

**FISCAL IMPACT OF PROPOSED LEGISLATION**

**Measure: SB 819 - A**

82nd Oregon Legislative Assembly – 2023 Regular Session

Legislative Fiscal Office

*Only Impacts on Original or Engrossed Versions are Considered Official*

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**Measure Description:**

Repeals and replaces the requirements of the abbreviated school day program. Takes effect on March 27, 2023.

**Government Unit(s) Affected:**

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

**Summary of Fiscal Impact:**

Costs related to the measure may require budgetary action - See analysis.

**Summary of Expenditure Impact:**

	<b>2021-23 Biennium</b>	<b>2023-25 Biennium</b>
<b>Department of Education</b>		
<b>General Fund</b>		
Personal Services	\$222,287	\$1,114,127
Services and Supplies	\$59,466	\$259,950
<b>Total General Fund</b>	<b>\$281,753</b>	<b>\$1,374,077</b>
<b>Total Fiscal Impact</b>	<b>\$281,753</b>	<b>\$1,374,077</b>
<i>Total Positions</i>	6	6
<i>Total FTE</i>	0.44	5.50

**Analysis:**

Senate Bill 819 A-engrossed repeals and replaces the abbreviated school day program requirements for students with disabilities in public school districts and education service districts.

The measure requires school districts, before considering or recommending a student with a disability for an abbreviated school day program, to document reasonable efforts to provide meaningful access to the same number of hours of instruction or educational services that are provided to the majority of other students who are in the same grade within the student’s resident school district. In relevant part, an abbreviated school day program is defined as any education program that results in a student with a disability having an abbreviated (i.e. shortened) school day school for more than 10 school days per school year. School districts are prohibited from considering, recommending, or implementing an abbreviated school day program due to inadequate staffing available for instruction or educational services, and they are prohibited from unilaterally placing a student with a disability on an abbreviated school day program, regardless of the student’s age.

School districts may provide an abbreviated school day to program to a student with a disability only if the student’s individualized education program team recommends it; the school district provides various written statements to the student’s parent or foster parent; the school district receives a signed acknowledgement from the student’s parent or foster parent acknowledging receipt of the written statements; and the student’s parent or foster parent provides informed and written consent to the student being placed in an abbreviated school day program.

Once a student with a disability is placed on an abbreviated school day program, school districts must do all of the following, at least once every 30 days during the school year: provide certain information in writing to the student's parent or foster parent; obtain a signed acknowledgement from the parent or foster parent that the parent received the information in writing and does not withdraw consent; hold a meeting of the student's individualized education program team to review and discuss the student's placement; once a parent provides a signed acknowledgement, include in the student's individualized education program, or 504 Plan, a written statement that explains the reasons for the placement and why other reasonable options were not implemented; and inform the Department of Education (ODE) about the student's placement in an abbreviated school day program.

School district superintendents must review a student's placement on an abbreviated school day program if the student is placed on an abbreviated school day program for 60 or more cumulative calendar days. When required to do so, school district superintendents must review a placement and must document in writing whether the placement complies or does not comply with state and federal law, including any plan for credit recovery and comprehensive services, the student's progress towards on-time graduation, and any findings or documentation that, within five school days of making the finding, must be provided to ODE and the student's parent or foster parent.

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

The measure applies to any student with a disability who is placed on an abbreviated school day program on or after its effective date, subject to certain exceptions.

The measure takes effect on March 27, 2023. The school district reporting requirements become operative on July 1, 2023.

### **Department of Education**

The measure is anticipated to have a fiscal impact on ODE; see analysis below.

### **Effective Date**

The effective date of March 27, 2023 will create an immediate workload that will be addressed by 10 current special education staff in the Office of Enhancing Student Opportunities working overtime to develop systems and tools, address noncompliance, and monitor districts. Overtime costs are estimated to be \$133,800 in the current biennium.

### **Student Population Affected**

The immediate workload will result from new complaint processes, short timelines, and penalties that go into effect immediately as of March 27, 2023. Additionally, the population of students subject to the measure may be larger than the initial estimate of approximately 1,000 students on abbreviated school day programs statewide.

Because the measure changes the definition of “abbreviated school day,” there is the potential that students with disabilities as defined in the measure who attend ESD-based programs, special schools, or private schools that provide fewer instructional hours than schools in the student’s resident district would be considered to be placed on an abbreviated school day program. As of the 2021-2022 December Special Education Child Count, this population is about 800 students, who would become immediately eligible to pursue the revocation process outlined in Section 5 of the measure. It is currently unknown how many families will choose to revoke consent to a student’s placement on an abbreviated school day program, and how many revocations will not be addressed by school districts and will result in elevation of a complaint to ODE.

### **Investigations**

Consent to an abbreviated school day placement may be revoked in writing at any time by a student’s parent or foster parent. Upon revocation, a school district superintendent must ensure the student has access, within a five-day period, to the same number of instructional hours that are provided to the majority of students in the same grade in the district. Failure to comply with this section of the measure causes the school district or education service district to be found nonstandard. Should a complaint reach the Department, it must initiate an investigation and report noncompliance to the school district within 30 days, unless the complaint is made by a parent or foster parent on behalf of their child. In that case, no investigation is required under the measure. Because most objections to abbreviated school day schedules are raised by parents or foster parents, as they are the only people authorized by the measure to revoke consent to an abbreviated school day program, it is assumed that the vast majority of the total number of objections will not require ODE to conduct an investigation. ODE pays \$150 per hour for contracted complaint investigators, and reports an average cost per complaint investigation of \$6,000. At present, the Department averages 30-40 state complaints per year, at a cost of between \$180,000-\$240,000 for investigations. It is currently unknown how many investigations will be required under the measure.

### **Orders**

After either receiving a complaint from a parent or foster parent or completion of an investigation, the Superintendent of Public Instruction is required to enter an order that the student named in the complaint or identified through the investigation be provided, within five school days of the final order, with access to the same number of hours of instruction that are provided to the majority of other students in the same grade in the district. This requirement will add new workload to the Department, some of which will occur in the near term and a smaller amount of which may be ongoing. Staff will be needed to determine noncompliance, identify corrective actions to make students whole in light of the violation, and prepare the orders. ODE will need to work with the Department of Justice in order to ensure legal sufficiency to withstand challenges in court; and will need to monitor issued orders to ensure compliance or to impose penalties in the event of failure to comply. Estimated costs for legal support to review findings, advise, defend orders in court, and pay Department of Justice costs are \$9,094 in the 2021-23 biennium and \$32,750 in the 2023-25 biennium. Estimated costs of one legal specialist position to write orders, work with the Department of Justice to create templates for orders and other documents, and address compliance issues related to orders; and one administrative specialist position to receive complaints, track cases, gather information, and work with school districts and parents are \$52,353 in the 2021-23 biennium and \$502,273 in the 2023-25 biennium.

### **Penalties**

If, within 10 days, a school district fails to comply with an order to reinstate a student with a disability to the same number of hours of instruction as the majority of students in the school district, ODE must immediately withhold State School Fund moneys that would otherwise be distributed to the school district, in an amount equal to the weighted average daily membership (ADMw) attributable to the student and based on the percentage of the school year that the student was placed in an abbreviated school day program in violation of the measure. This requirement may impose a fiscal impact on ODE, as it currently does not track State School Fund payments to school districts on a specific per-ADMw basis, but would need to do so in instances where penalties were invoked under the measure. The cost of one administrative position to compute and track the

amount of State School Fund to be withheld is \$21,575 in the 2021-23 biennium and \$283,547 in the 2023-25 biennium.

### **Reporting**

The measure requires ODE to receive reports from school districts, but does not require the agency to take any actions relative to these reports. Nevertheless, the volume of reports received by the agency may be substantial, and positions will be required to both receive and file the reports, and to review them for potential violations of the measure. The costs of one half-time administrative position to receive and file reports and one research analyst position to review them are \$36,105 in the 2021-23 biennium and \$307,293 in the 2023-25 biennium.

### **Technical Assistance**

The Department can be expected to provide guidance and technical assistance to school districts and education service districts on compliance with the measure. The cost of one education specialist position to provide technical assistance to districts is \$28,826 in the 2021-23 biennium and \$248,214 in the 2023-25 biennium.

### **School Districts**

The measure is anticipated to have a fiscal impact on school districts; however, the impact is indeterminate at this time. The fiscal impact would only affect those school districts with students with disabilities in an abbreviated school day program. The measure imposes requirements on school districts that may or may not require greater use of district resources than are being used now, such as for providing qualified licensed teachers and/or qualified classified staff to provide meaningful access to instruction as defined in the measure. New requirements are imposed on school districts for more frequent reviews of a student's abbreviated school day program, more frequent reporting, superintendent review of and findings on a student's abbreviated school day program after 60 days, and the provision of two hours of compensatory education for each hour lost due to a student's being placed in an abbreviated school day program in violation of the measure. Additional penalties for violations of the measure include withholding, on a pro rata basis, State School Fund moneys that would otherwise be distributed to the school district.

### **Teacher Standards and Practice Commission**

The measure is anticipated to have a minimal fiscal impact on TSPC.

### **Department of Justice**

The measure is anticipated to have a minimal fiscal impact on the Department of Justice.