



PRE-K - 12 SPECIAL EDUCATION

LPRO: LEGISLATIVE POLICY AND RESEARCH OFFICE

Special education refers to the provision of education for students with disabilities. The system is governed by both federal and state law, has specific funding structures, contends with specific issues, and is served by several state programs.

FEDERAL LAW

The rights of students with disabilities are enshrined in the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act.¹ IDEA codifies state and local responsibility for educating children with specific disabilities by requiring that schools provide a free, appropriate public education (FAPE) to all students with those disabilities in the least restrictive environment (LRE), usually interpreted as mainstream classrooms whenever possible. IDEA also establishes requirements for identification and evaluation of children with disabilities. Additionally, the law grants parents significant influence over the educational programs for their children.

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IDEA requires that for each student identified as having a disability and being eligible for special education services or specialized instruction, a team of educators and parents must prepare an Individualized Education Program (IEP). The IEP team must include the child’s teacher, a school district representative, someone familiar with the evaluation process used, and the child’s parents. Under certain circumstances, the student may also participate in development of the IEP.

Students who have disabilities, but who are not eligible for specialized instruction or services, receive accommodations under Section 504 of the Rehabilitation Act of 1973. These students have “504 Plans” to document their accommodations but are not counted as students with disabilities in the Oregon Department of Education’s (ODE) statistical reporting.

¹ [20 U.S. Code Sect. 1400](https://sites.ed.gov/idea/statute-chapter-33/subchapter-i/1400) *et seq.*, available at <https://sites.ed.gov/idea/statute-chapter-33/subchapter-i/1400>; [29 U.S. Code sect. 701](https://uscode.house.gov/view.xhtml?req=(title:29%20section:701%20edition:prelim)) *et seq.*, available at [https://uscode.house.gov/view.xhtml?req=\(title:29%20section:701%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:29%20section:701%20edition:prelim)); and [42 U.S. Code Section 12101](https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title42-section12101&num=0&edition=prelim) *et seq.*, available at <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title42-section12101&num=0&edition=prelim>

Title II of the Americans with Disabilities Act (ADA) protects students with disabilities from discrimination in school settings. Table 1 compares the requirements of the three relevant federal laws.

Table 1: Federal Laws Protecting the Rights of Students with Disabilities

	ADA	Section 504	IDEA
Definition / Eligibility	A person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment.	Same as ADA	A child age three through 21 with one of the following disabilities who needs specially designed instruction: autism, deaf-blindness, emotional disturbance, hearing impairment, intellectual disability, multiple disabilities, orthopedic impairments, other health impairment, specific learning disability, speech or language impairment, traumatic brain injury, or visual impairment.
Documentation	No formal written documentation required.	No documentation required, but students generally receive a written 504 plan.	Individualized Education Program (IEP) that identifies the services the school will provide.
Entitlement	Accommodations	Accommodations	Specially designed instruction and/or accommodations
Setting	Most integrated setting appropriate	Least restrictive environment (LRE)	Least restrictive environment (LRE)
Due Process	School districts must have a coordinator and grievance procedures.	School districts must have a coordinator and adopt grievance procedures that incorporate due process standards that provide for the prompt and equitable resolution of complaints.	Parents can file complaints with the school district or the state.
Enforcement	U.S. Department of Education	U.S. Department of Education	State education agency and U.S. Department of Education

Source: Adapted from the [ADA National Network](#)

While Section 504 and the ADA both apply in higher education settings, the IDEA is not applicable in higher education.

OREGON LAW

State law codifies the rights of students and the obligations of school districts in Chapter 343 of the Oregon Revised Statutes. Oregon’s definition of “child with a disability” adds developmental delays to the definition established in IDEA, for children ages three through nine.²

Governance

The Superintendent of Public Instruction is tasked with general supervision and administration of all special education programs, while the State Board of Education is tasked with developing rules for these programs.³ The Superintendent of Public Instruction can withhold special education funds from school districts that do not comply with state law.⁴ In 2022, the State Board of Education adopted a general supervision rule clarifying ODE’s authority to monitor whether local education providers are in compliance with federal and state special education laws.⁵ While ODE monitors special education, the primary means of enforcing state and federal special education law in Oregon is the complaints process.⁶

Boards and Commissions. Under the provisions of ORS 343.287, the State Advisory Council for Special Education (SACSE) reviews aspects of statewide programs in special education and advises the State Board of Education on unmet needs. 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.

A separate Interagency Coordinating Council advises, assists, and oversees the provision of special education services to preschool-age children.⁷ In addition, school districts may, but are not required to, establish local advisory councils on special education.⁸

General Requirements

Under state law, school districts must conduct individual evaluations to determine a child’s eligibility.⁹ State law requires school districts to identify, locate, and evaluate all resident children who may have disabilities and need special education after obtaining

² [ORS 343.035 \(2021\)](#)

³ [ORS 343.041](#), [ORS 343.045](#), [ORS 343.055 \(2021\)](#)

⁴ [ORS 343.183 \(2021\)](#)

⁵ [Oregon Administrative Rule 581-015-2015](#)

⁶ [ORS 343.041 \(2021\)](#), [OAR 581-015-2030](#)

⁷ [ORS 343.499 \(2021\)](#)

⁸ [ORS 343.293 \(2021\)](#)

⁹ [ORS 343.146 \(2021\)](#)

parental consent.¹⁰ Specific eligibility requirements are established in administrative rule.¹¹ Generally, the fact that a student has a disability does not automatically qualify them for special education. In order to qualify, documentation such as assessment results, classroom observations, or teacher reports must show that the student's disability has an adverse impact on their educational outcomes. In the event that eligibility determinations are contested, state law requires access to mediation, resolution sessions, or hearings.¹² However, parties may file a civil action if they are still dissatisfied with the result.¹³

State law requires school districts to conduct a functional behavioral assessment and develop a behavior intervention plan within 45 school days of receiving parental consent to conduct the assessment if a special education student engages in behavior that puts others around them at risk of serious bodily injury.¹⁴

Special education may be provided on a local, county, or regional basis for children with low-incidence disabilities, including visual impairments, hearing impairments, deafblindness, orthopedic impairments, autism spectrum disorder, or traumatic brain injuries.¹⁵ In addition, state law requires education service districts to include special education in their local service plans for school districts and allows school districts to contract with other school districts or with education service districts to provide special education to their students.¹⁶

Oregon law limits the use of abbreviated school days. School districts may not place students on abbreviated school days without parents' or guardians' consent.¹⁷

While not specific to students enrolled in special education, Oregon law allows for modified and extended diplomas for students who are unable to meet the full set of academic content standards for a high school diploma when given reasonable modifications and accommodations.¹⁸ A student's medical condition can be an eligibility consideration for awarding a modified or extended diploma.

FUNDING

Special education is funded by both the state and federal governments.

State School Fund

Since eligible students with special needs are guaranteed specialized instruction, the State School Fund (SSF) formula provides a double weight for these students. This double weighting has been in effect since the establishment of the formula in 1991 and

¹⁰ [ORS 343.157, ORS 343.164 \(2021\)](#)

¹¹ [OAR 581-015-2127 through 2180](#)

¹² [ORS 343.155 \(3\), ORS 343.165, ORS 343.167 \(2021\)](#)

¹³ [ORS 343.175 \(2021\)](#)

¹⁴ [ORS 343.154 \(2021\)](#)

¹⁵ [ORS 343.236 \(2021\)](#)

¹⁶ [ORS 334.175 \(2021\), ORS 343.221 \(2021\)](#)

¹⁷ [ORS 343.161\(2\) \(2021\)](#)

¹⁸ [ORS 329.451\(7\) and \(8\) \(2021\)](#)

is based on an estimated average cost for providing special education. However, school districts may not receive the double weight for more than 11 percent of district students without a waiver from ODE. The legislature established this limit to discourage school districts from “over identifying” special education students and receiving more state aid than is warranted. However, with the increase in this population, the statewide percentage of students with disabilities currently stands at around 14 percent.

High-Cost Disability Grant

Some students with disabilities require costly services, exceeding their double-weighting in Oregon’s funding formula. Oregon law establishes a high-cost disability grant that allows school districts to apply for reimbursement for service costs greater than \$30,000 per student. For the 2021-2023 biennium, the Legislative Assembly allocated \$110 million for this purpose. Of that funding, \$40 million comes from the Fund for Student Success generated by the state’s corporate activity tax, and \$70 million comes from General Fund revenues.

Federal Funds

The Maintenance of Effort requirement in the 2004 IDEA requires each school district to meet the documentation standard of expending local and state funds for special education at the same or higher level expended the previous year. This requirement ensures that IDEA funds are used to supplement and not supplant local, state, and other federal funds. To demonstrate compliance, each school district in Oregon submits certified annual expenditure reports to ODE. An independent audit firm, under ODE contract, reviews the special education expenditure portions of these reports. ODE must also demonstrate Maintenance of Effort each biennium. Oregon is also required to maintain financial effort similar to local school districts under IDEA. This is called State Maintenance of Financial Support (SMFS). For the 2021-2023 biennium, Oregon received \$280.9 million in IDEA grants to support special education.

PROVISION OF SPECIAL EDUCATION IN OREGON

Demographics

The percentage of students enrolled in special education has grown steadily, as indicated in Table 2.

Table 2: Students Enrolled in Special Education, 2016-2021

School Year	Total Special Education Enrollment	Percentage of Total Student Population
2016-2017	77,964	13.5%
2017-2018	78,867	13.6%
2018-2019	80,436	13.8%
2019-2020	82,485	14.2%
2020-2021	79,782	14.1%

Source: Legislative Policy and Research Office
Data: Oregon Department of Education

When disaggregated by race and ethnicity, statewide figures in Table 3 show that some historically underserved student groups are identified at higher rates than the statewide average. For example, in the 2021-2022 school year, while 14.2 percent of all students were enrolled in Special Education, 17.8 percent of Black or African American students were enrolled.

Table 3: Percentage of Racial/Ethnic Student Groups Enrolled in Special Education, 2017-2022

Student Group	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022
Asian	6.9%	7.1%	7.3%	7.3%	7.2%
Black / African American	17.7%	17.9%	18.6%	18.1%	17.8%
Hispanic / Latino / Latina	14.5%	14.7%	15.0%	15.0%	14.9%
American Indian / Alaska Native	19.0%	19.6%	20.3%	20.3%	21.2%
Native Hawaiian / Pacific Islander	9.8%	9.9%	10.0%	10.3%	10.0%
White	13.3%	13.6%	14.0%	14.1%	14.1%
Multi-Racial	13.5%	13.6%	13.7%	13.8%	14.0%
Statewide Average	13.6%	13.8%	14.2%	14.1%	14.2%

Source: Legislative Policy and Research Office

Data: Oregon Department of Education

When compared to percentages of overall student population, enrollment in special education disaggregated by race and ethnicity shows some groups enrolled at higher rates than their percentage of the overall student population, while some groups are enrolled at lower rates. Table 4 shows the percentage of special education students from each race/ethnicity category compared to that category's percentage of total student enrollment for 2021. Native American students are enrolled in special education at a rate double that of their presence in the overall student population, while Black students are enrolled at a rate 50 percent higher, Native Hawaiian and Pacific Islander students are enrolled at a rate 40 percent higher, Hispanic and Latino/Latina students at a rate eight percent higher, and Asian students at a rate 50 percent lower.

Table 4: Percentage Enrollment in Special Education Compared to Percentage of Total Student Population, 2021

Race/Ethnicity	As a percentage of students with disabilities (IDEA) (2021)	As a percentage of total student population (2021)
Hispanic/Latino	26%	24%
American Indian or Alaska Native	2%	1%
Asian	2%	4%
Black or African American	3%	2%
Native Hawaiian / Pacific Islander	1%	0.7%
White	60%	60%
Multi-Racial	7%	7%

Source: Legislative Policy and Research Office

Data: Oregon Department of Education

Special Education Programs

The Oregon Department of Education oversees the delivery of special education services to children through a number of education programs. Generally, school districts are the providers of special education services to qualifying students. Services can include specific supports provided inside a general education classroom, delivery of specialized instruction in which educators pull a student or small groups of students out of their general education classroom, or in some cases specialized classrooms. State law permits school districts to contract out special education services to education service districts (ESDs), which can result in ESD staff working in neighborhood schools or student placement in specialized classrooms located at the ESD itself.

Early Intervention/Early Childhood Special Education (EI/ECSE). Children from birth to age three may receive early intervention services for developmental delays 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 may be determined on the basis of medical diagnosis of a condition likely to result in developmental delay. Early intervention services can be provided to babies and toddlers at home, in a community setting, or one-on-one with a service provider.

Early childhood special education is preschool-based schooling available for children with disabilities ranging from mild to severe, from the age of three to entry into public kindergarten. Need for services is based on identification of developmental delays or conditions such as vision impairment, intellectual disability, 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 preschool-age children in need of services. ODE then contracts with education service districts to supply those services.

According to the Oregon Department of Education, only 57 percent of eligible children received an adequate level of early intervention services in 2021. For early childhood special education, 77 percent of low-need children received an adequate level of early childhood special education, but only 13 percent of high-need children received an adequate level of services. Additionally, only 45 percent of children with disabilities were served in inclusive settings for early childhood special education.¹⁹

Special Residential Programs. Oregon operates some residential programs for students with specific disabilities.

- Providence Child Center is a residential pediatric nursing facility located in Portland that offers educational services for medically fragile children and young people from infancy to 21 years old. It can accommodate a maximum of 58 students. [House Bill 4009](#) (2014) made ODE responsible for education of students at that facility and created a distinct funding stream for the facility.
- The Oregon School for the Deaf (OSD) was established by the Legislative Assembly in 1870 as a residential program for students ages five 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 Oregon School for the Blind (OSB) was established by the Legislative Assembly in 1873 and served students with visual impairments whose educational needs exceeded those that a local school district and regional programs could provide. In 2009, [House Bill 2834](#) closed OSB as of September 1, 2009, and students are now served through their local school districts.

Hospital Programs. The primary purpose of hospital programs is to provide instruction to students while they are hospitalized, either short-term or for a longer period. 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 leading to high school completion. The students at Emanuel Head Injury Unit and Emanuel Acute Care, Shriners, and the Oregon Health and 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.

¹⁹ Oregon Department of Education, [Early Intervention/Early Childhood Special Education Update](#). House Early Childhood Committee, June 9, 2021, available at <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/CommitteeMeetingDocument/244873>.

ISSUES IN SPECIAL EDUCATION

Several issues are perennially discussed relating to special education.

Cost

Since Congress enacted federal laws guaranteeing students' rights, federal funds appropriated have been inadequate to cover school districts' costs. Since students are entitled to services under the law, state funding and school district budget decisions must make up the difference. When Congress enacted the predecessor to IDEA, it anticipated paying 40 percent of school districts' costs; federal funding has not kept pace with that expectation. For federal fiscal year 2022, Oregon received the amounts identified in table 5.

Table 5: Federal Special Education Funds Awarded to Oregon, FY 2022

IDEA Part B, Section 611 (K-12)	\$148,491,349
IDEA Part B, Section 619 (Preschool)	\$4,162,302
IDEA Part C (Early Intervention)	\$5,245,675 (est.)

Source: Legislative Policy and Research Office

Data: U.S. Department of Education

Enforcement

A series of National Council on Disability reports issued in 2018 found significant challenges in enforcing the provisions of IDEA.²⁰ In Oregon, enforcement is constrained by the lack of authority expressly given in statute to the Oregon Department of Education (ODE), State Board of Education, or Superintendent/Deputy Superintendent of Public Instruction. In addition, state law requires complaint processes at the school district level prior to any complaint to ODE.

In 2019, Disability Rights Oregon filed a class-action lawsuit against the Oregon Department of Education alleging that the department failed to enforce the rights of students with disabilities when local education providers denied them access to full school days.²¹ In 2022, court-ordered neutral experts completed their report documenting significant problems with school districts' compliance.²²

Workforce shortages

During the 2021-2022 and 2022-2023 school years, school administrators have reported acute staffing shortages in special education, among both licensed teachers and classified staff. Discussion in the Senate Education Committee on November 15,

²⁰ National Council on Disability, *Individuals with Disabilities Education Act Report Series*. February 7, 2018. Available at <https://ncd.gov/publications/2018/individuals-disabilities-education-act-report-series-5-report-briefs>

²¹ *Complaint, J.N. et al v. Oregon Department of Education*, January 22, 2019 (2019 WL 316208) available at <https://static1.squarespace.com/static/5d645da3cf8e4c000158e55a/t/5ea77c6579dd71446eef13b1/1588034663590/JN-v-ODE-Final-Complaint-January-22-2019.pdf>

²² David Bateman, Jennifer Cline, Sonja de Boer, and Stacey Gahagan. *J.N. et al v. Oregon Department of Education – Report of the Neutral Fact Finder*, June 30, 2022 available at <https://static1.squarespace.com/static/5d645da3cf8e4c000158e55a/t/62be33ae7fd6b84676d37a8d/1656632242039/Neutral+Expert+Report.pdf>

2021, focused on the impact on students, including school districts that provide less than a full school day or week to students with disabilities, citing staffing shortages.²³ However, state and federal laws require that students with disabilities have the same access to school days as their nondisabled peers, unless their individualized needs, as written into their IEPs, require otherwise. District and school administrators' ability to reassign staff to special education in order to keep students in school and maintain compliance with the law may depend on the provisions of local collective bargaining agreements.

Disproportionate Discipline

Compared to the statewide average, students enrolled in special education are much more likely to be suspended or expelled than their nondisabled peers.²⁴ The 2018-2019 school year is the last full in-person school year for which data is available. That year, while 6.5 percent of students statewide were suspended or expelled, the rate of suspension or expulsion for students with disabilities was 11.9 percent.

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²³ [Oregon State Legislature, Senate Education Committee. K-12 School Reopening. November 15, 2021. https://olis.oregonlegislature.gov/liz/mediaplayer/?clientID=4879615486&eventID=2021111005](https://olis.oregonlegislature.gov/liz/mediaplayer/?clientID=4879615486&eventID=2021111005)

²⁴ Oregon Department of Education, [Oregon Statewide Report Card, 2018-2019](https://www.oregon.gov/ode/schools-and-districts/reportcards/Documents/rptcard2019.pdf). Salem, OR, 2019. p. 21. https://www.oregon.gov/ode/schools-and-districts/reportcards/Documents/rptcard2019.pdf