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Background Brief on...

# Special Education

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## Background

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 and statute law, specialized educational delivery systems, and legal processes.

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 was 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 who were deaf or blind sometimes attended special schools. Children in wheelchairs were considered "fire hazards" and were forbidden admission to 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 began to join 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, which was decided on behalf of the plaintiffs, granted developmentally disabled children the right to a free public education, and became a precedent for future cases. In the same year in Washington, D.C., the *Mills v. Board of Education* case won the same guarantees for all children with disabilities in Washington.

These and other, less well-known federal and state cases, coupled with a newly active disability 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 families with school-age children, because their children were guaranteed a "free, appropriate, public education" in the "least restrictive environment." Section 504 has become increasingly important in the current special education environment, including recent debates about how to meet the educational needs of students with special needs.

The Vocational Rehabilitation Act was followed by the Education for All Handicapped Children Act, P.L. 94-142 in 1975, which was succeeded by and renamed the Individuals with Disabilities Education Act (I.D.E.A.) 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 children's educational programs.

### Why Is Special Education an Issue?

*Expense:* When Congress enacted federal law 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, often at the expense of the general education program. 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 disabled students has increased. For instance, the Supreme Court recently 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 costs; the current share of Oregon's costs, 17 percent, is the highest percentage funded by the federal government to date. The 2003-05 budget for the Oregon Department of Education (ODE) assumes \$206.2 million in federal funds for special education grants to local districts and

other local programs. (This amount may increase once the federal budget affecting the state's 2004-05 fiscal year is finalized.)

*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 their children are entitled to under the law. 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, the body entrusted to license teachers, reports a shortage of special education teachers. Special education teachers testified during the 1999 Legislative Session that state and federal paperwork requirements were 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 behavior problems or those who were never taught how to read. Others suspect schools over-identify special education students to gain additional funding. Others question why a higher percentage of minority students are placed in special education classes.

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

In the 2003-04 school year, the Oregon Dept. of Education (ODE) found 12.8 percent of Oregon students qualified for some sort of special education service. The number of special education students has been steadily growing.

#### School Age Special Education Students

1993	1994	1995	1996	1997
55,014	56,116	57,652	59,843	63,097

1998	1999	2000	2001	2002
65,523	67,638	69,141	70,902	71,875

While the school population as a whole increased from 510,122 in 1992 to 554,071 in 2002, a 7.9% increase, the special education population grew 25% over the same time period.

### **Special Education in Oregon**

The Oregon Department of Education oversees the delivery of special education services to children and oversees a number of education programs. The department must investigate written complaints that allege violations of federal special education law.

#### **How the Process Works**

1. Parent, school personnel, or student requests evaluation for services. If the school district refuses, it must give the requestor notice of their rights.
2. Evaluation is given and reviewed.
3. If services are denied, the requestor may ask for an independent evaluation, at district expense.
4. If all agree that services are appropriate, the Individual Education Program is planned. The IEP lists any special services the child needs, including goals the child is expected to achieve in one year, and objectives or benchmarks to note progress.
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—who receive early intervention services have a need for services because of a delay in any one of a number of developmental areas, including cognitive, physical, communication development, self-help and psychosocial 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 need these services because they experience a developmental delay or have been evaluated as having one of the school-age disabilities,

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 to the Oregon Department of Education; the state then contracts with Education Service Districts, school districts, and private entities to supply those services.

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

The Oregon School for the Blind (OSB) was established by the legislature in 1873 and serves students with visual impairments who have educational needs beyond those which the local school district and regional program provide. A student may be placed at the School for the Blind after the local school district, in conjunction with regional program staff, and the student's parents, identify the student's instructional and service needs and evaluate the availability of resources through the local and regional programs.

The Oregon School for the Deaf (OSD) is 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 (usually in conjunction with regional services staff) when the needs and services as described in the child's IEP cannot be provided locally. OSD offers a full 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 its residence halls, career education, athletics, clubs, and leadership training opportunities, such as student government and the Junior National Association of the Deaf. The older residential students can live in dormitory apartments and are responsible for budgeting, cooking and housekeeping.

### **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 the students include tutoring during hospitalization to maintain their educational goals, instruction and related services which 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 or GED program completion. The students at Emanuel Head Injury Unit and Emanuel Acute Care, Shriners, and Oregon Health and Sciences University are primarily children hospitalized for acute or chronic medical conditions requiring extended hospital care. The students served at Oregon State Hospital represent children 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, and with federal funds.

#### *The State School Fund*

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

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% 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%.

#### *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 \$25,000 per student. The fund is capped at \$12 million per year. This grant sunsets at the end of 2004-05 the school year; the legislature will reevaluate it when more data are available.

#### *Federal Funds*

The Maintenance of Effort requirement in the Individuals with Disabilities Education Act Amendments of 1997 continues to require that each district meet the documentation standard of expending local and state funds for special education in a year 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. Each district in Oregon submits certified annual expenditure reports to the Oregon Department of Education. An independent audit firm under ODE contract reviews the special education expenditure portions of these reports.

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

The State Advisory Council for Special Education 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 may include individuals with disabilities; parents or guardians of children or youth with disabilities; educators of children and youth with disabilities; state and local education officials; administrators of programs for children and youth with disabilities and other persons associated with or interested in special education. One member must be the state special education chairperson for the Confederation of School Administrators.

### **Special Education Task Force**

House Bill 2598 (2001) created a task force on special education and school finance. The task force was directed to examine special education delivery and funding and to make recommendations to the legislature on improving the service to children. A report was written and delivered to the Legislature and is available from the ODE web site:

<http://www.ode.state.or.us/sped/advicou/taskforce.htm>

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