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To: House Committee on Education
From: Richard Donovan, Legislative Services Specialist
Re: Senate bill 819, -A13 amendments
Date: May 8, 2023

Chair Neron, Vice-Chairs Wright and Hudson, members of the committee:

On behalf of the OSBA membership, including 197 school districts and 19 Education Service Districts, thank you for the opportunity to submit testimony on Senate Bill 819, specifically the -A13 amendments. We are supportive of the core concepts of the bill, but unfortunately the language of the bill remains expansive and problematic and we oppose the -A13 amendments.

The foundational policy change in the bill is contained in section 5 of the amendments. Under federal IDEA law, the school IEP team, including a parent, has final placement authority for which school or program a student attends. The -A13 amendments would go beyond IDEA and create an Oregon-specific right of the parent to revoke a placement and demand a full day for their student, likely at a neighborhood school.

Advocacy testimony indicates that this is necessary because some students, primarily students with disabilities, have been harmed by abbreviated day schedules, and that these students need different, better rights and processes. This change to parent revocation is the core solution in the bill. This represents a foundational change for the delivery of student services for school districts. Currently, in Oregon, our system involves an IEP team making a final placement for a student based, among other things, upon instructional hours and compliance with Division 22 requirements. This bill would upend that structure and move towards a comparison of any program or school with the schedule of a student's neighborhood school.

This bill, for school districts, will absolutely cost money and time. It will require new processes, including much more frequent meetings, and have new penalties, including potential licensure ramifications for staff and potential withholding of school funding. This is deliberate. Advocates for the bill have made a clear case that the existing processes in schools are not working for many students, and the solution that the bill advances is a massive increase in bureaucracy and processes and meetings.

The bill also raises bargaining challenges and workforce questions. Among other provisions, the compensatory instruction language in sec. 3, the licensed and classified requirements in sec. 2, the presumption requirements in sec. 5, and possibly the increased requirement for meetings across the bill are all changes in working conditions.

The concern with this bill goes beyond money and cost, however. The shift of comparing to a neighborhood school is the crux of our concern because it will potentially imperil programs and schools that are currently delivering full instruction to students but have a difference from a neighborhood school. Schools that model asynchronous instruction, different curricular offerings, or alternate schedules such as a charter or magnet school, etc. If there is even a few minutes difference in these schools schedules versus a neighborhood school, then all of these schools could be considered abbreviated day programs. If true, then every student with a disability that has chosen to attend these programs could be caught up in the bureaucratic structure of this bill. There are exceptions to these requirements in sec. 6 of the bill, but they are too narrowly constructed.

It does not have to be this way. We have tried to advocate for changes. Attached to this testimony is a sample table that we worked on to address concerns proactively. We have repeatedly raised these concerns with the bill proponents. While we agree with the need for the bill and the policy goals of the bill, we unfortunately oppose the -13 amendments.

Date: 4-30-23

TO: Rep. Neron and Rep. Hudson

FR: Comments inclusive of feedback from OSBA, COSA, OASED, NWRES, MESD

RE: SB 819A Workgroup Feedback

Thank you for the opportunity to provide feedback on SB 819A. After careful consideration of all of the information shared during the House workgroup process and review of proposed amendments and policy concepts, our organizations offer the following feedback.

Under both state and federal law currently, an IEP team may place a student on an abbreviated day program. While a parent or guardian must be part of the IEP process, their consent to an abbreviated day program is not ultimately required. Senate Bill 819A changes the relationship between the IEP team and parent or guardian by requiring informed consent before a student can be placed on an abbreviated day and allowing a parent to revoke that consent for the placement at any time. We want to make clear that we do not oppose this core tenet of SB 819A.

During the workgroup process, our respective organizations and members have become aware of additional implementation requirements that we believe have the potential to disrupt programs that are working well for students and capture students that may not be intended to be impacted by SB 819A.

One example of this is the comparison of instructional hours and educational services between the majority of students in a district and students attending programs with a schedule that is not the same, but would not currently be considered an abbreviated day program. Under current Oregon law, a school or program is not defined by a comparison of "bell to bell" schedules. A school district or charter school must adhere to the current state requirements for providing the minimum number of required hours of instruction to students. Each district can implement that in a way that works for their community; that is why we have many districts on four day school weeks, for example. SB 819A compares the total time in a school day and the definition would potentially impact many schools, programs, and course offerings that meet the current legal standard of meeting instructional hour requirements, but would now be considered abbreviated day programs under the bill.

We offer these comments for consideration by you, the workgroup, and the proponents of the bill in the spirit of smooth implementation of the bill and prevention of unintended consequences for students, parents, schools, and staff. Please note that the feedback is based on the A-Engrossed version of the bill as was considered by the workgroup.

Please feel free to contact any of the following with questions: Richard Donovan (OSBA), Morgan Allen (COSA), Stacy Michaelson (MESD), David Williams (NWRES), and Ozzie Rose (OASED).

Feedback on issues discussed by the House SB 819A workgroup - Based on A-Engrossed version of the bill

SB 819A Engrossed Policy	Policy Issue and Language Citation	Proposed/Possible Solutions
<p>IEP meetings every 30 days during the school year</p>	<p>Section 4 (page 4, lines 38-39) requires that school districts convene an IEP meeting every 30 days during the school year when a student is placed on an abbreviated school day.</p>	<ul style="list-style-type: none"> ● After the initial IEP meeting, only require an IEP meeting every 90 days during the school year (at least 3 times per year). ● Continue to allow a parent to request that the IEP team meet more frequently as currently allowed by law. ● Allow a parent to provide written notice to the district that they are satisfied with the current abbreviated day schedule for their child and do not wish to attend an IEP meeting every 90 days.
<p>Definition of Abbreviated Day by comparing hours of “Educational and Instructional Services”</p>	<p>Section 1 (page 1, lines 6-15) of the bill creates a definition of abbreviated school day that changes the current requirement to meet instructional hour standards to a comparison of school day schedules district wide for the majority of students. This will mean that any school or program that has a schedule that is currently legal and meets instructional hour requirements, but may be shorter “bell to bell,” compared to the majority of students, would likely be considered an abbreviated school day program.</p> <p>This would likely include alternative schools, charter schools, virtual charter schools, online programs, special schools or programs, ESD schools or programs, specialized programs like Long Term Care and Treatment (LTCT), programs for adjudicated youth like YCEP and JDEP, and opportunities generally available in high school such as credit by proficiency, dual enrollment in college courses, internships, or work based learning.</p>	<ul style="list-style-type: none"> ● We acknowledge that this will likely not be a consensus solution, but we believe the most straightforward way to resolve this issue is to define an abbreviated school day as any school or program that offers less than the required instructional hours. And then providing appropriate exemptions for the opportunities in high school (internships, dual enrollment, etc.) <p>We have provided alternative suggestions for these types of programs separately in the next three rows for consideration. We may also want to consider excluding passing time, recess, lunch, etc. from instructional and educational services calculations.</p>

<p>Comparison of ESD school schedule to the schedule of the resident district</p>	<p>Section 1 (page 1, lines 6-15) of the bill would also impact schools or programs run by ESDs that serve students from multiple districts. The bill would require that the program must have a school day schedule that compares with the students who come from the school district with the longest school day schedule.</p>	<ol style="list-style-type: none"> 1. ESD school or placement is not an abbreviated school day program if it meets the minimum required instructional hours and the ESD received parental consent for enrollment, or 2. Averaging the hours over a bi-weekly or monthly basis to account for staff professional development, early release, etc.
<p>Some school district programs or schools would be considered abbreviated school day programs</p>	<p>Section 1 (page 1, lines 6-15) of the bill would also impact schools or programs run by school districts that serve in-district students. The bill would require that the program or school must have a school day schedule that is compared to the “bell to bell” schedules of schools serving the majority of students in the district.</p>	<ul style="list-style-type: none"> ● School district program or special school is not an abbreviated school day program if it meets minimum instructional hours, the parent or guardian gives consent and is informed of the right to return to a comprehensive neighborhood school program at any time.
<p>Some specialized services and programs for students are currently exempted from the provisions of SB 819</p>	<p>Section 6 (page 7, line 45 thru page 8, line 2) exempts students in Hospital Programs, adult regional correctional facilities, and those attending the School for the Deaf from the provisions of SB 819A. The bill also appears to exempt home-schooled students in Section 6 (Page 8, lines 3-5). We believe that there are additional specialized services and programs that should be exempted from the provisions of SB 819A. We have also provided suggestions for options generally available to high school students.</p>	<ul style="list-style-type: none"> ● Programs for exemption include: <ul style="list-style-type: none"> ○ Long-Term Care and Treatment (LTCT) ○ Students accessing special education services through a school district or ESD that are attending a private school. ○ Exempt alternative education programs if the program meets minimum instructional hours or has an exemption from the State Board of Education to operate a schedule to meet the needs of students as currently allowed, the enrollment is not an IEP or 504 placement, and the parent or guardian gives permission and is informed of the right to return to a comprehensive high school program at any time.

		<ul style="list-style-type: none"> ○ Exempt long term care and treatment, pediatric nursing programs, and JDEP/YCEP. ● Exemptions for magnet schools, charter schools, virtual charter schools, and online programs are allowed if: <ul style="list-style-type: none"> ○ These programs are required to be available for all students to apply for. We are having a difficult time coming up with conditions for exemption other than the school or program must meet minimal instructional hour requirements. ● For experiences generally available in high school such as online programs, dual credit/college programs, work based learning, credit by proficiency, internship opportunities, and accelerated learning programs - exempt these opportunities if the following conditions are met: <ul style="list-style-type: none"> ○ The school or program is available to all students in the district to participate or enroll in; ○ Enrollment includes parental consent and notification of the right to a full school day and to return to a comprehensive program at any time.
<p>Definition of “student with a disability” and the application of SB 819 to various student groups - who is covered by the bill</p>	<p>Section 1 (page 2, lines 24-33) defines which students are considered a “student with a disability.” We believe the definition needs to be narrowed to avoid inadvertently overidentifying students.</p>	<ul style="list-style-type: none"> ● Revise definition of a “student with a disability” to: <ul style="list-style-type: none"> ○ Those eligible for special education and related services; ○ Students with a current 504 plan; ○ Students who are being evaluated for an IEP or 504 Plan during the time they are being evaluated; and; ○ Students who have not had their IEP or 504 Plan formally closed.

<p>Superintendent review of students placed on abbreviated school day programs</p>	<p>Section 4 (page 5, lines 32-39) requires a superintendent to review placement of students on abbreviated days every 60 calendar days, excluding summer break. We believe that this should line up with the school schedule by semester or trimester.</p>	<ul style="list-style-type: none"> • For students in high school or middle school, require review each semester or trimester once the student has been on an abbreviated day program for at least 90 calendar days, excluding summer break. • For elementary students, require a review at least every 90 school days after the student has been on an abbreviated day for 90 consecutive calendar days, excluding summer break. • Limit review to Superintendent of the resident school district; ESD superintendent does not also have to do the review.
<p>Synchronous instruction requirement</p>	<p>Section 1 (page 2, lines 12-13) defines “meaningful access” to include synchronous instruction. We believe that many online programs or virtual charter schools may be set up in an asynchronous fashion, ie. the lessons or classes may be able to be completed independently according to the student’s own self-paced schedule or within a broad window of time that is not happening in real time in a classroom or online classroom setting.</p>	<ul style="list-style-type: none"> • Add language to the bill allowing for asynchronous instruction for online programs or virtual charter schools where the student is on an abbreviated day and the parent or guardian has provided consent.
<p>Proposed addition of 5 day return process</p>	<p>At the final workgroup meeting, Meghan Moyer and Dr. Sue Rieke-Smith gave a high-level overview of a plan to include more detail when a parent or guardian revokes consent and a student needs to be returned in 5 school days. It included an extension of the 5 day timeline if the parent consents and ODE is notified, for example.</p>	<ul style="list-style-type: none"> • We support the inclusion of this proposal and would ask the workgroup to consider adding a 5 day extension to the return of the student if the district notifies ODE to demonstrate intent to be in compliance but describes circumstances that may be a barrier to 5 day return and allows for a 10 day return, possible without parental consent.

Reporting to the legislature	The work group’s final meeting included a request to have a report back to the Legislature.	<ul style="list-style-type: none"> ● Include a provision for a report back to the Legislature after the first year of implementation.
Additional provisions to consider outside of SB 819 (in another vehicle).	We believe there are additional items that should be considered outside of SB 819 to help with oversight and resolution around issues that arise related to abbreviated school days. We believe parents and students would appreciate a system for complaints that exists outside their district. Unfortunately, we only briefly mentioned these concepts in the workgroup and did not have time to discuss them fully. We want to emphasize these proposals will need to be done in another legislative bill as they would likely add to the fiscal and should be considered independently so as not to slow down SB 819A.	<ul style="list-style-type: none"> ● SB 1578 (2022) would have created two positions to serve as ombudspeople to act as a resource for families and as a way to avoid violations of the rights of students. We would suggest funding for these positions in another vehicle. ● SB 1578 also included increased ODE oversight of abbreviated days and we suggest including language to increase oversight similar to page 1, lines 5-12 of which read, in part: “The State Board of Education shall adopt by rule procedures for the Department of Education to investigate and resolve allegations of violations of state or federal law... rules adopted by the board under this section must allow the department to immediately investigate allegations that a school district or an education service district has violated a state or federal law if the department has reasonable cause to believe that failure to immediately correct the violation”