

IDEA 2004 QUESTIONS & ANSWERS

This list of questions and answers has been developed by the Oregon Department of Education, Office of Student Learning and Partnerships, to address questions relating to the implementation of IDEA 2004. It is organized by topic area, though some questions may address issues that cover several topic areas. We encourage you to contact the Office of Student Learning & Partnerships if you have questions that are not addressed in this handout; educators and special education directors should contact their ODE County Contact for assistance and all others may contact the Special Education Information Specialist at 503-947-5600.

ODE also provides an online IDEA 2004 Questions & Answers document that is intended to be a "living" website. The online version will continue to expand and evolve as we receive new questions and as further resources and information become available. The online IDEA 2004 Questions & Answers (IDEA 2004 Q&A) is available at <http://www.ode.state.or.us/search/page/?id=289>.

The US Department of Education, Office of Special Education Programs (OSEP), maintains a very helpful website that includes a number of Q&A documents relating to the implementation of IDEA 2004. See "Building the Legacy: IDEA 2004," located at <http://idea.ed.gov/explore/home>.

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Admission and Residency	
1	<p>Q: When a child is placed in foster care outside of the district where the child formerly attended school, may the child continue to attend the former school?</p> <p>A: The 2005 Oregon legislature amended the school residency statute for children who are in placed in foster care or other substitute care placement. The juvenile court may make a finding that it is in the child's "best interest" to remain in the same school the child attended before placement in foster care, even if the child now resides in a different school district. If the court makes such a "best interests" finding, the child will be considered a resident of the school district the child previously attended and may continue to attend the school through the highest grade level at that school. The public agency (typically Department of Human Services) that placed the child in foster care is responsible for providing transportation to and from school "when the need for transportation is due to placement by the public agency." This obligation is limited to the availability of designated funds. <i>ORS 339.133(5)</i></p>

Assessment – State and District	
1	<p>Q: Where can one find updated information on extended assessment?</p> <p>A: On the ODE website at http://www.ode.state.or.us/search/page/?id=554 .</p>

Charter Schools	
1	<p>Q: May a public charter school limit the admission of children with disabilities?</p> <p>A: No, a public charter school may not limit admission based on ethnicity, national origin, race, religion, disability, gender, income level, proficiency in English language or athletic ability, but may limit admission to students within a given age group or grade level. <i>ORS 338.125 (3)</i></p>
2	<p>Q: What level of special education services must be provided to children with disabilities attending a public charter school?</p> <p>A: Children with disabilities attending a public charter school have the same entitlement to special education services as any other public school student. For charter schools that are chartered by a local school district, the local school district must provide special education services and supplementary and related services on site at the public charter school to the same extent as the local district provides such services on site at its other public schools. <i>20 USC § 1413 (a)(5)(A); 34 CFR 300.209; and OAR 581-015-2075.</i></p>
3	<p>Q: Where can one find additional information on Oregon charter schools?</p> <p>A: On the ODE website at http://www.ode.state.or.us/search/results/?id=124</p>

Child Find	
1	<p>Q: If a district is implementing a response to intervention (RTI) model for identification of students with specific learning disabilities, at what point should the district initiate a special education referral?</p> <p>A: Each district's RTI model must include a decision matrix on how to evaluate the student's response to intervention to determine whether the pattern of response indicates a specific learning disability. The district must initiate an evaluation for special education services when the district suspects, based on the student's response to intervention, that the student has a disability that has an adverse impact on the student's education. Districts using an RTI model must inform parents that the parents may request an evaluation for special education services. <i>OAR 581-015-2170(1)(e), 581-015-2105 and 581-015-2080.</i></p> <p>For further information regarding RTI, see http://www.ode.state.or.us/search/page/?id=315</p>

Consent	
1	<p>Q: What does "parental consent" mean?</p> <p>A: Parental consent means:</p> <ul style="list-style-type: none">• The parent has been fully informed of all information relevant to the activity for which the consent is sought, in his or her native language or other mode of communication;• The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records that will be released and to whom; and• The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. Parental withdrawal of consent does not negate (undo) an action that has occurred after the parent gave consent and before the parent withdrew consent.• If a parent gave consent to an evaluation, they cannot revoke that consent after the evaluation is done. If a parent gave consent to initial special education services, they cannot revoke that consent after the child has begun receiving special education services. <p><i>34 CFR 300.9, OAR 581-015-2000(5), 581-015-2090(4) & 581-015-2095</i></p>
2	<p>Q: Can an IEP team authorize reevaluation assessments without the parent's consent?</p> <p>A: If a parent <u>refuses</u> consent for the reevaluation, the district may not reevaluate the student. The school district may, but is not required to, pursue the re-evaluation by using mediation or due process hearing procedures.</p> <p>If the district is unable to get the parent to respond, "after reasonable efforts to obtain parent consent," the school district may conduct the reevaluation without consent, unless the reevaluation is an individual intelligence test or test of personality. <i>34 CFR 300.300(c) and OAR 581-015-2090</i></p>

Consent	
3	<p>Q: Who can grant consent for children in foster care?</p> <p>A: The answer will vary; see ODE Q&A section on Parents/Foster Parents/Surrogate Parents. For further information, see Guidelines for Consent for Children in Foster Care available online at http://www.ode.state.or.us/pubs/sped/fosterconsentchart.doc</p>
4	<p>Q: Who can grant consent for youth incarcerated in Oregon Youth Authority (OYA) facilities?</p> <p>A: If a student is a ward of the state and under the jurisdiction of OYA, the first step would be to determine whether there is a parent or guardian (other than the state) who could give consent. If a parent or guardian cannot be identified or located (or if the parent or guardian does not have legal authority to make educational decisions for the child), and if the juvenile court has not already appointed a surrogate parent for the student, the district would need to appoint a surrogate parent. DHS and OYA are both considered the "state", and neither can give consent for special education testing. <i>34 CFR 300.30, 34 CFR 300.519, and OAR 581-015-2000(20)(C)</i></p>

Consent for Medicaid Billing	
1	<p>Q: Why do districts/programs bill Medicaid for covered services?</p> <p>A: Some children with disabilities are eligible for Medicaid funded health services. This funding helps districts/programs provide health services to Medicaid covered children. IDEA permits districts/programs to seek Medicaid reimbursement for health services specified on a child's IEP or IFSP.</p>
2	<p>Q: Is parent consent required to access Medicaid benefits or insurance?</p> <p>A: Yes. IDEA 2004 requires parent consent to access Medicaid benefits "each time" that access to public benefits or insurance is sought. OSEP has stated that "each time" means for a specified amount of services over a specified period of time. This consent may be obtained on an annual basis for the specific services and duration of services identified in a child's IEP or IFSP. The district/program would not be required to obtain a separate consent each time a Medicaid agency or other public insurer or public program is billed for the provision of required services. <i>OSEP memorandum, May 2007, Interpretation of 34 CFR 300.154(d)(2)(iv)(A)</i></p> <p>ODE has a sample form for obtaining consent posted at: http://www.ode.state.or.us/pubs/forms/schoolage/1336-p.doc</p>

Consent for Medicaid Billing	
3	<p>Q: What happens if the amount of services or the specified period of time for service delivery changes? Would the district/program be required to get parental consent?</p> <p>A: If the district/program makes changes to an IEP or IFSP that would <u>increase</u> the amount of services or <u>extend</u> the duration of services, and would like to access the child's or parents' Medicaid benefits for those costs, the district/program must obtain parental consent, covering the additional amount of service and/or costs to be charged to the child's or parents' Medicaid benefits or public insurance. <i>OSEP memorandum, May 2007, Interpretation of 34 CFR 300.154(d)(2)(iv)(A)</i></p>
4	<p>Q: If the parent does not sign the consent form, will it affect the health services the child receives in the school program setting?</p> <p>A: No. The district/program seeking parental consent to access public benefits or public insurance programs is obligated to notify the parent that the parent's refusal to allow access to their child's public benefits or public insurance does not relieve the district/program of its responsibility to ensure that all required FAPE services are provided at no cost to the parent. Schools/programs are required to provide all IEP or IFSP services regardless of whether they have parental consent to share their child's information with Medicaid for reimbursement of a health service. <i>34 CFR 300.154(d)(2)(iv)</i></p> <p>See Sample Parent Letter posted with sample form for obtaining consent at: http://www.ode.state.or.us/pubs/forms/schoolage/1336-p.doc.</p>
5	<p>Q: Is there a sample form for consent to disclose educational records to the Oregon Medicaid agency?</p> <p>A: Yes. The "Consent to Disclose Educational Records to Oregon's Medicaid Agency," including a frequently asked questions section for parents, is available on the ODE website at http://www.ode.state.or.us/search/page/?id=817.</p>
6	<p>Q: What services can the districts/programs bill Medicaid for?</p> <p>A: The district can only bill for Medicaid reimbursable evaluation and testing service(s), and the amount of health service(s) outlined in the child's IEP or IFSP such as: audiology services, nursing services, occupational therapy, physical therapy, speech therapy, psychological services and social work services. For more information, see: http://www.oregon.gov/DHS/healthplan/school-based-hs/main.shtml</p>
7	<p>Q: If the district/program bills Medicaid, will Medicaid services for the child outside of the school/program setting be affected?</p> <p>A: Services received outside the school/program setting should not be affected. Medicaid reimbursable health services received from a community provider are authorized separately from the services provided in the school/program setting.</p>
8	<p>Q: If the child is in foster care, who can provide consent?</p>

Consent for Medicaid Billing	
	<p>A: That answer will vary depending on a number of factors. Refer to the consent chart for children in foster care on the ODE website: http://www.ode.state.or.us/pubs/sped/fosterconsentchart.doc</p>

Discipline for Students with Disabilities	
1	<p>Q: When does in-school suspension count as a suspension (disciplinary removal) from school?</p> <p>A: Disciplinary removal does not include “in-school suspensions if the child continues to have access to the general curriculum and to special education and related services as described in the child’s IEP, and continues to participate with nondisabled children to the extent they would in their current placement.” OSEP continues to endorse this interpretation in the commentary to the IDEA 2004 regulations. <i>OAR 581-015-2400(3)(c); FR 46715 (2006)</i></p>
2	<p>Q: How do we reconcile the Oregon law that requires expulsion for one year for a conduct violation with the IDEA, which only allows removal for 45 school days?</p> <p>A: IDEA 2004 provides that school districts may consider any unique circumstances on a case by case basis in determining whether a disciplinary removal is appropriate. Oregon law provides for a one year expulsion for weapons violations, but allows for case by case exceptions, which would include an exception for students with disabilities under the IDEA when the student’s behavior <u>is</u> a manifestation of the student’s disability. <i>34 CFR 300.530(a), FR 46714 (2006); ORS 339.250(6)(c); and OAR 581-015-2415(4).</i></p>
3	<p>Q: May a district expel a student for a conduct violation if the IEP team determines that the student’s behavior is <u>not</u> a manifestation of the student’s disability?</p> <p>A: Yes. If the IEP team determines that the behavior <u>is not</u> a manifestation of the student’s disability, the district may impose the same discipline as for a nondisabled student (including expulsion) but must still provide services, which may be provided in an interim alternative educational setting (IAES). <i>20 USC § 1415(k)(1)(C) & (G); 34 CFR 300.530, ORS 339.252 and OAR 581-015-2415(5).</i></p>
4	<p>Q. May a district expel a student for a weapons violation if the IEP team determines that the student’s behavior <u>is</u> a manifestation of the student’s disability?</p> <p>A. No. If the team determines that the behavior <u>is</u> a manifestation of the student’s disability, the district may not expel the student. A district may unilaterally remove a student to an IAES for 45 school days for a weapons or drug violation or behavior that has already resulted in serious bodily injury. The parent and district may agree to another setting at the end of the 45 school days period. The IEP/placement team may also make a change in placement that is appropriate and consistent with the student’s needs, subject to the parents’ procedural safeguards regarding prior written notice, mediation, due process, and “stay put” provisions. <i>20 USC § 1415(k)(1)(F) & (G); 34 CFR 300.530(f); FR 46721; ORS 339.252; and OAR 581-015-2415(4).</i></p>

Discipline for Students with Disabilities	
5	<p>Q: When would an administrative law judge (ALJ) get involved in a disciplinary removal from school?</p> <p>A: A parent may request an expedited impartial due process hearing before an ALJ if the parent disagrees with any decision regarding placement, or the manifestation determination. <i>20 USC § 1415(k)(3)(A) and OAR 581-015-2415(6) and 581-015-2445.</i></p> <p>A district may request an expedited impartial due process hearing before an ALJ if it believes that maintaining the current placement of the child is “substantially likely to result in injury to the child or to others.” (A district may unilaterally remove a student to an IAES for 45 school days for a weapons or drug violation or behavior that has already resulted in serious bodily injury. However, a district would need an order from an ALJ to remove a student to an IAES for behavior that is “substantially likely to result in injury.”) <i>20 USC § 1415(k)(3)(A); 34 CFR 300.532(a); and OAR 581-015-2430.</i></p>
6	<p>Q: Is the Administrative Law Judge the same person as the district’s expulsion hearing officer?</p> <p>A: No, the ALJ is a state level administrative law judge, not a district level expulsion hearing officer.</p>
7	<p>Q: Where may one find more information on discipline for students with disabilities in Oregon?</p> <p>A: There are a number of references available on the ODE website, including a discipline flow chart from the Fall 2006 Special Education Conference: http://www.ode.state.or.us/search/page/?id=776 . General information regarding student rights, including discipline rights are found in the ODE Procedural Safeguards booklet at http://www.ode.state.or.us/search/results/?id=261 . Also refer to OARs 581-015-2400 through 581-015-2445.</p>

Early Intervening Services	
	<p>Q: What are Early Intervening Services (EIS) and are the services implemented by special education teachers or general education teachers?</p> <p>A: Districts may use up to 15% of the amount of special education funding to develop and implement EIS for K-12 students (emphasis on grades K-3) “who have not been identified as needing special education or related services but who need additional academic and behavioral support to succeed in the general education environment.” Activities may include professional development for staff to deliver scientifically based academic instruction and behavioral interventions, including scientifically based literacy instruction, and educational and behavioral evaluations, services and supports. IDEA Part B funds used for EIS cannot supplant local and state funding committed to EIS activities. Typically, early intervening services are services provided by general education teachers, but these services can be</p>

Early Intervening Services	
provided by special education teachers. <i>20 USC 1413(f) and 34 CFR §300.226</i>	
Q: When <u>must</u> a district provide early intervening services (EIS)?	
A: EIS services must be provided by the district if the state has made the determination that the district has “significant disproportionality” based on race and ethnicity. If a district has been identified by the State with respect to the identification of children as children with disabilities, the placement of children with disabilities in particular educational settings, or the incidence, duration, and type of disciplinary actions taken against the children with disabilities, including suspensions and expulsions, the state must require the district to reserve the maximum amount (15%) of IDEA funding to provide comprehensive coordinated early intervening services to children in the district, particularly, but not exclusively, children in those groups that were significantly overidentified. Districts identified with significant disproportionality must publicly report on the revision of policies, practices, and procedures used to address the disproportionality issues. <i>20 USC §1418(d)(2)(B)&(C), , 34 CFR 300.646(a) &(b)(2) and 34 CFR 300.226(a)</i>	
Q: What is the relationship between EIS funds and maintenance of effort (MOE) funds?	
A: The local district maintenance of effort and the authority to use Part B funds for early intervening services are interconnected. The decisions that a district makes about the amount of funds it uses for one purpose affect the amount that it may use for the other. See “Optional Use of IDEA Funds” on the ODE website at http://www.ode.state.or.us/search/page/?id=479 . Further guidance is available from OSEP at http://idea.ed.gov/explore/home .	
Q: Are there State reporting requirements for EIS services?	
A: Yes, each district that provides EIS services must annually report to the ODE on the number of children receiving EIS services and the number of children who received EIS services during the preceding two year period and subsequently received special education and related services under IDEA. See additional guidance, instructions, reporting forms and ODE contacts at http://www.ode.state.or.us/search/page/?id=479 . <i>20 USC 1413(f)(4), 34 CFR 300.226(d)</i>	

Eligibility	
1	Q: Which district determines eligibility for parentally-placed private school students? A: The district where the private school is located is responsible for determining eligibility. For further information on parentally-placed private school students with disabilities, see www.ode.state.or.us/search/page/?id=239
2	Q: Are parents required to participate in an eligibility meeting? A: Districts and programs must invite the parents to an eligibility meeting sufficiently in

Eligibility	
	advance to ensure that one or both parents will have an opportunity to attend. A parent's unavailability for participation in the eligibility meeting should not hold up the eligibility process. <i>OAR 581-015-2190</i>
3	<p>Q: Do parents sign the eligibility statement if they do not attend the meeting?</p> <p>A: Only those participating in the eligibility meeting should sign the eligibility statement. When parents are not able to attend the meeting, their signatures should not be on the eligibility statement. If the parents are not in attendance, the school district must send copies of the eligibility form and evaluation report(s) to the parents documenting the decision, along with prior written notice if there is an initiation, change or termination of eligibility for special education and related services. <i>34 CFR 300.300 and OAR 581-015-2090</i></p>

Evaluation	
1	<p>Q: If the parents and district agree in writing that no three year reevaluation is necessary, must the district still complete an eligibility determination every three years?</p> <p>A: Yes, the team must still make a written determination that the student meets eligibility criteria at least once every three years. This determination may be based on existing information if the information adequately supports the requirements of the eligibility. <i>34 CFR 300.303(b)(2) and OAR 581-015-2100(4)</i></p>
2	<p>Q: What evaluations are required to determine whether a child with an IEP or IFSP no longer qualifies for services?</p> <p>A: The child's team makes this judgment by reviewing evaluation data on the child and, with input from the child's parents, identifying additional data, if any, needed to determine whether the child continues to have a disability. The district/program must conduct needed evaluations, consider the results and make an eligibility determination. <i>34 CFR 300.304 and 300.305; OAR 581-015-2115 and 581-015-2310</i></p>
3	<p>Q: Is it acceptable for a trained educational assistant to conduct observations for specific learning disability (SLD) eligibility?</p> <p>A: No, the observation requirement in the SLD eligibility evaluation includes an observation by a "team member other than the child's regular teacher....." The team members are further defined as the parent 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. An educational assistant does not meet these criteria. <i>OAR 581-015-2170</i></p>
4	<p>Q: What is required when a child receiving ECSE services is transitioning to the local school district?</p> <p>A. See <i>OAR 581-015-2805(2)(a)</i>, EI and ECSE Transition:</p>

Evaluation	
	<p>“Before a child reaches the age of eligibility for public school, the district must: (A) For children previously eligible with a developmental delay and suspected of having a disability under OAR 581-015-2130 through 581-015-2180, conduct an evaluation and determine eligibility for school age special education services; or (B) For children previously eligible in a disability category under OAR 581-015-2130 through 581-015-2180, continue the child’s eligibility for school age special education services. The school district may conduct a reevaluation and reconsider eligibility for special education services.”</p> <p>In addition, if the school district suspects that a child, previously eligible in a disability category, is no longer eligible for special education, the district would follow OAR 581-015-2800, Termination of Eligibility – ECSE.</p> <p>If the school district does not suspect a disability category for a child previously eligible with a developmental delay, then it would complete a prior written notice indicating that the child no longer qualifies for ECSE services because of the child’s age and that none of the disability categories are suspected. On the prior written notice the team must indicate what evaluation procedures, tests, records or reports the act (change in identification, provision of FAPE) is based upon.</p>
5	<p>Q: Under what circumstance(s) is written parent consent required for conducting a Functional Behavior Analysis (FBA)?</p> <p>A: For students with disabilities, the nature of the FBA will determine whether consent is needed:</p> <ol style="list-style-type: none"> 1. If the FBA is a review of existing information only, parent consent <u>is not</u> required. 2. If the FBA is collecting new information through structured, formal observations and data collection, parent consent <u>is</u> required. Exception: If the IEP includes behavior goals and the method of assessment is identified as observations and the behavior goals encompass the same or similar behaviors as the FBA, consent <u>is not</u> required because the observations would already be covered by the IEP. 3. If the FBA includes “functional analysis” (manipulating variables and assessing student response), parent consent <u>is</u> required. 4. If the FBA includes the use of any formal assessments such as behavior checklists, parent consent <u>is</u> required for those assessments. 5. If the behavior observations are part of a special education evaluation, parent consent <u>is</u> required.
6	<p>Q: What does “screening for instructional purposes” mean and does it require prior parental consent?</p> <p>A: The commentary to the federal regulations suggests that “screening for instructional purposes” are typically procedures used with groups of children, rather than an individual process. It is something that is “relatively simple and quick” and can be done by a teacher or specialist. Parent consent is not required because it is not an</p>

Evaluation	
	evaluation. However, it is always a good practice to keep parents advised of any concerns the school may have regarding a student. <i>20 U.S.C. §1414(a)(1)(E) and OAR 581-015-2095.</i>
7	<p>Q: Our district uses behavior intervention specialists to assist general education teachers in developing strategies for behavior management and positive behavior supports and in creating success plans for general education students. This often requires the specialist to observe a student. Is prior parental consent required?</p> <p>A: To the extent that the students are not eligible for special education and the observations are not related to determination of eligibility or evaluation of special education needs, and as long as the observations are not based on checklists that would be considered “tests of personality” (such as Conners, etc.), the need for parental consent would be based on district policies.</p>

Evaluation Timelines	
1	<p>Q: When does the 60 school day timeline for conducting an evaluation begin and end?</p> <p>A: The 60 school day timeline begins on the date the parent gives written consent for the evaluation and ends on the date of the meeting to review the results of the evaluation and determine eligibility and/or to consider the results in reviewing the child’s IEP. <i>OAR 581-015-2110(5).</i></p>
2	<p>Q: Are there any exceptions to the 60 school day timeline for conducting an evaluation?</p> <p>A: Yes. IDEA 2004 includes three exceptions: (1) If the parent “repeatedly fails or refuses to produce the child for the evaluation”; and (2) If the child transfers school districts after an initial evaluation has begun but before the eligibility decision. The second exception only applies if the new school district “is making sufficient progress to ensure a prompt completion of the evaluation,” and the parent and district agree to a specific time when the evaluation will be completed. The IDEA 2004 regulations also allow an extension of the timeline pending completion of an evaluation for specific learning disabilities by mutual written agreement of the child’s parents and a group of qualified professionals (the eligibility team). Oregon regulations also provide an exception for documented “circumstances outside the school district’s control”. These circumstances may not include lack of availability of qualified staff to conduct the evaluation. <i>34 CFR 300.301(d), 34 CFR 300.309(c), OAR 581-015-02110(5)(c)</i></p>

Funding and Census for Children with Disabilities	
1	<p>Q: May a district use special education staff to teach core regular education classes in regular education settings when the class enrollment is a blend of disabled and nondisabled students?</p> <p>A: Districts have discretion in making staff assignments. However, Districts may not use IDEA funds for this purpose. Federal IDEA funds may only be used to pay the excess costs of providing special education and related services to children with disabilities,</p>

Funding and Census for Children with Disabilities	
	<p>and must supplement (not supplant) state, local and other federal funds. 20 USC § 1413(a)(2)(A).</p> <p>State special education funds (ADMw) are not specifically restricted, but the district must be able to demonstrate maintenance of effort. The district could not count the provision of core regular education instruction to students with and without disabilities toward maintenance of effort. 20 USC §1413(a)(2)(A)</p>
2	<p>Q: May a district claim a transfer student from out of state on the Special Education Child Count (SECC) census report before the district has determined the student meets Oregon eligibility criteria?</p> <p>A: No. A student must be found eligible for special education services in Oregon and have a current Oregon IEP before the student can be counted on the December 1st Special Education Child Count census. (The district must still provide comparable services to those described in the out of state IEP, in consultation with the parents, until the eligibility status is established and, if found eligible, a valid Oregon IEP is developed.) 20 USC §1414(d)(2)(C)(i)(II) and OAR 581-015-2230.</p>
3	<p>Q: Where may one find more information on special education funding in Oregon?</p> <p>A: A Financial Manual has been developed by ODE on special education funding. See the ODE website, at http://www.ode.state.or.us/data/schoolanddistrict/funding/sped/fundingqa.doc</p>

Highly Qualified Staff	
1	<p>Q: Do the “highly qualified personnel” requirements apply to early childhood special education teachers?</p> <p>A: No. The highly qualified requirements are to ensure “each person employed as a special education teacher in the State who teaches <i>elementary, middle school, or secondary school</i> is highly qualified by the deadline established in section 119(a)(2) of the Elementary and Secondary Education Act of 1965.” 20 USC §1412 (a)(14)(C)</p>
2	<p>Q: When a special education resource teacher teaches a core academic subject (such as 9th grade English or pre-algebra), does the teacher need to be highly qualified in the subject area?</p> <p>A: Yes, as per both IDEA 2004 and ESEA Title II (NCLB).</p> <p>All special education teachers at all grade levels must hold a non-provisional special education license.</p> <p>All special education teachers (elementary or secondary):</p>

Highly Qualified Staff	
	<p>Must be highly qualified in all the core academic subjects they teach and may meet the definition of HQT special education teacher either by:</p> <ol style="list-style-type: none"> a. Passing a rigorous state elementary (multiple subjects) test such as the TSPC-approved ORELA (Oregon Educator Licensure Assessment); or b. HOUSSE (Highly Uniform State Standard of Evaluation) for elementary teachers or the substantially similar HOUSSE for special education teachers; or c. If a new teacher (taught less than 3 complete school years) and already highly qualified in math, language arts or science, may use HOUSSE to become HQT [an evaluation that must happen within 2 years of employment.] Note: The teacher is not highly qualified in all subjects, just the “single” subjects if they qualify under this provision. d. If teaching core academic subjects exclusively to students who are assessed against alternate achievement standards (standard extended assessments or scaffold extended assessments), can meet the highly qualified requirements by: <ol style="list-style-type: none"> 1. Passing a rigorous state elementary (multiple subjects) test – the TSPC-approved ORELA; or 2. Meeting HOUSSE for elementary teachers or the substantially similar HOUSSE for special education teachers. <p>Special note for secondary teachers:</p> <ol style="list-style-type: none"> 1. If the student(s) are performing at or below 8th grade level: <ol style="list-style-type: none"> a. Passing a rigorous state elementary (multiple subjects) test – the TSPC-approved MSE (Multiple Subjects Examination); b. Meeting HOUSSE requirements for elementary teachers. 2. If the students are performing above the 8th grade level: <ol style="list-style-type: none"> a. Passing a subject-matter test in each subject they teach; or b. Meeting HOUSSE for middle-level and secondary teachers. <p>For further information on Highly Qualified status, see http://www.ode.state.or.us/search/results/?id=102</p> <p><i>20 USC 1402 (10) and ESEA Title II §1119(a)(2), NCLB; OAR 584-100-0016 and 584-100-0038.</i></p> <p>* Core academic subjects include arts (visual arts, music, and drama), mathematics, history, geography, economics, government and civics, sciences, language arts and reading, and foreign languages.</p>
3	<p>Q: If only elective credit is granted by the special education teacher, does the teacher need to be highly qualified in that subject area? Example: a student receives subject credit, but the credit does not count towards the graduation requirement for that content area and is listed as an elective credit on the student transcript.</p> <p>A: If the academic content area is considered a core academic subject, then HQ requirements would apply as the law makes no distinction as to how credits earned for the course are applied towards graduation requirements. <i>20 USC §1412 (a)(14)(C)</i></p>
4	<p>Q: What are the timelines for attaining Highly Qualified status teachers?</p>

Highly Qualified Staff	
	<p>A: IDEA 2004 aligned the “highly qualified” requirements for special education teachers with those requirements established under the No Child Left Behind Act (NCLB). NCLB requires that all public school teachers of core academic subjects be “highly qualified” by the end of the 2005-2006 school year and requires that all new Title I teachers hired after the first day of the 2002-2003 school year be highly qualified. This means that all special education teachers who teach core academic subjects must meet the “highly qualified” definition in NCLB by the end of the 2005-2006 school year. The US Department of Education granted Oregon a “good faith” extension to meet the federal requirement for highly qualified teachers by the end of the 2006-07 school year; this one year extension does not apply to the para-professional requirements. <i>20 USC 1402 (10) and ESEA Title II §1119(a)(2)</i></p>
5	<p>Q: Must special education paraprofessionals be “highly qualified”?</p> <p>A: NCLB requires that paraprofessionals in <u>Title I-A</u> schools or in positions that are funded fully or in part by Title 1-A must be “highly qualified” by the end of the 2005-2006 school year. According to NCLB guidelines, “highly qualified” paraprofessionals must have (1) 72 hours of college credit, or (2) earned an Associates Degree or higher, or (3) met a rigorous standard of quality and be able to demonstrate, through a formal State or local academic assessment, knowledge of and the ability to assist in instructing reading, writing, and mathematics. However, non-instructional aides (e.g. personal care services for students with severe disabilities, cafeteria or playground supervision, food services personnel and non-instructional computer assistance) do not need to meet the highly qualified standards. Paraprofessionals who only serve as translators or who only conduct parental involvement activities must have a secondary school diploma or its equivalent but do not have to meet the other requirements. The IDEA 2004 regulations state that special education paraprofessionals must be “appropriately and adequately trained”, including having “content knowledge and skills to serve children with disabilities.” <i>20 USC §1412 (a)(14)(B), 34 CFR 300.156(b), NCLB Title IA section 1119(c) and OAR 581-037-0006 and OAR 581-037-0015</i></p>

IEP Changes	
1	<p>Q: May a school district make changes to an IEP without an IEP meeting?</p> <p>A: Yes, with written parent consent, a district may make amendments to the IEP between annual IEP meetings without an IEP meeting. <i>20 USC §1414(d)(3)(F); OAR 581-015-2225(2)&(3)</i></p>
2	<p>Q: May a district make changes to the annual IEP without an IEP meeting?</p> <p>A: No, the provision regarding consent to changing the IEP without an IEP meeting only applies to changes to the IEP between the annual IEP meetings. <i>20 USC §1414(d)(4)(A)(i); OAR 581-015-2225(1)</i></p>

IEP Content	
1	<p>Q: How do we determine when a child will need short term objectives?</p> <p>A: If the student will take alternative assessments aligned to alternate achievement standards, then short term objectives are required. As of the 2006-2007 school year, there is a single alternate assessment system, known as the Extended Assessments (Standard or Scaffold administration) which includes a broader item pool to meet federal requirements that all students are assessed according to grade level content standards. <i>20 USC §1414(d)(1)(A)(I)(cc) and OAR 581-015-2200</i></p>
2	<p>Q: For a student who is taking an alternate assessment aligned to alternate achievement standards (Extended Assessment, Standard or Scaffold administration), may the IEP team include annual goals (without objectives) in some areas and both annual goals and short-term objectives in other areas?</p> <p>A: Yes. Here is an example: A student takes the extended assessment for reading but regular grade level assessment in math. The IEP would need to include goals and objectives for reading, but would require only annual goals for math.</p>

IEP In Effect	
1	<p>Q: When a student transfers into a new school, is the IEP from the previous school still in effect?</p> <p>A: Under IDEA 2004, if the student moves into a district with a current IEP, either from within the state or out of state, the new school must implement services “comparable to” those in the IEP, in consultation with the student’s parents. If the student is transferring from another district within Oregon, the new district must continue to implement the IEP until the new district either adopts the IEP from the former district or develops, adopts and implements a new IEP. The new district may initiate an evaluation to reconsider eligibility, but the new district must implement the current IEP during the re-evaluation period.</p> <p>If the student is transferring from out of state, the new district must continue to implement comparable services to the IEP until the district conducts an evaluation to determine if the student is eligible under Oregon special education standards and, if eligible, develops, adopts and implements an Oregon IEP for the student. <i>20 USC §1414(d)(2)(C); OAR 581-015-2230.</i></p>
2	<p>Q: May an IEP be in effect if it does not have a valid parent signature?</p> <p>A: Yes. While a district may request that parents sign an IEP to indicate their participation in the IEP meeting, parent signatures are not required on an IEP and an IEP may be in effect without parent signatures. However, parents must give written consent before the initial placement and provision of special education and related services to a child with disabilities. <i>20 USC §1414(a)(1)(D)(i)(II); OAR 581-015-2090(1)&(2)</i></p>

IEP In Effect	

IEP & IFSP Team Members	
1	<p>Q: Under what circumstances is attendance not required for an IEP team member?</p> <p>A: A member of the IEP team is not required to attend an IEP meeting if the parent of the child with a disability and the district agree that the attendance of such member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the IEP meeting. The parent's consent must be in writing. <i>20 USC § 1414(d)(1)(C)(i) and (iii); OAR 581-015-2210(3)</i></p> <p>Sample forms for agreements between the parent and district are available at http://www.ode.state.or.us/pubs/forms/schoolage .</p>
2	<p>Q: Under what circumstances may a member of the IEP team be excused from attending an IEP meeting?</p> <p>A: A member of the IEP may be excused from attending an IEP meeting when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if the parent and district consent to the excusal and the member submits, in writing to the parent and the IEP team, input into the development of the IEP prior to the meeting. The parent's consent must be in writing. <i>20 USC 1414(d)(1)(C)(ii) and (iii); OAR 581-015-2210(3)</i></p> <p>Sample agreement between parent and district forms are available at http://www.ode.state.or.us/pubs/forms/schoolage .</p>
3	<p>Q: Is the attendance of the regular education teacher at an IEP meeting contingent on the student participating in the general curriculum?</p> <p>A: No, the IEP team must include a regular education teacher "if the child is, or may be, participating in the regular education environment". The IDEA does not define "regular education environment," but the IDEA uses the term more broadly than the term "general curriculum." While most students in the regular education environment will be participating in the general curriculum, some students with the most severe disabilities may be participating in the regular education environment but not in the general curriculum. In both of these situations, a regular education teacher must be at the IEP meeting. <i>20 USC §1414(d)(1)(B); OAR 581-015-2210(1)(c)</i></p>
4	<p>Q: Is the attendance of a regular education teacher required if the child will be in a self contained setting?</p> <p>A: The regular education teacher is a required participant, under the statute, if the child "is, or may be, participating in the regular education environment." Many students in self-contained settings do participate for part of the day in a regular education environment. If so, a regular education teacher needs to be at the IEP meeting.</p>

IEP & IFSP Team Members	
	<p>If there is no reasonable possibility that the student may be participating in a regular education environment, the participation of the regular education teacher is not required. Because the phrase “or may be” is broad, districts should take a cautious approach in determining that participation of a regular education teacher is not required. One reason to be cautious is that the Ninth Circuit has emphasized the importance of the participation of regular education teachers at IEP meetings. <i>20 USC §1414(d)(1)(B)(ii) and M.L. v Federal Way School District, 394 F. 3d 634, (9th Cir., 1/14/05)</i></p>
5	<p>Q: May the parent be excused and provide written input for an IEP meeting?</p> <p>A: The IDEA 2004 “agreement to excuse” provisions do not apply to the parent. The parent does not have “an area of curriculum or related service.” The statute allows the parent to participate by alternate means. Alternate means could be with written input, by telephone conference, etc.</p> <p>An IEP meeting may be held without the parent, but only after the district has made sufficient attempts to get parent participation, either in person or by alternate means. <i>20 USC §1414(f) and OAR 581-015-2195</i></p>
6	<p>Q: The ODE sample form for district-parent agreements calls for the signature of an “authorized district staff” person. Are there requirements for the authorized district staff signature?</p> <p>A: IDEA 2004 and state law do not specify who is authorized to enter into the various types of agreements. Local districts decide who is authorized to sign on behalf of the district.</p>
7	<p>Q: May a special education teacher act as the district representative at an IEP meeting?</p> <p>A: Yes, the district may designate a special education teacher as the district representative as long as the teacher is knowledgeable about the general curriculum, knowledgeable about district resources and authorized to commit district resources and ensure that the services set out in the IEP will be provided. The district representative must also be qualified to provide, or supervise the provision of special education. A special education teacher is qualified to provide special education services. <i>OAR 581-015-2210(1)(e)</i></p>
8	<p>Q. May a school psychologist act as the district representative at an IEP meeting?</p> <p>A. Yes, the district may designate a school psychologist as the district representative as long as the school psychologist is knowledgeable about the general curriculum, knowledgeable about district resources and authorized to commit district resources and ensure that the services set out in the IEP will be provided. The district representative must also be qualified to provide, or supervise the provision of special education. Under TSPC rules, a school psychologist’s endorsement covers “providing specially designed instruction in the areas of social and behavior skills.” <i>OAR 581-015-2210(1)(e); OAR 584-036-0025</i></p>

IEP & IFSP Team Members	
9	<p>Q: Is email communication between the parent and a school representative sufficient evidence of written consent to excuse a member of the IEP team from attending the IEP meeting?</p> <p>A: IDEA 2004 requires the parent's agreement to be "in writing." Email communication is written communication, but a parent signature would provide better evidence of parent consent. It is a local school district decision as to whether the district will allow an email or electronic signature. <i>20 USC §1414(d)(1)(C)(iii)</i></p>
10	<p>Q: For children aged 3-5, is a regular preschool teacher a required member of the child's IFSP team when the child is or may be participating in a general preschool program?</p> <p>A: The answer depends on the type of program the child attends:</p> <ul style="list-style-type: none"> • Child receives ECSE services in a public program or is placed by ECSE in a private program: When a child receives ECSE services in a public program, such as Head Start Oregon Prekindergarten (HSOPK) or when the EI/ECSE program pays tuition for a child to attend a private preschool, the preschool teacher is considered a required member of the IFSP team. This includes when children are "pulled out" to receive ECSE services in another room of the program. • Child attends a public (HSOPK) or private preschool and attends an ECSE preschool to receive ECSE services: The regular preschool teacher or child-care staff is not considered a required member of the child's IFSP team although the EI/ECSE program should invite the teacher to the IFSP meeting and use other means (e.g., interviews, questionnaires) to get their input concerning the child's needs, the general curriculum used in the preschool or child-care and the child's participation in age appropriate activities in the preschool or child-care environment. • Child attends a private preschool and receives ECSE services in that setting, but was NOT placed by the ECSE program for FAPE: The regular preschool teacher is not considered a required member of the child's IFSP team although the EI/ECSE program should invite the teacher to the IFSP meeting and use other means to get their input if they are unable to attend. Input should include information on the child's needs, the general curriculum used in the preschool and the child's participation in age appropriate activities in the preschool environment. • Child attends child care and receives ECSE services in that setting, but was NOT placed by the ECSE program for FAPE: The child care staff is not considered a required member of the child's IFSP team although the EI/ECSE program should invite the staff to the IFSP meeting and use other means to get their input if they are unable to attend. Input should include information on the child's needs, the child's participation in age appropriate activities in the child care environment, and any general curriculum used in the child-care setting.

IFSP Content	
1	<p>Q: May service coordination go on the IFSP as a service to the child and family?</p> <p>A: Yes. Service coordination is defined as the activities carried out by a service coordinator to assist and enable an eligible child and the child's family to receive the rights, procedural safeguards and services that are authorized under the state's EI program and to coordinate access to other services designated on the IFSP. Service coordination responsibilities include:</p> <ul style="list-style-type: none"> (a) Coordinate all services across agency lines by serving as a single point of contact for helping parents obtain the services and assistance they need; (b) Assist parents of eligible children in gaining access to EI services and other services identified in the IFSP; (c) Facilitate the timely delivery of available services; (d) Continuously seek the appropriate services in situations necessary to benefit the development of each child being served for the duration of the child's eligibility; (e) Coordinate the performance of evaluation and assessments; (f) Facilitate and participate in the development, review, and evaluation of IFSPs; (g) Assist families in identifying available service providers; (h) Coordinate and monitor the delivery of available services; (i) Inform families of the availability of advocacy services; (j) Coordinate with medical and health providers; and (k) Facilitate the development of a transition plan to ECSE services or other early childhood service, if appropriate. <p>Any of the service coordination activities outlined above can be listed on the IFSP as a service to the child and family. <i>OAR 581-015-2700 (27) and OAR 581-015-2840</i></p>
2	<p>Q: May a plan for reevaluation be an IFSP service?</p> <p>A: Yes. The plan for reevaluation may be listed on the service page or on the EI or ECSE transition plan.</p>
3	<p>Q: When a child receives ECSE services at home, how does the IFSP address the extent, if any, to which the child will not participate with typical children in the regular class and IFSP activities?</p> <p>A: The IFSP would indicate the child is not receiving services with typical children in a regular class because appropriate services can be provided in the child's typical setting at home. There could be other justifications for providing services to a child at home, e.g. medical.</p>

Parentally-placed Private School Children with Disabilities	
1	<p>Q: Which district is responsible for child find and special education for children enrolled in private schools by their parents?</p> <p>A: Under IDEA 2004, parentally-placed private school students are the responsibility of</p>

Parentally-placed Private School Children with Disabilities	
	<p>the district where the private school is located, not the resident district of the student. The district where the private school is located is responsible for:</p> <ul style="list-style-type: none"> • the initial referral and evaluation planning; • conducting the evaluation and determining eligibility; • determining where services are to be provided and developing a services plan with a team, including the parent; • conducting the annual IEP review; • conducting reevaluations and determining eligibility; and • conducting timely and meaningful consultation with representatives from the private school. <p><i>20 USC §1412(a)(10)(i); OAR 581-015-2455(1)</i></p>
2	<p>Q: What responsibility does a resident district have for a parentally-placed private school student attending a private school located outside the resident district?</p> <p>A: If a determination is made that a child has a disability and needs special education and related services, the district where the child resides is responsible for making FAPE available to the child. If the parents make clear their intention to keep their child enrolled in the private school located outside the resident district, the resident district need not develop an IEP for the child. The district where the private school is located is then responsible for special education services for the parentally-place private school student attending the private school within their district boundaries.</p>
3	<p>Q: Where can one find additional information regarding parentally-placed private school students with disabilities?</p> <p>A: For more information on parentally-placed private school children with disabilities, see www.ode.state.or.us/search/page/?id=239 .</p>

Parents / Foster Parents / Surrogate Parents	
1	<p>Q: Who is considered a “parent”?</p> <p>A: A “parent” means one or more of the following persons:</p> <ul style="list-style-type: none"> • A biological or adoptive parent of the child; • A foster parent of the child; • A legal guardian, other than a state agency; • An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child’s welfare; or • A surrogate parent who has been appointed in accordance with OAR 581-015-2320, for school age children, or OAR 581-015-2760 for preschool children. <p>If a judicial decree or order identifies a specific person to act as the parent of a child or to make educational decisions on behalf of a child, then that person will be the parent for special education purposes. If no judicial decree or order identifies a specific person to act as the parent, and if more than one party is qualified to act as a parent and the biological or adoptive parent is attempting to act as the parent, the</p>

Parents / Foster Parents / Surrogate Parents	
	biological or adoptive parent is presumed to be the parent unless the biological or adoptive parent does not have legal authority to make educational decisions for the child. <i> OAR 581-015-2000(21)</i>
2	<p>Q: The definition of “parent” in IDEA 2004 includes a person “acting as a parent”. What does this mean?</p> <p>A: The IDEA’s definition of “parent” includes “an individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child’s welfare.” “Acting as a parent” is like the phrase “person in parental relationship” in Oregon law. This generally means an adult who is living with and caring for the student. <i> 20 USC 1402 (23)(C)</i></p>
3	<p>Q: Does Oregon have a definition for “ward of the state”?</p> <p>A: A “ward of the state” means a child who is in the temporary or permanent custody of, or committed to, the Department of Human Services or Oregon Youth Authority through the action of the juvenile court. <i> OAR 581-015-2000(39) & ORS 343.035(20)</i></p>
4	<p>Q: Must a school district appoint a surrogate parent for all children with disabilities (or suspected disabilities) who are wards of the State?</p> <p>A: No, but the school district must determine whether each child with a disability who is a ward of the court needs a surrogate parent. A school district does not need to appoint a surrogate for a child who is a ward of the court when someone that meets the definition of “parent” is willing to serve in that role. In Oregon, a foster parent is considered a parent. <i> 20 USC §1402(23)(A); OAR 581-015-2000(21) and OAR 581-015-2320</i></p>

Procedural Safeguards	
1	<p>Q: Transfer of rights documentation on the IEP must show that the student is informed of his/her rights at district one year from the age of majority. When rights actually transfer at the age of 18, what documentation needs to be included on the notice?</p> <p>A: ODE’s Transfer of Rights technical assistance document includes a sample form, posted on the ODE website at: http://www.ode.state.or.us/gradelevel/hs/transition/documents.aspx.</p> <p>Sample form:</p> <div style="border: 1px solid black; padding: 5px;"> <p>Date _____</p> <p>Dear _____ (Parent) and _____ (Student) _____ :</p> <p>When _____ (Student) _____ turns 18 on _____ (Date) _____ , all special education rights given to the parent(s) will transfer to the student, unless a court has appointed a legal guardian or surrogate parent for the student. Parent(s) will continue to receive any future notice required by state and federal laws regarding the educational program for the student. If you have</p> </div>

Procedural Safeguards							
	<p>questions, you may contact the person listed below.</p> <table border="1"> <thead> <tr> <th>NAME</th> <th>POSITION</th> <th>TELEPHONE</th> </tr> </thead> <tbody> <tr> <td colspan="3">ADDRESS</td> </tr> </tbody> </table> <p>A copy of Student Rights in Special Education procedural safeguards is enclosed.</p>	NAME	POSITION	TELEPHONE	ADDRESS		
NAME	POSITION	TELEPHONE					
ADDRESS							
2	<p>Q: Are districts required to send out notification that the district stands ready to provide a free and appropriate education to students who have received an alternative diploma (e.g. modified diploma or certificate of attendance/completion) or otherwise left school without a regular high school diploma?</p> <p>A: Districts have child find responsibilities for students who have left school without a regular diploma and a “stand ready” letter is one way to inform students that they continue to have a right to return to school for further education. While districts are not required to send such a letter, it is one effective approach to demonstrate the district’s readiness to provide FAPE to the student.</p>						
3	<p>Q: Is it necessary to complete a prior written notice of special education action when a child transitions to another educational level?</p> <p>A: Programs and schools are not required to provide prior written notice when a child transitions from pre-kindergarten into kindergarten, from elementary school to middle school, from middle school to high school or when the student’s eligibility for special education services ends at the end of the school year in which the student turns the age of 21.</p> <p>District must provide a prior written notice when the student graduates from high school with a regular diploma, at which time the student is no longer eligible for FAPE. <i>OAR 581-015-2310 and 581-015-2045</i></p>						

Progress Reports	
1	<p>Q: What are the progress report requirements for children receiving ECSE services?</p> <p>A: IFSPs for children receiving ECSE services must include a description of how the child’s progress toward meeting the annual goals will be measured and when periodic reports on the child’s progress toward annual goals will be provided.</p> <p>For children in preschool programs, EI/ECSE programs should provide progress reports on the same schedule as other progress reports. Indicate on the IFSP services page how progress will be reported and the schedule for reporting. Use the IFSP goal and objective page to report child progress to parents.</p>

Specially Designed Instruction	
1	Q: What is specially designed instruction?

	<p>A: Students with disabilities under the IDEA must be provided with an IEP that includes special education services and, where appropriate, related services. “Special education services” means "specially designed instruction" that is designed to meet the unique needs of the child resulting from the child’s disability. In Oregon, special education services includes academic instruction, speech-language services and instruction in physical education, travel training, vocational education and orientation and mobility services. <i>OAR 581-015-2000(33)</i></p> <p>“Specially designed instruction” means “adapting, as appropriate to the needs of an eligible child, the content, methodology, or delivery of instruction to (a) address the unique needs of the child that result from the child’s disability; and (b) ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children”. This definition applies to special education services for children and students age 3-21. <i>OAR 581-015-2000 (34)</i></p> <p>Specially-designed instruction, unlike modifications and accommodations, must include an <i>instructional</i> component with an anticipated, measurable outcome.</p> <p>In addition, under the IDEA special education services must be provided by qualified staff. When a special education teacher provides specially designed instruction by consulting with a regular education teacher who then provides the specially designed instruction to the student, the special education teacher must assist the regular education teacher with the design and implementation of the child’s special education program and check to ensure that the child is making progress on the goals and objectives on the child’s IEP. The provision of modifications and accommodations, alone, does not constitute the provision of special education services (or specially designed instruction).</p> <p>For more information about accommodations and modifications for secondary transition, see the Transition Toolbox at http://www.ode.state.or.us/gradelevel/hs/transition/newsletters/2003/ttvol01issue08.pdf</p>
2	<p>Q: What is the difference between “specially designed instruction” based on peer-reviewed research and “scientifically based interventions”?</p> <p>A: Under IDEA 2004, special education services must be based on "peer-reviewed research, to the extent practicable." To be "special education" or "specially designed instruction", the services must be based on the student's IEP which is dependent on the evaluation of the student's unique needs, and the services must be delivered by qualified staff. (See question 1 in this section for description of specially designed instruction).</p> <p>Under IDEA 2004, districts may use a process for identifying students with a specific learning disability that determines if the child “responds to scientific, research-based intervention as part of the evaluation procedures.” This process is known as Response to Intervention (RTI).</p> <p>While both types of services are research-based, special education services (or specially designed instruction) are determined by a student’s IEP team and based on</p>

	<p>the IEP goals and objectives. RTI, on the other hand, uses research based interventions that are not necessarily individualized. <i>20 USC §1414(d)(1)(A)(i)(IV) & 1414(b)(6).</i></p> <p>For further information on peer-reviewed research and scientifically based interventions see http://www.whatworks.ed.gov .</p>
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Student Records & Confidentiality	
1	<p>Q: How quickly must a school district respond to a parent request for access to (or copies of) student records and may the district charge a fee for copying records?</p> <p>A: The district must permit a parent to inspect and review any education records relating to the child that are collected, maintained, or used by the school district under IDEA. The school district must comply with the request to inspect and review any education records on the child without unnecessary delay and before any meeting regarding an individualized education program (IEP), or any impartial due process hearing (including a resolution meeting or a hearing regarding discipline), and in no case more than 45 calendar days after such a request. If the parent requests copies of the records, the district may charge a fee for the copies “unless the imposition of a fee effectively prevents a parent or eligible student from exercising the right to inspect and review the student’s education records.” If the records contain information on more than one student, the parent “may inspect, review, or be informed of” only the specific information about their child. <i>OAR 581-021-0220 thru 581-021-0440 and OAR 581-015-2300</i></p>
2	<p>Q: How quickly must student records be transferred when a student moves to a new school district?</p> <p>A: When a student transfers to a new school, the receiving school must request student records within 10 days of initial enrollment. The former school or educational program must transfer all student education records for that student no later than 10 days after receipt of the request for records. <i>ORS 326.575(1)&(2) and OAR 581-015-2230</i></p> <p>For students placed in substitute care programs, the transfer of school records requires the receiving district to request student records within 5 days of initial enrollment of the student and gives the former school 5 days from receipt of the request to send the student records to the new school. Substitute care programs include family foster care, family group home care, parole foster care, family shelter care, adolescent shelter care and professional group care. <i>ORS 326.575(3) & 339.133(8)</i></p>
3	<p>Q: What records may be excluded from disclosure under the “sole possession” exception?</p> <p>A: “Sole possession” documents apply only to “memory-jogger” type notes and do not include “detailed or comprehensive notes that record specific clinical, educational or other services provided to a student, or that record direct observations or evaluations</p>

Student Records & Confidentiality	
	of student behavior, including a student's success in attaining specified objectives, whether or not these records have been shared with another individual." <i>FPCO, letter dated December 29, 2006.</i>
4	<p>Q: May district staff exchange confidential student information to other staff in the same district by email?</p> <p>A: Email users should exercise extreme caution in using emails to communicate confidential or sensitive matters, and should not assume that emails are private and confidential. All use of email, including use for sensitive or confidential information, should be consistent with district policies on the use of electronic emails. Confidentiality of student records is protected under the Family Educational Rights and Privacy Act of 1974 (FERPA) and all use of email communication regarding confidential student information must be consistent with FERPA. In general, email is not appropriate for transmitting sensitive or confidential information unless an appropriate level of email server security is in place.</p>
5	<p>Q: In Oregon, when a student transfers from one school to another, is parent consent required for the transfer of student records?</p> <p>A: Parent consent is not required for the transfer of student records for a student seeking enrollment or services from another educational agency or institution. Each educational agency or institution is required to develop a Student Education Records policy authorizing the district to transfer student records upon receipt of a request for such records. The educational agency or institution must give parents annual notice of this policy. <i>OAR 581-021-0250(1)(l, m, n & p)</i></p>
6	<p>Q: When a student transfers to a new school district, may the previous district withhold records from the new district for nonpayment of fines or fees?</p> <p>A: No. Even if a student or former student owes a fine or fee, school districts may not withhold educational records of students when "requested for use in appropriate placement of the student." <i>ORS 339.260(5)</i></p>
7	<p>Q: Oregon Administrative Rules were recently amended to align with changes in the Federal Family Educational Rights and Privacy Act (FERPA). Where could one find the OARs on student records?</p> <p>A: OARs 581-021-0220 through 581-021-0400 deal with student records and privacy issues. The ODE website contains multiple links to education OARs, including the "Policy" link on ODE's home page (http://www.ode.state.or.us). All Oregon Administrative Rules are available at http://arcweb.sos.state.or.us/banners/rules.htm.</p>

Transfer Students	
1	<p>Q: When a student transfers into a new school, is the IEP from the previous school still in effect?</p> <p>A: Under IDEA 2004, if the student moves into a district with a current IEP, either from</p>

Transfer Students	
	<p>within the state or out of state, the new school must implement services “comparable to” those in the IEP, in consultation with the student’s parents. If the student is transferring from another district within Oregon, the new district must continue to implement the IEP until the new district either adopts the IEP from the former district or develops, adopts and implements a new IEP. The new district may initiate an evaluation to reconsider eligibility, but the new district must implement the current IEP during the re-evaluation period.</p> <p>If the student is transferring from out of state, the new district must continue to implement comparable services to the IEP until the district conducts an evaluation to determine if the student is eligible under Oregon special education standards and, if eligible, develops, adopts and implements an Oregon IEP for the student. <i>20 USC §1414(d)(2)(C); OAR 581-015-2230.</i></p>
2	<p>Q: When a student with an out of state IEP transfers to an Oregon school district, must the Oregon school district determine Oregon special education eligibility for the student?</p> <p>A: Yes, the district must review existing information and determine whether any additional evaluation is needed to determine eligibility and the student’s special education needs. If yes, the district would view this as an initial evaluation and must get written parent consent before evaluating the student. Pending determination of Oregon eligibility for special education the district must provide services comparable to those described in the child’s IEP from the out of state district. <i>OAR 581-015-2230 and 581-015-2110</i></p>
3	<p>Q: May a district claim a transfer student from out of state on the Special Education Child Count (SECC) census report before the district has determined the student meets Oregon eligibility criteria?</p> <p>A: No. A student must be found eligible for special education services in Oregon and have a current Oregon IEP before the student can be counted on the December 1st Special Education Child Count census. (The district must still provide comparable services to those described in the out of state IEP, in consultation with the parents, until the eligibility status is established and, if found eligible, a valid Oregon IEP is developed.) <i>20 USC §1414(d)(2)(C)(i)(II) and OAR 581-015-2230.</i></p>
4	<p>Q: How quickly must student records be transferred when a student moves to a new school district?</p> <p>A: When a student transfers to a new school, the receiving school must request student records within 10 days of initial enrollment. The former school or educational program must transfer all student education records for that student no later than 10 days after receipt of the request for records. <i>ORS 326.575(1)&(2) and OAR 581-015-2230</i></p> <p>For students placed in substitute care programs, the transfer of school records requires the receiving district to request student records within 5 days of initial enrollment of the student and gives the former school 5 days from receipt of the</p>

Transfer Students	
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6	<p>Q: When a student transfers to a new school district, may the previous district withhold records from the new district for nonpayment of fines or fees?</p> <p>A: No. Even if a student or former student owes a fine or fee, school districts shall not withhold educational records of students when “requested for use in appropriate placement of the student.” <i>ORS 339.260(5)</i></p>
7	<p>Q: When a family pays tuition for a student to attend another district as a nonresident student, what are the obligations of the resident and attending school district for students with disabilities?</p> <p>A: Oregon law permits school districts to accept nonresident students on a tuition basis. <i>ORS 339.115</i> permits school boards to “admit nonresident persons, determine who is not a resident of the district and fix rates of tuition for nonresidents.”</p> <p>The attending school district may not receive state school funds for the student, but is still considered a public school, and must still comply with Section 504 requirements. The attending school district may not charge a higher rate of tuition to students with disabilities. The Office for Civil Rights has stated that once an applicant pays tuition that applies to all nonresident students, the student would be considered “in the recipient’s jurisdiction” for the purposes of Section 504. See <i>Letter to Bocketti</i> (OCR, August 6, 1999). This means that the attending district may not discriminate against the student and must provide appropriate services to the student under Section 504 if the student meets the definition of having a disability under Section 504. The attending district is not considered a private school, and the student is not considered a parentally-placed private school student, or counted for the purposes of proportionate share.</p> <p>The resident district is responsible for continuing to offer a free appropriate public education under the IDEA for the student should the family decide to reenroll the student in the resident district. The resident district is also responsible for “child find” under the IDEA.</p>

Transition	
1	<p>Q: What is the difference between annual goals and post-secondary goals?</p> <p>A: Measurable Annual Goals, including academic and functional goals are statements, written in measurable terms that describe what the student can reasonably accomplish in a 12-month period. There should be a direct relationship between the goal statements and the student's present levels of educational performance. The goals should also be designed to assist the student in reaching the student's postsecondary goals.</p> <p>Postsecondary goals are statements written in measurable terms that describe what the student hopes to achieve <u>after</u> leaving high school. The postsecondary goals must be based upon age-appropriate transition assessments and be written for training, education, employment, and, where appropriate, independent living skills.</p> <p>See Guidelines for Oregon Standard IEP for students age 16 and older when the IEP is in effect at http://www.ode.state.or.us/search/page/?id=1163 .</p>
2	<p>Q: How does the IEP team document the post secondary goals for transition age students? How does the IEP relate to the Summary of Performance sheet?</p> <p>A. The IEP team identifies the appropriate measurable post-secondary goals for the student for each IEP beginning with the first IEP in effect when the student will be 16. The post-secondary goals relate to what the student expects to be doing after high school related to training, education, employment, and, where appropriate, independent living skills. The post-high school goals may change as the student moves through high school. The Summary of Performance form is an exit document and includes the most recent post-secondary goals listed in the IEP. <i>20 USC §1414(d)(1)(A)(i)(VIII)(aa) &(bb; OAR 581-015-2200(2))</i></p>
3	<p>Q: What are age-appropriate assessment instruments for transition?</p> <p>A. Age-appropriate assessment instruments for transition could include standardized vocational assessment instruments (e.g. Self-Determination Scales, Life Skills Inventories, Checklists of Adaptive Living Skills, Functional Skills Assessments) and non-standardized vocational assessments (e.g. observations, anecdotal information, on-the-job tryouts, apprenticeships, paid work experiences, informal inventories) related to training, education, employment, and, where appropriate, independent living skills. See Transition Toolbox link below for further information. http://www.ode.state.or.us/gradelevel/hs/transition/newsletters/2004/ttvol02issue03.pdf</p>
4	<p>Q: What is the Summary of Performance and when should it be completed?</p> <p>A. The Summary of Performance is a written summary of a student's high school academic achievement and functional performance that includes recommendations on how to assist the student in meeting the student's post-secondary goals. Typically, the Summary of Performance would be completed during the student's final quarter in school. <i>20 USC § 1414(c)(5)(B)(ii)</i></p> <p>Sample Summary of Performance forms are available at</p>

	http://www.ode.state.or.us/pubs/forms/schoolage
5	<p>Q: Are there examples of “appropriate measurable post-secondary goals” for transition aged students?</p> <p>A: ODE has not developed examples of "appropriate measurable post-secondary goals." It is the responsibility of the individual IEP team to develop post-secondary goals based on age appropriate transition assessment(s), the student's preferences, interests, needs and strengths, and other information specific to the individual student.</p>
6	<p>Q: Are post-secondary goals required for training, education, employment and independent living skills?</p> <p>A: IDEA regulations require a student’s IEP to include measurable post-secondary goals in the areas of training, education, and employment, and, <i>where appropriate</i>, independent living skills. <i>IDEA 2004 300.320(b), OAR 581-015-2200(2)(a)(A)</i></p> <p>It is up to the child’s IEP team to determine whether IEP transition goals related to the development of independent living skills are appropriate and necessary for the child to receive FAPE.</p> <p>For further clarification on transition services, see Federal Register, pages 46667-68, August 14, 2006.</p>
7	<p>Q: Is it necessary to include evaluation criteria, anticipated amount and frequency, and progress reports for post-secondary goals as required for goals listed on the measurable annual goals page(s) of the IEP?</p> <p>A: No. Post-secondary goals refer to those goals that a student hopes to achieve after leaving high school and should be written on the "transition page" of the Oregon Standard IEP. The goals must be measurable and based on age-appropriate transition assessment. Post-secondary goals must be written in the areas of training, education, and employment and where appropriate, independent living skills.</p> <p>See Guidelines for Oregon Standard IEP for students age 16 and older when the IEP is in effect at http://www.ode.state.or.us/search/page/?id=1163 .</p>
8	<p>Q: Are transition goals addressed in the Present Levels of Academic Achievement and Functional Performance statement for transition aged youth?</p> <p>A: Yes. In developing the Present Levels of Academic Achievement and Functional Performance Statement for transition aged youth, the IEP Team must include specific information including the student’s post-secondary preferences, needs, interests, and the results of age-appropriate transition assessment(s).</p> <p>See Guidelines for Oregon Standard IEP for students age 16 and older when the IEP is in effect at http://www.ode.state.or.us/search/page/?id=1163 .</p>
9	<p>Q: Is there a recommended 'age-appropriate transition assessment (s)'?</p>

	<p>A: The specific transition assessments used to determine appropriate measurable post-secondary goals will depend on the individual needs of the child, and the IEP team shall determine the appropriate assessments. ODE does not provide a recommended list of age-appropriate transition assessments.</p> <p>For further clarification on transition services, see Federal Register, pages 46667-68, August 14, 2006.</p>
10	<p>Q: Is the school district responsible for providing and funding all items included in the "course of study"?</p> <p>A: Yes, it is the school district's responsibility to provide and pay for all items included in the course of study. The course of study lists the classes, experience, and activities that are needed to assist the child in high school in preparation for reaching their post-secondary goals. It should be directly related to the student's post-secondary goals, be meaningful to the student's future, motivate the student to complete his or her education, and support post-school outcomes.</p> <p>The district is not responsible for the student completing the post-secondary goal, but the district is responsible for services leading up to completion of the goal as provided in the IEP.</p> <p>See Guidelines for Oregon Standard IEP for students age 16 and older when the IEP is in effect at http://www.ode.state.or.us/search/page/?id=1163.</p>
11	<p>Q: Are linkages required with outside agencies for all transition aged students?</p> <p>A: No. Federal regulations require that, "<u>to the extent appropriate</u>, with the consent of the parents or a child who has reached the age of majority, in implementing the requirements of this section, the public agency must <u>invite</u> a representative of any participating agency that is likely to be responsible for providing or paying for transition services." <i>IDEA 2004 300.321(b)(3), OAR 581-015-2210(2)(b)</i></p> <p>IDEA has never given school districts the authority to compel other agencies to participate in the planning of transition services for a student with a disability. School districts should take steps to obtain the participation of other agencies in the planning of transition services for a student, if appropriate; however, districts are no longer required to "ensure" linkages to outside agencies. For further clarification on transition services, see Federal Register, pages 46667-68, August 14, 2006.</p> <p>If a participating agency, other than the school district, fails to provide agreed-upon transition services described in the IEP, the school district must, as soon as possible, initiate an IEP meeting to identify alternative strategies to meet the transition objectives for the student and, if appropriate, to revise the student's IEP. <i>OAR 581-015-2235</i></p>

Transportation	
1	<p>Q: When is a school district required to provide transportation to a school age special education student?</p> <p>A: School districts are required to provide transportation for all resident elementary students who reside more than one mile from the school they attend and for secondary school students who reside more than 1.5 miles from school. The State Board of Education may waive the requirement to provide transportation to secondary school students provided the district presents to the board a plan providing or identifying suitable and sufficient alternate modes of transporting the secondary school students.</p> <p>School districts are also required to provide transportation for all K-12 special education students who receive transportation as a related service in their Individualized Education Program (IEP).</p> <p>When a child with a disability attends a program outside of the resident district, the resident district is responsible for transportation if the placement in the program is necessary to provide appropriate services and transportation and is included as a related service on the IEP. <i>ORS 327.043</i></p>
2	<p>Q: When is a school district required to provide transportation to a pre-school special education student?</p> <p>A: The resident school district is responsible for providing transportation to all infants and children with disabilities, from birth to the age of eligibility for kindergarten, who receive transportation as a related service in their Individualized Family Service Plan.</p> <p>When a child with a disability attends a program outside of the resident district, the resident district is responsible for transportation if the placement in the program is necessary to provide appropriate services and transportation and is included as a related service on the IFSP. <i>ORS 343.533</i></p>
3	<p>Q: What responsibilities do districts have to provide transportation to home schooled children accessing special education services?</p> <p>A: Regular school transportation options are available to the child. However, a school district is not responsible for providing transportation resulting from the parent's decision to access special education services outside of the district's ordinary transportation schedules and routes.</p>
4	<p>Q: What responsibilities do districts have to provide transportation to students placed in approved ODE funded long term care and treatment (LTCT) education programs that provide psychiatric day treatment?</p> <p>A: The resident district must provide transportation to pupils enrolled in day treatment LTCT programs who live at home but require day treatment. <i>ORS 343.961(2)</i></p>