



NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 581
OREGON DEPARTMENT OF EDUCATION

FILED

10/13/2025 9:54 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Temporary-to-Permanent Rule Revisions: Surrogate Parents & Age of Majority Procedural Rights

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 12/11/2025 9:00 AM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 11/18/2025

TIME: 3:00 PM - 4:00 PM

OFFICER: Haedon Brunelle

REMOTE HEARING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 669-254-5252

CONFERENCE ID: 1618307027

NEED FOR THE RULE(S)

The proposed permanent rules are necessary to close a significant regulatory gap that was temporarily addressed by Board action in June 2025. Without permanent adoption, the temporary rules will expire in December 2025, reopening the gap and creating procedural uncertainty for districts, risking service disruption for vulnerable students, and creating compliance concerns with federal IDEA requirements under 34 CFR § 300.520(b).

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

There will be a presentation at the October 16, 2025, State Board of Education meeting. Please refer to the State Board of Education website, boardbook, here for meeting materials:

<https://meetings.boardbook.org/Public/Organization/2146>

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

Permanent adoption of these rules will have a significant positive impact on disabled adult students and adult students experiencing disabilities, a population that has been historically marginalized. The rules solidify an administrative pathway that allows families to secure decision-making support for adult students without navigating complex and costly legal guardianship proceedings. This particularly benefits historically underserved communities, including

families of color and those with lower incomes, who may face disproportionate barriers to accessing legal services. The rules and the accompanying resources on Supported Decision-Making are designed to challenge the historic presumption of incompetence and promote the self-determination and autonomy of these students.

FISCAL AND ECONOMIC IMPACT:

The proposed rule changes are not expected to have any fiscal impact on the Oregon Department of Education; all work will be absorbed by existing staff. The fiscal impact for units of local government (school districts and ESDs) is expected to be minimal or potentially positive. By establishing standardized procedures, the amendments create predictability and may reduce costs for districts by providing a clear framework for legally ambiguous situations, reducing the need for costly legal consultation. There are no anticipated economic impacts to the public.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

All work will be absorbed by existing staff. The fiscal impact for units of local government (school districts and ESDs) is expected to be minimal or potentially positive. By establishing standardized procedures, the amendments create predictability and may reduce costs for districts by providing a clear framework for legally ambiguous situations, reducing the need for costly legal consultation. There are no anticipated economic impacts to the public.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses were not involved in the development of these rules as this will not impact small businesses.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

An administrative rule advisory committee was not consulted. The Oregon Department of Education (ODE) identifies those who may be impacted by these rule updates and hosts direct engagements with them. In addition, ODE staff present their rule updates to a broader group of education partners ranging from non-profits, education service districts, school districts, student rule advisors, and more, prior to approaching the State Board of Education for further consideration and a vote. The State Board of Education holds public meetings and recordings for all rules. You can find all of their meetings here on boardbook: <https://meetings.boardbook.org/Public/Organization/2146>.

RULES PROPOSED:

581-015-2320, 581-015-2325

AMEND: 581-015-2320

RULE SUMMARY: The proposed amendments to OAR 581-015-2320 and OAR 581-015-2325 make permanent the temporary rules adopted in June 2025. These rules establish a clear, IEP team-driven process for appointing an educational representative for an adult student who lacks the capacity to provide informed consent to their educational program. Key provisions, developed through extensive engagement, require the consideration of supported decision-making first, prioritize parents for the role of surrogate, and mandate an annual review of the determination.

CHANGES TO RULE:

581-015-2320
Surrogate Parents 

(1) Each public agency must ensure that the rights of a child and, as determined appropriate under OAR 581-015-2325, adult student with a disability are protected by determining the need for, and when appropriate assigning, a surrogate parent when no parent (as defined in OAR 581-015-2000) with legal rights in respect to a student's educational decision making can be identified or located after reasonable efforts and additionally:¶

- (a) The child is a ward of the state and there is reasonable cause to believe that the child has a disability; or¶
- (b) The child is an unaccompanied homeless youth.¶

(2) The school district may not appoint a surrogate solely because the parent or adult student to whom rights have transferred is uncooperative or unresponsive to special education needs.¶

(3) ~~Notwithstanding section (1) of this rule, each school district must have a method for determining whether a child or adult student, as determined appropriate under OAR 581-015-2325, needs a surrogate parent and for assigning a surrogate parent to the child or adult student, as determined appropriate under OAR 581-015-2325.~~ The school district must ensure that each person approved to serve as a surrogate:¶

(a) Is not an employee of the school district or the Department or any other agency that is involved in the education or care of the child or adult student, as determined appropriate under OAR 581-015-2325;¶

(b) Is free of any personal or professional interest that conflicts with representing the child's or adult student's, as determined appropriate under OAR 581-015-2325, special education interests; and¶

(c) Has knowledge and skills that ensure adequate representation of the child ~~in special education decisions.~~¶

~~(4) or adult student, as determined appropriate under OAR 581-015-2325 in special education decisions.~~¶

~~(4) If the Juvenile Court appoints a surrogate parent for a child or adult student under ORS 419B.220 or 419C.220, the school district must:~~¶

~~(a) Promptly recognize and document the court-appointed surrogate as the student's educational decision maker;~~¶

~~(b) Secure a copy of the appointment order within 10 school days of receipt of notice;~~¶

~~(c) Include this order in the student's cumulative file; and~~¶

~~(d) Not override, terminate, or replace the court-appointed surrogate unless ordered by the Juvenile Court or upon receipt of a new court order.~~¶

(5) For an unaccompanied homeless youth, appropriate staff of emergency shelters, independent living programs and street outreach programs may be appointed as a temporary surrogate parent without regard to subsection (3)(a) until a surrogate can be appointed that meets all of the requirements of subsection (3).¶

~~(5) An appointed surrogate parent has all of the special education rights and procedural safeguards available to the parent.~~¶

~~(6) A surrogate is not considered an employee of a school district solely on the basis that the surrogate is compensated from public funds.~~¶

~~(7) The duties of the surrogate parent are to:~~¶

~~(a) Protect the special education rights of the child;~~¶

~~(b) Be acquainted with the child's disability and the child's special education needs;~~¶

~~(c) Represent the child in all matters relating to the identification, evaluation, IEP and educational placement of the child; and~~¶

~~(d) Represent the child in all matters relating to the provision of a free appropriate public education to the child.~~¶

~~(8) or adult student, as determined appropriate under OAR 581-015-2325;~~¶

~~(b) Be acquainted with the child's or adult student's, as determined appropriate under OAR 581-015-2325, disability and the child's or adult student's, as determined appropriate under OAR 581-015-2325, special education needs;~~¶

~~(c) Represent the child or adult student, as determined appropriate under OAR 581-015-2325, in all matters relating to the identification, evaluation, IEP and educational placement of the child or adult student, as determined appropriate under OAR 581-015-2325; and~~¶

~~(d) Represent the child or adult student, as determined appropriate under OAR 581-015-2325, in all matters relating to the provision of a free appropriate public education to the child or adult student, as determined appropriate under OAR 581-015-2325.~~¶

~~(e) The surrogate, parent, or adult student, as appropriate, may request review or termination of the surrogate appointment at any time.~~¶

(9) A surrogate has the same rights granted to a parent in a hearing under OAR 581-015-2360, and the procedures regarding hearings in OAR 581-015-2340 through 581-015-2385 apply.¶

~~(9) A parent, or an adult student to whom rights have transferred, may give written consent for a surrogate to be appointed.~~¶

~~(a) When a parent or an adult student requests that a surrogate be appointed;~~¶

~~(A) The parent or adult student retains all parental rights to receive notice under OAR 581-015-2190, 581-015-2195, 581-015-2310, and 581-015-2315 and all of the information provided to the surrogate.~~¶

~~(B) The surrogate, alone, is responsible for all matters relating to the special education of the child or adult student~~

unless the parent or adult student revokes consent for the surrogate's appointment.¶

(b) The parent or adult student may revoke consent at any time by providing a written request to revoke the surrogate's appointment.¶

(101) The school district may change or terminate the appointment of a surrogate when:¶

(a) The person appointed as surrogate is no longer willing to serve;¶

(b) Rights transfer to the adult student ~~or the child graduates with a regular diploma;~~¶

~~(c) The child, unless determined to continue to require a surrogate under OAR 581-015-2325, or the child or adult student, as determined appropriate under OAR 581-015-2325, graduates with a regular diploma;~~¶

~~(c) The child or adult student, as determined appropriate under OAR 581-015-2325, is no longer eligible for special education services;~~¶

~~(d) The legal guardianship of the child or adult student, as determined appropriate under OAR 581-015-2325, is transferred to a person who is able to carry out the role of the parent;~~¶

~~(e) A foster parent is identified who can carry out the role of parent under OAR 581-015-2000(20);~~¶

~~(f) The parent, who previously could not be identified or located, is now identified or located;~~¶

~~(g) The appointed surrogate is no longer eligible;~~¶

~~(h)(A) The child or adult student, as determined appropriate under OAR 581-015-2325, moves to another school district; or~~¶

~~(iB) The child or adult student, as determined appropriate under OAR 581-015-2325, is no longer a ward of the state or an unaccompanied homeless youth.~~¶

~~(112) 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 or adult student, as determined appropriate under OAR 581-015-2325.~~¶

~~(123) When it is determined that a surrogate parent is needed to protect the rights of a student with a disability as outlined above, the surrogate must be appointed not more than 30 days after the determination that the student needs a surrogate.~~¶

~~(14) The necessity of a surrogate parent must be reviewed at least every 365 days or when requested by the adult student or surrogate parent.~~

Statutory/Other Authority: ORS 343.041, ORS 343.045, ORS 343.055, ORS 343.155

Statutes/Other Implemented: ORS 343.155, 34 CFR 300.519

RULE SUMMARY: The proposed amendments to OAR 581-015-2320 and OAR 581-015-2325 make permanent the temporary rules adopted in June 2025. These rules establish a clear, IEP team-driven process for appointing an educational representative for an adult student who lacks the capacity to provide informed consent to their educational program. Key provisions, developed through extensive engagement, require the consideration of supported decision-making first, prioritize parents for the role of surrogate, and mandate an annual review of the determination.

CHANGES TO RULE:

581-015-2325

Transfer of Procedural Rights at Age of Majority ¶¶

(1) When a child with a disability reaches the age of majority under ORS 109.510 or 109.520, or is emancipated pursuant to 419B.550 to 419B.558, the rights accorded to the child's parents under the special education laws transfer to the child. A student for whom rights have transferred is considered an "adult student" under OAR 581-015-2000.¶

(2) ~~Notwithstanding section (1) of this rule:¶¶~~

~~(a) Beginning no later than the first IEP at or after age 14, the IEP team must annually consider and, where appropriate, include age-appropriate, documented activities and goals designed to build the student's capacity to understand and exercise procedural rights and self-determination.¶~~

(3) ~~Notwithstanding section (1) of this rule:¶~~

~~(a) After considering the adult student's preferences, interests, needs, and strengths based on age appropriate transition assessment, when the IEP team determines it is necessary, a school district shall appoint the parent of an adult student or, if the parent is not available, not willing, or not able, another appropriate individual to serve as a surrogate parent under OAR 581-015-2320 for any adult student who:¶~~

~~(A) Has a disability;¶~~

~~(B) Is not able to provide informed consent with respect to their educational program as a result of their disability; and¶~~

~~(C) Is not already subject to a court order depriving them of decision-making authority or otherwise designating another person to make educational decision, as described below.¶~~

~~(b) In considering whether an adult student has the capacity to provide informed consent with respect to their educational program, the school district shall, at minimum, consider whether the adult student:¶~~

~~(A) Has any condition or circumstance that significantly interferes with their understanding of, and ability to participate meaningfully in, the IEP process, even with the use of supplementary aids and services; or¶~~

~~(B) Experiences any significant limitations in communicating their educational concerns, or expressing their preferences, interests, needs, or strengths regarding their IEP in a way that interferes with their ability to participate meaningfully in the IEP process, even with the use of supplementary aids and services.¶~~

~~(c) In considering whether an adult is suitable to serve as surrogate parent for an adult student, the school district shall consider all of the following:¶~~

~~(A) Any indication of the adult student's preferences about who might serve as a surrogate parent:¶~~

~~(B) If the parent is not appointed as the surrogate, any input from the parent about who might serve as a surrogate parent;¶~~

~~(C) Whether the adult student has:¶~~

~~(i) A pre-existing relationship with the proposed surrogate;¶~~

~~(ii) A history of positive interactions with the proposed surrogate; and¶~~

~~(iii) A demonstrated comfort in the presence of the proposed surrogate;¶~~

~~(iv) Whether the other adult has:¶~~

~~(I) Demonstrated an understanding of the responsibilities of a surrogate parent;¶~~

~~(II) Demonstrated an understanding of and the willingness to apply the principles of supported decision-making for the benefit of the adult student; and¶~~

~~(III) Demonstrated the capacity to reliably act to the benefit of the adult student.¶~~

~~(IV) Any disqualifying factors listed in ORS 343.156.¶~~

~~(d) The determination that a surrogate parent or conditional surrogate parent is necessary can be made in any IEP meeting for the adult student. For conditional surrogate appointments, the determination must include:¶~~

~~(A) Documentation of the adult student's informed consent to the conditional arrangement;¶~~

~~(B) Clear specification of activation criteria and deactivation procedures;¶~~

~~(C) A plan for regular review of the need for conditional surrogate status; and¶~~

~~(D) Procedures for the adult student to revoke the conditional surrogate appointment at any time when they have~~

capacity to do so.¶

(e) Pursuant to a protective proceeding under ORS Chapter 125, the Probate Court may find the child to be incapacitated to make educational decisions and may appoint a guardian to exercise these rights.¶

(b) Under ORS 419B.220 or 419C.220, the Juvenile Court may appoint a surrogate parent to exercise these rights if the child is a ward of the state.¶

(3) School districts are for a ward of the state. The district must follow requirements from OAR 581-015-2320 for documentation and recognition.¶

(g) For students aged 18-21 incarcerated in state or local correctional facilities, the district or service provider must:¶

(A) Deliver all required notices using the correctional facility's delivery system;¶

(B) Ensure the student can confidentially participate in IEP/surrogate discussions; and¶

(C) Coordinate with facility staff to enable participation by the student's chosen representative (including by phone or video).¶

(h) Conditional Surrogate Appointment for Students with Fluctuating Capacity.¶

(A) When the IEP team determines that an adult student experiences fluctuating capacity to provide informed consent regarding their educational program, and after considering the principles of supported decision-making under subsection (2)(h) of this rule, the school district may appoint a conditional surrogate parent who shall exercise decision-making authority only during specific periods when the adult student's capacity is impaired.¶

(B) A conditional surrogate appointment shall be made only when:¶

(i) The adult student has provided informed consent during a period of lessened capacity for the conditional appointment;¶

(ii) The IEP team has documented specific patterns or circumstances that predictably affect the adult student's decision-making capacity; and¶

(iii) Clear activation criteria have been established and agreed upon by the adult student, IEP team, and proposed conditional surrogate.¶

(iv) Activation criteria for conditional surrogate authority may include:¶

(I) Documented medical or psychological episodes that temporarily impair decision-making capacity;¶

(II) Specific environmental stressors or circumstances that have been shown to impact the adult student's ability to participate meaningfully in educational decisions;¶

(III) Emergency situations requiring immediate educational decisions when the adult student's capacity is compromised and delay would result in educational harm; or¶

(IV) Other circumstances specifically documented in the adult student's IEP that create predictable periods of impaired capacity.¶

(v) During periods when the conditional surrogate is not activated, the adult student retains all decision-making authority and rights under this rule.¶

(i) Supported Decision-Making Considerations: Before determining that a surrogate parent is necessary under subsection (2)(a) or a conditional surrogate is appropriate under subsection (2)(g), the IEP team shall consider whether supported decision-making could enable the adult student to participate meaningfully in educational decisions. Supported decision-making may include:¶

(A) Providing additional time for the adult student to process information and make decisions;¶

(B) Using plain language, visual aids, or other communication supports;¶

(C) Allowing trusted supporters chosen by the adult student to assist in understanding options and consequences;¶

(D) Breaking complex decisions into smaller components; or¶

(E) Scheduling meetings at times when the adult student's capacity is typically at its highest level.¶

(4) If a surrogate is considered, the district and IEP team must first document why less restrictive means were not appropriate and what steps were taken to support the student's ability to participate meaningfully and independently.¶

(5) A school district is not responsible for the costs of a protective proceeding unless the school district is the Petitioner.¶

(46) Pursuant to OAR 581-015-2320(9), a child to whom rights transfer may request that a surrogate be appointed to exercise the child's special education rights.¶

(57) This rule applies to all students, including students who are incarcerated in a state or local adult or juvenile correctional facility or jail.¶

(8) Conditional Surrogate Implementation and Safeguards¶

(a) A conditional surrogate parent shall:¶

(A) Exercise authority only when activation criteria are met and document the basis for activation;¶

(B) Involve the adult student in decision-making to the greatest extent possible, even during periods of impaired capacity;¶

- (C) Make decisions based on the adult student's known preferences, values, and previously expressed wishes;¶
- (D) Immediately cease exercising authority when the adult student's capacity is restored or when the adult student requests to resume decision-making authority.¶
- (b) The school district shall:¶
- (A) Provide written notice to the adult student and all relevant parties when conditional surrogate authority is activated or deactivated;¶
- (B) Review the need for conditional surrogate status at least annually or whenever requested by the adult student;¶
- (C) Maintain detailed documentation of all activations, decisions made, and deactivations;¶
- (D) Ensure that activation decisions are made by qualified personnel trained in capacity assessment.¶
- (c) The adult student retains the right to:¶
- (A) Challenge any activation of conditional surrogate authority;¶
- (B) Request immediate review of surrogate decisions;¶
- (C) Revoke the conditional surrogate appointment at any time when they have capacity;¶
- (D) Choose their own conditional surrogate, subject to the qualifications in subsection (2)(c).¶
- (9) Presumption of Capacity and Dignity Preservation: All determinations under this rule shall:¶
- (a) Begin with a presumption that the adult student has capacity to make educational decisions;¶
- (b) Recognize that capacity can fluctuate and that lack of capacity at one time does not establish a permanent lack of capacity;¶
- (c) Respect the adult student's autonomy and right to make decisions that others might consider unwise;¶
- (d) Utilize the least restrictive means necessary to ensure appropriate educational services;¶
- (e) Prioritize the adult student's own expressed preferences, values, and previously stated wishes in all decision-making processes.

Statutory/Other Authority: ORS 343.055, ORS 343.155

Statutes/Other Implemented: ORS 343.155, ORS 343.181, 34 CFR 300.520