Dear Chair Neron, Vice-Chairs Hudson and Wright, and House Committee on Education members,

As a school psychologist now in my 24th year, an educator in Oregon for 29 years, and former president of the Oregon School Psychologists Association, I closely watch the implications of legal changes or rulings in special education in order to advise my teachers and administrators, who often don't have the time, training, or historical knowledge of Oregon practices to understand how our laws may influence daily work on the ground.

Such is the case with the original version of this law passed in 2017 (SB 263) related to the use of abbreviated school day programs for students in special education. At that time, I submitted cautionary testimony that the law was, "fundamentally flawed in both content and construction." I now caution again against the adopted SB 819 (-6 amendment) before this committee. The lawsuit filed against ODE, the governor and Director Gill was the inevitable outcome of the passage of SB 263. This is because it clearly created a direct and predictable conflict with the provision of the 2004 Individuals with Disabilities Education Act (IDEA).

Since the 1970s, it has never been legal to disproportionately limit students with disabilities access to a free and appropriate public education (FAPE). Coming on the heels of the pivotal 1954 *Brown v Board* of Education that overturned the 1890s Plessy "separate but equal doctrine" and reaffirming the 14th amendment equal rights protection as it applied to education, the Supreme Court has been very clear about the due process rights afforded by the law. In the 1972 *Mills v DC* ruling, Judge Joseph Waddy wrote, "The inadequacies of the District of Columbia Public School System whether occasioned by insufficient funding or administrative inefficiency, certainly cannot be permitted to bear more heavily on the 'exceptional' or handicapped child than on the normal child." The Mills ruling along with the 1971 *PARC v Pennsylvania* rulings were reaffirmed in federal courts over 30 times before 1973.

IDEA **already** ensures in both statute and regulation that parents have a right to full participation in educational decision-making. It also guarantees a right of the student to a FAPE in the "least restrictive environment" (CFR § 300.112). It requires that the assembled team, including parents, determine educational programming with special education services that prioritizes participation to the maximum extent appropriate with non-disabled peers in regular education settings and with access to the general curriculum (CFR § 300.114). **However, IDEA also requires that every public agency must ensure that a "continuum of alternative placements" is available to meet the unique needs of the student (CFR § 300.115).** And, ultimately, IDEA provides for a course of action for complaints and due process remedy if parents disagree with any provision of services or placements undertaken (CFR § 300.140).

The current bill appears to double-down on the original problems it created, highlighted in the lawsuit and the subsequent independent report conducted as part of the settlement. Much has been made regarding the "neutral expert" report published June 30, 2022. I can confirm with direct knowledge that this expert ignored caveats and conditions provided with the data when it called out specific districts by name. Regardless, the report did not make a recommendation to rewrite the law.

Among many other things, the current bill would:

- Redefine the federal definition of a student with a disability to include students who no longer qualified up to 3 years ago.
- Redefine the federal definition of an IEP team under IDEA.
- Conflate provisions of IDEA with the requirements under ADA for section 504 disabilities.

- Enforce monthly IEP meetings with parents and team members for a student in a wheelchair who leaves on a bus 10 minutes early to avoid crowded hallways at the end of the day.
- Give parents unilateral rights to override IEP team placement determinations as defined under federal law.
- Enforce the lengthy procedures (including the monthly meetings) for abbreviated days for a high school student who is earning a GED but doesn't have a full class schedule.
- Force districts to pay for compensatory education if a student doesn't graduate on time.
- Force superintendents to investigate every shortened day plan longer than 2 months (inclusive of breaks and holidays except summer).
- Add district additional state reporting requirements to ODE on top of the 80+ existing reports they already file.

There are many more implications and harmful outcomes found in this bill—too many to detail here. Just for reference, an IEP meeting with a minimum of 3 district staff and the parent for an hour conservatively costs between $100 and $200 in staff time. That does not include the time to schedule the meeting, send out written notice to parents sufficiently in advance, document changes to any IEP or program plans and provide the required prior written notices documenting decisions. Under this bill just one student who has 10 such meetings in a school year would likely cost more than $2,000 a year, or about 1/5th of the money a district would receive for that student annually. This is a particularly onerous requirement, even if it may only apply to less than the 1% of all students in special education affected by abbreviated day programs.

I could also point to significant internal inconsistencies in both the existing law and the new bill. For example, it says the abbreviated day procedures don't apply for a student who has fulfilled graduation requirements, "*when the parent or foster parent has agreed to the abbreviated school day program*" (Section 6 (4)). So, you are exempted from the procedures, only if you follow the procedures you're supposed to be exempted from to ensure parent agreement? It is internally self-contradictory.

The intent of the current version of SB 819 appears to create a bureaucratic and complicated set of procedures special ed teachers and school teams must undertake so as to make it virtually impossible to have a student on anything less than a full day. This is a very obvious conflict with federal law with many potential downstream consequences.

I was unable to find any corollary to Oregon's current law or SB 819 in any other state. The inevitable conflict such a law would create with federal statutes and regulation, resulting in endless court actions, is the likely reason other states have not taken the road Oregon's lawmakers have. Oregon stands alone here, and not as an innovator or leader.

Recently, a colleague of mine wrote a letter to the leadership at ODE last fall and shared it with me, writing,

> "*The challenges in special education are significant, now more than ever. Given the shortage of teachers and the emotional stresses and strains of this work, it is imperative that we attract and keep as many teachers as we can. My concern is that the requirements related to an Abbreviated Day are so extensive and so complicated, they are yet another barrier to attracting and keeping good teachers. As teachers, we struggle every day with balancing the legally required paperwork, providing specially designed instruction, and providing the emotional support our students so desperately need. I have seen us lose several really good sped teachers*

because of the paperwork demands. That is unfortunate. I understand the legal realities of the special education world. I come from a long history of attorneys in my family. At the same time, when the legal realities become too much of a burden, the impact will cause some good teachers to leave the profession."

ODE leadership responded in part, reflecting the level of guidance and support the department offers,

"*At this point in the proceedings, we are not able to move away from these resolution steps. If you are talking about the rule itself, ODE is unable to make adjustments to this as the rule came out of the Oregon legislature.*"

Educators are either not coming into the field or are leaving in significant numbers across the country. We have an ongoing workforce shortage, particularly in special education, due in no small part to (1) the continually expanding paperwork and documentation requirements, (2) the longstanding and chronic failures to fully fund special education, (3) the devaluation and distrust of educators broadly as part of the "parent rights in education" movement, and (4) the lack of expert guidance from the department of education.

The language in SB 819 seems rooted in a deep disregard for educators as professionals or experts and punishes the individuals in the system trying to serve kids the best they can with the resources and supports they are given, rather than addressing the systems of power responsible for limiting their resources, capacity and voice.

I have always been a vociferous advocate for addressing the needs of students who are marginalized, whether by race, gender, socioeconomic status, disability, or by the intersection of all of these factors and more. I find the exploitation of the system by those with privilege and power to extract a disproportionate level of resources for some, than for the many others who have no advocates, distasteful. I have seen this time and time again in my work over three decades.

I agree that districts must be accountable for providing a full range of appropriate support and educational programs for all students. But SB 819 and the original SB 263 do nothing to address the underlying challenges in ensuring we're meeting our expectations under the existing federal and state laws for special education. These longstanding problems are rooted in lack of training time, poor recruitment and retention of a qualified and diverse workforce, lack of expert leadership at the state level, and the dramatic increase of mental and behavioral health concerns among our students. Add to that the expected significant funding cuts we are bracing for starting next year. In the absence of a full repeal of SB 263 without replacement, I suspect that these challenges will only continue to play out in the courts and through the lawyer/lobby class, while our students and staff languish in the middle. The solution is to fully fund the actual cost of special education, provide time and resources to give expert training to educators, focus on implementation of existing federal law, and allow educators to focus on students and not bureaucracy.

Thank you for your consideration,

Justin Potts, MS NCSP
Nationally Certified School Psychologist