5/4/2025

Re: HB 2670-A changing the state definition for special education identification under Traumatic Brain Injury

Dear Chair Frederick, Vice-Chair Weber, and Senate Education Committee Members,

I have been a school psychologist in Oregon districts for a quarter of a century and am a past president of the Oregon School Psychologists Association.

Traumatic brain injury (TBI) was added to the Individuals with Disabilities Education Act (IDEA) in 1990 along with autism. I have done many TBI special education evaluations in my career and have done many more evaluations and eligibilities for services under learning disabilities, health impairments, orthopedic impairments and other categories resulting from non-traumatic brain injuries or neurological conditions. I evaluated a student who had undergone blood-brain barrier chemotherapy who had learning impacts and was eligible for special education. I've evaluated children who had cerebral palsy or spastic diplegia secondary to prenatal stroke who also qualified. While these were not TBIs, this did not change their eligibility status or the nature of the individualized plans they received.

There seems to be a mistaken belief in the creation and passage of this bill through the House that there is an undiscovered and unserved group of students in our schools because the Federal Individuals with Disabilities Education Act provides a category specifically for TBI that is defined as an external force injury that is not congenital, degenerative, or induced by birth trauma. It is also unfortunate that the organizations and professionals responsible for this work in our schools were not consulted or included in the consideration of this highly unusual statutory change.

The actual fact is, if a student has an impairment that meets any one or more of the disability categories defined under the federal and matching state rules, and they have adverse impacts that require special education, they qualify for services based on their needs and not defined or confined by the disability category(ies) they fall under. For example, Federal regulators wrote in the IDEA 2006 comments when there was a suggestion to create a separate disability category for Fetal Alcohol Syndrome:

> ***"Special education and related services are based on the identified needs of the child and not on the disability category in which the child is classified.*** *We, therefore, do not believe that adding a separate disability category for children with FAS is necessary..."* (Federal Register/Vol. 71, No. 156 – Page 46549).

The Office of Special Education Programs has reiterated this principle many times in guidance issued since then (e.g. Letter to Rowland, OSEP 2019).

Oregon's existing rules also state that in determining a student's eligibility for special education, *"...the team need only qualify the child under one disability category. However, the child must be*

evaluated in all areas related to the suspected disability or disabilities, and the child's IEP must address all of the child's special education needs." (OAR 581-015-2120 (4))

There is also a mistaken belief that special education categorical identification is a "diagnosis". While some IDEA categories may be more closely aligned with similar medical diagnostic frameworks like deaf-blindness, autism and TBI, the schools are not engaged in a diagnostic process aligned with some specific medical treatment like you would do with cancer.

Unlike the thousands of diagnoses of both symptoms and conditions you may find in medicine, special education operates under 12 intentionally broad categories or "buckets" under which a student may receive an Individualized Education Program (IEP). There are actually 13 in federal law, but Oregon, like a number of other states, does not have a "multiple disabilities" category. Other than that, all of Oregon's definitions for these categories align with the federal language counterpart.

In considering the rationale for this bill, and the claim that a "brain injury" does not qualify a student for services if it is not "traumatic", I would also refer the committee to the current federal and state definition of a specific learning disability:

> *"The term means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities,* ***brain injury, minimal brain dysfunction****, dyslexia, and developmental aphasia."*

If a student has a brain injury but does not fall under the TBI criteria, they may still fall under a specific learning disability (SLD), an other health impairment (OHI), an orthopedic impairment (OI), speech or language impairment (SLI) or any other category resulting from that injury or neurological condition that impacts their education.

I would also like to address the myths presented during the House Education public hearing oral and written testimony and the actual facts.

Myth: *"This bill is really just a follow-through [from a few years ago] to be able include those kids that have had both an internal and external, so any accidents whether they be sports, skiing accidents, car accidents, whatever it might be that would have there be a traumatic brain injury to a student be able to access interventions services and support services. So, for me this bill is just closing that loop to be able to include those kids that we know need help and we're really not being able to accommodate them in our schools."* (Rep McIntire)

Fact: It is unclear what Rep McIntire was referring to, but she actually just defined students who would qualify already under TBI resulting from accidents because that was the purpose behind the creation of the category in 1990. For the "follow-up", I'm presuming that Rep McIntire is referring to SB13 and SB16 that simply renamed a couple of the terms of disability categories such as changing "communication disorder" back to matching the federal naming of "speech or language

impairment" and changing Oregon's term for the federal category of "emotional disturbance" to "emotional behavior disability." Regardless of those changes, the underlying definitions and criteria for qualification did not change, unlike this current proposal, and as someone who closely participated in the rule adoptions, there was no discussion or consideration of changes to TBI at the time.

Myth: Written testimony by Disability Rights Oregon claimed in its support of this bill that Colorado used a "brain injury" definition that was similar to what was being proposed here, presumably as evidence this was true in other states saying, *"That statute would make Oregon's definition clearer and more in line with the current consensus."* (Ben Gerewitz, DRO submitted 2/5/25)

Fact: It is unclear where this individual obtained information claiming to support some alternative consensus on the matter, but Colorado's Department of Education makes its definition of TBI available publicly on its website, using the same definition as is in Federal regulation. https://www.cde.state.co.us/cdesped/sd-tbi

Myth: *"We have previously had issues with being able to get alignment with services because an internal TBI was not recognized as a TBI; they are better known as an acquired TBI, they're being served under OHI which creates a lot more paperwork and a lot more navigating to be able to get the same services as student getting services with TBIs."* (Daniel Langston, Eagle Point)

Fact: As I wrote previously, services and placement in special education is based on need, not on the categorical identification under IDEA. Students may have multiple underlying medical conditions but have a single educational qualification. Nothing about the category can limit or deny a service if the IEP team deems it is required for the child to access their regular education. As a professional who has done this paperwork for over 25 years, the claim that OHI has "more paperwork" is factually incorrect. In fact, a TBI evaluation is far more comprehensive, requiring evidence around both pre and post-injury performance, specific medical documentation around the injury, and more. Some of these students are also being served under other categories such as specific learning disability, orthopedic impairments, or vision/hearing impairments.

Myth: When Rep Hudson asked the individuals providing testimony whether this proposed definition aligned with federal IDEA language, the testimony in reply was, *"Yes it does align in the research I've done on this bill; it's pretty much just a gap in Oregon and the educational system and I can provide you with that information"* (Terrissa Langston, healthcare business partner consultant).

Fact: It is unclear what research that testimony was based on, or this individual's expertise in this area, but it is factually incorrect. The IDEA Regulations (2006) **and** Oregon rules under OAR 581-015-2000 define traumatic brain injury the same as below:

> *Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both,*

that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

The proposed new language would make Oregon the only state to adopt a definition of TBI different than federal language. Testimony also submitted by Oregon brain injury research institutions also oppose this change.

There are likely a number of costly and negative impacts this statutory change would have going forward if passed:

1) ODE would have to go through a new set of rule adoptions. By way of history, ODE took 4 years to implement the relatively minor changes posed in the 2019 SB13 and SB16 bills. This change would be far more substantial.
2) Students who currently are identified under TBI would be reevaluated under a different set of criteria. In cases where we would normally just continue a student's eligibility under TBI based on the history and review of data, they would have to be comprehensively re-evaluated under the new rules.
3) Students identified under a new "brain injury" category who moved to any other state could experience a delay in services while the new state tries to establish the student's eligibility using the existing federal definition.
4) This would require retraining staff, changing electronic student information systems, determining whether regional services would be significantly impacted, changing state reporting requirements, and many other technical and bureaucratic processes resulting in significant costs in time and staff effort.

Ultimately, the proponents of this bill provided **no** evidence that there is some population of students who are not being identified for special education services, or receiving inappropriate services, because they have a "brain injury" and not a "traumatic brain injury." The proponents did not consult with the organizations and experts who actually conduct special education evaluations or provide services. The proponents provided factually inaccurate information in their testimony to the House Education Committee and clearly misunderstand special education laws and rules. This bill would result in confusion and a significant waste of educational time and resources for absolutely no appreciable improvement to the availability of student services or improved outcomes.

Thank you in advance for your consideration.

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Nationally Certified School Psychologist