

J.N. et al. v. Oregon Department of Education et al.
United States District Court for the District of Oregon, Case No. 6:19-cv-00096-AA

Report of the Neutral Fact Finder

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June 30, 2022

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Acknowledgements:

The Neutral Expert Team thanks the many individuals who contributed to this review of the material for the J.N. v. ODE lawsuit. Their efforts were critical to our ability to obtain a broad and detailed understanding of the system so we could present the best possible proposals for improving special education services for students eligible for special education and related services placed on a shortened school day due to behavior. This review would not have been possible without the support of the Oregon Department of Education, the attorneys representing the plaintiffs, the many individuals working in school districts across the state and the families who gave of their valuable time to talk with our team. We thank everyone for their willingness to devote the time and attention needed to ensure a high-quality and inclusive review. The commitment of ODE staff and educators across the state to the work they do, the children they serve, their efforts to support students with disabilities and those requiring intervention supports, and their desire to ensure these students are served appropriately was evident through their comments and earnest feedback.

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I. Executive Summary

Executive Summary

When a student has difficulty reading, the response should not be “Let’s reduce the amount of instructional time they are receiving—they will figure it out at home.” However, for students with significant behavior issues that is exactly what has been happening in many school districts across Oregon. Students eligible for special education and related services, whose behaviors are difficult to manage and need to be taught replacement behaviors, are being placed on shortened school days usually with little or no instruction provided outside of their shortened school day. Some of these students only receive a total of 1-2 hours each day, and some receive less.

In 2017, the U.S. Supreme Court confirmed that a student’s individualized education program (IEP) “must aim to enable the child to make progress,” since “the essential function of an IEP is to set out a plan for pursuing academic and functional advancement.” *Endrew F.*, 137 S. Ct. at 999. As the Court explained, “[a] substantive standard not focused on student progress would do little to remedy the pervasive and tragic academic stagnation that prompted Congress to act.” The Court acknowledged the IDEA is an “ambitious” piece of legislation and further held that “every child should have the chance to meet challenging objectives,” even though each student’s goals and needs may differ.

In exchange for federal funding under the IDEA, states must have policies and procedures in effect to ensure the statute’s requirements are met. 20 U.S.C. § 1412(a). The law vests State Educational Agencies (SEAs) with general supervision powers and duties over local school districts, including duties to oversee the collection of required data; analyze the data; issue findings; and reach conclusions to prevent and remedy systemic problems. *See* 20 U.S.C. §§ 1412(a)(11), 1450(2).

To satisfy their obligations under the IDEA, SEAs must operate an effective general supervision system and must “maintain high academic achievement standards and clear performance goals for children with disabilities, consistent with the standards and expectations for all students.” 20 U.S.C. § 1450(4)(A); *see* 20 U.S.C. § 1416(b)(2)(A). States must specifically ensure that all eligible students receive a free appropriate public education in the least restrictive environment (LRE). 20 U.S.C. § 1412(a)(1), (a)(5).

Free appropriate public education (FAPE) means the provision of “special education,” which is specially designed instruction to meet the student’s unique needs, and “related services,” which are services “required to assist a child with a disability to benefit from special education,” including developmental, corrective, and other supportive services. 20 U.S.C. § 1401(9), (26), (29); 34 C.F.R. §§ 300.34, 300.39. Specially designed instruction means adapting, as appropriate to the needs of the child, “the content, methodology, or delivery of instruction . . . [t]o address the unique needs of the child that result from the child’s disability; and . . . [t]o ensure access of the child to the general curriculum, so that the child can meet the educational standards . . . that apply to all children.” 34 C.F.R. § 300.39(b)(3).

Our analysis found that while less than 2% of students in special education are placed on a shortened school day, for those students and their families, this amounted to often a dramatic decrease in the amount of instruction received, a loss of opportunities for interaction with peers, and an educational program that put them in a position to lag further and further behind their peers

in both academic and social emotional skills. School districts in Oregon that were placing students eligible for special education on shortened school days viewed the decision as appropriate as long as they followed the right procedures. The districts did not often demonstrate an understanding that the IEP and program should be developed and calculated to allow these students to aggressively work toward moving the student along the LRE continuum toward more time with peers. We were unable to locate sufficient guidance, training, or other resources and support provided by ODE to help districts understand the LRE considerations and the role of the IEP team to ambitiously move students back to a full-day. Thus, in many of the districts, shortened school day was viewed as a part of a long term placement on the LRE continuum.

Our early analysis also showed the ODE monitoring system did not allow for appropriate data gathering and monitoring of the use of shorten school days—this was only reconfirmed as our review continued. Perhaps ODE recognized this as well, as ODE is implementing some changes in it's monitoring process next year as outlined in the newly passed (June 16th, 2022) General Supervision Oregon Administrative Rule (OAR 581-015-2015), which outlines processes and procedures that will improve the ODE's monitoring and general supervisions processes. As the agency tasked with ensuring local school districts are providing each student, in every district, an opportunity to have access to and progress in the general curriculum and receive a FAPE in the LRE, these processes are vital to fulfilling its statutory duties.

As a result of our analysis that included a survey of school districts across Oregon (93% response rate, representing 92% of students with disabilities across the state), talking with school district personnel, ODE staff, compliance officers, families, and reviewing IEPs/FBAs/BIPs we make the following recommendations to the ODE:

1. Clarify guidance on the use of Shortened School Days.
2. Conduct mandatory training for all special education staff and administrators across the state on the use of SSD that is consistent and available as new staff come into districts.
3. Designate IDEA funding to provide stipends for special education teachers and school psychologists to be paid at designated intervals during the school year with increased stipends for high need areas.
4. Establish a statewide program to offer Registered Behavior Technician (RBT) training for paraprofessionals and other school staff as well as required supervision by regional Board Certified Behavior Analysts (BCBAs).
5. Create and fund regional Intensive Interagency Support Teams that districts can call on to provide training, consultation, and coaching in addressing behavior needs.
6. Purchase, implement, and mandate the use of a Statewide IEP system.
7. Include a process/procedure in the monitoring process to include low incident situations such as SSD.
8. Issue guidance on how SB263 requires parent *permission* for a shortened school day and meld the conflict between consent and meaningful participation.
9. Issue guidance on how to document Informal Removals.
10. Issue guidance on the use and processes for FBAs and BIPs, including sample documents that could be included in the statewide IEP system.

B. Purpose of Review

The Purpose of the Review is taken directly from the contract and the stipulated areas of review. This scope did not change during the course of the review. The timelines changed due to a variety of factors, but the scope of the work did not change.

Introduction

- a. The parties wish to settle J.N. et al. v. Oregon Department of Education et al., United States District Court for the District of Oregon, Portland Division, No. 6:19-cv-00096-AA (the “Action”).
- b. Plaintiffs are J.N., by and through his next friend, T.S.; E.O., by and through his next friend, Alisha Overstreet; J.V. by and through his next friend, Sarah Kaplansky; B.M., by and through his next friend, Traci Modugno, and the Council of Parent Attorneys and Advocates, Inc. (COPAA).
- c. A class has been certified in the Action comprised of all students with disabilities aged 3 to 21 residing in Oregon who are eligible for special education and related services under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq. (IDEA), and are currently being subjected to a shortened school day or are at substantial risk of being subjected to a shortened school day due to their disability-related behaviors.
- d. Defendants are the Oregon Department of Education (ODE), Colt Gill, in his official capacities as Director of ODE and Deputy Superintendent of Public Instruction for the State of Oregon, and Katherine Brown, in her official capacities as Governor and Superintendent of Public Instruction for the State of Oregon.
- e. This Interim Settlement Agreement (Interim Agreement) is not a final settlement of plaintiffs' claims asserted in the Action.
- f. Defendants dispute the allegations against them in the Action. This Interim Agreement is not an admission of liability, and defendants deny the allegations in the Action.
- g. The parties represent and acknowledge that this Interim Agreement is the result of extensive, thorough, and good faith negotiations. The parties further represent and acknowledge that the terms of this Interim Agreement have been voluntarily accepted, after consultation with counsel, for the purpose of making this Interim Agreement.
- h. The Court has jurisdiction over the Action pursuant to 28 U.S.C. § 1331. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b).
- i. This Interim Agreement will be interpreted in accordance with federal law and the laws of the State of Oregon. The venue for all legal actions concerning this Interim Agreement

will be in the United States District Court for the District of Oregon, Portland Division (the "Court").

II. INTRODUCTION

A. Background

There have always been students and young adults with disabilities, but educational services have not always been available to them. In fact, as recently as 1970 it was legal to prevent students with disabilities from attending school (Johnson, 1986).¹ One specific example allowed the exclusion from school for students physically or mentally incapacitated (Code of Virginia, 1973).² The history of educational services for students with disabilities is filled with stories and examples of wholesale exclusion and legal denials. Often, the best a parent could hope for was some form of educational service in a state-run institution (Sheerenberger, 1983).³

As the result of several court cases and pressure from parents, Congress investigated educational services for students with disabilities. Two notable statements from their findings stand out:

The long-range implications of these statistics are that public agencies and taxpayers will spend billions of dollars over the lifetimes of these individuals to maintain such persons as dependents and in a minimally acceptable lifestyle. With proper education services, many would be able to become productive citizens, contributing to society instead of being forced to remain burdens. Others, through such services, would increase their independence, thus reducing their dependence on society (U.S.C.C.A.N, 1975, p. 1433).

Providing educational services will ensure against persons needlessly being forced into institutional settings. One need only look at public residential institutions to find thousands of persons whose families are no longer able to care for them and who themselves have received no educational services.

¹ Johnson, T. P. (1986). *The principal's guide to the educational rights of handicapped students*. National Association of Secondary School Principals.

² Code of Virginia, Section 22.275.3 (1973).

³ Scheerenberger, R. C. (1983). *A history of mental retardation*. Paul H. Brookes Publishing.

Billions of dollars are expended each year to maintain persons in these subhuman conditions . . . (U.S.C.C.A.N, 1975, p. 1433).⁴

Congress realized something needed to be developed to provide standard guidelines and some uniformity to the states in the provision of identification and educational services for students with disabilities. The USCANN report helped with this, as did several court cases at the local level. These court cases clarified that specific procedures needed to be followed when determining if a student had a disability, the need for enforcement of compulsory attendance laws, and alleviating biases against certain students (*Diana v. State Board of Education of California*, 1970; *Mills v. DC Board of Education*, 1972; *Pennsylvania Association for Retarded Children v. The Commonwealth of Pennsylvania*, 1972). The Education for all Handicapped Children Act was passed by Congress in 1975 and sought to address these issues being brought to the courts.

P. L. 94-142

The Education for All Handicapped Children Act, frequently referred to as P.L. 94-142, provided guidance to states allowing students with disabilities to access public education as well as providing financial assistance to states to supplement state and local funds to provide special education and related services. P.L. 94-142 mandated states comply with the law to receive federal funding for special education (Yell, 2018).⁵

Specifically:

The intent when Congress passed P.L. 94-142 was to insure that all students with disabilities will be assured that they in fact have a right to education, and to establish a process by which State and local education agencies may be held accountable for providing educational services for all handicapped children. (U.S.C.C.A.N, 1975).

PL 94-142 has a profound impact in the lives of children with disabilities and provided the foundation for special education as you know it. PL 94-142, which became the Individuals with Disabilities Education Act in 1990, is the primary law regarding the educational services for students with disabilities. The law and its specific components are important to the education of students with disabilities. Education, prior to 1975, for

⁴ United States Code Congressional and Administrative News 1975 (U.S.C.C.A.N. 1975)

⁵ Yell, M. L. (2018). *The law and special education, fifth edition*. Pearson.

students with disabilities existed in a few small locations across the country. As noted above it was legal to prevent students with disabilities from receiving an education, and some states it was a crime for parents of disabled children to enroll them in school. This law changed everything for students with disabilities, and public education became education for all.

The problem with PL 94-142, now the Individuals with Disabilities Education Act, is that it has not been evenly applied. The recent Supreme Court case in *Endrew F.* highlighted the differences between the various circuits relating to the benefit students eligible for special education and related services are to receive. Hopefully the long-term impact of that case will be a clearer standard about the need for students to make appropriate progress in light of their unique circumstances while receiving special education services.

In the present matter, there are allegations that students eligible for special education and related services have been denied access to attending school for a full-day due to their behaviors. Since PL 94-142, all children with disabilities have the right under federal law to a free appropriate public education and equal educational opportunity. The present matter is there is a concern that throughout Oregon students who engage in challenging classroom behaviors related to their disability have been placed on a shortened school day. Children eligible for special education and related services who are placed on a shortened end school day receive significantly fewer hours of instruction as compared to all other students, who typically receive six-hours in Oregon public schools. Therefore, our report excludes data or analysis related to students who receive a shortened school day due to medical necessity (surgeries, cancer treatments, problems with medications, stamina, etc.), phobia of school, or other parental circumstances or demands.

As one director of special education said to us, if a student has problems in reading you don't provide them with less instruction in reading. This sums up the absence of logic and evidence-based pedagogical decisions when placing students on shortened school days. When students are denied access to a full-day of instruction they miss out not only on the educational opportunities provided to the other students, but also the benefits and incidental learning from socialization and regular interactions with other students. These students often fall behind academically and miss out on critical social opportunities in

which they can practice appropriate behaviors and implement the strategies they are learning. Instead of receiving this needed instruction and opportunities to practice, they are separated and disconnected from peers who receive the academic, social, and emotional benefits of attending school for a full-day. This isolation perpetuates the stigma, misunderstanding, and fear that often underlies a school district's decision to exclude children with disability-related behaviors from the classroom.

The impact of this isolation and these lost opportunities became abundantly clear over the past two years as schools across the nation provided virtual instruction to most students as a result of the COVID-19 pandemic. Anecdotal reports from veteran teachers are that students are significantly more immature than previous chronologically aged peers and will need concerted efforts by all to help them "catch-up" to where they are supposed to be.

Under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et seq., the State must "ensure" that all eligible children with disabilities receive a free appropriate public education. 20 U.S.C. § 1412(a)(1). Therefore, the Governor of Oregon as Superintendent of Public Instruction, the Oregon Department of Education, and its Director (collectively, Defendants or "the State") are legally responsible for ensuring all Oregon students with disabilities receive a free appropriate public education and for taking action when school districts systemically fail to provide FAPE. The standard for such an education is a "demanding" one: students with disabilities must receive an "appropriately ambitious" educational program that gives them "the chance to meet challenging objectives." *Andrew F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 1000 (2017).

Accordingly, the IDEA also holds the State responsible for ensuring that children with disabilities are educated in the least restrictive environment in which they can learn alongside their non-disabled peers to the maximum extent appropriate to their needs. 20 U.S.C. § 1412(a)(5). Children with disabilities, including children whose disabilities affect their behavior, may not be removed unnecessarily from general education classrooms in neighborhood schools in which they could be served effectively with appropriate services and supports. See *id.* 11. Under the requirements of Title II of the Americans with

Disabilities Act (ADA), 42 U.S.C. § 12131 et seq., and Section 504 of the Rehabilitation Act (Section 504), 29 U.S.C. § 794.

To fulfill these responsibilities, the State, among other things, must engage in “effective monitoring” to ensure that local school districts provide a free appropriate public education in the least restrictive environment to all eligible children. See 20 U.S.C. §§ 1416(a)(1)(C), (a)(3)(A), (a)(3)(B). While the State must use data to measure school districts performance, maintain an administrative complaint process, and take corrective action upon finding any violations of the Act, see 20 U.S.C. §§ 1411(e)(2)(B)(i), 1415, 1416(a)(3), this duty involves far more.

In January 2016, the State issued an Executive Memorandum to districts generally discouraging the use of shortened school days due to student behaviors but approving the practice for students with severe behaviors. In June 2017, the State passed a law that allows school districts to impose shortened school days, but the law established each student’s “presumptive right” to the same hours of instruction as other children receive and prohibits school districts from unilaterally shortening a student’s school day. See O.R.S. §§ 343.161(4)(a)(C), (2). The State further asked some of its advisory bodies to provide recommendations to ensure that all Oregon students are supported in school and “experience[] an inclusive, safe and welcoming learning environment.” Lastly, the State, through the Oregon Department of Education, has investigated administrative complaints about this problem and, in some cases, ordered limited relief to individual students upon finding violations of the IDEA.

B. Original Charge

Scope of the Neutral Expert's Work in Phase I

Phase I is intended to be a statewide evaluation regarding the use of Shortened School Days to inform negotiations over remedies, if warranted, in Phase II. The scope of the Neutral Expert's work in Phase I is as follows:

- a. Determine the sources of information from which to gather evidence regarding use of Shortened School Days for the Target Population. These sources of information could include (but would not be limited to):
 - i. Records and data in ODE's possession relevant to Shortened School Day placements for the Target Population;
 - ii. State and district statutes, policies, guidelines, processes, and procedures relevant to Shortened School Day placements for the Target Population;
 - iii. Student-level state and district data relevant to Shortened School Day placements for the Target Population;
 - iv. Interviews regarding Shortened School Day placements for the Target Population with individuals and/or focused groups of state and district staff, students, parents, guardians, various advisory committees, parent organizations, subject-matter experts, and counsel for the parties;
 - v. Targeted site visits to review individual student files and make classroom observations for information related to Shortened School Day placements for the Target Population.
- b. Gather information from the sources identified in (a) or otherwise determined relevant by the Neutral Expert through data collection, document review, and interviews needed to understand the data. The time period for the data collection shall be from the 2017-2018 school year to the present, except to the extent the Neutral Expert determines that obtaining data from earlier school years is appropriate. The information gathering shall be completed within three (3) months after retention of the Neutral Expert; such time period may be extended by mutual agreement of the parties or, if the parties cannot agree, pursuant to an extension granted by Judge Acosta.
- c. Identify the conditions under which Shortened School Days are used due to disability-related behavior (i.e., where, when, why, how long) for the Target Population. Plaintiffs and ODE will each supply the Neutral Expert with a checklist of essential data elements to be gathered in connection with uses of Shortened School

Days to assist the parties in determining the appropriateness of the uses of Shortened School Days. The checklists may be modified by the Neutral Expert as appropriate after consulting with the parties.

d. Identify and examine the root cause(s) at the state and/or district level of the use of Shortened School Days due to disability-related behaviors for the Target Population.

e. Synthesize information collected above and describe the magnitude and scope of the use of Shortened School Days for the Target Population, including: (i) the number of students in the Target Population placed on Shortened School Days due to disability-related behaviors; (ii) the length of time that those students are placed on Shortened School Days; (iii) whether the students' placements on Shortened School Days were revisited after any specified period and, if so, what time period; (iv) differences in utilization of Shortened School Days for the members of the Target Population based on district type or student demographics; and (v) descriptive statistics and information related to the time and location of services received by students in the Target Population.

f. Identify uses of Shortened School Days for the Target Population that potentially fail to meet the requirements of federal law—namely, the IDEA, the ADA, and/or Section 504—and also identify where districts are implementing positive practices with respect to serving the Target Population and/or reducing inappropriate uses of Shortened School Days. Nothing in this section allows the Neutral Expert to inquire into any potential violations of the IDEA, the ADA and/or Section 504 unrelated to the use of Shortened School Days for the Target Population.

g. Prepare a report describing the Neutral Expert's sources used and findings relative to (a)-(f) above and, if any, advisory recommendations for Phase II to address the existence of Shortened School Days that potentially fail to meet the requirements of federal law. To the extent the Neutral Expert determines sharing a draft report with the parties for comment is appropriate, the Neutral Expert may do so prior to releasing the report. The report shall be completed within six (6) months after retention of the Neutral Expert; such time period may be extended by mutual agreement of the parties or, if the parties cannot agree, pursuant to an extension granted by Judge Acosta. The report shall be admissible as evidence in any court of law. The report shall not be considered confidential; to the extent any details of the report are required to remain confidential under federal law, including IDEA and FERPA, to protect the privacy of

individually identifiable students, the parties will prepare a version of the report that redacts only those details and that can be available to the public.

The report may include, if appropriate, recommendations for the creation of new programs, hiring of new staff, contracting for services, developing new training systems, redirection of existing resources, or any other possible remedies, including recommending changes to state policies, statutes, or rules. The report may also include, if appropriate, recommendations for using existing programs, facilities, and staff to the extent those existing resources are adequate. The report may also recommend making no changes. Within the report, the Neutral Expert shall include their rationale to support each recommendation.

h. The Neutral Expert will have monthly joint phone conferences with the parties and their counsel to report on progress and the parties will provide feedback to the Neutral Expert to ensure that the evaluation is progressing in accordance with the scope of work. The parties may communicate any additional information to the Neutral Expert at any time during the evaluation period.

i. Upon request of the Neutral Expert, the parties will assist the Neutral Expert in obtaining access to the sources of information as described in (a) and (b) above and ODE will provide sufficient administrative support to perform the duties described in (a)-(g) above.

C. Barriers

Barriers

We encountered multiple, unanticipated, and unnecessary barriers as we attempted to fulfill our charge and obtain the necessary data and anecdotal information from districts, including scheduling the visits and interviews, to write this report. We feel it is very important for the readers to have an understanding of these road-blocks when considering the information included in this report and many of our recommendations designed to obviate such roadblocks that would prevent ODE from gathering and monitoring the same data in the future.

COVID-19

We started working on this project in December 2021. At around that same time there was a dramatic surge in the Omicron variant of COVID-19. The parties made it very clear to us that not only would travel be difficult, but school districts did not want us to visit, and parents did not want to meet face-to-face. The reactions by school districts and parents, afraid of having others bringing more of the virus to their area, caused us to pause our travel plans. We switched to setting up meetings using virtual means to quickly move forward with the tasks at hand.

Scheduling Problems

A great deal of time was spent developing a regionally based travel schedule for each month targeting districts that represented the state both geographically and by the number of students on SSD. This schedule was shared with the parties with the understanding they would be distributing it to the districts. We wanted to move forward in February with travel, but the districts we sought to visit had not received notice of the trip. We wanted to then move forward for travel in March, but the districts still had not received notice of the trip. We ended up contacting districts directly and scheduling virtual meetings and making our own travel plans.

Survey

During our initial stages of planning, we thought we would be able to use the data from the April 2021 survey. However, early on, after reviewing the data, we discovered that to fulfill our obligation, and have reliable and valid data to analyze, we would need to create and distribute a new survey for school districts. With the help of Dr. Eric Wells at ODE a new survey was formatted and distributed to Oregon school districts. The purpose of the survey was to gather information that clarified parts of the April 2021 survey that were either vague or left unanswered. We worked very hard to develop a survey that was not only easy to use, but one that allowed for school districts a clear sense of what data they were expected to gather. To ensure we had adequate time to compile and analyze the data a due date was given to all the districts when the survey was sent out. We assigned a team member to be available by email to provide quick responses when districts had questions. Our request for a response to the survey was not very well received.

As a result of the lack of responses by the due date, we sought subpoenas from the DOJ to facilitate districts' responses. The DOJ worked hard to get subpoenas out to all of the remaining school districts, which took additional weeks. This was exactly what was needed to get a much larger number of districts to respond to the survey. In addition to the subpoenas, we sent out individual emails to each district that had not already responded. There were, however, a number of districts that still refused to respond to the survey because they stated they could not be compelled to provide information where that information did not previously exist, hindering our efforts to fully understand the magnitude of the problem of shortened school days in Oregon.

Redacted IEPs

Many of the districts that refused to answer the survey were also subpoenaed seeking documents they had in their possession related to the files of students with disabilities on shortened school days due to behaviors. We received a lot of documents from these districts, however, many of the documents were redacted to such an extent it was almost impossible to pull the needed data from them, such as the grade, disability, amounts of SSD a student was receiving, how long the student was placed on SSD, and when the Step-up Plan contemplated the student returning to a full-school day. Some school districts sent

IEPs and student documents that were appropriately redacted (with only the student identification information blocked out), but they sent them as separate files and pages and with confusing numbers in their title so it took us many hours to figure out which documents belonged to the same student.

Provision of Documents

In January, 2022, when we sent a list to ODE and the Plaintiffs of information we needed, and visits and interviews we wanted to conduct, we also included a list of student documents that we wanted to review from districts that had been geographically and population-wise selected. We were clear that we wanted at least 20 IEPs, along with the FBAs and BIPs and any other SSD documentation from each district. At our periodic meetings with the parties we would update them regarding what progress had been made on receiving documents. It was not until May that we started receiving a few documents and the majority of the documents were received mid to late June. This was one reason we requested an extension to provide our investigative report; we had not received student IEPs, FBAs, BIPs and SSD documents to review and analyze to determine how the actual SSD process was implemented and how long students were being placed on SSD throughout the state.

Classroom Visits

We wanted to see classrooms where students were being educated. As noted above COVID-19 made that initially very difficult. Even as the intense threat of COVID started to dissipate, the schools still did not want us to visit classrooms, or even to meet with teachers. As we scheduled visits we were often limited to just talking with either the director of special education or the superintendent, both with a school board attorney present. There were some school districts that would allow us only to meet with the superintendent at a date four weeks in the future and only for a few minutes. Needless to say, this made fact-finding very difficult and prevented front-line staff from talking openly about any changes they believed needed to be made. However, there was one district that made teachers available to us (without an administrator or attorney present) allowing them to speak freely with us. We greatly appreciate their service.

Local Control

In our interviews with ODE and district personnel, it was often stated that the minimum oversight and guidance by the ODE was due the fact that Oregon was a local control state. Since this was highlighted as an important component of ODE's authority to monitor and oversee the education of students in the state, we wanted to talk with local school district administrators about their thoughts regarding this concept. However, we were prevented many times from doing this when talking with superintendents/directors of special education as some district attorneys objected to our questions on this topic. There were other attorneys, however, who would participate in the conversations with district personnel and allowed questions on this topic. At times these attorneys would even chime in and provide additional information to help us better understand their perception of the concept.

Parents

We spent a lot of our time reaching out to and trying to talk with parents. Very few of the initial group of parents we contacted responded or indicated they would be willing to talk. Joel Greenburg at DRO then became instrumental in helping pave the way to facilitating contact with many of the parents with whom we talked. Also, we did have instances where we had worked with parents to set up a time and modality to meet and then the parent did not show. There were a number of districts that also told us they would provide us names of parents with whom to talk. However, we received no names of parents to talk with from school districts.

III. Quantitative Summary

Quantitative Summary

Background

As a part of the discussions prior to the interim settlement, ODE requested records on April 9, 2021, from every Oregon school district. Plaintiffs had requested: (1) records from the 2017-18, 2018-19, and 2019-20 school years showing districts' efforts to implement Senate Bill 263, which concerned the use of SSD; and (2) records from the 2016-17, 2017-18, 2018-19, and 2019-20 school years documenting the number of students placed on SSD. One hundred and ten Oregon school districts submitted documents including Abbreviated Day Notice and Acknowledgement forms, IEPs, and IEP meeting notes. After a review of this survey and analyzing the data the team determined a new survey would need to be developed and distributed.

To see more detail of our survey, refer to the Methodology in Appendix B.

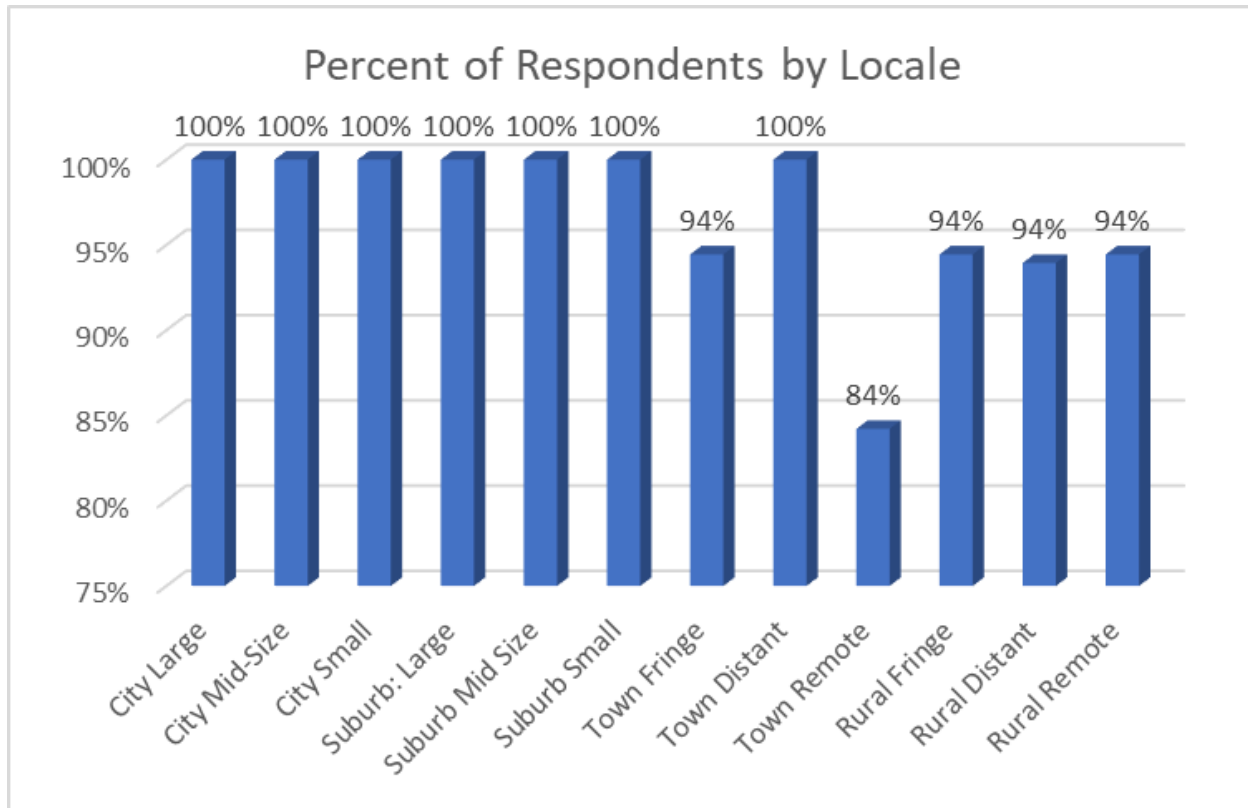
Below we provide a summary of the quantitative information concerning the survey created and distributed in 2022 regarding the use of shortened school days ("SSD") for students with disabilities in Oregon schools. We obtained this information from 185 Oregon school districts—93% of the state's school districts, representing approximately 92% of students eligible for special education and related services within the state for each of the target years. We sought information indicating how many Oregon public school students with disabilities experienced SSD as a part of their Individualized Education Program ("IEP") over the 2016–2017, 2017–2018, 2018–2019, and 2019–2020 school years. In addition to what is described below the reader can refer to the attached spreadsheet that includes the data from the four years collected in the survey. We also have graphs

highlighting the changes from year-to-year. The data from the survey does not allow for the comparison of how many students were placed on SSD for consecutive or multiple years. When asked, districts did have data on the number of students, but did not keep data on how many students were on SSD for multiple years, and due to the redactions of the IEPs provided, it was challenging to gather this information. This again highlights the needs for clear and accurate data keeping with a consistent format that allows for capturing this data easily.

We were unable to make comparisons from 2016-17 to the 2019-2020 school year as the districts did not typically collect data from before SB 263. Therefore, the data are from the three years after SB 263. Also, as noted, some of the districts refused to respond to the survey, with some providing examples of redacted IEPs. A number of the redacted IEPs were from 2020-2021 and 2021-2022, a period after our reporting responsibility, so it is clear that SSD is continuing to this day. The districts that responded with redacted IEPs often did not provide copies from 2017-2018.

Spring 2022 Survey results.

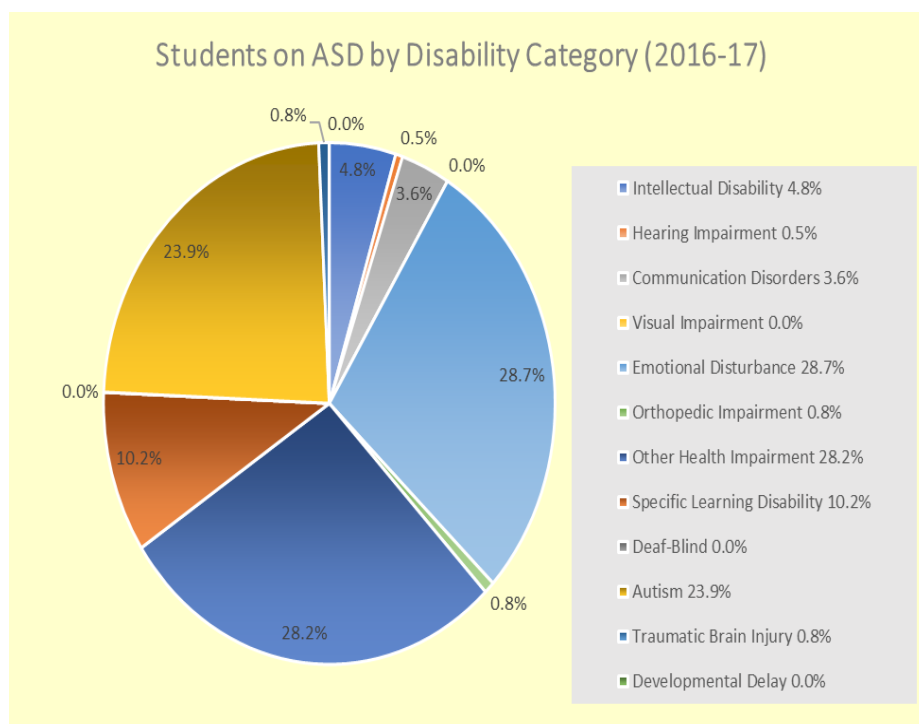
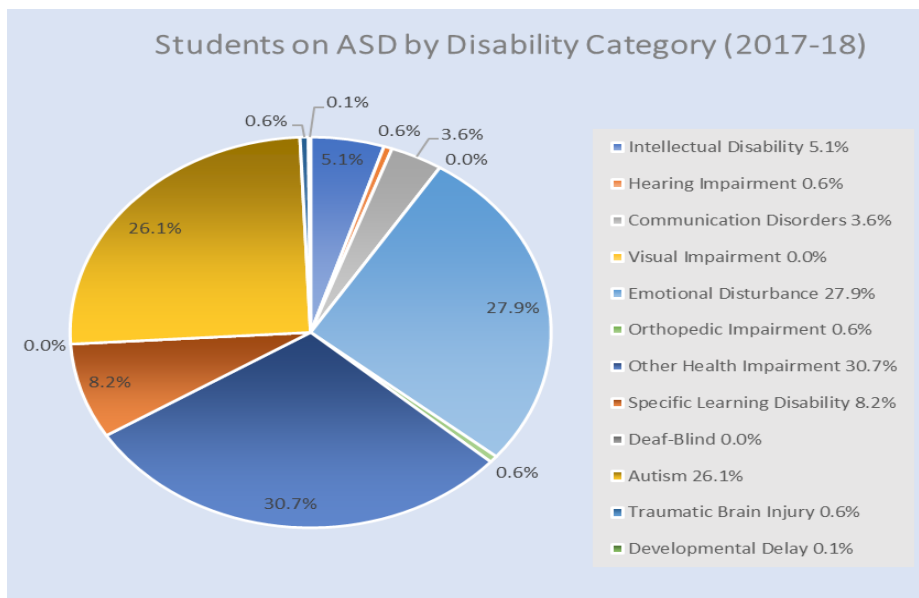
- I. As indicated in the previous section the Spring 2022 survey resulted in 93% of the state's districts responding. The graph below shows the percent of districts by the census locale that responded.

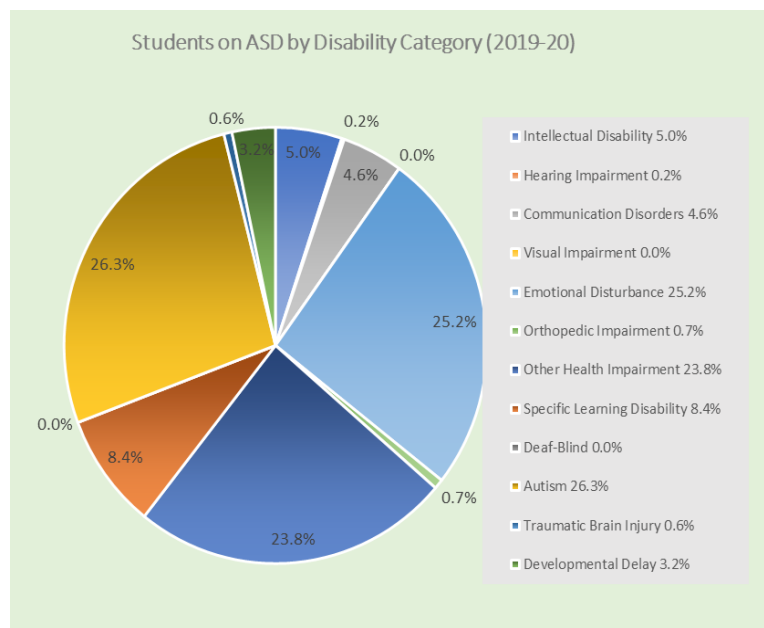
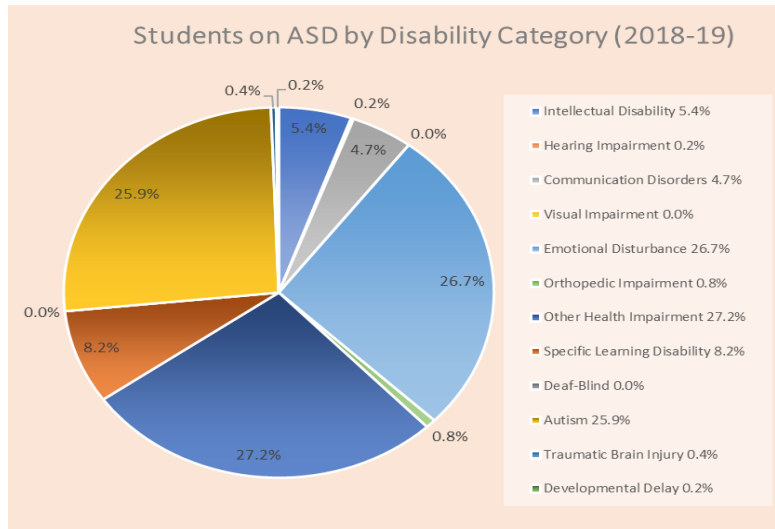


A. The graph below shows the number of students on SSD for each year and the age of those students.

School Year	Pre-School SWD on ASD	Elementary School SWD on ASD	Middle School SWD on ASD	High School SWD on ASD	Total SWD on SSD	Percent of total state SECC
2016-2017	3	182	113	96	394	0.48%
2017-2018	1	357	159	168	685	0.77%
2018-2019	3	571	248	207	1029	1.04%
2019-2020	4	563	227	192	986	1.04%

B. The primary disability of each student on SSD due to behavior for each target year is reflected below;





C. How many students were placed on an SSD due to behavior in each year due to an inability to adhere to COVID safety protocols;

D. For the students reported on an SSD due to behavior, how many had signed parent acknowledgements in accordance with SB263;

E. How many students on SSD due to behavior had the reasons for this placement in their IEP and

F. How many students on SSD due to behavior had a re-entry/transition plan in place to remove them from the SSD.

In addition to the above items, the new survey clarified that we were only asking for data on students with IDEA disabilities who were on SSD due to disability related behavior and provided definition of “behavior” and “re-entry/transition plan” for purposes of the survey.

Data Inconsistencies

As noted above, there were challenges with the April 2021 survey and data. We worked to learn from the problems and the information retrieved to develop a new survey that would more accurately identify the extent of the use of SSD for Oregon’s IDEA-eligible children. For a greater discussion of the specific methodology used in the Spring 2022 survey the reader is referred to Appendix B.

As we worked to collect data through the second survey, some problems with the production of the data became evident. Specifically, a number of districts had to be called to clarify their data, many of the districts reported no specific mechanism for keeping track of the data, one district used an intern to collect the data, some of the districts reported the data were kept in a notebook (with the notebook going missing), one of the districts stated the data were kept in the head of the director of special education and when that person passed away the data were gone. Some districts refused (under advice from counsel) to respond to the subpoena requesting data for the survey and instead provided redacted (often overly redacted documents rendering them almost useless) IEPs and meeting notes. However, we reviewed the redacted IEPs and, determined the number of students placed on shortened school day from specific districts and therefore included

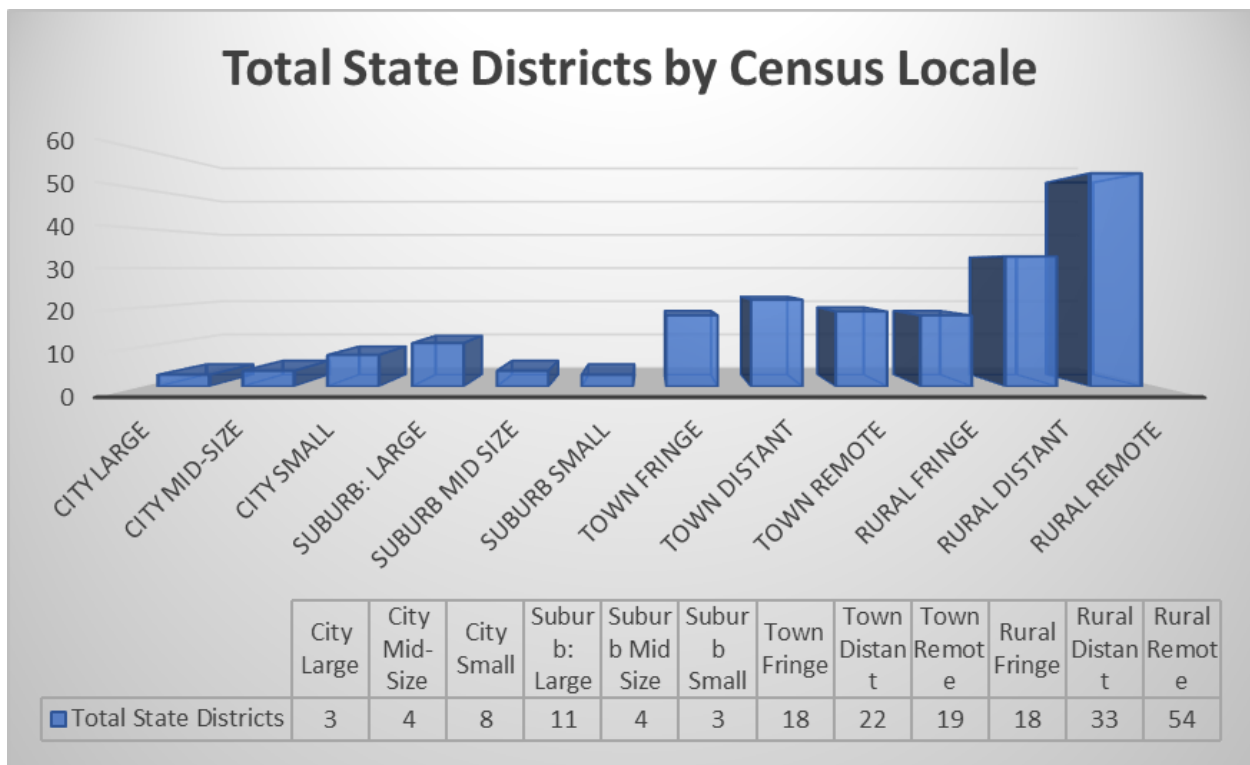
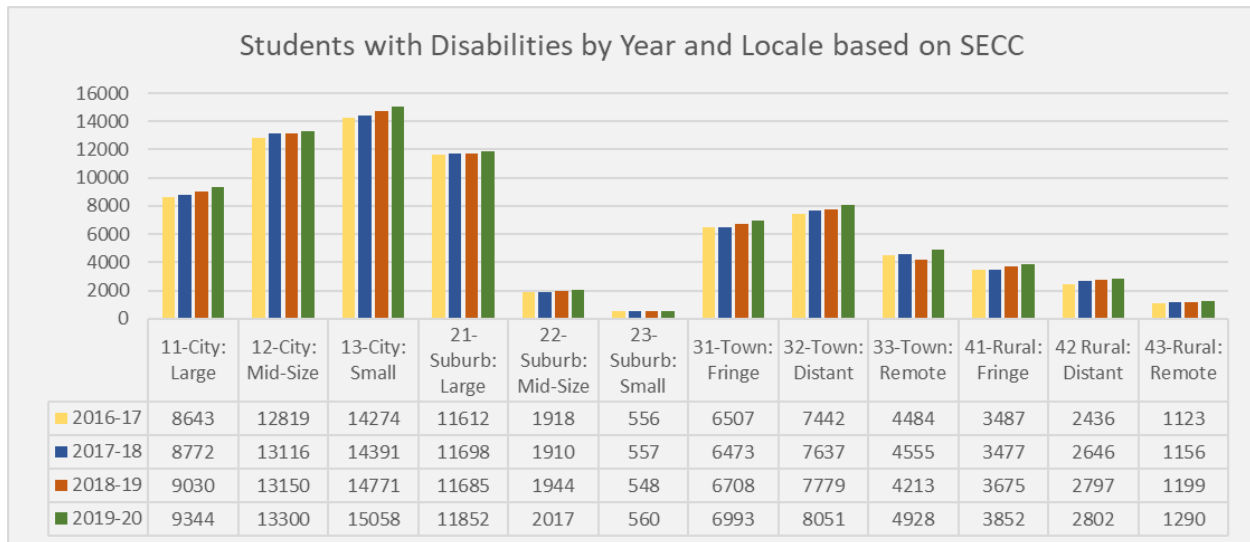
their data as a part of our results. Finally, when there were inconsistencies with the data submitted in April 2021 from the data that were submitted in the Spring 2020 survey, we contacted the districts and sought clarification. We worked tirelessly to answer questions as quickly as possible and provide clarity to the districts.

Despite these challenges, we feel the data are a fairly accurate representation of the number of students eligible for special education and related services placed on a shortened school day due to behaviors for the school years 2017/18 through 2019/20. Although part of our task included reviewing data from 2016, we are less confident in our data from that year as 2016-2017 was before SB 263, and many districts reported that they did not keep data on the students they placed on SSD prior to SB 263. The challenges discussed above and lack of consistent data and reporting, lead us to conclude there needs to be a more reliable means and method for obtaining the data on the number of students who are placed on a shortened school day (for a more detailed explanation of our recommendations please see page 49).

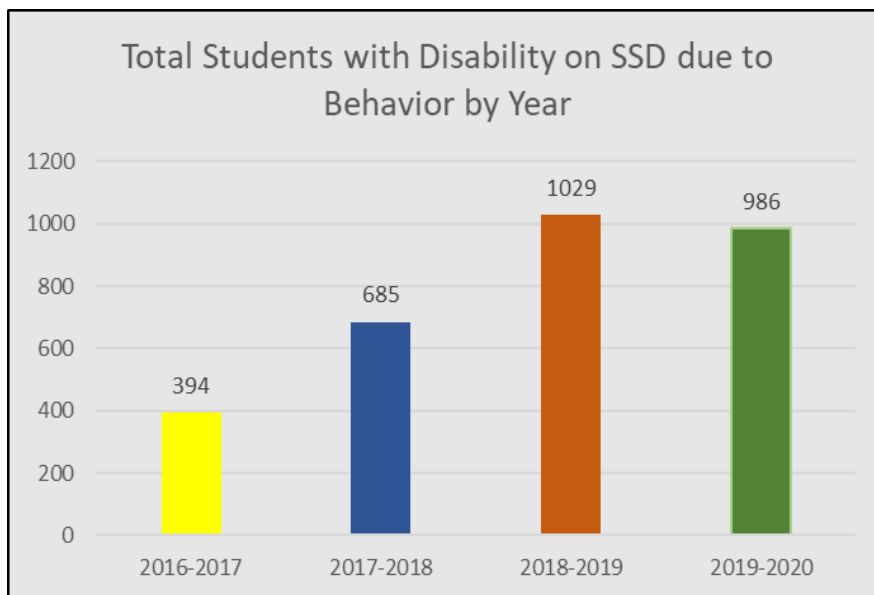
From our research there is only one state that has school districts report to the state department of education whether a student is placed on a shortened school day: Oklahoma. In our conversations with administrators and special education professionals in Oklahoma, they unanimously stated that the reporting of students on shortened school days is not burdensome, is very easy to do, and due to the methods established by the state, all but guarantees easier aggregation of the data and clearly represents the number of students placed on a shortened school day (for a more detailed explanation of our recommendations please see page 49).

State Demographic Data

The state of Oregon currently consists of 197 school districts. The graphs below show the number of schools that reside in different locales by census sizes and the number of students with disabilities in each of those locales.

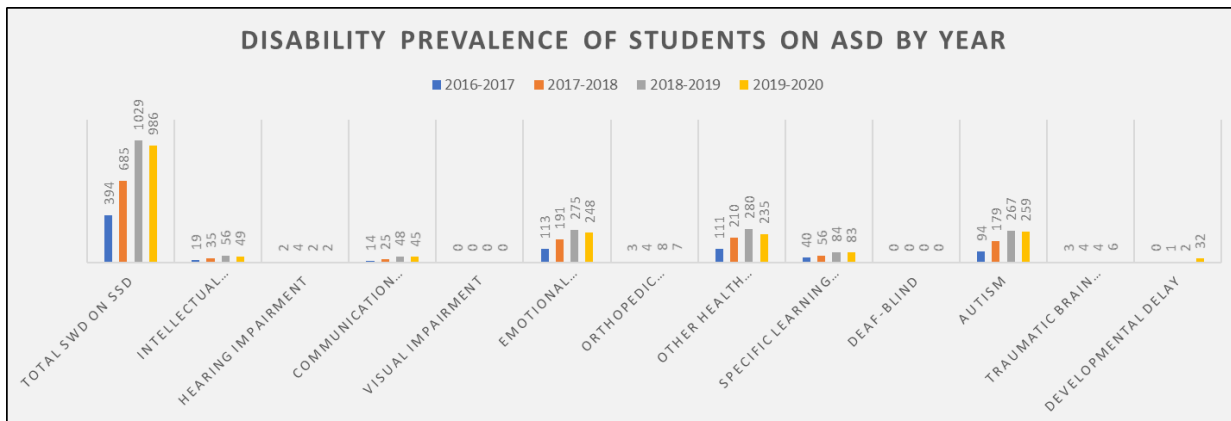


Year-to-Year Data

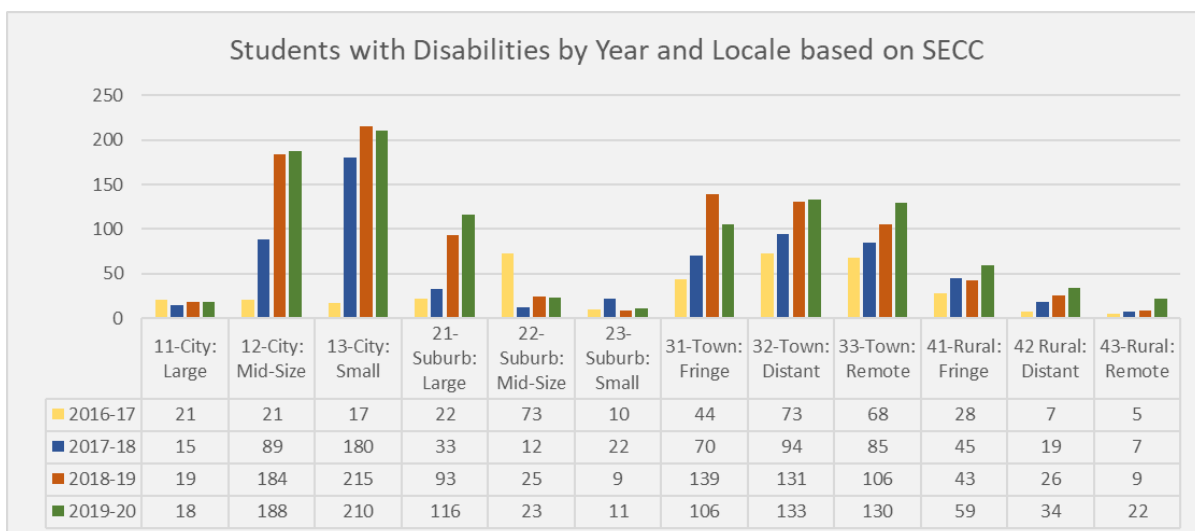


As one can see from the above graph, it appears there has been an increase in the number of students placed on SSD. In 2017-2018 there were 685 students placed on SSD. In 2018-2019 there were 1029 students placed on SSD. In 2019-2020 there were 986 students placed on SSD. This increase may be due to a combination of two factors: 1) an actual increase in the number of students placed on SSD and 2) better data gathering by districts. However, as these are baseline data on this topic, a conclusive answer cannot be determined. The prompt made by ODE in April 2021 spurred districts into gathering data on the number of students placed on SSD, thus we feel we have a good representation of the numbers of students placed on SSD over the past few years in Oregon.

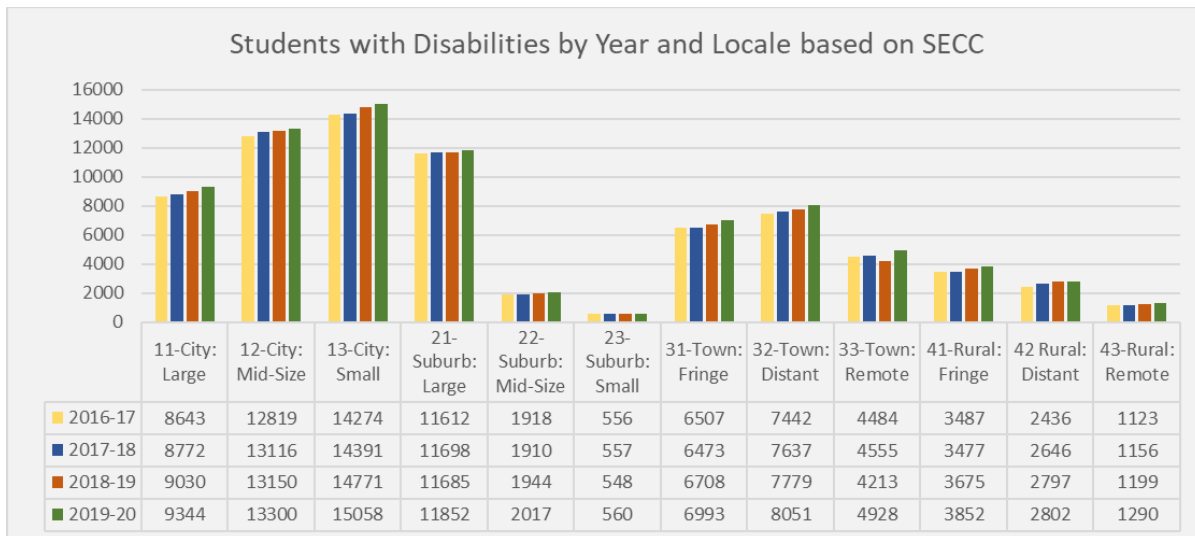
- I. The majority of students on SSD due to behavior have Other Health Impairment, Emotional Disturbance, or Autism as their primary eligibility category.



II. The majority of students on SSD due to behavior are found in the following 5 locales: City: Mid-Size, City: Small, Town: Fringe, Town: Distant, and Town Remote.

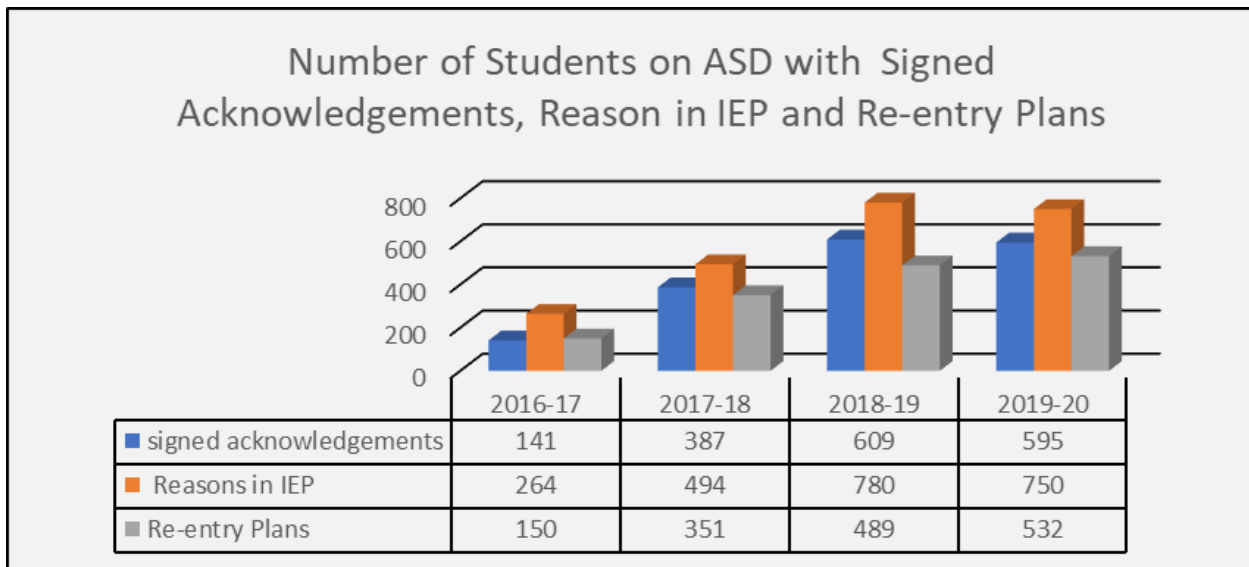
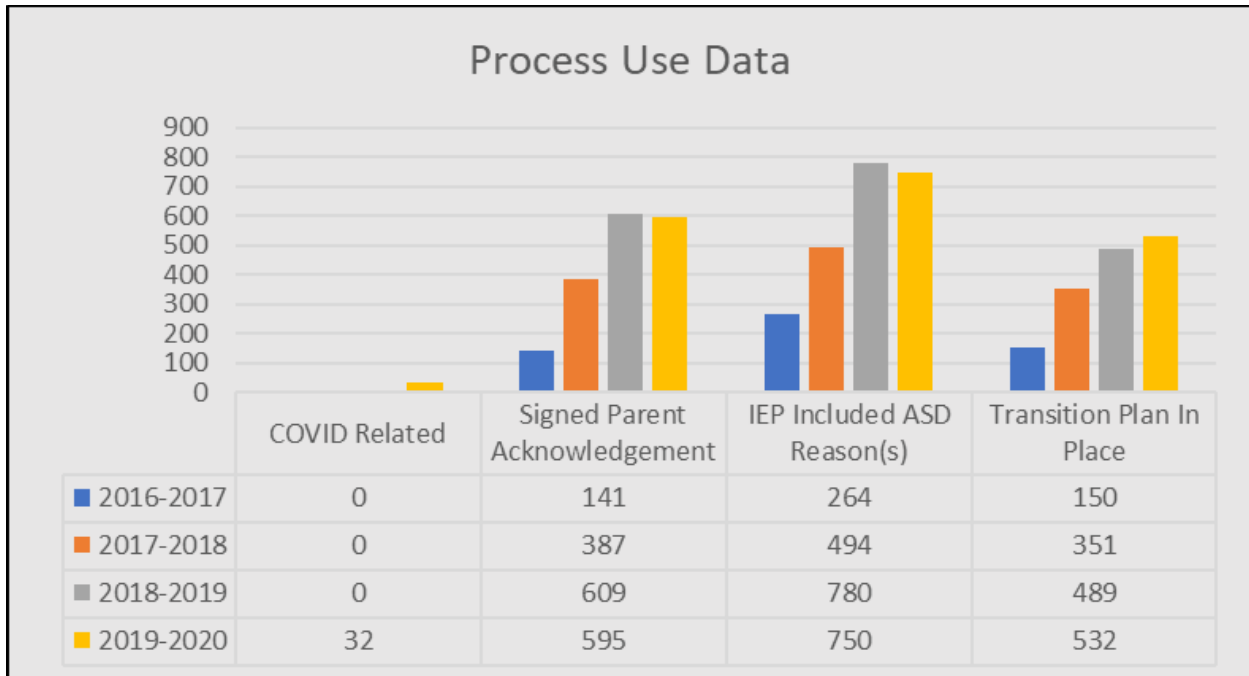


III. The location where the majority of SWD reside do not necessarily represent the same locales of where the majority of students on SSD, due to behavior, reside. This can be seen by comparing the graph above with this one below.



Documentation (Parent Permission, Reason for SSD in IEP, Re-Entry Plan)

The data we collected sheds light on the number of signed parent acknowledgement forms, how many IEPs included a reason for the student being on an SSD, and how many students had transition plans in place. As evident in the graph below, there was a steady increase in the use of each of these from the 2016-17 school year to the 2018-19 school year that remained fairly steady for the 2019-20 school year. We attempted to clarify the number of students with re-entry plans as a part of their program. The previous April 2021 survey did not find many students with reentry plans. In addition, we looked at the impact of COVID on the use of SSD for students who could not abide by the safety protocols.



Synopsis

- 1) There were significant increases in the use of the Signed Parent Acknowledgement Form and the inclusion of the reason for the student being on SSD in the IEP from 2016-17 to 2019-20. However, there was a slight decline from 2018-19 to 2019-2020.

- 2) There are significant differences between the number students with disabilities who are on SSD and the number of Signed parent acknowledgement, reasons for SSD included in the IEP, and re-entry plans.
- 3) In addition to the data presented above, based on our conversations with districts across the state, it appears there is a misunderstanding as to when the Parent Acknowledgement form needs to be used. We found the absence of guidance on the implementation of placing students on SSD in accordance with SB 263 led to confusion as to whether the Parent Acknowledgement form applies to students with IEPs since the parents are part of the IEP team who is making the placement decision. (See Recommendation/Findings page 49)
- COVID did not appear to have much of an impact on the students placed on SSD. The only year students were reported to be on SSD due to inability to follow COVID Safety protocols was 2019-20. Of the 991 students reported on SSD due to behavior 32 (3%) were said to not be able to follow the COVID safety protocols.

Summary of Data

When reviewing the data, we found that there were 57 districts who did not have any students on SSD due to behavior for the 2017-18, 2018-19 and 2019-20 school years. The three districts with the highest 3-year average of students placed on SSD due to behavior were Eugene, Medford, and Springfield.

School District	School Year	Pre-School	Elementary School	Middle School	High School	Total SWD on SSD
Eugene SD	2016-2017	DNC	DNC	DNC	DNC	0
Eugene SD	2017-2018	DNC	14	16	39	69

Eugene SD	2018-2019	DNC	48	20	46	114
Eugene SD	2019-2020	DNC	24	8	35	67
	3 yr Ave		28.67	14.67	40.00	83.33
Springfield SD	2016-2017	0	0	0	0	0
Springfield SD	2017-2018	0	39	13	15	67
Springfield SD	2018-2019	0	55	9	16	80
Springfield SD	2019-2020	0	45	5	12	62
	3 yr Ave	0.00	46.33	9.00	14.33	69.67
Medford SD	2016-2017	0	3	0	0	3
Medford SD	2017-2018	0	52	7	12	71
Medford SD	2018-2019	0	18	6	7	31
Medford SD	2019-2020	0	43	9	9	61
	3 yr Ave	0.00	37.67	7.33	9.33	54.33

OVERALL SUMMARY

- The majority of SWD in Oregon reside in Cities and Large Suburbs.
- The majority of students placed on SSD reside in Small and Mid-Size cities and towns.
- Over 1% of students with disabilities in Oregon are being placed on SSD due to behavior.
- The majority of students placed on SSD are of elementary age.
- The majority of students placed on an SSD have a primary disability of Other Health Impairment, Emotional Disturbance, or Autism.

- There is not consistent use of the signed Parent Acknowledgement form, including the reason for SSD in the IEP, or the use of a re-entry plan.
- COVID did not appear to have much of an impact on the student placed on SSD.

IV. Qualitative Summary

In addition to the quantitative data, we also gathered qualitative data to understand the why behind the numbers. We interviewed administrators, teachers, behavior specialists, school psychologists, as well as parents from across the state to hear their comments related to this issue. The quantitative and qualitative data together allow for a deeper understanding of the issue.

Based on the survey results from April 2021 and comments from the focus groups with the ODE staff we identified 20 school districts across the state for which we desired to interact with school personnel. We planned multiple weeks where we, as a team, could interview individuals from different school districts. We relied on ODE/DOJ to contact the school districts to let them know we would like to meet with them, talk with staff and teachers, and review IEPs and BIPs. As discussed in the Barriers section, multiple obstacles were placed in our path and thwarted or delayed our efforts.

Some districts never contacted us, making visits very difficult. Some of the districts would only talk with us if their attorney was present. Some of the districts would only allow us to meet with the superintendent for 30 minutes on a day that we did not plan on being in Oregon, weeks in the future. It was not uncommon for attorneys for the districts to contact us and decline to allow us to meet with school personnel, stating the teachers were too stressed to meet with us, they did not have coverage of the classes so there was no way they could meet with us, or the topic was too emotional for them to talk about and should not be addressed with the teachers.

Despite our clarifying, multiple times, that the work we sought to accomplish was related to the lawsuit against ODE, and their districts were not targeted for a lawsuit, the response rate was poor. When we were able to meet with staff it was often with only the special education administrators or supervisors with their attorney present. While some school board attorneys were collaborative and engaged in the process, some were not. One attorney would object to questions we posed, most notably objectionable were any questions related to local control. These were important questions as local control was often given as a justification for why there was not more oversight by ODE on district's use of

SSD. These objections hindered our process and prevented our full understanding from their perspective about the way ODE does work with local school districts.

Some districts were concerned about talking with us because they were worried that things they said would be used against them in future lawsuits or complaint investigations. We sought clarity from both the Plaintiffs and Defendants who assured us that it was highly unlikely the information would be used in such a manner. We began ALL of our discussions with school staff clarifying our role in the lawsuit, clarifying information they provided would reference not them specifically, and reiterating the lawsuit was against ODE and not their individual school district

We also stated to districts and families multiple times that we did not need, nor want, personal identifiable information about students, as this was raised multiple times as a reason why we could not meet with a variety of school staff or receive requested documents. We repeatedly told school staff and parents that we when did include comments they made we would not include information that would identify who made the comment. We would only state, for example, "A teacher in Oregon stated . . .", instead of naming a specific teacher or a specific district. This also did not allay their fears that information provided to us would be used in either a future compliance investigation by the state or in future lawsuits involving Disability Rights Oregon. In addition, we stated that if any document was provided to us, either a flow-chart for decision making, a sample letter to a parent, an example of a behavior management plan, or a Step-up Plan for bringing the student back to full-time, we would make sure to get their explicit written permission before including such a document as an example. As noted below, some of the districts (before the subpoena) were more than willing to share documents and examples.

We also let districts know we were seeking examples not only of ideas for improvement for ODE as it works to oversee the use of SSD due to behavior with IDEA-eligible students, but also examples of what supports ODE was already providing that districts found effective and would want ODE to continue or expand. The statements made by district personnel related to what ODE has done well or areas of strength related to other areas of special education, outside of SSD due to behavior, are not included, as our contract explicitly outlined the scope and topics of our report.

There were some districts, however, that were incredibly open (even prior to the subpoenas) and arranged times for us to meet with staff at all levels, did not monitor our conversations, provided us documents, and worked very hard to assist in our learning about the process of placing and working with students on shortened school days. These districts shared a lot of vital information, allowing us to learn important and necessary components of the provision of appropriate special education services for eligible students across the state of Oregon. We came away from every conversation with these helpful school districts with an increased acuity of the issue. This report would be incredibly different, lacking in detail, and lacking in recommendations if these districts had not been as forthcoming as they were. A great deal of the specific verbiage for the recommendations comes directly from the examples and words from the special education directors and teachers with whom we met, which was only reinforced by the quantitative data we collected.

There were also a few attorneys who represented school districts who were incredibly helpful, arranging focus groups with multiple directors of special education, going into great length on the role of ODE and how they felt it should interact with local school districts. These attorneys, when they were on the call, also provided a wealth of background information that greatly contributed to our work. We realize their role is to protect the interests of their clients-the school districts-but they also had the greater good in mind as they discussed the role of ODE and the recommendations for improvement. Their interests were not just their school districts, but all student with disabilities in Oregon as well.

In addition to school staff, we wanted to make sure the parents who were willing to talk with us could do so without feeling concerned there may be retaliation or other ramifications against their children or families. After extensive back and forth between the parties we reached an acceptable statement that would be made to the parents as a part of the interviews.

As part of my work, I am preparing a final report for the parties. In my final report, I will not identify any parents or students. I will do my best to keep all parent identities confidential; however, if requested by either party, I will be required to provide them. That said, the parties are committed to attempting to resolve the lawsuit through a settlement.

Unless required by law, the parties will not share parent identities with school districts. I will not share parent identities with school districts.

Finally, the qualitative piece was made very difficult by the impact of COVID-19. When this project started, we hoped to very quickly come to Oregon and meet with special education directors, teachers, and parents. However, the Omicron variant of COVID rose rather precipitously making travel extremely difficult. This coupled with the fact that we did not want to unwittingly spread and expose the virus to others prevented a lot of travel for the first few months of the project. There is a lot that can be gleaned from a face-to face conversation, and we did the best we could to facilitate in-person visits

When face-to-face was not an option, we used Zoom/Google Meets/Microsoft Teams as a means to meet with school district personnel, subject matter experts, and with parents. While this was not ideal, we found many individuals appeared comfortable and conversant in the use of these forms of technology to interact with others after two years of virtual interactions due to COVID. These virtual meeting allowed for more personal conversations, greater flexibility in scheduling, less travel for parents to centralized locations, and significantly less exposure to COVID. We had genuine conversations with some of the participants that enabled us to form and make the recommendations we have as a part of this report. The willingness of all the individuals to talk with us as a part of this project could not have happened without the use of technology in this form.

Given the reluctance of some of the districts to talk with us, the necessity of subpoenas for answering the survey and meeting with us, and the problems with travel as a result of COVID, we are actually pleased with the qualitative indicators that we obtained. The conversations we had with the many district staff from across the state provide the spirit of what is necessary to provide appropriate recommendations included in this report. We also sought input from ODE staff, education service directors, complaint investigators, and subject matter experts. The opinions expressed as a part of these interviews provided significant insight, and combined with the feedback from district staff and parents, elucidated the challenges and spirit necessary to effectuate the recommendations included in this report.

Eligible students being placed on a shortened school does not occur in a vacuum. One cannot only talk about the students who are on shortened school day without also

talking about the training for teachers, administrators, school psychologists, behavior specialists, substitute teachers, and the needs of parents. There are many factors that go into placing a student on shortened school day. We did hear about the eligibility process for special education, staff shortages, and problems with transportation staff understanding and responding appropriately to the needs of the target student. We also heard about the needs of bus drivers, the needs for providing FAPE, issues related to least restrictive environments, in addition to issues related to compensatory education for students who are placed on a shortened school day. The behavior needs of the students were apparent in many different areas related to instruction and impacted many different jobs and responsibilities.

The questions that we used to gather information as a part of the interviews were developed independent of both parties. The focus of the questions related to the process of how a child is placed on a shortened school day, how frequently they are monitored, the role of the IEP teams in the decision-making process, the use of FBAs/BIPs, the development of a plan for bringing the student back into school for a full-day of education, and the specific strategies and skills that are to be taught to the student to facilitate their coming back to school.

We tailored our questions to the specific roles and responsibilities of the individuals we were addressing. We did ask all district employees we talked with, what guidance or support they sought from ODE. The classroom teachers, who were all very forthcoming, all deferred that question to their supervisors as they felt it was the supervisors/administrators role to address or seek guidance from ODE while their job was to listen to and implement what their supervisors/administrators stated was necessary.

One item that was overarching as a part of the discussions was the need for clarification or additional guidance from ODE about the requirements of SB 263 as it relates to students with disabilities on SSD due to disability related behaviors, the need for efficient and effective data gathering and reporting, and the need for support when there is a student with intense behavioral needs. Please see the recommendations section of this document.

We are deeply indebted to the districts, ODE staff, and parents, who by taking time from their schedules and talking to use despite any reservations they may have had,

provided us important information for this report. The conversations with teachers, principals, administrators and families, all clarified the need for increased guidance from ODE in specific areas related to students on SSD due to disability related behavior. These qualitative statements give the meat on the bone to the quantitative data numbers that were a part of the survey. The two work very closely with each other and are necessary to read together, not in isolation.

V. Findings

Findings

- 1) The Quantitative findings from the survey included:
 - a) · The majority of SWD in Oregon reside in Cities and Large Suburbs.
 - b) · The majority of students on SSD reside in small and mid-size cities and towns.
 - c) · Over 1% of student with disabilities are being placed on SSD due to behavior.
 - d) · The majority of students on SSD are of elementary age.
 - e) · The majority of student placed on an SSD have a primary disability of Other Health Impairment, Emotional Disturbance, and Autism.
 - f) · There is no consistent use of the signed parent permission, including the reason for SSD in the IEP, or the use a Re-entry plan.
 - g) · COVID did not appear to have much of an impact on the student placed on SSD.
- 2) Based on our research, there are no mandated trainings provided by ODE on the topic of Shortened School Days (SSD), on how to prevent putting students on SSD, or on how to ensure effective use of Functional Behavior Assessments (FBAs) and Behavior Intervention Plans (BIPs), etc. There were some trainings provided by ODE at the COSA Conference (Coalition of School Administrators) regarding the new SB263 legislation and what it meant, but the trainings were not about how to prevent or change the SSD process (and all trainings provided

at the COSA conference are an option for attendees). We were made aware of other trainings and guidance provided however, all were voluntary and districts had to seek out these trainings and supports, and we list those below:

- a) ODE guidance from 2018 on SB 263.⁶
- b) Hungerford Law Firm guidance for “Step-Up Plans.” While we did not have access to this guidance, it was mentioned by multiple districts.
- c) Multiple ODE PowerPoints
 - i) New Reduced School Day Legislation from Fall 2017;
 - ii) HB 3318: New Legislation Regarding FBA and BIP best practices and implementation resources – Coalition of Oregon School Administrators (COSA) June 2018;
 - iii) SB 263 – Shortened School Day – undated;
 - iv) Responding to Students on Shortened School Day Programs – undated.
- 3) Due to the level of redactions of IEP documents received from multiple school districts, we were unable to determine the prevalence of students remaining on SSD over multiple years,
- 4) There is not an effective and efficient way for the state to gather and monitor data on the use of SSD.
- 5) Although most school districts opted to input cumulative information of students on SSD into our 2022 survey, there were some that neglected to respond, or refused and, instead, provided redacted copies of the students IEPs. For some districts, the level of redaction made it impossible to confirm if the same student was on SSD for multiple years. However, the districts that provided files (appropriately redacted only to remove and personally identifiable

⁶ <https://www.oregon.gov/ode/students-and-family/SpecialEducation/publications/Documents/sb263.pdf>

information) for every student on SSD due to behavior allowed us to gather data and identify the following trends:

- a) The most common IDEA eligibility categories were Emotional Disability (ED), Autism (AU), and Other Health Impaired (OHI). This is consistent with the April 2021 survey and our 2022 survey.
- b) Many students started kindergarten on a SSD.
- c) Most of the students had SSD information documented in their IEPs.
- d) We did not find a single IEP that documented a student returning to full-day.
- e) A large number of the students were on a SSD for multiple years.
- f) Very few of the students on SSD were provided instruction outside of school (i.e., instruction in the home or via video). For example, if the student only attended school from 8:30am-11:30am and left school at 11:30am, the district did not provide any more instruction to the student that day.
- g) In the IEPs we reviewed that were written after SB 263 was enacted in June 2017, the vast majority of the students (school years of 2017-2018 and 2018-2019) did not have a Shortened School Day notice and acknowledgement form that was signed by a parent/guardian. During the 2019-2020 school year there was an increase in the use of the signed notice and acknowledgement forms.
- h) Most Functional Behavior Assessments (FBAs) and Behavior Intervention Plans (BIPs) were each one-page templates with spaces for IEP teams to fill in a few words or phrases.
- i) In most of the IEPs we reviewed from the 2016-2017, 2017-2018, and 2018-2019 school years there are no written plans regarding how that student's SSD will be reviewed, nor any delineated timeframe, description of data to be collected and analyzed, or review dates.

- j) In most of the IEPs we reviewed from the 2019-2020 school year, there was a “Step-Up” plan which wrote out the timeframe, review meeting dates, specific behaviors the student needs to improve, team members, and data to be collected.
- 6) During interviews with school staff, administrators, lawyers, and parents, a standard “Step-Up Plan” was described to us as being written and included in a student’s IEP when the IEP team decides to place a student on SSD. This plan details the procedures to be followed that will eventually allow the student to return to attending school for a full-day.
 - a) During interviews with school staff and administrators, it was stated that most of the students are placed on SSD for multiple marking periods.
 - b) However, in interviews with parents and upon review of IEP documents, it was clear that most students are on SSD for multiple years.
- 7) In the interviews with school district personnel from across the state, there were two main reasons for why students eligible for special education and related services were placed on SSD due to behaviors: “stamina” and “safety.” Administrators and teachers alike explained that some students cannot handle being at school all day and thus need a shortened school day to behave appropriately and safely for the abbreviated time they attend school.
- 8) Based on discussion with school staff and administrators, written language in flowcharts or procedural documents, and written language in IEP documents (including FBAs, BIPs and Step-Up Plans) it is clear school districts and ODE leadership considered SSD as a part of the continuum of placement options for students eligible for special education—rather than a temporary last resort with a cognizable plan to return to a full-day.
- 9) We learned through our interviews with staff, administrators, lawyers, and parents, there are currently Shortened School Day *Programs* for students eligible for special education

(and unidentified general education students). These programs have names (we heard about or found in IEP documents at least five different named SSD Programs) and most of them appear to be “half-day” program, in which one half of the students in the program attend for the morning (i.e., 8:30am-11:30am) and half of them attend for the afternoon (12:00pm-3:00pm). These are permanent programs that have been established to operate year-round—and have been in operation for multiple years—with full-time staff and most students remain in these programs for several years.

- 10) We found more often than not that the students are required to “earn” their way back into a full school day, for example, demonstrating a particular number of “good days” when they were at school for the shortened length of time. Some, but not all, districts were teaching the students the behavioral skills needed to be able to better function in a school setting for more hours.
- 11) In many of the IEPs we reviewed of students were placed on SSD, there were many districts that did not include any behavioral goals and often there was no Behavior Intervention Plan (BIP) included.
- 12) Based on interviews with school staff and parents and review of IEPs, it was clear that many times districts do not take into consideration the impact on the families (i.e., parents having to change jobs or hours of work to be during the night, locating childcare services, paying for childcare services, etc.) when the district required their child to stay at home during school hours. The impact on families was further exacerbated when the district did not provide transportation services in the middle of the day and when students were assigned to programs that were not in their neighborhood school.

- 13) Students with disabilities are being placed on SSD without parental consent. SB 263 contains language that requires parental consent and forbids unilateral placement in one portion yet only requires meaningful participation in another.
- a) SB 263; Section 2. (1)(d) states ‘ “Unilaterally place ’means a placement by a school district without *consent* (italics added) of the student’s parent. Section 2. (3)(a)(B) states “After the opportunity for the student’s parents to meaningfully participate in a meeting to discuss the placement;”
 - b) Several IEP documents that we reviewed included a SSD notice and acknowledgement form that had written notes on it by the parent, an advocate or school staff person that the parent disagreed with the SSD placement decision. The student was placed on SSD regardless.
 - c) Information gained through interviews with school staff, administrators and parents revealed that Informal Removal (IR) is: 1) being used frequently with students with disabilities due to behavior difficulties; and 2) little to no data are being collected or recorded regarding its use. Informal Removal is when a student is taken out of the classroom and forced to remain somewhere else in the school without receiving any instruction OR when a school staff member or administrator calls a student’s parent/guardian to come pick up the student and take him or her home because the student’s behaviors are too difficult to handle.
- 14) Rural areas appear to be more heavily impacted as demonstrated by numbers collected in the survey and IEP documents collected from rural areas.

- a) Information gained from parent, staff and administrator interviews coincided with this data and provided reasons that pointed to lack of trained staff available and lack of mental and behavioral health services in the community.
 - b) Information gained from the Behavior Analyst Certification Board website and through interviews with ODE staff, school staff, administrators, lawyers and parents indicate that there is currently a significant shortage of Board Certified Behavior Analysts (BCBAs), Board Certified Assistant Behavior Analyst BCaBAs) and highly trained behavior specialists in the entire state of Oregon (as of June 20, 2022 only 23 active BCBAs and BCaBAs listed as living and practicing in Oregon). Many districts expressed opposition to the use of BCBAs; however, these same districts had no alternative effective program to address student behavior and had higher rates of SSD.
- 15) There is currently no way for ODE to efficiently collect data on and monitor the use of SSD using their current practices (this includes electronic data collection, IEP documentation, paper records, or personnel to monitor the practice).

VI. Recommendations

Specific Recommendations

We have broken down the recommendations for changes based on the IDEA and its regulations, quantitative results from the survey and other state data gathered, IEP files that were reviewed from many school districts, and qualitative information received from interviews and comments from school district personnel and parents/guardians we interviewed. We outlined the foundation for these recommendations within the Findings section. This section on Recommendations should not be read without first reviewing the quantitative and qualitative data and the findings, which form the basis for our recommendations. It should be noted that these recommendations are directed to the Oregon Department of Education (ODE). While many of the findings are based on what is occurring within individual school districts, it is important for ODE to become aware so they are able to follow through with their general supervisory responsibility and implement to make statewide changes and improvements regarding the use of Shortened School Day (SSD) with students with disabilities.

We have divided our recommendations into two categories: Priority and Strongly Consider. The Priority recommendations are those that should be addressed as soon as possible. The Strongly Consider recommendations are ones that not only will improve services for students eligible for special education and related services but will also improve communication and working relationships with parents. Not every section includes accompanying Strongly Consider recommendations.

Recommendation One

Based on our findings that there is a lack of ODE guidance on Shortened School Days and a pervasive lack of understanding of the relationship between SSD and least restrictive environment (LRE) we recommend the following:

<i>Priority</i>	<i>Strongly Consider</i>
Issue guidance on the use of SSD with students due to behavior. We have provided sample guidance in the form of questions and answers located in Appendix V.	
Develop and issue guidance on how the use of Shortened School Day and the IDEA mandate to place students in their least restrictive environment and intertwine.	
<p>Conduct mandatory training for all LEAs on the use of SSD for special education staff and administrators. This training must include:</p> <ol style="list-style-type: none"> 1. a universal format for the creation and use of “Transition Plans” or “Step-Up Plans”; 2. the data collection and analysis process that needs to occur and be included in the IEP documentation; and 3. how to develop a Plan that does not require a student to “earn” their way back to a full day of school. 	

<p>1. Set up a new position within ODE who is the point person for districts and parents for all SSD questions/concerns.</p> <ul style="list-style-type: none">● This will ensure that all districts and parents receive consistent information and guidance.● ODE point person would work with an interagency support team (see more explanation of the team in Appendix T) to provide the necessary supports/resources to districts and monitor the effectiveness of the team's efforts.● ODE point person would also set up, coordinate, and, when appropriate, provide trainings on SSD.	
<p>2. Develop and provide training on the Least Restrictive Environment (LRE) continuum and how behavior goals, Functional Behavior Assessments (FBAs), and Behavior Intervention Plans (BIPs) are the essential tools necessary to ensure students are educated in the LRE and to prevent placement on a SSD and to return students from a SSD to full-day attendance.</p>	

Recommendation Two

Based on our finding that there is a lack of necessary staffing in rural areas and for hard-to-fill positions across the state, we recommend the following:

<i>Priority</i>	<i>Strongly Consider</i>
<p>Designate IDEA funding to provide stipends for special education teachers and school psychologists to be paid at designated intervals during the school year.</p>	<p>Designate funding to provide full university scholarships for in-state tuition of a select group of students who commit to becoming special education teachers (e.g., Teaching Fellows”) in exchange for working in remote areas in Oregon for five years. This could be in the form of a promissory note that is forgiven at the completion of five years of service. While this may not be something ODE can fund independently, it is something ODE can advocate for legislation to create this program and/or develop partnerships with state universities.</p>
<p>Designate IDEA funding to provide an <u>additional</u> stipend for special education teachers and school psychologists in remote areas.</p>	<p>ODE could provide full university scholarships for special education teachers in exchange for working in urban areas for five years. This could be in the form of a promissory note for which is forgiven at the completion of five years of service.</p>
	<p>Designate funding to provide full university scholarships for in-state graduate programs for a select group of students who commit to becoming school psychologists in exchange for working in remote areas for five years. This could be in the form of a promissory note for which is forgiven at the completion of five years of service. The funding should include any necessary supervision or practicums. If the ODE does not use IDEA funds for, the ODE can advocate for legislation to create this program and/or develop partnerships with state universities.</p>

	ODE could provide full scholarships for school psychologists and work with the Universities to pay for any necessary supervision or practicums in exchange for working in urban areas for five years. This could be in the form of a promissory note for which is forgiven at the completion of five years of service.
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Recommendation Three

Based on our finding that there is a lack of behavior support resources and training for teachers, administrators, and school staff to understand the functions of behavior, preventative and proactive behavioral interventions, and appropriate consequence interventions (i.e., reactive and reinforcers), as well as the fact that almost every district noted the lack of mental health services and resources for districts to access and coordinate with to meet students' needs, we therefore recommend the following:

<i>Priority</i>	<i>Strongly Consider</i>
Establish a statewide program to offer Registered Behavior Technician (RBT) training for paraprofessionals and other school staff as well as required supervision by regional Board Certified Behavior Analysts (BCBAs).	Provide full scholarships for qualified individuals seeking to become BCBAs who already work for ODE or a local school district and pay for any necessary supervision in exchange for working in rural areas for five years. This could be in the form of a promissory note for which is forgiven at the completion of five years of service.

<p>Employ regional BCBA's to train and supervise RBTs statewide. The number of regions may not always align with the ESDs, as the rural ESDs are not accessible for some districts. The number of regional BCBA's must be sufficient to be accessible to the districts they serve and able to fulfill their ethical duties of supervision.</p>	<p>Create a Joint Task Force with Oregon Teacher Standards and Practices Commission to consider changes in the regulations for all teacher training programs and administrator training programs to include requirements for instruction and establishing an expected level of proficiency/understanding of:</p> <ul style="list-style-type: none"> ● the IDEA's requirement of a free appropriate public education (FAPE); ● LRE and the calculation of placement; ● Manifestation Determination Reviews (MDRs) particularly as they relate to informal suspensions; ● the provision of appropriate behavior supports; and ● the functions of behavior and the appropriate consequences.
<p>Provide a stipend to paraprofessionals who successfully complete the RBT training. This stipend should be increased for serving in rural areas.</p>	
<p>Create and fund regional Intensive Interagency Support Teams that districts can call on to provide training, consultation, and coaching in addressing behavior needs. (See Appendix T for a description of an Intensive Interagency Support Team).</p>	

Recommendation Four

Due to the need to increase monitoring of the use of SSD by ODE, we recommend the following:

<i>Priority</i>	<i>Strongly Consider</i>
Purchase, implement, and mandate the use of a Statewide IEP system.	Collect data on staffing shortages to identify the areas of greatest need and determine the best use of state resources to address the shortages. We have made several recommendations regarding staffing shortages, as we observed districts throughout the state utilizing SSD due to staffing shortages. There are no data available on vacant positions without going to each individual district. A method to formally collect these data would ensure the stipends are being provided to the greatest areas of need. This could also be in the form of a statewide platform to advertise job openings for any prospective employee to be able to see openings across the state.
Using a Statewide IEP system, collect data on the use of SSD as part of the annual monitoring process and monitor the prevalence and use of SSD quarterly once a statewide IEP system is in place.	
Use the monitoring data to identify districts with a greater percentage of students on SSD to provide supports, resources, and corrective actions, when necessary, to decrease the use of SSD.	
Ensure that included in the monitoring process is a way to examine low incidence situations such as SSD.	

<p>ODE needs to provide guidance on calculating the amount of time a child is in school. School day = “bell to bell” v. “child’s school day” https://www.oregon.gov/ode/reports-and-data/SpEdReports/BootCampMaterials/ProcessContentManual.docx</p>	
<p>Issue clear guidance, with examples, on how to correctly document a student’s setting particularly when a child is on SSD. Districts are calculating the child’s setting without noting the limited amount of time a child is attending due to SSD.</p>	
<p>Issue guidance that districts may not use transportation needs and/or administrative convenience to dictate the timeframe of students with disabilities attendance. The guidance should explain that “school day” has the same definition for students with disabilities and nondisabled students.</p>	
<p>Adopt policies/regulations that require districts to notify ODE when a student has reached 30 school days on a SSD placement. Upon notification, the ODE Point Person will immediately coordinate the involvement of the regional Intensive Interagency Support Team (Appendix T).</p>	

<p>Issue guidance on how to document Informal Removals for partial school days as suspensions that count towards the 10 days triggering an MDR. Mandate the reporting of all Informal Removals as suspensions on students' disciplinary history in their educational record to be reported to ODE as part of the annual discipline data collection. ODE should then review that data annually to identify any districts that are not holding MDRs as needed for these suspensions and provide training, support, and corrective action if training and support prove ineffective.</p>	
<p>Establish and provide to districts clear consequences, in the form of withholding funding, to LEAs who do not follow ODE guidance on SSD and who do report use of SSD or accurately report use of SSD. A recommended logical consequence would be to reduce the district's IDEA and state funding for any student who is placed on SSD for more than 30 school days during a calendar year. The funding would be reduced to reflect the actual percentage of time each day the student is receiving live instruction from a certified teacher. For example, if a student is only allowed to attend school for half a day the funding for that student would be cut in half and only restored incrementally as the student is returned to school. If funding has already been paid to a district, the district would be required to return a pro rata share of that funding every 30 days with documentation of the student's receipt of live instruction from a certified teacher.</p>	

Recommendation Five

Due to the lack of understanding and need for clear guidance from ODE on SB 263, we recommend the following:

<i>Priority</i>	<i>Strongly Consider</i>
<p>Issue guidance on how SB263 requires parent <i>permission</i> for a shortened school day. ODE needs to provide guidance, so every district understands its responsibility and melds the conflict between consent and meaningful participation.</p>	<p>Revising SB263 to include many of the components in the originally proposed legislation or provide guidance to districts that includes those components.</p>
<p>Issue guidance specifying if a district is considering placing a general education child on SSD, the child should be put in the referral process for IDEA. We suggest the language from the original legislation should be used in the guidance.</p>	
<p>Issue guidance on requiring the use of FBA/BIP and Behavior goals, etc. – the IEP must address the child’s unmet needs resulting in the use of SSD so the child can develop the skills to move on the LRE continuum to a less restrictive environment. We suggest the guidance the language from the original legislation should be used in the guidance.</p>	

Recommendation Six

Due to a lack of training for developing and implementing FBAs and BIPs, the lack of understanding of the role of an FBA and BIP for meaningful behavior change, and need for behavior goals prior to placing a child on SSD due to behavior, we recommend the following:

<i>Priority</i>	<i>Strongly Consider</i>
Issue guidance on FBAs and BIPs processes and format including sample documents that would be included in the statewide IEP system. See Appendix U for additional guidance on FBA/BIP development.	
Establish a system for providing mandatory training for special education staff and administrators on FBAs and BIPs and the resulting behavioral goals.	

Recommendation Seven

To prevent the overuse of SSD we recommend the following:

<i>Priority</i>	<i>Strongly Consider</i>
Issue guidance that, for every student placed on SSD, 1 hour of 1:1 home instruction needs to be provided for every 2 hours of school instruction missed.	

Issue guidance that for every student placed on SSD for longer than 30 days, compensatory education needs to be provided based on a calculation of hours not at school = amount of equivalent school days missed.	
Issue guidance that if school districts decide to provide a student instruction through video (asynchronous or synchronous) while they are at home on a SSD, no more than 2 hours a day of instruction may be provided in this manner.	

Recommendation Eight

To ensure agreements are carried out, we recommend the following:

<i>Priority</i>	<i>Strongly Consider</i>
Appoint a Special Master to oversee the implementation of the final agreement.	
Appoint a panel of advisors to review data and make recommendations to the special master regarding implementation of monitoring efforts related to SSD. The panel must include at least one parent.	

CONCLUSION

School personnel across Oregon appear to understand conceptually how and when the use of Shortened School Day (SSD) may be appropriate; however, there is a discrepancy between this conceptual understanding and the implementation of SSD in the student IEP files and survey data we reviewed.

When asked what other alternatives to SSD were attempted, the districts had few, if any, responses despite the fact that SB 263 mandates at least one other placement be considered. Even more concerning were the examples provided as justification for placing students on SSD. The two main reasons consistently given were “stamina” and “safety.” “Stamina” was explained to be that a student did not have the emotional, psychological, or physical endurance to get through an entire school day without exhibiting inappropriate behaviors. “Safety” ranged from: throwing items, elopement, climbing on furniture, hitting, biting, kicking, to property damage (e.g., tearing posters off the wall, turning over desks or chairs). The IEPs of students on SSD that we reviewed ranged from not having behavior goals, to behavior goals that did not pass “The Dead Man Test,”⁷ to goals that appropriately addressed the identified behaviors that led to placement on SSD.

Many districts self-perceptions of their efforts to return students to full day are not supported by the IEP documents provided or data submitted. The original proposed legislation for SB263 included mandatory timelines requiring frequent review of SSD placements, particularly for any student on SSD for more than sixty (60) calendar days, to reinforce the presumption of a return to a full-school day. This language was removed from the final adopted version and ODE has not issued any guidance to clarify the frequency of reviews or expected duration of placement on SSD resulting in many students across Oregon spending years on SSD and missing years of instruction. This is concerning. It was noted as a part of our research the two following facts:

- 1) Students who miss 10% of kindergarten lag, on average, almost a year behind in reading by third grade.
- 2) Students who miss two days of school per month will miss 1.5 years of instruction by the end of 12th grade.⁸

⁷ <http://teachearlyautism.blogspot.com/2012/08/the-dead-mans-test.html>

⁸ <https://www.readingrockets.org/article/waiting-rarely-works-late-bloomers-usually-just-wilt>

There are districts, however, that have figured out how to address inappropriate behaviors while keeping students in school for a full-day. What has become apparent throughout this process is the importance of leadership in how these decisions are made. Without any requirements for additional home instruction, placing students on SSD is easier than dealing with difficult behaviors. When the state and district leadership dedicate resources, provide training, and issue clear directives, it can be done. Where the district leadership saw SSD as a viable option, the data revealed, and conversations with district staff supported, the inappropriate and extensive use of SSD.

For example, one superintendent in a district on the I-5 corridor told administrators and teachers that no students would be put on SSD in the district and instructed them to “figure it out.” This initially was met with resistance; however, over time, it has become the new practice in this district. The commitment of the superintendent to all students receiving a full-day of instruction was the key to ensuring staff members dug into their professional “tool box” and found ways to address the inappropriate behavior and teach the students the skills they lacked.

Additionally, two special education directors in very rural districts in eastern Oregon reported they did not place any students on SSD. They could not think of any examples of students they were unable to serve with appropriate supplemental aids and services. The data provided by these districts is consistent with their statements.

There were major inconsistencies across the state with how districts are implementing SSD from districts that do not place any students on SSD to districts that are clearly implementing as a regular practice and view SSD as an acceptable placement option. Many districts have created programs that by design place children on SSD—often for years. These districts place both students eligible for special education and general education students (without considering the student’s eligibility under the IDEA) within these programs. Districts that are using SSD also have widely varied “Step-up Plans,” check-in systems, and expectations for students to return to a full-school day. Most school districts we queried did not provide any additional instruction outside of the student’s SSD to replace the instruction missed while the student was on SSD. In fact, the question was typically met with incredulity as to why that would be an expectation.

These findings only reinforce the need for ODE to issue clear guidance, provide direct training and support for LEAs, to serve as a resource for schools and families, and to monitor the

use of SSD on a consistent basis. Very few, if any, districts reported seeing ODE as a source of guidance or a resource for training and support—in fact, in one ESD, the special education director said this would be a philosophical shift. Due to the absence of clear guidance from ODE, districts rely on trainings and guidance from private law firms—whose clients are the school boards and not the children they serve—and their own institutional knowledge of using SSD as an acceptable method to address inappropriate behaviors. Given the vacuum of leadership around the use of SSD, lack of consistent state training, and absence of monitoring of the use of SSD, districts utilize the path of least resistance—placing children with behavior issues on SSD.

There is also a disconnect between ODE’s perspective of the prevalence, significance, and prolific use of SSD throughout the state through a variety of institutionalized programs and pathways. There are students on SSD who are not attending school at all—their SSD includes tutoring at home for one (1) hour each day without any access to peers. There are also students who have been on SSD for two or more years and continue to remain on SSD (we were provided entire student IEP files that included IEPs up through this past school year 2021-2022). In one district alone there were 12 students who had been on SSD for 2, 3 or 4 years.

As part of our investigation, we asked ODE to identify exemplary districts, so we could see what they were doing and how it might be emulated in other districts. However, in our interview with one of the districts ODE identified, the district personnel proudly described a program they created that was specifically designed to serve two groups of students each on a half-day schedule (one in the morning and one in the afternoon). The program placed both students with and *without* IEPs on SSD. The students who were not eligible for special education had not been referred for testing and had poor monitoring and Step-up Plans. For the students with IEPs, district staff reported that placement in this program did not affect their placement on the continuum and did not need to be reflected on the IEP as attending an SSD program. These students were typically in this program for years.

While the pandemic forced school districts to provide instruction remotely, what has become abundantly clear is the learning loss that children throughout our nation have suffered and from which they may never recover. This is consistent with the research documenting the impact of missing instruction on a child’s ability to learn and master basic academic skills. Perhaps even more profound—as noted by almost every district with whom we spoke—is the regression and failure to develop age-appropriate social skills that directly correlates with the demonstration of

inappropriate behaviors while at school, many of which impede their own learning and that of their peers. Thus, the IEPs and district staff that referenced the use of virtual instruction, both synchronous and asynchronous, as examples of the only instruction provided to students on SSD is particularly concerning. The lack of options for students to participate with peers and opportunities for the students to engage face-to-face with their instructors and learn from the modeling of their non-disabled peers poses significant long-term repercussions for students who are already academically, socially, and emotionally struggling.

As ODE noted in its response to the SOS Systemic Risk Report Talking Points from May 2022, action is required by the legislature to add authority to the Oregon Department of Education to address when local school districts and school boards are not in compliance with Oregon Administrative rules. We believe the guidance passed by the state board on June 16, 2022 is a good start (see Appendix Y). It would also require the Legislature to fund positions to monitor school district compliance.

Another concerning point is that many school districts are not counting Informal Suspensions or Informal Removals of students with disabilities as part of the 10-days that would trigger the need for an MDR. ODE must provide guidance and training to ensure districts understand and appropriately document as suspensions:

- When a child is removed from the classroom due to behavior and sits in the principal's office or other location away from their class and peers and direct instruction for greater than 60 minutes; and
- any time a parent is called to pick up a child early from school due to behavior.

Finally, ODE is the entity that receives the funding from the federal government to serve students eligible under IDEA for special education service and therefore has the fiduciary responsibility to ensure the districts to which they provide funding:

- 1) provide students FAPE in the LRE;
- 2) follow a linear progression across the continuum when restricting students' access to non-disabled peers;
- 3) do not deny students the opportunity to participate in a full-school day with peers for extended periods of time;

- 4) have the personnel and training resources they need to appropriately address students' behaviors;
- 5) have the training they need to develop appropriate FBAs, BIPs, and behavior goals; and
- 6) have the coaching they need to implement the BIPs along with collecting appropriate data and analyzing and using the data to ensure the student's behavior improves.

Students eligible for special education and related services have a presumptive right to attend the same amount of time as typically developing students. Shortened School Days should be seen and used as a temporary and emergency tool to help a student acquire the skills they need to attend a full-day and to help school staff and administrators receive training, secure additional supports, and make changes that are needed for the student to return to a full day within 30 school days. SSD should never be seen as a placement option on the LRE continuum and should not be used on a consistent basis with one student or many students within a school district.

The state has a difficult task ahead to ensure that SSD is sparingly used; however, we are confident that with a firm commitment from ODE leadership to eradicate the improper use of SSD it can be done.

Appendices

- I. Qualifications of Individuals Working on the Project
- II. Methodology
- III. Spreadsheet with Data
- IV. Terminology
- V. IDEA Part B Responsibility
- VI. State Education Agency Responsibility Under IDEA
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- XV. July 27, 2018, Letter to Mason
- XVI. Current SB 263
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- XVIII. February 2022 Survey to School
- XIX. List of School Districts Visited
- XX. Intensive Interagency Support Plan
- XXI. Recommendations for Guidance on FBAs/BIPs
- XXII. Recommendations for Guidance in a Question and Answer Format
- XXIII. Recommended IEP Team Statement
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- XXV. June 16, 2022 State Board Guidance
- XXVI. Decision Tree

Appendix A:

Qualifications of Individuals Working on the Project

David F. Bateman, Ph.D., is a professor at Shippensburg University of Pennsylvania in the Department of Educational Leadership and Special Education where he teaches courses on special education law, assessment, and facilitating inclusion. He is a former due process hearing officer for Pennsylvania for over 580 hearings. He uses his knowledge of litigation relating to special education to assist school districts in providing appropriate supports for students with disabilities and to prevent and to recover from due process hearings. He has been a classroom teacher of students with learning disabilities, behavior disorders, intellectual disability, and hearing impairments. Dr. Bateman earned a Ph.D. in special education from the University of Kansas. He has recently co-authored the following books: *A Principal's Guide to Special Education*, *A Teacher's Guide to Special Education*, *Special Education Law Case Studies*, *Special Education Leadership: Building Effective Programming in Schools*, *Developing Educational Meaningful and Legally Sound IEPs*, and *Current Trends and Issues in Special Education*. He was also recently co-editor of a special issue of TEACHING Exceptional Children focusing on legally proficient IEPs. He is one of the co-founders of the *Journal of Disability Law and Policy in Education* (JDLPE). He is also co-editor of the new Special Education Law and Policy Series for Rowman and Littlefield Publishers.

Since 2020 he has been involved in 85 due process hearings, and leads the Pennsylvania Department of Education monthly presentations on working with students with disabilities in virtual environments. He has also worked with multiple state education agencies on system-wide change, and helping rewrite SEA procedures for charter schools for the Guam Department of Education.

Jenifer Cline has worked in the field of special education for 23 years. Her experience includes being the State Special Education Director for Montana, working at the Montana Office of Public Instruction as the Continuing Education and Technical Assistance Unit Manager and as a monitor, working as a large district special education administrator, working as a special

education cooperative director and providing direct speech and language services to students in Montana schools. Ms. Cline provided leadership at the state and national levels by serving as president of Montana Council of Administrators of Special Education (MCASE) and as secretary and on the professional development committee of national Council of Administrators of Special Education (CASE) and participating in other national organizations and technical assistance centers such as the National Association of State Directors of Special Education (NASDSE) and the Technical Assistance for Excellence in Special Education (TAESE). In these roles Ms. Cline has experience working with teams at the local, state, and national level to facilitate continuous improvement of special education programs. Ms. Cline has presented on special education and administrative topics for the American Speech-Language-Hearing Association, CASE, MCASE, American Educational Research Association, Council for Exceptional Children, and many school districts in Montana and Guam. Ms. Cline has co-authored several articles and book chapters and is the coauthor of the following books: *A Teacher's Guide to Special Education*, *Special Education Law Case Studies: A Review from Practitioners*, and *Special Education Leadership; Building Effective Programming in Schools*, *A School Board Member's Guide to Special Education* and *Efficient and Effective Management of Resources*, *Data: Making it Meaningful*.

Sonja R. de Boer is a Board Certified Behavior Analyst-Doctoral (BCBA-D) and obtained her Ph.D. (2005) in special education and psychology and research in education at the University of Kansas, with an emphasis on early intervention for children with Autism Spectrum Disorders (ASD). She has almost 30 years of experience working in early childhood special education, early intervention services, Applied Behavior Analysis (ABA) with students with disabilities, and specifically children with ASD. She is currently the Director of Special Education for a small rural school district in Maine and is an Instructor for Tufts University Medical Center in Child Psychiatry.

For more than half of her career, she has focused on serving students with ASD and their families and educators in rural communities. She has also worked as an adjunct professor and regularly provides consultation and training around the nation regarding interventions for children with ASD. Besides the United States, she has worked with professionals, universities,

non-profit organizations and families with children with ASD and other disabilities in Australia, New Zealand, Ireland, Russia, Nigeria, China, Chile, Abu Dhabi and Dubai. She is the author of three books: *Successful Inclusion Practices for Children with Autism: Creating a Complete, Effective, ASD Inclusion Program*; *How to Do Discrete Trial Training*, 2nd edition; and is one of the original co-authors of the first edition of *Autism Spectrum Disorders: Interventions and Treatments for Children and Youth*.

Stacey Gahagan graduated magna cum laude from North Carolina State University in 1992, with a degree in Spanish Language and Literature and a K-12 teaching license. She studied in Seville, Spain for a year, where she became fluent in Spanish. She was a member of the first class of North Carolina Teaching Fellows. During her teaching career, she taught students Spanish from preschool through the community college level, including teaching English as a Second Language, and was honored as the Teacher of the Year multiple times. In 2000, Stacey founded the Washington Montessori Public Charter School and served as the Head of School - a role that included a myriad of duties including Exceptional Children Director, 504 Coordinator, and Human Resources Director.

Stacey was selected to participate in the Principal Fellows Program, but she opted to pursue a law degree to combine her passion for the law and education. She attended the University of North Carolina School of Law where she served as the Editor in Chief of her law journal, tutored fellow students, and was selected as an Honors Writing Scholar. She graduated with honors and has exclusively practiced education law with an emphasis on special education since 2012.

In 2014, Stacey opened the doors of The Gahagan Law Firm representing students with disabilities in schools and universities across North Carolina, public school teachers, and families facing issues such as school assignment issues, bullying, and suspension. In 2019, the Gahagan Law Firm combined with Ann Paradis Law to become the largest firm in the state with a focus on representing parents in special education disputes throughout North Carolina. Stacey regularly advocates for students with disabilities to be included with their non-disabled peers. In addition, Stacey also represents educators in employment issues, students with disabilities facing academic

issues in higher education, and representing students in Title IX cases. Stacey is passionate about protecting the civil rights of students and ensuring that students and teachers receive the due process to which they are entitled by law.

Appendix B:
Methodology

Methodology

The purpose of this work was to determine the extent that Oregon public school students eligible for special education services were being placed on a shortened or abbreviated school day due to a disability related behavior and then provide recommendations based on the findings to the parties for consideration. While there are students who receive a shortened school day as a result of medical needs or outside of the school therapy needs, the focus of our work was to investigate and to make recommendations only for those placed on shortened or abbreviated school days as a result of disability related behaviors. Oregon placed a greater emphasis on this practice when the legislature passed, and the governor signed, SB 263 in 2017 and provided specific guidelines related to the educational needs of students as it relates to shortened or abbreviated school days.

To meet our charge, the team met with focus groups from the Oregon Department of Education (ODE), school district staff, families, and other experts in the field in Oregon. The team planned to gather and analyze data regarding the use of shortened or abbreviated school day modeled on the survey of the Oregon school districts sent out in April of 2021, which our team expanded and sought to clarify the scope of the data.

Below is a description of the specific tasks the Neutral Experts were assigned and what was done to complete those tasks.

Task One

- a. Determine the sources of information from which to gather evidence regarding use of Shortened School Days for the Target Population. These sources of information could include (but would not be limited to):
 - i. Records and data in ODE's possession relevant to Shortened School Day placements for the Target Population;

ODE had the results from the April 2021 survey that had responses from 56% of the districts in Oregon. We were not provided, nor did we find any other records in the possession of ODE specifically related to the monitoring or prevalence of the use of SSD in Oregon schools.

Task Two

- ii. State and district statutes, policies, guidelines, processes, and procedures relevant to Shortened School Day placements for the Target Population;

Based on our research, which includes discussing this topic with many directors of special education and district superintendents, we were unable to locate actual Board policies on SSD despite districts having notice and acknowledgement forms and processes to follow when placing students on SSD. The only state statute found was SB263. In addition, we found no formal guidance or mandated training provided by ODE. We identified some trainings provided by ODE at the COSA Conference (Coalition of School Administrators), but these trainings were merely an option for attendees. We also identified other trainings that were offered to individual districts and ESDs based on request.

Task Three

Student-level state and district data relevant to Shortened School Day placements for the Target Population.

We developed a survey for districts to provide these data. We received responses to the survey from 185 districts (93% of school districts in Oregon), representing 92% of all students eligible for special education and related services for each of the target years. For more information on the survey results and how this survey compares to the results of the April 2021 survey, please see the survey spreadsheet and go to the analysis section of this document. We were also provided copies of IEPs and FBAs for students placed on SSD. However, many of the documents districts provided were redacted to such an extent that it was very difficult to ascertain data on the prevalence of students who were on a shortened school day over multiple years. However, the districts that submitted documentation redacting only the requisite personally identifiable information, as requested, allowed us to see there are students who are part of established SSD programs (i.e., students in these programs attend school for 2 or 3 hours a day) over multiple years that use a shortened school day as well as others whose Individual Education Programs (IEPs) reflected they had been placed on shortened school days for multiple years.

Task Four

Interviews regarding Shortened School Day placements for the Target Population with individuals and/or focused groups of state and district staff, students, parents, guardians, various advisory committees, parent organizations, subject-matter experts, and counsel for the parties.

1. We attempted to contact all the individuals provided by both the Plaintiffs and the Defendants. Many did not respond, but the Neutral Experts interviewed all who did respond.
2. We met with a variety of ODE personnel multiple times.
3. We met with complaint investigators.
4. We met with many parents who had a child who was placed on a shortened school day. The parents we interviewed also included parents who had moved out of the state in order to seek an appropriate education for their children.
5. We spoke with 24 school districts across the state. See the list in Appendix S. As a part of these meetings we met with building-level school administrators, teachers, behavior specialists, Directors of Special Education, ESD administrators, and attorneys representing school districts.
6. We also talked with students impacted by SSD.

Task Five

Targeted site visits to review individual student files and make classroom observations for information related to Shortened School Day placements for the Target Population.

Initially we set up a schedule which included four physical visits to Oregon (January/March/April/May 2022), each to a specific geographic area of Oregon that would allow us to visit a selected number of rural, suburban and urban school districts over 4-5 days. The goal of each visit was to meet with general education teachers, special education teachers, principals, directors of special education, superintendents

and parents, as well as review IEP documents and other SSD documents used with students with disabilities who had been placed on shortened school day due to behavior challenges. Unfortunately, in January, when beginning work on this project, the Omicron variant of COVID-19 started to dramatically impact school districts and families. We delayed our first visit as a result. However, there were other mitigating factors preventing our visit to schools. Please see the section of this document regarding Barriers. In April, we were finally able to visit an ESD to talk with special education directors, and in May we visited three different school districts meeting with a variety of staff and touring and observing a wide range of classrooms. We also attended the June 2022 COSA conference and spoke with a number of special education directors there.

Task Six

Gather information from the sources identified in (a) or otherwise determined relevant by the Neutral Expert through data collection, document review, and interviews needed to understand the data. The time period for the data collection shall be from the 2016-2017, 2017-2018, 2018-2019 and 2019-2020 school years, except to the extent the Neutral Expert determines that obtaining data from earlier school years is appropriate. The information gathering shall be completed within three (3) months after retention of the Neutral Expert; such time period may be extended by mutual agreement of the parties or, if the parties cannot agree, pursuant to an extension granted by Judge Acosta.

We created a survey and, with the help of ODE, we distributed it to districts within the three months allotted; however, the response rate was low. It quickly became apparent

that many districts would not respond without a subpoena, and Defendant's counsel assisted in drafting and serving the subpoenas. Although it took a great deal of time to get the subpoenas out and multiple follow-ups with a number of schools to get them to respond, we ended up with responses from 93% of public schools in Oregon. We accepted data from districts through June 21, 2022. Please see the extensive spreadsheet developed as a result of that survey, and the resulting analysis of the data in that section of the report.

Task Seven

Identify the conditions under which Shortened School Days are used due to disability-related behavior (i.e., where, when, why, how long) for the Target Population. Plaintiffs and ODE will each supply the Neutral Expert with a checklist of essential data elements to be gathered in connection with uses of Shortened School Days to assist the parties in determining the appropriateness of the uses of Shortened School Days. The checklists may be modified by the Neutral Expert as appropriate after consulting with the parties.

We received a checklist of information the Plaintiffs desired that we gather. Initially, to save time collecting presumably the same data collected previously, we sought to use the April 2021 survey; however, as noted in other parts of this document, we found many deficiencies with the data, and there were also multiple inconsistencies with the information provided by the districts in response to the April 2021 survey. Therefore, we developed a new survey that went out to all school districts in Oregon to gather responsive information to many components of this task. With the assistance of ODE, we distributed the survey and collected data from individual districts (where) for the

2016-17, 2017-18, 2018-19, and 2019-20 school years (when), and only collected data related to SSD due to behaviors (why).

We only have documentary evidence of “how long” students were placed on SSD from a handful of districts, as districts were very reluctant to provide, and often advised by their attorneys to make available significantly redacted documents to the extent we were unable to ascertain this information. However, the documentary evidence we did secure was supported by the anecdotal evidence gathered by talking to school, district, ESD, and ODE’s contracted complaint investigators—the students are placed on SSD for extended periods of time, often for years.

Task Eight

Identify and examine the root cause(s) at the state and/or district level of the use of Shortened School Days due to disability-related behaviors for the Target Population.

Due to the extensive amount of quantitative and qualitative information gathered regarding the root causes, please see the information detailed in the section of the report titled Findings, with follow-up discussion in the Recommendations and Conclusion sections. Additionally, we would ask school districts what would happen if the parents were not going to be home when the student was placed on a shortened school day. One district stated that they would not place the student on a shortened school day if they knew the child was going to be in an empty home. However, most school districts said that the parents would figure it out somehow and that it was not a concern. In talking with the parents, there were multiple stories of parents who had to either quit their jobs (for example, a teacher who was also a parent of a child with a disability had

to quit their job because someone had to be home with the student starting at 930 every morning), or one of the parents would have to work the night shift so he could be at home with his child while his wife worked during the day.

There were multiple stories of parents stating in IEP meeting where shortened school day was being discussed that they did not want their child on a shortened school day and would like their child to be educated for a full-day like their peers. The IEP team would still make the recommendations for a shortened school day and without the parents' consent, place the student on a shortened school day.

Another theme across the state, with the rural areas appearing to be more heavily impacted was the lack of staffing and mental health and behavioral supports. One administrator shared that his ESD had shortened the day of one of their programs because they were not able to find staff to allow a full day. When asked what resources were needed to be able to decrease the number of students on SSD the majority of the districts reported more staff and access to behavioral and mental health services.

Task Nine

Synthesize information collected above and describe the magnitude and scope of the use of Shortened School Days for the Target Population, including: (i) the number of students in the Target Population placed on Shortened School Days due to disability-related behaviors; (ii) the length of time that those students are placed on Shortened School Days; (iii) whether the students' placements on Shortened School Days were revisited after any specified period and, if so, what time period; (iv) differences in utilization of Shortened School Days for the members of the Target Population based on district type or student demographics; and (v)

descriptive statistics and information related to the time and location of services received by students in the Target Population.

Please see the attached spreadsheet for more information on this specific area. Additionally, please see the narrative accompanying the spreadsheet. We looked at all the IEPs provided to us that are legible. Many are redacted to such an extent it is impossible to figure out the child's disability, their grade, or the services that are provided to them (see for example the IEP in Appendix X). Due to the absence of any statewide IEP system or systematic mechanism for ODE to pull the requested data, we were forced to rely on data gathered independently and reported to us by the districts without any guarantees of fidelity in the process they employed.

Task Ten

Identify uses of Shortened School Days for the Target Population that potentially fail to meet the requirements of federal law—namely, the IDEA, the ADA, and/or Section 504—and also identify where districts are implementing positive practices with respect to serving the Target Population and/or reducing inappropriate uses of Shortened School Days. Nothing in this section allows the Neutral Expert to inquire into any potential violations of the IDEA, the ADA and/or Section 504 unrelated to the use of Shortened School Days for the Target Population.

The IDEA requires the district to demonstrate a child is not able to be educated with non-disabled peers with appropriate supplemental aids and services. We discovered and our qualitative data confirmed, districts are placing students on Shortened School Day without ever attempting, much less demonstrating, a child cannot access a full-day without

supplemental aids and services. There are also districts predetermining placement on Shortened School Day for students prior to their enrollment and also prior to conducting an FBA, developing a BIP, or adding behavior goals to the IEP. One step beyond this is that many districts have established space and staff to implement SSD programs into which students are placed and only allowed to attend school in that program for their education, i.e., 2 or 3 hours a day. Students placed in these programs appear to not be seen as placed in on a shortened day, because it is an established program. For example, one program in a district has a teacher and several paraprofessionals that work a full-day for the [intentionally left blank] Program. The students who attend the program are split into two groups; half attend 8:30am-11:30am and half attend 12:00pm-3:00pm.

Additionally, as implemented, students with disabilities are being placed on Shortened School Day without parental consent as SB 263's conflicting language implies that parents of SWD must only have the opportunity to meaningfully participate in the decision, rather than consent to placement on Shortened School Day. This is contrary to the prohibition on "unilateral placement" by a school district in SB 263 which states that placing a child on SSD cannot happen "without parent consent".

Task Eleven

Prepare a report describing the Neutral Expert's sources used and findings relative to (a)-(f) above and, if any, advisory recommendations for Phase II to address the existence of Shortened School Days that potentially fail to meet the requirements of federal law. To the extent the Neutral Expert determines sharing a draft report with the parties for comment is appropriate, the Neutral Expert may do so prior to releasing the report. The report shall be completed within six

(6) months after retention of the Neutral Expert; such time period may be extended by mutual agreement of the parties or, if the parties cannot agree, pursuant to an extension granted by Judge Acosta. The report shall be admissible as evidence in any court of law. The report shall not be considered confidential; to the extent any details of the report are required to remain confidential under federal law, including IDEA and FERPA, to protect the privacy of individually identifiable students, the parties will prepare a version of the report that redacts only those details and that can be available to the public.

The report may include, if appropriate, recommendations for the creation of new programs, hiring of new staff, contracting for services, developing new training systems, redirection of existing resources, or any other possible remedies, including recommending changes to state policies, statutes, or rules. The report may also include, if appropriate, recommendations for using existing programs, facilities, and staff to the extent those existing resources are adequate. The report may also recommend making no changes. Within the report, the Neutral Expert shall include their rationale to support each recommendation.

Please see the Recommendations section of this report.

Quantitative Data

From the April 2021 survey, the ODE obtained this information from approximately 110 Oregon school districts. As a part of the survey, the ODE sought information regarding how many Oregon public school students with disabilities experienced SSD as a part of their Individualized Education Program (“IEP”) over the 2016–2017, 2017–2018, 2018–2019, and 2019–2020 school years. These survey results reflect about half of the state’s school districts.

The data gathered in the April 2021 survey included:

- number of students on shortened school day (SSD), including students with disabilities and without disabilities, and students who were not clearly identified as having disabilities or not;
- number of students on SSD whose parents or guardians were notified the student would receive an SSD;
- number of students on SSD whose parents had signed Abbreviated Day Notice and Acknowledgement forms;
- number of students with disabilities for whom SSD is identified in their IEPs; and
- number of students on SSD with a re-entry plan (a plan to transition out of placement on SSD).

Our team spent a considerable amount of time reviewing the data gathered in April of 2021. In an effort to be more efficient with school districts and our time, we originally intended to use that information as a foundation for our next steps, determining what additional data needed to be gathered and to include in the final report. Upon close review the team found, the information was incomplete and, at times, unclear. The data was not uniform in format, and school districts varied significantly as to how they produced the data, which made it difficult to make interpretations based on the data. For example, one district reported more students on shortened school day than the number of students that were eligible for special education and related services. This in conjunction with the fact that many districts that did not report any data left us with more questions about the reliability of the data than our initial presumptions. More accurate information was required.

The results of the April 2021 survey also indicated the districts varied in their documentation of notices about SSD sent to parents; signed parent/guardian acknowledgements that their child would receive a SSD; the IEPs for children who had SSD identified in their IEPs; and/or summary graphs listing SSD recipients. The plaintiffs in their summary statement of the April 2021 survey extrapolated from the districts that reported the number of students on SSD to compare with the districts that did not report. We have chosen not to do that. We take this route because even though we do not have the data from every school district across Oregon, we have data from 93% of the districts and this number represents approximately 92%% of the students eligible for special education and related services.

There were four major questions gleaned from the data provided as a part of the April 2021 survey: 1) There was inconsistent documentation of how districts reported signed notices, information about how parents were involved; 2) The data did not include information from many of the school districts. This raised the questions, did the districts who were non-responders have no eligible students who were placed on a shortened school day? 3) There were inconsistencies for most of the school districts in their data indicating they may not have understood the purpose of the survey (i.e., to identify IDEA eligible students who were placed on a shortened school day as a result of the student's disability related behavior, and not due to a medical issue or doctor's note). 4) Was it clear to the districts what constituted an abbreviated or shortened school day? For example, were parent-initiated requests counted by the districts in their responses?

Need for a New Survey

The April 2021 survey sought to gather information related to the number of students placed on a shortened school day. However, the data inconsistencies prevented a reliable interpretation of the data. Therefore, we prioritized creating and distributing a new survey to the school districts regarding the use of shortened school days for IDEA eligible children. We realized the districts spent time on this survey in April 2021, and we were cognizant of the challenges facing districts in the 2021-2022 school year with staffing and COVID-19 related issues. While we did not want to place an additional burden on the districts, the data already gathered did not provide the answers needed.

Therefore, we sought to develop a survey that was clear in the intent of what was necessary, provided more clear definitions of behavior, target population, shortened school day, and transition plans, did not allow for partial responses, provided a tool to facilitate data gathering, and provided a point of contact on our team to quickly respond to questions or problems. Further, we worked with special education directors in another state to field-test the questions in an effort to mitigate as many misinterpretations and other issues prior to sending out the new survey. Following the field testing, we made changes to the format and explanation sheet.

The survey this team developed sought to clarify and focus the data to target only students with IDEA disabilities who were on SSD due to disability related behaviors as well as gathered data on the student's participation in the least restrictive environment. The questions sought the following information:

1. The number of students with IDEA eligible disabilities on SSD due to disability related behavior.
2. The age range of the students identified above on SSD.
3. The primary disabilities of the students identified above on SSD.
4. Was the SSD included on the IEP?
5. Did the parents sign the form required by SB 263?
6. Was a plan in place to transition the students back to full day in place?

In addition to the survey, a cover letter explaining the survey, we provided an email address for additional questions.

Dr. Eric Wells of ODE assisted with the use of a tool to send out and gather the survey data. ODE continued to support this work by sending the survey with a cover letter to contact members of our team with questions about the survey, process, and other items needing clarification. The survey went out in February 2022 and the districts were provided three weeks to complete the survey.

Our team received feedback from one school board attorney and multiple districts after the letter and survey was sent out. The districts specifically expressed that gathering the data requested was burdensome and onerous. The school board attorney further expressed concerns regarding lack of clarity on specific items and informed the Neutral Expert that the districts represented would not complete the survey without a subpoena. The team reviewed and considered all the concerns that were expressed. Something more was necessary.

As a result of the statement clarifying the lack of ability to voluntarily comply with the request, the team sought and obtained a subpoena for the districts to comply with the production of information for the survey. At that time, approximately 85 districts had responded to the original survey request. A subpoena was issued in the latter part of March 2022. The team again worked with Dr. Eric Wells to resend the survey and notifying the districts that subpoenas had been provided seeking compliance with answering the survey.

We also had districts, under the advice of counsel, that would not answer the survey even with a subpoena—stating they did not have to produce information that was not already available. A number of these districts, however, were provided a subpoena seeking documents relevant to the issue of shortened school day within their district. These documents included IEPs, signed

notices from parents, and behavior plans. Many of the districts provided these documents but redacted the documents in such a manner so as to render them almost useless.

However, we were able to use these documents, even the ones heavily redacted, to determine the grade, disability category, years of service, and whether the parents had signed the notices regarding shortened school day. We then analyzed every one of the documents and were able to use the information provided to answer the survey questions and assist in our making a determination about the extent of students across the state who are placed on a shortened school day.

Qualitative Indicators

The above discusses the quantitative part of our assignment, determining the prevalence of placing students with disabilities on shortened school day as a result of behaviors in the state of Oregon. However, as the parties recognized in developing our charge, simply providing the numbers of students across the state placed on SSD does not provide for a real understanding of the needs of parents, teachers, administrators, and others across the state who are faced with dealing with this issue on a day-to-day basis. Therefore, we sought to interview administrators, teachers, behavior specialists, school psychologists, educational service districts (ESD), as well as parents from across the state to hear their comments related to this issue. We developed a list of questions we posed to each group, with the option for expanding the scope of the questions based on the responses.

The questions that we used to gather information as a part of the interviews were developed independent of both parties. The focus of the questions related to the process of how a child is placed on a shortened school day, behaviors the student demonstrated, how frequently they are monitored, the role of the IEP teams in the decision making process, the role of the IEP in the decision making process, the use of FBAs/BIPs, the development of a plan for bringing the student back into school for a full-day of education, the specific strategies and skills that are to be taught to the student to facilitate their coming back to school, and what services the student received from the school after they were sent home early. There were also additional questions related to whether the IEP team would still recommend a shortened school day if there was no parent at home to supervise, what would happen if the parent disagrees with the school's recommendation, and how

the days were counted (i.e., as suspensions, excused/unexcused absences) if an administrator called a parent to come pick up their child during the course of the school day independent of an IEP team decision. We also asked overarching questions related to the guidance and support that was provided by ODE on this topic, and sought feedback on, and examples of, any desires for guidance and support from ODE.

We tailored our questions to the specific roles and responsibilities of the individuals we were addressing. We did ask all the district employees we interviewed, what guidance or support they seek from ODE. The classroom teachers, who were all very forthcoming, all deferred that question to their supervisors as they felt it was their supervisors/administrators role to address or seek guidance from ODE, and their job was to follow the directives of their supervisors/administrators. We also made sure to ask all district personnel, what do they wish we knew about shortened school days, and what do they want from ODE. These, as noted above, formed the basis for many recommendations for the report.

We also sought input from ODE staff, education service directors, complaint investigators, and subject matter experts. Consistently, all those we interviewed across the state provided thoughtful input that helped inform our recommendations in this report.

One item that was overarching as a part of the discussions was the need for guidance from ODE about the requirements of SB 263, the need for data reporting, and the need for supports and resources when there is a student with intense behavioral needs. For further information on this topic, please see the recommendations section of this document. Our team's first focus groups were with the ODE staff as other focus groups were being scheduled. Based on the survey results from April 2021 and comments from the focus groups with the ODE staff and input from the plaintiffs, the team identified 20 school districts across the state where we desired to interact face-to-face with school personnel and conduct observations of programs and individual classrooms, when possible. We planned multiple weeks where we, as a team, could interview individuals from different school districts. We were not prepared for the barriers placed in our path to accomplishing this goal..

Despite clarifying multiple times that the work we sought to accomplish related to the lawsuit against ODE, and that school districts were not being targeted for future lawsuits, the response rate was not very good. We relied on the ODE/DOJ to initially contact the school districts

to let them know we would like to meet with them, talk with teachers, and review individual education programs (IEP) and behavior intervention plans (BIP), and transition plans.

Appendix C:

Spreadsheet with Data

Appendix D:

Terminology

We used the definitions provided as a part of the interim agreement, and are copied below for reference.

For the purposes of this Interim Agreement, the following definitions apply:

- a. “ADA” - Title II of the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., and its implementing regulations.
- b. “Effective Date” - the date on which this Interim Agreement has been fully executed by all parties.
- c. “IDEA” - the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., and its implementing regulations.
- d. “FAPE” - a free appropriate public education within the meaning of the IDEA.
- e. “FERPA” - the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and its implementing regulations.
- f. “LEA” - local education agencies which provide educational services directly to students.
- g. “LRE” - least restrictive environment.
- h. “Section 504” - Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, and its implementing regulations.
- i. “Shortened School Day”- refers to any school day during which a student within the Target Population receives instruction or educational services in school for fewer hours than other students who are in the same grade within the same school.

j. “Target Population”- refers to the certified class for the lawsuit (i.e., “all students with disabilities aged 3 to 21 residing in Oregon who are eligible for special education and related services under the IDEA and are currently being subjected to a shortened school day or are at substantial risk of being subjected to a shortened school day due to their disability-related behavior”).

Appendix E

IDEA State Education Agency Part B Responsibility

FEDERAL GUIDANCE

A. IDEA Part B Responsibilities, from 20 U.S.C. Section 1412.

11) State educational agency responsible for general supervision**(A) In general**

The State educational agency is responsible for ensuring that—

- (i) the requirements of this subchapter are met;
- (ii) all educational programs for children with disabilities in the State, including all such programs administered by any other State agency or local agency—
 - (I) are under the general supervision of individuals in the State who are responsible for educational programs for children with disabilities; and
 - (II) meet the educational standards of the State educational agency; and
- (iii) in carrying out this subchapter with respect to homeless children, the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) are met.

(B) Limitation

Subparagraph (A) shall not limit the responsibility of agencies in the State other than the State educational agency to provide, or pay for some or all of the costs of, a free appropriate public education for any child with a disability in the State.

(C) Exception

Notwithstanding subparagraphs (A) and (B), the Governor (or another individual pursuant to State law), consistent with State law, may assign to any public agency in the State the responsibility of ensuring that the requirements of this subchapter are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons.

(12) Obligations related to and methods of ensuring services**(A) Establishing responsibility for services**

The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency described in subparagraph (B) and the State educational agency, in order to ensure that all services described in subparagraph (B)(i) that are needed to ensure a free appropriate public education are provided, including the provision of such services during the pendency of any dispute under clause (iii). Such agreement or mechanism shall include the following:

(i) Agency financial responsibility

An identification of, or a method for defining, the financial responsibility of each agency for providing services described in subparagraph (B)(i) to ensure a free appropriate public education to children with disabilities, provided that the financial responsibility of each public agency described in subparagraph (B), including the State medicaid agency and other public insurers of children with disabilities, shall precede the financial responsibility of the local educational agency (or the State agency responsible for developing the child's IEP).

(ii) Conditions and terms of reimbursement

The conditions, terms, and procedures under which a local educational agency shall be reimbursed by other agencies.

(iii) Interagency disputes

Procedures for resolving interagency disputes (including procedures under which local educational agencies may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

(iv) Coordination of services procedures

Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in subparagraph (B)(i).

(B) Obligation of public agency

(i) In general

If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy pursuant to subparagraph (A), to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in section 1401(1) relating to assistive technology devices, 1401(2) relating to assistive technology services, 1401(26) relating to related services, 1401(33) relating to supplementary aids and services, and 1401(34) of this title relating to transition services) that are necessary for ensuring a free appropriate public education to children with disabilities within the State, such public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to subparagraph (A) or an agreement pursuant to subparagraph (C).

(ii) Reimbursement for services by public agency

If a public agency other than an educational agency fails to provide or pay for the special education and related services described in clause (i), the local educational agency (or State agency responsible for developing the child's IEP) shall provide or pay for such services to the child. Such local educational agency or State agency is authorized to claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency or State agency pursuant to the terms of the interagency agreement or other mechanism described in subparagraph (A)(i) according to the procedures established in such agreement pursuant to subparagraph (A)(ii).

(C) Special rule

The requirements of subparagraph (A) may be met through—

- (i) State statute or regulation;
- (ii) signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or
- (iii) other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer and approved by the Secretary.

(13) Procedural requirements relating to local educational agency eligibility

The State educational agency will not make a final determination that a local educational agency is not eligible for assistance under this subchapter without first affording that agency reasonable notice and an opportunity for a hearing.

Appendix F

State Education Agency Responsibility Under IDEA

Eight Legally-Required Components of an Effective State System of General Supervision

Specifically, states are required under federal law to supervise LEA's in the following areas:

§ 300.600 State monitoring and enforcement.

(a) The State must -

(1) Monitor the implementation of this part;

(2) Make determinations annually about the performance of each LEA using the categories in § 300.603(b)(1);

(3) Enforce this part, consistent with § 300.604, using appropriate enforcement mechanisms, which must include, if applicable, the enforcement mechanisms identified in § 300.604(a)(1) (technical assistance), (a)(3) (conditions on funding of an LEA), (b)(2)(i) (a corrective action plan or improvement plan), (b)(2)(v) (withholding funds, in whole or in part, by the SEA), and (c)(2) (withholding funds, in whole or in part, by the SEA); and

(4) Report annually on the performance of the State and of each LEA under this part, as provided in § 300.602(b)(1)(i)(A) and (b)(2).

(b) The primary focus of the State's monitoring activities must be on -

(1) Improving educational results and functional outcomes for all children with disabilities; and

(2) Ensuring that public agencies meet the program requirements under Part B of the Act, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

(c) As a part of its responsibilities under paragraph (a) of this section, the State must use quantifiable indicators and such qualitative indicators as are needed to adequately measure

performance in the priority areas identified in paragraph (d) of this section, and the indicators established by the Secretary for the State performance plans.

(d) The State must monitor the LEAs located in the State, using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in those areas:

(1) Provision of FAPE in the least restrictive environment.

(2) State exercise of general supervision, including child find, effective monitoring, the use of resolution meetings, mediation, and a system of transition services as defined in § 300.43 and in 20 U.S.C. 1437(a)(9).

(3) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

(e) In exercising its monitoring responsibilities under paragraph (d) of this section, the State must ensure that when it identifies noncompliance with the requirements of this part by LEAs, the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance.

Components of General Supervision

The U.S. Department of Education (USDE), Office of Special Education Programs (OSEP), developed a model, “Components of General Supervision” found below, to illustrate the connectivity among the components that comprise a state’s system of general supervision. There are eight components related to general supervision:

- I.** State Performance Plan;
- II.** Policies, Procedures, and Effective Implementation;
- III.** Integrated Monitoring Activities;
- IV.** Fiscal Management;

V. Data on Processes and Results;

VI. Improvement, Correction, Incentives and Sanctions;

VII. Effective Dispute Resolution; and

VIII. Targeted Technical Assistance and Professional Development.

Appendix G

State Performance Plan

The IDEA Part B, Sections 611 and 619 formula grant programs assist states in providing a free appropriate public education (FAPE) in the least restrictive environment (LRE) for students with disabilities ages 3 through 21. In accordance with the Individuals with Disabilities Education Act (IDEA), Part B, Oregon is required to have in place a performance plan evaluating the state's implementation of Part B and describing how the state will improve such implementation. This plan is called the Part B State Performance Plan (SPP) and is required to be posted on the state's website. For the SSP the state sets specific targets to meet on the 17 indicators. It is important to note that Indicator 17 is the State Systemic Improvement Plan (SSIP). The SSIP is a comprehensive multi-year plan developed to improve the results of children with disabilities while driving innovation and evidence-based practices. The targets in the SSIP are developed by each individual state. The other 16 indicators are determined by OSEP. For students on SSD, indicators B5 and B6 are important. These two indicators look at Least Restrictive Environment, how much time a student spends in the general education classroom. The state reports annually to the Office of Special Education Programs (OSEP) on its performance according to its SPP targets. This report is called the Part B Annual Performance Report (APR). Oregon must also use the targets established in the State Performance Plan (SPP) under 34 CFR § 300.601 and the priority areas described in 34 CFR § 300.600(d) to analyze the performance of each LEA. The IDEA Part B, requires Oregon to report annually, to the public, on the performance of each of its local educational agencies (LEA) according to the targets set in its SPP.

Policies, Procedures, and Effective Implementation

Oregon is required to have policies and procedures that are aligned with the IDEA 34 CFR § 300.100. Oregon's special education policies and procedures support state and local implementation of the IDEA. Agencies responsible for special education and related services must abide by Oregon State law, policies, procedures, and the federal regulations for the IDEA Part B and C. Agencies having these responsibilities are: local educational agencies (LEA),

educational service districts (ESD), public charter schools, accredited private schools, and facilities as described in the applicable federal regulations and established by Oregon state laws.

Appendix H

State Advisory Council for Special Education (SACSE)

The IDEA requires each state to develop and maintain an advisory panel to provide policy guidance for children with disabilities (34 CFR §300.167). In Oregon this panel is referred to as State Advisory Council for Special Education (SACSE).

The IDEA Part B State Advisory Panel must include the following stakeholders: parents of students with disabilities; individuals with disabilities; state and local education officials; state and local agency representatives; general and special education school administrators and teachers; advocacy groups; representatives of institutions of higher education that prepare special education and related services personnel; representatives of private schools and charter schools; representatives of vocational, community, and business organizations concerned with the provision of transition services to youth with disabilities; and representatives of state juvenile and corrections agencies (34 CFR §300.168). The IDEA B State Advisory Panel participates in the annual review and revision of the State Performance Plan (SPP) and Annual Performance Report (APR). This includes participation in the development of state targets, the review of data of improvement activities, and making suggestions for updates to the activities and targets.

Integrated Monitoring Activities

In accordance with the Individuals with Disabilities Education Act (IDEA), the ODE must employ general supervision activities that include monitoring of local educational agencies (LEAs) with a particular emphasis on improving educational results and functional outcomes for all students with disabilities while ensuring that LEAs meet the requirements of the IDEA Part B. ODE implements procedures for monitoring activities in accordance with the IDEA Part B, federal regulation 34 CFR § 300.600.

Tiered Compliance Review

ODE will monitor every LEA in the state each year using the data available for each of the compliance indicators identified in the State Performance Plan (SPP). For each LEA, data

submitted are compared to the targets for each compliance indicator identified in the SPP. The focus is the question- Does the LEA implement IDEA with fidelity?

Fiscal Management

IDEA funds are provided for the excess cost of special education and related services for students with disabilities. IDEA funds are intended to supplement and not supplant state, local or other federal funds.

Funds are awarded to ODE by the United States Department of Education (USDE), Office of Special Education Programs (OSEP), to "flow-through" to the LEA contingent upon an LEA's application for Part B funds.

Flow-through funds are awarded on a formula based on the number of students with disabilities aged three through 21 served on December 1st, 1999, as well as the total student enrollment in the LEA (in both public and private schools located in the LEA) and the poverty level of the LEA (defined as the free and reduced lunch count within the LEA) as provided by the OSEP.

ODE must ensure fiscal accountability at each phase in the distribution and use of the Individuals with Disabilities Education Act (IDEA) Part B funds.

Data on Processes and Results

As a part of a state's general supervision responsibilities, data are used for decision making about program management and improvement. This process includes:

(1) Data collection and verification, (2) Data examination and analysis, (3) Public reporting of data, (4) Status determination, and (5) Improvement activities.

(1) Data Collection and Verification - IDEA requires that data are collected from LEAs through a state-reported data collection system and reported in the Annual Performance Report (APR). To effectively use these data, LEAs must regularly update the data, and the state must routinely examine the collected data. The state uses the data, as well as information from other sources;

such as other state-collected data, patterns and trends in dispute resolution data and previous findings, to evaluate the performance of the state and the LEAs on the State Performance Plan (SPP) indicators. These data are also useful in identifying the LEAs in need of monitoring, especially when these data can be compared across SPP/APR indicators.

It is important for ODE to ensure that the data collected from the LEAs are accurate, as well as submitted in a timely manner. Accuracy has multiple levels, including that the data follow rules of entry or submission and reflect actual practice.

Improvement, Correction, Incentives, and Sanctions Improvement and Corrections

If ODE issues a finding of noncompliance for an LEA then the LEA must correct the noncompliance, as soon as possible, but no later than one year from the date of notification. The LEA must identify the root cause of the area(s) of noncompliance and may be required to develop a Corrective Action Plan (CAP) or an Improvement Plan based on their compliance review determination.

Improvement Plan

LEAs with identified areas of noncompliance may be required to develop a written plan addressing the areas of noncompliance and include improvement strategies to ensure correction. This Improvement Plan shall include methods of internal monitoring, safeguards, the person(s) responsible for the implementation, and the date of implementation. Improvement Plan templates will be provided by ODE. ODE will assist LEAs in the development of the improvement plan and timelines for completion.

Corrective Action Plan (CAP)

Corrective Action Plans are developed in collaboration with ODE and will require the LEA to take action specific to a particular area of non-compliance.

Effective Dispute Resolution

Several mechanisms are available through ODE to assist in resolving disputes. The processes are individualized education program (IEP) facilitation, mediation, formal complaints, due process hearings, facilitated resolution sessions, and expedited due process hearings.

Targeted Technical Assistance/Professional Development

Targeted Technical Assistance and Professional Development are ongoing activities and are a major part of the ODE general supervision system. Technical Assistance is designed to link directly to indicators in the State Performance Plan/Annual Performance Report (SPP/APR) and to improve the level of compliance in Oregon LEAs. The State's comprehensive approach to technical assistance enables the Department to differentiate the scope of services provided for LEAs based on local needs. Technical Assistance provides a framework for LEAs to build their general supervision.

Appendix I

Background of Need

ODE is very specific about the number of hours of education a student is expected to receive during an academic year. The focus of this report is the students who are not receiving the hours of education due to their behaviors.

Oregon Department of Education

Chapter 581

Division 22

STANDARDS FOR PUBLIC ELEMENTARY AND SECONDARY SCHOOLS

581-022-2320

Required Instructional Time

(1)(a) Except as allowed under subsections (2) and (4), each school district shall ensure that at least 92% of all students in the district and at least 80% of all students at each school operated by the district are scheduled to receive annually the following minimum hours of instructional time:

(A) Grade 12 — 966 hours;

(B) Grades 9–11 — 990 hours; and

(C) Grades K–8 — 900 hours.

(b) A student who is 18 years of age or older or an emancipated minor or the person in parental relationship to a minor student may request to annually receive the minimum hours of instructional time. The school district must honor the request except as specifically provided for by rule or law.

(2)(a) Notwithstanding the requirements of subsection (1), with the annual approval of the local school board after a public hearing, the following students are exempted from the instructional time requirement and are not included in the district's calculation of instructional time under subsection (1):

(A) Students who have fulfilled all state requirements for graduation under OAR 581-022-2000;

(B) Students who at the start of their senior year are on track to exceed all state requirements for graduation under OAR [581-022-2000](#) as determined by the number and type of credits earned by the student; and

(C) Students who are earning credits toward a diploma through accelerated learning classes, such as Advanced Placement, International Baccalaureate, or classes at a post-secondary institution, internship, work-based learning, or credits by proficiency.

(b) Each year, the school district must report to the local school board the total number of students disaggregated by relevant sociodemographic group that have been exempted from the instructional time requirements under this subsection.

(3) Nothing in this rule may be construed to affect the right of a person to be admitted to the school district in which they reside under ORS 339.115.

(4) A school district may request permission to exempt an alternative education program as defined in ORS 336.615 from the requirement in subsection (1). The request must be made in writing to the Deputy Superintendent of Public Instruction. The Deputy Superintendent is authorized to grant permission under this section without obtaining approval from the State Board of Education. Permission will be granted where:

(a) The request is made with the approval of the school district's governing school board;

(b) The school district is using an evidence-based strategy that includes flexible time options; and

(c) The school district has implemented a system to assess students prior to placement to determine whether placement in an alternative education program is appropriate.

(5) If a school district chooses to offer less than 900 hours of instructional time for kindergarten students, the kindergarten program shall be considered a half-day program for purposes of ORS 327.006(1) and the school district shall ensure that every kindergarten student is scheduled to receive a minimum of 450 hours of instructional time per year.

(6) Upon approval by the local school board, a district may include in its calculation of instructional time required by subsection (1) of this rule the following:

(a) For kindergarten programs offering 900 hours or more of instructional time, up to 60 hours of recess;

(b) For kindergarten programs offering less than 900 hours of instructional time, up to 30 hours of recess;

(c) For grades 1–3, up to 60 hours of recess;

(d) Up to 30 hours for staff professional development;

(e) Up to 30 hours for parent teacher conferences; and

(f) For the 2015–16 school year, up to 14 hours for emergency school closures due to adverse weather conditions and facilities failure.

(7) For students participating in online instruction:

(a) Instructional time includes online instruction supported by a licensed or registered teacher through electronic means.

(b) For online instruction, up to one hour per course per day may be counted as instructional time where the following criteria are met:

(A) Every student has access to a licensed or registered teacher through in-person, telephone, or electronic means for each course taken; and

(B) Every student has regular contact with school personnel for the purpose of attendance and progress monitoring as outlined in the policies maintained by the Oregon Department of Education.

(c) Instructional time may not be claimed for weekends or holidays, per ORS 336.010 and 187.010, or any other day during which a licensed or registered teacher is not available to students.

(8) There shall be no fewer than 265 consecutive calendar days between the first and last instructional day of each school year at each grade level.

(9) No student shall be required to exceed the following number of instructional hours per day:

(a) Grades 9–12 — 8.5 hours;

(b) Grades K–8 — 8 hours.

Statutory/Other Authority: ORS 326.011 & 326.051

Statutes/Other Implemented: ORS 326.051

Appendix J

Sec. 300.149 SEA responsibility for general supervision

[Statute/Regs Main](#) » [Regulations](#) » [Part B](#) » [Subpart B](#) » Section 300.149

300.149 SEA responsibility for general supervision.

[\(a\)](#) The SEA is responsible for ensuring—

[\(1\)](#) That the requirements of this part are carried out; and

[\(2\)](#) That each educational program for children with disabilities administered within the State, including each program administered by any other State or local agency (but not including elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior)—

[\(i\)](#) Is under the general supervision of the persons responsible for educational programs for children with disabilities in the SEA; and

[\(ii\)](#) Meets the educational standards of the SEA (including the requirements of this part).

[\(3\)](#) In carrying out this part with respect to homeless children, the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) are met.

[\(b\)](#) The State must have in effect policies and procedures to ensure that it complies with the monitoring and enforcement requirements in §§300.600 through 300.602 and §§300.606 through 300.608.

[\(c\)](#) Part B of the Act does not limit the responsibility of agencies other than educational agencies for providing or paying some or all of the costs of FAPE to children with disabilities in the State.

[\(d\)](#) Notwithstanding paragraph (a) of this section, the Governor (or another individual pursuant to State law) may assign to any public agency in the State the responsibility of ensuring that the requirements of Part B of the Act are met with respect to students with disabilities who are convicted as adults under State law and incarcerated in adult prisons.

Appendix K

§ 300.600 State monitoring and enforcement.

(a) The State must -

(1) Monitor the implementation of this part;

(2) Make determinations annually about the performance of each LEA using the categories in § 300.603(b)(1);

(3) Enforce this part, consistent with § 300.604, using appropriate enforcement mechanisms, which must include, if applicable, the enforcement mechanisms identified in § 300.604(a)(1) (technical assistance), (a)(3) (conditions on funding of an LEA), (b)(2)(i) (a corrective action plan or improvement plan), (b)(2)(v) (withholding funds, in whole or in part, by the SEA), and (c)(2) (withholding funds, in whole or in part, by the SEA); and

(4) Report annually on the performance of the State and of each LEA under this part, as provided in § 300.602(b)(1)(i)(A) and (b)(2).

(b) The primary focus of the State's monitoring activities must be on -

(1) Improving educational results and functional outcomes for all children with disabilities; and

(2) Ensuring that public agencies meet the program requirements under Part B of the Act, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

(c) As a part of its responsibilities under paragraph (a) of this section, the State must use quantifiable indicators and such qualitative indicators as are needed to adequately measure

performance in the priority areas identified in paragraph (d) of this section, and the indicators established by the Secretary for the State performance plans.

(d) The State must monitor the LEAs located in the State, using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in those areas:

(1) Provision of FAPE in the least restrictive environment.

(2) State exercise of general supervision, including child find, effective monitoring, the use of resolution meetings, mediation, and a system of transition services as defined in § 300.43 and in 20 U.S.C. 1437(a)(9).

(3) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

(e) In exercising its monitoring responsibilities under paragraph (d) of this section, the State must ensure that when it identifies noncompliance with the requirements of this part by LEAs, the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance.

Appendix L

§ 300.601 State performance plans and data collection.

(a) General. Not later than December 3, 2005, each State must have in place a performance plan that evaluates the State's efforts to implement the requirements and purposes of Part B of the Act, and describes how the State will improve such implementation.

(1) Each State must submit the State's performance plan to the Secretary for approval in accordance with the approval process described in section 616(c) of the Act.

(2) Each State must review its State performance plan at least once every six years, and submit any amendments to the Secretary.

(3) As part of the State performance plan, each State must establish measurable and rigorous targets for the indicators established by the Secretary under the priority areas described in §300.600(d).

(b) Data collection.

(1) Each State must collect valid and reliable information as needed to report annually to the Secretary on the indicators established by the Secretary for the State performance plans.

(2) If the Secretary permits States to collect data on specific indicators through State monitoring or sampling, and the State collects the data through State monitoring or sampling, the State must collect data on those indicators for each LEA at least once during the period of the State performance plan.

(3) Nothing in Part B of the Act shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under Part B of the Act.

Appendix M

§ 300.602 State use of targets and reporting.

(a) General. Each State must use the targets established in the State's performance plan under § 300.601 and the priority areas described in § 300.600(d) to analyze the performance of each LEA.

(b) Public reporting and privacy -

(1) Public report.

(i) Subject to paragraph (b)(1)(ii) of this section, the State must -

(A) Report annually to the public on the performance of each LEA located in the State on the targets in the State's performance plan as soon as practicable but no later than 120 days following the State's submission of its annual performance report to the Secretary under paragraph (b)(2) of this section; and

(B) Make each of the following items available through public means: the State's performance plan, under § 300.601(a); annual performance reports, under paragraph (b)(2) of this section; and the State's annual reports on the performance of each LEA located in the State, under paragraph (b)(1)(i)(A) of this section. In doing so, the State must, at a minimum, post the plan and reports on the SEA's Web site, and distribute the plan and reports to the media and through public agencies.

(ii) If the State, in meeting the requirements of paragraph (b)(1)(i) of this section, collects performance data through State monitoring or sampling, the State must include in its report under paragraph (b)(1)(i)(A) of this section the most recently available performance data on each LEA, and the date the data were obtained.

(2) State performance report. The State must report annually to the Secretary on the performance of the State under the State's performance plan.

(3) Privacy. The State must not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children, or where the available data are insufficient to yield statistically reliable information.

Appendix N

State Responsibility**343.041 Supervision of programs for children with disabilities by Superintendent of Public Instruction; rules; complaint procedure; staff training; public agency cooperative agreements.**

(1) Pursuant to rules of the State Board of Education, the Superintendent of Public Instruction shall be responsible for the general supervision of all special education programs for children with disabilities, early childhood special education and early intervention services for preschool children with disabilities within the state, including all such programs administered by any state agency or common or union high school district or education service district.

(2) All special education programs for children with disabilities, early childhood special education and early intervention services for preschool children with disabilities within this state shall meet the standards and criteria established therefor by the State Board of Education.

(3) The State Board of Education shall adopt by rule procedures whereby the superintendent investigates and resolves complaints that the Department of Education, a local education agency or an early intervention or early childhood special education contractor has violated a federal law or statute that applies to a special education or early childhood special education program.

(4) The State Board of Education shall adopt rules relating to the establishment and maintenance of standards to ensure that personnel providing special education and early childhood special education and early intervention services are appropriately and adequately trained.

(5) The Governor shall direct that agencies affected by this section enter into cooperative agreements to achieve necessary uniformity in meeting the standards and criteria established by the state board under subsection (2) of this section.

(6) The Governor shall direct that each public agency obligated under federal or state law to provide or pay for any services that are also considered special education or related services necessary for ensuring a free appropriate public education to children

with disabilities, including but not limited to the Department of Human Services, enter into cooperative agreements with the Department of Education concerning:

- (a) Allocation among agencies of financial responsibility for providing services;
- (b) Conditions, terms and procedures for reimbursement; and
- (c) Policies and procedures for coordinating timely and appropriate delivery of services.

(7) All cooperative agreements entered into under subsections (5) and (6) of this section shall include procedures for resolving interagency disputes. [1977 c.528 §3; 1989 c.491 §30; 1991 c.749 §2; 1999 c.989 §6; 2005 c.22 §237]

Appendix O

Letter to Mason

Letter to Mason, 72 IDELR 192 (OSEP 2018). Shortened school days that are imposed repeatedly as a disciplinary measure could count in creating a “pattern” of removals that are a change of placement that would trigger the IDEA’s procedural protections, including a manifestation determination. For a student who was subjected to an administratively shortened day to address his behavior and it was done outside the IEP team process, those shortened days may count in determining whether a pattern of removals constituting a change of placement occurred. It is up to a district to determine on a case-by-case basis whether a pattern or removal exists that would trigger a manifestation determination.

Carrie Mason
Education Attorney
Metro Defender Juvenile Division Education Rights Project
100 Woodland Street
Nashville, Tennessee 37213
Dear Ms. Mason:

July 27, 2018

This letter responds to your correspondence to the U.S. Department of Education (Department), Office of Special Education Programs (OSEP). In that letter, you asked OSEP to provide clarification on partial day exclusions from school counting toward a disciplinary change in placement. You asked, “specifically, what factors should school staff consider in determining, on a case by case basis, whether shortened school days are considered in the disciplinary change of placement analysis?” We regret the delay in responding.

In your letter, you provide a description of one of your client’s cases in which a child experienced an administratively shortened school day to address problem behavior at the child’s school. You stated that the shortened school days did not occur as a result of the

individualized education program (IEP) Team process. You further stated that you reached an agreement with the school for the child to be returned to full school days and for compensatory services. However, you disagree with the school administrators about whether the daily exclusions from school should be considered disciplinary removals when evaluating whether a pattern of removals has occurred that would constitute a change of placement. You stated that you are concerned that students with disabilities in this school are not being provided with the disciplinary protections required under the Individuals with Disabilities Education Act (IDEA). While we cannot comment specifically on the facts of your case, we can provide clarification on the regulatory requirements surrounding this issue.

We note that section 607(d) of the IDEA prohibits the Secretary from issuing policy letters or other statements that establish a rule that is required for compliance with, and eligibility under, IDEA without following the rule-making requirements of section 553 of the Administrative Procedure Act. Therefore, based on the requirements of IDEA section 607(e), this response is provided as informal guidance and is not legally binding. This response represents an interpretation by the Department of the requirements of IDEA in the context of the specific facts presented, and does not establish a policy or rule that would apply in all circumstances. In addition, this response does not address issues under Section 504 of the Rehabilitation Act of 1973 or Title II of the Americans with Disabilities Act.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

The IDEA authorizes school personnel to implement a short-term disciplinary removal from the current placement, such as an out-of-school suspension, for a child with a disability who violates a code of student conduct, for up to 10 consecutive school days, to the extent those alternatives are applied to children without disabilities, and for additional removals of up to 10 consecutive school days for separate incidents of misconduct, so long as those removals do not constitute a change of placement. 34 CFR §300.530(b)(1).

For purposes of removals of a child with a disability from the child's current educational placement under 34 CFR §§300.530 through 300.536, a change of placement occurs if 1) the removal is for more than 10 consecutive school days; or 2) the child has been subjected to a series of removals that constitute a pattern (i) because the series of removals total more than 10 school days in a school year; (ii) because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and (iii) because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another. 34 CFR §300.536(a). Additionally, the public agency must determine on a case- by-case basis whether a pattern of removals constitutes a change of placement, and this determination is subject to review through due process and judicial proceedings. 34 CFR §300.536(b).

In general, the Department does not consider the use of exclusionary disciplinary measures to be disciplinary removals from the current placement for purposes of 34 CFR §300.530, so long as children with disabilities are:

- Afforded the opportunity to continue to be involved in and make progress in the general education curriculum;
- Receive the instruction and services specified on their IEPs; and
- Participate with non-disabled children to the extent they would have in their current placement.

The use of short-term disciplinary measures under the circumstances you described, if implemented repeatedly (emphasis added), could constitute a disciplinary removal from the current placement, and thus the discipline procedures set out in 34 CFR §§300.530-300.536 would apply.

If you have any further questions, please do not hesitate to contact Lisa Pagano of my staff at 202-245-7413 or by email at Lisa.Pagano@ed.gov.

Sincerely, /s/

Ruth E. Ryder,

Acting Director

Office of Special Education Programs

Appendix P

SB 263

There are clear directions as a part of the IDEA that students eligible for special education and related services receive a free appropriate public education, one that confers the opportunity to access the general curriculum and make progress in the least restrictive environment. Oregon has something more, SB 263. This law took effect in July 2017. Given that there are still students eligible for special education placed on abbreviated school days without following the process outlined in SB 263 according to the documents we reviewed and parents we interviewed, and the concerns articulated by school district personnel across the state in our interviews, there needs to be clearer guidance to local school districts related to abbreviated school days, along with increased supervision and monitoring by ODE of the use of this restrictive practice. We recognize the legislature is not a party to this lawsuit, and ODE has no authority to enforce any recommendations related to future legislative action; however our charge also included recommendations for suggested changes, therefore, we make the following recommendations. We strongly encourage both parties to review the recommendations and talk with members of the Oregon legislature regarding improvements to the law. SB 263 was a really good step in the right direction, we are making these recommendations after meeting with staff from across the state.

Current SB 263

Enrolled Senate Bill 263

Sponsored by Senator GELSER; Senator KNOPP (Pre-session filed.)

CHAPTER

AN ACT

Relating to abbreviated school days; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2017 Act is added to and made a part of ORS chapter 343.

SECTION 2. (1) As used in this section:

- (a) "Abbreviated school day" means any school day during which a student receives instruction or educational services for fewer hours than other students who are in the same grade within the same school.
 - (b) "Abbreviated school day program" means an education program:
 - (A) In which a school district restricts a student's access to hours of instruction or educational services; and
 - (B) That results in a student having an abbreviated school day for more than 10 school days per school year.
 - (c) "Parent" includes the student, if the student is 18 years of age or older or is emancipated pursuant to ORS 419B.550 to 419B.558.
 - (d) "Unilaterally place" means a placement by a school district without the consent of the student's parent.
- (2) A school district may not unilaterally place a student on an abbreviated school day program, regardless of the age of the student.
- (3) A school district may provide an abbreviated school day program to a student only if the student's individualized education program team:
- (a) Determines that the student should be placed on an abbreviated school day program:
 - (A) Based on the student's needs; and
 - (B) After the opportunity for the student's parents to meaningfully participate in a meeting to discuss the placement; and
 - (b) Documents that the team considered at least one option that included appropriate supports for the student and that could enable the student to access the same number of hours of instruction or educational services that are provided to students who are in the same grade within the same school.
- (4) If a student is placed on an abbreviated school day program, the school district shall, at least once each term:
- (a) Provide the following information in writing to the parent of the student:
 - (A) The school district's duty to comply with the requirements of this section;

(B) The prohibition against a school district unilaterally placing a student on an abbreviated school day program; and

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(C) The student's presumptive right to receive the same number of hours of instruction or educational services as other students who are in the same grade within the same school and the parent's right to request, at any time, a meeting of the individualized education program team to determine whether the student should no longer be placed on an abbreviated school day program.

(b) Obtain a signed acknowledgment from the parent of the student that the parent received the information described in paragraph (a) of this subsection.

(c) Include in the student's individualized education program a written statement that explains the reasons the student was placed on an abbreviated school day program.

(5) This section does not apply to:

(a) Any abbreviated school days that are a component of discipline imposed in compliance with ORS 339.250;

(b) A student who will be eligible to complete the requirements for a diploma or certificate under ORS 329.451 during the school year if the student, and the parent of the student, agree to the abbreviated school day program; or

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

SECTION 3. Section 2 of this 2017 Act first applies to the 2017-2018 school year.

SECTION 4. This 2017 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect July 1, 2017.

Appendix Q

Original SB 263

Senate Bill 263

Sponsored by Senator GELSER (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Limits school district's ability to require students to participate in abbreviated school day program. Prescribes requirements when students do participate in abbreviated school day program.

A BILL FOR AN ACT

Relating to abbreviated school days; creating new provisions; and amending ORS 338.025 and 338.115.

Be It Enacted by the People of the State of Oregon:

SECTION 1. As used in sections 1 to 6 of this 2017 Act:

- (1) "Abbreviated school day" means any school day during which a student receives instruction or educational services for fewer hours than other students who are in the same grade within the same school.
- (2) "Abbreviated school day program" means an education program that results in a student receiving an abbreviated school day for more than 10 school days per school year.
- (3) "Behavior intervention plan" means an individualized plan based on a current functional behavioral analysis that includes positive interventions and that is designed to assist a student in decreasing inappropriate behaviors and increasing alternative appropriate behaviors.
- (4) "Evaluating team" means a team that:
 - (a) Conducts an evaluation to determine whether to require a student to participate in an abbreviated school day program; and
 - (b) Includes a school administrator, a teacher, the special education director and the parent or guardian of the student.
- (5) "Full school day" means a school day during which students in the same grade within the same school are scheduled to receive the same number of hours of instruction or educational services.
- (6) "Full school day program" means an education program that is composed of full school days.
- (7) "Functional behavioral analysis" means an individualized assessment of a student that produces a hypothesis about the function of the student's behavior and that is used to make recommendations for a behavior intervention plan.
- (8) "Individualized education program team" means the team that has been formed to develop, review and revise the individualized education program of a student who is a child with a disability as provided under ORS chapter 343.

SECTION 2. (1) Except as provided by subsection (2) of this section, a school district may not require a student to participate in an abbreviated school day program.

- (2) A school district may require a student to participate in an abbreviated school day program:
- (a) When a student cannot safely participate in a full school day program, as provided by section 3 of this 2017 Act; or
 - (b) For medical reasons, as provided by section 4 of this 2017 Act.
- (3) When a student is participating in an abbreviated school day program, a school district may not:
- (a) Condition the student's return to a full school day program on the student meeting specified behavior standards; or
 - (b) Alter the length of a school day based on a formula and without consideration of the student's needs.
- (4) When a student is participating in an abbreviated school day program in the form of home instruction or tutorial services provided outside of the presence of other students:
- (a) The amount and nature of the instruction and related services must be based solely on the student's needs; and
 - (b) Instruction must be provided by a licensed special education teacher or, when necessary to meet the student's needs, a teacher licensed to teach a particular subject required by those needs.

SECTION 3. (1) A student may participate in an abbreviated school day program for safety reasons only as provided by this section.

- (2) A school district may require a student to participate in an abbreviated school day program for safety reasons if:
- (a) The student cannot safely participate in a full school day program, even if provided with fully implemented supports and services designed to allow regular attendance; and
 - (b)(A) Subject to subsection (3) of this section, the student's parent or legal guardian requests the abbreviated school day program; or
 - (B) Subject to subsection (4) or (5) of this section, the school district provides to the parent or legal guardian of the student written notice of the school district's determination that the student may not safely participate in a full school day program without placing the student, other students or staff at imminent risk of bodily harm.
- (3) If a parent or legal guardian requests the abbreviated school day program, the request:
- (a) Must be in writing and must be limited to one school year; and
 - (b) May be renewed in writing for additional school years, one school year at a time.
- (4) A student who is not receiving special education and related services may not be required to participate in an abbreviated school day program without a written request from the parent or legal guardian of the student until the school district makes a determination that the student may not safely participate in a full school day program and does all of the following:
- (a) Completes an expedited evaluation for eligibility for special education and related services, unless the student already has been determined to be eligible;
 - (b) Completes a functional behavioral analysis and develops a behavior intervention plan;
 - (c) Addresses how the student will receive full access to the general curriculum and general educational services while participating in an abbreviated school day program, as determined by the student's needs;
 - (d) Addresses how the student will participate in assessments administered by the school, school district or state; and

- (e) Develops a reentry plan for the student to return to a full school day program within a reasonable period of time, which may not exceed 60 calendar days.
- (5) A student who is receiving special education and related services may not be required to participate in an abbreviated school day program without a written request from the parent or legal guardian of the student until the school district makes a determination that the student may not safely participate in a full school day program based on recommendations of the individualized education program team and after the team addresses all of the following:
 - (a) Any additional supports and services necessary to support the student while participating in the abbreviated school day program;
 - (b) The justification for the abbreviated school day program and how the abbreviated school day program is based on the student's needs;
 - (c) How the student will receive full access to the general curriculum and general educational services while participating in an abbreviated school day program, as determined by the student's needs;
 - (d) How the student will participate in assessments administered by the school, school district and state; and
 - (e) How the student may return to a full school day program within a reasonable period of time, which may not exceed 60 calendar days, and how the student's individualized education program may need to be revised to include additional supports and services when the student returns.
- (6) Any actions taken under this section for a student with a disability who is receiving special education and related services are subject to:
 - (a) The requirements prescribed by section 5 of this 2017 Act; and
 - (b) The written notice requirements prescribed by ORS 343.159.

SECTION 4. (1) A student may participate in an abbreviated school day program for medical reasons only as provided by this section.

- (2) Any determinations about whether a school district may require a student to participate in an abbreviated school day program for medical reasons may not be made until the requirements described in subsection (3) of this section are made by:
 - (a) The student's individualized education program team, if the student is receiving special education and related services; or
 - (b) An evaluating team, if the student is not receiving special education and related services.
- (3) A student may not be required to participate in an abbreviated school day program for medical reasons until the individualized education program team or evaluating team addresses all of the following:
 - (a) The medical needs of the student, as identified by a qualified medical professional;
 - (b) How the student will receive full access to the general curriculum and general educational services while participating in the abbreviated school day program, as determined by the student's medical needs;
 - (c) How the student will participate in assessments administered by the school, school district or state, in a manner that is consistent with the student's medical needs; and
 - (d) The medical basis for the determination of an abbreviated school day program.
- (4) Any actions taken under this section for a student who is receiving special education and related services are subject to:
 - (a) The requirements prescribed by section 5 of this 2017 Act; and

(b) The written notice requirements prescribed by ORS 343.159.

SECTION 5. (1) Any abbreviated school day program provided as described in section 3 or 4 of this 2017 Act to a student who is receiving special education and related services is subject to this section.

(2) The decision to place a student in an abbreviated school day program is considered a change of placement for purposes of the student's individualized education program and must be documented in the student's individualized education program.

(3) If a student is provided an abbreviated school day program for safety reasons as described in section 3 of this 2017 Act and has not returned to a full school day program within 60 calendar days of first being provided the abbreviated school day program, the individualized education program team must convene every 20 school days to:

(a) Review the student's progress toward returning to a full school day program;

(b) Review behavioral data and other indicators of progress in the educational setting; (c) Review strategies and supports that have been implemented and assess their efficacy and appropriateness; and

(d) Determine what regular or alternative education setting would allow the student to be safely provided a full school day program if there is not significant progress toward the goal of returning the student to a full school day program.

(4) If a student is provided an abbreviated school day program for medical reasons as described in section 4 of this 2017 Act and is medically unable to return to a full school day program, the individualized education program team shall:

(a) Meet no less frequently than every 90 calendar days, unless:

(A) The team extends the timeline when an extension is considered necessary by the team or is consistent with medical recommendations; or

(B) The student becomes medically able to increase the number of hours in the school day or to return to a full school day program; and

(b) Review the student's progress toward returning to a full school day program and modify the abbreviated school day program, as appropriate.

SECTION 6. (1) Each school district that is providing an abbreviated school day program under sections 1 to 6 of this 2017 Act shall annually collect and report data to the Department of Education. The data must include the following information for students who are provided an abbreviated school day:

(a) The number of students who are provided an abbreviated school day program;

(b) The number of students who receive an abbreviated school day program of five or fewer hours per week for more than 60 school days; and

(c) The number of students who are provided an abbreviated school day program of five to 20 hours per week for more than 60 school days.

(2) The information provided under subsection (1) of this section must be disaggregated by:

(a) Whether the student is receiving an abbreviated school day program based on safety reasons or based on medical needs;

(b) The ethnicity of the student;

(c) The specific eligibility of the student for special education and related services, if

applicable; and (d) Whether the student is in the care of a foster parent or is a ward of the state.

SECTION 7. ORS 338.115 is amended to read:

338.115. (1) Statutes and rules that apply only to school district boards, school districts or other public schools do not apply to public charter schools. However, the following laws do apply to public

9 charter schools:

10 (a) Federal law;

11 (b) ORS 30.260 to 30.300 (tort claims);

12 (c) ORS 192.410 to 192.505 (public records law);

13 (d) ORS 192.610 to 192.690 (public meetings law);

14 (e) ORS chapters 279A, 279B and 279C (Public Contracting Code);

15 (f) ORS 297.405 to 297.555 and 297.990 (Municipal Audit Law);

16 (g) ORS 326.565, 326.575 and 326.580 (student records);

17 (h) ORS 181A.195, 326.603, 326.607 and 342.223 (criminal records checks);

18 (i) ORS 329.045 (academic content standards and instruction);

19 (j) ORS 329.451 (high school diploma, modified diploma, extended diploma and alternative certificate);

21 (k) The statewide assessment system developed by the Department of Education for mathematics,

22 science and English under ORS 329.485 (2);

23 (L) ORS 336.840 (use of personal electronic devices);

24 (m) ORS 337.150 (textbooks);

25 (n) ORS 339.119 (consideration for educational services);

26 (o) ORS 339.141, 339.147 and 339.155 (tuition and fees);

27 (p) ORS 339.250 (9) (prohibition on infliction of corporal punishment);

28 (q) ORS 339.326 (notice concerning students subject to juvenile court petitions);

29 (r) ORS 339.370, 339.372, 339.388 and 339.400 (reporting of abuse and sexual conduct and training

30 on prevention and identification of abuse and sexual conduct);

31 (s) ORS 342.856 (core teaching standards);

32 (t) Sections 1 to 6 of this 2017 Act (abbreviated school day programs);

33 [(t)] (u) ORS chapter 657 (Employment Department Law);

34 [(u)] (v) ORS 659.850, 659.855 and 659.860 (discrimination);

35 [(v)] (w) Any statute or rule that establishes requirements for instructional time provided by a school during each day or during a year;

37 [(w)] (x) Statutes and rules that expressly apply to public charter schools;

38 [(x)] (y) Statutes and rules that apply to a special government body, as defined in ORS 174.117,

39 or a public body, as defined in ORS 174.109;

40 [(y)] (z) Health and safety statutes and rules;

41 [(z)] (aa) Any statute or rule that is listed in the charter; and

42 [(aa)] (bb) This chapter.

43 (2) Notwithstanding subsection (1) of this section, a charter may specify that statutes and rules

44 that apply only to school district boards, school districts and other public schools may apply to a

45 public charter school.

- (3) If a statute or rule applies to a public charter school, then the terms “school district” and “public school” include public charter school as those terms are used in that statute or rule.
- (4) A public charter school may not violate the Establishment Clause of the First Amendment to the United States Constitution or section 5, Article I of the Oregon Constitution, or be religion based.
- (5)(a) A public charter school shall maintain an active enrollment of at least 25 students.
- (b) For a public charter school that provides educational services under a cooperative agreement described in ORS 338.080, the public charter school is in compliance with the requirements of this subsection if the public charter school provides educational services under the cooperative agreement to at least 25 students, without regard to the school districts in which the students are residents.
- (6) A public charter school may sue or be sued as a separate legal entity.
- (7) The sponsor, members of the governing board of the sponsor acting in their official capacities and employees of a sponsor acting in their official capacities are immune from civil liability with respect to all activities related to a public charter school within the scope of their duties or employment.
- (8) A public charter school may enter into contracts and may lease facilities and services from a school district, education service district, public university listed in ORS 352.002, other governmental unit or any person or legal entity.
- (9) A public charter school may not levy taxes or issue bonds under which the public incurs liability.
- (10) A public charter school may receive and accept gifts, grants and donations from any source for expenditure to carry out the lawful functions of the school.
- (11) The school district in which the public charter school is located shall offer a high school diploma, a modified diploma, an extended diploma or an alternative certificate to any public charter school student who meets the district’s and state’s standards for a high school diploma, a modified diploma, an extended diploma or an alternative certificate.
- (12) A high school diploma, a modified diploma, an extended diploma or an alternative certificate issued by a public charter school grants to the holder the same rights and privileges as a high school diploma, a modified diploma, an extended diploma or an alternative certificate issued by a nonchartered public school.
- (13) Prior to beginning operation, the public charter school shall show proof of insurance to the sponsor as specified in the charter.
- (14) A public charter school may receive services from an education service district in the same manner as a nonchartered public school in the school district in which the public charter school is located.

SECTION 8. ORS 338.115, as amended by section 7, chapter 839, Oregon Laws 2007, section 12, chapter 50, Oregon Laws 2008, section 4, chapter 618, Oregon Laws 2009, section 3, chapter 53, Oregon Laws 2010, section 3, chapter 94, Oregon Laws 2011, section 118, chapter 637, Oregon Laws 2011, section 5, chapter 682, Oregon Laws 2011, section 10, chapter 92, Oregon Laws 2012, section 7, chapter 98, Oregon Laws 2013, section 14, chapter 265, Oregon Laws 2013, section 9, chapter 267, Oregon Laws 2013, section 2, chapter 67, Oregon Laws 2015, and section 48, chapter 245, Oregon Laws 2015, is amended to read:

338.115. (1) Statutes and rules that apply only to school district boards, school districts or other public schools do not apply to public charter schools. However, the following laws do apply to public charter schools:

2 (a) Federal law;

3 (b) ORS 30.260 to 30.300 (tort claims);

4 (c) ORS 192.410 to 192.505 (public records law);

5 (d) ORS 192.610 to 192.690 (public meetings law);

6 (e) ORS chapters 279A, 279B and 279C (Public Contracting Code);

7 (f) ORS 297.405 to 297.555 and 297.990 (Municipal Audit Law);

8 (g) ORS 326.565, 326.575 and 326.580 (student records);

9 (h) ORS 181A.195, 326.603, 326.607 and 342.223 (criminal records checks);

10 (i) ORS 329.045 (academic content standards and instruction);

11 (j) ORS 329.451 (high school diploma, modified diploma, extended diploma and alternative certificate);

(k) ORS 329.496 (physical education);

(L) The statewide assessment system developed by the Department of Education for mathematics- science and English under ORS 329.485 (2);

(m) ORS 336.840 (use of personal electronic devices);

(n) ORS 337.150 (textbooks);

(o) ORS 339.119 (consideration for educational services);

(p) ORS 339.141, 339.147 and 339.155 (tuition and fees);

(q) ORS 339.250 (9) (prohibition on infliction of corporal punishment);

(r) ORS 339.326 (notice concerning students subject to juvenile court petitions);

(s) ORS 339.370, 339.372, 339.388 and 339.400 (reporting of abuse and sexual conduct and training on prevention and identification of abuse and sexual conduct);

24 (t) ORS 342.856 (core teaching standards);

25 (u) Sections 1 to 6 of this 2017 Act (abbreviated school day programs);

26 [(u)] (v) ORS chapter 657 (Employment Department Law);

27 [(v)] (w) ORS 659.850, 659.855 and 659.860 (discrimination);

28 [(w)] (x) Any statute or rule that establishes requirements for instructional time provided by a 29 school during each day or during a year;

30 [(x)] (y) Statutes and rules that expressly apply to public charter schools;

31 [(y)] (z) Statutes and rules that apply to a special government body, as defined in ORS 174.117,

32 or a public body, as defined in ORS 174.109;

33 [(z)] (aa) Health and safety statutes and rules;

34 [(aa)] (bb) Any statute or rule that is listed in the charter; and

35 [(bb)] (cc) This chapter.

36 (2) Notwithstanding subsection (1) of this section, a charter may specify that statutes and rules

37 that apply only to school district boards, school districts and other public schools may apply to a

38 public charter school.

39 (3) If a statute or rule applies to a public charter school, then the terms “school district” and 40 “public school” include public charter school as those terms are used in that statute or rule.

41 (4) A public charter school may not violate the Establishment Clause of the First Amendment

42 to the United States Constitution or section 5, Article I of the Oregon Constitution, or be religion

43 based.

44 (5)(a) A public charter school shall maintain an active enrollment of at least 25 students.

45 (b) For a public charter school that provides educational services under a cooperative agreement described in ORS 338.080, the public charter school is in compliance with the requirements of this subsection if the public charter school provides educational services under the cooperative agreement to at least 25 students, without regard to the school districts in which the students are residents.

(6) A public charter school may sue or be sued as a separate legal entity.

(7) The sponsor, members of the governing board of the sponsor acting in their official capacities and employees of a sponsor acting in their official capacities are immune from civil liability with respect to all activities related to a public charter school within the scope of their duties or employment.

(8) A public charter school may enter into contracts and may lease facilities and services from a school district, education service district, public university listed in ORS 352.002, other governmental unit or any person or legal entity.

(9) A public charter school may not levy taxes or issue bonds under which the public incurs liability.

(10) A public charter school may receive and accept gifts, grants and donations from any source for expenditure to carry out the lawful functions of the school.

(11) The school district in which the public charter school is located shall offer a high school diploma, a modified diploma, an extended diploma or an alternative certificate to any public charter school student who meets the district's and state's standards for a high school diploma, a modified diploma, an extended diploma or an alternative certificate.

(12) A high school diploma, a modified diploma, an extended diploma or an alternative certificate issued by a public charter school grants to the holder the same rights and privileges as a high school diploma, a modified diploma, an extended diploma or an alternative certificate issued by a nonchartered public school.

(13) Prior to beginning operation, the public charter school shall show proof of insurance to the sponsor as specified in the charter.

(14) A public charter school may receive services from an education service district in the same manner as a nonchartered public school in the school district in which the public charter school is located.

SECTION 9. ORS 338.025 is amended to read:

338.025. (1) The State Board of Education may adopt any rules necessary for the implementation of this chapter. The rules shall follow the intent of this chapter.

(2) Upon application by a public charter school, the State Board of Education may grant a waiver of any provision of this chapter if the waiver promotes the development of programs by providers, enhances the equitable access by underserved families to the public education of their choice, extends the equitable access to public support by all students or permits high quality programs of unusual cost. The State Board of Education may not waive any appeal provision in this chapter or any provision under ORS 338.115 (1)(a) to [(z)] (aa), 338.120, 338.125 (4), 338.135 (2)(b) or 339.122.

SECTION 10. ORS 338.025, as amended by section 8, chapter 839, Oregon Laws 2007, section 14, chapter 50, Oregon Laws 2008, section 5, chapter 53, Oregon Laws 2010, section 4, chapter 72, Oregon Laws 2010, section 5, chapter 94, Oregon Laws 2011, section 4, chapter 649, Oregon Laws 2011, section 27, chapter 718, Oregon Laws 2011, section 9, chapter 98, Oregon Laws 2013, section 16, chapter 265, Oregon Laws 2013, and section 4, chapter 67, Oregon Laws 2015, is amended to read:

338.025. (1) The State Board of Education may adopt any rules necessary for the implementation of this chapter. The rules shall follow the intent of this chapter.

(2) Upon application by a public charter school, the State Board of Education may grant a waiver of any provision of this chapter if the waiver promotes the development of programs by providers, enhances the equitable access by underserved families to the public education of their choice, extends the equitable access to public support by all students or permits high quality programs of unusual cost. The State Board of Education may not waive any appeal provision in this chapter or any provision under ORS 338.115 (1)(a) to [(aa)] (bb), 338.120, 338.125 (4), 338.135 (2)(b) or 339.122.

Appendix R

February 2022 Survey to School Districts

DATE

Greeting Special Education Directors,

As a part of an interim settlement agreement in a class-action lawsuit against the Oregon Department of Education (ODE) and the governor, a neutral fact-finder is requesting district data from all Oregon school districts to help determine the extent of the use of abbreviated school day **due to behavior** for students with disabilities eligible for special education and related services under the IDEA in Oregon schools.

Similar data was previously requested and received from some districts. However, there were a number of inconsistencies in the data reporting making it unreliable. Therefore, this new request is being made for the **2016-17, 2017-18, 2018-19 and 2019-2020 school years**.

To help make this process easier for you, we have provided the attached spreadsheet to use while gathering information. You will be receiving a link to Smart Sheets Survey to submit your final data.

DATA REQUESTED

- Please provide the number of students eligible for special education and related services in your district who have been placed on an “abbreviated school day” at any time during the requested school years due to behavior for the following categories:
 - Preschool
 - Middle School
 - High School
 - For each disability category

One possible source for this information for the 2018-19 school year may be records prepared to comply with the requirement in OAR 581-022-2320(2)(b) that each school district report annually to its school board “the total number of students disaggregated by relevant sociodemographic group that have been exempted from the [state’s] instructional time requirements.”

1. Please provide the total number of students for whom:
 - a. Disability related behaviors rendered them unable to follow COVID safety protocols, thus necessitating an ASD. (i.e., If we were not in a Pandemic, these students would have been on a full school day).

- b. Signed parent/guardian acknowledgement in accordance with SB263 was obtained.
- c. A written statement was placed in the student's IEP explaining the reasons for the abbreviated school day program.
- d. A transition plan was in place to return this student to a full school day.

Possible sources for this information may be the Abbreviated Day Notice and Acknowledgement form, student's IEP, and student's special education file.

We are striving to ensure the data collected are valid and reliable. When entering data please ensure that you **use a 0 (Zero)** when there were no students for a particular data point, and if the district did not collect the data please **enter DNC** in the cell.

We are not requesting any personally identifiable information—just the number of students in each category. This will help the neutral third-party make appropriate recommendations regarding abbreviated school days for IDEA students.

For the purpose of this request the following definitions will be used:

“Behavior” includes maladaptive behaviors but may also include school refusal, discipline problems, toileting issues, etc. This does not include students who are on ASD for community integration, work study programs, medical reasons, etc.

“Target Population” refers to all students with disabilities aged 3 to 21 residing in Oregon who are eligible for special education and related services under the IDEA and are currently being subjected to an abbreviated school day due to their behavior, regardless of whether it is documented in their IEP.

“Abbreviated School Day,” or more generally “shortened school day,” refers to any school-day during which a student within the Target Population receives instruction or educational services in school for fewer hours than other students who are in the same grade within the same school.

"Transition Plan" identifies: 1) the skills or behaviors that are currently inhibiting the student's learning and participation in a full day of school; 2) what resources (i.e., trained personnel, FBA and/or BIP, space on campus, transportation, etc.) are currently unavailable to the student that he or she needs in order to learn and participate in a full school day; 3) a plan for acquiring the necessary resources; 3) a target timeline with an end date for the student's attendance for full school day; 4) the type of data collected and record keeping that will occur and be analyzed regarding acquisition of necessary resources ; and 5) a consistent schedule of team meetings and data and record review regarding current student progress and acquisition of necessary resources.

“SB 263” Refers to the Oregon law passed in 2017 defining abbreviated school day and districts 'obligations when placing students on ASD.

If you have any questions, please contact **Dr. David Bateman at DavidBateman@me.com**. We will work to provide you a very timely answer to your questions.

Appendix S

List of School Districts Visited (virtually and face to face)

Adrian SD
Bend-LaPine SD
Central Linn SD
Crook County SD
Dallas SD
David Douglas SD
Grants Pass SD
Gresham-Barlow SD
High Desert ESD
Jefferson County SD
Klamath County SD
Klamath Falls SD
Malheur ESD
Molalla SD
North Powder SD
Nyssa SD
Pendleton SD
Redmond SD
Reedsport SD
Rogue River SD
Salem-Keizer SD
Sisters SD
Springfield SD
Vale SD

Appendix T

Intensive Interagency Support Plan**Intensive Interagency Supports**

The Oregon Department of Education (ODE) K–12 interagency teams would bring together a variety of stakeholders with resources to support children with disabilities to enable them to receive a Free Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE). Because Oregon is primarily a rural state with only a few urban areas, resources to support students with disabilities with mental health and behavior challenges (i.e., special schools, behavior specialists, staff training and coaching, mental health services, community family supports, etc.) are often sparse and difficult to find. When Local Education Agencies (LEAs) do not have access to the necessary resources to adequately prevent or intervene with the challenging behaviors displayed by some students, Individualized Education Program (IEP) teams frequently place students on a shortened school day (SSD). LEAs often cite concerns for the safety of staff and students as a rationale for placing students on SSD. If the LEAs could receive ongoing support and could call for specific emergency support provided by an interagency team, or help developing and implementing the needed resources for students, the amount of days a student with disability is placed on SSD could be limited, if not prevented altogether.

Interagency teams to support IEP teams would serve the following purposes:

- Identify local needs or discontinuity in policies, procedures, services, and programs that hinder children with disabilities from maintaining placement in full-day school programs;
- Increase the availability, access, and quality of interagency behavior intervention and behavioral health services through the development and improvement of policies, procedures, systems, funding, and other mechanisms for providing supports in the school setting or alternative placement options that maintain a full-day school program;
- Help other service representatives understand the educational service system including laws, regulations, and policies related to transition services; roles and responsibilities of families and district personnel; roles of local or regional interagency planning teams; and roles now expected of other service agencies involved; and
- Develop a state-wide professional development program to create teams for all regions in the state to provide training to those who support the LEAs along with follow-up coaching

regarding evidence-based mental health planning and interventions and behavior planning and intervention strategies.

The ODE should develop a system for providing intensive interagency support to students with disabilities whose LEAs have determined they cannot be appropriately educated in a public educational setting and who have been placed on a shortened school day for more than 30 days and need assistance for the provision of an appropriate educational placement. This system should also be aimed at providing assistance to students who are at substantial risk of waiting more than 30 days for an appropriate educational placement.

LEAs must also report students with disabilities who are placed on an abbreviated (shortened) school day related to the display of challenging behavior(s) so ODE can determine whether these students require intensive interagency coordination.

Procedures

The system of intensive interagency coordination is not intended to replace the local process. In the majority of situations requiring interagency efforts, local IEP and Interagency Teams do not require additional assistance to assure the provision of appropriate educational programs and placements for the students who they serve. Intensive interagency coordination is designed for the rare situations when local teams do not have the resources and supports needed to serve the students for a full day, and the students have been placed on an abbreviated school day for more than 30 days.

LEAs have a crucial role in identifying which students require intensive interagency coordination, since these are students whom the LEA has determined cannot currently be served in the public educational setting for a full day due to behaviors. It is important to address that these students are still entitled to a free appropriate public education and need supports to be able to access a full educational day. In addition to assisting LEAs with providing appropriate educational programs and placements, the system of intensive interagency coordination would work towards the goal of enhancing the capacity of LEA programs so the needs of students with disabilities can be met in public educational settings in most situations.

If there is a dispute about the appropriateness of the student's program or placement, this dispute must be resolved through mediation and/or due process hearing procedures. Program and/or placement disputes should not be resolved through an intensive interagency coordination.

ODE would require LEAs to identify any student in need of intensive interagency coordination. Initial reports must be filed within five days of initial identification of these students and reports must be updated on a monthly basis until an appropriate placement is provided. As stated above, the students who must be identified are those:

- (1) whose LEA has determined that the student due to behaviors cannot currently be served in the public educational setting; and
- (2) who have been placed on a shortened school day for more than 30 days (or are at substantial risk of waiting more than 30 days for a placement.)

In addition, parents, advocates, representatives of child serving agencies, and other individuals may be able to call the ODE point person regarding a student who may potentially require intensive interagency coordination.

Once an LEA reports a student to ODE, the point person will work to coordinate the local interagency supports, in conjunction with the District Support Specialists. The District Support Specialists will make an initial determination regarding whether the student requires intensive interagency coordination, or if he or she can be served by another portion of the special education system.

If the student requires intensive interagency coordination to access an appropriate educational placement, the District Support Specialists will assess the matter and work with the IEP and Interagency teams to determine the barrier(s) preventing the student from receiving full-day services in the agreed-upon placement. If necessary to resolve the matter, the District Support Specialists will promptly schedule a meeting of the local interagency team, which should include the family of the student, the LEA and representatives of the ESD, and other relevant child serving agencies, such as county offices of Intellectual Disabilities, Mental Health, and Children, Youth and Families, and regional offices of Vocational Rehabilitation. If the student's placement is not resolved within 30 school days (with the exception of the summer months) by the local interagency team, the District Support Specialists will forward a report to the office of the ODE Director for appropriate intervention with other state agencies based on the presenting issue(s).

The District Support Specialists in collaboration with ODE, will regularly review their referrals to identify whether any illustrate the need to enhance the capacity of an LEA or ESD program. When the need to enhance local capacity is identified, the LEAs or ESDs at issue will incorporate specific details of capacity-building activities that will be undertaken to remedy the

need in their special education plans (LEAs) or annual plans (ESDs). ODE will then monitor the LEAs or ESDs progress in building the identified capacity.

In addition to the case referral system described above, in accordance with the IDEA related to interagency coordination, ODE should identify the manner in which services should be coordinated among child-serving agencies to ensure students with disabilities receive a free appropriate public education in the least restrictive environment. ODE should also form an interagency committee to coordinate services for individuals with disabilities, which would address issues related to capacity building that are beyond the control of LEAs or ESDs.

Appendix U

Recommendations for Guidance on FBAs/BIPs

ODE Guidance for FBAs and BIPs

The Individuals with Disabilities Education Act (IDEA) is the federal law outlining what is required to ensure each child with a disability needs to receive a Free Appropriate Public Education (FAPE). Outlined in this law are a number of processes to help ensure teams and school districts use the necessary tools to determine and carry out the services to provide FAPE. However, there are “tools” included in IDEA that are not clearly defined or clearly outlined. Nowhere is this more true than with Functional Behavioral Assessments (FBA).

Therefore, local school districts look to states for guidance on the implementation of requirements of the Individuals with Disabilities Education Act (IDEA) to ensure children with disabilities receive Free Appropriate Public Education (FAPE). The IDEA regulations do not define an FBA or explain the steps required to complete one. Instead, FBA requirements are left to state law or local policy that may articulate a specific process. The only guidance from the federal government, "requires the public agency to ensure that the child is assessed in all areas related to the suspected disability....If a child's behavior or physical status is of concern, evaluations addressing these areas must be conducted." ⁹

Federal law requires an FBA whenever a child with a disability has an educational placement change for disciplinary reasons in the following instances:

1. when a child is removed from school for more than 10 consecutive days for behavior that is a manifestation of the student’s disability;
2. when a child is removed for more than 10 school days for conduct that is not a manifestation of the disability but the IEP team determines that an FBA is necessary.¹⁰

In the case of a child whose behavior impedes the child’s learning or that of others, the federal regulations require IEP teams to consider the use of positive behavioral interventions,

⁹ 34 C.F.R. § 300.304 (c)(4).

¹⁰ 34 C.F.R. § 300.530

supports, and other strategies to address that behavior.¹¹ IEP teams have wide latitude in determining how to best address a child's behavior, through behavioral goals, behavioral supports and services (such as a behavior coach or counseling services), or a behavioral intervention plan (BIP). Broadly defined, a BIP is a plan based on the results of an FBA and, at a minimum, includes a description of the problem behavior, global and specific hypotheses as to why the problem behavior occurs, and intervention strategies that include proactive and reactive behavioral supports and services to address the behavior. Additionally, behavior can be addressed outside of the IEP process through a behavior contract or the use of informal strategies.

The IDEA regulations are silent on how an FBA is to be conducted. The IEP team determines what constitutes a valid or a current FBA.¹² The regulations affirm that when developing a child's IEP, as it relates to a child whose behavior impedes his learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports and other strategies to address the behavior.¹³ This may, or may not include a FBA; however, behavior is to be addressed with an FBA in certain disciplinary situations.¹⁴ There's further ambiguity regarding who is qualified to conduct an FBA, as "[t]he statute and regulations do not specify which individuals must conduct the FBA. There is no Part B requirement . . . that a Board Certified Behavior Analyst (BCBA) conduct the FBA, unless State law imposes such a requirement".¹⁵

To make matters worse for local school districts and for parents, there is also a lack of clarity about when to develop a BIP. Despite the fact that many students may clearly benefit from a BIP, the only time a BIP is required by the IDEA is when a student's behavior has led to a disciplinary change of placement that is determined to be a manifestation of his/her disability.¹⁶ When this occurs, the IDEA regulations require the school to return the child to the placement from which he or she was removed and require the child's IEP team to conduct an FBA and develop and implement a BIP for the child, or review and modify an existing BIP as necessary to address the behavior.¹⁷ The regulations do not define a BIP or explain what such a plan must look

¹¹ 34 C.F.R. § 300.324(a)(2)(i)

¹² 34 C.F.R. Part 300, Analysis of Comments and Changes, Subpart E-Procedural Safeguards, Federal Register, Vol. 71, No. 156, p. 46721 (August 2006)

¹³ 34 C.F.R. § 300.324(a)(2)

¹⁴ 34 C.F.R. §§ 300.530(d)(1)(ii) and (f)(1)(i)

¹⁵ Letter to Janssen, 51 IDELR 253 (OSERS 2008)

¹⁶ 34 C.F.R. § 300.530(f)(1)(i-ii)

¹⁷ 34 C.F.R. § 300.530(f)(1)

like. Like the contents and standards of the FBA, the contents and standards of the BIP is left to the IEP team.

The IDEA does not specify who is qualified to conduct FBAs. States or even districts must determine who conducts the assessments. Although the IDEA does not state who should conduct FBAs, districts should ensure those who do conduct them are adequately trained. Since the development of an FBA often does not neatly fit under the responsibility of any one individual or job title within a school district, this furthers exemplifies the need for effective *Guidance* from state education agencies.

The development of an FBA is a three-step process: 1) defining the problem behavior; 2) collecting data about the antecedents and consequences of the behavior; and 3) developing a hypothesis about the function of the behavior. Appropriate FBAs use various methods of collecting relevant data, identifying the child's most significant concerning behaviors, identifying the triggers and consequences of those behaviors, and providing guidance on how to create an educational program and behavior plan to address the behaviors.

As with FBAs, Local Education Agencies (LEA) seek guidance in best practice for the development of BIPs. The Supreme Court stated very clearly in the *Endrew F.* decision in 2017 that the standard for determining FAPE is whether a district's plan is reasonably calculated to enable a child to make progress appropriately in light of the child's circumstances. The BIP should be tailored to the unique needs of the particular child and be appropriately ambitious in light of the child's circumstances.¹⁸ IEP teams should consider the behavioral needs of students in the development, review, and revision of IEPs when necessary to provide FAPE. Teams must consider and include appropriate behavioral goals, objectives and other appropriate services and supports in the IEPs of children whose behavior impedes their own learning or the learning of their peers.¹⁹ However, since the content of the BIP is not clearly delineated in the federal regulations, there needs to be guidance for LEAs from State Education Agencies (SEA) about the requirements and process.

¹⁸ *Endrew F. v. Douglas County School Dist.* RE–1 798 F. 3d 1329 (2017).

¹⁹ <https://sites.ed.gov/idea/files/qa-endrewcase-12-07-2017.pdf>

In 2005, Researchers analyzed state guidance on FBA/BIP's available to LEA's and determined that 41 states had information and materials related to FBA development.²⁰ They also found, however, that the materials were not adequate to support local school districts in the development of FBAs. Some of these same researchers in a parallel study, found only 40 SEAs had guidance related to the development of BIPs and, like the FBA study, the vast majority were not adequate to support local school districts.

A major study was completed in 2011 by Zirkel.²¹ Among other important items, the Zirkel study found only 17 state laws provided definitions of FBAs and/or BIPs, and the vast majority of these definitions merely mentioned some of the key elements in the special education literature, such as "function" for FBAs or "interventions" for BIP. It also identified only 31 specific state statutes and regulations that related to the FBAs and BIPs, and most of the states were fairly limited in scope and specificity.

In light of these current nationwide circumstances and Oregon's Department of Education (ODE) current lawsuit regarding the lack of provision of FAPE for students with IEPs who were placed on abbreviated school days due to their behavior challenges, we are recommending that ODE provide clear Guidance for all LEAs on the necessary components for conducting FBAs and developing and implementing BIPs across the state. Below are some suggested best practices that can be used when developing guidance or best practice documents for Oregon LEA's and families.

Functional Behavior Assessment Components

An appropriate functional behavioral assessment consists of eight components, each of which is discussed below.

1. A requirement for **input** to be collected **from multiple sources** in order to identify and define the problem target behavior(s). (Note: It is important for bias to be considered regarding the persons and sources of information collected. The FBA process should be implemented by a team and the lead of the team should not be the student's teacher).
 - a. These sources must include:
 - i. a minimum of two individuals working directly with the student, AND

²⁰Killu, K., Weber, K. P., Derby, K. M., & Barretto, A. (2006). Behavior intervention planning and implementation of positive behavioral support plans: An examination of states' adherence to standards for practice. *Journal of Positive Behavior Interventions*, 8, 195-200.

²¹ Zirkel, P. A. (2011). State special education law for functional behavioral assessment and behavior intervention plans. *Behavioral Disorders*, 36(4), 262-278.

- ii. a minimum of two different routines or environments, AND
 - iii. a minimum of two methods of data with supporting details regarding who and what kind of information and data collection is appropriate (i.e., interview, Antecedent-Behavior-Consequence data, duration, frequency), AND
- b. Examples and non-examples must be provided to help professionals understand what multiple sources can look like (persons to interview, sources of paper information/document gathering and indirect and data collection) and how to provide and describe results in a report.
2. ***Target problem behavior(s) are to be identified and defined*** (easily observable and measurable). (If more than one behavior is identified, it must be clear which behaviors will be the focus of the FBA.)
- a. to identify and operationally define (i.e., are observable and measurable and can be seen, heard, counted) ALL target problem behaviors, AND
 - b. to provide a clear link between the target problem behavior(s) that is identified and the behavior that is identified in the Hypothesis Statement (Component 8) section, AND
 - c. to provide examples and non-examples to help professionals, AND
 - d. to include clarifications on acceptable identification and definitions, AND
 - e. to provide the following clarifications and explanations:
 - i. If there is more than one problem behavior identified, the FBA needs to address more than one target behavior or prioritize how and when they will all be addressed.
 - ii. Behaviors do not need to be broken down into discrete units (e.g., pushes until the other person is moved 1.5 meters/inches), but behaviors are clearly defined so anyone can determine when the behavior starts and stops (onset and offset).
 - iii. Behavior definitions in “dead man” terminology (i.e., a dead person could

perform the behaviors - “he lays on the ground”) are not acceptable.²²

iv. Any target problem behavior(s) that are checked from a pre-stocked dropdown checklist in a computer-based program should also always include an open-ended field for individualized description.

1. **Baseline data** on the problem behaviors are required to be collected and detailed or summarized. The data is in addition to office discipline referrals (ODRs), in-school suspension (ISS), and/or out-of-school suspension (OSS) data. Note: The guidelines do not need to indicate that they require the analysis process be at the level of a board certified behavior analyst, but it should include a summary of all the data that allows a team to determine how behavior occurred over the time period that data was collected (e.g., statements such as “4 times a day on average,” “10 times a week”). Baseline data collection guidelines include the following:
 - a. must be collected across multiple days or multiple environments and during times when the behavior is most likely to occur and least likely to occur, AND
 - b. must address, in the description, the four essential details:
 - i. name and definition of target behavior;
 - ii. method/format (e.g., frequency, rating/intensity scale, ABC, duration, etc.),
 - iii. time period it was collected (e.g., dates, statement such as “data collected over last two weeks”), and
 - iv. analysis of outcomes (e.g., “average of four times a week”), AND
 - c. must provide examples for professionals (see below) of how or what data can be collected and presented. See examples below:
 - i. “Frequency data box checked; 9/01/19-9/05/21; hitting averages three times a week, and hitting was the problem behavior targeted”.
 - ii. “Data collected over the last three weeks show that Jack cursed 3-5 times a day.”

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iii. Data may be provided in a graph, check box, or narrative format.

2. **Setting Events** (SE) (i.e., slow triggers, events that provide the context or “set the stage” for a higher likelihood of problem behavior) are required to be considered, identified and the contingency to the target problem behavior be described. Note: If the guidelines specify identifying setting events, then the Hypothesis Statement (Component 8) section should also include the identified setting event(s) and relation to the target behavior. Setting events guidelines include the following:
 - a. Requirements for the team to follow the SE-A-B-C analysis process, AND
 - b. Clear explanations and definitions of setting events, AND
 - c. Requirement of at least one setting event analysis, AND
 - d. Description of the relation to the target behavior (all of which is included in the hypothesis statement) (Component 8), AND
 - e. Provision of examples and non-examples to help professionals understand how to identify setting events (and difference from setting and antecedents) and describe the relationship between a setting event and target behavior.
3. **Antecedent events** in which target problem behavior is *least* likely to occur (or appropriate behavior is more likely to occur) and *most* likely to occur are required to be identified and specified. Note: The guidelines need to make it clear that it is also important to indicate in the FBA the situations in which there is an *absence* of the target problem behavior. Antecedent events descriptions include the following:
 - a. Identification of one or more antecedent events in which problem behavior is least likely *and* most likely to occur, AND
 - b. Detailed explanation of how antecedent data should be collected (i.e., in observable and measurable terms) and described within the FBA, AND
 - c. List of useful examples and non-examples for professionals to understand the difference and need for identifying most likely and least likely antecedents.
4. **Consequence events** (i.e., how others respond immediately after problem behavior occurs) are required to be identified and described. Note: Guidelines need to explain that there is a difference between describing the immediate consequence event that occurs and describing the consequence in a manner that serves as a function. For

example, *Consequence Event*: Children look at the child and snicker and laugh; *Consequence/Function*: The child gains attention from peers. For this component, identification of the consequence *event(s)* is important so that later in Components 7 and 8, the inference and identification of the “function of the behavior” can be clearly tied to the baseline data acquired regarding the consequence events that are maintaining the behavior. Consequence events descriptions need to include the following:

- a. Identification of the *immediate* consequence event(s) following the target problem behavior(s), AND
 - b. Explanations to help professionals understand they need to describe all of the consequence events in observable and measurable terms, AND
 - c. Explanations that consequences must be specified for each target behavior, when multiple target behaviors are present, AND
 - d. List of useful examples and non-examples for professionals to help them understand how to identify immediate consequence events and describe them adequately.
5. The ***function of the target problem behavior(s)*** is required to be identified and is one listed in research literature (i.e., gain attention, gain tangible item, activity, or sensory stimulation, avoid attention, avoid task, activity or sensory stimulation), provides specificity, and is linked to the FBA data (i.e., Components 4-6). Note: Function of the target problem behaviors include the following:
- a. Explanations of how valid functions are determined by what the individual tries to gain or avoid (positive reinforcement (access/obtain) or negative reinforcement (escape/avoid)) and are observable.
 - b. Identification of a function for each of the identified target behaviors, AND
 - c. Description of the process for identifying the function(s), AND
 - d. Definition and link between functions of a target behavior to the data if there is more than one function for a behavior identified. AND
 - e. List of examples and non-examples with appropriate ways to write about the function of the behavior and linking it to the data.

6. An identifiable ***hypothesis/summary statement*** of the target problem behavior(s) is required to be present and includes the five main essential components discussed previously (setting events, antecedent events, functions that are linked to the setting events, antecedents and consequences, and current consequence events maintaining the behavior). Hypothesis statement must include all of the following:
 - a. A definition and examples of each of the five components, AND
 - b. A clear link to the SE-A-B-C data, AND
 - c. An example of a sample hypothesis statement for professionals to follow when providing their statement, including
 - i. Instructions on how to integrate multiple functions within the hypothesis statement (if there are multiple functions for the target behavior), AND
 - ii. Examples and non-examples on how to incorporate all four components in the hypothesis statement.

Behavior Intervention Plan Component

The FBA and, if available, previous BIP data is then used to develop an appropriate BIP.

An appropriate BIP consists of 10 components described below.

1. A BIP is required to be **developed in a timely manner** upon completion of the FBA. Note: The guidelines need to include some discussion about the difference between a new BIP and an updated BIP and, if the current BIP being reviewed is an update to a previous FBA/BIP, the team must describe how they determined the FBA information collected at a much earlier date is still accurate or provide a description of the FBA data they updated to confirm the original hypothesis is still valid. Guidelines need to be clear about timelines for BIP to be developed within a certain amount of time (i.e. school days) after FBA was completed and must be clear that all dates on all documents need to be accurate and coincide with reported timelines.
2. The ***hypothesis/summary statement*** requires the following:
 - a. Is linked to and developed from the FBA or data from previous BIP (and needs to be restated and included in the new or updated BIP). AND
 - b. Is included/restated in the behavior intervention plan. AND
 - c. Is identical to all five components as those included in the FBA.

- d. Note: Guidelines can also provide for the FBA and BIP to be part of the same document (e.g., stapled together, page numbers are continuous; form numbers are sequential) and references correctly made to all the necessary components in the one overall document.
3. **Behavior goals** for increasing the replacement behavior and decreasing the target problem behavior are required to be identified and written in a way that is achievable, observable, and measurable and include a clear timeframe for achievement/monitoring. Note: 1) In short term objectives, then these need to also include a measurable difference between each objective progressing toward the goal, *and* 2) there should also be skill acquisition goals in the student's IEP linking to the target problem behaviors in the BIP (i.e., if the student's inability to read is part of the reason the behavior is occurring, then a skill acquisition goal should be included regarding his or her reading skills). Behavior goals require the following:
 - a. An explanation or delineation on forms separating goals that are needed for both replacement behavior and target problem behavior, AND
 - b. An explanation how the goals need to be achievable, observable, measurable, and include a specific timeframe, with the measurable aspect being linked to current baseline data from the FBA. AND
 - c. Explanations and examples or non-examples for written behavior goals.
 4. **Strategies/interventions** that directly address and modify *antecedent events* listed in the "when" component of the FBA Hypothesis Statement (Component 8) are required to be identified and described in enough detail for implementation as a part of the intervention. Requirements for strategies/interventions are as follows:
 - a. Identification of at least one antecedent intervention strategy. AND
 - b. Linkage of strategies to the FBA hypothesis (both to the setting events, antecedent(s) and the function). AND
 - c. Detailed description of the intervention for ease of implementation and replication (e.g., who is doing the intervention, the different points at which different strategies are implemented related to the setting events, antecedents and consequences, and, how the adults working with the child will use different prompting, teaching, accommodations and modifications, etc). AND

- d. Description of intervention as a preventative strategy (the intervention is implemented prior to student performance of problem behavior and to prevent the behavior from occurring). AND
 - e. List of examples and non-examples to help professionals understand antecedent-based strategies/interventions (proactive and preventative).
5. **A replacement behavior** (a minimum of one) must be identified, defined, and taught to the student that is linked to the FBA hypothesis (Component 8), and described in enough detail for implementation. A replacement behavior must include the following:
- a. serve the same function as the problem behavior or is incompatible with the problem behavior, AND
 - b. describes an intervention with enough detail implementation (i.e., a stranger would be able to implement the strategy). AND
 - c. the exact skill that will be taught, AND
 - d. who will teach the skill, AND
 - e. at what point related to the antecedent will the skill be prompted or practiced, AND
 - f. how the skill will be taught (instructional plan), AND
 - g. explain that the replacement behavior should be one that is a functional equivalent (i.e., a behavior that directly seeks the same function) or an alternate skill (e.g., pro-social/ academically desirable behavior), AND
 - h. align with the behavior goals written in the IEP, AND
 - i. provide examples and non-examples for professionals to understand.
6. **Reinforcement** of the replacement behavior must be identified and described as ones that provide the same outcome/function as did the target problem behavior and is described in enough detail to implement. Reinforcement of the replacement behavior must include the following:
- a. Identification of at least one strategy in the BIP to reinforce the use of replacement behavior, AND
 - b. Requirement that it results in the same outcome/function as the problem behavior, AND
 - c. Described in enough detail so a stranger would be able to implement the intervention with the student and/or multiple people would implement the strategy

in the same way.

- d. Provision of examples and non-examples to help professionals understand what reinforcement strategies/interventions are.
7. ***Elimination of the maintaining (current) consequence events*** and implementation of new consequence events must include the following:
- a. Description with sufficient detail to implement (i.e., changes the way others respond to problem behavior). AND
 - b. Identification of at least one strategy in the BIP to minimize reinforcement of the problem behavior. AND
 - c. Identification of at least one strategy be identified in the BIP to implement a consequence when the target problem behavior occurs that decreases the likelihood of the occurrence of the target problem behavior in the future (punishment procedure), AND
 - d. Linkage to the function, AND
 - e. Detailed description enough that a stranger would be able to implement the strategy with the student and/or multiple people would implement the strategy in the same way. AND
 - f. Explanation that drop-down box menus are not appropriate without an accompanying detailed description of the intervention. AND
 - g. Inclusion of examples and non-examples are included to help professionals understand what consequence strategies are. Examples should include implementation of punishment procedures, not just withholding reinforcement.
8. ***Crisis or safety plan*** must be included in the BIP and be described with sufficient detail. This should include the following:
- a. A brief explanation of why an individualized Crisis or Safety Plan is needed (i.e., in the case that an extinction burst would include dangerous or violent behavior, etc.), AND
 - b. An explanation that a crisis plan is not a behavior change intervention and is only used as a last resort in emergency cases. AND
 - c. An explanation that it may be a separate document referred to and attached to the BIP and would require:

- i. sufficient detail regarding the individualization of the plan with who, what, when and how things will be done. AND
 - ii. provide examples and non-examples to help professionals understand what and how to write a clear crisis/safety plan.
9. A detailed **plan for *collecting monitoring data*** on both the problem target behavior and replacement behavior through the implementation of the BIP must be included in the BIP. The plan must include the following:
 - a. details and specifics describing who will collect the data, how often it will be collected, and the format of the data collection and data presentation/explanation, AND
 - b. review dates for collecting outcome data on both the problem and replacement behavior, AND
 - c. strategies that are clearly linked to the target problem behavior and replacement behavior on the intervention plan (i.e., frequency data for discrete occurrences of hitting or duration data for tantrum behavior). AND
 - d. examples and non-examples to help professionals understand what and how to write a clear plan for data monitoring.
10. A **detailed plan for the *collection of fidelity data*** on BIP implementation must be included in the BIP. This plan must include the following:
 - a. Detailed description of specific procedures for collecting fidelity-of-implementation data (e.g., who, when, how, review). AND
 - b. Examples and non-examples of the data to help professionals to write a clear and replicable fidelity data collection plan.

Appendix V

Recommendations for Guidance on Shortened School Day in a Question and Answer Format

Shortened School Day

The Oregon Department of Education (ODE), as the State Educational Agency (SEA), is responsible for general supervision of every Local Education Agency (LEA) within the state to ensure the requirements of Part B of the Individuals with Disabilities Education Improvement Act (“IDEA”) are met pursuant to 34 CFR § 300.149.

Definitions

FAPE: All students with an Individualized Education Program (IEP) are entitled to a free appropriate public education (FAPE). This includes students who are eligible for special education from the ages of 3 through 21²³. FAPE is individually determined for each student with a disability. FAPE must include special education in the least restrictive environment (LRE) and may include related services, transition services, supplementary aids and services, and/or assistive technology devices and services. The LEA is required to ensure a FAPE is available to students enrolled in the LEA who are eligible for special education.

LRE: The IDEA mandates all students with disabilities, 3 through 21 years of age, be educated, to the maximum extent appropriate, with their non-disabled peers (i.e., the student’s LRE).²⁴ The LRE is the appropriate balance of settings and services to meet the student’s individual needs. LEAs must have an array of services and a continuum of educational setting options available to meet the individual LRE needs of each student. An appropriate LRE is one that enables the student to make reasonable gains toward goals identified in an IEP. The student’s IEP must indicate the individualized LRE placement and provide a justification for any removal from the general education setting to provide services. The IEP team must give first consideration to educating the

²³ 20 U.S.C. § 1412(a)(1)(A)

²⁴ 20 U.S.C. § 1412(a)(5)

student in the general education setting with supplemental aids and services. *Letter to Cohen*, 25 IDELR 516 (OSEP 1996). If a student is unable to make progress in the general education setting with appropriate supplemental aids and services, the IEP may consider to what extent, if any, the student may be removed from the general education classroom environment to receive specially designed instruction. In addition, consideration must be given to any potential current or long-term harmful effect on the student or on the quality of services the student needs, including the student's ability to graduate and achieve his or her post high-school goals.

Compulsory Attendance: Oregon requires all children between the ages of 6 and 18 years who have not completed the 12th grade to attend regularly a public full-time school during the entire school term, unless a statutory exception applies. ORS 339.010. LEAs share responsibility with parents/guardians to ensure school-age children are enrolled in and attending appropriate educational programs. Further, all children eligible for special education between the ages of five (5) and twenty-one (21) have a civil right of access to a free, appropriate, public education.

Length of the School Day: As part of the protections afforded under the IDEA, students with disabilities have the right to attend school each day for the same length of time as non-disabled students. School day has the same meaning for all children—disabled and non-disabled—enrolled in the school. 34 CFR § 300.11(c). This premise is grounded in the IDEA and bolstered by Section 504 of the Rehabilitation Act (Section 504). Public agencies must comply with both the IDEA and Section 504 when a student is eligible for service under the IDEA. *Yankton Sch. Dist. v. Shramm*, 93 F.3d 1369, 1376 (8th Cir. 1996). The failure to provide the same instructional time for students with disabilities is actionable under the IDEA and Section 504 as a denial of a FAPE. *K.F. v. Francis Howell R-III Sch. Dist.*, No. 4:07CV01691 ERW. 2008 WL 723751, *4 (E.D. Mo. March 17, 2018).

Instruction Conducted in the Home is the most restrictive option on the continuum of special education placements for students with disabilities. This placement is provided as a last resort when a student with disabilities requires that special education services and programs can only be conducted in the home or a mutually agreed upon location that is decided by the IEP Team. A

Prior Written Notice must be provided documenting this decision of the student's educational placement.

Homebound Instruction is described as temporary excusals due to illness or other urgent reasons, "A principal or teacher may, upon receipt of satisfactory evidence of mental, physical or other urgent reasons, excuse a student for nonattendance during a temporary period, but the term 'urgent reasons' shall be strictly construed and does not permit irregular attendance. A school district shall adopt rules and procedures governing temporary excusals that may be granted by principals and teachers under this section. A school district, area vocational technical school, may provide students temporarily excused under this section with homebound instruction for a period not to exceed three months. A school district, area vocational technical school, may request approval from ODE to extend the provision of homebound instruction, which shall be reevaluated every three months."

Legal Standard

The IDEA mandates eligible students receive a free appropriate public education (FAPE) that includes special education and related services that:

- (a) Are provided at public expense, under public supervision and direction, and without charge.
- (b) Meet the standards of the SEA, including the requirements of this part.
- (c) Include an appropriate preschool, elementary school, or secondary school education in the state involved.
- (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of 34 CFR §§ 300.320 through 300.324.

The United States Supreme Court has ruled school districts must offer an IEP reasonably calculated to enable a student to make progress appropriate in light of the student's unique circumstances. *Endrew F. v. Douglas County School District RE-1*, 137 S. Ct. 988, 197 L Ed. 2d 335, 349 (2017); *see also* Questions and Answers on *Endrew F. v. Douglas County Sch. Dist. Re-1*, December 7, 2017 (US Dept. of Educ.).

Schools have a fundamental obligation under the IDEA to provide a FAPE to all students that addresses each child's unique academic, behavioral, emotional, physical, and functional needs that adversely affect his or her educational performance. Letter to Wentzell, 69 IDELR 79 (OSEP 2016). The right to a FAPE is afforded to all eligible students. This principle flows from the "zero-reject" policy articulated in *Timothy W v. Rochester, N.H. School District*, 875 F. 2nd 954 (1st Cir. 1989), guaranteeing a FAPE to all disabled students no matter the severity of their cognitive or behavioral needs.

Students with disabilities must attend school for the same number of hours and minutes as non-disabled students, unless a student's IEP team determines otherwise based on a student's unique, disability-related needs. Shortening a student's day raises issues regarding the provision of a FAPE under the IDEA, as well as potential discrimination under Section 504. The only use of a shortened day as necessary for the provision of FAPE should be for a specific purpose and designed to meet a student's unique needs. A student's IEP team must discuss the continuum of services and placement, including shortened day and any alternatives considered as appropriate, and the Prior Written Notice should reflect these proposals and refusals and the bases for the team's decisions. IEP teams should exercise caution when placing a student on a shortened day as it may limit a student's ability to make adequate progress on IEP goals, access the general education curriculum, meet graduation requirements, and receive FAPE in the Least Restrictive Environment (LRE). Any offer of FAPE that includes a shortened day must be for a specific purpose and designed to meet a student's unique needs and reported to ODE if it lasts more than 30-school days. The use of a shortened school day for any student should be rare, temporary, and viewed as the last option because it severely restricts the student's opportunity to receive an appropriate education with their peers and benefit from the modeling and incidental learning inherent to inclusive settings.

Under all but the rarest circumstances, a shortened school day should be in place for only a limited amount of time. When an IEP team determines the need to shorten a student's school day, the student's IEP should include:

1. An explanation of why the student's unique disability-related needs require a shortened day. 34 CFR § 300.320(a)(1).

2. A clear explanation of the unique need or skill gap prohibiting the student from attending a full day of school, 34 CFR §§ 300.320(a)(4)-(5), and the instruction the district will provide to the student to close that skill gap.
3. A clear connection to the growth and progress expected to be achieved by shortening the student's school day (e.g., the student is expected to recover from the physical or medical condition with rest and medical treatment). 34 CFR § 300.320(a)(3).
4. An explicit plan for the student's return to school for a full-day, which includes a plan to regularly meet on a pre-established timeline to review student data and determine whether the student is able to return to school full-time and, if not, how much time can be added to the student's day. 34 CFR § 300.114.

The student must return to a full school day as soon as he or she is able, affording a student a full educational opportunity as required by 34 CFR § 300.109.

As a result of the interim agreement in the *J.N. v. Oregon Department of Education* lawsuit, we recommend ODE issue the following Guidance to provide consistent, clear answers to districts and parents regarding the use of shortened school day for a child with a disability.

1. What is the general requirement regarding the length of the school day for students with disabilities?

- All Oregon public schools share responsibility with parents/guardians to ensure school-age children are enrolled in and attending appropriate educational programs. Under Oregon's compulsory school law, all children between age 6 and 18 must attend a public or private or receive home schooling unless the student is excused under the law or has graduated with a regular diploma.
- Oregon's compulsory school law applies to students with disabilities in the same manner as it applies to students without disabilities. Students with disabilities must attend school for the same number of hours and minutes as non-disabled students, unless a student's individualized education program (IEP) team determines otherwise based on a student's unique, disability-related needs.
- A school district may excuse a school age child from compulsory school attendance upon recommendation of the student's physician and a psychiatrist or school psychologist, or

both, and with the approval of ODE. Prior to seeking excusal and approval, the school district must provide the child's parents with written notice of both the proposed excusal, including the reasons for the excusal, and an opportunity to be heard.

2. *When is it appropriate for a school district to provide a shortened school day for a student with a disability?*

The only time it is appropriate to shorten the school day for a student with a disability is when the student's IEP team determines a shortened day is required to address the student's unique disability-related needs. Examples of brief, shortened days for a specific purpose that may not impede a student receiving FAPE in an LRE (this is not an exhaustive list):

- i) Student who has recently undergone chemotherapy treatment for cancer and is currently in recovery, needs a transitional reduced day due to fatigue associated with recovery;
- ii) Physician of a student transitioning to new seizure medications requests gradually increasing the length of day;

Before deciding to shorten the student's day, the IEP team must consider if there are other ways to meet the student's needs.

3. *What are inappropriate uses of shortened school day for a student with a disability?*

Shortened school day is only appropriate when it is necessary to address the student's unique disability-related needs and enable the child to receive FAPE. The following non-exhaustive list provides examples of when shortened school day is not appropriate:

a) Managing Student Behavior as a Means of Discipline

- i) An LEA may not reduce a student's instructional time as a form of punishment or in lieu of a suspension or an expulsion.
- ii) Attendance may not be conditioned upon the student's taking medication or receiving treatment, therapies, or other outside services.
- iii) In the case of a student whose behavior impedes the student's learning or that of others, the IEP team must develop an IEP that addresses the student's behavioral needs. The IEP must include positive behavioral interventions,

supports and strategies reasonably calculated to enable the student to participate in the full school day.

- iv) School removals are not positive behavioral supports. On August 1, 2016, the U.S. Department of Education's Office of Special Education and Rehabilitative Services (OSERS) issued guidance in the form of a Dear Colleague Letter (DCL)²⁵ emphasizing the requirement that schools provide positive behavioral supports to students with disabilities who need them. It also clarifies the repeated use of disciplinary actions may suggest children with disabilities may not be receiving appropriate behavioral interventions and supports. When schools fail to consider and provide for needed behavioral supports through the IEP, it is likely to result in a child not receiving the free appropriate public education to which they are entitled under federal law.

b) Accommodating Transportation Schedules

- i) An LEA may not reduce a student's instructional time by starting the student's school day later or releasing the student earlier than non-disabled peers to accommodate a transportation schedule.
- ii) It is not permissible for a school to release students with disabilities earlier than their non-disabled peers to schedule an earlier bus route. Any LEA that has permitted such actions up to now should take immediate steps to correct the resulting denial of equal opportunity of access to education.

c) Administrative Convenience

- i) A student's school day may not be shortened for administrative convenience including staffing shortages. Student's whose day is shortened due to administrative convenience may be due compensatory education.
- ii) LEAs may not develop programs that, by design, only allow students to attend a partial day. For example, it is not appropriate to place students with disabilities in programs that only allow them to attend school in the morning

²⁵ <https://www2.ed.gov/policy/gen/guid/school-discipline/files/dcl-on-pbis-in-ieps--08-01-2016.pdf>

or afternoon. A student may not be placed on a shorted school day upon being assigned to a particular program or class.

- iii) Any decision to shorten a student's school day must be made on an individual, case-by-case basis by the student's IEP team. The expectation for all programs and classes is that students will attend a full day.

d) Accommodating Regularly Scheduled Outside Therapies

IEP teams may not shorten a student's school day based solely on a parent's request to accommodate regularly scheduled non-school medical or therapeutic appointments. Instead, when absences are frequent due to outside therapies, the IEP team should meet to determine how to ensure the continued provision of FAPE for the child to continue to progress and meet the annual goals in the IEP. Schools must refer to their local attendance and excusal policies to determine whether absences are excused.

4. *Must a school district shorten a student's school day upon request of the student's parent?*

No. If a parent requests a change in the length of the student's school day, the district must respond to the parent's request. However, any changes to the student's placement, which include deviating from the regular school day schedule, must be made by the student's IEP team, which includes the parent. The only time it is appropriate to shorten the school day for a student with a disability is when the student's IEP team determines a shortened day is required to address the student's unique disability-related needs. This decision must be reflected in the student's IEP, including documenting the data and reasons for the shortened day, behavior goals within the IEP (that are linked to the student's Behavior Intervention Plan), and providing a plan for returning to a full-day and the parent signed acknowledgement based on SB 263.

5. *Is parental consent required before placing a child on a shortened school day?*

Yes. SB 263 prohibits an LEA from unilaterally placing a child on a shortened school day. Parents must agree with the decision and provide written consent for

the student to be placed on a shortened school day. By law, Oregon requires parents to consent to a shortened school day when this is proposed by an IEP team. If a parent does not consent, the IEP team must propose a different placement that will offer the student FAPE.

6. *When parents and the LEA agree to shorten a student's school day, what must the student's IEP include?*

- 1) The IEP team must provide documentation that it followed the guidelines in Appendix W and decision-tree Appendix Z for placing a student on a shortened school day due to behavior challenges;
- 2) an explanation of why the student's disability-related needs require a shortened day; and
- 3) a plan for the student's return to school for a full day, including a plan to regularly meet on an established timeline to review student data and determine whether the student can return to school full-time or to increase the student's time at school.

7. *How long may an IEP team place a child on a shortened school day?*

- i) The student should return to a full school day as soon as he or she is able, and under all but the rarest circumstances, a shortened school day should be in place for only a limited amount of time.
- ii) All students who are on placed a shortened-school day for more than 30 school days or 6 calendar weeks (whichever comes first) must be reported to ODE.
- iii) The IEP team must meet as often as necessary to review the plan and to determine when the student is able to return to school full-time. A meeting every 4 to 6 weeks is recommended for most students on a shortened school day.

8. *What resources and supports are there to help school districts and IEP teams with a student with challenging behaviors before considering a shortened-day school program?*

ODE has several different synchronous and asynchronous trainings available for administrators and special education and support staff which cover the guidelines for completing an FBA and BIP and which discuss the procedures and decision process the IEP team needs to follow for addressing a student's challenging behaviors. The District Support Specialists also need to provide support as does the recommended intensive interagency support team. If the student requires additional supports not available in the district, the district should contact ODE for assistance in obtaining the necessary supports.

9. *Is shortening a student's school day in the student's IEP a change in placement?*

Yes. Shortening a student's school day is a change in placement, as it alters the educational program offered to the student. If the IEP team is considering shortening the student's day due to challenging behaviors, then they would follow the decision-tree and utilize the guidelines provided by ODE for determining if and why that student needs a shortened school day. This decision must be made through the IEP team process, and parents must consent to the change of placement.

10. *Must districts document a student's shortened school days when the decision is not made by the IEP team?*

Yes. Districts need to collect data on the days a student is administratively placed on a shortened school day informally (i.e., calling a parent to pick up child from school) and formally (i.e., an agreement has been made that child will come to school at a certain time and leave school at a certain time) to document the amount of time removed. Once a child has missed ten school days, or portions of ten school days, due to formal or informal removals, the LEA must determine if there is a pattern that constitutes a change of placement such that a Manifestation Determination Review (MDR) is necessary.

11. *What is the process for how a student can be placed on a shortened school day?*

Shortening a student's school day is a decision that must be made through the IEP team process. As part of the discussion, the IEP should discuss and answer the following questions:

- a) What skill is the student lacking to successfully attend the full school day and what specific instructional steps are being put in place to address this skill deficit and enable the child to return to a full day?
- b) How will removal from school meet the student's educational needs? How will removal from school help close the skill gap? How will removal from school result in educational progress?
- c) What services will the team provide to help close the skill gap and educate the student in the least restrictive environment, assist the student to be successful in school the entire day, and make progress in the general education curriculum?
- d) What is the plan, including a timeline, to return the student to a full day of school? A school district may not require a student with a disability-related behavior to "earn" back the right to return to a longer or full school day by demonstrating good behavior.
- e) Has the IEP team developed an IEP addressing the student's behavioral needs through a Functional Behavior Assessment (FBA), Behavior Intervention Plan, annual goals, related services, and supplementary aides and services?
- f) Do the IEP and BIP include positive behavioral interventions, supports, skill acquisition, and strategies to enable the student to participate in the full school day?

12. *How should a shortened school day be documented in the student's IEP?*

The IEP team has several options as to which section of the IEP to include this documentation and specify why the unique disability-related needs of the child require a shortened day:

- a) There must be a comprehensive FBA and BIP which reflects the student's skill strengths, deficits, and behavior challenges with a clear link to the reasons that a shortened school day is needed to address those deficits and challenges.
- b) The IEP must include a Step-Up Plan for returning the student to a full-day as soon as the student is able and describe the frequency and proposed schedule for the team to meet and discuss the plan to return the student to a regular school day.
- c) The IEP and BIP should include goals and/or services designed to address the disability-related behavioral needs that resulted in a decision to shorten the student's school day.

- d) The IEP must include a clear description of the special education, related services, and supplementary aids and services to be provided including the amount, frequency, location, and duration of services.
- e) The IEP should clearly indicate the student is on a shortened school day and include the specific hours/minutes that the student attends school and the calculation of time in general education must be based on a full school day, not on the student's shortened day.

13. *After an IEP team has implemented a shortened school day for a student, what obligation does the school district have to monitor the shortened day program?*

School districts, through the IEP team process, should continuously monitor and review the student's progress and plan frequent IEP team meetings to determine whether a shortened school day continues to be necessary to meet the student's unique, disability-related needs. The student should return to a full day as soon as he or she is able, and under most circumstances, a shortened day should be in place for only a limited amount of time. If the student is placed on a shortened school day for 30 days or more, the district must immediately report this to the ODE.

14. *What are the obligations of the school district to provide services to students receiving a shortened-school day?*

All students are entitled to receive education for a full school day. If, however, the IEP team determines the student requires a shortened school day, the district needs to document how the missed schooling will be provided to the student. For example, if the student can only attend school through to lunch, the IEP team should meet and determine the appropriate methods for the student to receive the afternoon instruction. IEP teams may consider technological options such as web conferencing, distance learning, video conferencing, and virtual classrooms to connect students to the classroom and schools, when appropriate, to provide access to teachers, peers, and provide additional participation and learning opportunities. The method of additional instruction should be documented in the student's IEP.

15. *What are the obligations of the school district to inform parents of their rights regarding the use of shortened school day?*

It is the school board's responsibility to adopt written policies related to the use of shortened school day and distribute these yearly to parents. These policies must adopt or align with the guidance provided by ODE and include the following:

- a) The district's responsibilities to document informal and formal removals and conduct an MDR as appropriate;
- b) The IEP team's duty to discuss the implications to the student of being placed on shortened school day, develop a Step-Up Plan, and regularly meet to review the plan;
- c) The necessity of parental consent prior to a student being placed on shortened school day; and
- d) A description of the instructional services that will be provided to students placed on shortened school day.

16. *If a shortened school day is no longer necessary for a student, what steps must a district take to return the student to a full day?*

If a shortened school day is no longer necessary, the school district must conduct an IEP team meeting to return the student to a full school day. The IEP team must also review the student's IEP to ensure that it reflects a full-day program with the requisite services and supports needed for the student's individualized needs. A copy of the revised IEP and notice of full-day placement must be provided to the parent.

17. *What can be done if there is a disagreement within the IEP team's regarding whether to implement a shortened school day?*

Either party may elect to participate in mediation to resolve the dispute. Mediation is a voluntary process conducted by a trained, neutral mediator who helps facilitate discussion and assists parties in reaching a resolution. Federal law requires schools to provide free mediation for disputes about IEPs or special education. Parents are allowed to bring a lawyer or others to mediation, but may need to pay for those individual services. Either party may also file a special education complaint with the Oregon

Department of Education. The complaint must be in writing, signed, and submitted within one year of the decision to shorten the school day.

18. *What are the responsibilities of local districts who contact a parent to remove a child during the course of a school day, outside of an IEP team decision?*

There may be instances where an administrator determines that a child eligible for special education and related services needs to be removed from school and contacts the parents or guardians and asks for them to pick the child up early from school. In these instances, these removals should be counted as suspensions and should be documented as suspensions due to behavior challenges. The number of days a student can be removed due to a suspension is clearly limited by federal and state regulations.

19. *What are the reporting requirements for school districts to the Oregon Department of Education regarding students with disabilities placed on shortened school days?*

All students with disabilities who are on a shortened school day for more than 30 school days must be reported to the Oregon Department of Education. As a part of this reporting, the school district should justify its decision for the shortened school day with the required documentation. ODE will monitor the number of students placed on a shortened school day. For additional guidance, please see the attached decision tree and guidelines for shortened school days for students due to behavior challenges.

20. *What is the process if there is an urgent need for services that are not available?*

A school district may provide instruction to students eligible for special education on a shortened school day for a total of 30-school days without consulting or notifying ODE. The reasons for allowing a student to receive a shortened school day in lieu of being physically present at school should be defined by as mental, physical, or other urgent reasons.

Extensions

- 1) Following the initial 30-school days, the district must request and receive an extension from ODE to allow a student to continue being excused from school attendance and to provide instruction to students on a shortened school day.

- 2) ODE should not act on any request for an extension until the initial 30-school days has expired, with ODE acting on the request within one week. When an extension is requested, ODE should require that a licensed practitioner submit to the school district an updated examination and extension request within two weeks of the impending extension.
- 3) If an extension is not granted by ODE, the student must return to school.

21. *What is the Difference Between Instruction Conducted in the Home versus Homebound Instruction?*

Instruction Conducted in the Home should not be confused with "Homebound Instruction," which describes the instruction a LEA may provide when a student has been excused from compulsory attendance due to temporary mental or physical illness or other urgent reasons. The most important difference between Instruction Conducted in the Home and Homebound Instruction is that Homebound Instruction is NOT a special education placement while Instruction Conducted in the Home is a placement made by the IEP Team. Formal definitions for each are below.

22. *What happens when the school district reports to ODE about a student reaching 30 shortened school days?*

If the school district has not already reached out for assistance from the Intensive Interagency Support Team, ODE will initiate the involvement of the Intensive Interagency Support Team to contact the school district. *See Interagency Support Team Description.* This team will meet with the IEP team to review the student's IEP, FBA, BIP and Step-Up plan. They will assist the team in determining if there are further resources that the team needs to assist the child in skill acquisition and/or decreasing challenging behaviors (i.e., staff training, further assessment, additional staff, etc.). They will continue to meet (virtually or in person) with the IEP team on a regular basis until the student has resumed a full-day school program.

Appendix W

Recommended IEP Team Statement

ABBREVIATED SCHOOL DAY NOTICE AND ACKNOWLEDGEMENT NOTICE TO
PARENT/GUARDIAN OR FOSTER PARENT

Oregon law requires that if a student is placed on an abbreviated (shortened) school day program, school districts must then provide parents/guardians or foster parents with the notice below and also obtain a signed parent/guardian or foster parent acknowledgement of receiving the notice. This must occur at least once every month. A copy of the state law [SB 263] should be included along with this notice.

Notice is hereby given that the school district's responsibilities include the following:

1. The school district may not unilaterally place²⁶ a student on an abbreviated (shortened) school day program,²⁷ regardless of the age of the student.
2. A school district may provide an abbreviated school day program to a student with an individualized education program ("IEP") OR a foster youth²⁸ only if all of the following actions are taken:
 - a. The opportunity for the student's parent, guardian, or foster youth parent to meaningfully participate in any and all meetings (IEP team meeting for student with an IEP) to discuss the change of placement to abbreviated school day program, including the reasonable opportunity to
 - i. physically attend the meeting and
 - ii. express ideas, suggestions and concerns
 - iii. bring an advocate or other educational or behavior expert

²⁶ "Unilaterally place" means a placement by a school district without the consent of the student's parent, or, if the student is a foster youth, without the consent of the student's foster parent and, if the student has a surrogate as defined in ORS 419A.004, the consent of the surrogate.

²⁷ "Abbreviated school day program" means an education program in which a school district restricts a student's access to hours of instruction or educational services; and that results in a student having an abbreviated school day for more than 10 school days per school year.

²⁸ "Foster youth" means a child or ward who is in the legal custody of the Department of Human Services as provided in ORS 418.015 or 419B.337 and who has been placed in substitute care.

- b. Determines and documents that the student should be placed on an abbreviated school day program based on the student's needs;
- c. Documents in the IEP the reasons why the student was placed on an abbreviated school day;
- d. Clarifies and documents the specific behaviors the student is lacking and/or demonstrating and inhibits them from receiving a full-day of instruction.
- e. Clarifies and documents how the student will be taught the skills they are lacking.
- f. Documents that the team implemented at least three different options that include appropriate support for the student and that could enable the student to access the same number of hours of instruction or educational services, at the school site, that are provided to students who are in the same grade within the same school.
- g. Has identified the date when the student is to come back to school.
- h. Identifies how the student will receive their full-day of instruction while at home.
- i. Has developed a detailed step-by-step re-entry plan for the student, that includes, but is not limited to: behavior and/or skills teaching, behavior intervention plan, data to be collected and analyzed, regular review meeting dates (not to be more than two weeks apart)
- j. Has identified a form for tracking the total number of hours the student will be missing as a part of the abbreviated school day program.
- k. Has identified how the hours of lost instruction due to the abbreviated school day program will be made up (compensatory education).

Each student has a presumptive right to receive the same number of hours of instruction or educational services as other students who are in the same grade within the same school.

For parents/guardians or foster parents of students with IEPs, parents/guardians or foster parents have the right to request, at any time, a meeting of the IEP team to determine whether the student should no longer be placed on an abbreviated school day program.

ACKNOWLEDGEMENT

I have received the information described above regarding the school district's obligations surrounding abbreviated (shortened) school day programs. I am also aware of my student's presumptive right to receive the same number of hours of instruction or educational services, at the school site, as other students who are in the same grade within the same school.

Parent/Guardian or Foster Parent Printed Name: _____

Parent/Guardian or Foster Parent Signature: _____ Date: _____

Appendix X

Sample Redacted IEP

Individualized Education Program
AMENDMENT

Date: 01/14/2019

Grade
12

Parent/Guardian

IEP Review Due Date : 01/13/2020 Re-evaluation Due Date: 03/15/2020
Revision dates to annual IEP: 04/12/2019, 09/30/2019
Eligibility(ies): 82 - Autism Spectrum Disorder, 10 - Intellectual Disability

B. IEP Team Members

Names	Position	Present/Absent	Signature	Date
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Appendix Y

June 16, 2022 State Board Guidance581-015-2015 General Supervision (Proposed Replacement for [Compliance Monitoring OAR](#))

- (1) “General Supervision” means a system that enables the Department to ensure that the requirements of the Individuals with Disabilities Education Act, Oregon Revised Statutes, and Oregon Administrative Rules are being effectively implemented by school districts and programs to produce both results for children and students with disabilities and compliance with legal and regulatory requirements.
- (2) The requirements described in this rule apply to each school district or program involved in the education of children or students with disabilities.
- (3) School districts and programs involved in the education of children or students with disabilities shall undertake activities of General Supervision as directed by the Department, including but not limited to, the following activities:
 - (a) Development and review of policies and procedures that document compliance with the requirements in IDEA;
 - (b) Collection, validation, and submission of data on processes and results;
 - (c) Integrated monitoring activities, including but not limited to, district and program self-assessment, data collection, analysis and reporting, on-site visits, review of policies and procedures, review of the development and implementation of IEPs and IFSPs, improvement planning, corrective action, and auditing federal fund use;
 - (d) Participation in effective dispute resolution including but not limited to mediation as described in OAR 581-015-2335, due process hearings as described in OAR 581-015-2345, and state complaints as described in OAR 581-015-2030;
 - (e) Compliance with any corrective actions required through State complaints and due process decisions; and
 - (f) Participation in universal, targeted, and intensive technical assistance and professional development.
- (4) The Department may provide, or make available the provision of, universal, targeted, and intensive technical assistance, coaching, and professional development to support district and program capacity to meet general supervision requirements.
- (5) The Department shall notify any school district or program of any noncompliance identified through the General Supervision system, in writing, within three months of its identification. This notification shall include any required corrective action to be completed by the district or program and the timeline within which corrective action must be completed.
- (6) Notwithstanding section (5) above, the Department shall notify any school district or program of any noncompliance identified through the General Supervision system within 30 days of its identification when the Department determines that the noncompliance could cause a student to be denied 10 or more instructional days consecutively or cumulatively within any one school year, as compared to the majority of general education students who are in the same grade within the attending school district or program. This notification shall

include any required corrective action to be completed by the district or program and the timeline within which corrective action must be completed.

- (7) In determining the corrective action the school district or program must complete, the Department may consider a variety of factors, including but not limited to whether the noncompliance:
 - (a) Was extensive or found in only a small percentage of files;
 - (b) Resulted in the denial of free appropriate public education, parent participation, or placement in the least restrictive environment as required by the IDEA; and/or
 - (c) Represents an isolated incident in the school district or program, or reflects a longstanding failure to meet IDEA requirements.
- (8) When a school district or program is notified of noncompliance, the school district or program must correct the noncompliance, including completing any corrective action required by the Department, as soon as possible, and in no case later than one year after it was identified.
- (9) Notwithstanding section (8) above, identified noncompliance must be corrected as soon as possible, and in no case later than 60 days after it was identified when the Department determines that the noncompliance could cause a student to be denied 10 or more instructional days consecutively or cumulatively within any one school year, as compared to the majority of general education students who are in the same grade within the attending school district or program.
- (10) To demonstrate that the school district or program has corrected the noncompliance identified by the Department, a school district or program must:
 - (a) Correct each individual case of noncompliance, unless the child or student is no longer within the jurisdiction of the school district or program;
 - (b) Implement changes to policies, procedures, and/or practices that contributed to or resulted in the identified noncompliance, if needed; and
 - (c) Submit updated data as required by the Department to document that the school district or program is correctly implementing the specific regulatory requirements related to the identified noncompliance.
- (11) The Department will verify correction of noncompliance based on evidence according to subsection (10) above, notify school districts and programs regarding correction status, and may require further action from school districts or programs based on the Department's determination.
- (12) School districts and programs that do not complete corrective actions and correct noncompliance may be subjected to enforcement mechanisms, including but not limited to additional reporting requirements, technical assistance, a corrective action plan or improvement plan, and conditions on funding, and/or withholding funds, in whole or in part, by the Department.
- (13) The Department shall make determinations annually about the performance of each local education agency consistent with the requirements of the Individuals with Disabilities Education Act at 34 C.F.R. § 300.600(a)(2).

Statutory/Other Authority: ORS 343.041, 343.045 & 343.055

Statutes/Other Implemented: ORS 343.041 & 343.055 History:

Renumbered from 581-015-0048, ODE 10-2007, f. & cert. ef. 4-25-07

ODE 2-2003, f. & cert. ef. 3-10-03

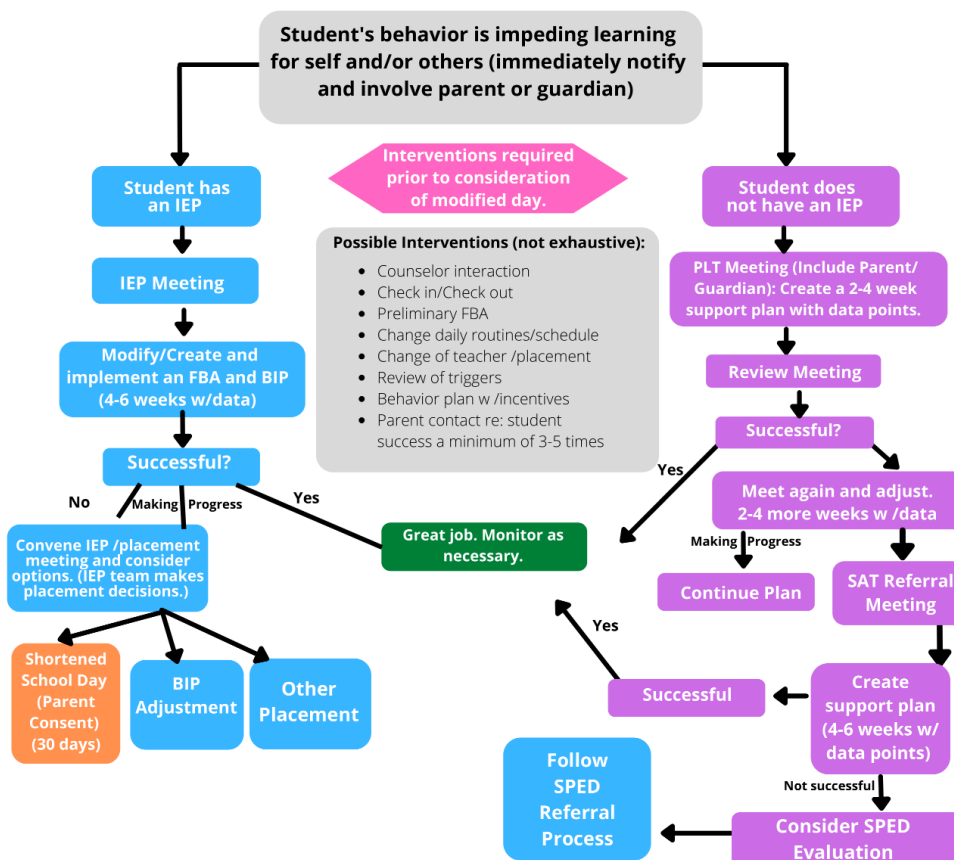
EB 11-1995, f. & cert. ef. 5-25-95 EB 6-1993, f. & cert. ef. 2-11-93

1EB 15-1983, f. 11-23-83, ef. 11-25-83

Appendix Z

Decision Tree

ODE SHORTENED SCHOOL DAY (SSD) DECISION TREE



SSD Requirements:

- Shortened School Programs (i.e. all students in that program/class attend school for 3 hours a day) are not an option for any student (general education or special education).
- If SAT or IEP teams recommend the alternative placement of Shortened School Day then Parent Consent (signature) is required for all students, including those identified through IDEA.
- If a determination is made that a shortened day is needed, a re-entry plan, review meeting dates (every 2 weeks) and timeline must be written and copies provided to all parties.
- A shortened day can only be considered after all other options (including FBA, BIP, staff training, etc) have been implemented and IEP documentation must include clearly defined data and analysis discussion.
- If a student has been placed on SSD for 30 days, ODE must be notified and SSD compliance records for ODE must be completed for that student.