

SENATE AMENDMENTS TO SENATE BILL 819

By COMMITTEE ON EDUCATION

February 28

1 On page 1 of the printed bill, line 2, delete “amending” and insert “repealing”.

2 Delete lines 5 through 29 and delete pages 2 through 7 and insert:

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

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

7 **“(2) ‘Abbreviated school day program’ means an education program:**

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

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

14 **“(3) ‘504 Plan’ means an education plan developed for a student with a disability in ac-**
15 **cordance with section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794.**

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

19 **“(5) ‘Individualized education program team’ includes, when applicable, a team that de-**
20 **velops a 504 Plan.**

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

23 **“(a) The parent or foster parent received the information described in section 3 (2) and**
24 **(3) of this 2023 Act;**

25 **“(b) The parent or foster parent was not asked to provide consent before having an op-**
26 **portunity to meaningfully participate in a meeting of the individualized education program**
27 **team;**

28 **“(c) The school district offered, and the individualized education program team consid-**
29 **ered, at least one reasonable alternative placement, as described in section 3 (1)(b) of this**
30 **2023 Act, prior to requesting that the parent or foster parent provide consent for placement**
31 **of the student on an abbreviated school day program;**

32 **“(d) The parent or foster parent signed the consent form voluntarily; and**

33 **“(e) The parent or foster parent is informed of the right to revoke consent, in writing,**
34 **at any time.**

35 **“(7) ‘Meaningful access’ means access to full-time, quality, synchronous instruction or**

1 educational services delivered by:

2 “(a) A qualified licensed teacher; or

3 “(b) Qualified classified staff who are under the direct supervision of a qualified licensed
4 teacher.

5 “(8) ‘Parent’ includes:

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

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

9 “(9) ‘Resident school district’ means the school district in which a student is a resident
10 under ORS 339.133.

11 “(10) ‘School district’ includes an education service district.

12 “(11) ‘Student with a disability’ means a student who:

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

14 “(b) Has a disability under section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794,
15 regardless of whether the student has a 504 Plan;

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

19 “(d) Is no longer identified as being eligible for special education and related services
20 under ORS chapter 343 or for a 504 Plan, but who was eligible for special education and re-
21 lated services or a 504 Plan at any time during the prior three school years.

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

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

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

33 “(3) A school district may not consider, recommend or implement an abbreviated school
34 day program due to the school district, or a contractor with the school district, having in-
35 adequate staffing available for instruction or educational services.

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

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

44 “(A) Lack of school district personnel, including instructional assistants, nursing staff
45 and transportation providers;

1 “(B) Convenience of school district staff; or

2 “(C) Behaviors related to the student’s disability, unless the schedule is provided pursu-
3 ant to ORS 339.250.

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

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

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

15 “(e) The school district providing transportation that arrives at the student’s school after
16 the start of the school day or leaves from the student’s school before the end of the school
17 day and that causes the student to receive fewer hours of instruction or educational services
18 than the number of hours provided to the majority of other students who are in the same
19 grade within the student’s resident school district.

20 “(f) The school district failing to provide transportation identified in the student’s indi-
21 vidualized education program or 504 Plan.

22 “(5) A school district may not unilaterally place a student with a disability on an abbrevi-
23 ated school day program, regardless of the age of the student.

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

26 “(1) The student’s individualized education program team:

27 “(a) Recommends that the student should be placed on an abbreviated school day pro-
28 gram:

29 “(A) Based on the student’s individual needs, which may not include consideration of a
30 lack of school district resources, including:

31 “(i) Licensed or classified staff;

32 “(ii) Accessible facilities; and

33 “(iii) Related services, including nursing services and transportation services; and

34 “(B) After the opportunity for the student’s parent or foster parent to meaningfully
35 participate in a meeting of the individualized education program team to discuss the place-
36 ment, including the reasonable opportunity to physically attend the meeting of the individ-
37 ualized education program team at which the abbreviated school day program is discussed.

38 “(b) Documents that the school district offered at least one reasonable alternative
39 placement that included appropriate supports for the student and that could enable the stu-
40 dent to have meaningful access to the same number of hours of instruction or educational
41 services that are provided to the majority of other students who are in the same grade
42 within the student’s resident school district.

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

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

45 “(i) Support the student’s return to a school day program that is not an abbreviated

1 school day program; and

2 “(ii) Make progress toward the student’s individualized learning goals and progress in the
3 general curriculum;

4 “(B) How the student’s progress toward the student’s individualized learning goals and
5 progress in the general curriculum will be measured; and

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

8 “(2) The school district provides a written statement to the student’s parent or foster
9 parent informing the parent or foster parent of:

10 “(a) The student’s right to have meaningful access to the same number of hours of in-
11 struction or educational services as the majority of other students who are in the same
12 grade within the student’s resident school district;

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

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

18 “(3) The school district provides a written statement summarizing the documentation
19 described in subsection (1)(b) and (c) of this section in a language and format accessible to
20 the parent or foster parent.

21 “(4) The school district receives a signed acknowledgment from the parent or foster
22 parent acknowledging receipt of the written statement described in subsection (2) of this
23 section.

24 “(5) The parent or foster parent provides informed and written consent for the place-
25 ment.

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

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

30 “(a) Provide the following information in writing to the parent or foster parent of the
31 student:

32 “(A) The school district’s duty to comply with the requirements of sections 1 to 6 of this
33 2023 Act;

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

36 “(C) The student’s right to have meaningful access to the same number of hours of in-
37 struction or educational services as the majority of other students who are in the same
38 grade within the student’s resident school district; and

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

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

45 “(c) Hold a meeting of the student’s individualized education program team to review the

1 student's abbreviated school day program and discuss whether to continue placement on the
2 abbreviated school day program.

3 "(d) If the parent or foster parent provides a signed acknowledgment under paragraph
4 (b) of this subsection and the placement on the abbreviated school day program continues,
5 include in the student's individualized education program or 504 Plan a written statement
6 that:

7 "(A) Explains the reasons the student was placed on the abbreviated school day program;
8 and

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

11 "(e) Inform the Department of Education about the student's placement on an abbrevi-
12 ated school day program, including:

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

17 "(B) The date the student began the abbreviated school day program and the start and
18 end dates of any prior formal or informal placements of the student on an abbreviated school
19 day program; and

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

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

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

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

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

31 "(A) Find that the placement is compliant with state and federal law and document in
32 writing:

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

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

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

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

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

4 “(B) The student’s progress toward on-time graduation with a high school diploma, a
5 modified diploma or an extended diploma.

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

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

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

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

18 “(c) Upon receipt of a written revocation or objection, the school district superintendent
19 shall ensure that, within five school days, the student has meaningful access to the same
20 number of hours of instruction or educational services that are provided to the majority of
21 other students who are in the same grade within the student’s resident school district.
22 Failure of the school district superintendent to comply with this paragraph shall cause the
23 school district to be found nonstandard under ORS 327.103 or 334.217.

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

29 “(b) If a complaint described in paragraph (a) of this subsection relates to a specific
30 student and is submitted by the student’s parent or foster parent, the Superintendent of
31 Public Instruction shall presume that consent has been revoked and is not required to con-
32 duct an investigation and the superintendent shall immediately order the school district to
33 provide to the student meaningful access to the same number of hours of instruction or ed-
34 ucational services that are provided to the majority of other students who are in the same
35 grade within the student’s resident school district. If the school district fails to comply with
36 the order, the superintendent shall find the school district is not in compliance with sections
37 1 to 6 of this 2023 Act.

38 “(c) If the superintendent finds that a school district is not in compliance with sections
39 1 to 6 of this 2023 Act, either after an investigation or as provided by paragraph (b) of this
40 subsection, the superintendent shall:

41 “(A) Enter an order that any students named in the complaint or identified in the course
42 of an investigation initiated under paragraph (a) of this subsection who are placed on an
43 abbreviated school day program in violation of sections 1 to 6 of this 2023 Act be provided,
44 within five school days of the final order, with meaningful access to the same number of
45 hours of instruction or educational services that are provided to the majority of other stu-

1 dents who are in the same grade within the student’s resident school district.

2 “(B) If the school district fails to comply with the order described in subparagraph (A)
3 of this paragraph within five days, find the school district nonstandard under ORS 327.103
4 or 334.217 until all students subject to the order and placed on an abbreviated school day
5 program in violation of sections 1 to 6 of this 2023 Act are provided with meaningful access
6 to the same number of hours of instruction or educational services that are provided to the
7 majority of other students who are in the same grade within the student’s resident school
8 district.

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

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

20 “(3) The failure of a school district superintendent to restore meaningful access to a
21 student within five school days as required by section 4 (3)(b)(B) of this 2023 Act or sub-
22 section (1)(c) of this section or to comply with an order issued under subsection (2)(c) of this
23 section to restore meaningful access to all students subject to the order may be grounds for
24 discipline by the Teacher Standards and Practices Commission under ORS 342.175.

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

26 “(1) Any abbreviated school days that are a component of discipline imposed in compli-
27 ance with ORS 339.250.

28 “(2) A student’s exclusion from schools due to the student’s immunization status or due
29 to the student’s exposure to a restrictable disease, as provided by ORS 433.235 to 433.284.

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

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

36 “(5) A student enrolled in a program described in ORS 339.129, 343.261 or 346.010, if the
37 student has access to the same number of hours of instruction or educational services as the
38 majority of other students enrolled in the same program as the student.

39 “(6) A student whose parent or foster parent has notified an education service district
40 that the student is being taught by a parent, legal guardian or private teacher under ORS
41 339.035.

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

43 “SECTION 7. ORS 343.161 is repealed.

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

1 Act.

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

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

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

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

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

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

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