

DEPARTMENT OF HUMAN SERVICES, MENTAL HEALTH AND  
DEVELOPMENT DISABILITY SERVICES

**DIVISION 42**  
**STATE TRAINING CENTERS FOR THE MENTALLY RETARDED**

**309-042-0000 Admission and Release of Residents**

*(Effective 08/24/1987)*

(1) Purpose. These rules prescribe criteria for voluntary admission of a person to a state training center for persons with mental retardation and criteria for the examining authority's recommendation to a court on commitment of a person alleged to have mental retardation to the Mental Health and Developmental Disability Services Division. These rules also prescribe a procedure for the release of certain residents from state training centers for persons with mental retardation.

(2) Statutory Authority. These rules are authorized by [ORS 430.041](#) and carry out the provisions of ORS Chapters 179 and 427.

Stat. Auth.: [ORS 179](#), [ORS 427](#) & [ORS 430](#)

Stats. Implemented:

**309-042-0001 Definitions**

*(Effective 08/24/1987)*

As used in these rules:

(1) "Administrator" means the Assistant Director, Human Resources, and Administrator for Mental Health.

(2) "Community Mental Health Program (CMHP)" means the organization of all services for persons with mental or emotional disturbances, drug abuse problems, mental retardation or other developmental disabilities, and alcoholism and alcohol abuse problems, operated by, or contractually affiliated with, a local mental health authority, operated in a specific geographic area of the state under an intergovernmental agreement or

direct contract with the Mental Health and Developmental Disability Services Division.

(3) "Diagnosis and Evaluation Service" means the designated unit of the Mental Health and Developmental Disability Services Division created by ORS 427.104 to approve applications for admission to state training centers; process and coordinate all placements of residents from state training centers; consult on diagnostic evaluations statewide; provide information to the State Training Center Review Board, as appropriate; and provide consultation to appropriate agencies and individuals regarding persons evaluated, and diagnosis and evaluation services.

(4) "Division" means the Mental Health and Developmental Disability Services Division of the Department of Human Resources.

(5) "Examining Authority" means any program designated by the Diagnosis and Evaluation Service to act as an examining authority for the purpose of these rules.

(6) "Facility" means a state training center, community hospital, group home, activity center, intermediate care facility, community mental health clinic, or such other facilities or programs as the Division approves to provide necessary services to persons with mental retardation or developmental disabilities.

(7) "Mental Retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period. Persons of borderline intelligence may be considered to have mental retardation if there is also serious impairment of adaptive behavior. Definitions and classifications shall be consistent with the "**Manual on Terminology and Classification in Mental Retardation**" of the American Association on Mental Deficiency, 1977 Revision. Mental retardation is synonymous with mental deficiency:

(a) "Adaptive Behavior" means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected for age and cultural group;

(b) "Developmental Period" means the period of time between birth and the 18th birthday;

(c) "Intellectual Functioning" means functioning as assessed by one or more of the individually administered general intelligence tests developed for the purpose;

(d) "Significantly Subaverage" means a score on a test of intellectual functioning that is two or more standard deviations below the mean for the test.

(8) "Specialized Back-up" means provision of services, such as respite care or time-limited intensive treatment and training, not currently available or appropriate for an individual in any other facility or program operated or supported by the Division for the care, treatment, and training of the person with mental retardation.

(9) "State Training Center" means Fairview Training Center; and Eastern Oregon Training Center operated for specialized back-up care, treatment, and training of persons with mental retardation.

(10) "State Training Center Review Board" means the Board created by [ORS 427.205](#).

(11) "Warrant of Detention" means the legal process by which a person alleged to have mental retardation who is thought to pose an imminent and serious danger to the person or others may be ordered by a court to be detained by custody pending an investigation and possible commitment hearing.

[Publication: The Publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: [ORS 179](#), [ORS 427](#) & [ORS 430](#)

Stats. Implemented:

### **309-042-0002 General Policy**

*(Effective 08/24/1987)*

The role of state training centers is to serve as specialized back-up facilities to a primary system of community-based services for persons with mental retardation and other developmental disabilities.

Stat. Auth.: [ORS 179](#), [ORS 427](#) & [ORS 430](#)

Stats. Implemented:

### **309-042-0003 Admission Criteria**

*(Effective 08/24/1987)*

(1) Before a person will be accepted for voluntary admission to a state training center, or before an examining authority may recommend to a court commitment to the Division of a person alleged to have mental retardation, or before the Division directs a court-committed person to be admitted to a state training center or other facility, the Diagnosis and Evaluation Service shall:

(a) Receive written documentation prior to admission from the community mental health program of attempts to secure appropriate services for the person in the county in which the person resides, and, all adjacent counties, and, the reasons such attempts were unsuccessful. In an effort to avoid the need for admission, the Division shall assist community mental health programs in attempts to locate appropriate community services in other parts of the state;

(b) Determine that an examining authority has found the person to have mental retardation based upon the "**Manual on Terminology and Classification in Mental Retardation**" of the American Association on Mental Deficiency, 1977 Revision. The examination shall include a comprehensive evaluation covering physical, social, and cognitive factors and considering past and present behavior of the person. Persons of borderline intelligence may be considered to have mental retardation if there is also serious impairment to adaptive behavior, unless the examiner can definitely attribute the adaptive deficits to such factors as mental or emotional disturbance, sensory impairments, or other such variables. However, the examiner shall include a recommendation as to whether admission to a state training center is in the best interest of the person with borderline intelligence;

(c) Determine that admission to a state training center for time limited specialized services is the optimal available plan, is in the best interest of the person and the community, appropriate residential space is available, and programs are available at the state training center that can treat or habilitate the person's problems that brought about the need for admission. The Mental Health Division may create a 'wait list' for admission to a state training center if the state training center does not have space available in an appropriate unit;

(d) Develop an agreement with the respective community mental health program and the state training center that clearly documents in measurable terms the training needs of the person and the programming that needs to occur during the stay. The agreement will report the expected duration of the admission and specify how the Diagnosis and Evaluation Service, community mental health program and the state training center will be involved in planning for the expeditious return of the person to a community program.

(2) Persons committed to the Mental Health and Developmental Disability Services Division pursuant to [ORS 426.060](#), 161.370 or 161.341 and who also meet the requirements of this section may be admitted to a state training center by transfer from other Division institutions pursuant to [ORS 161.390](#) and OAR 309-031-0010.

[Publication: The Publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: [ORS 179](#), [ORS 427](#) & [ORS 430](#)

Stats. Implemented:

### **309-042-0004 Custody Pending Investigation**

*(Effective 08/24/1987)*

A warrant of detention may be issued and the person admitted to a state training center for custody and diagnostic evaluation if the court finds there is probable cause to believe that failure to take the person into custody pending an investigation or hearing would pose an imminent and serious danger to the person or others. However, the community mental health program must comply with admission criteria in OAR 309-042-0003, if the

client is to be considered for admission to the state training center after the warrant of detention elapses.

Stat. Auth.: [ORS 179](#), [ORS 427](#) & [ORS 430](#)

Stats. Implemented:

### **309-042-0005 Diagnostic Evaluation**

*(Effective 08/24/1987)*

(1) The Diagnosis and Evaluation Service shall assure the provision of diagnostic evaluations required by [ORS 427.105](#), and shall assure that diagnostic evaluations are in compliance with standards for diagnostic evaluations as defined by OAR 309-042-0050.

(2) The diagnostic evaluation report shall:

(a) Include a recommendation as to the type of treatment or training facility best able to habilitate the person;

(b) Advise the court whether, in the opinion of the examining facility, the person with mental retardation and, if the person is a minor or incapacitated, the person's parents or legal guardian would cooperate with voluntary treatment or training; and

(c) Advise the court whether the person would benefit from voluntary treatment or training or from appointment of a legal guardian or conservator.

Stat. Auth.: [ORS 179](#), [ORS 427](#) & [ORS 430](#)

Stats. Implemented:

### **309-042-0006 Admission Procedure**

*(Effective 08/24/1987)*

(1) The Diagnosis and Evaluation Service shall:

(a) Normally schedule pre-admission evaluations of persons in the following order:

(A) Persons being held on a warrant pending court hearing for involuntary commitment and other cases determined to be most urgent by the Administrator of the Division, or designee;

(B) Persons being examined for commitment under [ORS 427.290](#);

(C) Persons being examined for admission under [ORS 427.185](#);

(D) Patients and residents being referred from Division institutions.

(b) Ensure that the prospective resident and/or the resident's parent, guardian, or other responsible person has been counseled before admission on the relative advantages and disadvantages of services in a state training center;

(c) Ensure that, before admission, the prospective resident and/or the resident's parent, guardian, or other responsible person, as appropriate, has an opportunity, and is apprised of the opportunity, to visit the living unit in which the prospective resident is likely to be placed;

(d) Ensure that, before admission, the prospective resident and/or the resident's parent, guardian, or other responsible person, understands that the admission will be time limited; and an immediate and ongoing search for a community alternative will occur; and the resident will be relocated in a community program appropriate to his or her needs as soon as such a program is identified or developed;

(e) Initially define the prospective resident's immediate and most critical care, treatment, and training needs, including the reason or reasons for admission as the top priority for treatment and training on the admission plan of care;

(f) Investigate and weigh all available and applicable care, treatment, and training services and record its deliberations and findings;

(g) Clearly specify the problems requiring the admission.

(2) The Mental Health and Developmental Disability Services Division may direct any court committed person with mental retardation to any state operated or supported facility or program best able to provide necessary care, treatment, or training. The Division shall consult with any community mental health program or service provider affected by a decision made under this section.

(3) The superintendent of a state training center shall:

(a) Admit as a resident and take custody of only such persons authorized for admission by the Coordinator of the Diagnosis and Evaluation Service;

(b) Ensure that the number of admissions does not exceed the licensed capacity of the state training center or its provisions for adequate programming;

(c) Consider all admissions temporary and limit the duration of admissions when such limitation is appropriate according to the superintendent's best professional judgment.

Stat. Auth.: [ORS 179](#), [ORS 427](#) & [ORS 430](#)

Stats. Implemented:

### **309-042-0007 Priority for Admissions**

*(Effective 08/24/1987)*

The Diagnosis and Evaluation Service shall maintain a waiting list for admission to state training centers:

(1) Persons are entitled to admission to state training centers in the order in which completed applications are received and filed.

(2) Persons may be admitted on a priority basis by the Coordinator of the Diagnosis and Evaluation Service if their behavior or condition is a threat to their welfare or safety or to the safety of others.

Stat. Auth.: [ORS 179](#), [ORS 427](#) & [ORS 430](#)

Stats. Implemented:

### **309-042-0008 Appeals**

*(Effective 08/24/1987)*

Any decision made by the Diagnosis and Evaluation Service regarding admission or the current status of a resident's eligibility for continued care in a state training center can be appealed by the person, or other persons on his or her behalf, to the Administrator of the Division, or designee:

- (1) The appeal must be filed within 30 days of receipt of notice of the decision and shall set forth reasons for the appeal.
- (2) The Administrator, or designee, shall convene the State Training Center Review Board within 30 days of receipt of the appeal.
- (3) The Board shall advise the Administrator, or designee, regarding disposition of the appeal.
- (4) The Administrator, or designee, shall make the decision within 30 days of the meeting of the Board.
- (5) The decision of the Administrator, or designee, shall be final.

Stat. Auth.: [ORS 179](#), [ORS 427](#) & [ORS 430](#)

Stats. Implemented:

### **309-042-0009 Procedures for Release of Certain Residents from State Training Centers**

*(Effective 08/24/1987)*

Before the discharge of any resident for reason of ineligibility who scores in the 59 - 79 range on a test of intellectual functioning, the state training center having custody of the resident shall require a re-examination of the resident to be coordinated by the Diagnosis and Evaluation Service:

- (1) Upon receipt of a request from the state training center, the Diagnosis and Evaluation Service shall assure that an examination is conducted to

determine the current status of the resident's eligibility for care in a state training center.

(2) If the results of this examination differ significantly, in the opinion of the examining authority, from the most recent examination conducted by the state training center, the examining authority shall arrange for a special examination of the resident by a psychologist who is not an employee of the State of Oregon.

(3) The Diagnosis and Evaluation Service shall report its findings and the results of the special examination referred to in section (2) of this rule, if any, to the state training center in not more than three calendar days after completion of the examination.

(4) After receiving and considering the examination results, the state training center may proceed to discharge the resident. All reports and findings from examination of the resident shall be added to, and become a part of, the central record of that resident.

Stat. Auth.: [ORS 179](#), [ORS 427](#) & [ORS 430](#)  
Stats. Implemented:

### **309-042-0015 Crisis Intervention and Respite Care**

*(Effective 04/25/1980)*

(1) Purpose. This rule prescribes procedures for the delivery of crisis intervention and respite care in state training centers for the mentally retarded.

(2) Statutory Authority and Procedures. This rule is authorized by [ORS 430.041\(1\)](#) and carries out the provisions of Chapter 683, Oregon Laws 1979 (Enrolled Senate Bill 142).

(3) Definitions. As used in this rule:

(a) "Community Mental Health Program" means all service elements for mentally retarded and developmentally disabled persons that participate within a comprehensive community mental health program through a contract or affiliation agreement;

(b) "Crisis Intervention" means a short-term admission of a person to a state training center for crisis relief in those extreme situations specified in the eligibility criteria section (4) of this rule.

(c) "Diagnosis and Evaluation Service" means the unit of the Mental Health and Developmental Disability Services Division that authorizes admission to state training centers for the purposes of crisis intervention and respite care.

(d) "Division" means the Mental Health and Developmental Disability Services Division of the Department of Human Resources.

(e) "Respite Care" means a short-term admission of a person to a state training center to provide temporary relief for the family or other person(s) responsible for daily care of the person seeking admission.

(f) "Short-Term Admission" means the presence of a person at a state training center for 24 hours a day for a specific period of not more than 90 continuous days.

(g) "State Training Center" means Fairview Training Center; that part of Eastern Oregon Hospital and Training Center operated for the care, treatment, and training of mentally retarded persons; and any other facility operated by the Mental Health and Developmental Disability Services Division for the care, treatment, and training of the mentally retarded.

(h) "State Training Center Review Board" means the Board created by Chapter 683, Oregon Laws 1979 (Enrolled Senate Bill 142), codified as [ORS 427.205](#).

(4) Eligibility. A person shall be eligible for admission to a state training center for:

(a) Crisis intervention if:

(A) The life, health, or safety of the person is in immediate danger; or

(B) The behavior or condition of the person is an immediate threat to the safety of the others; and

(C) The person meets eligibility criteria established in OAR 309-042-0000; and

(D) The community mental health program and the Diagnosis and Evaluation Service determine that no adequate alternative to admission to a state training center exists in the community; and

(E) There is reasonable assurance of the return of the person to the community at the termination of admission for crisis intervention.

(b) Respite care if:

(A) The person meets eligibility criteria established in OAR 309-042-0000; and

(B) There is reasonable assurance of the return of the person to the community at the termination of admission for respite care.

(c) Precommitment examination if:

(A) The Diagnosis and Evaluation Service deems admission necessary to make the diagnostic evaluation required for voluntary admission to a state training center or involuntary commitment to the Division; and

(B) The person shall not be kept in residence in a state training center for a diagnostic evaluation for a period longer than ten business days; and

(C) The court issues a warrant of detention when it believes an imminent or serious threat to the person or others exists.

(5) Standards and Procedures Governing Crisis Intervention or Respite Care:

(a) Requests shall be granted only when it is reasonably clear that the need for crisis intervention or respite care is likely to be met by institutionalization for a period of time not to exceed 90 days. In other situations, application shall be made for regular admission in accordance with OAR 309-042-0000. The request shall be made by the person to be seeking admission, or those immediately responsible for the person's care, to the community mental health program of the county of residence of the person;

(b) Immediately upon receipt of a request for crisis intervention, the community mental health program shall:

(A) Obtain information regarding the history and condition of the person;

(B) Determine the nature and urgency of the circumstances that led to the request for short-term admission; and

(C) Determine the availability of appropriate local alternatives to meet the situation -- That is, inpatient treatment in community residential facilities.

(c) If, with the concurrence of the Diagnosis and Evaluation Service, it is determined that no adequate local alternative placement is available and the person appears eligible for short-term admission, the community mental health program shall immediately refer the request and all appropriate information about the person to the Chief of the Diagnosis and Evaluation Service for determination of the appropriateness of short-term admission;

(d) If the person is eligible and needs crisis intervention and appropriate space for the person's care and treatment is available in a state training center, the person shall be immediately admitted as a short-term admission. The Diagnosis and Evaluation Service may enlist the assistance of the state training center or community mental health program in evaluating the person's eligibility and the necessity of admission;

(e) If during the course of admission for crisis intervention or respite care, the state training center or community mental health program

determines that the needs of the person or the person's plan for subsequent release and placement have changed so that short-term admission is no longer adequate, the Diagnosis and Evaluation Service shall be so notified. The Diagnosis and Evaluation Service may initiate appropriate action in accordance with OAR 309-042-0000 if the change(s) warrant consideration of an admission to a state training center for an indefinite period, or for a specified time period of more than 90 days.

(6) Duration of Crisis Intervention or Respite Care:

(a) Projected duration of stay shall be determined and approved by the Diagnosis and Evaluation Service before admission;

(b) Crisis intervention or respite care shall not routinely exceed 60 consecutive days and, in no instance, exceed 90 consecutive days in duration;

(c) A person shall be eligible for respite care for a combined total number of days not to exceed 180 days within a 12-month period.

(7) Fee Schedule for Crisis Intervention or Respite Care. Fees for crisis intervention or respite care shall be established by the Division and will be charged to the person admitted to the state training center or to his estate or third-party payor.

(8) Appeal From Denial of Requested Crisis Intervention or Respite Care: Any decision made by the Diagnosis and Evaluation Service regarding crisis intervention or respite care can be appealed by the person seeking admission or other person on his behalf to the Administrator of the Division, or his designee:

(a) The appeal must be filed within 30 days of receipt of notice of the decision and shall set forth reasons for the appeal;

(b) The Administrator, or his designee, shall convene the State Training Center Review Board within 30 days of receipt of the appeal;

(c) The Board shall advise the Administrator, or his designee, regarding disposition of the appeal;

(d) The Administrator, or his designee, shall make his decision on the appeal within 30 days of the meeting of the Board;

(e) The decision of the Administrator, or his designee, shall be final.

Stat. Auth.: [ORS 430](#)

Stats. Implemented:

### **309-042-0030 Annual Review and Certification of Residents for Continued Residential Care and Training**

*(Effective 04/18/1980)*

(1) Purpose. This rule prescribes procedures for an annual review of each resident's plan of care and presentation of certification of the resident's eligibility and need for continued residential care and training in a state training center to the State Training Center Review Board.

(2) Statutory Authority and Procedure. This rule is authorized by [ORS 430.041\(1\)](#) and carries out the provisions of Chapter 683, Oregon Laws 1979 (Enrolled Senate Bill 142).

(3) Definitions. As used in this rule:

(a) "Care" means supportive services, including, but not limited to, provision of room and board; supervision; protection; and assistance in bathing, dressing, grooming, eating, management of money, transportation, or recreation;

(b) "Central Record" means the principal individual case document for each resident that contains for safekeeping the pertinent clinical and programmatic data;

(c) "Central Records" means the department responsible for the documentation, storage, and safekeeping of pertinent clinical and programmatic data pertaining to each resident in a state training center;

(d) "Certification" means the formal decision of the state training center Unit Interdisciplinary Team to continue the resident's care and training in the state training center for a period up to 12 months;

(e) "Commitment" means the assignment of a person to custody, confinement, or treatment by court order to the Mental Health and Developmental Disability Services Division;

(f) "Diagnosis" means a concise description of the distinguishing characteristics of a condition as described in the **"Manual on Terminology and Classification in Mental Retardation" of the American Association on Mental Deficiency, 1977 Revision**;

(g) "Direct care staff" means state training center employees having responsibility for the day-to-day care of the residents;

(h) "Discharge" means the permanent separation of the resident from the state training center. If the resident has been civilly committed, discharge also means termination from commitment. The term "release" is synonymous with discharge;

(i) "Disposition Board" means an administrative, clinical, and community consumer body appointed by the Superintendent to assess the release and/or discharge plans of residents before the Superintendent approves their return to the community and permanent separation from the state training center;

(j) "Eligibility" means the state of being qualified by reason of being mentally retarded;

(k) "Facility" means a state training center;

(l) "Level of Functioning" means a person's intellectual and adaptive behavior capabilities;

(m) "Long-Term Goal" means a goal achievable within two or more years;

(n) "Mental Retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive

behavior and manifested during the developmental period. Persons of borderline intelligence may be considered mentally retarded if there is also serious impairment of adaptive behavior. Definitions and classifications shall be consistent with the **"Manual on Terminology and Classification in Mental Retardation" of the American Association on Mental Deficiency, 1977 Revision**. Mental retardation is synonymous with mental deficiency:

(A) "Adaptive Behavior" means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected for age and cultural group.

(B) "Developmental Period" means the period of time between birth and the 18th birthday.

(C) "Intellectual Functioning" means functioning as assessed by one or more of the individually administered general intelligence tests developed for that purpose.

(D) "Significantly Subaverage" means a score on the test of intellectual functioning that is two or more standard deviations below the mean for the test.

(o) "Plan of Care Review" means the annual assessment of the progress of each resident toward long- and short-term program goals established by the Unit Interdisciplinary Team and assessment of the appropriateness of those goals.

(p) "Post-Institutional Plan of Care" means that part of the Plan of Care review that describes the type of living and day plans needed by the resident to accomplish release from the facility and permanent residence in a community-based facility.

(q) "Qualified Mental Retardation Professional" means a person who meets the professional requirements prescribed by **42 CFR 442.401**.

(r) "Resident" means a person admitted to a state training center either voluntarily or after commitment to the Mental Health Division.

(s) "Short-Term Goal" means a goal achievable in less than two years. The estimated achievement date is specified in the Plan of Care.

(t) "State Training Center" means Fairview Training Center; that part of Eastern Oregon Hospital and Training Center operated for the care, treatment, and training of mentally retarded person; and any other facility operated by the Mental Health Division for the care, treatment, and training of the mentally retarded.

(u) "State Training Center Review Board" means the Board created by Chapter 683, Oregon Laws 1979 (Enrolled Senate Bill 142), codified as [ORS 427.205](#).

(v) "Superintendent" means the executive head of Fairview Training Center and the executive head of Eastern Oregon Hospital and Training Center.

(w) "Training" means the systematic, planned maintenance, development, or enhancement of self-care, social or independent living skills; or the planned sequence of systematic interactions, activities, structured learning situations, or education designed to meet each resident's specified needs in the areas of physical, emotional, intellectual, and social growth.

(x) "Unit" means a group of specified residential living areas, wards, cottages, or buildings within a state facility.

(y) "Unit Director" means the administrative head of a designated living unit within a state training center.

(z) "Unit Interdisciplinary Team" means a group consisting of professional and direct care staff, usually including, but not limited to, representatives from social services, psychology, education, medicine, and direct care services. The team shall be chaired by a qualified mental retardation professional. Its function is to prescribe the overall individual program for each assigned resident.

#### (4) General Description:

(a) The annual Plan of Care is designed to assess the progress of each resident and prescribe long- and short-term program goals according to the resident's needs. The resident's Unit Interdisciplinary Team shall conduct the reviews;

(b) At the time of the annual Plan of Care review meeting, the chairperson of the Unit Interdisciplinary Team shall make provision for advising and adequately explaining to the resident the facility's statement of resident rights and the policies and rules governing the resident's living area;

(c) The annual review shall include determination of the resident's mental retardation based on standardized measures of intelligence and adaptive behavior and the need for continued residential care and training. Residents determined eligible and in need of continued residential care and training shall be certified for one year and presented with clear and convincing justification to the State Training Center Review Board for review and action;

(d) The State Training Center Review Board shall approve or disapprove the facility's certification of the resident. If the certification is approved, the resident will be certified to remain at the state training center for a period up to 12 months. If the certification is disapproved, the Superintendent shall discharge the resident; or, if discharge is determined not in the resident's best interest, the Superintendent shall seek a court commitment;

(e) The resident and the resident's parent, guardian, or person entitled to custody shall be notified in writing of the facility's intent to certify the resident for continued residential care and training; and the resident shall be advised of the right to object. In addition, the resident shall be orally advised of the facility's intent to certify;

(f) **Exhibit A** is a flow chart of the review and certification process described in this rule.

(5) Contents of Plan of Care. The Plan of Care for each resident shall include, but not be limited to, the following:

(a) Current diagnosis;

- (b) Level of functioning;
- (c) Current habilitation and health programs in which the resident is participating;
- (d) Statement as to continued eligibility and continued need for residential care;
- (e) Statements of long- and short-term goals for the resident; and
- (f) Verification that the person has been advised of the facility's statement of resident's rights and the policies governing the resident's immediate living area.

(6) Notification of Intent to Certify Need for Continued Residential Care and Training:

- (a) The state training center shall notify the following persons of their intent to certify the need for the resident's continued residential care and training:
  - (A) The resident, orally;
  - (B) The resident and the resident's parent, guardian, or person entitled to custody, in writing, by certified mail.
- (b) The written notification shall include the following:
  - (A) Date, time, place, and location of the State Training Center Review Board hearing;
  - (B) Explanation of the possible consequences of the proceedings;
  - (C) Explanation of the resident's right to appear before the board on his or her own behalf or to be represented at the proceeding by the resident's parent, guardian, the person entitled to custody, or another person, including counsel, of the resident's choosing; and

(D) Explanation of the resident's right to object to certification and its consequences.

(c) In the event the resident, because of severe disability, is unable to receive and acknowledge the notification required by subsection (b) of this section, that fact shall be documented in the resident's central record and conveyed to the State Training Center Review Board on the Checklist/Cover Sheet accompanying the copy of the Plan of Care.

(7) Certification of Need for Continued Residential Care and Training:

(a) The resident shall be scheduled to receive an annual Plan of Care review by the appropriate assigned Unit Interdisciplinary Team:

(A) The Plan of Care review shall include, but not be limited to, participation and/or data contributions from the chairperson of the Unit Interdisciplinary Team; a unit representative from the direct care staff; and assigned social worker, physician, and psychologist;

(B) The Plan of Care review shall consider all, but not be limited to, items listed in subsections (5)(a) through (f) of this rule:

(i) The psychologist assigned to the unit shall assess the resident's overall intellectual and adaptive behavior functioning levels to determine the resident's eligibility based on OAR 309-042-0000. If the resident is found to be mentally retarded as described in OAR 309-042-0000, the resident is eligible. If, in the psychologist's professional opinion, current testing is not indicated, the psychologist shall state the reasons why testing is not indicated at that time and further state support of the last psychological assessment(s). These assessments or statements shall be the evidence supporting or not supporting eligibility;

(ii) The Unit Interdisciplinary Team shall develop a Post-institutional Plan of Care for each resident that shall indicate the type of living facility and day program that will

be needed by the resident if community placement is to be accomplished. The chairperson of the Unit Interdisciplinary Team shall secure from the Diagnosis and Evaluation Service (Exit Team) of the Mental Health and Developmental Disability Services Division confirmation in writing of the availability or non-availability of community services to accomplish the Post-institutional Plan. This written statement shall be the evidence supporting the need for continued residential care and training on the basis that a community alternative plan is not currently available.

(C) The Unit Interdisciplinary Team shall make the decision to certify or not to certify the resident based on the data considered within the Plan of Care with particular attention to eligibility (determination of mental retardation) and availability of an appropriate Post-institutional Plan;

(D) The resident shall be notified orally, at the Plan of Care review, of the state training center's intent to certify or not to certify the resident's continued residential care and training;

(E) When the state training center intends to certify for continued residential care and training, the resident shall be advised of the right to object.

(i) The resident shall be notified of the consequences of any objection, which may be:

(I) The resident may be discharged;

(II) The Superintendent of the state training center may initiate commitment proceedings if discharge is considered not in the best interest of the resident.

(ii) The resident, with the assistance of an assigned social worker, shall submit any objection in writing to the Unit Director within ten days after receipt of the notice of certification;

(iii) If the resident agrees with the certification for continued residential care and training following oral notification, subsection (b) of this section can be undertaken;

(iv) If the resident objects to continued certification for residential care and training following oral notification, or at a later date following written notification, the following procedures will be followed:

(I) The objection will be noted in the appropriate place on the Checklist/Cover Sheet and the resident's central record;

(II) The recommendation of the Unit Interdisciplinary Team, together with the objection, if any, will be immediately forwarded by the Unit Director with the Checklist/Cover Sheet to the chairperson of the Disposition Board;

(III) The chairperson of the Disposition Board will schedule a hearing of the resident's objection to continued residential care and training. The resident and a representative of the Unit Interdisciplinary Team will be present at the Disposition Board hearing. The Disposition Board, after considering the facts of the case, shall make a recommendation to the Superintendent of the state training center regarding continued certification of the resident and initiation of commitment proceedings or discharge of the resident;

(IV) The Superintendent will act upon the recommendation of the Disposition Board by either discharging the resident, or initiating commitment proceedings pursuant to Chapter 683, Oregon Laws 1979, codified as [ORS 427.235](#) to 427.270, 427.280 and 427.285.

(F) When the Unit Interdisciplinary Team decides certification for continued residential care and training is not appropriate, the following procedure will be followed:

(i) The recommendation will be noted in the appropriate place on the Checklist/Cover Sheet and forwarded to Central Records for notation;

(ii) Central Records will note and forward the recommendation to the chairperson of the Disposition Board;

(iii) The chairperson of the Disposition Board shall schedule a hearing relative to the proposed discharge of the resident:

(I) The resident and a representative of the Unit Interdisciplinary Team shall be present at the Disposition Board hearing;

(II) The Disposition Board, after considering the facts of the case, shall make a recommendation to the Superintendent of the state training center regarding the resident's discharge or continued residential care and training.

(iv) The Superintendent shall act upon the recommendation of the Disposition Board:

(I) If discharge is recommended, the Superintendent shall direct Central Records and the resident's Unit Director to discharge the resident;

(II) If continued residential care and training is recommended, the Superintendent shall direct the Unit Director to proceed under paragraph (a)(C) of this section to certify the resident's continued residential care and training based on the findings of the Disposition Board.

(v) When recommendation of the Disposition Board is for continued residential care and training, contrary to the Unit Interdisciplinary Team's recommendation, and the Superintendent agrees with the Disposition Board, the Unit Director will be notified to reconvene the appropriate Unit Interdisciplinary Team and proceed under paragraph (a)(C) of this section to certify the resident's continued residential care and training based on the facility's Disposition Board findings;

(b) The Unit Director shall retain the Checklist/Cover Sheet until the resident responds to written notification of intent to certify and the results recorded thereon. The Unit Director shall advise Central Records to prepare and send the Notification of Intent to Certify Need for Continued Residential Care and Training and shall also forward the completed Plan of Care to Central Records;

(c) Central Records shall tentatively schedule the resident's hearing time before the State Training Center Review Board in one of the time slots allocated by the Review Board;

(d) Central Records shall complete the letter of Notification of Intent to Certify Need for Continued Residential Care and Training and forward it to the Superintendent or designee for signature. The letter of Notification of Intent to Certify Need for Continued Residential Care and Training shall contain all required items and be sent to recipients as described in paragraph (6)(a)(B) of this rule. The Unit Director or designee shall be responsible for explaining all items in the notification letter to the resident:

(A) If the resident agrees to certification, the Unit Director shall so designate on the place provided in the Checklist/Cover Sheet. If because of severe disability, the resident is unable to acknowledge the facility's notification of intent to continue residential care and training, the Unit Director or designee shall document this fact in the resident's central record and on the Checklist/Cover Sheet, which shall be conveyed to the State Training Center Review Board;

(B) If the resident objects to certification, the Unit Director shall complete action described in subparagraph (a)(E)(iv) of this section.

(e) Central Records shall determine that the Checklist/Cover Sheet is complete, keep a current list of those residents certified, procure the signature of the Superintendent or designee on the certification statement, finalize the resident's hearing time before the State Training Center Review Board, and forward the time and date of the hearing time with the resident's Plan of Care and appropriate supportive data for eligibility and need for continued residential care and training and the Checklist/Cover Sheet with signed certification to the secretary of the State Training Center Review Board for action;

(f) The facility shall provide transportation to the resident to attend the State Training Center Review Board hearing if needed, as requested by the resident, or at the Board's request;

(g) The facility shall provide staff at the State Training Center Review Board hearings to assist the resident if needed, as requested by the resident, or at the Board's request;

(h) The State Training Center Review Board shall approve or disapprove each resident's certification, check the corresponding approval or disapproval category on the Checklist/Cover Sheet, and forward the Checklist/Cover Sheet to the facility's Central Records;

(i) Central Records shall file each approved certification in the resident's central record, update the list of certified residents, and note and forward each disapproved certification to the Superintendent or designee;

(j) The Superintendent or designee shall cause each resident whose certification has been disapproved to be scheduled on the facility's Disposition Board agenda:

(A) The Disposition Board shall consider each resident whose certification has been disapproved and decide, after weighing the evidence, whether release is not in the best interest of the resident and whether commitment proceedings should be

initiated pursuant to Chapter 683, Oregon Laws 1979. This decision, in the form of a recommendation, shall be forwarded to the Superintendent for approval or disapproval;

(B) The Superintendent shall evaluate the Disposition Board's findings and recommendation(s) regarding the resident whose certification has been disapproved by the State Training Center Review Board and shall approve or disapprove the recommendation(s):

(i) If the approved recommendation is discharge, the Superintendent shall direct Central Records and the resident's Unit Director to discharge the resident;

(ii) If the approved recommendation is commitment, the Superintendent shall direct Central Records to initiate commitment proceedings pursuant to Chapter 683, Oregon Laws 1979, codified as [ORS 427.235](#) to 427.270, 427.280, and 427.285.

[ED. NOTE: The Exhibit(s) and Publication(s) referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: [ORS 430](#)

Stats. Implemented:

### **309-042-0035 Transfer and Discharge of Residents**

*(Effective 05/29/1980)*

(1) Purpose. This rule prescribes procedures for notifying certain specified persons:

(a) Before the transfer of a resident of a state training center for the mentally retarded to another Mental Health and Developmental Disability Services Division facility; and

(b) Before the discharge of a resident of a state training center for the mentally retarded. This rule also prescribes procedures for appealing transfers and discharges.

(2) Statutory Authority and Procedure. This rule is authorized by [ORS 430.041\(1\)](#) and carries out the provisions of Chapter 683, Oregon Laws 1979 (Enrolled Senate Bill 142).

(3) Definitions. As used in this rule:

(a) "Day plan" means a schedule of activities or programs provided for the resident leaving the state training center;

(b) "Discharge" means the permanent separation of the resident from the state training center. If the resident has been civilly committed, discharge also means termination of commitment. The term "release" is synonymous with discharge;

(c) "Disposition Board" means a body composed of administrative, clinical, and community consumer representatives appointed by the superintendent of the state training center to assess the release and/or discharge plans of residents before their return to the community and permanent separation from the state training center;

(d) "Division" means the Mental Health and Developmental Disability Services Division of the Department of Human Resources;

(e) "Facility" means any Mental Health and Developmental Disability Services Division facility;

(f) "Living plan" means the residential arrangements provided for the resident leaving the state training center;

(g) "Qualified mental retardation professional" means a person who meets the professional requirements prescribed by **42 CFR 442.401**;

(h) "Resident" means a person admitted to a state training center either voluntarily or after commitment to the Mental Health and Developmental Disability Services Division;

(i) "State institution" means Dammasch State Hospital in Wilsonville, Oregon State Hospital in Salem, Fairview Training Center in Salem, and Eastern Oregon Hospital and Training Center in Pendleton;

(j) "State Training Center" means Fairview Training Center; that part of Eastern Oregon Hospital and Training Center operated for the care, treatment, and training of mentally retarded persons; and any other facility operated by the Division for the care, treatment, and training of the mentally retarded;

(k) "State Training Center Review Board" means the Board created by Chapter 683, Oregon Laws 1979 (Enrolled Senate Bill 142), codified as [ORS 427.205](#);

(l) "Superintendent" means the executive head of Fairview Training Center and the executive head of Eastern Oregon Hospital and Training Center;

(m) "Transfer" means movement of a resident from one Mental Health and Developmental Disability Services Division facility to another Division facility for a good cause and in the best interest of the resident;

(n) "Unit" means a group of specified residential living areas, wards, cottages, or buildings within a state facility;

(o) "Unit Director" means a qualified mental retardation professional who is the administrative head of a designated living unit within a state training center;

(p) "Unit Interdisciplinary Team" means a group consisting of professional and direct care staff, usually including, but not limited to, representatives from social services, psychology, medicine, education, and direct care services. The team shall be chaired by the unit director. Its function is to prescribe the overall individual program for each assigned resident.

(4) General Description. The Division may transfer a mentally retarded person from one Mental Health and Developmental Disability Services Division facility to another, or discharge the person as no longer in need of residential care, treatment, or training, provided notification of such action is given to certain specified persons. The action may be appealed by those persons to the State Training Center Review Board, which will make its recommendation to the Administrator of the Division, or the Administrator's

designee. The Administrator, or the Administrator's designee, shall make the final decision regarding transfer or discharge and notify, by certified mail, the person who appealed the action and the superintendent of the facility that requested the action.

(5) Procedure for Notification of Transfer and Appeal:

(a) The superintendent of the state institution shall determine the feasibility of transfer to another facility based upon the needs and best interest of the resident;

(b) Through established policy and procedure, the facility shall initiate a request to transfer the resident to another facility. If the resident is in imminent danger of doing serious bodily harm to self or others, and the facility cannot provide the necessary level of security to ensure the safety of the resident or others, the facility shall initiate a temporary transfer to the Forensic Psychiatric Service at Oregon State Hospital, pursuant to OAR 309-031-0010(5);

(c) If the transfer request is accepted by the superintendent of the facility and returned to the initiating facility, the initiating facility shall notify the resident and the resident's parent or guardian or the person entitled to custody of the transfer, in writing, 15 days before the date the transfer is to take place:

(A) The notice of transfer shall be sent by certified mail and include the following:

(i) Reason(s) for the transfer;

(ii) Name of the facility to which the transfer is being made;

(iii) Date of the transfer;

(iv) Right to appeal within ten days after receipt of the notice;

(v) Description of the appeals process; and

(vi) State Training Center Review Board's address and telephone number.

(B) The resident, with assistance of an assigned social worker, shall decide whether to object to the transfer and, if so decided, submit the resident's appeal in writing to the State Training Center Review Board within ten days after receipt of the notice of transfer;

(C) The facility shall transfer the resident on the date specified in the notice unless the transfer is appealed;

(D) The State Training Center Review Board shall notify the facility if a transfer has been appealed:

(i) The State Training Center Review Board shall hold a hearing at which Division staff, the resident being transferred or the resident's representative if the resident approves of the transfer, and the person making the appeal or the person's representative will be present to state the respective cases within 30 days from the date the appeal is received. The Board shall make a recommendation to the Administrator of the Division, or the Administrator's designee;

(ii) The Administrator, or the Administrator's designee, shall make a final decision and communicate it by certified mail to the person who appealed, with a copy of the letter to the superintendent of the facility that initiated the transfer.

(E) If a transfer is appealed, the initiating facility shall await the communication from the Administrator, or the Administrator's designee, and transfer or not transfer the resident, as directed.

(6) Procedure for Notification of Discharge and Appeal:

(a) The Unit Interdisciplinary Team of the Unit in which the resident resides shall make a recommendation of discharge to the state training center's Disposition Board when its assessment and

evaluation have determined the resident is no longer in need of care, treatment, or training in a state training center;

(b) The Disposition Board shall consider the evidence for discharge, determine approval or disapproval of the Unit Interdisciplinary Team's recommendation, and forward this decision, in the form of a recommendation, to the superintendent;

(c) The superintendent shall approve or disapprove the Disposition Board's recommendation:

(A) If the discharge is approved, the superintendent shall direct the appropriate unit director to prepare and send a notice of discharge letter:

(i) The notice of discharge letter shall be sent to the resident and the resident's parent or guardian or the person entitled to custody, by certified mail, 15 days before the date the discharge is to take place;

(ii) The notice shall include:

(I) Reason(s) for the discharge;

(II) Statement of the proposed living plans and day plans for the resident after leaving the state training center;

(III) Date of the discharge;

(IV) Right to appeal with ten days of receipt of the notice;

(V) Description of the appeals process; and

(VI) State Training Center Review Board's address and telephone number.

(iii) The resident, with assistance of an assigned social worker, shall decide whether to object to the discharge

and, if so decided, submit the resident's appeal in writing to the State Training Center Review Board within ten days after receipt of the notice of discharge.

(B) The facility shall discharge the resident on the date specified in the notice unless the discharge is appealed;

(C) The State Training Center Review Board shall notify the facility if a discharge has been appealed:

(i) The State Training Center Review Board shall hold a hearing at which Division staff, the resident being discharged or the resident's representative if the resident approves of the discharge, and the person making the appeal or the person's representative will be present to state the respective cases within 30 days from the date the appeal is received. The board shall make a recommendation to the Administrator of the Division, or the Administrator's designee;

(ii) The Administrator, or the Administrator's designee, shall make a final decision and communicate it by certified mail to the person who appealed, with a copy of the letter to the superintendent of the facility.

(D) Except as specified in paragraph (c)(E) of this section, if a discharge is appealed, the facility shall await the communication from the Administrator, or the Administrator's designee, and discharge or not discharge the resident, as directed;

(E) Any voluntary resident shall be discharged within 15 days of the resident's request for release regardless of whether the discharge is appealed, unless court commitment procedures are initiated under ORS 427.235 for continued residential care and training.

Stat. Auth.: [ORS 430](#)

Stats. Implemented:

## **309-042-0050 Diagnosis and Evaluation Services**

*(Effective 05/05/1980)*

(1) Purpose. This rule prescribes standards and procedures for diagnostic evaluations of person known to be, or suspected of being, mentally retarded.

(2) Statutory Authority and Procedure. This rule is authorized by [ORS 430.041\(1\)](#) and carries out the provisions of [ORS 427.104](#) as amended by Chapter 683, Oregon Laws 1979 (Enrolled Senate Bill 142).

(3) Definitions. As used in this rule:

(a) "Adaptive Behavior" means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected for the age and cultural group;

(b) "Client" means the person known to be, or suspected of being, mentally retarded;

(c) "Diagnostic Evaluation" means the comprehensive assessment of a client to determine the extent of the developmental deficits, service(s) needed, and an action plan for intervention;

(d) "Intellectual Functioning" means functioning as assessed by one or more of individually administered general intelligence tests developed for that purpose;

(e) "Mental Retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period. Persons of borderline intelligence may be considered mentally retarded if there is also serious impairment of adaptive behavior. Definitions and classifications shall be consistent with the "**Manual on Terminology and Classification in Mental Retardation**" of the American Association on Mental Deficiency, 1977 Revision. Mental retardation is synonymous with mental deficiency;

(f) "Interdisciplinary Team" means a group of professionals that includes, but is not limited to, a psychologist, a social worker or social service worker, and a physician;

(g) "Physician" means a person licensed by the Board of Medical Examiners for the State of Oregon to practice medicine and surgery;

(h) "Psychologist" means a person possessing at least a master's degree in psychology from an accredited program with course work in human growth and development, tests, and measurement and a supervised practicum in individual psychological assessment, and/or a state certified school psychologist;

(i) "Severe Condition" means a condition that has continued, or can be expected to continue, indefinitely and contributes a substantial hardship to a person's ability to function normally in society;

(j) "Social Service Worker" means a person with a bachelor's or associate degree and at least three years of social work experience under the supervision of a qualified social worker, one year of which must be in work with the mentally retarded;

(k) "Social Worker" means a person with a master's degree in social work, or equivalent, and one year of experience in working with the mentally retarded.

#### (4) Procedure:

(a) Each diagnostic evaluation shall be done by an interdisciplinary team. Each member of the team shall assess the client individually and make a report according to the standards in this rule. Results of the diagnostic evaluation shall include a report that summarizes the client's diagnoses, problems, and the interdisciplinary team's recommendation;

(b) The summary report and all individual professional reports shall be forwarded to the appropriate service providers and/or referral source and to the community mental health program;

(c) When the diagnostic evaluation is performed in compliance with an order of the court, the summary report shall:

(A) Include a recommendation as to the type of treatment or training facility best suited to habilitate the client;

(B) Advise the court whether the client and, if the client is a minor or incapacitated, the client's parents or legal guardian would cooperate with voluntary treatment or training;

(C) State whether the client would benefit from voluntary treatment or training; and

(D) State whether the client would benefit from appointment of a legal guardian or conservator.

(5) Psychological Standards:

(a) A psychological assessment shall be done by a psychologist. The psychologist shall consider the client's intellectual functioning; adaptive behavior; sensory, perceptual, and motor development; speech and language skill; academic achievement; vocational skills; personality development; behavioral problems; and social development assessment;

(b) The psychologist shall report mental retardation and adaptive behavior impairments according to criteria established by the American Association on Mental Deficiency, 1977 Revision.

(c) The written psychological report shall include:

(A) Reasons for evaluation and prior evaluation history;

(B) Assessment procedures used;

(C) Behavior observation during evaluation;

(D) Current evaluation results and an interpretation of the results; and

(E) Recommendations regarding the client's program needs.

(6) Medical Standards:

(a) A medical assessment shall be done by a physician and shall include a history and a physical examination;

(b) The medical history shall include, to the extent available:

(A) Details of prenatal factors:

(i) Course of pregnancy;

(ii) Use of drugs; and

(iii) Hereditary disorders.

(B) Details of delivery (any complications).

(C) Immediate postpartum condition of the baby:

(i) Apgar;

(ii) Respiratory distress; and

(iii) Other.

(D) Postnatal history of illness and accident during early childhood; that is, cerebralinsults, encephalitis, dehydration, cerebral concussion, and other;

(E) Developmental landmarks;

(F) Seizure history;

(G) History of mental disorder;

(H) Family history;

(I) Present medications.

(c) The medical history may be taken by a qualified nurse or medical assistant;

(d) A standard physical examination will be completed and the results of the following shall be included in the examination record:

(A) Eye examination and other visual tests, as necessary;

(B) Ear examination and any necessary audiometry tests;

(C) Orthopedic evaluation;

(D) Coordination tests as necessary; and

(E) Brief neurological examination; that is, reflexes, muscle function, etc.

(e) The written report of examination shall include recommendations for medical care and treatment.

(7) Social Work Standards:

(a) During the diagnostic evaluation, the following information shall be obtained:

(A) Identifying information and legal status of the client;

(B) Reason for referral, the referral source, and name(s) of person(s) providing information, and relationship to the client;

(C) Description of client and presenting problems;

(D) Relevant history, specifically educational and vocational history and family data;

(E) Financial resources of the client, and, when relevant, financial resources of the client's family; and

(F) Social concerns and strengths of the client.

(b) The social work report shall contain interpretation of the information gathered under subsection (a) of this section, as well as recommendations.

[Publication: The Publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 427 & [ORS 430](#)

Stats. Implemented:

## **Leaves of Absence for Residents**

### **309-042-0060 Purpose and Statutory Authority**

*(Effective 01/03/1983)*

(1) Purpose. These rules establish policy and procedures for the temporary leave of absence and return of residents from the state training centers, and establish the process for reporting residents who are on unauthorized leave (UL) from state training centers.

(2) Statutory Authority and Procedure. These rules are authorized by [ORS 430.041](#) and carry out the provisions of [ORS 427.041](#).

Stat. Auth.: [ORS 427](#) & [ORS 430](#)

Stats. Implemented:

### **309-042-0065 Definitions**

*(Effective 01/03/1983)*

As used in these rules:

(1) "Central Record" means the principal individual case document for each resident that contains for safekeeping the pertinent clinical and programmatic data.

(2) "County of Commitment" means the governmental jurisdiction wherein the court is located which remanded the resident to the state training center.

(3) "Qualified Mental Retardation Professional" means a person who meets the professional requirements prescribed by **42 CFR 422.401** or as amended.

(4) "State Training Center" means Fairview Training Center; that part of Eastern Oregon Hospital and Training Center operated for the care, treatment and training of mentally retarded persons; and any other facility operated by the Division for the care, treatment, and training of the mentally retarded.

(5) "Superintendent" means the executive head of Fairview Training Center and the executive head of Eastern Oregon Hospital and Training Center.

(6) "Unit Interdisciplinary Team" means a group consisting of professional and direct care staff, usually including, but not limited to, representatives from social services, psychology, education, medicine, and direct care services. The team shall be chaired by a qualified mental retardation professional. Its function is to prescribe the overall individual program for each assigned resident. There is a Unit Interdisciplinary Team assigned to each cottage/ward.

[Publication: The Publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: [ORS 427](#) & [ORS 430](#)

Stats. Implemented:

### **309-042-0070 General Description**

*(Effective 01/03/1983)*

The superintendent may grant a temporary leave of absence to residents of the facility. The state training center, the superintendent and the chief medical officer thereof, and the Administrator of the Mental Health and Developmental Disability Services Division, or designee, shall not be liable for a resident's expenses while on temporary leave of absence, nor shall

they be liable for any damages whatsoever that are sustained by a person on account of the actions or misconduct of a resident while on leave of absence.

Stat. Auth.: [ORS 427](#) & [ORS 430](#)

Stats. Implemented:

### **309-042-0075 Policy**

*(Effective 01/03/1983)*

The superintendent of the state training center shall strongly encourage the use of authorized temporary leave of absence by residents in order to provide residents with community experiences, to strengthen ties with family and friends, provide respite from the state training center, and provide them with an opportunity for personal enjoyment.

Stat. Auth.: [ORS 427](#) & [ORS 430](#)

Stats. Implemented:

### **309-042-0080 Procedures**

*(Effective 01/03/1983)*

To carry out the policy stated in OAR 309-042-0075, the superintendent shall develop procedures for the facility which include, but are not limited to, the following:

(1) A description of temporary leave of absence categories:

(a) "Day Visit" means the resident is away from the facility's grounds for a period of time, but not overnight;

(b) "Vacation" means the resident is away from the facility's grounds for a specified period of time, at least overnight;

(c) "Preplacement Visit" means the resident is placed in a community residential setting prior to permanent community placement and discharge;

(d) "UL" means the resident is on unauthorized leave of absence from the facility; and

(e) "Other" means the resident is on a temporary leave of absence from the facility for the purpose of receiving specified treatment or training; for example, at the University of Oregon Health Sciences Center or at a local general hospital.

(2) Procedures for the release and return of residents which:

(a) Record the resident's release, both centrally and in the resident's living area;

(b) Obtain a signature from the person taking the resident on leave of absence, the person's address, telephone number, the person's relationship to the resident, and the date the resident is expected to return;

(c) Maintain a list of people approved to take individual residents out on temporary leave of absence and a list of restrictions, for applications as necessary, to protect certain specified residents and the community; and

(d) Provide a procedure for return from temporary leave of absence which insures that all areas of the facility needing to know, including the resident's living area, are notified of the time and fact of the resident's return and that the return is properly documented.

(3) Conditions for authorizing temporary leaves of absence:

(a) Residents may go on leave of absence with any person who has proper clearance. The following may be provided with such clearance to take residents out on temporary leave of absence:

(A) Parents or guardians without court or other restrictions;

(B) Persons with signed permission of parents or guardians;  
and

(C) Persons approved by the Unit Interdisciplinary Team and acceptable to the resident.

(b) Clearances are granted by, and subject to periodic review by the resident's Unit Interdisciplinary Team;

(c) Residents may sign themselves out on temporary leave of absence when approved by the resident's Unit Interdisciplinary Team;

(d) Certain persons may be restricted from taking residents out on temporary leave of absence for the following reasons:

(A) Parent or guardian has requested restriction; or

(B) Resident has requested restriction.

(e) Certain residents may be restricted from going out on temporary leave of absence, from time to time, by decisions of the resident's Unit Interdisciplinary Team. Residents may need to be restricted when they exhibit severe maladaptive behaviors which are considered dangerous to the resident or others, or which may have serious antisocial impact. Such restrictions with supporting reasons shall be documented in the resident's central record by a qualified mental retardation professional; and

(f) The status of residents under restriction shall be reviewed and updated at least within six months of the restriction or the date of the last review by the resident's Unit Interdisciplinary Team.

(4) A procedure for reporting of residents on unauthorized leave (UL) and their subsequent return to the facility which insure that:

(a) Thorough searches of the facility's grounds have been carried out before classifying the resident on UL status;

(b) When the grounds search has been concluded, and the resident is considered on UL status, the state and local police and the county of commitment's community mental health program are advised of the following information by telephone to assist in returning the

resident or to assure that the resident is safe and does not wish to return to the facility:

(A) Resident's name and case number;

(B) County of commitment, if applicable;

(C) Time last seen;

(D) Place, time and circumstances surrounding leaving, if known;

(E) A physical description of the resident including sex, age, height, weight, color of hair, color of eyes, wearing apparel when last seen, and other distinguishing characteristics;

(F) Name and address of nearest relative or guardian; and

(G) Whether the resident is considered dangerous; that is, has a history of aggressiveness to others, robbery, arson, etc. The fact of such reporting shall be documented.

(c) The State Fire Marshal is advised of the resident on UL status if the resident has a history of arsonous activities. The same information as given in subsection (4)(b) of this rule shall be given to the State Fire Marshal. The fact of such reporting shall be documented;

(d) Residents on UL status and considered dangerous are reported to the Mental Health Division as special incidents as prescribed in **Mental Health Division Management Media 3.000 and 3.002**. The time, date, and contacted person shall be recorded in the resident's record;

(e) The resident's nearest relative or guardian is contacted and the contact recorded; and

(f) The state and local police, State Fire Marshal if applicable, the resident's parent or guardian, and the mental Health Division, if applicable, are advised of the resident's return from unauthorized

leave of absence (UL). The fact of such reporting shall be documented.

(5) A resident on UL from temporary leave of absence may be discharged from the facility if it is determined by the community mental health program and the Unit Interdisciplinary Team that the person is safe, has a satisfactory place to live and does not wish to return to the facility.

(6) These procedures must comply with the ICF/MR rule on Reserved Bed Payments (OAR 309-043-0080).

[Publication: The Publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: [ORS 427](#) & [ORS 430](#)

Stats. Implemented:

### **309-042-0100 Statement of Purpose and Statutory Authority**

*(Effective 06/06/1997)*

(1) Purpose. These rules prescribe procedures which govern the operation of the State Training Center Review Board, establish policy on the discharge or transfer of an individual from a state training center, and prescribe procedures for requesting a contested case hearing on a decision to transfer or discharge an individual from a state training center.

(2) Statutory Authority. These rules are authorized by [ORS 430.041\(1\)](#), [427.205\(5\)](#) and [427.300\(2\)](#).

Stat. Auth.: [ORS 430.041\(1\)](#), [ORS 427.205\(5\)](#) & [ORS 427.300\(2\)](#)

Stats. Implemented: [ORS 427.007](#), [ORS 427.205\(5\)](#), [ORS 427.300\(1\)](#) & [ORS 427.300\(2\)](#)

### **309-042-0110 Definitions**

*(Effective 06/06/1997)*

As used in these rules, the following definitions apply:

(1) "Administrator" means the Administrator of the Mental Health and Developmental Disability Services Division.

(2) "Appropriate service alternatives" means:

(a) Residential services;

(b) Employment or alternatives to employment services; and

(c) Access to medical and dental services.

(3) "Best contemporary professional practices" means those services and systems designed to significantly increase the individual's independence, productivity, and integration.

(4) "Board" means the State Training Center Review Board.

(5) "Diagnosis and Evaluation Service" means the service established to provide or coordinate diagnostic evaluations before the placement of individuals with developmental disabilities in public or private training facilities.

(6) "Developmental disability" means a disability attributable to mental retardation, autism, cerebral palsy, epilepsy and/or other neurological handicapping condition which requires training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual attains the age of 22 years, except that in the case of mental retardation the condition must be manifested before the age of 18; and

(b) Has continued, or can be expected to continue, indefinitely; and

(c) Constitutes a substantial handicap to the ability of the person to function in society; or

(d) Results in significant sub average general intellectual functioning with concurrent deficits in adaptive behavior that are manifested during the developmental period. Individuals of borderline intelligence may be considered to have mental retardation if there is also serious

impairment of adaptive behavior. Definitions and classifications shall be consistent with the "Manual of Terminology and Classification in Mental Retardation" by the American Association on Mental Deficiencies, 1977 Revision. Mental retardation is synonymous with mental deficiency.

(7) "Division" means the Mental Health and Developmental Disability Services Division.

(8) "Hearing case number" means a number assigned by the State Training Center Review Board to protect the confidentiality of individuals whose cases come before the Board.

(9) "Independence" means the extent to which persons with mental retardation or developmental disabilities exert control and choice over their own lives.

(10) "Individual" means a person who has been admitted to a state training center.

(11) "Integration" means use by persons with mental retardation or developmental disabilities of the same community resources that are used by and available to others and participation in the same community activities in which nondisabled persons participate, together with regular contact with nondisabled persons, and residence by persons with mental retardation or developmental disabilities in homes or in home-like settings which are in proximity to community resources, together with regular contact with nondisabled persons in their community.

(12) "Office of Developmental Disability Services" or "DD Office" means the Office of Developmental Disability Services of the Mental Health and Developmental Disability Services Division.

(13) "Productivity" means engagement in income-producing work by a person with mental retardation or developmental disabilities which is measured through improvements in income level, employment status or job advancement or engagement by a person with mental retardation or developmental disabilities in work contributing to a household or community.

(14) "State training center" means Fairview Training Center or Eastern Oregon Training Center.

Stat. Auth.: [ORS 430.041\(1\)](#), [ORS 427.205\(5\)](#) & [ORS 427.300\(2\)](#)  
Stats. Implemented: [ORS 427.007](#), [ORS 427.205\(5\)](#), [ORS 427.300\(1\)](#) & [ORS 427.300\(2\)](#)

### **309-042-0120 State Training Center Review Board Appointment and Terms of Office**

*(Effective 06/06/1997)*

(1) The Administrator shall appoint a Board composed of three members.

(2) Selection of Board. The Arc of Oregon, the Fairview Parent/Guardian Association and the Oregon Developmental Disabilities Council or their successor organizations may each recommend three persons to the Administrator. The Administrator may select one person from each list to serve as a member of the Board.

(3) Involvement and active interest. Each board member shall have had at least five years of involvement and active interest in programs for individuals with developmental disabilities.

(4) Employee of Division prohibited. No employee of the Division shall be a board member.

Stat. Auth.: [ORS 430.041\(1\)](#), [ORS 427.205\(5\)](#) & [ORS 427.300\(2\)](#)  
Stats. Implemented: [ORS 427.007](#), [ORS 427.205\(5\)](#), [ORS 427.300\(1\)](#) & [ORS 427.300\(2\)](#)

### **309-042-0130 Function of Board**

*(Effective 06/06/1997)*

Functions of Board. The Board shall perform the following functions:

(1) Annually review state training center certifications for continued residential care and training of individuals.

(2) Review appealed decisions of the Diagnosis and Evaluation Service regarding admissions to state training centers and advise the Administrator regarding the appropriateness of the admission; and

(3) Review appealed decisions of the state training centers regarding transfer or discharge of individuals and advise the Administrator regarding the appropriateness of such decisions.

Stat. Auth.: [ORS 430.041\(1\)](#), [ORS 427.205\(5\)](#) & [ORS 427.300\(2\)](#)  
Stats. Implemented: [ORS 427.007](#), [ORS 427.205\(5\)](#), [ORS 427.300\(1\)](#) & [ORS 427.300\(2\)](#)

### **309-042-0140 Staff Assistance, Legal Assistance and Official Address** *(Effective 06/06/1997)*

(1) DD Office. The DD Office shall provide the Board with staff assistance and shall furnish or arrange for state training centers to furnish other services and supplies as may be needed by the Board.

(2) Legal assistance. The Administrator may arrange for the provision of legal services to the Board upon request.

(3) Mailing address. The official mailing address of the Board shall be: State Training Center Review Board, Office of Developmental Disability Services, 2575 Bittern Street NE, Salem, Oregon 97310

Stat. Auth.: [ORS 430.041\(1\)](#), [ORS 427.205\(5\)](#) & [ORS 427.300\(2\)](#)  
Stats. Implemented: [ORS 427.007](#), [ORS 427.205\(5\)](#), [ORS 427.300\(1\)](#) & [ORS 427.300\(2\)](#)

### **309-042-0150 Chairperson Appointment and Duties** *(Effective 06/06/1997)*

(1) Appointment. The Administrator may appoint one of the Board members to be the chairperson.

(2) Duties. The chairperson shall direct the activities and preside at all meetings of the Board.

(3) Absence of chairperson. The chairperson shall designate in their absence another member of the Board to be acting chairperson.

Stat. Auth.: [ORS 430.041\(1\)](#), [ORS 427.205\(5\)](#) & [ORS 427.300\(2\)](#)  
Stats. Implemented: [ORS 427.007](#), [ORS 427.205\(5\)](#), [ORS 427.300\(1\)](#) & [ORS 427.300\(2\)](#)

### **309-042-0160 Hearings**

*(Effective 06/06/1997)*

(1) Majority of board members required. The presence of a majority of Board members shall be required for the Board to conduct its statutory duties.

(2) Regular hearings. Regular hearings shall be held for the primary purpose of reviewing state training center certification for continued stay of individuals. Appeals as described in OAR 309-042-0190(1)(a) and (b) may be scheduled for hearing during regular hearings of the Board.

(3) Special hearings. Special hearings may be called by the chairperson as deemed necessary.

(4) Majority vote required for decisions. A decision of the Board shall require a majority vote of members present. In the event of a tie vote, the chairperson shall schedule a special hearing of the Board, within 30 days to resolve the tie vote.

(5) Conduct of hearings. The Board shall conduct hearings in accordance with the rules of order prescribed by the Board.

(6) Annual schedule of regular hearings. The Board shall publish and maintain an annual schedule of regular hearings. The schedule shall show the location, dates at each location, and the number of individual certifications the Board will hear on each date.

(7) Public notice of hearings. The distribution of the schedule and revisions thereof shall constitute public notice.

Stat. Auth.: [ORS 430.041\(1\)](#), [ORS 427.205\(5\)](#) & [ORS 427.300\(2\)](#)  
Stats. Implemented: [ORS 427.007](#), [ORS 427.205\(5\)](#), [ORS 427.300\(1\)](#) &  
ORS 427.300(2)

### **309-042-0170 Records**

*(Effective 06/06/1997)*

(1) Written minutes of hearings. Written minutes of each hearing shall be open to public inspection and shall include the following:

(a) Names of all Board members present;

(b) Results of the hearing, including the hearing case number used to identify individuals and applicants whose certification or appeal is considered by the Board; and

(c) In the case of a divided vote, the minutes shall record the vote of each Board member by name.

(2) Tape recording of hearings. All proceedings of the Board during closed portions of meetings shall be tape-recorded.

(3) Storage and confidentiality of tape recordings. All tape recordings shall be stored in a place and manner that protects their confidential nature.

(4) Written transcription of tape recordings. Written transcription of tape recordings shall not be made without just cause and without the specific written permission of the Administrator.

(5) Record retention. Records of Board Hearings will be retained in accordance with the State Training Center Review Board Rules of Conduct.

Stat. Auth.: [ORS 430.041\(1\)](#), [ORS 427.205\(5\)](#) & [ORS 427.300\(2\)](#)  
Stats. Implemented: [ORS 427.007](#), [ORS 427.205\(5\)](#), [ORS 427.300\(1\)](#) &  
ORS 427.300(2)

## **309-042-0180 Certification Hearings for State Training Center Individuals**

*(Effective 06/06/1997)*

(1) State training center annual review of plan of care and certification of continued stay. State training centers shall:

(a) Annually review the plan of care for each individual;

(b) Except as provided in OAR 309-042-0180(2), certify the individual's eligibility and need for continued residential care and training; and

(c) Present each certification with clear and convincing justification for continued residential care and training to the Board for its approval or disapproval.

(2) State training center certification or transfers of individuals under court commitment. State training center certification or transfers of individuals under court commitment pursuant to ORS Chapter 426 (Mentally Ill and Sexually Dangerous) or [ORS 161.336](#) or [ORS 161.341](#) (Psychiatric Security Review Board) shall not be presented to, or considered by, the Board. Continued residential care and training of such individuals shall be determined by the Division, a court of appropriate jurisdiction or the Psychiatric Security Review Board as provided by law.

(3) State training center coordination of annual review and plan of care for individuals. The state training center shall coordinate its annual review of the plan of care for each individual with the schedule of regular hearings published by the Board so that the number of certifications for continued residential care and training approximates the number of certifications the Board indicates it will review on each scheduled hearing date.

(4) State training center responsibilities for notifications and forwarding of supporting documents. In advance of the regular hearings of the Board the state training center shall provide the Board with the name and case number of each resident it has scheduled for the Board to review at the hearing. The state training center shall also:

(a) Indicate which, if any, of those individuals that will be unable to be physically present at the Board hearing; and

(b) On or before the day of the Board hearing, forward to the Board the certification and supporting documents for each individual to be reviewed at the hearing.

(5) Assignment of hearing case number. The Board shall assign a hearing case number to each case that will be used to identify the individual in the minutes of the Board hearing.

(6) Certification hearings closed to the public. Because the hearing of certifications involve the consideration of records that are exempt from public inspection, such hearings shall be closed to the public.

(7) Board decisions based on determinations. The Board shall base its decision on the following three determinations:

(a) Whether the individual is eligible for a training center (IQ level and adaptive behavior);

(b) Whether the individual needs continued residential care and training; and

(c) Whether appropriate residential care and training for the individual is available in a community setting.

(8) Approval of certifications. If, in the opinion of the Board, the individual is by clear and convincing justification eligible for, and in need of, continued residential care and training and such services are not currently available in a community setting, the Board shall approve the certification.

(9) Certification disapprovals. If, in the opinion of the Board, the state training center has not presented the need for continued residential care and training with clear and convincing justification, the Board shall not approve the certification of the individual for continued care and training.

(10) Time limited approval of certification. At the hearing, the Board may grant a time-limited approval of certification up to 60 days upon its own motion in order to receive additional information from the state training

center, or upon the request of the state training center in order to provide additional information, regarding the criteria described in OAR 309-042-0180(7)(a), (b) and (c). The Board may not grant a time-limited approval for any other reason or purpose. Prior to the expiration of the 60-day period, the Board shall reconvene the hearing and make a final decision to approve or disapprove certifications for the subsequent 10-month period.

(11) Programmatic or other concerns raised during hearing process. If in the course of a hearing the Board notes programmatic or other concerns affecting an individual that are unrelated to the criteria described in OAR 309-042-0180(7)(a), (b) and (c), the Board may request a response from the state training center. The request shall be in writing and on forms provided by the DD Office. The state training center shall issue its response to the Board within 60 days of receiving the request.

(12) Board hearing decisions. The Board's hearing decision shall be:

- (a) Noted on the state training center certification over the signature of the chairperson or acting chairperson, one copy of which will be retained by the Board;
- (b) Noted in the minutes of the hearing; and
- (c) Communicated to the state training center within three working days following the hearing.

Stat. Auth.: [ORS 430.041\(1\)](#), [ORS 427.205\(5\)](#) & [ORS 427.300\(2\)](#)  
Stats. Implemented: [ORS 427.007](#), [ORS 427.205\(5\)](#), [ORS 427.300\(1\)](#) & [ORS 427.300\(2\)](#)

### **309-042-0190 Appeals of Admission of Individual**

*(Effective 06/06/1997)*

(1) Appeal rights. [ORS 427.190](#) provides that an individual applying for admission to a state training center or an individual applying on behalf of a minor or incapacitated individual may appeal any decision of the Diagnosis and Evaluation Service regarding admission to the Administrator who will refer it to the Board.

(2) General appeal procedure. The appeal shall be in writing and shall set forth the reasons for the appeal.

(3) Appeal to the Board. Within 30 days of the receipt of the appeal, the Board shall:

(a) Schedule and hold the hearing before the Board;

(b) Notify the parties concerned of the time, place, and location of the scheduled hearing;

(c) Advise the individual making the appeal of their right to present their case;

(d) Assign a hearing case number that will be used to identify the individual or applicant for admission in the minutes of the Board hearing;

(e) Require the state training center or the Diagnosis and Evaluation Service to justify the decision under appeal; and

(f) After the hearing appeal, communicate in writing to the Administrator its recommendation as to disposition of the appeal. The recommendation to the Administrator shall be adopted by majority vote of the Board.

(4) Appeal hearings closed to the public. Because the hearing of appeals will involve the consideration of records that are exempt from public inspection, such hearings will be closed to the public, except as set forth in OAR 309-042-0190(5).

(5) Participants in an appeal hearing. The following individuals may attend the admission appeal hearing: representatives from the Division and the State Training Center, the individual and/or the individual's representative, the person making the appeal (if different from the individual), and/or his or her representative, and, for the duration of their testimony, witnesses.

(6) Final decision on appeal and notification. The Administrator shall make the final decision regarding the appeal and notify the appellant within 30 days of receipt of the Board's recommendation.

Stat. Auth.: [ORS 430.041\(1\)](#), [ORS 427.205\(5\)](#) & [ORS 427.300\(2\)](#)  
Stats. Implemented: [ORS 427.007](#), [ORS 427.205\(5\)](#), [ORS 427.300\(1\)](#) &  
ORS 427.300(2)

### **309-042-0200 Appeals of Discharge or Transfer of Individuals**

*(Effective 06/06/1997)*

(1) Appeals. ORS 427.300(2) provides that:

(a) The Division may, at any time, for good cause and in the best interest of the individual, transfer or discharge a resident as no longer in need of residential care, treatment or training in a state training center.

(b) At least 15 days prior to Division action, the Division shall notify the individual and the parent, guardian or person entitled to custody of the resident by certified mail of its decision.

(c) The notice shall indicate the right of the aforementioned parties to appeal this decision to the State Training Center Review Board in writing within 10 days after receipt of notice.

(d) The notice shall indicate the right of the aforementioned parties to a contested case hearing to appeal the Administrator's decision to transfer or discharge an individual. The Administrator's decision is made after receiving the recommendation of the State Training Center Review Board.

(2) Good cause exists for the transfer or discharge of an individual from a state training center under, but not limited to, the following circumstances:

(a) A plan to close the state training center where the individual resides is being implemented and appropriate service alternatives have been procured for the individual in the community as a condition for transfer or discharge; or

(b) The individual, or the individual's parent or guardian or person entitled to custody, requests transfer or discharge; or

(c) Appropriate services alternatives have been procured for the individual.

(3) It is in an individual's best interest to be more independent, integrated and productive, to live in a less restrictive environment, to receive services which are more consistent with the best contemporary practices, with preference given to community-based settings over institutional settings.

(4) The Division recognizes the individual, the parent, guardian or other person entitled to custody of the individual as key decision-makers in the development of any plan to transfer or discharge the individual from a state training center. For purposes of this rule, this recognition means the Division will closely consult with the individual, the parent, guardian, or other persons entitled to custody of the individual, and carefully consider their preferences expressed at each phase of the discharge or transfer planning process. In addition, during the planning process, the Division shall consider the following as part of the discharge or transfer planning process:

(a) The geographic proximity of the community residence to the family members and friends of the individual;

(b) The qualifications and training of the staff of the community service provider;

(c) The risk of mental and physical abuse of the individual;

(d) The availability of medical and dental services to sustain the health and well-being of the individual; and

(e) The availability of community-based services and activities appropriate to the mental and physical abilities of the individual.

(5) The following factors shall be considered in determining whether the transfer or discharge of an individual from a state training center is in the individual's best interest and shall be weighed and balanced in the context of each individual's proposed transfer or discharge:

(a) The effect of the transfer or discharge on the individual's independence, integration and productivity;

(b) The restrictiveness of the proposed service delivery environment;  
and

(c) The best contemporary professional practices in serving  
individuals with developmental disabilities.

Stat. Auth.: [ORS 430.041\(1\)](#), [ORS 427.205\(5\)](#) & [ORS 427.300\(2\)](#)

Stats. Implemented: [ORS 427.007](#), [ORS 427.205\(5\)](#), [ORS 427.300\(1\)](#) &  
ORS 427.300(2)

### **309-042-0210 Appeal Rights**

*(Effective 06/06/1997)*

(1) Appeal Rights. The individual, the individual's parent or guardian or the person entitled to custody may appeal any decision of the Division to transfer or to discharge an individual from a state training center to the State Training Center Review Board.

(2) General appeal procedures. All appeals shall be in writing and mailed to the State Training Center Review Board, c/o MHDDSD. Upon receipt of an appeal, the Board shall direct the Division to suspend its decision to transfer or discharge the individual pending outcome of the appeal.

(3) Appeal to the Board. Within 30 days of the receipt of the appeal, the Board shall:

(a) Schedule and hold the hearing before the Board;

(b) Notify the parties concerned of the time, place and location of the scheduled hearing;

(c) Advise the individual making the appeal of their right to present their case; and

(d) Assign a hearing case number that will be used to identify the individual in the minutes of the Board hearing.

(e) After the hearing appeal, communicate in writing to the Administrator its recommendation as to the disposition of the appeal.

The recommendation to the Administrator shall be adopted by majority vote of the Board.

(f) Appeal hearing closed to the public. Because the hearing of appeals will involve the consideration of records that are exempt from public inspection, such hearings will be closed to the public except as set forth in OAR 309-042-0210(3)(g).

(g) Participants in an appeal hearing. The following individuals may attend the discharge appeal hearing: representatives from the Division and the State Training Center, the individual and/or the individual's representative, the person making the appeal (if different from the individual), and/or his or her representative, and, for the duration of their testimony, witnesses.

(h) Final decision on appeal and notification. The Administrator shall make the final decision regarding the appeal and notify the appellant by certified mail within 30 days of receipt of the Board's recommendation.

Stat. Auth.: [ORS 430.041\(1\)](#), [ORS 427.205\(5\)](#) & [ORS 427.300\(2\)](#)  
Stats. Implemented: [ORS 427.007](#), [ORS 427.205\(5\)](#), [ORS 427.300\(1\)](#) & [ORS 427.300\(2\)](#)

### **309-042-0220 Rights of Review and Contested Case Hearings**

*(Effective 06/06/1997)*

(1) Request for Hearing. If, upon notification by certified mail of the Administrator's decision to transfer or discharge an individual from a state training center, the individual, the individual's parent or guardian, or the person entitled to custody of the individual disagrees with the Administrator's decision, he or she may request a contested case hearing before the Division. The request for a contested case hearing must be received by the Division in writing no later than ten calendar days from the date of service of the notice of the Administrator's decision to transfer or discharge an individual. The request for a contested case hearing shall include a short statement alleging why the transfer or discharge decision should be overturned.

(2) Hearing Rights. The contested case hearing shall be conducted in accordance with [ORS 183.413](#) to 183.470.

(3) Prior to the scheduling of the contested case hearing, the Division shall offer the person requesting the contested case hearing an informal conference to review all available information and determine the need for a contested case hearing.

(4) Any person adversely affected or aggrieved by a final discharge or transfer order is entitled to a judicial review of the Order. Judicial review may be obtained by filing a petition of review within 60 days from the service of the order. Judicial review is pursuant to the provisions of [ORS 183.482](#) to the Oregon Court of Appeals.

Stat. Auth.: [ORS 430.041\(1\)](#), [ORS 427.205\(5\)](#) & [ORS 427.300\(2\)](#)

Stats. Implemented: [ORS 427.007](#), [ORS 427.205\(5\)](#), [ORS 427.300\(1\)](#) & [ORS 427.300\(2\)](#)