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**EI/ECSE Policies and Procedures Manual**

*This is a document regarding policy and procedures that apply to both Early Intervention (EI) and Early Childhood Special Education (ECSE) programs. Created 2021.*

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# SECTION ONE: CHILD IDENTIFICATION

**EARLY INTERVENTION AND EARLY CHILDHOOD SPECIAL EDUCATION PROCEDURES**

*NOTE: Policies and procedures in this section apply to both Early Intervention (EI) and Early Childhood Special Education (ECSE). School districts may contract with EI/ECSE contractors or subcontractors to carry out the activities under child find.*

### I. Public Awareness

1. The EI/ECSE contractor prepares and disseminates public awareness information, including information about the availability of EI/ECSE services. The public awareness information will also include procedures for assisting referral sources in disseminating the information to parents of infants, toddlers, and preschoolers, including:
2. Parents with premature infants.
3. Parents with infants that have physical risk factors associated with learning or developmental complications.
4. Parents with children ages birth until the age of eligibility for public school with disabilities, regarding services available to them.
5. The EI/ECSE contractor will have procedures to assist primary referral sources to disseminate information on the availability of early intervention/early childhood special education services to parents of infants or toddlers with disabilities. This information includes:
	1. A description of the availability of early intervention and early childhood special education services.
6. A description of the child find system and how to refer a child ages birth until the age of eligibility for public school for an evaluation for early intervention or early childhood special education services.
7. A central directory as defined in OAR 581-015-2713.
8. The EI/ECSE contractor will disseminate the public awareness information to:
9. Hospitals
10. Physicians
11. Public Health Agencies
12. Child Care Centers and Family Child Care
13. Homeless Shelters
14. Domestic Violence shelters and agencies
15. And any other primary referral sources
	* + 1. The EI/ECSE contractor will conduct general public awareness activities (e.g. local media resources including television, radio, or newspaper; direct contact activities in the community, including presentations at community meetings, business group meetings, and other meetings; outreach to those who may not understand English, highly mobile populations, or who may live in rural or isolated areas).

E. The EI/ECSE contractor will develop communication links with various agencies that provide services to children eligible for early intervention and early childhood special education within the community, including the dissemination of information of child find materials to hospitals, clinics pediatricians, pediatric nurses, and social service professionals involved in family or child services.

### II. Child Find

1. The EI/ECSE contractor has joint responsibility with school districts to locate, identify, and evaluate all children birth up to age of eligibility for public school residing within its jurisdiction, suspected of being eligible for early intervention (EI) or early childhood special education (ECSE). This ongoing system applies to all children with disabilities, regardless of the severity of their disabilities, including children who are:
	1. Highly mobile children with disabilities (such as migrant children and children who are experiencing homelessness;
	2. Children who are wards of the state;
	3. Preschool children who reside on reservations;
	4. Children below the age of compulsory school attendance who are not enrolled in a public or private program
	5. Attending private (religious or secular) preschool located within the boundaries of each EI/ECSE contractor area.
	6. Children under the age of three who;
		1. Are involved in a substantiated case of abuse or neglect; or
		2. Are identified as affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure.
2. The joint EI/ECSE and school district responsibilities are:
3. Conducting public awareness activities including announcements on television, radio, or newspaper; presentations at community meetings; and outreach to those who may not understand English, who may move frequently, or who may live in rural or isolated areas;
4. Disseminating materials to parents on the availability of EI/ECSE services including how to make a referral and how to obtain an eligibility evaluation for EI/ECSE services. This includes materials for reaching non-English speaking families;
5. Developing communication links with various agencies that provide services to children who may be eligible for EI/ECSE within the community, including the dissemination of child find materials including but not limited to hospitals, clinics, public health agencies, pediatricians, pediatric nurses, Head Start, Early Head Start, Preschool Promise, Baby Promise, community preschools, child care providers and social service professionals involved in family or child services; and
6. Publishing notices, before any major child find activity, informing parents that confidentiality requirements apply to these activities. Circulation for this notice must be adequate to inform parents within the EI/ECSE program’s and district’s jurisdiction.

Local school districts are responsible, financially and legally, for EI/ECSE eligibility evaluations. School districts may contract with the local EI/ECSE program or other entity for fulfilling these requirements. Evaluating children for EI/ECSE eligibility includes:

1. Administering assessments, scoring tests, interpreting evaluation scores, conducting child observations, gathering developmental histories, conducting parent interviews and writing evaluation reports.

2. Evaluating children referred for an EI eligibility evaluation within 45 calendar days (45 days from confirming valid referral to IFSP).

3. Evaluating children referred for an ECSE eligibility evaluation within 60 school days from parent consent for an evaluation.

4. Conducting ECSE eligibility evaluations for children enrolled in EI and approaching their third birthday (OAR 581-015-2805).

Local EI/ECSE programs are responsible for providing a referral and evaluation process in each county, including:

1. Providing a year-round primary contact who receives referrals for children suspected of being eligible for EI/ECSE services.

2. Assuring that all children referred as suspected of having a disability are referred to the child’s local school district (or agency contracted by the district) for EI/ECSE eligibility evaluations.

3. Assisting in local school districts’ responsibility for eligibility evaluations for EI services within 45 calendar days from referral and for ECSE within 60 school days of parent consent for evaluation, by helping form evaluation consortia through district contracts with ESD’s or other sources.

4. Convening eligibility teams to determine eligibility for EI or ECSE services.

5. Assuring eligibility determinations are conducted in compliance with applicable federal and State of Oregon statutes, regulations and guidelines.

6. Referring children who are eligible for EI/ECSE services to the county’s EI/ECSE program for the development of the Individual Family Service Plan (IFSP) and placement in appropriate services.

7. Assuring child find materials are disseminated to reach non-English speaking families and are available in locations frequented by families of young children.

8. Staff Awareness. A system in each school in the EI/ECSE area and school districts to ensure that:

a. District and EI/ECSE staff are knowledgeable of the characteristics of disabilities and appropriate referral of children suspected of having disabilities; and

b. Early intervention and early childhood special education referrals from parents, teachers, and others are directed to appropriate EI/ECSE staff.

* + 1. Staff Awareness of Community Partners: The EI/ECSE contractor and school district provide information about and EI and ECSE services and the referral process to facilities in the EI/ECSE contractor area including child care centers, preschools, homeless shelters, group homes, hospitals, Head Start, Oregon Pre-Kindergarten, Preschool Promise, Migrant/Seasonal Head Start, Migrant education programs, Early Head Start, Even Start, Tribal Head Start and other facilities that serve children birth to five years old.

9. Interagency Agreements with the Department of Human Services: The Oregon Department of Education and each EI/ECSE Contractor establish and maintain interagency agreements addressing the requirements “Child Abuse Prevention and Treatment Act” (CAPTA).

*Citations:*

*State Regulations*

ORS 343.157 Duty of School Districts to Identify, Locate and Evaluate Resident Children In Need of Special Education or Early Intervention

ORS 343.517 Parent-Initiated Referral to Determine Eligibility

OAR 581-015-2100 Responsibility for Evaluation

OAR 581-015-2080 Child Find

OAR 581-015-2774 Referral Procedures

Program Operating Guideline [Child Identification](https://www.oregon.gov/ode/students-and-family/SpecialEducation/earlyintervention/Documents/childidpog.pdf)

*Federal Regulations:*

34 CFR 300.111 Child Find

34 CFR 303.21 Infant or Toddler with a Disability

34 CFR 303.301 Public Awareness Program

34 CFR 303.302 Comprehensive Child Find System

34 CFR 303.310 Post-Referral Timeline (45 Days)

34 CFR 303.321 Evaluation of the Child and Assessment of the Child and Family

### III. Private School Children with Disabilities

1. The EI/ECSE contractor’s and school district‘s child find activities for children in private preschools ensure the equitable participation of parentally-placed private preschool children with disabilities and an accurate count of such children.
2. The EI/ECSE contractor and school district consults with appropriate representatives of private preschool children with disabilities on how to carry out these child find activities, including how private preschool children suspected of having a disability can participate equitably, and how parents, teachers, and private preschool officials will be informed of the process.
3. Child find requirements apply to all parentally-placed private preschool children, including those children who are residents of another state.
4. The EI/ECSE Contractor and school districts do not consider the cost of conducting child find activities for private preschool children, including individual evaluations, in determining whether it has spent its proportionate share of federal IDEA funds on parentally placed private preschool children with disabilities

*Citations:*

*State Regulations:*

581-015-2085 Child Find for Children Attending Private Schools

*Federal Regulations*

34 CFR 300.131 Child Find for Parentally-Placed Private School Children with Disabilities

### IV. Referral procedures

A. The EI/ECSE Contractor ensures that:

1. A designated referral and evaluation agency is established in each county;
2. Referrals are made to the designated referral and evaluation agency;
3. Service coordinators are appointed as soon as possible for children referred for EI services; and
4. Physicians, hospitals and other primary referral sources have information on how to refer children to the EI/ECSE program.
5. Children must be referred to the designated referral and evaluation agency for Child Find purposes as soon as possible, but in no case more than seven days after the child has been identified.

B. Interagency Agreements with the Department of Human Services: The EI/ECSE Contractor establishes and maintains interagency agreements with the local Department of Human Services addressing the requirements of the Child Abuse Prevention and Treatment Act (CAPTA).

C. EHDI: The EI/ECSE Contractor ensures that referrals from the Early Hearing Detection and Intervention Program (EHDI) are addressed within established timelines.

*Citations:*

*State Regulations*

581-015-2080 Child Find

581-015-2774 Referral Procedures

# SECTION TWO: CONFIDENTIALITY

**EARLY INTERVENTION AND EARLY CHILDHOOD SPECIAL EDUCATION PROCEDURES**

*NOTE: This section of policy and procedures apply to both Early Intervention (EI) and Early Childhood Special Education (ECSE) programs.*

###  I. Confidentiality of EI/ECSE Records

A. Each contractor designates one official to coordinate early intervention and early childhood special education records and to ensure that the EI/ECSE program provides access to and protects the confidentiality of child records.

B. The EI/ECSE contractor or subcontractor ensures that the confidentiality of personally identifiable information is protected at collection, storage, disclosure, and destruction stages.

C. The EI/ECSE contractor or subcontractor ensures that each person collecting or using personally identifiable information shall receive training or instruction regarding the policies and procedures governing confidentiality of personally identifiable information.

D**.** The EI/ECSE contractor or subcontractor maintains for public inspection a current listing of the names and positions of the employees who may have access to personally identifiable information and keeps a record of any authorized personnel who reviews the record that is not on the listing.

1. The EI/ECSE contractor or subcontractor provides parents, on request, a list of the types and locations of education records collected, maintained, or used by the EI/ECSE contractor or subcontractor.
2. Contractors and subcontractors must follow the rules and procedures in 34 CFR 303.400 - 303.416 and 300.504, 300.610-3 00.625 for confidentiality of records for preschool children with disabilities with the following exception: “School District” means “contractors or subcontractors.”

*Citations:*

*State Regulations*

ORS 343.485 Rules Relating to Confidentiality of Records

OAR 581-021-0230 The Rights of Parents

OAR 581-015-2300 Access to Student Educational Records

OAR 581-015-2770 Confidentiality of Records for Preschool Children with Disabilities

*Federal Regulations*

34 CFR 300.501 Opportunity to Examine Records; Parent Participation in Meetings

### II. Access Rights

1. The EI/ECSE contractor or subcontractor will permit a parent, or a representative of the parent to inspect and review any educational records directly relating to the child that are maintained by the EI/ECSE contractor or subcontractor.
2. The EI/ECSE contractor or subcontractor will comply with a request from a parent to inspect and review any education records without unnecessary delay and:

* 1. For children ages three and older, in no case more than 45 calendar days after the request has been made.
	2. For children under three years old who receive EI services, in no case more than 10 days after the request has been made; and

3. Before any meeting regarding an IFSP or hearing relating to the identification, evaluation, discipline or placement of the child.

1. The EI/ECSE contractor or subcontractor ensures that a parent who requests an explanation or interpretation of any information contained in an education record receives an appropriate explanation or interpretation.
2. The EI/ECSE contractor or subcontractor presumes that the parent has authority to inspect and review records relating to his or her child unless the EI/ECSE contractor or subcontractor determines that the parent does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.
3. If a parent requests a copy of the child’s records, the EI/ECSE contractor or subcontractor will give the parent a copy, except that:

1. The EI/ECSE contractor or subcontractor will not provide a copy of test protocols, test questions and answers, and other documents unless authorized by federal law; and,

1. The EI/ECSE contractor or subcontractormay charge a copying fee, subject to the fees section, below.

*Citations:*

*State Regulations*

OAR-581-021-0250 An Educational Agency or Institutions’ Policy Regarding Student Education Records

OAR 581-021-0270 Rights of Inspections and Review of Educational Records

OAR 581-021-0280 Fees for Copies of Educational Records

OAR 581-021-0290 Limitations on the Right to Inspect and Review Records

OAR 581-015-2300 Access to Student Education Records

*Federal Regulations:*

34 CFR 99.4 What are the Rights of Parents

34 CFR 99.5 What are the Rights of Students

34 CFR 99.10 What Rights Exist for a Parent or Eligible Student to Inspect and Review Educational Records?

34 CFR 99.11 May an Educational Agency or Institution Charge a Fee for Copies of Education Records?

34 CFR 99.12 What Limitations Exist on the Right to Inspect and Review Records

34 CFR 300.501 Opportunity to Examine Records; Parent Participation in Meetings

34 CFR 300.613 Access Rights

34 CFR 303.405 Access Rights (Part C)

### III. Fees

A. If requested by a parent, the EI/ECSE contractor or subcontractor will provide copies of the records containing the information without a fee if the EI/ECSE contractor or subcontractor determines that a failure to provide those copies would effectively prevent the person from exercising the right to inspect and review the records.

* 1. The EI/ECSE contractor or subcontractor will determine that a parent will be effectively prevented from exercising the right to inspect and review an education record if the person cannot inspect and review the education record at the location at which it is normally maintained (or at any other location where the EI/ECSE contractor or subcontractor offers to produce it) without incurring significant expense or personal hardship.
1. The EI/ECSE contractor or subcontractor may charge a fee for copies of records that are made for a parent if the fee does not effectively prevent the person from exercising the right to inspect and review those records.
2. The EI/ECSE contractor or subcontractor may not charge a fee to search for or to retrieve information.

*Citations:*

*State Regulations:*

OAR 581-021-0280 Fees for Copies of Educational Records

*Federal Regulations:*

34 CFR 99.11 May an Educational Agency or Institution Charge a Fee for Copies of Educational Records?

34 CFR 300.617 Fees

34 CFR 303.409 Fees for Records

### IV. Records on More Than One Child

* 1. The EI/ECSE contractor or subcontractor will permit a parent to inspect and review only those portions of an education record that contain information regarding the child and will inform the parent of any other specific information in the record regarding the child but which cannot be directly inspected or reviewed because of the confidentiality rights of other children.

*Citations:*

*State Regulations:*

OAR 581-021-0290 Limitations on the Right to Inspect and Review Records

*Federal Regulations:*

34 CFR 99.12 What Limitations Exist on the Right to Inspect and Review Records?

34 CFR 300.615 Records of More than One Child

### V. Amendment of Records at Parent's Request

A. A parent who believes that information in the education records is inaccurate or misleading or violates the privacy or other rights of the child may request the EI/ECSE contractor or subcontractor to amend the information.

B. The EI/ECSE contractor or subcontractor, upon receiving a request from a parent, will decide whether to amend the information as requested within ten days from the date of receipt of the request.

1. The EI/ECSE contractor or subcontractor determines that information contained in an education record is "inaccurate" if the EI/ECSE contractor or subcontractor, after reviewing the information, concludes that it is untrue or cannot be substantiated.
2. The EI/ECSE contractor or subcontractor determines that information contained in an education record is "misleading" if the EI/ECSE contractor or subcontractor, after reviewing the information, concludes that a person reading the record would likely arrive at an inaccurate conclusion regarding the personal characteristics or history of the child who is the subject of the educational record.

3. The EI/ECSE contractor or subcontractor determines that the information contained in an education record "violates the privacy or other rights of the child" if the EI/ECSE contractor or subcontractor determines that the information contained in the education record concerning the personal characteristics or personal history of the child:

a. If disclosed, would cause adverse consequences such as severe embarrassment for the child or the child’s parents; or

b. Need not be included in the education record in order for the education record to be appropriately used by the EI/ECSE contractor or subcontractor.

C. If the EI/ECSE contractor or subcontractor refuses to amend the information, the EI/ECSE contractor or subcontractor will inform the parent of the refusal and advise the person of the right to a student records hearing.

*Citations:*

*State Regulations:*

OAR 581-021-0300 A Parent or Eligible Student’s Request for Amendment of a Student’s Education Records

*Federal Regulations:*

34 CFR 99.20 How can a Parent or Eligible Student Request Amendment of the Student’s Educational Records?

34 CFR 303.410 Amendment of Records at a Parent’s Request

### VI. EI/ECSE Records Hearing

A. The EI/ECSE contractor or subcontractor will provide an opportunity for an EI/ECSE records hearing to challenge information in the education records.

B. If, as a result of an EI/ECSE records hearing, it is determined that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, the EI/ECSE contractor or subcontractor will amend the information and will provide written notice to the parent requesting the amendment.

C. If, as a result of a EI/ECSE records hearing, it is determined that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, the EI/ECSE contractor or subcontractor will inform the parent of the decision and of the right to place in the child’s records a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the EI/ECSE contractor or subcontractor.

D. The EI/ECSE contractor or subcontractor ensures that a statement placed in an education record meets the following requirements:

1. Is maintained by the EI/ECSE contractor or subcontractor as part of the records of the child as long as the record or contested portion is maintained by the EI/ECSE contractor or subcontractor; and
2. Is disclosed by the EI/ECSE contractor or subcontractor to any party to whom the records of the child or the contested portion are disclosed.

*Citations:*

*State Regulations:*

OAR 581-021-0310 Right to a Hearing to Challenge Content

*Federal Regulations:*

34 CFR 300.619 Opportunity for a Hearing

34 CFR 300.620 Result of Hearing

34 CFR 99.21 Under What Conditions does a Parent or Eligible Student have the Right to a Hearing?

34 CFR 303.411 Opportunity for a Hearing

### VII. EI/ECSE Records Hearings Requirements

A. The EI/ECSE contractor or subcontractor will hold the hearing within a reasonable time after it has received a request for a student records hearing.

B. The EI/ECSE contractor or subcontractor will give the parent notice of the date, time, and place reasonably in advance of the hearing.

C. The hearing may be conducted by any individual, including an official of the EI/ECSE contractor or subcontractor, who does not have a direct interest in the outcome of the hearing.

D. The EI/ECSE contractor or subcontractor will give the parent a full and fair opportunity to present evidence relevant to the issues raised.

E. The parent may, at their own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney.

F. The EI/ECSE contractor or subcontractor will make its decision in writing within a reasonable period of time after the hearing.

G. The decision will be based solely on the evidence presented at the hearing, and will include a summary of the evidence and the reasons for the decision.

*Citations:*

*State Regulations*

OAR 581-021-0320 Minimum Requirements for the Conduct of a Hearing

*Federal Regulations:*

34 CFR 300.621 Hearing Procedures

34 CFR 99.22 What Minimum Requirements Exist for the Conduct of a Hearing?

### VIII. Prior Consent to Disclose Information

1. The EI/ECSE contractor or subcontractor obtains signed and dated written consent from the parent before permitting personally identifiable information to be disclosed to anyone other than officials of participating agencies collecting or using informa­tion for the purposes of the activities described in these confidentiality procedures and only where the disclosure is consistent with all applicable federal statutes.
2. The EI/ECSE contractor or subcontractor obtains written consent from the parent before permitting personally identifiable information to be used for any purpose other than meeting a requirement under these procedures.
3. The written consent:

1. Specifies the records that may be disclosed;

2. States the purpose of the disclosure; and

1. Identifies the party or class of parties to whom the disclosure may be made.
2. When a disclosure is made, the EI/ECSE contractor or subcontractor provides the parent a copy of the disclosed record upon request.
3. The EI/ECSE contractor or subcontractor does not release information from education records without parent consent unless permitted under an authorized exception.

*Citations:*

*State Regulations:*

OAR 581-021-0330 Prior Consent to Disclose Information

*Federal Regulations:*

34 CFR 99.30 Under What Conditions Is Prior Consent Required to Disclose Information?

34 CFR 99.33 What Limitations Apply to the Redisclosure of Information?

34 CFR 99.34 What Conditions Apply to Disclosure of Information to Other Educational Agencies or Institutions?

34 CFR 99.35 What Conditions Apply to Disclosure of Information for Federal or State Program Purposes?

34 CFR 99.36 What Conditions Apply to Disclosure of Information in Health and Safety Emergencies?

34 CFR 99.37 What Conditions Apply to Disclosing Directory Information?

34 CFR 300.622 Consent

34 CFR 300.623 Safeguards

### IX. Exceptions

* 1. The EI/ECSE contractor or subcontractor will disclose personally identifiable information from a child’s educational record if the disclosure is:
		1. To EI/ECSE officials and teachers within the EI/ECSE program who have legitimate educational interests in the child as described in the EI/ECSE contractor or subcontractor’s records policy;
		2. To school board members during executive session;
		3. To officials of another school, school system, education service district, state regional program, Head Start, or other educational agency that has requested the records and in which the child seeks or intends to enroll, or is enrolled in or receives services from this agency. The term “receives services” includes, but is not limited to, an evaluation or reevaluation for purposes of determining whether a child has a disability;
		4. To authorized representatives of government agencies;
		5. To accrediting organizations to carry out their accrediting functions;
		6. To parents of a dependent child, as defined in Section 152 of the Internal Revenue Code of 1986;

7. Based on a judicial order or lawfully issued subpoena. The EI/ECSE contractor or subcontractor may disclose information under this section only if the EI/ECSE contractor or subcontractor makes a reasonable effort to notify the parent of the order or subpoena in advance of compliance.

8. No notice is required for the EI/ECSE contractor to disclose information under the following conditions:

a. A federal grand jury subpoena and the court has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed; or

b. Any other subpoena issued for a law enforcement purpose and the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

9. When legal action is initiated:

a. If an educational agency or institution initiates legal action against a parent or student, the educational agency or institution may disclose to the court, without a court order or subpoena, the education records of the student that are relevant for the educational agency or institution to proceed with the legal action as plaintiff.

b. If a parent or eligible student initiates legal action against an educational agency or institution, the educational agency or the institution may disclose to the court, without a court order or subpoena, the student’s education records that are relevant for theeducational agency or institution to defend itself.

10. In connection with a health or safety emergency to law enforcement, child protective services, and health care professionals, and other appropriate parties if knowledge of the information is necessary to protect the health and safety of the child or other individuals. A “health or safety emergency” includes, but is not limited to, law enforcement efforts to locate a child who may be a victim of kidnap, abduction, or custodial interference and law enforcement or child protective services efforts to respond to a report of child abuse or neglect; or

1. Information the EI/ECSE contractor or subcontractor has designated as “directory information” in the EI/ECSE contractor or subcontractor’s record policy, if the EI/ECSE contractor or subcontractor has given annual public notice to parents of children in attendance of:
	1. The types of personally identifiable information that the EI/ECSE contractor or subcontractor has designated as directory information;
	2. A parent ‘s right to refuse to let the EI/ECSE contractor or subcontractor designate any or all of those types of information about the child as directory information; and
	3. The period of time within which a parent has to notify the EI/ECSE contractor or subcontractor in writing that he or she does not want any or all of those types of information about the child designated as directory information.
	4. The EI/ECSE contractor or subcontractor discloses child records without consent to organizations conducting studies for, or on behalf of, educational agencies or institutions to develop, validate, or administer predictive tests, administer student programs, or improve instruction only if:
		1. The study is conducted in a manner that does not permit personal identification of parents and children by individuals other than representatives of the organization; and
		2. The information is destroyed when no longer needed for the purposes for which the study was conducted.
		3. For the purposes of this section, the term “organization” includes, but is not limited to, federal, state, and local agencies, and independent organizations.
		4. The disclosure is in connection with financial aid for which the child has applied or which the child has received, if the information is necessary for such purposes as to:
2. Determine eligibility for the aid;
3. Determine the amount of the aid;
4. Determine the conditions for the aid;
5. Enforce the terms and conditions of the aid.

*Citations:*

*State Regulations*

ORS 336.187 When School Authorized to Disclose Information about Student

OAR 581-021-0260 An Educational Agency or Institution’s Annual Notification

OAR 581-021-0340 Exceptions to Prior Consent

OAR 581-021-0350 Limitations on the Redisclosure of Information

OAR 581-021-0360 Conditions for the Disclosure of Information to Other Educational Agencies or Institutions

OAR 581-021-0370 Conditions for the Disclosure of Information for Federal or State Program Purposes

OAR 581-021-0371 Conditions for Disclosure of Information to Comply with Judicial Order or Subpoena

OAR 581-021-0372 Conditions for the Disclosure of Information when Legal Action Initiated

OAR 581-021-0380 Conditions for the Disclosure of Information in Health and Safety Emergencies.

OAR 581-021-0390 Conditions for the Disclosure of Directory Information

*Federal Regulations:*

34 CFR 99.31 Under What Conditions Is Prior Consent Not Required To Disclose Information?

34 CFR 99.34 What Conditions Apply to Disclosure of Information to Other Educational Agencies or Institutions?

34 CFR 99.35 What Conditions Apply to Disclosure of Information for Federal or State Program Purposes?

34 CFR 99.36 What Conditions Apply to Disclosure of Information in Health and Safety Emergencies?

34 CFR 99.37 What Conditions Apply To Disclosing Directory Information?

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### X. Retention of EI/ECSE Records

A. The EI/ECSE contractor or subcontractor retains copies of the following documents for the prescribed time periods designated in State Archives Rules, including:

1. The child’s permanent record as defined in the EI/ECSE contractor or subcontractor’s records policy; and
2. Such special education records as are necessary to document compliance with state and federal regulations, including eligibility documents, IFSPs, notices, and IFSP progress reports for at least the previous five (5) years. [**Note:** EI/ECSE contractor or subcontractors may want to retain these records for six (6) years based on current Oregon case law establishing a six (6) year statute of limitations for reimbursement cases under the IDEA.]
3. Records documenting speech pathology and physical therapy services: until the child reaches age 21 or 5 years after last seen, whichever is longer.

*Citations:*

*State Regulations:*

OAR 166-400-0060 Student Education Records

OAR 581-021-0430 The Distribution of Rules Relating to Student Records

### XI. Destruction of Information

A. The EI/ECSE contractor or subcontractor sends written notice to inform parents when personally identifiable information collected, maintained, or used by the EI/ECSE contractor or subcontractor is no longer needed to provide educational services to the child. This notice requirement applies only to information that would otherwise be retained under the State Archives Rules.

B. The written notice sent to the parent describes the personally identifiable information that the EI/ECSE contractor or subcontractor intends to destroy and informs the parents that the information will be destroyed no earlier than 60 days from the date of the notice. The notice also outlines the procedure that the parent may follow if they wish to formally object to the destruction of the records in question.

C. Upon request of the parent, the EI/ECSE contractor or subcontractor may maintain a permanent record without time limitation of the child’s name, address and phone number, attendance records, contractor or subcontractor attended, and year completed.

D. The EI/ECSE contractor or subcontractor will not destroy any education records if there is an outstanding request to inspect and review the records.

*Federal Regulations:*

34 CFR 300.624 Destruction of Information

### XII. EI/ECSE Contractor or Subcontractor Records Policy

*The EI/ECSE contractor and/or subcontractor are to attach their Records Policy to this section.*

### XIII. Transfer of Child Records

A. The EI/ECSE contractor or subcontractor requests the educational records from the former EI/ECSE contractor or subcontractor (public, private, ESD, or agency) within ten (10) days of a parent’s request for the child’s enrollment for educational services.

B. The EI/ECSE contractor or subcontractor transfers the originals of all requested education records no later than ten (10) days after receipt of request from the EI/ECSE contractor or subcontractor or new educational agency (public, private, ESD, or agency) which a parent seeks or intends to enroll the child, is enrolled in, or receives services from.

C. The EI/ECSE contractor or subcontractor, upon transfer of original records to new educational agency, retains readable photocopies of the following documents for the prescribed time periods designated in State Archives Rules, including:

1. The child’s permanent record as defined in the EI/ECSE contractor or subcontractor records policy; and

* 1. Such EI or ECSE records as are necessary to document compliance with state and federal regulations, including eligibility documents, IFSPs, notices, and IFSP progress reports for at least the previous five (5) years. [**Note:** EI/ECSE contractor or subcontractors may want to retain these records for six (6) years based on current Oregon case law establishing a six (6) year statute of limitations for reimbursement cases under the IDEA.]

*Citations:*

*State Regulations:*

OAR 581-021-360 Conditions for the Disclosure of Information to Other Educational Agencies or Institutions

OAR 581-021-370 Conditions for the Disclosure of Information for Federal or State

Program Purposes

### XIV. Distribution of Student Records Rules

1. The EI/ECSE contractor or subcontractor makes EI/ECSE records rules available to the public schools in the EI/ECSE service area and to the public on request.

*Citations:*

*State Regulations:*

OAR 581-021-0430 The Distribution of Rules Relating to Student Records

# SECTION THREE: FULL EDUCATION OPPORTUNITY GOAL

**EARLY INTERVENTION AND EARLY CHILDHOOD SPECIAL EDUCATION PROCEDURES**

*Note: Policies and procedures in this section apply to Early Childhood Special Education (ECSE) programs.*

### I. Full Education Opportunity Goal

A. The Oregon Department of Education has a goal of providing full educational opportunity to each child with a disability, three years to school age, regardless of the severity of the child's disability.

*Federal Regulations:*

34 CFR 300.109 Full Educational Opportunity Goal

# SECTION FOUR: COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT

**EARLY INTERVENTION AND EARLY CHILDHOOD SPECIAL EDUCATION PROCEDURES**

*Note: Policies and procedures in this section apply to both Early Intervention (EI) and Early Childhood Special Education (ECSE) programs.*

### I. Personnel Development

A. The contractor and subcontractor ensure that personnel employed through the EI/ECSE program meet the federal and state personnel standards.

1. The contractor and subcontractor ensure a comprehensive system of personnel development (CSPD) consistent with Department of Education EI/ECSE Personnel Development, ODE Authorization and Authorization renewals, and TSPC requirements. The major priorities emphasized are:

1. Assistance to families in enhancing the development of their children and in IFSP development and participation;

2. Services for low incidence populations;

3. Provision of services in natural environments and inclusive settings;

4. Services for children with behavioral problems or emotional disturbance;

5. Basic components of early intervention services and early childhood special education services;

6. Provision of interrelated social, health, developmental and educational needs of young children with disabilities.

1. The contractor conducts an annual needs assessment of personnel by conducting:

1. Discussions with and/or surveys of subcontractors;

2. Review of the results of subcontractor monitoring reports from ODE;

3. Review of the results of any subcontractor evaluations; and

4. Review of public complaints.

D. The contractor compiles and communicates the needs assessment data, professional development priorities including training that will be provided to enhance parent support and engagement, and in-service training plans to the ODE via the service area plan.

E. The contractor provides staff development activities, which include local, regional, and statewide workshops; release time for visitations to other programs; regular meetings of instructional, related and support personnel, and individual consultation with local or ODE personnel.

F. The contractor encourages subcontractors to be aware of significant information proven effective through research and demonstration or dissemination by the ODE. The contractor encourages the use of innovative practices in the educational setting, which have proven to be effective.

G. The contractor and subcontractor provide in-service training and staff development activities to a variety of personnel, including:

1. Public service providers;

2. Private Service providers and private preschools;

3. Primary referral sources, including physicians, public health and SCF;

4. Paraprofessionals;

5. Service coordinators;

6. Preschool and child care staff;

7. Special education instructional personnel;

8. Related services personnel;

9. Support personnel; and

10. Administrative personnel.

H. The contractor and subcontractor also provide in-service training and staff development to:

1. Parents;

2. Surrogate parents;

3. Volunteers; and

1. Other interested community persons, agencies, and organizations (such as local interagency coordinating council members).

I. Duties of Related Service Personnel

* + - 1. Definition of Related Service Personnel: The definition of a Related Service Personnel in the Oregon Administrative Rules (581-015-2700 (36)), is “a professional who consults, supervises, trains staff, and designs curriculum or implements related services.” Related Service Personnel must possess a minimum of a baccalaureate degree and a valid license necessary to practice in Oregon (OAR 581-015-2900(4)).
			2. Related Service Personnel as Service Coordinators: Related Service Personnel who also provide service coordination as outlined in OAR 581-015-2840 must have: (a) TSPC licensure in their area of discipline; or (b) State licensure in their area of discipline; and (c) A professional development plan based on the content of the EI/ECSE competencies.
			3. Related Service Personnel as EI/ECSE Specialists: The definition of an EI/ECSE Specialist in the Oregon Administrative Rules (581-015-2700 (8)) is “a professional who implements or coordinates the implementation of individualized family service plans.” Related Service Personnel may serve as EI/ECSE Specialists, if they meet the following criteria outlined in OAR 581-015-2900(3):

(a) Possess a minimum of a baccalaureate degree in early childhood, special education or a related field;

(b) Have a professional development plan based on the content of the EI/ECSE competencies; and

(c) Hold one of the following credentials:

(i.) TSPC licensure or endorsement in EI/ECSE;

(ii.) TSPC licensure or endorsement in related field; or

(iii.) Within 12 months of employment, authorization as an Early Childhood Specialist under OAR 581-015-2905.

4. Related Service Personnel as Lead Interventionists: In a Transdisciplinary Model of service, a lead interventionist or primary specialist provides service coordination and specialized instruction to a child. They assure that all goals for the child and family are mutually agreed upon among the staff and family and that information, skills, and knowledge are shared across disciplinary boundaries in order to meet those goals.

Lead Interventionists are either Related Service Personnel or EI/ECSE Specialists, given the child’s area of primary need. For a child with an overall delay or a primary delay in cognitive development, the lead interventionist most commonly will be an EI/ECSE Specialist and hold the required credentials outlined in OAR 581-015-2900(3).

If the child’s primary delay is a specific communication disorder(s), the lead interventionist will likely be a Speech Language Pathologist who holds the required credentials outlined in OAR 581-015-2900(4). For a child whose primary needs result from motor disorders, the lead interventionist will likely be an Occupational or Physical Therapist.

Related Service Personnel who provide service coordination must have: a) TSPC licensure in their area of discipline; or (b) State licensure in their area of discipline; and (c) A professional development plan based on the content of the EI/ECSE competencies (OAR 581-015-2840).

*Citations:*

*State Regulations:*

OAR 581-15-2900 Personnel Standards

Program Operating Guideline: [Duties of Related Service Personnel](https://www.oregon.gov/ode/students-and-family/SpecialEducation/earlyintervention/Documents/pogrelatedserver.pdf)

*Federal Regulations:*

34 CFR 300.156 Personnel Qualifications

34 CFR 300.207 Personnel Development

34 CFR. 303.12 Early Intervention Service Provider

34 CFR 303.118 Comprehensive System of Personnel Development

34 CFR 303.119 Personnel Standards

34 CFR 303.344 Content of an IFSP

ORS 343.465 Policy on Services to Preschool Children with Disabilities; Agency Coordination of Services.

# SECTION FIVE: PARTICIPATION IN REGULAR EDUCATION

**EARLY CHILDHOOD SPECIAL EDUCATION PROCEDURES**

*Note: Policies and procedures in this apply to Early Childhood Special Education (ECSE) programs only.*

### I. Least Restrictive Environment

A. The ECSE contractor and subcontractor ensure that:

1. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities are educated with children who are non-disabled; and
2. Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

B. Because a public education program for nondisabled preschool children is unavailable, other methods for educating eligible children with non-eligible children are used for meeting the requirements of 34 CFR 300.114 - 300.120. Other methods are addressed in the continuum of options in Subsection II of this section of policies and procedures.

*Citations:*

*State Regulations:*

OAR 581-015-2845 Placement and Least Restrictive Environment in ECSE

OAR 581-015-2240 Requirement for Least Restrictive Environment

*Federal Regulations:*

34 CFR 300.114 LRE Requirements

### II. Placement of the Child

* + 1. The placement decision for each eligible child:

1. Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options;

2. Is made in conformity with the Least Restrictive Environment requirements.

3. Is determined at least once every 365 days;

4. Is based on the child’s IFSP; and

5. Is as close as possible to the child’s home.

B. The child is educated in the program that he or she would attend if nondisabled unless the services identified in the IFSP cannot feasibly be provided in this setting.

C. The ECSE contractor and subcontractor ensure that a continuum of placement options is available to meet the needs of children with disabilities for special education and related services. The options include various alternative placements in the following:

1. **Home Instruction** - The child's IFSP is implemented at home. This option may be appropriate for example, for children with health concerns, who cannot be educated outside of their home.

2. **Early Childhood Program** – The child's IFSP is implemented in the regular program with consultation from ECSE and modifications and/or adaptations to the regular program.A "regular program" is a public or private program for nondisabled preschool children. This includes Head Start, Oregon Prekindergarten, Preschool Promise, community childcare, home, and approved private preschools.

3. **Early Childhood Program with Supplementary Service** – The child's IFSP is implemented in the regular program with direct service(s) from ECSE.

4. **Separate Class** – The child’s IFSP is implemented in an early childhood special education program that includes less than 50% typical peers.

5. **Special Program** – The child's IFSP is implemented in a self-contained early childhood special education classroom.

6. **Separate School** – The child’s IFSP is implemented in a public or private day school’s educational program designed specifically for children with disabilities.

7. **Residential Facility** – The child’s IFSP is implemented in a publicly or privately operated residential school or residential medical facility on an inpatient basis.

8. **Hospital Instruction** – The child's IFSP is implemented in a hospital. The child's medical condition is such that their education cannot be provided outside of the health care facility.

9. **Service Provider Location** – The child’s IFSP is implemented by a service provider. The child did not attend an early childhood program or a special education program provided in a separate class, separate school, or residential facility. For example, speech instruction provided in:

* 1. Private clinicians’ offices
	2. Clinicians’ offices located in school buildings
	3. Hospital facilities on an outpatient basis
	4. Libraries and other public locations
1. Provision of EI/ECSE services to children enrolled in religiously affiliated preschools by their parents

1. EI/ECSE services may be provided to children who are attending a religious preschool as long as:

* + - * 1. The EI/ECSE program provides similar types of services in other settings (services are distributed in a neutral manner that do not favor the religious preschool over a public preschool); and
				2. The purpose of the EI/ECSE instruction is to teach the child skills targeted on the child’s IFSP, not to teach the religious content or concepts of the preschool. The IFSP team determines the scope of the EI/ECSE services to be provided to implement the IFSP; and

2. EI/ECSE placement in religiously affiliated preschools: Religiously affiliated preschools may apply for and be approved by ODE as a “approved private preschool” in which EI/ECSE programs may “place” a child to receive EI/ECSE services under the following circumstances:

a. The educational curriculum and instructional practices are free of religious content;

b. Religious symbols are not pervasive and are not part of the instructional program; and

c. The preschool does not accept or reject eligible preschool children on the basis of the

 children’s religious affiliation.

An IFSP team may place a child in a religiously affiliated preschool if a preschool setting is required to implement the child’s IFSP services, the preschool is approved by ODE and the EI/ECSE program does not have an appropriate public placement option available.

E. Children are placed in the least restrictive environment, using the following decision making process:

1. Completion of the IFSP;
2. Determining which IFSP services, including instruction, can be implemented in the regular program;
3. If all IFSP services cannot be provided in a regular program\*, identifying those that must be provided outside the regular program; however, the ECSE program will not remove a child from education in age-appropriate regular classrooms solely because of needed modifications in appropriate activities;
4. For those services that must be provided outside the regular program, identifying where, on the continuum from least to most restrictive, the services can be provided;
5. Placement is in the program the child would attend if not disabled, unless another arrangement is required for implementation of the IFSP;

6. In selecting the child’s placement, the IFSP team considers and documents:

* 1. All placement options considered, including placement options requested by the parent;
	2. Potential benefits of placement options that are considered;
	3. Any potential harmful effects on the child or on the quality of services that he or she needs; and
	4. Modifications and services considered to reduce harmful effects, and to maintain the child in the least restrictive placement.

7. The IFSP team documents the placement selected, and provides a copy of the determination to the parent;

8. If the selected placement is a change from previous placement, the ECSE program provides the parent with prior written notice of the change in placement; and

9. If the parent requests a specific placement that the team rejects, the ECSE program provides a prior written notice of refusal.

*Citations:*

*State Regulations:*

OAR 581-015-2245 Alternative Placements and Supplementary Aids and Services

OAR 581-015-2250 Placement of the Child

OAR 581-015-2270 Standards for Approval of Private Schools for School-age Children

Program Operating Guideline: [Religiously Affiliated Preschools](https://www.oregon.gov/ode/students-and-family/SpecialEducation/earlyintervention/Documents/religneutralprog.pdf)

*Federal Regulations:*

34 CFR 300.115 Continuum of Alternative placements

34 CFR 300.116 Placements

34 CFR 300.503 Prior notice by the public agency; content of notice

### III. Nonacademic Services

A. The EI/ECSE program takes steps to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities equal opportunity for participation in those services and activities. Such steps included the provision of supplementary aides and services determined by the child’s IFSP team to be appropriate and necessary for the child to participate.

* 1. Nonacademic and extracurricular services and activities include all those available to children without disabilities, and may include meals, play periods, transportation and other activities available in public preschool programs or approved private preschool programs.

*Citations:*

*State Regulations:*

OAR 581-015-2070 Nonacademic Services

OAR 581-015-2255 Nonacademic Settings

*Federal Regulations:*

34 CFR 300.107 Nonacademic Services

34 CFR 300.117 Nonacademic Settings

# SECTION SIX: INDIVIDUALIZED FAMILY SERVICE PLAN (IFSP)

**EARLY INTERVENTION AND EARLY CHILDHOOD SPECIAL EDUCATION PROCEDURES**

*NOTE: Except as noted, policies and procedures in this section apply to both Early Intervention (EI) and Early Childhood Special Education (ECSE).*

### I. General IFSP Information

A. An IFSP is in effect for each eligible child:

1. Before EI or ECSE and related services are provided to a child, and

* + 1. At the beginning of each school year.

B. For children eligible for EI, services are provided year round, unless agreed to otherwise by the parents.

C. All EI/ECSE programs use the IFSP form adopted by the Oregon Department of Education.

1. ECSE services on an IFSP are implemented in a timely manner, as soon as possible following parent consent for services.

E. EI services on an IFSP are implemented by the initiation date on the IFSP or 10 calendar days from when the parent provides consent for services.

F. If there is any delay in IFSP implementation, the reason must be documented on the IFSP.

G. The EI/ECSE program provides all the EI or ECSE and related services, including program modifications, supports, and/or supplementary aids and services, identified on the IFSP.

H. The IFSP will be accessible to:

1. The child’s regular preschool teacher (if applicable);

2. The child’s EI or ECSE teacher(s); and

3. The child’s EI or related services provider(s) and other service provider(s) responsible for its implementation.

*Citations:*

*State Regulations:*

Part C Oregon State Annual Performance Report FFY 2010: Indicator 1: Timely IFSP Services

OAR 581-015-2810 IFSP Meeting Procedures and Timelines

OAR 581-015-2815 IFSP Content

*Federal Regulations:*

34 CFR 300.101 Free Appropriate Public Education (FAPE)

34 CFR 300.320 Definition of Individualized Education Program

34 CFR 300.323 When IFSPs must be in effect.

### II. Provision of EI Services before an Evaluation and Assessment are Completed

A. The EI/ECSE program ensures that EI services for an eligible child (with an obvious and immediate need) and the child’s family may begin before the completion of the evaluation and assessment process if the following conditions are met:

1. Parent consent for an evaluation is obtained;

B. An interim IFSP is developed that includes:

* 1. The name of the service coordinator who will be responsible for implementation of the interim IFSP and coordination with other agencies and persons; and
	2. The EI services determined to be needed immediately by the child and the child’s family.

3. The evaluation and assessment are completed within 45 calendar days of the initial referral.

*Citations:*

*State Regulations:*

OAR 581-015-2785 Provision of Early Intervention Services before an Evaluation and Assessment are Completed

*Federal Regulations:*

34 CFR 303.345 Interim IFSPs - Provision of Services before Evaluation and Assessment are Completed

### III. IFSP Meeting Procedures and Timelines

A. The EI/ECSE program initiates and conducts IFSP meetings at least annually (every 365 days) for the purpose of developing, reviewing, and revising an eligible child’s IFSP.

B. For children eligible for EI services, the contractor or subcontractor conducts an IFSP meeting within 45 calendar days of the initial referral and validation of parent contact information for evaluation by the contractor or subcontractor.

C. For children eligible for ECSE services, the contractor or subcontractor conducts an IFSP meeting within 30 calendar days of the determination that the child needs ECSE and related services.

D. For children eligible for EI services the EI/ECSE contractor or subcontractor initiates and conducts a meeting, with the participation of the parents, to review the child’s IFSP every six months or more frequently if conditions warrant or if the family requests such a review. This review may be carried out by a meeting or by another means that is acceptable to the parents and other participants. If IFSP revisions are necessary, an IFSP meeting must be conducted. The purpose of this review is to determine:

1. The degree to which progress on annual goals is being made; and

2. Whether revision of major outcomes or goals or services is needed.

E. Each eligible child’s IFSP is reviewed and revised at least once a year to determine whether annual goals for the child are being achieved, and to make necessary revisions to address:

1. Any lack of anticipated progress toward annual goals and appropriate activities;

2. Results of any reevaluation;

3. Existing information about the child provided to or by the parent;

4. Anticipated needs; and

5. Other matters related to the child’s EI or ECSE needs.

1. The EI/ECSE contractor or subcontractor initiates and conducts a meeting to plan the child’s transition to ECSE services or other preschool services at least 90 days, and at the discretion of the parents, up to nine months, before the child’s third birthday. The EI/ECSE contractor or subcontractor must notify the LEA and SEA for the area in which the toddler resides that the toddler on his third birthday will reach the age of eligibility for services under Part B of the Act as determined in accordance with State law.
2. For children eligible for ECSE services under OAR 581-015-2795, the EI/ECSE contractors or contractor initiates and conducts an IFSP meeting on or before the child’s third birthday to:
	1. Review and revise the IFSP;
	2. Determine placement; and
	3. Obtain parent consent for placement.
3. The EI/ECSE contractor or subcontractor conducts an IFSP meeting more frequently than six month reviews if it believes that a change in the IFSP may be necessary to ensure the provision of appropriate EI services for a child under age three or a FAPE to a child over age three.
4. Parents may request a meeting at any time to review or revise the IFSP.
5. In response to a parent request for an IFSP meeting, the EI/ECSE contractor or subcontractor will hold an IFSP meeting within a reasonable time.

K. The EI/ECSE contractor or subcontractor provides prior written notice to the parent upon completion of the IFSP, and before implementation of IFSP services, if:

1. The IFSP changes the provision of early intervention services to the child birth-to-age three;

2. The IFSP changes the provision of FAPE to the child receiving ECSE (e.g., adding or discontinuing a ECSE or related service); or

3. The IFSP team refuses a parent request for a change in the provision of early intervention services or FAPE to the child receiving ECSE services.

*Citations:*

*State Regulations:*

OAR 581-015-2810 IFSP Meeting Procedures and Timelines

Program Operating Guideline: [Contact Required for Referral](https://www.oregon.gov/ode/students-and-family/SpecialEducation/earlyintervention/Documents/contactrequiredreferralpog.pdf)

*Federal Regulations:*

34 CFR 300.101 Free Appropriate Public Education (FAPE)

34 CFR 300.323 When IEPs must be in Effect

### IV. IFSP Team Members

A. IFSP team members include the following:

1. One or both of the child’s parents (required for EI);

2. The child’s EI or ECSE specialist;

3. A representative of the contracting or subcontracting agency who may be another member of the team and who is:

* 1. Qualified to provide or supervise the provision of EI or ECSE services to meet the unique needs of children with disabilities;
	2. Knowledgeable of typical child development and appropriate activities for infants and young children; and
	3. Knowledgeable about the availability of resources.

4. For a child eligible for EI services, the service coordinator who is responsible for implementation of the IFSP and may be the child’s EI specialist;

5. The child’s preschool teacher if the child is or may be participating in a regular preschool;

6. Family members and/or advocates as requested by the parents;

7. Other individuals, including related service personnel, as appropriate, at the discretion of the parent, primary contractor, or subcontractor who have knowledge or special expertise regarding the child;

8. An individual, who may be another member of the team, who:

a. Was involved in conducting the evaluation;

b. Is knowledgeable about the child’s disability; and

c. Can interpret the developmental or instructional implications of the evaluation.

1. A representative of the school district in which the child resides during the year before the child enters school;
	* 1. For a child birth to three the IFSP team must be multidisciplinary as defined in OAR 581-015-2700 (23).
		2. The regular preschool teacher will participate, to the extent appropriate, in the development, review and revision of the child’s IFSP, including assisting in the determination of:
2. Necessary modifications to appropriate preschool activities in the classroom and participation in the preschool/early learning environment;
3. Supplementary aids and services, program modifications or supports for preschool personnel that will be provided for the child; and
4. Appropriate positive behavioral interventions and strategies for the child.

D. For a child age 3 or older:

1. A member of the IFSP team described above is not required to attend an IFSP meeting, in whole or in part, if the child’s parent and the representative of the contractor or subcontractor agree in writing that the attendance of the member is not necessary because the member’s area of the curriculum or related services is not being discussed or modified at the meeting.
2. A member of the IFSP team described above may be excused from attending an IFSP meeting, in whole or in part, when the member’s area of the curriculum or related services is being discussed or modified at the meeting, if the parent and the representative of the contractor or subcontractor provide written consent to the excusal; and the member submits, in writing to the parent and the IFSP team, input into the development of the IFSP before the meeting.

*Citations:*

*State Regulations:*

OAR 581-015-2825 Participants for IFSP Meetings and Reviews

*Federal Regulations:*

34 CFR 300.321 IEP Team

34 CFR 303.343 IFSP Team Meetings and Periodic Reviews

### V. Content of the IFSP

The IFSP for each eligible child includes:

1. A statement of the child’s present levels of physical development, (including vision, hearing and health status), cognitive development, communication development, social or emotional development, and adaptive development.
2. A statement of how the disability affects the child’s participation in appropriate activities.
3. A statement of the measurable annual goals, including short-term objectives, related to:
	* + 1. Meeting the child’s needs that result from the child’s disability, to participate in appropriate activities;

2. Meeting each of the child’s other developmental needs that result from the child’s disability; and

3. Clearly describing the anticipated outcomes, including intermediate steps, that serve as a measure of progress toward the goal.

1. With the concurrence of the family, a statement of the family’s resources, priorities, and concerns related to enhancing the development of the child, based on information obtained through an assessment tool and also through an interview with those family members who elect to participate in the assessment.
2. A statement of the EI services, ECSE services, related services, supplementary aids and services, program modifications, and supports for EI/ECSE personnel that will be provided to the child, or on behalf of the child, based on peer-reviewed research to the extent practicable. These services, modifications, and supports are developed for the child to:
3. Meet the annual goals (including pre-literacy, language, and numeracy skills, as developmentally appropriate for the child);
4. Be involved and progress in appropriate activities;

3. Be involved and participate in extracurricular and other nonacademic activities; and

4. Be educated and participate with other children, with and without disabilities, in appropriate activities, nonacademic, and extracurricular activities.

1. For each EI service, ECSE service, related service, supplementary aid and service, program modification, and support for EI/ECSE personnel that will be provided to the child, or on behalf of the child, a description of:
2. The projected date for initiation;
3. Projected duration, or ending date;
4. The anticipated method, amount and frequency; and who is responsible for implementation of all or part of an IFSP; and
5. The anticipated location.
6. Related Services: Transportation; Responsibility of School Districts for Transporting Children Other than to and from the Child’s Home:

1. Local school districts are responsible for transportation services for children birth to kindergarten age if it is determined to be a service (early intervention) or a related service (early childhood special education) on the child’s Individualized Family Service Plan (ORS 343.533). The district may include those costs in its claims for transportation costs reimbursement by the state.

The Individualized Family Service Plan (IFSP) team determines whether transportation is a service necessary for a child to benefit from (or access) their early intervention (EI) or early childhood special education (ECSE) services. If the IFSP team decides that transportation is necessary, then the school district must provide the transportation services. The EI/ECSE program should invite a representative from the school district to the IFSP meeting if transportation is likely to be considered. Transportation that is a required service (EI) or a related service (ECSE) on a child’s IFSP cannot be arbitrarily limited by the geographic boundaries of a school district so long as it is required for the special circumstances of the child.

When considering whether transportation is a necessary service to and/or from childcare settings or non EI/ECSE preschools outside of district boundaries, the IFSP team, including the school district representative may consider factors including the following:

a. Availability of child care for the child;

b. Any difficulty the family has had in obtaining child-care for their child with disabilities;

c. The work hours of the parent and hours child-care providers are open; and

d. The distance the child-care is outside the school boundaries. For example, is the child-care 1 or 2 miles, or 15-20 miles outside the boundary?

2. If the school district did not participate in the IFSP meeting and disagrees with the IFSP team’s decision regarding transportation the district may request another IFSP meeting. At this point the IFSP team may consider:

a. Exploring if the district where the child-care is located would provide the transportation under an agreement with the child’s resident school district;

b. Exploring other alternative transportation possibilities;

c. Exploring if EI or ECSE services can be provided at the child-care setting or another setting that is close to the child-care setting.

All of the considerations listed above are discussion points for the IFSP team in determining whether the child needs transportation in order to benefit from or access EI or ESCE services. Ultimately, the decision must be based on the child’s needs and not on cost or administrative convenience.

1. For a child eligible for EI, a statement of the natural environments in which EI services will be provided, and a justification of the extent, if any, to which the services will not be provided in a natural environment. Other services, such as medical services that the child may need but are not EI or ECSE services are listed.
2. For a child eligible for ECSE:

1. A statement of the extent, if any, to which the child will not participate:

2. With nondisabled children; and

3. In appropriate activities, nonacademic, and extracurricular activities.

1. Other services, such as medical services that the child may need but are not EI or ECSE services are listed.

K. A statement that describes how the child’s progress toward completion of the annual goals will be measured, and how this progress will be reported to parents at least as often as progress reports for nondisabled children are provided to parents. The progress reports will indicate:

* + - 1. The progress made toward completion of each annual goal during that reporting period; and
			2. The extent to which the progress will allow the child to meet the annual goals by the end of the IFSP.

L. The name of the service coordinator who is responsible for coordinating the involvement of the family and agencies in implementing EI and other services, including transition services.

M. The steps to be taken to support the transition of the child from EI services to ECSE or other services that may be appropriate. These steps include:

1. Discussions with, and training of, parents regarding future services, placements and other matters related to the child’s transition;
2. Procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and functioning new setting; and
3. With parent consent, the transmission of information about the child to the ECSE subcontractor, if different than the child’s EI subcontractor.
4. The steps to be taken to support the transition of the child from ECSE to public schooling.

*Citations:*

*State Regulations:*

OAR 581-015-2815 IFSP Content

Program Operating Guideline: [Transportation; Responsibility of School Districts for Transporting Children Other Than to and from the Child's Home](https://www.oregon.gov/ode/students-and-family/SpecialEducation/earlyintervention/Documents/transportation-pogmal.pdf)

*Federal Regulations:*

34 CFR 300.320 Definition Individualized Education Program

34 CFR 303.340 - 346 Individualized Family Service Plan

### VI. IFSP Team Considerations and Special Factors for ECSE

1. In developing, reviewing, and revising the IFSP, the IFSP team considers:
	* + 1. The strengths of the child and concerns of the parent for enhancing the education of the child; and
2. The results of the initial or most recent evaluation of the child.
3. For a child age three and older, the academic, developmental and functional needs of the child.
4. For children age three and older, in developing, reviewing, and revising the child’s IFSP, the IFSP team considers the following special factors:

1. The communication needs of the child; and

2. The need for assistive technology services and/or devices.

1. For children age three and older, the IFSP team also considers the following special factors in developing and revising the child’s IFSP:

1. For a child whose behavior impedes his or her learning or that of others, strategies, positive behavioral intervention, and supports to address that behavior;

2. For a child with limited English proficiency, the language needs of the child as those needs relate to the IFSP;

3. For a child who is blind or visually impaired, instruction in Braille and the use of Braille unless the IFSP team determines, after an evaluation of reading and writing media, including evaluation of future needs for instruction in Braille or the use of Braille, that instruction in Braille or the use of Braille is not appropriate; and

4. For a child who is deaf or hard of hearing, the child’s language and communication needs, including opportunities for direct communication with peers and professional personnel in the child’s language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child’s language and communication mode.

*Citations:*

*State Regulations:*

581-015-2820 IFSP Team Consideration and Special Factors

*Federal Regulations:*

34 CFR 300.105 Assistive Technology

34 CFR 300.324 Development, Review, and Revision of IEP

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### VII. Extended Year Services – ECSE Only

1. The EI/ECSE program makes extended year services (EYS) services available to all children eligible for ECSE for whom the IFSP team has determined that such services are necessary.
2. EYS services are:
3. Provided to a child with a disability in addition to the services provided during the typical service year;
4. Identified in the child’s IFSP; and
5. Provided at no cost to the parent.
6. Consideration of EYS services will not be limited to particular categories of disability, and will not be limited to a type, amount, or duration of service.
7. EYS services are available to maintain the child’s learning skills or behavior; EYS services are not provided to teach new skills or behaviors.
8. The EI/ECSE program has established criteria for determining the need for EYS services*.* This criteria includes:
9. Evidence of the child’s regression/recoupment of skills or behavior, based on documented evidence; and
10. If no documented evidence, predictions regarding the child’s regression and recoupment of skills and/or behavior.
11. Regression means a significant loss of skills or behaviors that will likely result if services are interrupted in an area specified on the IFSP.
12. Recoupment means the ability to recover skills and/or behavior to a level that was achieved prior to the interruption of service in an area specified on the IFSP.

*Citations:*

*State Regulations:*

581-015-2855 EYS for ECSE

*Federal Regulations:*

34 CFR 300.106 Extended School Year (ESY)

### VIII. Assistive Technology

1. The EI/ECSE program ensures that assistive technology devices or assistive technology services, or both, are made available if they are identified as part of the child’s IFSP. These services and/or devices may be part of the child’s EI, ECSE, related services, or supplementary aids and services.

B. On a case-by-case basis, the EI/ECSE program permits the use of program purchased assistive technology devices in the child’s home or in other settings if the child’s IFSP team determines that the child needs access to those devices to receive EI or a free appropriate public education. In these situations, EI/ECSE program policy will govern liability and transfer of the device when the child ceases to attend the EI/ECSE program.

*Citations:*

*State Regulations:*

581-015-2860 Assistive Technology for ECSE

*Federal Regulations:*

34 CFR 300.105 Assistive Technology

34 CFR 303.13 Early Intervention Services

# SECTION SEVEN: PROCEDURAL SAFEGUARDS

**EARLY INTERVENTION AND EARLY CHILDHOOD SPECIAL EDUCATION PROCEDURES**

*NOTE: Policies and procedures in this section apply to both Early Intervention (EI) and Early Childhood Special Education (ECSE), except for subsection VII, which applies to ECSE only. All references to FAPE apply only to ECSE.*

### I. Procedural Safeguards

1. The EI/ECSE contractor or subcontractor provides procedural safeguards to:
	1. Parents, guardians (unless the guardian is a state agency), or persons in parental relationship to the child; and
	2. Surrogate parents.

*Citations:*

*State Regulations:*

OAR 581-015-2315 Notice of Procedural Safeguards

OAR 581-015-2000 Definitions

*Federal Regulations:*

34 CFR 300.504 Procedural Safeguards Notice

### II. Consent

1. The EI/ECSE contractor or subcontractor obtains informed written consent from the parent before:
2. Conducting an initial evaluation;
3. The provision of EI services or the initial placement of a child with a disability in a program providing ECSE and related services;
4. Conducting reevaluations; and
5. The administration of individual intelligence tests and all tests of personality.
6. The EI/ECSE contractor or subcontractor advises parents that consent may be revoked at any time before the completion of the activity or action for which they have given consent. If a parent revokes consent, that revocation is not retroactive. If consent has been given to evaluate a child that consent cannot be revoked after the evaluation is done. If there is consent to initial provision of special education services for a child, that consent cannot be revoked after the child has begun receiving special education services.
7. If a parent refuses to grant consent for an evaluation or reevaluation, the EI/ECSE contractor or subcontractor follows the procedures set forth in OAR 581-015-2730 or 581-015-2735.
8. Refusal to consent to one service or activity is not used to deny the parent or child any other service, benefit, or activity of the EI/ECSE program, except as provided in OAR 581-015-2090.

*Citations:*

*State Regulations:*

OAR 581-015-2315 Notice of Procedural Safeguards

OAR 581-015-2730 Parent Consent for EI

OAR 581-015-2735 Parent Consent for ECSE

OAR 581-015-2745 Prior Written Notice Required for the Identification, Evaluation, or Placement in EI/ECSE

*Federal Regulations:*

34 CFR 300.300 Parental Consent

34 CFR 300.504 Procedural Safeguards Notice

34 CFR 303.420Parental Consent and ability to decline services

### III. Exceptions to Parental Consent

A. The EI/ECSE contractor or subcontractor may review existing data as part of an evaluation or reevaluation without consent.

1. The EI/ECSE contractor or subcontractor may administer a test or other evaluation that is administered to all children without consent unless, before administration of that test or evaluation, consent is required of parents of all children.
2. The EI/ECSE contractor or subcontractor may conduct evaluations, tests, and procedures or administer instruments that are identified on a child’s IFSP as a measure for determining progress without parent consent.
3. The EI/ECSE contractor or subcontractor may conduct a screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation.
4. If a child is a ward of the state and is not residing with the child’s parent, the EI/ECSE contractor or subcontractor is not required to obtain informed written consent from the parent for an initial evaluation to determine whether the child is a child with a disability if:
	1. Despite reasonable efforts to do so, the agency cannot discover the whereabouts of the parent of the child;
	2. The rights of the parents of the child have been terminated in accordance with state law; or
	3. The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.
5. If the EI/ECSE contractor or subcontractor can demonstrate that it has taken reasonable measures to obtain written consent, and the parent has failed to respond, written consent need not be obtained for reevaluation, except for tests of individual intelligence and all tests of personality.
6. If the EI/ECSE contractor or subcontractor proceeds with a reevaluation without parent consent the EI/ECSE program will maintain a record of attempts to gain parental consent, such as:
	1. Detailed records of telephone call made or attempted and the results of those calls;
	2. Copies of correspondence sent to the parents and any responses received;
	3. Detailed records of visits made to the parents’ home or place of employment and the results of these visits.

1. Written consent is not required if a hearing officer determines that the evaluation or reevaluation is necessary to ensure that the child is provided with a free appropriate public education.

*Citations:*

*State Regulations:*

OAR 581-015-2740 Exceptions to Parent Consent

OAR 581-015-2755 Additional Parent Participation Requirements for IFSP and Placement Meetings –EI/ECSE Program

*Federal Regulations:*

34 CFR 300.300 Parental Consent

34 CFR 303.7 Consent

### IV. Due Process Hearings: Hearing Costs

A. The Oregon Department of Education EI/ECSE program pays for the hearing officer’s costs related to conducting the hearing, including pre-hearing conferences, scheduling arrangements, and other related matters.

B. The Oregon Department of Education EI/ECSE program provides the parent with a written, or at the option of the parent, an electronic verbatim recording of the hearing, within a reasonable time of the closing of the hearing.

*Citations:*

*State Regulations:*

OAR 581-015-2865 Mediation

OAR 581-015-2870 Due Process Hearings

*Federal Regulations:*

34 CFR 303.444 Hearing Rights

34 CFR 303.447 Timelines and Convenience of Hearings and Procedures

34 CFR 303.448 Civil Action

34 CFR 300.518 Status of Child during Proceedings

### V. Parent Meeting Participation

A. The EI/ECSE contractor or subcontractor provides parents an opportunity to participate in meetings with respect to the identification, evaluation, IFSP and educational placement of the child, the provision of early intervention services and the provision of a free appropriate public education to the child.

1. The EI/ECSE contractor or subcontractor provides parents written notice of any meeting sufficiently in advance to ensure an opportunity to attend. The written notice:
2. States the purpose, time, and place of the meeting and who is invited to attend;
3. Advises that parents may invite other individuals who they believe have knowledge or special expertise regarding the child;
4. Inform the parents of a child three or older that the team may proceed with the meeting even if the parent is not in attendance;
5. Advises who to contact before the meeting to provide information if they are unable to attend.
6. The EI/ECSE contractor or subcontractor shall take steps to ensure that one or both parents of a child with a disability are present at each IFSP or placement meeting or are afforded the opportunity to participate, including:
	* + 1. Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
			2. Scheduling the meeting at a mutually agreed upon time and place.

1. The EI/ECSE contractor or subcontractor schedules meetings to develop an IFSP or determine placement at a mutually agreed upon time and place. If neither parent can attend, the EI/ECSE contractor or subcontractor will use other methods to ensure participation, including, but not limited to individual or conference phone calls or home visits.

E. For ECSE, the contractor or subcontractor may conduct an IFSP or placement meeting without the parent if the ECSE contractor or subcontractor is unable to convince the parents that they should attend. Attempts to convince the parent to attend can be considered sufficient if the EI/ECSE contractor or subcontractor has:

* 1. Communicated directly with the parent to arrange a mutually agreeable time and place and written notice was sent to confirm the arrangement; or
	2. Proposed a time and place in the written notice, stated that a different time and place might be requested, and confirmed that the notice was received.

F. If the EI/ECSE contractor or subcontractor proceeds with an IFSP meeting without a parent, the district maintains a record of its attempts to arrange a mutually agreed upon time and place such as:

1. Detailed records of telephone calls made or attempted and the results of those calls;

2. Copies of correspondence sent to the parents and any responses received; and

3. Detailed records of visits made to the parent’s home or place of employment and the results of those visits.

G. If the parent does not attend the IFSP meeting, the EI/ECSE contractor or subcontractor will provide a copy of the IFSP to the parent.

H. The EI/ECSE contractor or subcontractor shall take whatever action is necessary to ensure that the parent understands the proceedings at a meeting, including;

* 1. For a child under age three, conducting the meeting in the native language of the family or other mode of communication used by the family unless it is clearly not feasible to do so;
	2. For a child age three and over, arranging for an interpreter for parents who are deaf or whose language is other than English.
1. An IFSP meeting does not include:
2. Informal or unscheduled conversations involving school EI/ECSE contractor or subcontractor personnel;
3. Conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child’s IFSP; or
4. Preparatory activities that EI/ECSE contractor or subcontractor or public personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

*Citations:*

*State Regulations:*

OAR 581-015-2750 Parent Participation – General – EI/ECSE Program

OAR 581-015-2755 Additional Parental Participation Requirements for IFSP and Placement

Meetings – EI/ECSE Program

*Federal Regulations:*

34 CFR 300.501 Opportunity to Examine Records; Parent Participation in Meetings

### VI. Prior Notice of Early Intervention or Early Childhood Special Education Action (Prior Written Notice)

* + 1. The EI/ECSE contractor or subcontractor provides prior written notice to the parent or surrogate parent of a child, within a reasonable period of time when the EI/ECSE contractor or subcontractor proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the child, the provision of early intervention services, or the provision of a free appropriate public education.
		2. The EI/ECSE contractor or subcontractor provides prior written notice after a decision is made and a reasonable time before that decision is implemented.
		3. The content of the prior written notice will include:
1. A description of the action proposed or refused by the EI/ECSE contractor or subcontractor;
2. An explanation of why the EI/ECSE contractor or subcontractor proposed or refused to take the action;
3. A description of any options that the EI/ECSE contractor or subcontractor considered and reasons why those options were rejected;
4. A description of each evaluation procedure, assessment, test, record, or report that is directly relevant to the proposal or refusal;
5. A description of any other factors that are relevant to the EI/ECSE contractor or subcontractor's proposal or refusal;
6. A statement that the parents of a child with a disability have procedural safeguards and, if it is not an initial referral for evaluation, how a copy of the Notice of Procedural Safeguards may be obtained; and
7. Sources for parents to contact to obtain assistance in understanding their procedural safeguards.

8. For early intervention only a statement of the complaint procedures under OAR

581-015-2030, including a description of how to file a complaint and the timelines under those procedures.

1. The prior notice is:
2. Written in language understandable to the general public; and
3. Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
4. If the native language or other mode of communication of the parent is not a written language, the EI/ECSE contractor or subcontractor takes steps to ensure that:
	1. The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;
	2. A reasonable effort is made to help the parent to understand the content of the notice; and
	3. There is written evidence that the requirements of this rule have been met.
	4. If a parent is deaf or blind, or has no written language, the mode of communication must be that normally used by the parent (such as sign language, Braille, or oral communication).
5. If the proposed action requires prior written notice and written consent, the contractor or subcontractor may give notice at the same time it requests consent.
6. Notice of Procedural Safeguards: Contractors and subcontractors must provide notice of procedural Safeguards as described in OAR 581-015-2315.

*Citations:*

*State Regulations:*

OAR 581-015-2745 Prior Written Notice and Notice of Procedural Safeguards – EI/ECSE Program

*Federal Regulations:*

34 CFR 300.504 Procedural Safeguards

### VII. Notice of Procedural Safeguards

1. The EI/ECSE contractor or subcontractor gives parents a copy of the Notice of Procedural Safeguards at a minimum only one time per year except that a copy is given to the parents:
2. Upon initial referral or parent request for evaluation;
3. Upon request by a parent.
4. The procedural safeguards notice includes all of the content provided in the Notice of Procedural Safeguards published by the Oregon Department of Education in the following areas:
	1. Independent educational evaluations;
	2. Prior written notice;
	3. Parental consent;
5. Access to educational records;

5. Mediation, complaints and due process hearings;

6. The child's placement during pendency of due process proceedings;

7. Procedures for children who are subject to placement in an interim alternative educational setting;

1. Requirements for unilateral placement by parents of children in private school at public expense;
2. Civil actions, including the time period for filing such actions;
3. Attorney's fees;
4. Use of public or private insurance.
5. The Notice of Procedural Safeguards is written in language understandable to the general public.
6. The Notice of Procedural Safeguards is provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
7. If the native language or other mode of communication of the parent is not a written language, the EI/ECSE contractor or subcontractor takes steps to ensure:

1. The notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

2. The parent understands the content of the notice; and

3. There is written evidence that the district has met these requirements.

*Citations:*

*State Regulations:*

OAR 581-015-2315 Notice of Procedural Safeguards

OAR 581-015-2865 Mediation

OAR 581-015-2870 Due Process Hearings

*Federal Regulations:*

34 CFR 300.500 Responsibility of SEA and other Public Agencies

34 CFR 300.501 Opportunity to Examine Records; Parent Participation in Meetings

34 CFR 300.504 Procedural Safeguards Notice

34 CFR 303.401 Confidentiality and Opportunity to Examine Records

34 CFR 303.421 Prior Written Notice and Procedural Safeguards Notice

34 CFR 303.420 Parental Consent and Right to Decline Services

34 CFR 303.431 Mediation

34 CFR 303.441 Due Process Complaint

### VIII. Independent Educational Evaluations (for ECSE only)

1. If a parent requests an independent educational evaluation at public expense, the ECSE contractor or subcontractor provides information to parents about where an independent educational evaluation may be obtained, and the ECSE program criteria applicable for independent educational evaluations.
2. If a parent requests an independent educational evaluation at public expense, the ECSE contractor, subcontractor or school district, without unnecessary delay, either:

1. Ensures that an independent educational evaluation is provided at public expense unless the ECSE contractor or subcontractor demonstrates in a hearing that the evaluation obtained by the parent did not meet ECSE program criteria; or

2. Initiates a due process hearing to show that its evaluation is appropriate

1. The ECSE contractor or subcontractor criteria for independent educational evaluations are the same as for ECSE contractor or subcontractor evaluations including, but not limited to, location, examiner qualifications and cost.

1. Criteria established by the ECSE contractor or subcontractor do not preclude the parent's access to an independent educational evaluation.

2. The EI/ECSE contractor or subcontractor provides the parents the opportunity to demonstrate the unique circumstances justifying an IEE that does not meet the EI/ECSE contractor or subcontractor’s criteria.

1. If a parent requests an independent educational evaluation, the ECSE contractor or subcontractor may ask why the parent disagrees with the public evaluation. The parent may, but is not required to, provide an explanation. The ECSE contractor or subcontractor may not:

1. Unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation;

2. Except for the criteria in “C” impose conditions or timelines related to obtaining an IEE at public expense.

1. The ECSE contractor or subcontractor considers an independent educational evaluation submitted by the parent if the evaluation meets ECSE contractor or subcontractor criteria in any decision made with respect to the provision of a free appropriate public education to the child.
2. A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

*Citations:*

*State Regulations:*

OAR 581-015-2305 Independent Education Evaluation

OAR 581-015-2765 Independent Education Evaluation - ECSE

*Federal Regulations:*

34 CFR 300.502 Independent Educational Evaluation

### IX. Surrogate Parents

1. The EI/ECSE contractor or subcontractor ensures that the rights of a child with a disability or suspected of having a disability, are protected by appointing a surrogate parent not more than 30 days after a determination by the EI/ECSE contractor or subcontractor that the child needs a surrogate because:
2. No parent (as defined in OAR 581-015-2700(22) can be identified or located after reasonable efforts;
3. The child is a ward of the state and there is reasonable cause to believe that the child has a disability; or
4. The parent requests the appointment of a surrogate parent.
5. The EI/ECSE contractor or subcontractor has a method for determining whether a child needs a surrogate parent and for assigning a surrogate parent to the child.
6. A foster parent may be treated as a parent without being appointed as a surrogate parent if:

1. Parental rights have been terminated by court order, and

2. The foster parent:

* 1. Has an ongoing or intended long-term relationship with the child;
	2. Is willing to make educational decisions; and
	3. Has no interest that would conflict with the interests of the child.
1. The EI/ECSE contractor or subcontractor ensures that each person approved to serve as a surrogate:

1. Is not an employee of the EI/ECSE contractor or subcontractor or the Department of Education or any other agency involved in the early intervention, education or care of the child.

2. Does not provide EI/ECSE services to the child or to any family members of the child;

3. Is free of any personal or professional interest that conflicts with representing the child's EI or ECSE interests; and

4. Has the necessary knowledge and skills that ensure adequate representation of the child in special education decisions. The EI/ECSE contractor or subcontractor will provide training, as necessary to ensure that surrogate parents have the requisite knowledge.

E. The EI/ECSE contractor or subcontractor provides all EI or ECSE rights and procedural safeguards to appointed surrogate parents.

F. A surrogate will not be considered an employee of the EI/ECSE contractor or subcontractor solely on the basis that the surrogate is compensated from public funds.

G. The duties of the surrogate parent are to:

1. Protect the EI or ECSE rights of the child;

2. Be acquainted with the child's disability and the child's EI or ECSE needs;

3. Represent the child in all matters relating to the identification, evaluation and assessment, IFSP services, educational placement of the child; and any other EI/ECSE rights; and

4. Represent the child in all matters relating to the provision of appropriate early intervention services or a free appropriate public education to the child.

H. A parent may give written consent for a surrogate to be appointed. When a parent requests that a surrogate be appointed, the parent shall retain all parental rights to receive notice, and all of the information provided to the surrogate. The surrogate, alone, is responsible for all matters relating to the EI or ECSE of the child unless the parent revokes consent for the surrogate's appointment. If a parent gives written consent for a surrogate to be appointed, the parent may revoke consent at any time by providing a written request to revoke the surrogate's appointment.

1. The EI/ECSE contractor or subcontractor may change or terminate the appointment of a surrogate when:

1. The person appointed as surrogate is no longer willing to serve;

2. The child is no longer eligible for EI or ECSE services;

3. The legal guardianship of the child is transferred to a person who is able to carry out the role of the parent;

4. A foster parent is identified who can carry out the role of parent;

5. The parent, who previously could not be identified or located, is now identified or located;

6. The appointed surrogate is no longer eligible;

7. The child moves to another EI/ECSE contractor or subcontractor service area; or

8. The child is no longer a ward of the state.

K. A person appointed as surrogate will not be held liable for actions taken in good faith on behalf of the parent in protecting the special education rights of the child.

L. The EI/ECSE contractor or subcontractor will not appoint a surrogate solely because the parent is uncooperative or unresponsive to the EI or ECSE needs of the child.

*Citations:*

*State Regulations:*

OAR 581-015-2760 Surrogate Parents – EI/ECSE

OAR 581-015-2320 Surrogate Parents

*Federal Regulations*:

34 CFR 300.519 Surrogate Parents

34 CFR 303.422 Surrogate Parents

# SECTION EIGHT: EVALUATION AND SCREENING PROCEDURES

**EARLY INTERVENTION AND EARLY CHILDHOOD SPECIAL EDUCATION PROCEDURES**

*Note: Unless otherwise noted, policies and procedures in this section apply to both Early Intervention (EI) and Early Childhood Special Education (ECSE).*

### I. Initial Evaluation

1. The child’s resident school district either directly, or through contract with the EI/ECSE contractor, subcontractor or other qualified evaluator(s), conducts a comprehensive individualized evaluation before determining that the child is eligible for EI or ECSE services, and before the EI/ECSE program provides EI or ECSE and related services.
2. Parents, child care providers, preschool teachers, or other interested individuals can refer a child for an initial EI or ECSE evaluation if there is suspicion that a child may have a disability that has an adverse impact on their development.
3. For children under three years of age, a public agency must refer a child as soon as possible, but in no case more than seven days after the child has been identified.
4. The designated referral and evaluation agency designates a team to determine whether an evaluation will be conducted. The team includes at least two professionals, at least one of who is a specialist knowledgeable and experienced in the evaluation and development of young children with disabilities, and the parent.
5. For children under the age of three the evaluation must be conducted by a multidisciplinary team, with individuals from two or more disciplines or professions, including persons who are knowledgeable about the child. For children age three and older the evaluation must be conducted by at least two professionals, at least one of who is a specialist knowledgeable and experienced in the evaluation and development of young children with disabilities or one person with credentials in two separate disciplines.
6. In determining what testing and/or further assessment may be necessary, the team will review existing information.
7. As appropriate, the designated referral and evaluation agency provides the parent with:
	1. Prior written notice of the intent to conduct an initial evaluation including descriptions of any evaluation procedures the agency proposes to conduct as a result of the evaluation planning process, and obtain consent for such evaluation;
	2. Prior written notice of the refusal to conduct an initial evaluation; or
	3. Notice of the team determination that no further data is required, including:

a. The reasons why no further data are required; and

b. The right to request further assessment(s) to determine if the child is eligible for EI or ECSE and related services.

*Citations:*

*State Regulations:*

ORS 343.157 Duty of School Districts

OAR 581-015-2090 Consent

OAR 581-015-2100 Responsibility for Evaluation and Eligibility Determinations

OAR 581-015-2105 Evaluation and Reevaluation requirements

OAR 581-015-2110 General Evaluation and Reevaluation Procedures

OAR 581-015-2115 Evaluation Planning

OAR 581-015-2730 Parent Consent for EI

OAR 581-015-2735 Parent Consent for ECSE

OAR 581-015-2775 EI Evaluation

OAR 581-015-2780 EI Eligibility

OAR 581-015-2790 ECSE Evaluation

OAR 581-015-2795 ECSE Eligibility

*Federal Regulations:*

34 CFR 300.300 Parental Consent

34 CFR 300.301 Initial Evaluation

34 CFR 300.303 Reevaluation

34 CFR 303.303 Referral Procedures

34 CFR 303.321 Evaluation of the Child and Assessment of the Family

### II. Requirements for Reevaluation

1. The district either directly, or through contract with the EI/ECSE contractor, subcontractor or other qualified evaluator(s), conducts a complete reevaluation:
	1. At least once every three years; or
	2. Whenever conditions warrant a reevaluation, including if the child’s parent or teacher(s) requests such reevaluation.
2. When conducting a reevaluation, the IFSP team reviews existing information and determines what additional assessment information, if any, is needed to address all minimum eligibility criteria of the child’s eligibility category(ies).
3. If additional evaluation is determined to be necessary, the designated referral and evaluation agency provides the parent with prior written notice of the intent to conduct the evaluation and request consent for such evaluation including descriptions of any evaluation procedures the agency proposes to conduct as a result of the evaluation planning process.

D. With the exception of testing of intelligence or personality, if the parents fail to respond to the request for consent, the designated referral and evaluation agency can initiate the testing. Parent consent is obtained prior to any testing of intelligence or personality.

E. If the team determines that no further data is required, the designated referral and evaluation agency:

* 1. Provides prior written notice of this decision to the parent; and
	2. Provides parents with the reasons why no further data are required; and, informs the parents of their right to request further assessment(s) to determine if their child is eligible for EI or ECSE and related services.

*Citations:*

*State Regulations:*

OAR 581-015-2090 Consent

OAR 581-015-2095 Exceptions to Consent

OAR 581-015-2105 Evaluation and Reevaluation requirements

OAR 581-015-2110 General Evaluation and Reevaluation Procedures

OAR 581-015-2730 Parent Consent for EI

OAR 581-015-2735 Parent Consent for ECSE

OAR 581-015-2740 Exceptions to Parental Consent – EI/ECSE

OAR 581-015-2775 EI Evaluation

OAR 581-015-2790 ECSE Evaluation

*Federal Regulations:*

34 CFR 300.300 Parental Consent

34 CFR 300.303 Reevaluations

### III. Evaluation Planning and Review of Existing Information

A. When initially evaluating, and when reevaluating a child, the IFSP team, and other professionals as appropriate, review existing data and other information that is available, including information provided by the parent, and determine any additional information, if any, that the team will need to obtain in order to determine:

* + - 1. Whether or not a child is eligible under any category of disability or developmental delay, including the need for EI or ECSE and related service(s);
			2. The present levels of developmental functioning;
			3. The educational needs of the child; and
			4. In the case of reevaluation, whether any additions or modifications in the specially designed instruction and related services are needed to allow the child to meet the IFSP goals, and allow the child to participate in the appropriate activities.

B. A review of existing information includes:

* 1. Any evaluations and information provided by the parents;
	2. Any current classroom-based assessments and observations; and
	3. Any observations by teachers and other service providers.

C. The IFSP team and other professionals, as appropriate, may review existing information without a meeting. If a meeting is held, the parent will be provided the opportunity to participate.

D. If additional information is not needed:

1. If the IFSP team determines that no additional data or testing is required to determine whether a child is or continues to be a child with a disability, and to determine the child’s educational and developmental needs, the public agency notifies the child’s parents:

a. Of that determination and the reasons for it;

b. Of their right to request an assessment to determine whether the child continues to be a child with a disability and to determine the child’s educational and developmental needs.

2. The public agency is not required to conduct further testing, unless requested to do so by the parent.

*Citations:*

*State Regulations:*

OAR 581-015-2115 Evaluation Planning

OAR 581-015-2775 EI Evaluation

OAR 581-015-2790 ECSE Evaluation

*Federal Regulations:*

34 CFR 300.305 Additional Requirements for Evaluations and Reevaluations: Determination of needed evaluation data

### IV. Evaluation Procedures

1. The district, either directly or through contract with the EI/ECSE contractor or subcontractor, ensures that all tests and evaluations used for initial evaluations and reevaluations are:

1. Are developmentally appropriate;

2. Selected and conducted so as not to be racially or culturally discriminatory;

3. Conducted in the child’s native language or other mode of communication, unless it is clearly not feasible to do so; and

4. for children with limited English proficiency, are reflective of the child’s English language skills; the assessments will measure the extent to which the child may have a disability and need EI or ECSE, and not solely reflect the child’s limited English proficiency.

1. The district, either directly or through contract with the EI/ECSE contractor or subcontractor, designates trained and knowledgeable personnel to conduct the evaluation.
2. For early intervention, the evaluation and assessment is conducted by a multidisciplinary team representing two or more disciplines or professions, including persons who are knowledgeable about the child and is based on informed clinical opinion.
3. The district, either directly or through contract with the EI/ECSE contractor or subcontractor, uses a variety of tools and measures to gather relevant functional and developmental information about the child. This includes:
	* + 1. Any information provided by the parent;
			2. Any information related to the child’s ability to be involved in and progress in appropriate activities;
			3. Observations of the child; and
			4. Information obtained from the curriculum based assessment.
4. For ECSE, evaluation and assessment tools and strategies are selected by the team to assist in determining:
	* + 1. Whether the child has a disability and needs ECSE; and
			2. What the content of the IFSP may be to address the ECSE needs.
5. For early intervention:
6. Evaluation tools and strategies are selected by the team to assist in determining whether the child has a disability and needs EI.
7. Assessment tools and strategies are selected by the team to assist in determining what the content of the IFSP may be to address EI needs.
8. Standardized tests used to evaluation a child:

1. Are validated for the purpose for which they are used;

2. Are administered by trained and knowledgeable personnel, as determined by the test producer; and

3. If administered in a non-standardized manner, a description of the way(s) in which the variance occurred will be described in the evaluation report.

1. Tests and other evaluation measures include those that are designed to assess specific areas of educational need, not only those designed to provide a single intelligence quotient.
2. When testing children with impaired sensory, manual, or speaking skills, the tests used will accurately reflect the child’s actual abilities rather than solely reflect the impairment.
3. No single evaluation tool will be used as the sole instrument in determining eligibility for EI or ECSE, including the need for EI or ECSE and related services.
4. For a child suspected of being eligible for early intervention, the child’s level of functioning is assessed in all of the following areas:
	1. Cognitive development;
	2. Physical development including vision and hearing;
	3. Communication development;
	4. Social or emotional development, and
	5. Adaptive development.
5. Each child is assessed in all areas related to each suspected disability(ies), including, if appropriate:
	* + 1. Health;
			2. Vision;

3. Hearing;

4. Social and emotional status;

5. General intelligence;

6. Academic performance;

7. Communication skills; and

8. Motor abilities.

1. The evaluation is comprehensive enough to identify all the child’s EI or ECSE and related service needs, whether or not these needs are commonly associated with the suspected or identified disability category (ies).
2. The district, either directly or through contract with the EI/ECSE contractor or subcontractor, uses technically sound instruments that may assess the relative contribution of:

1. Cognitive factors;

2. Behavioral factors; and

3. Physical, developmental and communication factors.

1. The child is evaluated in a manner that assists in determining his or her educational needs.
2. For early intervention, the evaluation and assessment are completed in time to conduct the initial IFSP within 45 days from the date of the referral and validation of parent contact information.
3. For early childhood special education, the evaluation and assessment are completed in a reasonable period of time. Reasonable period of time means within 60 school days of the parent’s consent for the evaluation, unless special circumstances require a longer period. The district, either directly or through contract with the EI/ECSE contractor or subcontractor, documents these circumstances when applicable. Special circumstances are limited to the following:
	1. 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.

2. The child is a transfer student in the process of reevaluation and the district and the parents agree in writing to a different length of time to complete the evaluation. In this circumstance, when the child transfers from one school district to another school district in the same school year, the previous and current school district coordinate any pending assessments as necessary and as expeditiously as possible to ensure prompt completion of the evaluation (581-015-2110).

*Citations:*

*State Regulations:*

OAR 581-015-2100 Responsibility for Evaluation and Eligibility Determination

OAR 581-015-2110 General Evaluation and Reevaluation Procedures

OAR 581-015-2130 - OAR 581-015-2180 Criteria for Evaluation and Eligibility Procedures

OAR 581-015-2775 EI Evaluation

OAR 581-015-2790 ECSE Evaluation

*Federal Regulations:*

34 CFR 300.304 Evaluation Procedures

*Additional Procedures for Evaluating Children with Specific Learning Disabilities:*

34 CFR 300.307 Specific Learning Disabilities

34 CFR 300.308 Additional Group Members

34 CFR 300.309 Determining the Existence of a Specific Learning Disability

34 CFR 300.310 Observation

34 CFR 300.311 Specific Documentation for the Eligibility Determination

34 CFR 303.321 Evaluation of the Child and Assessment of the Child and Family

### V. Eligibility Determination

1. Once the evaluation is completed, the designated referral and evaluation agency designates an eligibility team to determine whether or not the child is eligible for EI or ECSE services. This team includes:

1. For EI, a multidisciplinary team including the parents and individuals from two or more separate disciplines or professions, including persons who are knowledgeable about the child;

2. For ECSE the team must include the parents and two or more professionals, at least one of whom is knowledgeable and experienced in the evaluation and education of children with the suspected disability. The eligibility team may be the child’s IFSP team.

1. The designated referral and evaluation agency prepares a written eligibility statement that includes:
	1. A description of all evaluation data used in determining the child’s eligibility;
	2. Determination of whether or not the child meets the eligibility criteria for one or more of the categorical disability areas described in Oregon Administrative Rules. For ECSE, this determination includes additional documentation of:
		1. Whether the disability has an adverse impact on the child’s developmental performance; and
		2. Whether the child needs ECSE as a result of the disability.

3. For EI, in addition to or in lieu of the above, the child could have a medical eligibility. In this situation, the child has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay, as documented by one of the following with the appropriate State Board licensure: a physician, a physician assistant, or a nurse practitioner. Assessment in all areas of development occurs prior to the development of the IFSP.

4. For ECSE, whether the determinant factor for eligibility determination is a lack of instruction of reading or math;

5. For ECSE, whether the determinant factor for eligibility determination is limited English proficiency; and

* 1. The signature of members of the eligibility team, indicating their agreement or disagreement with the eligibility determination.
1. The designated referral and evaluation agency provides the child’s parent with a copy of the evaluation report and documentation of eligibility determination.
2. For children who may be eligible in more than one disability category, the designated referral and evaluation agency ensures that:

1. The child is evaluated in all the areas related to the suspected disability(ies); and

2. The child’s IFSP addresses all the EI or ECSE and related service needs.

1. In addition to the above, for children with suspected specific learning disabilities:
	* + 1. The eligibility team includes:

a. The child’s regular preschool teacher, or if the child doesn’t have a regular teacher, a regular classroom teacher qualified to teach children who are the same age; and

b. A person qualified to conduct individual diagnostic examinations (e.g.: school psychologist, speech-language pathologist, and other qualified professionals).

2. The written evaluation report includes:

a. Statement regarding whether the child has a specific learning disability;

b. The basis for this determination;

c. A description of relevant behavior that was documented during an observation of the child, including a description of the relationship of that behavior to the child’s preacademic functioning;

d. If appropriate, educationally relevant medical findings; whether there is a severe discrepancy between intellectual ability and achievement and that is not correctable without special education; and

e. A statement of eligibility team determination regarding the effects of environmental, cultural, or economic disadvantage.

*Citations:*

*State Regulations:*

OAR 581-015-2100 Responsibility for Evaluation and Eligibility Determination

OAR 581-015-2120 Determination of Eligibility Specific Learning Disability

OAR 581-015-2170

OAR 581-015-2780 EI Eligibility

OAR 581-015-2795 ECSE Eligibility ECSE

*Federal Regulations:*

34 CFR 300.8 Child with a Disability

34 CFR 300.306 Determination of Eligibility: Procedures for Determining Eligibility and

Placement

### VI. Termination of EI or ECSE Eligibility

A. Before determining that a child is no longer eligible for EI or ECSE and related services, the district, either directly or through contract with the EI/ECSE contractor or subcontractor, completes a reevaluation.

*Citations:*

*State Regulations:*

OAR 581-015-2105 Evaluation and Reevaluation Requirements

OAR 581-015-2800 Termination of Eligibility – EI/ECSE

# SECTION NINE: FREE APPROPRIATE PUBLIC EDUCATION

**EARLY INTERVENTION AND EARLY CHILDHOOD SPECIAL EDUCATION PROCEDURES**

*Note: Policies and procedures in this section apply only to Early Childhood Special Education (ECSE), except for subsection III, which applies to both EI and ECSE.*

For the purposes of ECSE programs, the free appropriate public education is the ECSE and related services needed by the child and provided by the contractor and subcontractor.

### I. FAPE

A. The ECSE program provides ECSE and related services to all eligible 3-5 year old children with disabilities.

B.The ECSE program provides FAPE to children with disabilities who have been suspended or expelled from their ECSE services setting, in accordance with the ECSE discipline rules.

*Citations:*

*State Regulations:*

OAR-015-2040 FAPE and Age Ranges

*Federal Regulations:*

34 CFR 300.101 Free Appropriate Public Education (FAPE)

34 CFR 300.102 Limitation - Exceptions to FAPE for Certain Ages

### II. Nonacademic Services

A. The ECSE program provides equal opportunity for children with disabilities for participation in activities that the ECSE contractor or subcontractor makes available to children without disabilities.

B. Nonacademic and extracurricular services and activities may include all those available to children without disabilities, and may include meals, play periods, transportation, and other activities available in public preschool programs.

*Citations:*

*State Regulations:*

OAR 581-015-2070 Nonacademic Services

*Federal Regulations:*

34 CFR 300.107 Nonacademic Services

### III. Interagency Agreements for Placement in another EI/ECSE Region

* 1. The resident EI/ECSE contractor or subcontractor enters into a written agreement with another EI/ECSE contractor, subcontractor or approved private school to provide EI/ECSE services to preschool children with disabilities:

1. When necessary to provide EI/ECSE services; or

2. When a parent requests EI/ECSE services from a different region and both programs agree. However, the resident school district is not obligated to provide transportation when the parent chooses services outside their resident EI/ECSE service area.

* 1. The following provisions shall be included in the written agreement:
		+ 1. The resident EI/ECSE contractor or subcontractor retains all responsibility for ensuring that the parents and the child are afforded all EI/ECSE rights and services under state and federal law, including, but not limited to:

a. Individualized Family Service Plan (IFSP);

* 1. The resident EI/ECSE program initiates and conducts IFSP meetings or authorizes the attending EI/ECSE program in writing to act on its behalf;
	2. A representative of the resident EI/ECSE program attends all IFSP meetings or authorizes the attending EI/ECSE program in writing to act on its behalf.

b. Provision of early intervention services for children birth through 2;

c. Educational placement and provision of free appropriate public education for children age 3 through entry into kindergarten when they turn age 5 prior to September 1;

d. Provision of all procedural safeguards; and

e. The resident EI/ECSE contractor or subcontractor and ODE shall be jointly responsible for any ECSE due process hearing or judicial proceeding arising out of the child's placement or program.

* + - 1. The attending EI/ECSE program:
				1. Allows the child to remain in his or her present education placement at the attending EI/ECSE program during the pendency of any due process hearing or judicial proceeding unless the resident program and parents of the child agree otherwise;
	1. Immediately notifies the resident program of any complaint made by the parents of the child regarding the child's program at the attending program or any problems related to attendance or delivery of EI/ECSE services;
	2. Immediately notifies the resident program of any behavioral issues that may affect continued delivery of EI/ECSE services.

5. Transportation when Child Attends an EI/ECSE program in Another Region:

a. The resident school district is responsible for transportation if the placement in the attending EI/ECSE program is necessary to provide appropriate services and transportation is a related service on the IFSP.

b. If appropriate services are available in the resident EI/ECSE program, but the resident and attending programs have agreed to the parent's request for the child to receive services from the attending program, the resident school district is not responsible for transportation.

c. Public agencies are not responsible for any additional transportation costs as long as an appropriate EI/ECSE program is available within the resident EI/ECSE service area.

*Citations:*

*State Regulations:*

ORS 343.511 Interagency Agreements to Provide Services

### IV. Residential Placement

1. If the ECSE program places a child in a public or private residential program to provide ECSE and related services to a child with a disability, the EI/ECSE program ensures that the program, including non-medical care and room and board, is provided at no cost to the parents of the child.

*Federal Regulations:*

34 CFR 300.104 Residential Placement

### V. Program Options

A. The ECSE program ensures that each eligible child has available a variety of educational programs and services available to nondisabled children including art and music.

*Federal Regulations:*

34 CFR 300.110 Program Options

### VI. Physical Education

A. The ECSE program provides the opportunity to participate in typical motor development activities for those ECSE children attending a preschool program to receive FAPE.

1. If specially designed physical education is prescribed in a child’s IFSP, the ECSE program will provide the services directly or make arrangements for them to be provided by other agencies or programs.

*Federal Regulations:*

34 CFR 300.108 Physical Education

### VII. Recovery of Funds for Misclassified Children

1. The EI/ECSE contractor or subcontractor ensures that children identified on the special education child count under Part B of the Individuals With Disabilities Education Act are limited to children who:
2. Meet eligibility requirements under OAR 581-015-2130 to 581-015-2180, and 581-015-2795;
3. Have a current IFSP; and
4. Are receiving a free, appropriate public education.

*Citations:*

*State Regulations:*

OAR 581-015-2020 Recovery of Funds for Misclassified Children

### VIII. Children with Disabilities Covered by Public Insurance

* 1. For purposes of this rule the term “public benefits” means public insurance including but not limited to Medicaid.
1. The contractor or subcontractor may use a child or family’s public benefits to provide or pay for early intervention or a Free Appropriate Public Education, as permitted under the public insurance program and the requirements of 581-015-2885.
2. The contractor or subcontractor may not require a parent to sign up for, or enroll in, public benefits to receive early intervention services under Part C or a free appropriate public education (FAPE) under Part B.
3. For a child under age three, the contractor or subcontractor:

Must obtain, prior to using public benefits, parent consent if the child or family is not enrolled in the public benefits program or if that use would:

1. Decrease available lifetime coverage or any other insured benefit;
2. Result in the family paying for services that would otherwise be covered by the public benefits;
3. Increase premiums or lead to the discontinuation of insurance; or
4. Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

2. Must provide, if the parent does not consent to use of their public benefits, the early intervention services on the IFSP for which the parent has provided consent.

3. Must provide written notification, prior to using public benefits, to the parents that includes:

1. A statement that parental consent must be obtained before the contractor or subcontractor discloses a child’s personally identifiable information to the State Medicaid Agency for billing purposes;
2. A statement of the no-cost protection provision in OAR 581-015-2885 (5)(a)-(b) that early intervention services on the IFSP must still be made available if the parent has consented to these services;
3. A statement that the parents have the right to withdraw their consent to disclose personally identifiable information to the public agency responsible for the administration of public benefits or insurance program (e.g., Medicaid) at any time; and
4. A statement of the general cost categories that the parent would incur as a result of participating in a public benefits program.
5. Must pay any costs incurred as a result of using public benefits for early intervention services, such as a deductible or copayment.
6. May use its Part C funds to pay fees and costs (e.g., the deductible or co-pay amounts) the parents otherwise would have to pay to use public benefits.
7. May use its Part C funds to pay for early intervention services;
8. Must notify parents that they may use any of the state’s dispute resolution procedures including, but not limited to, the state complaint system under OAR 581-015-2030, and mediation, due process and related resolution sessions under OAR 581-015-2345 - OAR 581-015-2385 to contest the imposition of an insurance-related fee or cost, such as co-payments or deductibles, to provide early intervention services or a free appropriate public education for a child who may have a disability**.**
9. For a child over age three, the contractor or subcontractor:
10. Must obtain parent consent for releasing information to the state Medicaid agency necessary to access public insurance for the period of time covered by the child’s IFSP;
11. Must notify parents that the parents’ refusal to allow access to their public benefits does not relieve the contractor or subcontractor of responsibility to ensure that all required services are provided at no cost to the parents;
12. Must not require parents to incur an out-of-pocket expense such as the payment of deductible or co-pay amount incurred in filing a claim for services;
13. Must not use a child's benefits under a public insurance program if that use would:
14. Decrease available lifetime coverage or any other insured benefit;
15. Result in the family paying for services that would otherwise be covered by the public benefits;
16. Increase premiums or lead to the discontinuation of insurance; or
17. Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.
18. May use its Part B funds to pay for the service to ensure FAPE; and
19. May use its Part B funds to pay the cost the parents otherwise would have to pay to use public benefits (e.g., the deductible or co-pay amounts).
20. Proceeds from public benefits are not treated as program income for purposes of 34 CFR 80.25.
21. If a contractor or subcontractor spends reimbursements from federal funds (e.g., Medicaid) for early intervention, special education and related services, those funds will not be considered "state or local" funds for purposes of the maintenance of effort provisions.

*Citations:*

*State Regulations:*

OAR 581-015-2885 Preschool Children with Disabilities Covered by Public Insurance

### IX. Children with Disabilities Covered by Private Insurance

1. With regard to services required to provide FAPE to a preschool child over age three or EI services to a child under the age of three, a contractor or subcontractor may access a parent's private insurance proceeds only if the parent provides informed consent and applicable federal requirements related to confidentiality of personally identifiable information.
2. For a child under the age of three, when the contractor or subcontractor proposes to access the parent's private insurance to pay for the initial provision of early intervention services, it must:
3. Obtain parent consent and whenever personally identifiable information is released due to an increase in frequency, length, duration, or intensity in the provision of services on the child’s IFSP;
4. Inform the parents of any of the State’s payment policies and identify potential costs that the parent may incur when their private insurance is used to pay for services;
5. Not permit use of private insurance to:
6. Count towards or result in a loss of benefits due to the annual or lifetime insurance coverage caps, to the parent, or the child’s family members who are covered by the policy;
7. Negatively affect the availability of insurance to the child, the parent, or the child’s family members who are covered under the insurance policy, and insurance coverage may not be discontinued for these individuals due to the use of the insurance to pay for services; or
8. Be the basis for increasing insurance premiums of the child, the parent, or the child’s family members covered under the insurance policy.
9. For a child under the age of three, the contractor or subcontractor:
10. Must not require parents to pay out-of-pocket expenses (e.g. co-payments, premiums, or deductibles), even if the parent has given consent for the use of private insurance.
11. Must use its Part C funds to pay the cost the parents otherwise would have to pay to use public benefits (e.g., the deductible or co-pay amounts).
12. May use its Part C funds to pay for early intervention services.
13. Must notify parents that they may use any of the state’s dispute resolution procedures including, but not limited to, the state complaint system under OAR 581-015-2030; mediation, due process, and related resolution sessions under OAR 581-015-2345 – OAR 581-015-2385, to contest the imposition of an insurance related fee or cost, such as co-payments or deductibles, to provide early intervention services**.**
14. For a child above the age of three, the contractor or subcontractor must obtain consent each time it proposes to access the parents’ private insurance.
15. If a public agency is unable to obtain parental consent to use the parent's private insurance, to ensure the provision of FAPE, the public agency may use its Part B funds to pay for the service.
16. To avoid financial cost to parents who otherwise would consent to use private insurance, if the parent would incur a cost, the public agency may use its Part B funds to pay the cost the parents otherwise would have to pay to use the parent's insurance (e.g., the deductible or co-pay amounts).
17. For all preschool children, the contractor or subcontractor must inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

F. Proceeds from private insurance will not be treated as program income.

*Citations:*

*State Regulations:*

OAR 581-015-2890 Preschool Children with Disabilities Covered by Private Insurance

# SECTION TEN: APPLICATION AVAILABLE TO THE PUBLIC

**EARLY INTERVENTION AND EARLY CHILDHOOD SPECIAL EDUCATION PROCEDURES**

*Note: Policies and procedures in this section apply to both Early Intervention and Early Childhood Special Education.*

### I. Public Inspection

A. The contractor makes each early intervention/early childhood special education program application, periodic program plan and report available to the public.

B. Prior to adoption of EI/ECSE policies or procedures, the contractor provides adequate notice to the public with an opportunity for comment.

 C. The contractor makes all documents relating to the EI/ECSE program’s eligibility under the IDEA available to the public.

*Federal Regulations:*

34 CFR 76.304 Subgrantee Shall Make Subgrant Application Available to the Public

34 CFR 300.212 Public Information

34 CFR 303.208 Public Participation Policies and Procedures

# SECTION ELEVEN: NONDISCRIMINATION

**EARLY INTERVENTION AND EARLY CHILDHOOD SPECIAL EDUCATION PROCEDURES**

*Note: Policies and procedures in this section apply to both Early Intervention and Early Childhood Special Education.*

### I. Discrimination Prohibited

A. The EI/ECSE program promotes nondiscrimination and an environment free of harassment based on an individual's race, color, religion, sex, national origin, disability, marital status or age, or because of the race, color, religion, sex, national origin, disability, marital status or age of any other persons with whom the individual associates**.**

1. The EI/ECSE program makes every effort to remove any indication of discrimination in:
2. Employment;
3. Assignment and promotion of personnel;
4. Educational opportunities and services offered to children;
5. Child assignment to programs and classes;
6. Child discipline;
7. Location and use of facilities;
8. Educational offerings and materials; and
9. Accommodating the public at public meetings.

C. Each EI/ECSE contractor or subcontractor has written procedures for prompt resolution of complaints of discrimination.

D. Each EI/ECSE program has a written policy that assures equity, opportunity, and access for all children and implements this policy in each program location*.*

*Citations:*

*State Regulations:*

OAR 581-021-0045 Discrimination Prohibited

OAR 581-021-0046 Program Compliance Standards

OAR 581-022-0103 Equal Educational Opportunities

*Federal Regulations:*

Title VI of the Civil Rights Act of 1964

Title IX of the Education Amendments of 1972

Section 504 of the Rehabilitation Act of 1973

The Age Discrimination Act

# SECTION TWELVE: DISCIPLINE

**EARLY INTERVENTION AND EARLY CHILDHOOD SPECIAL EDUCATION PROCEDURES**

*Policies and procedures in this section apply to Early Childhood Special Education (ECSE) only. For this section of policies and procedures relating to discipline, “school day” means calendar days excluding weekends, holidays, and ECSE program vacation days.*

### I. Definitions

A. The ECSE contractor or subcontractor applies the following definitions when considering disciplinary action:

1. "Behavioral intervention plan" means an individualized plan, including positive interventions, designed to assist a child to decrease inappropriate behavior and increase or teach an alternative appropriate behavior.

2. "Current educational placement" means the type of educational placement of the child as described in the child's "annual determination of placement" document at the time of the disciplinary removal. It does not mean a specific location or school but the types of placement on the continuum of placement options.

3. "Disciplinary removal" means suspension, expulsion, or other removal from a program for disciplinary reasons, including removals for mental health examinations for children who threaten violence or harm in school. It does not include:

* 1. Removals by other agencies;
	2. Removals for public health reasons (e.g., head lice, immunizations, communicable diseases, etc.);
	3. In-school suspensions if the child continues to have access to ECSE and related services as described in the child's IFSP; or
	4. Bus suspensions, unless the child's IFSP includes transportation as a related service and the ECSE contractor or subcontractor makes no alternative transportation arrangements for the child, and the child does not attend the program as a result of the bus suspension.
1. “Functional behavioral assessment" means an individualized assessment of the child that results in a team hypothesis about the function of a child's behavior and, as appropriate, recommendations for a behavior intervention plan.
2. "Suspension" means any disciplinary removal other than expulsion.

*Citations:*

*State Regulations:*

ORS 343.155 Procedures to Protect Rights of Children with Disabilities

OAR 581-015-2400 Discipline: Definitions

OAR 581-015-2875 Discipline of Children with Disabilities for ECSE

### II. Disciplinary Removals for up to 10 School Days

1. The ECSE contractor or subcontractor may remove a child with a disability who violates a code of student conduct from their current educational placement to an appropriate interim alternative educational setting, another setting, or suspension, for up to ten school days in a school year to the same extent, and with the same notice, as for children without disabilities. *For ECSE, “school day” means calendar days excluding weekends, holidays, and ECSE program vacation day (*OAR 581-015-2875). These removals are not considered a change in placement.
2. During disciplinary removals for up to 10 school days:

1. The ECSE contractor or subcontractor is not required to provide access to ECSE services and appropriate activities, unless children without disabilities are provided access during this time.

2. The ECSE contractor or subcontractor is not required to determine whether the child’s behavior resulting in the disciplinary removal is a manifestation of the child’s disability.

3. The ECSE contractor or subcontractor counts days of suspension as follows:

a. Suspensions of a half day or less will be counted as a half day; and

b. Suspensions of more than a half-day will be counted as a whole day.

c. *For ECSE “day” means the length of time the child is scheduled to attend the program or participate in the ECSE services, as outlined on the IFSP.*

d. If a child moves from another ECSE program in Oregon, any days of suspension from the former ECSE program apply, unless the ECSE contractor or subcontractor does not have knowledge of previous suspensions.

*Citations:*

*State Regulations:*

OAR 581-015-2405 Disciplinary Removals for up to 10 School Days for Children with Disabilities

OAR 581-015-2875 Discipline of Children with Disabilities for ECSE

*Federal Regulations:*

34 CFR 300.530 Authority of School Personnel

### III. Additional Disciplinary Removals of up to 10 Business Days When There is No Pattern of Removal

1. The ECSE contractor or subcontractor may remove a child with a disability who violates a code of student conduct from their current educational placement to an appropriate interim alternative educational setting, another setting, or suspension for additional periods of up to ten days in a school year to the same extent, and with the same notice, as for children without disabilities, if the removals do not constitute a pattern. These removals do not constitute a change in placement.
2. ECSE personnel determine, on a case-by-case basis, whether the series of removals constitute a pattern:

1. Because the child’s behavior is substantially similar to the child’s behavior in previous incidents that resulted in the series of removals; and

2. Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of removals to one another.

1. Services. During removals of additional periods of up to 10 business days in a school year that do not constitute a pattern, the ECSE contractor or subcontractor provides services that are necessary to enable the child to:
	* + 1. Continue to participate in appropriate activities, although in another setting; and
			2. Progress toward meeting the goals in the child’s IFSP.
2. ECSE personnel, in consultation with at least one of the child’s ECSE teachers, determine the extent to which the services in this section are needed and location for delivery of services.

E. The ECSE contractor or subcontractor is not required to determine whether the behavior resulting in the disciplinary removal is a manifestation of the child’s disability.

*Citations:*

*State Regulations:*

OAR 581-015-2410 Additional Disciplinary Removals for up to 10 School Days Each (No Pattern)

*Federal Regulations:*

34 CFR 300.530 Authority of School Personnel

34 CFR 300.536 Change of Placement Because of Disciplinary Removals

### IV. Disciplinary Removals of More than 10 Business Days (Pattern or Consecutive)

1. When a child is removed for disciplinary reasons for more than 10 business days, it is considered a change in the child’s educational placement and the EI/ECSE contractor or subcontractor follows due process procedures if:

The removal is for more than 10 consecutive business days or more than 10 cumulative business days, and it constitutes a pattern of removals.

1. EI/ECSE Personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a disciplinary removal for a child with a disability who violates a code of conduct.
2. Manifestation determination. Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the EI/ECSE contractor or subcontractor determines whether the child’s behavior is a manifestation of the student’s disability.
3. If the IFSP team determines that the child's behavior is a manifestation of the child's disability, the ECSE contractor or subcontractor returns the child to the placement from which the child was removed, unless;

1. The parent and EI/ECSE contractor or subcontractor agree to a change of placement as part of the modification of the behavioral intervention plan;

1. The EI/ECSE contractor or subcontractor removes the child to an interim alternative educational setting for a weapons, drug violation, or infliction of serious bodily injury; or
2. For injurious behavior, the EI/ECSE contractor or subcontractor obtains an order from an administrative law judge allowing a change in placement to an interim alternative educational setting and;
	1. Either conducts a functional behavioral assessment, unless the EI/ECSE contractor or subcontractor conducted a functional behavioral assessment before the behavior occurred that prompted the disciplinary action, and implement a behavior intervention plan; or
	2. If the child already has a behavior plan, review the behavioral intervention plan and modify it, as necessary, to address the behavior.
3. If the IFSP team determines that the child’s behavior is not a manifestation of the child's disability, the ECSE contractor or subcontractor may proceed with disciplinary action applicable to children without disabilities in the same manner and for the same duration as would be applied to children without disabilities. If the program takes such action applicable to all children the program:

1. On the date which the decision is made to remove the child, notifies the parents of that decision and provides them with the notice of procedural safeguards under OAR 581-015-2315;

2. Provides the services to the child in an interim alternative educational setting, determined by the IFSP team, in accordance with OAR 581-015-2435 and;

3. Provides, as appropriate, a functional behavior assessment, and behavior intervention services and modifications that are designed to address the behavior violation so that it does not recur.

 F. Placement pending due process hearing. If a parent disagrees with the manifestation determination or any decision about placement related to the disciplinary removal and requests a due process hearing, the child remains in the interim alternative educational setting pending the decision of the administrative law judge under OAR 581-015-2445, or until the end of the disciplinary removal under subsection (1), whichever comes first, unless the parent and EI/ECSE contractor or subcontractor agree otherwise.

*Citations:*

*State Regulations:*

OAR 581-015-2415 Disciplinary Removals of More than 10 School Days (Pattern or Consecutive)

OAR 581-015-2315 Notice of Procedural Safeguards

*Federal Regulations:*

34 CFR 300.530 Authority of School Personnel

34 CFR 300.531 Determination of Setting

34 CFR 300.532 Appeal

34 CFR 300.533 Placement during Appeals

34 CFR 300.504(a)(3) Procedural Safeguards Notice

### V. Manifestation Determination

A. The ECSE contractor or subcontractor will complete a manifestation determination before a child is removed for disciplinary reasons for more than 10 business days if the removal constitutes a change in the child’s educational placement. A change in placement is:

1. A removal for more than 10 cumulative days from their current educational setting that constitutes a pattern;

2. A removal for more than 10 consecutive days; or

3. A removal to an interim alternative educational setting.

B. In determining whether the child’s behavior is a manifestation of the child’s disability, the EI/ECSE program, the parent, and relevant members of the child’s IFSP team (as determined by the parent and the EI/ECSE program) reviews all relevant information in the child’s file, including the child’s IFSP, any teacher observations, and any relevant information provided by the parents to determine:

* + - 1. If the conduct in question was caused by, or had a direct and substantial relationship to, the child’s disability; or

2. If the conduct in question was the direct result of the EI/ECSE program’s failure to implement the IFSP.

C. If the EI/ECSE program, the parent, and relevant members of the IFSP team determine that either the above B (1 or 2) applies to the child, the conduct is then determined to be a manifestation of the child’s disability.

D. If, in conducting the manifestation determination review, deficiencies in the child’s IFSP or placement are identified, the ECSE contractor or subcontractor takes immediate steps to remedy those deficiencies.

*Citations:*

*State Regulations:*

OAR 581-015-2420 Manifestation Determination

*Federal Regulations:*

34 CFR 300.530(e) Authority of School Personnel

### VI. Removal to an Interim Alternative Educational Setting by EI/ECSE Contractor or Subcontractor (Drugs & Weapons)

1. For the purpose of determining a drug or weapon violation, the ECSE contractor or subcontractor will apply the following definitions:

1. “Drug” means illegal drug or controlled substance but does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or otherwise legally possessed. It does not include alcohol or tobacco.

2. “Drug violation” means the use, possession, sale, or solicitation of drugs at school or a school function.

3. “Serious bodily injury” means bodily injury, which involves substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

4. “Weapon” means a weapon, device, instrument, material or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that it does not include a pocket knife with a blade of less than 2 ½ inches in length

5. “Weapon violation” means carrying a weapon to school or to a school function or acquiring a weapon at school.

1. The EI/ECSE contractor or subcontractor may remove a child with disabilities from their current educational placement to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 calendar days in a school year without regard to whether the behavior is determined to be a manifestation of the child’s disability for;
	1. A drug or weapon violation as defined in definitions above; or
	2. If the child has inflicted serious bodily injury upon another person while at school, on school premises or at a school function under the jurisdiction of the Department or the EI/ECSE contractor or subcontractor.

C. A removal for a drug or weapon violation, or for inflicting serious bodily injury is considered a change of placement.

 D. EI/ECSE personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a removal for a child with a disability who violates a code of conduct.

E. For removals of this rule, EI/ECSE personnel:

1. On the date which the decision is made to remove the child, notify the parents of that decision and provide the parents with notice of procedural safeguards under OAR 581-015-2315;
2. Provide the services to the child in an interim alternative educational setting, determined by the IFSP team, in accordance with OAR 581-015-2425;
3. Within 10 school days of any decision to remove a child, determine whether the child’s behavior is a manifestation of the child’s disability in accordance with OAR 581-015-2420; and
4. Provide, as appropriate, a functional behavioral assessment, and behavior intervention services and modifications that are designed to address the behavior violation so that it does not recur.
5. Placement pending due process hearing:

If a parent requests a due process hearing because of a disagreement with the manifestation determination, removal to the interim alternative educational setting, or any decision about placement related to a disciplinary removal, the child remains in the interim alternative educational setting pending the decision of the administrative law judge under OAR 581-015-2425, or until the end of the removal, unless the parent and EI/ECSE program agree otherwise.

*Citations:*

*State Regulations:*

OAR 581-015-2425 Removal to an Interim Alternative Educational Setting by School District

*Federal Regulations:*

34 CFR 300.504(a)(3) Procedural Safeguards Notice

34 CFR 300.530 Authority of School Personnel

34 CFR 300.533 Placement during Appeals

34 CFR 300.536 Change of Placement for Disciplinary Removals

### VII. Removal to an Interim Alternative Educational Setting by Administrative Law Judge (Injurious Behavior)

1. The ECSE contractor or subcontractor may request an expedited due process hearing to obtain an administrative law judge’s order to remove a child to an interim alternative educational setting for not more than 45 school days if the child is exhibiting injurious behavior. For the purpose of this request, “injurious behavior” is defined as behavior that is substantially likely to result in injury to the child or to others.
2. The interim alternative educational setting meets the requirements of OAR 581-015-2435(2).
3. The procedures in subsection 2 may be repeated if the EI/ECSE contractor or subcontractor believes that returning the child to the original placement is substantially likely to result in injurious behavior.
4. Nothing in this rule precludes an EI/ECSE contractor from seeking a court order to remove a child from the child’s current educational placement to another placement if the district believes that the maintaining the child in the child’s current educational placement is substantially likely to result in injurious behavior.

*Citations:*

*State Regulations:*

OAR 581-015-2430 Removal to an Interim Alternative Educational Setting by Administrative Law Judge

*Federal Regulations:*

34 CFR 300.532 Appeal

### VIII. Interim Alternative Educational Setting

* 1. The ECSE contractor or subcontractor will ensure that an interim alternative educational setting:
		+ 1. Be determined by the child’s IFSP team;
			2. Enable the child to continue to participate in educational activities, although in another setting; and

3. Progress toward achieving their IFSP goals.

*Citations:*

*State Regulations:*

OAR 581-015-2435 Requirements of an Interim Alternative Educational Setting

*Federal Regulations:*

34 CFR 300.530 Authority of School Personnel

### IX. Protections for Children Not Yet Eligible for ECSE

A. The ECSE contractor or subcontractor will apply these protections to a child not yet identified as a child with a disability if the ECSE contractor or subcontractor had knowledge that the child was a child with a disability. The ECSE contractor or subcontractor has such knowledge if:

1. A parent has expressed a concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to ECSE personnel that their child is in need of ECSE and related services;

2. The parent of a child has requested a ECSE evaluation of their child; or

3. The teacher of the child or other ECSE personnel expressed a specific concern about a pattern of behavior or performance of the child to the ECSE contractor or subcontractor or other supervisory personnel of the EI/ECSE program.

B. The ECSE contractor or subcontractor will not be considered to have knowledge of a disability if:

1. The parent of the child has not allowed an evaluation of the child or has refused services under OAR 581-015-2090; or
2. The child has been evaluated in accordance with OAR 581-015-2090 through 581-015-2180, and the child was determined not eligible.
3. It was determined that there was no suspicion of a disability, and the ECSE contractor or subcontractor gave the parent prior written notice of the refusal to evaluate.

C. If the ECSE contractor or subcontractor did not have knowledge before taking disciplinary action against the child, the EI/ECSE contractor or subcontractor may take the same disciplinary actions as applied to children without disabilities who engaged in comparable behaviors. However:

1. If an ECSE evaluation is requested, or if the ECSE contractor or subcontractor initiates an ECSE evaluation, the evaluation is conducted in an expedited manner.

2. Until the evaluation is completed, the child will remain in the educational placement determined by ECSE personnel, which can include suspension, expulsion, or placement in alternative education.

3. Upon completion of the evaluation, if the child is determined to be a child with a disability, the ECSE contractor or subcontractor conducts an IFSP meeting to develop an IFSP and determine placement and provides special education and related services.

1. The ECSE contractor or subcontractor will apply the discipline provisions beginning on the date of the eligibility determination.

*Citations:*

*State Regulations:*

OAR 581-015-2440 Protections for Children not yet Eligible for Special Education

*Federal Regulations:*

34 CFR 300.534 Protections for Children not determined Eligible for Special Education and Related Services

### X. Expedited Due Process Hearings

* 1. An expedited due process hearing is held, if a hearing is requested, in the following instances:

* + 1. In a dispute over a disciplinary action for a child with a disability, the child’s parent disagrees with a determination that the child’s behavior was not a manifestation of the child’s disability or with any decision regarding the child’s educational placement; or
		2. The EI/ECSE contractor or subcontractor believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.
	1. Expedited due process hearings meet the requirements in OAR 581-015-2340 through 581-015-2385 unless the parents and the EI/ECSE contractor or subcontractor agree in writing to waive the resolution meeting in OAR 581-015-2355 or agree to use the mediation process in OAR 581-015-2335.
	2. A resolution meeting occurs within seven days of receiving notice of the due process hearing request and the hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process hearing request.
	3. The expedited hearing occurs within 20 school days of the date the hearing is requested and results in a written decision within 10 school days after the hearing.

*Citations:*

*State Regulations*

OAR 581-015-2445 Expedited Due Process Hearings

OAR 581-015-2875 Discipline of Children with Disabilities for ECSE

*Federal Regulations:*

34 CFR 300.532 Appeal

34 CFR 300.537 State Enforcement Mechanisms

# SECTION THIRTEEN: RESTRAINT AND SECLUSION

**EARLY CHILDHOOD SPECIAL EDUCATION PROCEDURES**

*Policies and procedures in this section apply to Early Childhood Special Education only. See* [School Discipline, Bullying, Restraint and Seclusion](https://www.oregon.gov/ode/students-and-family/healthsafety/Pages/School-Discipline%2C-Bullying%2C-Restraint-and-Seclusion.aspx) *for current information from ODE.*

### I. Definitions

Restraint means the restriction of a student’s actions or movements by holding the student or using pressure or other means. Restraint does not include holding a student’s hand or arm to escort the student safely and without the use of force from one area to another or assisting a student to complete a task if the student does not resist the physical contact. Restraint does not include providing reasonable intervention with the minimal exertion of force necessary if the intervention does not include a restraint prohibited under ORS 339.288 and the intervention is necessary to:

* Break up a physical fight.
* Interrupt a student’s impulsive behavior that threatens the student’s immediate safety, including running in front of a vehicle or climbing on unsafe structures or objects.
* Effectively protect oneself or another from an assault, injury or sexual contact with the minimum physical contact necessary for protection.

Restraint may not be used for discipline, punishment, retaliation or convenience of personnel, contractors or volunteers of a public education program. Restraint may only be used for as long as the child’s behavior imposes a reasonable risk of imminent and substantial physical or bodily injury to the student or others and less restrictive interventions would not be effective.

**Seclusion is not an appropriate course of action for use with young children. A young child should never be left alone in a room.** If restraint is unnecessary to prevent a reasonable risk of imminent and substantial physical or bodily injury to the student or others, the child could be removed or separated from the other children for a short time to provide the child with an opportunity to regain self-control. This should occur in a setting from which the child is not physically prevented from leaving, per OAR 581-021-0550(6)(a). The child being removed or separated from other children will always be accompanied by an adult.

In providing care and educational instruction to young children there is always some physical contact for guiding, directing, prompting, or preventing harm. It is normal and natural for an adult to guide or direct a child by gently laying a hand on the child’s shoulder, back or arm, or clasping the child’s hand. It is also normal and natural to briefly hold a child in order to calm or comfort the child. It may be necessary for an adult to hold a child on their lap to maintain the child’s attention or to provide structure or security for some activities. An adult may use his/her body to block a child from exiting an area of safety or entering a dangerous area. These are normal, typical activities that adults use to guide, direct, and protect children and are not considered restraint.

Restraint does not include placing children in tray chairs, high chairs, or other adapted equipment for physical support or instructional purposes. Mechanical restraint is prohibited by law, although mechanical restraint does not included placing a child in a protective or stabilizing device ordered by a licensed physician. Discretion must be used to ensure that placement in such chairs or adapted equipment meets the instructional or physical support needs of the child, and is not used to restrict the child’s mobility. The use of a safety harness during bus transportation is not considered restraint when it is used as an appropriate safety precaution when the child is in a moving vehicle.

*Citations:*

*State Regulations:*

OAR 581-021-0550 Definitions

### II. Use of Restraint and Seclusion

1. Restraint may be used on a child when the child’s behavior imposes a reasonable risk of imminent and substantial physical or bodily injury to the child or others and less restrictive interventions would not be effective.
2. Seclusion may be used on a child in a public education program when the child’s behavior imposes a reasonable risk of imminent and serious bodily injury to the child or others and less restrictive interventions would not be effective. (Seclusion is not used for children in EI/ECSE programs!)
3. In an emergency, restraint or seclusion may be imposed by staff otherwise available in the case of an emergency circumstance when trained personnel are not immediately available due to the unforeseeable nature of the emergency circumstance.
4. Restraint is used only for as long as the child’s behavior poses a reasonable risk of imminent and substantial physical or bodily injury to the child or others [OAR 581-021-0553(4)(a)].
5. Seclusion is used only for as long as the child’s behavior imposes a reasonable risk of imminent and serious bodily injury to the child or others and less restrictive interventions would not be effective. [OAR 581-021-0553(3)(b)].
6. Staff will continuously monitor a child’s status during the duration of the restraint or seclusion [OAR 581-021-0553(4)(B)(c)].

G. Training programs approved for use in the EI/ECSE program must teach evidence based skills to prevent and safely use restraint or seclusion. Training programs must also include the use of evidence-based techniques and skills training, positive behavior supports, conflict prevention, de-escalation, and crisis response techniques.

H. Restraint or seclusion can only be imposed by staff who have been trained, except as described in OAR 581-021-0553(4)(A).

### III. Cautions for using Restraint

EI/ECSE programs must select and be trained in the use of one of the ODE approved restraint programs

([Approved Restraint and Seclusion Training Programs](https://www.oregon.gov/ode/students-and-family/healthsafety/Documents/approvedtrainingprograms.pdf)). Restraint may only be used on a child when the child’s behavior imposes a reasonable risk of imminent and substantial physical or bodily injury to the child or others and less restrictive interventions would not be effective. Staff must continuously monitor a child’s status during the duration of the restraint.

At no time and under no circumstances is it appropriate for any EI/ECSE staff member to use any prohibited restraint on a child (OAR 581-021-0553).

### IV. Minimum Training Required for Physical Restraint

EI/ECSE programs must have appropriate behavior management and behavior intervention training programs. EI/ECSE public education programs may only use training programs on restraint that are approved by the Department of Education. Your agency must arrange for and provide the training to staff having direct contact with children. Selected staff must receive training in appropriate restraint techniques, including determining when restraint is appropriate, assuring all debrief protocols are followed.

### V. Reporting Requirements

When restraint is deemed necessary as an emergency procedure to prevent harm to the child or others, an incident report is required. Incident reports are made to the staff member’s supervisor who is responsible to monitor the appropriateness of actions taken and provide direction as necessary. Parents must be notified of the restraint either verbally or electronically by the end of the day of the incident. They must receive written documentation of the incident within 24 hours of the incident that provides a description of the restraint, as specified in OAR 581-021-0556(2). Timely notification of a debriefing meeting to be held within 2 days and of the parent’s or guardian’s right to attend the meeting needs to be provided. Parent’s must receive a written copy of any notes taken at the debrief meeting. Also, see EI/ECSE Policy and Procedures for Restraint and Seclusion regarding documentation and notification requirements.

In summary, restraint and seclusion shall be used with extreme caution and only in in accordance with the child’s IFSP and BIP, and Oregon statutes and administrative rules regarding restraint and seclusion (OARs 581-021-0550, -0553, -0556, -0559, -0563, -0566, -0568, -0569, and -0570).

*Citations:*

*State Regulations:*

OAR 581-015-2400-2445 Discipline

OAR 581-021-0550 Definitions

OAR 581-021 0553 Use of Restraint and Seclusion in Public Education

 Programs

OAR 581-021-0556 Procedures Regarding Restraint & Seclusion

OAR 581-021-0556(2)(b) Written Documentation

OAR 581-021-0563 Approval of Restraint and Seclusion Training

 Programs for School Staff

OAR 581-021-0566 Required Use of Approved Restraint and Seclusion Programs

[Technical Assistance & Guidelines Manual: Restraining and Seclusion](https://www.oregon.gov/ode/students-and-family/healthsafety/Documents/rsguidelinesmanual.pdf)

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### VI. The Use of Seclusion with Young Children (Early Childhood Special Education)

1. **Seclusion is not an appropriate course of action for use with young children. A young child should never be left *alone* in a room**.
2. If a child is not requiring restraint to prevent a reasonable risk of imminent and substantial physical or bodily injury, the child could be removed or separated from the other children ‘for a short time to provide the child with an opportunity to regain self-control, in a setting from which the child is not physically prevented from leaving, per OAR 581-021-0550(6)(a). The child being removed or separated from other children will always be accompanied by an adult.

### VII. Documentation of Restraint or Seclusion

1. There are sample forms and a manual with an early childhood section online at: [School discipline, Bullying, Restraint and Seclusion](https://www.oregon.gov/ode/students-and-family/healthsafety/Pages/School-Discipline%2C-Bullying%2C-Restraint-and-Seclusion.aspx).
2. Parents or guardians are notified verbally or electronically following the use of restraint or seclusion by the end of the day the incident occurred, per OAR 581-021-0556(2)(a).
3. Parents or guardians receive written notification of any incidents of restraint or seclusion within 24 hours, per OAR 581-021-0556(2)(b).
4. Within two school days of the incident, a debriefing meeting related to the use of restraint or seclusion is held and must include all personnel of the public education program who were involved in the incident and any other appropriate personnel. Written notes must be taken of the debriefing meeting, and a copy of the written notes must be provided to a parent or guardian of the student [OAR 581-021-0556(4)].
5. Documentation requirements following the use of restraint or seclusion must include, per OAR 581-021-0556(2)(a-c):
6. The name of the child.
7. The name of the staff member(s) who administered the restraint.
8. The date of the restraint, and the time the restraint began and ended.
9. The location of the restraint.
10. A description of the child’s activity that prompted the use of restraint.
11. A description of the behavior that prompted the use of restraint.
12. The efforts to de-escalate the situation and alternatives to restraint that were attempted.
13. Information documenting parent contact and timely notification of a debriefing meeting to be held within two days and of the parent's or guardian's right to attend the debriefing meeting.
14. A description of the training status of the personnel who administered the restraint.
15. If the personnel who administered the restraint had not received training, parents are to receive written notification of the lack of training and the reason the restraint was administered by a person without training.
16. Parents are to receive written notes from the debrief meeting.
17. District school boards shall adopt written policies to implement restraint and seclusion procedures consistent with and as indicated in ORS 339.285 to 339.308 and OARs 581-021-0550 to 581-021-0570, and shall inform teachers, administrators, school employees and school volunteers of those policies. [OAR 581-021-0556(10)].

Note: As per OAR 581-021-0556(5) Procedures Regarding Restraint and Seclusion: If a student is involved in five incidents in a school year involving restraint or seclusion, a team consisting of personnel of the public education program and the parent or guardian of the student must be formed for the purposes of:

* Reviewing and revising the student's behavior plan and
* Ensuring the provision of any necessary behavioral supports

*Citations:*

*State Regulations:*

OAR 581-021-0556 Program’s Procedures Regarding Restraint and Seclusion

OAR 581-021-0563 Approval of Restraint and Seclusion Training Programs for School Staff

OAR 581-021-0556(5) Procedures Regarding Restraint and Seclusion

### VIII. Applicability of Restraint and Seclusion Rules

* 1. ‘Public Education Program’ means a program that meets the following:
		+ 1. It is for children in early childhood education, elementary school or secondary school;
			2. It is under the jurisdiction of a school district, an education service district (ESD) or another educational institution or program; and
			3. Receives, or serves students who receive, support in any form from any program supported, directly or indirectly, with funds appropriated to the Department of Education.

B. Public education programs must meet all three requirements above. (Note: any Early Childhood program that is under the jurisdiction of a school district and/or ESD and meets all three requirements is subjected to the requirements of the law).

*Citations:*

*State Regulations:*

OAR 581-021-0550Definitions

# SECTION FOURTEEN: CHILDREN WITH DISABILITIES ENROLLED BY THEIR PARENTS IN PRIVATE PRESCHOOLS

**EARLY CHILDHOOD SPECIAL EDUCATION PROCEDURES**

*Policies and procedures in this section apply to Early Childhood Special Education only.*

### I. Definitions of terms used in this section

A. “IDEA funds” means federal funds allocated to the EI/ECSE contractor under the Individuals with Disabilities Education Act.

B. “Private school” means a private elementary or secondary school or facility, including a private religious school. A preschool is considered a private school under these provisions (parentally placed private preschool children) **only** if it is part of a private elementary or secondary school.

1. “Private preschool child with a disability”, for this section of the manual means a preschool child with a disability age 3 to school age enrolled by a parent in a private school or facility that meets the definition of private school for this section (see definition B above).
2. “Private preschool child with a disability” under this section does not include:
* Children placed in a private preschool or other location by the EI/ECSE contractor or subcontractor; or
* Children enrolled in a private preschool that does not meet the definition of private school for this section.
1. “Private school official” means an administrator of the private preschool.
2. “Representatives of private preschool children with disabilities” means representatives of parents of private preschool children with disabilities and private preschool officials or other private preschool representatives.
3. “Services plan” means a written statement that describes the special education and related services the EI/ECSE contractor will provide to the parentally placed private preschool child with a disability designated to receive services, including the location of services and any transportation necessary.

*Citations:*

*State Regulations:*

OAR-015-2450 Definitions

OAR-015-2480 Consultation with Representatives of Private School Children with Disabilities

OAR-015-2485 Complaint by a Private School Official

*Federal Regulations:*

34 CFR 300.130 Definition of parentally-placed private school children with disabilities

34 CFR 300.133 Expenditures

### II. Child Find

A. The EI/ECSE contractor and school districts must locate, identify and evaluate all children with disabilities who are enrolled by their parents in private, including religious, preschools meeting the definition in this section (see definition 1 above) located within the boundaries of the EI/ECSE service area.

* 1. The child find process for parentally –placed private preschool children is designed to ensure the equitable participation of parentally-placed private preschool children with disabilities and an accurate count of such children.
	2. The EI/ECSE contractor and school district’s child find activities for parentally-placed private preschool children is similar to, and completed within a comparable time period, to child find activities for other preschool children suspected of qualifying for ECSE services.

D. Child find requirements apply to all parentally-placed private preschool children, including those children who are residents of another state.

*Citations:*

*State Regulations:*

OAR-015-2085 Child Find for Children Attending Private Schools

*Federal Regulations:*

34 CFR 300.131 Child Find for Private School Children with Disabilities

34 CFR 300.133 Expenditures

34 CFR 300.134 Consultation

### III. Services for private preschool children with disabilities

A. The EI/ECSE contractor provides for participation in special education and related services to private preschool children with disabilities enrolled in private preschools located within the EI/ECSE service area boundaries, to the extent consistent with the number and location of these children. The services provided are determined by the EI/ECSE contractor after consultation with representatives of private preschool children with disabilities (see “Consultation with Representatives of Private Preschool Children with Disabilities” in this section).

B. No parentally placed private preschool child with a disability has an individual right to receive some or all of the ECSE services that the child would receive if placed in an EI/ECSE program.

C. Parentally placed private preschool children with disabilities may receive a different amount of services than children with disabilities receiving services from an EI/ECSE program.

D. ECSE services are provided by employees of the EI/ECSE contractor or through contract with an individual or other entity. The ECSE services are provided by personnel meeting the same standards as personnel providing services in an EI/ECSE program.

1. ECSE services may be provided to private preschool children with disabilities onsite at the child’s private preschool, including a religious preschool, as long as the purpose of the ECSE services is to teach or facilitate child skills targeted on the child’s Services Plan, not to teach the religious content or concepts of the preschool. Services are provided during the child’s regular preschool day, unless stated otherwise on the child’s Services Plan.
2. ECSE services provided to private preschool children with disabilities, including materials and equipment, are secular, neutral and non-ideological.
3. Complaints and due process hearing procedures:
	* 1. Due process hearing procedures apply only to complaints that an EI/ECSE contractor has failed to meet the child find requirements, including the requirements regarding evaluation, determination of eligibility for ECSE services and reevaluation. Any due process hearing request regarding child find requirements is filed with the EI/ECSE contractor in which the private preschool is located and with ODE under OAR 581-015-2345 and 2870.
		2. Due process hearing procedures do not apply to complaints that an EI/ECSE contractor failed to meet the requirements related to the provision of services to and expenditures for children enrolled by their parents in private preschools, including the provision of services indicated on the child’s services plan.
		3. Complaints that an EI/ECSE program failed to meet any of the requirements related to private preschool children may be filed under OAR 581-015-2030.

*Citations:*

*State Regulations:*

OAR 581-015-2345 Hearing Request and Response

OAR-581-015-2455 Provision of Services for Private School Children with Disabilities

OAR 581015-2490 Complaints and Due Process Hearings for Private School Children

OAR 581-015-2870 Due Process Hearings

*Federal Regulations:*

34 CFR 300.132 Provision of Services for Parentally Placed School Children with Disabilities – Basic Requirement

34 CFR 300.137 Equitable Services Determined

34 CFR 300.138 Equitable Services Provided

[Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools (PDF)](https://sites.ed.gov/idea/files/qa-parentally-placed-private-schools-12-2020.pdf)

### IV. Consultation with Representatives of Private Preschool Children with Disabilities

1. The EI/ECSE contractor consults, in a timely and meaningful way, with appropriate representatives of private preschool children with disabilities to design and develop the ECSE services to be provided to these children. The process is conducted using the following steps:

Identify private preschools, that meet the definition of private school for this section, attended by children ages 3-5 within the contractor service area;

Notify representatives of these private preschools of the opportunity for them and parents of parentally placed private preschool children to be included in the consultation process;

Design and conduct the consultation process. Consultation could include individual or group meetings, interviews, or other effective and efficient strategies, including specific discussions of the following topics:

* + - 1. The child find process, including how resident and non-resident parentally placed private preschool children suspected of having a disability can participate equitably, and how evaluations, eligibility determination and reevaluations will be conducted.
			2. How parents, teachers and private preschool officials will be informed of the child find process;
			3. The determination of the proportionate amount of federal funds to be expended and how the proportionate share was calculated;
			4. The consultation process and how the calculation process operates through the year to ensure that children identified through the child find process can meaningfully participate in ECSE services.
			5. How, where, and by whom ECSE services (including direct services) are provided, including a discussion of types of services and services delivery mechanisms;
			6. How such services are distributed if funds are insufficient to serve all children, and how and when these decisions are made; and
			7. If the EI/ECSE contractor or subcontractor disagrees with the views of the private preschool officials about the provision of services, how the contractor or subcontractor provides a written explanation of the reasons why the contractor or subcontractor chose not to provide services.
			8. Obtain a written statement of affirmation of satisfactory consultation, signed by the representatives of each participating private preschools involved in the process. The contractor uses the ODE affirmation letter available on the ODE website or from the contractor ODE liaison.
			9. If the private preschool representatives do not provide written affirmation within 60 calendar days, the EI/ECSE contractor sends documentation of the consultation process to ODE.

B. A private preschool official may submit a complaint to ODE that the EI/ECSE contractor did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of the private preschool official. If the private preschool official wishes to submit a complaint, the official provides the basis of the noncompliance by the EI/ECSE contractor. The EI/ECSE program forwards documentation related to the complaint as requested by ODE.

C. If the private preschool official is dissatisfied with the decision of ODE, the official may submit a complaint to the US Secretary of Education by providing the basis of the noncompliance by the EI/ECSE contractor. ODE forwards the appropriate documentation related to the complaint as requested by the Secretary.

*Citations:*

*State Regulations:*

OAR-015-2085 Child Find for Children Attending Private Schools

OAR-015-2480 Consultation with Representatives of Private School Children with Disabilities

OAR-015-2483 Written Affirmation

OAR-015-2485 Complaint by Private School Official

*Federal Regulations:*

34 CFR 300.131 Child find for Parentally-Placed Private School Children with Disabilities

34 CFR 300.134 Consultation

34 CFR 300.135 Written Affirmation

34 CFR 300.136 Compliance

34 CFR 300.137 Equitable Services Determined

### V. Evaluation, Reevaluation, and Eligibility of Private Preschool Children with Disabilities

1. The resident school district, either directly or through contract, ensures that all requirements for evaluation and reevaluation that apply to public preschool children with disabilities are met with regard to evaluations for private preschool children who are suspected of having a disability.
2. Eligibility for ECSE services is determined by the EI/ECSE contractor in the same manner as for all three-to-five year old children with disabilities.
3. The resident school district, either directly or through contract, reevaluates private preschool children with disabilities at least every three years to determine whether the child continues to be eligible for ECSE, whether or not the child is receiving services under a services plan.
4. If a parent refuses an evaluation that is necessary to determine a child’s eligibility, continuing eligibility, or present level of performance for developing a service plan, the EI/ECSE contractor notifies the parent in writing that it is prepared to complete the necessary evaluations upon parent consent or if the parent enrolls the child in an ECSE program.
5. If a parent refuses a reevaluation that is necessary to determine whether the child continues to be a child with a disability, and as a result the team cannot determine the child's continuing eligibility, the child is no longer considered "eligible" and is not counted as a private preschool child with a disability for the purposes of the private preschool child count.
6. Upon an initial determination of eligibility, and upon any subsequent determination of eligibility, the EI/ECSE contractor notifies the parent in writing that it will make a FAPE available to the child if the child is enrolled in an ECSE program.
7. If the child lives in a service area other than where the private preschool is located then the EI/ECSE program where the private preschool is located informs the parent, in writing, to contact the resident EI/ECSE area contractor if the parent wants to pursue a FAPE for their child. If the parent seeks ECSE services from the resident EI/ECSE contractor, the resident EI/ECSE contractor requests the records from the EI/ECSE contractor that conducted the evaluation and eligibility determination.

*Citations:*

*State Regulations:*

OAR 581-015-2100 Responsibility for Evaluation and Eligibility Determination

OAR 581-015-2790 ECSE Evaluation

OAR 581-015-2795 ECSE Eligibility

OAR 581-015-2735 Parent Consent for ECSE

*Federal Regulations:*

34 CFR 300.131 Child find for Parentally-Placed Private School Children with Disabilities

### VI. Services Plan

1. If a private preschool child with a disability receives ECSE services from the EI/ECSE contractor, the contractor develops, reviews and revises a Services Plan for the child. The contractor uses ODE Services Plan forms. Services Plan forms are available on the ODE website or from the contractor ODE liaison.
2. The EI/ECSE contractor ensures that initial and annual Services Plan meetings include the same meeting participants as required for IFSP meetings, including a representative from the child’s private preschool. If a representative cannot attend, the contractor uses other methods to ensure participation by the private preschool, including individual or conference telephone calls.
3. The EI/ECSE contractor ensures that the same parent participation requirements as required for an IFSP are used when developing, reviewing and revising a Services Plan.
4. The EI/ECSE contractor ensures that a Services Plan is developed that describes the specific ECSE services that the EI/ECSE program will provide to the child in light of the services that the EI/ECSE program has determined, through the consultation process described in this section, it makes available to private preschool children with disabilities. The Services Plan meets the same content requirements as IFSP’s to the extent possible. This means that the services plan includes information about the selected ECSE services to be provided. This includes, but is not limited to the projected date of initiation, frequency, location, intensity, method, and duration of services. For example:
5. If through the consultation process ECSE classroom consultation on strategies for integrating a child into typical classroom activities is identified as the service the EI/CSE program provides, the Services Plan for a child would include a description of those consultation services but would not include specific goals and objectives for the child.
6. In another example: If through the consultation process direct speech and language services is the service the EI/ECSE program provides to private preschool children, then the Services Plan would include a description of those services **and** information about the child’s present level of functioning in relationship to speech and language and specific speech and language goals and objectives for the child.
7. Is written thirty calendar days from the date the child is determined eligible for ECSE services;
8. Is written before ECSE services are provided to the child; and
9. Begins as soon as possible following the meeting.
10. The EI/ECSE contractor:

1. Ensures that the Services Plan is available to each private preschool teacher, ECSE specialist, related service provider and other service provider who is responsible for its implementation;

2. Informs each teacher and provider of his or her specific responsibilities for implementing the child’s Services Plan and the specific accommodations, modifications, and supports that are provided for or on the behalf of the child in accordance with the Services Plan; and

3. Ensures that if a parent of a private preschool child with a disability requests a Services Plan or IFSP meeting, the contractor or subcontractor either:

* + 1. Holds a Services Plan or IFSP meeting within a reasonable time; or
		2. Provides the parent with prior written notice of the contractor or subcontractor’s refusal to hold a meeting.
1. The school district where the child lives **is not** required to provide transportation from the child's home to the private preschool.
2. The school district where the child lives **is** required to provide transportation to the child if it is necessary for the child to benefit from or participate in the services on the Services Plan. Transportation is provided:

1. From the child’s preschool or the child’s home to a site other than the private preschool; and

2. From the service site to the private preschool, or to the child’s home, depending on the timing of the services.

*Citations:*

*State Regulations*

OAR 581-015-2460 Services Plan

OAR 581-015-2810 IFSP Meeting Procedures and Timelines

OAR 581015-2220 When IEPs Must Be In Effect

OAR 581-015-2830 Implementation of the IFSP

*Federal Regulations:*

34 CFR 300.132 Provision of Services for Parentally-Placed Private School Children with Disabilities – Basic Requirement

34 CFR 300.137 Equitable Services Determined

34 CFR 300.138 Equitable Services Provided

34 CFR 300.139 Location of Services and Transportation

### VII. Property, Equipment, and Supplies

1. The EI/ECSE contractor keeps title to and exercises continuing administrative control of all property, equipment, and supplies that the EI/ECSE contractor acquires with IDEA funds for the benefit of parentally placed private preschool children with disabilities.
2. The EI/ECSE contractor may place equipment and supplies in a private preschool for a period of time needed to implement the services plan of a private preschool child with disabilities or for child find purposes.
3. The EI/ECSE contractor ensures that the equipment and supplies placed in a private preschool:

1. Are used only for implementation of the services plan or for child find activities; and

2. Can be removed from the private preschool without remodeling the private school facility.

1. The EI/ECSE contractor removes equipment and supplies from a private preschool if:
	1. The equipment and supplies are no longer needed for the purposes identified in section C (2); or
	2. Removal is necessary to avoid unauthorized use of the equipment and supplies.
2. The EI/ECSE contractor does not use IDEA funds for repairs, minor remodeling, or construction of private preschool facilities.

*Citations:*

*State Regulations*

OAR 581-015-2510 Property, Equipment and Supplies

*Federal Regulations:*

34 CFR 300.144 Property, equipment and supplies

### VIII. Separate Classes Prohibited

1. The EI/ECSE contractor does not use IDEA funds for classes that are organized separately on the basis of school enrollment or religion of the children if:
	1. The classes are at the same site; and
	2. The classes include children enrolled in public preschool programs (including ECSE programs) and children enrolled in private preschools.

*Citations:*

*State Regulations*

OAR-015-2505 Separate Classes Prohibited

*Federal Regulations:*

34 CFR 300.143 Separate classes prohibited

### IX. Funds and Property Not To Benefit Private Preschools

A. The EI/ECSE contractor does not use IDEA funds to finance the existing level of instruction in a private preschool or to otherwise benefit the private preschool.

B. The EI/ECSE contractor uses IDEA funds to meet the ECSE needs of children enrolled in private preschools, but not for:

1. The needs of a private preschool; or

2. The general needs of the children enrolled in the private preschool.

*Citations:*

*State Regulations:*

OAR 581-015-2495 Funds and Property Not to Benefit Private Schools

*Federal Regulations:*

34 CFR 300.141 Requirement that funds not benefit a private school

### X. Use of ECSE Personnel

A. The EI/ECSE contractor may use IDEA funds to make ECSE personnel available in other than public facilities:

1. To the extent necessary to implement any of the requirements related to private preschool children with disabilities; and

2. If those services are not normally provided by the private preschool.

1. The EI/ECSE contractor may use IDEA funds to pay for the services of an employee of a private preschool to provide services to private preschool children if:

1. The employee performs the services outside of his or her regular hours of duty; and

2. The employee performs the services under public supervision and control.

*Citations:*

*State Regulations*

OAR-015-2500 Use of Personnel

*Federal Regulations:*

34 CFR 300.142 Use of personnel

### XI. Documentation Requirements

* 1. The EI/ECSE Contractor maintains in its records and provide annually to ODE the following information for parentally-placed private preschool children:
1. The number of parentally- placed private preschool children evaluated;
2. The number of children evaluated that were determined to be children with disabilities; and
3. The number of children that received ECSE services.

*Citations:*

*State Regulations*

OAR 581-015-2465 Documentation Requirements

*Federal Regulations:*

34 CFR 300.132 Provision of services for parentally placed school children with disabilities – basic requirement

### XII. Expenditures for Parentally Placed Private Preschool Children

A. Each EI/ECSE contractor spends the following on providing ECSE services to parentally-placed private preschool children with disabilities:

1. An amount that is the same proportion of the ECSE contractor’s total IDEA fund subgrant under section 611(f) for ECSE children as the number of ECSE private school children with disabilities who are enrolled by their parents in private preschools located within the boundaries of the ECSE service area is to the total number of ECSE children with disabilities in the service area; and
2. An amount that is the same proportion of the contractor’s total IDEA fund subgrant under section 619(g) as the number of ECSE private school children with disabilities who are enrolled by their parents in private schools located within the boundaries of the ECSE service area is to the total number of ECSE children with disabilities in the service area.

B. If the EI/ECSE contractor does not expend for equitable services all of the proportionate funds designated for that purpose by the end of the fiscal year the IDEA funds were appropriated, the ECSE contractor obligates the remaining funds for ECSE services to parentally-placed private preschool children with disabilities for a carry-over period of one additional year.

C. The EI/ECSE contractor does not consider expenditures for child find activities, including individual evaluations, in determining whether the ECSE contractor has met the requirements of section “1” above.

D. The EI/ECSE contractor does not provide services to private preschool children with disabilities in excess of those required.

*Citations:*

*State Regulations*

OAR-015-2470 Expenditures for Parentally-Placed Private School Children

*Federal Regulations*

34 CFR 300.133 Expenditures

### XIII. Private School Child Count

* 1. The EI/ECSE contractor:
		+ 1. After consultation with representatives of private preschool children, determines the number of private preschool children with disabilities attending private schools located within the boundaries of the EI/ECSE contractor;
			2. Conducts the count on December 1 of each year; and

3. Uses the count to determine the amount that will be spent by the EI/ECSE contractor on providing ECSE services to private preschool children with disabilities in the next fiscal year.

*Citations:*

*State Regulations*

OAR 581-015-2475 Private School Child Count

*Federal Regulations:*

34 CFR 300.131 Child find for Parentally-Placed Private School Children with Disabilities

34 CFR 300.133 Expenditures

# SECTION FIFTEEN: APPROVED PRIVATE PRESCHOOLS

**EARLY INTERVENTION AND EARLY CHILDHOOD SPECIAL EDUCATION PROCEDURES**

*Policies and procedures in this section apply to both Early Intervention and Early Childhood Special Education.*

### I. Rights of Children

1. The EI/ECSE program ensures that every child with a disability who is placed in or referred to a private preschool or facility by the EI/ECSE program as a means of providing EI services, ECSE services and related services:

1. Is provided EI/ECSE and related services in conformance with an IFSP, and at no cost to the parents;

2. Is provided an education that meets the standards that apply to education provided by the public agency; and

3. Has all of the rights of a child with a disability who is served by the public agency.

*Citations:*

*State Regulations*

OAR 581-015-2260 Rights of Children with Disabilities in Private Schools Placed or Referred by Public Agencies

*Federal Regulations:*

34 CFR 300.148 Placement of children by parents when FAPE is at issue

### II. Out of State Placements for Special Education

1. The EI/ECSE program maintains documentation of approval by the Oregon Department of Education for any out-of-state programs that provide EI/ECSE services to children eligible for EI/ECSE services and shall be made available to the Oregon Department of Education upon request. Such contractual arrangements will be made only after:
	* + 1. It has been determined that no appropriate in-state placement options are available; and
			2. An individualized family service plan has been developed.

*Citations:*

*State Regulations*

OAR 581-015-2295 Out-of-State Placements for Special Education

### II. Obligations of Public Agencies

A. The EI/ECSE program may contract with private schools that have been approved by the Oregon Department of Education.

B. The EI/ECSE program ensures that all federal and state requirements relating to the evaluation, individualized family service plan development, and placement are followed when determining EI/ECSE services.

C. The EI/ECSE program determines whether placement in an approved private preschool constitutes a free appropriate public education in the least restrictive environment for each child.

D. When proposing to place a child with a disability in an approved private preschool, the EI/ECSE program ensures that the child is a resident of the EI/ECSE program under Oregon law.

E. Before placing a child with a disability in an approved private preschool, the EI/ECSE program initiates and conducts an individualized family service (IFSP) plan meeting that includes a representative of the approved private preschool and at which an IFSP is developed based upon the needs of the child.

1. If a representative of the approved private preschool is unable to attend the individualized family service plan meeting, the EI/ECSE program uses other methods to ensure participation including, but not limited to, individual or conference telephone calls, or individual meetings.
2. After the EI/ECSE program initially places a child in an approved private preschool, any subsequent meetings to review or revise an individualized family service plan are the responsibility of the EI/ECSE program.
3. The EI/ECSE program may request by written agreement that the approved private preschool initiate and conduct individualized family service plan meetings to review and revise an individualized family service plan. If the approved private preschool initiates and conducts these meetings, the EI/ECSE program will ensure that the parents and a representative of the EI/ECSE program:
	1. Are involved in any decision about the child’s education program; and
	2. Agree to any proposed changes in the program before those changes are implemented.
4. The EI/ECSE program conducts IFSP and placement meetings following the same requirements as for children attending EI/ECSE programs.
5. The EI/ECSE program provides all procedural safeguards to parents of children placed in approved private preschools.
6. The EI/ECSE program ensures that transportation to and from the approved private preschool is provided at no cost to the parent, if the placement in the attending EI/ECSE program is necessary to provide appropriate services and transportation is a related service on the IFSP.

*Citations:*

*State Regulations*

OAR 581-015-2265 Obligations of Public Agencies that Contract with Approved Private Schools

*Federal Regulations:*

34 CFR 300.145 Applicability of 300.146 - 300.147

34 CFR 300.146 Responsibility of State Educational Agency

34 CFR 300.147 Implementation by State Educational Agency

### IV. Standards and Process for Approval of Private Preschools

A. Private schools that intend to provide EI/ECSE and related services and/or a preschool setting under a written agreement with an EI/ECSE program fulfill the requirements of:

1. OAR 581-015-2275: Standards for Approval of Private Preschools; and

2. OAR 581-015-2280: Process for Approval of Private School or Preschool as a Contractor with Public Agencies when they are seeking approval or renewal to provide EI/ECSE and related services and placement.

B. Approval of Private Preschools may be suspended, revoked or refused by ODE if:

1. The private school fails to maintain the approval standards in OAR 581-015-2270;

1. The private preschool fails to maintain the approval standards in OAR 581-015-2275;
2. The private school or preschool violates the rights of children with disabilities; or
3. The private school or preschool refuses to implement corrective actions ordered by the Department after completion of a special investigation.

C. Appeal of Denial, Suspension, Revocation or Refusal to Renew Approval: A private school or preschool may appeal the ODE's denial, suspension, revocation or refusal to renew approval of a private preschool to contract with public agencies for the provision of early intervention, early childhood special education by requesting a contested case hearing under the provisions of ORS 183.413 through 183.470.

*Citations:*

*State Regulations*

OAR 581-015-2275 Standards for Approval of Private Preschools

OAR 581-015-2280 Process for Approval of Private School or Preschool as a Contractor with Public Agencies

OAR 581-015-2285 Suspension, Revocation or Refusal to Renew Approval

OAR 581-015-2290 Appeal of Denial, Suspension, Revocation or Refusal to Renew Approval

# APPENDIX

**Select Guidelines**

### I. Early Intervention and Early Childhood Special Education Referrals: Contact Required for Referral

Early Intervention and Early Childhood Special Education (EI/ECSE) programs are responsible for following up on referrals made to them from a variety of sources, including hospitals, prenatal facilities, physicians, parents, child care programs, LEAs, schools, public health facilities, other public health or social service agencies, other clinics or health care providers, public agencies and staff in the child welfare system, homeless family shelters, and domestic violence shelters and agencies.

For the 45 calendar day Early Intervention evaluation timeline, and the 60 school day Early Childhood Special Education evaluation to begin, the following valid and reliable criteria must be in place:

* The Parent/Legal Guardian Name
* Working Contact Phone Number, Text, or Email.
* Child Name
* Child Date of Birth

Until or unless these four criteria are met, the 45 calendar day for Early Intervention and 60 school day for Early Childhood Special Education timelines do not start.

 **Citations**: OAR 581-015-2080, 581-015-2110(6), 581-015-2774, 581-015-2810

###  Professional Development: Duties of Related Service Personnel

1. Definition of Related Service Personnel: The definition of a Related Service Personnel in the Oregon Administrative Rules (581-015-2700 (26)), is “a professional who consults, supervises, trains staff, and designs curriculum or implements related services.” Related Service Personnel must possess a minimum of a baccalaureate degree and a valid license necessary to practice in Oregon (OAR 581- 015-2900(4)).
2. Related Service Personnel as Service Coordinators: Related Service Personnel who also provide service coordination as outlined in OAR 581-015-2840 must have: (a) TSPC licensure in their area of discipline; or (b) State licensure in their area of discipline; and (c) A professional development plan based on the content of the EI/ECSE competencies.
3. Related Service Personnel as EI/ECSE Specialists: The definition of an EI/ECSE Specialist in the Oregon Administrative Rules (581-015-2700 (26)) is “a professional who implements or coordinates the implementation of individualized family service plans.” Related Service Personnel may serve as EI/ECSE Specialists, if they meet the following criteria outlined in OAR 581-015-2900(3): (a) Possess a minimum of a baccalaureate degree in early childhood, special education or a related field; (b) Have a professional development plan based on the content of the EI/ECSE competencies; and (c) Hold one of the following credentials:
	1. TSPC licensure or endorsement in EI/ECSE;
	2. TSPC licensure or endorsement in related field; or
	3. Within 12 months of employment, authorization as an Early Childhood Specialist under OAR 581-015-2905.
4. Related Service Personnel as Lead Interventionists: In a Transdisciplinary Model of service, a lead interventionist or primary specialist provides service coordination and specialized instruction to a child. They assure that all goals for the child and family are mutually agreed upon among the staff and family and that information, skills, and knowledge are shared across disciplinary boundaries in order to meet those goals.

Lead Interventionists are either Related Service Personnel or EI/ECSE Specialists, given the child’s area of primary need. For a child with an overall delay or a primary delay in cognitive development, the lead interventionist most commonly will be an EI/ECSE Specialist and hold the required credentials outlined in OAR 581-015-2900(3).

If the child’s primary delay is a specific communication disorder(s), the lead interventionist will likely be a Speech Language Pathologist who holds the required credentials outlined in OAR 581-015- 2900(4). For a child whose primary needs result from motor disorders, the lead interventionist will likely be an Occupational or Physical Therapist.

Related Service Personnel who provide service coordination must have: a) TSPC licensure in their area of discipline; or (b) State licensure in their area of discipline; and (c) A professional development plan based on the content of the EI/ECSE competencies (OAR 581-015-2840).

Citations: 20 USC 1432, Sec. 632 (G); OSEP policy memo; 34 C.F.R. 303.12 (b), 303.167(c),

303.18, & 303.344 (d) (1) ii. ORS 343.465 (1) (g); OAR 581-015-0995; OAR 581-015-0900

(17);

EI/ECSE Policies & Procedures, Section Six, V., A.7; Personnel Standards: Stat. Auth.: ORS 343.055, 343.475

###  Private Schools: Religiously Affiliated Preschools

* + 1. Provision of EI/ECSE services to children enrolled in religiously affiliated preschools by their parents

EI/ECSE services may be provided to children who are attending a religious preschool as long as:

* The EI/ECSE program provides similar types of services in other settings (services are distributed in a neutral manner that do not favor the religious preschool over a public preschool); and
	+ 1. The purpose of the EI/ECSE instruction is to teach the child skills targeted on the child’s IFSP, not to teach the religious content or concepts of the preschool. The IFSP team determines the scope of the EI/ECSE services to be provided to implement the IFSP; andEI/ECSE placement in religiously affiliated preschools

Religiously affiliated preschools may apply for and be approved by ODE as a “approved private preschool” in which EI/ECSE programs may “place” a child to receive EI/ECSE services under the following circumstances:

* The educational curriculum and instructional practices are free of religious content;
* Religious symbols are not pervasive and are not part of the instructional program; and
* The preschool does not accept or reject eligible preschool children on the basis of the children’s religious affiliation.

An IFSP team may place a child in a religiously affiliated preschool if a preschool setting is required to implement the child’s IFSP services, the preschool is approved by ODE and the EI/ECSE program does not have an appropriate public placement option available.

Citation: OAR 581-015-0126 and Approval of religiously oriented preschools (DOJ, letter dated 2/9/06)

### Related Services: Transportation; Responsibility of School Districts for Transporting Children Other Than to and from the Child’s Home

Local school districts are responsible for transportation services for children birth to kindergarten age if it is determined to be a service (early intervention) or a related service (early childhood special education) on the child’s Individualized Family Service Plan (ORS 343.533). The district may include those costs in its claims for transportation costs reimbursement by the state.

The Individualized Family Service Plan (IFSP) team determines whether transportation is a service necessary for a child to benefit from (or access) their early intervention (EI) or early childhood special education (ECSE) services. If the IFSP team decides that transportation is necessary, then the school district must provide the transportation services. The EI/ECSE program should invite a representative from the school district to the IFSP meeting if transportation is likely to be considered.

Transportation that is a required service (EI) or a related service (ECSE) on a child’s IFSP cannot be arbitrarily limited by the geographic boundaries of a school district so long as it is required for the special circumstances of the child.

When considering whether transportation is a necessary service to and/or from child- care settings or non EI/ECSE preschools outside of district boundaries, the IFSP team, including the school district representative may consider factors including the following:

1. Availability of childcare for the child;
2. Any difficulty the family has had in obtaining child-care for their child with disabilities;
3. The work hours of the parent and hours child-care providers are open; and
4. The distance the child-care is outside the school boundaries. For example, is the child-care 1 or 2 miles, or 15-20 miles outside the boundary?

If the school district did not participate in the IFSP meeting and disagrees with the IFSP team’s decision regarding transportation the district may request another IFSP meeting. At this point the IFSP team may consider:

* Exploring if the district where the child-care is located would provide the transportation under an agreement with the child’s resident school district;
* Exploring other alternative transportation possibilities;
* Exploring if the child’s parents would change child-care so that it is within the school district boundary. This includes considering how the child will be affected, and the availability, accessibility and affordability of child-care within district boundaries; and
* Exploring if EI or ECSE services can be provided at the child-care setting or another setting that is close to the child-care setting.

All of the considerations listed above are discussion points for the IFSP team in determining whether the child needs transportation in order to benefit from or access EI or ESCE services. Ultimately, the decision must be based on the child’s needs and not on cost or administrative convenience.

**Citation:** ORS 343.533; 34 CFR 300.34(16)