested added weighted ADM over 11 percent;

(d) The Superintendent shall make the determination of approval for funding above the 11 percent limitation. Such determination may be appealed for review by the State Board of Education according to a process established by the Superintendent;

(e) If the review indicates that a district has claimed ineligible special education students, the Superintendent also shall withhold the related federal funds from the district, pursuant to OAR 581-015-0049;

(f) A district must submit an application for an exception to the 11 percent ceiling no later than six months after the close of the year for which payment is being sought. Payments for allowable exceptions shall be made in the following school year as part of the May 15 payment.

(3) Pursuant to ORS 336.640(4), the resident school districts shall receive an additional 1.0 times the ADM of all eligible pregnant and parenting students:

(a) To be eligible, a student must be in the ADM of the resident school district and meet the following criteria:

(A) The student must be identified through systematic procedures established by the district;

(B) The student must be enrolled and receiving services described in ORS 336.640(1)(b) and (d);

(C) The student must have an individualized written plan for such services which identifies the specific services, their providers, and funding resources.

(b) Students counted in section (2) of this rule are not eligible under this section.

(4) Pursuant to ORS 327.013(7)(a)(B), the resident school districts shall receive an additional .5 times the ADM of all eligible students enrolled in an English as a Second Language program. To be eligible, a student must be in the ADM of the school district in grades K through 12 and be a language minority student attending English as a Second Language (ESL) classes in a program which meets basic U.S. Department of Education, Office of Civil Rights guidelines. These guidelines provide for:

(a) A systematic procedure for identifying students who may need ESL classes, and for assessing their language acquisition and academic needs;

(b) A planned program for ESL and academic development, using instructional methodologies recognized as effective with language minority students;

(c) Instruction by credentialed staff and trained in instructional strategies that are effective with second language learners and language minority students, or by tutors supervised by credentialed staff trained in instructional strategies that are effective with second language learners and language minority students;

(d) Adequate equipment and instructional materials;

(e) Evaluation of program effectiveness in preparing ESL students for academic success in the mainstream curriculum.

(5) Students served in the following programs are not eligible for weighting:

(a) Programs funded fully by state funds, programs funded fully by federal funds, and programs funded fully by a combination of state and federal funds;

(b) Private and parochial schools unless placed by the resident district in a registered private alternative program or state approved special education program;

(c) Instruction by a private tutor or parent under ORS 339.035.

(6) No later than January 15 of each year, the designated official for a school district shall submit to the Department a report of students eligible under sections (3) and (4) of this rule. The report shall include the following data for the period October 1 through December 31:

(a) Total days in session for the quarter ending December 31 for the school or program reporting;

(b) Total days membership for the quarter ending December 31 for all students served in eligible programs.

(7) Not later than July 10 of each year, the designated official for a school district shall submit to the Department a final report of students eligible under sections (3) and (4) of this rule. The report shall include the following:

(a) Total days in session during the regular school year for the school or program reporting;

(b) Name of each student;

(c) Total days membership beginning with the first day of instruction for each student and ending with the date of withdrawal from the eligible program or the end of the regular school year, whichever comes first;

(d) Grade level of the student.

(8) School districts must retain supporting documentation for a minimum of two years.

(9) The Department shall perform periodic reviews of the eligibility of students reported for additional weighting. Any funds provided for ineligible students shall be recovered by the Department for redistribution to school districts.

(10) This rule is effective beginning with the 1993-94 school year.

Stat. Auth.: ORS 327.013 & 327.125

Stats. Implemented: ORS 327.013 & 327.125

Hist.: EB 31-1992, f. & cert. ef. 10-14-92; EB 6-1994, f. & cert. ef. 4-29-94

581-023-0104

Reimbursement to School Districts for Children with High Cost Disabilities

(1) Consistent with the provisions of this rule, a school district may apply to the Department for reimbursement from the high cost disability fund when combined district and ESD general fund expenditures for special education and related services for any student eligible and served under IDEA exceed \$25,000 in a fiscal year.

(2) To be eligible for the reimbursement, the school district shall have:

(a) Determined that the student is eligible for special education and related services under one of the disability categories set forth in OAR 581-015-0051;

(b) Provided services to the student on the basis of the student's current or previous individualized education program in effect during the fiscal year; and

(c) Submitted a timely application as per Department requirements.

(3) The Department shall only distribute the reimbursement to a school district for:

(a) Expenditures exceeding \$25,000 for special education and related services that are required by the individualized education program of an individual student with a disability. Qualifying expenditures include those incurred by the school district and those incurred by the ESD through the resolution process.

(b) Transportation expenditures, exclusive of local, state and federal reimbursements.

(c) Special education general fund expenditures, exclusive of federal sources, as set forth in the Maintenance of Effort requirements of the federal IDEA. District and school level administrative expenditures (e.g. salaries) may be included by first averaging the expenditures across all the special education students enrolled as identified on the most recent SECC, then applying the average to the student for whom the district is requesting reimbursement. Similarly, teacher and educational assistant salaries must be averaged across all the special education students for whom the teacher or assistant provided instruction during the school year.

(4) Expenditures not eligible for reimbursement include:

(a) Regional Program expenditures;

(b) Reimbursed Medicaid expenditures;

(c) Expenditures associated with facility operations and maintenance (e.g., heat, electricity, custodial services).

(5) In December of each year, school districts will provide the Department with an estimate of the aggregate number of students eligible for reimbursement from the High Cost Disabilities Fund and the total estimated aggregate amount of reimbursable expenditures, including ESD expenditures that will be incurred during the school year. As requested by the Department, districts will also report during the school year, updated information listing eligible students, SDID, names, estimated expenditures, and other information as requested.

(6) A school district may submit an application for each student identified who meets the criteria set forth in section (2) and (3) of this rule.

(7) The Department shall provide school districts with an application that shall require documentation that identifies all the school districts and ESD's expenditures for each student. Additional supporting documentation, subject to ODE review, may include a copy of the contract(s) between the school district and the service provider(s), invoices reflecting actual expenses, and any additional documentation of expenditures incurred as determined by the Department. These documents must be maintained at the District for at least three years after the submission of the student-level data.

(8) The Department shall develop and implement a process for reviewing applications.

(9) The Department shall prorate the distribution of funds for each school year to eligible school districts if sufficient funds are not available.

(10) Based on the outcome of section (8), the Department will exclude from reimbursement those expenditures deemed excessive, ineligible or unsubstantiated.

(11) Funds will be distributed to districts on or before May 15 for the current fiscal based on expenditure estimates. Adjustments will be made May 15 of the following year based on audited data and Department reviews of district records.

(12) The decision of the Department regarding reimbursement of costs pursuant to this rule shall be final.

Stat. Auth.: ORS 326.051, 2003 OL Ch. 715, Sec. 2
Stats. Implemented: 2003 OL Ch. 715
Hist.: ODE 6-2004, f. & cert. ef. 3-15-04

581-023-0110

Report on High School Graduates

(1) Oregon school districts operating a high school shall report annually to the Department of Education each school's graduates by gender within the following racial/ethnic characteristics:

- (a) White (not of Hispanic origin);
- (b) Black (not of Hispanic origin);
- (c) Hispanic;
- (d) Asian/Pacific Islander;
- (e) American Indian/Alaskan Native.

(2) For purposes of this report, a student may be included in a group to which he or she appears to belong, identifies with, or is regarded in the community as belonging to.

Stat. Auth.: ORS 335.105
Stats. Implemented: ORS 335.105
Hist.: EB 36-1992, f. & cert. ef. 11-24-92

581-023-0112

School Improvement Fund

(1) Definitions: "School Improvement Fund" refers to a separate fund established in Chapter 794, Oregon Laws 2001.

(2) The Department of Education will distribute School Improvement Fund grants of \$108 million in 2001-02 and \$112 million plus interest earned in 2002-03 for activities that relate to improved student performance on third and fifth grade reading and mathematics assessments, including:

- (a) Class size reduction;
- (b) Increases in instructional time;
- (c) Professional development;
- (d) Remediation and alternative learning;
- (e) Early childhood support;
- (f) Services to at-risk youth;
- (g) Additional instructional materials;
- (h) Curriculum and instructional support;
- (i) Services for English as a second language students; and
- (j) Other activities approved by the State Board of Education that are shown to have a relationship to increasing student achievement.

(3) The Department will allocate funds to each district and the Youth Corrections Education and Juvenile Detention Education Programs on a per student basis (extended ADMw) upon approval of grant applications.

(4) Grant applications for each school district and for the Youth Corrections Education and Juvenile Detention Education Programs will identify the goals of the school district or program for increases in student performance for the year and will outline how the district plans to use the resources provided from the Fund to reach the performance goals. The Department will evaluate the grant applications based on the following criteria:

- (a) The goals set by the districts and programs for increases in student performance;
- (b) The activities identified to meet the stated goals;
- (c) Consistency with the district's Consolidated District Improvement Plan.

(5) Grant applications must be submitted to the Department of Education for Department approval by September 4, 2001 for the 2001-02 fiscal year for distribution by October 15, 2001. Grants approved after October 15 will be distributed with any other necessary adjustments on May 15 of the fiscal year, with final adjustment to be made in the following year.

(6) Grant applications must be submitted to the Department of Education for Department approval by April 15, 2002 for the 2002-03 fiscal year for distribution by August 15, 2002. Any necessary adjustments will be made on May 15 of the fiscal year, with final adjustment to be made in the following year.

(7) Each school district or program shall account for the grant amounts it receives separately, and shall apply these amounts to pay for activities described in the district or program's application. Districts may choose to budget these funds in the General Fund or a Special Revenue Fund. The Department will establish an Area of Responsi-

bility code in the *Program Budgeting and Accounting Manual for School Districts and Education Service Districts in Oregon* to identify all expenditures for the School Improvement Fund.

(8) The department may award grants for activities that relate to improved student performance other than on third and fifth grade reading and mathematics assessments if the department determines that a school district or program:

- (a) Has met the benchmarks established for third and fifth grade reading and mathematics; or
- (b) Is making significant progress toward achieving the benchmarks established for third and fifth grade reading and mathematics; or

(c) Does not operate education programs for elementary students.

(9) The State Superintendent of Public Instruction shall resolve any issues arising from the administration of the School Improvement Fund grants not specifically addressed by this rule and the Superintendent's determination shall be final.

Stat. Auth.: ORS 327
Stats. Implemented: ORS 327
Hist.: ODE 18-2001(Temp), f. & cert. ef. 8-15-01 thru 1-02-02; ODE 31-2001, f. & cert. ef. 12-20-01

581-023-0220

State Education Lottery Bonds

(1) Distribution of State Education Lottery Bond proceeds:

(a) To be distributed to school districts as State Education Project grants in each year of biennium as soon as practicable after proceeds from bond sale becomes available;

(b) Each school district's State Education Project grant shall be equal to:

(A) The district's extended weighted average daily membership (extended ADMw), for the year ending June 30, of the year of distribution; times

(B) The amount available for the grants divided by statewide extended ADMw for the year ending June 30, of the year of distribution.

(2) School districts shall account for the amounts received as State Education Project grants including interest earnings on the grants as follows:

(a) As a separate fund limited to State Education Project grants only; or

(b) As a subaccount of an existing fund.

(3) Proceeds from the State Education Projects grant shall be expended for the following purposes:

- (a) Acquisition, construction, improvement, remodeling, maintenance or repair of public school facilities in Oregon, including land;
- (b) Site preparation costs;
- (c) Permanent or portable buildings and equipment;
- (d) Telecommunications equipment;
- (e) Computers;
- (f) Software and related technology;
- (g) Textbooks;
- (h) Library books;
- (i) Furniture and furnishings;
- (j) Vehicles;
- (k) Costs of planning for bond issues and capital improvements;
- (l) Payment of debt service on obligations, other than general obligation bonds, issued for such projects; or
- (m) Instructional training.

(4) Proceeds may be held in reserve and be expended in future years for purposes listed in section (3).

Stat. Auth.: ORS 327.731
Stats. Implemented: ORS 327.731
Hist.: ODE 17-1998, f. & cert. ef. 10-12-98; ODE 5-2000, f. & cert. ef. 2-1-00

581-023-0230

Facility Grant

(1) For purposes of this rule:

(a) "New School Building" means newly constructed school buildings, additions to existing school buildings, newly remodeled or converted structures and newly acquired premanufactured structures if those buildings or structures are to be used for instructing students. Newly remodeled structures may not have been used as classrooms in the prior five school years.

(b) "Construction Cost" means the cost of construction or remodeling excluding cost of land acquisition and cost of equipment not

DIVISION 24

STANDARDS FOR INTERMEDIATE EDUCATION
DISTRICTS (EDUCATION SERVICE
DISTRICTS ON JULY 1, 1978)

Standards for Education Service Districts

581-024-0190

Legal Name, Common Name and Annexation

(1) The initial name of a regional education service district for the purposes of section 2(6), chapter 611, Oregon Laws 1995, shall be a unique name agreed upon by the existing board or boards of directors within the region. The agreement shall be evidenced by a resolution or resolutions signed by a majority of the members of each existing board of directors. The resolution or resolutions shall be submitted to the Department of Education not later than January 10, 1996. If the resolution or resolutions are not submitted to the Department by January 10, 1996, the initial name of the regional education service district shall be the acronym ESD, followed by the word "Region" and the corresponding region number specified in ORS 334.020 (1995 Replacement Part).

(2) For regions that contain more territory than a single education service district prior to the board's order of annexation, the surviving district of the annexation for the purposes of section 2(2), chapter 611, Oregon Laws 1995, shall be the district agreed upon by all of the existing boards of directors within the region. The agreement shall be evidenced by a resolution or resolutions signed by a majority of the members of each existing board of directors. The resolution or resolutions shall be submitted to the Department of Education not later than January 10, 1996. If the resolution or resolutions are not submitted to the Department by January 10, 1996, the surviving district shall be the district whose taxing authority, except as to taxes permitted under section 11(3), Article XI of the Oregon Constitution, equals or most closely approximates but is not less than the sum of the tax base amounts for each of the education service districts in the region, as otherwise determined under section 11(2), Article XI of the Oregon Constitution.

Stat. Auth.: ORS 334.020

Stats. Implemented: ORS 334.020

Hist.: EB 29-1995, f. & cert. ef. 12-11-95; ODE 20-2002, f. & cert. ef. 8-2-02, Renumbered from 581-024-0200

581-024-0191

ESD Merger — General Requirements

(1) Two or more ESDs may merge to form one ESD. To merge, each merging ESD must present to the State Board of Education a petition indicating the intent to merge. An ESD may obtain a petition in either of the following two methods:

(a) The boards from at least two-thirds of the component districts in each ESD proposed for merger, representing at least a majority of the students included in the average daily membership of the ESD, must present resolutions to the ESD board supporting the merger. Average daily membership for this purpose must be determined using data from the previous school year; or

(b) The ESD boards proposed for merger mutually consents to the merger and by majority vote of each board approve the petition.

(2) When the State Board of Education receives from the ESD that are proposed for merger, petitions for merger that have been approved under either of the methods established in Section 1 of this rule, the State Board must review the petitions. Within 15 days following the State Board meeting when the petitions are reviewed the State Board must determine the date for a public hearing and notify the boards of each ESD proposed for merger of the date of the hearing.

(3) The State Board must ensure that notice is provided under the provisions of ORS 330.400.

(4) The State Board must ensure that hearings are conducted in each ESD proposed for merger to discuss the proposals contained in the petitions, including the effect of the proposed merger. Any resident of the affected districts may provide testimony on the proposed merger.

(5) The Board will review the fiscal and programmatic impact of the proposed merger in determining feasibility as required in section (6) of this rule.

(6) Following the hearings, if the State Board determines that the proposed merger is feasible, the Board must order the proposed merger based on the proposals contained in the petitions.

intrinsic to the structure or, for premanufactured structures, the purchase price excluding interest. Costs of site preparation and improvements, project management, and mandated utility and access upgrades may be included. Construction cost does not include structures such as athletic fields, stadiums, pools or any other structure whose primary purpose is not the instruction of students.

(2) A school district is eligible to receive a facility grant for a new school building in the year the new school building is first used for instruction for more than half of the district's regular school year or the following year.

(3) Facility grant shall equal a percentage of new school building construction cost as determined by statute. If the total amount to be distributed as facility grants exceed the limitation set in statute, the Department of Education shall prorate the amount of funds available for facility grants among those school districts that qualified for a facility grant. The proration percentage shall be adjusted to be the same for each year of the biennium.

(4) A school district may not use the portion of the State School Fund grant that is attributable to the facility grant for capital construction costs.

(5) Facility grant applications must be received at the Department of Education no later than February 15 of the school year following the school year in which the new school building is first eligible for the facility grant. The application shall include a summary of the construction cost as well as a copy of the parts of the contract(s) documenting the construction cost or purchase price.

(6) The Department of Education will distribute the facility grant with the March 15 State School Fund payment. Any necessary adjustments will be made on May 15, with final adjustment to be made in the second year.

(7) The State Superintendent of Public Instruction shall resolve any issues arising from the administration of the facility grant not specifically addressed by this rule and the Superintendent's determination shall be final.

Stat. Auth.: ORS 327.125

Stats. Implemented: ORS 327.013 & 327.008

Hist.: ODE 6-2000, f. & cert. ef. 2-1-00; ODE 10-2003, f. & cert. ef. 6-13-03

581-023-0240

School Revenue Forecast

(1) The following definitions and abbreviations apply to this rule:

(a) "ADMw" means weighted average daily membership or the ADM plus an additional amount, as set forth in ORS 327.013.

(b) "Extended ADMw" means ADMw or ADMw of the prior year, whichever is greater.

(2) The Department of Education will provide each school district and education service district with revenue forecasts for the ensuing three years annually in January.

(3) These forecasts will be based on a forecast from the Department of Administrative Services in December of each year of a statewide allowable growth factor of general operating revenue per extended ADMw that can reasonably be expected for each of the next three fiscal years.

(4) The Department of Education will calculate — based on current law, estimates of ADMw, and of other state school fund formula factors — the distribution of those revenues to each education district.

(5) K-12 education districts should use these forecast revenues in developing their budgets and other considerations for expenditure levels, including collective bargaining, contractual commitments, and program changes.

(6) Districts shall report by letter to the Department of Education each year by March 31 conditions that do not allow them to operate within the forecast revenue for the ensuing year. Such conditions may include:

(a) Projected changes in the costs of employee salaries, benefits, supplies, purchased services, capital outlay, or other factors;

(b) Changes in economic or demographic conditions within the district;

(c) Changes in revenues outside state school funding;

(d) Other factors.

Stat. Auth.: ORS 327, Gov. Ex. Order

Stats. Implemented: ORS 327

Hist.: ODE 24-2001, f. & cert. ef. 11-7-01

(7) The new ESD will come into existence effective May 31 of the year following the order of the State Board issued under section (6) of this rule.

Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 334.710 - 334.770 (Ch. 518 OL 2001)
Hist.: ODE 20-2002, f. & cert. ef. 8-2-02

581-024-0192

Establishment of Zones for New ESD

(1) Following the issuance of an order by the State Board of Education to join two or more ESDs together, the chairperson from the board of the most populous merging ESD must call a meeting of newly formed joint board, which must include all members of the boards of all merging ESDs. The joint board shall divide the newly formed ESD into at least seven, but no more than eleven zones.

(2) The zones should be as nearly equal in population as practicable.

(3) The joint board must, if possible, establish the zones so that each county represented in the newly formed ESD, if the majority of the land area of the county lies within the boundaries of the newly formed ESD, has at least one member on the new board.

Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 334.710 - 334.770 (Ch. 518 OL 2001)
Hist.: ODE 20-2002, f. & cert. ef. 8-2-02

581-024-0193

Election of Board of New ESD

Within 90 days following the establishment of the zones as required in OAR 581-024-0202, the joint board must call for a special election in the new ESD to elect directors representing each of the newly established zones.

Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 334.710 - 334.770 (Ch. 518 OL 2001)
Hist.: ODE 20-2002, f. & cert. ef. 8-2-02

Definitions

581-024-0205

Definitions

The following definitions apply to OAR 581-024-0205 through 581-024-0310 unless otherwise indicated by context:

(1) “Annual Report” document prepared by the district and filed by October 31 of each year with the Department. The Annual Report includes both a completed “Self-Appraisal Form” and a “Service and Performance Summary” as identified on forms provided by the Department.

(2) “Assessment”: activities designed to secure and organize information describing district performance relative to its own instructional and support service goals;

(3) “Board”: State Board of Education;

(4) “Component”: a school district whose administrative office is within the district;

(5) “Department”: Oregon Department of Education;

(6) “District”: an education service district;

(7) “District Board”: an education service district board;

(8) “Noncomponent”: a school district whose administrative office is outside the district;

(9) “Public Entity” is a unit of local, state, or federal government;

(10) “Private entity” is not a unit of local, state, or federal government and includes, but is not limited to, a not-for-profit or business organization;

(11) “Service”: the activities provided by the district in response to statutes, administrative rules, district board directives, resolutions and contracts;

(12) “Service Evaluation”: the adopted method, system, or the way by which the effectiveness of service goals is measured;

(13) “Service Goals”: statements of desired service outcomes for each district instructional service for the entire system stated in terms of the activities to be implemented;

(14) “Service Improvement”: using assessment and needs identification information in making service revisions that reduce needs identified;

(15) “Service Needs Identification”: procedures to specify and rank actual and desired outcomes of district services sufficient to warrant considering program revision;

(16) “Standard District”: a district having met provisions of Division 24 of Board administrative rules;

(17) “Substandard District”: a district not meeting the provisions of Division 24 of Board administrative rules; and

(18) “Superintendent”: State Superintendent of Public Instruction.

Stat. Auth.: ORS 334
Stats. Implemented: ORS 334.125
Hist.: IEB 265, f. & ef. 8-22-77; IEB 4-1985, f. 1-4-85, ef. 7-1-85; EB 10-1994, f. & cert. ef. 8-16-94; ODE 13-2005(Temp), f. & cert. ef. 12-29-05 thru 6-1-06; Administrative correction 7-20-06

581-024-0206

Powers and Duties

Pursuant to ORS 334.125, the district board is authorized to transact appropriate business and is required to perform certain duties.

(1) Every district shall comply with the statutes and rules governing the transaction of public business to include directives on budgeting and expenditures.

(2) Every district shall comply with Board adopted administrative rules and applicable statutes.

(3) The district board shall perform all duties required by law, including but not limited to those identified in ORS 342.125(3) as follows:

(a) Distribute school funds as it is empowered to apportion. Distribution shall be done in a timely and accurate manner;

(b) Conduct of audits requiring the district to assist components to meet budgeting, accounting and audit requirements (OAR 581-024-0265), to serve as a public depository for just completed audits and maintain past audit reports for 20 years;

(c) Serve as district boundary board as identified in ORS 330.081–330.310 and OAR 581-024-0252;

(d) Prepare an annual operating budget in accordance with the local budget section of Chapter 294 of ORS, the local Budget Law, and the chart of accounts contained in the program Budget and Accounting Manual as adopted by the State Board of Education;

(e) Contract bonded indebtedness in the manner authorized by statute. Bonds are to be issued pursuant to ORS 328.205 to 328.295 and other laws applicable to the issuance of bonds; and

(f) Review periodically with components, their operations, and submit to the components plans that would achieve economies and efficiencies through consolidation of various operations of all or some of the components. The district and its components shall submit an annual report to the Board on the effectiveness of the consolidation of operations.

Stat. Auth.: ORS 334.125
Stats. Implemented: ORS 334.125
Hist.: EB 16-1994, f. & cert. ef. 11-14-94; ODE 22-2002, f. & cert. ef. 10-15-02; ODE 13-2005(Temp), f. & cert. ef. 12-29-05 thru 6-1-06; Administrative correction 7-20-06

581-024-0208

Mission, Roles and Goals

(1) Each district board shall adopt a statement of goals compatible with the legislated mission and roles of districts.

(2) In accordance with ORS 334.005 the mission and roles of the districts are as follows:

(a) The mission of education service districts is to assist school districts and the Department of Education in achieving Oregon’s educational goals by providing equitable, high quality, cost-effective and locally responsive educational services at a regional level.

(b) An education service district plays a key role in:

(A) Ensuring an equitable and excellent education for all children in the state;

(B) Implementing the Oregon Education Act for the 21st Century;

(C) Fostering the attainment of high standards of performance by all students in Oregon’s public schools; and

(D) Facilitating inter-organizational coordination and cooperation among educational, social service, health care and employment training agencies.

(E) Pursuing, at its option and after first meeting local responsibilities, entrepreneurial endeavors, which may provide school districts with necessary cost effective services.

(c) An education service district’s role is one of leadership and service. Education service districts shall maintain the distinction

between their role as service organizations and the regulatory role of the Department of Education and other agencies.

(d) To ensure that an education service district is locally responsive, an education service district shall provide:

(A) Opportunities for component school districts to participate in decisions about the services that are offered by the education service district; and

(B) A variety of flexible service delivery models.

(e) An education service district shall remain accountable to:

(A) The public at large;

(B) The component school districts; and

(C) The State Board of Education.

Stat. Auth.: ORS 334.005 & 334.217

Stats. Implemented: ORS 334.125

Hist.: EB 10-1994, f. & cert. ef. 8-16-94; ODE 22-2002, f. & cert. ef. 10-15-02; ODE 13-2005(Temp), f. & cert. ef. 12-29-05 thru 6-1-06; Administrative correction 7-20-06

Standardization

581-024-0210

Administration of the Standardization Requirements

(1) The State Board of Education by adopting Oregon Administrative Rules establishes standards to determine the adequacy of services and facilities provided by an education service district. In establishing these standards the Board shall consider the most economic method of providing services and facilities, the quality of the services and facilities according to the best educational standards, and the needs of the students.

(2) The standards include rules in OAR 581 division 24. The Board requires substantial compliance with applicable statutes and rules.

(3) The evaluation for compliance shall be conducted through the review of an annual report. In addition, an on-site evaluation of the district shall be done at intervals not to exceed five years. The evaluation team named by the Department shall use the annual report, district records, and the on-site evaluations in determining the degree to which these standards are met.

(4) The Department shall use the standards and the district's annual report to identify which standards are to be evaluated and reported on during the on-site visit. The district will be notified of the standards to be evaluated and the dates of the visit at least 90 days prior to the on-site visit. The district shall prepare exhibits that document its activities relative to the identified standards.

(5) Each district shall prepare and forward by October 31 to the Department an annual report as required in OAR 581-024-0226.

(6) The on-site visit will be conducted by a team chaired by Department staff person with additional members from the Department, other education service districts and components. The size of the team shall be determined by the Department in accordance with the standards to be reviewed and the complexity of the programs and services.

(7) The chair of the team shall, within 30 days of the visit, present to the district a draft report of the team's findings. The district's response must be received by the Department not later than 30 days after the district's receipt of the draft report.

Stat. Auth.: ORS 334.217

Stats. Implemented: ORS 334.125

Hist.: IEB 237, f. & ef. 7-9-76; IEB 265, f. & ef. 8-22-77; IEB 4-1985, f. 1-4-85, ef. 7-1-85; EB 16-1994, f. & cert. ef. 11-14-94; ODE 13-2005(Temp), f. & cert. ef. 12-29-05 thru 6-1-06; Administrative correction 7-20-06

581-024-0212

Waiver Provisions

(1) When a district believes it is not feasible to comply with a specific standard, it may petition the Board for a waiver.

(2) The Department will encourage districts to develop carefully planned pilot or experimental services, and the Department will give latitude to districts to deviate from these standards for this purpose. When such a service requires deviation from these standards, the district shall submit a petition describing its proposed service to the Superintendent and secure Board approval prior to implementing the change. Approval, if granted, shall be for a specified time and may be followed by Department evaluation of the service.

(3) The petition for waiver shall:

(a) Identify the specific standard for which the waiver is requested;

(b) Specify why the district cannot reasonably comply with the standard;

(c) Specify how the district's proposed alternative will provide the services or facilities required; and

(d) Identify a maximum time for which the waiver is requested.

(4) The Superintendent shall recommend to the Board approval of waivers when the district superintendent provides satisfactory assurance that planned services meet the intent of standards and district needs. The district board shall adopt all petitions for waivers.

(5) Except for applications submitted in accordance with the 21st Century School Program, ORS 329.535 to 329.605, petitions for waivers modifying requirements specified in the Oregon Revised Statutes shall not be approved.

Stat. Auth.: ORS 334.217

Stats. Implemented: ORS 334.217

Hist.: IEB 4-1985, f. 1-4-85, ef. 7-1-85; EB 10-1994, f. & cert. ef. 8-16-94

581-024-0215

Assignment of Standardization Classification

(1) The district's designation as standard, conditionally standard or nonstandard is determined by the State Superintendent of Public Instruction and is based on the district's compliance with the rules set out in OAR 581 division 24.

(2) The Superintendent will review a district's compliance with division 24 standards as part of a comprehensive, regular review of the district, or may review a district in response to a public complaint alleging noncompliance with one or more of the division 24 standards, or upon the Superintendent's own initiative at any time as may be necessary to ensure compliance with the division 24 standards.

(3) During a review, the district shall cooperate with the Superintendent and provide any and all evidence the Superintendent considers necessary for the review. If as a result of a review of the district by the Superintendent it is determined that the district does not comply with one or more of the division 24 standards, the Superintendent will notify the district of the initial determination of noncompliance and give the district 15 days to respond.

(4) If after reviewing the district's response, the Superintendent determines that the district is in compliance with all division 24 standards, the Superintendent will within 15 days from the receipt of the district's response designate the district as standard.

(5) If after reviewing the district's response, the Superintendent determines that the district is not in compliance with one or more division 24 standards, the Superintendent will within 15 days from the receipt of the district's response designate the district as nonstandard and require from the district a plan to correct all deficiencies. The district will have 30 days to provide the Superintendent with the plan. The Superintendent may accept, reject or modify the plan within 30 days from the receipt of the district's plan and will order the district to comply with the plan as approved. The district will have 180 days from the approval of the plan to correct all identified deficiencies.

(6) If a plan is not submitted to the Superintendent within 30 days, the Superintendent will designate the district nonstandard.

(7) When a plan to correct deficiencies is approved by the Superintendent, the district is designated conditionally standard.

(8) When the district corrects all identified deficiencies, the district is designated standard.

(9) If after 180 days from the approval of the plan, the district has not corrected all identified deficiencies, the Superintendent will designate the district nonstandard.

(10) The Superintendent may impose sanctions on a nonstandard district, including requiring merger with a contiguous, standard district, withholding state school fund allocations and the sanctions described in ORS 342.173. The determination of sanction is left to the discretion of the Superintendent.

Stat. Auth.: ORS 334

Stats. Implemented: ORS 334.125

Hist.: IEB 237, f. & ef. 7-9-76; IEB 265, f. & ef. 8-22-77; IEB 4-1985, f. 1-4-85, ef. 7-1-85; EB 16-1994, f. & cert. ef. 11-14-94; ODE 1-2005(Temp), f. & cert. ef. 2-14-05 thru 8-1-05; Administrative correction 8-17-05; ODE 11-2006, f. & cert. ef. 2-21-06

Planning, Assessment and Evaluation

581-024-0225

Planning of Services

Each district board shall adopt and implement a planning process which involves component districts. The plan shall be in accordance

with the purpose and goals, and power and duties of districts and provide for:

- (1) District board-adopted goals, including:
 - (a) Instructional service goals, to the extent the district conducts such instructional services; and
 - (b) Support service goals to the extent the district conducts such support services.
 - (2) Identifying instructional and support service needs and determining priorities for addressing them. This process shall involve the participation of the components in determining service needs.
 - (3) Policies and procedures for making improvements in instructional and support services. These policies and procedures shall aim at reducing identified needs having highest priority in the district.
- Stat. Auth.: ORS 334.005, 334.125 & 334.175
 Stats. Implemented: ORS 334.005, 334.125 & 334.175
 Hist.: 1EB 237, f. & ef. 7-9-76; Renumbered from 581-024-0025 by 1EB 265, f. & ef. 8-22-77; 1EB 33-1978, f. & ef. 10-5-78; 1EB 15-1979, f. 10-4-79, ef. 10-5-79; 1EB 4-1985, f. 1-4-85, ef. 7-1-85; EB 10-1994, f. & cert. ef. 8-16-94

581-024-0226

Assessment and Evaluation of Services

(1) Each district board shall file by October 31 of each year with the Superintendent of Public Instruction an annual report to include a completed "Self-Appraisal Report" and a "Service and Performance Summary" as identified on Department forms.

(2) To adequately complete the report, the district shall have on file information regarding the process and implementation of an assessment procedure, including:

- (a) A description of the services provided with appropriate documentation of the quantitative data gathered;
 - (b) A numerical accounting of district personnel by job description and service area; and
 - (c) A statement of operational cost for each service provided.
- (3) In addition, the district shall have completed an evaluation of the assessment data in relation to the service goals, and shall have on file:

- (a) Information obtained in the assessment activity;
 - (b) A summary of the reports from components regarding services provided by the district; and
 - (c) A list of deficiencies with plans for correction.
- Stat. Auth.: ORS 334.217
 Stats. Implemented: ORS 334.217
 Hist.: 1EB 4-1985, f. 1-4-85, ef. 7-1-85; EB 16-1994, f. & cert. ef. 11-14-94; Suspended by ODE 7-2006(Temp), f. & cert. ef. 2-14-06 thru 8-1-06

581-024-0228

Review School District Operations

(1) Pursuant to ORS 334.125(9) each district board shall adopt a policy a policy and procedure describing how the district shall work cooperatively with components to periodically review their operations.

(2) The results of the review and report shall be summarized and reported to the Board as part of the district's annual report which is to be submitted by October 31 of each year.

(3) Unless specifically waived by the Board, the operations to be reviewed shall be accomplished as follows:

- (a) 1998, Insurance and student records;
- (b) 1999–2002, Professional staff development activities relating to the implementation of the Oregon Educational Act for the 21st Century, including but not limited to:
 - (A) Alignment of curriculum and instruction with the Oregon Content Standards;
 - (B) The improvement of content area proficiency;
 - (C) The improvement of assessment proficiency, including the use of official scoring guides and analysis of assessment data; and
 - (D) The expansion of alternative learning options for students.
- (c) 2003–2004, Cooperative purchasing of educational supplies, materials, equipment;

(d) 2005–2009, Accounting, payroll and printing; pupil transportation; legal services, investments and auditing; insurance and student records management. The order of review may be determined by the ESD and the component districts.

(4) Other similar operations are subject to review as agreed upon by the district and components. Nothing in the above requirement prevents an Education Service District and its components from reviewing any or all operations including those listed in section (3)(a), (b), and (c) of this rule at any time.

(5) Future review of operations and similar services will be as established by the Board.

Stat. Auth.: ORS 334.125(9)
 Stats. Implemented: ORS 334.125
 Hist.: EB 16-1994, f. & cert. ef. 11-14-94; ODE 8-1999, f. & cert. ef. 1-15-99; Suspended by ODE 7-2006(Temp), f. & cert. ef. 2-14-06 thru 8-1-06

Instructional Services

581-024-0231

Curriculum Improvement

Districts providing the instructional support services shall do so, subject to available funds, by one or more of the following:

- (1) Resolution approved by components as provided in ORS 334.175(2) and (4);
 - (2) Contract with one or more components or the Department as provided in ORS 334.175(3);
 - (3) Contract with one or more noncomponents as provided in ORS 334.185; or
 - (4) Cooperative relationships between the education service district and businesses, foundations, non-profit organizations, state agencies or other appropriate organizations.
- Stat. Auth.: ORS 334.125, 334.175 & 334.185
 Stats. Implemented: ORS 334.125, 334.175 & 334.185
 Hist.: 1EB 33-1978, f. & ef. 10-5-78; 1EB 15-1979, f. 10-4-79, ef. 10-5-79; 1EB 4-1985, f. 1-4-85, ef. 7-1-85; EB 10-1994, f. & cert. ef. 8-16-94; ODE 22-2002, f. & cert. ef. 10-15-02

581-024-0235

Special Education Services

Each district shall cooperate with its components to:

- (1) Demonstrate that it has met state and federal requirements when providing special education and related services to children; with disabilities; and
- (2) Assist components, to the extent that it provides services, to gather, analyze and report individualized testing data.

Stat. Auth.: ORS 334.125 & 334.175
 Stats. Implemented: ORS 334.125 & 334.175
 Hist.: 1EB 265, f. & ef. 8-22-77; 1EB 15-1979, f. 10-4-79, ef. 10-5-79; 1EB 4-1985, f. 1-4-85, ef. 7-1-85; EB 10-1994, f. & cert. ef. 8-16-94

Support Services

581-024-0240

Administration

(1) Each district board shall adopt rules, policies and procedures pursuant to ORS 334.125(7), and shall make such information available upon request.

(2) Each district shall complete and forward promptly all reports required by state and federal governments.

(3) Each district shall cause all employees responsible for funds, fees or cash collections to be covered under a district board-approved bond.

Stat. Auth.: ORS 334.005, 334.125 & 334.240
 Stats. Implemented: ORS 334.125
 Hist.: 1EB 237, f. & ef. 7-9-76; 1EB 265, f. & ef. 8-22-77; 1EB 4-1985, f. 1-4-85, ef. 7-1-85; EB 10-1994, f. & cert. ef. 8-16-94

581-024-0245

Staff

(1) Each district shall employ staff as needed to accomplish the goals of the district as; adopted by the district board, provided for in its annual budget, required in ORS 342.505 to 342.970, 653.310 to 653.340 and Chapter 659.

(2) Each district shall assign:

(a) Licensed personnel in accordance with Rules of Licensures; and

(b) All personnel in accordance with their position descriptions.

(3) Each district shall maintain personnel policies to include:

(a) An affirmative action plan assuring equal employment opportunities for all persons regardless of age, handicap, national origin, race, marital status, religion or sex; and

(b) Liaison between the district board and its employees, described by means of a chart or written statement.

(4) Personnel policies shall be provided to all employees and made available to the public.

Stat. Auth.: ORS 334
 Stats. Implemented: ORS 334.125

Hist.: IEB 237, f. & ef. 7-9-76; IEB 265, f. & ef. 8-22-77; IEB 4-1985, f. 1-4-85, ef. 7-1-85; EB 15-1994, f. & cert. ef. 10-3-94

581-024-0250

District Boundary Board

In fulfilling its statutory responsibility to serve as district boundary board, the education service district board shall:

- (1) Maintain official minutes showing its actions as district boundary board since the last standardization visit;
- (2) Insure that meetings and minutes of the district boundary board are separate from its actions as district board;
- (3) Maintain a current record showing the boundaries and numbers of the components in the district based on official records in the offices of the respective county assessors;
- (4) Adopt policies under ORS 330.090(5); and
- (5) Adopt procedures for conducting hearings and reporting findings and conclusions in accordance with the requirements of OAR 581-025-0005 through 581-025-0015.

Stat. Auth.: ORS 334

Stats. Implemented: ORS 330.090

Hist.: IEB 237, f. & ef. 7-9-76; IEB 265, f. & ef. 8-22-77; IEB 4-1985, f. 1-4-85, ef. 7-1-85; EB 6-1989, f. & cert. ef. 1-26-89; EB 15-1994, f. & cert. ef. 10-3-94

581-024-0252

Boundary Changes

(1) The Board shall serve as the boundary board for districts. While serving as the boundary board the Board shall determine if a proposed boundary change is feasible and if the matter shall be submitted to the electors of each district. The Board, upon request, shall make available preprinted forms for petition and cause its staff to review and, if appropriate, modify statements of proposed boundary changes as they are to appear on the yet-to-be signed petitions.

(2) Upon receipt of a petition from each proposing district containing the signatures of at least 100 electors or a number of electors of the district equal to five percent of the electors in the district, the Board shall consider the proposal. Consideration by the Board shall not be later than its second regular meeting following receipt of the qualified petition. At that meeting the Board shall review the petition and if appropriate:

- (a) Fix the time and place for a public hearing in each of the proposing districts to discuss the proposal;
- (b) Cause notices of the hearings to be published in accordance with ORS 330.400;
- (c) Name a Hearings Officer, Board member or Department staff person to conduct the public hearings and to present a written report on the hearings to the Superintendent. The report shall be submitted to the Superintendent within 15 days of the last hearing;
- (d) Notify the district boards of each district designated by the petition of this rule. This notification shall be issued to be received by each district within 15 days of the Board's action.

(3) At the public hearing in each proposing district the presiding officer shall cause to have discussed the effect on the proposed district. The hearing shall be conducted in accordance with procedures identified in ORS Chapter 183.

(4) Following the public hearings and receipt of the hearings report the Superintendent shall prepare for the Board's consideration at its next regular meeting an analysis and recommendation on the proposal. The recommendation shall consider whether the proposed district would have the characteristics identified in ORS 334.690(1)-(5) and is feasible (ORS 334.720(2)).

(5) The Board shall consider the boundary change proposal including the Superintendent's analysis and recommendation and the hearings officer's report. The Board shall consider whether the proposed district would have the characteristics identified in ORS 334.690. To favorably consider the proposal the Board shall determine that the proposed district is in the best interest of the state and the students and school districts to be served. The Board may:

- (a) Find the petition feasible and approve submitting the question of the proposed district to the electors of each district at the next regular district election;
- (b) Find the petition to be unfeasible, denying the request to place the matter before the electors; or
- (c) Postpone action until the next meeting. Action by the Board shall be accomplished not later than its second meeting following receipt of the report on the hearings.

(6) Expenses incurred for the election shall be paid by each district as specified in ORS 255.305.

Stat. Auth.: ORS 255.305, 334.690, 334.710 & 334.720

Stats. Implemented: ORS 255.305, 335.690, 334.710 & 334.720

Hist.: EB 10-1994, f. & cert. ef. 8-16-94

581-024-0255

Attendance Supervision

Each district shall provide attendance supervisors for components of less than 1,000 ADM.

Stat. Auth.: ORS 339.040

Stats. Implemented: ORS 339.040

Hist.: IEB 237, f. & ef. 7-9-76; IEB 265, f. & ef. 8-22-77; IEB 4-1985, f. 1-4-85, ef. 7-1-85; EB 10-1994, f. & cert. ef. 8-16-94

581-024-0257

Children Instructed by Parent or Private Teacher

Each district shall perform those duties assigned to the Education Service District and Superintendent as identified in OAR 581-021-0026 through 581-021-0029.

Stat. Auth.: ORS 339.005 - 339.090

Stats. Implemented: ORS 339.035

Hist.: EB 10-1994, f. & cert. ef. 8-16-94

581-024-0260

Budgets

Each district board shall:

- (1) Provide evidence that the district budget has been properly developed, adopted and implemented;
- (2) Assist components when requested to develop annual budgets; and
- (3) Maintain a file of district and component budgets as finally adopted.

Stat. Auth.: ORS 334.125 & 334.240

Stats. Implemented: ORS 334.125 & 334.240

Hist.: IEB 237, f. & ef. 7-9-76; IEB 265, f. & ef. 8-22-77; IEB 15-1979, f. 10-4-79, ef. 10-5-79; IEB 4-1985, f. 1-4-85, ef. 7-1-85; EB 10-1994, f. & cert. ef. 8-16-94

581-024-0262

Budget Committee

(1) The budget committee of a district shall consist of the voting members of the district board and a number of electors, equal to the number of voting members of the district board plus one, who are members of component boards.

(2) The district board shall adopt policies assuring equitable representation of the component school districts and which identify the nomination and appointment process. Terms of appointment shall be for three years.

(3) Sections (1) and (2) of this rule are not applicable when the district has a population exceeding 100,000 and is located in a county which has a tax supervising and conservation commission which shall serve as the budget committee. (See ORS 294.341)

Stat. Auth.: ORS 334.240

Stats. Implemented: ORS 334.240

Hist.: EB 10-1994, f. & cert. ef. 8-16-94

581-024-0265

Audits

(1) Each district shall insure that an annual audit of components and its own accounts is conducted and shall:

- (a) File in the district office a copy of these annual audits;
- (b) Assist components, as requested, to meet budgeting, accounting and audit requirements of state agencies; and
- (c) Maintain a file of components' audits.

(2) By January 1 of each year the district shall file with the Department the district audit for the previous year.

Stat. Auth.: ORS 294, 334.125(3)(b) & 334.217

Stats. Implemented: ORS 334.125 & 334.217

Hist.: IEB 237, f. & ef. 7-9-76; IEB 265, f. & ef. 8-22-77; IEB 15-1979, f. 10-4-79, ef. 10-5-79; IEB 4-1985, f. 1-4-85, ef. 7-1-85; EB 16-1994, f. & cert. ef. 11-14-94

581-024-0270

State Board Assistance

(1) Each district shall assist the Board and Department pursuant to the provisions of ORS 334.005(2) in providing state-level services and support of statutes and standards.

(2) Each district shall verify how it has assisted components to comply with statutes and rules applicable to their operation.

(3) Each district shall gather and forward information the Department requires or requests.

(4) Each district shall, within its capabilities and when requested, provide personnel to assist in Department standardization visits and curriculum improvement.

Stat. Auth.: ORS 334.005 & 334.217

Stats. Implemented: ORS 334.005 & 334.217

Hist.: 1EB 237, f. & ef. 7-9-76; 1EB 265, f. & ef. 8-22-77; 1EB 15-1979, f. 10-4-79, ef. 10-5-79; 1EB 4-1985, f. 1-4-85, ef. 7-1-85; EB 10-1994, f. & cert. ef. 8-16-94

581-024-0275

Facilities and Safety and Emergency Planning

(1) Each district shall operate a central office and such other physical facilities as needed to meet district goals and statutory requirements.

(2) Each district shall maintain inspection reports showing the district in compliance with health and safety regulations.

(3) Each district shall conduct and document regularly scheduled safety inspections of all facilities and properties under its direct jurisdiction, including required fire drills if children use these facilities.

(4) Each district shall post an emergency medical plan for obtaining first aid, ambulance, hospital and physician services.

(5) First-aid supplies and qualified first-aid personnel shall be available at district facilities.

Stat. Auth.: ORS 334.125 & 334.217

Stats. Implemented: ORS 334.125 & 334.217

Hist.: 1EB 237, f. & ef. 7-9-76; 1EB 265, f. & ef. 8-22-77; 1EB 4-1985, f. 1-4-85, ef. 7-1-85; EB 10-1994, f. & cert. ef. 8-16-94

581-024-0280

Auxiliary Services

Each district choosing to engage in auxiliary services with components or other agencies shall do so consistent with district goals and shall document planning and assessment procedures for each such service.

Stat. Auth.: ORS 334.005, 334.125, 334.145(3), 334.175, 334.185 & 334.195

Stats. Implemented: ORS 334.005, 334.125, 334.145, 334.175, 334.185 & 334.195

Hist.: 1EB 237, f. & ef. 7-9-76; 1EB 265, f. & ef. 8-22-77; EB 10-1994, f. & cert. ef. 8-16-94

581-024-0285

Local Service Plans

(1) The district board shall adopt a policy describing how the district meets ORS 334.005(4) and 334.175 on providing resolution services to components.

(2) "Resolution services" are facilities, programs and associated tasks that are provided by the district for components as agreed to by the boards of the components with approval of the district board in accordance with ORS 334.175(2) and applicable Oregon Administrative Rules. Resolution services must be agreed upon on or before March 1 by resolution of two-thirds of the boards of the components that have a majority of the pupils enrolled in the school districts of the education service district.

(3) An education service district board shall expend at least 90 percent of all amounts received from the State School Fund and at least 90 percent of all amounts considered to be local revenues of an education service district, as defined in section 2, chapter 695, Oregon Laws 2001, on services or programs that have been approved by the component school districts of the education service district through the resolution process described in ORS 334.175.

(4) Local revenues for this purpose are state school fund revenues, including:

(a) The amount of revenue received from the Oregon Department of Education State School Fund by the district;

(b) The amount of revenue received by the district, including penalties and interest on the taxes;

(c) The amount of revenue received by the district from state-managed forestlands.

(5) Programs must be specifically approved as resolution programs to be considered as part of the required 90%. Mandated services provided for attendance and home school students are not included in the 90% calculation unless they are specifically named as resolution services.

(6) Appropriate indirect costs of personnel, supplies, materials, equipment, and facilities associated with providing resolution services may be allocated to the resolution services and included in the 90% calculation. The appropriate amount of indirect costs to be allocated

to resolution services shall be determined through the regular resolution planning process with district superintendents and other representatives of the component districts.

Stat. Auth.: ORS 334.005 & 334.175

Stats. Implemented: ORS 334.005

Hist.: EB 16-1994, f. & cert. ef. 11-14-94; ODE 22-2002, f. & cert. ef. 10-15-02; ODE 13-2005(Temp), f. & cert. ef. 12-29-05 thru 6-1-06; Administrative correction 7-20-06

581-024-0288

Providing Space, Other Facilities and Services

(1) The District board by agreement or contract may provide space for the offices of other education, employment training and human services agencies or organizations. The district board by policy shall set the conditions and terms of such agreements or contracts which may be on a reimbursable basis or at an agreed upon cost to the user.

(2) The district board by itself or in combination with other districts, school districts or public and private entities may provide services and facilities to components when agreed to as resolution services as identified by rule and ORS 334.175(1) and (2).

(3) The district board by itself or in combination with a school district or other public or private entity may provide facilities and services to a component or a combination of components. Facilities or services provided shall be by agreement with either no cost to the user or on a cost reimbursable basis.

(4) The district board may provide to noncomponents facilities and services as identified and approved by the district board. Facilities or services provided shall be identified by agreement to include a reimbursable basis of compensation, or as identified and approved by the district board.

(5) The district board may provide to other public and private entities the facilities and services provided to components as authorized in section (2) of this rule. Facilities or services provided shall be by agreement with either no cost to the user, or on a cost reimbursable basis.

(6) The district board shall adopt policies on providing appropriate facilities and services as identified in sections (1), (3), (4), and (5) of this rule and for resolution services as authorized by ORS 334.175 and OAR 581-024-0285 to include provision for no cost to the user, an agreed to cost or a cost reimbursable basis. These adopted policies shall preclude the district from sponsoring, financially supporting or participating in religious activity.

(7) A cost reimbursable basis is computed at the actual and true cost to the district which may include administrative costs or the fair market value, both of which are established by the district board.

Stat. Auth.: ORS 334.005, 334.125, 334.145, 334.175 & 334.185

Stats. Implemented: ORS 334.005, 334.125, 334.145, 334.175 & 334.185

Hist.: EB 16-1994, f. & cert. ef. 11-14-94

581-024-0290

Advisors to the Board

Each district board may appoint, as nonvoting advisory members to the board, to represent employment training agencies social service agencies, or other groups as determined by the local district board.

Stat. Auth.: ORS 334.025(3)

Stats. Implemented: ORS 334.025

Hist.: EB 10-1994, f. & cert. ef. 8-16-94; ODE 22-2002, f. & cert. ef. 10-15-02

581-024-0300

Advisory Committees

(1) Except as required in section (2) of this rule, the district board may appoint local advisory committees to represent the interest of areas within the district and to advise the district board on matters of concern within the area.

(2) If two or more components adopt resolutions petitioning the district board to establish a local advisory committee, the district board shall establish such a committee.

(3) A local advisory committee shall represent more than one component board.

(4) The district board shall adopt policies concerning the composition, number of members, term of office, manner of appointment, and duties of the advisory committees.

Stat. Auth.: ORS 334.025(4)

Stats. Implemented: ORS 334.025

Hist.: EB 10-1994, f. & cert. ef. 8-16-94

581-024-0310**Gifts and Bequests**

Each district board shall, subject to ORS 334.215 and 294.326, adopt a policy concerning acceptance of bequests of money and gifts and for their deposit and expenditure. By policy or duly adopted motion the district board may refuse to accept donations that it deems not to be in the district's best interest.

Stat. Auth.: ORS 334.215
 Stats. Implemented: ORS 334.215
 Hist.: EB 10-1994, f. & cert. ef. 8-16-94

DIVISION 25**DISTRICT BOUNDARY BOARD HEARINGS****581-025-0005****District Boundary Board Hearings**

(1) The boundary board may develop preprinted forms for a request and a petition for boundary change or merger.

(2) Before the proposed boundary change or merger is considered, the boundary board shall give notice in the manner provided in ORS 330.101(1) and 330.635.

Stat. Auth.: ORS 330.080, 330.090(5), 330.107 & 330.123
 Stats. Implemented: ORS 330.080, 330.090, 330.107 & 330.125
 Hist.: EB 7-1989, f. & cert. ef. 1-26-89; EB 48-1990, f. & cert. ef. 12-5-90

581-025-0010**Final Decision of District Boundary Board**

(1) The boundary board shall make, by resolution, the final decision on the proposed boundary change or merger.

(2) Within three days of the final decision, the boundary board shall serve a copy of the resolution of final decision personally or by certified mail upon the affected school districts, each district boundary board with jurisdiction over an affected district, and the petitioners or their designated agent.

Stat. Auth.: ORS 330.080, 330.090(5), 330.107 & 330.123
 Stats. Implemented: ORS 330.080, 330.090, 330.107 & 330.125
 Hist.: EB 7-1989, f. & cert. ef. 1-26-89; EB 48-1990, f. & cert. ef. 12-5-90

581-025-0015**Submission of Record to the State Board of Education**

Upon receipt of a copy of the notice of appeal to the State Board of Education, the boundary board shall forward the complete record of its consideration of the request or petition to the State Board within 30 days. The complete record shall include the original request or petition, affidavits of publication of notice of the meeting at which the request or petition was considered and a copy of the notice, and the resolution of final decision.

Stat. Auth.: ORS 330.080, 330.090(5), 330.107 & 330.123
 Stats. Implemented: ORS 330.080, 330.090, 330.107 & 330.125
 Hist.: EB 7-1989, f. & cert. ef. 1-26-89; EB 48-1990, f. & cert. ef. 12-5-90

581-025-0020**Procedure for Appeal to the State Board of Education of a District Boundary Board Decision**

(1) A notice of appeal to the State Board of Education under ORS 330.090(5) shall be filed within 30 days of the date of the resolution of final decision of the boundary board:

(a) The notice of appeal submitted by the petitioners shall be signed by all petitioners or their designated agent;

(b) A notice of appeal submitted by the school districts shall be signed by the district superintendent, the chairman of the district board of directors or by the attorney for each school district.

(2) The notice of appeal shall be filed with the State Superintendent of Public Instruction and a copy of the notice of appeal shall be sent to the boundary board.

(3) After consideration of the complete record submitted by the boundary board, the State Board of Education shall order the proposed boundary change or merger if the requirements of ORS 330.080 to 330.101 have been satisfied and shall direct the boundary board to perform the duties described in ORS 330.101 and 308.255

Stat. Auth.: ORS 330.080, 330.090(5), 330.107 & 330.123
 Stats. Implemented: ORS 330.080, 330.090, 330.107 & 330.125
 Hist.: EB 7-1989, f. & cert. ef. 1-26-89; EB 48-1990, f. & cert. ef. 12-5-90

DIVISION 37**EDUCATIONAL ASSISTANTS****581-037-0005****Definitions**

(1) The terms "teacher" and "educational assistant" refer to persons defined as such in ORS 342.120.

(2) "Supervision" refers to responsibility for and management of the program staff of which administrators, teachers and assistants are members.

Stat. Auth.: ORS 342
 Stats. Implemented: ORS 343.120
 Hist.: 1EB 118, f. 11-28-67, ef. 12-25-67; 1EB 131, f. 5-12-72, ef. 6-1-72; 1EB 227, f. & ef. 6-4-76; 1EB 15-1980, f. & ef. 6-9-80; EB 7-1990, f. & cert. ef. 1-26-90

581-037-0006**Qualifications of Educational Assistants**

A teacher aide shall:

(1) Have a high school diploma or such knowledge and experience determined by the local district superintendent to be sufficient to function as an educational assistant.

(2) Have standards of moral character as required of teachers.

Stat. Auth.: ORS 342
 Stats. Implemented: ORS 343.120
 Hist.: 1EB 227, f. & ef. 6-4-76; 1EB 20-1980(Temp), f. & ef. 7-15-80; 1EB 5-1981, f. & ef. 2-12-81; EB 7-1990, f. & cert. ef. 1-26-90

581-037-0015**Assignment and Direction and Supervision of Educational Assistants**

(1) The assistant shall assist a teacher only in a supportive capacity. The role of the educational assistant is adaptable to many support tasks, and nothing in these rules should be interpreted as limiting assistants only to the performance of classroom duties. Educational assistant tasks may include:

(a) Instructional support — Tasks performed by assistants to supplement students' basic instruction by offering students opportunities to practice and apply what they have learned;

(b) Clerical support — Tasks such as preparing materials, duplicating and operating audiovisual equipment, which are primarily concerned with the physical arrangement of the learning environment; and

(c) Student control — Such duties as supervision of lunchroom's and playground areas, assisting with fire drills, monitoring students in hallways, etc.

(2) Any assistant assigned to instruction-related activities shall work under the direction of the teacher assigned to that instructional station.

(3) A plan of supervision for the assistant shall provide for:

(a) Access to assistance and consultation; and

(b) Regular monitoring of the assistant's performance to determine effectiveness of the assigned tasks and the effect on students.

Stat. Auth.: ORS 342
 Stats. Implemented: ORS 343.120
 Hist.: 1EB 131, f. 5-19-72, ef. 6-1-72; 1EB 15-1980, f. & ef. 6-9-80; EB 7-1990, f. & cert. ef. 1-26-90

581-037-0025**Training of Educational Assistants**

Districts employing educational assistants shall provide or arrange for suitable training for such personnel to prepare them to perform such functions as they may be assigned.

Stat. Auth.: ORS 342
 Stats. Implemented: ORS 343.120
 Hist.: 1EB 131, f. 5-19-72, ef. 6-1-72; EB 7-1990, f. & cert. ef. 1-26-90

581-037-0030**Credentialing of Educational Assistants**

The Oregon State Board of Education will require no certificate, diploma or other credential (except the prerequisite high school diploma or its equivalent) as a condition for employment as a educational assistant.

Stat. Auth.: ORS 342
 Stats. Implemented: ORS 343.120
 Hist.: 1EB 131, f. 5-19-72, ef. 6-1-72; EB 7-1990, f. & cert. ef. 1-26-90

DIVISION 40

METHOD OF AWARDING
COMPETITIVE GRANTS

581-040-0000

Method of Awarding Competitive Grants

- (1) For purposes of the rule:
 - (a) "Grants" are defined as awards of funds to support specific programs;
 - (b) "Sub-grants" are defined as portions of a grant awarded to the Office of Community College Services or the Office of Professional Technical Education, or both, and apportioned to individuals or organizations within the state;
 - (c) "Entitlements" are defined as a method of distributing funds that ensures each potential recipient receives an equitable portion;
 - (d) "Competitive Grants" are defined as a method of distributing funds that requires judging the best response to a Request for Proposal (RFP);
 - (e) "OCCS" is defined as the Office of Community College Services;
 - (f) "OPTE" is defined as the Office of Professional Technical Education.
 - (2) Funding awards for OCCS projects shall be approved by OCCS designated project manager, budget manager, and the Commissioner of Community College Services.
 - (3) Funding awards for OPTE projects shall be approved by OPTE designated project manager, budget manager, and the Superintendent of Public Instruction.
 - (4) Other groups or individual specified by funding entity shall also be involved in the approval process.
 - (5) OCCS or OPTE project manager will design a Request for Proposal (RFP) that reflects requirements of state or federal legislation.
 - (6) Mailing requirements and deadlines will be included in the RFP.
 - (7) Project manager shall identify prospective review committee members and prepare proposal scoring sheets prior to RFP distribution. Review committees shall be knowledgeable about the programs to be funded and related legislation but no person who plans to be an applicant for a grant or sub-grant shall serve on the review committee. Committee members shall be sent copies of proposals and copies of scoring sheets at least one week prior to awards meeting by the project manager. Principles for reviewing grant proposals shall be distributed with copies of proposals and scoring sheets. All proposals shall be submitted to every member of the committee for review.
 - (8) Negotiations for minor changes in proposals may be conducted by telephone; notes of the conversation shall be made part of the project file.
 - (9) The Commissioner of Community College Services or the Superintendent of Public Instruction, as designated by the funding source, shall make recommendations on which proposals will be awarded grants.
 - (10) Project manager shall promptly notify both successful and unsuccessful candidates by certified mail with a return receipt requested to verify dates of delivery. Both successful and unsuccessful applicants shall be allowed access to a summary of comments and suggestions related to their proposals.
 - (11) Applicants shall have one week from the date of delivery of the notification letters to supply corrective information to the Commissioner of Community College Services or the Superintendent of Public Instruction as appropriate. Decisions made after the one week review period are final.
 - (12) All grant awards will be placed on the State Board of Education consent agenda at the meeting following approval by the Commissioner of Community College Services or the Superintendent of Public Instruction.
- Stat. Auth.: ORS 341.655
 Stats. Implemented: ORS 341.655
 Hist.: EB 29-1993(Temp), f. & cert. ef. 9-30-93; EB 35-1993, f. & cert. ef. 12-14-93

DIVISION 44

WORKFORCE 2000 VOCATIONAL
TECHNICAL EDUCATION PROGRAM

581-044-0080

Definitions

The following definitions apply to OAR 581-044-0080 through 581-044-0140:

- (1) "Apprenticeship" refers to those union and nonunion apprenticeships and training programs approved by the Bureau of Labor and Industries.
 - (2) "ATC" — Advanced Technology Centers, refers to a workforce act program which assists in transferring new technology from the development laboratory to the workplace.
 - (3) "OPTE" — Office of Professional Technical Education, Oregon Department of Education.
 - (4) "Eligible Applicant" is an education service district, community college, public school district, OSSHE institution and/or community-based organization which may apply for grant awards.
 - (5) "ESD" — Education Service District.
 - (6) "Family-Wage" is income that allows an individual and/or multiple-family unit to meet their basic needs without outside assistance.
 - (7) "Internship" is a program that provides teachers and counselors work in a business or industry related to their school assignment or technical area.
 - (8) "JTPA" — Job Training and Partnership Act.
 - (9) "Match" funds are those funds provided by local entities which support the project along with state funds.
 - (10) "OEDD" — Oregon Economic Development Department.
 - (11) "OSSHE" — Oregon State System of Higher Education.
 - (12) "PIC" — Private Industry Council.
 - (13) "Program" is any area of development in 1989 Oregon Laws Chapter 693, "The Workforce Act," for which funding is available.
 - (14) "Regional Consortia" are those 18 consortia which are formed and currently the managing bodies of the federal vocational education-funded regional cooperative 2+2 program development efforts.
 - (15) "SWE" — Structured Work Experience is a program which correlates the value of classroom education and job performance, is an integral part of students' educational plans, and is supervised by the school. Such experiences include, but are not limited to, cooperative work experience, internships, mentorships, on-the-job training, and apprenticeships.
 - (16) "TSPC" — Teachers Standards and Practices Commission.
 - (17) "2+2 Tech-Prep Program" is a combined secondary and postsecondary program which:
 - (a) Culminates in an associate degree. If the program does not culminate in an associate degree, alternates must be approved by the Office of Professional Technical Education;
 - (b) Provides technical preparation in at least one program area with emphasis on applied academics and new advanced or emerging technologies;
 - (c) Provides competence in mathematics, science, or communication.
 - (18) "Two+Two (2+2)" is a program between secondary high schools and community colleges and, as appropriate, with apprenticeship and OSSHE institutions, that allows for a smooth transition to reach agreed-upon student outcomes at each level.
 - (19) "Urban Areas" are any territory situated within the urban growth boundaries of Portland, Salem, Keizer, and Eugene.
- Stat. Auth.: ORS 961, 909 & 1087
 Stats. Implemented: OL 1991, Ch. 667
 Hist.: EB 29-1989(Temp), f. & cert. ef. 10-20-89; EB 8-1990, f. & cert. ef. 1-26-90; EB 29-1991, f. & cert. ef. 12-4-91; EB 4-1992, f. & cert. ef. 2-21-92

581-044-0090

State Goals

A workforce development fund was established by Chapter 961, 1991 Oregon Laws, in the Oregon Economic Development (OEDD) to assist public schools and community colleges to prepare an internationally competitive workforce by the year 2000. OEDD has established a plan and guidelines for administering the fund, **Oregon**

Economic Development Department Guidelines for Workforce Funds. The state goals for the program are:

- (1) The state goals for the program are:
 - (a) Coordinated and complementary education, training and employment programs;
 - (b) A high performance workforce characterized by diversity, technical competence and economic self-sufficiency;
 - (c) Educational performance standards that match any in the world;
 - (d) Assurance of education attention necessary for attainment of high academic standards for all students;
 - (e) An education and employment training system that has the capacity to meet both individual and employment needs.
- (2) The objectives of the legislation and the program are to:
 - (a) Restructure elementary and secondary schools in this state to teach a higher level of skills to all students and to have students achieve these skills at a younger age;
 - (b) Develop comprehensive, professional and technical programs that lead to industry certification and:
 - (A) Emphasize structured work experiences;
 - (B) Involve employers and labor in the development and delivery of such programs;
 - (C) Recognize standards approved by industry and, where necessary, establish new industry approved standards;
 - (D) Provide an articulated applied academics program carrying all students to agreed upon goals;
 - (E) Deliver the support at-risk students need to succeed; and
 - (F) Produce the high level technical, personal and leadership skills needed by competitive businesses and industries.
 - (c) Help employers transform their operations to high performance work organizations where frontline workers have higher skills, work in teams and are given greater responsibility for a larger part of the development and production of a product or service;
 - (d) Provide support and training for dislocated workers, workers in new and expanding businesses and workers collecting unemployment insurance compensation. All such training must be linked to and result in employment for the trainee.

Stat. Auth.: ORS 961, 909 & 1087

Stats. Implemented: OL 1991, Ch. 667

Hist.: EB 29-1989(Temp), f. & cert. ef. 10-20-89; EB 8-1990, f. & cert. ef. 1-26-90; EB 29-1991, f. & cert. ef. 12-4-91; EB 4-1992, f. & cert. ef. 2-21-92

581-044-0100

Workforce Development Programs

To attain the goals and objectives set forth in OAR 581-044-0090, the following programs and their purposes are established by the Oregon State Board of Education:

- (1) Advanced Technology Center (ATC):
 - (a) To provide advance instruction in emerging and high technology areas to train, upgrade and retrain personnel for key Oregon industries;
 - (b) To provide an industry/laboratory setting that will promote applied research in new and emerging technologies and processes which are key to business growth and expansion;
 - (c) To promote the effective transfer of new products, processes and procedures from the developmental stage to implementation in the workplace.
- (2) Community-Based Skill Center — To provide intensive instruction and support to prepare previously unskilled workers to enter education, occupational training, or productive employment.
- (3) 2+2 Tech Prep Programs — To provide for the expansion and further development of coordinated and connected instructional programs among high schools, community colleges, apprenticeship, and other training programs.
- (4) Secondary Professional Technical Equipment — To upgrade professional technical equipment in response to new technologies and to assure that instructional programs reflect existing and emerging workforce needs.
- (5) Professional Technical Curriculum Improvement — To update and implement improved curriculum, including applied academics, workplace readiness and technology education, to meet the challenges of new technology in an increasingly complex society.

(6) Professional Technical Instruction and Counselor Training — To upgrade the counseling skills of counselors and professional technical teachers and provide pre- and inservice training for professional technical instructors and counselors to meet the challenges of new technology in an increasingly complex society.

(7) Student Leadership Development — To provide secondary and community college students with activities and experiences designed to develop leadership and citizenship skills.

(8) America's Choice Development — To develop and implement secondary education reform including elimination of the general studies program, development of Certificate of Mastery, development of professional technical curriculum and provision of professional structured work experience for technical students.

(9) Business Internships — To provide secondary and community college professional technical and academic instructors with internship experience in business or industry.

(10) Structured Work Experience — To require students engaged in professional technical education programs to engage in progressively more significant structured work experience.

(11) Literacy Line — To continue the literacy line to provide information and referral services for literacy development statewide.

(12) Service and Math Education — To develop a plan and establish pilot projects to extend the Industry Initiatives for Science and Math Education programs statewide.

Stat. Auth.: ORS 961, 909 & 1087

Stats. Implemented: OL 1991, Ch. 667

Hist.: EB 29-1989(Temp), f. & cert. ef. 10-20-89; EB 8-1990, f. & cert. ef. 1-26-90; EB 29-1991, f. & cert. ef. 12-4-91; EB 4-1992, f. & cert. ef. 2-21-92

581-044-0110

Administrative Requirements

The following administrative requirements apply to all programs specified in OAR 581-044-0100:

(1) Funds from the Workforce Development Fund may not be used to supplant current efforts of applicant agencies and project collaborators.

(2) Any instructional or support program developed or improved with these funds must be continued after the funded effort is completed.

(3) The state will approve priority projects for funding that meet the required criteria and which, in total, assure reasonable geographic distribution of workforce monies. At least one-third of the funds shall be used in nonurban areas of the state and at least one-third within the urban growth boundaries of Portland, Salem, Keizer, and Eugene.

(4) Funds requested, with the exception of OAR 581-044-0100(10) Science and Math Education, must be matched on a dollar-for-dollar basis. Matching funds must directly contribute to the attainment of the workforce development proposed. The Oregon Department of Education may exempt an applicant from 100 percent matching requirement when it determines that the applicant is undergoing economic hardship and that the purpose of the act will be more readily accomplished by the lower matching requirement. The total amount of exemptions provided applicants will not exceed 25 percent of the amount reserved for a program. Qualified match is:

(a) Any cash contribution from a local agency, private business or organization, foundation, or other collaborating party;

(b) Fair market value of any third-party contribution of equipment, supplies, services, and technical assistance;

(c) In-kind provision of services, facilities, and other items which contribute directly to the implementation of the program.

(5) The Oregon Department of Education reserves the right to negotiate the scope and costs and funding source of proposed activities with those applicants preliminarily selected for funding.

(6) Proposed activities must be coordinated with other programs of the Workforce Act and with existing professional technical education programs.

Stat. Auth.: ORS 961, 909 & 1087

Stats. Implemented: OL 1991, Ch. 667

Hist.: EB 29-1989(Temp), f. & cert. ef. 10-20-89; EB 8-1990, f. & cert. ef. 1-26-90; EB 29-1991, f. & cert. ef. 12-4-91; EB 4-1992, f. & cert. ef. 2-21-92

581-044-0120

Eligibility

The following shall be the eligible applicant(s) for each of the workforce programs:

WORKFORCE PROGRAMS

2+2 Tech Prep Programs, Secondary Professional Technical Equipment, Business Internships, and Structured Work Experience

Advance Technology Centers and Community Based Skill Centers

Student Leadership Development

Professional Technical Curriculum Improvement

Professional Technical Instructor and Counselor Training

America's Choice Development Sites

Science and Math Education

Literacy Line

Stat. Auth.: ORS 961, 909 & 1087

Stats. Implemented: OL 1991, Ch. 667

Hist.: EB 29-1989(Temp), f. & cert. ef. 10-20-89; EB 8-1990, f. & cert. ef. 1-26-90; EB 29-1991, f. & cert. ef. 12-4-91; EB 4-1992, f. & cert. ef. 2-21-92

APPLICANTS

Regional Vocational Technical 2+2 Consortia through designated fiscal agent(s) (i.e., education service districts, community colleges, and public school districts

Community Colleges

Education service districts, community colleges, and public school districts

Education service districts, public school districts, and community college districts

Education services districts, public school districts, community colleges, and OSSHE institutions

School districts for secondary schools with an established 21st Century School Council

Business Education Compact of Washington County in cooperation with school districts, community-based organizations and business and industry

Portland Community College

(h) There is evidence of intent from education and job trainers, business, labor, and the community that programs implemented or improved will be continued;

(i) There are provisions for follow up of students/staff, evaluation of program results, and reporting of program results.

Stat. Auth.: ORS 961, 909 & 1087

Stats. Implemented: OL 1991, Ch. 667

Hist.: EB 29-1989(Temp), f. & cert. ef. 10-20-89; EB 8-1990, f. & cert. ef. 1-26-90; EB 29-1991, f. & cert. ef. 12-4-91; EB 4-1992, f. & cert. ef. 2-21-92

581-044-0140

Program Specific Criteria

In addition to the general criteria set out in OAR 581-044-0130, program-specific criteria which must be met include:

(1) Advanced Technology Centers (ATC):

(a) Lab, building, or worksite facilities are conducive to advanced technology programs, applied research, and technology transfer;

(b) Equipment for the center is state of the art or beyond;

(c) The center represents new activity for the college or a clear extension or expansion of a current activity;

(d) The center clearly fills a need that is not being met by the college or other service provider;

(e) Staff must be hired or contracted through the center.

(2) Community-Based Skill Centers:

(a) Area economic, business, industry, and labor representatives have been involved in program design and evaluation;

(b) There is cooperative planning and linkage to appropriate local alternative schools/programs, community college developmental education centers, Adult and Family Services, JTPA, apprenticeship, labor, and other service providers;

(c) Facilities are accessible to the populations to be served;

(d) Instruction includes applied basic skills, life skills, career planning, personal development, and preemployment training;

(e) The skills center represents a new activity for the college or a clear extension or expansion of a current activity;

(f) There are adequate provisions made for child care, transportation, and other support services;

(g) The center provides training programs of varying lengths which reflect the needs of the clients and specific job opportunities;

(h) Skill training centers shall provide:

(A) Intensive instruction and support for youth to achieve high academic standards;

(B) Training and support services to prepare unemployed, underemployed and dislocated workers and homemakers for participation in a competitive society.

(i) At least one center shall include a component for training older workers who have left the job market and wish to return;

(j) An overall plan for skill training centers will be proposed by the Office of Community College Services in consultation with community colleges in the state.

(3) 2+2 Tech Prep Programs:

(a) The program results in new, expanded, or improved connected and coordinated professional technical instructional programs;

(b) There is process for adjusting priorities to meet unanticipated economic development needs;

(c) The program leads to development of 2+2 tech prep model programs;

(d) There is integration of academic studies with professional technical connected programs;

(e) Structured work experience is an integral part of all appropriate programs.

(4) High School Professional Technical Equipment:

(a) Funds are used for equipment purchases for professional technical approved programs which are directly tied to preparing students for technology-related jobs;

(b) Equipment is purchased based on a long-range program improvement plan for upgrading equipment or as a result of a recent program assessment/evaluation;

(c) The equipment purchases will promote serving needs of disadvantaged and at-risk youth;

(d) The equipment can be shared regionally, among schools, with the community college, or other training providers;

(e) The equipment will have a significant impact in the district/region.

581-044-0130

General Criteria for Grant Awards

(1) The Oregon Department of Education shall establish a request for proposal solicitation and approval process to be conducted each biennium for which workforce development funds are available. The Department will notify eligible applicants of proposal process and due dates, and make available necessary guidelines and application forms.

(2) All proposals shall be reviewed by the Department of Education, Office of Professional Technical Education, Office of Community College Services, and the Economic Development Department and representatives of other appropriate agencies and organizations. Grant awards will be made by the State Board of Education upon recommendation of the State Superintendent of Public Instruction and Commissioner of Community Colleges.

(3) All proposals must comply with matching, geographic and other requirements of the Act and must adhere to the guideline of the Oregon Economic Development Department for workforce programs. Grants shall be awarded based on the following generally applicable criteria:

(a) There is a clear indication of the economic and social need for the program and the educational benefits which will result;

(b) The program will serve to increase enrollment in secondary, postsecondary, and apprenticeship programs which provide skills for employment in careers leading to family-wage jobs;

(c) The program demonstrates potential to teach a higher-level of academic and technical skills to all students, thereby increasing the knowledge and improving the skills of Oregon's workforce, and meeting established or development industry standards;

(d) There are plans to actively recruit and prepare disadvantaged, minority, women, chronically unemployed and underemployed, and other at-risk youth and adults for enrollment;

(e) There is coordination of activities and resources between secondary and community college programs and with JTPA, private vocational schools, welfare, employment, apprenticeship, and other employment training and service providers, councils, commissions, and boards;

(f) The program seeks the input, direction, and advice of state and local economic development planners and is in accord with one or more local and/or state economic development coordination strategies of the Workforce 2000 Economic Development Department Plan;

(g) The business industry, and labor communities are actively involved in program development and implementation;

(5) Professional Technical Curriculum Improvement:

(a) There is evidence of commitment for up-to-date employer-based, competency-based curriculum, and the development of applied academic courses;

(b) Available curriculum has been sought and reviewed for its adaption/adoption potential before new development efforts were instigated;

(c) There is a regional/district-wide plan for inservicing staff to use the new curriculum.

(6) Professional Technical Instructor and Counselor Training:

(a) Programs will be developed in cooperation with the OSSHE;

(b) The strategy of peer counseling will be taught;

(c) The focus of counseling skill training will follow the National Career Development Guidelines. Special attention will be given toward helping individuals;

(d) The preservice activities will result in improved structure to train secondary and community college professional technical instructors, particularly in trade and technical education, technology education, business and office education, marketing education, and in the development of applied academics curriculum.

(7) Student Leadership Development:

(a) There is indication that vocational student organization activities and vocational skills contested are an integral part of instructional activities for vocationally approved programs;

(b) The program ensures that local chapters are chartered through the state association and follow policies adopted by the association's board;

(c) Skills contests are planned and implemented in cooperation with the regional professional technical education coordinator or a state vocational student leadership association;

(d) There is evidence of activities designed to develop team-building skills and utilize students in a peer-teaching or coaching capacity wherever possible.

(8) "America's Choice" Developmental Sites:

(a) School district sites must have or initiate a 21st Century School Council. The 21st Century School Council is a body composed of teachers, classified district employees, administrators, parents and others, specified by ORS 336.745, for the purpose of designing, sponsoring, and administering local professional growth and career opportunity programs;

(b) Sites may serve students from single or multiple school districts;

(c) Programs may use extended days in the week or an extended schedule;

(d) Qualified persons from private agencies may be used as staff if noncertified personnel receive waivers by TSPC.

(9) Business Internships:

(a) The region/district has a plan for inservicing teachers and counselors to prepare them for business and industry internships. (The inservice should include a program orientation and procedure to assess the participant's skills and needs. An internship plan needs to be developed for an individual, noting strategies for approaching target industries in order to set up the internship.);

(b) There is an identified process to assess worksite performance and employer and participant feedback;

(c) An instructional program improvement plan will be developed and implemented to reflect current industry standards learned during the internship.

(10) Structured Work Experience:

(a) The program serves regional and multiple institution needs;

(b) The program provides direct relationship to the student's program of studies and attainment of individual career or occupational goals;

(c) There is evidence of an adequate number of students to be served and reasonable projected average training costs per students;

(d) Structured work experience shall be an integral part of 2+2 Tech Prep programs.

(11) Literacy Line Service:

(a) Ongoing operation through the Office of Community College Services shall be continual;

(b) Information providing and referral service for literacy education shall be provided.

(12) Science and Math Education Program:

(a) The programs shall follow the plan to extend the Industry Initiative for Science and Math, cooperatively developed by the Business Education Compact of Washington County and the Oregon Department of Education;

(b) Pilot projects shall be established which will replicate and extend the Washington County initiative statewide;

(c) Workforce programs shall compliment other professional technical curriculum improvement, instructor and counselor training and the 2+2 Tech Prep Program;

(d) The programs shall follow the plan for developing math and science courses of study.

Stat. Auth.: ORS 961, 909 & 1087

Stats. Implemented: OL 1991, Ch. 667

Hist.: EB 29-1989(Temp), f. & cert. ef. 10-20-89; EB 8-1990, f. & cert. ef. 1-26-90; EB 29-1991, f. & cert. ef. 12-4-91; EB 4-1992, f. & cert. ef. 2-21-92

581-044-0200

Youth Apprenticeship

(1) Students shall be considered for youth apprenticeship training after having been enrolled in, and having completed, an 18-week Career Exploration program that includes:

(a) Completion of basic skill and work place readiness skills;

(b) Participation in job site visits or structured work experience in employing apprenticeable occupations;

(c) Participation in an industry sponsored and delivered career presentation;

(d) Any other requirements jointly established by the apprenticeship committee and the school district.

(2) Youth Apprenticeship students shall maintain regular attendance as defined in ORS 339.065 in school courses and required related training, and complete their high school requirements as set forth in OAR 581-022-0316.

Stat. Auth.: OL 1991, Ch. 859

Stats. Implemented: ORS 344.745

Hist.: EB 17-1992, f. & cert. ef. 5-13-92

DIVISION 45

PRIVATE VOCATIONAL SCHOOLS

581-045-0001

Definitions

The following definitions apply to OAR 581-045-0006 through 581-045-0210, unless otherwise indicated by the context:

(1) "Advertising" means any form of public notice used in recruiting and promoting activities, however disseminated, including but not limited to print media, catalogs and other school publications, signs, mailing pieces, radio or television ads, audiovisual material, and the internet on behalf of a licensed school.

(2) "Ability to benefit" is a determination made by the school through some form of assessment (e.g. entrance examination) that indicates the student has a reasonable chance to succeed in the program and be employed in the profession for which the student is preparing.

(3) "Agent" has the meaning given in ORS 345.010(1).

(4) "Approved" means accepted by the State Board of Education or by the Superintendent in matters relating to school licensing requirements.

(5) "Assessment" means a written, oral, and/or hands-on evaluation of an applicant's progress in the educational program.

(6) "At-risk" means the school demonstrates a pattern or history of one or more of the following conditions, that the Superintendent determines, may cause potential serious problems for the continued successful and profitable operation of the organization:

(a) Failure to meet the standards of financial responsibility;

(b) Misrepresentation;

(c) Frequent substantiated complaints filed with the Department;

(d) A decrease in enrollment from the previous reporting period of 50 percent or more or 25 students, whichever is greater;

(e) Staff turnover from the previous reporting period of 50 percent or more or three staff, whichever is greater; and

(f) Conditions listed in subsections (6)(d) and (e) of this rule, caused by unusual circumstance or reason, shall be evaluated by the Superintendent and exceptions may be granted.

(7) "Auxiliary facility" means a facility that does not use or list its address as a school location and:

(a) Absorbs a temporary overload that the principal facility cannot accommodate; or

(b) Provides a specialized training facility away from the principal school location; or

(c) Provides training under contract that is not open to general enrollment, or

(d) Is a site approved by the Department of Education for teaching a short-term course that is taught by registered teachers from the principal facility.

(8) "Barbering" has the meaning given in ORS 690.005.

(9) "Board" means the State Board of Education.

(10) "Bona fide organization or group" means any body or entity that is nationally chartered or recognized by a national or state educational/occupational policy board that has operated or functioned in good faith without fraud or deceit for at least 25 years.

(11) "Chairperson" means the person who is responsible for overseeing the business of the advisory committee.

(12) "Class" means a scheduled meeting of persons for instructional purposes.

(13) "Clinic lab" means a place where students perform assigned instructional tasks identified in the approved curriculum on models or the general public.

(14) "Completion" means the student has satisfactorily finished all the requirements of the program in which enrolled, has fulfilled the terms of the enrollment agreement, and has been awarded an appropriate certificate, diploma, or completion document.

(15) "Continuing education" means the enrollment in and completion of ongoing, Department approved instruction, outside the normal teaching schedule, which upgrades a teacher's skills and knowledge with the intent of making the teacher more proficient and current in subject matter taught.

(16) "Course" means an aggregation of classes to achieve a completed set of competencies.

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

(18) "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, disability, national origin, race, marital status, religion, or sex.

(19) "Distance learning instruction" means education provided by written correspondence or any electronic medium for students enrolled in a private career school in pursuit of an identified occupational objective, but not attending classes at an approved school site or training establishment.

(20) "Enrollment" means a student agrees to the purchase of a course or program of instruction from a school and signs an enrollment agreement, instrument or note, however named that commits both the student and the school to a legal and binding obligation.

(21) "Facial technology" has the meaning given in ORS 690.0005.

(22) "Fund" means the private career school Tuition Protection Fund (TPF).

(23) "Gross tuition income" means all direct tuition charges from programs for which the school is licensed under OAR 581-045-0001 through 581-045-0210, including any laboratory fee. Total gross tuition income does not include:

(a) Tuition refund;

(b) Registration/application fees; or

(c) Costs for books, supplies, tools, and equipment purchased by students.

(24) "Hair design" has the meaning given in ORS 690.005.

(25) "In default" is defined in ORS 345.115(5) as "when a course or program is discontinued or canceled or the school closes prior to completion of contracted services."

(26) "License" means a license to operate a private career school.

(27) "Nail technology" has the meaning given in ORS 690.005.

(28) "On-site review" means a visit to the school by authorized Department staff that may review the facilities, classrooms, and school records, talk with students, staff, and administrators, and determine whether the school is in compliance with Oregon law.

(29) "Operating/operation" means any form of marketing, advertising, instruction, recruitment, or any other activity regulated under ORS Chapter 345 and OARs 581-045-0001 through 581-045-0210.

(30) "Placement" means the student has been employed in the occupation for which trained.

(31) "Probation" means that a school has been officially notified by the Superintendent that it has deficiencies that must be corrected within a specified time.

(32) "Program" means an aggregation of courses to meet an identified occupational objective.

(33) "Program advisory committee" means a representative group appointed by the school, which advises the school ownership and administration.

(34) "Program improvement plan" means a written outline or plan designed to describe how the school will resolve or comply with violations of state rule or regulation assessed by the Superintendent and/or correct any deficiencies identified by the Superintendent.

(35) "Published Class Schedule" (for the purpose of calculating tuition charges) means the period of time between the commencement of classes and the student's last date of attendance as offered by the school and scheduled by the student.

(36) "Recruiting" means personally soliciting or attracting a person or persons by a school or its agent(s) with the intention of actively pursuing enrollments in the school. Recruiting does not include leaving materials at or near an office or other site for a person to pick up of his or her own accord or handing a brochure or other materials to a person.

(37) "Registration" means the process by which directors, agents, or teachers either request registration by the Superintendent to teach at the school or notify the Superintendent of their appointment of an agent to represent the school.

(38) "Registration/application fee" means any fee, however named, covering those expenses incurred by a school in processing student applications and establishing a student records system and so identified on the student enrollment agreement.

(39) "Reporting period" means the period from July 1 of one year to June 30 of the next year on which schools shall base all student placement and program records and reports that must be submitted to the Department. The school's fiscal year may be for the same period, the calendar year, or some other 12-month time period.

(40) "Resident instruction" means education provided at an approved school site or training establishment for students enrolled in and attending classes at the school facility in pursuit of an identified occupational objective.

(41) "Revoke" means the Superintendent terminates the school license. When the license is revoked, the school is not authorized to continue operating. Probation or suspension may, but is not required to, precede revocation.

(42) "School" has the meaning given in ORS 345.010.

(43) "Short term course" means a course no longer than 16 clock hours in duration that is offered to prepare a student for a state examination or licensure, which is required to enter a profession.

(44) "State advisory committee" means a representative, statutory advisory committee appointed by the Superintendent of Public Instruction, and consists of members who shall serve for terms of three years ending June 30.

(45) "Structured work experience or externship" means a work-site educational activity that correlates the value of classroom training and on-site job performance, is an integral part of the student's training plan, and is supervised/evaluated by appropriate school personnel.

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

(47) "Suspend" means the Superintendent has notified a school that because of deficiencies, it may not advertise, recruit, enroll students, or begin instruction of new students, but may remain open to complete training of currently enrolled students. Probation may, but is not required to precede suspension.

(48) "Teachout" means a defaulting school or the Department makes provisions for students enrolled at the time of the default to complete a comparable program at no additional cost beyond the original enrollment agreement with the defaulting school. Teachout arrangements, if made by the defaulting school, shall be approved in advance by the Superintendent and, if ongoing, approved annually by the Superintendent.

(49) "Transcript" means a written record that shall include, but is not limited to, name and address of student, first and last date of attendance, all programs or courses undertaken, grades achieved,

whether the courses or programs were successfully completed, and signature of a school official.

(50) "Tuition" means money or other compensation paid or credited to a school by a student or on behalf of a student that is applied to the costs of instruction and training actually received or to be received by the student.

(51) "Withdrawal fee" means any fee, however named, covering those expenses incurred by a school in processing student paperwork relating to program changes (i.e. course additions/drops or transfers) or withdrawal from school and so identified on the student enrollment agreement.

Stat. Auth.: ORS 345.010

Stats. Implemented: ORS 345.030 & 345.325

Hist.: 1 EB 31-1986, f. & cf. 7-23-86; EB 11-1990, f. & cert. ef. 2-1-90; EB 13-1996, f. & cert. ef. 7-26-96; ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 21-2002, f. 9-26-02 cert. ef. 10-1-02; ODE 17-2003, f. 12-30-03, cert. ef. 1-1-04

581-045-0006

Application for Private Career School License

(1) Any person, partnership, association, or corporation desiring to function as a private career school as defined in ORS 345.010 shall submit an application for its first approval year on forms provided by the Department. No person, partnership, association, or corporation shall hold itself out to be a school, solicit students or collect fees prior to the date of the license. A school requesting exemption from licensure must request such exemption from the superintendent under the provision of ORS 345.015.

(2) An initial site inspection may be required prior to approval of the application. Any deficiencies must be corrected prior to issuance of a license.

(3) A license may be denied by the Superintendent, 60-days after the school has been notified of the application deficiencies, for failure to submit accurate and complete materials required by the application, or for other substantiated just cause.

(4) A separate license shall be required for each location of a school except those approved by the Superintendent as auxiliary sites. A license for the specific location must be issued prior to operating at that location.

(5) An initial license shall be granted after:

(a) Receipt of a complete application by the Superintendent; and

(b) Completion of an interview with and approval by the Department's designee for private career schools.

(6) Each license shall be issued to the owner of an applicant school and shall be nontransferable. In the event of a change of ownership of a school and when continuous operation is desired, the buyer must apply for and obtain approval of a new license prior to the completion of the sale. Failure of the seller to notify the Department prior to completion of the sale may result in the imposition of civil penalties established in OAR 581-045-0190. The current owner (seller) must inform the Department in writing prior to completion of the sale as to whom:

(a) Will acquire the school's assets, which are directly related to the school's educational activities;

(b) Will assume liability on the date the school is sold for the outstanding debts incurred as a direct result of the school's educational activities under previous ownership;

(c) Has authority to make all refunds that on the date the school is sold, may be due to eligible persons; and

(d) Has agreed to honor all student contracts that were signed or approved by the school's authorities before the effective date of the change of ownership; and

(e) Has responsibility to transfer all educational transcripts of former and current students to the possession of the new school owner.

(7) Before an individually-owned (commonly referred to as a sole proprietorship) or partnership-owned school elects to incorporate or when there are changes in existing ownership that affect financial control of the school, the Superintendent shall be notified in writing, and a new license shall be required. Such notice shall occur prior to the ownership change. Control is affected when a new party or entity assumes ownership of more than 50 percent of the school's net worth. Instances in which control is affected and a new license is required include but are not limited to the following examples:

(a) Owner(s) sells more than 50 percent to another party;

(b) Partner(s) owning less than 50 percent buy out the other partner(s) interest; or

(c) The type of ownership is changing (i.e., individual, partnership, or corporation).

(8) Request for confidentiality regarding the purchase/sale of a school will be honored by the Department in accordance with the public records law.

(9) The initial application shall include:

(a) The name and address of the school, the names and addresses of its owners, governing body, officials, and faculty with attendant qualification forms;

(b) Course syllabi as required by OAR 581-045-0009(1)(a)(C)(D);

(c) School facility description as required by OAR 581-045-0022;

(d) Enrollment agreement (contract) information and procedures, including a copy of the contract or enrollment agreement for only those courses offered by the schools that are licensed by Oregon Department of Education;

(e) A copy of school policies and regulations relating to:

(A) Admissions standards;

(B) Ability to benefit examination (if used) must be:

(i) Ability to benefit examination must be approved by the Superintendent; and

(ii) Ability to benefit examination must be proctored in a manner approved by the Superintendent;

(C) Enrollment and entrance dates; and

(D) Description of the procedure for which a student can file a complaint about the school or the program;

(E) Attendance;

(i) Policy on attendance;

(ii) A statement of how the school will monitor and report enrollment and attendance information as required by federal and/or state statutes.

(F) Credit for previous training;

(G) Discriminatory behaviors;

(H) Grading policies;

(I) Leaves of absence;

(J) Make-up Work;

(K) Methods of reporting progress;

(L) Safe, healthy environment;

(M) Student conduct;

(N) Suspensions, terminations, reentry; and

(O) Tardiness.

(f) A statement explaining how the policies and the regulations in (9)(e)(A)–(O) of this rule are disseminated to all students and how they are monitored by the school;

(g) Information relating to tuition charges and all other fees or costs;

(h) Policy of the school relating to cancellations and refunds of unused tuition, fees, and other charges. The policy must be consistent with the schedules established by OAR 581-045-0026, 581-045-0027, and 581-045-0028;

(i) A written plan designed to protect the contractual rights of students in the event the school closes or undergoes a change of status as described in OAR 581-045-0067;

(j) Labor market information showing current employment, replacement, and expansion data for regional, state, and national labor markets for the occupational area being served;

(k) A description of placement information provided to students;

(l) The school calendar;

(m) The signature of authorized officials of the school including each owner, partner or member of the board. If the institution is incorporated, each owner of ten percent or more of stock must sign. If the institution is incorporated and the stock is publicly traded through a stock exchange, the president or chief executive officer of the corporation must sign. If the applicant is a nonprofit corporation, each member of the governing body must sign;

(n) Full disclosure by owners, directors, and teachers of any conviction or crime referenced under OAR 581-045-0012(8)(a); and

(o) If information required by subsections (9)(a)–(l) of this rule is provided in the school catalog, references to catalog and page number will be acceptable.

(10) The application shall be accompanied by:

(a) The nonrefundable license fee required by ORS 345.080 (see OAR 581-045-0007);

(b) The initial capitalization payment for the student tuition protection plan required by ORS 345.110;

(c) A complete resume of education and work experience for the school owner(s), corporate officer(s), school director, and teachers, including social security number, date of birth, home address, and telephone numbers;

(d) A draft of the proposed school catalog or brochure required by OAR 581-045-0019;

(e) A copy of proposed advertising and promotional information to be used by the school;

(f) Copies of program materials prescribed by OAR 581-045-0009(b), or relating to schools also regulated by another state agency as described in OAR 581-045-0014;

(g) All inspection documents required by OAR 581-045-0022(2);

(h) Copies of incorporation certificates, if applicable;

(i) A financial statement, which provides information required by OAR 581-045-0032. The financial statement shall be kept confidential within the limits permitted by the public records law;

(j) An enrollment agreement that is legally binding on both the school and the student, which shall include, but is not limited to, a description of:

(A) The instructional program in which the student is enrolled;

(B) Beginning and ending dates;

(C) Length of program;

(D) Registration/application fee;

(E) Tuition;

(F) All other program costs listed separately;

(G) Installment payment plan, if available;

(H) The state-specified refund schedule or one approved by the Superintendent as being more favorable to the students;

(I) A clear and conspicuous disclosure of the student's cancellation rights; and

(J) A statement informing students who have questions regarding the enrollment agreement that they may contact the Oregon Department of Education (use current address) Salem, Oregon;

(k) Schools implementing program changes cannot require students who are currently enrolled to complete the requirements of the revised program. Enrolled students are to be taught out under the program identified in their most current signed enrollment agreement and identified in the catalog in effect at the time of their enrollment. Exceptions may be allowed when and if the school and student mutually agree to the program change(s) and a new or amended enrollment agreement is negotiated, accepted, and signed by the student and school. Examples of program changes as used in this rule include, but are not limited to, increase or decrease of hours required, changes in the schedule of hours of instruction, adding or dropping required courses, increasing program costs or fees, changes in the payment plan, and/or adapting the program to accommodate implementation of some or all components of the Oregon Education Reform Act; and

(l) The school must maintain documentation signed by each student to substantiate that the student has received and read all information contained in subsection (10)(j) of this rule. The school must also indicate any special rules or publications that the student signature acknowledges. Additional information not listed in the enrollment agreement may be published in the current school catalog or catalog addendum.

(11) Out-of-state schools:

(a) Any private career school whose principal place of business is outside of Oregon shall obtain an Oregon private career school license whenever it maintains a physical presence in Oregon;

(b) The Superintendent may consider the following factors to determine whether a school has established a physical presence in Oregon:

(A) Maintains an office in the state;

(B) Conducts any part of the instructional program from or in the state;

(C) Employs sales representatives who reside or solicit students within the state;

(D) Canvasses for prospective students within the state;

(E) Operates career or information booths at fairs or other such public gatherings within the state;

(F) Presents school information at high school career days within the state; or

(G) Advertises in local media that originate in Oregon.

(c) Out-of-state schools shall submit upon initial application and annually thereafter:

(A) Out-of-state application form;

(B) Copy of the most recent licensure application for the state in which the school is located;

(C) Copy of current resident state license certificate;

(D) If accredited, copy of the report for the most recent school accreditation review;

(E) List of approved programs; and

(F) Copy of the school's most recent catalog to include the items listed below. If any of the following items do not appear in the body of the catalog but appear in other specific documents they must also be submitted:

(i) Name and address of the school;

(ii) Date of publication or other reference identifier such as years(s), volume or edition or version numbers;

(iii) The educational or vocational objective of each course or program including the name and the level of occupations for which the course or programs purport to train;

(iv) The number of clock or credit hours of instruction in each course and the length of time in weeks or months normally required for completion;

(v) A complete listing and description of courses or programs offered specifying subjects included in each course or program that clearly identifies coverage of the training;

(vi) A description of the school's physical facilities, equipment available for student use, and the maximum or usual class size;

(vii) Policies relating to tardiness, absences, makeup work, conduct, termination, reentry, and other rules and regulations of the school, including the student appeals process;

(viii) The grading system, including definition of ratings and credit units, if any;

(ix) Refund policy;

(x) The requirements for graduation;

(xi) Statement describing certificates, diplomas, or degrees awarded upon graduation; and

(xii) Information regarding any limitations on transfer of credits; and

(G) Teachers' education and experience requirements for employment at the school. (Information about individual teachers does not need to be submitted if the teachers are licensed or approved in the state in which the school is located.)

Stat. Auth.: ORS 345.030

Stats. Implemented: ORS 345.030

Hist.: 1EB 257, f. 1-3-77, ef. 7-1-77; 1EB 23-1978, f. 6-30-78, ef. 7-1-78; 1EB 30-1986, f. & ef. 7-23-86; EB 11-1990, f. & cert. ef. 2-1-90; EB 32-1991, f. & cert. ef. 12-18-91; EB 13-1996, f. & cert. ef. 7-26-96; ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 21-2002, f. 9-26-02 cert. ef. 10-1-02

581-045-0007

License Fees

(1) Before issuing a license under ORS 345.010 to 345.470, the Superintendent shall collect license fees based on the license fee schedule in ORS 345.080.

(2) The initial license fee will be based on the fourth step of the license fee schedule. Thereafter, the renewal license fee will be computed on the basis of the previous fiscal or calendar year's total gross tuition income.

(3) Total gross tuition income includes all direct tuition charges including any laboratory fee. Total gross tuition income does not include tuition refunds or registration fees and costs for books, supplies, tools and equipment purchased by students.

(4) The renewal license fee for out-of-state schools as defined in OAR 581-045-0006(11) shall be computed on total gross tuition income received from students recruited and enrolled from Oregon.

(5) All license fees are nonrefundable.

Stat. Auth.: ORS 345.080

Stats. Implemented: ORS 345.080

Hist.: EB 13-1996, f. & cert. ef. 7-26-96; Renumbered from 581-045-0002, ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01

581-045-0008

Advanced Deposits

Prior to the beginning of classes, no private career school shall require from an enrollee an advance deposit in excess of twenty (20) percent of the total tuition and fees:

(1) Schools that offer short term programs designed to be completed in one (1) term or four (4) months, whichever is less, can require payment of all tuition and fees on the first day instruction begins;

(2) For those programs designed to be four (4) months or longer, a school cannot require more than one (1) term or four (4) months of advanced payment of tuition at a time. When fifty (50) percent of the program has been offered, the school can require payment of all tuition;

(3) This limitation shall not apply to federal and state financial aid payments received by the school;

(4) At the student's option, a school may accept payment in full for tuition and fees after the student has been accepted and enrolled and the date for commencement of classes is specifically disclosed on the enrollment agreement; and

(5) The Superintendent may grant a waiver to this limitation if sufficient evidence is submitted indicating that a larger advance deposit would be more appropriate and not compromise the intent of ORS 345.115(4).

Stat. Auth.: ORS 345.010

Stats. Implemented: ORS 345.115

Hist.: ODE 21-2002, f. 9-26-02 cert. ef. 10-1-02

581-045-0009

Instructional Programs

(1) All schools shall:

(a) Offer programs of quality, content and duration, and with appropriate entrance criteria, instructional materials, staff, equipment and facilities to prepare students for the programs' occupational objectives; and

(b) Operate programs evaluated by appropriate program advisory committees as defined in OAR 581-045-0013. The school shall prepare for each program advisory committee's review, evaluation and analysis:

(A) A clearly stated program educational or professional technical objective;

(B) A program outline indicating each unit of study, including skills to be taught and approximate number of clock or credit hours (with explanation as to how credit hours are defined) allowed for each unit;

(C) A teaching syllabus or guide for the program of study, copies of instructional materials used by the students, and an inventory of instructional equipment and materials (including software) available to be used in the programs;

(D) A description of the instructional area or facility with space allocations, equipment placement and teaching stations for each program appropriately indicated;

(E) A description of the entrance requirements and assessment process and tests used in the selection and placement of enrollees for the program;

(F) Standards of progress, attendance and performance required of students in the program;

(G) Labor market information as required in OAR 581-045-0006(9)(j); and

(H) A written plan for assisting graduates in obtaining full-time employment.

(2) The program advisory committee shall submit to the school and the Superintendent its analysis of the quality, content, duration and curriculum sequencing of the program of study, instructional materials, equipment and facilities provided to prepare the student in skills currently necessary for entry level employment in the occupation for which the program was designed:

(a) Program material prepared for the program advisory committee, as prescribed in subsections (1)(A)–(C) of this rule, will be filed with the Superintendent on request;

(b) The Superintendent may review:

(A) The school's program development procedures;

(B) The program advisory committee's involvement in program development; and

(C) The job placement plan submitted to the program advisory committee; and

(c) The Superintendent will review the program advisory committee's analysis of the adequacy of the program and reject or accept the committee's findings. The Superintendent's written approval is

required prior to commencement of any marketing, recruitment, enrollment or instructional activities.

Stat. Auth.: ORS 345.080

Stats. Implemented: ORS 345.080

Hist.: ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01

581-045-0012

Personnel

(1) A school shall establish, publish, and enforce specific written policies that set standards for the staff's:

(a) Professional performance and conduct;

(b) Evaluation; and

(c) Continuing education.

(2) Schools shall employ only teachers who are registered with the Department and who meet the requirements of section (3) of this rule. All applications for approval of teachers shall:

(a) Be recorded on forms provided by the Department;

(b) Indicate the specific subjects the prospective teacher will teach;

(c) Be signed by the prospective teacher and the school director, except teachers regulated by OAR 581-045-0200 need only the prospective teacher's signature; and

(d) Be accompanied by relevant official transcripts, letters, and documents that confirm that the teacher meets the minimum requirements listed in subsection (3)(a) and (b) of this rule.

(3) Teachers must hold all Oregon licenses, certificates and ratings, and successfully pass qualifying exams legally required for employment in the field in which they teach. However, the Superintendent upon written request may grant waivers from the school.

(a) All teachers must have graduated from high school as evidenced by a photocopy of a high school transcript indicating graduation, a high school diploma or its foreign equivalent. As an alternative, the teacher may show evidence of a General Education Development (GED) certificate. The Superintendent may grant a waiver to this limitation if sufficient evidence is submitted.

(b) All teachers must have at least two years of work experience or two years of education, or any combination of both, in the subject that they instruct. For new teachers the work experience must have been within the last five years;

(c) Part-time experience will be allowed if the total hours equal the equivalent of two years of full-time work experience;

(d) Full-time work experience is a minimum of 1,875 hours per year (37.5 hours per week times 50 weeks);

(e) In emergency situations, not to exceed three months, schools may hire substitute teachers who are the best-qualified persons available. Under no circumstances shall students be allowed to substitute as approved teachers;

(f) If a school utilizes any form of teacher assistants, aides or trainees, it shall establish and maintain policies that set forth qualifications, duties, procedures for use of these personnel, and maintain a copy of these policies for review by the Department. Teacher assistants, aides, and/or trainees shall:

(A) Not be used as substitutes or replacements for regular teachers,

(B) Work under the direct supervision of an approved teacher, and

(C) Evaluate students only under direct supervision of an approved teacher;

(f) The school shall have and implement written policies to promote improvement of teacher competency in their fields and in levels of performance in their teaching assignments. A recommended minimum for continuing education is 30 hours during each three year period; and

(g) The teacher's registration shall not be transferable from one school to another and shall terminate on cessation of the teacher's employment with the school. Exceptions to this rule include registered instructors of hair design, nail and facial technology, and barbering.

(4) Directors must have at least two years of experience in school or business administration, teaching, or other experience directly related to their duties within the school's organization. The experience must have been within the last five years. Part-time experience will be allowed if the total hours equal the equivalent of two years of full-time experience. Full-time work experience is a minimum of 1,875 hours per year (37.5 hours per week times 50 weeks). Qualified persons who do not meet the criteria in section (8) of this rule may be appointed as

directors with prior approval by the Superintendent and with a letter as required in subsection (8)(c) of this rule.

(5) Owners and directors, administrators, agents, supervisors, and instructors (hereinafter collectively “employees”) subject to registration, licensure, or approval pursuant to ORS 345.010 to 345.450 are subject to suspension, revocation, or other discipline if the employee:

(a) Is charged with knowingly making any false statements in the application for a license, registration, or approval;

(b) Is charged with gross neglect of duty; or

(c) Is charged with gross unfitness.

(6) Gross neglect of duty is any serious and material inattention to or breach of professional responsibilities. The following acts constitute gross neglect of duty:

(a) Knowing falsification of any document or knowing misrepresentation directly related to licensure, employment, or professional duties;

(b) Substantial deviation from professional standards of competency;

(c) Violation of any ethical standard contained in OAR 581-045-0012(9);

(d) Engaging in acts in violation of laws or rules applicable to the profession;

(e) Failure or refusal to respond to questions, to provide information, or to furnish documents to a Department of Education representative pursuant to review, assessment, or investigation; or

(f) Any other statement or act or omission not consistent with personal integrity, ethics, or honesty.

(7) Gross unfitness is any conduct that renders an owner or employee unqualified to perform duties. The following acts constitute gross unfitness:

(a) Convictions of a crime or offense specified in OAR 581-045-0012(8) or engaging in such wrongful acts even in the absence of a conviction;

(b) Commission of fraud, misrepresentation, or deceit;

(c) Commission of unfair, deceptive, or unlawful trade practices as defined in the Oregon Unlawful Trade Practices Act.

(8) No licensed school shall be owned by or employ an individual who is not of good moral character and reputation:

(a) Upon review by the Department, the Superintendent may find a person not to be of good moral character and reputation when the person:

(A) Has been convicted of a felony or a misdemeanor that involves the illegal use, sale or possession of a controlled substance, or that involves any sexual offense, or any violent offense;

(B) Has been convicted of an offense involving fraud or misrepresentation, or has committed fraud, misrepresentation, or deceit or has committed unfair, deceptive, or unlawful trade practices regulated by the Oregon Unlawful Trade Practices Act (ORS 646.605–646.652); or

(C) Is currently subject to suspension or revocation under OAR 581-045-0012(5).

(b) The Superintendent shall not make a finding that a person is not of good moral character and reputation solely for the reason that the person has been convicted of a crime, but shall consider the relationship of the facts that support the conviction and all intervening circumstances as they relate to the specific occupational standards and requirements; and

(c) If the prospective teacher has been convicted of a crime listed in subsections (8)(A) and (8)(B) of this rule, the Superintendent shall request a letter of recommendation from the employing school and the individual’s most recent employer, parole officer, or other appropriate professional source. The Superintendent shall fully consider such recommendation along with all other supporting materials submitted by the prospective teacher.

(9) The school shall set minimum expectations and provide training for all instructional personnel and supervisors of instructional personnel in:

(a) Curriculum and Instruction — including the educator’s competent application of:

(A) The school approved curriculum, and

(B) Effective teaching strategies; and

(b) Supervision and Evaluation of Students — including the educator’s responsibility to:

(A) Record progress of individual students,

(B) Evaluate student performance, and

(C) Use effective classroom management;

(c) Ethics — including the educator’s responsibility to:

(A) Know, respect, and obey all policies of the school,

(B) Exemplify personal integrity, ethics, and honesty,

(C) Keep student information confidential, and

(D) Avoid exploiting students for personal profit or advantage.

Stat. Auth.: ORS 345.080

Stats. Implemented: ORS 345.080

Hist.: ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 21-2002, f. 9-26-02 cert. ef. 10-1-02; ODE 17-2003, f. 12-30-03, cert. ef. 1-1-04

581-045-0013

Program Advisory Committees

(1) The school shall appoint and utilize a program advisory committee for each program being offered. If the school programs are in the same or similar vocational areas, the same advisory committee can be used for all related programs.

(2) Each committee shall be composed of not less than three members, knowledgeable in the occupational area being offered by the school and who are not employees of and have no financial interest in the school and who are not related to the owner(s) or administrator(s). When a program or curriculum is regulated, approved or certified by a state agency or Oregon State licensing board other than the Department as identified in OAR 581-045-0014, that program or curriculum is exempt from the advisory committee requirement.

(a) A list of the program advisory committee members and a resume of each shall be furnished to the Superintendent. The list and resumes shall include each member’s name, address, telephone number, present occupation and training experience; and

(b) The membership of the program advisory committee shall include:

(A) At least three members employed in the occupation served by the program, one of whom shall be employed or working in a supervisory capacity, and

(B) Each of the three members shall have at least two years experience in the occupation or industry. Other members having less experience may be added to the committee as desired.

(3) All program advisory committees must officially meet at least one time per year to review school policies, facilities, instructional materials, equipment, curriculum standards and technical updating:

(a) The program advisory committee shall meet to evaluate all new proposed program offerings and whenever the school proposes major revisions in existing programs. At least one such meeting per year shall be at the school. The following criteria will be used to determine what constitutes a major program revision:

(A) A change of 25% or more of the previously approved contract hours, credits, curriculum content (courses offered), or program length, or

(B) A change in academic measurement from clock-hours to credit-hours or vice versa, or a change from quarter or trimesters to semester credits or vice versa, or

(C) Any additions or deletions of courses offered that might change the overall objective of a currently approved program;

(b) Minutes of all program advisory committee meetings shall be on file in the school office. A copy of the committee findings or recommendations, if any, shall be included with the annual license renewal application; and

(c) If the school’s report of enrollments, completions, retentions and placements, as prescribed in OAR 581-045-0062(3), does not provide information that the school is meeting the provisions of ORS 345.325, the Superintendent may call for the school to convene the program advisory committee(s) for program evaluation(s) as prescribed in subsection (3)(a) of this rule.

Stat. Auth.: ORS 345.080

Stats. Implemented: ORS 345.080

Hist.: ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01

581-045-0014

Exceptions for Schools also Regulated by Another State Agency

(1) The following private career schools are exempt from having a program advisory committee as defined in OAR 581-045-0013:

(a) Pre-license schools that prepare a student to take an examination to meet the professional entrance requirements of another state agency; and

(b) Other schools whose curriculum requirements are established by another state agency.

(2) While the schools described in section (1) of this rule must meet the Department's approval criteria for teacher licensure, the Superintendent may defer approval of the school's teachers to the appropriate state agency.

(3) The Superintendent may modify the financial reporting requirements and/or Student Completion and Placement reporting requirements for any school described in section (1) of this rule when the school is operated by an agency or business only as a minor portion of their operation.

Stat. Auth.: ORS 345.080
Stats. Implemented: ORS 345.080
Hist.: ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01

581-045-0018

Recordkeeping

(1) Schools must furnish each prospective student, and have evidence of receipt acknowledged by student signature, with the following:

(a) A copy of the school's most recent catalog/bulletin, with any supplements and/or correction sheets with volume or date indicated, prior to or in conjunction with the applicant signing an enrollment agreement;

(b) A copy of the student's signed enrollment agreement;

(c) Upon request of the student, completion and placement data for students enrolled in the program for the last two years; and

(d) Upon request of the student, a copy of the Oregon Revised Statutes and Oregon Administrative Rules that govern Private Career Schools.

(2) Schools shall maintain a file for each student that must include:

(a) A statement signed by the student at the time of enrollment certifying receipt of a catalog and all other pertinent material;

(b) A copy of the student's signed enrollment agreement;

(c) Written progress reports that shall include information on how the student is progressing in areas such as classroom attendance and performance (but not used as final grades) updated at appropriate intervals;

(d) A copy of the results of any enrollment evaluation or examination;

(e) Student information that shall include:

(A) Legal name of the student;

(B) Address;

(C) Telephone number;

(D) Student identification number assigned, if any;

(E) Social security number (if student signs disclaimer);

(F) Date of birth;

(G) Dates of attendance (beginning and ending dates);

(H) Course or program of instruction; and

(I) Date of transfer if appropriate; and

(f) The student file must be maintained for a minimum of 3 years after the student has completed or withdrawn.

(3) Upon the student's satisfactory completion of instruction, schools shall:

(a) Issue an appropriate certificate or diploma; and

(b) Issue appropriate educational transcripts that shall include, but are not limited to:

(A) School name and location;

(B) Student's name;

(C) First and last date of attendance;

(D) Specific program(s) taken;

(E) Clock or credit hours;

(F) Grade for each subject;

(G) Name of accrediting agency, if the school is accredited.

(H) Statement indicating the school maintains transcripts for a minimum of 25 years; and

(I) Signature of the appropriate school official with school seal (if any) and date of issue.

(4) Schools shall maintain and issue transcripts as follows:

(a) Store transcripts in a safe, vault or file having a minimum one-hour fire-safe rating unless duplicate records are kept in a safe location outside the school building. The address of locations outside the school building must be on file with the Department;

(b) Keep transcripts of all former students that include the information described in subsection (3)(b)(A)–(H) of this rule for a period of no less than 25 years from date of termination of enrollment. Trans-

cripts must be stored under the same conditions as described in section (4)(a) of this rule;

(c) Make a student's records available to the student upon request. Availability of records shall comply with the "Family Educational Rights and Privacy Act" (Public Law 93-380 as amended by Public Law 93-568). The educational institution shall respond within a reasonable period of time, but not more than 45 days after receipt of the request.

(d) Deliver to the Superintendent all permanent student transcripts for safekeeping if the school should cease to operate. The Superintendent will maintain the transcripts of all closed schools. If available, certified copies of the transcripts will be provided, when a written request signed by the student, is received at the Department. A non-refundable search fee of \$10 must accompany the request.

(e) A school may withhold an official transcript, certificate of completion, and/or diploma if the student has any outstanding debt owed to the school. Forms, letters, questionnaires, or other material printed or written for the purpose of debt collection must clearly and conspicuously state that they are used for the purpose of attempting to collect a debt or attempting to obtain information concerning a debtor.

Stat. Auth.: ORS 345.080
Stats. Implemented: ORS 345.080
Hist.: ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 21-2002, f. 9-26-02 cert. ef. 10-1-02; ODE 17-2003, f. 12-30-03, cert. ef. 1-1-04

581-045-0019

School Catalogs

(1) A school catalog shall include the following. If any of the following items do not appear in the body of the catalog, a reference to other specific documents where the required information appears must be in the catalog:

(a) Name and address of the school;

(b) Date of publication or other reference identifier such as year(s), volume or edition, or version numbers, etc.;

(c) Admission requirements and procedures;

(d) The educational or vocational objective of each program including the name and level of occupations for which the course or program purports to train;

(e) The number of clock or credit hours of instruction in each course and the length of time in weeks or months normally required for completion;

(f) A complete listing and description of courses offered specifying subjects included in each program that clearly identifies coverage of the training. If for the purpose of continuing education and/or self-improvement they must be identified as such;

(g) A description of the school's physical facilities and equipment available for student use;

(h) Policies relating to tardiness, absences, makeup work, conduct, standards of progress, termination, reentry, and other rules and regulations of the school, including a student appeals process;

(i) The grading system, including definition of ratings and credit units, if any;

(j) The requirements for graduation or completion;

(k) A statement describing certificates, diplomas, or degrees awarded upon graduation;

(l) The total cost of tuition and registration fee and other charges related to enrollment such as deposits, fees, books and supplies, tools and equipment, and other charges for which a student may be responsible. This information may be presented as an addendum or insert to the main publication;

(m) The state refund policy or the school's refund policy if determined by the Superintendent to be more favorable to the student;

(n) A description of the extent and nature of placement assistance provided to students and/or graduates, including but not limited to job search techniques, resume writing, job interview techniques, and the assistance the school provides in establishing job contacts/interviews for graduates;

(o) Specifics describing the availability of student housing, counseling, and other student services, if any;

(p) A school calendar including beginning and ending dates of classes and programs, holidays, and other dates of importance that are reasonably likely to affect the decision of the potential student;

(q) A clear and conspicuous disclosure of the student's cancellation rights; and

(r) A student grievance policy, which includes this statement: “students aggrieved by action of the school should attempt to resolve these problems with appropriate school officials. Should this procedure fail students may contact: Oregon Department of Education, Public Service Building, (use current address), Salem, OR 97310-0203.” After consultation with appropriate Department staff and if the complaint alleges a violation of Oregon Revised Statutes ORS 345.010 to 345.470 or standards of the OARs 581-045-0001 through 581-045-0210, the Department will begin the complaint investigation process as defined in OAR 581-045-0023 Appeals and Complaints.

Stat. Auth.: ORS 345.080

Stats. Implemented: ORS 345.080

Hist.: ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 17-2003, f. 12-30-03, cert. ef. 1-1-04

581-045-0022

Facilities

(1) All schools shall demonstrate that premises owned, rented, leased, occupied, maintained, used or approved by the school, are maintained in compliance with applicable city, county or state ordinances and laws relating to safety and health of persons on the premises.

(2) Safety and health inspection data required by OR-OSHA (ORS 654.010) and other applicable statute, ordinance or administrative rule shall be available for review by Department staff. All applicants for an initial license must have a fire inspection by appropriate city or county Fire Marshall’s office prior to issuance of a license and all licensees must have an annual fire inspection if annual service is provided by applicable Fire Marshall’s office. Schools must be clean, well maintained and provide good lighting and ventilation. Schools must arrange classrooms, equipment and demonstration areas to enhance instruction, provide sufficient storage, use prescribed containers for hazardous materials, and provide for safe and orderly classroom management for the type of educational programs offered.

(3) A school shall notify the Superintendent in writing at least 30 calendar days in advance of any change of its principal location or name. In the event of change of location, Department staff may inspect the new site. Deficiencies, if any, must be corrected in a timely manner for continued approval to operate in the new location. Failure to notify the Superintendent of name or address change may result in the imposing of civil penalties per OAR 581-045-0190. An exception may be granted if the Superintendent determines a legitimate emergency or a circumstance exists which would prevent the school from complying.

Stat. Auth.: ORS 345.080

Stats. Implemented: ORS 345.080

Hist.: ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01

581-045-0023

Appeals and Complaints

(1) Each school shall implement a process for the prompt resolution of a complaint by a student of the school. Unless specifically provided by state or federal law or administrative rule, the decision of the school shall be final.

(2) Complaints filed on behalf of or by a student against a school must be postmarked within one year of the student’s last date of attendance.

(3) If the complaint alleges a violation of Oregon Revised Statutes, ORS 345.010 to 345.470 or standards of OAR 581-045-0006 through 581-045-0210, the complainant may direct an appeal to the State Superintendent of Public Instruction, after exhausting the school’s procedures or after 45 days from filing a written complaint with the school, whichever occurs first. The appeal shall be in writing and shall contain:

(a) The complainant’s name, address, and phone number;

(b) School name, address, and phone number;

(c) A brief statement indicating which statute or rule the school is alleged to have violated and how the school is alleged to have violated it, e.g., failure to refund tuition, failure to provide a portion of the program described in the enrollment agreement;

(d) Facts detailing dates of attendance, termination date, date of occurrence, names, addresses and positions of school officials contacted, financial loss, if any, and any other pertinent information;

(e) An explanation of what efforts have been taken to resolve the problem with the school, if any; and

(f) Copies of pertinent documents, such as the enrollment agreement, catalog and advertisements.

(4) After receipt of a complaint or other allegation that a school has failed or is failing to comply with the provisions of any laws or rules, the Superintendent shall investigate the facts surrounding the allegations.

(5) The Superintendent shall notify the complainant and the school of the findings resulting from the investigation.

(6) The Superintendent may impose penalties as defined in OAR 581-045-0190 if the school is found to be in violation of any standard or rule.

(7) Sections (1) and (2) of this rule do not limit the statutory authority of the Superintendent to investigate schools regardless of receiving allegations from the public.

(8) At the request of the Superintendent, complaints may be resolved with the assistance of such other parties as the Oregon Student Assistance Commission, Oregon Department of Justice, U.S. Department of Education, and other appropriate organizations and/or individuals.

Stat. Auth.: ORS 345.080

Stats. Implemented: ORS 345.080

Hist.: ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 17-2003, f. 12-30-03, cert. ef. 1-1-04

581-045-0026

Cancellation and Refund Policies: Resident Instruction

(1) A student may cancel enrollment by giving written notice to the school. If notice occurs:

(a) Within five business days of the date of enrollment, all monies paid shall be refunded; or

(b) After five business days of the date of enrollment and prior to the commencement of classes, the school may retain only the published registration/application fee. Such fee shall not exceed 15 percent of the total tuition cost, or \$150, whichever is less.

(2) If training is terminated by the student or the school after commencement of classes, unless the school has discontinued the program of instruction, the student is financially obligated to the school according to the following formulas or maximum charges:

(a) If a student withdraws prior to completion of 50 percent of the contracted instructional program, the student shall be entitled to a pro rata refund of the tuition charged and paid for such instructional program, less registration/application fees, supply fees, and any other legitimate charges owed by the student;

(b) If a student withdraws upon completion of 50 percent or more of the contracted instructional program, the student shall be obligated for the tuition charged for the entire instructional program and shall not be entitled to any refund;

(c) The term “Pro rata refund” means a refund of tuition paid for that portion of the program beyond the last recorded date of attendance. The date for determining that portion shall be the published class schedule and the last recorded date of attendance by the student; and

(d) To calculate charges under subsections (2)(a) through (c) of this rule:

(A) When a program is measured in clock hours, the portion of the enrollment period for which the student will be charged is determined by dividing the total clock hours into the number of clock hours accrued according to the published class schedule as of the last recorded day of attendance by the student;

(B) When a program is measured in credit hours, the portion of the enrollment period for which the student will be charged is determined by dividing the total number of weeks into the number of weeks accrued according to the published class schedule as of the last recorded day of attendance by the student; and

(C) For other measurements of time such as days, weeks, or months, the portion of the enrollment period for which the student will be charged is determined by dividing the total number of weeks or months into the number of weeks or months accrued according to the published class schedule as of the last recorded day of attendance by the student.

(3) In calculating charges under subsections (2)(a) through (d) of this rule:

(a) The term “tuition cost” shall include direct tuition charges including any lab fees. The school shall adopt and publish policies regarding credits issued for the return of resalable books and supplies and/or the proration of user fees, other than lab fees;

(b) The school shall not charge a withdrawal fee of more than \$25;

(c) Any refund shall be calculated on the basis of the published class schedule using the last day of actual attendance as the termination date. The student shall not be charged for a leave of absence, granted according to the school's written attendance policy in the calculation of refunds;

(d) The school may adopt and apply refund calculations more favorable to the student than those described under subsections (2)(a) through (d) of this rule.

(4) When a cancellation, termination or completion occurs, a calculation of all allowable charges under sections (1), (2) and (3) of this rule shall be made, using the last recorded date of attendance as a baseline. If such calculations evidence that the school received total payments greater than its allowable charges:

(a) Within 40 days after notification of such cancellation, termination or completion, a written statement showing allowable charges and total payments received shall be delivered to the student by the school, together with a refund equal in amount to monies paid to the school in excess of those allowable charges;

(b) In the event payments to a student account are derived from federal and/or state tuition assistance program(s), including student loan programs, regulations governing refund notification and awarding within respective program(s) shall prevail in lieu of subsection (4)(a) of this rule, but only with respect to the covered portions thereof; and

(c) In the event payments to a student account are derived from a sponsoring public agency, private agency or any source other than the student, the statement of charges and payments received together with an appropriate refund described under subsection (4)(a) of this rule may be delivered instead to such party(ies) in interest, but only with respect to the covered portions thereof.

(5) In case of illness or disabling accident, death in the immediate family or other circumstances beyond the control of the student that causes the student to leave school, the school shall arrange a prorated tuition settlement that is reasonable and fair to both parties.

(6) A school shall be considered in default of the enrollment agreement when a convened and functioning course or program is discontinued or canceled or the school closes prior to completion of contracted services. When a school is in default, student tuition may be refunded by the school on a pro rata basis. The pro rata refund shall be allowed only if the Superintendent determines that the school has made provision for students enrolled at the time of default to complete a comparable program at another institution. The provision for program completion shall be at no additional cost to the student in excess of the original contract with the defaulting school. If the school does not make such provision, a refund of all tuition and fees shall be made by the school to the students.

Stat. Auth.: ORS 345.115

Stats. Implemented: ORS 345.115

Hist.: 1EB 24-1978, f. 6-30-78, ef. 7-1-78; 1EB 30-1986, f. & ef. 7-23-86; EB 11-1990, f. & cert. ef. 2-1-90; EB 41-1990, f. & cert. ef. 7-10-90; EB 13-1996, f. & cert. ef. 7-26-96; ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 21-2002, f. 9-26-02 cert. ef. 10-1-02; ODE 17-2003, f. 12-30-03, cert. ef. 1-1-04

581-045-0027

Cancellation and Refund Policies: Distance Learning Instruction

(1) A student may cancel enrollment by giving written notice to the school within five business days after the date of enrollment or prior to delivery to the student of any lesson materials, whichever occurs later. If cancellation occurs during that five day period, all monies paid to the school by the student shall be refunded.

(2) When an enrollment application has been accepted by the school and not canceled under the provisions of section (1) of this rule, the following schedules of maximum charges may be assessed by the school:

(a) If termination occurs in the period between the delivery of lesson materials and receipt by the school of the first completed lesson materials, the school may charge an amount equal to 15 percent of the total tuition cost, or \$150, whichever is less; that being established as its registration fee;

(b) If termination occurs after receipt by the school of the first completed lesson materials and up to 50 percent of the completed lesson assignments, the student shall be entitled to a pro rata refund of the total tuition cost of the distance learning portion of the program. The school may retain the established registration fee;

(c) If termination occurs after receipt by the school of 50 percent or more of the completed lesson assignments, the school may retain 100 percent of the total tuition costs plus the established registration fee; and

(d) Calculation of the pro rata refund under subsections (2)(a)–(c) of this rule is determined by dividing the total number of lessons comprising the period of enrollment for which the student has been charged into the total number of such lessons not submitted by the student.

(3) In calculating charges under section (2) of this rule, the terms “lesson assignments” and “tuition costs” shall apply to only such portions of a program that are offered and pursued by distance learning instruction:

(a) A program that includes mandatory resident instruction must state separately on the enrollment agreement the costs for the distance learning portion of the program, and the costs for the resident portion:

(A) Mandatory resident instruction dates must be scheduled by the time the student completes 50 percent of the distance learning portion of the program.

(B) For the mandatory resident portion, charges can be assessed only after a student attends the first resident class session,

(C) Maximum charges shall be calculated by applying the pro rata refund requirements established under OAR 581-045-0026(2)(a) through (d), and

(D) In the event that a school denies a student the mandatory residence portion of the program because of discontinuance of the program, more than a 30-day delay between completion of the distance learning portion and commencement of the residence portion, or other change in contract conditions, all tuition paid for both the distance learning and scheduled residence portions must be refunded; and

(b) A program that includes external resident instruction cannot state the costs of such options as separate charges. Seminars, training sessions or other on-site activities shall be considered inclusive with distance learning lessons and all costs thereof calculated with the charges allowed under OAR 581-045-0026(2)(a) through (d).

(4) “Termination” is acknowledged to have occurred when:

(a) Written notice of same is provided to the school by the student; or

(b) The student has failed to submit completed lesson assignments and/or to otherwise maintain the school's published standards of satisfactory progress; or

(c) In the instance of a mandatory resident portion of a program, the student has failed to attend classes and/or to otherwise maintain the school's published standards for satisfactory progress.

(5) When a cancellation or termination occurs, a calculation of any allowable charges under sections (1), (2) and (3) of this rule shall be made, based upon the last completed lesson assignment received and/or the published course schedule and the last date of attendance in a mandatory resident program. In no more than 40 days after notification of termination or cancellation, a written accounting of charges shall be delivered to the student by the school, together with a refund equal in amount to any monies paid by the student in excess of allowable charges.

Stat. Auth.: ORS 345.115

Stats. Implemented: ORS 345.115

Hist.: 1EB 31-1986, f. & ef. 7-23-86; EB 11-1990, f. & cert. ef. 2-1-90; EB 41-1990, f. & cert. ef. 7-10-90; EB 13-1996, f. & cert. ef. 7-26-96; ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01

581-045-0028

Cancellations, Tuition and Refund Policies: Exceptions

(1) A school may adopt a refund or cancellation policy different from the policies described under OAR 581-045-0026 and 581-045-0027 only if:

(a) The policy is more favorable to the student than what those respective rules require; or

(b) The school enters into contractual arrangements for training services where the costs are paid by a contract with another agency, and no refund liability is created between those students and the school.

(2) The Superintendent may, upon request, establish an alternative refund policy for a school that offers courses or programs with such an organizational structure that application of the refund policies prescribed, if applied, would cause unfair results to either the school or enrollees.

Stat. Auth.: ORS 345.115

Stats. Implemented: ORS 345.115

Hist.: 1EB 31-1986, f. & ef. 7-23-86; EB 11-1990, f. & cert. ef. 2-1-90; EB 13-1996, f. & cert. ef. 7-26-96; ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 21-2002, f. 9-26-02 cert. ef. 10-1-02

581-045-0029

Tuition Protection Fund

(1) There shall be a fund known as the Private Career School Tuition Protection Fund (as described in ORS 345.110). The Tuition Protection Fund is hereby established in the custody of the State Treasurer. The Superintendent shall deposit in the fund all monies received under this rule. Monies from the fund shall be spent only for the purposes under this rule. Disbursements from the fund shall be on authorization from the Superintendent and no appropriation is required for such disbursements. All earnings on investments of the fund shall be credited to the fund. To be and remain licensed, each private career school authorized in accordance with the provisions of ORS Chapter 345 shall pay to the state an initial capitalization deposit and 14 semi-annual payments. The fund shall be initially capitalized at a minimum of \$200,000 and shall achieve and maintain an operating balance of at least \$1 million. Said fund is intended to be a fund of last resort.

(2) Purpose of the fund:

(a) Students attending schools licensed by the State of Oregon, other than students covered by another state's tuition protection, may apply to the Superintendent, when a school ceases to provide educational services, for a refund of tuition from the fund established pursuant to this rule to the extent that such fund exists or has reached the level necessary to pay outstanding approved claims. The liability of the fund for claims against the school shall not exceed the total amount of the liability limit assigned to the school under subsection (3)(a) of this rule. Such limitation on each school's liability remains unchanged by single or cumulative disbursements made on behalf of the school. If the Superintendent finds that a student is entitled to a refund of tuition, the Superintendent shall determine the amount of refund based on criteria established by the Superintendent;

(b) The Superintendent shall direct the State Treasurer to pay the refund on behalf of the student to the student and/or the student's financial sponsor(s). If the student is a minor, payment shall be made to the student's financial sponsor(s). Each recipient of a tuition refund shall, as a condition for receiving the claim, assign all rights to the Superintendent of any action against the school or its owner(s) for tuition amounts reimbursed pursuant to this section;

(c) Upon such assignment, the Superintendent shall take appropriate action against the school or its owner(s) in order to reimburse the Tuition Protection Fund for any expenses or claims that are paid from the fund and to reimburse the Superintendent for the reasonable and necessary expenses in undertaking such action;

(d) The Superintendent shall attempt to recover from the school all funds disbursed from the Tuition Protection Fund and other costs of recovery;

(e) The Tuition Protection Fund shall not be used to reimburse private party attorney fees;

(f) Under no circumstances will any party, person or entity, other than the Department, be allowed to access funds from the Tuition Protection Fund; and

(g) No liability accrues to the State of Oregon from claims made against the fund.

(3) Establishment of fund liability limits:

(a) The amount of liability that can be satisfied by this fund, on behalf of each individual school licensed under this rule, shall be based on the gross tuition income reported on the last license renewal application: [Table not included. See ED. NOTE]

(b) The calculation of gross annual tuition for a school located outside the State of Oregon shall include only that income derived from residents of this state during the school's preceding year of operation, as evidenced in the financial statement required by OAR 581-045-0032;

(c) Institutions not yet in operation or otherwise lacking a full year's financial data prior to initial licensing, shall have a liability limit calculated on the basis of an estimation of gross annual tuition;

(d) Each school subject to this rule shall submit to the Superintendent in cash or by check or money order, the following nonrefundable* amounts for its initial capitalization deposit into the Tuition Protection Fund: [Table not included. See ED. NOTE]

(e) After the date of its nonrefundable initial capitalization deposit, as a condition to remaining licensed, each school shall remit to the Superintendent for deposit into the Tuition Protection Fund semiannual payments (on January 31 and July 31) in cash or by check or money order, in accordance with the schedule in subsection (3)(d) of this rule. If the semiannual payment is not postmarked (or date stamped if hand delivered to the Department) before or on the due date, the Superintendent may impose a civil penalty as allowed under ORS 345.995 and OAR 581-045-0190(5). Failure of a school to make payment within 30 days of due date shall be grounds for suspension or revocation of the school's license; and

(f) The Superintendent shall prepare and mail to each licensee semiannual notices of the due dates and amounts of deposits required under section (3) of this rule. Each notice shall include therein at least once each year:

(A) A notation showing the licensee's aggregate prior deposits into the fund;

(B) A notation showing the licensee's balance of remaining payments based on the most recent deposit received;

(C) A notation showing the cumulated balance existing in the fund at the most recent half-year accounting; and

(D) A summary showing all disbursements made from the fund to satisfy claims in the period since the last such similar summary was disseminated.

(4) After disbursements made to settle claims reduce the operating balance below \$500,000, and recovery of such funds has not been ensured by the affected school within 30 days, the Superintendent shall assess each licensee a pro rata share of the amount required to restore the balance in the fund to \$500,000. When calculating each share, the Superintendent shall employ a pro rata percentage of liability. If the amount of any single such assessment equals or is less than the semi-annual amount of deposit established for the licensee, the assessment shall be paid within 30 days of notice. If any single assessment exceeds the amount of its semiannual deposit, the school may apply to the Superintendent for a schedule of deferred payments. The Superintendent shall grant such deferrals on application, but in no case shall the time extended exceed one year beyond the date of an assessment.

(5) The Superintendent shall determine, based on annual financial data supplied by the school, whether the semiannual deposit assigned to the school on the matrix established under subsection (3)(d) has changed. If an increase or decrease has occurred, a corresponding change in the semiannual deposit shall be made before the date of its next scheduled deposit into the fund.

(6) When any ownership interest in a school is conveyed through sale or other means that results in the transferee (buyer) owning more than 50 percent of the school, the contribution schedule of the prior owner is canceled. All contributions made up to the date of the transfer accrue to the fund. The new owner commences contributions under provisions applying to a new applicant. Exception shall be granted to any transferee (buyer) who held more than 50 percent of the ownership interest prior to the transfer and to any transferee who owned any interest in the school for more than four years prior to the transfer. In such instances the transferee (buyer) shall provide the Superintendent with legal evidence to validate the percent and time period of ownership.

(7) When deposits total \$3,000,000, and the history of disbursements so warrants, the Superintendent may reduce the schedule of deposits whether as to time, amount, or both. When such level is achieved, the Superintendent may return any excess funds to currently licensed schools that have completed their required contributions to the fund.

(8) Additional procedures established to deal with a school that ceases to provide educational services:

(a) A school ceases to provide educational services when the school or a division of the school ceases to provide classes or instruction;

(b) The Superintendent shall attempt to notify all potential claimants within 60 days of the date the Superintendent determines a school has ceased to provide educational services. The absence of records and other circumstances may make it impossible or unreasonable for the Superintendent to ascertain the name and address of each potential claimant, but the Superintendent shall make reasonable inquiries to secure that information from all likely sources including but not limited to public notification. The notification to students shall

inform them of the opportunity and the deadline for submitting claims against the Tuition Protection Fund;

(c) Claims against the Tuition Protection Fund may be made only by students who were enrolled at the time a school ceases to provide educational services;

(d) All claims must be filed with the Superintendent by the deadline established in the Superintendent's notification. Each student filing a claim must specify and verify any and all sources and amounts of tuition that were paid on the student's behalf. The Superintendent may refuse to pay any claim that does not contain sufficient verification or other information required by the Superintendent;

(e) The Superintendent shall not consider any claims filed after the deadline established in the Superintendent's notification. Failure of a student to receive notification shall not be a basis for the Superintendent to consider any claims filed after the deadline;

(f) The Superintendent shall seek to recover such disbursed funds from the assets of the defaulted school, including but not limited to asserting claims as a creditor in bankruptcy proceedings; and

(g) A school shall have no vested right, claim or interest in any deposit to the Tuition Protection Fund and all payments shall accrue to the fund.

(9) In the event of a potential and actual school closure a school shall inform its students in writing of their rights under the provisions governing the Tuition Protection Fund.

(10) If a school closure is in violation of OAR 581-045-0067, the Superintendent may allocate monies from the Tuition Protection Fund, as a fund of last resort, to teach-out arrangements for displaced students. The liability level for teach-out costs shall be the same as that established in subsection (3)(a) of this rule. Students signing a written agreement as a result of this option would not be entitled to a refund from the school or the Tuition Protection Fund.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 345.110 & 345.995

Stats. Implemented: ORS 345.110

Hist.: EB 32-1991, f. & cert. ef. 12-18-91; EB 18-1992 (Temp), f. & cert. ef. 5-13-92;

EB 34-1992, f. & cert. ef. 11-3-92; EB 13-1996, f. & cert. ef. 7-26-96; ODE 32-2000,

f. 12-11-00 cert. ef. 1-1-01; ODE 21-2002, f. 9-26-02 cert. ef. 10-1-02

581-045-0032

Standards for Financial Reporting

(1) All private career schools shall submit at initial licensing, and annually thereafter in conjunction with the license renewal, financial information reflecting the fiscal condition of the school at its start-up or at the close of its most recent fiscal or calendar year, whichever is applicable. For such purposes the information submitted shall conform to the following:

(a) At initial application for licensing, the school must submit a business plan based on the major goals of the school for the first two years of operation along with the methods and procedures for achieving the goals. Included as part of the plan will be an opening balance sheet. The school shall have sufficient capital to provide all the appropriate instruction, support and administrative services (including appropriate comprehensive general liability insurance), staffing, equipment and facilities. The Superintendent will use financial ratios found in such sources as "Almanac of Business and Industrial Financial Ratios," accrediting organizations, and other appropriate financial statistics to determine the sufficiency of the planned capital. The plan also shall include a projected income statement showing the projected income and expenses for each of the first two years of operation;

(b) In addition to the licensing requirements cited in subsection (1)(a) of this rule, financial requirements shall be based on a school's ability to fulfill its obligations to students, meet refund obligations, meet operational expenses and other financial obligations, and make the required contributions to the existing tuition protection fund;

(c) The financial report for license renewal shall be prepared in accordance with the Generally Accepted Accounting Principles (GAAP), Generally Accepted Audit Standards (GAAS), and Statements on Standards for Accounting and Review Services (SSARS) in effect on January 1, 1996. Such report shall cover the most recent annual accounting period completed. The balance sheet information must clearly show all assets, liabilities and net worth, while the income statement must clearly show the profit and/or loss for the fiscal or calendar year. Each school also must provide a cash flow statement showing its:

(A) Cash flow from operations;

(B) Cash flow used in investing; and

(C) Cash flow from financing activities.

(d) The information for license renewal must also show total instructional income and expense for the school for the preceding fiscal or calendar year and clearly identify gross tuition income from which license fees and tuition protection fund assessment will be computed. The amount of the tuition protection fund assessment required for an initial license will be computed on the basis of projected first year tuition income but shall not be less than a liability limit of \$5,000;

(e) At the option of the school, the financial report may be in the format provided by the Superintendent;

(f) Each school must certify in its financial report that all refunds due students have been made and are not in default;

(g) In all instances, information supplied must be certified true and correct by the school owner or an authorized representative; and

(h) Schools that are accredited and offer students Title IV financial aid shall submit an audited financial report signed by an independent certified public accountant.

(i) Schools reporting gross tuition income over \$15,000 will submit a financial report completed and signed by a licensed Public Accountant (PA) or Certified Public Accountant (CPA).

(2) If after analyzing a school's financial reports and records, the Superintendent determines the school is not financially responsible or that the school's records are incomplete or inaccurate, the Superintendent may require the school to submit within 75 calendar days of written notice:

(a) An audited financial report signed by an independent certified public accountant; and

(b) Its most recent federal and state income tax reports.

(3) The Superintendent may waive or modify all or part of the requirements in sections (1) and (2) of this rule for schools offering prelicense programs or courses.

Stat. Auth.: ORS 345.325(8)

Stats. Implemented: ORS 345.325

Hist.: 1EB 34-1978, f. & ef. 10-5-78; 1EB 30-1986, f. & ef. 7-23-86; EB 11-1990, f.

& cert. ef. 2-1-90; EB 13-1996, f. & cert. ef. 7-26-96; Renumbered from 581-045-0016,

ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 17-2003, f. 12-30-03, cert. ef. 1-1-04

581-045-0033

Standards for Advertising

(1) Printed school publications, brochures, or pamphlets shall be on file at the school and available upon request to any prospective student, enrolled student, and the Department.

(2) A school catalog shall meet the requirements of OAR 581-045-0019.

(3) Upon request of the student, the school must provide the following information no later than at the time the student signs an enrollment agreement:

(a) Number of students enrolled in the program at the beginning of the current reporting period;

(b) Number of students who enrolled in the program during the last reporting period;

(c) Number of students who left the program without completing it during the last reporting period;

(d) Number of students who graduated from the program during the last reporting period; and

(e) Number of those who graduated and were placed or working full time in directly related occupations during the last reporting period.

(4) Subsections (3)(b) through (e) of this rule do not apply to prelicense schools as in OAR 581-045-0014.

(5) A school shall have records available to document any statements made by the school through its advertising including salary and placement claims.

(6) A school shall not advertise that it is endorsed, recommended, or approved by the Oregon Department of Education or the Superintendent. The school may use the phrase "licensed by the Oregon Department of Education" in its advertising material.

(7) If a school offers programs licensed by the Department and also offers programs that do not require licensure, the school shall clearly identify each type of program in any publication.

(8) Any school that performs services for the public shall conspicuously display in the reception area a sign indicating that exclusively either students or employees, or both perform its services.

Stat. Auth.: ORS 345.325 & SB 326.051

Stats. Implemented: ORS 345.325

Hist.: 1EB 257, f. 1-3-77, ef. 7-1-77; 1 EB 30-1986, f. & ef. 7-23-86; EB 11-1990, f. & cert. ef. 2-1-90; EB 13-1996, f. & cert. ef. 7-26-96; ODE 23-2000(Temp), f. 7-27-00, cert. ef. 7-27-00 thru 1-22-01; Renumbered from 581-045-0021, ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 21-2002, f. 9-26-02 cert. ef. 10-1-02

581-045-0034

False, Deceptive, Inaccurate or Misleading Representations

No private career school or its agents may intentionally or knowingly make false, deceptive, inaccurate or misleading representations of fact in any oral, written, visual or electronic presentation in connection with the offering or publicizing of a subject or course of instruction.

Stat. Auth.: ORS 345.325 & 326.051

Stats. Implemented: ORS 345.325

Hist.: ODE 23-2000(Temp), f. 7-27-00, cert. ef. 7-27-00 thru 1-22-01; ODE 31-2000, f. 12-11-00, cert. ef. 1-1-01; ODE 9-2001(Temp), f. & cert. ef. 2-27-01 thru 8-17-01, Renumbered from 581-045-0585; Renumbered from 581-045-0585, ODE 12-2001, f. & cert. ef. 5-15-01

581-045-0060

Standards Governing Recruitment for Private Career Schools and their Agents

All agents and schools will be subject to the following conditions of this rule:

(1) As the recruitment of prospective students relates to admissions policies and practices:

(a) The school or agent shall clearly explain to each applicant for enrollment the nature of the course under consideration and what the training can reasonably be expected to do for the student in preparation for or furtherance of a trade or occupation;

(b) The school shall not enroll, and no agent or any person involved in recruitment or admission shall recommend for enrollment, any person without having reason to believe that the person is likely to succeed in and benefit from the proposed training or course of instruction;

(c) Where a school or agent enrolls a person who does not meet regular basic admission qualifications of the school, the school must have a written record of the reasons why the enrollee was permitted to enroll, and be prepared to justify its action in accepting the enrollment;

(d) No school or agent may accept an enrollment from a person of compulsory school age, nor one attending a school of elementary or secondary level, until the agent has written assurance from the enrollee's parent, guardian, or principal of the elementary or secondary school attended, that pursuit of the course would not be detrimental to enrollee's regular school work; and

(e) The school must produce, upon demand of the Department, documents attesting to completion of subsections (1)(a) and (b) of this rule and, when applicable, subsections (1)(c) and (d) of this rule.

(2) As recruitment of prospective students relates to enrollment agreements or contracts:

(a) The enrollment agreement or contract must clearly outline obligations of both school and student, and a copy of the enrollment agreement or contract must be furnished the student by the agent before payment is made;

(b) The school or agent must inform each applicant of the nature of the obligation entered into and the responsibilities and rights of the student under the enrollment agreement or contract before the student signs the document. Evidence of compliance with this will be the student's signature on file at the school verifying receipt of a copy of the contract as well as other documents required in OAR 581-045-0018;

(c) The total tuition for any specific course must be the same for all persons enrolling at a specific time, except that a group-training contract showing lower individual rates may be negotiated;

(d) Tuition changes in courses shall be effective on specific dates and applicable to all who enroll thereafter; and

(e) All charges and costs incidental to training must be revealed by the school or agent to the prospective student before any enrollment agreement or contract is signed.

(3) As recruitment of prospective students relates to advertising and promotional literature: No bonus or other incentive may be given a prospective student for the purpose of enticing the student to sign an enrollment agreement other than that which is offered to all students in a special promotional effort. This rule does not prohibit a school from establishing a bona fide program with clearly identified criteria.

(4) As recruitment of prospective students relates to the school's responsibility for its agents:

(a) The school is responsible for insuring that the agent has been oriented to and is knowledgeable about the school's:

- (A) Beginning, history, and owners,
- (B) Program of studies,
- (C) Refund policy,
- (D) Admission and assessment requirements,
- (E) Graduation requirements,
- (F) Rules and regulations,
- (G) Financial policies and procedures,
- (H) Relationship to state laws and regulations, and
- (I) Relationship to applicable consumer protection laws.

(b) The school is responsible for all advertising or promotional literature used by its agents;

(c) The school or agent must provide the student a receipt for all money collected and a copy of the enrollment agreement;

(d) No person who has any responsibility for the recruitment of students shall use the title of counselor, advisor, or any term of similar import, as determined by the Superintendent. Persons responsible for student recruiting may use the titles of admissions representative, career consultant, or other similar titles. The use of such titles shall be allowed so long as neither the school nor any such titled person represents, either directly or by implication, that they are acting on behalf of the prospective student rather than on behalf of the school;

(e) No school or agent may discredit other schools or agents in any manner that may influence a student to leave another school or discourage a student from signing an enrollment agreement with another school; and

(f) All schools and their agents shall comply with all standards set forth in OAR 581-045-0033 and 581-045-0034 concerning advertising and promotional material.

Stat. Auth.: ORS 345.040 & 345.325

Stats. Implemented: ORS 345.040

Hist.: 1EB 257, f. 1-3-77, ef. 7-1-77; 1EB 30-1986, f. & ef. 7-23-86; EB 11-1990, f. & cert. ef. 2-1-90; EB 13-1996, f. & cert. ef. 7-26-96; ODE 23-2000(Temp), f. 7-27-00, cert. ef. 7-27-00 thru 1-22-01; ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 21-2002, f. 9-26-02 cert. ef. 10-1-02

581-045-0061

Private Career School Agents

(1) An agent shall be a person who has attained the age of 18 years, is of good moral character and is otherwise competent and qualified to safeguard and protect the interests of the public.

(2) No person shall act in the state as an agent for a private career school unless the Superintendent has received the agent's registration.

(3) Agents shall be considered registered only when the school notifies the Department in writing of the name, address, date of employment and geographic territory for each agent.

(4) For licensing purposes, registered agents shall be considered employees of the school.

(5) Prior to employing agents a school shall provide training to the prospective agent that includes: knowledge of the Oregon private career school law and rules, detailed understanding of the school's catalog, student contracts, refund policy, other written school policies, and code of ethical conduct when dealing with prospective students and parent(s) or guardian(s).

(6) The school shall be responsible for developing identifying credentials and passport pictures for each of its agents. The credentials shall remain the property of the school. The identifying credentials shall include:

- (a) The full name and address of the agent;
 - (b) The full name and address of the career school to be represented; and
 - (c) A passport type picture affixed to the identifying credentials.
- (7) The school shall immediately notify the Superintendent of the termination of employment of an agent and demand return of the agent's credentials.

(8) The school may be fined for failure to keep its agent files current and accurate.

(9) Agents, when representing more than one school, shall disclose to each employing institution that they are employed by more than one school.

(10) Agents, when representing a school, shall:

- (a) Report first to the administrative offices of any high school or college before conducting any student interviews or presentations;
- (b) Make no statements which are false, misleading or fraudulent;
- (c) Respond with all facts about the school the prospective student may wish to know prior to the making of an enrollment decision;
- (d) Use only advertising which complies with OAR 581-045-0021;

(e) Provide a copy of the school's catalog/brochure to high school administrators or counselors prior to making any presentation at a high school;

(f) Disclose information on tuition and other instructional costs upon request by prospective students;

(g) Explain to the student payment obligations before the student signs the enrollment agreement, and explain the school's refund policy;

(h) Make clear the school's academic policies and code of conduct;

(i) Accurately describe the school's facilities and living accommodations, and explain living costs;

(j) Give a report on current job prospects;

(k) Make available for review samples of the school's distance learning lessons prior to the signing of the enrollment agreement;

(l) Explain the school's placement assistance, and provide placement statistics;

(m) Explain the school's admissions criteria;

(n) Provide a copy of the enrollment agreement and fully explain all terms and conditions;

(o) Suggest that the prospective student visit the school to talk with teachers, guidance counselors, employment counselors and students; and

(p) Show identifying credentials to the high school administrator and prospective students before making any presentation regarding the school(s).

(11) Agents shall not:

(a) Make false, inaccurate or misleading statements concerning any degree, certificate or diploma offered by the school;

(b) State that credits from the school are transferable unless such claims are supported by documentation in the school's files and provided to and on file with the Department. The agent shall, at the time of representation, identify each school or type of school and program which accepts such credits. The agent shall clearly and conspicuously disclose all limitations on such transferability; for example, it is not possible to transfer credits from a certificate program to a degree program;

(c) Recommend a prospective student for acceptance if the agent does not have reason to believe the student has a chance to succeed;

(d) Distribute distance learning lessons if to do so limits the student's right to cancel the enrollment within three business days of signing and receive a full refund of all monies paid to the school;

(e) Collect any fee other than the registration fee prior to the student's official admittance; or

(f) Represent that any commodity or service is free when, in fact, such commodity or service is regularly included as part of a course for which tuition or any other fee is paid.

(12) The school shall monitor its agent's activities and sales and marketing practices and immediately investigate and resolve complaints about their activities. The school shall be accountable for the adherence of its agents to ORS Chapter 345 and OAR 581, division 045.

Stat. Auth.: ORS 345.325 & 345.040

Stats. Implemented: ORS 345.040

Hist.: 1EB 119, f. & ef. 7-19-68; 1EB 131, f. 5-19-72, ef. 6-1-72; 1EB 25-1978, f. 6-30-78, ef. 7-1-78; 1EB 30-1986, f. & ef. 7-23-86; EB 11-1990, f. & cert. ef. 2-1-90; EB 13-1996, f. & cert. ef. 7-26-96; Renumbered from 581-045-0050, ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01

581-045-0062

Application for Private Career School License Renewal

(1) Each school shall annually renew its license. At least 30 calendar days prior to the anniversary date of its license, the school must file with the Department a completed application for license renewal, including a current financial statement, certified true and accurate by the school's chief administrative officer. Any statements or materials on file that are no longer accurate must be amended on the application.

(2) If a school has been licensed for three years or more and there are no changes in the school's structure, the Superintendent may allow

the school to submit an abbreviated renewal application that confirms the school's compliance with applicable Oregon Revised Statutes and Oregon Administrative Rules. Such abbreviated renewal application shall include the required renewal fee.

(3) The school must provide the following information on the application for the reporting period identified on the renewal:

(a) Number of students continuing from the prior enrollment period;

(b) Number of students who enrolled in the program during the reporting period;

(c) Number of students who left the program without completing it during the reporting period;

(d) Number of students who were graduated from the program during the reporting period; and

(e) Number of those who graduated and were placed or working in full-time directly related occupations during the reporting period.

(4) An application for renewal of license shall be considered late if not postmarked (or date stamped if hand delivered to the Department) before or on the due date. The Superintendent as allowed under ORS 345.995 may impose a late fee and OAR 581-045-0190(5) for each calendar day the renewal application is late. Such fees, where applicable, shall be included with the renewal application.

(5) The Superintendent may invoke immediate license suspension as defined in OAR 581-045-0001(46) and begin revocation procedures as described in ORS 183.413-497:

(a) When a school fails to submit the application for license renewal by the date of expiration; or

(b) If submitted, it does not include accurate or complete materials necessary for license renewal; or

(c) The school is on probation and not making satisfactory progress to comply with all provisions of the program improvement plan.

(6) License renewal may be denied if the Superintendent determines that:

(a) The school's license has been suspended; or

(b) The school is on probation and not making satisfactory progress to comply with all provisions of the program improvement plan. In such cases a school shall be granted a hearing, if requested, within 20 calendar days of the date of denial.

(7) The Superintendent may conditionally approve a license renewal providing a school agrees to a program improvement plan acceptable to the Superintendent.

Stat. Auth.: ORS 345.030

Stats. Implemented: ORS 345.030

Hist.: EB 13-1996, f. & cert. ef. 7-26-96; Renumbered from 581-045-0004 by ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 21-2002, f. 9-26-02 cert. ef. 10-1-02

581-045-0063

Factors of Financial Responsibility

(1) To retain its license a school must demonstrate to the Superintendent that it is financially responsible under the requirements established in this rule.

(2) The Superintendent considers a school to be financially responsible only if it:

(a) Is able to provide the services described in its official publications and statements;

(b) Is able to provide the administrative resources necessary to comply with the requirements of this subpart;

(c) Is able to meet all of its financial obligations, including, but not limited to:

(A) Refunds that it is required to make; and

(B) Repayments to the U.S. Department of Education for liabilities and debts incurred in programs administered by the U.S. Department of Education.

(d) Demonstrates at the end of its latest fiscal year, a ratio of current assets to current liabilities of at least 1:1;

(e) Had, for its latest fiscal year, a positive net worth. For the purposes of this section, a positive net worth occurs when the school's assets exceed its liabilities;

(f) Has not had operating losses over both of its two latest fiscal years. In applying this standard, the Superintendent may consider the effect of unusual events such as natural disasters;

(g) Has not had, for its latest fiscal year, an operating deficit exceeding 10 percent of the institution's net worth. For purposes of this

section, an operating deficit occurs when operating expenses exceed revenues from current business activities; and

(h) Has not had, as part of the documents prepared by its independent accountant on its audited and certified financial statements for the institution's most recently completed fiscal year, a statement from the accountant acknowledging substantial doubt about the institution's ability to continue as a going concern.

(3) A school that is determined by the Superintendent not to be financially responsible may be considered "at-risk," and will be required to follow the procedures cited in OAR 581-045-0024.

(4) The Superintendent may waive or modify all or part of the requirements in sections (1) through (3) of this rule for schools offering prelicense programs or courses.

Stat. Auth.: ORS 345.325(8) & 345.030

Stats. Implemented: ORS 345.325

Hist.: EB 13-1996, f. & cert. ef. 7-26-96; Renumbered from 581-045-0017, ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01

581-045-0064

Student Completion and Placement

(1) Schools shall submit true and correct data annually to the Superintendent which identifies completion and placement rates for each approved program. These rates shall be computed by individual programs and substantiated by worksheets and records.

(2) Any school failing to maintain completion and placement rates for each approved program of at least 50 percent may be placed on probation for up to one full year or such time as evidence submitted indicates that a 50 percent level of completion and placement is being achieved.

(3) The Superintendent may withdraw approval of any program that fails to maintain completion and placement rates of at least 50 percent for two consecutive reporting periods. Unusual cause or circumstance will be considered by the Superintendent and exceptions may be granted.

(4) The Superintendent may require the name, address, and telephone number of any or all graduates and employers accounted for in Section (1) of this rule for verification and reporting purposes.

Stat. Auth.: ORS 345.080

Stats. Implemented: ORS 345.080

Hist.: ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01

581-045-0065

Inspection and Periodic Review

(1) A school shall provide the Superintendent or qualified designee access to all information, records, physical facilities, school employees, and other parties (including advisory groups, administrators, students and graduates) as may be necessary to verify compliance with Oregon Revised Statutes, ORS 345.010 to 345.450, or standards of OAR 581-045-0001 through 581-045-0210.

(2) A school shall permit the Superintendent or designee to conduct an investigation or on-site review of the school with or without notice. When requested, the school must provide the Superintendent or designee with true and accurate information including but not limited to records and documents.

(3) A school located in Oregon may be inspected on an annual basis or as the Superintendent determines necessary.

(4) A school may be reviewed to determine whether the school has and is adhering to policies and procedures in such areas as its programs, services and staff conduct.

(5) Whenever an inspection or other investigation reveals lack of compliance with Oregon Revised Statutes, ORS 345.010 to 345.450 or standards of OAR 581-045-0001 through 581-045-0210, the Superintendent may officially notify the school by certified mail that the school has been placed on probation and send the school a report of deficiencies. When deemed appropriate the Superintendent may initiate immediate license suspension or revocation proceedings and schools will be provided due process through the provisions allowed in subsection (5)(c) of this rule. If the Superintendent elects to place the school on probation, the school shall have 20 calendar days after date of notification to report on actions that have been taken to correct these deficiencies:

(a) The school's response shall indicate corrective action taken and/or a program improvement plan for correcting any remaining deficiencies;

(b) If violations cited are not corrected, or if a program improvement plan submitted to correct the violations is not acceptable to the

Superintendent, the Superintendent shall send notice to revoke or suspend the school's license;

(c) The school may request a hearing within 20 calendar days of receipt of the Superintendent's notice to revoke or suspend the school's license; and

(d) A school whose license has been placed on suspension shall not be permitted to engage in any advertising, recruitment or student enrollment activities, or begin the instruction of any new students during the period of suspension.

Stat. Auth.: ORS 345.080

Stats. Implemented: ORS 345.080

Hist.: ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 17-2003, f. 12-30-03, cert. ef. 1-1-04

581-045-0066

At-Risk School

(1) The Superintendent may determine a school is "at risk" if a pattern or history of one or more of the conditions cited in the definition for "at risk" exist.

(2) The school owner and/or director shall be required to meet with Department staff to discuss the conditions.

(3) A school determined to be "at risk" at any time, will be required to provide:

(a) A school improvement plan acceptable to the Superintendent within 30 days after meeting with Department staff;

(b) A letter of credit if appropriate; and

(c) A monthly report for up to 12 months. During that time the school shall demonstrate improvement of the Superintendent shall proceed with further action of probation, suspension, or license revocation as deemed necessary.

Stat. Auth.: ORS 345.120

Stats. Implemented: ORS 345.120 & SB 326.051

Hist.: EB 13-1996, f. & cert. ef. 7-26-96; Renumbered from 581-045-0024 by ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 21-2002, f. 9-26-02 cert. ef. 10-1-02

581-045-0067

School Closure

(1) In the event a school closes, the school shall file a plan with the Superintendent designed to protect the contractual rights of its students and graduates, including the right to complete the course of instruction in which they were enrolled. The school shall return its license to the Superintendent immediately by certified mail upon cessation of instruction.

(2) A school that is closing, either voluntarily or involuntarily, shall:

(a) Inform the Superintendent of this action by certified mail at least 30 calendar days prior to the anticipated cessation of instruction and other normal school business practices. Such notice shall detail the school's closure plan including:

(A) Teach-out arrangements (if made with another school);

(B) The name, address, and telephone number of the person, who will be responsible for closing arrangements;

(C) The name, address, telephone number, and the name of the course of instruction for every student who will not complete their course of instruction; and

(D) The amount of class time left for each student to complete the course with the amount of refund, if any, for which each student is eligible;

(b) Provide written notice to all registered and enrolled students of the school's closure plan at least 30 calendar days prior to closure;

(c) Furnish the Superintendent with copies of the written notice being mailed to all enrolled students explaining the procedures they are to follow to secure refunds or to continue their education;

(d) File procedures for disbursement of refunds with the Superintendent and set a date no later than 30 calendar days from the last day of instruction to issue refund checks in the full amount for which students are entitled; and

(e) Within four calendar days of its closing transfer permanent student transcripts and roster of all students enrolled at the time of closure to the Superintendent. All transcripts of students not enrolled at the time of closure are due to the Superintendent within 90 calendar days after closure.

(3) If students are receiving instruction prior to the school's closing, the school shall file a Superintendent-approved plan with the Superintendent to ensure that the school's students will continue to

receive training of the same quality and content as that for which they contracted.

(4) If the Superintendent, in any situation in which students are receiving instruction prior to a school's closing, determines that the school has not fulfilled its contractual obligations or that a student has reasonable and justifiable objections to the proposed transfer resulting from the closing, the school shall refund all tuition, fees, and other charges as related to OAR 581-045-0026(6).

(5) If the school to be closed offers a combination of distance learning and resident training, the school shall refund the entire cost of both the distance learning and resident portion paid.

(6) Any school owner, including a corporation and/or any of its officers, involved in the decision to close a school in violation of this section will not be granted a license to operate any other private career school in Oregon.

(7) When a school closes or ceases operation, for any reason, its license is automatically revoked effective the day following the date of closure or cessation of operations.

Stat. Auth.: ORS 345.115 & SB 326.051

Stats. Implemented: ORS 345.115

Hist.: EB 13-1996, f. & cert. ef. 7-26-96; Renumbered from 581-045-0031 by ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 21-2002, f. 9-26-02 cert. ef. 10-1-02

581-045-0068

Reporting Obligations

(1) Schools must notify the Superintendent within 10 days of receipt of a notice from any source that involves

(a) Action against the school; or

(b) Action against owners, directors, administrators, agents, supervisors, and instructors subject to registration, licensure, or approval pursuant to ORS 345.010 to 345.450, including but not limited to disciplinary, licensure, legal, or conviction of any crime and that might affect the person's ability to fulfill the assigned responsibilities.

(2) Upon request of the Superintendent or designee, the school must provide the Superintendent or designee with truthful and accurate information regarding the disciplinary action, licensure action, legal action, or conviction of any crime referenced in OAR 581-045-0068(1)(b).

(3) Schools must provide the Superintendent with a copy of any notice of warning, if such notice indicates the school is in immediate jeopardy of losing recognition from that agency, or any notice of suspension or revocation received from any national, regional or state accrediting and/or approval agency within 10 days of receipt of such notice. The school shall at the same time inform the Superintendent in writing of actions being taken to correct the deficiencies cited.

(4) In the event of a school name change, the school shall submit to the Department legal documents from the Secretary of State's office that validates the name change.

Stat. Auth.: ORS 345.080

Stats. Implemented: ORS 345.080

Hist.: ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 17-2003, f. 12-30-03, cert. ef. 1-1-04

581-045-0190

Civil Penalties

(1) Amendments to OAR 581-045-0001 through 581-045-0210 must be implemented by the schools within 90 days after the effective date of the amendments. Failure to implement rule changes within 90 days shall subject a school to penalties under ORS 345.995 and this rule.

(2) Except as provided in section (5) of this rule, any licensee under the provisions of ORS Chapter 345 that violates the provisions of, or the rules pertaining to, ORS Chapter 345, is subject to a penalty under ORS 345.992 or 345.995 that shall not exceed the amounts in the following schedule:

(a) First violation — \$300;

(b) Second violation — \$400;

(c) Third violation — \$500; and

(d) Each additional violation — \$500.

(3) Penalties listed in subsections (2)(a)–(d) of this rule may be assessed for each violation of statutes or rules for which a school is charged in writing by the Superintendent. In the event a school is cited for violation of a specific statute or rule on the first occasion, the "first violation" penalty amount will be assessed. Subsequent or repetitive violations of the same statute or rule will cause second, third, and additional penalty amounts to be assessed respectively.

(4) Each commission of an act in violation of a regulation shall constitute a separate violation. The imposition of penalties under OAR 581-045-0001 through 581-045-0210 shall be in addition to, and does not preclude the imposition of, any other penalties for the same act or conduct pursuant to any other provision of law.

(5) Penalties of \$25 per day, up to a maximum of \$500, may be imposed for each calendar day after a license renewal is due under OAR 581-045-0062 or after payment to the Tuition Protection Fund is due under OAR 581-045-0029.

(6) Failure to pay penalties within 30 days of the service of a final order imposing penalties, unless stayed pending appeal by subsequent order of the Superintendent or a court of competent jurisdiction, may result in revocation of license to operate a school.

Stat. Auth.: ORS 345.992 & 345.995

Stats. Implemented: ORS 345.995

Hist.: EB 13-1996, f. & cert. ef. 7-26-96; ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 21-2002, f. 9-26-02 cert. ef. 10-1-02

581-045-0200

Barbering, Hair Design, Facial Technology, and Nail Technology

In addition to OAR 581-045-0001 through 581-045-0190, schools of barbering, hair design, facial technology, and nail technology shall comply with this rule and OAR 581-045-0210.

(1) Minimum hourly training requirements:

(a) For hair design, 1,450 hours;

(b) For barbering, 1,100 hours;

(c) For facial technology, 250 hours;

(d) For nail technology, 350 hours; and

(e) In addition to the programs listed above, students are required to successfully complete the following requirements once:

(A) Safety and sanitation, 150 hours; and

(B) Career development, 100 hours.

(2) Individual progress records must be regularly maintained for the purpose of monitoring each student's progress through the instructional program and verifying actual hours of instruction in each certifiable classification. Once a student completes the state minimum and the school program requirements, the school shall administer a Department-approved written and practical exam prior to the student taking the State Board exam for licensure. The time required to take the practical exam shall be included as part of the contracted program hours included in the tuition cost.

(3) The Department, with the assistance of a curriculum committee, will develop minimum standards for each certificated program or any combination of programs.

(4) No student shall perform any task in a clinic lab without first having achieved verifiable minimum competence. The following hours are recommended as a guideline for classroom and laboratory instruction that students should experience prior to any assignment in the clinic lab:

(a) Hair design, 160 hours;

(b) Facial technology, 40 hours;

(c) Nail technology, 40 hours; and

(d) Barbering, 100 hours.

(5) The instructional program shall determine the type of assignments students will receive in the clinic lab. Clinic lab assignments should, as nearly as possible, reflect the emphasis of the student's current and cumulative theory and laboratory experiences. Schools shall establish a minimum and maximum number of clinic activities for each type of task required in the clinic lab. These minimums/maximums should show a comparable distribution of activities reflective of industry practice. Only when students have completed the minimum in all areas can they be assigned to clinic activities in excess of the maximums.

(6) As an alternative to section (1) of this rule a competency-based training program that is self-paced may be approved by the Superintendent when the school has developed written requirements which it administers for graduation including:

(a) Clearly defined student performance objectives that measure levels of performance at each level of instruction for each skill/task and knowledge required for students to successfully pass the appropriate practitioner certificate examination and successfully and safely perform on members of the public all services allowed in the certificate classifications;

(b) Individual progress records maintained for the purpose of monitoring each student's progress through the instructional program

and recording/verifying actual hours of instruction and performance achievement by each student;

(c) A curriculum design, which the Superintendent determines to be comparable to the Board adopted model curriculum, showing a logical progression of academic and practical training experiences leading to the levels of student performance required for graduation and certification;

(d) The identification of specific levels of competence to be achieved by each student prior to any clinic lab experience that will ensure students have achieved sufficient skill and knowledge to successfully and safely perform assigned tasks on members of the general public;

(e) A diagnosis of each student's beginning level of competency and a prescriptive instructional program for specific competency completion with projected timelines resulting in an estimated program completion date; a copy to be given to the student on commencement of the program and on file in the student's personal file. Revisions to the prescriptive program must be based on recorded performance evaluations and as a result of school/student negotiation. Copies of revisions must be given to the student and on file in the student's academic file;

(f) Assurances that the instructional program will determine the type of assignments that students receive for the clinic lab; that, as nearly as possible, the clinic lab assignments reflect the emphasis of the student's current and cumulative theory and laboratory experiences;

(g) School catalogs and/or student enrollment agreements, that show the average time for students to complete the requirements for the various certificate programs during the previous reporting period;

(h) An annual report at the time of relicensing to the Department showing the actual total hours of instruction received by each student who has completed or left the school during the previous reporting period;

(i) Assurances that no student's competency based prescriptive training program will be significantly altered or regulated in any way, once the student and the school administration have signed a competency based agreement; and

(j) When the school informs a student that he/she is competent, the student may elect to leave the school with a diploma at that time or stay in school until he/she has been trained for an amount of time equal to the training hours listed in section (1) of this rule, and no additional tuition may be charged. The student shall notify the school of his/her decision within two weeks of notice of competency.

(7) With the exception of the teacher training program in section 25 of this rule, a school shall not conduct both fixed-hour and student competency-based training programs in the same school facility concurrently unless the school is in transition from one training program to another. The Department may set a time limit in which the transition must be completed.

(8) No school shall enroll a student wishing to transfer hours from a school of barbering, hair design, facial technology, and nail technology in Oregon or out-of-state without first receiving an official transcript properly signed and/or sealed directly from the previous school(s). A school may admit a student on a temporary basis without receiving an official transcript. In no event should a student be considered a graduate until an official transcript from a prior school(s) is in the graduating school's student file. Schools shall evaluate and grant appropriate credit for any education and training students received at state regulated postsecondary schools.

(9) Schools shall validate only their own hours of instruction provided a student but not any hours provided by other schools.

(10) Upon receipt and evaluation of official transcripts from schools previously attended:

(a) Schools shall give full credit for hours earned within the last ten years; and

(b) Schools may grant credit for hours earned prior to the last ten years, if approved by the Superintendent.

(11) No school shall deny a student a record of hours earned. A record of hours does not infer or include the official transcript.

(12) Schools shall have the following staff present in the facility at all times:

(a) 1–15 students present — one approved teacher;

(b) 16–30 students present — two approved teachers; and

(c) One additional approved teacher for each additional 20 students or part thereof. Teachers must be certified in all areas they teach and supervise. When only one teacher is present at the school, clinic lab operations, and classroom instruction shall not occur simultaneously. The lone teacher shall conduct and supervise one or the other but not both concurrently. Teachers who supervise the clinic lab and/or approve student practical performance must be certified in all areas they supervise or approve.

(13) The minimum teaching staff, as set forth in these rules, shall not perform administrative or financial aid or any other non-instructional duties during the time that the clinic lab and classroom instruction are taking place concurrently.

(14) A teacher or student teacher shall not perform any services in the school at any time except for teaching purposes.

(15) Schools may use resource persons who are not approved teachers for enrichment of instruction.

(a) Maximum time limits for resource persons are:

(A) Hair design, 340 hours;

(B) Facial technology, 100 hours;

(C) Nail technology, 100 hours; and

(D) Barbering, 270 hours; and

(b) Instruction by resource persons, if provided outside the school premises, must be supervised by a certified teacher.

(16) All services performed by students shall take place under the supervision and direction of a certified teacher.

(17) Premises shall be used during school hours only for instructing students and teacher trainees in barbering, hair design, facial technology, or nail technology.

(18) The school shall provide a minimum of 2,800 square feet of total floor space to be allocated as follows; one work station for each of the first twenty students; one additional work station for every five students in excess of twenty; and, where hair design is taught, one shampoo bowl for every five work stations. The superintendent must approve any exception to this requirement. Classroom and clinic space are in compliance with OAR 581-045-0022. Schools must comply with ORS 345.240 relative to accessibility of programs for persons with handicapping conditions.

(19) The Superintendent may approve a facility of less than 2,800 square feet of floor space for schools if the school presents a written plan as to how the number of students will be served in the space provided. The plan must include how the school meets the entire model curriculum standards.

(20) The school shall be separated from adjoining rooms used for another business or for domestic purposes, by means of walls or substantial partitions extending from floor to ceiling; all doors leading to the school from the aforesaid adjoining rooms must be kept closed. Access to the school shall be provided by means of an outside or separate entrance, or from a public passageway in a public building.

(21) Currently, certified practitioners of barbering, hair design, facial technology or nail technology may be approved by the Department to teach subjects or programs directly relating to their certified classification(s) if they:

(a) Have graduated from high school as evidenced by a photocopy of a high school transcript or high school diploma or, as an alternative, the obtaining of a General Education Development (GED) certificate;

(b) Are at least 18 years of age as evidenced by a photocopy of a birth certificate, driver's license, or baptismal certificate;

(c) Have completed the Standard Course of Study as set forth in section (25) of this rule unless they meet the requirements as set forth in subsection (22)(d) of this rule;

(d) Hold all Oregon licenses, certificates, and ratings legally required for employment in the field in which they teach. The teacher requirements found in OAR 581-045-0012, apply, if the applicants:

(A) Have at least one year of work experience as a certified practitioner in the subject in which they instruct, following certification or licensure. The work experience and the training for certification or licensure must equal a minimum of two years; or

(B) Have completed an approved teacher training program; and

(e) Provide evidence to the satisfaction of the Superintendent that the requirements of this section have been met; and

(f) Submit the \$50.00 registration fee.

(22) Each school shall include the names of all actively employed (full-time or part-time) approved teachers on its annual license renewal application.

(23) Continuing education of teachers shall be required to maintain approval:

(a) A teacher may maintain registration status by completing 30 clock hours of continuing education approved by the Superintendent within every 36-month period following that teacher's first date of common teacher registration (including any period of time from the actual date of registration until the first date of common teacher registration); and by completing 30 clock hours of approved continuing education within every 36-month period thereafter, even if the teacher is not teaching for all or a portion of each three year period. The common teacher registration dates are from August 1 until July 31. Only 10 of the 30 clock hours may be from an authorized manufacturer or distributor show;

(b) The Department shall, in conjunction with the state advisory committee, approve courses for which continuing education credit will be allowed;

(c) Proof of completion of the requirements of subsection (24)(a) of this rule, and the \$25.00 renewal of registration fee, must be submitted to the Superintendent prior to each teacher's next date of registration; and

(d) An individual failing to comply with the requirements of subsection (24)(a) of this rule shall not be approved for registration renewal or for a new registration until such requirements have been met.

(24) A licensed school of barbering, hair design, facial technology, or nail technology may offer a teacher training program if it complies with the following:

(a) Courses of teacher training for instruction in barbering, hair design, facial technology, and nail technology may be offered only in a school of hair design licensed under the provisions of ORS Chapter 345 or Mt. Hood Community College. Courses of study must be submitted to the Superintendent for approval.

(b) The Standard Course of Study shall require 1,000 hours of instruction that shall include the following:

- (A) Preparation and use of lesson plans;
- (B) Use of audiovisual and other instructional aids;
- (C) Development and administration of tests and evaluation of test results;

(D) Evaluation and recording of student progress, and recording of attendance;

- (E) Observation of practical demonstrations;
- (F) Assisting with practical demonstrations;
- (G) Setting up and performance of practical demonstrations; and
- (H) Practice teaching;

(c) The Superintendent shall approve teacher-training programs of 200 hours for:

(A) Teachers whose certification has lapsed more than three years; and

(B) Teachers from other states whose licensing requirements are less than the minimum requirements for Oregon.

(d) The school shall:

(A) Maintain daily records of the teacher trainee's attendance, and the subject matter covered; and

(B) Conduct and record the results of periodic evaluations of each teacher trainee;

(e) The school may evaluate and give up to 500 hours credit for professional teaching experience or any academic training received in a community college or institution of higher education when that academic training contributes to achievement of the total approved Standard Course of Study;

(f) A school shall not have more than three approved teacher trainees at one time. The school shall designate who shall have the principal supervisory responsibility for the student in the teacher-training program. Each trainee, when in the clinic lab, must be under direct supervision of an approved teacher with a minimum of two years teaching experience;

(g) Teacher trainees shall evaluate students only under the direct supervision of a certified teacher; and

(h) Teacher training students must be registered with the Superintendent prior to commencement of their training.

Stat. Auth.: ORS 345.400, 345.460 & 345.470

Stats. Implemented: ORS 345.400 & 345.460

Hist.: EB 13-1996, f. & cert. ef. 7-26-96; ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01;

ODE 21-2002, f. 9-26-02 cert. ef. 10-1-02; ODE 17-2003, f. 12-30-03, cert. ef. 1-1-04

581-045-0210

Safety and Sanitation Compliances and Inspections for Schools of Hair Design, Barbering, Facial Technology and Nail Technology Only

(1) Students, teachers and school owners shall observe and be subject to all state, county and municipal laws and regulations pertaining to public health. Compliance with state and municipal fire regulations is required.

(2) Sanitation and safety rules set forth in OAR chapter 817 shall be available in the school.

(3) The current sanitation inspection report required by this section shall be conspicuously displayed in the school.

(4) Sanitation and safety inspections of schools regulated by this rule shall be conducted periodically by agents of the Health Licensing Office. Such inspections shall be for the purpose of determining whether schools are in compliance with the standards set forth in OAR chapter 817, divisions 5, 10 and 60 as they relate to the schools.

(5) A school is considered to be open and subject to inspection when the school is serving the public.

(6) The inspecting agent shall submit to the Superintendent a written report of sanitation and safety conditions observed in each school inspected. Any violation of standards existing in a school at the conclusion of an inspection shall be specifically noted in the inspection report.

(7) Failure of a school to correct a condition of violation within the time allotted for compliance as determined by the Superintendent shall be subject to penalties as set forth in OAR 581-045-0190.

Stat. Auth.: ORS 345.440 & 345.450

Stats. Implemented: ORS 345.440

Hist.: EB 13-1996, f. & cert. ef. 7-26-96; ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01

Standards for Registration of Private Elementary and Secondary Schools

NOTE: Upon receipt of an application for registration, the agency shall evaluate the private school and shall register the school if it finds that the school is in compliance with the requirements of ORS 345.525 and 345.535 and the rules adopted pursuant thereto. The registration expires June 30 next following its issuance. If the Department refuses to register the school, it shall notify the applicant and give its reasons for the refusal.

581-045-0500

Registration

Registration is renewable annually on or before October 14. Registration not renewed before October 14 shall be considered lapsed and may only be renewed in the manner required for initial registration. Elementary and secondary private schools shall be any combination of Grades Kindergarten through 12 for purposes of registration.

Stat. Auth.: ORS 326.215, 339.030, 343.055, 345.535, 433.245, 453.205 & 453.255

Stats. Implemented: ORS 345.515 & 345.525

Hist.: 1EB 109, f. 3-30-64; 1EB 256, f. & ef. 12-20-76; EB 5-1991, f. & cert. ef. 2-28-91

581-045-0505

Statement of Philosophy

The school shall file with the Department of Education a written statement of its philosophy. The school goals shall reflect the Goals for Elementary and Secondary Education in OAR 581-022-0201(2), with the exception of any goal which is contrary to or inconsistent with the school's statement of philosophy.

Stat. Auth.: ORS 326.215, 339.030, 343.055, 345.535, 433.245, 453.205 & 453.255

Stats. Implemented: ORS 345.525 & 345.535

Hist.: 1EB 109, f. 3-30-64; 1EB 256, f. & ef. 12-20-76; EB 5-1991, f. & cert. ef. 2-28-91

581-045-0510

Administrative and Secretarial Assistance

The school shall have available the administrative and secretarial assistance necessary to assure its effective operation.

Stat. Auth.: ORS 326.215, 339.030, 343.055, 345.535, 433.245, 453.205 & 453.255

Stats. Implemented: ORS 345.525 & 345.535

Hist.: 1EB 109, f. 3-30-64; 1EB 256, f. & ef. 12-20-76; EB 5-1991, f. & cert. ef. 2-28-91

581-045-0515

Reports

The school shall furnish promptly such reports and information as the Department of Education requires by rule or other law and shall maintain a file of copies of such reports in its own office.

Stat. Auth.: ORS 326.215, 339.030, 343.055, 345.535, 433.245, 453.205 & 453.255
Stats. Implemented: ORS 345.525 & 345.535
Hist.: 1EB 109, f. 3-30-64; 1EB 256, f. & ef. 12-20-76; EB 5-1991, f. & cert. ef. 2-28-91

581-045-0520

Transportation

If transportation is provided, the school shall comply with all applicable state and federal laws and with the rules and regulations of the State Board of Education.

Stat. Auth.: ORS 326.215, 339.030, 343.055, 345.535, 433.245, 453.205 & 453.255
Stats. Implemented: ORS 345.525 & 345.535
Hist.: 1EB 109, f. 3-30-64; 1EB 256, f. & ef. 12-20-76; EB 5-1991, f. & cert. ef. 2-28-91

581-045-0525

Administrator Qualifications

The administrator may demonstrate qualifications in any one of the following three ways:

(1) Possess a current administrative certificate from any state, which shall be valid for three years or until the administrator has completed certification for the State of Oregon.

(2) Be enrolled in and actively working toward an educational program leading to an administrative certificate.

(3) Possess relevant verifiable experience, other than the above, according to clearly defined criteria which are consistent with the educational goals of the school and filed with the Department of Education.

Stat. Auth.: ORS 326.215, 339.030, 343.055, 345.535, 433.245, 453.205 & 453.255
Stats. Implemented: ORS 345.525 & 345.535
Hist.: 1EB 109, f. 3-30-64; 1EB 256, f. & ef. 12-20-76; EB 5-1991, f. & cert. ef. 2-28-91

581-045-0530

Teacher Qualifications

Private schools should not knowingly misrepresent to the public the certification, training, and qualifications of the teaching staff. The teacher may demonstrate qualifications in any one of the following three ways:

(1) Possess a current teaching certificate from any state, which shall be valid for three years until the teacher has completed certification for the State of Oregon.

(2) Teach at least half time in the subject field in which the B.S. or B.A. degree was obtained, which shall be valid for three years while the teacher is enrolled in and actively working toward an educational program leading to a teaching certificate in the state of Oregon.

(3) Possess relevant verifiable experience, other than the above, according to clearly defined criteria which are consistent with the educational goals of the school and filed with the Department of Education.

Stat. Auth.: ORS 326.215, 339.030, 343.055, 345.535, 433.245, 453.205 & 453.255
Stats. Implemented: ORS 345.525 & 345.535
Hist.: 1EB 109, f. 3-30-64; 1EB 256, f. & ef. 12-20-76; EB 5-1991, f. & cert. ef. 2-28-91

581-045-0535

Program of Studies

(1) The curriculum in Grades Kindergarten through 12 shall be such that it considers the goals of modern education as defined in OAR 581-022-0201(2) and the requirements of a sound, comprehensive curriculum consistent with the philosophy of the school. Particular emphasis shall be given to establishing the highest practical standards which shall approximate those standards expected of Oregon's public schools as defined in Division 022 except when the standard is contrary to or inconsistent with the school's statement of philosophy. Secondary schools shall establish academic standards necessary for admission to community colleges and institutions of higher education and issuance of a high school diploma. Appropriate guidelines are found in OAR 581-022-0316. Courses shall be taught for a period of time equivalent to that required for students attending public schools as defined in OAR 581-022-0502 and 581-022-0102(33).

(2) Private schools should not knowingly misrepresent their accreditation status.

Stat. Auth.: ORS 326.215, 339.030, 343.055, 345.535, 433.245, 453.205 & 453.255
Stats. Implemented: ORS 345.525 & 345.535
Hist.: 1EB 109, f. 3-30-64; 1EB 256, f. & ef. 12-20-76; EB 5-1991, f. & cert. ef. 2-28-91

581-045-0540

Staff Adequacy

The student to teacher ratio shall be sufficient to assure the effectiveness of the educational program.

Stat. Auth.: ORS 345
Stats. Implemented: ORS 345.525 & 345.535
Hist.: 1EB 109, f. 3-30-64; 1EB 256, f. & ef. 12-20-76

581-045-0545

Student Records

The school shall maintain an adequate system of student records in compliance with OAR 581-022-0717(3). In the event of permanent school closure, the school shall arrange to transfer permanent student records to the local education service district office, county unit office, local school district, or the Department of Education. A school which closes permanently may use another depository for student records, providing that the Department is notified in writing of the name and location of the depository.

Stat. Auth.: ORS 326.215, 339.030, 343.055, 345.535, 433.245, 453.205 & 453.255
Stats. Implemented: ORS 345.525 & 345.535
Hist.: 1EB 109, f. 3-30-64; 1EB 256, f. & ef. 12-20-76; EB 5-1991, f. & cert. ef. 2-28-91

581-045-0550

Transfer of Progress Records

The school shall transfer promptly to any other educational institution all progress records in conformance with ORS 336.215(2). Student records may not be withheld from other institutions because of nonpayment of fees.

Stat. Auth.: ORS 326.215, 339.030, 343.055, 345.535, 433.245, 453.205 & 453.255
Stats. Implemented: ORS 345.525 & 345.535
Hist.: 1EB 109, f. 3-30-64; 1EB 256, f. & ef. 12-20-76; EB 5-1991, f. & cert. ef. 2-28-91

581-045-0555

Media Centers

The school shall have instructional media centers to provide services for all students which shall approximate the goals of OAR 581-022-0710 except for the requirements of certification of staff.

Stat. Auth.: ORS 326.215, 339.030, 343.055, 345.535, 433.245, 453.205 & 453.255
Stats. Implemented: ORS 345.525 & 345.535
Hist.: 1EB 109, f. 3-30-64; 1EB 256, f. & ef. 12-20-76; EB 5-1991, f. & cert. ef. 2-28-91

581-045-0560

Print and Nonprint Materials

Print and nonprint materials, including textbooks, shall be adequate to meet the needs of the instructional program.

Stat. Auth.: ORS 345
Stats. Implemented: ORS 345.525 & 345.535
Hist.: 1EB 109, f. 3-30-64; 1EB 256, f. & ef. 12-20-76

581-045-0565

Denial or Revocation of Registration

In the event that registration or renewal of registration is denied or registration is revoked, the school shall be notified with a statement of the reason(s) for the denial or revocation and a hearing shall be provided under ORS 183.413 to 183.464.

Stat. Auth.: ORS 326.215, 339.030, 343.055, 345.535, 433.245, 453.205 & 453.255
Stats. Implemented: ORS 345.535
Hist.: 1EB 109, f. 3-30-64; 1EB 256, f. & ef. 12-20-76; EB 5-1991, f. & cert. ef. 2-28-91

581-045-0570

Site

The school site shall be well-maintained and large enough to provide for school needs to approximate the provisions of OAR 581-022-0706 and 581-022-0720(3), (4), and (5). A school receiving state or federal funds shall be accessible to disabled persons.

Stat. Auth.: ORS 326.215, 339.030, 343.055, 345.535, 433.245, 453.205 & 453.255
Stats. Implemented: ORS 345.535
Hist.: 1EB 109, f. 3-30-64; 1EB 256, f. & ef. 12-20-76; EB 5-1991, f. & cert. ef. 2-28-91

581-045-0575

School Building

The location, condition, and operation of the school building shall be adequate to protect the health and safety of its students, including but not limited to fire protection and safety standards. Guidelines are found in OAR 581-022-0706 and 581-022-0720, and Section 203 of

Title II of the Toxic Substances Control Act, 15 U.S.C. 2643, regarding asbestos.

Stat. Auth.: ORS 326.215, 339.030, 343.055, 345.535, 433.245, 453.205 & 453.255
 Stats. Implemented: ORS 345.535
 Hist.: 1EB 109, f. 3-30-64; 1EB 256, f. & ef. 12-20-76; EB 5-1991, f. & cert. ef. 2-28-91

581-045-0580

Equipment and Instructional Materials

(1) Equipment shall be adequate in quality and quantity to achieve the purposes of the educational program.

(2) Classroom furniture shall conform to hygienic requirements and shall be adaptable to classroom activities in accordance with the requirements of the State Board of Health.

(3) Each room shall be equipped with instructional materials, providing the environment appropriate for the work assigned to that room.

(4) Art and craft materials shall comply with the requirements of ORS 453.205, 433.245, and 453.255(1).

Stat. Auth.: ORS 326.215, 339.030, 343.055, 345.535, 433.245, 453.205 & 453.255
 Stats. Implemented: ORS 345.535
 Hist.: 1EB 109, f. 3-30-64; 1EB 256, f. & ef. 12-20-76; EB 5-1991, f. & cert. ef. 2-28-91

DIVISION 49

STANDARDS FOR THE ACCREDITATION OF EMERGENCY MEDICAL TECHNOLOGY EDUCATION AND TRAINING PROGRAMS

581-049-0000

Purpose

(1) The purposes of the rules in this division are to set the minimum standards with which Emergency Medical Technology (EMT) programs must comply prior to approval of courses by Emergency Medical Services Section of the Oregon Health Division (OHD-EMS) and to set forth the process of accreditation for determining if the offering institution is meeting these standards.

(2) EMT education and training programs are offered by teaching institutions pursuant to OAR 333-265-0000 through 333-265-0020 effective July 1, 1994, including community colleges, licensed private vocational schools, and institutions of higher education. If OHD-EMS determines that training is not available in a rural area through a teaching institution, hospitals licensed by the Health Division may be authorized to teach basic levels of EMT courses.

(3) The standards in OAR 581-049-0000 – 581-049-0040 effective (as of date rules are adopted) apply to EMT basic, intermediate, and paramedic levels of education and training offered by or through Oregon community colleges and licensed private vocational schools.

Stat. Auth.: ORS 326.051
 Stats. Implemented: ORS 823.130 - 823.150
 Hist.: EB 22-1993, f. & cert. ef. 6-2-93; EB 19-1995, f. & cert. ef. 7-11-95

581-049-0010

Definitions

Definitions for the purposes of division 049:

(1) “Administrator” means a person responsible for all aspects of planning and managing an Emergency Medical Technology (EMT) Program.

(2) “Class” means scheduled meeting of persons for instructional purposes.

(3) “Clinical Experiences” means those experiences acquired by a student during an approved EMT program under the direct supervision of appropriate medical direction and clinical supervision. Experience must include the application of specific knowledge, assessment, and treatment skills required to meet written clinical experience competencies.

(4) “Clinical Preceptor” means a person who has been trained as a preceptor and appointed by an accredited teaching institution and approved by the EMS provider, having the responsibility of supervising and evaluating the performance of an EMT student during the clinical and field internship phases of an EMT course. A preceptor must be a physician, physician assistant, registered nurse, or certified EMT in good standing at or above level for which the student is in training.

(5) “Course” means aggregation of classes to achieve a completed set of competencies as identified by OHD-EMS and established in OAR 333-265-0000 et seq. effective July 1, 1994.

(6) “Course Director” means a person who is the principal instructor of an EMT course and is responsible for scheduling lectures and coordinating and arranging clinical rotations and field internships.

(7) “Emergency Medical Technician (EMT)” means a person who has received formal training in prehospital emergency care and is state-certified to attend an ill, injured, or disabled person (ORS 823.020) effective July 1, 1993.

(8) “Field Internship” means those hours and calls acquired by a student during an approved clinical EMT paramedic course under the direct visual supervision of a preceptor. A call shall be accepted when the clinical preceptor providing direct visual supervision has documented and verified satisfactory student performance. Calls must include the application of specific assessment and treatment skills required of a certified EMT.

(9) “Guest Lecturer” means a person who presents one or more lectures on specific topics in which the lecturer has personal expertise.

(10) “In Good Standing” means the status of a person who is currently certified or licensed, who does not have any restrictions placed on his/her certificate, and who is not on probation with the certifying or licensing agency for any reason.

(11) “Medical Director” means a licensed physician who shall provide medical direction to the didactic, clinical and field internship portions of an EMT course or serves as the medical director of an EMT, registered nurse or physician assistant associated with a licensed ambulance service. The medical director must meet the qualifications of a supervising physician as defined in OAR 847-035-0020 effective January 1, 1995.

(12) “OCCS” means the Office of Community College Services.

(13) “OHD-EMS” means the Emergency Medical Services Section of the Oregon Health Division.

(14) “OPTE” means the Office of Professional Technical Education.

(15) “Patient” means an ill, injured, or disabled person who may be transported in an ambulance.

(16) “Physician” means a person licensed under ORS 677.010, actively registered and in good standing with the Board of Medical Examiners as a Medical Doctor (MD) or Doctor of Osteopathic Medicine (DO).

(17) “Private Vocational Schools Section” means the section within the Oregon Department of Education which has the responsibility for the licensure of private vocational schools (ORS 345.010 to 345.470 effective July 1, 1994).

(18) “Registered Nurse (RN)” means a person licensed under ORS 678.040 effective July 1, 1994, actively registered and in good standing with the Oregon Board of Nursing.

(19) “Scope of Practice” means the maximum level of emergency care that an EMT may provide as set forth in OAR 847-035-0030 effective July 1, 1994.

(20) “Teaching Institution” means a two-year community college or a licensed vocational school that is currently licensed and in good standing with the Private Vocational Schools Section of the Office of Professional Technical Education of the Oregon Department of Education.

Stat. Auth.: ORS 326.051
 Stats. Implemented: ORS 823.130 - 823.150
 Hist.: EB 22-1993, f. & cert. ef. 6-2-93; EB 19-1995, f. & cert. ef. 7-11-95

581-049-0020

Standards

(1) The standards and accreditation process in this rule pertain specifically to EMT programs offered by community colleges (including satellite courses and programs), and licensed private vocational schools.

(2) Each EMT course shall follow, without substantial variation, the OHD-EMS prescribed curriculum for the level of EMT course being presented. The curriculum consists of three components: Didactic instruction, including laboratory skills; supervised clinical experience in health care facilities; and supervised field internship. Didactic instruction and supervised clinical experience are required for Basic and Intermediate level EMT courses. A supervised field internship is required as well as didactic instruction and supervised clinical experience for EMT paramedic level courses. Each curriculum component shall comply with all OHD-EMS requirements for the particular level of EMT certification involved. All psycho-motor skills shall be taught

in accordance with the Health Division/OHD-EMS EMT Skills Manual:

(a) Didactic Instruction: Each EMT course shall have a written planned course statement that contains course goals and objectives stated in terms of the competencies students will be expected to achieve upon successful completion of the course;

(b) Clinical Experiences: Clinical affiliations shall be established and confirmed in written affiliation agreements between the teaching institution and hospitals and other institutions and agencies that provide clinical experiences for students under appropriate medical direction and clinical supervision:

(A) Goals and identified competencies to be attained shall be written for each clinical rotation site. Students shall be provided a copy of the clinical rotation site goals and competencies prior to each clinical experience;

(B) Students shall be assigned to clinical settings where experiences are educationally efficient and effective in achieving the program's goals and objectives;

(C) Students in clinical settings shall be supervised by appropriate medical personnel or by an instructor from the program as outlined in the written affiliation agreement. The ratio of students to instructors in the clinical facilities shall be adequate to ensure effective learning.

(c) Field Internship: A field internship shall be established for each student for whom such is required by OHD-EMS. The internship shall meet requirements established by OHD-EMS and defined in OAR 333-265-0010(f)(C)(iii) effective July 1, 1994.

(A) The school shall enter into written agreements for clinical experiences and field internships that provide sufficient clinical experiences and field internships to permit every student enrolled to complete these requirements within the timeframe of the approved course;

(B) All field internships will occur within an emergency medical system which demonstrates medical accountability. A clinical preceptor shall be assigned to supervise each student intern. The preceptor's qualifications shall meet guidelines set by OHD-EMS;

(C) Written goals and competencies to be attained shall be established for all field internships. Copies shall be provided the student and the student's assigned preceptor. These competencies shall meet requirements of OHD-EMS as stated in OAR 333-265-0010 effective July 1, 1994.

(3) Program Administrator: Each program shall have a qualified program administrator primarily responsible for managing all aspects of the program, whose responsibilities include, but are not limited to, the organization, administration, and evaluation of the program. Acquisition of adequate resources and staff to assure a quality program is a primary responsibility of the program administrator.

(4) The intent of section (3) of this rule is to assure that appropriate officials of the sponsoring teaching institution are directly involved in program planning and management and to provide OHD-EMS and OPTE-OCCS with a single focus for resolution of problems arising as a result of EMT program delivery.

(5) The program administrator shall be a senior manager or administrative officer with general managerial responsibility who has training and experience in education administration and evaluation (i.e., dean, associate dean, administrator, or associate administrator).

(6) Course Director: Each course shall have a course director who shall be the principle teacher for the course. The course director shall be responsible for all aspects of course planning and delivery. The course director shall meet the requirements as outlined in OAR 333-265-0020(f)(C)(iii) effective July 1, 1994.

(7) Guest Lecturers: These are individuals who do not regularly assist in the delivery of EMT education and training who present one or more lectures on specific topics in which they possess personal expertise. Guest lecturers do not need to have any particular level of certification. It is the responsibility of the course director to establish that each guest lecturer possesses the necessary expertise and teaches in compliance with all course standards.

(8) Medical Director: Each EMT education and training program shall have a medical director, who shall advise the program administrator and course director on medical aspects of the EMT program. The medical director shall currently be approved by OHD-EMS as an EMT supervising physician.

(9) Continuing Education for Faculty and Staff. It is recommended that financial support be provided for faculty education required to keep mandatory certifications current.

(10) Financial Resources: The operational budget for the program shall be sufficient to maintain the continuous operation of the EMT program.

(11) Facilities: Classroom, laboratories, administrative, and faculty offices shall be provided with sufficient space to accommodate the number of students enrolled in the program and the program faculty:

(a) Classrooms shall be clean and have adequate lighting, ventilation, and storage for instructional materials and equipment. Furniture should be in good repair and comfortable with appropriate writing surfaces;

(b) Laboratory space shall be available for students to practice skills. This may be the same room as the classroom, providing there is adequate space for students to perform the required skills (e.g., CPR, patient packaging, splinting, etc.). Floors, where skills are practiced, shall be covered with carpet or other appropriate protective materials. Running water shall be available in the class/lab facility. The room should meet all Oregon Occupational Safety and Health Administrative standards for safety;

(c) Each classroom site shall have sufficient toilet facilities to reasonably accommodate the number of students enrolled in the course;

(d) Administrative staff and faculty shall be provided adequate office space to manage the program, keep adequate records and instructional materials, and prepare lesson plans. Space should also be provided for confidential faculty/student conferences.

(12) Instructional Aids, Supplies, and Materials: Sufficient up-to-date instructional aids, supplies, and materials shall be provided to facilitate learning for the number of students in the program and the level of EMT course being offered:

(a) Teaching aids and instructional materials shall be readily available to the instructor;

(b) Adequate AV materials and equipment shall be available for instructor and student use;

(c) Independent study areas with TV monitors/audio outlets shall be available for student use as needed for make-up work and independent study;

(d) The budget shall provide for supplies and annual updating of instructional materials.

(13) Equipment: Each EMT course shall be supported by the prescribed quantity of equipment necessary to support the level of EMT education and training being provided. Required equipment shall be specified by OHD-EMS:

(a) Equipment shall be technologically up-to-date and readily accessible to faculty and students;

(b) All equipment shall be kept in good repair;

(c) An annual and long-term budget for capital equipment shall be in place to maintain and provide for replacement of equipment.

(14) Support Services: Support services necessary to ensure student success shall be made available to students in the EMT program. These services include, but are not limited to:

(a) A library with appropriate up-to-date periodicals and books open during hours which will provide maximum accessibility to students;

(b) Counseling staff available for academic and career planning;

(c) Tutoring assistance available on an "as needed" basis;

(d) Funding and staff time available for student recruitment, selection, and placement procedures. It is required that students pass reading and math placement tests at appropriate levels for each course prior to acceptance into the program.

(15) Admission Policies and Procedures: Admission of students shall be made in accordance with clearly defined and published practices of the institution. Specific academic and technical requirements for admission shall also be clearly defined and published. The standards and prerequisites shall be made known to all potential program applicants.

(16) Program Information: Accurate information regarding program requirements, tuition and fees, institutional and programmatic policies, procedures and supportive services shall be available upon request to all prospective students and be provided to all enrolled students. It is recommended that this information be compiled in an EMT student handbook.

(17) Program Descriptions: A description of each EMT course, a statement outlining course competencies, course outlines, class and laboratory schedules, clinical and field internship experience schedules, and teaching plans shall be on file and available to candidates and enrolled students;

(18) Equal Opportunity: The program shall comply with ORS 659.150 effective January 1, 1995, and shall not discriminate with respect to race, religion, sex, marital status, age, disabling condition, or national origin.

(19) Evaluation: Each approved course shall provide the number of written and practical examinations prescribed by OHD-EMS. The content of examinations for each level of EMT course shall be prescribed by OHD-EMS:

(a) Each approved course shall culminate in written and practical certification examinations prescribed by the OHD-EMS. For academic purposes, a teaching institution may administer its own final written and practical examination prior to the conduct of OHD-EMS certification examinations;

(b) The written certification examination shall be administered by a proctor provided by the teaching institution. The proctor shall be subject to the approval of the OHD-EMS, shall not be certified as an EMT at any level, and shall not be otherwise involved in the delivery of EMT training;

(c) Evaluators for the final practical examination shall be individuals meeting the requirements prescribed by OHD-EMS to serve as final practical examination evaluators. An OHD-EMS representative shall be present at final practical examinations and shall provide evaluation instruments to be used in the conduct of all final practical evaluations.

(20) Job Search and Placement: Students who successfully complete the program shall be provided access to job search and placement services.

(21) Advisory Committee: Each program shall have an advisory committee to provide guidance and information regarding local community practices and needs:

(a) The advisory committee shall consist of representatives from local employers of EMT personnel, current or former students, and other community members as appropriate. The medical director shall be a member of the advisory committee and serve as a primary source of information. A roster of the advisory committee members, their place of employment and phone numbers shall be kept on file and easily accessible;

(b) The advisory committee shall meet a minimum of three times each year and minutes of the meeting shall be recorded and kept on file.

(22) A safe working and learning environment shall be provided to all students and staff so that students learn to be safety conscious in the classroom and carry that consciousness into practice in clinical and internship experiences and ultimately into the profession:

(a) Safety Policy: The teaching institution shall have a safety policy that meets all state and federal requirements. The teaching institution shall identify an administrator who is responsible for monitoring the safety policy and assures that regular safety inspections are made and documented;

(b) Instructional Activities: All instructional activities (i.e., didactic, clinical, and internship) shall be carried on in accordance with the Oregon Safe Employment Act, OR-OSHA standards, and ORS 656.046 effective January 1, 1995, which requires coverage of persons in college work experience and vocational educational programs;

(c) Curriculum: Occupational safety shall be an integral part of the curriculum;

(d) Insurance: Each student enrolled in the program shall be covered by professional liability insurance in the amount of not less than \$1,000,000 per occurrence. Copies of insurance policies documenting the coverage shall be on file at the institution.

(23) The institution shall maintain complete, accurate student records in a safe, secure place within the educational institution:

(a) The following records shall be maintained until the student has been certified by OHD-EMS at the level corresponding to the education program or for a minimum of five years following the student's enrollment in the program:

(A) Student admission into the program;

(B) Class attendance;

(C) Evidence of competencies attained throughout the program;

(D) Copies of examinations and assessments throughout the program;

(E) Evidence of satisfactory completion of all didactic, clinical, and field internship requirements.

(b) A record of all grades and credits earned by each student shall be kept permanently by the institution;

(c) All records shall be confidentially maintained in accordance with Family Education Rights and Privacy Act.

(24) To assure a high quality program it is essential that all aspects of the program be evaluated on both an ongoing and periodic basis:

(a) The teaching institution shall establish processes to evaluate on an ongoing basis the effectiveness of the instructional program. These will include gathering evaluative data from students, administrators, clinical supervisors, intern preceptors and advisory committee members. Follow-up surveys of graduates and the employers of graduates shall be conducted to evaluate the effectiveness of the curriculum, teaching, and the services offered by the institution. Data gathered through these processes should be analyzed and utilized for program improvement;

(b) Every EMT program shall be evaluated through a process of accreditation at least once every five years. This process shall occur as outlined in OAR 581-049-0030 effective (date these rules are adopted).

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 823.130 - 823.150

Hist.: EB 22-1993, f. & cert. ef. 6-2-93; EB 28-1993, f. & cert. ef. 9-29-93; EB 19-1995, f. & cert. ef. 7-11-95

581-049-0030

Process of Accreditation

The purpose of the accreditation process is to assure quality Emergency Medical Technology Educational programs and to provide recognition for those programs which meet or exceed the minimum standards as outlined in these rules. The accreditation process shall consist of two components, an internal self-study conducted by the teaching institution, and an external evaluation conducted by an accreditation team:

(1) Self-Study: The teaching institution shall complete an internal review of the EMT program that will result in a self-study which documents that the program meets the minimum requirements as outlined in these rules. The self-study will be sent to the OPTE at least 30 days prior to the date set for the external team visit. Guidelines for preparing the self-study can be obtained from the OPTE-OCCS.

(2) External Evaluation Review Team: The review team shall consist of at least three people, an OPTE-OCCS assigned coordinator, and EMT 4 who has had active field patient care experience and is knowledgeable regarding educational needs and issues related to EMT training, and an education curriculum person designated by the OPTE-OCCS. The team will:

(a) Review the self-study completed by the institution prior to the site visit;

(b) Participate in a site visit where the team will confirm that the information in the self-study is accurate and meets the minimum requirements set forth in these rules; and

(c) Report to the associate superintendent, OPTE-OCCS, the team findings, specifically identifying strengths, weaknesses, and any deficiencies of the program. The associate superintendent shall send a copy of the report, along with a letter of accreditation status, to the chief administrative officer of the institution in which the program is located. A copy of the letter and report also will be sent to OHD-EMS.

(3) Site Team Coordinator: The role of the coordinator will be to:

(a) Work with the institution's program administrator to schedule the site visit;

(b) Select and orient the review team members;

(c) Serve as a team leader on the site visit;

(d) Conduct an exit interview summarizing the team's findings;

(e) Coordinate the writing of the team report and provide it to the associate superintendent who will send a copy to the chief administrative officer of the institution within 30 days of the site visit; and

(f) Conduct follow-up activities as necessary.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 823.130 - 823.150

Hist.: EB 22-1993, f. & cert. ef. 6-2-93

581-049-0040

Deficiencies

(1) If deficiencies are reported by the External Evaluation Review Team, the program has 90 days from the date the report was received by the chief administrative officer to correct the deficiencies. The institution shall not start any new courses until the deficiencies are corrected or a detailed plan to correct each deficiency has been submitted reviewed and accepted by OPTE/OCCS.

(2) If the chief administrative officer disputes the reported deficiencies, he or she may request, within ten days from the date the report was received, a hearing which shall be held in accordance with ORS Chapter 183 effective January 1, 1995.

(3) If deficiencies are not corrected within 90 days or an approved plan to correct the deficiency(s) has not been submitted to OPTE/OCCS, the program accreditation shall be revoked after a hearing held in accordance with ORS Chapter 183 effective January 1, 1995.

(4) The associate superintendent may issue an interim order prohibiting the teaching institution from starting any new classes or accepting any new students until either the deficiencies are corrected or a hearings officer determines that the alleged deficiencies did not occur.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 823.130 - 823.150

Hist.: EB 22-1993, f. & cert. ef. 6-2-93; EB 19-1995, f. & cert. ef. 7-11-95

DIVISION 51

SCHOOL FOOD AND NUTRITION SERVICES

581-051-0100

School Nutrition Programs

(1) Authority and direction for the operation of school nutrition programs in Oregon shall be derived from the United States Department of Agriculture, the Oregon Revised Statutes, Oregon Administrative Rules and rules of district school boards.

(2) Claims for reimbursement by schools participating in the USDA School Nutrition Programs:

(a) Shall be submitted in a form designated by the Oregon Department of Education; and

(b) Must be received in the Oregon Department of Education by the fifteenth day of the month following the month for which claim is made.

(3) Food sold in competition with the School Breakfast Program or National School Lunch program shall not be allowed during the breakfast and/or lunch periods unless the funds accrue to the nonprofit food service program, the school or student organizations as may be defined by the district school board.

(a) The sale of items from the USDA Categories of Foods of Minimal Nutritional Value 7 CFR 210. Appendix B during the breakfast and/or lunch periods in the food service area is prohibited. However, if approved by the school district board, foods of minimal nutritional value may be sold outside the food service area during the breakfast and/or lunch periods.

(A) "Foodservice Area" means any area on school premises where NSLP and SBP meals are both served and eaten. Areas where students eat NSLP and SBP meals that are completely separate from the serving area are also part of the foodservice area.

(B) Financial penalties to the school food service program resulting from FMNV being served during meal time in the food service area by school policy or practice will be repaid to the program from the general fund.

(b) A copy of the Board action of approval must be filed with the School Nutrition Programs Section, Oregon Department of Education.

Stat. Auth.: ORS 326 & 327, 7 CFR 210

Stats. Implemented: ORS 327.137

Hist.: IEB 2-1986, f. 1-7-86, ef. 1-8-86; ODE 17-2004, f. & cert. ef. 8-10-04

Inspection Procedures

581-051-0305

Food Safety Inspection Definitions

Definitions:

(1) "Central Kitchen" means a foodservice site where food is prepared at a facility and then some or all of the food is delivered to a meal serving site(s) at a place(s) other than the preparation site.

(2) "CNP" means Child Nutrition Programs.

(3) "Competitive Food Sales" means any foods sold in competition with the NSLP and SBP in foodservice areas during the breakfast and lunch meal periods.

(4) "Competitive Food Sales vendor" means any person or organization selling competitive foods in the Sponsor's foodservice areas during the lunch and breakfast meal periods.

(5) "Critical Violation" means a Food Safety Inspection violation that is more likely than other Food Safety Inspection violations to cause food contamination, illness or an environmental health hazard.

(6) "Finishing Kitchen" means a foodservice site that receives prepared foods for reheating, assembling, portioning, and serving.

(7) "Food Safety Inspection Annual Report" means the report of completed Sponsor site(s) Food Safety Inspections. The Annual Report is prepared by state and local public health authorities and delivered to ODE CNP by June 30 each school year.

(8) "Food Safety Inspection document of findings" means any form used by the state or local public health authority to document a Food Safety Inspection.

(9) "Food Safety Inspection: National School Lunch Program and School Breakfast Program Requirements" means schools shall at least once each school year obtain a Food Safety Inspection conducted by a state or local governmental agency responsible for food safety inspections. (7 CFR 210.13 and 7 CFR 220.7)

(10) "Foodservice Area" means any area on school premises where NSLP and SBP meals are both served and eaten as well as any other areas where programs meals are served and eaten. Areas where students eat NSLP and SBP meals that are completely separate from the serving area are also part of the foodservice area.

(11) "Notice of Non-Compliance" means documentation that a Critical violation(s) has not been corrected nor has the Sponsor of Competitive Food Sales vendor implemented an alternative plan, approved by the state or local public health authority.

(12) "NSLP" means the National School Lunch Program.

(13) "ODE" means the Oregon Department of Education.

(14) On-site Preparation Kitchen" means a foodservice site where food is prepared and served at one location.

(15) "Person in Charge" means the person responsible for food safety and sanitation, and who is present at the food establishment during the NSLP, SBP, and Competitive Food Sales hours of operation. The Person in Charge is designated by Public and Private schools and RCCI Sponsors and Competitive Food Sales vendors for each meal site and each Competitive Food Sales site.

(16) "Private School" means any entity, except as provided in ORS 339.030(1)(c) & (d), that:

(a) Is not supported with state funds;

(b) Is operated by a non-governmental, religious or non-religious group or organization;

(c) Is registered as a private school under the provisions of ORS 345.505-345.565;

(d) Provides educational services to students at any level, pre-K through grade 12;

(e) Has a teacher or teachers who provide instruction;

(f) Has an administrator or head teacher; and

(g) Occupies one or more buildings.

(17) "Program meals," means the National School Lunch Program meals and School Breakfast Program meals.

(18) "Public School" means any entity that has been recognized as a school by the district school board through a resolution adopted by the board and:

(a) Is supported with public funds;

(b) Is operated by a local education agency, education service district or state education agency;

(c) Provides educational services to students at any level, pre-K through grade 12;

(d) Has a teacher or teachers to provide instruction;

(e) Has an administrator or head teacher;

(f) Provides Oregon statewide assessment to its students; and

(g) Occupies one or more buildings.

(19) "Residential Child Care Institution (RCCI)" means any Public or Nonprofit Private Residential Child Care Institution, or distinct

part of such institution, which operates principally for the care of children. An RCCI is considered a school. Private RCCIs must be licensed to provide Residential Child Care services under the appropriate licensing code by the state or a subordinate level of government.

(20) "Satellite Kitchen" means a foodservice site where food is received fully prepared from another location and is ready to serve.

(21) "SBP" means the School Breakfast Program.

(22) "School Year" means a period of 12 calendar months beginning July 1 of any year and ending June 30 of the following year.

(23) "Sponsor" means Public and Private Schools and RCCIs who participate in the NSLP and SBP.

(24) "State or local public health authority" means the state or local governmental authority responsible for conducting Sponsor and Competitive Food Sales vendor Food Safety Inspections.

(25) "USDA" means the United States Department of Agriculture.

(26) "Vended Meals" means meals prepared by a facility other than the Sponsor and sold for service at a Sponsor's meal site(s); or meals prepared by the Sponsor and sold to another foodservice operation.

Stat. Auth.: ORS 326

Stats. Implemented: 7 CFR210 & 7 CFR220.7

Hist.: EB 15-1987, f. & ef. 7-30-87; EB 2-1996, f. & cert. ef. 1-29-96; ODE 5-2002(Temp), f. & cert. ef. 2-1-02 thru 6-30-02; ODE 15-2002, f. & cert. ef. 6-10-02

581-051-0306

Food Safety Inspection Requirements

(1) Sponsors must have a Food Safety Inspection for every kitchen and meal-serving site in their foodservice operation each school year.

(2) Vended Meal Sponsors must have a Food Safety Inspection for the receiving and sending food preparation and serving meal sites each school year.

(3) Competitive Food Sales vendors may be subject to a Food Safety Inspection every school year as determined by the state or local public health authority.

(4) The Food Safety Inspection standards are set forth in the School Food Safety Inspection Requirements for Sponsors and Competitive Food Sale vendors that are adopted by reference.

(5) The Sponsor "Person in Charge" requirements for Responsibility, Knowledge and Duties as stated in the School Food Safety Inspection Requirements will be effective July 1, 2003.

(6) The Competitive Food Sales vendor "Person in Charge" requirements for Responsibility, Knowledge and Duties as stated in the School Food Safety Inspection Requirements will be effective July 1, 2003.

(7) New Sponsors must have a Food Safety Inspection conducted by the state or local public health authority and must meet school food safety inspection requirements before starting the NSLP and SBP.

Stat. Auth.: ORS 326

Stats. Implemented: 7 CFR210 & 7 CFR220.7

Hist.: ODE 5-2002(Temp), f. & cert. ef. 2-1-02 thru 6-30-02; ODE 15-2002, f. & cert. ef. 6-10-02

581-051-0310

Food Safety Inspection Procedures

(1) Sponsors are required to contact their state or local public health authority for Food Safety Inspections every school year.

(2) Competitive Food Sales vendors are required to contact their state or local public health authority to determine if they need a Food Safety Inspection every school year.

(3) Sponsors are responsible for the cost of the Food Safety Inspection and re-inspection(s), if applicable, for every kitchen and meal-serving site under their jurisdiction.

(4) Competitive Food Sales vendors are responsible for the cost of the Food Safety Inspection, if required by the state or local public health authority, and re-inspection(s), if applicable, for every Competitive Food Sales site under their jurisdiction.

(5) Sponsor Food Safety Inspections must be conducted during meal service operations.

(6) Competitive Food Sales vendor Food Safety Inspections must be conducted during business operations.

(7) The Sponsor Food Safety Inspection document of findings will be provided to the foodservice representative, site administrator, and Superintendent or Director, at the completion of each Food Safety Inspection by the state or local public health authority.

(8) The Competitive Food Sales vendor Food Safety Inspection document of findings will be provided to the vendor representative, Sponsor foodservice representative, Sponsor site administrator, and Sponsor Superintendent or Director, at the completion of each Competitive Food Sales Safety Inspection by the state or local public health authority.

(9) If the Sponsor Food Safety Inspection Critical Violation(s) are not corrected, or an alternative plan approved by the state or local public health authority is not implemented by the Sponsor, a Notice of Non-Compliance will be issued to the foodservice representative, site administrator, Superintendent or Director, and ODE CNP by the state or local public health authority. Effective July 1, 2003, Sponsor meal reimbursements may be withheld if the Sponsor receives the Notice of Non-Compliance. When the Notice of Non-Compliance is corrected, Sponsor reimbursement payments will be released.

(10) If Competitive Food Sales vendor Food Safety Inspection Critical Violation(s) are not corrected or an alternative plan approved by the state or local public health authority is not implemented by the Competitive Food Sales vendor, a Notice of Non-Compliance will be issued to the vendor representative, Sponsor foodservice representative, Sponsor site administrator, and Sponsor Superintendent or Director.

(11) The Food Safety Inspection Annual Report will be provided to ODE CNP by June 30 of each year.

Stat. Auth.: ORS 326

Stats. Implemented: 7 CFR210 & 7 CFR220.7

Hist.: EB 15-1987, f. & ef. 7-30-87; EB 2-1996, f. & cert. ef. 1-29-96; ODE 5-2002(Temp), f. & cert. ef. 2-1-02 thru 6-30-02; ODE 15-2002, f. & cert. ef. 6-10-02

581-051-0400

Breakfast Programs

This rule outlines the criteria for a waiver from the breakfast program:

(1) As used in this rule:

(a) "Site" means the school where the children participating in the United States Department of Agriculture (USDA) lunch program are enrolled;

(b) "Lunch" means USDA reimbursable lunch;

(c) "Breakfast" means USDA reimbursable breakfast.

(2) A school district may apply to the State Board of Education for a waiver from providing a breakfast program for all or for individual sites if it is financially unable to implement or maintain a breakfast program.

(3) A request to the State Board of Education for a waiver shall be made by the local school superintendent or designee and contain at least the following:

(a) A projected revenue and expense statement for one year for the breakfast program including descriptions of each line item;

(b) Copy of one month's menus;

(c) Copy of the staffing pattern for the breakfast program;

(d) Projected breakfast participation levels and the percentage of those qualifying for free, reduced-price and paid meals;

(e) Number of students currently approved for free and reduced price for the National School Lunch Program;

(f) Anticipated breakfast charges for paid and reduced-price meals;

(g) A statement explaining why the school district is financially unable to provide the breakfast program.

(h) Copy of class schedule for each site included in the waiver request.

(4) For each request received, the State Superintendent shall make a recommendation to the State Board of Education based on the data submitted by the requesting district.

(5) Waiver requests are evaluated by Oregon Department of Education Child Nutrition staff to assist the State Superintendent in making a recommendation. Evaluation may include an on-site visit.

(6) The State Board of Education, upon review of the Superintendent's recommendations and data submitted by requesting districts, may grant a waiver for a period not to exceed two years, after which the district may submit a request for an extension of the waiver for an additional year.

Stat. Auth.: OL 1991, Ch. 500

Stats. Implemented: ORS 327.535

Hist.: EB 13-1992, f. & cert. ef. 4-7-92; ODE 18-2004, f. & cert. ef. 8-10-04

581-051-0500

Purpose of Rules

These rules are adopted to assist Oregon School Districts in the development of contracts for food service management services.

Stat. Auth.: ORS 326.051, 7 CFR 210.21 & 7 CFR part 3015, 3016, 3019

Stats. Implemented:

Hist.: ODE 6-1999, f. & cert. ef. 1-12-99; ODE 19-2004, f. & cert. ef. 8-10-04

581-051-0510

Definitions

The following definitions apply to the Rules 581-051-0500 to 581-051-0590.

(1) "Competitive Negotiation" means a method of procurement whereby proposals are solicited from a number of sources, proposals are evaluated according to published criteria, and negotiations are conducted with one or more of the proposers.

(2) "Contract" means an agreement in writing, including the Sponsor's solicitation document and the accepted portions of the proposal, between a Sponsor and a Food Service Management Company, describing the work to be done and the obligations of the parties.

(3) "Department" means the Department of Education.

(4) "Sponsor" means any Oregon school district and any school, of high school grade or under, recognized as part of the educational system of this state and operating under private nonprofit or public ownership, in a single building or campus; and public or licensed private nonprofit residential child care facility; or any other entity meeting the definition of "school food authority" under **7 CFR Section 210 et seq., Section 220 et seq., Section 225 et seq., and Section 226 et seq.**

(5) "Food Service Management Company" means a commercial enterprise or nonprofit association that contracts or proposes to contract with a Sponsor to manage any aspect of school food service. FSMC may contract or propose to contract with Sponsors participating in the Child and Adult Care for meals only.

(6) "Food Service Management Services" means management of any aspect of food service.

(7) "Federal Policy" means any directive adopted and published by the United States Department of Agriculture which regulates or interprets regulations, or which recommends procedures or standards for implementation, of Child Nutrition Programs. Federal policy specifically includes, but is not limited to, the publications "Contracting with Food Service Management Companies: Guidance for School Food Authorities," June 1995, and "Contracting with Food Service Management Companies: Guidance for State Agencies," June 1995, and any amendments and revisions to said publications.

(8) "Meal Equivalency Ratio" means the number of dollars in non-reimbursable food sales per equivalent pattern meal. It is a component of payment structure in many FSMC contracts. Where contracts provide for payment of a fee based on the number of meals and allow service of foods other than reimbursable pattern meals (such as a la carte food sales, catered food sales, and other similar food sales), the contract shall provide that sales of food other than reimbursable pattern meals be converted into an equivalent number of reimbursable meals.

(a) The ratio is based on National School Lunch Program meals.

(b) The value of a reimbursable meal is the current free reimbursement rate plus the per meal commodity rate.

(9) "National School Lunch Program" means the program under which participating schools operate a nonprofit lunch program in accordance with Part 210, Title 7, Code of Federal Regulations. Cash assistance and donated food assistance are made available to schools pursuant to this program.

(10) "Proposal" means a competitive offer, binding on the offer or and submitted in response to a Request for Proposals, where proposal evaluation and contract award is based on criteria such as proposer qualifications and experience, service features and characteristics, quality and efficiency, and conformance with the specifications and requirements of the solicitation. Price must be an evaluation criterion for proposals, but will not necessarily be the predominant basis for contract award.

(11) "Requests for Proposals" means an instrument of competitive negotiation used to solicit proposals from a number of sources.

(12) "Responsible Offeror" means an individual, firm or corporation who has the experience and capacity in all respects to perform fully the contract requirements, the integrity and reliability which will

assure good faith performance, and who has not been disqualified by regulation.

(13) "School Year" means the period from July 1 of each calendar year to June 30 of the following calendar year.

(14) "Twenty-One Day Cycle Menu" means the menu with food item specifications developed in accordance with **7 CFR Section 210.10 or 210.10a**, as applicable.

(15) "Vendor" means a commercial enterprise or nonprofit association that contracts or proposes to contract with a Sponsor to provide only food without management. These organizations are not Food Service Management Companies (FSMC).

Stat. Auth.: ORS 326.051, 7 CFR 210.21 & 7 CFR part 3015, 3016, 3019

Stats. Implemented:

Hist.: ODE 6-1999, f. & cert. ef. 1-12-99; ODE 20-2004, f. & cert. ef. 8-10-04

581-051-0520

Scope of Rules

These rules apply to the solicitation, award, renewal, and execution of contracts between Sponsors and FSMCs within this State. Agreements that provide only for the provision of food, without management, are not subject to these rules.

Stat. Auth.: ORS 326.051, 7 CFR 210.21 16, 220.16, 225.17, 226.22 & 7 CFR part 3015

Stats. Implemented:

Hist.: ODE 6-1999, f. & cert. ef. 1-12-99; ODE 21-2004, f. & cert. ef. 8-10-04

581-051-0530

Responsibilities of the Oregon Department of Education

(1) The Oregon Department of Education shall receive and disburse federal funds made available by acts of Congress for the assistance of public and private nonprofit organizations, including Districts, as defined herein, in providing food services to children and adults according to the provisions of the National School Lunch Program, School Breakfast Program, Special Milk Program, Child and Adult Care Food Program and Summer Food Service Program.

(2) The Department shall not disburse funds to any Sponsor if it finds that such Sponsor is substantially in violation of any provision of these rules or of the Richard B. Russell National School Lunch Act, 42 U.S.C. Sec. 1751 as amended or Child Nutrition Act of 1966, 42 U.S.C. Sec. 1771 as amended. Upon determining that a Sponsor is substantially in violation, the Department shall promptly notify the Sponsors and its retained FSMC, if any, in writing of the determination to withhold funds. The sponsor shall recover funds withheld only after the defect is corrected. The Sponsor shall also have the right to appeal the determination in accordance with the Contested Case Procedures promulgated by the Oregon State Attorney General.

(3) The Department shall annually review all contract documents between Sponsors and FSMCs for conformity to these rules. The Department shall publish a Request for Proposal (RFP) and contract outlining the required general form and language of contract between Sponsors and FSMCs. The use of the department developed RFP and contract, which is attached here to and by this reference incorporated in these rules, by the Sponsor to secure services from an FSMC is mandatory.

(4) The Department shall conduct administrative and nutrition reviews of contracting Sponsors at least once every five years. Such reviews will include an assessment of the Sponsor's compliance with 7 CFR 210.16.

(5) Upon request, the Department may provide technical assistance to Sponsors related to the National School Lunch Program, School Breakfast Program, Child and Adult Care Food Program, or Summer Food Service Program. Such assistance may include, but is not limited to:

(a) Development of a 21-day cycle menu with food item specifications;

(b) Nutrition monitoring and advising;

(c) Audit of fiscal and other records;

(d) Training of Sponsor Staff;

(e) Coordination with FSMCs; and

(f) Arbitration of disputes over interpretation of a Contract.

(6) Whenever review and approval of an action or document by the Department is required by these rules, the Department shall review and either approve or disapprove promptly. In the event that the Department has neither approved nor disapproved such document or action within 30 days, the document or action shall be deemed to have been approved.

Stat. Auth.: ORS 326.051, 7 CFR 210. 220, 225, 226 & 7 CFR part 3015, 3016, 3019

Stats. Implemented:
Hist.: ODE 6-1999, f. & cert. ef. 1-12-99; ODE 22-2004, f. & cert. ef. 8-10-04

581-051-0550

Contracts Authorized

No Sponsor shall execute a contract or otherwise agree, formally or informally, to purchase food service management services except when all of the following conditions are fulfilled:

(1) The contract is in compliance with all applicable laws, rules and regulations, including but not limited to guidelines promulgated and published by the United States Department of Agriculture pursuant to the National School Lunch Program, School Breakfast Program, Child and Adult Care Food Program, or Summer Food Service Program;

(a) The agreement for Food Service Management Services is made in writing, contains all terms required by OAR 581-051-0580 herein;

(b) The FSMC has been selected after a procurement process that conforms to the requirements of OAR 581-015-0570 herein;

(2) The contract is approved by the Sponsor's board or governing body; and

(3) The contract has been reviewed and approved by the Department.

Stat. Auth.: ORS 326.051, 7 CFR 210.21 & 7 CFR part 3015, 3016, 3019
Stats. Implemented:
Hist.: ODE 6-1999, f. & cert. ef. 1-12-99; ODE 23-2004, f. & cert. ef. 8-10-04

581-051-0555

Contract Renewal

The sponsor shall renew its contract with FSMC only if all of the following conditions are satisfied:

(1) The original contract allows for annual renewal and the total contract term does not exceed five years, original contract year plus four renewals;

(2) The Sponsor consents to the renewal by action of the board;

(3) There is no change in financial terms, unless so designated in the original agreement. Contracts may not allow for an unlimited or discretionary change to the meal fee at renewal. Contracts may allow for an annual change to the meal fee not to exceed 20 percent.

Stat. Auth.: ORS 326.051, 7 CFR 210.21 & 7 CFR part 3015, 3016, 3019
Stats. Implemented:
Hist.: ODE 6-1999, f. & cert. ef. 1-12-99; ODE 24-2004, f. & cert. ef. 8-10-04

581-051-0560

Responsibilities of Sponsors

Every Sponsor shall:

(1) Hire or retain a FSMC only in accordance with these rules and with federal policy.

(2) Includes in its request for proposals the 21-day cycle menu with food specifications.

(3) Ensure that food provided by FSMCs is consistent with the 21-day cycle menu, meet food specifications and of good quality; changes to the 21-day cycle menu may be made after 21 days of implementation, upon mutual agreement of the sponsor and the FSMC;

(4) Monitor the operation and performance of the FSMC to ensure that the FSMC complies with the contract, with these rules and with federal policy. The Sponsor shall maintain records of same, and provide such records to the Department upon request;

(5) Coordinate, monitor, review and control food service operations, and perform the responsibilities that must be retained by Sponsors under federal policy, including but not limited to:

(a) National School Lunch Program, School Breakfast Program, Special Milk Program;

(b) Signature authority of state agency – sponsor agreement;

(c) Activities contained in the free and reduced price policy statement;

(d) Claiming;

(e) Use of nonprofit food service account revenues only for allowable costs;

(f) Ensure full utilization of federally donated foods for the benefit of the school food service program;

(g) Annual food safety inspections;

(h) Establishing an advisory board composed of parents, teachers and students to assist in menu writing three times a year;

(6) Child and Adult Food Program;

(a) Assign Sponsor staff with authority to manage program;

(b) Assure compliance with regulations;

(c) Approve Confidential Income Statements and develop OMAR;

(d) Monitor sites;

(e) Correct problems found during site monitoring or record reviews;

(f) Train staff with CACFP duties;

(g) Attend annual ODE training for CACFP Sponsors;

(h) Approve menus;

(i) Review and maintain all required CACFP records; actual menus served, documentation demonstrating CACFP menu compliance; invoices for meals purchased; confidential income statements;

(j) Validate and submit reimbursement claims;

(k) Communicate with FSMC;

(l) Complete annual ODE Agreement Renewal application Summer Food Service Program:

(A) Ordering meals for sites;

(B) Maintaining program records;

(C) Submitting claim for reimbursement;

(D) Training and monitoring sites;

(E) Determining eligibility for free and reduced price meals in order to establish site eligibility.

(7) Administer the contract so as to provide for good, efficient and effective use of public funds, and avoid delegating responsibility for contract administration to the FSMC;

(8) If the contract provides for reimbursement of costs to the FSMC, independently monitor costs incurred under the contract for compliance with 7 CFR Sec. 3015, 3016 or 3019, and other applicable federal policies; and

(9) Perform all functions required by federal regulation and by guidance of the United States Department of Agriculture.

Stat. Auth.: ORS 326.051, 7 CFR 210.21 & 7 CFR part 3015

Stats. Implemented:

Hist.: ODE 6-1999, f. & cert. ef. 1-12-99; ODE 25-2004, f. & cert. ef. 8-10-04

581-051-0565

Responsibilities of Food Service Management Companies

(1) A FSMC shall sign and perform its duties under a contract for food service management services in accordance with these rules and federal policy.

(2) The FSMC shall serve meals substantially as described in the sponsor's 21-day cycle menu, and which shall not be of lesser quality, appeal, or nutritional value than as described in the 21-day cycle menu.

(3) The FSMC shall maintain complete business and financial records of the food service operations and shall make them available upon request to the Department or its authorized designee.

(4) The FSMC shall refrain from performing any function under USDA regulations and procedures, which is the non-delegable responsibility of a School Food Authority.

(5) The FSMC shall seek reimbursement of food costs and administrative expenses only as follows:

(a) Food costs must be 100 percent of actual and reasonable costs paid to independent third parties who negotiate with the FSMC at arms' length. If food is manufactured or provided by the FSMC itself, the FSMC must independently demonstrate to the satisfaction of the Sponsor and of the Department that such costs are not above market. If the FSMC receives from third parties any rebate or discount against commodity or purchased food costs which have been charged to the Sponsor, such rebates and discounts must be refunded to the Sponsor; and

(b) Reimbursable administrative expenses must be actual and reasonable and must relate solely to administration of the food service management at the particular Sponsor served and not to Sponsors or customers of the FSMC in general.

(6) All food service management companies who contract with Oregon schools and other sponsors to provide food services will be required to meet the same employee screening standards as other school district employees. Such standards should include, but not be limited to fingerprint screening and criminal conviction screening applicable to school employees. Such standards should be consistent with ORS 326.603 and OAR 581-22-0716.

Stat. Auth.: ORS 326.051, 7 CFR 210.16, 226.21, 225.15(h) & 7 CFR part 3015, 3016, 3019

Stats. Implemented:

Hist.: ODE 6-1999, f. & cert. ef. 1-12-99; ODE 26-2004, f. & cert. ef. 8-10-04

581-051-0570**Procurement Procedures Required**

(1) Sponsors shall procure food service management services in accordance with the requirements of these rules, as well as with **7 CFR Part 3015, 3016, 3019** and other applicable contracting laws. Each sponsor shall also comply with such public contracting rules and regulations as it may have adopted, or if a sponsor has adopted no public contracting rules and regulations as it may have adopted, or if a sponsor has adopted no public contracting rules and regulations, the sponsor shall comply with the **Oregon Attorney General's Model Public Contract Rules**, OAR 137-030-0000 et seq.

(2) Sponsors shall conduct procurement for food service management services in a manner as to maximize free and open competition by issuance of Requests for Proposals.

(a) The Request for Proposal shall:

(i) Specify the scope of work required;

(ii) Specify the criteria which will be used to evaluate proposals, and the relative importance of each criterion; and

(iii) Specify the manner in which proposals will be evaluated.

(b) The RFP shall include a contract form which is identical to the document issued by the Department pursuant to OAR 581-051-0530(3);

(c) The Sponsor shall provide the Department with a copy of the RFP 60 days prior to publication for review.

(d) The Sponsor shall solicit proposals from qualified sources to permit reasonable competition, consistent with the nature and requirements of the procurement;

(e) The Sponsor shall evaluate the proposals in accordance with the published criteria and shall ensure that it has, or shall else retain, adequate technical expertise to reasonably evaluate the proposals. The Sponsor may avail itself of technical assistance from the Department as authorized in OAR 581-051-0530(5);

(f) The Sponsor will negotiate price and terms with top-ranked offerors.

(g) The Sponsor shall make award to the responsible offeror whose proposal is most advantageous to the District;

(h) The Sponsor shall submit the contract with the selected proposer to the Department for review within 10 days after Board or governing body of the District has approved the selected proposer.

(i) The sponsor shall submit the final contract to the Department within 10 days after signature;

(j) Alternative procurement methods may be approved by the Department.

(3) Sponsors shall not:

(a) Place any unreasonable requirement upon proposers that would tend to exclude qualified proposers;

(b) Foster or encourage any collusion between proposers or other noncompetitive practice;

(c) Allow any conflict of interest that is prohibited by Oregon law;

(d) Use a form of RFP or contract that has been provided by an FSMC in preparing the Request for Proposal;

(e) Negotiate with any proposer prior to evaluation of all proposals;

(f) Disclose the contents of any proposal to another proposer until all proposals are opened and made public;

(g) Provide relevant information to only some and not to all proposers.

(4) Exception for secondary contract. Any Sponsor may, without Requests for Proposals, enter into an agreement with any other Sponsor which has a valid contract for food service management, for the provision of meals, provided that:

(a) The subordinate Sponsor is otherwise qualified as a School Food Authority under 7 CFR;

(b) The subordinate Sponsor entered into a written agreement for delivery of meals;

(c) The proceeds of such meals and reimbursements are kept in segregated accounts under the management of the subordinate Districts; and

(d) The subordinate Sponsor fulfills the obligations of a Sponsor under OAR 581-051-0560 herein.

Stat. Auth.: ORS 326.051, 7 CFR 210.21, 220.16, 225.17, 226.22 & 7 CFR part 3015, 3016, 3019

Stats. Implemented:

Hist.: ODE 6-1999, f. & cert. ef. 1-12-99; ODE 27-2004, f. & cert. ef. 8-10-04

581-051-0580**Contract Terms Required**

(1) Financial terms and payment provisions must be objective and unambiguous, such that two different parties are able to independently calculate the cost or payment and obtain identical results. Administrative and management fees must be itemized in detail to accurately describe the actual costs incurred by the FSMC for which the Sponsor will make payment.

(2) All revenue and expenses must accrue to the non-profit school food service account, never the District or the FSMC.

(3) Where a contract provides for special functions outside the nonprofit school food service, the contract must delineate the cost allocation for those special functions in such a manner as to demonstrate that labor costs will not be double billed for program meals and special function meals.

(4) The contract shall provide a fiscal guarantee to the District.

(5) Where the contract permits a la carte food sales and the conversion of a la carte sales into equivalent pattern meals, the calculation to make that conversion is to be the current NSLP free reimbursement rate plus the commodity value rate.

(6) No change in charges payable to the FSMC from the Sponsor shall be permitted upon contract renewal unless the contract in place contains specific terms permitting such change.

(7) Annual increases in charges payable to the FSMC from the Sponsor upon contract renewal shall be limited to such reasonable predictions of anticipated increased costs as are defined in the original Contract.

(8) Contracts shall be based on a one-month accounting period, consistent with Department and Sponsor accounting practices.

(9) The following terms are prohibited and may not be included in any contract for the management of food service operations in Oregon schools:

(a) A "cost plus" fee structure in which the Sponsor pays to the FSMC cost plus a percentage of cost or income;

(b) Duplicate fee structures that permit a FSMC to bill management fees and charge the same costs as cost-reimbursable expenses;

(c) Purchasing clauses, where the Sponsor makes purchases that limit the selection of vendors to only those approved by the FSMC;

(d) Acceleration clauses that require full payment of multi-year equipment purchases if the contract is not renewed;

(e) Interest may not be charged for past due invoices, equipment purchases, or any other reason to the extent that federal program funds are used in payment;

(f) Contingent return provisions that make the financial guarantee of the contract contingent upon contract renewal or multi-year performance of the contract;

(g) Automatic renewal of the contract, or any other process for renewal inconsistent with OAR 581-051-0550 or any provision acting as penalty for non-renewal;

(h) Subcontracting of food service management operations;

(i) Loans from the FSMC to the District, whether in the form of direct lending, advances of payments, or deferral of invoices due; and

(j) Restrictions on the ability of the Sponsor to rehire non-management FSMC food service employees in the event that the contract is not renewed.

Stat. Auth.: ORS 326.051, 7 CFR 210.16, 220.16, 225.15(h), 226.21 & 7 CFR part 3015, 3016, 3019

Stats. Implemented:

Hist.: ODE 6-1999, f. & cert. ef. 1-12-99; ODE 28-2004, f. & cert. ef. 8-10-04

581-051-0590**Meal Quality**

The nutrition standards of **Section 210.10, 210.10a, 220.8a, 225.16, and 226.20 of Title 7, Code of Federal Regulations** shall apply to all programs under these rules.

Stat. Auth.: ORS 326.051, 7 CFR 210.21 & 7 CFR part 3015

Stats. Implemented: Federal Regulations

Hist.: ODE 6-1999, f. & cert. ef. 1-12-99

DIVISION 53

SCHOOL BUS DRIVER TRAINING,
LICENSING, AND SCHOOL BUS STANDARDS

581-053-0002

Administration of Pupil Transportation

(1) Definitions of terms used in OAR 581-053-0002 through 581-053-0550 shall be as follows:

- (a) A school bus shall be as defined in ORS 801.460;
- (b) A school activity vehicle shall be as defined in ORS 801.455;
- (c) For purposes of OAR 581-053-0006, a diabetic is a person who takes insulin.

(d) Pupil transporting vehicles shall include all school buses as well as other vehicles that are owned or under contract with the school districts, private or parochial schools and are used to transport pupils to or from school or an authorized school activity or function.

(2) School districts shall provide transportation in compliance with all applicable laws and administrative rules.

(3) School districts or other employers shall not require or knowingly permit any person to operate a school bus or other pupil transporting vehicle in violation of any applicable rules of the Oregon Department of Education or Oregon laws.

(4) School boards shall adopt and implement written policies that insure that transportation officials receive notification of students having special medical or behavioral protocols identified in student records and that drivers receive appropriate training related to specified protocols, including requirements of confidentiality.

(5) School districts shall adopt and implement written transportation policy, including provisions regarding student suspensions and expulsions from district-provided transportation.

(a) Written transportation suspension and expulsion policy shall include at least the following:

(A) Definitions for the terms "suspension" and "expulsion" from district-provided transportation services and identify the specific applicable time limits; and

(B) Identification of criteria used for student suspension and expulsion from district-provided pupil transportation services; and

(C) Special provisions for the application of the policy to students receiving services under the Individuals with Disabilities Education Act; ORS 339.250, and 343.363; or

(b) An adoption as local board policy all elements listed below:

(A) Students may be suspended from district-provided pupil transportation services when such suspensions are executed within the provisions contained in OAR 581-021-0065(1) through (3) and all applicable procedures are consistent with OAR 581-053-0002(9), 581-053-0010, and the Individuals with Disabilities Education Act;

(B) The school district board shall limit the term of a suspension for a specific incident to a specific number of days. The maximum shall not exceed 10 school days when transportation is provided;

(C) Upon the occurrence within one school year of a subsequent incident or any occurrence of a severe disciplinary problem constituting a demonstrable safety hazard for the pupil-transporting vehicle or persons inside/outside the vehicle, the student may be expelled from district-provided transportation services for a period not to exceed one school year. Parent notification and procedural rules for yearlong length expulsions must be included in local board-approved transportation policy and must comply with those set forth for student expulsion in OAR 581-021-0070. An expulsion may extend into a second term or semester if the current term or semester ends within such a short period of time that the expulsion would be too short to be effective;

(D) Suspensions and expulsions shall be ordered by the school board, the executive officer of the school district or his or her designated representative. The district school board shall have the right of final review if the school board itself does not take the action. The school board may affirm, amend, modify, or rescind any suspension or expulsion order.

(6) School buses and all other pupil transporting vehicles shall be maintained in safe operating condition and shall meet or exceed the minimum standards in effect at the time of purchase, plus any subsequent rules applicable to the vehicle.

(7) Any additions of vehicle equipment or alterations in the vehicle construction not provided for in the applicable minimum standards

for Oregon school buses or school activity vehicles are prohibited without prior approval from the Oregon Department of Education.

(8) All school buses and school activity vehicles that will be transporting students for the first time in a school system in Oregon must conform, or be made to conform within thirty days of notice of nonconformity, to the minimum standards for Oregon school buses or school activity vehicles currently in force as they apply to each vehicle. Written notification must be sent to the Superintendent of Public Instruction when relocating school or activity buses for a period exceeding 10 days. School and activity buses with a manufacture date prior to September 1, 1993 shall not be relocated. Type 21 activity vehicles may not be entered into the fleet for the first time with a manufacture date prior to April 1, 1977. Oregon Department of Education personnel may give a written order that a vehicle is unsafe and shall not be used to transport students when there is reason to believe that a deficiency is such that continued operation of the vehicle may jeopardize the safety of students or the public. The vehicle owner shall notify the Oregon Department of Education that the deficiency is corrected before transporting students.

(9) Vehicle maintenance records shall be kept for each vehicle used to transport students. These records shall be available to Department of Education personnel upon request. The following minimum information shall be kept for each vehicle by date and mileage at the time of service, adjustment or repair:

- (a) Chassis lubrications;
- (b) Engine oil and filter changes;
- (c) Major engine tune-ups and repairs;
- (d) All adjustment, service and repair of brake system;
- (e) All adjustment, service and repair of steering mechanism and other related parts;
- (f) Tires; and
- (g) Drive train components.

(10) A seat that fully supports the passenger shall be provided for every passenger on all pupil-transporting vehicles. Seating is not permitted on any portion of the vehicle not designed for that purpose. Passengers shall not be permitted to stand while vehicle is in motion.

(11) Safety instruction:

(a) All regularly transported pupils in schools which provide pupil transportation shall receive the following instruction at least once within the first six (6) weeks of the first half and once within the first six (6) weeks of the second half of each school year:

(A) Safe school bus riding procedures, including but not limited to loading, unloading, crossing, etc.;

(B) Use of emergency exits; and

(C) Planned and orderly evacuation of the school bus in case of emergency, including participation in actual evacuation drills.

(b) All pupils in schools where pupil transportation is provided who are not regularly transported shall receive the following instruction at least once in the first half of each school year:

(A) Safe school bus riding procedures; and

(B) Use of emergency exits.

(c) Records listing safety instruction course content and dates of training shall be maintained locally.

(12) All school buses manufactured prior to September 1, 1979 shall be equipped to meet all requirements of the applicable minimum standards for Oregon school buses in effect on that date.

(13) School systems shall provide for the required training, examination, and testing of their school bus and school activity vehicle drivers to comply with Oregon Department of Education rules. Appropriate specialized training designed for special needs transportation shall be provided prior to allowing drivers to transport students with disabilities. Records to document training and testing shall be maintained by school districts. Such records shall be made part of each driver's driver-training record file. Records shall be made available to Oregon Department of Education personnel or the driver upon request.

(14) School districts or contractors employing school bus drivers or Type 10 or Type 20 school activity vehicle drivers shall immediately notify the Department of Education if they have reason to believe any change in the driver(s)' criminal or driving record has occurred which could affect their ability to:

(a) Maintain a school bus driver permit or certificate under the provisions of OAR 581-053-0006(8); or

(b) Meet the requirements listed in OAR 581-053-0545 and 581-053-0550 for activity vehicle drivers.

(15) Schools or contractors selling a used school bus shall be responsible for removing all markings that would identify it as a school bus including the school bus safety lights. Exception: If the school bus is sold for the purpose of transporting school children to and from school, the school bus identification and school bus safety lights need not be removed. If sold for the purpose of transporting workers, the school bus safety lights need not be removed.

(16) Schools or contractors planning to rebuild a school bus shall first secure approval from the Pupil Transportation Section, Oregon Department of Education. (This does not apply to repair of damage.) All rebuilt school buses must meet current Oregon Minimum Standards for School Buses and applicable Federal Department of Transportation regulations.

(17) Special vehicles used for transportation of students with disabilities or for specific educational purposes that do not meet all current Oregon Minimum Standards for School Buses must be approved by the Pupil Transportation Section, Oregon Department of Education.

(18) Appeal for Variance.

(a) A school or contractor desiring to purchase a school bus or school activity vehicle which cannot meet all required minimum construction standards for school buses or school activity vehicles as applicable in Oregon must forward an "Appeal for Variance" request to the State Superintendent of Public Instruction, Salem, Oregon. This appeal must be made by the highest ranking official with the local operation and contain at least the following information:

(A) The need for such a vehicle;

(B) Why a standard school bus or school activity vehicle will not suffice;

(C) List of items, which will not meet applicable standards; and

(D) Passenger capacity of vehicle.

(b) This variance provision is designed for unique changes or alterations necessary to accommodate special equipment or conditions.

(19) In case of an accident involving serious injury or death, the Oregon Department of Education shall be notified immediately.

(20) A school district or contractor shall notify the Department of Education in writing within 30 days of notification of school bus driver who:

(A) No longer meet the physical requirements for school bus drivers in OAR 581-053-0006(7)

(B) Have received a conviction for a driving violation or criminal offenses specified in OAR 581-053-0006(8).

(C) Have had their driving privileges revoked, restricted or suspended.

(D) Fail to comply with testing or screening requirements established by the Federal Highway Administration for commercial drivers.

(21) School district shall report to the Department of Education statistics related to pupil transportation: Information required shall be related to mileage, numbers and types of school buses, and numbers of students.

Stat. Auth.: ORS 327.013 & 820.100 - 820.120

Stats. Implemented: ORS 327.013, 820.100, 820.105, 820.110 & 820.120

Hist.: 1EB 13-1978, f. 4-3-78, ef. 9-1-78; 1EB 5-1979, f. & ef. 3-30-79; EB 3-1987, f. & ef. 2-18-87; EB 43-1988, f. 12-16-88, cert. ef. 1-1-89; EB 5-1992, f. & cert. ef. 2-21-92; EB 21-1993, f. & cert. ef. 6-2-93; ODE 11-1999, f. & cert. ef. 2-12-99; ODE 30-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 7-2002, f. & cert. ef. 3-11-02; ODE 1-2003(Temp), f. & cert. ef. 3-4-03 thru 8-1-03; ODE 11-2003, f. & cert. ef. 6-13-03; ODE 11-2004, f. & cert. ef. 8-4-04

581-053-0006

School Bus Driver Training and Certification

No person shall transport pupils in a school bus or a vehicle with a capacity of more than 20 passengers not subject to regulations of the Oregon Public Utilities Commission or Federal Department of Transportation, unless such person has completed all requirements for a school bus driver's permit or certificate and meets the standards established by the Department for issuance of permits or certificates. No person shall transport pupils in a school bus of any size and type without first receiving documented instruction in its safe operation. Emergency drivers who meet all requirements listed in OAR 581-053-0006(4) may only operate a school bus within the prescribed limitations.

(1) School Bus Driver Permits. The Oregon Department of Education shall issue a school bus driver permit to applicants who meet the permit criteria but do not qualify for a school bus driver's certificate. A person cannot reapply for a permit for at least 12 months from

date of permit expiration. An applicant must meet the following criteria to qualify for a school bus driver permit. The applicant shall:

(a) Possess a valid Commercial Driver License (CDL) with proper endorsements for the vehicle being driven.

(b) Pass an approved physical examination within six months prior to application;

(c) Pass a behind-the-wheel test as prescribed by the Oregon Department of Education within one year of application. This permit shall not be valid for operating a vehicle of a higher-class size than that authorized by the driver's CDL;

(d) Pass a check of driving and criminal records by the Oregon Department of Education;

(e) File with the Department an application provided by the Department, signed by the local employer's designated official assuring immediate notification to the Department of any knowledge of the applicant's driving and criminal record status that could affect the qualifications for a school bus driver's permit as listed in OAR 581-053-0006(8);

(f) Complete a minimum of fifteen hours of approved behind-the-wheel training by a trainer certified by the Oregon Department of Education within one year of application. Hours of behind-the-wheel training shall be those hours spent by the trainee with a certified trainer or an assistant approved by the Oregon Department of Education in actual operation of the vehicle or vehicles the applicant will be expected to drive;

(g) Read and speak the English language sufficiently to converse with the general public, to understand highway signs and signals in the English language, to respond to official inquiries and make entries on reports and records;

(h) Exemption: If an applicant has regularly driven a bus of a size and type similar to that which the driver will be expected to drive, for a period of at least six months within the past three years, the applicant shall be required to complete four hours of approved behind-the-wheel training. The employer must have written acknowledgment from the applicant's previous employer verifying bus-driving experience if this exception is to be exercised.

(2) School Bus Driver's Certificate. The Oregon Department of Education shall issue an original school bus driver's certificate to qualified individuals who meet the following requirements:

(a) Has filed with the Oregon Department of Education an application or school bus permit conversion card provided by the Department, signed by an official designated by the local employer certifying that the driver:

(A) Has completed the Core Course for school bus drivers within the last four years taught by a certified Core instructor approved by the Oregon Department of Education;

(B) Possesses a valid first aid card that verifies that the applicant has completed at least the American Red Cross First Aid program requirements or an equivalent course that is consistent with US Department of Labor Occupational Safety and Health Administration Guidelines for First Aid Programs, Directive Number CPL 2-2.53 effective January 7, 1991. A valid first aid card shall be maintained at all times;

(C) Has demonstrated the knowledge and ability to perform the duties of a school bus driver;

(D) To the best of the local employer's knowledge, has not been convicted of any driving or criminal offense listed in OAR 581-053-0006(8) which could prevent certification; and

(E) Has a training record on file with the local employer meeting the requirements of the certificate being requested.

(b) Possesses a valid permit; or:

(A) Possesses a valid Commercial Drivers License with the proper endorsements for the vehicle being driven. The Oregon Department of Education may approve an out of state operator's license if it is consistent in provisions with the required Oregon license;

(B) Has passed an approved physical examination within six months prior to application;

(C) Has passed a behind-the-wheel test as prescribed by the Oregon Department of Education within one year of application. The certificate shall not be valid for operating a vehicle of a higher-class size than that authorized by the driver's Commercial Drivers License;

(D) Has passed a check of driving and criminal records by the Oregon Department of Education;

(E) Has completed a minimum of fifteen hours of approved behind-the-wheel training within one year of application by a trainer

certified by the Oregon Department of Education. Hours of behind-the-wheel training shall be those hours spent by the trainee with a certified trainer or an assistant approved by the Oregon Department of Education in actual operation of the vehicle or vehicles the applicant will be expected to drive.

(F) Reads and speaks the English language sufficiently to converse with the general public; understands highway signs and signals in the English language; is able to respond to official inquiries and make entries on reports and records.

(c) Exemption: If an applicant has regularly driven a bus of a size and type similar to that which the driver will be expected to drive, for a period of at least six months within the past three years, the applicant shall be required to complete four hours of approved behind-the-wheel training. The employer must have written acknowledgment from the applicant's previous employer verifying bus-driving experience if this exception is to be exercised.

(3) Certificate Renewal. The Oregon Department of Education shall renew a school bus driver's certificate for the driver who:

(a) Possesses, or has possessed within the last 12-month period, a valid Oregon School Bus Driver's Certificate;

(b) Possesses a valid CDL with proper endorsements for the vehicle being driven. The Oregon Department of Education may approve an out of state operator's license if it is consistent in provisions with the required Oregon license;

(c) Has passed an approved physical examination within six months prior to application;

(d) Has passed a check of current driving and criminal records by the Oregon Department of Education;

(e) Has filed with the Oregon Department of Education an application provided by the Department, signed by an official designated by the local employer certifying that the driver:

(A) Has completed the Core or Core Refresher Course for school bus drivers within the last four years taught by a certified Core or Core Refresher instructor approved by the Oregon Department of Education;

(B) Possesses a valid first aid card that verifies that the applicant has completed at least the American Red Cross First Aid program requirements or an equivalent course that is consistent with US Department of Labor Occupational Safety and Health Administration Guidelines for First Aid Programs, Directive Number CPL 2-2.53 effective January 7, 1991. A valid first aid card shall be maintained at all times;

(C) Has completed Oregon Department of Education approved classroom training averaging at least eight hours annually while certified as a school bus driver during the preceding four-year period.

(f) Has been certified as able to satisfactorily perform the duties of a school bus driver by the official designated by the local employer on forms provided by the Oregon Department of Education;

(g) To the best of the local employer's knowledge, has not been convicted of any driving or criminal offense listed in OAR 581-053-0006(8) which could prevent certification;

(h) Has training record on file with local employer that meets the requirements of the certificate being requested;

(i) Makes application for a certificate within four months before expiration or within one year after expiration or suspension of a current certificate. Any driver whose school bus driver's certificate has been expired for 12 months or more will be considered an original applicant:

(j) The certificate shall not be valid for operating a vehicle of a higher-class size than that authorized by the driver's CDL.

(A) Any driver need pass a behind-the-wheel test only once as long as the driver maintains a valid school bus driver's certificate;

(B) Additional tests may be required by the Oregon Department of Education if reasonable doubt of driver competency exists.

(4) Temporary Driver. A person who does not currently possess a valid school bus driver's certificate may be used temporarily if such driver:

(a) Is judged competent by the local school authorities;

(b) Possesses a valid CDL with proper endorsements for the vehicle being driven. The Oregon Department of Education may approve an out of state operator's license if it is consistent in provisions with the required Oregon license;

(c) Possesses a valid medical card.

(d) Is on a list of approved temporary drivers maintained by the Oregon Department of Education. A temporary driver must pass the same check of driving and criminal records as required for a certified

school bus driver. The temporary driver shall meet all qualifications prescribed on the temporary driver application. This form must be signed by the an authorized official of the school district and submitted to the Oregon Department of Education for approval. Approval as a temporary driver shall expire on July 1 annually; and

(e) Temporary drivers shall not drive more than ten driving days in any school year. No temporary driver may be used for more than ten days in any school year without written permission from the Oregon Department of Education.

(5) Expiration:

(a) Permits expire 120 days after issuance and may not be renewed. The holder of a valid permit may apply for a school bus driver's certificate at any time all requirements have been met for such certificate.

(b) For applicants 18 through 54 years of age, a certificate issued on July 1 shall expire on July 1 two years later. For applicants 55 years of age or older and persons with a diabetic condition as defined in OAR 581-053-0002(1)(c), a certificate issued on July 1 shall expire on July 1 one year later unless a reduced time period is identified by the examining physician. Any certificate issued from March 1 through June 30 shall have the same expiration date as a certificate issued on the following July 1. Any certificate issued from July 2 through the last day of February shall have the same expiration date as a certificate issued on the previous July 1.

(6) Age Restrictions: To obtain an original school bus driver's certificate or permit or to renew a school bus driver's certificate following a person's 70th birthday, an applicant shall comply with all certification requirements and must successfully complete a Department of Education behind-the-wheel test within 30 days prior to the date of application. The test must be administered by a behind-the-wheel tester/trainer currently certified by the Department of Education. A copy of the test shall be attached to the application form.

(7) Physical Examinations:

(a) An applicant for a permit, certificate, or renewal must have passed an approved physical examination administered within six months prior to date of application by a physician or physician assistant licensed under ORS Chapter 677, a nurse practitioner certified under ORS 678.375, or a Chiropractic physician licensed under ORS Chapter 684. Physicians completing the required Oregon Department of Education forms for persons having a diabetic condition as defined in this rule, must be a Board Certified Endocrinologist, Board Certified Diabetologist, Board Certified Family Practitioner or Board Certified Internist;

(b) In addition, a cardiac stress test shall be required with certificate application given any evidence of myocardial infarction within the past three months or unstable angina pectoris. The examining physician may also require a resting ECG or other testing as determined appropriate related to coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse or congestive heart failure;

(c) Physical examination and certificate application forms adopted by the Oregon Department of Education shall be utilized by applicants for school bus driver's certificates. The Bureau of Motor Carrier Safety physical examination form effective January 1, 1986, may be used in lieu of the physical examination forms adopted by the Oregon Department of Education. However, the examining health care professional's signature and appropriate checks must appear on School Bus Driver Application;

(d) An applicant will be refused a school bus driver's permit or certificate unless such person possesses the minimum qualifications described below:

(A) Mental and physical condition:

(i) No impairment of use of foot, leg, finger, hand or arm, or other structural defect or limitation, likely to interfere with safe driving or other responsibilities of a school bus driver. Drivers may be required to demonstrate ability to: open and close a manually operated bus entrance door control with a force of at least 30 pounds; climb and descend steps with a maximum step height of 17 1/2 inches; operate two hand controls simultaneously and quickly; have a reaction time of 3/4 of a second or less from the throttle to the brake control; carry or drag a 125 pound person 30 feet in 30 seconds or less; depress a brake pedal with the foot to a pressure of at least 90 pounds; depress a clutch pedal with the foot to a pressure of at least 40 pounds unless operating an automatic transmission; exit from an emergency door

opening of 24 x 48 inches at least 42 inches from the ground in ten seconds or less. Drivers must be physically able to open all emergency exits installed in any school bus they drive;

(ii) No mental, nervous, organic, or functional disease or disability likely to interfere with safe driving or other responsibilities of a school bus driver.

(B) Visual acuity of at least 20/40 (Snellen) in each eye either with or without corrective lenses and a binocular acuity of at least 20/40 (Snellen) in both eyes either with or without corrective lenses. Form field of vision shall not be less than a total of 140 degrees and the ability to distinguish colors red, green, and yellow. Drivers requiring corrective lenses shall wear properly prescribed lenses at all times while driving;

(C) Hearing. First perceives a forced whispered voice in the better ear not less than five feet with or without the use of a hearing aid, or if tested by the use of an audiometric device, applicant shall not have average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard Z24.5-1951. Drivers requiring a hearing aid shall wear such properly operating aid at all times while driving;

(D) The driver shall not use to excess, or be addicted to alcoholic beverages, narcotics, or drugs. Compliance with any alcohol or drug screening requirements established by the Federal Highway Administration for commercial driver's license shall be maintained at all times;

(E) Drivers who have had a loss of consciousness or loss of control (cognitive function) due to a diabetic event may not apply for a school bus certificate or permit for one (1) year, provided there has not been a recurrent hypoglycemic reaction requiring assistance of another person within the previous five (5) years. A period of one year of demonstrated stability is required following the first episode of hypoglycemia.

(F) Drivers with a diabetic condition as defined in OAR 581-053-0002(1)(c) shall comply with all the following requirements:

(i) Self-monitor blood glucose and demonstrate conformance with requirements, more than 100mg/dl and less than 300 mg/dl, within one hour before driving pupil transporting vehicles and approximately every four hours while on duty using an FDA approved device;

(ii) Report immediately to their employer, any failure to comply with specific glucose level requirements as listed in (F)(i) and (v) of this rule, or loss of consciousness or control;

(iii) Maintain a daily log of all glucose test results for the previous six month period and provide copies to his/her employer, the examining physician and the Oregon Department of Education upon request;

(iv) Carry a source of readily absorbable/fast-acting glucose while on duty;

(v) Undergo and submit physician-signed results of the HbA1c test indicating values more than 5.9 and less than 9.6 to their employer for transmission to the Oregon Department of Education every six months;

(vi) Undergo and submit the results of annual examination to detect any peripheral neuropathy, unstable diabetic retinopathy or clinically significant eye disease that prevents the individual from meeting current vision standards included in this rule, or circulatory insufficiency;

(vii) Provide a signed statement by the examining physician indicating that within the past three years the driver has completed instruction to address diabetes management and driving safety; signs and symptoms of hypoglycemia and hyperglycemia, and what procedures must be followed if complications arise;

(viii) Submit all required Oregon Department of Education forms signed by the appropriate medical professionals within the prescribed timelines.

(G) The driver is no longer qualified to operate a pupil-transporting vehicle and must be removed immediately from driving duties for the following:

(i) Results of an HbA1c test indicating values less than 6.0 or greater than 9.5 unless accompanied by the required medical opinion that the event was incidental and not an indication of failure to control glucose levels;

(ii) Results of self-monitoring indicate glucose levels less than 100 mg/dl or greater than 300 mg/dl, until self-monitoring indicates compliance with specifications;

(iii) Experiencing a loss of consciousness or control relating to diabetic condition;

(iv) Failing to maintain or falsifying the required records.

(H) If the driver has severe hypertension (grade 3 retinopathy), the driver is not qualified to operate a school bus;

(I) The driver is not qualified to operate a school bus if he/she has an established medical history or clinical diagnosis of epilepsy or any other condition likely to cause loss of consciousness or any loss of ability to control a motor vehicle. This section is included to comply with Title 49 CFR 391.41(b)(8).

(e) In cases of serious illness, injury, or change in physical or mental condition which may impair ability to fulfill the duties and responsibilities of a school bus driver as required in OAR 581-053-0015 and those described in this rule, re-examination and medical approval are required prior to resumption of driving.

(8) Driving and Criminal Records:

(a) The Oregon Department of Education shall review the driving record of each applicant before a permit or certificate is issued or renewed. Applicants who have held a driver's license in a state other than Oregon anytime during the preceding three-year period shall furnish, upon request, a copy of the driving record from such state or states to the Oregon Department of Education at time of application;

(b) The Oregon Department of Education shall review the criminal record of a driver upon original application for a permit, certificate or renewal;

(c) An applicant shall be refused a school bus driver's certificate or a current certificate shall be suspended or revoked if the applicant or driver:

(A) Has ever been convicted of crime listed in ORS 342.143;

(B) Has ever been convicted of a crime involving violence, threat of violence, or theft. This shall not apply if applicant or driver has been free from custody, probation and parole for the preceding three-year period from date of application;

(C) Has ever been convicted of a crime involving activity in drugs or alcoholic beverages. This shall not apply if the applicant or driver has been free from custody, probation, and parole for the preceding three-year period from date of application;

(D) Has had a driver's license suspended by the Division of Motor Vehicles of any state, within the preceding three year period, for a cause involving the unsafe operation of a motor vehicle or because of driving record;

(E) Has been convicted within the preceding three-year period of:

(i) Hit-and-run driving;

(ii) Driving under the influence of intoxicants as defined in ORS 813.010;

(iii) Reckless driving as defined in ORS 811.140;

(iv) Fleeing or attempting to elude a police officer while driving a motor vehicle;

(v) Failure to perform the legal duties of a driver involved in an accident or collision which results in injury or death of any person.

(F) Has had driving privileges revoked or suspended as a habitual offender under ORS 809.600. This shall not apply if applicant or driver has had driving privileges restored under ORS 809.660 for the preceding three years;

(G) Has a driving record for the preceding three-year period that has an accumulation of 31 or more points based upon the following point system:

(i) Each chargeable accident and each conviction for a moving violation of traffic laws shall have a value of 10 points. A chargeable accident is one in which the driver is answerable as the primary cause of, or chargeable with the result of an accident;

(ii) One point shall be subtracted from the total number of points for each full month, since the last chargeable accident or conviction, to the time of driving record check; however, all subtracted points will be reinstated if any additional moving violation convictions or chargeable accidents occur within the three-year calculation period;

(9) Refusals and Suspensions:

(a) The Oregon Department of Education may refuse, suspend or revoke the certificate of a school bus driver for noncompliance with certification or physical requirements, giving false or incomplete information on application forms, or failure to comply with laws, rules and

regulations applicable to school bus drivers. Applications with obvious incomplete or inaccurate information will be returned to the employer with no action taken regarding denial or approval;

(b) The Oregon Department of Education shall suspend the driver's school bus driver certificate or permit immediately upon the receipt of appropriate documentation indicating that driver's failure to comply with any regulations identified in OAR 581-053-0006(7)(d)(E) and (F) related to persons with diabetes;

(c) The Oregon Department of Education may reinstate a school bus driver certificate or permit if a driver provides or demonstrates the following:

(A) Submit application for reinstatement with form 581-2278-e;

(B) Provide copies of blood sugar records for three months immediately prior to reinstatement application indicating stable blood sugars as certified by qualifying physician including a copy of a conforming HbA1c results for this period;

(C) Drivers who have had certificates suspended/revoked for falsification of records may not apply for reinstatement for 3 years;

(D) Drivers who have had a loss of consciousness or loss of control due to a diabetic related episode may apply for reinstatement under the guidelines included in OAR 581-053-0006(7)(d)(E).

(d) Upon suspension or revocation, the certificate holder shall surrender the suspended or revoked certificate to the Oregon Department of Education;

(e) Hearings on appeal for refusal, suspension or revocation of school bus driver's certificates shall be pursuant to ORS Chapter 183;

(f) A certificate may be suspended for any period up to 90 days. If conditions of the suspension have not been met within the suspension period, the certificate shall be revoked.

(10) Change of Name, Address or Employer. Upon change of name, address or employer, a driver must notify the Oregon Department of Education within 30 days. A duplicate certificate will be issued if necessary.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 327.013 & 820.100 - 820.120

Stats. Implemented: ORS 327.013, 820.100, 820.105 & 820.110 - 820.120

Hist.: 1EB 19-1978, f. 6-19-78, ef. 7-1-78; 1EB 32-1978, f. & ef. 9-5-78; 1EB 4-1979, f. 3-30-79, ef. 7-1-79; 1EB 8-1981, f. & ef. 4-1-81; 1EB 13-1981(Temp), f. & ef. 7-29-81; 1EB 7-1982, f. & ef. 2-18-82; EB 3-1987, f. & ef. 2-18-87; EB 43-1988, f. 12-16-88, cert. ef. 1-1-89; EB 25-1993, f. & cert. ef. 7-30-93; ODE 11-1999, f. & cert. ef. 2-12-99; ODE 30-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 14-2001(Temp) f. & cert. ef. 6-15-01 thru 12-1-01; ODE 8-2002, f. & cert. ef. 3-11-02; ODE 12-2004, f. & cert. ef. 8-4-04

581-053-0008

Pupil Transporting Vehicle Inspection

(1) Transporting districts shall have all vehicles used in transporting pupils inspected annually, and certify to the Oregon Department of Education that all deficiencies have been corrected before September 1 each year.

(2) The Oregon Department of Education shall furnish forms for the inspection and for the certification reports.

(3) Oregon Department of Education personnel may make pupil transporting vehicle inspections at any time or upon request of local school districts. The Department may investigate accidents and examine pupil transporting vehicles involved in accidents as the Department considers necessary.

(4) Upon inspection of pupil transporting vehicles by Oregon Department of Education personnel, school districts shall be notified in writing of deficiencies. Such deficiencies shall be corrected within 30 days. If the district is unable to cause the deficiency to be corrected within 30 days, the district may submit a written request for an extension of time to the Oregon Department of Education. Such request may be granted, provided the deficiency does not affect the safety of students or public, and is not contrary to Oregon Motor Vehicle Laws.

(5) Oregon Department of Education personnel may give a written order that a vehicle is unsafe and shall not be used to transport students when there is reason to believe that a deficiency is such that continued operation of the vehicle may jeopardize the safety of students or public.

(6) The district shall notify the Oregon Department of Education in writing that the deficiency is corrected before transporting students in a vehicle that has been declared unsafe in section (5) of this rule.

(7) The school bus driver shall inspect the following daily, unless the inspection is performed by other designated employees:

(a) Windshield and wipers;

(b) All outside lights;

(c) Service door;

(d) Tires and wheel lug nuts;

(e) Battery, belts, oil and coolant level;

(f) Horns;

(g) Brakes;

(h) Steering;

(i) Exhaust system;

(j) See that lights, windshield, mirrors, and warning sign is clean;

(k) Emergency equipment;

(l) Emergency exits and audible warning devices.

(8) The school activity vehicle driver shall inspect the vehicle as required by OAR 581-053-0545, 581-053-0550, or 581-053-0555, whichever is applicable.

(9) The driver shall report as soon as possible to the proper official any deficiency or malfunction of any equipment or component of the vehicle.

(10) The driver shall not transport students unless the vehicle is safe to operate.

Stat. Auth.: ORS 327.013 & 820.100 - 820.120

Stats. Implemented: ORS 327.013, 820.100, 820.105, 820.110 & 820.120

Hist.: 1EB 218, f. 2-17-76, ef. 3-15-76; EB 3-1987, f. & ef. 2-18-87; EB 43-1988, f. 12-16-88, cert. ef. 1-1-89; EB 21-1993, f. & cert. ef. 6-2-93

581-053-0010

Rules Governing Pupils Riding School Buses

(1) Pupils being transported are under authority of the bus driver.

(2) Fighting, wrestling, or boisterous activity is prohibited on the bus.

(3) Pupils shall use the emergency door only in case of emergency.

(4) Pupils shall be on time for the bus both morning and evening.

(5) Pupils shall not bring firearms, weapons, or other potentially hazardous material on the bus.

(6) Pupils shall not bring animals, except approved assistance guide animals on the bus.

(7) Pupils shall remain seated while bus is in motion.

(8) Pupils may be assigned seats by the bus driver.

(9) When necessary to cross the road, pupils shall cross in front of the bus or as instructed by the bus driver.

(10) Pupils shall not extend their hands, arms, or heads through bus windows.

(11) Pupils shall have written permission to leave the bus other than at home or school.

(12) Pupils shall converse in normal tones; loud or vulgar language is prohibited.

(13) Pupils shall not open or close windows without permission of driver.

(14) Pupils shall keep the bus clean, and must refrain from damaging it.

(15) Pupils shall be courteous to the driver, to fellow pupils, and passerby.

(16) Pupils who refuse to obey promptly the directions of the driver or refuse to obey regulations may forfeit their privilege to ride on the buses.

(17) Rules Governing Pupils Riding School Buses must be kept posted in a conspicuous place in all school buses.

Stat. Auth.: ORS 820

Stats. Implemented: ORS 327.013, 820.100, 820.105, 820.110 & 820.120

Hist.: 1EB 118, f. 11-28-67, ef. 12-25-67; 1EB 134, f. 6-26-72, ef. 7-15-72; 1EB 217, f. 2-17-76, ef. 3-15-76; EB 25-1993, f. & cert. ef. 7-30-93

581-053-0015

Rules Pertaining to School Bus Drivers

(1) School bus drivers shall observe all local and state traffic laws and ordinances.

(2) Drivers shall enforce local school board and Oregon Department of Education rules governing pupils riding school buses.

(3) Drivers shall observe local school board and Oregon Department of Education rules pertaining to school bus drivers.

(4) After stopping at a railway crossing as required by law, the driver shall turn off any noise-producing device with the exception of two-way radio communication. The driver shall then open the bus entrance door and driver window, look and listen for an approaching train, then close the door before proceeding across the tracks.

(5) The driver shall assist in conducting student instruction and evacuation drills as directed by the school administration.

(6) Drivers shall report to their employer(s) within 15 days:

(a) Any conviction for driving or criminal offenses specified in OAR 581-053-0006(8) or any involvement in an accident as defined in OAR 581-053-0006(8)(c)(G)(i).

(b) Any involvement in an accident as defined in OAR 581-053-0006(8)(c)(G)(i).

(c) If their CDL is no longer valid.

(7) A school bus driver shall:

(a) Never drive backwards on the school grounds prior to looking behind the bus, sounding the horn, and placing a responsible person to guard the rear;

(b) Not leave the bus when pupils are in it until the motor is shut off, the brakes set, a manual transmission put in gear and the key removed from the ignition;

(c) Not disengage the clutch or gears to allow the bus to coast;

(d) Stop to load or unload pupils only at designated places;

(e) See that all doors on the bus are kept closed while the bus is in motion;

(f) Bring the bus to a complete stop before taking on or letting off pupils. Whenever possible the driver shall stop at a place where the road may be clearly seen for several hundred feet in either direction;

(g) Not permit anyone to hang on or hitch onto the outside of the bus;

(h) Not use a public-owned bus for any purpose other than transporting pupils to and from schools, except on special order of school officials;

(i) Not permit anyone else to operate the bus or controls, except with the permission of school officials or the bus contractor;

(j) Not permit animals on the bus except guide dogs and assistance animals from recognized programs that will be accepted when accompanying blind, deaf, or physically impaired persons. Guide/assistance animals or animals in training as defined in ORS 346.680 are also accepted when they comply with all the following:

(A) Are enrolled and identified in an assistance animal training program registered with and regulated by an appropriate county extension service or designated state agency;

(B) Have a comprehensive immunization record on file with the district;

(C) Are always clearly and distinctively identified as an assistance animal in training, e.g., "green guide-dog jacket";

(D) Are accompanied by the trainer identified in district records;

(E) Continue to demonstrate their ability to ride safely with students, posing no hazards or distractions; and

(F) Comply with any additional requirements and safeguards specified by the local district.

(k) Not permit firearms or other weapons to be carried in the bus;

(l) Not operate the bus with a trailer attached;

(m) Not fill the fuel tank while pupils are in the bus or while the motor is running;

(n) Not transport any person who is not a pupil, a teacher, or an official of the school while traveling the regular route, unless authorized to do so by a responsible school official. School officials may authorize other persons to ride in the school buses on special occasions having to do with school affairs;

(o) Make certain that all aisles and passageways are kept clear;

(p) Not permit signs of any kind to be attached to the bus, except those specifically permitted by law or regulation;

(q) Report to school officials immediately when buses are overloaded as described in OAR 581-053-0002 and ORS 820.180(1)(b);

(r) Stop the bus if any difficulty arises or if disorder prevails in the bus and not proceed until the situation is remedied. Misconduct of pupils shall be reported to the proper school official;

(s) Not use tobacco on the school bus and shall not permit passengers to use tobacco on the bus;

(t) Not be under the influence of any alcoholic beverage or any drug likely to affect the person's ability to operate the vehicle safely while on duty; shall not consume an alcoholic beverage, regardless of its alcoholic content or any drug likely to affect the person's ability to operate the vehicle safely while on duty or within eight hours before going on duty to operate a pupil transporting vehicle;

(u) Not allow pupils to leave the bus except at their designated stop without the authorization of school officials;

(v) Allow time for pupils to be seated before putting the bus in motion;

(w) Complete any training required by the Oregon Department of Education or local employer;

(x) Make written reports of accidents involving the pupil-transporting vehicle to the Oregon Department of Education. Reports shall be mailed within 72 hours of the accident. Drivers shall use forms provided by, or approved by, the Oregon Department of Education. An accident is defined as an occurrence that results in any of the following:

(A) An injury requiring medical or dental treatment;

(B) Any damage to property other than the pupil-transporting vehicle;

(C) Damage to the pupil-transporting vehicle in excess of seven hundred and fifty dollars.

(y) Make other reports as required by the local district, the Oregon Department of Education and the Motor Vehicles Division:

(aa) Use all securement straps and attachments for students with adaptive/assistive devices in a manner consistent with their design;

(bb) Not transport pupils seated on three-wheeled mobile seating devices.

(z) Not use a cellular telephone while operating a school bus except under the following conditions — For the purpose of communication with any of the following regarding an emergency situation:

(A) An emergency system response operator or 911 public safety communications dispatcher;

(B) A hospital or emergency room;

(C) A physician's office or health clinic;

(D) An ambulance or fire department rescue service;

(E) A fire department;

(F) A police department;

(G) To call for assistance if there is a mechanical breakdown or mechanical problem impairing the operation of the bus; or

(H) When the school bus is parked.

(8) Use of Bus Safety Lights:

(a) When pupils must cross the highway to board, or after leaving the bus, the driver shall actuate the amber flashing warning lights 100 to 300 feet before the stop. The driver shall stop the bus in the right hand traffic lane. The red lights shall remain flashing until all pupils have safely crossed the roadway;

(b) When pupils need not cross the roadway to board, or after leaving the bus, the driver shall:

(A) When practicable, stop completely off the main traveled portion of the roadway. The driver shall not actuate the bus safety lights;

(B) Where it is not practicable to stop completely off the main traveled portion of the roadway the driver shall actuate the amber flashing warning lights 100 to 300 feet before the stop. The driver shall stop the bus in the right-hand traffic lane. The red lights shall remain flashing until pupils have safely boarded or left the bus.

(9) Driving Hour Limitations:

(a) A driver of a school bus must comply with one of the following two options:

(A) No person shall drive a school bus or other pupil-transporting vehicle more than ten total hours during any consecutive fifteen-hour period. At the end of ten hours of driving or a fifteen hour period, whichever occurs first, the driver shall not again drive a school bus or pupil transporting vehicle until at least eight hours have elapsed;

(B) The driver of a school bus or pupil transporting vehicle, after driving a regular morning route transporting pupils from home to school, may again operate a bus or pupil transporting vehicle, but not more than eight hours in a consecutive ten hour period or until 12 midnight, whichever occurs first, provided the driver has at least four hours free from actual operation of a bus following the end of the morning route. To qualify under this provision the driver shall have been free from bus driving duties for at least eight consecutive hours prior to the regular morning route.

(b) A driver shall not drive more than three hours continuously without taking at least a 15-minute break from driving duties;

(c) Emergency extension of driving hours. In the event of an unforeseen emergency, e.g., mechanical breakdown, accident or adverse road conditions, a driver may complete the trip without being in violation of the provisions of this rule if such trip could have reasonably been completed as originally scheduled without violation of this rule.

Stat. Auth.: ORS 327.013 & 820.100 - 820.120
 Stats. Implemented: ORS 327.013, 820.100, 820.105, 820.110 & 820.120
 Hist.: 1EB 118, f. 11-28-67, ef. 12-25-67; 1EB 134, f. 6-26-72, ef. 7-15-72; 1EB 216, f. 2-17-76, ef. 3-15-76; 1EB 15-1978, f. 4-3-78, ef. 9-1-78; 1EB 6-1979, f. & ef. 3-30-79; EB 3-1987, f. & ef. 2-18-87; EB 43-1988, f. 12-16-88, cert. ef. 1-1-89; EB 21-1993, f. & cert. ef. 6-2-93; ODE 11-1999, f. & cert. ef. 2-12-99; ODE 13-2004, f. & cert. ef. 8-4-04

School Bus Standards

581-053-0507

School Bus Definitions

(1) A Type "A-1" school bus is a vehicle with a gross weight rating of 14,500 pounds or less.

(2) A Type "A-2" school bus is a vehicle with a gross weight rating between 14,500 and 19,500 pounds, and a passenger capacity not to exceed 36.

(3) A Type "B" school bus is a vehicle with a gross weight rating of more than 10,000 pounds, but less than 19,500 pounds. Most of the engine is beneath and/or behind the windshield and beside the driver's seat. The entrance door is behind the front wheels.

(4) A Type "C" school bus is a vehicle with all or part of the engine is in front of the windshield and the entrance door is behind the front wheels.

(5) A Type "D" school bus is a vehicle with the engine mounted in the front behind the windshield, midship, or rear. The entrance door is ahead of the front wheels.

(5) A Type "D" school bus is a vehicle with the engine mounted in the front behind the windshield, midship, or rear. The entrance door is ahead of the front wheels.

Stat. Auth.: ORS 820
 Stats. Implemented: ORS 327.013, 820.100, 820.105, 820.110 & 820.120
 Hist.: 1EB 17-1985, f. 10-29-85, ef. 11-1-85; ODE 11-1999, f. & cert. ef. 2-12-99; ODE 1-2004, f. & cert. ef. 10-4-04; ODE 14-2004, f. & cert. ef. 8-4-04; ODE 10-2005, f. & cert. ef. 11-15-05

581-053-0512

Minimum Standards for School Bus Chassis

(1) Air Cleaner:

(a) The engine intake air cleaner shall be furnished and properly installed by the chassis manufacturer to meet engine specifications;

(b) All Type C and Type D buses equipped with diesel engines shall have an air cleaner restriction indicator properly installed by the chassis manufacturer to meet engine specifications.

(2) Axles: The front and rear axles and suspension assemblies shall have a gross weight rating at least equal to that portion of the load as would be imposed by the chassis manufacturer's maximum gross weight rating for each axle.

(3) Air System: All buses equipped with air systems for brakes shall provide and identify an appropriate air port for plumbing in air powered accessories.

(4) Air-Operated Accessories: Air-operated accessories shall be plumbed into the vehicle's air supply system in compliance with all the following:

(a) Safeguarded by a check valve or equivalent device located between the air supply system and the accessory to prevent air loss due to accessory failure. This shall include the supply line for a designated accessory air tank;

(b) Connected to the air supply system in compliance with all applicable Federal Motor Vehicle Safety Standards;

(c) Connected in the manner prescribed by the vehicle manufacturer.

(5) Brakes:

(a) Air brakes are required on all buses having a manufacturer's gross vehicle weight rating of 26,001 pounds or greater;

(b) An air or power actuated service braking system and parking brake shall be provided;

(c) Buses using air or vacuum in the operation of the brake system shall be equipped with warning signals, readily audible and visible to the driver, that will give a continuous warning when the air pressure available in the system for braking is 60 psi (pounds per square inch) or less or the vacuum in the system available for braking is 8 inches of mercury or less. An illuminated gauge shall be provided that will indicate to the driver, the air pressure in pounds per square inch or the inches of mercury vacuum available for the operation of the brake.

(A) Vacuum-assist brake systems shall have a reservoir used exclusively for brakes which shall be adequate to ensure loss in vac-

uum at full stroke application of not more than 30 percent with engine not running. Brake system on gas-powered chassis shall include suitable and convenient connections for the installation of separate vacuum reservoir;

(B) Any brake system dry reservoir shall be so safeguarded by a check valve or equivalent device, that in the event of failure or leakage in its connection to the source of compressed air or vacuum, the stored dry air or vacuum shall not be depleted by the leakage or failure.

(d) Buses using a hydraulic assist-booster in the operation of brake system shall be equipped with a warning signal, readily audible and visible to the driver, which will provide continuous warning in the event of a loss of fluid flow from primary source or loss of electric source powering the backup system;

(e) The brake lines and booster-assist lines shall be protected from excessive heat and vibrations and be so installed as to prevent chafing;

(f) All brake systems shall be designed to permit visual inspection of brake lining wear without removal of any chassis components except for inspection dust covers or wheels;

(g) Air brake systems shall be equipped with manual drain valves on all air tanks. A provision shall be made to operate manual drain valve(s) on first (wet) reservoir(s) from the side of the bus unless one of the following options is provided:

(A) Automatic moisture ejector on the first (wet) reservoir;

(B) An air dryer that has the drying ability to insure an adequate margin of safety under normal and adverse operating conditions;

(C) Skirt-mounted controls for manual drain valve(s) shall not extend beyond the outer side of bus skirt panel.

(6) Bumper, Front:

(a) Front bumper shall be furnished by chassis manufacturer as part of the chassis for Type A, A-1, B, and C buses. Type D buses shall have bumpers furnished by the body manufacturer;

(b) Front bumper shall extend beyond forward-most part of body, grille, hood and fenders and shall extend to outer edges of fenders at bumper top line;

(c) Front bumper, except breakaway bumper ends shall be of sufficient strength to permit pushing a vehicle of equal gross vehicle weight without permanent distortion to bumper, chassis or body;

(d) An energy absorbing front bumper may be used providing its design shall incorporate a self-restoring energy absorbing system of sufficient strength to:

(A) Push another vehicle of similar GVW without permanent distortion to the bumper, chassis, or body;

(B) Withstand repeated impacts without damage to the bumper, chassis, or body according to the following performance standards:

(i) 7.5 MPH fixed barrier impact (FMVSS cart and barrier test);

(ii) 4.0 MPH corner impact at 30 degrees (Part 581 CFR Title 49);

(iii) 20.0 MPH into parked passenger car (class B, C, and D buses of 18,000 pounds GVW or more).

(C) The manufacturer of the energy absorbing system shall provide evidence from an approved test facility (capable of performing the above FMVSS test(s)) that their product conforms to the above.

(7) Chains, Automatic: Automatic tire chains (traction) may be installed at drive wheels in conformance with manufacturing specifications and any applicable chassis manufacturer standards. (Note: Air-applied chain systems must comply with air-operated accessory requirement included in this rule.)

(8) Certification: Chassis manufacturer will, upon request, certify to the state agency having pupil transportation jurisdiction that their product meets minimum standards on items not covered by certification issued under requirements of National Traffic and Motor Vehicle Safety Act.

(9) Clutch:

(a) Clutch torque capacity shall be equal to or greater than, the engine torque output;

(b) A starter interlock shall be installed to prevent actuation of the starter if the clutch is not depressed on all buses manufactured after January 1, 1999.

(10) Color: Chassis and front bumper shall be black; hood, cowl and fenders shall be in National School Bus Yellow. Hood may be painted low-luster yellow. Wheels may be painted either black or school bus yellow. (Silver lock rings are acceptable.) Type A, A-1, and B buses may have manufacturer standard white or black wheels.

(11) Drive Shaft: Drive shafts over 24 inches in length shall be protected by metal guard or guards around circumference of drive shaft to reduce the possibility of the shaft whipping through floor or dropping to ground if broken. Guards shall be mounted around front half of each drive shaft section.

(12) Electrical System:

(a) Battery:

(A) Storage battery shall have a minimum cold cranking capacity rating equal to the cranking current required for 30-seconds at 0° Fahrenheit (-17.8c) and a minimum reserve capacity rating of 120-minutes at 25 amp. Higher capacities may be needed dependent upon optional equipment and local environmental conditions;

(B) Since the batteries in Type C and D buses are to be located in a slide-out or swing-out body tray, the battery shall be temporarily mounted on the chassis frame by the chassis manufacturer. In this case the final location of the battery and the appropriate cable lengths provided by the chassis manufacturer shall be according to the SBMI Design Objectives Booklet, May 1990 edition.

(b) Circuits: An appropriate identifying diagram (color and number coded) for electrical circuits shall be provided to the body manufacturer for distribution to the end user for all buses purchased after September 1, 1993;

(c) Generator or Alternator:

(A) All buses shall have a generator or alternator with a minimum rating of at least 100 amperes (in accordance with Society of Automotive Engineer rating) with minimum charging of 50 percent of maximum rated output at manufacturer's recommended engine idle speed (12 volt system), and shall be ventilated and voltage-controlled and, if necessary, current-controlled;

(B) Direct-drive generator or alternator is permissible in lieu of belt drive. Belt drive shall be capable of handling the rated capacity of the generator or alternator with no detrimental effect on other drive components;

(C) Dual belt drive or equivalent shall be used on Type C and D buses with generator or alternator.

NOTE: Refer to Exhibit 1 for estimating required generator or alternator capacity.

(d) Wiring:

(A) General — All wiring shall conform to current applicable recommended practices of the Society of Automotive Engineers. All wiring shall use a standard color coding and each chassis shall be delivered with a wiring diagram that coincides with the wiring of the chassis;

(B) Chassis manufacturer shall install a readily accessible terminal strip or plug on the body side of the cowl, or at accessible location in engine compartment of vehicles designed without a cowl, which shall contain the following terminals for the body connections:

- (i) Main 100 amp body circuit;
- (ii) Tail lamps;
- (iii) Right turn signal;
- (iv) Left turn signal;
- (v) Stop lamps;
- (vi) Back up lamps;
- (vii) Instrument panel lights.

(13) Engine Compartment: Automatic/Manual Engine Fire Extinguishers: Automatic fire extinguisher systems may be installed in the engine compartment on buses. System must have a visible gauge easily read from the driver's seat and a manual activation switch clearly identified and located in the driver's compartment. The entire system must be UL (Underwriters Laboratories) Approved and assure protection from passenger compartment. Extinguisher system manual activation switch/control shall be safeguarded from accidental activation by a pull-pin or equivalent device. The extinguisher, if mounted in the passenger compartment, shall not be readily removable for use elsewhere, but dedicated for the engine compartment.

(14) Exhaust System:

(a) Exhaust pipe, muffler, and tailpipe shall be outside bus body compartment and attached to chassis;

(b) Tailpipe shall be constructed of a corrosion-resistant tubing material at least equal in strength and durability to 16 gauge steel tubing;

(c) Tailpipe shall meet one of the following options:

(A) Tailpipe shall extend at least to the rear bumper edge but not more than 2 inches beyond and be mounted outside of chassis frame rail at end point;

(B) Tailpipe may extend to, but not beyond the body limits on the left side of the bus forward or rearward of the rear tires outboard of chassis centerline as described in section 14(c)(C) of this rule. If the tailpipe terminates forward of the rear tires it shall terminate not more than 24 inches or less than 6 inches forward of rear tires. No tailpipe shall terminate beneath any emergency exit or fuel fill receptacle;

(C) Type A, A-1, B, C, and D buses — 48.5 inches minimum from centerline of chassis.

NOTE: Tailpipe may not exit on the right side of vehicle. See OAR 581-053-0517(41).

(d) Exhaust system shall be properly insulated from fuel tank and connections by securely attached metal shield at any point where it is 12 inches or less from tank or tank connections on all gasoline or alternative fueled vehicles;

(e) Muffler shall be constructed of corrosion-resistant material.

(15) Fenders, Front, Type C Vehicles:

(a) Total spread of outer edges of front fenders, measured at fender line, shall exceed total spread of front tires when front wheels are in straight-ahead position;

(b) When equipped, front fenders shall be properly braced and free from any body attachments.

(16) Frame:

(a) Frame or equivalent shall be of such design and strength characteristics as to correspond at least to standard practice, for trucks of same general load characteristics which are used for highway service;

(b) Any secondary manufacturer that modifies the original chassis frame shall guarantee the performance of workmanship and materials resulting from such modification;

(c) Any frame modification shall not be for the purpose of extending the wheelbase;

(d) Holes in top or bottom flanges of frame side rail shall not be permitted except as provided in original chassis frame. There shall be no welding to frame side rails except by chassis or body manufacturer;

(e) Frame lengths shall be provided in accordance with SBMI Design Objectives, May 1990 edition.

(17) Fuel Tank:

(a) Fuel tank shall be provided by the chassis manufacturer. Buses with a passenger capacity of 58 or less shall be equipped with a fuel tank or tanks of minimum 30 gallon capacity with at least a 25 gallon actual draw. Buses with a capacity of 58 or more shall be equipped with a minimum 60 gallon fuel tank with an actual draw of 50 gallons or more. Type A and A-1 buses may be equipped with manufacturers' standard tank;

(b) No portion of the fuel system, which is located rear of the engine compartment, except the filler tube, shall extend above the top of the chassis frame rail. Fuel lines shall be mounted to obtain maximum possible protection from the chassis frame;

(c) Fuel filter with replaceable element shall be installed between fuel tank and engine;

(d) Fuel tank installation shall be in accordance with SBMI Design Objectives effective May 1990 and in compliance with all applicable Federal Motor Vehicle Safety Standards:

(A) Type A, A-1, B, C, and D bus fuel tanks may be mounted on left chassis frame rail or behind rear wheels. Type D buses with rear engines may have the tank mounted ahead of the rear axle between the frame rails;

(B) Tank(s) shall be mounted, filled and vented outside of body. The tank(s) location shall not permit fuel spillage to drip or drain on any portion of the exhaust system.

(e) Alternate engine fuel tank installation shall be in accordance with Oregon Department of Education specifications. No dual fuel or bi-fuel systems are allowed.

(18) Governor:

(a) An engine governor is permissible. However, when it is desired to limit road speed, road-speed governor should be installed;

(b) When engine is remotely located from driver, governor shall be installed to limit engine speed to maximum revolutions per minute recommended by engine manufacturer.

(19) Heating System, Provision For: The chassis engine shall have plugged openings for the purpose of supplying hot water for the bus heating system. The opening shall be suitable for attaching 3/4

inch pipe thread/hose connector. The engine shall be capable of supplying water having a temperature of at least 170° F at a flow rate of 50 pounds per minute at the return end of 30 feet of 1 inch inside diameter automotive hot water heater hose. (SBMI Standard No. 001 — Standard Code for Testing and Rating Automotive Bus Hot Water Heating and Ventilating Equipment.)

(20) Horn: Bus shall be equipped with horn or horns of standard make, each horn capable of producing complex sound in bands of audio frequencies between approximately 250 and 2,000 cycles per second and tested per SAC Standard J-377.

(21) Instruments and Instrument Panel:

(a) Chassis shall be equipped with following instruments and gauges. (Lights in lieu of gauges are not acceptable except as noted):

(A) Speedometer;

(B) Odometer, which will give accrued mileage including tenths of miles;

(C) Voltmeter: A graduated charge and discharge ammeter compatible with generating capacities is permitted in lieu of or in addition to a voltmeter;

(D) Oil-pressure gauge;

(E) Water temperature gauge;

(F) Fuel gauge;

(G) Upper beam headlight indicator;

(H) Air pressure or vacuum gauge according to brake system used: Light indicator or gauge required on vehicle equipped with hydraulic-over hydraulic brake system;

(I) Turn signal indicator;

(J) Tachometer, when engine is remotely located from driver;

(K) Glow plug indicator light, where appropriate.

(b) All instruments shall be easily accessible for maintenance and repair;

(c) Above instruments and gauges shall be mounted on instrument panel in such a manner that each is clearly visible to and lies within a 140 degree field of vision for a 95th percentile female anthropomorphic dummy while in normal seated position;

(d) Instrument panel shall have lamps of sufficient candlepower to illuminate all instruments and gauges and shift selector indicator for automatic transmission.

(22) Oil Filter: Oil filter of replaceable element or cartridge type shall be provided and shall be connected by flexible oil lines if it is not built-in or engine mounted design. Oil filter shall have a capacity of at least one quart.

(23) Openings: All openings in floorboard or firewall between chassis and passenger-carrying compartment, such as for gearshift lever and parking brake lever, shall be sealed. Access plates to cover openings shall have adequate gaskets and be fastened securely.

(24) Passenger Load:

(a) Actual gross vehicle weight (GVW) is the sum of the chassis wet weight, plus the body weight, plus the driver's weight, plus total seated pupil weight:

(A) For purposes of calculation, the driver's weight is 150 pounds;

(B) For purposes of calculation, the pupil weight is 120 pounds per pupil.

(b) Actual gross vehicle weight (GVW) shall not exceed the chassis manufacturer's gross vehicle weight rating (MGVWR) for the chassis;

(c) Manufacturer's gross vehicle weight rating and other chassis information shall be furnished by the manufacturer, the manufacturer's representative or seller to the Oregon Department of Education on forms furnished by the department.

(25) Power and Gradeability: Gross vehicle weight (GVW) shall not exceed 165 pounds per net published horsepower of the engine at the manufacturer's recommended maximum number of revolutions per minute.

(26) Retarder System: Retarder system, if installed, shall maintain the speed of the fully loaded school bus at 19.0 MPH on a seven percent grade for 3.6 miles without incurring damage to the retarder or vehicle.

(27) Shock Absorbers: Bus shall be equipped with front and rear double-acting shock absorbers compatible with manufacturer's rated axle capacity at each wheel location.

(28) Springs:

(a) Capacity of springs or suspension assemblies shall be commensurate with chassis manufacturer's gross vehicle weight rating;

(b) If rear springs are used they shall be of progressive type. Front leaf springs shall have a stationary eye at one end and shall be protected by a wrapped leaf in addition to the main leaf.

(29) Steering Gear:

(a) Steering gear shall be approved by chassis manufacturer and designed to assure safe and accurate performance when vehicle is operated with maximum load and at maximum speed;

(b) Steering mechanism that allows for external adjustment to correct for lost motion shall provide an accessible adjustment location;

(c) No changes shall be made in steering apparatus which are not approved by chassis manufacturer;

(d) There shall be clearance of at least two inches between steering wheel and cowl, instrument panel, windshield, or any other surface;

(e) Power steering of the integral type is required. Power steering shall be approved and installed by chassis manufacturer or authorized chassis representative;

(f) The steering system shall be designed to provide for means for lubrication of all wear-points, if wear points are not permanently lubricated.

(30) Throttle: The force required to operate the throttle shall not exceed 16 pounds throughout the full range of accelerator pedal travel.

(31) Tires and Rims:

(a) Tires and rims of proper size and tires with load rating commensurate with chassis manufacturer's gross vehicle weight rating shall be provided. The use of multi-piece rims and/or tube type tires shall not be permitted on any school bus ordered after January 1, 1999;

(b) Dual rear tires shall be provided. Type A vehicles may have single rear tires;

(c) All tires on new buses shall be of same size. Load range of tires shall meet or exceed the gross axle weight rating as required by FMVSS 120;

(d) If bus is equipped with spare tire and rim assembly, it shall be of the same size as those mounted on the vehicle;

(e) A spare tire, when carried, shall be suitably mounted in an accessible location outside passenger compartment. Type A, and A-1 buses may have spare tire securely mounted in left rear corner of passenger compartment;

(f) Recapped tires are prohibited on the front of the bus;

(g) Regrooved tires are not permitted on any bus;

(h) Minimum tread depth on tires shall be:

(A) Front axle — 4/32 inch;

(B) Rear axle — 2/32 inch.

(i) Tread depth shall be measured as follows: The minimum depth in any two adjacent major grooves at three locations spaced approximately equally around the outside of the tire but not on wear indicators.

(32) Tow Hooks: Chassis manufacturer shall provide at least one front tow hook on Type C and D buses.

(33) Transmission:

(a) Transmission shall have an input torque capacity greater than maximum net torque developed by engine;

(b) When automatic or semi-automatic transmission is used, it shall provide for not less than three forward and one reverse speed. The shift selector, if applicable, shall provide a detent between each gear position when shift selector is not steering column mounted. Type C and D buses shall be equipped with a transmission temperature gauge;

(c) When manual transmission is used, second gear and higher shall be synchronized. A minimum of three forward speeds and one reverse must be provided.

(34) Turning Radius:

(a) Chassis with a wheel base of 264 inches or less shall have a right and left turning radius of not more than 42 1/2 feet, curb to curb measurement;

(b) Chassis with a wheelbase of 265 inches or more shall have a right and left turning radius of not more than 44 1/2 feet, curb to curb measurement.

(35) Undercoating: Chassis manufacturer shall coat undersides of front fenders with compound to protect surfaces and prevent rust which meets or exceeds federal specifications TT-C-520a, using modified test procedures as defined under "Undercoating" of body standards.

(36) Weight Distribution:

(a) Weight distribution of fully loaded bus on level surface shall be such as to not exceed the manufacturer's front gross axle weight rating and rear gross axle weight rating;

(b) Weight distribution of fully loaded bus on level surface shall be such that not more than 75 percent of gross vehicle weight is on rear tires and not more than 35 percent is on front tires. Type B and D buses with engine inside front of body and entrance door ahead of front wheels shall have not more than 75 percent of gross vehicle weight on rear tires nor more than 50 percent on front tires. If entrance door is behind front wheels, not more than 75 percent of gross vehicle weight shall be on rear tires not more than 40 percent on front tires. With engine in rear, not more than 75 percent of gross vehicle weight shall be on rear tires nor more than 40 percent on front tires.

[ED. NOTE: Exhibits referenced are available from the agency.]

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 327.013 & 820.100 - 820.120

Stats. Implemented: ORS 327.013, 820.100, 820.105, 820.110 & 820.120

Hist.: IEB 17-1985, f. 10-29-85, ef. 11-1-85; EB 44-1988, f. 12-16-88, cert. ef. 1-1-89;

EB 21-1993, f. & cert. ef. 6-2-93; ODE 11-1999, f. & cert. ef. 2-12-99; ODE 30-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 15-2004, f. & cert. ef. 8-4-04

581-053-0517**Minimum Standards for School Bus Bodies**

(1) Aisle:

(a) Minimum clearance of all aisles shall be 12 inches;

(b) Aisle supports of seat backs shall be slanted away from aisle sufficiently to give aisle clearance of 15 inches at tops of seat backs.

(2) Battery:

(a) Battery is to be furnished by chassis manufacturer;

(b) When battery is mounted as described in electrical section, Battery of Chassis Standard, i.e., the body manufacturer shall securely attach battery on slide-out or swing-out tray in closed, vented compartment in body skirt whereby battery may be exposed to outside for convenient servicing and removal. Battery compartment door or cover shall be hinged at front or top and secured by adequate and convenient operated latch or other type fastener;

(c) Access to battery through body floor not permitted;

(d) Buses may be equipped with a battery shut-off switch. The switch is to be placed in a location not readily accessible to the driver or passengers.

(3) Body Sizes: It is the body supplier's responsibility to determine that the completed body-on-chassis type bus will fulfill weight distribution requirements as explained in OAR 581-053-0512, Bus Chassis, section (30), Weight Distribution. Body manufacturer shall determine the vehicle's maximum designed and equipped passenger capacity and post it along with GVWR and vehicle compliance information.

(4) Bumper (Front): See OAR 581-053-0512, Bus Chassis, section (6) Bumper, Front. Deer guards may be added to a front bumper to protect the front grill. Deer guards may not be in any portion of the driver's forward view, including use of all mirrors.

(5) Bumper (Rear):

(a) Rear bumper for all body on chassis units shall be of pressed steel channel or equivalent material at least 3/16-inch thick and eight inches wide (high), and of sufficient strength to permit pushing by another vehicle without distortion. Type A-1 and A-2 buses (not body on chassis) may be manufacturers' standard;

(b) Bumper for all body on chassis units shall wrap around back corners of bus. It shall extend forward at least 12 inches, measured from rear-most point of body at floor line. Type A-1 and A-2 buses (not body on chassis) may be manufacturers' standard;

(c) Bumper shall be attached to chassis frame in such manner that it may be easily removed, shall be so braced as to develop full strength of bumper section from rear or side impact, and shall be so attached as to prevent the insertion of small fingers between the body and bumper;

(d) Bumper shall extend beyond rear-most part of body surface at least one inch, measured at floor line;

(e) An energy absorbing rear bumper may be used providing a self-restoring energy absorbing bumper system so attached as to prevent the hitching of rides and of sufficient strength to:

(A) Permit pushing by another vehicle without permanent distortion to the bumper, chassis, or body;

(B) Withstand repeated impacts without damage to the bumper, chassis, or body according to the following performance standards:

(i) 2.0 MPH fixed barrier impact (FMVSS cart and barrier test);

(ii) 4.0 MPH corner impact at 30 degrees (Part 581 CFR Title 49);

(iii) 5.0 MPH buses (Part 581 CFR Title 49).

(C) The manufacturer of the energy absorbing system shall provide evidence from an approved test facility (capable of performing the above FMVSS tests) that their product conforms to the above.

(6) Ceiling: See section (19) of this rule, Insulation, and section (20), of this rule, Interior.

(7) Color:

(a) The school bus body shall be painted a uniform National School Bus Yellow. The body exterior paint trim, bumper, lamp hoods, and emergency door lettering shall be black. The roof of the bus may be painted white. The white color may extend across the roof down to the drip rails or within 6 inches above the passenger windows on the sides of the bus except that front and rear caps shall remain National School Bus Yellow. Retroreflective material may be used as trim on rear bumper. Beltline lettering may be yellow;

(b) Retroreflective material approved by the Department of Education shall be installed as a background for the required school bus lettering both on the front and rear of the body of buses purchased after September 1, 1993. Maximum dimensions: 12" x 36", unless equipped with approved lighted school bus signs. Retroreflective material shall have reflective values equal or greater than 3M Scotchlite Diamond Grade and retain at least 50 percent of those values for a minimum of six years;

(c) Additional retroreflective material, if used, shall be automotive engineering grade or better, meeting initial reflectance values in FHWA FP-85 and retaining at least 50 percent of those values for a minimum of six years. Retroreflective materials and markings, if used, may include any or all of the following:

(A) Front and rear bumper: may be marked diagonally 45 degrees down to centerline of pavement with two-inch wide strips of noncontrasting reflective material;

(B) Rear of the bus body may be marked with a strip of retroreflective National School Bus Yellow matching material no greater than two inches wide to be applied to the back of the bus, extending from the left lower corner of the "SCHOOL BUS" lettering, across to the left side of the bus; then vertically down to the top of the bumper; across the bus on a line immediately above the bumper to the right side, then vertically up to a point even with the strip placement on the left side, and concluding with a horizontal strip terminating at the right lower corner of the "SCHOOL BUS" letter;

(C) Sides of bus body: may be marked with retroreflective National School Bus Yellow matching material comprising background for letters at least six inches but no more than twelve inches in width, extending the length of the bus body and located (vertically) as close as practicable to the beltline. Two-inch wide reflective material having high intensity reflectance values (3M Scotchlite Diamond Grade or equivalent) may be substituted for the six inch to twelve-inch wide materials;

(D) See appendix for diagram defining locations of marking referred to above.

(8) Construction:

(a) Construction shall be of prime commercial quality steel, or other metal, or other material with strength at least equivalent to all-steel as certified by bus body manufacturer;

(b) Construction shall provide a water-tight and reasonably dust-proof unit;

(c) Must meet or exceed applicable federal motor vehicle safety standards for construction, effective April 1, 1977.

(9) Crossing Arm: A crossing arm may be mounted on the front of a school bus in accordance with the following specifications:

(a) Installed on the front bumper as close as practicable to the right (curb) side, opening left to right and providing an extension of the curbside of bus;

(b) Arm shall be located at least 18 inches but not more than 24 inches above ground level and in the closed position; arm shall not cover numbers on license plate;

(c) Installed in a manner to limit the outward deployment to 90 degrees from the front bumper;

(d) Arm shall extend 72 inches from the front bumper in its extended position;

(e) Arm shall be activated through the existing bus safety light system assuring the driver is required to take no additional action to either deploy or retract the arm. No outward movement of the arm may occur before red flashing sequence begins;

(f) Override switches are prohibited;

(g) Crossing arm must be safeguarded from damage due to pushing or pulling by hand through the use of a clutch-like device or equivalent, double spring hinges are not acceptable);

(h) The arm may be equipped with an amber flashing light that functions only when the arm is in the fully extended position;

(i) Entire unit shall have no sharp edges or other projections that could injure children or others due to casual contact;

(j) Unit shall provide secure mounting opportunities to prevent misalignment or failure due to extreme weather conditions;

(k) Shall meet or exceed all requirements in SAE Standard J1133;

(l) Shall be either air, vacuum, or electrically operated and in conformance to section (39)(g) of this rule;

(m) Crossing arm color shall either appear in an unpainted state or comply with trim requirements listed in section (7)(a) of this rule;

(n) All components and connections shall be weatherproofed.

(10) Defrosters:

(a) Defrosting and defogging equipment shall direct a sufficient flow of heated air onto the windshield, the window to the left of the driver and the glass in the viewing area directly to the right of the driver to reduce the amount of frost, fog and snow;

(b) The defroster units shall have separate blower motors, in addition to the heater motors. Type A-1 and A-2 buses may have manufacturers' standard defrosters;

(c) A right front windshield and door defrosting unit with a separate hot water core and separate blower motors shall be provided on Type C buses;

(d) The defrosting system shall conform to SAE performance standards J-381 and 382;

(e) The defroster and defogging system shall be capable of furnishing heated outside ambient air, except that part of the system furnishing additional air to the windshield, entrance door and stepwell may be of the recirculation air type;

(f) Auxiliary fans are not to be considered as a defrosting and defogging system:

(A) Auxiliary fans, if used, must be mounted above the windshield, so as not to interfere with the driver's vision of the roadway, mirrors or students outside the bus;

(B) The fan blades shall be covered with a protective cage.

(11) Doors: Service Door:

(a) Service door shall be under control of driver, and so designed as to afford easy release and provide a positive latching device for manual operating door so as to afford easy release and prevent accidental opening. When hand lever is used, no part shall come together so as to shear or crush fingers;

(b) Service door shall be located on right side of bus opposite driver and within direct view;

(c) Service door shall have minimum horizontal opening of 24 inches and minimum vertical opening of 68 inches. Type A-1 and A-2 buses shall have a minimum opening of 1,200 square inches;

(d) Service door shall be of split type, sedan type or jack-knife type. (Split type door includes any sectioned door, which divides and opens inward or outward.) If one section of split type door opens inward and other opens outward, front section shall open outward. Manual door controls shall not require more than 25 pounds of force to operate at any point throughout the range of operation;

(e) If power operated, pressure shall be controlled by a regulator valve or switch and provision shall be made for opening the door manually in the event of driver disability or mechanical failure. Emergency release valve or switch for power operated doors shall be located in an accessible place, in plain view, as near the service door as practicable. Valve or switch shall be properly identified and "open" and "closed" position plainly marked;

(f) Sedan type door which opens inward in normal use shall be equipped with an adequate device for emergency opening outward;

(g) Lower as well as upper panels shall be of approved safety glass. Bottom of lower glass panel shall not be more than ten inches from top surface of bottom step. Top of upper glass panel shall not be

more than six inches from top of door. Type A-1 and A-2 buses shall have a minimum 350 square inch upper glass panel;

(h) Vertical closing edges shall be equipped with flexible material to protect children's fingers. Type A-1 and A-2 buses may be equipped with chassis manufacturers' standard entrance door;

(i) There shall be no door to left of driver. (This shall not be interpreted to conflict with emergency doors or windows.) Type A-1 and A-2 and B buses may be equipped with manufacturers' left side driver's door;

(j) All doors shall be equipped with an energy absorbing pad at the top edge of each door opening. Pad shall be at least 3 inches wide and 1 inch thick and extend the full width of the door opening. Pad not required on Type A-1 and A-2 and B buses, left side driver's door.

(12) Emergency Exits:

(a) All buses purchased after January 1, 1999 shall be equipped with required emergency exits and identification listed in 49 CFR Part 571 FMVSS 217 as it has been adopted by National Highway Traffic Safety Administration for June 9, 1995 implementation plus all applicable standards specified in this rule: These rule changes apply to buses ordered after July 1, 2004

(b) For buses equipped with a rear emergency door additional exits as listed below:

(A) Buses designed or equipped with a passenger capacity of 1-22 shall provide the following:

(i) 2 swing-out windows, one on each side of the bus approximately mid-point of the passenger compartment and One FMVSS 217 complying roof hatch; or

(ii) Side windows with a 12 inch vertical drop and One FMVSS 217 complying roof hatch.

(B) Buses designed or equipped with a passenger capacity of 23 to 45 shall provide:

(i) One FMVSS 217 complying left side emergency door and One FMVSS 217 complying roof hatch; or

(ii) Two FMVSS 217 complying swing-out windows one on each side of the bus approximately mid-point of the passenger compartment and One FMVSS 217 complying roof hatch.

(C) Buses designed or equipped with a passenger capacity of 46 to 62 shall provide:

(i) One FMVSS 217 complying left side emergency door and One FMVSS 217 complying roof hatch; or

(ii) Four FMVSS 217 complying swing-out windows; two on each side of the bus approximately mid-point of the passenger compartment, but not immediately adjacent to each other and one FMVSS 217 complying roof hatch.

(D) Buses designed or equipped with a passenger capacity of 63 and above shall provide:

(I) One FMVSS 217 complying left side emergency door and One FMVSS 217 complying roof hatch; or

(iii) Four FMVSS 217 complying swing-out windows; two on each side of the bus approximately mid-point of the passenger compartment, but not immediately adjacent to each other and One FMVSS 217 complying roof hatch.

(c) For buses equipped with a rear push-out window, a left side emergency door shall be provided and the following additional exits as listed below:

(A) Buses designed or equipped with a passenger capacity of 1-22 shall provide one of the following:

(i) Two FMVSS 217 swing-out windows, one on each side of the bus approximately mid-point of the passenger compartment; or

(ii) Side windows with a 12 inch vertical drop and One FMVSS 217 complying roof hatch.

(B) Buses designed or equipped with a passenger capacity of 23-45 shall provide:

(I) Two FMVSS 217 complying swing-out windows and One FMVSS 217 complying roof hatch.

(C) Buses designed or equipped with a passenger capacity of 46-57 shall provide:

(i) One FMVSS 217 complying right side door and One FMVSS 217 complying roof hatch; or

(ii) Four FMVSS 217 complying swing-out windows and One FMVSS 217 complying roof hatch.

(D) Buses designed or equipped with a passenger capacity of 58 and above shall provide:

(i) One FMVSS 217 complying right side door and One FMVSS 217 complying roof hatch; or

(ii) Four FMVSS 217 complying swing-out windows; and One FMVSS 217 complying roof hatch

(d) Selection of the added exits (if any) necessary to comply with the "additional emergency exit area" requirements of FMVSS 217 shall be made by the vehicle purchaser in conformance to applicable rules;

(e) Manufacturer shall identify all emergency exits used for calculations relating to FMVSS 217 compliance and list the daylight (clear) opening for each exit;

(f) A document identifying the following shall be provided by the vehicle seller to the Oregon Department of Education and bus purchaser prior to the bus being introduced into a bus system for the first time:

(A) Bus manufacturer;

(B) Bus identification number;

(C) Bus designed and equipped passenger capacity;

(D) Bus purchaser and district(s) served;

(E) All emergency exits used for FMVSS 217 compliance; and

(F) Total square inches/square cm clear opening for each emergency exit provided in the bus.

(g) Swing out windows shall provide a minimum clear opening of 18" x 24". If side emergency swing-out windows can be opened from outside the bus the words "Emergency Exit" shall be placed directly above the window in letters at least two inches high on the exterior of the bus. If the words "Emergency Exit" are placed on the exterior of the bus above swing-out windows inoperable from outside, the label must include the following statement in letters approximately one inch high "Operates From Inside Only."

(h) Rear emergency door exits:

(A) Type A-1 and A-2 buses with double rear emergency doors shall be hinged on the outside and have a three point fastening device;

(B) Upper portion of emergency door shall be equipped with approved safety glazing, exposed area of not less than 400 square inches;

(C) Lower portion of rear emergency door shall be equipped with approved safety glass and shall have an exposed area of not less than 350 square inches of approved safety glazing. Type A-1 and A-2 buses are not required to have lower rear emergency door glazing;

(D) There shall be no steps leading to emergency door;

(E) Clearance between outside emergency door handle and the emergency door shall not exceed 1/4-inch when handle is in closed position. Handle shall not provide a firm handhold to someone trying to "hitch" a ride. Handles shall be positioned to prevent snagging of clothing or pinching of fingers;

(F) Emergency door hinge shall not provide an opening for insertion of fingers when door is closed;

(G) If emergency door is lockable, provision must be made to prevent the bus from starting while the door is locked. An audible warning that does not affect engine operation shall be provided to alert the driver should the door be locked while the bus is in operation;

(H) An adequately padded head bumper shall be placed on the interior directly above any emergency exit door opening. The pad shall extend the full width of the door opening and shall be at least three inches wide and one inch thick.

(i) Approximately one inch/three centimeter retroreflective exterior perimeter marking shall be yellow in color, of automotive engineering grade material, and in compliance with both the retroreflective requirement of FMVSS and durability specifications listed in National Minimum Standards for reflective material;

(j) Roof emergency exit:

(A) Roof emergency exit, when required, shall be installed in a school bus body in accordance with FMVSS 217;

(B) A roof exit shall be waterproof and provide a minimum clear opening of 16" x 16"; and have an audible warning signal able to be heard at the driver's area. These rule changes apply to buses ordered after July 1, 2004

(C) Roof exit may also serve as a roof ventilator; however, this may not be used in place of the required static vent.

(13) Emergency Equipment:

(a) Belt cutter: Each bus equipped with passenger seat belts or webbed restraining devices shall have a belt cutter mounted in the driver's compartment, readily accessible and in plain view of the driver.

Device shall be of a design offering protected cutting edges to prevent accidental or intentional injury to drivers or passengers;

(b) Emergency road reflectors:

(A) Each bus shall be equipped with at least three DOT triangle reflectorized disabled vehicle warning devices;

(B) Reflectors must be in a container securely mounted with nut-and-bolt fasteners enhanced with large flat (fender) washers or held in place by a nut-and-bolt mounted metal bracket that also protects and secures the container lid. Both shall be located in an accessible location. Reflectors shall not be mounted in any engine compartment;

(C) If not mounted in plain view of the driver, the location shall be clearly designated.

(c) Body fluid cleanup kit: Buses purchased after September 1, 1993 shall have a removable moisture proof and dust proof body fluid cleanup kit, mounted in an accessible place within the driver's compartment. This place shall be marked to identify its location. Contents shall include at least the following items:

(A) Two pair rubber/latex gloves;

(B) Two four-ounce packages of stabilized chlorine absorbent deodorant (or equivalent) capable of stabilizing at least 1 litre/36 fl. oz. of body fluids;

(C) One spatula for pick up of congealed fluid;

(D) One plastic bag in which to place congealed fluid;

(E) One red plastic bag with tie, identified for infectious waste and as a bio-hazard;

(F) One two-ounce bottle of germicidal detergent to apply to a contaminated area;

(G) Four paper towels to wipe up contaminated area;

(H) One one-ounce antiseptic alcohol hand rinse (or equivalent);

(I) One placard of step by step use instructions;

(J) Germicidal detergents, stabilized chlorine absorbent deodorant, alcohol hand rinse, or their equivalents shall provide documentation of EPA approval regarding their microbiological efficacy for at least the following:

(i) *Staphylococcus aureus*;

(ii) *Pseudomonas aeruginosa*;

(iii) *Salmonella choleraesuis*;

(iv) *Streptococcus* species;

(v) Herpes simplex Type II;

(vi) HIV (Associated with AIDS);

(vii) Fungi (athlete's foot);

(viii) Poliovirus; and

(ix) Tuberculosis.

(K) Documentation of efficacy for Hepatitis B may be hospital or test studies. The certified effective shelf life of these products shall be a minimum of 12 months. Product expiration date shall be clearly displayed on all time-sensitive products.

(d) Fire extinguishers:

(A) Each bus shall be equipped with at least one pressurized, dry, chemical type fire extinguisher, mounted in a bracket and located in the driver's compartment, readily accessible and in plain view of the driver. A pressure gauge shall be mounted on the extinguisher so as to be readily read without removing the extinguisher from its mounted position;

(B) The fire extinguisher shall be of a type approved by the Underwriters Laboratories, Inc., with a rating of not less than 2 A-10 BC. The extinguisher shall have a minimum five pound capacity and equipped with a hose and nozzle;

(C) The operating mechanism shall be sealed with a type of seal that will not interfere with the use of the fire extinguisher;

(D) Extinguishers with plastic heads are not permitted.

(e) First aid kit:

(A) Each bus shall have a readily removable, moisture proof and dustproof first-aid kit container mounted in an accessible place within driver's compartment. If not mounted in plain view of the driver, the location shall be clearly designated;

(B) The first aid kit contains a minimum of 24 units that shall include the following:

(i) One 1" adhesive compress — 16 per unit;

(ii) Two 2" bandage compress — 4 per unit;

(iii) Two 3" bandage compress — 2 per unit;

(iv) Two 4" bandage compress — 1 per unit;

(v) Two 3" x 3" plain gauze pads — 4 per unit;

(vi) Two 2" x 6 yards gauze roller bandage — 1 per unit;

- (vii) Three 1/2 square yard gauze;
- (viii) Three 24" x 72" gauze;
- (ix) Four Triangular bandage;
- (x) One 1/2 x 5 yard adhesive tape-one per unit;
- (xi) One round nose scissors and tweezers. Latex gloves-one pair;

and

- (xii) One microshield for mouth to mouth airway (to lay on top of other contents).

(C) Specific local requirements may be substituted in lieu of 2 units of 1/2 square yard gauze.

(14) Floor:

(a) Floor in underseat area, including tops of wheelhousing, driver's compartment and toeboard, shall be covered with rubber floor covering or equivalent having minimum overall thickness of .125 inch:

(A) Floor covering in aisle shall be of aisle-type fire-resistant rubber or equivalent, wear-resistant and ribbed. Minimum overall thickness shall be .1875 inch measured from tops of ribs;

(B) Floor covering must be permanently bonded to floor and must not crack when subjected to sudden changes in temperature. Bonding or adhesive material shall be waterproof and shall be of type recommended by manufacturer of floor-covering material. All seams must be sealed with waterproof sealer.

(b) Edge of floor at stepwell shall be treated as a step edge and shall be protected as required in section (37)(c) of this rule;

(c) A vapor and liquid proof inspection plate provided for access to the fuel tank sending unit is permissible;

(d) A subfloor of 5-ply plywood, at least 5/8 inch nominal thickness or equivalent, may be installed over the standard school bus floor. Plywood shall equal or exceed properties of exterior-type softwood plywood, C-D grade as specified in standards issued by the Department of United States Commerce. Floor shall be level from front to back and from side to side except for wheelhousing, toeboard and driver's seat platform areas;

(e) For Type A-1 and A-2 buses that are not constructed with a standard school bus floor, the existing metal floor in the passenger area shall be covered with not less than 1/2-inch nominal thickness exterior C-D grade plywood. All plywood seams shall extend from side to side (laterally), longitudinal seams not permitted.

(15) Heaters:

(a) At least one heater of hot water type is required in all buses;

(b) If only one heater is used, it shall be of fresh-air or combination fresh-air and recirculation type;

(c) If more than one heater is used, additional heaters may be of recirculation air type;

(d) The heating system shall be capable of maintaining throughout the bus a temperature of not less than 50 degree Fahrenheit at average minimum January temperature as established by the U.S. Department of Commerce, Weather Bureau, for the area in which the vehicle is to be operated;

(e) All heaters installed by body manufacturers shall bear a name plate which shall indicate the heater rating in accordance with SBMI Standard No. 001, said plate to be affixed by the heater manufacturer which shall constitute certification that the heater performance is as shown on the plate;

(f) Heater hoses shall be adequately supported to guard against excessive wear due to vibration. The hoses shall not dangle or rub against the chassis or sharp edges, and shall not interfere with or restrict the operation of any engine function. Heater hose shall conform to SAE J20c. Heater hoses on the interior of the bus shall be shielded to prevent scalding of the driver or passengers;

(g) Each hot water heater system installed by a body manufacturer shall include a shutoff valve installed in the pressure and return lines near the engine in an accessible location. There shall be a water flow regulating valve or airflow regulating door for the front heater installed for convenient operation by the driver while seated;

(h) Return heater lines on body company installed heaters shall be equipped with bleeder valves in an accessible location to allow for removal of heater line air;

(i) Combustion type heaters may be installed and shall comply with all the following:

(A) The combustion type heater must be installed outside the passenger compartment;

(B) Exhaust exit from the heater must meet the same location requirements as for engine exhaust;

(C) The heater must have been tested by a qualified laboratory and certified as complying with the following regulations:

(i) Code of Federal Regulations, CFR 300-399, Transportation Heaters, 393.77 and CFR 49: Part 571, Transportation: Motor Vehicle Safety Standard 301; Fuel System Integrity;

(ii) American Institute of Electrical and Electronic Engineers, IEEE1: Temperature Limits in Rating Electrical Equipment;

(iii) UL 307A: Liquid Fuel-Burning Heating Appliances, UL 756C: Polymeric Materials — Use in Electrical Equipment, and UL 796: Printed Wiring Boards;

(iv) TE-12: Impact Testing of Vehicular Components.

(D) Provide isolation valves at the heater for both the coolant feeder and return lines;

(E) Heater must be equipped with a pressure relief valve preset to release any internal system pressure over 50 psi;

(F) An impact switch for the heater's electric fuel pump that will stop the pump with special inertial mechanics.

(j) Portable heaters may not be used.

(16) Identification:

(a) School bus bodies shall bear the words "School Bus" in black letters at least eight inches high and of proportionate width on both front and rear of body. Lettering shall be placed as high as possible without impairment of its visibility;

(b) A warning sign, calling attention to the school bus stop law shall be installed on the rear of all school buses. It shall be centered on the back of the bus and occupy the space, belt high, directly beneath the upper window in the rear door. Signs on transit type buses shall occupy approximately the same area. Signs on Type A buses with double rear door having obstructions such as door handles and recessed license plate holders that prevent sign centering shall be placed completely on the right side (rear) door in a manner that all reflective letters are located on that door and as high on the lower portion of the door as practicable in relationship to the door handle, but the top of the sign may be no more than four inches below handle shaft. Sign shall conform to the following:

(A) Decals with white reflectorized letters conforming to retroreflective requirements listed in section (7)(c) of this rule mounted on a flat black background;

(B) Decal shall be 9 inches by 30 inches with lettering as shown below:

UNLAWFUL TO PASS
WHEN RED LIGHTS FLASH

(C) It is prohibited for any school bus to display a warning sign, which does not meet the above requirements;

(D) The name of the school district IE: (and contractor company name if applicable) contractor company name shall be placed on the side of each bus. Such signs shall appear in the area directly below the side windows and the letters and figures in such signs shall not be less than four inches nor more than six inches in height and of proportionate width;

(E) School team name or contractor's insignia may be placed above the side windows on the front portion of the bus body. All such lettering must be approved by the Pupil Transportation Section of the Oregon Department of Education;

(F) At least one bus identification number at least four inches in height shall be placed on a flat vertical surface on each side and on the front and rear of the bus. At least one complete unit number shall be visible from any point 50 feet from the bus. Symbols may be used in lieu of numbers. Type A-1 and A-2 bus numbers may be three inches in height. Bus identification numbers are not required if the school has only one route bus;

(G) Only signs and lettering approved by state law or by the regulations of the Department of Education shall appear on the inside or outside of a school bus.

(17) Inside Height: Clear inside body height shall be 72 inches or more measured at any point on the longitudinal center line from front vertical bow to rear vertical bow. Type A bus height shall be not less than 62 inches.

(18) Instruments, Gauges, Indicators: Body manufacturer shall in no manner obstruct the driver's visibility of required instruments, gauges or indicators provided by the chassis manufacturer. Body instrument panel lights shall be controlled by an independent rheostat switch.

(19) Insulation:

(a) Ceiling and walls in all new buses purchased after September 1, 1985, shall be insulated with proper material to deaden sound and to reduce vibration to a minimum. Thermal insulation of fire-resistant and non-water absorbing material approved by Underwriters Laboratories, Inc., is required in body ceiling and walls;

(b) If floor insulation is desired it must be 5-ply, at 5/8-inch thick plywood as specified in section (14) of this rule.

(20) Interior:

(a) Interior of bus shall be free of all unnecessary projections likely to cause injury including luggage/book racks on buses purchased after September 1, 1993 or retrofitting occurring after that date. This standard requires inner lining on ceilings and walls. If ceiling is constructed so as to contain lapped joints, forward panel shall be lapped by rear panel and exposed edges shall be beaded, hemmed, flanged or otherwise treated to minimize sharp edges;

(b) Ceiling of bus shall be free of all projections that can cause injury in the event of a collision or rollover (see section (30) of this rule.);

(c) All materials used in the interior of a school bus body shall meet the requirements of Federal Motor Vehicle Safety Standard No. 302, Flammability of Interior Materials;

(d) Construction of buses manufactured after September 1, 1993 shall assure noise level taken at the ear of the occupant nearest to the primary vehicle noise source shall not exceed 85 DBA when tested according to the procedure found in the Appendix (Noise Test Procedure).

(21) Lamps and Signals:

(a) All lamps on exterior of bus shall conform with and be installed as required by Oregon Motor Vehicle law and the Federal Motor Vehicle Safety Standard No. 108, effective January 1985;

(b) Headlamps, when furnished by body manufacturer, shall be of proper intensity and adjustment as specified by Oregon Motor Vehicle law;

(c) Stop-tail lamps: Buses shall be equipped with four combination red stop-tail lamps. Two combination lamps with a minimum 38 square inches of illuminated area shall be mounted on the rear of the bus on the beltline or immediately below. Two combination lamps with a minimum 12 square inches of illuminated area shall be placed on the rear of the body between the beltline and the floor line. Rear license plate lamp may be combined with one lower tail lamp. Stop lamps shall be activated by the service brakes and shall emit a steady light when illuminated. Type A-1 and A-2 buses with bodies supplied by chassis manufacturer may have manufacturer's standard stop and tail lamps;

(d) Clearance and identification lights: Each bus shall be equipped with clearance and identification lights as required by Oregon Motor Vehicle law and Federal Motor Vehicle Safety Standard No. 108;

(e) Reflectors: Each bus shall be equipped with reflectors as required by Oregon Motor Vehicle law and Federal Motor Vehicle Safety Standard No. 108;

(f) Directional signals: Each bus shall be equipped with front and rear turn signal lamps that conform to requirements of the Oregon Motor Vehicle law. Lamps shall have a minimum illuminated area of 38 square inches. Lamps shall be amber in color whether mounted at the front or rear. Type A-1 and A-2 buses may be equipped with manufacturer's standard front turn signals. Signal lamps shall be independent units and connected to chassis-supplied turn signal switch and four-way hazard warning switch to cause simultaneous flashing of turn signal lamps when needed as vehicular traffic hazard warning. A turn signal lamp with a minimum of 4 candlepower shall be mounted on each body side at approximately seat level height, located to the rear of the entrance door on the right side of the body and approximately the same location on the left side. These are to be connected to and function with the regular turn signal lamps. Type B buses may have the right side body turn signal forward of the entrance door;

(g) Back-up lamps: Two back-up lamps shall be provided in accordance with Federal Motor Vehicle Safety Standard 108;

(h) Back-up warning alarm: An automatic audible alarm shall be installed on the rear of all buses purchased after November 1, 1985, that complies with the Society of Automotive Engineers (SAE 994 Backup Alarm Standard specifying $97 \pm 4\text{db(A)}$);

(i) Interior dome lamps: Interior lamps shall be provided which will adequately illuminate interior aisles. There shall be at least one

interior lamp for every two rows of passenger seats. One or two rear dome lamp(s) shall be wired through a separate switch. Separate circuit for rear dome lamp(s) is not required on buses with less than five rows of seats;

(j) Stepwell lamp: A stepwell lamp shall be provided which will adequately illuminate the entire stepwell. The lamp circuit shall be wired through the headlamp or clearance lamp system and shall be activated only when the door is opened;

(k) School Bus Safety Lights:

(A) Each school bus shall be equipped with a system meeting FMVSS 108 consisting of four red signal lamps designed to conform to SAE Standard J887, "School Bus Red Signal Lamps," July 1964, and four amber signal lamps designed to that standard, except for color, and except that their candle power shall be at least 2-1/2 times that specified for red signal lamps. Lamps shall have minimum of 17.25 square inches and shall be clearly visible in direct sunlight from a distance of 500 feet along axis of vehicle;

(B) The system shall be wired so that the system is activated by a manually operated spring-loaded switch clearly labeled and distinguishable from other switches. A circuit master switch is permitted if the manually operated activating switch and the master switch are together in one switch;

(C) For buses equipped with power-controlled entrance doors, an additional spring loaded switch that will activate the red school bus safety lights prior to opening entrance door is permissible;

(D) The flashing mechanism shall be capable of carrying the full current load of the signal system;

(E) Right and left signal lamps shall flash alternately. Each signal lamp shall flash not less than 60 or more than 120 flashes per minute. The "on" period shall be long enough to permit bulb filament to come up to full brightness;

(F) Pilot lamps/monitors:

(i) Each bus shall be equipped with two, 3/8-inch illuminated pilot lamps — one amber and one red — to indicate when the respective amber or red system is actuated. Pilot lamps shall be placed within a 140° field of vision for a 95th percentile female anthropomorphic test dummy seated in a normal driving position. Pilot lamps shall also provide an unmistakable indication that the flasher system is operating and an unmistakable indication if any circuit is broken, any lamp is not operating or the system is not otherwise functioning normally unless a separate monitoring system performs all those functions; or

(ii) Each bus shall be equipped with a monitor system utilizing 3/8-inch illuminated red and amber lamps to indicate when the respective amber or red system is actuated. Monitor shall be placed within a 140° field of vision for a 50th percentile anthropomorphic test dummy seated in a normal driving position. Monitor shall also provide an unmistakable indication that the flasher system is operating and an unmistakable indication if any circuit is broken, any lamp is not operating or the system is not functioning normally.

(G) School Bus Safety Light system shall operate as follows:

(i) With entrance door closed, depress activation switch. Amber pilot light and amber bus safety lights shall go on;

(ii) Open entrance door; amber bus safety lights shall go off, and red pilot light and red bus safety lights shall go on;

(iii) Close entrance door; pilot and bus safety lights shall go off;

(iv) Reopen entrance door without depressing hand switch; no bus safety lights shall go on. Depress hand switch, red pilot light and red bus safety lights shall go on.

(H) There shall be a canceling switch that will deactivate the amber bus safety lights and flasher sequence if they are accidentally activated or if the driver discovers there is no need to make a stop after activating the switch;

(I) Installation requirements:

(i) Both red and amber signal lamps shall be installed in accordance with SAE Standard J887, except that each amber signal lamp shall be located near each red signal lamp, at the same level, but closer to the vertical centerline of the bus. Each signal lamp shall be mounted with its axis substantially parallel to the longitudinal axis of the vehicle;

(ii) Front and rear alternately flashing bus safety lights shall be spaced as far apart laterally as practicable;

(iii) Alternately flashing bus safety lights shall be mounted at the front above the windshield and at the rear so that the lower edge of the lens is not lower than the top line of the side windows;

(iv) Vertical and lateral vision of the front and rear alternately flashing warning bus safety lights shall not be obstructed by any part of the body or lamphouse insofar as standard bus body construction will permit;

(v) Where practicable, the area around lens of each alternately flashing warning bus safety light and extending outward at least 3 inches or more shall be painted black;

(vi) Front amber school bus safety lights shall be visible (directly or indirectly) from the driver's area inside the bus;

(vii) A separate fuse or circuit breaker, adequate to prevent damage to the system in the event of a short circuit, shall be provided between the power source and flasher system.

(J) Strobe Lamp:

(i) A white flashing lamp, approved by the Oregon Department of Education, may be installed on the longitudinal center of the roof on rear half of the bus but no closer than one foot from the rear of the bus body. The lamp shall have a single clear lens emitting light 360 degrees around its vertical axis and may not extend above the roof more than 6-1/2 inches or maximum legal vehicle height;

(ii) The lamp shall have a separate switch and be wired through the vehicle hazard lamp system. A pilot lamp to indicate when the light is in operation is required.

(22) Metal Treatment:

(a) All metal used in construction of bus body shall be zinc- or aluminum-coated or treated by equivalent process before bus is constructed. Included are such items as structural members, inside and outside panels and floor sills; excluded are such items as door handles, grab handles, interior decorative parts and other interior plated parts;

(b) All metal parts that will be painted shall be (in addition to above requirements) chemically cleaned, etched, zinc-phosphate coated and zinc-chromate or epoxy primed or conditioned by equivalent process;

(c) In providing for these requirements, particular attention shall be given lapped surfaces, welded connections of structural members, cut edges, punched or drilled hole areas in sheet metal, closed or box sections, unvented or undrained areas and surfaces subjected to abrasion during vehicle operation;

(d) As evidence that above requirements have been met, samples of materials and sections used in construction of bus body, when subjected to 1000-hour salt spray test as provided for in latest revision of ASTM designation, B-117 "Standard Method of Salt Spray (Fog) Testing," shall not lose more than 10 percent of material by weight.

(23) Mirrors:

(a) Exterior Mirror Systems:

(A) All buses purchased after September 1, 1993 shall be equipped with mirror systems complying with 49 CFR Part 571, FMVSS 111 as adopted by the National Highway Traffic Safety Administration for December 3, 1993 implementation, plus all applicable standards specified in this rule;

(B) Manufacturer shall certify compliance with mirror and direct/indirect visibility standards listed in the aforementioned FMVSS 111 and provide copy to bus purchaser for all buses manufactured prior to January 1, 1994.

(b) Interior Mirror:

(A) Interior mirror shall be either clear view laminated glass or clear view glass bonded to a backing which retains the glass in the event of breakage. Mirror shall be a minimum of 6" x 30". Mirror shall have rounded corners and protected edges;

(B) Type A buses shall be equipped with a mirror providing at least 96 square inches of flat mirror surface;

(C) Bus seller shall certify compliance with mirror and direct/indirect visibility standards listed in the aforementioned FMVSS 111 and provide a copy to used bus purchasers when certification is not available from manufacturer for all buses manufactured prior to January 1, 1994.

(24) Mounting:

(a) Chassis frame shall support rear body cross member. Bus body shall be attached to chassis frame at each main floor sill, except where chassis components interfere, in such a manner as to prevent shifting or separation of body from chassis under severe operating conditions;

(b) Body front shall be attached and sealed to chassis in such manner as to prevent entry of water, dust or fumes through joint between chassis cowl and body;

(c) When floor is provided by bus body manufacturer, adequate insulating padding shall be placed at all contact points between body and chassis frame. Insulating material shall be approximately 1/4-inch thick and shall be so attached as to prevent movement under severe operating conditions.

(25) Mud Flaps:

(a) Mud flaps or splash aprons are required for rear wheels on all school buses and shall be provided by the body manufacturer;

(b) Flaps shall be of heavy-duty rubberized material or equivalent and shall extend at least the full width of tires from a point above the center of the tires to a point not more than ten inches above the surface of the highway when such vehicle is empty.

(26) Overall Length: Maximum length for school buses shall be limited to 40 feet (see OAR 581-053-0512, Bus Chassis, section (33), Turning Radius: ORS 818.080).

(27) Overall Width: Overall width of bus shall not exceed the maximum permitted by Oregon Motor Vehicle laws.

(28) Overhang: Body shall be so mounted as to comply with requirements described in chassis weight distribution standard. Body length extending beyond the rear axle shall not exceed three-fourths the length of the vehicle's wheel base per Oregon Vehicle Code.

(29) Racks: The installation of any kind of exterior luggage rack outside the bus is prohibited. This does not prohibit enclosed luggage compartments.

(30) Radios and Public Address Systems:

(a) Interior speakers mounted in the ceiling panels shall be either flush mounted or may protrude not more than 1-1/2 inches if the speaker housing is free of any corners or projections which can cause injury by striking with the head or in the event of a collision or rollover. Speakers protruding more than 1-1/2 inches may be mounted in the vertical end panels above the windshield or back windows as long as speakers are free of corners or projections that could cause injury;

(b) Speakers shall not be placed above any aisle;

(c) Buses purchased after November 1, 1985, shall be equipped with a public address system having interior and exterior speakers and a switch to separate from inside and outside.

(31) Rub Rails:

(a) There shall be one rub rail located on each side of bus approximately at seat level which shall extend from rear side of entrance door completely around bus body (except for emergency door and access panel(s)) to point of curvature near outside cowl on left side;

(b) There shall be one rub rail located approximately at floor line which shall cover same longitudinal area as upper rub rail, except at wheelhousing, and shall extend only to radii of right and left rear corners;

(c) Both rub rails shall be attached at each body post and all other upright structural members;

(d) Both rub rails shall be four inches or more in width, shall be of 16-gauge steel, suitable material of equivalent strength, and shall be constructed in corrugated or ribbed fashion;

(e) Both rub rails shall be applied to the outside body or outside body posts. Pressed-in or snap-on rub rails do not satisfy this requirement. For Type A-1 and A-2 buses using chassis manufacturer's body, or Type B, C and D buses using rear luggage or engine compartment, rub rails need not extend around rear corners.

(32) Sanders: Where used, sanders shall:

(a) Be of hopper cartridge-valve type;

(b) Have metal hopper with all interior surfaces treated to prevent condensation of moisture;

(c) Be of at least 100 pound (grit) capacity;

(d) Have cover on filler opening of hopper, which screws into place, sealing unit airtight;

(e) Have discharge tubes extending to front of each rear wheel under fender;

(f) Have no-clogging discharge tubes with slush-proof, nonfreezing rubber nozzles;

(g) Be operated by electric switch with telltale light mounted on instrument panel;

(h) Be exclusively driver-controlled.

(33) Seat Belt:

(a) A Type 2 lap belt/shoulder harness seat belt shall be provided for the driver. Each belt section shall be booted to keep belt and the button or buckle type latch off floor when not in use. Shoulder belt

assemblies on Type B, C, and D buses shall provide for a height adjustment of at least four inches at its upper point of attachment to the bus. Belt shall be anchored or guided in a manner at the seat frame to prevent the driver from sliding sideways when belt is in use. Locking retractors may be either an ELR (Emergency Locking Retractor) or an ALR (Automatic Locking Retractor). All ALR equipped buses received after July 1, 1989, must include an approved anti-cinching device;

(b) Seat belts for passengers: Passenger seat belts may be installed in school buses with a GVWR of more than 10,000 pounds. The attachments, belts and installation shall meet the requirements of Federal Motor Vehicle Safety Standard Nos. 208, 209 and 210 as they apply to school buses with a GVWR of 10,000 pounds or less.

(34) Seats and Crash Barriers:

(a) Seats and barriers shall meet requirements of Federal Motor Vehicle Safety Standard No. 222;

(b) All seats shall have minimum depth of 15 inches;

(c) In determining seating capacity of bus, the minimum allowable rump width shall be 13 inches;

(d) Seat, seat back cushion and crash barrier shall be covered with a material having a minimum 42-ounce finished weight, 54-inch width and finished vinyl coating of 1.06 broken twill, or other material with equal tensile strength, tear strength, seam strength, adhesion strength, resistance to abrasion, resistance to cold, and flex separation. Material shall meet or exceed the criteria contained in the School Bus Seat Upholstery Fire Block Test for all buses purchased after September 1, 1993 (see Appendix);

(e) All seats shall be forward facing and shall be securely fastened to that part(s) of bus that support them with a nut-and-bolt type of fastener. Each seat leg shall be secured to the floor by a minimum of two nut-and-bolt type fasteners of at least grade 5 SAE strength. Sheet metal screw-type fasteners without a nut are not acceptable, except in areas where it is not possible to install a nut-and-bolt type fastener. Type A-1 and A-2 bus seat fasteners shall meet the requirements of Federal Motor Vehicle Safety Standards 209 and 210;

(f) No bus shall be equipped with jump seats or portable seats. Flip-up seats at side emergency exit doors are allowed;

(g) Seat spacing shall not be less than 24 inches between the front of the back of each seat and the rear of the back of the seat immediately ahead. This shall be measured at cushion height on a plane parallel to the center line of the bus;

(h) Driver's seat shall be so located in relationship to the steering wheel that the driver may assume a natural position while driving, have a clear view of the road, and sufficient leg room to operate safely and effectively the brake and clutch pedals and accelerator without cramping or interference. Minimum distance between steering wheel and back rest of driver's seat shall be 11 inches. Driver's seat shall have a fore-and-aft adjustment of not less than four inches and shall on Type B, C, and D buses be capable of being raised and lowered at least three inches and shall be strongly attached to comply with acceptable installation procedures:

(A) Driver's seat supplied by the body company shall be a high back suspension seat with a minimum seat back adjustment of 15 degrees, not requiring the use of tools, and with a head restraint to accommodate a 95th percentile female anthropomorphic dummy as defined in FMVSS 208. The driver's seat shall be secured with nuts, bolts, and washers or flanged-headed nuts;

(B) Driver's seat positioning and range of adjustment shall be designed to accommodate comfortable actuation of the foot control pedal by 95 percent of the adult female population.

(i) Each passenger seat and driver's seat shall have a positive type retention system to prevent the seat cushion from disengaging from the seat frame at the front and rear in the event of an accident or rollover.

(35) Steering Wheel: (See OAR 581-053-0512(29), Steering Gear, also.) Steering wheel outside circumference shall have at least two inches of clearance at all points.

(36) Steps:

(a) Service door entrance may be equipped with two-step or three-step stepwell. Risers in each case shall be approximately equal and shall not exceed 10 inches in height. When plywood floor is used on steel, differential may be increased by thickness of plywood used:

(A) First step at service door shall be not less than 10 inches and not more than 14 inches from ground, based on standard chassis specifications;

(B) Type D buses shall be equipped with a three-step stepwell. First step at service door shall not be less than 12 inches and not more than 16 inches from the ground based on standard chassis specifications.

(b) Steps shall be enclosed to prevent accumulation of ice and snow;

(c) Steps shall not protrude beyond side body line;

(d) Steps (if any) on Type A-1 and A-2 buses not manufactured originally as school buses may be chassis manufacturer's standard;

(e) At least one grab handle not less than 20 inches in length shall be provided to assist passengers during entry or egress in unobstructed locations inside doorway. Grab handle shall be designed, installed and maintained to minimize the opportunity for entanglement of passenger clothing and belongings.

(37) Step Treads:

(a) All steps, including floor line platform area, shall be covered with 3/16-inch rubber floor covering or other materials equal in wear resistance and abrasion resistance to top grade rubber;

(b) Metal back of tread, minimum 24-gauge cold roll steel, shall be permanently bonded to ribbed rubber;

(c) 3/16-inch ribbed step tread shall have a 1-1/2-inch white nosing as integral piece without any joint;

(d) Rubber portion of step treads shall have the following characteristics:

(A) Special compounding for good abrasion resistance and high coefficient of friction;

(B) Flexibility so that it can be bent around a 1/2-inch mandrel both at 130 degrees F and 20 degrees F without breaking, cracking or crazing;

(C) Show a durometer hardness 85 to 95.

(38) Steps, Windshield Access: There shall be at least one folding step or recessed foothold and suitably located handles on each side of the front of the body for easy accessibility for cleaning the windshield and lamps except when windshield and lamps are easily accessible from the ground. Standard does not apply to chassis not originally manufactured as school buses.

(39) Stop Signal Arms: All buses purchased after September 1, 1993 and all buses in service after August 1, 1995 shall be equipped with stop signal arms mounted in accordance with the following requirements:

(a) Shall meet all applicable requirements of the Federal Motor Vehicle Safety Standard 49 CFR 571.131;

(b) Shall be installed on the left side of the bus; the vertical center of the stop blade shall be at least seven inches but not more than 14 inches below the window line, on the first body post to the rear of the driver or as close as practicable;

(c) Shall be a metal octagon shaped sign 18 inches wide and 18 inches long exclusive of the mounting bracket. A windguard shall be provided. All sheet metal parts shall be 16 gauge metal or heavier;

(d) Shall have the word "STOP" on both sides in white letters six inches high and of proportionate width on a red background. The outer edge shall have a white border one-half inch wide. All other parts of the assembly shall be painted black;

(e) Shall be equipped with two, four-inch, double faced alternating flashing red lamps to be mounted near the perimeter of the sign with a minimum of 12 inches spacing between lamp centers. The stop arm and lamps shall be wired to the circuit of the flashing red warning lamps mounted on the front and rear of the bus and shall operate simultaneously with the red bus safety lamps. Lamps shall be LED or strobe ORS 820.105;

(f) May be reflectorized:

(A) Reflectorized material shall be of automotive engineering grade or better;

(B) Reflectorized material may be retroreflective or reflective.

(g) Shall be either air, vacuum, or electrically operated:

(A) Air operated stop arms:

(i) Air may be supplied from an air accessory tank or from the first (wet) tank;

(ii) If source is from the first (wet) tank a pressure protection valve shall be installed to prevent the tank air supply from falling below 60 pounds;

- (iii) Stop arm system must have a pressure regulating valve;
- (iv) All fittings shall be brass.
- (B) Vacuum operated stop arms:
- (i) Vacuum shall be supplied from a separate accessory tank. Tank shall be protected by a check valve;
- (ii) All fittings shall be brass.

(40) Sun Visor: Interior adjustable sun visor, not less than 6 by 30 inches in size, shall be installed above windshield in position convenient for use by driver. If transparent visor is used, it shall be of such material so as not to prevent distinguishing between the colors of red and green traffic signals. Vehicles not originally manufactured as school buses may be equipped with manufacturer's standard visor. Buses purchased after November 1, 1985, shall have visors with protected edges.

(41) Tail Pipe: (See OAR 581-053-0512, Bus Chassis, section (14) also.) Tail pipe shall extend to outside surface of the rear bumper but not more than two inches beyond the rear bumper. The tail pipe may be routed through the rear bumper. If tail pipe is routed to the left side of body, the tail pipe shall extend at least to body skirt, but not more than one inch beyond body skirt. Tailpipe shall exit in the rear of the vehicle or to the left side of the bus. Tailpipe shall not exit beneath any fuel filler location or beneath any emergency exit.

(42) Tool Compartment: A metal container of adequate strength and capacity for storage of tire chains, tow chains and such tools as may be necessary, may be provided. Container may be located inside or outside of passenger compartment. If inside, it shall have a cover and positive type latch to prevent opening in event of a severe impact or bus rollover, and shall be attached to the floor with a nut and bolt fastener, or may be securely attached to a seat frame under a seat.

(43) Tow Hooks:

(a) Type C buses shall be equipped with two rear tow hooks, or one center tow hook tied to both frame rails, that have sufficient strength to pull or be pulled by another vehicle of the same GVWR. Tow hooks shall be installed in order that no permanent distortion to the body or chassis will result if the bus must be towed. (See also OAR 581-053-0512, Bus Chassis, section (31), Tow Hooks);

(b) Type D vehicles shall be equipped with two rear tow hooks or tow eyes, and at least one front tow hook or eye, mounted or capable of immediate mounting. Hooks or eyes shall have sufficient strength to pull or be pulled by another vehicle of the same GVWR.

(44) Under carriage luggage compartments: Luggage compartments may be installed on the outside of the bus mounted below the floor level or in the rear of the bus. Access to compartments must be from the outside only. Compartment doors must have a positive retention to hold the doors open. Compartment doors must be lockable. These rule changes apply to buses ordered after July 1, 2004

(45) Undercoating:

(a) Entire underside of bus body, including floor sections, cross member and below floor line side panels, shall be coated with rust-proofing compound for which compound manufacturer has issued notarized certification of compliance to bus body builder that compound meets or exceeds all performance and qualitative requirements of paragraph 3.4 of Federal Specification TT-C-520b using modified test procedures* for following requirements:

(A) Salt spray resistance — pass test modified to five percent salt and 1,000 hours;

(B) Abrasion resistance — pass;

(C) Fire resistance — pass.

(b) Undercoating compound shall be applied with suitable airless or conventional spray equipment to recommended film thickness and shall show no evidence of voids in cured film. *Test panels are to be prepared in accordance with paragraph 4.6.12 of TT-C-520a with modified procedure requiring that tests be made on a 48-hour air cured film at thickness recommended by compound manufacturer.

(46) Ventilation:

(a) Body shall be equipped with suitable, controlled ventilating system of sufficient capacity to maintain proper quantity of air under operating conditions without opening of windows except in extremely warm weather;

(b) Static-type nonclosable exhaust ventilation shall be installed in low-pressure area of roof.

(47) Video surveillance cameras may be installed inside or on the forward bulkhead (header) above the windshield in compliance with the following requirements:

(a) Surface mounted camera/camera housing/video recording devices or those extending into the passenger compartment shall be mounted as close as practicable directly above the driver but not to extend into the area directly forward of the aisle beyond the existing 6" x 30" rear view mirror or the installation complies with all of the following:

(A) The camera/recorder/housing extends into the passenger compartment no more than 9 inches;

(B) Extends down from the ceiling no more than five inches;

(C) Is no wider than five inches; and

(D) Is located as close as practicable to the mid-point of the head-end at the highest possible position.

(b) If camera/camera housing or video receiving device extends into the passenger compartment all edges must be rounded and/or protected with enclosure of shatterproof construction;

(c) Flush mounted camera systems (no extension into passenger compartment) may be mounted in any desired position on the bulkhead;

(d) Camera/camera housing must be adequately secured to the bulkhead or ceiling in a manner to prevent separation from the vehicle in the event of a collision or mishap. Securement system shall be capable of withstanding a force of 5,672 Newtons applied from any direction without separation from the bus;

(e) Camera mounting design must allow ready access for camera and video recording medium removal;

(f) All electrical connections shall be made with UL approved wiring and protected by grommets any place it passes through metal panels.

(48) Weight Distribution:

(a) Weight distribution of fully loaded bus on level surface shall be such as to not exceed the manufacturer's front Gross Axle Weight Rating (GAWR) and rear Gross Axle Weight Rating;

(b) Weight distribution of fully loaded bus on level surface shall be such that not more than 75 percent of gross vehicle weight is on rear tires and not more than 35 percent is on front tires. Type B and D buses with engine inside front of body and entrance door ahead of front wheels shall have not more than 75 percent of gross vehicle weight on rear tires or more than 50 percent on front tires. If entrance door is behind front wheels, not more than 75 percent of gross vehicle weight shall be on rear tires not more than 40 percent on front tires. With engine in rear, not more than 75 percent of gross vehicle weight shall be on rear tires or more than 40 percent on front tires.

(49) Wheelhousing:

(a) The wheelhousing opening shall allow for easy tire removal and service;

(b) Wheelhousing shall be attached to floor sheets in such a manner as to prevent any dust, water or fumes from entering the body. Wheelhousing shall be constructed of 16-gauge steel, or other material of equal strength;

(c) The inside height of the wheelhousing above the floor line shall not exceed 12 inches;

(d) The wheelhousing shall provide clearance for installation and use of tire chains on single and dual (if so equipped) power-driving wheels;

(e) No part of a raised wheelhousing shall extend into the emergency door opening.

(50) Windshield and Windows:

(a) All glass in windshield, windows and doors shall be of approved safety glass so mounted that its identification mark is visible and of a quality to prevent distortion in any direction. All glazing materials shall be on the approved list of the Oregon Department of Motor Vehicles;

(b) Windshield shall be of safety plate glass AS-1 grade as specified by American National Standards Institute Safety Code Z26.1-1966;

(c) Windshield glass may be heat absorbing and may have a horizontal gradient band starting slightly above the line of the operator's vision and gradually decreasing in light transmission to 20 percent or less at the top of the windshield in compliance with Federal Motor Vehicle Safety Standard 205;

(d) Glass in all side windows, doors and rear windows shall be AS-2 or better grade, as specified in Z26.1-1966, or AS-4 coated abrasion resistant rigid plastic meeting requirements of Federal Motor

Vehicle Safety Standard 205. Rigid plastic cannot be used for windshields or windows immediately to the left or right of the driver;

(e) Side windows shall conform to the following:

(A) Buses shall provide full drop or split sash windows which provide an unobstructed opening of at least 12 inches and not more than 14 inches in height, obtained by lowering the sash, and at least 22 inches in width. Type A-1 and A-2 buses may have a full drop or split sash windows which provide an unobstructed opening of at least 9 inches and not more than 13 inches in height, obtained by lowering the sash, and at least 22 inches in width, provided the bus has 2 swing-out windows.

(B) One window on each side of the bus may be less than 22 inches in width.

(51) Windshield Washers: Bus shall be equipped with electric or air operated windshield washers.

(52) Windshield Wipers: Bus shall be equipped with two windshield wipers of air or electric type that meets FMVSS 104 powered by motor or motors of at least two speeds and with sufficient power to operate wipers under severe weather conditions. Type A-1 and A-2 bus manufacturer's standard is permitted.

(53) Wind deflectors may be installed according to manufacturer's standards on the rear roof to deflect snow, dust and dirt from the rear window.

(54) Wiring:

(a) All wiring shall conform to current standards of Society of Automotive Engineers;

(b) Circuits:

(A) Wiring shall be arranged in circuits, as required, with a circuit protection system. A system of color or number coding shall be used for all buses purchased after September 1, 1993 and an appropriate identifying diagram shall be provided the end user along with the wiring diagram provided by the chassis manufacturer. The following interconnecting circuits shall be color coded as noted:

(i) Left rear directional light — yellow;

(ii) Right rear directional light — dark green;

(iii) Stop lights — red;

(iv) Back-up lights — blue;

(v) Tail lights — brown;

(vi) Ground — white;

(vii) Ignition feed, primary feed — black;

(viii) The color of cables shall correspond to SAE J1128.

(B) Wiring shall be arranged in at least seven regular circuits, as follows:

(i) Head, tail, stop (brake) and instrument panel lamps;

(ii) Clearance and stepwell lamps (stepwell lamp shall be activated when service door is opened);

(iii) Dome lamp;

(iv) Ignition and emergency door signal;

(v) Turn signal lamps;

(vi) School Bus Safety Lights;

(vii) Heaters and defrosters.

(C) Any of above combination circuits may be subdivided into additional independent circuits;

(D) Whenever possible, all other electrical functions (such as sanders and electric-type windshield wipers) shall be provided with independent and properly protected circuits.

(c) The entire electrical system of the body shall be designed for the same voltage as the chassis on which the body is mounted;

(d) All wiring shall have an ampere capacity equal to or exceeding the designed load. All wiring splices are to be done at an accessible location and noted as splices on wiring schematic;

(e) Each body circuit shall be coded by number or letter on a diagram of easily readable size and be furnished with each bus body or affixed in an area convenient to the electrical accessory control panel;

(f) Body power wire is to be attached to special terminal on the chassis;

(g) All wires passing through metal openings shall be protected by a grommet;

(h) Wires not enclosed within body shall be fastened securely at intervals of not more than 18 inches. All joints shall be soldered or joined by equally effective connectors and shall be moisture and corrosion resistant.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 327.013 & 820.100 - 820.120

Stats. Implemented: ORS 327.013, 820.100, 820.105, 820.110 & 820.120

Hist.: 1EB 17-1985, f. 10-29-85, ef. 11-1-85; EB 16-1987(Temp), f. 7-30-87, ef. 9-27-87; EB 30-1987, f. & ef. 12-9-87; EB 44-1988, f. 12-16-88, cert. ef. 1-1-89; EB 21-1993, f. & cert. ef. 6-2-93; ODE 11-1999, f. & cert. ef. 2-12-99; ODE 30-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 16-2004, f. & cert. ef. 8-4-04; ODE 10-2005, f. & cert. ef. 11-15-05

581-053-0527

Minimum Standards for School Buses Designed to Transport Children with Disabilities

(1) Vehicles used for the transportation of children with disabilities shall meet all minimum standards for Oregon school buses, except for alterations and equipment necessary to accommodate special needs:

(a) No modification or alteration of a school bus shall be performed if such modification or alteration would cause the vehicle to be constructed or equipped in violation with any Federal Motor Vehicle Safety Standard effective at the time of original chassis manufacture;

(b) Design of special equipment not covered in the minimum standards is subject to approval by the Oregon Department of Education;

(c) With respect to vehicles constructed or modified for transportation of children with disabilities, this rule presents the standards for special equipment, and exceptions in minimum standards for school buses:

(A) For determining standard requirements, the passenger and gross vehicle weight rating classification for any vehicle to transport exceptional children will be determined as if the vehicle were equipped with a standard seating arrangement prior to modification;

(B) Any school bus that is used specifically for the transportation of children who use wheelchairs and/or other mechanical restraining devices prohibiting use of the regular service entrance, shall be equipped with a power lift. Type A buses may be equipped with ramps. See section (10) of this rule.

(2) Aisles leading to emergency door(s) from wheelchair area shall be at least 30 inches wide to permit passage of a wheelchair. Special lift doors are not considered emergency doors unless in compliance with all right side emergency door requirements.

(3) Child Safety Seats/Systems:

(a) Child safety seats/systems used for transporting infants, toddlers, or others requiring added support shall conform to specific strength and performance standards or dynamic test standards identified in **Federal Motor Vehicle Safety Standard 213** for protection of a child up to 50 pounds;

(b) Child safety seats/systems shall bear a label specifying compliance with all applicable Federal Motor Vehicle Safety Standards at the time of their manufacture;

(c) Child safety seats/systems shall be secured to the school bus seat by either seat belts or special restraining devices as defined in section (13) of this rule.

(4) Fuel Tank: Fuel tanks may be relocated when necessary, but must maintain full compliance with **Federal Motor Vehicle Safety Standard 301**.

(5) Glazing: All windows may be tinted.

(6) Guard Panel: Guard panel shall be installed at both rear and front edges of lift door opening extending into bus. Enclosure walls of equal or greater strength installed front and rear of the lift are an acceptable alternative. If elevator-type lift (body floor section serving as a lift platform) is used, a covered chain shall be installed extending across platform opening. The chain shall be positively attached at the rear point of attachment and a hook and eye at the front of the lift mechanism.

(7) Identification: Buses designed and used for transporting children with disabilities may display universal handicapped symbols located near service entrance door and at the rear of the vehicle below the window line. Such emblems shall be white on blue, shall not exceed 12 inches square in size, and may be reflectorized.

(8) Lights:

(a) Dome Lights: There shall be the equivalent of at least one dome light for every two full body sections (approximately every 54 inches) behind the regular service entrance door;

(b) An interior light shall be placed over lift area and activated by a door switch. Circuit may be wired through stepwell light circuit.

(9) Oxygen (personal):

(a) Tank(s) of compressed oxygen being transported may not have a capacity greater than 22 cubic feet;

(A) Tank(s) shall be Department of Transportation approved and shall have certification label affixed;

(B) Tank(s) valve(s) and regulators shall be protected from breakage;

(C) Tank(s) shall be securely attached to the bus in a manner to avoid being a hazard for students and away from intense heat.

(b) Container(s) of liquid oxygen being transported may not have a capacity greater than 23 cubic feet:

(A) Container(s) shall be Department of Transportation approved and shall have certification label affixed;

(B) Container(s) shall be securely attached to the bus in a manner to avoid being a hazard for students and to prevent damage and exposure to intense heat.

(10) Power Lift:

(a) Lifting mechanism shall be located on the right side of the bus and be capable of lifting a minimum load of 800 pounds;

(b) When the platform is in the fully up position, it shall be locked in position mechanically by means other than a support, or lug in the door;

(c) Controls shall be provided that enable the operator to activate the lift mechanism from either inside or outside of the bus. There shall be a means of preventing the lift platform from falling while in operation due to a power failure. If equipped with a control switch flex cord, the cord shall be installed to minimize entanglement with lift mechanism;

(d) Power lifts shall be so equipped that they may be manually raised and lowered in the event of power failure of the power lift mechanism;

(e) Lift travel shall allow the lift platform to rest securely on the ground;

(f) All edges of the platform shall be designed to restrain wheelchair and operator's feet from being entangled during the raising and lowering process;

(g) Lift platform shall have a minimum usable area of 30 inches by 48 inches;

(h) Platform shall be fitted on both sides with full width barriers which extend above the floor line of the lift platform;

(i) A restraining device shall be affixed to the outer edge (curb end) of the platform that will prohibit the wheelchair from rolling off the platform when the lift is in any position other than fully extended to ground or desired platform level. Minimum height of device/barrier shall be four inches;

(j) A self-adjusting, skid resistant plate shall be installed on the outer edge of the platform to minimize the incline from the lift platform to the ground level. This plate, if so designed, may also suffice as the restraining device described in subsection (h) of this section. The lift platform must be skid resistant;

(k) A circuit breaker or fuse shall be installed between power source and lift motor if electrical power is used;

(l) The lift mechanism shall be equipped with adjustable limit switches or bypass valves to prevent excessive pressure from building in the hydraulic system when the platform reaches the full up position or full down position;

(m) Sharp corners or projections of the lift which are likely to cause injury to passengers in the event of a collision or rollover shall be padded with impact absorbing material;

(n) There shall be no exposed areas on lift mechanism or adjacent to lift that could cause injury to children while lift is in motion;

(o) Power unit for lift shall be located so as not to restrict or impair center aisle space or foot and leg room between seats;

(p) If body floor section serves as a portion of the lift platform, the adjacent under-floor areas on three sides shall be closed off with shields when platform is in the lowered position;

(q) Platform shall be confined within the perimeter of the school bus body when not extended, in no way attached to the exterior sides of the bus.

(r) Platform shall provide at least one handrail in compliance with requirements specified in Public Law 101-376.

(11) Ramps: In lieu of a power lift, a ramp device may be installed on Type A buses:

(a) Ramp shall be of sufficient strength and rigidity to support wheelchair, occupant and attendant. It shall be equipped with protective flange on each longitudinal side to keep wheelchair on ramp;

(b) Floor of ramp shall be covered with nonskid material;

(c) Ramp shall be of weight, and equipped with handle(s), to permit one person to put ramp in place and return it to storage place;

(d) Provisions shall be made to secure ramp to side of bus for use without danger of detachment, and ramp shall be connected to bus at floor level in such manner as to permit easy access of wheels on wheelchair to floor of bus;

(e) Ramp shall be at least 80 inches in length, and width of the ramp shall be adequate to accommodate wheelchairs up to 30 inches wide. Ramp shall be of one piece, or two 40-inch sections hinged to allow for storage;

(f) Dustproof and waterproof enclosed container shall be provided if ramp is stored under floor.

(12) Ramp Door:

(a) Special ramp door opening shall be located on right side of bus and be not less than 30 inches in width;

(b) Doors must meet the standards specified for "special service entrance doors" or be standard hinged cargo doors supplied and installed at the factory;

(c) Side cargo-type sliding doors are acceptable on production line vans providing that the doors slide outside and along the body wall and lock in the closed position at two points opposite each other.

(13) Special Restraining Devices:

(a) Webbed straps/belts not less than 1.8 inches wide and having a breaking strength when tested under procedures listed in **49 CFR 571.209 S5.1(b)** of not less than 6,000 pounds or 2,720 kilograms. Webbing shall comply with requirements listed in **49 CFR 571.209** for elongation, resistance to abrasion, light, and micro-organisms as well as colorfastness;

(b) Hardware, including buckles, retractor, bolts, and attachment devices shall comply with all applicable standards listed in **49 CFR 571.209 S4.3**;

(c) Belts/straps shall be secured to the vehicle either at points designated by the manufacturer for the attachment of seat belts in compliance with **49 CFR 571.210 S4.3.1** and **S5** or through nut-and-bolt fasteners attached through the floor, each capable of withstanding a pulled force of at least 5,000 pounds;

(d) Belts/straps shall be clearly identified with labels or other permanent markings as: "**Special Restraining Devices.**"

(14) Special Service Entrance:

(a) Bus bodies may have a special service entrance constructed in the body to accommodate a wheelchair lift for the loading and unloading of passengers;

(b) The opening, to accommodate the special service entrance, shall be at any convenient point on the right (curb side) of the bus and far enough to the rear to prevent the door(s), when open, from obstructing the right front regular service door;

(c) The opening may extend below the floor through the bottom of the body skirt. If such an opening is used, reinforcements shall be installed at the front and rear of the floor opening to support the floor and give the same strength as other floor openings;

(d) Entrance shall be of sufficient width and depth to accommodate various mechanical lifts and related accessories as well as the lifting platform. The minimum clear opening width shall be adequate to accommodate the minimum platform defined in section (10) of this rule;

(e) Door posts and headers from entrance shall be reinforced sufficiently to provide support and strength equivalent to the areas of the side of the bus not used for service doors;

(f) A drip moulding shall be installed above the opening to effectively divert water from entrance;

(g) A soft energy absorbing cushion not less than three inches wide and one inch thick shall be located inside the bus at the lowest point possible of the upper door sill. The cushion shall be at least as wide as the lift platform.

(15) Special Service Entrance Doors:

(a) A single door may be used if the width of the door opening does not exceed forty-two inches;

(b) Two doors shall be used if any single door opening would exceed 42 inches;

(c) All doors shall open outwardly;

(d) All doors shall have positive nonhitchable fastening devices to hold doors in the open position;

(e) All doors shall be weather sealed and on buses with double doors, they shall be so constructed that a flange on the forward door overlaps the edge of the rear door when closed;

(f) When manually operated dual doors are provided the rear door leaf shall have at least a one-point fastening device to the header. The forward mounted door shall have at least three-point fastening devices. One shall be to the header, one to the floor line of the body, and the other shall be into the rear door. These locking devices shall afford maximum safety when the doors are in the closed position. The door and hinge mechanism shall be of a strength that will provide for the same type of use as that of a standard entrance door;

(g) If optional power doors are installed the design shall permit manual release of the doors for opening and closing by the attendant from the platform inside the bus;

(h) Door materials, panels, and structural strength shall be equivalent to the conventional service and emergency doors. Color, rub rail extensions, lettering and other exterior features shall match adjacent sections of the body;

(i) Each door shall have windows set in rubber, compatible within one-inch of the lower line of adjacent sash;

(j) Door(s) shall be equipped with a device that will activate a green flashing signal located in the driver's compartment when door(s) is not securely closed and ignition is in "on" position;

(k) A switch shall be installed so that the lifting mechanism will not operate when the lift platform door(s) is closed;

(l) Buses equipped with special service entrance doors not currently in use for service to students with disabilities or power lift equipped, must assure: Doors must be in compliance with all requirements for right side emergency door, or all of the following:

(A) Be sealed and inoperable;

(B) Have no handles; and

(C) Have the words **NOT AN EXIT** placed in letters at least two inches high above the door on both the interior and exterior of the bus.

(16) Seating Arrangements:

(a) Flexibility in seat placement and spacing to accommodate special needs or devices may be permitted due to change of passenger requirements;

(b) Rear-facing seats may be installed if necessary for exit access or student monitoring. If rear-facing seats are installed they shall comply with all applicable elements of **Federal Motor Vehicle Safety Standard 222** and be equipped with a lap belt meeting requirements listed in **FMVSS 208, 209, and 210**.

(17) Steps: Vehicles equipped with power lifts shall provide service door steps extending the full width of the stepwell.

(18) Student Securement Systems:

(a) All child securement systems provided in the bus shall be used in compliance with all applicable standards and rules, including those addressing mobile seating devices;

(b) Any exemption from student securement system requirements shall be acceptable only when provided by a doctor on a form consistent with ORS 811.220.

(19) Wheeled Mobility Device — Fastening Devices:

(a) Adjustable and accessible positive fastening devices shall be provided, attached to floor or walls or both, that will securely hold wheelchairs or other type of ambulatory mobility devices in the event the vehicle is overturned and to prevent the wheels from leaving the floor in case of a sudden movement. All floor-mounted attachment devices shall be affixed with nut and bolt fasteners, except in areas where it is not practicable. Buses purchased after September 1, 1993, equipped to transport mobile seating devices or buses retrofitted for that purpose after that date, shall provide mobility-device securement straps and hardware in compliance with **FMVSS 222** adopted by National Highway Traffic Safety Administration for January 17, 1994, implementation;

(b) Wheelchairs or other devices designed solely for use by handicapped or convalescent passengers may be positioned in a direction other than forward-facing only at the specific direction of the student's IEP when forward-facing positions are available;

(c) Buses equipped to transport mobile seating devices purchased after September 1, 1993, or buses retrofitted after that date to transport mobile seating devices shall have a **Federal Motor Vehicle Safety Standard** complying barrier placed forward (front of bus) of each

mobile seating device placed in a position other than forward facing. Barriers shall be located as close as practicable to the forward side of the mobile seating device.

(d) No fastening device shall be attached to any door;

(e) Additional fastening devices may be installed to restrain the student due to the many different configurations of chairs and exceptionalities;

(f) Three-wheeled mobile seating devices shall not be occupied during transport.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 327.013, 485 & 820.100 - 820.120

Stats. Implemented: ORS 327.013, 820.100, 820.105, 820.110 & 820.120

Hist.: IEB 17-1985, f. 10-29-85, ef. 11-1-85; EB 44-1988, f. 12-16-88, cert. ef. 1-1-89; EB 21-1993, f. & cert. ef. 6-2-93

581-053-0535

Required School Bus Use

(1) Vehicles manufactured after April 1, 1977, with a capacity of more than ten persons, that are used to transport students to and from school shall be a school bus as defined in ORS 801.460.

(2) Vehicles manufactured prior to April 1, 1977, with a capacity of ten or more persons, that are used to transport students to and from school shall not be entered into a fleet for the first time after June 1, 1986.

Stat. Auth.: ORS 820

Stats. Implemented: ORS 327.013, 820.100, 820.105, 820.110 & 820.120

Hist.: IEB 26-1986, f. 7-17-86, ef. 10-1-86

581-053-0540

Vehicles Exempted from Regulation as a School Bus or School Activity Vehicle

In addition to exemptions provided for in ORS 801.455 and 801.460, vehicles exempted from regulation as a school bus or school activity vehicle, under the provisions of ORS 820.150, are all vehicles not marked with the words "**School Bus**" that are owned or leased by, contracted to, or operated by or for a school and do not have a primary design or intended use of transporting students.

Stat. Auth.: ORS 820

Stats. Implemented: ORS 327.013, 820.100, 820.105, 820.110 & 820.120

Hist.: IEB 26-1986, f. 7-17-86, ef. 10-1-86

581-053-0545

Type 10 Pupil Transporting Vehicle Standards and Rules for Operation

(1) Definitions of terms used in this rule:

(a) "Type 10 vehicle": Type 10 vehicles shall have a capacity of not more than ten persons, shall have a gross vehicle weight rating of not more than 10,000 pounds and are used to transport students to and from school or authorized school activities. These vehicles shall not be marked with the words "School Bus" and shall be determined by class in accordance with provisions of ORS 820.150 and are not exempted by ORS 801.455 or 801.460;

(b) "Pupil transporting vehicle": A pupil transporting vehicle is defined by OAR 581-053-0002(1)(c);

(c) "Authorized official": An authorized official means a person designated by the local employer.

(2) Construction and equipment:

(a) Vehicle construction shall be according to manufacturers' standard for all vehicles having a capacity of ten or fewer persons including the driver. Capacity shall be based on each vehicle's manufacturer-designated seating capacity;

(b) Equipment shall be the manufacturers' standard plus:

(A) 24-unit first aid kit, in accordance with requirements set forth in OAR 581-053-0517(13)(e). Existing Type 10 vehicles in a fleet prior to June 1, 1986, may be equipped with the previously approved 16-unit first aid kit;

(B) U.L. approved five pound-2A.10BC fire extinguisher (plastic head not permissible), in accordance with OAR 581-053-0517(13)(d). Existing Type 10 vehicles in a fleet prior to June 1, 1986, may be equipped with the previously approved five pound-10 BC fire extinguisher;

(C) D.O.T. approved triangular disabled vehicle road reflectors, in accordance with OAR 581-053-0517(13)(b);

(D) A seat belt approved by the Oregon Division of Motor Vehicles, provided for each seating position;

(E) Any alterations or equipment necessary to accommodate special needs of handicapped children, in accordance with the applicable standards in OAR 581-053-0527.

(3) Annual vehicle inspection: An annual inspection shall be completed for each vehicle (all applicable items on Form 581-2255), and certification of inspection and repair (Form 581-2256) shall be returned to ODE in accordance with OAR 581-053-0008(1) and (2).

(4) Operating rules: Operating rules for Type 10 pupil transporting vehicles when used to transport students for authorized school activities and/or to and from school on an unscheduled, irregular basis:

(a) District requirements — Districts shall adopt and implement policies and procedures to assure adequate training for all Type 10 vehicle drivers, including:

- (A) Emergency procedures and evacuation training;
- (B) Vehicle pretrip inspection training; and
- (C) Others as considered necessary.

(b) District shall immediately notify the Department of Education if they have reasons to believe any change in the driver(s)' criminal or driving records has occurred which could effect the person(s) ability to meet the licensing provisions listed in OAR 581-053-0006(8);

(c) Driver requirements — Each driver shall:

- (A) Be at least 18 years of age as required by ORS 820.190;
- (B) Possess a valid driver license or Oregon commercial driver

license. The Oregon Department of Education may approve an out-of-state operator's license if consistent in provision with the required Oregon license;

(C) Possess or obtain within 120 days of original vehicle use request, a valid first aid card; i.e., an American Red Cross First Aid program requirements or an equivalent course that is consistent with US Department of Labor Occupational Safety & Health Administration Guidelines for First Aid Programs, Directive Number CPL 2-2.53 effective January 7, 1991. A valid first aid card must then be maintained at all times;

(D) Pass a driving and criminal records check by meeting requirements specified in OAR 581-053-0006(8);

(E) Receive emergency procedure and evacuation training, vehicle pretrip inspection training and all other training as determined necessary locally. Pretrip inspections may include:

- (i) Windshield and wipers;
- (ii) All outside lights;
- (iii) Service door, emergency door and buzzer;
- (iv) Tires and wheel lug nuts;
- (v) Battery, belts, oil and coolant level;
- (vi) Horns;
- (vii) Brakes;
- (viii) Steering;
- (ix) Exhaust system;
- (x) Emergency equipment; and
- (xi) See that lights, windshield and mirrors are clean.

(F) Receive specialized training designed for special education transportation prior to transporting students with disabilities;

(G) Be judged by an authorized official as having the ability to operate the Type 10 vehicle safely and to perform related duties. Examples of related duties include, but are not limited to, handling stressful situations such as mechanical breakdowns, traffic accidents, and unruly students;

(H) Be placed on an approved driver list maintained at the Oregon department of Education. An authorized official shall provide a signed certification that the driver has completed or shall complete all requirements prior to transporting passengers, except for the first aid training provision which must be completed within 120 days as required by paragraph (5)(b)(C) of this rule. Approval expires on July 1 annually upon failure to comply with any rule requirements or termination of employment from district submitting approval list;

(I) Complete accident reports as required for school bus drivers by OAR 581-053-0015(7)(y);

(J) Report to his/her employer(s) within 15 days, any conviction for driving or criminal offenses specified in OAR 581-053-0006(8) or any involvement in an accident as defined in OAR 581-053-0006(8)(c)(G)(i);

(K) Not operate a vehicle with more passengers than the manufacturer's rated capacity;

(L) Instruct passengers to use seat belts at all times the vehicle is in motion;

(M) Maintain order in the vehicle at all times. The inside of the vehicle shall be kept clean;

(N) See that all doors on the vehicle are kept closed while the vehicle is in motion;

(O) Not permit anyone else to operate the vehicle except with the permission of authorized officials;

(P) Make certain that all aisles and passageways are kept clear;

(Q) Make sure all rear doors (emergency exits) are unlocked during vehicle operation;

(R) Not use tobacco on the vehicle and shall not permit passengers to use tobacco on the vehicle;

(S) Not be under the influence of any alcoholic beverage or any drug likely to affect the person's ability to operate a vehicle safely while on duty;

(T) Not consume any alcoholic beverage regardless of its alcoholic content or any drug likely to affect a person's ability to operate a vehicle safely while on duty or within eight hours before going on duty to operate or to have physical control of a pupil-transporting vehicle;

(U) Not permit signs of any kind to be attached to the vehicle except those specifically permitted by law or regulation;

(V) Not permit animals in the vehicle; however, guide dogs are allowed when accompanying a blind or deaf person as are other assistance animals and guide/assistance animals in training that comply with OAR 581-053-0015(7)(j);

(W) Not permit firearms, other weapons, or potentially hazardous materials in the vehicle;

(X) Secure any article in the passenger compartment likely to cause injury to a passenger in the event of an accident;

(Y) Not fill the fuel tank while passengers are in the vehicle or while the motor is running;

(Z) Not leave the vehicle when passengers are aboard until the motor is shut off, the brakes set, a manual transmission put in gear and the key removed from the ignition;

(AA) Report as soon as possible to the proper official any deficiency or malfunction of any equipment or component of the vehicle;

(BB) Not alter routes unless approved by school authorities;

(CC) Shall use all securement straps and attachments for students with adaptive/assistive devices in a manner consistent with their design.

(d) Driving hour limitations:

(A) Except as provided by paragraph (5)(c)(B) of this rule, a driver shall not drive any pupil transporting vehicle more than a total of ten hours during any consecutive 15-hour period. At the end of ten hours of driving or a 15-hour period, whichever occurs first, the driver shall not again drive any pupil transporting vehicle until at least eight hours have elapsed;

(B) The driver of any pupil transporting vehicle, after driving a regular morning route transporting pupils from home to school, may again operate any pupil transporting vehicle, but not more than eight hours in a consecutive ten hour period or until 12 midnight, whichever occurs first, provided the driver has at least four hours free from actual operation of a pupil transporting vehicle following the end of the morning route. To qualify under this provision, the driver shall have been free from pupil transporting vehicle driving duties for at least eight consecutive hours prior to the regular morning route;

(C) A driver shall not drive more than three hours continuously without taking at least a 15-minute break from driving duties;

(D) Emergency extension of driving hours: In the event of an unforeseen emergency, e.g., mechanical breakdown, accident or adverse road conditions, a driver may complete the trip without being in violation of the provisions of this rule if such trip could have reasonably been completed as originally scheduled without violation of this rule.

(5) Operating rules for Type 10 pupil transporting vehicles when used for regularly scheduled student transportation to and from school:

(a) District requirements are the same as those listed in subsection (5)(a) of this rule when used to transport students for authorized activities and/or to and from school on an unscheduled, irregular basis;

(b) Driver requirements are the same as those listed in subsection (5)(b) of this rule, when used to transport students for authorized activities and/or to and from school on an unscheduled, irregular basis, plus the driver shall:

(A) Demonstrate necessary vehicle operational skills (in a vehicle to be used) to the authorized official through a behind-the-wheel test; and

(B) Demonstrate to an authorized official, a knowledge of laws and regulations applicable to the vehicle being used.

(c) Driver rules are the same as those listed in subsection (5)(b) of this rule, when used to transport students for authorized activities and/or to and from school on an unscheduled, irregular basis plus the following;

(d) Drivers shall inspect the following prior to each trip, unless the inspection is performed by other designated employees:

- (A) Windshield and wipers;
- (B) All outside lights;
- (C) Service door, emergency door and buzzer;
- (D) Tires and wheel lug nuts;
- (E) Battery, belts, oil, and coolant level;
- (F) Horns;
- (G) Brakes;
- (H) Steering;
- (I) Exhaust system;
- (J) Emergency equipment; and
- (K) See that lights, windshield and mirrors are clean.

(e) Driving hour limitations are the same as those listed in subsection (5)(c) of this rule, when used to transport students for authorized activities and/or to and from school on an unscheduled, irregular basis.

(6) Occasional/emergency use provision — A person who does not currently meet the driver requirements for a Type 10 pupil transporting vehicle may be used on an occasional/emergency basis if such driver:

- (a) Is judged competent by the local authorized official;
- (b) Possesses a valid driver license or Oregon commercial driver license;
- (c) Does not operate vehicles under this provision more than three times in any given fiscal year (July 1 to June 30); and
- (d) Is not transporting students to and from school on regularly scheduled routes.

[ED. NOTE: Forms referenced available from the agency.]
Stat. Auth.: ORS 327.013 & 820.100 - 820.120
Stats. Implemented: ORS 327.013, 820.100, 820.105, 820.110 & 820.120
Hist.: 1EB 26-1986, f. 7-17-86, ef. 10-1-86; EB 45-1988, f. 12-16-88, cert. ef. 1-1-89;
EB 21-1993, f. & cert. ef. 6-2-93; ODE 32-2004, f. & cert. ef. 10-15-04

581-053-0550

Type 20 Pupil Transporting Vehicle Standards

(1) Definitions of terms used in this rule:

(a) "Type 20 vehicle": Type 20 vehicles shall have a capacity of not more than 20 passengers, shall have a gross vehicle weight rating of not more than 14,500 pounds, and are used to transport students to and from authorized school activities. These vehicles shall not be marked with the words "school bus" and shall be determined by class in accordance with provisions of ORS 820.150 and are not exempted by ORS 801.455;

(b) "Pupil transporting vehicle": A pupil transporting vehicle is defined by OAR 581-053-0002(1)(b);

(2) Vehicles shall meet all minimum construction and equipment standards of a Type A-1 school bus except for the following:

(a) Identification required by OAR 581-053-0517(16)(a) and (b). The words "School Bus" may not appear on a vehicle, which does not comply with all school bus requirements provided for in ORS 820.100 and 820.110. Activity vehicles may have fleet identification;

(b) Color required by OAR 581-053-0517(5). The vehicle may be painted school bus yellow if desired;

(c) Lights required by OAR 581-053-0517(21)(k). Only vehicles described in ORS 816.350(8) may be equipped with and display bus safety lights;

(d) Public address systems required by OAR 581-053-0517(30)(c).

(3) An annual inspection shall be completed for each vehicle (all applicable items on Form 581-2255), and certification of inspection and repair (Form 581-2256) shall be returned to the Oregon Department of Education in accordance with OAR 581-053-0008(1) and (2).

(4) District shall immediately notify the Department of Education if they have reason to believe any change in the driver(s)' criminal or

driving record has occurred which could effect the person(s)' ability to meet the licensing provisions listed in OAR 581-053-0006(8).

(5) No person shall transport pupils in a Type 20, unless such person has completed all requirements for a Type 20 certificate and meets the standards established by the Department for Type 20 activity drivers.

(6) Type 20 Original Certificate. The Oregon Department of Education shall issue a Type 20 certificate to qualified individuals who meet the following requirements:

(a) Be at least 18 years of age as required by ORS 820.190;

(b) Possess the required license as follows:

(A) A valid driver's license for vehicles with a passenger capacity of 14 or less; or

(B) An Oregon commercial driver license with passenger endorsement for vehicles with a passenger capacity of 15 or more, provided the driver has:

(i) A valid medical card, as defined in 735-074-0280;

(ii) Been enrolled in a drug and alcohol screening requirements by the Federal Highway Administration for Commercial Drivers.

(C) The Oregon Department of Education may approve an out-of-state operator's license if it is consistent in provision with the required Oregon license.

(c) Has completed a minimum of two hours of approved behind-the-wheel training within one year of application by a trainer certified by the Oregon Department of Education. Hours of behind-the-wheel training shall be those hours spent by the trainee with a certified trainer or an assistant approved by the Oregon Department of Education in actual operation of the vehicle or vehicles the applicant will be expected to drive. Training shall include:

(A) Complete training for proper vehicle pretrip inspection;

(B) Demonstrate knowledge of laws and regulations applicable to the vehicle being used;

(C) Complete emergency procedure and evacuation training;

(d) Demonstrate necessary vehicle operational skills (in the vehicle to be used) to an authorized official through a behind-the-wheel test, administered by a trainer certified by the Oregon Department of Education;

(e) Pass a driving and criminal records check by meeting current requirements of issuance for a school bus driver's license, as specified in OAR 581-053-0006(8).

(f) Possess or obtain within 120 days of original use request a valid first aid card; i.e., A valid first aid card must then be maintained at all times;

(g) Complete accident reports as required of school bus drivers by OAR 581-053-0015(7)(y);

(h) Report to he/her employer(s) within 15 days, any conviction for driving or criminal offenses specified in OAR 581-053-0006(8) or any involvement in an accident as defined in OAR 581-053-0006(8)(c)(G)(i);

(i) Drivers who are transporting special education students should receive specialized training designed for this purpose;

(j) Not operate a vehicle with more passengers than the manufacturers designed or equipped capacity;

(k) Instruct passengers to use seat belts at all times the vehicle is in motion;

(l) Maintain order in the vehicle at all times. The inside of the vehicle shall be kept clean;

(m) See that all doors on the vehicle are kept closed while the vehicle is in motion;

(n) Not permit anyone else to operate the vehicle except with the permission of authorized officials;

(o) Make certain that all aisles and passageways are kept clear;

(p) Make sure all rear doors (emergency exits) are unlocked during vehicle operation;

(q) Not use tobacco in the vehicle or the vicinity and shall not permit passengers to use tobacco on the vehicle;

(r) Not be under the influence of any alcoholic beverage or any drug likely to affect the person's ability to operate a vehicle safely while on duty;

(s) Not consume any alcoholic beverage regardless of its alcoholic content or any drug likely to affect a person's ability to operate a vehicle safely while on duty or within eight hours before going on duty to operate or to have physical control of a pupil-transporting vehicle;

(t) Not permit signs of any kind to be attached to the vehicle except those specifically permitted by law or regulation;

(u) Not permit animals in the vehicle; however, guide dogs are allowed and assistance animals as well as guide/assistance animals in training that comply with OAR 581-053-0015(7)(j);

(v) Not permit firearms, other weapons, or potentially hazardous materials to be carried in the vehicle;

(w) Secure any article in the passenger compartment likely to cause injury to a passenger in the event of an accident;

(x) Not fill the fuel tank while passengers are in the vehicle or while the motor is running;

(y) Not leave the vehicle when passengers are aboard until the motor is shut off, the brakes set, a manual transmission put in gear and the key removed from the ignition;

(z) Report as soon as possible to the proper official any deficiency or malfunction or any equipment or component of the vehicle;

(aa) Not alter routes unless approved by school authorities;

(bb) Shall inspect the following prior to each trip, unless the inspection is performed by other designated employees:

(A) Windshield and wipers;

(B) All outside lights;

(C) Service door, emergency door and buzzer;

(D) Tires and wheel lug nuts;

(E) Battery, belts, oil and coolant level;

(F) Horns;

(G) Brakes;

(H) Steering;

(I) Exhaust system;

(J) Emergency equipment; and

(K) See that lights, windshield and mirrors are clean.

(cc) Shall use all securement straps and attachments for students with adaptive/assistive devices in a manner consistent with their design.

(dd) Shall not tow a trailer with a gross vehicle weight rating of more than 3,000 lbs or longer than the towing vehicle.

(7) Type 20 Certificate Renewal. The Oregon Department of Education shall issue a Type 20 certificate to qualified individuals who meet the following requirements:

(a) Possesses or has possessed within the last 12 month period a valid Type 20 certificate.

(b) Possess the required license as follows:

(A) A valid driver's license for vehicles with a passenger capacity of 14 or less; or

(B) An Oregon commercial driver license with passenger endorsement for vehicles with a passenger capacity of 15 or more, provided the driver has:

(i) A valid medical card, as defined in 735-074-0280;

(ii) Been enrolled in a drug and alcohol screening requirements by the Federal Highway Administration for Commercial Drivers.

(C) The Oregon Department of Education may approve an out-of-state operator's license if it is consistent in provision with the required Oregon license.

(8) Expiration:

(a) Type 20 certificates shall be valid for two years. Certificates will not be valid if:

(A) First Aid card has expired; or

(B) Medical Card has expired if applicable.

(9) Driving hour limitations:

(a) Except as provided by subsection (5)(b) of this rule a driver shall not drive any pupil transporting vehicle more than a total of ten hours during any consecutive 15-hour period. At the end of ten hours of driving or a fifteen hour period, whichever occurs first, the driver shall not again drive any pupil transporting vehicle until at least eight hours have elapsed;

(b) The driver of any pupil transporting vehicle, after driving a regular morning route transporting pupils from home to school, may again operate any pupil transporting vehicle, but not more than eight hours in a consecutive ten hour period or until 12 midnight, whichever occurs first, provided the driver has at least four hours free from actual operation of a pupil transporting vehicle following the end of the morning route. To qualify under this provision, the driver shall have been free from pupil transporting vehicle driving duties for at least eight consecutive hours prior to the regular morning route;

(c) A driver shall not drive more than three hours continuously without taking at least a 15-minute break from driving duties;

(d) Emergency extension of driving hours: In the event of an unforeseen emergency, e.g., mechanical breakdown, accident or adverse road conditions, a driver may complete the trip without being in violation of the provisions of this rule if such trip could have reasonably been completed as originally scheduled without violation of this rule.

(9) Refusals and Suspensions:

(a) The Oregon Department of Education may refuse, suspend or revoke the certificate of a Type 20 driver for noncompliance with certification or license requirements, giving false or incomplete information on application forms, or failure to comply with laws, rules and regulations applicable to Type 20 drivers. Applications with obvious incomplete or inaccurate information will be returned to the employer with no action taken regarding denial or approval;

(10) These rules may be implemented prior to, but are mandatory by January 1, 2006.

Stat. Auth.: ORS 327.013 & 820.100 - 820.120

Stats. Implemented: ORS 327.013, 820.100, 820.105, 820.110 & 820.120

Hist.: 1EB 26-1986, f. 7-17-86, ef. 10-1-86; EB 45-1988, f. 12-16-88, cert. ef. 1-1-89; EB 21-1993, f. & cert. ef. 6-2-93; ODE 31-2004, f. & cert. ef. 10-15-04; ODE 10-2005, f. & cert. ef. 11-15-05

581-053-0555

Type 21 Activity Vehicle Standards

(1) Type 21 plus activity vehicles shall have a manufacturers' date prior to April 1, 1977, or if the vehicle was manufactured after that date, the vehicle must be constructed and equipped in accordance with **Federal Motor Vehicle Safety Standards Numbers 217, 220, 221, 222, and 301** effective at the time of manufacture.

(2) Driver requirements — Each driver shall:

(a) Possess a valid Oregon school bus driver's certificate unless the driver is under regulation of the Oregon Public Utility Commission of Oregon, the United States Department of Transportation or the Interstate Commerce Commission;

(b) Comply with rules relating to school bus drivers described in OAR 581-053-0006, Certification and Training, 581-053-0008(7), (8), and (9), Vehicle Inspection, and 581-053-0015, Rules Pertaining to School Bus Drivers.

(3) Vehicle inspection — An annual inspection shall be completed for each vehicle (all applicable items on Form 581-2255) and certification of inspection and repair (Form 581-2256) shall be returned to the Oregon Department of Education in accordance with OAR 581-053-0008(1) and (2).

(4) Vehicle requirements — Type 21 Plus activity buses shall be of standard manufacturers' design and shall meet or exceed all of the following minimum construction and equipment requirements:

(a) Brakes:

(A) Four-wheel brakes, adequate at all times to control the vehicle under all load conditions, shall be provided;

(B) Brakes shall comply with requirements of ORS 815.125 in the Oregon Motor Vehicle Law;

(C) Brakes shall comply with all applicable federal motor vehicle safety standards;

(D) Vehicles having full compressed air systems shall be equipped with:

(i) An air gauge mounted on the instrument panel to register the air pressure in the air brake system;

(ii) A visible or audible low air pressure indicator to warn the driver if air pressure in the brake system falls below 60 PSI;

(iii) A reservoir capacity equal to or greater than 12 times the total volume of all brake actuators at full travel;

(iv) An automatic moisture ejector — adequate air dryer — or control mounted at skirt to allow manual drain for tanks;

(v) Manual drains on all air tanks; and

(vi) A spring-type emergency/parking brake system.

(E) Vehicles having vacuum-assisted brake systems shall be equipped with:

(i) A vacuum reservoir capacity of not less than 1,000 cubic inches;

(ii) A vacuum gauge mounted on instrument panel to indicate available vacuum for brake assist; and

(iii) A visible or audible low vacuum indicator to warn driver if vacuum reservoir drops below eight inches of mercury.

(F) Vehicles equipped with either hydraulic or power-assisted hydraulic brakes shall be equipped with a visible or audible indicator to indicate partial or total system failure.

(b) Bumpers:

(A) Vehicles shall be equipped with bumpers front and rear;

(B) Bumpers shall be of sufficient strength to permit the fully loaded vehicle to be pushed without permanent distortion to bumper, chassis or body, except breakaway bumper ends.

(c) Body construction:

(A) Construction shall be all steel or other metal with strength at least equivalent to all steel as certified by body manufacturer;

(B) Construction shall provide a reasonably dust-proof, water-tight unit;

(C) Floor shall be of metal at least equal in strength to 14-gauge steel or five-ply plywood at least 5/8 of an inch nominal thickness;

(D) Floor covering must be permanently bonded to floor and must not crack when subjected to sudden changes in temperature. Bonding or adhesive material shall be waterproof, and all seams must be sealed with waterproof sealer;

(E) Aisle flooring shall have nonskid surface.

(d) Defroster:

(A) Defrosters are required, and shall be of sufficient capacity to keep windshield clear of fog and reasonably clear of ice and snow;

(B) Defroster unit shall consist of at least one (1) hot water core and blower motor. Auxiliary fans may be used to aid flow of heated air.

(e) Doors:

(A) Service door shall be located on the right side near the front of the bus;

(B) Service door shall be under the control of the driver;

(C) There shall be at least two approved emergency exits in the rear portion of the passenger area. Emergency exits shall be labeled "**Emergency Exit**" and include operating instructions.

(f) Exhaust system:

(A) Exhaust pipe, muffler and tail pipe shall be outside bus body and attached to chassis;

(B) Exhaust system shall be properly insulated from the fuel tank and connections by securely attached metal shield at any point where it is 12 inches or less from tank or tank connections for gasoline or alternative fueled vehicles;

(C) Muffler and tail pipe shall be constructed of corrosion-resistant material;

(D) Tail pipe shall meet one of the options provided in the school bus chassis standards, OAR 581-053-0512(14).

(g) Heaters:

(A) At least one heater of the hot water core and blower type is required;

(B) Heater(s) shall be capable of maintaining an inside temperature of at least 50°F at average minimum January temperatures as established by the U.S. Weather Bureau for the geographic area;

(C) Combustion-type heaters may be installed and shall comply with requirements listed in OAR 581-053-0517.

(h) Horn: There shall be a horn(s) of standard make that meets requirements of the Oregon Motor Vehicle Laws;

(i) Instruments/instrument panel:

(A) Vehicles shall be equipped with the following instruments and gauges:

(i) Speedometer and odometer;

(ii) Voltmeter or ammeter — Light may be used in lieu of gauge;

(iii) Oil pressure gauge — Light may be used in lieu of gauge;

(iv) Water temperature gauge — Light may be used in lieu of gauge;

(v) Fuel gauge;

(vi) Headlight high beam indicator; and

(vii) Turn signal indicator.

(B) The above gauges and instruments shall be mounted on an instrument panel in such manner that each is clearly visible to the driver while in a normal driving position;

(C) The instrument panel shall have lamps of sufficient candlepower to illuminate all instruments and gauges.

(j) Lights and other motor vehicle requirements:

(A) The vehicle at all times must have in good working order all equipment required by Oregon Motor Vehicle Laws, to include but not

be limited to, head and tail lights, windshield wipers and turn signal lights;

(B) School bus safety lights are prohibited.

(k) Mirrors:

(A) An interior mirror of at least 60 square inches is required to provide a view of pupils and roadway to the rear;

(B) Two exterior rearview mirrors, each with an area of not less than 50 square inches shall be installed on the right and left side of the vehicle.

(l) Seats:

(A) All seats shall be forward-facing and permanently mounted;

(B) Portable or jump seats are not allowed;

(C) All seats shall be adequately padded and upholstered and securely fastened to the part(s) of the vehicle which is supporting them.

(m) Springs: Capacity of springs or suspension assemblies shall be commensurate with chassis manufacturer's gross vehicle rating;

(n) Storage/book racks:

(A) Racks, if installed, shall be above side windows;

(B) Racks shall be padded on the bottom at each end as well as any part of the rack that may extend over the emergency door. Racks shall be free of projections likely to cause injury;

(C) Forward ends and rear of racks shall have a restriction-enclosing-space between rack and ceiling to prevent article ejection.

(o) Steering gear:

(A) Steering gear shall be approved by chassis manufacturer and designed to assure safe and accurate performance when vehicle is operated with maximum load at maximum speed;

(B) Steering mechanism that allows for external adjustment to correct for lost motion shall provide accessible adjustment location;

(C) Steering system shall be designed to provide for means of lubrication for all wear points if wear points are not permanently lubricated;

(D) No changes shall be made in steering apparatus which are not approved by chassis manufacturer.

(p) Steps:

(A) Shall be enclosed to prevent accumulation of ice and snow;

(B) Shall not protrude beyond side body line;

(C) Step surface shall be of nonskid material;

(D) For Type A buses, not manufactured originally as school buses, steps may be to chassis manufacturer's standards.

(q) Tires:

(A) Tires and rims of proper size and tires with load-rating commensurate with chassis manufacturer's gross vehicle weight rating shall be provided;

(B) Recapped tires are prohibited on the front axle of vehicle;

(C) regrooved tires are prohibited on the vehicles;

(D) Minimum tread depth on tires shall be:

(i) Front axle — 4/32 inch;

(ii) Rear axle — 2/32 inch.

(E) Tread depth shall be measured as follows: the minimum depth in any two adjacent major grooves measured at three locations spaced approximately equally around the outside of the tire but not on wear indicators.

(r) Tool storage compartment: A container of adequate strength and capacity for the storage of tire chains and other tools or supplies as may be necessary, may be provided. If located inside passenger compartment, it shall have a cover and positive-type latch to prevent opening in event of severe impact or bus rollover and shall be attached to the floor with a nut-and-bolt fastener;

(s) Ventilation: Vehicle shall be equipped with suitable, controlled ventilating system of sufficient capacity to maintain proper quality of air under operating conditions without opening of windows except in extremely warm weather;

(t) Windshield and windows:

(A) Windshield shall be of safety plate glass;

(B) Windows and glass area in doors shall be safety glass.

[ED. NOTE: Forms referenced available from the agency.]

Stat. Auth.: ORS 327.013 & 820.100 - 820.120

Stats. Implemented: ORS 327.013, 820.100, 820.105, 820.110 & 820.120

Hist.: 1EB 26-1986, f. 7-17-86, ef. 10-1-86; EB 21-1993, f. & cert. ef. 6-2-93

DIVISION 60

FUNDS TO STATE AND LOCAL AGENCIES TO PROVIDE
EMPLOYMENT AND TRAINING SERVICES UNDER
THE JOB TRAINING PARTNERSHIP ACT (JTPA)

581-060-0005

Definitions

The following definitions apply to OAR 581-060-0005 through 581-060-0020 unless the context requires otherwise:

(1) "Department": The Oregon Department of Education.
(2) "The Act": Job Training Partnership Act (JTPA), Public Law 97-300 enacted October 13, 1982, by the U.S. Congress.

(3) "Economically Disadvantaged":

(a) One who receives, or is a member of a family which receives, cash welfare payments under a federal, state or local welfare program;

(b) One who has, or is a member of a family which has, received a total family income (exclusive of unemployment compensation, child support payments, and welfare payments) for the six-month period prior to application for the program involved which, in relation to family size, was not in excess of the higher of:

(A) The poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget; or

(B) 70 percent of the lower living standard income level;

(c) One who is receiving food stamps pursuant to the Food Stamp Act of 1977;

(d) One who is a foster child on behalf of whom state or local government payments are made; or

(e) In cases permitted by federal regulations, one who is an adult handicapped individual whose own income meets the requirements of subsection (3)(a) or (b) of this rule, but who is a member of a family whose income does not meet such requirements.

(4) "Eligible Participants": Economically disadvantaged youth ages 14 to 21 or adults ages 22 and older.

(5) "Support Services": Services which are necessary to enable an individual who is eligible for training under this Act, but cannot afford to pay for such services, to participate in a training program.

(6) "Service Delivery Area (SDA)": The state or one or more units of general local government designated by the Governor to promote effective delivery of job training services to eligible program participants.

(7) "Private Industry Council (PIC)": An advisory council appointed by each Service Delivery Area comprised of representatives of the private sector, educational agencies, labor, rehabilitation agencies, community-based organizations, economical development agencies and public employment service.

(8) "Local Matching Funds": State or local area and authorized non-JTPA federal funds qualified to match JTPA funds, where required, in the form of cash or in-kind.

(9) "Performance Standards": Criteria established by Congress to determine the return on investment, measured by increased employment opportunities and earnings of participants, coupled with the reduction in welfare dependency.

(10) "Review Committee": A body of individuals selected by the Department to review, evaluate and make recommendations on the awarding of grants for services delivery.

(11) "Sole Source": An agency or organization selected by the Department and subsequently awarded funds to perform a specific service or activity exclusive of the competitive RFP process.

Stat. Auth.: PL 97-300, 1982

Stats. Implemented: PL 97-300, 1982

Hist.: 1EB 10-1983(Temp), f. & ef. 11-2-83; 1EB 12-1984, f. & ef. 5-3-84; 1EB 18-1986, f. 5-20-86, ef. 5-23-86

581-060-0010

Application for Funds to Provide Employment and Training
Services to Eligible Participants

Funding availability will be announced to the public by the Department of Education for the provision of selected services allowed under the Act. All funds will be disbursed as contracts or interagency agreements either through competitive or sole source "Requests for Proposals." The Department will solicit, from eligible and appropriate state and local agencies or entities, responses to competitive "Requests for Proposals" (RFPs) for most of the operation of programs. Limited

funds will be awarded through a sole source "Request for Proposal" process. Some RFPs will be general in nature while others will target specific training needs and sole source services. The RFP response proposal shall describe:

- (1) Statement of need;
- (2) Project goals, objectives and activities;
- (3) Project description (timelines, target group, etc.);
- (4) Geographic areas served;
- (5) Specific occupations of training;
- (6) Project management and evaluation; and
- (7) Methods by which required dollar-for-dollar "local matching funds" will equate to funds requested.

Stat. Auth.: PL 97-300, 1982

Stats. Implemented: PL 97-300, 1982

Hist.: 1EB 10-1983(Temp), f. & ef. 11-2-83; 1EB 12-1984, f. & ef. 5-3-84; 1EB 18-1986, f. 5-20-86, ef. 5-23-86

581-060-0015

Selection of Proposals to be Funded and the Awarding of Funds

A review committee, comprised of Department staff and other outside persons, will review all training proposals submitted and make recommendations for funding. Review selection and funding criteria will be that established and itemized within the appropriate RFP. Review of committee findings and recommendations will be sought by Department staff from applicable state and local agencies, councils and associations. The State Board of Education will be the final authority in approving proposals funded by the Department. Once authorized by the Board, funds will be awarded to the respective applicant by the Department.

Stat. Auth.: PL 97-300, 1982

Stats. Implemented: PL 97-300, 1982

Hist.: 1EB 10-1983(Temp), f. & ef. 11-2-83; 1EB 12-1984, f. & ef. 5-3-84; 1EB 18-1986, f. 5-20-86, ef. 5-23-86

581-060-0020

Payments and Accounting for Funds

(1) Agencies and institutions receiving funds shall be reimbursed by the Department upon submission of requests for reimbursement detailing information regarding expenditures.

(2) Payment of the last 10 percent of the contract or agreement amount will be contingent upon receipt of a final report containing the following information:

(a) Descriptive report of project activities and performance standard achievement;

(b) Summary of expenditures by program objectives; and

(c) Summary of project evaluation including effectiveness for the program participants.

(3) Funds not expended by fund recipients will be reallocated to fund other programs and projects.

Stat. Auth.: PL 97-300, 1982

Stats. Implemented: PL 97-300, 1982

Hist.: 1EB 10-1983(Temp), f. & ef. 11-2-83; 1EB 12-1984, f. & ef. 5-3-84; 1EB 18-1986, f. 5-20-86, ef. 5-23-86

DIVISION 70

DISTRIBUTION OF JTPA TITLE III
GOVERNOR'S RESERVE FUNDS

581-070-0000

Disclosure of Information and Fee Schedule

(1) All information in the custody of the Business Resources Division will be disclosed, or protected from disclosure, in accordance with the provisions of Chapter 192 of the Oregon Revised Statutes.

(2) Requests for information can be made verbally, but the Manager of the Business Resources Division reserves the right to require the request to be in writing, signed and dated, naming or describing the information desired, the reason for the request, and the date information is needed. A reasonable period of time is required for the custodian of the records to locate and assemble the requested information. The Manager may, in the interest of efficiency, place restrictions upon where the information will be delivered or made available for inspection.

(3) Fees will be charged to reimburse the Business Resources Division for the actual cost of making information available. The fees for producing copies of records are as follows:

(a) No fee will be charged an individual for providing a reasonable amount (as determined by the Manager) of information or documents from his or her file.

(b) For all other requests, a charge of ten (10) dollars per hour or fraction thereof and five (5) cents per page for documents provided.

(c) The Manager may waive the fees provided in subsection (b) of this section for public bodies, governmental agencies, and representatives of the new media.

Stat. Auth.: ORS 285.035(5) & 293.550

Stats. Implemented: Job Training Partnership Act, Public Law 97-300

Hist.: IRD 8-1984, f. & ef. 2-21-84; Renumbered from 120-001-0010; EB 13-1997, f. 9-30-97, cert. ef. 10-4-97, Renumbered from 123-070-0000

581-070-0010

Waiver of Liability Criteria

(1) In determining whether to impose any sanction authorized by the Job Training Partnership Act (JTPA) against a subrecipient for violations by a contractor of such subrecipient under the Act or the regulations under the Act, (other than for violations of nondiscrimination and equal opportunity, provisions of JTPA and its regulations), the State shall first determine whether such subrecipient has adequately demonstrated that it has:

(a) Established and adhered to an appropriate system for the award and monitoring of agreements with contractors which contains acceptable standards for ensuring accountability;

(b) Entered into a written contract with such contractor which established clear goals and obligations in unambiguous terms;

(c) Acted with due diligence to monitor the implementation of the contractor agreement, including the carrying out of the appropriate monitoring activities (including audits) at reasonable intervals; and

(d) Taken prompt and appropriate corrective action upon becoming aware of any evidence of a violation of the Act or the regulations under the Act by such contractor.

(2) If the State determines that the subrecipient has demonstrated substantial compliance with the requirements of Section (1) of this rule, and if the Secretary of the Department of Labor (herein after "Secretary") has waived sanctions against the State, the State may waive the imposition of sanctions authorized by the Act upon such subrecipient for contractor violations.

(3) In determining whether to impose any sanction authorized by the JTPA or applicable regulations against a subrecipient for violations of JTPA nondiscrimination and equal opportunity provisions by a contractor, the State shall first determine whether such subrecipient has demonstrated substantial compliance with the following requirements:

(a) Adhered to applicable provisions of the State's Methods of Administration (pursuant to **29 CFR Part 34.33**), designed to give a reasonable guarantee of the subrecipient's compliance of such provisions;

(b) Entered into a written contract with its contractor, which clearly establishes the contractor's obligations regarding nondiscrimination and equal opportunity;

(c) Acted with due diligence to monitor the contractor's compliance with these provisions; and

(d) Taken prompt and appropriate corrective action to effect compliance with these provisions.

(4) If the State determines that the subrecipient has demonstrated substantial compliance with the requirements of Section (3) of this rule, and if the Secretary waives sanctions against the State, the State may recommend to the Directorate of Civil Rights to waive the imposition of sanctions authorized by **29 CFR 34** upon such subrecipient for contractor violations.

Stat. Auth.: ORS 285.035(5) & 293.550

Stats. Implemented: Job Training Partnership Act, Public Law 97-300

Hist.: IRD 5-1983(Temp), f. & ef. 10-3-83; IRD 10-1984, f. & ef. 4-3-84; EDD 16-1988, f. 5-27-88, cert. ef. 5-25-88; Renumbered from 120-040-0000; EDD 6-1994, f. & cert. ef. 3-11-94; EB 13-1997, f. 9-30-97, cert. ef. 10-4-97, Renumbered from 123-070-0010

581-070-0020

Performance Standard Improvement Policy

(1) Section 106(j) of the Job Training Partnership Act (JTPA) requires the Governor to take appropriate action if a grant recipient fails to attain Title II-A and II-C performance standards. The following outlines the procedures to transmit performance data to the State.

(a) The subrecipient transmits participant data electronically, within the time parameters established in policy 581-6-5-6.1, to the State Job Training Partnership Act Administration;

(b) The State JTPA Administration reports on subrecipient performance standard attainment and plans for providing technical assistance to Service Delivery Areas (SDAs) failing to meet performance standards to the State Job Training Coordinating Committee (State Committee) and the Secretary of Labor within 90 days from the end of the program year.

(2) For the purposes of this rule "failing to attain Title II-A and II-C performance standards" means that based on the subrecipient's year-end program data as transmitted to the State JTPA Administration prior to September 1st of each year, the subrecipient has not met any three or more of the six core performance standards or both of the youth performance standards as established in the Governor's Special Services and Coordination Plan.

(3) The following outlines the procedures to be taken when a subrecipient fails to attain the Title II performance standards:

(a) The State Job Training Partnership Act (JTPA) Administration determines the degree of failure of the recipient based on the following scale:

(A) First Degree: When a subrecipient fails to attain one or two (when the two are not both of the youth standards) Title II-A and II-C performance standards;

(B) Second Degree: When a subrecipient fails to attain any three or more of the Title II-A and II-C performance standards or both of the youth standards; or

(C) Third Degree: When a subrecipient fails to attain any three or more of the Title II-A and II-C performance standards or both of the youth standards for two consecutive program years.

(b) The State JTPA Administration reserves that portion of incentive funds received under the JTPA not awarded as incentives to provide technical assistance to those subrecipients who have failed to meet performance standards. Those unawarded funds which are not used for failure to meet technical assistance may be made available for technical assistance/capacity building addressed in Oregon Administrative Rule 581-070-0180;

(c) The JTPA allows for a variety of actions to be taken, however, the following criteria must be considered:

(A) The action taken must be remedial in nature rather than punitive;

(B) The action taken must be appropriate to remedy the problem causing the poor performance; and

(C) The degree of failure may be considered, but it alone is not determinative of the appropriate remedial action.

(d) When the degree of failure has been determined, the State JTPA Administration notifies the subrecipient of failure to meet performance standard(s) and identifies the degree of failure. Upon such notification, one of the procedures described below shall be followed:

(A) First Degree Procedures:

(i) The subrecipient analyzes the problem relative to failing to attain the Title II performance standard;

(ii) The subrecipient develops and submits a program improvement plan designed to address performance standard(s) not achieved to the State JTPA Administration within 30 calendar days of notification from the State. The plan shall include proposed actions and costs. The subrecipient may request the assistance of the State JTPA Administration in developing the program improvement plan.

(iii) Within 30 calendar days following receipt of the plan, the State JTPA Administration reviews and may approve the program improvement plan based on the following criteria:

(I) The plan adequately addresses the standard which was not achieved; and

(II) The costs of the planned action are reasonable.

(iv) If the program improvement plan is not approved, the State JTPA Administration notifies the subrecipient of the decision and provides assistance to address the issues resulting in the plan disapproval.

(v) Upon approval of the program improvement plan by the State JTPA Administration, the State JTPA Administration makes technical assistance funds available as appropriate to implement the plan;

(vi) Such funds shall be distributed in an amount sufficient to implement the program improvement plan to the extent that funds are available;

(vii) The State JTPA Administration makes available technical assistance through the JTPA Administration staff, when appropriate, at no cost;

(viii) The subrecipient implements the program improvement plan as approved by the State JTPA Administration.

(B) Second Degree Procedures:

(i) The subrecipient, State JTPA Administration and State Committee carry out the procedures above in sections (3)(d)(A)(i) through (viii). The State Committee and the JTPA Administration shall review and approve the program improvement plan(s) and make incentive funds available as appropriate to implement the plan(s);

(ii) The subrecipient may conduct an independent performance audit to ascertain problem identification and potential solutions. Costs associated with independent performance audits may be paid for with incentive funds.

(iii) Not later than 90 days after the end of the program year, the State will report to the Secretary of Labor the plans for providing technical assistance for "failure to meet" performance standards.

(C) Third Degree Procedures:

(i) The subrecipient, State JTPA Administration, and State Committee carry out steps (3)(d)(A)(i) through (viii) and (3)(d)(B)(i), (ii), and (iii) of this rule.

(ii) The State Committee, PIC and LEO review the factors leading to the failure to meet performance standards;

(iii) The State Committee based on the above review, recommends to the Governor the reorganization plan to be imposed. Such actions may:

(I) Restructure the private industry council;

(II) Prohibit the use of designated service providers; or

(III) Make such other changes as the Governor deems necessary to improve performance. This may include the selection of an alternative administrative entity to administer the program for the SDA. The alternative entity may be a newly formed private industry council or any agency jointly selected by the Governor and the chief elected official of the largest unit of general local government in the SDA or the Substate Area.

(iv) An SDA that is the subject of a reorganization plan may, within 30 days after receiving notice thereof, appeal to the Secretary of Labor to rescind or revise such plan

Stat. Auth.: ORS 285.035(5) & 293.550

Stats. Implemented: Job Training Partnership Act, Public Law 97-300

Hist.: IRD 17-1986, f. & ef. 12-4-86; IRD 2-1987, f. 3-9-87, ef. 3-12-87; Renumbered from 120-040-0001; EDD 16-1990, f. 6-25-90, cert. ef. 7-1-90; EDD 6-1994, f. & cert. ef. 3-11-94; EDD 16-1994, f. & cert. ef. 12-1-94; EB 13-1997, f. 9-30-97, cert. ef. 10-4-97, Renumbered from 123-070-0020

581-070-0030

Eligibility Determination for Title II Programs

The following definitions shall apply when determining an applicant's eligibility to participate in Title II programs funded by the Job Training Partnership Act (JTPA), Public Law 97-300 as amended. These definitions are applicable to all Title II programs and to all recipients and subrecipients of JTPA funds under Title II programs unless other specific eligibility criteria have been defined for the program. For the purpose of determining an individual person's eligibility for services:

(1) The term "economically disadvantaged" means (as stated in PL 97-300 as amended, Section 4(8)) an individual who:

(a) Receives, or is a member of a family which receives cash welfare payments under a federal, State or local welfare program; or

(b) Has, or is a member of a family which has received a total family income for the six-month period prior to application for the program involved (exclusive of unemployment compensation, child support payments, and welfare payments) which, in relation to family size, was not in excess of the higher of:

(A) The official poverty line as defined by the Director of the Office of Management and Budget (OMB) and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (**42 U.S.C. 9902(2)**); or

(B) Seventy percent of the lower living standard income level.

(c) Is receiving (or has been determined within the 6 month period prior to the application for the program involved to be eligible to receive) food stamps pursuant to the Food Stamp Act of 1977;

(d) Qualifies as a homeless individual under Section 103 (a) and (c) of the Stewart B. McKinney Homeless Assistance Act; or

(e) Is a foster child on behalf of whom State or local government payments are made.

(2) Individuals ages 14 through 21 who are in full-time school shall be considered income eligible to participate in Title II youth programs if such individuals meet the eligibility requirements in Section (1) of this rule or:

(a) Are participating in a compensatory education program under chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 (**20 U.S.C. 2711 et seq.**); or

(b) Have been determined to meet the eligibility requirements for free meals under the National School Lunch Act (**42 U.S.C. 1751 et seq.**) during the most recent school year; or

(c) Are participating in a school wide project and are enrolled in a public school:

(A) That is located in a poverty area; and

(B) That is served by a local education agency that is eligible for Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 (**20 U.S.C. 2711 et seq.**);

(C) In which not less than 70% of the students enrolled are included in the hard-to-serve categories under Section 263(b) of the JTPA; and

(D) That conducts a program under a cooperative arrangement that meets the requirements of Section 265(d) of the JTPA, "School-wide Projects for Low-Income Schools."

(E) For the purposes of this section "poverty area" is defined as an urban census tract or a nonmetropolitan county with a poverty rate of 30 percent or more, as determined by the Bureau of Census.

(3) "Family" means two or more persons related by blood, marriage, or decree of court, who are living in a single residence and are included in one or more of the following categories:

(a) Husband, wife, and dependent children;

(b) A parent or guardian and dependent children; or

(c) A husband and wife.

(4) A step-child or a step-parent shall be considered to be related by marriage.

(5) The phrase "living in a single residence" with other family members includes temporary, voluntary residence elsewhere (e.g., attending school or college, or visiting relatives). It does not include involuntary residence elsewhere (e.g., incarceration, or placement as a result of a court order).

(6) The family size shall consist of those related individuals listed in Section (3) of this rule who have lived in the single residence for the last 30 days, and who meet the family definition specified in Section (3) or any of the definitions specified in Sections (4), (5), or (6) of this rule. In situations where documentation exists, (e.g., birth, marriage, or death certificate) that the family size has changed permanently, it would not be necessary to wait 30 days to establish the current family configuration.

(a) Where two or more family units live in a single dwelling; and

(A) The family units are linked by blood, marriage, or decree of court; and

(B) Each of the family unit(s) living in the single residence meets the definition of family in Section (3) of this rule;

(C) Then for the purpose of determining family size, the family units may be counted as two or more separate families.

(b) An individual with a disability whose own income meets the requirements of (1)(a) or (b) of this Rule but who is a member of a family whose income does not meet such requirements shall, for the purposes of income eligibility determination, be considered to be an unrelated individual who is a family unit of one. The term "individual with a disability" means any individual who has a physical or mental disability that for such individual constitutes or results in a substantial handicap to employment.

(c) Any youth ages 18 through 21 who live with their parent(s) or legal guardian(s), and who are not married or do not have dependent children, and who receive less than 50 percent of support from the family, may be considered a separate family unit of one.

(d) Any youth ages 14 through 21 who can document that they have lived alone or with persons other than their parent(s), legal guardian(s), or spouse for the previous 30-day period may be considered a family unit of one for the purpose of eligibility determination. In order to minimize the legal risks involved with serving unemancipated minors ages 14 through 17 in this situation, every effort must be made to inform the parent or legal guardian, in writing, that the minor will be participating in an employment and training program. Such written notice must be initiated prior to enrollment.

(e) Single, divorced or widowed youth ages 14 through 17 who live with a parent(s) or a legal guardian(s) must be considered a member of the family unless they are legally emancipated and they receive less than 50 percent of their support from their parent(s) or legal guardian(s), or they meet the definition of an individual with a disability, or they are a custodial parent with a dependent child.

(7) "Family income" for the purpose of determining applicant eligibility means the total income of each individual in the current family configuration (as determined in subsection (3) through (6) of this rule) for the six month period prior to application or for that portion of the income determination period that the person was a part of the family unit of the applicant. It is not adequate to gather a 30-day income, and multiply by six to identify the six month income. For the purpose of calculating total family income for the six month period prior to application, the applicant's family size must first be established in accordance with subsection (3) through (6) of this section. The sources of income that are included in the total family income or excluded from the total family income are as follows:

(a) Inclusions in Family Income:

(A) Gross Wages and Salary. The total money earnings received from work performed as an employee (including casual labor and on-the-job-training wages). It represents the amount paid before deductions for income taxes, Social Security taxes, bond purchases, union dues, etc. If a family's only source of income was from wages and salary payments, family income would be equal to the gross wages and salary for each member of the family for the six month period prior to application or for that portion of the six month income determination period that each member of the family was a part of the family unit of the applicant;

(B) Net receipts from nonfarm self-employment (receipts from a person's own unincorporated business, professional enterprise, or partnership after deductions for business expense);

(C) Net receipts from farm self-employment (receipts from a farm which one operates as an owner, renter, or sharecropper, after deductions for farm operating expenses);

(D) Regular payments from:

(i) Social Security including Old Age and Survivors Insurance (OASI) (see exception under section (7)(b)(P)) or disability payments from Social Security Disability Insurance (SSDI);

(ii) Railroad retirement benefits;

(iii) Strike benefits from union funds;

(iv) Worker's compensation.

(E) Alimony;

(F) Military family allotments or other regular support from an absent family member or someone not living in the household;

(G) Pensions whether private or government employee (including military retirement pay);

(H) Regular insurance or annuity payments;

(I) College or university grants, fellowships, and assistantships (see exception in section (7)(b)(N) and (O));

(J) Dividends and interest;

(K) Net rental income;

(L) Net royalties;

(M) Periodic receipts from estates or trusts;

(N) Net gambling or lottery winnings;

(O) Vista or Peace Corps stipends;

(P) Income received by National Guard or Military reserve members who are not veterans.

(b) Exclusions from Annual Family Income:

(A) Unemployment compensation;

(B) Child support payments including foster care child payments;

(C) Welfare payments — Including Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI), Refugee Cash Assistance (RCA), Emergency Assistance money payments, and non-federally funded General Assistance (GA) money payments;

(D) Capital gains;

(E) Any assets drawn down as withdrawals from a bank, the sale of property, a house or a car;

(F) Tax refunds, gifts, loans, lump-sum inheritances, one-time insurance payments or compensation for injury;

(G) Noncash benefits such as employer paid fringe benefits, food or housing received in lieu of wages, Medicare, Medicaid, Food Stamps, school meals, and housing assistance;

(H) Payments made by Vocational Rehabilitation to one of their clients (except that OJT Vocational Rehabilitation payments are included income);

(I) Pay or allowances previously received by any veteran (whether an applicant or a member of the applicant's family) while serving on active duty in the United States Armed Forces. Also excluded are payments received by a veteran for participation in National Guard or military, naval, or Air Force reserve activities;

(J) Educational assistance and compensation payments to veterans and other eligible persons under **Title 38, United States Code, Chapters:**

(i) **11** — Compensation for Service-Connected Disability or Death;

(ii) **13** — Dependents and Indemnity Compensation for Service-Connected Death;

(iii) **31** — Vocational Rehabilitation;

(iv) **34** — Veterans' Educational Assistance;

(v) **35** — War Orphans' and Widows' Educational Assistance; and

(vi) **36** — Administration of Educational Benefits.

(K) Allowances, income and payments to individuals participating in programs under the JTPA (except that wages earned by participants in JTPA funded OJTs are included income) and other federal programs when a federal statute specifically provides that income or payments shall be excluded in determining eligibility for and the level of benefits received under any other federal statute;

(L) Payments made to Indians under PL 98-64 ("**An Act to provide that per capita payments to Indians may be made by tribal governments, and for other purposes**");

(M) Income derived by a member of an Indian tribe from fishing rights-related activity of the tribe;

(N) Educational financial assistance under title IV of the Higher Education Act (**20 U.S.C. 1087**), as amended by section 479(B) of the Higher Educational Act Amendments of 1992), i.e., Pell Grants, Federal Supplemental Educational Opportunity Grants and Federal Work Study payments. Loans received under this Act are considered debt and not income;

(O) Needs-based scholarship assistance;

(P) For the purposes of determining income eligibility for services to older individuals under section 204(d)(5) of the JTPA, 25% of Social Security and Old Age Survivors' Insurance benefit payments under Title II of the Social Security Act (**42 USC, section 401, et seq.**).

Stat. Auth.: ORS 285.035(5) & 293.550

Stats. Implemented: Job Training Partnership Act, Public Law 97-300

Hist.: IRD 4-1983(Temp), f. & ef. 9-30-83; IRD 9-1984, f. & ef. 3-29-84; IRD 14-1984, f. & ef. 11-26-84; IRD 3-1985, f. & ef. 8-5-85; IRD 3-1986(Temp), f. & ef. 2-10-86; IRD 10-1986, f. & ef. 7-10-86; IRD 18-1986, f. & ef. 12-4-86; IRD 1-1987(Temp), f. & ef. 2-13-87; IRD 6-1987, f. 3-13-87, ef. 3-16-87; EDD 20-1988, f. 6-10-88, cert. ef. 7-1-88; Renumbered from 120-040-0005; EDD 1-1989, f. 5-26-89, cert. ef. 7-1-89; EDD 4-1989, f. 9-12-89, cert. ef. 9-15-89; EDD 12-1990(Temp), f. 5-25-90, cert. ef. 6-1-90; EDD 21-1990(Temp), f. & cert. ef. 7-11-90; EDD 24-1990, f. 8-23-90, cert. ef. 9-1-90; EDD 1-1991, f. 1-16-91, cert. ef. 1-21-91; EDD 6-1994, f. & cert. ef. 3-11-94; EDD 3-1995, f. 4-11-95, cert. ef. 4-12-95; EB 13-1997, f. 9-30-97, cert. ef. 10-4-97, Renumbered from 123-070-0030

581-070-0040

Definitions

Each of the following definitions shall apply to Job Training Partnership Act (JTPA) programs in all Service Delivery Areas (SDAs), Private Industry Councils (PIC's), and all subrecipients of JTPA funds.

(1) "Summer" shall be defined as May 1 through September 30 for the purpose of Title II-B Summer Youth Employment and Training Program.

(2) In order to maximize local control, and to promote the most efficient and effective use of JTPA funds in any particular labor market, the following phrase shall be defined by the SDA recipient. The definition shall be in writing, and a copy shall be maintained on file at their local office. "Satisfactory progress in school" — To be defined by the SDA in cooperation with the local school system. A written policy defining an individual standard of progress that each participant is required to meet must be developed. Such a standard should, at a minimum, include both a qualitative element of a participant's progress, (e.g., performance on a criterion-referenced test or a grade point average) and a quantitative element, (e.g., a time limit for completion of the program or course of study). This policy may provide for exceptional situations in which students who do not meet the stan-

dard of progress, because of mitigating circumstances, are nonetheless making satisfactory progress during a probationary period.

Stat. Auth.: ORS 285.035(5) & 293.550

Stats. Implemented: Job Training Partnership Act, Public Law 97-300

Hist.: IRD 18-1986, f. & cf. 12-4-86; Renumbered from 120-040-0008; EDD 18-1990, f. 6-28-90, cert. ef. 7-1-90; EDD 6-1994, f. & cert. ef. 3-11-94; EB 13-1997, f. 9-30-97, cert. ef. 10-4-97, Renumbered from 123-070-0040

581-070-0050

Grievance Procedures Generally for Non-Criminal Complaints Other than Discrimination

In order to provide for prompt and informal resolution of any complaint related to the Job Training Partnership Act (JTPA) programs, the Job Training Partnership Act (JTPA) Administration will refer all complaints against a Service Delivery Area subrecipient or other subrecipient receiving State JTPA funds (hereinafter "recipient") to that subrecipient for resolution.

(1) The complainant must file the complaint with the subrecipient within one (1) year of the alleged occurrence. The complaint shall be in writing and shall include:

(a) Name, address and phone number of complainant;

(b) Name and address of person or organization grievance is against;

(c) The basis of the complaint — Factual information and date occurred;

(d) Provision of the Act, regulations, grant or other agreement alleged to have been violated, if known; and

(e) Relief requested.

(2) The subrecipient determines if the complaint includes an allegation of a violation of the Act, regulations, grant, or other agreement under the Act. If the complaint includes such an allegation, the subrecipient shall follow the procedure in OAR 581-070-0070. If the complaint relates to terms and conditions of employment given under Section 143 of the JTPA law, the subrecipient shall follow the procedure in OAR 581-070-0060 after the complainant has exhausted the complaint procedures set forth under this OAR, OAR 581-070-0070, 581-070-0080, and 581-070-0090. The subrecipient shall notify the complainant of the resolution process to be used within five (5) days of receipt of the complaint.

(3) Hearings on any grievance shall be conducted within 30 days of filing of a complaint and decisions shall be made not later than 60 days after filing of a complaint, unless extended upon a showing of good cause and both parties agree, in writing, to waive these timelines and establish new ones. All references to days shall be defined as calendar days.

(4) If complainant is alleging a complaint regarding discrimination, the procedure to be followed is found in OAR 581-070-0130 and the filing must be within 180 days of the alleged act of discrimination unless the time is extended by the Assistant Secretary of the Department of Labor for good cause.

(5) The Governor has delegated to the JTPA Administration the authority to carry out any complaint procedure function designated to the Governor's office by the JTPA and accompanying federal regulations.

Stat. Auth.: ORS 285.035(5) & 293.550

Stats. Implemented: Job Training Partnership Act, Public Law 97-300

Hist.: IRD 7-1983(Temp), f. & cf. 11-30-83; IRD 11-1984, f. & cf. 5-30-84; IRD 1-1985, f. & cf. 4-19-85; Renumbered from 120-040-0020; EDD 6-1994, f. & cert. ef. 3-11-94; EB 13-1997, f. 9-30-97, cert. ef. 10-4-97, Renumbered from 123-070-0050

581-070-0060

Procedure for Resolution of a Non-Criminal Complaint which Relates to Terms and Conditions of Employment

(1) **20 CFR 627.603** of the Job Training Partnership Act (JTPA) regulations, provides for special handling of labor standards violations under Section 143 of the JTPA. According to this paragraph a complaint alleging JTPA section 143 violations may be submitted to the Secretary of Labor by either party to the complaint when:

(a) The complainant has exhausted the complaint procedures set forth under **Subpart E** of **20 CFR 627**, or

(b) The 60-day time period specified for reaching a decision under a procedure set out at **Subpart E** of **20 CFR 627**, has elapsed without a decision.

(c) The procedures and 60 day time period, referred to respectively in (1)(a) and (b) of this rule, are covered in OAR 581-070-0050, 581-070-0070, 581-070-0080, and 581-070-0090.

(2) The Secretary of Labor shall investigate the allegations contained in a complaint alleging violations of JTPA section 143, make a determination whether a violation has occurred, and issue a decision within 120 days of receipt by the Secretary of Labor of the complaint.

(3) If the results of the Secretary of Labor's investigation indicate that a decision by a subrecipient under a procedure set forth at OAR 581-070-0050 requires modification or reversal, or that the 60-day time period for decision under section 144(a) has elapsed, the Secretary of Labor shall modify, reverse, or issue such decision.

(4) If the Secretary of Labor modifies or reverses a decision made under the procedure set forth at OAR 581-070-0050, or issues a decision where the 60-day time period has elapsed without a decision, the Secretary of Labor shall offer an opportunity for a hearing, in accordance with the procedures under section 166 of JTPA and **Subpart H** of **20 CFR 627**.

(5) If the Secretary of Labor upholds a subrecipient's decision, the determination is the final decision of the Secretary of Labor. This decision is not appealable to the Office of Administrative Law Judges.

(6) Except as provided in (7) of this rule, remedies available under this OAR to a complainant for violations of section 143 of JTPA shall be limited to:

(a) Suspension or termination of payments under JTPA;

(b) Prohibition of placement of a participant, for an appropriate period of time, in a program under JTPA with an employer that has violated section 143 of JTPA, as determined under section 144(d) or (e) of JTPA; and/or appropriate equitable relief (other than back pay).

(7) Available remedies for violations of sections 143(a)(4), (b)(1), (b)(3), and (d) of JTPA include the remedies listed in (6) of this rule, and may include the following:

(a) Reinstatement of the complainant to the position held prior to displacement;

(b) Payment of lost wages and benefits; and/or

(c) Reestablishment of other relevant terms, conditions, and privileges of employment.

(8) **20 CFR 627.604** provides for the alternative procedure for handling labor standards violations under section 143 of JTPA — Binding arbitration:

(a) A person alleging a violation of section 143 of JTPA, as an alternative to processing the grievance under a procedure described at section 144 of JTPA, may submit the grievance to a binding arbitration procedure, if a collective bargaining agreement covering the parties to the complaint so provides;

(b) A person electing to have her/his complaint on JTPA section 143 labor standard violations processed under binding arbitration provisions:

(A) Shall choose binding arbitration before, and in lieu of, initiating a complaint under other complaint procedures established pursuant to section 144 of JTPA; and

(B) May not elect binding arbitration for a complaint that previously has been or is subject to any other complaint procedure established under JTPA.

(c) Binding arbitration decisions under the provisions of section 144(e) of JTPA are not reviewable by the Secretary of Labor. The remedies available to a complainant under binding arbitration are limited to those set forth at section 144(f)(1)(C) and (f)(2) of JTPA.

(9) Nothing in this rule shall be construed to prohibit a complainant from pursuing a remedy authorized under another Federal, State, or local law for a violation of section 143 of JTPA.

Stat. Auth.: ORS 285.035(5) & 293.550

Stats. Implemented: Job Training Partnership Act, Public Law 97-300

Hist.: IRD 7-1983(Temp), f. & cf. 11-30-83; IRD 11-1984, f. & cf. 5-30-84; EDD 21-1988, f. 6-10-88, cert. ef. 6-13-88; Renumbered from 120-040-0021; EDD 6-1994, f. & cert. ef. 3-11-94; EB 13-1997, f. 9-30-97, cert. ef. 10-4-97, Renumbered from 123-070-0060

581-070-0070

Procedure for Informal Resolution of a Non-Criminal Allegation of a Violation of the Act, Regulations, Grant, or Other Agreement under the Act at the Subrecipient Level

(1) The subrecipient begins informal resolution efforts and investigation.

(2) The subrecipient sets a date for the informal resolution and issues clarification meeting. Both parties may agree, in writing, to waive the thirty (30) day timeline for formal hearing and sixty (60) day

timeline for decision as provided in Oregon Administrative Rule 581-070-0050.

(3) The complainant, if unsatisfied with the results of the informal resolution meeting, requests a formal hearing as provided in Oregon Administrative Rule 581-070-0080. Such request must be made in writing.

(4) The complainant may amend the grievance, in writing, at any time until twenty (20) days before the formal hearing.

Stat. Auth.: ORS 285.035(5) & 293.550

Stats. Implemented: Job Training Partnership Act, Public Law 97-300

Hist.: IRD 7-1983(Temp), f. & ef. 11-30-83; IRD 11-1984, f. & ef. 5-30-84; Renumbered from 120-040-0022; EDD 6-1994, f. & cert. ef. 3-11-94; EB 13-1997, f. 9-30-97, cert. ef. 10-4-97, Renumbered from 123-070-0070

581-070-0080

Hearing Requirements for Non-Criminal Allegations of a Violation of the Act, Regulations, Grant, or Other Agreement under the Act at the Subrecipient Level.

(1) The subrecipient schedules the formal hearing for within thirty (30) days from receipt of the complaint, unless the parties have agreed, in writing, to waive this timeline.

(2) The subrecipient schedules the formal hearing and notifies the complainant/in writing of the date, time and place of a hearing as well as the notice that the Governor review the decision if the subrecipient fails to meet prescribed timelines or if the complainant receives a decision unsatisfactory to the complainant.

(3) The Hearing Officer or Hearing Board conducts the formal hearing. Both parties shall be provided an opportunity to present evidence, cross-examine witnesses, and be represented by legal counsel. The hearing shall be taped, and a record including all exhibits shall be maintained. The complainant may withdraw the complaint at any time.

(a) Any party may request a different Hearing Officer or Hearing Board to be appointed:

(A) The request must be filed together within five (5) days after parties received notification of the hearing schedule and designation of the Hearing Officer or Hearing Board;

(B) No hearing shall be permitted to make more than one (1) request that a different Hearing Officer or Board be appointed in any one complaint.

(b) Upon receipt of the request described in Subsection (3)(a) of this rule, the recipient shall designate a different Hearing Officer or Hearing Board. In such case, all timelines shall be automatically extended ten (10) days;

(c) If the complainant does not appear for the hearing for good cause shown, the complaint may be dismissed;

(d) The Hearing Officer or Hearing Board shall provide to all parties a written recommendation, defining issues, facts and suggested resolution.

(4) The subrecipient shall consider the complaint, informal resolution efforts, and Hearing Officer's or Hearing Board's recommendation. The subrecipient shall then define issues, facts, and resolution, in writing, and forward copies of the decision to each party. The decision will be received by complainant and the JTPA Administration within 60 days of filing the complaint, unless the parties have waived this requirement pursuant to OAR 581-070-0050(13). The decision shall also include notice that the complainant has the right to request that the Governor review the decision if the subrecipient fails to meet the prescribed timelines or if the complainant receives a decision unsatisfactory to the complainant.

Stat. Auth.: ORS 285.035(5) & 293.550

Stats. Implemented: Job Training Partnership Act, Public Law 97-300

Hist.: IRD 7-1983(Temp), f. & ef. 11-30-83; IRD 11-1984, f. & ef. 5-30-84; IRD 1-1985, f. & ef. 4-19-85; Renumbered from 120-040-0023; EDD 6-1994, f. & cert. ef. 3-11-94; EB 13-1997, f. 9-30-97, cert. ef. 10-4-97, Renumbered from 123-070-0080

581-070-0090

Hearing Decision Review Process

(1) If a complainant receives an unsatisfactory decision from a subrecipient or if the subrecipient fails to issue a decision within the prescribed timelines, unless the timelines have been waived, either party may request a review by the Governor.

(2) The JTPA Administration must receive the review request at 775 Summer Street, NE, Salem, OR 97310, (or its current address if the office has moved), from the complainant or respondent within 10 days of subrecipient decision or within 15 days from the date on which the complainant should have received a decision. The State may

request all necessary information, including but not limited to the following:

- (a) The complaint;
- (b) A synopsis of the informal resolution efforts;
- (c) The tapes of and exhibits from the hearing;
- (d) The hearing officer's recommendation; and
- (e) The subrecipient's decision.

(3) The JTPA Administration reviews the complaint within ten days of receipt of the request for review to ensure that the hearing process was followed and that any regulations were correctly interpreted. For the purposes of review, the subrecipient's factual determination will be accepted. If the record contains enough information to render a decision, the JTPA Administration will issue a final decision within 30 days of receipt of the request for review as to whether the process was followed and whether a material regulation or legal requirement was incorrectly or inadequately interpreted:

(a) If the hearing was in accordance with the hearing procedure, and the material regulations were correctly interpreted, the JTPA Administration shall issue a final decision notifying all parties, in writing, that the subrecipient's hearing decision is affirmed;

(b) If within ten days of receipt of the request for review the JTPA Administration finds any evidence of an irregularity in the hearing process, or determines that a material regulation was incorrectly or inadequately interpreted and additional information is needed to render a final decision, the subrecipient will be given 15 days to gather and provide JTPA Administration the additional information. Such requirement for additional information will include any necessary instructions. The JTPA Administration will review the additional information and issue a final decision, in writing, to all parties within 30 days of receipt of the request to review, either affirming or denying the subrecipient's hearing decision;

(c) The final decision shall state that, "This represents the State of Oregon's Final Decision."

(4) If the JTPA Administration does not complete a review within 30 days of receipt of request, complainant or respondent may request review with the Secretary of Labor within ten days from the date on which the review should have been completed. (See **20 CFR Subsection 627.605**)

(5) This process applies to a review of hearings conducted at the subrecipient level other than for discrimination/grievances which are filed in accordance with Oregon Administrative Rule 581-070-0130.

Stat. Auth.: ORS 285.035(5) & 293.550

Stats. Implemented: Job Training Partnership Act, Public Law 97-300

Hist.: IRD 7-1983(Temp), f. & ef. 11-30-83; IRD 11-1984, f. & ef. 5-30-84; IRD 1-1985, f. & ef. 4-19-85; EDD 22-1988, f. 6-10-88, cert. ef. 6-13-88; Renumbered from 120-040-0024; EDD 19-1990, f. 6-28-90, cert. ef. 7-1-90; EDD 6-1994, f. & cert. ef. 3-11-94; EB 13-1997, f. 9-30-97, cert. ef. 10-4-97, Renumbered from 123-070-0090

581-070-0110

Procedure for Resolving a Non-Criminal Allegation of a Violation of the Act, Regulations, Grant, or Other Agreement under the Act at the State Level

(1) If there is a complaint against the State and the complainant is a Service Delivery subrecipient or another grant recipient receiving JTPA funds directly from the State the initial complaint must be filed at the State level with the Economic Development Department, Job Training Partnership Act Administration.

(2) The grievance procedure to be followed is the Contested Cases procedure as outlined in the **Attorney General's Administrative Law Manual and Model Rules of Procedure Subsection IV** (March 1986).

(3) These procedures shall be used for the resolution of complaints arising from actions, such as audit disallowance or the imposition of sanctions, taken by the Governor with respect to audit findings, investigations, or monitoring reports.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 285.035(5) & 293.550

Stats. Implemented: Job Training Partnership Act, Public Law 97-300

Hist.: IRD 11-1984, f. & ef. 5-30-84; IRD 3-1987, f. 3-9-87, ef. 3-12-87; EDD 23-1988, f. 6-10-88, cert. ef. 6-13-88; Renumbered from 120-040-0025; EDD 18-1990, f. 6-28-90, cert. ef. 7-1-90; EB 13-1997, f. 9-30-97, cert. ef. 10-4-97, Renumbered from 123-070-0110

581-070-0130

Procedure for Resolution of Complaints Alleging Discrimination

(1) Section 167(a) of the Job Training Partnership Act (JTPA) requires that for the purpose of applying the prohibitions against

discrimination, programs and activities funded or otherwise financially assisted in whole or in part under the JTPA are considered to be programs and activities receiving Federal financial assistance. As given in **29 CFR 34.1(a)**, Section 167 of the JTPA prohibits discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in JTPA.

(2) **20 CFR 627.500(a)** requires that the procedures of **29 CFR Parts 31–32** and **34** be utilized to impose sanctions or corrective actions regarding violations of section 167(a) of the JTPA.

(3) Complaints:

(a) Who may file. Any person who believes that he or she or any specific class of individuals has been or is being subjected to discrimination prohibited by the nondiscrimination and equal opportunity provisions of JTPA or **29 CFR 34** may file a written complaint by him or herself or by a representative.

(b) Where to file. The complainant has the right to choose whether to file a complaint with the State subrecipient or as applicable or with the Director. The “Director” is the Director, Directorate of Civil Rights (DCR), Department of Labor.

(A) Complaints relating to and filed with subrecipients. In order to provide for the prompt and informal resolution of any complaint alleging discrimination regarding JTPA, complaints relating to a Service Delivery Area or other subrecipient (hereinafter referred to “subrecipient”) receiving JTPA funds directly from the State will file the complaint directly with that entity. The subrecipient’s internal review process shall provide for prompt and equitable resolution of complaints.

(B) Complaints filed with DCR. Complaints that complainants choose not to file with applicable subrecipients as given in (3)(a)(A) of this rule and any other complaints will be filed with the Director, DCR.

(c) Time for filing. A complaint filed pursuant to this rule must be filed within 180 days of the alleged discrimination. The Director, for good cause shown, may extend the filing time. This time period for filing is for the administrative convenience of the Directorate and does not create a defense for the respondent;

(d) Contents of complaints. Each complaint shall be filed in writing and shall:

(A) Be signed by the complainant or his or her authorized representative;

(B) Contain the complainant’s name and address (or specify another means of contacting him or her);

(C) Identify the respondent; and

(D) Describe the complainant’s allegations in sufficient detail to allow the Director or the subrecipient, as applicable, to determine whether:

(i) The Directorate or the subrecipient, as applicable, has jurisdiction over the complaint;

(ii) The complaint was timely filed; and

(iii) The complaint has apparent merit, i.e., whether the allegations, if true, would violate any of the nondiscrimination and equal opportunity provisions of the JTPA or this part. The information required by this paragraph may be provided by completing and submitting the Directorate’s Complaint Information and Privacy Act Consent Forms or, for the subrecipients, applicable forms, if any.

(e) Rights to Representation. Each complainant and respondent has the right to be represented by an attorney or other individual of his or her own choice;

(f) Election of Subrecipient-level complaint processing. Any person who elects to file his or her complaint with the subrecipient shall allow the subrecipient 60 days to process the complaint. The subrecipient’s complaint process shall substantially comply with the following:

(A) The subrecipient begins informal resolution efforts and investigations;

(B) The subrecipient sets a date for the issues clarification meeting and informal resolution;

(C) The complainant, if unsatisfied with the results of the informal resolution meeting, may request a formal hearing. Such request must be made in writing;

(D) The complainant may amend the complaint, in writing, at any time until twenty (20) days before the hearing;

(E) The subrecipient schedules the formal hearing for within thirty (30) days from receipt of the complaint;

(F) The subrecipient schedules the formal hearing and notifies the complainant in writing of the date, time, and place of a hearing;

(G) The Hearing Officer or Hearing Board coordinates the formal hearing. Both parties shall be provided an opportunity to present evidence, cross-examine witnesses, and be represented by legal counsel. The hearing shall be taped, and a record including all exhibits shall be maintained. The complainant may withdraw the complaint at any time;

(i) Any party may request a different Hearing Officer or Hearing Board be appointed:

(I) The request must be filed together within five (5) days after parties received notification of the hearing schedule and designation of the Hearing Officer or Hearing Board;

(II) No party shall be permitted to make more than one (1) Hearing Officer or Hearing Board be appointed in one complaint.

(ii) Upon receipt of the request described in subsection (f)(G)(i) of this rule, the subrecipient shall designate a different Hearing Officer;

(iii) If the complainant or a representative does not appear for the hearing, the complaint may be dismissed;

(iv) The Hearing Officer or Hearing Board shall provide to all parties a written recommendation, defining issues, facts, and suggested resolution.

(H) The subrecipient shall consider the complaint, informal resolution efforts and Hearing Officer’s or Hearing Board’s recommendation. The subrecipient shall then define issues, facts, and resolution, in writing, and forward copies of the decision to each party.

(I) The subrecipient shall send notice to the Job Training Partnership Administration of the hearing decision.

(g) Timelines:

(A) If, during the 60-day period, following the filing of the complaint, the subrecipient offers the complainant a written resolution of the complaint but the resolution offered is not satisfactory to the complainant, the complainant or his or her representative may file a complaint with the Director within 30 days after the subrecipient notifies the complainant of its proposed resolution;

(B) Within 60 days, after the filing of the complaint, the subrecipient shall offer a resolution of the complaint to the complainant, and shall notify the complainant of his or her right to file a complaint with the Director, and inform the complainant that this right must be exercised within 30 days;

(C) If, by the end of 60 days, the subrecipient has not completed its processing of the complaint or has failed to provide the complainant of the written decision, the complainant or his or her representative may, within 30 days of the expiration of the 60-day period, file a complaint with the Director;

(D) The Director may extend the 30-day time limit if the complainant is not notified as required or for other good cause shown;

(E) Notification of no jurisdiction. The subrecipient shall notify the complainant in writing immediately upon determining that it does not have jurisdiction over a complaint that alleges a violation of the nondiscrimination and equal opportunity provisions of JTPA or **29 CFR Part 34**. The notification shall also include the basis for such determination, as well as a statement of the complainant’s right to file a written complaint with the Director within 30 days of receipt of the notification;

(F) The subrecipient shall maintain records on all grievances filed under this rule and make such records available to the Director upon request.

(4) **29 CFR Part 34.24(a)(3)(ii)** requires that each subrecipient shall maintain a log of complaints filed with it that allege discrimination on the ground of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in JTPA. The log shall include: The name and address of the complainant; the ground of the complaint; i.e., race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in JTPA; a description of the complaint; the date the complaint was filed; the disposition and date of disposition of the complaint; and other pertinent information.

(i) Confidentiality. The identity of any person who furnishes information to or assisting in a complaint investigation or review shall be kept confidential, to the extent possible, consistent with a fair deter-

mination of the issues. The person whose identity is necessary to disclose information shall be protected from relator.

Stat. Auth.: ORS 285.035(5) & 293.550
 Stats. Implemented: Job Training Partnership Act, Public Law 97-300
 Hist.: IRD 2-1985, f. & ef. 4-19-85; Renumbered from 120-040-0027; EDD 6-1994, f. & cert. ef. 3-11-94; EB 13-1997, f. 9-30-97, cert. ef. 10-4-97, Renumbered from 123-070-0130

581-070-0140

Application for and Distribution of JTPA Title III Discretionary National Reserve Funds

(1) The Secretary of Labor reserves discretionary funds to allocate to projects serving workers affected by multi-state and industry-wide dislocations and to areas of special need in a manner that efficiently targets resources to areas of most need, encourages a rapid response to economic dislocations, and promotes the effective use of funds.

(2) The application shall be made in accordance with the requirements published in the **Federal Register**, and the following state guidelines and procedures:

(a) Application for Discretionary National Reserve funds may be submitted by Substate Grantees and other agencies or organizations authorized under the JTPA, in writing at such times as required, to the JTPA Administration, 775 Summer Street, NE, Salem, OR 97310.

(b) The JTPA Administration shall review the application and determine appropriateness for funding, considering the following factors:

(A) Whether the application proposes to use the funds in a manner that furthers the goals and objectives of the Program;

(B) Whether the application contains evidence that an approval of the application will increase the job opportunities for eligible individuals from those currently available; and

(C) Whether the application meets the requirements of the application procedures defined by the U.S. Department of Labor (DOL) for Dislocated Worker funds reserved by the Secretary of Labor;

(D) Other factors may be taken into consideration if they are found to be consistent with the general policy goal of this rule.

(3) If the application is found to be consistent with this rule and consistent with the application requirements and the intent of the National Reserve funds, the State JTPA Administration will submit the application to the Department of Labor for consideration.

Stat. Auth.: ORS 293.550 & 285.035(5)
 Stats. Implemented: Job Training Partnership Act, Public Law 97-300
 Hist.: IRD 1-1984, f. & ef. 1-9-84; IRD 4-1985, f. & ef. 8-5-85; IRD 12-1986, f. & ef. 9-29-86; EDD 30-1988(Temp), f. 10-14-88, cert. ef. 10-17-88; Renumbered from 120-040-0030; EDD 18-1990, f. 6-28-90, cert. ef. 7-1-90; EDD 10-1991, f. 9-10-91, cert. ef. 9-16-91; EB 13-1997, f. 9-30-97, cert. ef. 10-4-97, Renumbered from 123-070-0140

581-070-0150

Distribution Methodology for JTPA Title III Funds

(1) Definitions — As used in this Oregon Administrative Rule (OAR):

(a) “Allocation”: Funds distributed by the Governor to a substate grantee within a state according to established procedures consistent with the Act;

(b) “Allotment”: Funds distributed by the Secretary of Labor to the State according to the Job Training Partnership Act (JTPA) formulas;

(c) “Program Year”: The 12-month period beginning on July 1, and ending on June 30, in the fiscal year for which the appropriation is made;

(d) “Appropriation”: An Act of Congress that permits the Secretary of Labor to incur obligations and to make payments out of the Treasury for specified purposes up to a specified limit.

(2) The Governor shall allocate 50 percent of the State’s allotment for Title III funds under the Economic Dislocation and Worker Adjustment Assistance (EDWAA) Act to substate grantees within the State based on the formula recommended by the State Job Training Coordinating Council (State Council).

(3) The Governor shall allocate ten percent of the State’s allotment for Title III funds under the EDWAA Act to substate grantees within the State based on need, as determined by the State Council.

(4) The Governor may, at the time of the initial allocation with the recommendation of the State Council, distribute additional funds to substate grantees. Such distribution will be on the basis of need, and will be allocated by formula.

(5) Funds recaptured by the JTPA Administration during the program year or reallocated to the State by the Department of Labor (DOL) will be distributed using the substate allocation formula stated in section (1) of this rule to those substate areas/grantees who have a need for such funds. “Need” is defined as having spent at least 85 percent of the original funding or as projecting an expenditure rate of at least 85 percent of the original funding and needing the additional funds to carry out program objectives. If substate grantees are unable to project appropriate expenditure levels in order to access these funds, or do not need all available funds, the recaptured funds may also be made available for expenditure through State level programs.

(6) Substate areas/grantees shall be allowed to carryout no more than 15 percent of their allocation into any given program year, unless in the aggregate, the carryout of funds above 15 percent would be more costly to redistribute than to leave with the respective substate grantees. Reallocated funds will increase the allocation level of formula funds for substate areas/grantees that receive additional funds. Therefore, unexpended reallocated funds at the end of the year will be subject to the 15-percent limitation on allowable carry forward of formula-allocated funds into the subsequent program year.

Stat. Auth.: ORS 285.035(5) & 293.550
 Stats. Implemented: Job Training Partnership Act, Public Law 97-300
 Hist.: IRD 13-1986, f. & ef. 9-29-86; EDD 17-1988, f. 5-27-88, cert. ef. 5-25-88; EDD 28-1988, f. 8-22-88, cert. ef. 8-31-88; Renumbered from 120-040-0031; EDD 2-1989, f. 6-19-89, cert. ef. 7-1-89; EDD 19-1990, f. 6-28-90, cert. ef. 7-1-90; EB 13-1997, f. 9-30-97, cert. ef. 10-4-97, Renumbered from 123-070-0150

581-070-0170

Distribution of JTPA Title II Incentive Grant Awards

The methodology for distributing Title II incentive funds received pursuant to the federal Job Training Partnership Act (JTPA), PL 97-300, its amendments and regulations shall be as follows:

(1) Twenty percent of the available incentive funds shall be reserved for technical assistance activities directly related to program performance.

(2) Eighty percent of the available incentive funds shall be reserved for incentive awards, to be distributed in the following manner:

(a) Seventy percent of the 80 Percent funds are reserved to provide incentive payments to subrecipients for rewarding the six core Secretary of Labor’s standards based on exceeding each of the departure points for the six core Secretary of Labor’s standards as adjusted by the State of Oregon regression model. One sixth of the 70 Percent funds will be awarded for each adjusted core standard that is exceeded.

(b) Thirty percent of the 80 Percent funds are reserved to reward the achievement of each of the six core Secretary of Labor’s performance standards based on Program Year 1995 actual performance increased by 5 percent (PY ‘95 actual performance x 1.05.) One sixth of the 30 Percent funds will awarded for each PY ‘95 core standard increased by 5 percent that is met or exceeded in PY ‘97.

(3) Incentive funds shall be awarded annually after the end of each program year utilizing the Title II-A and Title II-C formula allocation methodology outlined in OAR 581-070-0190. Incentive awards will be made from funds available for that purpose out of current year funding, e.g., PY ‘98 incentive funds would be used to reward PY ‘97 performance.

(4) Definitions used for performance standards shall conform to those provided by the Department of Labor and applied as outlined in the state’s Governor’s Coordination and Special Services Plan (GCSSP).

(5) Unawarded incentive funds or capacity building/technical assistance funds are those funds remaining after all incentive awards have been made and technical assistance has been provided to those SDAs who have failed to meet performance standards. These funds may be used pursuant to Oregon Administrative Rule (OAR) 581-070-0180.

(6) The total incentive awards available to be earned by each subrecipient shall be based on the relative percent of the subrecipient’s Title II-A and II-C formula share.

(7) Incentive awards shall only be applied to performance in Title II-A and Title II-C programs.

[Publications: Publications referenced are available from the agency.]
 Stat. Auth.: OL 1997, Ch. 61, Section 19(2)
 Stats. Implemented: JTPA, PL 97-300
 Hist.: IRD 14-1986, f. & ef. 9-29-86; IRD 4-1987, f. 3-9-87, ef. 3-12-87; EDD 18-1988, f. 5-27-88, cert. ef. 5-25-88; EDD 32-1988, f. 11-28-88, cert. ef. 12-5-88; Renumbered from 120-040-0033; EDD 8-1989, f. 10-31-89, cert. ef. 11-1-89; EDD 19-1990, f. 6-

28-90, cert. ef. 7-1-90; EDD 6-1994, f. & cert. ef. 3-11-94; EDD 6-1995, f. 9-15-95, cert. ef. 9-22-95; ODE 15-1998, f. & cert. ef. 9-9-98, Renumbered from 123-070-0170

581-070-0180

Distribution of Job Training Partnership Act (JTPA) Administration Title II, Five Percent Unawarded Incentive Grants and Five Percent Technical Assistance/Capacity Building Funds

(1) “Definitions”: As used in this rule, the following definitions apply:

(a) Capacity Building. The systematic improvement of job functions, skills, knowledge and expertise of the personnel who staff employment and training and other closely related human service systems. Capacity building is designed to enhance the effectiveness, to strengthen the caliber of client services provided under the Job Training Partnership Act (JTPA) and other Federal, State and local employment and training programs, and improve coordination among them. Capacity building includes curricula development, appropriate training, technical assistance, staff development, and other related activities;

(b) Technical Assistance. A facet of capacity building which includes information sharing; dissemination and training on program models and job functions; peer-to-peer networking and problem solving; guides; and interactive communication technologies;

(c) Technical Assistance/Capacity Building Funds. The portion of five percent Title II Incentive Grant funds identified for technical assistance and capacity building purposes. Funds used for technical assistance and capacity building may not exceed 33% of the Title II Incentive Grant Funds for any year’s allotment.

(d) Unawarded Five Percent Funds. Those funds remaining after all incentive awards have been made and technical assistance has been provided to those Service Delivery Areas (SDAs) who have failed to meet the performance standards pursuant to Oregon Administrative Rule (OAR) 581-070-0170.

(2) “Fund Use”:

(a) Technical assistance/capacity building five percent funds may be used for SDA system enhancement and/or SDA management development strategies which improve the overall performance of the SDA. These funds may also be used at the state level for purposes within the guidelines of (1) and (2) of this rule. Under the Job Training Reform Amendments of 1992, greater emphasis is placed on the use of these funds for the development of staff capabilities at all levels, and particularly for front-line staff, through a comprehensive capacity building and technical assistance strategy.

(b) Unawarded five percent funds not used for failure to meet technical assistance may be made available for technical assistance/capacity building.

(3) “Fund Distribution”:

(a) The technical assistance/capacity building funds including the unawarded five percent funds received pursuant to the Job Training Partnership Act (JTPA), PL 97-300 and its amendments shall be distributed as follows:

(A) SDA enhancement — Seventy-five percent of the 20 Percent TA/Capacity Building funds shall be for SDA enhancement. These funds are to be distributed in equal amounts to the SDAs. These funds shall be used for activities within the guidelines of (1) and (2) of this rule to enhance JTPA program performance at the SDA level in accordance with the approved Technical Assistance/Capacity Building section in the SDA’s Job Training Plan.

(B) State level technical assistance/capacity building — Twenty-five percent of the 20 Percent Technical Assistance/Capacity Building funds shall be reserved for funding activities at the state level within the guidelines of (1) and (2) of this rule.

(b) Technical Assistance/Capacity Building five percent funds must be used in accordance with the procedures specified in JTPA Administration Policy 581-6-5-4.10.

Stat. Auth.: ORS 285.035(5) & 293.550

Stats. Implemented: ORS 293.550

Hist.: IRD 14-1986, f. & ef. 9-29-86; EDD 19-1988, f. 5-27-88, cert. ef. 5-25-88; Renumbered from 120-040-0034; EDD 12-1989, f. 12-12-89, cert. ef. 12-15-89; EDD 6-1994, f. & cert. ef. 3-11-94; EDD 13-1994, f. & cert. ef. 11-2-94; EDD 6-1995, f. 9-15-95, cert. ef. 9-22-95; EB 13-1997, f. 9-30-97, cert. ef. 10-4-97, Renumbered from 123-070-0180

581-070-0190

Distribution Methodology for JTPA Title II Funds

Definitions. As used in 581-070-0190, the following definitions apply:

(1) “Allocation.” Funds distributed by the Governor (JTPA Administration) to a subrecipient within the state according to established procedures consistent with the Job Training Partnership Act.

(2) “Appropriation.” An Act of Congress that permits the United States Secretary of Labor to incur obligations and to make payments out of the Treasury for specified purposes up to a specified limit.

(3) “Eligible Service Delivery Area (SDA).” An SDA that has obligated at least 85 percent (85%) of its allocation under Title II-A and Title II-C for the program year prior to the program year for which the determination was made.

(4) “Obligation.” The amount of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a funding period that will require payment by the recipient or subrecipient during the same or a future period.

(5) “Program Year.” The 12-month period beginning on July 1, and ending on June 30, in the fiscal year for which the appropriation is made.

(6) SDAs within the state that have the highest rates of unemployment for an extended period of time and to those with the highest poverty rates:

(a) Those SDAs within a composite unemployment/poverty index ranking which, relative to all other “eligible” SDAs, is *not* the lowest; or

(b) Is the only “eligible” SDA within the state (as defined under subsection (3) of this rule):

(A) A composite index of SDAs will be determined by each SDAs’ rank order (high to low; 1 to 6 respectively) based on an SDAs’ percent of unemployed (total unemployed divided by the total population) within their area as compared with the percent unemployed (total unemployed divided by total population) within each of the other SDAs within the State. A similar rank order of SDAs based on their relative percent of economically disadvantaged (total economically disadvantaged divided by total population) will also be completed. The numerical value for each SDA’s ranking within the two indexes are added together and, based on the sum of the two (composite) values, ranked again — high to low; the lowest composite number being the highest within the rank order;

(B) The data used to determine the total population, unemployed, and economically disadvantaged will be the same two-year rolling average data used to determine the next initial Program Year’s (PY) Titles 2A and 2C substate fund allocations (following the PY in which fund are being reallocated). This data are the most recent “long term” population, unemployment, and economically disadvantaged figure available to the State JTPA Administration. The data is received by the State JTPA Administration two quarters prior to the beginning of the PY for which they are used to determine initial allocations.

(7) Distribution of Funds. All JTPA funds received by the state, which the state has the discretion to allocate, shall be distributed, unless otherwise explicitly provided in an Administrative Rule, according to the formula for Title II fund allocation as described in the Job Training Partnership Act, 97-300 and its Amendments sections 202(a)(2) and (b), 252(b), and 262(a)(2) and (b), as amended by Title VII, Miscellaneous Provisions, of the Job Training Reform Amendments of 1992.

(8) The allocation percentage for a grant recipient is the percentage which the subrecipient will receive pursuant to section 202 and 262 of the JTPA, as amended by Title VII, Miscellaneous Provisions, of the Job Training Reform Amendments of 1992.

(9) If the amounts appropriated pursuant to sections (1) and (2) are not sufficient to provide an amount equal to 90 percent of such allocation percentages to each subrecipient, the amounts allocated to each subrecipient shall be proportionately reduced.

(10) Data to address subsection 202(a)(2) and (b), and section 262(a)(2) and (b) of the JTPA shall be based on a 24-month average using the most recent two-year base allocation period.

(11) This methodology will apply to allocations beginning with the PY’93 and calendar year 1994 allocations.

(12) Recapture and Reallocation. For program years beginning on or after July 1, 1993, funds recaptured in Title II-A and Title II-C by the JTPA Administration shall be reallocated to eligible SDAs within the State that have the highest rates of unemployment for an extended period of time and to those with the highest poverty rates.

(13) The amount available for reallocation is equal to the amount by which the unobligated balance of each SDA allocation under Title

II-A and Title II-C exceeds 15 percent (15%) of such allocation for the program year prior to the program year for which the determination was made.

(14) Reallocated funds will increase the allocation level of Title II-A and/or Title II-C for SDAs that received additional funds. Therefore, the recapture/reallocation requirements of (12) and (13) of this rule will apply to these funds as well.

(15) SDAs shall be allowed to carryout no more than 15 percent of unobligated funds for a program year allocation into any subsequent program year. This applies to reallocated funds as well.

Stat. Auth.: ORS 285.035(5) & 293.550

Stats. Implemented: Job Training Partnership Act, Public Law 97-300

Hist.: IRD 5-1985, f. & ef. 8-5-85; IRD 5-1987, f. 3-9-87, ef. 3-12-87; EDD 12-1988(Temp), f. 4-20-88, cert. ef. 4-22-88; Renumbered from 120-040-0036; EDD 6-1994, f. & cert. ef. 3-11-94; EB 13-1997, f. 9-30-97, cert. ef. 10-4-97, Renumbered from 123-070-0190

581-070-0200

Distribution of JTPA Title II-A & II-C — Eight Percent State Education Coordination Funds

The purpose of this rule is to govern the use and distribution of the eight percent State Education Coordination Funds received by the State Job Training Partnership Act (JTPA) Administration under Titles II-A & II-C of the JTPA, PL 97-300 and its amendments.

(1) Distribution Methodology:

(a) Coordination of Education and Training Services. Twenty percent (20%) of the total funds received will be allocated for Coordination of Education and Training Services. These funds will be granted to the Oregon Department of Education (ODE), Office of Professional/Technical Education under an interagency agreement between State JTPA Administration and ODE. This agreement will be administered by the State JTPA Administration;

(b) Services to Participants. Eighty percent (80%) of the total funds received will be allocated for Services to Participants. These funds will be granted to ODE, Office of Professional/Technical Education, under an interagency agreement between the State JTPA Administration and ODE. This agreement will be administered by the State JTPA Administration;

(c) ODE shall distribute the 80% funds to the JTPA Service Delivery Areas based on the JTPA Title II-C formula as it is applied to the each of the fifteen (15) Regions established in Oregon by the Workforce Quality Council.

(2) Use of 8% State Education Coordination Funds:

(a) Twenty Percent (20%) Coordination Funds. The funds granted to the ODE, Office of Professional/Technical Education, are to facilitate coordination of education and training services for eligible participants in accordance with Section 123(a)(2)(D)(i) of the JTPA. These funds will be used for activities that advance the objectives of linking workforce development to education reform for appropriate JTPA populations and to administer the projects funded with 80% funds;

(b) Eighty Percent (80%) Services to Participants Funds.

(A) The 80% funds allocated to ODE will be used to provide employment and training services to JTPA eligible participants following the recommendations of the State Job Training Coordinating Committee;

(B) Projects must be designed through a collaborative planning process involving representatives of the education and JTPA communities;

(C) The Regional Workforce Quality Committees shall review and approve the local education coordination plans as developed by the Service Delivery Areas.

(c) One-hundred percent (100%) of the 8% funds allocated to ODE must be matched by non-JTPA funds. Matching funds may be provided with cash or in-kind contributions;

(d) The portions of the 8% funds that are unspent/unobligated shall be distributed pursuant to policies established by the State JTPA Administration.

Stat. Auth.: ORS 285.035(5) & 293.550

Stats. Implemented: Job Training Partnership Act, Public Law 97-300

Hist.: IRD 15-1986, f. & ef. 9-29-86; EDD 24-1988, f. 6-10-88, cert. ef. 6-13-88; Renumbered from 120-040-0037; EDD 15-1990, f. 6-18-90, cert. ef. 7-1-90; EDD 11-1991, f. 9-26-91, cert. ef. 10-1-91; EDD 6-1994, f. & cert. ef. 3-11-94; EB 13-1997, f. 9-30-97, cert. ef. 10-4-97, Renumbered from 123-070-0200

Confidentiality

581-070-0210

Purpose

This Oregon Administrative Rule (OAR) provides information to the recipient and subrecipients when making decisions concerning the disclosure of information from participant records. The purpose of the OAR is:

(1) To protect participants from unreasonable invasions into their privacy;

(2) To give participants access to their records; and

(3) To provide the circumstances where disclosure of information from participant records without participant consent is permissible.

Stat. Auth.: ORS 285.035(5) & 293.550

Stats. Implemented: Job Training Partnership Act, Public Law 97-300

Hist.: EDD 2-1990, f. 1-16-90, cert. ef. 1-22-90; EB 13-1997, f. 9-30-97, cert. ef. 10-4-97, Renumbered from 123-070-0210

581-070-0220

Definitions

As used in 581-070-0210 through 581-070-0240, the following definitions apply:

(1) "Participant" means a person applying for or receiving training in programs conducted under the direction of the State Job Training Coordinating Council (State Council) as the State Council implements the federal Job Training Partnership Act (JTPA) (**29 U.S.C. 1501 et seq.**).

(2) "Participant behavioral records" are records which include, but are not limited to, psychometric testing, personality evaluations, written transcripts of incidents relating to participant behavior, grades, conduct, personal and academic evaluations, counseling, alcohol or substance abuse evaluation and/or treatment, disciplinary actions, if any, and other personal evaluations.

(3) "Participant records" include all participant records, participant behavioral records and documents which contain personally identifiable information maintained by the recipient and its subrecipients.

(4) "Personally identifiable" means that the participant records include:

(a) The name of the participant, the participant's parents; or other family members;

(b) The address of the participant;

(c) A personal identifier, such as the participant's Social Security number or phone number;

(d) A list of personal or physical characteristics which would make the participant's identity easily traceable; or

(e) Other information which would make the participant's identity easily traceable.

(5) "Program staff" means Recipient and Subrecipient staff.

(6) "Recipient" means the Governor.

(7) "Release" means to make participant records available to individuals, agencies or businesses for inspection in original or duplicate form.

(8) "Subrecipient" means any person, organization or other entity which receives JTPA funds either directly or indirectly from the Governor.

(9) "Surrogate" means an individual who acts in the place of a parent or guardian in safeguarding a participant's rights when the parent or guardian is unknown (the parent cannot be identified or ascertained by diligent inquiry), unavailable (after reasonable effort, the whereabouts of the parents cannot be ascertained) or the participant is a ward of the State. "Surrogate" may also apply to disabled adults who have a designated legal guardian or advocate.

Stat. Auth.: ORS 285.035(5) & 293.550

Stats. Implemented: Job Training Partnership Act, Public Law 97-300

Hist.: EDD 2-1990, f. 1-16-90, cert. ef. 1-22-90; EB 13-1997, f. 9-30-97, cert. ef. 10-4-97, Renumbered from 123-070-0220

581-070-0230

Release of Participant Records

(1) No participant records shall be released without the express consent of the participant, the participant's parent or legal guardian or surrogate, except as noted in this rule.

(2) A participant may provide written consent for the examination or release of his/her records.

(3) A participant who is under the age of 18 and is not legally emancipated shall not authorize the release of any records pertaining

to him/herself without the written consent of the participant's parent, legal guardian or surrogate unless otherwise provided for herein or in OAR 581-070-0240. Custodial and non-custodial parents share equal access to participant records unless a court order is presented to the contrary.

(4) Records of participants who are at least 18 years of age, shall not be released to anyone, including the participant's parent, legal guardian or surrogate, without the written consent of the participant unless otherwise provided for herein or in OAR 581-070-0240.

(5) Participant behavioral records shall be examined or released only in the presence of an individual qualified to explain or interpret the records. Staff whose job descriptions or positions require the ability to understand and interpret behavioral material shall be considered qualified to explain or interpret behavioral records. Specialized third party reports such as personality testing/interpretations, alcohol and substance abuse evaluations, and behavioral analysis reports shall only be interpreted by individuals who have specialized training and expertise in those areas.

(6) A person qualified to interpret psychometric and vocational tests shall be able to show evidence of proper training to make such interpretations. Evidence of proper training consists of the approval of the test publishing company, usually through a test user's qualifications statement.

(7) Information included in the participant records from another agency shall be released only with the written permission of:

(a) The originating agency (if the records are behavioral records); and

(b) The participant or the parent or legal guardian or surrogate, if the record is of a participant under age 18.

(8) Information gained as a result of conversations, conferences, or staff meetings regarding participant problems shall be considered part of a participant's records and must be kept confidential.

(9) Oral release of participant records is prohibited except:

(a) As required to meet emergency medical or other unusual circumstances, but only if the release of such information is necessary to protect the health and safety of the participant or other individuals; and

(b) Among subrecipient staff, and subrecipients and their contractors when necessary for the provision of effective and efficient services.

(10) The subrecipients shall establish policies for protecting the confidentiality of participant records and procedures for releasing or examining participant records which will include all of the following:

(a) Hours during which participant record release or examination may occur;

(b) That a written request for such release or examination must be made;

(c) That the request specifically identify the participant record to be examined;

(d) That the requestor provide his or her name and address;

(e) The person to whom such requests should be directed (normally the custodian of records);

(f) That the fee schedule for record production not exceed the actual cost of production, including staff time, in locating, reviewing and copying the records; and

(g) A record of each release for which a participant or parent, legal guardian or surrogate's written consent is required shall be maintained which includes the name of the party seeking access, the date access was granted, and the purpose for which the party requested or was authorized to use the records. The records of disclosure should be kept with, but not released or examined as a part of, the participant's records. If participant behavioral records are released, the record of disclosure shall include the name of the individual who explained the behavioral portion of the records

Stat. Auth.: ORS 285.035(5) & 293.550

Stats. Implemented: Job Training Partnership Act, Public Law 97-300

Hist.: EDD 2-1990, f. 1-16-90, cert. ef. 1-22-90; EDD 6-1994, f. & cert. ef. 3-11-94;

EB 13-1997, f. 9-30-97, cert. ef. 10-4-97, Renumbered from 123-070-0230

581-070-0240

Release of Participant Records Without Written Consent

(1) Disclosure of Records to Comply With A Judicial Order or Subpoena. Participant records may be disclosed in compliance with judicial order, or pursuant to any lawfully issued subpoena. However, a reasonable effort (which would include documented attempts to con-

tact by phone or, if unsuccessful, by certified letter) must be made to notify the participant, and the parent, legal guardian or surrogate, if the participant is under the age of 18, of any such order or subpoena in advance of the release to permit a proper challenge to the court order or subpoena. Behavioral records shall be released only in the presence of an individual qualified to explain or interpret the records. Unless the subpoena specifically requires the personal attendance of the custodian of records, copies of the records described in the subpoena may be mailed to the court.

(2) Disclosure of Records in Medical Emergencies or where a participant poses a clear and immediate danger to others. The recipient or its subrecipients may disclose personally identifiable information without participant, parent, legal guardian or surrogate consent to appropriate parties in connection with a medical emergency if knowledge of the information is necessary to protect the health or safety of the participant or other individuals. A medical emergency exists if the person is injured or, because of some other physical condition, the person is unconscious, delirious or otherwise unable to convey consent. The release should only be of information necessary to treat the emergency. Participant records may also be released to an appropriate authority if there is a clear and immediate danger to others or to society. An appropriate authority would be that person having the authority to deal with that danger. Release should include only that information which indicates why a clear and immediate danger exists.

(3) Disclosure of Participant Records to Federal, State or Local Officials and Public Institutions. Participant records may be released to:

(a) Authorized federal, State and local staff or their designees to whom such information is specifically required by law to be accessible for the purpose of auditing, monitoring, reporting or evaluation;

(b) Provide information to State and local agencies administering ORS Chapters 418 (Child Welfare Services) or 657 (Unemployment Insurance); or

(c) Public institutions or agencies when the participant has applied to the institution or agency for assistance or service or is receiving such assistance or service, and the purpose of the institution or agency (if this can be clearly ascertained) is to protect or advance the welfare of the participant, but only if:

(A) The confidential nature of the information will be preserved;

(B) The information will be used only for the purposes for which it is made available;

(C) The information, when provided, shall be for the exclusive use of the institution or agency to which it is submitted, and the institution or agency has written standards for safeguarding the confidential nature of the information.

(d) Organizations, including state and federal workforce development, educational agencies and community colleges and their local boards, conducting studies for or on behalf of employment and training agencies, educational agencies, institutions or the State of Oregon Workforce Quality Council for purposes which may include developing, validating, or administering predictive tests, program enhancement or in order to develop statistical and demographic data to facilitate the creation of strategies to improve the education, training and quality of Oregon's workforce provided that:

(A) The information shall be used only for the purposes for which it is made available; and

(B) Personally identifiable information contained in the participant records has been transformed or otherwise encoded by a staff member from the agency releasing the records to a form usable by the organization conducting the study or, if applicable, to those standards required by the Workforce Quality Council's Shared Information System, in order to safeguard the identity of the participant.

(e) Private auditing firms employed by the subrecipient to carry out monitoring of its programs for internal purposes;

(f) Organizations conducting research provided that:

(A) The information will be used only for the purposes for which it is made available; and

(B) Personally identifiable information has been transformed by a staff member from the agency releasing the records to a form usable by organizations conducting research, and which would not contain personally identifiable data or information.

(g) Organizations who provide test scoring and/or data analysis provided that the test scoring and/or data analysis services:

(A) Have established written practices to preserve the confidentiality of the records; and

(B) Will not send reports containing participant personally identifiable information to anyone other than the organization requesting the service.

(4) Participant record information will not be disclosed when such disclosure would constitute a clearly unwarranted invasion of personal privacy.

Stat. Auth.: ORS 285.035(5) & 293.550

Stats. Implemented: Job Training Partnership Act, Public Law 97-300

Hist.: EDD 2-1990, f. 1-16-90, cert. ef. 1-22-90; EDD 6-1994, f. & cert. ef. 3-11-94; EB 13-1997, f. 9-30-97, cert. ef. 10-4-97, Renumbered from 123-070-0240

581-070-0250

Applicant, Participant, and Employee Records

(1) In compliance with **29 CFR Part 34**, Implementation of the Nondiscrimination of Equal Opportunity Requirements of the JTPA Act Section 34.24 (a)(1) and (2), subrecipients shall collect data and maintain records necessary to determine whether the recipient has complied/is complying with nondiscrimination and equal opportunity provisions of the Job Training Partnership Act. Subrecipients shall record the race/ethnicity, sex, age, and where known, disability status of every applicant, eligible applicant, participant, trainee, applicant for employment and employee.

(2) Such data/information shall be stored in such a manner as to ensure confidentiality and shall be used only for the purposes of:

(a) Recordkeeping and reporting;

(b) Determining eligibility, where appropriate, for JTPA funded programs or activities;

(c) Determining the extent to which the subrecipient is operating its JTPA funded program or activity in a nondiscriminatory manner;

(d) Or other use authorized by the nondiscrimination and equal opportunity provisions of the JTPA or its implementing regulations.

Stat. Auth.: ORS 285.035(5) & 293.550

Stats. Implemented: Job Training Partnership Act, Public Law 97-300

Hist.: EDD 6-1994, f. & cert. ef. 3-11-94; EB 13-1997, f. 9-30-97, cert. ef. 10-4-97, Renumbered from 123-070-0250

Establishment (Designation/Redesignation) of Service Delivery Areas (SDAs) Substate Areas, and Substate Grantees

581-070-0380

Purpose

This Oregon Administrative Rule (OAR) provides the requirements for the designation and redesignation of SDAs, Substate Areas and Substate Grantees. The purpose of the OAR is to identify the procedures for determining the geographic area and agencies or organizations responsible for delivering and administering programs pursuant to the Job Training Partnership Act.

Stat. Auth.: ORS 285.035(5) & 293.550

Stats. Implemented: Job Training Partnership Act, Public Law 97-300

Hist.: EDD 18-1990, f. 6-28-90, cert. ef. 7-1-90; EB 13-1997, f. 9-30-97, cert. ef. 10-4-97, Renumbered from 123-070-0380

581-070-0390

Definitions

As used in 581-070-0380 through 581-070-0420, the following definitions apply:

(1) "Act." The Job Training Partnership Act Public Law 97-300 and its amendments.

(2) "Chief Elected Official." In the case of a service delivery area, the governing body of a unit of general local government or designated representative thereof.

(3) "Job Training Plan." A plan for a two year period which is prepared according to procedures specified by JTPA and as mutually agreed to by the Private Industry Council and appropriate chief elected official(s).

(4) "Labor Market Area." A geographic area consisting of a central community and contiguous areas which are economically integrated into that community. Within a labor market area, workers can reside and find employment within a reasonable distance or can readily change jobs without relocating. Labor market areas are defined by the Bureau of Labor Statistics in terms of entire counties. Labor market areas are categorized as either "major," which is usually coterminous with a metropolitan statistical area or as "small." A "small" labor market area is defined as a county or group of counties with a central community of at least 5,000 in population which meets commuting require-

ments. Counties which are not included in labor market areas are designated as "estimating areas."

(5) "Private Industry Council." A council comprised of voluntary representatives of the private sector (who constitute a majority of the membership), educational agencies, organized labor, vocational rehabilitation agencies, public assistance agencies, community based organizations, economic development agencies, and the public employment service. The Private Industry Council is responsible for providing policy guidance for and exercising oversight with respect to activities under the job training plan for its Service Delivery Area in partnership with local government.

(6) "Program Year." The 12-month period beginning on July 1 and ending on June 30 in the fiscal year for which the appropriation is made.

(7) "Service Delivery Area (SDA)." An area designated by the governor which:

(a) Is comprised of one or more units of general local government;

(b) Will promote effective delivery of job training services; and

(c) Is consistent with labor market areas or standard metropolitan statistical areas (this does not mean that an entire labor market area must be designated); or

(d) Is consistent with areas in which related services are provided under other State or Federal programs.

(8) "Substate Area." That geographic area in a State which is, pursuant to Section 312(a) of the Act:

(a) Any single service delivery area that has a population of 200,000 or more; or

(b) Any two or more contiguous service delivery areas:

(A) That in the aggregate have a population of 200,000 or more; and

(B) That request such designation.

(c) Any unit of general local government or consortium of contiguous units of general local government, without regard to population, which serves a substantial portion of a labor market area.

(9) "Substate Grantee." That agency or organization selected to administer programs pursuant to section 312 (b) of the Act. The Substate grantee is the entity that receives Title III funds for a Substate Area directly from the Governor.

(10) "Substantial Portion/Part." The terms "substantial portion/part" are defined as not less than 10% of the population of a labor market area.

Stat. Auth.: ORS 285.035(5) & 293.550

Stats. Implemented: ORS 293.550

Hist.: EDD 18-1990, f. 6-28-90, cert. ef. 7-1-90; EDD 6-1994, f. & cert. ef. 3-11-94; EDD 6-1995, f. 9-15-95, cert. ef. 9-22-95; EB 13-1997, f. 9-30-97, cert. ef. 10-4-97, Renumbered from 123-070-0390

581-070-0400

Establishment of Service Delivery Areas (Designation/Redesignation)

(1) Requests for designation as an SDA may be made by the following entities:

(a) Any unit of general local government with a population of 200,000 or more;

(b) Any consortium of contiguous units of general government with an aggregate population of 200,000 or more which serves a substantial part, i.e., not less than 10% of the population of one or more labor market areas; and

(c) Any unit of general local government or consortium of contiguous units of general local government, without regard to population, which serves a substantial portion, i.e., not less than 10% of the population of a labor market area.

(2) Requests for designation as an SDA must be made not later than October 1 of the Program Year prior to the beginning of the first year of a two year planning period (e.g., October 1, 1993 for the two year period, July 1, 1994 through June 30, 1996). Designations may be made eight months before the beginning of a program year, but shall be made not later than four months before the beginning of a program year.

(3) The governor may redesignate SDAs no more frequently than every two years:

(a) Redesignations must conform to the requirements outlined in sections (1) through (7) of this rule;

(b) An existing SDA is not required to resubmit requests for redesignation in accordance with section (2) of this rule, unless there is some change in the SDA's status under which the original designation was made.

(4) Requests for designation must be made in writing and shall be submitted to: Job Training Partnership Act (JTPA) Administration; Oregon Economic Development Department; 255 Capitol Street NE, Suite 399, Salem, Oregon, 97310.

(5) The Workforce Quality Council (State Council) recommends the Service Delivery Areas (SDAs) to the Governor. State Council proposal(s) must provide a written explanation of the reasons for designation of each SDA. The State Council shall consider:

(a) Consistency with the requirements for an SDA listed under section (1) of this rule;

(b) The capacity to administer the job training program in accordance with the Act, applicable rules and regulations and state standards;

(c) The capability to deliver and coordinate the delivery of services with other human services and economic development programs; and

(d) Consistency with the geographic boundaries of labor market areas within the state.

(6) The JTPA Administration will publish designations of proposed SDAs:

(a) Units of general local government (and combinations thereof), business organizations, organized labor, and other affected persons or organizations must be given an opportunity to comment on the proposed designation of SDAs and to request revisions thereof;

(b) Publication shall be consistent with procedures outlined in the Attorney General's Manual on Public Records and Meetings (1993).

(7) The Governor shall approve any request to be an SDA from an entity listed in subsections (1)(a) and (b) of this rule after review of the recommendations made by the State Council under section (5) of this rule and comments received under section (6) of this rule:

(a) If there are competing requests for designation for the same geographical area and the entities meet the requirements and criteria identified in section (1) and subsection (3)(a) of this rule, the Governor shall designate the entity with the population closest to 200,000, i.e., at least 200,000. If the remaining entity continues to meet the requirements, the Governor shall offer to designate the remaining entity;

(b) If there are competing requests for designation for the same geographical area and the designation of the entity with the population closest to 200,000 leaves the remaining entity with a population below 200,000, the Governor may determine which request to honor.

(8) The Governor may approve a request to be an SDA from an entity listed in subsection (1)(c) of this rule, after review of State Council recommendations and receipt of comments.

(9) After honoring all requests for designation from eligible entities under section (1) of this rule, the Governor shall include uncovered areas in the state within other designated SDAs willing to accept them or within another new SDA within the state.

(10) A denial by the Governor for designation as an SDA under subsections (1)(a) and (b) of this rule may be appealed to the Secretary of the Department of Labor if the entity making the request alleges that the decision of the Governor is contrary to the provisions of Section 101 of the Act and this OAR:

(a) Appeals shall be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, Washington, D.C. 20210, ATTENTION: ASET;

(b) A copy of the appeal shall simultaneously be provided to the Governor, sent to the JTPA Administration at the address stated in (4) of this rule;

(c) The Secretary shall not accept an appeal dated later than 30 days after receipt of written notification of the denial from the Governor;

(d) The appealing party shall explain why it believes the denial is contrary to the provisions of Section 101 of the Act and this OAR;

(e) The Secretary shall accept the appeal and make a decision only with regard to determining whether or not the denial is inconsistent with Section 101 of the Act. The Secretary may consider any comments submitted by the Governor; and

(f) The Secretary shall make a final decision within 30 days after the appeal is received and shall notify the Governor and the appellant in writing of the Secretary's decision.

(11) An entity described in subsection (1) (c) of this rule that has been denied designation as an SDA and wishes to appeal that decision must utilize the state-level grievance procedures described in OAR 581-070-0110.

Stat. Auth.: ORS 285.035(5) & 293.550

Stats. Implemented: ORS 293.550

Hist.: EDD 18-1990, f. 6-28-90, cert. ef. 7-1-90; EDD 12-1991, f. 9-26-91, cert. ef. 10-1-91; EDD 6-1994, f. & cert. ef. 3-11-94; EDD 6-1995, f. 9-15-95, cert. ef. 9-22-95; EB 13-1997, f. 9-30-97, cert. ef. 10-4-97, Renumbered from 123-070-0400

581-070-0410

Establishment of Substate Areas

(1) Requests for designation as a Substate Area, for the purposes of Title III — Employment and Training Assistance for Dislocated Workers, may be made by the following entities:

(a) Any single SDA that has a population of 200,000 or more;

(b) Any two or more contiguous SDAs that in the aggregate have a population of 200,000 or more and that request such designation;

(c) Any single SDA that has a population of less than 200,000.

(2) Requests for designation as a Substate Area may be made not later than October 1 of the Program Year prior to the beginning of the first year of a two year planning period (e.g. October 1, 1993 for the two year period, July 1, 1994 through June 30, 1996. Designations may be made eight months before the beginning of a Program Year, but shall be made not later than four months before the beginning of a program year.

(3) The governor may redesignate Substate Areas no more frequently than every two years.

(4) Requests for designation must be made in writing and shall be submitted to: Job Training Partnership Act Administration; Oregon Economic Development Department; 255 Capitol Street NE, Suite 399; Salem, OR 97310.

(a) Redesignations must conform to the requirements outlined in sections (1) through (8) of this rule;

(b) An existing Substate Area is not required to submit requests for redesignation in accordance with section (2) of this rule, unless there is some change in the Substate Area's status under which the original designation was made.

(5) The Workforce Quality Council (State Council) recommends the proposed Substate Areas to the Governor. State Council proposal(s) must provide a written explanation of the reasons for designation of each proposed Substate Area. Such reasons shall consider:

(a) Consistency with the requirements for a Substate Area listed under section (1) of this rule;

(b) Inclusion of each SDA wholly within a Substate Area (no SDA shall be divided among two or more Substate Areas);

(c) The availability of services throughout the State;

(d) The capability to coordinate the delivery of services with other human services and economic development programs; and

(e) Consistency with geographic boundaries of labor market areas within the State.

(6) The JTPA Administration will publish designations of proposed Substate Areas:

(a) Units of general local government (and combinations thereof), business organizations, organized labor, and other affected persons or organizations must be given an opportunity to comment on the proposed designation of Substate Areas and to request revisions thereof;

(b) Publication shall be consistent with procedures outlined in the Attorney General's Manual on Public Records and Meetings (1993).

(7) The Governor shall, subject to compliance with the requirements of subsection (5)(b) of this rule, approve any request to be a Substate Area from an entity listed in subsections (1)(a) and (b) of this rule upon review of the recommendations made by the State Council under section (5) of this rule and comments received under subsection (6)(a) of this rule.

(8) The Governor may, without regard to the 200,000 population requirement, designate SDAs with smaller populations as substate areas upon review of State Council recommendations and receipt of comments.

(9) The Governor may deny a request for designation from a consortium of two or more SDAs that meet the requirements of subsection (1)(b) of this rule only upon a determination that the request is not consistent with the effective delivery of services to eligible dislocated workers in the relevant labor market area, or would otherwise be inappropriate:

(a) The Governor will give good faith consideration to all such requests by a consortium of SDAs to be a Substate Area;

(b) The basis and rationale for the denial shall be set forth in writing.

(10) An entity described in subsection (1)(a) of this rule may appeal the Governor's denial of Substate Area designation to the Secretary of Labor:

(a) Appeals shall be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, Washington, D.C. 20210, ATTENTION: ASET;

(b) A copy of the appeal shall simultaneously be provided to the Governor, sent to the JTPA Administration at the address stated in (4) of this rule;

(c) The Secretary shall not accept an appeal dated later than 30 days after receipt of written notification of the denial from the Governor;

(d) The appealing party shall explain why it believes the denial is contrary to the provisions of Section 312 of the Act and this OAR;

(e) The Secretary shall accept the appeal and make a decision only with regard to determining whether or not the denial is inconsistent with Section 312 of the Act. The Secretary may consider any comments submitted by the Governor;

(f) The Secretary shall make a final decision within 30 days after the appeal is received.

(11) An entity described in subsections (1)(b) and (c) of this rule that has been denied Substate Area designation and wishes to appeal that decision must utilize the State-level grievance procedures described in OAR 581-070-0110.

Stat. Auth.: ORS 285.035(5) & 293.550

Stats. Implemented: ORS 293.550

Hist.: EDD 18-1990, f. 6-28-90, cert. ef. 7-1-90; EDD 12-1991, f. 9-26-91, cert. ef. 10-1-91; EDD 6-1994, f. & cert. ef. 3-11-94; EDD 6-1995, f. 9-15-95, cert. ef. 9-22-95; EB 13-1997, f. 9-30-97, cert. ef. 10-4-97, Renumbered from 123-070-0410

581-070-0420

Establishment of Substate Grantees

(1) Designation of the Substate Grantee for each Substate Area shall made on a biennial basis.

(2) Requests for designation as a Substate Grantee, for the purpose of carrying out programs under Title III — Employment and Training Assistance for Dislocated Workers, may be made not later than October 1 of the Program Year prior to the beginning of the first year of a two year planning period (e.g. October 1, 1993 for the two year period, July 1, 1994 through June 30, 1996). The following entities are eligible for such designation:

(a) Private Industry Councils in the Substate Areas;

(b) SDA grant recipients or administrative entities;

(c) Private non-profit organizations;

(d) Units of general local government in the Substate Area, or agencies thereof;

(e) Local offices of State agencies; and

(f) Other public agencies, such as community colleges and area vocational schools.

(3) Requests for designation must be made in writing and shall be forwarded to Job Training Partnership Act Administration; Oregon Economic Development Department; 255 Capitol Street NE, Suite 399; Salem, OR 97310 jointly by the local elected official or officials and the private industry council or councils of a Substate Area. Requests shall set forth the conditions, considerations and other factors supporting the designation of Substate Grantee status. Such requests shall address:

(a) The availability of services throughout the Substate Area;

(b) The capability to coordinate the delivery of services with other human services and economic development programs; and

(c) Consistency of service delivery capability within the geographic boundaries of labor market areas within the Substate Area.

(4) The Workforce Quality Council (State Council) recommends the proposed Substate Grantees to the Governor. State Council proposal(s) must provide a written explanation of the reasons for designation for each proposed Substate Grantee. Such reasons shall consider consistency with the requirements for Substate Grantees listed under sections (2) and (3) of this rule.

(5) Whenever a Substate Area is represented by more than one local elected official or private industry council, the respective officials

and councils shall jointly designate representatives to negotiate agreement with the Governor on a Substate Grantee for the Substate Area.

(6) Substate Grantees shall be designated in accordance with an agreement among the Governor, the local elected official(s) and the private industry council(s) of a Substate Area which shall set forth the conditions, considerations and other factors related to the selection in accordance with Section 312(b) of the Act.

(7) The Governor shall negotiate in good faith with the parties identified in section (5) of this rule and shall make a good faith effort to reach agreement.

(8) In the event agreement cannot be reached on the selection of a Substate Grantee, the Governor shall select the Substate Grantee.

(9) Designations may be made eight months before the beginning of a Program Year, but shall be made not later than four months before the beginning of a program year.

(10) The Governor may deny a request for designation upon determination that the request is not consistent with the effective delivery of services to eligible dislocated workers, or would otherwise be inappropriate.

(11) Entities that have been denied Substate Grantee designation and wish to appeal that decision must utilize the state-level grievance procedures described in OAR 581-070-0110.

Stat. Auth.: ORS 285.035(5) & 293.550

Stats. Implemented: ORS 293.550

Hist.: EDD 18-1990, f. 6-28-90, cert. ef. 7-1-90; EDD 28-1990(Temp), f. & cert. ef. 11-19-90; EDD 2-1991, f. 2-22-91, cert. ef. 2-26-91; EDD 12-1991, f. 9-26-91, cert. ef. 10-1-91; EDD 6-1994, f. & cert. ef. 3-11-94; EDD 6-1995, f. 9-15-95, cert. ef. 9-22-95; EB 13-1997, f. 9-30-97, cert. ef. 10-4-97, Renumbered from 123-070-0420

581-070-0500

Private Industry Council (PIC) Certification

(1) The Governor shall recertify the PICs biennially, one year prior to the date for submittal of the two-year Service Delivery Area job training plan to the Job Training Partnership Act (JTPA) Administration (e.g., April, 1995 for the two-year period, July 1, 1996, through June 30, 1998).

(2) The JTPA Administration shall issue a schedule and instructions for the submission of materials needed to certify the PICs; the instructions shall at a minimum, require the submission of:

(a) A written statement of the PIC composition which shall be consistent with section 102(a), (b), (c), and (d) of the Job Training Partnership Act (Act) and shall include the names of individuals nominated and their qualifications;

(b) A description of the nomination process;

(c) The written agreement(s) among the appropriate chief elected official(s) and the PIC, including procedures for the development of the SDA job training plan and the selection of the grant recipient and administrative entity; and

(d) A description of the basic organizational structure and operational framework through which the PIC intends to carry out its role under the Act.

Stat. Auth.: ORS 285.035(5) & 293.550

Stats. Implemented: Job Training Partnership Act, Public Law 97-300

Hist.: EDD 6-1994, f. & cert. ef. 3-11-94; EB 13-1997, f. 9-30-97, cert. ef. 10-4-97, Renumbered from 123-070-0500

581-070-0510

Distribution of JTPA Title III Governor's Reserve Funds

(1) The Dislocated Worker Unit (DWU) of the Job Training Partnership Act (JTPA) Administration shall allocate Title III of the JTPA, PL 100-418 Governor's Reserve funds to Oregon's designated substate grantees (SSGs) and others, in accordance with section 302 (c)(1)(E) and (2) of the Act. The Governor may reserve not more than 40 percent of the amount allotted to the State under section 302(a)(1) for:

(a) State administration, technical assistance, and coordination of the programs authorized under this title;

(b) Statewide, regional, or industry-wide projects;

(c) Rapid response activities as described in section 314(b);

(d) Establishment of coordination between the unemployment compensation system and the worker adjustment program system; and

(e) Discretionary allocation for basic readjustment and retraining services to provide additional assistance to areas that experience substantial increases in the number of dislocated workers, to be expended in accordance with the substate plan or modification thereof.

(2) The specific amount of funds to be allocated to the Governor's Reserve fund and the use of those funds shall be determined by the Workforce Quality Council.

(3) JTPA Administration policy 123-6-5-2.11 defines the method for the distribution and guidelines for the use of the Title III Governor's Reserve funds.

Stat. Auth.: ORS 292.550 & 285.035(5)

Stats. Implemented: Job Training Partnership Act PL 97-300 and its amendments

Hist.: EDD 5-1995(Temp), f. & cert. ef. 8-14-95; EDD 2-1996, f. & cert. ef. 3-25-96; EDD 1-1998, f. 1-29-98, cert. ef. 2-4-98, Renumbered from 123-070-0510

DIVISION 71

RADIO-TELEVISION AGREEMENT

581-071-0005

Purpose and Needs

Educational television and radio in Oregon embrace three major functions, and consequently these are the three areas of interest which the state educational network is designed to serve:

(1) The needs of the State System of Higher Education for inter-institutional programming, broadcast courses, and experimental programs such as the Oregon College of the Air;

(2) The needs of the elementary and secondary schools of the state for in-school and teacher in-service programs;

(3) The needs of the general public for cultural programming and continuing education.

Stat. Auth.: ORS 354

Stats. Implemented: ORS 354.430 - 354.515

Hist.: 1 EB 118, f. 11-28-67, ef. 12-25-67

581-071-0010

Principles of Operating Network

Since the agency operating the network may encounter conflicts among the interests representing these needs, these guiding principles for operating the network are therefore agreed upon by the Educational Coordinating Council:

(1) The purpose of educational television and radio in relation to the elementary and secondary schools is the improvement of instruction and services to children. Therefore, all agencies involved in such programming for the public schools, including the Department of Educational Media of the State System of Higher Education, the Oregon State Department of Education, and participating schools, shall consider their specific activities as part of a cooperative project for the accomplishment of these goals.

(2) It is the primary responsibility of the Oregon State Department of Education to develop programs for in-school viewing and listening and teacher in-service both within the Department and with school districts and involve the network in-school program personnel in such program planning.

(3) Instructional programs for in-school viewing and listening and teacher in-service may be initiated by any appropriate group, but such programs must be approved by the Oregon State Department of Education before they can be scheduled on either network. Persons or agencies interested in developing any in-school or teacher in-service programs or other programs oriented to instructional objectives for elementary and secondary pupils will be referred by the network personnel to the Oregon State Department of Education.

(4) Studio production and broadcasting of such programs, when approved by the Oregon State Department of Education, shall be the primary responsibility of the agency operating the network. In such production, consideration shall be given to the wishes of the Oregon State Department of Education, and the tele-teacher shall be considered an employee of the Department.

(5) The daytime hours from 8 a.m. to 5 p.m. are priority hours for instructional programming on the networks.

(6) Assignment of available time on the networks will be the responsibility of the Network Program Committee in consultation with representatives of the Oregon State Department of Education, State System of Higher Education, and other participating organizations and agencies. Factors such as program availability, budgets for station operation and program production, interests of the intended audience segments, needs of the educational groups to be served, and network production capabilities shall be given due consideration in the development of the composite schedule.

(7) Solution of any problems between the Oregon State Department of Education and the State System of Higher Education arising out of conflicts in scheduling shall be referred by the Network Program Committee of the two State Boards. In resolving conflicts, the needs of the various educational levels shall be the determining factors.

(8) Adequate funds for the development of in-school programs including such items as teacher salaries, television and radio program specialists, artists, handbooks, and the acquisition of programs on tapes and films should be included in the Oregon State Department of Education budget.

(9) Funds budgeted for station costs (studio production and broadcast transmission) chargeable to the Oregon State Department of Education for programs it has developed and/or approved should be clearly earmarked for this purpose in the Department of Educational Media of the State System of Higher Education budget. Adequate funds shall be budgeted to permit the network operating agency to schedule in-school and teacher in-service programs to coincide with the public school calendar as determined by the Oregon State Department of Education.

(10) The Department of Educational Media of the State System of Higher Education shall, through a cost accounting system, make available a price schedule for the prorating of the several costs involved in the development, production, and transmission of educational television broadcasts. These data are to be reviewed by the coordinating subcommittee.

(11) It is primarily the responsibility of the Oregon State Department of Education to supply public school educators with information about and schedules of in-school and teacher in-service programs; to develop and publish teacher's guides and handbooks; to initiate and solicit ideas for programs; to work with school districts on facilities and the development and utilization of programs; and to conduct surveys of program utilization, evaluation, and needs. The cooperative services of the informational officers of both agencies may be utilized to provide public information concerning approved in-school and teacher in-service programs.

(12) The executive producer of instructional programs shall serve as the liaison person between the Department of Educational Media of the State System of Higher Education and the appointed representative of the Oregon State Department of Education in matters of scheduling and program production which involve both agencies.

(13) The Department of Educational Media of the State System of Higher Education and the Oregon State Department of Education shall consult through their proper representatives with regard to budget information and formulation in areas of mutual concern.

(14) The policies, rules, and regulations adopted by the coordinating council shall be distributed to all employees of both agencies who are concerned with educational television and radio and to school district personnel involved in program production.

(15) These same policies for mutual working relationships shall cover any expansion of the network facilities and services and any expansion of the Oregon State Department of Education's educational television and radio program.

Stat. Auth.: ORS 354

Stats. Implemented: ORS 354.430 - 354.515

Hist.: 1 EB 118, f. 11-28-67, ef. 12-25-67