Disability
Rights
Oregon

TO: Senate Committee on Education
FROM: Disability Rights Oregon
DATE: Month February 7, 2023
RE: SB 819 Abbreviated School Day and Unilateral Placement

Chair Neron, Vice Chair Hudson, and members of the Committee,

It has now been ten years or more since DRO began a series of efforts to convince the Oregon Department of Education that it has a duty to proactively eliminate the destructive practice of shortening the school days of children with disabilities for long periods of time. Although ODE has reluctantly acknowledged that Shortened School Days (SSDs) may indeed be a problem that disastrously impacts a thousand or more children with disabilities every year, the Department's limited efforts to curtail SSDs have been ineffective.[1]

It is DRO's long held position that SSDs are not only disastrously harmful and unnecessary, but unlawful pursuant to the requirements of three Federal statutes: IDEA, The ADA, and Section 504 of the Rehabilitation Act.[2]

Prior to the passage of these laws, children with disabilities were routinely excluded from school because it was widely held that they were incapable of learning or too difficult to teach. Congress passed IDEA to directly reject such theories and bring children with disabilities into the classrooms where their neighbors attended school. IDEA operates by requiring, not suggesting, that public schools provide a FAPE, a Free and Appropriate Public Education.[3]

Since the passage of IDEA many decades ago, there have been many legal decisions about its requirements, but none that have found it acceptable to renew the historic exclusion of children with disabilities from school by reducing the length of their school

[1] See report of Dr. David Bateman available at https://www.droregon.org/s/Neutral-Expert-Report.pdf .
[2] Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 ("Section 504"), and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131–12134 ("Title II" or "ADA"),
[3] A FAPE consists of specially designed instruction and all supports and services needed to ensure that children with disabilities need to make meaningful progress toward individually determined educational and social goals in the least restrictive environment. Notably, a FAPE is not a simplistic menu of services or hours of instruction; it is instead a complex package of accommodations, services, supports, and procedures that are all described in an Individualized Educational Plan which is regularly updated and revised to ensure progress.

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days or repeatedly sending them home because they could not learn or were too difficult to teach.

The ADA and Section 504 operate on a different theory. Rather than focusing on a raft of specific services and procedures to ensure that children with disabilities receive a FAPE, both statutes more simply forbid discrimination against children and adults on the basis of disability. Although this leads to a different sort of legal analysis, both statutes have been consistently interpreted by courts to require that children with disabilities receive a FAPE.

A six-year old boy who is allowed to attend school for two or three hours a day does not receive a FAPE. He is not learning how to regulate his behavior. He is probably not learning to read or do math.

If SB 819 is passed with the -13 amendment, it will provide a clear legal framework that will require ODE to aggressively pursue the elimination of frequent and long-term shortened school days in an accountable way. In so doing, it will spare at least hundreds of Oregon children from an experience that robs them of the basic right to receive a full day of effective education at a public school where they live. It will change lives.

It is important to address what opponents of SB 819 are telling legislators. For the most part, they provide lip service to the goals of the bill, but warn of disastrous consequences that will occur if districts, ESDs, and special schools are forced to follow the laws that Congress passed decades ago to ensure that people with disabilities would be integrated into society. Those warnings, regardless of whether they are sincere, simply ignore the fact that educational providers are only being asked to do what is required by federal laws that they have circumvented or ignored for years.

In addition, the feared difficulties that are inappropriately raised as reasons to continue violating three federal laws are wildly overblown. It is hard to understand, for instance, why either a district or the ODE will be brought to a standstill if required to collect and report the data that both should have been collecting for years. Similarly, the idea that districts and parents will be paralyzed by having to attend IEP meetings every 30 days simply ignores the adjustments to that requirement and others that are contained in -13 amendment. Other opponents of the bill have sought to eviscerate its core goal of requiring parental consent to an SSD by suggesting that it will take a crushing expenditure of time and resources to draft and send letters to inform parents of their rights under the statute. Common sense and experience suggest that doing this sort of thing is well within wheelhouse of the districts and schools that routinely send parents letters about field trips, calendar adjustments, and other events.

The umbrella which hovers over those arguments are that it’s too hard, too expensive, too inconvenient to provide a full day of school to the very children who have the most to lose if they are not allowed to attend inclusive schools that provide effective

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instruction. Those sorts of arguments ignore the fact that the districts and others who make them receive a full day of state funding for providing as few as one hour of education per day. Similarly, such arguments suggest that districts are free to forgo or reduce the requirements of the law. The requirements of IDEA, 504, and the ADA are not limited to what may be convenient or easy to implement. More importantly, if the requirements of those laws continue to be flouted through the widespread imposition of SSDs, many lives will be ruined as children who are entitled to full days of school instead learn that they are not real members of their schools and communities.

DRO's long experience with the problem of the pervasive inappropriate use of SSDs as a substitute for effective behavioral supports suggests that three of its proposed provisions in SB 819 are particularly important:

1.) Oregon School Districts will be clearly and accountably prohibited from reducing the school days of children because of behavioral issues without written and revocable parental agreement. This will end what has been a disastrous distortion of what constitutes a unilateral and unlawful district imposition of SSDs that occurred when another bill, SB 263, was passed without the guardrails that are at the heart of SB 819. As a result, SB 819 will also end the all too common situation in which a parent agrees to what she believes will be a short period of a reduced school day that turns into months or years during which her child is not allowed to be at school for more than a few hours a day.[4]
2.) The revocation of parent consent will trigger a speedy and time-limited return to the full day of school that is the right of every child who lives in our state. This will end another common scenario in which parents are repeatedly advised not "make a fuss" because a longer school day is just around the corner as soon as their children attain a level of performance measured against criteria that act to prolong exclusion from school.
3.) In what we expect will become rare situations in which SSDs might continue for substantial periods of time despite parental objections, SB 819 will require a significant measure of compensatory education to redress the harm associated with lost time in school.

DRO believes that SB 819 will prompt ODE to adopt a new and necessary understanding of its role as the agency that is entrusted to oversee a comprehensive educational system which ensures that every Oregon child with a disability receives FAPE in the least restrictive environment without discrimination based on disability. For most if not all of those children,[5] that means a full day of school as a baseline. It is our additional expectation that a better understanding of this duty will spur ODE to more actively support the classroom teachers who may not have the resources or expertise to effectively address complex behavioral problems.

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[4] It is notable that the legislatures previous effort to eliminate such situations (ORS 343.161) has been harmfully interpreted by many districts to be a roadmap for how to override parental objections to SSDs.

[5] Excluding children with medical issues that render them unable to receive a full day of education.

For all of the above reasons, DRO supports the passage of SB 819.

About Disability Rights Oregon

Since 1977 Disability Rights Oregon has been the State's Protection and Advocacy System.[6] We are authorized by Congress to protect, advocate, and enforce the rights of people with disabilities under the U.S. Constitution and Federal and State laws, investigate abuse and neglect of people with disabilities, and "pursue administrative, legal, and other appropriate remedies".[7] We are also mandated to "educate policymakers" on matters related to people with disabilities.[8]

If you have any questions regarding DRO's position on this legislation, please call Meghan Moyer at 503-432-5777 or email her at mmoyer@droregon.org.

[6] See ORS 192.517.
[7] See 42 U.S.C. § 15041 et seq; 42 U.S.C. § 10801 et seq.
[8] See 42 U.S. Code § 15043(a)(2)(L).