

CHAPTER 25

AN ACT

HB 4067

Relating to developmental delays; amending ORS 343.035; and prescribing an effective date.

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

SECTION 1. ORS 343.035 is amended to read:

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

(1) "Child with a disability" means a school-age child who is entitled to a free appropriate public education as specified by ORS 339.115 and who requires special education because the child has been evaluated as having one of the following conditions as defined by rules established by the State Board of Education:

- (a) Intellectual disability;
- (b) Hearing impairment, including difficulty in hearing and deafness;
- (c) Speech or language impairment;
- (d) Visual impairment, including blindness;
- (e) Deaf-blindness;
- (f) Emotional disturbance;
- (g) Orthopedic or other health impairment;
- (h) Autism;
- (i) Traumatic brain injury; [or]
- (j) Specific learning disabilities[.]; or
- (k) Developmental delay, if the child is in third grade or lower.**

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

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

(4) "Developmental delay" means:

(a) Delay, at a level of functioning and in accordance with criteria established by rules of the State Board of Education, in one or more of the following developmental areas:

- (A) Cognitive development;
- (B) Physical development, including vision and hearing;
- (C) Communication development;
- (D) Social or emotional development; or
- (E) Adaptive development; or

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

(5) "Early childhood special education" means instruction that is:

(a) Free, appropriate and specially designed to meet the unique needs of a preschool child with a disability;

(b) Provided from three years of age until the age of eligibility for kindergarten; and

(c) Provided in any of the following settings:

(A) The home, a hospital, an institution, a special school, a classroom or a community child care setting;

(B) A preschool; or

(C) A combination of a setting described in subparagraph (A) of this paragraph and a preschool.

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

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

(b) Selected in collaboration with the parents; and

(c) Provided:

(A) Under public supervision;

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

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

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

(8) "Individualized family service plan" means a written plan of early childhood special education, related services, early intervention services and other services developed in accordance with criteria established by rules of the State Board of Education for each child eligible for services under this chapter.

(9) "Instruction" means providing children and families with information and skills that support the achievement of the goals and outcomes in the child's individualized family service plan and working with preschool children with disabilities in one or more of the following developmental areas:

- (a) Communication development;
- (b) Social or emotional development;
- (c) Physical development, including vision and hearing;
- (d) Adaptive development; and
- (e) Cognitive development.

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

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

(12) "Other services" means those services which may be provided to preschool children with disabilities and to their families that are not early child-

hood special education or early intervention services and are not paid for with early childhood special education or early intervention funds.

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

(14) “Preschool child with a disability” means a child from:

(a) Birth until three years of age who is eligible for early intervention services because the child is experiencing developmental delay or has a diagnosed mental or physical condition that will result in developmental delay; or

(b) Three years of age to eligibility for entry into kindergarten who needs early childhood special education services [*because the child is experiencing developmental delay or*] because the child has been evaluated as having one of the conditions listed [*for a school-age child*] under subsection (1) of this section.

(15)(a) “Related services” means transportation and such developmental, corrective and other supportive services as are required to assist a child with a disability to benefit from special education, including:

- (A) Speech-language and audiology services;
- (B) Interpreting services;
- (C) Psychological services;
- (D) Physical and occupational therapy;
- (E) Recreation, including therapeutic recreation;
- (F) Social work services;
- (G) School nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child;
- (H) Early identification and assessment of disabilities in children;
- (I) Counseling services, including rehabilitation counseling;
- (J) Orientation and mobility services;
- (K) Medical services for diagnostic or evaluation purposes;
- (L) Parent counseling and training; and
- (M) Assistive technology.

(b) “Related services” does not include a medical device that is surgically implanted or the replacement of a medical device that is surgically implanted.

(16) “School district” means a common or union high school district that is charged with the duty or contracted with by a public agency to educate children eligible for special education.

(17) “Service coordination” means the activities carried out by a service coordinator to assist and enable a preschool child with a disability and the child’s family to receive the rights, procedural safeguards and services that are authorized under the state’s early intervention and early childhood special education programs and to coordinate access to other services designated on the individualized family service plan.

(18) “Special education” means specially designed instruction that is provided at no cost to parents to meet the unique needs of a child with a disability. “Special education” includes instruction that:

(a) May be conducted in the classroom, the home, a hospital, an institution, a special school or another setting; and

(b) May involve physical education services, speech-language services, transition services or other related services designated by rule to be services to meet the unique needs of a child with a disability.

(19) “Transition services” means a coordinated set of activities for a child with a disability that:

(a) Is designed to be within a results-oriented process;

(b) Is focused on improving the academic and functional achievement of the child to facilitate the child’s transition from school to post-school activities, including post-secondary education, competitive employment, independent living and community inclusion;

(c) Is based on the individual child’s needs, taking into account the child’s preferences and interests; and

(d) May be special education, or related services, and may include earning credit at a community college or public university listed in ORS 352.002.

(20) “Unaccompanied homeless youth” has the meaning given that term in the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11434a(6).

(21) “Ward of the state” means a child who is temporarily or permanently in the custody of, or committed to, a public or private agency through the action of the juvenile court. “Ward of the state” may be further defined by rules adopted by the State Board of Education.

SECTION 2. This 2018 Act takes effect on July 1, 2019.

Approved by the Governor March 16, 2018

Filed in the office of Secretary of State March 21, 2018

Effective date July 1, 2019