

A-Engrossed
House Bill 3168

Ordered by the Senate July 8
Including Senate Amendments dated July 8

Sponsored by COMMITTEE ON EDUCATION

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Revises special education law to address amendments to federal Individuals With Disabilities Education Act.

Declares emergency, effective July 1, 2005.

A BILL FOR AN ACT

1
2 Relating to special education; creating new provisions; amending ORS 339.115, 339.252, 339.873,
3 343.035, 343.146, 343.151, 343.155, 343.165, 343.167, 343.175, 343.177, 343.287, 343.499, 343.521,
4 419B.220 and 419C.220; repealing ORS 343.149; and declaring an emergency.

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

6 **SECTION 1.** ORS 343.035 is amended to read:

7 343.035. As used in this chapter unless the context requires otherwise:

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

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

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

19 (4) "Developmental delay" means:

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

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

27 (5) "Early childhood special education" means free, appropriate, specially designed instruction
28 to meet the unique needs of a preschool child with a disability, three years of age until the age of

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 eligibility for kindergarten, where instruction is provided in any of the following settings: Home,
2 hospitals, institutions, special schools, classrooms, and community child care or preschool settings,
3 or both.

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

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

8 (b) Selected in collaboration with the parents; and

9 (c) Provided:

10 (A) Under public supervision;

11 (B) By personnel qualified in accordance with criteria established by rules of the State Board
12 of Education; and

13 (C) In conformity with an individualized family service plan.

14 (7) "Individualized education program" means a written statement of an educational program for
15 a child with a disability that is developed, reviewed and revised in a meeting in accordance with
16 criteria established by rules of the State Board of Education for each child eligible for special edu-
17 cation and related services under this chapter.

18 (8) "Individualized family service plan" means a written plan of early childhood special educa-
19 tion, related services, early intervention services and other services developed in accordance with
20 criteria established by rules of the State Board of Education for each child eligible for services un-
21 der this chapter.

22 (9) "Instruction" means providing families with information and skills that support the achieve-
23 ment of the goals and outcomes in the child's individualized family service plan and working with
24 preschool children with disabilities in one or more of the following developmental areas: Communi-
25 cation development, social or emotional development, physical development, including vision and
26 hearing, adaptive development and cognitive development.

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

31 (11) "Order" has the meaning given that term in ORS chapter 183.

32 (12) "Other services" means those services which may be provided to preschool children with
33 disabilities and to their families that are not early childhood special education or early intervention
34 services and are not paid for with early childhood special education or early intervention funds.

35 (13) "Parent" means the parent, person acting as a parent or a legal guardian, other than a state
36 agency, of the child or the surrogate parent. **"Parent" may be further defined by rules adopted
37 by the State Board of Education.**

38 (14) "Preschool children with disabilities" means all children from:

39 (a) Birth until three years of age who are eligible for early intervention services because they
40 are experiencing developmental delay or have diagnosed mental or physical conditions that will re-
41 sult in developmental delay; or

42 (b) Three years of age to eligibility for entry into kindergarten who need early childhood special
43 education services because they are experiencing developmental delay or because they have been
44 evaluated as having one of the conditions listed for school-age children under subsection (1) of this
45 section.

1 (15) "Related services" means transportation and such developmental, corrective and other
2 supportive services as are required to assist a child with disabilities to benefit from special educa-
3 tion, and includes speech-language and audiology services, **interpreting services**, psychological
4 services, physical and occupational therapy, recreation including therapeutic recreation, **social**
5 **work services, school nurse services designed to enable a child with a disability to receive a**
6 **free appropriate public education as described in the individualized education program of the**
7 **child**, early identification and assessment of disabilities in children, counseling services including
8 rehabilitation counseling, orientation and mobility services, [and] medical services for diagnostic or
9 evaluation purposes[. "*Related services*" also includes school health services, social work services in
10 schools] and parent counseling and training. **"Related services" does not include a medical device**
11 **that is surgically implanted or the replacement of a medical device that is surgically im-**
12 **planted.**

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

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

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

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

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

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

34 **SECTION 2.** ORS 343.146 is amended to read:

35 343.146. (1) To receive special education, children with disabilities shall be determined eligible
36 for special education services under a school district program approved under ORS 343.045 and as
37 provided under ORS 343.221.

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

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

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

1 **adopted by the State Board of Education.**

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

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

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

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

10 **SECTION 3.** ORS 343.151 is amended to read:

11 343.151. (1) School districts shall ensure that an individualized education program is developed,
12 **reviewed and revised** for each child with a disability, as defined in ORS 343.035, pursuant to the
13 rules of the State Board of Education.

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

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

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

25 (5) In considering whether to approve an alternate form under subsection (4) of this section, the
26 department shall consider whether the form meets the requirements for the contents of an individ-
27 ualized education program adopted under subsection (2) of this section and whether the form satis-
28 fies the intent of subsection (4) of this section to reduce unnecessary or confusing paperwork. The
29 department shall approve or disapprove an alternate form submitted under subsection (4) of this
30 section within 10 days of receiving the alternate form.

31 **SECTION 4.** ORS 343.155 is amended to read:

32 343.155. The State Board of Education shall establish by rule procedures to protect the rights
33 of every child with a disability who is eligible for special education and every child who there is a
34 reasonable cause to believe has a disability, including:

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

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

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

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

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

45 [*b*] (d) The child reaches the age of majority and has been determined not to have the ability

1 to give informed consent regarding the child's education.

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

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

7 (5) Rules prescribing standards and procedures for disciplinary actions for behavior or miscon-
8 duct of a child with a disability.

9 (6) Other procedural safeguards as required by law.

10 **SECTION 5.** ORS 343.165 is amended to read:

11 343.165. (1) A hearing shall be conducted pursuant to rules of the State Board of Education if:

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

15 (b) The school district requests a hearing to obtain a decision regarding whether its identifica-
16 tion, evaluation, individualized education program or educational placement of the child is appro-
17 priate or whether the district's proposed action is necessary to provide the child with a free
18 appropriate public education.

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

22 [(2)] **(3)(a) Except as provided in paragraph (b) of this subsection,** a hearing described in
23 subsection (1) of this section must be requested within two years after the date of the act or omis-
24 sion that gives rise to the right to request a hearing under subsection (1) of this section.

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

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

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

31 [(3)] **(4)** The State Board of Education shall adopt rules that establish when a school district is
32 obligated to initiate a contested case hearing to ensure that a student with disabilities is provided
33 with a free appropriate public education.

34 [(4)] **(5)** The board's rules in subsection (1) of this section shall be as consistent as possible with
35 the procedures applicable to a contested case under ORS chapter 183. However, the board's rules
36 shall provide that:

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

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

43 [(5)] **(6)** Notwithstanding subsection [(4)] **(5)** of this section, in an expedited hearing the evidence
44 must be disclosed to the other party not later than two business days before the hearing.

45 [(6)] **(7)** The parent shall be entitled to have the child who is the subject of the hearing present

1 at the hearing and to have the hearing open to the public.

2 [(7)] (8) [When either party requests,] An expedited hearing shall be held [in a dispute over a
3 disciplinary action for a child with a disability] if:

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

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

10 [(8)] (9) The hearing shall be conducted by an independent hearing officer appointed by the Su-
11 perintendent of Public Instruction. The hearing officer:

12 (a) Shall not be:

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

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

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

17 (b) **Shall possess:**

18 (A) **Knowledge of, and the ability to understand, the provisions of state and federal spe-**
19 **cial education laws, regulations and legal interpretations by federal and state courts;**

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

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

24 **SECTION 6.** ORS 343.167 is amended to read:

25 343.167. (1) If the finding at the hearing held under ORS 343.165 is that the identification, eval-
26 uation and educational placement by the district are appropriate and that the child is being provided
27 a free appropriate public education, the hearing officer shall decide in support of the determination
28 of the district.

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

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

34 (a) **Impeded the child's right to a free appropriate public education;**

35 (b) **Significantly impeded the parents' opportunity to participate in the decision-making**
36 **process regarding the provision of a free appropriate public education to the child; or**

37 (c) **Caused a deprivation of educational benefits.**

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

40 [(3)] (5) The decision shall be entered not later than 45 days after the request for hearing is filed
41 unless an extension has been granted by the hearing officer at the request of the parent or the
42 school district. Copies of the decision shall be sent to the parent and to the school district accom-
43 panied by a statement describing the method of appealing the decision.

44 [(4)] (6) In expedited hearings conducted pursuant to ORS 343.165 [(7)] (8), the State Board of
45 Education shall adopt rules that require a [decision within 45 days, without exceptions or

1 *extensions*] **hearing within 20 school days of the date the hearing is requested and a determi-**
2 **nation within 10 school days after the hearing.**

3 [(5)] (7) Pursuant to rules of the State Board of Education, the Superintendent of Public In-
4 struction shall bill the school district for all reasonable costs connected with the appointment of an
5 independent hearing officer and the conduct of a due process hearing. The district shall make pay-
6 ment to the Department of Education for the cost of the hearing within 30 days of receipt of the
7 billing.

8 **SECTION 7.** ORS 343.175 is amended to read:

9 343.175. (1) A decision under ORS 343.165 is final unless the parent or the school district files
10 a civil action under subsection (2) of this section.

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

13 (3) In any action brought under this section, the court shall receive the records from the ad-
14 ministrative proceeding, shall hear additional evidence at the request of a party and, basing its de-
15 cision on the preponderance of the evidence, shall grant such relief as the court determines is
16 appropriate.

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

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

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

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

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

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

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

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

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

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

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

44 (9) Attorney fees may not be awarded relating to any meeting of the individualized education
45 program team unless the meeting is convened as a result of an administrative proceeding under ORS

1 343.165, or as a result of judicial action. **A resolution session is not considered a meeting con-**
2 **vened as a result of an administrative hearing or judicial action, or an administrative hearing**
3 **or judicial action.**

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

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

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

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

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

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

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

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

17 (C) A proposed resolution of the problem.

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

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

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

21 **SECTION 8.** ORS 343.177 is amended to read:

22 343.177. (1) During the pendency of any administrative or judicial proceedings concerning the
23 identification, evaluation or educational placement of the child or the provision of a free appropriate
24 public education to the child, the child shall remain in the then current educational program
25 placement.

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

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

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

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

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

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

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

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

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

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

6 **(b) The child continues to be entitled to a free appropriate public education under ORS**
7 **339.252, although the education may be provided in an interim alternative educational setting;**
8 **and**

9 **(c) The child shall remain in the interim alternative educational setting pending the de-**
10 **cision of a hearing officer or until the expiration of the school district's determination of**
11 **duration of the change in placement under paragraph (a) of this subsection, whichever oc-**
12 **curs first.**

13 [(3)] (4) For the purposes of subsection (2)(b) of this section, a decision of a hearing officer under
14 ORS 343.165 that agrees with the child's parents that a change of placement is appropriate shall be
15 treated as an agreement between the school district and the parents.

16 **SECTION 9.** ORS 343.287 is amended to read:

17 343.287. (1) There is created a State Advisory Council for Special Education, consisting of
18 members appointed by the Superintendent of Public Instruction. Members shall be representative of
19 the geographic areas of this state.

20 (2) Members must include:

21 (a) Individuals with disabilities;

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

23 [(c) *Educators of children with disabilities;*]

24 **(c) Teachers;**

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

28 (e) Administrators of programs for children with disabilities;

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

31 (g) Representatives of other state agencies involved in the financing or delivery of related ser-
32 vices;

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

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

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

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

40 [(k)] **(L) Other persons associated with or interested in the education of children with disabili-**
41 **ties.**

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

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

45 (a) Review aspects of the statewide program of education of children with disabilities and advise

1 the Superintendent of Public Instruction and the Department of Education on such programs;

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

4 (c) Comment publicly on any rules proposed for adoption by the Department of Education con-
5 cerning special education;

6 (d) Assist the state in developing and reporting data and evaluations concerning special educa-
7 tion;

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

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

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

14 **SECTION 10.** ORS 343.499 is amended to read:

15 343.499. (1)(a) There is created the State Interagency Coordinating Council.

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

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

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

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

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

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

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

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

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

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

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

39 (i) At least one council member shall represent the Department of Consumer and Business Ser-
40 vices.

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

42 (k) At least one council member shall represent the Child Development and Rehabilitation Cen-
43 ter of the Oregon Health and Science University.

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

1 **(m) At least one council member shall be a representative designated by the state coor-**
2 **dinator for homeless education.**

3 **(n) At least one council member shall represent the state child welfare agency responsi-**
4 **ble for foster care.**

5 **(o) At least one council member shall represent the state agency responsible for chil-**
6 **dren's mental health.**

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

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

13 (3) An individual appointed to represent a state agency that is involved in the provision of or
14 payment for services for preschool children with disabilities under subsection (2)(e) and (h) to (k)
15 of this section shall have sufficient authority to engage in making and implementing policy on behalf
16 of the agency.

17 (4) The State Interagency Coordinating Council shall:

18 (a) Advise the Superintendent of Public Instruction and the State Board of Education on unmet
19 needs in the early childhood special education and early intervention programs for preschool chil-
20 dren with disabilities, review and comment publicly on any rules proposed by the State Board of
21 Education and the distribution of funds for the programs and assist the state in developing and re-
22 porting data on and evaluations of the programs and services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (a) Conduct hearings and forums;

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

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

20 (d) Hire staff; and

21 (e) Obtain the services of such professional, technical and clerical personnel as may be neces-
22 sary to carry out its functions.

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

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

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

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

33 **SECTION 11.** ORS 343.521 is amended to read:

34 343.521. (1) In accordance with rules of the State Board of Education, the agencies under con-
35 tract with the Department of Education to provide early childhood special education or early
36 intervention services must ensure that an individualized family service plan is developed for each
37 preschool child with a disability, **as defined in ORS 343.035**, who is determined eligible for early
38 childhood special education or early intervention services and for the child's family. The Department
39 of Education or its contractors shall not be responsible for the cost of other services of the indi-
40 vidualized family service plan that are not early childhood special education or early intervention
41 services. [*The individualized family service plan must be developed in a meeting conducted within:*]

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

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

45 [*(2) The meeting arrangements must be made with, and written notice provided to, the parents and*

1 *other participants within a reasonable time prior to the meeting date. Meetings must be conducted:]*

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

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

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

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

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

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

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

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

19 *[(6)]* **(2) The State Board of Education shall establish by rule the contents of an individualized**
20 **family service plan and the procedures for the development, review and revision of an indi-**
21 **vidualized family service plan.**

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

26 **SECTION 12.** ORS 339.252 is amended to read:

27 339.252. (1) As used in this section, "child with a disability" has the meaning given that term
28 in ORS 343.035.

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

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

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

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

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

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

44 **(6) School personnel may consider any unique circumstances on a case-by-case basis**
45 **when determining whether to order a change in placement for a child with a disability who**

1 **violates a code of student conduct.**

2 **SECTION 13.** ORS 339.873 is amended to read:

3 339.873. (1) A [*kindergarten*] **preschool** through grade 12 public school administrator, teacher,
4 counselor or nurse may not recommend to a parent or legal guardian of a student that the student
5 seek a prescription for a medication that is prescribed with the intent of affecting or altering the
6 thought processes, mood or behavior of the student.

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

12 [(2)] (3) Nothing in this section:

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

18 (b) Relieves a school district of the duty to identify, locate and evaluate students with disabili-
19 ties.

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

21 419B.220. [(1) *As a part of the investigation, before making a child a ward of the court, a prelim-*
22 *inary evaluation shall also be conducted to determine if the child may be eligible for special education*
23 *as provided in ORS chapter 343. This preliminary evaluation of disabling conditions shall not consti-*
24 *tute a final determination of the child's eligibility for special education but shall be used as the basis*
25 *for appointing a surrogate to protect the child's due process rights pursuant to ORS chapter 343.]*

26 [(2)] (1) **Upon the request of any party,** the court shall appoint a surrogate for a child [*when*
27 *that child is made a ward of the court if*] **who is temporarily or permanently in the custody of,**
28 **or committed to, a public or private agency through the action of the juvenile court if:**

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

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

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

36 (2) **A surrogate appointed under this section:**

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

39 (b) **May not have a conflict of interest that would interfere with the surrogate repre-**
40 **senting the special education interests of the child; and**

41 (c) **Shall have knowledge and skills that ensure that the surrogate can adequately rep-**
42 **resent the child in special education decisions.**

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

44 419C.220. [(1) *As a part of the investigation, before finding a youth to be within the jurisdiction*
45 *of the court, a preliminary evaluation shall be conducted to determine if the youth may be eligible for*

1 *special education as provided in ORS chapter 343. This preliminary evaluation of disabling conditions*
2 *does not constitute a final determination of the youth's eligibility for special education but shall be used*
3 *as the basis for appointing a surrogate to protect the youth's due process rights pursuant to ORS*
4 *chapter 343.*]

5 [(2)] (1) **Upon the request of any party**, the court shall appoint a surrogate for a **youth or**
6 **youth offender who is temporarily or permanently in the custody of, or committed to, a public**
7 **or private agency through the action of the juvenile court** if:

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

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

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

16 (2) **A surrogate appointed under this section:**

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

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

21 (c) **Shall have knowledge and skills that ensure that the surrogate can adequately rep-**
22 **resent the youth or youth offender in special education decisions.**

23 **SECTION 16.** ORS 339.115 is amended to read:

24 339.115. (1) Except as provided in ORS 339.141, authorizing tuition for courses not part of the
25 regular school program, the district school board shall admit free of charge to the schools of the
26 district all persons between the ages of 5 and 19 residing therein. The person whose 19th birthday
27 occurs during the school year shall continue to be eligible for a free and appropriate public educa-
28 tion for the remainder of the school year. [However,] A district school board may admit [other]
29 nonresident persons, determine who is not a resident of the district and [may] fix rates of tuition for
30 nonresidents.

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

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

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

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

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

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

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

42 (a) A local correctional facility as defined in ORS 169.005;

43 (b) A regional correctional facility as defined in ORS 169.620; or

44 (c) A Department of Corrections institution as defined in ORS 421.005.

45 (5) An otherwise eligible person under subsection (2) of this section whose 21st birthday occurs

1 during the school year shall continue to be eligible for a free appropriate public education for the
2 remainder of the school year.

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

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

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

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

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

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

26 **SECTION 17. ORS 343.149 is repealed.**

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

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

31 **(a) Procedural inadequacies occurring on or after the effective date of this 2005 Act; and**

32 **(b) Expedited hearings held on or after the effective date of this 2005 Act.**

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

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

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

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

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