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Background Brief on ...

# Special Education

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

For students identified as having a disability, an Individualized Education Program (**IEP**) must be prepared by a special education committee, required by law to consist of a representative of the school district, the child's teacher, someone who is familiar with the evaluation process that is used, and the child's parents. Under certain circumstances, the student may also participate in developing the plan.

## History of Special Education

Prior to 1973, some states and local school boards had laws, policies, and regulations covering the education of children with special needs. Many children stayed in general education classrooms and were allowed to fail. Little attention was given to the students' special needs. Some were put into classes for the "retarded" and some were institutionalized. Children in wheelchairs were considered "fire hazards" and were forbidden admission to the neighborhood schools. Some students with severe disabilities were kept at home because school districts refused to serve them.

In the late 1960s, the parents and advocates of children with special needs joined together to protest the lack of services for disabled students. The Pennsylvania Association for Retarded Citizens (PARC 1971) sued for equal access to public education on behalf of 14 children with mental retardation. *The PARC v. Commonwealth of Pennsylvania* class action suit, decided on behalf of plaintiffs, granted children with developmental disabilities the right to a free public education and became a precedent for future cases. In the same year, the *Mills v. Board of Education* case won the same

guarantees for all children with disabilities in Washington, D.C.

These and other, lesser well-known federal and state cases, coupled with the newly active disabled community, were the catalysts for passage of the Vocational Rehabilitation Act (1973), the civil rights act for people with disabilities. The portion of the Act that affects the education of students with disabilities is known commonly as Section 504. The Act states that institutions receiving federal funds cannot exclude people with disabilities from their programs. Section 504 preceded the 1975 passage and implementation of the Education for All Handicapped Children Act (**EAHC**, P.L. 94-142). The legislation and its accompanying regulations were extremely important to qualifying families with school-age children, because their children were guaranteed a “free, appropriate, public education” in the “least restrictive environment.” This law has become increasingly important in the current special education environment, as well as in recent debates about how to meet the educational needs of students with special needs.

The EAHC Act was succeeded by and renamed the Individuals with Disabilities Education Act (**IDEA**) in 1990. This federal legislation amplifies and clarifies state and local responsibility for the education of children with disabilities, spelling out the requirements for the identification, evaluation, educational programs, and rights of children with disabilities. This law grants parents significant influence in decision-making concerning their child’s educational program.

The reauthorized and amended IDEA was signed into law in December 2004. The law addresses better communication regarding disputes with parents, greater flexibility in writing IEP’s, and greater focus on transitions from high school. In addition, it aims to better coordinate special education requirements with the No Child Left Behind Act (**NCLB**). Requirements were clarified that link special education to the general curriculum and to statewide testing programs. One identified challenge has been to align the two laws’ very

different philosophical approaches, with NCLB being focused on all children and IDEA being focused on children with disabilities. Also NCLB emphasizes a global view of closing the achievement gap of all demographic groups of pupils in specific levels, while IDEA emphasizes the individual child.

## **Why Is Special Education an Issue?**

### *Expense:*

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

The costs for a single high-cost special education student can be very difficult for a small school district to absorb. Adding to the expense of increasing special education enrollments, the court-ordered list of services that schools must provide for students with disabilities has increased. For instance, the Supreme Court ruled that schools must pay for any medical services—except those provided by a medical doctor—needed for a disabled child to attend school. When the federal law was enacted, it was expected that federal funds would pay up to 40 percent of the excess costs; the current share of Oregon’s total costs, just exceeds half of the amount anticipated by the law, even with federal IDEA funds available under the federal American Recovery and Reinvestment Act of 2009.

### *Parental Advocacy:*

According to a National Council on Disability report, many states have ignored the federal law and found that enforcement is often the burden of parents who must invoke formal complaint procedures and request due process hearings to obtain the services and supports to which their children are entitled. Some parents believe that state departments of education are biased on the side of school districts in the dispute resolution process, leading to adversarial and tense relationships between parents and school personnel.

*Lack of trained specialists:*

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

*Over-identification of students needing special services:*

Some concerns have been raised that students might be misidentified as disabled, such as children with behavioral problems, those who were never taught to read, and foreign language students. Others suspect schools over-identify special education students to gain additional funding. Still others question why a higher percentage of minority students are identified for special education.

**How Many Oregon Students Qualify for Special Education Services?**

In the 2009-2010 school year, the ODE found 13 percent of Oregon students qualified for some sort of special education service. The percentage of special education students has been steadily growing.

**School Age Special Education Students**

1995	1996	1997	1998	1999
57,652	59,843	63,097	65,523	67,638

2000	2001	2002	2003	2004
69,141	70,902	71,875	70,824	71,393

2005	2006	2007	2008	2009
71,517	71,834	72,051	72,846	73,509

The number of Oregon students receiving special education services through the IDEA has increased from 54,952 in 1992-1993 to 73,509 in 2009-2010 a 33.8 percent increase.

**Special Education in Oregon**

The ODE oversees the delivery of special education services to children and oversees a

number of education programs. The ODE must investigate written complaints that allege violations of federal special education law.

*How the Process Works*

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

**Early Intervention/Early Childhood Special Education (EI/ECSE)**

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

Children who receive early childhood special education range in age from three years to entry into public kindergarten and have disabilities that range from mild to severe. They have been determined to need these services because they experienced a developmental delay or have been evaluated as having a school-age disability such as vision impairment, mental retardation, or autism. Services a child may receive include evaluation, speech therapy, physical therapy, vision and hearing services, and assistive technology.

Local school districts are responsible for identifying pre-school age children in need of

services. The ODE contracts with education service districts to supply those services.

### **Schools for the Deaf and Blind**

The Oregon School for the Blind (**OSB**) was established by the Legislative Assembly in 1873 and served students with visual impairments with educational needs beyond those for which a local school district and regional program could provide.

House Bill 2834 (2009) closed the OSB as of September 1, 2009. The measure required that plans be developed for each student that offer educational services substantially equivalent to the level, type, and frequency of services offered when the student was enrolled in OSB except that residential services need not be included.

The measure directed the Department of Administrative Services (DAS) to sell the real property associated with the OSB with proceeds, following reimbursement of costs associated with appraisal and sale, to be deposited into the Education Stability Fund. The measure also created the Blind and Visually Impaired Student Fund to hold appropriations to the DAS to assist blind and visually impaired students and supplement resources already provided within other state and local programs. The measure allowed the superintendent to designate one of the regional programs that provides special education to blind and visually impaired students to provide statewide coordination and technical assistance related to activities paid for by the fund.

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

The school offers a range of curriculum and provides individually designed instruction for students leading to a variety of post-high school options, including college, competitive employment, and supported work. In addition to

the regular program, the school provides living skills instruction in residence halls, career education, athletics, clubs, and leadership training opportunities.

### **Hospital Programs**

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

### **Funding Special Education**

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

#### *The State School Fund*

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

The double weight was estimated to be the average cost for these students. School districts may not receive the double weight for more than 11 percent of their students without a waiver from the ODE. This is to inhibit districts from "over identifying" special education students and receiving more state aid than is warranted. However, with the increase in this population, the state average is now about 13.5 percent.

### *High Cost Disability Grant*

Some students with disabilities require costly services, far exceeding their double weighting in the funding formula. Districts may apply for reimbursement for service costs greater than \$30,000 per student. The 2005 Legislative Assembly removed a sunset provision and made the high cost disability grant program permanent. The 2007 Legislative Assembly raised the fund cap from \$12 million to \$18 million.

### *Federal Funds*

The Maintenance of Effort requirement in the IDEA of 2004 requires that each district meet the documentation standard of expending local and state funds for special education at the same or higher level as the district did the previous year. The Maintenance of Effort requirement ensures that IDEA, Part B funds provided for the purposes of the IDEA are used to supplement and not supplant local, state, and other federal funds. To demonstrate compliance, each district in Oregon submits certified annual expenditure reports to the ODE. An independent audit firm, under ODE contract, reviews the special education expenditure portions of these reports. The ODE must also demonstrate Maintenance of Effort each biennium.

### **State Advisory Council for Special Education**

The State Advisory Council for Special Education (**SACSE**) was created to review aspects of statewide programs in special education and advise the Superintendent of Public Instruction and the State Board of Education on unmet needs in special education. Membership includes: individuals with disabilities; parents or guardians of children or youth with disabilities; educators; state and local education officials; administrators of programs for children; and youth with disabilities and other persons associated with or interested in special education. A majority of members must be individuals with disabilities or parents of children with disabilities.

### **Special Education Initiatives**

In an effort to support districts in determining special education services to students, the ODE has focused on three primary initiatives:

1. Response to Intervention as a systematic way to assess student performance, design learning strategies and refer only those students not making progress to special education;
2. Positive Behavior Support as a systematic way to determine behavioral expectations and to assure that the proper special education behavior support gets to those students who need it the most; and
3. Autism Model Classrooms, pre-K-12, are being created statewide to address the service and training needs of students with autism and their families. By creating a statewide direct support to students, families and teachers, the need to move closer to services will be eliminated and families will be able to remain in their communities to receive the necessary support for their child.

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