

A-Engrossed Senate Bill 819

Ordered by the Senate February 28
Including Senate Amendments dated February 28

Sponsored by Senators GELSER BLOUIN, KNOPP, WAGNER, DEMBROW, GORSEK, HAYDEN, JAMA, MANNING JR, PATTERSON; Senators ANDERSON, CAMPOS, FREDERICK, GOLDEN, HANSELL, LIEBER, MEEK, SOLLMAN, TAYLOR, THATCHER, WEBER

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Modifies abbreviated school day program requirements. Requires that parent or foster *[advocate]* **parent** must give informed and written consent for student **with disability** to be placed on program. Prescribes duties of school district superintendent and Department of Education in relation to abbreviated school day programs.

Declares emergency, effective March 27, 2023.

A BILL FOR AN ACT

1
2 Relating to abbreviated school day programs; creating new provisions; repealing ORS 343.161; and
3 declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. As used in sections 1 to 6 of this 2023 Act:**

6 (1) **“Abbreviated school day” means any school day during which a student with a disa-**
7 **bility receives instruction or educational services for fewer hours than the majority of other**
8 **students who are in the same grade within the student’s resident school district.**

9 (2) **“Abbreviated school day program” means an education program:**

10 (a) **In which a school district restricts access for a student with a disability to hours of**
11 **instruction or educational services to less than the number of hours of instruction or edu-**
12 **cational services that are provided to the majority of other students who are in the same**
13 **grade within the student’s resident school district; and**

14 (b) **That results in a student with a disability having an abbreviated school day for more**
15 **than 10 school days per school year.**

16 (3) **“504 Plan” means an education plan developed for a student with a disability in ac-**
17 **cordance with section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794.**

18 (4) **“Foster youth” means a child or ward who is in the legal custody of the Department**
19 **of Human Services as provided in ORS 418.015 or 419B.337 and who has been placed in sub-**
20 **stitute care.**

21 (5) **“Individualized education program team” includes, when applicable, a team that de-**
22 **velops a 504 Plan.**

23 (6) **“Informed and written consent” means that a student’s parent or foster parent has**
24 **signed and dated a written consent form affirming that:**

25 (a) **The parent or foster parent received the information described in section 3 (2) and**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (3) of this 2023 Act;

2 (b) The parent or foster parent was not asked to provide consent before having an op-
3 portunity to meaningfully participate in a meeting of the individualized education program
4 team;

5 (c) The school district offered, and the individualized education program team considered,
6 at least one reasonable alternative placement, as described in section 3 (1)(b) of this 2023 Act,
7 prior to requesting that the parent or foster parent provide consent for placement of the
8 student on an abbreviated school day program;

9 (d) The parent or foster parent signed the consent form voluntarily; and

10 (e) The parent or foster parent is informed of the right to revoke consent, in writing, at
11 any time.

12 (7) “Meaningful access” means access to full-time, quality, synchronous instruction or
13 educational services delivered by:

14 (a) A qualified licensed teacher; or

15 (b) Qualified classified staff who are under the direct supervision of a qualified licensed
16 teacher.

17 (8) “Parent” includes:

18 (a) The student, if the student is 18 years of age or older or is emancipated pursuant to
19 ORS 419B.550 to 419B.558.

20 (b) The student’s surrogate, if the student has a surrogate, as defined in ORS 419A.004.

21 (9) “Resident school district” means the school district in which a student is a resident
22 under ORS 339.133.

23 (10) “School district” includes an education service district.

24 (11) “Student with a disability” means a student who:

25 (a) Is eligible for special education and related services, as provided by ORS chapter 343;

26 (b) Has a disability under section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, re-
27 gardless of whether the student has a 504 Plan;

28 (c) Has not been determined to be eligible for special education and related services, as
29 provided by ORS chapter 343, or to be eligible for a 504 Plan, but for whom a request or re-
30 ferral for evaluation for eligibility determination has been made; or

31 (d) Is no longer identified as being eligible for special education and related services un-
32 der ORS chapter 343 or for a 504 Plan, but who was eligible for special education and related
33 services or a 504 Plan at any time during the prior three school years.

34 (12) “Unilaterally place” means a placement by a school district without the informed and
35 written consent of the student’s parent or foster parent.

36 **SECTION 2.** (1) The Legislative Assembly finds that students with disabilities have a
37 right to meaningful access to the same number of hours of instruction or educational ser-
38 vices as the majority of students without disabilities who are in the same grade within the
39 student’s resident school district.

40 (2) Before considering or recommending a student with a disability for an abbreviated
41 school day program, a school district must document reasonable efforts to provide mean-
42 ingful access to the same number of hours of instruction or educational services that are
43 provided to the majority of other students who are in the same grade within the student’s
44 resident school district.

45 (3) A school district may not consider, recommend or implement an abbreviated school

1 day program due to the school district, or a contractor with the school district, having in-
2 adequate staffing available for instruction or educational services.

3 (4) For the purpose of determining if an abbreviated school day program has been im-
4 plemented, or of determining if a student with a disability has received an abbreviated school
5 day for more than 10 school days, the following are considered examples of an abbreviated
6 school day:

7 (a) The school district implementing policies or taking actions that are not applied to the
8 majority of other students who are in the same grade within the student's resident school
9 district and that cause the student to start school late, to leave school early or to not come
10 to school due to:

11 (A) Lack of school district personnel, including instructional assistants, nursing staff and
12 transportation providers;

13 (B) Convenience of school district staff; or

14 (C) Behaviors related to the student's disability, unless the schedule is provided pursuant
15 to ORS 339.250.

16 (b) The school district releasing the student early from school or requesting or requiring
17 the student not to come to school due to any illness that would not typically have the same
18 effect for the majority of other students who are in the same grade within the student's
19 resident school district.

20 (c) The school district requesting the student to not attend, prohibiting the student from
21 attending or otherwise making attendance inaccessible for a planned activity, including a
22 field trip, a special event or an outdoor school program.

23 (d) The school district imposing temporary lack of access to education facilities due to
24 construction, special events or weather when that lack of access does not apply to the ma-
25 jority of other students who are in the same grade within the student's resident school dis-
26 trict.

27 (e) The school district providing transportation that arrives at the student's school after
28 the start of the school day or leaves from the student's school before the end of the school
29 day and that causes the student to receive fewer hours of instruction or educational services
30 than the number of hours provided to the majority of other students who are in the same
31 grade within the student's resident school district.

32 (f) The school district failing to provide transportation identified in the student's indi-
33 vidualized education program or 504 Plan.

34 (5) A school district may not unilaterally place a student with a disability on an abbrev-
35 viated school day program, regardless of the age of the student.

36 **SECTION 3.** A school district may provide an abbreviated school day program to a stu-
37 dent with a disability only if all of the following are satisfied:

38 (1) The student's individualized education program team:

39 (a) Recommends that the student should be placed on an abbreviated school day program:

40 (A) Based on the student's individual needs, which may not include consideration of a
41 lack of school district resources, including:

42 (i) Licensed or classified staff;

43 (ii) Accessible facilities; and

44 (iii) Related services, including nursing services and transportation services; and

45 (B) After the opportunity for the student's parent or foster parent to meaningfully par-

1 ticipate in a meeting of the individualized education program team to discuss the placement,
2 including the reasonable opportunity to physically attend the meeting of the individualized
3 education program team at which the abbreviated school day program is discussed.

4 (b) Documents that the school district offered at least one reasonable alternative place-
5 ment that included appropriate supports for the student and that could enable the student
6 to have meaningful access to the same number of hours of instruction or educational ser-
7 vices that are provided to the majority of other students who are in the same grade within
8 the student's resident school district.

9 (c) Documents the specific provisions of the abbreviated school day program, including:

10 (A) How the abbreviated school day program will be designed to:

11 (i) Support the student's return to a school day program that is not an abbreviated
12 school day program; and

13 (ii) Make progress toward the student's individualized learning goals and progress in the
14 general curriculum;

15 (B) How the student's progress toward the student's individualized learning goals and
16 progress in the general curriculum will be measured; and

17 (C) The date by which the student is expected to return to a school day program that is
18 not an abbreviated school day program.

19 (2) The school district provides a written statement to the student's parent or foster
20 parent informing the parent or foster parent of:

21 (a) The student's right to have meaningful access to the same number of hours of in-
22 struction or educational services as the majority of other students who are in the same
23 grade within the student's resident school district;

24 (b) The prohibition on the school district to unilaterally place a student with a disability
25 on an abbreviated school day program; and

26 (c) The parent's or foster parent's right, at any time, to withdraw consent or to request
27 a meeting of the student's individualized education program team to discuss whether the
28 student should no longer be placed on an abbreviated school day program.

29 (3) The school district provides a written statement summarizing the documentation de-
30 scribed in subsection (1)(b) and (c) of this section in a language and format accessible to the
31 parent or foster parent.

32 (4) The school district receives a signed acknowledgment from the parent or foster par-
33 ent acknowledging receipt of the written statement described in subsection (2) of this sec-
34 tion.

35 (5) The parent or foster parent provides informed and written consent for the placement.

36 **SECTION 4.** (1) When a student with a disability is placed on an abbreviated school day
37 program, the provisions of this section apply.

38 (2) For each student with a disability placed on an abbreviated school day program, the
39 school district shall, at least once every 30 calendar days during the school year:

40 (a) Provide the following information in writing to the parent or foster parent of the
41 student:

42 (A) The school district's duty to comply with the requirements of sections 1 to 6 of this
43 2023 Act;

44 (B) The prohibition against a school district unilaterally placing a student with a disa-
45 bility on an abbreviated school day program;

1 (C) The student's right to have meaningful access to the same number of hours of in-
2 struction or educational services as the majority of other students who are in the same
3 grade within the student's resident school district; and

4 (D) The parent's or foster parent's right, at any time, to withdraw consent or to request
5 a meeting of the student's individualized education program team to discuss whether the
6 student should no longer be placed on an abbreviated school day program.

7 (b) Obtain from the parent or foster parent a signed acknowledgment that the parent or
8 foster parent received the information described in paragraph (a) of this subsection and does
9 not choose to withdraw consent.

10 (c) Hold a meeting of the student's individualized education program team to review the
11 student's abbreviated school day program and discuss whether to continue placement on the
12 abbreviated school day program.

13 (d) If the parent or foster parent provides a signed acknowledgment under paragraph (b)
14 of this subsection and the placement on the abbreviated school day program continues, in-
15 clude in the student's individualized education program or 504 Plan a written statement that:

16 (A) Explains the reasons the student was placed on the abbreviated school day program;
17 and

18 (B) Describes in detail other reasonable options that were considered and documents why
19 each option considered was not implemented.

20 (e) Inform the Department of Education about the student's placement on an abbreviated
21 school day program, including:

22 (A) The measurable steps the school district is taking to provide the student with
23 meaningful access to the same number of hours of instruction or educational services that
24 are provided to the majority of other students who are in the same grade within the
25 student's resident school district;

26 (B) The date the student began the abbreviated school day program and the start and end
27 dates of any prior formal or informal placements of the student on an abbreviated school day
28 program; and

29 (C) The date by which the student is expected to receive meaningful access to the same
30 number of hours of instruction or educational services that are provided to the majority of
31 other students who are in the same grade within the student's resident school district.

32 (3)(a) The school district superintendent must review a student's placement on an ab-
33 breviated school day program if the student is placed on an abbreviated school day program
34 for:

35 (A) Sixty or more cumulative calendar days during a school year; or

36 (B) Sixty or more cumulative calendar days, excluding summer break, when the student
37 is placed on an abbreviated school day program during two or more consecutive school years.

38 (b) The school district superintendent must review a placement when required under
39 paragraph (a) of this subsection and:

40 (A) Find that the placement is compliant with state and federal law and document in
41 writing:

42 (i) The efforts of the school district to facilitate the student's meaningful access to the
43 same number of hours of instruction or educational services that are provided to the ma-
44 jority of other students who are in the same grade within the student's resident school dis-
45 trict; and

1 (ii) The specific barriers that prevent that meaningful access; or

2 (B) Find that the placement is not compliant with state and federal law and ensure that,
3 within five school days of making the finding, the student has meaningful access to the same
4 number of hours of instruction or educational services that are provided to the majority of
5 other students who are in the same grade within the student's resident school district.

6 (c) In addition to a finding made under paragraph (b) of this subsection, for any student
7 in grades 9 through 12 not expected to graduate on time with a high school diploma, a mod-
8 ified diploma or an extended diploma, the school district superintendent must document in
9 writing:

10 (A) The plan for credit recovery and comprehensive services, including compensatory
11 services, that is being implemented to ensure the student's on-time graduation with a high
12 school diploma, a modified diploma or an extended diploma; and

13 (B) The student's progress toward on-time graduation with a high school diploma, a
14 modified diploma or an extended diploma.

15 (d) If the student is served by an education program through an education service dis-
16 trict, the requirements of paragraphs (a) to (c) of this subsection apply to both the super-
17 intendent of the resident school district and the superintendent of the education service
18 district.

19 (e) Any findings or documentation required under paragraphs (b) and (c) of this sub-
20 section must be provided, within five school days of making the finding, to the Department
21 of Education and to the student's parent or foster parent.

22 **SECTION 5.** (1)(a) A parent or a foster parent may, at any time, revoke consent for the
23 placement of a student with a disability on an abbreviated school day program.

24 (b) Consent for the placement on an abbreviated school day program shall be considered
25 revoked if, at any time, the parent or the foster parent revokes the consent in writing or
26 makes a written objection to the placement.

27 (c) Upon receipt of a written revocation or objection, the school district superintendent
28 shall ensure that, within five school days, the student has meaningful access to the same
29 number of hours of instruction or educational services that are provided to the majority of
30 other students who are in the same grade within the student's resident school district.
31 Failure of the school district superintendent to comply with this paragraph shall cause the
32 school district to be found nonstandard under ORS 327.103 or 334.217.

33 (2)(a) When the Department of Education receives a complaint or otherwise has cause
34 to believe a school district is not in compliance with sections 1 to 6 of this 2023 Act, the de-
35 partment must initiate an investigation and inform the school district of any noncompliance
36 within 30 days of receiving the complaint or having cause to believe the school district is not
37 in compliance.

38 (b) If a complaint described in paragraph (a) of this subsection relates to a specific stu-
39 dent and is submitted by the student's parent or foster parent, the Superintendent of Public
40 Instruction shall presume that consent has been revoked and is not required to conduct an
41 investigation and the superintendent shall immediately order the school district to provide
42 to the student meaningful access to the same number of hours of instruction or educational
43 services that are provided to the majority of other students who are in the same grade
44 within the student's resident school district. If the school district fails to comply with the
45 order, the superintendent shall find the school district is not in compliance with sections 1

1 to 6 of this 2023 Act.

2 (c) If the superintendent finds that a school district is not in compliance with sections 1
3 to 6 of this 2023 Act, either after an investigation or as provided by paragraph (b) of this
4 subsection, the superintendent shall:

5 (A) Enter an order that any students named in the complaint or identified in the course
6 of an investigation initiated under paragraph (a) of this subsection who are placed on an
7 abbreviated school day program in violation of sections 1 to 6 of this 2023 Act be provided,
8 within five school days of the final order, with meaningful access to the same number of
9 hours of instruction or educational services that are provided to the majority of other stu-
10 dents who are in the same grade within the student's resident school district.

11 (B) If the school district fails to comply with the order described in subparagraph (A) of
12 this paragraph within five days, find the school district nonstandard under ORS 327.103 or
13 334.217 until all students subject to the order and placed on an abbreviated school day pro-
14 gram in violation of sections 1 to 6 of this 2023 Act are provided with meaningful access to
15 the same number of hours of instruction or educational services that are provided to the
16 majority of other students who are in the same grade within the student's resident school
17 district.

18 (C) If the school district fails to comply with the order within 10 days and
19 notwithstanding any timelines or process requirements of ORS 327.103 or 334.217, imme-
20 diately withhold State School Fund moneys that otherwise would be distributed to the school
21 district. Amounts withheld must be calculated based on the weighted average daily mem-
22 bership attributable to the student, as calculated under ORS 327.013, and the percentage of
23 the school year that the student was placed on an abbreviated school day program in vio-
24 lation of sections 1 to 6 of this 2023 Act.

25 (D) Require the school district to provide compensatory education to the student that is
26 equivalent to at least one hour of direct instruction for every two hours of instruction that
27 were lost due to placement on an abbreviated school day program in violation of sections 1
28 to 6 of this 2023 Act.

29 (3) The failure of a school district superintendent to restore meaningful access to a stu-
30 dent within five school days as required by section 4 (3)(b)(B) of this 2023 Act or subsection
31 (1)(c) of this section or to comply with an order issued under subsection (2)(c) of this section
32 to restore meaningful access to all students subject to the order may be grounds for disci-
33 pline by the Teacher Standards and Practices Commission under ORS 342.175.

34 **SECTION 6.** Sections 2 to 5 of this 2023 Act do not apply to any of the following:

35 (1) Any abbreviated school days that are a component of discipline imposed in compliance
36 with ORS 339.250.

37 (2) A student's exclusion from schools due to the student's immunization status or due
38 to the student's exposure to a restrictable disease, as provided by ORS 433.235 to 433.284.

39 (3) The exclusion of a student from schools or the closure or restriction of access to
40 schools due to actions taken under a public health emergency authorized under ORS 433.441
41 to 433.452.

42 (4) A student who has fulfilled all state requirements for graduation with a high school
43 diploma, as described in ORS 329.451 (2), when the parent or foster parent has agreed to the
44 abbreviated school day program.

45 (5) A student enrolled in a program described in ORS 339.129, 343.261 or 346.010, if the

1 student has access to the same number of hours of instruction or educational services as the
2 majority of other students enrolled in the same program as the student.

3 (6) A student whose parent or foster parent has notified an education service district
4 that the student is being taught by a parent, legal guardian or private teacher under ORS
5 339.035.

6 (7) A student who is excluded from, or limited access to, school due to a court order.

7 SECTION 7. ORS 343.161 is repealed.

8 SECTION 8. (1) Sections 1 to 3 of this 2023 Act apply to a student with a disability who
9 is placed on an abbreviated school day program on or after the effective date of this 2023
10 Act.

11 (2) Notwithstanding section 5 (3) of this 2023 Act, during the 2022-2023 school year only,
12 if a student with a disability was placed on an abbreviated school day program prior to Feb-
13 ruary 1, 2023, the Teacher Standards and Practices Commission may not take disciplinary
14 action in relation to a school district superintendent unless the superintendent failed to:

15 (a) Restore meaningful access to the student within 10 school days under section 4
16 (3)(b)(B) of this 2023 Act or section 5 (1)(c) of this 2023 Act; or

17 (b) Comply, within 10 school days, with an order issued under section 5 (2)(c) of this 2023
18 Act to restore meaningful access to all students subject to the order.

19 (3) Nothing in this section prevents a parent or foster parent from revoking consent, or
20 the Department of Education or the Superintendent of Public Instruction from taking any
21 action related to the placement of a student with a disability on an abbreviated school day
22 program, if the placement occurred before the effective date of this 2023 Act and the place-
23 ment is ongoing on the effective date of this 2023 Act.

24 SECTION 9. Section 4 of this 2023 Act becomes operative July 1, 2023.

25 SECTION 10. This 2023 Act being necessary for the immediate preservation of the public
26 peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect
27 March 27, 2023.

28