

Proposed OAR language related to Developmental Delay

OAR 581-015-2000

...

(4)(a) "Children with disabilities" or "students with disabilities" means children or students evaluated in accordance with OAR 581-015-2100 through 581-015-2180 as having autism spectrum disorder; communication disorder; deafblindness; **developmental delay**; emotional disturbance; hearing impairment, including deafness; intellectual disability; orthopedic impairment; other health impairment; specific learning disability; traumatic brain injury; or visual impairment, including blindness, and who, by reason thereof, need special education and related services.

(A) If it is determined through an appropriate evaluation in accordance with OAR 581-015-2100 through 581-015-2180, that a child has one of the disabilities identified in section (4) above, but only needs a related service and not special education, the student is not a student with a disability under this OAR.

(B) If, consistent with OAR 581-015-2000 (29), the related service required by the child is considered special education rather than a related service, the child would be determined to be a child with a disability under this OAR.

(b)The terms used in the definition of a child with a disability are defined as follows:

(A) "Autism Spectrum Disorder" means a developmental disability that includes persistent deficits in social communication and social interaction across multiple contexts; restricted, repetitive patterns of behavior, interests, or activities. Characteristics are generally evident before age three but may not become fully evident until social demands exceed limited capacities, or may be masked by learned strategies. Characteristics cause educationally and developmentally significant impairment in social, occupational, or other important areas of current functioning. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance. However, a child who qualifies for special education under the category of autism spectrum disorder may also have an emotional disturbance as a secondary disability if the child meets the criteria under emotional disturbance. The term "Autism Spectrum Disorder" is equivalent to the term "autism" used in ORS 343.035 and in 34 CFR §300.8.

(B) "Communication Disorder" means the impairment of speech articulation, voice, fluency, or the impairment or deviant development of language comprehension and/or expression, or the impairment of the use of a spoken or other symbol system that adversely affects educational performance. The language impairment may be manifested by one or more of the following components of language: morphology, syntax, semantics, phonology, and pragmatics.

(C) "Deafblindness" means having both hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that the child cannot be accommodated in special education programs designed solely for students having hearing or visual impairments.

(D) "Developmental delay" means 1.5 standard deviations or more below the mean in two or more of the following developmental areas for Early Childhood special education and school-age special education (ages 3-9), that adversely affects a child's educational performance:

(i) Cognitive development;

(ii) Physical development;

(iii) Communication development;

(iv) Social or emotional development; and

(v) Adaptive development.

~~(D)~~~~(E)~~ "Emotional Disturbance" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

(i) An inability to learn that cannot be explained by intellectual, sensory, or health factors;

(ii) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(iii) Inappropriate types of behavior or feelings under normal circumstances;

(iv) A general pervasive mood of unhappiness or depression; or

(v) A tendency to develop physical symptoms or fears associated with personal or school problems;

(vi) The term includes schizophrenia but does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.

~~(E)~~~~(F)~~ "Hearing Impairment" means a hearing condition, whether permanent or fluctuating, that adversely affects a child's educational performance. The term includes those children who are hard of hearing or deaf.

~~(F)~~~~(G)~~ "Intellectual Disability" means significantly sub average general intellectual functioning, and includes a student whose intelligence test score is two or more standard deviations below the norm on a standardized individual intelligence test, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, and that adversely affects a child's educational performance.

~~(G)~~~~(H)~~ "Orthopedic Impairment" means a motor disability that adversely affects the child's educational performance. The term includes impairments caused by an anomaly, disease or other conditions (e.g., cerebral palsy, spinal bifida, muscular dystrophy or traumatic injury).

~~(H)~~~~(I)~~ "Other Health Impairment" means limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment, that:

(i) Is due to chronic or acute health problems (e.g. a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, attention deficit disorder, attention deficit hyperactivity disorder, leukemia, Tourette's syndrome or diabetes); and

(ii) Adversely affects a child's educational performance.

~~(H)~~~~(J)~~ "Specific Learning Disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or do mathematical calculations. Specific learning disability includes conditions such

as perceptual disabilities, brain injury, dyslexia, minimal brain dysfunction, and developmental aphasia. The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, intellectual disability, emotional disturbance, or environmental, cultural, or economic disadvantage.

~~(H)~~(K) "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. The term includes open or closed head injuries resulting in impairments in one or more areas, including cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not include brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

~~(K)~~(L) "Visual Impairment" means a visual impairment that, even with correction, adversely affects a child's educational performance. The term includes those children who are partially sighted or blind.

OAR 581-015-xxxx (To align with 581-015-2130 to 581-015-2130)

Developmental Delay

(1) If a child is suspected of having a developmental delay, the following evaluation must be conducted:

(a) Developmental History as defined in OAR 581-015-2000(8);

(b) At least one norm referenced, standardized test in each area of suspected delay;

(c) At least one additional procedure to confirm the child's level of functioning in each area of suspected delay;

(d) At least one 20-minute observation of the child;

(e) Review of previous testing, medical data, and parent reports;

(f) Any additional assessments necessary to determine the impact of the suspected disability:

(A) On the child's educational performance for a school-age child; or

(B) On the child's developmental progress for a preschool child; and

(g) Other evaluative information as necessary to determine eligibility.

(2) To be eligible for special education services as a child with a developmental delay, the child must meet all of the following minimum criteria:

(a) 1.5 or more standard deviations below the mean in two or more of the developmental areas:

(A) Cognitive development;

(B) Physical development;

(C) Communication development;

(D) Social or emotional development;

(E) Adaptive development.

(3) To be eligible for special education services as a child with a developmental delay, the eligibility team must also determine that:

(a) For a child age 3 to 5, the child's disability has an adverse impact on the child's developmental progress; or

(b) For a child age 5 through 9, the student's disability has an adverse impact on the student's educational performance.

(c) The child needs special education services as a result of the delay.

(d) The team has considered the child's special education eligibility, and determined that the eligibility is not due to a lack of appropriate instruction in reading, including the essential components of reading instruction (phonemic awareness, phonics, vocabulary development; reading fluency/oral reading skills; and reading comprehension strategies); and is not due to a lack of appropriate instruction in math; and is not due to limited English proficiency; and is not due to another disability.

581-015-2805

(3) Transition from ECSE to School-age Special Education Services:

(a) For children previously eligible in a disability category under OAR 581-015-2130 through 581-015-2180,
beBefore a child reaches the age of eligibility for public school, the district must:

~~(A) For children previously eligible with a developmental delay and suspected of having a disability under OAR 581-015-2130 through 581-015-2180, conduct an evaluation and determine eligibility for school age special education services; or~~

~~(B) For children previously eligible in a disability category under OAR 581-015-2130 through 581-015-2180,~~
continue the child's eligibility for school age special education services. The school district may conduct a reevaluation and reconsider eligibility for special education services.

(b) The school district and contractor or subcontractor must hold a meeting during the year before the child is eligible to enter public school:

(A) To determine steps to support the child's transition from ECSE to public schooling or other educational setting;
and

(B) For a child eligible for school age special education services, to develop an IEP that is in effect at the beginning of the school year.

581-015-2790

(1) General. A public agency must conduct an evaluation or reevaluation process in accordance with this rule before:

- (a) Determining that a child is a child with a disability under OAR 581-015-2795; or
- (b) Determining that a child continues to have a disability under OAR 581-015-2795; or
- (c) Changing the child's eligibility; or
- (d) Terminating the child's eligibility as a child with a disability.

(2) Request for initial evaluation. Consistent with the consent requirements in OAR 581-015-2735, a parent or public agency may initiate a request for an initial evaluation to determine if a child qualifies for ECSE services.

(3) When initial evaluation must be conducted.

(a) An initial evaluation must be conducted to determine if a child is eligible for ECSE services when a public agency suspects or has reason to suspect that:

(A) The child has a disability that has an adverse impact on the child's education or development; and

(B) The child may need ECSE services as a result of the disability.

(b) The public agency must designate a team to determine whether an initial evaluation will be conducted.

(A) The team must include the parent and at least two professionals, at least one of whom is a specialist knowledgeable and experienced in the evaluation and education of children with disabilities.

(B) The team may make this decision without a meeting. If a meeting is held, parents must be invited to participate in accordance with OAR 581-015-2750.

(4) Evaluation planning. Before conducting any evaluation or reevaluation, the public agency must conduct evaluation planning in accordance with OAR 581-015-2115.

(5) Notice and consent.

(a) Before conducting any evaluation or reevaluation, the public agency must provide notice to the parent in accordance with OAR 581-015-2745 that describes any evaluation procedures the agency proposes to conduct as a result of the evaluation planning process.

(b) Before conducting any evaluation or reevaluation, the public agency must obtain written consent for evaluation in accordance with OAR 581-015-2735 and 581-015-2740.

(c) If the public agency refuses an evaluation or reevaluation requested by the parent, the public agency must provide the parent with prior written notice under OAR 581-015-2745.

(d) Parents may challenge the public agency's refusal to conduct an evaluation or reevaluation under OAR 581-015-2870.

(6) ECSE evaluation requirements: For a child suspected of being eligible for ECSE services, the following evaluation must be conducted:

(a) For a child suspected of having any of the following disabilities, an evaluation in all areas of the suspected disability following OAR 581-015-2130 through 581-015-2180, respectively:

(A) Autism spectrum disorder;

(B) Communication disorder;

(C) Deafblindness;

(D) Emotional disturbance;

(E) Hearing impairment;

(F) Intellectual Disability;

(G) Orthopedic impairment;

(H) Other health impaired;

(I) Specific learning disability;

(J) Traumatic brain injury;

(K) Visual impairment; or

(b) For a child suspected of having a developmental delay, an evaluation that includes:

(A) Developmental History as defined in OAR 581-015-2000(8);

~~(A)~~(B) At least one norm referenced, standardized test in each area of suspected delay;

~~(B)~~(C) At least one additional procedure to confirm the child's level of functioning in each area of suspected delay;

~~(C)~~(D) At least one 20-minute observation of the child;

~~(D)~~(E) Review of previous testing, medical data, and parent reports; and

~~(E)~~(F) Other evaluative information as necessary to determine eligibility.

(7) Reevaluation.

(a) Public agencies must ensure that a reevaluation of each child with a disability is conducted in accordance with OAR 581-015-2115, subject to subsection (5) and (7)(b) in this rule:

(A) If the public agency determines that the ECSE needs of the child warrant a reevaluation; or

(B) If the child's parent or ECSE specialist requests a reevaluation.

(b) A reevaluation for each child with a disability:

(A) May occur not more than once a year, unless the parent and public agency agree otherwise; and

(B) Must occur at least every three years, unless the parent and public agency agree that a reevaluation is unnecessary.

(8) Conduct of evaluation. In conducting the evaluation, the public agency must:

(a) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent that may assist in determining:

(A) Whether the child is eligible for EI/ECSE services; and

(B) The content of the child's IFSP, including information related to enabling the child to be involved in and progress in appropriate activities;

(b) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and

(c) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(9) Other evaluation procedures. Each public agency must ensure that:

(a) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;

(b) Assessments and other evaluation materials used to assess a child under this part:

(A) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

(B) Are provided and administered in the child's native language or other mode of communication as determined developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment, and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so;

(C) Are used for the purposes for which the assessments or measures are valid and reliable;

(D) Are administered by trained and knowledgeable personnel; and

(E) Are administered in accordance with any instructions provided by the producer of the assessments.

(c) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(d) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

(e) The evaluation is sufficiently comprehensive to identify all of the child's EI/ECSE and related services needs, whether or not commonly linked to the disability category in which the child has been classified; and

(f) The evaluation includes assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child.

(10) Evaluation timelines:

(a) Initial. An initial evaluation must be completed within 60 school days from written parent consent to the date of the meeting to consider eligibility.

(b) Reevaluation. A reevaluation must be completed within 60 school days from written parent consent (or from the date the evaluation is initiated under OAR 581-015-2740(3)) to the date of the meeting to consider eligibility, continuing eligibility or the student's educational needs.

(c) Exceptions. An evaluation may be completed in more than 60 school days under the following circumstances documented in the child's educational record:

(A) The parents of a child repeatedly fail or refuse to produce the child for an evaluation, or for other circumstances outside the school district's control;

(B) The student is a transfer student in the process of reevaluation and the public agency and the parents agree to a different length of time to complete the evaluation in accordance with subsection (d); or

(C) The public agency and parent agree to extend the timeline for an evaluation to determine eligibility for specific learning disabilities in accordance with OAR 581-015-2170.

(d) Transfer students.

(A) When a child with disabilities transfers from one EI/ECSE program to another EI/ECSE program in the same school year, the previous and current EI/ECSE programs must coordinate any pending assessments as necessary and as expeditiously as possible to ensure prompt completion of the evaluation.

(B) The exception under subsection (10)(c) only applies if the current EI/ECSE program is making sufficient progress to ensure a prompt completion of the evaluation and the parent and current EI/ECSE program agree to a specific time for completion of the evaluation.

581-015-2700

(44) The following words are defined in OAR 581-015-2000:

(a) "Assistive technology device";

(b) "Assistive technology service";

(c) "Children with disabilities";

(d) "Autism";

(e) "Communication disorder";

(f) "Deafblindness";

(g) "Developmental Delay";

~~(g)~~(h) "Emotional disturbance";

~~(h)~~(i) "Hearing impairment";

~~(i)~~(j) "Intellectual disability";

~~(j)~~(k) "Orthopedic impairment";

~~(k)~~(l) "Other health impairment";

~~(l)~~(m) "Specific learning disability";

~~(m)~~(n) "Traumatic brain injury";

~~(n)~~(o) "Visual impairment";

~~(o)~~(p) "Consent";

~~(p)~~(q) "Day";

~~(q)~~(r) "Department";

~~(r)~~(s) "General curriculum";

~~(s)~~(t) "Health assessment statement";

~~(t)~~(u) "Identification";

~~(u)~~(v) "Individualized education program (IEP)";

~~(v)~~(w) "Mediation";

~~(w)~~(x) "Medical statement";

~~(x)~~(y) "Native language";

~~(y)~~(z) "Participating agency";

~~(z)~~(aa) "Personally identifiable information";

~~(aa)~~(bb) "Placement";

~~(bb)~~(cc) "Private school";

~~(cc)~~(dd) "School district";

~~(dd)~~(ee) "Short term objectives";

~~(ee)~~(ff) "Special education";

~~(ff)~~(gg) "Specially designed instruction";

~~(gg)~~(hh) "Supplementary aids and services";

~~(hh)~~(ii) "Superintendent";

~~(ii)~~(jj) "Surrogate parent";

~~(jj)~~(kk) "Ward of the state"; and

~~(kk)~~(ll) "Scientifically Based Research"