



SPECIAL EDUCATION

BACKGROUND BRIEF

LPRO: Legislative Policy and Research Office

Special education refers to the system that organizes the provision of education for students with disabilities. The system consists of administrative structures, a body of case law and statutes, legal procedures and due process rights and specialized educational delivery systems.

For each student identified as having a disability and being eligible for special education services, an Individualized Education Program (IEP) must be prepared by a special education committee. The IEP is legally required to include the child's teacher, a school district representative, someone familiar with the evaluation process used and the child's parents. Under certain circumstances, the student may also participate in development of the IEP.

HISTORY OF SPECIAL EDUCATION

Prior to 1973, individual states and some local school boards had laws, policies and regulations covering the education of children with special needs. Many children were taught in general education classrooms where they failed to thrive. Little attention was

given to students' special needs. Some were put into classes for the "retarded" and some were institutionalized. Children in wheelchairs were often forbidden admission to neighborhood schools due to perceived fire hazards. Some students with severe disabilities were kept at home when school districts refused to serve them.

In the late 1960s, parents and advocates of children with special needs joined to protest the lack of services for disabled students. In 1971, the Pennsylvania Association for Retarded Citizens sued for equal access to public education on behalf of 14 children with intellectual disabilities. The lawsuit, *The PARC v. Commonwealth of Pennsylvania*, was decided by the United States District Court for the Eastern District of Pennsylvania on behalf of plaintiffs, and granted children with developmental disabilities the right to a free public education and became a precedent for future cases. The

same year, the *Mills v. Board of Education, D.C.*

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case won similar guarantees for children with disabilities in Washington, D.C.

These cases, along with other federal and state cases and an energized disabled community, inspired passage of the federal Vocational Rehabilitation Act in 1973. The Act codifies a number of civil rights for people with disabilities, and the portion of the Act addressing special education is commonly known as Section 504. It states that institutions receiving federal funds cannot exclude or discriminate against people with disabilities. Rights of individuals with disabilities were further codified in 1975 with the passage of the Education for All Handicapped Children (EAHC) Act. This legislation and its accompanying regulations guaranteed all school-aged children a “free, appropriate, public education” in the “least restrictive environment.” This guarantee of a “free, appropriate, public education” is commonly referred to as the “FAPE” requirement.

The EAHC was succeeded by and renamed the Individuals with Disabilities Education Act (IDEA) in 1990. IDEA amplifies and clarifies state and local responsibility for educating children with disabilities by detailing the requirements for identification, evaluation, and rights of children with disabilities. Additionally, the law grants parents significant influence over the educational programs for their children.

The reauthorized and amended IDEA was signed into law in December, 2004. The law addressed improved communication in disputes with parents, increased flexibility in IEPs and placed increased focus on transitions from high school. In addition, it aimed to

better coordinate special education requirements with the 2001 No Child Left Behind (NCLB) Act. NCLB required linking special education instruction to the general curriculum and to statewide testing and accountability requirements. With the passage of the federal Every Student Succeeds Act (ESSA) by President Obama in December 2015, NCLB has been replaced. States are now offered greater flexibility in the areas of assessment, accountability, school improvement and educator effectiveness. The flexibility encourages states and schools to innovate, while still targeting accountability. Inclusion of students with disabilities continues to be a focus, along with English Language Learner students and students in poverty.

WHY IS SPECIAL EDUCATION AN ISSUE?

Expense: When Congress enacted federal laws requiring special education, the federal funds appropriated were inadequate to cover the costs. Since the services are mandated costs for districts, special education services are a priority.

The costs for a single, high-needs special education student can be difficult for a school district to absorb. The expense for school districts has continued to rise because of the increase in special education enrollment and the court-ordered list of services that schools are required to provide for students with disabilities. For example, the United States Supreme Court has ruled that schools must pay for any medical services—except those provided by a medical doctor—needed for a disabled child to attend school and benefit from instruction. When federal laws were



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enacted, it was expected that federal funds would pay up to 40 percent of the excess costs; the current share of Oregon's total costs just exceeds half of the amount anticipated by the law.

Parental Advocacy: A National Council on Disability report found evidence of states ignoring federal laws leaving enforcement to parents who must invoke formal complaint procedures and request due process hearings to obtain the services and supports to which their children are entitled. Some parents believe that state departments of education are biased on the side of school districts in the dispute resolution process, leading to adversarial and tense relationships between parents and school personnel. Current data in Oregon indicates that requests for formal court hearings are low, relying on less formal resolutions such as complaint investigations and mediations.

Lack of trained specialists: The Oregon Teacher Standards and Practices Commission (TSPC), the body entrusted to license teachers, historically has reported a chronic shortage of special education teachers. Special education teachers acknowledge that state and federal paperwork requirements and other non-instructional issues, including accountability, are driving many from the field and discouraging others from entering it.

Over-identification of students needing special services: Concerns have been raised that some students might be misidentified as disabled, such as children with behavioral problems, those who struggle with reading, and English Language Learners. Some suspect schools over-identify special education students to gain additional funding for

services for the student, while others question why a higher percentage of minority students are identified for special education.

SPECIAL EDUCATION IN OREGON

The Oregon Department of Education (ODE) oversees the delivery of special education services to children through a number of education programs and investigates written complaints alleging violations of federal special education law.

HOW THE PROCESS WORKS

1. Parents, school personnel or students request evaluation for eligibility for services. If a school district refuses, it must give requesters notice of their rights.
2. Evaluation is conducted and reviewed.
3. If services are denied, the requester may ask for an independent evaluation at district expense.
4. If all agree that services are appropriate, the IEP is developed. The IEP lists any special services the child needs and includes goals the child is expected to achieve in one year.
5. When parents and school districts disagree, they may ask for an impartial hearing to resolve issues. Mediation must also be available.

HOW MANY OREGON STUDENTS QUALIFY FOR SPECIAL EDUCATION SERVICES?

In the 2014-15 school year, ODE found 13 percent of Oregon students qualified for some form of special education service. The percentage of special education students has



grown steadily as indicated on the following chart.

School Age Special Education Students

2010-2011	2011-2012	2012-2013	2013-2014	2014-2015
74,099	74,430	74,793	75,363	75,927

This data reflects an increase in the percentage of students receiving special education against the State’s total enrollment from 13.2 percent in 2010-2011 to 13.3 percent in 2014-15.

EARLY INTERVENTION/EARLY CHILDHOOD SPECIAL EDUCATION (EI/ECSE)

Children from birth to age three may receive early intervention services for delays in any one of a number of developmental areas, including cognitive, physical, communication, self-help and psycho-social development. In addition, for very young children, eligibility for services may be determined on the basis of medical diagnosis of a condition likely to result in developmental delay.

Early childhood special education is available for children with disabilities ranging from mild to severe, from the age of three to entry into public kindergarten. Need for services is based on identification of developmental delays or conditions such as vision impairment, intellectual disability or autism. Services a child may receive include evaluation, speech therapy, physical therapy, vision and hearing services and assistive technology.

Local school districts are responsible for identifying pre-school-age children in need of services. ODE then contracts with education service districts to supply those services.

SPECIAL RESIDENTIAL PROGRAMS

Providence Child Center is a residential pediatric nursing facility that offers educational services located in Portland for medically fragile children and young people from infancy to 21 years old. It can accommodate a maximum of 58 students. House Bill 4009 (2014) made ODE responsible for education of students at that facility and created a distinct funding stream for the facility.

The Oregon School for the Deaf (OSD) was established by the Legislative Assembly in 1870 as a residential program for students aged 5 to 21 who are deaf or hard of hearing. Placement at OSD is initiated by the school district in conjunction with regional services staff when the needs and services, as described in the child’s IEP, cannot be provided locally.

The Oregon School for the Blind (OSB) was established by the Legislative Assembly in 1873 and served students with visual impairments whose educational needs exceeded those which a local school district and regional programs could provide. In 2009, House Bill 2834 closed OSB as of September 1, 2009, and students are now served through their local school districts.

HOSPITAL PROGRAMS

The primary purpose of hospital programs is to provide instruction to students while they are hospitalized, either short-term or for a



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longer period. Services for students include: tutoring during hospitalization to maintain educational goals; instruction and related services that emphasize basic school subjects within a regular school curriculum; specially designed instruction as described in an eligible student's IEP; and instruction leading to high school completion. The students at Emanuel Head Injury Unit and Emanuel Acute Care, Shriners, and the Oregon Health & Science University are primarily children hospitalized for acute or chronic medical conditions requiring extended hospital care. The students served at the Oregon State Hospital represent young adults with serious mental health needs or developmental disabilities. The length of stay ranges from as little as 30 days to two or more years.

FUNDING SPECIAL EDUCATION

Special education is funded by the state, through the State School Fund (SSF), and with federal funds.

STATE SCHOOL FUND

Since students with special needs are more costly to educate, the SSF formula double weights these students. This double weighting has been in effect since the formula was created in 1991, and applies to students with mild learning impairment as well as those with severe disabilities.

The double weight was estimated to be the average cost for these students. School districts may not receive the double weight for more than 11 percent of district students without a waiver from ODE. This is to limit districts from "over identifying" special education students and receiving more state aid than is warranted. However, with the

increase in this population, the state average is now about 13.2 percent.

HIGH COST DISABILITY GRANT

Some students with disabilities require costly services, far exceeding their double weighting in the funding formula. Districts may apply for reimbursement for service costs greater than \$30,000 per student.

FEDERAL FUNDS

The Maintenance of Effort requirement in the 2004 IDEA requires each district to meet the documentation standard of expending local and state funds for special education at the same or higher level expended the previous year. This requirement ensures that IDEA funds are used to supplement and not supplant local, state and other federal funds. To demonstrate compliance, each district in Oregon submits certified annual expenditure reports to ODE. An independent audit firm, under ODE contract, reviews the special education expenditure portions of these reports. ODE must also demonstrate Maintenance of Effort each biennium. Oregon is also required to maintain financial effort similar to local school districts under IDEA. This is called State Maintenance of Financial Support (SMFS).

STATE ADVISORY COUNCIL FOR SPECIAL EDUCATION

The State Advisory Council for Special Education (SACSE) was created to review aspects of statewide programs in special education and advise the State Board of Education on unmet needs. Membership includes: individuals with disabilities; parents or guardians of children or youth with



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disabilities; educators; state and local education officials; administrators of programs for children and youth with disabilities; and other persons associated with or interested in special education. A majority of members must be individuals with disabilities or parents of children with disabilities.

SPECIAL EDUCATION INITIATIVES

In an effort to support districts and EI/ECSE programs in providing special education services for students and children, ODE has focused on four primary initiatives:

1. *Response to Intervention* as a systematic way to assess student performance, design learning strategies and refer only those students not making progress to special education;
2. *Positive Behavior Support* as a systematic way to determine behavioral expectations and to assure that the proper special education behavior support gets to those students who need it the most;
3. *Autism Model Classrooms*, pre-K-12, are being created statewide to address the service and training needs of students with autism and their families. By creating statewide direct support to students, families and teachers, the need to move closer to services will be eliminated and families will be able to receive the necessary support in their communities; and
4. *Schoolwide Integrated Framework for Transformation (SWIFT)* is a systematic district-level management process of implementing evidence-based practices. Training includes school district leadership teams on how to ensure fidelity

and sustainability of instructional practices. Oregon is one of the three original states selected for this work. Expansion has continued beyond the first four districts, and now includes an additional four districts.

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