

House Bill 2670

Sponsored by Representative MCINTIRE; Senator FREDERICK (Pre-session filed.)

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 **as introduced**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: Expands the types of TBI that cause a child to qualify for special education. (Flesch Readability Score: 65.7).

Broadens the description of what constitutes a traumatic brain injury for determining when a child is considered a child with a disability for purposes of qualifying for special education.

Directs the Department of Human Services to provide, when applicable, services related to education when an individual has a brain injury.

A BILL FOR AN ACT

1
2 Relating to education for children with a traumatic brain injury; amending ORS 343.035, 343.236 and
3 410.750.

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

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

6 343.035. As used in this chapter unless the context requires otherwise:

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

11 (a) Intellectual disability;

12 (b) Deafness or being hard of hearing;

13 (c) Speech or language impairment;

14 (d) Visual impairment, including blindness;

15 (e) Deafblindness;

16 (f) Emotional behavior disability;

17 (g) Orthopedic impairment;

18 (h) Other health impairment;

19 (i) Autism spectrum disorder;

20 (j) Traumatic brain injury **caused by an internal or external source**;

21 (k) Specific learning disabilities; or

22 (L) Developmental delay, if the child is three through nine years of age.

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

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

27 (4) "Developmental delay" means:

28 (a) Delay, at a level of functioning and in accordance with criteria established by rules of the

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 State Board of Education, in one or more of the following developmental areas:

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

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

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

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

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

14 (c) Provided in any of the following settings:

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

17 (B) A preschool; or

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

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

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

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

24 (c) Provided:

25 (A) Under public supervision;

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

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

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

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

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

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

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

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

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

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

12 (14) "Preschool child with a disability" means a child from:

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

16 (b) Three years of age to eligibility for entry into kindergarten who needs early childhood spe-
 17 cial education services because the child has been evaluated as having one of the conditions listed
 18 under subsection (1) of this section.

19 (15)(a) "Related services" means transportation and such developmental, corrective and other
 20 supportive services as are required to assist a child with a disability to benefit from special educa-
 21 tion, including:

22 (A) Speech-language and audiology services;

23 (B) Interpreting services;

24 (C) Psychological services;

25 (D) Physical and occupational therapy;

26 (E) Recreation, including therapeutic recreation;

27 (F) Social work services;

28 (G) School nurse services designed to enable a child with a disability to receive a free appro-
 29 priate public education as described in the individualized education program of the child;

30 (H) Early identification and assessment of disabilities in children;

31 (I) Counseling services, including rehabilitation counseling;

32 (J) Orientation and mobility services;

33 (K) Medical services for diagnostic or evaluation purposes;

34 (L) Parent counseling and training; and

35 (M) Assistive technology.

36 (b) "Related services" does not include a medical device that is surgically implanted or the re-
 37 placement of a medical device that is surgically implanted.

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

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

45 (18) "Special education" means specially designed instruction that is provided at no cost to

1 parents to meet the unique needs of a child with a disability. “Special education” includes instruc-
 2 tion that:

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

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

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

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

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

13 (c) Is based on the individual child’s needs, taking into account the child’s preferences and in-
 14 terests; and

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

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

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

22 **SECTION 2.** ORS 343.236 is amended to read:

23 343.236. (1)(a) The Superintendent of Public Instruction may provide special education on a local,
 24 county or regional basis without regard to county boundaries in all areas of the state for children
 25 who have a low incidence disability. Children with a low incidence disability include, but are not
 26 limited to, children who:

27 (A) Have a visual impairment;

28 (B) Are deaf or hard of hearing;

29 (C) Are deafblind;

30 (D) Have an orthopedic impairment;

31 (E) Have autism spectrum disorder; or

32 (F) Have traumatic brain injury **caused by an internal or external source.**

33 (b) The superintendent shall designate one of the regional programs that provides special edu-
 34 cation to children who are blind or visually impaired to provide statewide coordination and techni-
 35 cal assistance related to the provision of services described in ORS 346.315 (2).

36 (c) The program designated under paragraph (b) of this subsection may receive moneys from the
 37 Blind and Visually Impaired Student Fund established under ORS 346.315 and distribute those mon-
 38 eys to other regional programs.

39 (2) The Superintendent of Public Instruction may operate and administer a local, county or re-
 40 gional program of special education or the superintendent may contract for the operation and ad-
 41 ministration of the program with a school district or an education service district.

42 (3) The State Board of Education by rule shall:

43 (a) Establish eligibility criteria and educational standards for the programs described in sub-
 44 section (1) of this section and those programs in the school operated under ORS 346.010.

45 (b) Develop a method for funding the programs described in subsection (1) of this section in a

1 manner that is consistent with state and federal law.

2 (4) A school district that contracts to provide a program under this section shall be paid for the
3 state-approved program as determined and funded by the Legislative Assembly. Contracting school
4 districts are authorized to negotiate supplemental programs with participating school districts.

5 **SECTION 3.** ORS 410.750 is amended to read:

6 410.750. (1) As used in this section, "brain injury" means damage to the brain from an internal
7 or external source that results in total or partial impairment in critical functions, including but not
8 limited to attention, memory, reasoning, problem solving, processing speed, decision-making, learn-
9 ing, perception, sensing, speech and language, motor and physical function or psychosocial behavior,
10 and that is of sufficient severity to produce partial or total disability.

11 (2)(a) The Department of Human Services shall provide the following services to individuals with
12 brain injuries, delivered in a person-centered manner and in collaboration with the individual:

13 (A) Service coordination;

14 (B) Resource navigation;

15 (C) Advocacy; and

16 (D) Options counseling.

17 (b) Services provided under this subsection:

18 **(A) Must include the services identified in paragraph (a) of this subsection for children**
19 **who qualify for early intervention services or special education and related services under**
20 **ORS chapter 343.**

21 **(B) May not include institutionalization, hospitalization or medication.**

22 (3) The department is authorized, but not required, to contract with or provide grants to third
23 parties to provide services described in subsection (2) of this section.

24 (4)(a) The department shall convene a Brain Injury Advisory Committee to advise the depart-
25 ment in the development of brain injury programs, services described in subsection (2) of this section
26 and other activities that the department may develop to address the needs of individuals with brain
27 injuries.

28 (b) The membership of the advisory committee must consist of between six and 12 individuals
29 with knowledge and experience in brain injuries and be broadly representative of the geographic
30 areas of this state. At least one-third of the members must have experienced a brain injury.

31 (c) Members of the advisory committee are entitled to compensation and actual and necessary
32 travel or other expenses incurred in the performance of their official duties as specified for qualified
33 members of boards or commissions in ORS 292.495.

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