

Memorandum

PREPARED FOR: Chair Neron

DATE: April 26, 2023

BY: Lisa Gezelter, Legislative Analyst

RE: Abbreviated school days guidance in other states



LPRO
LEGISLATIVE POLICY
AND RESEARCH OFFICE

This memorandum responds to your request for information regarding abbreviated days guidance in other states. Due to time constraints, staff did not complete a full 50-state survey. Initial searches resulted in locating guidance from nine other states issued by the state education agencies summarized below. Guidance to districts should be considered in the context of a state's regulatory framework for local districts, therefore information on each state's authority over local districts is also included. Based on a scan of readily available information online, we identified the nine states that are included in this memorandum.

Hyperlinks to statutes in this memorandum direct users to Westlaw, a subscription-based service. For any reader without a subscription, staff will provide the full text of any given statute upon request.

The states included in our review are:

[Idaho](#)

[Michigan](#)

[New Jersey](#)

[New York](#)

[North Dakota](#)

[Pennsylvania](#)

[Rhode Island](#)

[Texas](#)

[Washington](#)

Additionally, this memorandum provides a summary of [Senate Bill 819 A \(2023\)](#) within the context of Oregon's regulatory framework.

Idaho

[Link to guidance](#)

Summary of guidance: Beginning on 11th day of removal, educational services must be provided to the student. The guidance defines informal removal as actions taken outside of the Individuals with Disabilities Education Act (IDEA) discipline provisions by school personnel in response to a student's behavior which results in the student being excluded for part or all of a school day, or for an indefinite period of time. Informal

removals are counted as suspensions or disciplinary removals. Guidance states explicitly that “Students eligible for special education are entitled to the same length of school day as their nondisabled peers.” Requires teams to consider how the student will continue accessing the supports and services outlined in their individualized education program (IEP) if the length of the school day is decreased. Requires a manifestation determination review (MDR) after 10 consecutive days of removals. Regardless of the outcome of the MDR, the district is required to provide educational services to the student to the extent necessary to allow the student to continue to participate in the general education curriculum. The guidance also establishes reporting requirements.

Regulatory framework: Idaho gives its state board the authority to enforce the state’s school laws through its executive departments and offices.¹ State law also gives the State Board “supervision and control” over local school districts.² The state requires that local boards govern their districts in compliance with state law and administrative rules.³ Idaho also requires the State Board to set standards for accreditation of secondary schools. Accreditation can be withdrawn if schools do not conform to standards.⁴

Michigan

[Link to Guidance](#)

Summary of guidance: School days should not be shorter than school days for students without disabilities. Shortened school days are only allowed when the IEP team determines the shortened day is required to address the student’s unique needs. The Michigan Department of Education (MDE) advises that giving a student less than a full school day “is contrary to IDEA’s goal that an IEP result in appropriate progress.” MDE’s guidance requires that IEP teams consider and document other ways to meet students’ needs. Shortening school days to manage behavior is prohibited.

Regulatory framework: In general, Michigan conditions the receipt of state funding on compliance with the law. School officials or board members who neglect or refuse to carry out their duties as required for the district to receive state aid are guilty of a misdemeanor and can be imprisoned for 90 days or fined \$1,500.⁵ Michigan requires its school districts to apply for permission to provide special education programs that do not comply with state law. State law outlines a process for submitting the application and criteria for approval.⁶ Michigan law authorizes the withholding of state funding from

¹ [Idaho Code 33-107](#)

² [Idaho Code 33-116](#)

³ [Idaho Code 33-512](#)

⁴ [Idaho Code 33-119](#)

⁵ Mich. Comp. Laws [388.1761](#)

⁶ Mich. Comp. Laws [380.1702](#)



districts that do not submit complete data.⁷ Michigan conditions allocation of nonmandated payments on compliance with certain statutes.⁸ The Superintendent of Public Instruction has the authority to assign some districts as partnership districts. Those districts must have partnership agreements with the Department of Education in order to receive state funding. Partnership districts must make changes based on a comprehensive review of data.⁹ The Department of Education can withhold state funding from districts that do not submit required deficit elimination plans.¹⁰

New Jersey

[Link to guidance](#)

Summary of guidance: New Jersey’s guidance echoes and provides links to federal guidance, which defines informal removals as action taken by school personnel to remove a student for part or all of the school day without invoking the Individuals with Disabilities Education Act’s (IDEA’s) disciplinary procedures. The guidance restates the federal requirement that informal removals are subject to the discipline procedures outlined in the IDEA.

Regulatory framework: New Jersey’s State Board of Education has general supervision and control authority, but also has authority to enforce its rules, administer oaths, examine witnesses, compel testimony, and issue subpoenas.¹¹ The Commissioner of Education (Commissioner) is required to enforce all rules enacted by the State Board, and also has the ability to administer oaths, take affidavits, and examine witnesses.¹² The Commissioner has jurisdiction to hear and determine controversies and disputes arising under the state’s education laws, and their decisions are final.¹³ New Jersey has county superintendents who provide oversight for school districts within their county.¹⁴

The Commissioner is tasked with evaluating the thoroughness and efficiency of all public schools to “ensure that all districts are operating at a high level of performance.”¹⁵ The Commissioner has the ability to place a district under state intervention, including

⁷ Mich. Comp. Laws [388.1614](#)

⁸ Mich. Comp. Laws [388.1622b](#)

⁹ Mich. Comp. Laws [388.1622p](#)

¹⁰ Mich. Comp. Laws [388.1702](#)

¹¹ N.J. Stat. Ann. [18A:4-10](#), [18A:4-15](#), [18A:4-17](#), [18A:4-18](#), [18A:4-19](#)

¹² N.J. Stat. Ann. [18A:4-23](#) and [18A:4-31](#)

¹³ N.J. Stat. Ann. [18A:6-9](#) and [18A:6-9.1](#)

¹⁴ N.J. Stat. Ann. [18A:7-8](#)

¹⁵ N.J. Stat. Ann. [18A:7A-10](#)



ordering budgetary changes or other measures they deem necessary. For these districts, the State Board can approve the appointment of up to three additional members of a local board or appoint a new superintendent.¹⁶ Districts remain under full state intervention for three years, and then may be placed under partial state intervention or designated as transitioning to local control.¹⁷ In cases where local districts have negative audit results, the Commissioner can appoint a state monitor to oversee district finances, or can order a compliance audit if they suspect that district spending is not in compliance with state education laws or regulations.¹⁸ New Jersey requires local boards to enforce the rules of the State Board.¹⁹

New York

[Link to regulations](#)

Summary of regulations: New York publishes its regulations rather than a specific guidance document. In its regulations, New York limits the ability of an administrator to remove a student with a disability to five days or less. A superintendent is required to have the recommendation of a hearing officer to order the placement of a student with a disability into an interim alternative education setting for up to 10 days. Students may not be removed for 5 or 10 days if the removal would constitute a pattern of suspensions or removals unless a manifestation team has determined that the behavior was not a manifestation of the student's disability. Superintendents may order a change in placement to an interim alternative education setting for certain infractions, including inflicting serious bodily injury, carrying or possessing a weapon, or knowingly possesses or uses illegal drugs at school. Periods of suspension or removal may not exceed the time that a nondisabled student would be suspended. Impartial hearing officers have authority to order a change in placement to an interim alternative education setting in dangerous situations. State regulations require that students with disabilities be provided with services during suspensions or removals. During suspensions or removals of more than 10 days that constitute a disciplinary change in placement, students with disabilities must be provided with services necessary to enable the student to continue participating in the general education curriculum and make progress toward goals.

Regulatory framework: New York allows parties aggrieved by school board or superintendent actions to appeal those actions to the Commissioner of Education for

¹⁶ N.J. Stat. Ann. [18A:7A-15 et seq](#) and [18A:7A-34 et seq](#)

¹⁷ N.J. Stat. Ann. [18A:7A-49](#)

¹⁸ N.J. Stat. Ann. [18A:7A-55](#) and [18A:7A-60](#)

¹⁹ N.J. Stat. Ann. [18A:11-1](#)



redress, and allows the Commissioner to stay local proceedings, regulate the practices being contested, dismiss an appeal, and make orders (including directing spending) necessary to affect the decision.²⁰ New York's Commissioner of Education can remove local board members, superintendents, or other school officers after a hearing if they are members of subversive organizations or if they have willfully violated or neglected their duty, violated any law pertaining to schools or educational institutions, or willfully disobeyed any administrative rules.²¹

North Dakota

[Link to guidance](#)²²

Summary of guidance: North Dakota's guidance defines any removal lasting more than 10 total days (cumulative or consecutive) or any removals constituting a pattern as a change of placement and requires school districts to follow procedures for long-term removals. Further, the guidance states that frequent and repeated removals can reveal a pattern of exclusion that suggests school personnel are making changes of placement without going through the IEP process. North Dakota's guidance to school districts outlines required steps for students removed for more than 10 days, including a determination of change in placement, parental notification, and an IEP team meeting to conduct a manifestation determination. If the behavior was related to the student's disability or the school district's failure to implement the IEP, the student must immediately be returned to their current placement. An exception is made if a parent and district reach an agreement, if the offense is related to controlled substances, weapons, or serious bodily injury, or for removal to an interim alternative educational setting by an impartial hearing officer. A behavior assessment is conducted and a behavior intervention plan is implemented. If the manifestation determination is that the behavior was not related to the student's disability, the student is subject to the same disciplinary procedures as students without disabilities. North Dakota's guidance establishes appeals and due process for parents and students overseen by a hearing officer. North Dakota's guidance also establishes protections for children not yet eligible for special education services.

Regulatory framework: In North Dakota, the Superintendent of Public Instruction supervises elementary and secondary education, including determining the outcome of appeals of local decisions and accrediting schools.²³ Additionally, local districts must

²⁰ N.Y. [Education Law, tit 1, art. 7, sect. 310 and 311](#)

²¹ N.Y. [Education Law, tit 1, art 7, sec. 306](#)

²² North Dakota issued its guidance in 2019, prior to more recent guidance issued in 2022 by the U.S. Department of Education.

²³ N.D. Cent. Code [15.1-02-04](#) and [15.1-02-11](#)



obtain approval to operate by submitting compliance reports that indicate they meet certain standards. For schools that do not meet standards, the Superintendent of Public Instruction is required to notify parents and withhold some state funding.²⁴

Pennsylvania

[Link to guidance](#)

Summary of guidance: Pennsylvania requires school districts to determine whether the disciplinary exclusion being contemplated is a change in educational placement. The removal is considered a change in educational placement if any of the following apply:

1. The exclusion is for more than 10 consecutive school days;
2. The exclusion, when cumulated with other disciplinary exclusions in a single school year, exceeds 15 school days; or
3. The exclusion (for any length of time) involves a student with an intellectual disability.

Students may not be removed if their behavior is a manifestation of their disability with specific exceptions, including when the parent agrees to the change in placement. For students eligible under IDEA or Section 504, districts must conduct and document a manifestation determination prior to a disciplinary change in educational placement. Pennsylvania allows 45-day removals to interim alternative educational settings for students who carry or possess a weapon at school, students who knowingly possess or use illegal drugs at school, or students who inflict serious bodily injury on another person while at school. Removals may last longer if a hearing officer orders the change in placement. Pennsylvania's guidance requires a manifestation determination, and if the behavior is a manifestation of the disability, requires a functional behavior assessment and a behavior intervention plan. Due process hearings that challenge disciplinary exclusions must be expedited and are adjudicated by the Office for Dispute Resolution.

Any student with a disability removed from their current placement must continue to receive educational services so that the student can continue to progress in the general education curriculum. If all procedural requirements are met, and the IEP team recommends a disciplinary exclusion which would constitute a change in educational placement, the district must follow the notice requirements. If parents dispute the proposed change in educational placement, they can request a due process hearing.

²⁴ N.D. Cent. Code [15.1-06-06](#)



For students with intellectual disabilities, parental agreement is required for a removal. Districts can appeal to the Pennsylvania Department of Education's Bureau of Special Education to request permission. Pennsylvania does provide protections for students who are not yet eligible for special education, and specifically prohibits the cessation of free appropriate public education (FAPE).

Regulatory framework: In general, Pennsylvania specifies the role of the State Board of Education and the Department of Education separately for each area of statute, as it does for enforcement. Pennsylvania allows the withholding of state funding from districts that do not comply with certain standards.²⁵ Pennsylvania requires districts to submit annual financial reports to the Secretary of Education, and the state can order forfeiture penalties against districts that fail to submit their reports on time.²⁶ The Department must maintain an early warning system to monitor the financial health of districts. Districts can be placed on financial watch status, financial recovery status, or placed in receivership under certain circumstances.²⁷

Rhode Island

[Link to guidance](#)

Summary of guidance: Rhode Island provides a flow chart to its districts outlining the requirements and procedures for school removals. For students with an IEP, only three types of removals are allowed: in-school suspensions, out-of-school suspensions, or interim alternative educational settings. For removals of more than 10 days, the state requires the school district to continue providing educational services and conforms to the federal requirement for a manifestation determination. The guidance requires that if the behavior is the result of incorrect or incomplete implementation of the IEP, the school district must adjust the services to provide what is required, and if the behavior is a manifestation of the disability, the district must implement a behavioral intervention plan. Parental agreement is required for a change of placement.

Regulatory framework: Rhode Island gives its Commissioner of Elementary and Secondary Education responsibility for certifying the approval of accredited schools, requiring the observance of all school laws, and interpreting school laws and deciding controversies, among others.²⁸ Cities or towns that cannot provide sufficient revenue to maintain schools at state standards can request the state to assume supervision,

²⁵ [24 Pa. Cons. Stat. 10-1005](#)

²⁶ [24 Pa. Cons. Stat. 2-218](#)

²⁷ [24 Pa. Cons. Stat. 6-611a et seq](#)

²⁸ [R.I. Gen. Laws 16-1-5](#)



control, and management of local schools.²⁹ Local school committees (boards) must adopt a state-mandated code of basic management principles and ethical school standards.³⁰

The Department of Elementary and Secondary Education also provides oversight of local districts' finances, including periodic reviews of revenues and expenses.³¹ Local superintendents are charged with complying with federal and state law, as well as local ordinances.³² The Department must establish program standards to be used in overseeing the use of some state funds.³³ School officials who violate education laws or refuse to perform their duties can face fines of up to \$500 or imprisonment for up to six months.³⁴ Parties to any dispute involving education law or the conduct of schools, or any action of a local board, can appeal directly to the Commissioner of Elementary and Secondary Education, who is responsible for deciding the appeal.³⁵

The State Board of Education must implement a system for annual evaluations of district and school performance. Districts in which 20 percent of the students do not meet grade level expectations must submit a success plan to the Department. The Department must review schools' efforts and provide targeted assistance and interventions.³⁶ Districts that do not meet performance goals may receive supports or intervention from the state, including progressive levels of control by the Department.³⁷

Texas

[Link to guidance](#)

Summary of guidance: Texas' technical assistance document "Behavior Supports and Guidance for Students with Disabilities" quotes federal guidance in defining informal removals as portions of a school day and requiring that school districts treat such removals as disciplinary proceedings. The guidance cites state law to define time-outs, establish limits on their use, and establish training for school employees, volunteers, and independent contractors. Texas' guidance emphasizes the harmful effects of

²⁹ [R.I. Gen. Laws 16-1-10](#)

³⁰ [R.I. Gen. Laws 16-2-9.1](#)

³¹ [R.I. Gen. Laws 16-2-9.4](#)

³² [R.I. Gen. Laws 6-2-11](#)

³³ [R.I. Gen. Laws 16-7.2-8](#)

³⁴ [R.I. Gen. Laws 16-38-9](#)

³⁵ [R.I. Gen. Laws 16-39-1](#) and [16-39-2](#)

³⁶ [R.I. Gen. Laws 16-97.1-1](#) and [16.97-2](#)

³⁷ [R.I. Gen. Laws 16-7.1-5](#)



exclusionary discipline and establishes reporting requirements for five types of disciplinary removals. Texas has programs for students who have committed disciplinary offenses, called Disciplinary Alternative Education Programs, or DAEPs. However, districts must provide students in a DAEP with special education services, a full school day of instruction, and access to courses needed for graduation. Placement in a DAEP cannot exceed one year unless certain conditions are met. Texas' guidance requires school districts to continue providing access to the general education curriculum once a student has been removed for 10 days or more. The guidance outlines federal requirements for school districts when a disciplinary removal takes place.

Regulatory framework: The Texas Education Agency must monitor districts' compliance with state and federal law.³⁸ Texas' State Board of Education has the authority to revoke districts' home-rule charters.³⁹ Texas has an accreditation system for school districts, and districts are required to maintain accreditation.⁴⁰ The Commissioner of Education must determine each district's accreditation status annually. Considerations must include students' academic performance and the district's financial accountability. Optional considerations include the district's compliance with laws and administrative rules. If the Commissioner revokes a district's accreditation, they must order the closure of the district. Districts that receive sub-par accreditation ratings must notify parents and property owners.⁴¹ State law requires local boards to establish performance goals for the district and publish an annual performance report.⁴² Additionally, Texas maintains a performance rating system for districts.⁴³

Districts that do not meet the state's accreditation criteria, academic performance standards, or financial accountability standards may be subject to a public notice of deficiency, a public hearing conducted by the local board, preparation of an achievement improvement plan, a hearing before the Commissioner, a monitoring review of the district by the state, appointment of an agency monitor, appointment of a conservator, appointment of a management team to direct district operations, authorization to enter an agreement with an institution of higher education, or the use of the state's board improvement and evaluation tool.⁴⁴

Texas allows individuals to appeal to the Commissioner of Education to review school laws of the state as well as local board decisions that may violate either state education

³⁸ [Tex. Education Code ch. 7 sect. 7.021](#)

³⁹ [Tex. Education Code ch. 7 sect. 5.102](#)

⁴⁰ [Tex. Education Code ch. 7 sect. 11.001](#) and [ch. 7 sect. 39.051](#)

⁴¹ [Tex. Education Code ch. 7 sect. 39.052](#)

⁴² [Tex. Education Code ch. 7 sect. 11.1511](#)

⁴³ [Tex. Education Code ch. 7 sect. 39.0543](#)

⁴⁴ [Tex. Education Code ch. 7 sect. 39A.001](#) and [39A.002](#)



laws or employment contracts.⁴⁵ The Commissioner may hold a hearing, and has authority for discovery and conduct of a hearing. The Commissioner has 180 days to hold a hearing, and 240 days to issue a decision.

The Texas Education Agency has authority to conduct special investigations and is required to present findings to any individual or entity the agency finds has violated a law, rule, or policy.⁴⁶

Texas districts are required to send their annual audits to the Texas Education Agency, which reviews the reports and notifies the local board of any deficiencies and refers any criminal violations to the county or district attorney and the Attorney General.⁴⁷

Washington

[Link to guidance](#)

Summary of guidance: Washington instructs school districts that a change of placement occurs when a student receiving special education services is either removed from school for 10 consecutive days or more or has been subjected to a series of removals for more than 10 days in a school year that constitutes a pattern of exclusion. Washington’s guidance requires a manifestation determination review any time a change of placement occurs, and requires the district to continue providing educational services that constitute FAPE. In addition, Washington specifically disallows school districts from counting the initial 10-day period as “free days” and requires school districts to report removals to the Office of the Superintendent of Public Instruction (OSPI).

Regulatory framework: In Washington, the State Board of Education has authority over the state’s accountability system, and can redirect a district’s Title I funds in certain circumstances.⁴⁸ The Superintendent of Public Instruction generally has supervisory authority, but must establish sanctions on any school district that fails to comply with special education law.⁴⁹ Washington has basic education requirements that school districts must meet.⁵⁰ For school districts that fail to meet basic education requirements,

⁴⁵ [Tex. Education Code ch 7 sect. 7.057](#)

⁴⁶ [Tex. Education Code ch. 7 sect. 39.004](#)

⁴⁷ [Tex. Education Code ch. 7 sect. 44.008](#)

⁴⁸ Wash. Rev. Code [28A.305.130](#) and [28A.657.080](#)

⁴⁹ Wash. Rev. Code [28A.300.040](#) and [28A.155.100](#)

⁵⁰ Wash. Rev. Code [28A.150.210](#) and [28A.15.220](#)



the State Board may recommend that the Superintendent of Public Instruction withhold state school funds in whole or in part.⁵¹

Some districts in Washington must submit condensed compliance reports annually. In these districts, local boards must dedicate a public meeting to the report and receive public testimony. District compliance reports may be subject to random audits by the Superintendent of Public Instruction.⁵² Local districts that are the subject of state audits must have a public hearing on audit findings, and local boards may discipline their superintendents.⁵³ Additionally, some schools and districts are subject to academic performance audits by the state.⁵⁴ Districts that fail to comply with state law or policy may have their state funding withheld.⁵⁵ In Washington, any individual aggrieved by a local decision can appeal that decision to the county superior court.⁵⁶

Oregon: Senate Bill 819 A (2023)

[Link to bill](#)

What the measure does: Senate Bill 819 establishes requirement that prohibits school districts from placing a student on an abbreviated day program without parental consent, and only allows for abbreviated days in certain circumstances. The measure prohibits school districts from considering, recommending, or implementing abbreviated school days due to staffing. Additionally, the measure establishes procedures to follow if the district does obtain parental consent, including a requirement to reinstate a full school day within five days of a parent’s revocation of consent. The measure establishes requirements for the Superintendent of Public Instruction to take action in any case in which a student has not been returned to a full school day as required.

Regulatory framework: In general, Oregon’s education statutes provide local control to school districts within the context of the Legislative Assembly’s authority over statewide policy and the delegation of authority to the State Board of Education. While the Oregon Department of Education (ODE) can find a district to be deficient for not complying with state laws or administrative rules, state law establishes a process in which districts file plans to come into compliance and have the ability to get extensions up to 12 months before complying. Although there are certain statutes in which accountability for

⁵¹ Wash. Rev. Code [28A.150.250](#)

⁵² Wash. Rev. Code [28A.330.250](#) and [28A.300.545](#)

⁵³ Wash. Rev. Code [28A.320.245](#)

⁵⁴ Wash. Rev. Code [28A.657.040](#)

⁵⁵ Wash. Rev. Code [28A.505.120](#)

⁵⁶ Wash. Rev. Code [28A.645.010](#)



compliance is placed on licensed individuals with suspension or revocation as a means of enforcement, accountability for a district's overall compliance with state laws and standards established by the State Board of Education is placed at the district level, and the withholding of state funding is the only means of enforcement.⁵⁷ In practice, enforcement in Oregon is generally complaint-driven.

⁵⁷ [ORS 327.103 \(2021\)](#)

