

Senate Bill 819

Sponsored by Senators GELSER BLOUIN, KNOPP, WAGNER, DEMBROW; Senators CAMPOS, FREDERICK, TAYLOR

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 **as introduced**.

Modifies abbreviated school day program requirements. Requires that parent or foster advocate must give informed and written consent for student 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; amending ORS 343.161; and
3 declaring an emergency.

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

5 **SECTION 1.** ORS 343.161 is amended to read:

6 343.161. (1) As used in this section:

7 (a) "Abbreviated school day" means any school day during which a student receives instruction
8 or educational services for fewer hours than **the majority of** other students who are in the same
9 grade within the *[same school]* **student's resident school district**.

10 (b) "Abbreviated school day program" means an education program:

11 (A) In which a school district restricts a student's access to hours of instruction or educational
12 services **to less than the number of hours of instruction or educational services that are**
13 **provided to the majority of other students who are in the same grade within the student's**
14 **resident school district**; and

15 (B) That results in a student having an abbreviated school day for more than 10 school days per
16 school year.

17 (c) "**Foster advocate**" means a foster youth's foster parent and attorney advocate.

18 [*(c)*] (d) "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 substitute
20 care.

21 (e) "**Meaningful access**" means **access to full-time, quality, synchronous instruction or**
22 **educational services delivered by:**

23 (A) **A qualified licensed teacher; or**

24 (B) **Qualified classified staff who are under the direct supervision of a qualified licensed**
25 **teacher.**

26 [*(d)*] (f) "Parent" includes:

27 (A) The student, if the student is 18 years of age or older or is emancipated pursuant to ORS
28 419B.550 to 419B.558.

29 (B) **The student's surrogate, if the student has a surrogate, as defined in ORS 419A.004.**

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 (g) “Resident school district” means the school district in which a student is a resident
 2 under ORS 339.133.

3 (h) “School district” includes an education service district.

4 [(e) “Unilaterally place” means a placement by a school district without the consent of the student’s
 5 parent, or, if the student is a foster youth, without the consent of the student’s foster parent and, if the
 6 student has a surrogate as defined in ORS 419A.004, the consent of the surrogate.]

7 (i) “Unilaterally place” means a placement by a school district without the informed and
 8 written consent of the student’s parent or each foster advocate.

9 (2) The Legislative Assembly finds that students have a right to meaningful access to the
 10 same number of hours of instruction or educational services as the majority of other stu-
 11 dents who are in the same grade within the student’s resident school district.

12 (3) A school district must document reasonable efforts to provide meaningful access to
 13 the same number of hours of instruction or educational services that are provided to the
 14 majority of other students who are in the same grade within a student’s resident school
 15 district before considering or recommending the student for an abbreviated school day pro-
 16 gram.

17 (4) A school district may not consider, recommend or implement an abbreviated school
 18 day program due to the school district, or a contractor with the school district, having in-
 19 adequate staffing available for instruction or educational services.

20 (5) For the purpose of determining if an abbreviated school day program has been im-
 21 plemented, or of determining if a student has received an abbreviated school day for more
 22 than 10 school days, the following are examples of an abbreviated school day:

23 (a) The school district implementing policies or taking actions that are not applied to the
 24 majority of other students who are in the same grade within a student’s resident school
 25 district and that cause the student to start school late, to leave school early or to not come
 26 to school due to:

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

29 (B) Convenience of school district staff; or

30 (C) Behaviors related to the student’s disability, unless the schedule is provided pursuant
 31 to ORS 339.250.

32 (b) The school district releasing a student early from school or requesting or requiring
 33 a student not to come to school due to any illness that would not typically have the same
 34 effect for the majority of other students who are in the same grade within the student’s
 35 resident school district.

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

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

43 (e) The school district providing transportation that is scheduled to arrive at the
 44 student’s school after the start of the school day or to leave from the student’s school before
 45 the end of the school day and that causes the student to receive fewer hours of instruction

1 **or educational services than the number of hours provided to the majority of other students**
 2 **who are in the same grade within the student’s resident school district.**

3 **(f) The school district failing to provide transportation identified in the student’s indi-**
 4 **vidualized education program.**

5 [(2)] **(6)** A school district may not unilaterally place a student on an abbreviated school day
 6 program, regardless of the age of the student.

7 [(3)(a)] **(7)** A school district may provide an abbreviated school day program to a student only
 8 if:

9 **(a)** The student’s individualized education program team:

10 **(A)** *[Determines]* **Recommends** that the student should be placed on an abbreviated school day
 11 program:

12 **(i)** Based on the student’s **individual** needs, **which may not include consideration of a lack**
 13 **of school district resources, including:**

14 **(I) Licensed or classified staff;**

15 **(II) Accessible facilities; and**

16 **(III) Related services, including nursing services and transportation services; and**

17 **(ii)** After the opportunity for the student’s *[parents]* **parent or each foster advocate** to mean-
 18 ingfully participate in a meeting to discuss the placement, **including the reasonable opportunity**
 19 **to physically attend the meeting at which the abbreviated school day program is discussed;**
 20 and

21 **(B)** Documents that the *[team considered]* **school district offered** at least one **reasonable** option
 22 that included appropriate supports for the student and that could enable the student to **have**
 23 **meaningful** access to the same number of hours of instruction or educational services that are
 24 provided to **the majority of other** students who are in the same grade within the *[same school.]*
 25 **student’s resident school district;**

26 **(b)** The school district provides a written statement to the student’s parent or each fos-
 27 **ter advocate informing the parent or each foster advocate of:**

28 **(A)** The student’s right to have meaningful access to the same number of hours of in-
 29 **struction or educational services as the majority of other students who are in the same**
 30 **grade within the student’s resident school district;**

31 **(B)** The prohibition on the school district to unilaterally place a student on an abbrevi-
 32 **ated school day program;**

33 **(C)** The parent’s or each foster advocate’s right, at any time, to withdraw consent or to
 34 **request a meeting of the student’s individualized education program team to discuss whether**
 35 **the student should no longer be placed on an abbreviated school day program;**

36 **(c)** The school district provides a written statement summarizing the documentation de-
 37 **scribed in paragraph (a)(B) of this subsection;**

38 **(d)** The school district receives a signed acknowledgement from the parent or each foster
 39 **advocate acknowledging receipt of the written statement described in paragraph (b) of this**
 40 **subsection; and**

41 **(e)** The parent or each foster advocate provides informed and written consent for the
 42 **placement.**

43 *[(b) In addition to the requirements prescribed by paragraph (a) of this subsection, unless otherwise*
 44 *ordered by a court, a school district may provide an abbreviated school day program to a student who*
 45 *is a foster youth only if:]*

1 [(A) *The student's individualized education program team provided the opportunity for the*
 2 *student's foster parent to meaningfully participate in a meeting to discuss the placement, including the*
 3 *reasonable opportunity to physically attend the meeting at which the abbreviated school day program*
 4 *is discussed; and]*

5 [(B) *The school district provides written notification to the foster parent that includes:*]

6 [(i) *A statement informing the foster parent of the student's presumptive right to receive the same*
 7 *number of hours of instruction or educational services as other students who are in the same grade*
 8 *within the same school and the foster parent's right to request, at any time, a meeting of the individ-*
 9 *ualized education program team to determine whether the student should no longer be placed on an*
 10 *abbreviated school day program;*]

11 [(ii) *A statement that a school district may not unilaterally place a student on an abbreviated*
 12 *school day program; and]*

13 [(iii) *A statement summarizing the documentation described in paragraph (a)(B) of this*
 14 *subsection.*]

15 [(4) **(8)** If a student is placed on an abbreviated school day program, the school district shall,
 16 at least once *[each term]* **every 30 calendar days:**

17 (a) Provide the following information in writing to the parent or *[foster parent]* **each foster**
 18 **advocate** of the student:

19 (A) The school district's duty to comply with the requirements of this section;

20 (B) The prohibition against a school district unilaterally placing a student on an abbreviated
 21 school day program; and

22 (C) The student's *[presumptive right to receive]* **right to have meaningful access to** the same
 23 number of hours of instruction or educational services as **the majority of** other students who are
 24 in the same grade within the *[same school]* **student's resident school district** and the parent's or
 25 *[foster parent's right to request]* **each foster advocate's right**, at any time, **to withdraw consent**
 26 **or to request** a meeting of the **student's** individualized education program team to *[determine]*
 27 **discuss** whether the student should no longer be placed on an abbreviated school day program.

28 (b) Obtain a signed acknowledgment from the parent or *[foster parent]* **each foster advocate** of
 29 the student that the parent or foster *[parent]* **advocate** received the information described in para-
 30 graph (a) of this subsection **and does not choose to withdraw consent**.

31 *[(c) Include in the student's individualized education program a written statement that explains the*
 32 *reasons the student was placed on an abbreviated school day program.]*

33 **(c) Hold an individualized education program team meeting to review the student's ab-**
 34 **breivated school day program and discuss whether to continue placement on the abbreviated**
 35 **school day program.**

36 **(d) If the parent or each foster advocate provides a signed acknowledgment under para-**
 37 **graph (b) of this subsection and the placement on the abbreviated school day program con-**
 38 **tinues, include in the student's individualized education program a written statement that:**

39 **(A) Explains the reasons the student was placed on the abbreviated school day program;**
 40 **and**

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

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

45 **(A) The measurable steps the school district is taking to provide the student with**

1 meaningful access to the same number of hours of instruction or educational services that
2 are provided to the majority of other students who are in the same grade within the
3 student's resident school district; and

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

7 (9)(a) If a student is placed on an abbreviated school day program for more than 60 con-
8 secutive calendar days or 90 cumulative calendar days during a school year, the school dis-
9 trict superintendent must review the placement and:

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

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

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

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

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

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

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

30 (c) If the student is served by an education program through an education service dis-
31 trict, the requirements of paragraphs (a) and (b) of this subsection apply to both the super-
32 intendent of the resident school district and the superintendent of the education service
33 district.

34 (d) Any findings or documentation required under paragraphs (a) and (b) of this sub-
35 section must be provided, within five school days of making the finding, to the Department
36 of Education and to the student's parent or each foster advocate.

37 (e) Failure of a school district superintendent to comply with this subsection, or failure
38 to find that placement on an abbreviated school day program is not compliant when the su-
39 perintendent knew or should have known the placement was not compliant, is gross neglect
40 of duty for purposes of licensure by the Teacher Standards and Practices Commission.

41 (10) A parent or any foster advocate may, at any time, revoke consent for placement on
42 an abbreviated school day program. Consent shall be considered revoked if, at any time, the
43 parent or a foster advocate revokes the consent in writing or makes a written objection to
44 the placement. Upon receipt of the written revocation or objection, the school district su-
45 perintendent shall ensure that, within five school days, the student has meaningful access

1 to the same number of hours of instruction or educational services that are provided to the
 2 majority of other students who are in the same grade within the student's resident school
 3 district. Failure of the school district superintendent to comply with this subsection is gross
 4 neglect of duty for purposes of licensure by the commission and the school district shall be
 5 considered nonstandard under ORS 327.103 or 334.217.

6 (11)(a) The Department of Education must immediately initiate an investigation if the
 7 department determines, after receiving a complaint or on its own motion, that a school dis-
 8 trict is not in compliance with this section.

9 (b) If a complaint submitted under paragraph (a) of this subsection relates to a specific
 10 student and is submitted by the parent or a foster advocate of that student, the Super-
 11 intendent of Public Instruction shall presume that consent has been revoked is not required
 12 to conduct an investigation and shall immediately order the school district to provide to the
 13 student meaningful access to the same number of hours of instruction or educational ser-
 14 vices that are provided to the majority of other students who are in the same grade within
 15 the student's resident school district. If the school district fails to comply with the order,
 16 the superintendent shall find the school district is not in compliance with this section.

17 (c) If the superintendent finds that a school district is not in compliance with this sec-
 18 tion, either after an investigation or as provided by paragraph (b) of this subsection, the
 19 superintendent shall:

20 (A) Enter an order that any students placed on an abbreviated school day program in
 21 violation of this section be provided, within five school days of the final order, with mean-
 22 ingful access to the same number of hours of instruction or educational services that are
 23 provided to the majority of other students who are in the same grade within the student's
 24 resident school district.

25 (B) Find the school district nonstandard under ORS 327.103 or 334.217 until all students
 26 placed on an abbreviated school day program in violation of this section are provided with
 27 meaningful access to the same number of hours of instruction or educational services that
 28 are provided to the majority of other students who are in the same grade within the
 29 student's resident school district.

30 (C) Notwithstanding any timelines or process requirements of ORS 327.103 or 334.217,
 31 immediately withhold State School Fund moneys and moneys received under the Individuals
 32 with Disabilities Education Act, 20 U.S.C. 1400 et seq. that otherwise would be distributed to
 33 the school district. Amounts withheld must be calculated based on the weighted average daily
 34 membership attributable to the student, as calculated under ORS 327.013, and the percentage
 35 of the school year that the student was placed on an abbreviated school day program in vi-
 36 olation of this section.

37 (D) Require the school district to provide compensatory education to the student equiv-
 38 alent to at least one hour of direct instruction for every two hours of instruction that were
 39 lost due to placement on an abbreviated school day program in violation of this section.

40 (12) Every right, responsibility and duty accruing to a foster advocate under this section
 41 accrues to every entity that is a foster advocate, as defined in subsection (1)(c) of this sec-
 42 tion.

43 [(5)] (13) This section does not apply to:

44 (a) Any abbreviated school days that are a component of discipline imposed in compliance with
 45 ORS 339.250;

1 **(b) A student’s exclusion from schools due to the student’s immunization status or due**
2 **to the student’s exposure to a restrictable disease, as provided by ORS 433.235 to 433.284;**

3 **(c) The exclusion of a student from schools or the closure or restriction of access to**
4 **schools due to actions taken under a public health emergency authorized under ORS 433.441**
5 **to 433.452;**

6 **[(b)] (d) A student who will be eligible to complete the requirements for a diploma or certificate**
7 **under ORS 329.451 during the school year if the student, and the parent or each foster advocate**
8 **of the student, agree to the abbreviated school day program; [or]**

9 **[(c)] (e) A student whose parent or foster advocate has notified an education service district**
10 **that the student is being taught by a parent, legal guardian or private teacher under ORS**
11 **339.035[.]; or**

12 **(f) A student who is excluded from, or limited access to, school due to a court order.**

13 **SECTION 2. (1) The amendments to ORS 343.161 by section 1 of this 2023 Act apply to**
14 **students who are placed on an abbreviated school day program on or after the effective date**
15 **of this 2023 Act.**

16 **(2) If a student is on an abbreviated school day program on the effective date of this 2023**
17 **Act, the school district superintendent shall review the placement as provided by ORS 343.161**
18 **(9) within 14 calendar days of the effective date of this 2023 Act.**

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

24 **SECTION 3. This 2023 Act being necessary for the immediate preservation of the public**
25 **peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect**
26 **March 27, 2023.**