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Colt Gill

Deputy Superintendent of Public Instruction

HB 2060: Student Success Act Technical Changes

House Rules Committee

April 30, 2021

Chair Smith Warner, Vice-Chairs Drazan and Holvey, and members of the committee, I am Colt Gill, Director for the Oregon Department of Education (ODE) and Deputy Superintendent of Public Instruction. Thank you for the opportunity to provide written testimony in support of House Bill 2060 and proposed changes, which you can find on the last page of this written testimony.

The Promise of the Law Remains

There is a widespread sense that the two-years of listening done by the Joint Committee for Student Success was incredibly important and led to legislation that holds real promise of educational change in Oregon. The law embeds key principles of authentic community engagement with special attention to focal students along with families and staff. It puts the application of an equity lens in relationship to strategic planning focused on student well-being and solving long-standing academic disparities.

During the initial implementation period, the Department has identified some modifications to the Student Investment Account and Statewide Education Initiatives Account that will help support the intent and purpose of the Student Success Act (HB 3427).

HB 2060 has gone through extensive public input before bringing it to the Legislature. HB 2060 is supported by the Governor's Racial Justice Council and has community support through the Oregon Partners for Education Justice.

Changes in HB 2060

Section 1 - "Economically Disadvantaged" Student Definition

First, HB 2060 directs the State Board of Education to define in rule "economically disadvantaged" students for the purposes of the Student Investment Account (SIA). Although free or reduced price lunches under the United States Department of Agriculture's current Income Eligibility Guidelines is one commonly used method for "economically disadvantaged students," it does not completely capture the nuances of economic disadvantage. For one, not

all who are eligible for free and reduced price lunches apply for the program. Second, families at or below 185 percent of the federal poverty level are eligible for these programs. While this program's measurement is great in the case of expanding access to nutritional meals to children who may need it, it does not give us the full complex picture and measurement of children who are in poverty. Lastly, many schools are moving to community eligibility under the National School Lunch Program, which makes tracking individual student eligibility more difficult. Having the State Board of Education develop a definition can help give us more detailed information about the students we serve in Oregon.

Making this definition change will not impact funding for school districts in Oregon. The way the funds are distributed in the SIA is based on the school fund formula. This definition we are currently talking about for "economically disadvantaged" is separate from the definition that exists in the State School Fund. This request for the State Board of Education to define "economically disadvantaged" is only for measuring students overcoming academic disparities. It does not impact the financial part of the Student Success Act in any way.

Sections 2 & 3 - Optional Targets for Student Mental & Behavioral Health

HB 2060 allows the State Board of Education through community engagement to establish **optional** targets for student mental and behavioral health needs for the purposes of the Student Investment Account (SIA) that the district may decide to use. School districts would still have local control and autonomy to decide how to invest their SIA funds within the allowable uses and how to report their progress in this dimension. While grant recipients are focused on student mental and behavioral health outcomes, starting a conversation on how to develop a statewide framework for these targets will allow all grant recipients to have a better idea of what expectations and goal setting could look like.

ODE does not intend to hold the new potential "targets" in HB 2060 to the same requirements of "performance growth targets" mentioned by the SSA. The purpose of this is to create a measurement tool, and it will not tie to accountability as the "performance growth targets" do or be punitive in nature. This is an optional tool for districts to use to gauge whether they are making the difference in their schools they hoped to make. Local control is still very much at the forefront: school districts may choose to use these optional targets, create their own targets or markers, or simply not use these targets and use only the original four "performance growth targets" required by the SSA.

In the rulemaking process for HB 2060, the Oregon Department of Education and the State Board of Education are committed to rigorous and sincere community engagement, making

space at the table for all, including school counselors, community organizations, education associations, students, and student mental and behavioral health experts. We anticipate incorporating feedback from all of our education and community partners to develop rules that make sense for our students and the people responsible for supporting them.

Sections 4 & 5 - Student Investment Account Eligible Applicants

This proposal expands the list of eligible applicants to include Oregon School for the Deaf, Youth Corrections Education Program, Juvenile Detention Education Program and the four state sponsored charter schools not sponsored by the school district for the purposes of the Student Investment Account. Note that the proposed amendment does remove the Oregon School for the Deaf from this list of eligible applicants.

The original law effectively left out the State Board of Education sponsored charter schools unless they qualified to apply as eligible applicants because of their demographics. Unlike other public charter schools, the four state sponsored charters do not have a district sponsor and could not be invited to participate in a district's SIA application. HB 2060 as currently drafted only allows state sponsored charters to participate with district applications if not eligible because of demographics.

Sections 6 & 7 - Student Success Plan Updates

These sections of the bill make technical changes to our Student Success Plans. The African American/Black Student Success Plan is updated to remove language stating "a member of a student group that is not covered under an existing culturally specific statewide education plan" from the statute. (The Department now has authority to identify other student groups for statewide plans in ORS 327.254.) It would also allow education service districts to receive grants under the African American/Black Students Success Plan.

Additionally, the Latino/a/x & Indigenous Student Success Plan would be changed to allow education service districts and tribal governments to receive grants under the plan.

Sections 8 & 9 - School Nutrition Program

During the 2020 short session, ODE introduced [SB 1520](#). Section 8 and 9 have the same changes we [requested in 2020](#). Section 8 specifically does the following: the first recommended technical fix is to revise the definition of "eligible student" in Section 26 (1) of the School Breakfast & Lunch Program. ODE proposes to replace "student who is eligible for free or reduced price lunches based on USDA current income guidelines" with "student who is eligible

under the national school lunch program or school breakfast program to receive lunch or breakfast at no charge or reduced price.” As it currently reads, this definition leaves out students who are:

- a) Certified for meal benefits through methods other than income, e.g. Homeless, foster or migrant students, and
- b) Attending schools that use population eligibility to access the National School Lunch Program and School Breakfast Program, e.g. Community Eligibility Provision and Provision 2.

Within these two instances, individual students are not determined eligible for free and reduced price breakfast and lunches by income eligibility guidelines. For Community Eligibility Provision (CEP) and Provision 2, a formula is used to allocate meals into reimbursement categories. An estimated 329 schools serving over 120,000 students would not be required to implement Breakfast after the Bell under the current definition of eligible student.

Section 9 modifies school reimbursement rates for purposes of schools that provide free or reduced price meals under the National School Lunch Program or School Breakfast Program. During rulemaking, community partners and stakeholders asked ODE to propose replacing the current language: “The actual amount that a student would have been required to pay for the breakfast or lunch, taking into consideration if the student qualified for a free or reduced price lunch” with “The reimbursement rate established by the United States Department of Agriculture for reimbursable meals.” The current language is problematic as it will result in different rates of state reimbursement per meal because of different meal prices among grade levels— elementary, middle, and high—and between school districts. Technical stakeholders expressed concern about fairness because school districts could approve high paid meal prices in order to receive more state reimbursement. In federal regulations the setting of meal prices is a local level decision, preventing a state-set price.

Section 12 - Alignment to Family Educational Rights and Privacy Act

The Family Educational Rights and Privacy Act (FERPA) generally requires a parent’s written consent prior to the disclosure of information from a student’s education record.

However, one of the exemptions reads: “[a]n education agency or institution may disclose personally identifiable information from an education record to appropriate parties...in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.”

What does this have to do with eliminating civil action? Under the federal standard, educators can err on the side of safety when deciding whether to release information from an education record, in part because there is no ability to bring a civil action against a school or a school employee for FERPA violations and, therefore, errors in disclosure carry little risk for educators.

Note that the proposed amendment removes this change and maintains current Oregon standard for a private right to action.

Thank you for the opportunity to provide comments, and we welcome any questions you may have.

-2 Amendment & -3 Amendment

Based on feedback, ODE has agreed to amend out the following sections:

- Removes Section 4, (b) The Oregon School for the Deaf
- Remove Section 5, (B) For the Oregon School for Deaf, the average daily membership multiplied by 2.0, as calculated for the current school year and the previous school year and using the greater amounts.
- Remove: ORS 30.864 is repealed.
- Remove Section 12: The Repeal of ORS 30.864 by section 11 of this 2021 Act does not affect any civil action filed in a circuit court before the effective date of this 2021 Act.

These changes will remove Oregon School of the Deaf from being added to the list as eligible for Student Investment Account funds and will keep the current Oregon standard of a private right of action intact.

The -3 amendment also makes additional changes regarding the Intensive Coaching Program (Student Success Teams) which provides assistance to districts who are not meeting targets. Since the Student Success Team is an initiative invested over a four year term, ODE is requesting a dedicated account be created that ensures resources can be maintained beyond the two year biennial budget period. The proposal would amend ORS 327.254 to establish a dedicated treasury account for the Intensive Coaching Program, an initiative funded directly from the Statewide Education Initiative Account (SEIA). There is no anticipated fiscal resulting from this change.

Respectfully submitted,
Colt Gill

