

FISCAL IMPACT OF PROPOSED LEGISLATION

Measure: SB 819 - B17

82nd Oregon Legislative Assembly – 2023 Regular Session

Legislative Fiscal Office

Only Impacts on Original or Engrossed Versions are Considered Official

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Measure Description:

Modifies abbreviated school day program requirements. Resolves potential conflict with Senate Bill 992 (2023) if it becomes law.

Government Unit(s) Affected:

Department of Education, School Districts, Teacher Standards and Practices Commission, Department of Justice

Summary of Fiscal Impact:

Costs related to the measure are indeterminate at this time- See explanatory analysis.

Analysis:

Senate Bill 819, as amended by the -B17 amendment, repeals and replaces the abbreviated school day program requirements for students with disabilities in public school districts and education service districts.

The measure requires school districts to document reasonable efforts to provide meaningful access to full school days, before considering or recommending a student with a disability for an abbreviated school day program. School districts may not consider, recommend, or implement an abbreviated school day program due to inadequate staffing available for instruction or educational services. School districts also may not unilaterally place a student on an abbreviated school day.

The measure allows a student's individualized education program (IEP) team to recommend an abbreviated school day based on the student's individual needs, but only if the student's parent or foster parent has had an opportunity to meaningfully participate in a discussion of the student's placement; the school district documents one alternative that was offered, including the specific provisions of the abbreviated school day program in question; and the student's parent or foster parent is provided written information and gives informed written consent.

Once a student with a disability is placed on an abbreviated school day program, school districts must:

- Provide certain information in writing to the student's parent or foster parent every 30 days during the school year;
- Obtain a signed acknowledgement from the parent or foster parent that the parent received the information in writing and does not withdraw consent every 30 days during the school year;
- Hold a meeting of the student's IEP team to review and discuss whether to continue the student's placement in an abbreviated school day program;
- Once a parent provides a signed acknowledgement, include in the student's individualized education program, or 504 Plan, a written statement that explains the reasons for the placement and why other reasonable options were not implemented; and
- Inform the Department of Education (ODE) about the student's placement in an abbreviated school day program.

A school district superintendent must review a student's abbreviated school day program placement of the student is placed on an abbreviated school day program for 90 or more cumulative calendar days during a school

year or during two or more consecutive school years. When required to do so, school district superintendents must review a placement and must document in writing whether the placement complies or does not comply with state and federal law, including any plan for credit recovery and comprehensive services, the student's progress towards on-time graduation, and any findings or documentation that, within five school days of making the finding, must be provided to the student's parent or foster parent. If a parent or foster parents revokes consent or objects to an abbreviated school day program, the school district superintendent must ensure that the student has meaningful access to a full school day within five school days, or by the start of a new school year.

When ODE receives a complaint or has cause to believe a school district is not in compliance with the measure, ODE must initiate an investigation and inform the school district of any noncompliance within 30 days of receiving the complaint or having caused to believe that the school district is noncompliant, unless the complaint was made by a student's parent or foster parent, in which case no investigation is required and the Superintendent of Public Instruction (SPI) must immediately order the school district to restore the student to a full school day. If a school district fails to comply with the order within five school days, SPI must find the school district nonstandard; if a school district fails to comply with the order within 10 school days, SPI must immediately withhold State School Fund moneys, on a per-student basis, that would otherwise be distributed to the school district. If a school district is found to be noncompliant, SPI must require the school district to provide compensatory education to the student that is equivalent to at least one hour of direct instruction for every two hours of instruction that were lost due to placement on an abbreviated school day program. Failure of a school district superintendent to restore meaningful access to a student within five school days or to comply with an SPI order may be grounds for discipline by the Teacher Standards and Practice Commission, subject to certain exceptions.

The measure applies to any student with a disability who is placed on an abbreviated school day program and who currently has a 504 plan or an IEP, on or after its effective date. The measure takes effect on passage.

Within 14 days of the effective date, each school district must provide notice to the parents or foster parents of every student with a disability who was on an abbreviated school day program at the end of the 2022-23 school year or had an abbreviated school day program for more than 30 days during the 2022-23 school year.

Department of Education

The measure is anticipated to have a fiscal impact on ODE; however, the duration and size of the fiscal impact is indeterminate at this time. The bill imposes new requirements on school districts that place students with disabilities on abbreviated school day schedules and creates new requirements, including enforcement actions, for ODE to respond in instances of noncompliance with the law. The number of such instances of noncompliance that may occur is currently unknown. The measure increases the population of students for whom abbreviated school day protections apply by extending the definition of "student with a disability" to those students with disabilities under section 504 of the Rehabilitation Act of 1973 who are eligible for a 504 plan. The size of this population is currently unknown.

Federal law requires ODE to ensure that students with disabilities receive a free appropriate public education in programs that meet federal and state requirements. This measure adds new state requirements that fall under existing federal guidelines and thus is anticipated to increase activities of general supervision, but the size of that increase is currently unknown. It is anticipated that in the first year after passage of the measure, ODE may experience a "spike" in complaints and parental revocations of consent to an abbreviated day schedule that require a significant amount of work; however, because the measure imposes an administrative burden on districts that use abbreviated school schedules, the workload related to complaints is anticipated to decrease on an ongoing basis.

The measure has an emergency clause and takes effect on passage. Rulemaking activities will need to start immediately, as will providing information to school districts on the new law and on activities that districts will need to undertake immediately, such as notifying families of students with disabilities who were on abbreviated

school day programs at the end of the 2022-23 school year or had an abbreviated school day program for more than 30 days during the 2022-23 school year.

The Department anticipates that it would need two new staff teams to fully address the measure's requirements. The first team would address violations of the measure that fall under the scope of ODE's responsibilities per the federal Individuals with Disabilities Education Act (IDEA). The Department has identified the following positions as those that would be needed to implement the measure:

- One Education Programs Manager 3 (0.92 FTE) position for team management
- Two Administrative Specialist 2 positions (1.84 FTE) to help coordinate, track, and monitor the investigative processes
- Five Education Specialist 2 positions (4.60 FTE) to provide technical assistance to school districts, monitor on-line educational programs, track corrective actions, and undertake other activities related to the implementation of the bill.

The cost of these positions, related services and supplies, and legal support costs is \$1,975,307 in the 2023-25 biennium.

The second team would address violations of the measure as they pertain to students eligible for a 504 Plan under the Rehabilitation Act of 1973, a federal civil rights law that prohibits discrimination based on disability. This population of students is currently unknown, in part because their eligibility for Section 504 protections may not yet have been determined. ODE will need to provide training and technical assistance to school districts in order for districts to guide parents and families through the eligibility determination process. To address complaints and investigations under the measure and calls to ODE about Section 504 eligibility and disability discrimination, the Department has identified the following positions as those that would be needed:

- One Operations and Policy Analyst 4 (legal specialist) position (0.92 FTE) to lead rulemaking, civil rights complaints and appeals review, writing orders, and other legal tasks
- One Administrative Specialist 2 (0.92 FTE) to support the above legal specialist
- One Education Specialist 2 position (0.92 FTE) to provide technical assistance to districts and to review and investigate complaints of noncompliance
- One Program Analyst 4 position (0.92 FTE) to provide additional technical assistance to districts, parents, and families and to support the legal specialist above.
- One Administrative Specialist 2 position (0.92 FTE) in the Office of Finance and Information Technology, to track instances of State School Fund withholding from districts. The number of instances where this withholding would have to be calculated is currently unknown.

The cost of these positions, related services and supplies, and legal support costs is \$1,165,013 in the 2023-25 biennium. The total cost of both teams is \$3,140,320 General Fund and 13 positions (11.96 FTE) in the 2023-25 biennium.

The Legislative Fiscal Office notes that the Department is currently the subject of a federal class action lawsuit (J.N. v. Oregon Department of Education) brought by parents of children with disabilities against the State for denying children with disabilities the opportunity to attend school for a full day. This litigation places added pressure on the Department to implement this measure promptly and thoroughly, which is considered as part of this fiscal impact statement, despite the many currently unquantified aspects of the measure.

LFO further notes that other investments in the 2023-25 budget will support both ODE and districts to address the requirements of this measure. HB 5014 (2023) includes Federal Funds expenditure limitation and position authorization for one Research Analyst 3 position to support the Department's new Abbreviated School Day Action Team. Additional investments of federal IDEA funds made by the Department include \$2.5 million for a regional special education support network and \$2.5 million for a statewide technical assistance center, both of which are intended to provide additional support to districts, parents, and families of students with disabilities. SB 283 (2023) provides ODE with \$5 million General Fund for a new Safe School Culture grant program. SB 5506 (2023) contains an \$8.9 million special purpose appropriation for ODE, to provide stipends to educators working in special education in the 2024-25 school year.

School Districts

The measure is anticipated to have a fiscal impact on school districts; however, the impact is indeterminate at this time. The fiscal impact would only affect those school districts with students with disabilities in an abbreviated school day program. The measure imposes requirements on school districts that may or may not require greater use of district resources than are being used now, such as for providing additional qualified licensed teachers and/or qualified classified staff to provide meaningful access to instruction as defined in the measure. New requirements are imposed on school districts for more frequent reviews of a student's abbreviated school day program, some additional reporting, superintendent review of a student's abbreviated school day program if the student is placed on an abbreviated school day program for ninety or more cumulative calendar days during a school year or during two or more consecutive school years, and the provision of two hours of compensatory education for each hour lost due to a student's being placed in an abbreviated school day program in violation of the measure. Additional penalties for violations of the measure include withholding, on a pro rata basis, State School Fund moneys that would otherwise be distributed to the school district.

Other Agencies

The measure is anticipated to have a minimal fiscal impact on the Department of Justice and the Teacher Standards and Practices Commission.