



DISABILITY RIGHTS OREGON

SIXTH EDITION

## Special Education: A Guide for Parents & Advocates

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610 SW Broadway, Suite 200, Portland OR 97205  
Voice: 503-243-2081 or 1-800-452-1694  
Fax: 503-243-1738  
E-mail: [welcome@droregon.org](mailto:welcome@droregon.org)  
Website: [www.droregon.org](http://www.droregon.org)

Written 1999 by  
Chuck Levin, Attorney  
Annie Villegas, Advocate  
James Wrigley, Attorney

Updated 2008 & 2012 by  
Joel Greenberg, Attorney  
Susana Ramírez, Advocate  
Chris Shank, Attorney  
McKenna Lebens, Communications Specialist

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Disability Rights Oregon [DRO] and Family and Community Together [FACT] are pleased to bring you the 6<sup>th</sup> edition of “Special Education: A Guide for Parents & Advocates.” As Oregon’s designated Protection & Advocacy [P&A] System for 35 years, DRO has a unique role: to uphold the legal rights of people with disabilities. FACT is a family leadership organization working collaboratively to facilitate positive change in policies, systems, and attitudes, through family support, advocacy, and partnerships. By combining the legal expertise of DRO with FACT’s statewide contact with families, our organizations seek to make this invaluable information accessible to Oregon families experiencing disability.

DRO and FACT share a vision: a vision of a future where people with disabilities will experience full equality of opportunity and full participation in society. One of the first steps to attaining this goal is empowering families with information regarding their children’s education early on, so that they can advocate for the free and appropriate education [FAPE] that their child is entitled to in the Individuals with Disabilities Education Act.

Likewise, understanding the nuances of an individualized education plan [IEP] and how to be an effective member of the team is critically important for families. If issues arise, you will want to be familiar with your child’s rights and steps to resolve disputes.

Parent participation in the IEP process is important from early intervention to the transition into adulthood. FACT and DRO invite you to use this guide as a reference any time you have a question pertaining to your child’s special education services. Please see our websites ([www.factoregon.org](http://www.factoregon.org) and [www.droregon.org](http://www.droregon.org)) for additional resources. We look forward to hearing from you!

Bob Joondeph  
Executive Director, DRO

Roberta Dunn  
Executive Director, FACT

## **Purpose of this Guide**

This Guide was written to provide parents and advocates with accurate information and answers to questions about special education for children enrolled in Oregon's public schools from Kindergarten to 21 years of age. The information in the Guide reflects recent changes to the major federal and state laws and regulations that affect special education.

While we may make references to students enrolled in private school, parents of private school students should consult the Oregon Department of Education (ODE) website, which has a section on Special Education for Parentally Placed Private School Students: [www.ode.state.or.us](http://www.ode.state.or.us).

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## Chapter 1: An Introduction to Special Education

### What is the history of special education legislation?

The Education for All Handicapped Children Act (Public Law 92-142) was enacted in 1975. In 1990, it was renamed the **Individuals with Disabilities Education Act (IDEA)**. PL 108-446, 20 U.S.C. § 1400 et. seq. The name change reflects the evolution of how society has come to view students with disabilities as individuals first, instead of as being defined entirely by their disability. IDEA ensures a **Free Appropriate Public Education (FAPE)** to children with disabilities and defines most of your child's rights to special education. Periodically, Congress updates the law and allocates money to special education and related services for eligible students with disabilities. The IDEA was revised in 1997, and most recently in 2004, and is now called the **Individuals with Disabilities Education Improvement Act (IDEIA)**. Although IDEIA changed some parts of IDEA, many people still call the new law IDEA or **IDEA 2004**. This edition will refer to IDEA 2004 and addresses all of the major changes to the earlier law.

### What is FAPE?

**FAPE** is shorthand for the **Free Appropriate Public Education** that every child eligible for special education is entitled to receive. 20 U.S.C. § 1412(a)(1), 34 C.F.R. § 300.101, OAR 581-015-2040. It is the heart of special education and IDEA 2004. An **Individualized Education Program** or **IEP** is the basic tool that is used to provide FAPE. 20 U.S.C. § 1401(14), 34 C.F.R. § 300.22, OAR 581-015-2000(15).

### Who is eligible?

Students are entitled to receive special education under IDEA 2004 if they have certain disabilities **and** are having problems learning or functioning successfully in school because of their disabilities. Signs of a disability may include:

- Slowness in learning
- A serious illness
- Not seeing or hearing well
- Emotional problems
- Unexplained behavioral problems

## What disabilities are recognized under the IDEA 2004?

The following disabilities are recognized under the IDEA 2004:

- Autism
- Both deaf and blind
- Emotional disturbance
- Hearing impairment and deafness
- Intellectual disability
- Multiple disabilities
- Orthopedic impairment
- Other health impairments
- Specific Learning Disability (SLD)
- Speech or language impairment
- Traumatic Brain Injury (TBI)
- Visual impairment and blindness

20 U.S.C. § 1401(3), 34 C.F.R. § 300.8, OAR 581-015-2000(4).

## What if my child doesn't have one of these disabilities?

Some children may experience developmental delays in the areas of physical, cognitive, social-emotional, communication, or adaptive development. However, these children may not meet the standards to qualify for special education under one of the disability categories listed above. Students with disabilities such as Attention Deficit Hyperactivity Disorder (ADD/ADHD) or Fetal Alcohol Syndrome (FAS) may qualify for special education under Specific Learning Disability (SLD), emotional disturbance, or Other Health Impaired.

These students are also protected from discrimination based on their disability under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA). 29 U.S.C. § 794 (Section 504), 42 U.S.C. § 12101 (ADA). *See p. 3, What is Section 504?*

## What is Other Health Impaired?

A child may have a health condition that is not included in any of the listed categories, but which limits his or her strength and causes problems in learning. 34 C.F.R. § 300.8(c)(9), OAR 581-015-2165.

### OTHER HEALTH IMPAIRED CONDITIONS

- Asthma
- ADD/ADHD
- Diabetes
- Epilepsy
- Fetal Alcohol Syndrome (FAS)
- Heart condition
- Hemophilia
- Tourette syndrome

## What is Section 504?

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination based on disability by programs receiving federal funds. School districts must comply with this law because they receive federal funds. As a result, they must provide the same access and opportunity to children with disabilities as those without disabilities.

### STUDENTS THAT SECTION 504 PROTECTS

- Students with a physical or mental disability that substantially limits one or more major life activities – self-care, walking, seeing, speaking, hearing, breathing, learning, working.
- Students with a record of having a disability.
- Students that are thought to have a disability though they may not.

OAR 581-015-2390.

For example, a school district that provides a summer school program must allow students with disabilities to enroll in the program. For more information about Section 504 contact Disability Rights Oregon. *See Special Education Laws and Where to Find Them, pp. 73-74.*

## What is Early Intervention (EI)?

**Early Intervention (EI)** provides services for preschool children with disabilities from birth to three years of age.

Services for these children are met with an **Individualized Family Service Plan (IFSP)** in a natural environment, as much as possible – this means an environment natural for a child without a disability, such as in the home and community settings.

The family's needs, as it relates to the child's disability, are considered unlike an Individualized Education Program (IEP) in which the family's needs are not included.

## What is Early Childhood Special Education (ECSE)?

**Early Childhood Special Education (ECSE)** provides services for preschool children with disabilities from three years of age until the age of eligibility for public school.

It is free, specially designed instruction meeting the unique needs of preschool children with disabilities. Services for these children are met in a preschool environment, and the family's needs are still part of the IFSP.

## **Is there a general timetable for students under IDEA 2004?**

### **0 – 3 YEARS OLD**

- Early Intervention (EI).
- Services met through an IFSP.
- Natural environments, such as in the home.

### **3 – 5 YEARS OLD**

- Early Childhood Special Education (ECSE).
- Services met through an IFSP.
- Pre-school environment.

### **5 – 16 YEARS OLD**

- Services met through an Individualized Education Program (IEP). *See Chapter 5: The Individualized Education Program (IEP), pp. 17-22.*
- Public school environment.
- Focus is on the individual student from Kindergarten age until age 21.

### **16 YEARS OLD**

- Transition services must be in the IEP in effect when the student reaches age 16.
- Can begin when the student is younger if the IEP team agrees it is appropriate.

### **17 YEARS OLD**

- School district gives notice to student regarding age of majority (18 years of age).

### **18 – 21 YEARS OLD**

- Upon reaching the age of majority (18 years of age) the student makes all educational decisions.
- Exceptions: students who have an educational surrogate or legal guardian.
- School district is no longer responsible for educating the student once he/she finishes the school year of his/her 21<sup>st</sup> birthday. *See Chapter 10: Transition from Special Education to Adult Services, pp. 43-45.*

## Who makes decisions for a child?

Under IDEA 2004, an IEP team makes decisions about a child's special education. *See pp. 17-18, Who attends the IEP meeting?*

In general, parents must be included in the team or any group or meeting that makes important educational decisions for children with disabilities, such as:

- Evaluation of your child's disability and eligibility for special education.
- IEP goals, objectives, related services such as assistive technology, and other supports your child may need.
- How to deal with discipline problems and whether the problems are related to your child's disability.
- Educational placement.
- Transition services.
- Extended school year (ESY) services.
- Progress or lack of progress meeting annual goals.

For students age 16 through 21, both parents and students have roles in educational planning. Students aged 16 and older must be invited to the IEP meeting to participate in transition planning.

If transition planning begins before age 16, the student is still invited to participate. At 17, students must be informed of their rights under IDEA 2004 that may transfer to them. *See Chapter 10: Transition from Special Education to Adult Services, pp. 43-45.*

For children who are wards of the court or have state guardians, the school district must appoint a **surrogate parent** to make educational decisions. 20 U.S.C. § 1415(b)(2), 34 C.F.R. § 300.519, OAR 581-015-2320. The surrogate parent must be a person who knows about the child. That person can be a biological parent, a foster parent, or a **Court-appointed Special Advocate (CASA)**. The surrogate parent has all of the legal rights of parents discussed in this Guide. A surrogate parent should not be an employee of the school district or any other agency that is involved in the education or care of the child.

## Who is responsible?

The school district where your child lives is responsible for making sure that he or she receives FAPE. The school district may arrange for other private or public schools and agencies to provide services to your child, but must make sure that those services provide FAPE.

## Who pays?

Students with disabilities are entitled to FAPE. The cost of implementing a child's IEP cannot be passed on to parents or guardians. This includes the cost of related services and necessary assistive technology. 20 U.S.C. § 1412(a)(1), 34 C.F.R. § 300.17, OAR 581-015-2040. However, with parental consent, school districts may bill a third party, such as a family's private health insurance, to offset certain costs. 34 C.F.R. § 300.154(e), OAR 581-015-2535. **In order for school districts to bill a family's private insurance, the parents must voluntarily consent to the third-party billing.** School districts cannot force parents to consent if the billing would cause financial loss to the parents.

### EXAMPLES OF FINANCIAL LOSS

- Decrease in available cap or lifetime coverage.
- Increase in insurance premiums.
- Termination of the insurance policy.
- Payment of expenses such as deductibles.

If parents refuse to allow the school district to file a claim against the family's private insurance, the district is still responsible for providing the student with special education services. The school district cannot require parents to consent as a condition to providing special education services.

## What are assistive technology (AT) and AT services?

**Assistive technology (AT)** is any kind of technology that makes it easier for someone with a disability to maintain or improve functional independence in activities like learning, working, walking, or speaking. AT includes services that help individuals choose and learn to use the equipment and devices best suited for them. 20 U.S.C. § 1401(1) and (2), 34 C.F.R. § 300.5 and 6, OAR 581-015-2000(2)&(3).

### ASSISTIVE TECHNOLOGY EXAMPLES

- Over-sized pens and word processors for writing.
- Augmentative communication devices for speaking.
- Magnifiers and enlarged print materials for reading.
- Clipboards and Velcro attachments for organizing materials.

**If AT is necessary for your child, it will be identified as a special factor and be included on the IEP under Specially Designed Instruction, Related Services and/or Program Modifications, depending on the use or uses of the AT in your child's education.**

Like other parts of your child's special education, the district must pay for AT, including the cost of repair, maintenance, and replacement of necessary AT devices and services. 34 C.F.R. § 300.105, OAR 581-015-2055. On occasion, the school may be required to purchase an AT device for your child's use in your home, if it is necessary for your child to receive FAPE.

One exception to this requirement is that IDEA 2004 specifically excludes cochlear implants and/or their maintenance and programming as AT devices and related services that a district must provide to a special education student.

## **What is an appropriate education for my child?**

You should try to get the best possible education for your child. Under federal and state law, however, school districts do not have a legal obligation to provide what is best for special education students – only what is **"appropriate."**

Through many legal cases, and one pivotal case in the United States Supreme Court, the term appropriate has come to have a very specific meaning: **a school district offers an appropriate education when it provides access to public education that is designed to give "meaningful benefit."** *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 179 (1982). To be appropriate, services must be **individualized** to meet the unique needs of your child. Those needs are determined according to procedures spelled out in this Guide.



## Chapter 2: The Identification of a Disability

### What is Child Find?

Child Find is the obligation of every school district to identify, locate, and evaluate all children between the ages of birth and 21 who may need special education and related services. 20 U.S.C. § 1412(a)(3), 34 CFR § 300.111, OAR 581-015-2080. This includes children with disabilities who attend private schools, children with disabilities who have moved from grade to grade, and children with disabilities who are homeless or wards of the state.

**Anyone – a parent, teacher, student, nurse, doctor, social worker – may request that a child be considered for special education.**

The new law emphasizes that parents and others who request that a child be evaluated for special education **put those requests in writing. See Model Letters #1-5, pp. 59-64.**

### What do I do if I suspect my child has a disability?

If you suspect your child has a disability, request an evaluation in writing. **Submit your request both to your child's teacher and to the director of special education in your child's school district.** If your child is under five years of age, the school will refer you to your local Referral and Evaluation Agency.

Document the date you make the request for an evaluation, and follow-up with special education staff after a reasonable time if not contacted. **See Model Letter #1, p. 59 and Model Letter #2, p. 60.**



## Chapter 3: Evaluation

Children suspected of having disabilities must be tested prior to receiving special education. This testing is called an **evaluation** and its purpose is to:

- See if the child has a disability and is eligible for special education.
- Learn about the child's abilities and disabilities.
- Determine appropriate special education and related services.

**A full evaluation must be completed and an Individualized Education Program (IEP) developed before a student is placed in a special education program.**

After the initial evaluation, the child must be re-evaluated every three years. However, the re-evaluation need not include any additional testing if the IEP team decides that no further data is necessary. A parent or teacher may request more frequent evaluations, if needed.

### What is an initial evaluation?

The initial evaluation is the first time a child is being evaluated for special education. Parents have the right to give or refuse consent for this evaluation. After receiving parental consent, there is a 60-school day timeframe during which the initial evaluation must take place.

If a parent refuses consent, the school district may use mediation or due process hearing procedures to pursue an evaluation but is not required to do so. *See Chapter 13: Resolving Disagreements, pp. 51-56.*

### What must be included in an evaluation?

To determine a child's eligibility and special needs, more than one test or evaluation must be given. The tests must not discriminate by race or culture and must be given in the child's primary language and in the format most likely to yield accurate information about the child's knowledge and capabilities academically, developmentally, and functionally, unless it is clearly impossible to do so. 20 U.S.C. § 1414, 34 C.F.R. § 300.301-300.311, OAR 581-015-2105 through 581-015-2115.

For example, if your child primarily communicates through sign language, the district must provide an evaluator who signs or a sign language interpreter. Children who primarily speak in a foreign language, such as Spanish, Russian, or Vietnamese must be tested in that language. The evaluation should include observations by all people who are familiar with the child, such as parents, teachers, and caregivers.

Your child must be evaluated in **all** areas related to any suspected disabilities.

## EVALUATION AREAS

- Academic achievement
- Assistive technology
- Behavior
- Communication abilities
- Health status
- Hearing
- Intelligence
- Motor abilities
- Sensory needs
- Social and emotional status
- Vision
- Vocational aptitude

## What is done with the evaluations?

The evaluators must prepare a written report with the results of the evaluation. Then the IEP team meets to review evaluation results and make decisions about a student's eligibility for special education. The IEP team includes parents and someone who can explain evaluations and what the results mean for the child's education. *See Chapter 5: The Individualized Education Program (IEP), pp. 17-22.*

## How quickly should the evaluation be completed?

Evaluations must be done within 60 school days from the time the school received the request and your signed permission to evaluate. The school may be allowed more time if there are special circumstances or if a parent agrees to a longer period of time. 20 U.S.C. § 1414(a)(1)(C), 34 C.F.R. § 300.301(c)&(d), OAR 581-015-2110(5)(a)&(c).

## What is re-evaluation?

Every three years, the school district must conduct what is called a “re-evaluation” of a student receiving special education services to determine if the student continues to be eligible. During the normal re-evaluation process, the IEP team should consider if the student has had recent relevant evaluations, or if more testing is needed to inform the team about what services are necessary to help educate the child. **Parents can request an evaluation at any time if they have concerns that warrant more evaluations.**

If the team decides no further evaluations are needed, the team then reviews the most recent evaluation data and eligibility criteria for special education, and determines if the student remains eligible for special education. There must be current evaluations showing that a student no longer requires special education services before the team can end eligibility. 20 U.S.C. § 1414(c)(5)(A), 34 C.F.R. § 300.305(e), OAR 581-015-2105(1)(d).

For example, consider a nine-year-old girl who needed assistance learning to read in the first grade because of a learning disability. If fourth grade evaluations show that she is now able to read and write at grade level, she can be found ineligible for special education services if there is no evidence that she is experiencing other school problems related to her disability.

### **FACTS TO REMEMBER ABOUT EVALUATIONS**

- If parents request testing, the team cannot say no under most circumstances.
- Parents must give consent for a child to be re-evaluated unless the district can show that it tried several times to get parental consent without response.

The team can make any evaluation process more meaningful by giving a list of questions to the evaluators. Answers to focused questions can help the IEP team in planning for the child's education.

### **EXAMPLES OF QUESTIONS FOR EVALUATORS**

- How can my child become more independent with toileting?
- Would my child benefit from more community integration experiences?
- What vocational training would be appropriate for my child?
- How can my child learn to communicate choices and preferences?
- What is triggering my child's angry outbursts, and what can be done to help my child develop more self-control?
- What supports are needed for my child to participate in a regular class setting?

## **What is an independent educational evaluation?**

Parents who disagree with the results of school district evaluations have the right to request an independent educational evaluation at school district expense. 34 C.F.R. § 300.502, OAR 581-015-2305. If the school district disagrees with a request for an independent educational evaluation, the school district may request a due process hearing. If the Administrative Law Judge (ALJ) finds that the school district's evaluation was appropriate, the school district will not have to pay for the independent evaluation.

Parents still have the right to an independent evaluation, but not at school district expense. The school district must consider any evaluation offered by the parents in making IEP and placement decisions. After a parent requests an independent evaluation, the school district must give the parent information about where an independent evaluation may be obtained, and a list of district criteria for independent evaluations. These criteria, including both the location and the qualifications of the examiner, must be the same as those the district uses when it evaluates other children.

Parents are not required to use an evaluator on the school district list, and the criteria used by the school district cannot be so restrictive that parents are prevented from getting a meaningful independent evaluation. In selecting an independent evaluator, parents should make sure the evaluator understands their concerns. Parents should prepare questions about the area of disagreement for the evaluator to answer. See the example questions listed above. The independent evaluator should be prepared to back conclusions and recommendations if called to participate in an IEP meeting or hearing.

## **What are my evaluation rights?**

You have the overall right to consent or refuse consent for any evaluation or re-evaluation. If you fail to respond to a district's request for consent, the district can conduct a re-evaluation without your consent, unless it involves an intelligence or personality test. 20 U.S.C. § 1414(a)(1)(D), 34 C.F.R. § 300.300, OAR 581-015-2090, OAR 581-015-2095(3).

You have the right to get written notice before any evaluation or re-evaluation of your child. 20 U.S.C. § 1414(b)(1), 34 C.F.R. § 300.304(a), OAR 581-015-2110(2). ***See Chapter 11: Notice Rules, pp. 47-48.***

You may request an independent evaluation if you disagree with an evaluation conducted by the school district, or if the district fails to conduct requested evaluations within a reasonable amount of time.

You have the right to receive a copy of the evaluation report and documentation of determination of eligibility. 20 U.S.C. § 1414(b)(4)(B), 34 C.F.R. § 300.306(a)(2), OAR 581-015-2120(6).

You have the right to review and correct your child's school records. School records include evaluation results. In most circumstances, schools must get your written consent before releasing your child's records. 20 U.S.C. § 1415(b)(1), 34 C.F.R. § 300.501, OAR 581-015-2300. ***See FERPA, p. 73.***

You may request mediation, write a letter of complaint, or request a due process hearing to resolve any disagreement involving evaluations. 20 U.S.C. § 1415(b), (e), (f), 34 C.F.R. § 300.151-300.153 and 300.506-300.518, OAR 581-015-2030 and 581-015-2335 through 581-015-2385. ***See Chapter 13: Resolving Disagreements, pp. 51-56.***

## Chapter 4: Eligibility for Special Education

### What is eligibility?

After a child's initial evaluation is completed, the district must hold a meeting to decide whether or not the child is eligible for special education. 20 U.S.C. § 1414(b)(4) and (5), 34 C.F.R. § 300.306, OAR 581-015-2120.

That meeting must include a parent and relevant qualified professionals who can explain the evaluation results in the area of eligibility being considered, such as psychologists, behavioral experts, and speech and language professionals with expert understanding of the eligibility categories being considered.

Each disability category under the IDEA 2004 has different criteria that a child must meet in order to qualify for IDEA services. If you know what category your child is being evaluated for, we recommend that you review the eligibility criteria on the Oregon Department of Education (ODE) website before attending your child's eligibility determination meeting. OAR 581-015-2130 through 581-015-2180.

### What happens once my child is found eligible?

Once your child is found eligible, the district is required to provide special education services once you have signed consent for them to do so. **However, if you refuse to sign consent to begin special education services the school district has no obligation or power to provide those services.**

### Can the district end my child's eligibility?

Once your child has been found eligible for special education services, that eligibility cannot be ended or changed without an adequate evaluation and an eligibility determination meeting, which is a meeting to determine whether your child is still eligible. 20 USC § 1414(c)(5)(A), 34 CFR § 300.305(e), OAR 581-015-2105(1)(d), OAR 581-015-2120.

## **What if my child is not eligible?**

Your child may qualify for services under a 504 plan even if not eligible for special education services under IDEA 2004. A 504 plan is an individualized plan required by Section 504 of the Rehabilitation Act.

**If your child has a qualifying disability, he or she may also qualify for services under a 504 plan while being evaluated for eligibility under IDEA 2004.** This is important to remember if your child urgently needs help while the evaluation and eligibility processes are taking place. *See p. 3, What is Section 504?*

## **Can I revoke my consent for special education services?**

Yes, you can revoke your consent for special education services in writing at any time. However, if you do this, your child will no longer have the many rights and protections that the law provides to special education students. For instance, without those protections, your child could be suspended or expelled for behavior that is caused by a disability. Another option would be to ask for an IEP meeting to discuss why the services currently being provided are not working as you expected for your child. 34 C.F.R. § 300.300(b)(4), OAR 581-015-2090(4).

## Chapter 5: The Individualized Education Program (IEP)

### What is an IEP?

**The Individualized Education Program (IEP) is the written plan for a child's education services.** 20 U.S.C. § 1414(d), 34 C.F.R. § 300.320, OAR 581-015-2200. The Oregon Department of Education (ODE) has guidelines and forms that have been revised to comply with IDEA 2004. There is an IEP form for students age 15 or younger, and one for students age 16 and older. Both guidelines and forms are posted on the ODE website. The ODE also accepts approved alternate forms.

The purpose of an IEP meeting is to develop an IEP with goals and objectives to address a child's strengths and needs. These strengths and needs are determined by a combination of formal evaluations and informal observations by teachers, parents, and others. The IEP team must consider both the results of the initial or most recent evaluation and the concerns of the parents for enhancing their child's education.

**Every child with disabilities needing special education must have an initial IEP completed within 30 calendar days of eligibility.** In accordance with the IEP, special education and related services must be made available to the child as soon as possible. In general, school districts must have an IEP in effect for each child with a disability at the beginning of each school year. **The IEP must be reviewed and updated at least once each year.**

### Who attends the IEP meeting?

Parents or school district personnel may request an IEP meeting at any time. The following people must be at the IEP meeting and are considered the IEP team members:

**ONE OR BOTH PARENTS:** Generally the most knowledgeable about the child. In cases where parents are unavailable or unwilling to be part of the team, a surrogate parent should fill this role.

**REGULAR EDUCATION TEACHER:** Should be present if the student is or may need to be in a regular educational setting. The IDEA 2004 has reduced the requirement that a regular education teacher attend all IEP meetings, but only if there is a written agreement between the parent and district that the teacher's presence is not necessary. See the ODE form Written Agreements between the Parent and District, posted on the ODE website.

**SPECIAL EDUCATION TEACHER OR PROVIDER:** Such as a resource room teacher, speech therapist, or occupational therapist.

**SCHOOL DISTRICT REPRESENTATIVE:** Qualified to provide or supervise special education, and knowledgeable about the general curriculum and availability of resources.

**PERSON TO INTERPRET EVALUATION RESULTS:** Qualified to interpret evaluation results and explain what the results mean in terms of teaching the student. This could be a person already on the team as described above.

**OTHER INDIVIDUALS:** By invitation only – with knowledge or special expertise regarding the student, when invited by the district or parents.

**STUDENT WITH THE DISABILITY:** For discussion of transition services and other participation as appropriate.

20 U.S.C. § 1414(d)(1)(B)-(d)(1)(D), 34 C.F.R. § 300.321, OAR 581-015-2210.

If parents have a hearing impairment or do not speak English, the school district must provide an interpreter at the meeting. 34 C.F.R. § 300.322(e), OAR 581-015-2190(3).

## **How are IEP meetings scheduled?**

School districts must notify parents in writing **sufficiently in advance** so that one or both parents can attend the meeting, and schedule the meeting at a **mutually agreed upon time and place**. The written notice must also state the purpose, time, and place of the meeting, as well as who will attend. The school district may ask parents whom they intend to bring to the meeting.

## **Can the school conduct an IEP meeting without a parent?**

School districts must make serious efforts to include parents at the IEP meeting and must be reasonable about scheduling and location. 34 C.F.R. § 300.322(d), OAR 581-015-2195(3).

## **Can members of the IEP team be excused?**

Any team member may be excused if the parent and the school district agree in writing. However, that team member must provide a written report if his or her subject matter is discussed at the meeting.

## **Can the IEP be changed without a meeting?**

IDEA 2004 now allows some changes to the IEP without a meeting, **but only if the changes are in writing and by agreement of the district and parents.** This does not change the requirement of an annual IEP review meeting. 20 U.S.C. § 1414(d)(3)(D), 34 C.F.R. § 300.324(a)(4), OAR 581-015-2225(2)(a).

## **What must be in my child's IEP?**

The list that follows contains some key pieces that must be in a legally adequate and useful IEP. A complete list is found at Oregon Administrative Rules (OAR) 581-015-2200 on the Oregon Secretary of State website. See also 20 U.S.C. § 1414(d)(1)(A), 34 C.F.R. § 300.320, OAR 581-015-2200 & 2205. ***See Oregon Special Education Law, p. 73.***

### **Present levels of academic achievement and functional performance (PLAAFP)**

- Complete, accurate, and easy to understand description of your child's abilities, strengths, and weaknesses. You should be sure to include concrete examples of your concerns, hopes, and your observations of your child's strengths. This is a critically important part of a good IEP.

### **Statement of special education services, supports, and modifications that will be provided to your child**

- IDEA 2004 requires these items be chosen, if possible, on the basis of peer-reviewed research.

### **Measurable annual goals**

- These goals should allow you to understand whether or not your child has made progress by the end of the school year.

### **Short-term goals or benchmarks**

- Required if your child is academically evaluated by alternate assessments rather than by statewide testing. This is no longer required in all IEPs, but is often a good idea.

### **Statement of your child's transition service needs and a full-scale transition plan**

- Must be done no later than the IEP year in which your child turns 16, and earlier if appropriate.

### **Statement addressing your child's removal from the regular classroom**

- A statement of whether your child will need to be removed from the regular classroom and, if yes, for how long and for what reason.

### **Statement addressing five special factors**

- Addresses whether or not your child has an educational need in any of the following five areas: behavior, language, Braille instruction, communication, assistive technology.  
*See p. 21, What other important requirements should I consider for my child's IEP?*

What follows are examples of how certain specific sections of an IEP might be written. See the Oregon Department of Education (ODE) website for complete forms and guidelines.

### **Present levels of academic achievement and functional performance (PLAAFP)**

- Jason is able to add, subtract, and multiply whole numbers with 85% accuracy, but cannot accurately divide whole numbers without a calculator or times table.
- He can comprehend and solve whole-number practical math problems when they are read to him and involve a single calculation, but becomes confused if they require multiple calculations.
- He understands approximately 10 commonly used fractions (e.g.  $\frac{1}{2}$ ,  $\frac{1}{4}$ ,  $\frac{3}{4}$ ,  $\frac{1}{3}$ ,  $\frac{2}{3}$ ) and can solve one-step practical problems involving them, but he cannot perform calculations or estimate correct answers to practical problems that involve less commonly encountered fractions (e.g.  $\frac{3}{32}$ ,  $\frac{5}{19}$ ).
- According to recent academic testing, Jason's overall math skills have been measured at the 2.7 grade level. At the beginning of the school year, an achievement test measured his overall math skills at a grade level of 2.5.
- Jason's parents observed that one of Jason's many strengths at home is accurately setting the table with enough tableware for a family of six.
- Jason's parents are concerned that the new skills he is reportedly learning have not added up to any measurable progress toward catching up with his fifth grade classmates in the last two years.

### **Short-term objective**

- In four of five opportunities, Jason will be able to correctly identify relevant units of measurement and use them to accurately estimate answers to practical math problems involving whole numbers and common fractions.

### **Goal**

- By the end of this school year, Jason will increase his measured overall level of academic performance in math from 2.7 to 3.7 as measured by a standardized achievement test.

## What other important requirements should I consider for my child's IEP?

If appropriate, the IEP must include a statement about the **modifications and supports** that teachers, instructional aides, and specialists may need to help your child make progress toward annual goals. For example, a teacher may need training on how to use your child's communication device. This need for teacher training should be identified on the IEP.

**The school must focus on your child's involvement and progress in the general education curriculum.** The general education curriculum is the accepted plan of instruction, courses, and activities that most children without disabilities receive. Make certain the IEP includes a statement about your child's involvement in the general curriculum, and education with other children. For example, your child's IEP will need to list any accommodations necessary to allow your child to participate in school plays, eat in the cafeteria, or complete homework assignments.

**The IEP must either state that your child will participate in statewide assessments with individual appropriate accommodations or that your child will not participate in the assessments, and why.** If your child will not participate in statewide assessments, the IEP team must decide on an alternate assessment, and explain why the particular alternate assessment is appropriate for your child. The location of services must be identified on the IEP so you know where your child will receive physical therapy services, reading instruction, or any other service provided by the district.

**Under the IDEA 2004, there is a presumption that children with disabilities are to be educated in regular classes.** If your child will not be educated in regular education classes and activities, the IEP must explain why your child will be educated separately. *See Chapter 6: Placement in the Least Restrictive Environment (LRE), pp. 23-26.*

The IEP team must also consider and address **five special factors** in the IEP if your child has an educational need in any of the following areas:

**BEHAVIOR:** Students with behavior needs that affect learning.

**LANGUAGE:** Students with limited English skills.

**BRILLE INSTRUCTION:** Students who are blind or visually impaired.

**COMMUNICATION:** For all students, and for students who are deaf or hard of hearing.

**ASSISTIVE TECHNOLOGY:** For all students.

For additional information about how to write IEPs go to the Wrightslaw Special Education Law and Advocacy website, under Articles.

## How can I learn about my child's progress?

As a parent of a child with disabilities, you must be regularly informed of your child's progress. How often this occurs must be stated on the IEP. The school district is obligated to inform you at least as often as it informs parents of children without disabilities. The IEP must be reviewed at minimum once a year, and needs to be revised, as appropriate, to deal with any lack of expected progress, results of any re-evaluation, information you provide about your child, your child's anticipated needs, and other matters.

## How can I be sure my child's teachers will follow the IEP?

The IDEA 2004 requires that your child's IEP be accessible to teachers, specialists, aides, and any provider responsible for implementing your child's IEP. Each teacher or provider must be informed of his or her role in carrying out the IEP and of the individualized accommodations, modifications, and supports identified on your child's IEP. Teachers must make a good faith effort to help your child achieve the goals and objectives listed on the IEP. 34 C.F.R. § 300.323(d), OAR 581-015-2220(3).

## What are my IEP rights?

You have the right to:

- Written notice any time the district proposes to review or revise your child's IEP. 20 U.S.C. § 1415(c)(1), 34 C.F.R. § 300.503(a)(1), OAR 581-015-2310.
- Written notice any time the district refuses to make a change you requested to the IEP. ***See Chapter 11: Notice Rules, pp. 47-48.***
- Request an IEP meeting at any time.
- Be present and participate in all IEP meetings concerning your child.
- Invite others to the IEP meeting. 20 U.S.C. § 1414(d)(1)(B), 34 C.F.R. § 300.321, OAR 581-015-2210.
- Receive a copy of the IEP. 34 C.F.R. § 300.322(f), OAR 581-015-2195(5).
- Have any part of the IEP explained to you. 34 C.F.R. § 300.322(e), OAR 581-015-2190(3).
- Ask for additional IEP meetings, request mediation, write a letter of complaint, or request a due process hearing to resolve any disputes involving the IEP. 20 U.S.C. § 1415(b), (e), (f), 34 C.F.R. § 300.151-300.153 and 300.506-300.518, OAR 581-015-2030 and 581-015-2335 through 581-015-2385. ***See Chapter 13: Resolving Disagreements, pp. 51-56.***

## Chapter 6: Placement in the Least Restrictive Environment (LRE)

### What is an educational placement?

**An educational placement is the package of services and the setting needed to educate a child according to the IEP. It is not just a physical location.** After the IEP team develops IEP goals and objectives, they determine the setting, or placement, in which the student can work toward these goals. 20 U.S.C. § 1412(a)(5), 34 C.F.R. § 300.114-300.117, OAR 581-015-2240.

For example, a child's placement may be a self-contained classroom for children with emotional disturbance that offers daily opportunity to interact with students without disabilities. If more than one classroom in the district can provide everything that the IEP calls for, a change from one of these classrooms to another would not be a change of placement. This means that the district could legally make this kind of change without an IEP meeting.

The decision about what sort of placement is needed, on the other hand, must be made by the IEP team and include parents after the IEP is created. 20 U.S.C. § 1414(e), 34 C.F.R. § 300.327, OAR 581-015-2250(1)(a).

According to the law, a change of placement without the necessary IEP meeting has occurred if a child is excluded from the IEP designated placement for more than 10 consecutive days (or in a series of removals that show a pattern) because of disciplinary actions such as suspensions.

### How is placement decided?

The placement decision must be made by a group of people that includes someone with knowledge about the child and the meaning of evaluation results, and someone familiar with placement options. Parents must be included in this group. The placement decision is based on test results, teacher recommendations, and the student's needs as dictated by the IEP. The placement must be one where all of the IEP goals and objectives can be addressed. 34 C.F.R. § 300.116, OAR 581-015-2250. The **continuum of placement options** is the scope of placements where an IEP can be implemented, and ranges from less to more restrictive.

## CONTINUUM OF PLACEMENT OPTIONS

- A regular classroom.
- A regular classroom with modifications and/or supplemental aids and services.
- A resource room for special education instruction with instruction in a regular classroom.
- A classroom for children with disabilities located in a regular school (self-contained classroom).
- Day or residential special schools, where many or all students may have disabilities.
- A home, hospital, or institution-based program.

The district must ensure that this continuum is available to students in their district. 34 C.F.R. § 300.327, OAR 581-015-2245.

## What is the Least Restrictive Environment (LRE)?

**By law, children with disabilities must be educated in the Least Restrictive Environment.** Congress has defined the **Least Restrictive Environment (LRE)** as the placement closest to a regular education environment yet still capable of meeting the needs of a particular child with disabilities. This means that the LRE varies according to those needs. A child must be educated in the regular classroom with supplemental aids and services unless he or she cannot be satisfactorily educated there.

## EXAMPLES OF SUPPLEMENTAL AIDS AND SERVICES

- Adaptations to classroom materials.
- Special materials or equipment, including assistive technology (AT).
- An individual instructional assistant.

When deciding a child's placement, the school district must consider potential harmful and positive effects on the child. The district must also consider the quality and quantity of services the child needs. In addition, the educational impact on other students in the class must be considered. For example, a regular classroom may not be appropriate even with aids and services, if the child is greatly agitated by the noise and movement of a large group or is so disruptive that other students are unable to learn.

When a child is removed from a regular classroom, the school district must ensure that, whenever appropriate, the child will be with children who are in regular classes for nonacademic and extracurricular activities.

**Unless the IEP requires another arrangement, children must be educated in the school they would attend if they didn't have disabilities.** If the IEP requires a different placement, the location of the placement must be as close as possible to the child's home. 20 U.S.C. § 1412(a)(5), 34 C.F.R. § 300.114, OAR 581-015-2240 and 581-015-2250.

## **What if I don't like the placement?**

Any change in placement must be based on your child's IEP goals. Placement decisions must be reviewed each time the IEP is significantly revised. Since an IEP must be reviewed annually, placement decisions also must be made at least annually. However, as a parent, you have the right to request a change in placement if you feel a placement is not working. The placement team, which includes you, then meets to discuss and decide placement.

## **Can I visit my child's classroom?**

Prior to making a placement decision, school districts should give you the opportunity to visit the proposed placement setting so you can determine whether that setting would be appropriate for your child. Once the placement decision has been made, you should still be able to visit the classroom. School districts may have policies about school visitation by parents and guests that are designed to eliminate distractions to both students and staff. So long as those policies are reasonable and applied equally to all, they are legitimate.

For instance, such policies might reasonably limit the amount of time of your visit, and the cumulative amount of visitation time per week or month. However, policies that do not allow you or your guests to take notes, or that limit your visitation time to a particularly small amount of time, are probably not reasonable.

## **What if I want the school district to pay for private school?**

You always have the right to place your child in a private school at your own expense. In some cases, you may be entitled to reimbursement for private school costs from the school district if there is strong evidence that the district did not provide a free and appropriate public education (FAPE) to your child. However, before seeking reimbursement, you must give notice to the district of your intent to place your child privately and the reasons for this decision. **This notice must be given at an IEP meeting or in writing within 10 business days (including holidays) before you remove your child from public school.**

Once you give notice of your intention, the district may ask to evaluate your child or agree to change the IEP to address your concerns.

Reimbursement may be reduced or denied for any of the following reasons:

- You did not give notice of your intent to place your child in private school.
- The school district is providing FAPE to your child.

- You did not make your child available for evaluations when asked by the district.
- The private school does not provide FAPE.

20 U.S.C. § 1412(a)(10)(C), 34 C.F.R. § 300.148, OAR 581-015-2515.

***See Model Letter #3, p. 61 to give the district notice about placing your child in private school at public expense.***

## **What are my placement rights?**

- You have the right as a member of the placement team to participate in discussions and decisions regarding placement. 20 U.S.C. § 1414(e); 34 C.F.R. § 300.116, OAR 581-015-2250.
- You have the right to give or withhold consent for your child's first placement in special education. If you do not consent, the school district may no longer utilize due process hearing procedures to override your refusal to consent. School districts do not have a legal obligation to provide FAPE to students with disabilities if the parent refuses consent for special education or revokes consent in writing for special education services. 20 U.S.C. § 1414(a)(1)(D)(i)(II), 34 C.F.R. § 300.300(b), OAR 581-015-2090(2), (4).
- You have the right to receive prior written notice any time the district proposes a change in placement. You also have the right to written notice any time the district refuses your request to change your child's placement. 20 U.S.C. § 1415(b)(3), 34 C.F.R. § 300.503(a), OAR 581-015-2310(1). ***See Chapter 11: Notice Rules, pp. 47-48.***
- You have the right to request an IEP meeting, mediation, write a letter of complaint, or request a due process hearing to resolve any disagreement about placement. 20 U.S.C. § 1415(b), (e), (f), 34 C.F.R. § 300.151-300.153 and 300.506-300.518, OAR 581-015-2030 and 581-015-2335 through 581-015-2385. ***See Chapter 13: Resolving Disagreements, pp. 51-56.***

## Chapter 7: Extended School Year (ESY) Services

### What is ESY?

Some children in special education programs need education services continued during the summer months or other vacations when school is not in session in order to maintain the skills they have learned as identified on the IEP goals. This includes related services and assistive technology.

ESY services **must** be provided when:

- Your child is eligible for special education services.
- Your child would regress considerably in identified areas of the IEP without an extended school year program.
- Your child would require a substantial amount of time, after school starts, to recoup losses in identified goals of the IEP due to an extended school break.

34 C.F.R. § 300.106, OAR 581-015-2065.

### How do I get ESY for my child?

**Planning for an extended school year must begin at least several months before the vacation period starts.** School districts take data about the child's progress on an ongoing basis. This data can be used to determine a child's regression and recoupment after break periods.

If you believe that your child may need ESY and it is not already part of the IEP, you should request that data be kept on your child's regression and recoupment before and after the winter and spring breaks. Then request an IEP meeting to review the data and decide if your child is eligible for ESY. Often the meeting to decide ESY is held in the spring. Because the ESY decision is made by the IEP team, all of your IEP meeting rights apply. The decision to provide ESY must be written into your child's IEP. If the school disagrees with giving your child ESY, the school must provide you with written notice of its decision.

You can supplement the school's data by providing observations and documentation from summer months, especially if your child is getting no services. Collect notes and reports from teachers, specialists, and others at the end of one school year and the beginning of the next school year. This can also be done before and after other extended breaks. Documentation can include recommendations from private therapists or professionals who work with your child. These notes should describe your child's behavior or skills at both points in time.

## **What if there is no data?**

In the case of some children, there will be no data to show either the presence or absence of regression during breaks. In such cases, your child is still entitled to ESY services if the IEP team reasonably believes that there would be significant regression and recoupment problems.

## **What if I disagree with the ESY decision?**

You may request mediation, write a letter of complaint, or request a due process hearing to resolve any disagreement about ESY. *See Chapter 13: Resolving Disagreements, pp. 51-56.*

## **Where does my child go for ESY?**

The school district does not have to provide a full range of placement options for ESY programs. Still, the district must offer placements that are appropriate to carry out those portions of your child's goals on the IEP where problems with regression and recoupment were noted.

For example, an ESY placement might be a summer camp, a park and recreation program, or other non-classroom activity if your child's primary need for ESY relates to socialization skills. For students who require maintenance of physical therapy goals, the placement may be at the student's home.

## **Is summer school the same as ESY?**

Summer school – which is not free – cannot take the place of ESY services. If ESY services are part of your child's FAPE, they must be provided at no cost to you.

If a school district offers summer school to general education students, students with disabilities also must be given the opportunity to attend. Reasonable accommodations must be provided to students with disabilities.

## Chapter 8: Physical Restraint and Seclusion

State regulations effective July 1, 2012 promote school safety by requiring planning, training, and parental involvement to regulate use of physical restraint and seclusion in schools.

### What is physical restraint?

Oregon Administrative Rule (OAR) 581-021-0062(1)(a) defines physical restraint as “the restriction of a student's movement by one or more persons holding the student or providing physical pressure upon the student.” The rule notes that physical restraint is not touching or holding a student without the use of force to direct the student or to assist the student in completing a task.

### What is seclusion?

OAR 581-021-0062(1)(b) defines seclusion as "the involuntary confinement of a student **alone** in a room from which the student is **physically prevented from leaving**."

### Can my child be physically restrained or secluded away from other students while at school?

Yes, but only under strictly limited conditions that are now defined by state law and regulations.

### When may restraint or seclusion be used?

Your child can only be physically restrained or secluded when your child's behavior poses a reasonable threat of imminent, serious bodily injury to self or others and when less restrictive interventions would not be effective.

### Can the school use restraint or seclusion to make my child obey staff?

**No.** Physical restraint and seclusion may not be used for discipline, punishment or for the convenience of staff under the new law.

## **How long may restraint or seclusion last?**

Only as long as your child poses a threat of imminent, serious physical harm to self or others. As soon as the threat of harm is over, your child must be released from the restraint or seclusion.

Your child should not be restrained or secluded for extended periods of time. Restraints and seclusions are emergency interventions that should not be used to manage behavior on a regular basis.

If your child is experiencing restraint or seclusion for long periods or if it is happening frequently, your child's Individualized Education Program (IEP) team should meet and look at changes to your child's IEP, placement, and behavior plan.

## **What happens if my child is restrained or secluded for a long period of time?**

New protections have been put into place for restraints and seclusions that last more than 30 minutes.

1. Your child must be allowed access to the bathroom and water.
2. Staff must get written authorization from a district administrator for the restraint/seclusion to continue, including documenting the reason the restraint/seclusion needs to continue.
3. Staff must try to immediately contact you either by phone or e-mail to notify you of the length of the restraint or seclusion.

## **Are staff trained in how to safely engage in or avoid restraint and seclusion?**

The law requires that any staff members who use physical restraint and seclusion on students are trained by a state-approved training program, unless the restraint or seclusion was required during an unforeseeable emergency situation.

If restraint or seclusion are used by staff who were not trained in a proper and approved technique, the district must notify you and explain why it was necessary to have an untrained staff member use restraint or seclusion. Staff training must include positive behavior support, conflict prevention, and de-escalation and crisis response techniques.

## What happens after my child is restrained or secluded?

First, the school is required to notify you verbally or electronically by the end of the day the incident occurred. Within 24 hours of the incident, the district must provide you with written documentation including, at minimum:

- Who implemented the restraint or seclusion;
- How long the restraint or seclusion lasted;
- Where it happened;
- What was happening before it started;
- How staff tried to de-escalate the situation; and
- A description of what your child was doing that posed a reasonable threat of imminent bodily injury.

Within two days of the incident, staff must hold a debriefing meeting to discuss the incident. The purpose of this meeting is to look at why the incident happened and to take any action necessary to reduce the chances of it happening again.

You must be given notice of when that meeting will occur and you have the right to attend the meeting. However, because debriefing meetings must be held within two days, the district does not have to accommodate your schedule when setting a meeting time.

## What is mechanical restraint?

Mechanical restraint is any device that is used to restrict your child's movement; for example, strapping your child to a chair to prevent him/her from leaving the room. The district **cannot** mechanically restrain your child. Protective or stabilizing devices ordered by your child's physician and vehicle safety restraints used during transport are not mechanical restraints.

## What is prone restraint?

Prone restraint is a restraint in which a student is held face down on the floor. Prone restraint is not permitted under Oregon law.

## Are there tools available to help reduce or stop my child's difficult behaviors?

Your child's disability may cause behaviors that interfere with learning or lead to disciplinary problems. There are two basic tools to help reduce or stop difficult behaviors: a **functional behavior analysis (FBA)** and a **behavior plan (often called a BSP or BIP)**.

## What is a functional behavior assessment (FBA)?

An FBA tries to answer three questions:

1. Why is the behavior happening? Identify triggers and setting events.
2. What clues does your child give that the behavior is about to happen? These clues are also called antecedent behaviors. It is very rare for a student to not give any signs that the situation is escalating.
3. Why does your child engage in this behavior? Figure out the function or purpose of the behavior. If your child seems to be seeking attention, ask why. Is the work too difficult? Does your child feel anxious that she won't understand the work so that she wants an adult nearby?

Once these questions have been answered, a strategy is developed to deal with the behavior. A good FBA should describe your child in a way that makes sense to you.

## When should an FBA be done?

An FBA should be done when:

- Behavior consistently or predictably impacts your child's learning, or the learning of your child's classmates;
- Your child has multiple suspensions or disciplinary referrals;
- Your child is experiencing restraint or seclusion at school; or
- Before a behavior plan is written. *See pp. 33-34, What is a behavior plan?*

## What happens during an FBA?

The FBA starts with a school staff member (possibly a special education teacher, or a behavior specialist) observing your child in different settings, such as the playground and math class, on different days. That person writes down his/her observations. The IEP team then meets to review what was observed and members add their own observations and thoughts as to why the behavior might be happening. Parents are **crucial** to this process and have a right to be part of it. You know your child and have learned so much about when and why the behaviors happen. Share your expertise with the team during this process.

## What does a good FBA look like?

To give you an idea of how useful an FBA can be when done thoughtfully, review the following examples.

### TRIGGERS & SETTING EVENTS: When is the behavior happening?

Useful	Unhelpful
The behavior happens at recess and during unstructured times. The behavior happens when noise in the classroom gets too loud.	Daily, across settings. At all times, unpredictable.

### ANTECEDENT BEHAVIORS: What clues does the student give that the behavior is about to happen?

Useful	Unhelpful
The student's face turns red, and she raises her voice. The student hides under his desk, or fidgets with his pen and push papers away.	The behavior is unpredictable.

### FUNCTION OR PURPOSE: Why does the student engage in this behavior?

Useful	Unhelpful
The student becomes anxious when presented with too much verbal information to process.	The student is trying to avoid work. The student is trying to gain attention.

## What is a behavior plan?

A behavior plan (also called a BIP or BSP) is a set of instructions for the adults who work with your child. It is not a plan for what your child is required to do. The IEP team uses the information from the FBA to develop the behavior plan. A behavior plan should address the following:

- 1. What is the behavior theory or function of behavior that the team determined during the FBA? The plan should be based on that behavior theory or function.**

**Example:** If the FBA behavioral theory or purpose is that your child becomes anxious when presented with too much verbal information to process, the plan should instruct adults to reduce their demands and verbal explanations when they see signs of trouble.

- 2. How can staff help eliminate or reduce the triggers and setting events?**

**Example:** If loud noises are a trigger, can the student wear headphones? If transitions lead to behaviors, can the schedule be adjusted to make fewer transitions? Would a visual schedule help? If writing is a trigger, the plan should require adults to be flexible about how and when to ask your child to write.

- 3. Teach replacement behaviors. When you look at the function or purpose of the behaviors, is there another way for the student to get that need met?** This part of the plan focuses on teaching the student new skills that will eventually replace the negative behaviors. (This could also be covered by a behavior goal in the IEP.)

**Example:** If your child becomes anxious when presented with too much verbal information to process, this part of the plan might encourage your child to learn to flip over a card or give a hand signal to indicate their anxiety level. This gives your child the opportunity to learn another way to communicate their needs to those around them.

- 4. How will staff respond when they see antecedent behaviors?** The behavior plan should list what antecedent behaviors staff should look for, and specific ways they will respond when they see them.

**Example:** When the student raises his voice and his face gets red, staff will calmly suggest that he can take a walk or change activities, to give him space.

- 5. How will staff help the student de-escalate if the behaviors escalate?** Even with the best behavior plan in place, there are times the behaviors will escalate. This part of the plan should focus on the best way to help the student de-escalate as quickly as possible.

**Example:** If your child is known to escalate when forced to admit a mistake, make sure that the behavior plan specifies that your child is not asked to apologize during de-escalation.

## What should not be part of a behavior plan?

A behavior plan should not:

- Be a behavior contract with a list of expectations for the student and consequences for not meeting those expectations.
- Include half-day or reduced schedules unless you really feel these options are appropriate for your child.
- Include negative consequences unless they have been shown to be effective and meaningful for your child.

## What happens if the behavior plan does not work?

If your child's behavior becomes worse or the plan does not result in significant reduction or elimination of the targeted behaviors within a month, you should ask the team to meet and discuss the problem.

The team should first consider whether the problem has been caused by poor implementation – meaning that staff has not followed it. If that is the problem, the team needs to provide better training or increased supports to ensure that the plan is followed.

On the other hand, if the plan has been properly followed without a good result, the team needs to look at revising the plan **and** the FBA behavior theory.



## Chapter 9: School Discipline

Each school district in Oregon must publish and distribute a student conduct handbook. This handbook describes the school district's expectations for student behavior, and lists behaviors that may result in exclusion from school. Some behaviors, such as not following school rules, can result in a short-term exclusion, called a **suspension**. More serious behaviors, such as bringing weapons or drugs to school, can result in a long-term exclusion, called an **expulsion**. State law does not allow the use of corporal punishment, such as spanking, paddling, or hitting children at school. 20 U.S.C. § 1415(k), 34 C.F.R. § 300.530-300.536, OAR 581-015-2400 through 581-015-2425.

### Can my child be suspended?

Students with disabilities may be suspended if they violate school rules. They can be disciplined to the same extent as children without disabilities. Repeated suspensions of a student with disabilities may suggest that a child is not receiving appropriate educational services.

**You should request a review of your child's IEP and behavior plan (or request a functional behavior assessment and behavior plan if one has not been developed) if your child is being disciplined repeatedly.**

If your child is removed for more than 10 consecutive school days or is subjected to a series of removals that constitute a pattern, those removals are considered a change of placement. To determine if the removals from school create a pattern, school staff must answer a series of questions.

#### DETERMINING A PATTERN

- Is your child's behavior very similar to what caused earlier discipline?
- For how long has your child been suspended each time?
- How close together have the suspensions been?

## **If my child is suspended, what obligation does the district have to provide my child with educational services?**

After 10 school days of suspension (whether or not it is a pattern) the school must provide services that allow your child to make progress toward IEP goals and have access to the regular education curriculum.

## **Can students with disabilities be expelled?**

A school district cannot expel a student with a disability for misconduct that is a manifestation of the student's disability. When a district decides to suspend or expel a student with a disability for more than 10 days, it must hold an IEP meeting within 10 days to determine whether the misconduct was related to the student's disability. This is known as a **manifestation determination**.

The team must make specific factual findings before it may determine that the student's behavior was not disability related. If the team determines that the conduct was not disability related, it may seek to expel the child as it would any other student.

Under these circumstances, you must be given notice of the IEP meeting and manifestation determination within a reasonable time before the meeting. You must also be given notice of the intended disciplinary action on the date that the decision to take disciplinary action is made. Finally, you must be given notice of procedural safeguards, which is an explanation of your rights under IDEA 2004.

Even if your child is expelled following a decision that the misconduct was not related to a disability, the school district must still provide services to your child in an interim alternative setting. The setting is determined by the IEP team and must allow your child to make progress toward IEP goals and continue to participate in the general school curriculum.

## **What is a manifestation determination?**

The manifestation determination team decides if your child's misconduct is related to a disability. The team must consider all relevant information, including evaluations, your own observations, your child's IEP and placement (including behavior plans), related services, and other supports. The team must determine if:

1. Your child's behavior was caused by, or had a direct and substantial relationship to, his or her disability; or
2. The conduct in question was a direct result of the school district's failure to implement the IEP.

**If the answer to either of these questions is yes, then your child cannot be expelled or disciplined for the behavior.**

## What if I disagree with the manifestation determination?

You may request an expedited due process hearing to challenge a manifestation determination or a change of placement arising from misconduct. Under these circumstances, your child is placed in the interim alternative placement during the due process hearing until the decision of the Administrative Law Judge (ALJ) is final, or until the end of the disciplinary removal, whichever occurs first, unless you and the district agree otherwise.

## Who should be part of my child's manifestation determination team?

A representative of the school district, you and all relevant members of the IEP team should be included. Together, you and the district determine the relevant members. If there are teachers or counselors at the school who understand your child and your child's behavior, you can ask specifically for those staff members to be part of the manifestation determination team.

If there are professionals such as a private therapist working with your child outside of school they may have important input to contribute. It would be your responsibility to write to them in order that they are included on the team.

## What is the school district's obligation to review my child's IEP after my child is disciplined?

After a manifestation determination has been completed, regardless of the outcome, the district must conduct a functional behavior assessment (FBA). The IEP team then uses the information gathered from the FBA to develop a behavior plan. If your child already had an FBA and a behavior plan before being disciplined, then the district must review and change them as necessary to address the behavior.

If the team found that the school did not implement your child's IEP, then the school must immediately make changes to address the failures. **You are always entitled to request a review of your child's IEP and behavior plan.** After a disciplinary issue arises, we recommend that you call an IEP meeting and have the team consider whether additional steps would help your child maintain proper behavior.

### POSSIBLE STEPS TO MAINTAIN PROPER BEHAVIOR

- Adding a more structured behavior intervention program to your child's IEP.
- Adding a related service, such as counseling or an instructional assistant.
- Adding goals and objectives to help teach your child appropriate social and emotional responses or other skills needed for getting along in a school setting.
- Increasing the amount of time in a special education program.

- Changing your child’s special education placement to a different, possibly more restrictive, setting, such as a self-contained classroom, special school, alternative school, or residential program.
- Reconsidering the behavioral theory that has been used to create the current behavior plan.

Below is an example of an IEP with goals and objectives designed to help teach appropriate social and emotional responses and skills:

Mary enjoys spending time with her peers, but does not manage peer conflicts successfully. Mary frequently exhibits inappropriate verbal behaviors like name calling and teasing and has engaged in physically harmful behavior such as pushing and biting on three occasions during the past month.

Mary will learn to use alternate strategies of conflict management in 80% of her peer conflicts.

1. In a structured role play, such as in social skills group, Mary will identify five situations that lead to conflicts with peers.
2. Mary will identify five behaviors and/or phrases that are appropriate in conflict situations, such as walking away, taking five breaths, or telling the peer/teacher when she is getting angry.
3. Mary will use her appropriate behaviors and/or phrases during periods of frustration or anger 80% of the time, with prompting.
4. Mary will use her appropriate behaviors and/or phrases during periods of frustration or anger 80% of the time, independently.

## **What if a child with a disability brings drugs or weapons to school?**

If a student with a disability knowingly carries a weapon to school or to a school function, or knowingly uses, sells, or solicits the sale of illegal drugs at school or a school function, the school district may place the student in an appropriate interim alternative educational placement for up to 45 days. This placement is considered a safer temporary setting while the student's appropriate educational placement is being worked out by the parent and district.

The district should conduct or review the functional behavior assessment and behavior plan for the student and make changes to address the behavior so it does not recur.

A parent who disagrees with an interim placement arising from the student's involvement with a weapon or drugs may request an expedited due process hearing.

## **What if my child physically harms others or him/herself?**

When Congress amended IDEA in 2004, it divided physical harm into three categories, and the district must respond to these categories differently.

### **SERIOUS BODILY INJURY**

- An injury likely to cause death or serious disfigurement. If your child causes this, the school can immediately place him or her into an interim alternative placement.

### **INJURIOUS BEHAVIOR**

- Behavior likely to cause injury to your child or others. If your child's behavior falls in this category, the district must request an expedited due process hearing if they wish to place your child into an interim alternative placement.

### **OTHER HARM**

- Behavior that would lead to the normal discipline process – up to 10 days suspension or a manifestation determination if longer than 10 days.

## **Will my child get special education in the alternative placement?**

The IEP team must determine what the interim alternative setting will be. The setting chosen by the team must allow your child to progress in the regular education curriculum (although in another setting) and make progress toward IEP goals.

## **What happens after the 45 days is over?**

After the 45-day interim placement is over, your child must be returned to his or her current placement (the placement before the interim alternative setting), unless you and the district agree otherwise. However, if the district believes that it is dangerous for your child to return to the current placement while due process proceedings are ongoing, it may request an expedited hearing on this issue.

## **What if a student has not yet been found eligible for special education?**

If the district knows that a student in regular education has a disability, the student cannot be excluded without following IDEA 2004 procedures. The district is considered to know that the student has a disability if:

- The parent expressed concern in writing that the student needed special education.
- The parent requested a special education evaluation.

- A teacher or other staff expressed concern to the special education director or other supervisor about the behavior or performance of the child.

Even if a district cannot be deemed to have known that the student had a disability, the parent of a regular education student whom the district seeks to exclude may request an expedited evaluation. During the course of the evaluation, the student must remain in the placement determined by the district. 20 U.S.C. § 1415(k)(5), 34 C.F.R. § 300.534, OAR 581-015-2440.

# Chapter 10

## Chapter 10: Transition from Special Education to Adult Services

### What are transition services?

Eligible students are entitled to special education services until the end of the year during which they turn 21 years of age. The transition from educational services to adult services can often be confusing. Transition services are designed to help the student move from school to employment, further education, adult services, independent living, or other types of community participation. These activities must be based on the student's strengths, preferences, and interests. 20 U.S.C. § 1401(34), 34 C.F.R. § 300.43, OAR 581-015-2000(38).

### When do transition services begin?

Under IDEA 2004, transition services must be included in the IEP that will be in effect when a student reaches age 16. Transition services can begin when the student is younger if the IEP team agrees that it is appropriate. 20 U.S.C. § 1414(d)(1)(A)(i)(VIII), 34 C.F.R. § 300.320(b), OAR 581-015-2200(2).

### Who decides what transition services my child will get?

Transition services are decided at the IEP meeting. Besides the usual IEP team members, the school district should invite representatives from other public agencies who are likely to be responsible for providing or paying for transition services. Your child, whose preferences and participation are key transition factors, will also be invited. Because transition services are decided by the IEP team, all of your IEP rights apply. *See p. 22, What are my IEP Rights?*

### What are examples of transition services?

In considering the activities to include in a transition plan, it is helpful for parents to first discuss their child's desires for vocational, educational, independent living, and other goals for the future.

## EXAMPLES OF TRANSITION SERVICES

- Instruction
- Community experiences
- Employment development
- Vocational evaluation
- Job training
- Instruction in daily living skills
- Post-school adult living objectives

The goals listed on the IEP should be based on an age-appropriate transition assessment. 20 U.S.C. § 1401(34), 34 C.F.R. § 300.43, OAR 581-015-2000(38).

## What if other agencies don't provide a transition service?

If an agency other than the school district does not provide the agreed-upon services, the IEP team must meet to develop other approaches to achieve the transition objectives.

## Can my child continue to get special education if he or she graduates with a regular diploma?

The school district is not required to provide a free and appropriate public education to students with disabilities who have graduated with a **regular high school diploma**. For these students, special education services end at graduation. However, if your child reaches the age of 18 without a regular diploma, special education services will continue until age 21.

On July 1, 2011, Oregon House Bill (HB) 2283 went into effect and became law as ORS 329.451. The new law defines the types of diplomas that Oregon schools can offer. It affects special education students who reach age 18 without a regular diploma by clarifying that they have the right to full days of instruction and services in their transition programs. Districts cannot claim that transition-aged special education students should get fewer hours of school and services than other high school students and makes it clear that the right to full school days for most special education students does not change or disappear at age 18.

Specifically, the law requires that transition-age special education students who have not earned a regular diploma have access to instruction and services that meet your child's individual needs and, when added together, provide at least the same number of instructional hours as provided to regular education high school students. This state law follows federal special education laws by requiring that any decision to reduce services below a full school day be made by each student's IEP team on an individual basis. It also requires that the district give you a written explanation of the law annually, and get a signature from you or your child to prove that they have given your family that written explanation. A final protection of the new law is that the district is not allowed to make its own decision about how long your child's school day will be. The district can reduce hours only if it can convince your family that this makes sense and would give your child more benefit than a full day.

## **Can my 18-year-old make educational decisions without me?**

In Oregon, a child becomes a legal adult at age 18. Beginning at least one year before your child turns 18 years of age the school district must inform you and your child of rights under the IDEA 2004 that will transfer to your child. This must be documented on the transition plan. You must continue to be notified in writing of action the school district wants to take or refuses to take regarding education services, including IEP meeting notices, but all other IDEA 2004 rights transfer to your child.

Your school district will give your child a copy of the Oregon Department of Education (ODE) Notice of Procedural Safeguards at the IEP meeting closest to his or her 17<sup>th</sup> birthday, and inform you and your child that special education rights will transfer at age 18. Your child will also receive a written notice that these rights have transferred after his or her 18<sup>th</sup> birthday. 20 U.S.C. § 1415(m), 34 C.F.R. § 300.520, OAR 581-015-2325.

## **What if I think my 18-year-old is unable to understand the IDEA 2004 and be an effective self-advocate?**

In this situation, you may want to become legal guardian of an adult child with disabilities. However, guardians may only be appointed by the courts under particular circumstances and there are different types of guardians. Some guardians make all decisions for the person with disabilities while others make only limited kinds of decisions.

If you believe that your adult child might need a guardian, the Oregon State Bar Lawyer Referral Service can help you find a lawyer who practices guardianship law.

(For more detailed information on guardianship, contact Disability Rights Oregon or visit our website for a copy of our *Guardianship Handbook: Protective Proceedings for Adults*.)



## Chapter 11: Notice Rules

### When must the school district give you notice?

The school district must give parents written notice whenever the district:

- Identifies your child as a student with a disability.
- Changes the category of your child's disability.
- Evaluates or re-evaluates your child.
- Plans to develop, review, or change an IEP, including a change in related services.
- Changes part of your child's IEP.
- Places your child in a special education program.
- Changes your child's special education placement.

**The school district also must give you written notice whenever it refuses a request you've made about any of the above decisions.**

The Oregon Department of Education (ODE) must give you written acknowledgment and notice of procedural rights if you request a due process hearing. 20 U.S.C. § 1415(b)(3), 34 C.F.R. § 300.503, OAR 581-015-2310.

### What must the written notice include?

The notice must:

- Describe the action the school district wants to take or refuses to take, and why.
- Explain any options the school district considered and the reasons why those options were rejected.

- List each evaluation, test, record, or report that the school district used as a basis for the action or refusal.
- Give details on any other relevant factors that the district considered.
- Include a statement of the protections that you have under the procedural safeguards of IDEA 2004 and, if the notice is not an initial referral for evaluation, how you can obtain a copy of the ODE's Notice of Procedural Safeguards.
- Provide resources for you to contact for assistance in understanding your procedural rights.

The notice must be written in your native language and be clear enough that most people could understand it. The school district must also try to help you understand the notice if you cannot. If you receive a notice that you cannot understand, you should ask the school district for more information in writing.

20 U.S.C. § 1415(c)(1), 34 C.F.R. § 300.503(b), OAR 581-015-2310(3).

# Chapter 12

## Chapter 12: Preparing for Meetings

### What can I do to advocate for my child?

As a parent of a child with disabilities, you are the most important person in your child's education. You know your child better than anyone else.

#### HOW TO BE AN EFFECTIVE ADVOCATE FOR YOUR CHILD

- Know your child's rights and your rights as a parent, and be assertive about them.
- Learn everything you possibly can about your child's abilities and disabilities.
- Seek out other parents and organizations for information, support, and emerging educational practices.
- Learn to recognize a quality school program.
- Attend all meetings concerning your child.
- Keep copies of your child's records.
- Encourage your child's teachers to keep you informed of your child's progress or problems.
- Ask questions and share information concerning your child – let the teacher and the school district know how you feel about your child's program.

You are a **valuable and equal member** of the IEP team and any group that makes decisions about your child.

At the beginning of each meeting, express the issues you want to have resolved at the meeting if you have not already done this in writing prior to the meeting. While you may feel intimidated at meetings by the number of school district personnel sitting around the table, it is crucial for you to be assertive in explaining your positions and concerns. You will feel more confident at meetings if you take the time to prepare.

## **What can I do to prepare before a meeting?**

- Visit the classroom to watch your child at school.
- Review information in your child's records, including evaluation results.
- Think about questions or concerns you have, and bring them up at the meeting.
- If appropriate, talk with your child about his or her feelings about school, subjects, and classmates.
- Request proposed goals two weeks prior to the IEP meeting annual review.
- If possible, provide areas of concern ahead of time to be added and/or propose your own goals ahead of time.

## **How can I be more effective at the meeting?**

- Bring a friend or advocate to the meeting to take notes so you can concentrate on the discussion.
- Bring relevant medical documents or reports from outside specialists.
- Tell the team about your observations of your child's positive and negative behaviors, changes in the family or home that might have an effect on your child's learning, how your child learns best, what works as positive reinforcement for your child, and your understanding of your child's self-help skills.
- Tell the team about your suggestions for goals and objectives, related services, supports, modifications, and placement.
- Work towards consensus – there is no majority vote.

## **Can I tape record the meeting?**

You may want to tape record IEP meetings. Oregon law allows districts to either restrict or permit the tape recording of a meeting. The policy must be applied even-handedly, and it must permit tape recording if it is necessary for you to understand the discussion at the meeting.

You should recognize that there are times when taping can negatively affect the tone and result of an IEP meeting. As an option to taping in such circumstances, consider bringing a friend, relative, or advocate who can take notes and provide support. Use of tape recorders at IEP Meetings, Op. Att'y Gen., DOJ File No. 581020-581020-02, (2002).

# Chapter 13

## Chapter 13: Resolving Disagreements

There will be times when parents and school district staff disagree about a child's special education. Disagreements can occur in any area of a child's special education program. There are informal and formal methods parents may use to try to work out problems with the school. In general, it's best to contact the school to try to work out problems as soon as they occur.

### What is my first step?

Talk with your child's teacher or others involved in the dispute. Write a letter outlining your concerns and what you want done about the problem. Get a written response to your request. Ask for an IEP meeting to work out the problem.

The appropriate person to contact at school districts will vary depending on the size of the district. If the school district has a special education director, make contact with that person. In smaller districts, the contact person may be the principal or superintendent. *See Chapter 14: Writing to School District Administrators, pp. 57-58.*

There are four major tools available for solving special education disputes between parents and districts in Oregon. In order from the least formal to the most formal, they are:

1. Facilitated IEP meeting
2. Mediation
3. Oregon Department of Education (ODE) complaint
4. Due process hearing

Some disputes are better resolved under other laws. *To see whether your problem may be best addressed under one of these laws, please refer to ODE's chart on p. 65.*

## What is a facilitated IEP meeting?

A **facilitated IEP meeting** is a process available when communication between parents and the district has become ineffective and difficult. In these meetings, an impartial facilitator controls the process. Because the facilitator is not a member of the IEP team and cannot make any decisions, the team still makes all the decisions related to the student. The role of the facilitator is to minimize conflicts and help the team stay focused on developing the IEP. IEP facilitation is a new practice in many states that a parent can request as an early dispute resolution tool before communication completely breaks down between team members. However, IEP facilitation is not part of IDEA 2004. Because of this fact, a district is not legally required to provide a facilitated IEP meeting.

## What is mediation?

**Mediation** is another optional and voluntary process available to parents for resolving conflicts or communication problems with a school district. In mediation, parents and the school district agree to use a third, neutral person called a mediator who is impartial, trained in mediation techniques, and has knowledge of IDEA 2004 to help them solve problems. Unlike facilitated IEP meetings, however, mediation is provided by the ODE at no cost to parents or school district. Contact the ODE's Mediation Coordinator at (503) 947-5797 to request mediation.

Information exchanged in mediation is confidential. Both parties will normally be required to sign a pledge of confidentiality. The mediator helps both parties express their views and attempts to resolve the problem. Neither party has to agree to a solution at mediation. However, if an agreement is reached, the mediator then puts the agreement in writing. The participants sign this agreement at the end of the mediation session or shortly thereafter. Parents and school district will receive a copy of the signed mediation agreement. This agreement is "legally binding" and enforceable in court only – this means a judge can order you or the district to follow through with the agreements made in mediation. There is no recourse to make a district comply with a mediation agreement through an ODE complaint or due process hearing – only in circuit court for which you will need an attorney. 20 U.S.C. § 1415(e), 34 C.F.R. § 300.506, OAR 581-015-2335.

## What is a complaint to ODE?

An **Oregon Department of Education (ODE) complaint** is a more formal process that can be used to solve special education disputes between parents and school districts. Complaints may be made when parents think that the school district or ODE has violated federal laws by failing to provide an appropriate education to their child or to follow required procedures. **An ODE complaint can only be used to solve issues that have occurred in the last calendar year.** ODE's complaint system may result in improved services to a child without going through the expense, time, and trouble of a due process hearing. ODE complaints trigger a state investigation and are suited to particular sorts of disputes. 34 C.F.R. § 300.151-300.153, OAR 581-015-2030.

## How do I file an ODE complaint?

The process begins when you write and sign a letter of complaint to ODE stating and explaining how you believe a school district has violated federal law by failing to follow required procedures. You can only include issues that have occurred in the last calendar year. Once the complaint has been received, ODE will investigate the alleged violations.

*To file an ODE complaint, use Model Letter #4 on p. 62, or use ODE's Request for Complaint Investigation Form, which can be found on their website.*

Make sure to include how you think the problem(s) should be solved. Request whatever actions are necessary to correct the violation. **You MUST send a copy of your complaint to your child's school district at the same time you file it with ODE.** Recent changes to the law mean that ODE will no longer send a copy of your complaint to the school district.

## How long does the investigation take?

Once received, the ODE must respond to your complaint within 10 business days and ODE must complete its investigation within 60 days, also giving the school district the chance to respond to your complaint. If there are exceptional circumstances ODE may extend the time for providing a written decision, called a written order, of its findings.

## How can a complaint resolve my disagreement?

If the complaint investigation finds violations of the law, ODE has the power to issue orders requiring a school district to:

- Correct policies and/or procedures.
- Train personnel.
- Hold an IEP meeting with an impartial IEP facilitator or conduct evaluations.
- Provide compensatory education.
- Take other actions necessary to bring districts into compliance with state and federal special education laws.

ODE's complaint system may result in improved services for your child without going through the expense, time, and trouble of a due process hearing. If you are unhappy with the results, you have 60 days to appeal to a circuit court of proper jurisdiction – this is either Marion County or the county court where your school district is located. You may still ask for a due process hearing or try mediation on the same violations for which you filed your ODE complaint. 34 C.F.R. § 300.152(b)(2), OAR 581-015-2030(13).

## What is a due process hearing?

A due process hearing is a formal administrative proceeding that resembles a trial in many ways. In a due process hearing, school districts and parents present witnesses, evidence, and arguments to support their positions. An impartial Administrative Law Judge (ALJ) hears the evidence, decides each issue, and has the power to order corrective action as needed. Because due process hearings are often costly, long, and emotionally draining, it is usually best to try other less formal processes first. 20 U.S.C. § 1415(f), 34 C.F.R. § 300.507-300.518, ORS § 343.165, OAR 581-015-2340 through 581-015-2385.

## Do I need an attorney?

In Oregon, school districts must be represented by an attorney at due process hearings. Although it is not required, it is always a good idea for you to seek legal advice and representation for a due process hearing. ODE must advise you of low-cost or free legal services. If you win at the hearing, the ALJ may require the district to pay for your attorney's fees. There are a number of factors that affect whether your attorney will be paid for by the district. Consult with a private attorney to obtain more information about due process and fees.

## How do I request a due process hearing?

The process begins when you or your attorney send a request for a due process hearing to the State Superintendent of Public Instruction. You or the attorney representing your child must also provide notice of the hearing request to the school district. At a minimum, the following information must be included in the request: your child's name, address, school, problem(s) in clear detail, and proposed solutions to the problem(s). You are not entitled to a hearing until you file a request that includes this information.

***See Model Letter #5, pp. 63-64 to request a due process hearing.*** You can also contact the ODE Office of Student Learning and Partnerships Dispute Resolution Section at (503) 947-5689 and request a Due Process Hearing Information Packet for more detailed information. **You must request a due process hearing within two years of the date you or the school district knew or should have known about the issue that led to the hearing request.**

The two year timeline doesn't apply if you were unable to request a hearing because the school district misrepresented that it had solved the problem, or failed to provide you with required information. 20 U.S.C. § 1415(b)(6) and (7), 34 C.F.R. § 300.507-300.508, OAR 581-015-2345 and 581-015-2350.

## What happens after I make my request?

An Administrative Law Judge (ALJ) is appointed by the Office of Administrative Hearings. By law, the ALJ must be impartial and have knowledge of state and federal special education statutes and regulations. The ALJ will set up a pre-hearing conference, and then notify the parties of the date, time, and location of the hearing. The date, time, and location must be convenient for you.

If you file the hearing request, the school district has 15 days to notify the ALJ of any problems it has with your notice. The same timeline of 15 days applies to you if the district files the hearing request. The ALJ decides within five days whether or not the notice follows the rules and then notifies both you and the district of the decision in writing.

You can correct problems with your hearing request by sending another request if the district agrees in writing, or if the ALJ agrees and it is more than five days before the hearing. Keep in mind that sending another hearing request restarts the due process hearing process timelines. The district must send you a written notice of special education action related to the issues raised in your hearing request within 10 days if they haven't done so already. Otherwise, after receiving your hearing request the district has 10 days to address the issues raised in your hearing request.

Recent changes to the law create a new type of settlement meeting called a **resolution session** in which parents and districts can try one last time to work out an agreement to avoid a due process hearing within 15 days of a hearing request. Resolution sessions are not mandatory if both sides agree in writing to waive the meeting. 34 C.F.R. § 300.510, OAR 581-015-2355.

**The school district can only have an attorney present at the resolution meeting if you bring an attorney.** It is important to remember that if the district desires a resolution session and schedules it reasonably to allow your participation, your complaint can be dismissed by the ALJ if you fail to attend.

## What is the stay-put rule?

You have the right for your child to remain in his or her current placement after requesting a due process hearing. This is called the **stay-put rule**.

Under stay-put, your child stays in the current placement until the Administrative Law Judge decides the issue, or until the parties agree to a different placement.

There are exceptions to the stay-put rule for children who have brought illegal drugs or weapons to school or school events or have caused serious bodily injury to themselves or others. If any of these exceptions applies to your situation, your child is not entitled to stay in the current educational placement while issues are resolved through the hearing process. 20 U.S.C. § 1415(j), 34 C.F.R. § 300.518, OAR 581-015-2360(5)(a).

## What are my due process hearing rights?

You have the right to:

- Have the hearing at a time and place convenient for you.
- Have either an open or private hearing.
- Present evidence at the hearing.
- View all written material supporting the school district's position at least five days before the hearing, just as the school district has the right to view all of your evidence five days before the hearing. **Evidence which has not been shared with the other party five days before the hearing may be excluded.**
- Ask questions of the school district's witnesses.
- Demand the attendance of witnesses.
- Have your child present at the hearing.
- A written or electronic transcript of the hearing.
- Written or electronic findings of facts and decisions within 45 calendar days after the end of the resolution period. This timeline may be extended by the ALJ at the reasonable request of either party. For example, an ALJ may agree to an extension to get the results of an independent evaluation.
- Bring an attorney or an advocate to the hearing.

If you win at a due process hearing or on appeal, the school district will ordinarily (but not always) have to pay your attorney fees. See generally 20 U.S.C. § 1415(f)-1415(j), 34 C.F.R. § 300.511-300.518, OAR 581-015-2360 through 2385.

## Can I appeal a due process hearing decision?

In general, you cannot go to court about matters related to your child's special education without first going through a due process hearing and receiving a final written decision and order from an ALJ. However, once that occurs, you do have a right to appeal the due process outcome in state or federal court, but filing an appeal is a complex process that is not something you should attempt without legal advice.

Consult the Oregon Department of Education (ODE) website under Dispute Resolution for additional information on appealing a due process hearing decision. 20 U.S.C. § 1415(i)(2), 34 C.F.R. § 300.516.

# Chapter 14

## Chapter 14: Writing to School District Administrators

### Why should I write to the district?

As a general rule, it is important to have a good written record, especially if you feel that your child is not receiving adequate special education services.

Letters to the special education director can be essential to clarify and resolve disagreements. If disagreements continue, letters may also be useful in due process hearings or ODE complaint investigations. It's a good idea to write to the special education director to confirm agreements or promises of additional services. The letter should state your understanding of the conversation to assure that you and the school district have the same understanding. The letter also provides a written record of the agreement.

When needed, send copies of your letter to others in authority to get them involved or keep them informed. This also helps to make sure that the district is accountable for its actions.

### REASONS TO WRITE LETTERS

- To request an evaluation.
- To disagree with the district's evaluation and to notify the district of your intent to obtain an independent evaluation.
- To request an IEP or a change in the IEP.
- To express concern about your child's placement and request a new placement.
- To express concern about or request related services.
- To request reimbursement for private school.
- To request an inspection of your child's records.

- To consent or to refuse consent for your child's first evaluation or first special education placement.
- To request mediation or a due process hearing.

## **Who should get my letter?**

Send letters to the special education director. Sometimes it is also useful to send copies to the superintendent, principal, and classroom teacher. **Keep a copy of every letter that you send.** When you are writing regarding serious complaints, you might want to send the letter by certified mail with return receipt requested. Put both the return receipt and your copy of the letter in the file you are keeping for your child.

## **What if I don't get a response to my letter?**

Check back with the special education director to see that your letter was received. If the district does not respond, send another letter by certified mail. If you get a response but it is not satisfactory, check with someone else in the district with more authority. You may want to contact the Oregon Department of Education or resources in the community, including an attorney, to obtain advice or short-term assistance. Mediation and other approaches may also help to solve the problem. ***See Chapter 13: Resolving Disagreements, pp. 51-56.***

# Model Letter #1: Request to school district

[Your Name]  
[Your Address]  
[Your City, State, and Zip Code]  
[Your Area Code and Phone Number]  
[Your E-mail Address]  
[Date of the letter]

[Name of Special Education Director (or Superintendent)]  
[School District Name]  
[School District Address]  
[City, State, Zip Code]

Dear [Name of Special Education Director (or Superintendent)]:

My/our child [name of child], is a resident of [name of district]. Currently, [name of child] attends [school, class, program, etc.]. [Name of child] has [brief description of disability] and qualifies for special education services under the Individuals with Disabilities Education Improvement Act (IDEA 2004).

[Describe the problem. If there are several, list and number them separately. Include facts and dates if you have them].

[Describe the steps you have taken to resolve the problem(s): who you talked to, when, what happened, etc. This might include meetings you have had, letters you have written, agreements you thought were made, etc.].

[Make specific requests for solving the problem(s) and include any information that supports your position].

I/we understand that under the IDEA 2004, I/we have the right to prior written notice anytime the school district proposes or refuses to initiate or change the identification, evaluation or educational placement, or the provision of a free and appropriate education to my/our child. Please provide me/us with a written response to my/our request by [list date by which you want a response; usually 10 working days is more than reasonable].

Thank you.

Sincerely,

[Your Signature(s)]  
[Your Name(s)]

cc: [Student's Name] Permanent School File

## Model Letter #2: Follow-up letter to a discussion with the school district

[Your Name]  
[Your Address]  
[Your City, State, and Zip Code]  
[Your Area Code and Phone Number]  
[Your E-mail Address]  
[Date of the letter]

[Name of Person]  
[School District Name]  
[Address]  
[City, State, Zip Code]

RE: [Child's Name, Date of Birth]

Dear [Name of Person]:

We are the parents of [name of child], who is currently attending [name of school], in the [type of class or grade].

Our understanding of our [meeting or phone conversation] on [date] is: [state your interpretation].

If you have not contacted us within ten (10) days we will assume our understanding is correct.

Sincerely,

[Your Signature(s)]  
[Your Name(s)]

cc: [Student's Name] Permanent School File

## Model Letter #3: Notice to school district regarding private school

[Your Name]  
[Your Address]  
[Your City, State, and Zip Code]  
[Your Area Code and Phone Number]  
[Your E-mail Address]  
[Date of the letter]

[Name of Special Education Director (or Superintendent)]  
[School District Name]  
[School District Address]  
[City, State, Zip Code]

RE: [Child's Name, Date of Birth]

Dear [Name of Special Education Director (or Superintendent)]:

My/our child, [name of child], is a resident of [name of school district]. Currently, [name of child], attends [name of school, class, program, etc.]. [Name of child] has [brief description of disability] and qualifies for special education services under the Individuals with Disabilities Education Improvement Act (IDEA 2004).

I/we are writing to inform you that we do not agree with the school district's proposal to place [name of child] in [name the proposed school/program/class]. We do not believe the proposed placement will provide FAPE for my/our child.

I/we have the following concern(s): [describe the concern or list and number them if you have several concerns. Include any ideas you have to resolve your concerns].

I/we intend to enroll [name of child] in private school beginning [date you plan to enroll child]. The private school is [name of school] located at [address of school].

I/we are available to discuss my/our plans with you or answer any questions you have.

Sincerely,

[Your Signature(s)]  
[Your Name(s)]

cc: Student's Permanent School File

## Model Letter #4: Complaint to ODE

[Your Name]  
[Your Address]  
[Your City, State, and Zip Code]  
[Your Area Code and Phone Number]  
[Your E-mail Address]  
[Date of the letter]

[Name of current State Superintendent of Public Instruction]  
State Superintendent of Public Instruction, Oregon Department of Education  
255 Capitol Street NE  
Salem, OR 97310-0203

Dear [Name of current State Superintendent of Public Instruction]:

Our child, [child's name], attends [school your child attends] and has [your child's disability/disabilities]. We are requesting, in accordance with Oregon Administrative Rule 581-015-2030, that the Oregon Department of Education investigate our allegations that the [name of the school district] has violated federal law and regulations. We have outlined the following allegations and have supplied information to support our charges:

[Each allegation should be clearly written and brief information furnished. Supporting documents such as IEPs, evaluations and/or progress reports should be attached. Keep copies!]

We have sent a copy of this complaint to our child's school district. It is our understanding that the complaint will be investigated and resolved within 60 days of receipt.

As a corrective action we would like [include suggestions for correcting the violations].

We are available on [give days and times that are convenient for you] if you wish to discuss these allegations. Should you require us to furnish additional information or materials, please let us know.

Sincerely,

[Your Signature(s)]  
[Your Name(s)]

cc: [Director of Special Education in your district]  
[Principal of School]  
[Current Assistant Superintendent of Student Learning and Partnerships]

# Model Letter #5: Request for a Due Process Hearing

TO: [Name of current State Superintendent of Public Instruction]  
State Superintendent of Public Instruction  
Oregon Department of Education  
255 Capitol Street NE  
Salem, OR 97310-0203

And: [Name of Special Education Director (or Superintendent)]  
[School District Name]  
[School District Address]  
[City, State, Zip Code]

## 1. Parent information:

[Your Name]  
[Your Address]  
[City, State, Zip Code]  
[Your Telephone Number]  
[Your Fax Number]  
[Your E-mail]  
[Your Relationship to Your Child]

## 2. Child information:

[Your Child's Name]  
[Your Child's Date of Birth]  
[Your Child's Address or Contact Information]  
[City, State, Zip Code]  
[School or Program Your Child Attends]

## 3. Legal representation: (if any)

[Attorney Name/Firm]  
[Attorney Address]  
[City, State, Zip Code]  
[Attorney Telephone]  
[Attorney Fax]  
[Attorney E-mail]

## 4. Problem:

Describe the problem and the specific actions that the school district or EI/ECSE program has taken or refused to take. Include facts about the problem. Attach more pages as needed.

## 5. Proposed solution:

Describe what you think needs to be done to solve the problem, if you know or have any specific ideas at this time. Attach more pages as needed.

**6. Mediation:**

(a) Would you agree to try mediation to resolve this dispute? [Answer Yes or No]

**If Yes:** (For parents): I authorize the school district and ODE to share educational information with the mediator about my child’s identity, educational needs, and information pertinent to the mediation. I understand the mediator will keep this information confidential.

Parent signature:\_\_\_\_\_ Date:\_\_\_\_\_

(b) Would you like more written information about mediation? [Answer Yes or No]

(c) Would you like to talk to another parent about mediation? [Answer Yes or No]

**7. Scheduling resolution session:**

Indicate all dates and times in the next 15-17 days when you would be available to meet for a resolution session.

Example: If your hearing request will be received on or about July 1, 2012, identify all dates and times you would be available for a resolution session between July 2 and July 18, 2012.

**8. Scheduling pre-hearing conference:**

Indicate all dates in the 30-40 days following your hearing request when you would be available for a pre-hearing conference.

Example: If your hearing request will be received on or about July 1, 2012, identify all dates and times your would be available for a pre-hearing conference between August 1 and 10, 2012.

Signature:\_\_\_\_\_ Date:\_\_\_\_\_

(Print Name):\_\_\_\_\_

Signature:\_\_\_\_\_ Date:\_\_\_\_\_

(Print Name):\_\_\_\_\_

Letter courtesy of the Oregon Department of Education (ODE).  
Visit the ODE website for the Due Process Hearing Information Sheet and Hearing Request Form.

Note: It is not necessary that you use this form as long as the required information is included in your request for a due process hearing.

***See p. 54, How do I request a due process hearing?***

## ODE Chart – Options for Complaints not within IDEA

Type of Concern	Where to Turn
Discrimination (age, disability, national origin, race, sex, marital status, religion)	<p>File a complaint with school district or program equal educational opportunity or Section 504 compliance officer; ODE review under OAR 581-021-0049.</p> <p>File a complaint with Office for Civil Rights, U.S. Department of Education 915 Second Avenue, Room 3310 Seattle, WA 98174-1099 Telephone: 206-220-7900   Fax: 206-220-7887 TDD: 877-521-2172   E-mail: OCR.Seattle@ed.gov (within 180 days of alleged discrimination)</p>
Section 504 issue related to identification, evaluation, and provision of a free appropriate education or educational placement of student with a disability	<p>Request a hearing under OAR 581-015-0109.</p> <p>File a complaint with district or program equal educational opportunity or Section 504 compliance officer; ODE review under OAR 581-021-0049.</p> <p>File a complaint with Office for Civil Rights, U.S. Department of Education 915 Second Avenue, Room 3310 Seattle, WA 98174-1099 Tel: 206-220-7900   Fax: 206-220-7887 TDD: 877-521-2172   E-mail: OCR.Seattle@ed.gov (within 180 days of alleged discrimination)</p>
<p>School records violation</p> <p>Complaint about inaccurate, misleading, or private information in the child’s educational record</p> <p>Violations of the Family Education Rights and Privacy Act (FERPA)</p>	<p>File a complaint with the custodian of student records at the school district or program.</p> <p>Request an amendment to the child’s educational record under OAR 581-021-0300 to 0320.</p> <p>File a complaint with the Family Policy Compliance Office U.S. Department of Education 400 Maryland Ave SW Washington, D.C. 20202-5920</p>
<p>Complaint about specific teacher or administrator</p> <p>Serious violations that may affect teacher or administrator licensure</p>	<p>School district/program complaint procedure.</p> <p>Contact Teacher Standards and Practices Commission 465 Commercial St NE Salem, OR 97301</p>
Complaint about ODE school standards (including TAG)	Use the school district complaint procedure; ODE appeal under OAR 581-022-1940.

Table courtesy of the Oregon Department of Education (ODE).  
Visit the ODE website for the complete Special Education Complaint Resolution Process Q&A.



## Resources

**These agencies provide additional information to parents, students and advocates about rights under special education law.**

### **FACT Oregon**

Tel: (888) 988-3228 | Fax: (503) 227-0346  
E-mail: [info@factoregon.org](mailto:info@factoregon.org) | Website: [www.factoregon.org](http://www.factoregon.org)

### **Family Center on Technology and Disability (FCTD)**

Tel: (202) 884-8068 | Fax: (202) 884-8441  
E-mail: [fctd@fhi360.org](mailto:fctd@fhi360.org) | Website: [www.fctd.info](http://www.fctd.info)

### **National Dissemination Center for Children with Disabilities (NICHCY)**

Voice/TTY: (800) 695-0285 | Fax: (202) 884-8441  
E-mail: [nichcy@fhi360.org](mailto:nichcy@fhi360.org) | Website: [www.nichcy.org](http://www.nichcy.org)

### **Oregon Department of Education (ODE)**

Tel: (503) 947-5600 | TDD: (503) 378-2892 | Fax: (503) 378-5156  
Website: [www.ode.state.or.us](http://www.ode.state.or.us)

### **Oregon Department of Human Services, Developmental Disability Services**

Tel: (503) 945-5811 | Tel: (800) 282-8096 | TTY: (800) 282-8096  
E-mail: [ODDS.INFO@state.or.us](mailto:ODDS.INFO@state.or.us) | Website: [www.oregon.gov/DHS/dd](http://www.oregon.gov/DHS/dd)

### **Oregon Technology Access Program (OTAP)**

Voice: (541) 440-4791 | Fax: (541) 957-4808  
Website: [www.otap-oregon.org](http://www.otap-oregon.org)

### **Parents in Action / Padres en Acción**

Website: [www.padresenaccionoregon.org](http://www.padresenaccionoregon.org)

**Support systems can help parents and young adults with disabilities if adult services are not available. These organizations help young adults with disabilities in transition, and their parents.**

### **Access Technologies, Inc. (ATI)**

Salem, OR - Voice/TTY: (503) 361-1201 | Voice/TTY: (800) 677-7512 | Fax: (503) 370-4530  
PSU - Voice/TTY: (503) 725-8395 | Fax: (503) 725-6397  
E-mail: [info@accesstechnologiesinc.org](mailto:info@accesstechnologiesinc.org) | Website: [www.accesstechnologiesinc.org](http://www.accesstechnologiesinc.org)

### **The Arc of Oregon**

Tel: (877) 581-2726 | Tel: (503) 581-2726 | Fax: (503) 363-7168  
E-mail: [info@arcoregon.org](mailto:info@arcoregon.org) | Website: [www.arcoregon.org](http://www.arcoregon.org)

### **Oregon Department of Human Services, Developmental Disability Services**

Tel: (503) 945-5811 | Tel: (800) 282-8096 | TTY: (800) 282-8096  
E-mail: [ODDS.INFO@state.or.us](mailto:ODDS.INFO@state.or.us) | Website: [www.oregon.gov/DHS/dd](http://www.oregon.gov/DHS/dd)

**Oregon Department of Human Services, Office of Vocational Rehabilitation Services (OVRS)**

Tel: (503) 945-5880 | Toll Free: (877) 277-0513

TTY: Please use the text or video relay service of your choice.

Fax: (503) 947-5010

E-mail: [vr.info@state.or.us](mailto:vr.info@state.or.us) | Website: [www.oregon.gov/DHS/vr](http://www.oregon.gov/DHS/vr)

**Parents may need to seek legal advice about their child's rights and services under IDEA 2004 and other federal laws. Contact your private attorney or these resources.**

**Disability Rights Oregon (DRO)**

Voice: (503) 243-2081 or (800) 452-1694 | Fax: (503) 243-1738

E-mail: [welcome@droregon.org](mailto:welcome@droregon.org) | Website: [www.droregon.org](http://www.droregon.org)

**Youth, Rights & Justice (YRJ)**

Tel: (503) 232-2540

E-mail: [info@youthrightsjustice.org](mailto:info@youthrightsjustice.org) | Website: [www.youthrightsjustice.org](http://www.youthrightsjustice.org)

**Oregon Law Center (OLC) / Legal Aid Services of Oregon (LASO)**

OLC website: [www.oregonlawcenter.org](http://www.oregonlawcenter.org)

LASO website: [www.lawhelp.org/program/694](http://www.lawhelp.org/program/694)

**Oregon State Bar – Lawyer Referral Service**

Tel: (503) 684-3763 / (800) 452-7636

Website: [www.osbar.org](http://www.osbar.org)

**These agencies work in partnership with Disability Rights Oregon to increase the integration and inclusion of all Oregonians with developmental disabilities in their communities.**

**Oregon Council on Developmental Disabilities (OCDD)**

Voice: (503) 945-9941 / (800) 292-4154 | Fax: (503) 945-9947

E-mail: [ocdd@ocdd.org](mailto:ocdd@ocdd.org) | Website: [www.ocdd.org](http://www.ocdd.org)

**University Centers for Excellence in Developmental Disabilities Education, Research, and Service (UCEDDs)**

Oregon Institute on Development & Disability | Oregon Health & Science University

Tel: (503) 494-8364

E-mail: [oidd@ohsu.edu](mailto:oidd@ohsu.edu) | Website: [www.ohsu.edu/oidd](http://www.ohsu.edu/oidd)

Center for Excellence in Developmental Disabilities | University of Oregon | College of Education

Tel: (541) 346-3591 | Fax: (541) 346-2594

E-mail: [uocedd@uoregon.edu](mailto:uocedd@uoregon.edu) | Website: [www.ucedd.uoregon.edu](http://www.ucedd.uoregon.edu)

## Glossary

**Assistive technology** Any kind of technology that makes it easier for someone with a disability to maintain or improve functional independence in activities like learning, working, walking, or speaking.

**Assistive technology service** Any service that directly helps a student with a disability use equipment to maintain or increase capabilities. This includes evaluation services.

**Augmentative communication** Any system that supplements or replaces speech as the primary mode of communication. Examples are sign language, pictures, written language, and electronic devices.

**Behavior plan** A comprehensive plan outlining specific steps to promote a child's success and participation in daily activities and routines. It is a set of instructions for the adults who work with your child. It is **not** a plan for what your child is required to do. The IEP team uses the information from the FBA to develop the behavior plan.

**Continuum of placement** The scope of placements where an IEP can be implemented, ranging from less to more restrictive.

**Due process hearing** A formal administrative proceeding that resembles a trial in many ways. An administrative law judge (ALJ) hears the evidence from both sides and decides the issue.

**Extended School Year (ESY) services** Special education services continued during the summer and/or other times that school is not in session so that a child can maintain the skills learned during the regular school year, as identified on the IEP goals.

**Evaluation** The determination of a child's abilities and disabilities. This includes observations of the child, medical information, information provided by the parents, and testing by specialists. Testing may include health, vision, intelligence, hearing, communication, and motor assessments.

**Expulsion** Long-term exclusion from school.

**Facilitated IEP meeting** An impartial facilitator controls the IEP meeting process when communication between parents and the school district has broken down, allowing the IEP team to make decisions regarding the IEP. IEP facilitation is not a part of IDEA 2004 – school districts are not legally required to provide a facilitated IEP meeting.

**Free Appropriate Public Education (FAPE)** Instruction that is specially designed to meet a child's unique needs, based upon a complete evaluation of the child. All related services necessary to help the child benefit from special education are provided. The child should be educated with students without disabilities as much as possible, in the school the child would attend if they didn't have disabilities, unless the child's IEP requires otherwise. All of the above is provided at no cost to the parents.

**Functional behavior assessment (FBA)** The process of determining the cause, or function, of behavior before developing an intervention intended to address the behavior.

**Early Childhood Special Education (ECSE)** Free, specially designed instruction to meet the unique needs of a pre-school child with a disability, three years of age until the age of eligibility for public school.

**Early Intervention (EI)** Services for children with disabilities from birth until three years of age, by means of an individualized family service plan (IFSP).

**Individualized Educational Program (IEP)** A written plan with goals and objectives developed by a team which includes representatives of the school district, the child's teachers, and the child's parents that is based on the strengths and needs of the child. All participants have equal status in the decision-making process. Other persons who have a direct interest in the child's educational welfare may participate at the request of school district personnel or parents. The IEP is written together by the school district personnel and parents. Each child's IEP must be complete before determining placement and must be reviewed annually. IEPs may be reviewed more often at the request of parents or school district personnel.

**Individualized family service plan (IFSP)** A written plan developed by a team based on the needs of the family and the child, listing the goals and services to be provided by Early Intervention.

**Interim Alternative Educational Placement (IAEP)** A temporary setting where your child can be placed for up to 45 days for violations related to drugs and weapons at school, or for students whose behavior poses a serious risk of harm.

**Least Restrictive Environment (LRE)** The educational placement closest to a regular education environment that allows for interaction with students who do not have disabilities while addressing the specific needs of the individual child with a disability.

**Manifestation Determination** The team process used to decide if a student's behavior or misconduct is directly related to a disability. If the answer is yes, the student cannot be disciplined for that behavior.

**Mediation** Parents and the school district agree to use a third, neutral person called a mediator who is impartial, trained in mediation techniques, and has knowledge of IDEA 2004 to help them resolve conflicts and/or communication problems. It is provided by ODE at no cost to parents or school district.

**Oregon Department of Education (ODE) complaint** A formal process used to solve special education disputes between parents and school districts regarding issues that have occurred in the last calendar year.

**Physical restraint** Restriction of a student's movement by one or more persons holding the student or applying physical pressure upon the student.

**Placement** The combination of the package of services and the setting necessary to educate a child according to IEP goals and objectives – it is more than a physical location. Placement is determined annually upon completion of the IEP, and is reconsidered whenever the IEP is revised, or at the request of parents or school district.

**Present Levels of Academic Achievement & Functional Performance (PLAAPF)** A complete, accurate, and easy to understand description of a child's abilities, strengths, weaknesses, and parental observations, hopes, and concerns. This is a critically important part of the IEP.

**Related services** Special services necessary for a child to benefit from the educational program. Related services include, but are not limited to: transportation, speech therapy, audiology, occupational therapy, physical therapy, hearing and vision services, psychological services, vocational services, social work services, therapeutic reevaluation, rehabilitation counseling, and medical diagnostic and evaluation services.

**Resolution session** A settlement meeting in which parents and the school district try one last time to work out an agreement to avoid a due process hearing within 15 days of a hearing request. The school district can only have any attorney present at the resolution meeting if parents bring an attorney.

**Seclusion** Involuntary confinement of a student alone in a room from which the student is prevented from leaving.

**Special Education** Education designed to meet the unique needs of a child with a disability. Special education may include classroom instruction, physical education, vocational education, transition services, and other specially designed instruction that the child needs.

**Stay-put rule** The right for a child to remain in their current placement after requesting a due process hearing, until an administrative law judge has decided the issue, or until the parents and school district agree to a different placement.

**Supplementary aids and services** Supports that are necessary to carry out the IEP. May include expert consultation, computers, large print books, classroom or individual instructional assistants, and assistive technology services.

**Suspension** Short-term exclusion from school.

**Transition services** Coordinated activities designed to help a student move from high school to post-secondary education, vocational training, supported employment, independent living, and other adult services. These activities must be based on the student's needs, preferences, and interests and include vocational evaluation, community experiences, job development, and daily living skills instruction.

# **Special Education Laws and Where to Find Them**

## **The Individuals with Disabilities Education Improvement Act**

The Individuals with Disabilities Education Improvement Act (IDEIA or IDEA 2004) can be found beginning at 20 U.S.C. § 1400. Federal regulations are at 34 C.F.R. § 300. The IDEA used to be called the Education for All Handicapped Children Act (EAHCA or EHA) or P.L. 94-142.

U.S. Department of Education website: [www.ed.gov](http://www.ed.gov)

IDEA 2004 website: [www.idea.ed.gov](http://www.idea.ed.gov)

U.S. Government Printing Office website: [www.gpo.gov](http://www.gpo.gov)

## **Oregon Special Education Law**

State special education law can be found beginning at Oregon Revised Statutes, ORS Chapter 343 on the Oregon State Legislature website: [www.leg.state.or.us](http://www.leg.state.or.us)

State regulations can be found beginning at Oregon Administrative Rules, OAR Chapter 581 on the Oregon Secretary of State website: [www.sos.state.or.us](http://www.sos.state.or.us)

## **Family Educational Rights and Privacy Act**

The Buckley Amendment is the short name for a federal law known as the Family Educational Rights and Privacy Act (FERPA). This law gives parents and guardians of students under 18 years of age, and all students over 18, the right to see, correct and generally control access to student records. This law can be found beginning at 20 U.S.C. § 1232g. Regulations are found at 34 C.F.R. § 99.

Under FERPA, parents have the right to:

1. Review and get a copy of their child's educational records;
2. Have school records explained by school officials; and
3. Change or explain records that are inaccurate, misleading or a violation of student rights.

For more information, contact:

Family Policy Compliance Office | U.S. Department of Education  
Voice: 1(800) USA-LEARN or 1 (800) 872-5327  
Website: [www.ed.gov](http://www.ed.gov)

## **Section 504 of the Rehabilitation Act of 1973**

Complaints under Section 504 (29 U.S.C. § 794) may be made to the school district or the U.S. Department of Education, Office of Civil Rights, Region X in Seattle.

U.S. Department of Education website: [www.ed.gov](http://www.ed.gov)

Regulations are found beginning at 28 C.F.R. § 41.1.

Electronic Code of Federal Regulations (e-CFR): [www.ecfr.gpoaccess.gov](http://www.ecfr.gpoaccess.gov)

## **The Americans with Disabilities Act**

The Americans with Disabilities Act of 1990 (ADA) prohibits discrimination based on disability in a broad range of programs, activities, and services, whether or not federal funds are involved.

The ADA applies to employment, public services, transportation, public accommodations, and telecommunications. Both the ADA and Section 504 include accessibility standards. This law begins at 42 U.S.C. § 12101.

The ADA's Title II (Subtitle A) applies to local and state government, including public schools. Title II regulations are at 28 C.F.R. Part 35. The U.S. Department of Justice has technical assistance manuals and publications that interpret ADA laws and regulations, as well as yearly supplements.

U.S. Department of Justice ADA website: [www.ada.gov](http://www.ada.gov)

All school districts were required to complete an ADA self-evaluation by January 26, 1993. The self-evaluation must include a review of physical barriers to program access, and necessary steps to make programs accessible. If structural changes are necessary, school districts with 50 or more employees must do a written transition plan that provides for removal of program barriers. The self-assessment and transition plan are public documents. School districts with 50 or more employees must also have a grievance procedure and a 504/ADA compliance officer.

Complaint forms under Title II of the ADA/Section 504 can be found on the ADA Home Page. For more information about filing complaints and general information about the ADA, contact:

U.S. Department of Justice, Civil Rights Division  
Tel: (800) 514-0301 | TTY: (800) 514-0383  
E-mail: [ADA.complaint@usdoj.gov](mailto:ADA.complaint@usdoj.gov)

These laws also may be found at law libraries. Each county courthouse has a law library that is open to the public. Federal publications and other information products are made available for free public use in Federal depository libraries throughout the United States. In addition to the publications, trained librarians are available to assist in their use. For a list of federal depository libraries in Oregon, visit the U.S. Government Printing Office website.

## Abbreviations / Acronyms

ADA	Americans with Disabilities Act	IDEA	Individuals with Disabilities Education Act
ADD	Attention Deficit Disorder	IDEA 2004	Individuals with Disabilities Education Improvement Act
ADHD	Attention Deficit Hyperactivity Disorder	IDEIA	Individuals with Disabilities Education Improvement Act
ALJ	Administrative Law Judge	IDELR	Individuals with Disabilities Education Law Report
AT	Assistive Technology	IEP	Individualized Education Program
CASA	Court-appointed Special Advocate	IFSP	Individualized Family Service Plan
C.F.R.	Code of Federal Regulations	LRE	Least Restrictive Environment
DRO	Disability Rights Oregon	OAR	Oregon Administrative Rules
ECSE	Early Childhood Special Education	ODE	Oregon Department of Education
EI	Early Intervention Services	ORS	Oregon Revised Statutes
ESD	Education Service District	PLAAFP	Present Levels of Academic Achievement and Functional Performance
ESY	Extended School Year	SLD	Specific Learning Disability
FAPE	Free Appropriate Public Education	U.S.C.	United States Code
FAS	Fetal Alcohol Syndrome		
FBA	Functional Behavior Assessment		
FERPA	Family Educational Rights and Privacy Act		

## Legal Citations

A legal citation is a method of identifying the exact location of a law or regulation. It is normally made up of three parts:

1. The volume number;
2. The abbreviation of the name of the book; and
3. The section or page number.

34 C.F.R. § 300.300 would breakdown like this:

1. Volume 34
2. Code of Federal Regulations
3. Section 300.300

20 U.S.C. § 1400 would breakdown as:

1. Volume 20
2. United States Code
3. Section 1400



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