Sara A. Gelser Blouin
State Senator
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Oregon State Senate

March 8, 2023

Chair Neron and Members of the Committee,

Thank you for scheduling SB 819A for a hearing today, and for your tireless work to make the -A13 amendments possible. These are strong amendments and it is my belief that as a result of the extended discussion these past two months we have a bill that is stronger, better and provides more clarity to solving the problem of students with disabilities being denied access to public schools.

SB 819A is about kids. It's about kids with disabilities who want to go to school but can't because adults have decided that they can make due with less instruction than their nondisabled peers. These are not children who have been suspended or expelled. These students--- between 1000 and 1600 of them, depending on how you count—are primarily in elementary school. Based on the data reported to ODE, we also know that they receive on average only about 52% of the time in school compared to their peers. Some do receive more. Many receive far less—as few as four hours a week. Many students have been in this situation for years at a time. This violates the basic rights of students with disabilities to access public schools--- rights that were enshrined in law the year that I was born.

In 1973, Congress passed Section 504 of the Rehabilitation Act. It was specifically targeted at public programs, including schools. Section 504 was not a special education law but a civil rights law. The obligation that it has placed on public schools for nearly 50 years is unambiguous.

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No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance.
A recipient providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:
(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;
(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
(1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:
(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;
(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;
(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;
(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipients program or activity;
(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or
(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

SB 819A is not about special education. It is fundamentally about the right to equal access enshrined in Section 504 and anchored in the 14th Amendment of the Constitution. The courts have ruled that in states that have compulsory attendance laws, access to public education is a property interest that cannot be taken from a student without due process. More specifically, courts have found the removal from school for more than 10 days requires due process—something the students on these abbreviated days have been denied. Though IEP teams have met, IEP teams are not due process. IEP teams develop a plan for specially designed instruction

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for students. They do not have the right or the capacity to waive basic civil rights, such as equal access to public education.

Many people have told me that SB 819A seems complex. It is really pretty simple.

Kids have a right to attend school, and a short schedule should only be used in extraordinary circumstances related to the student's individual needs. Federal law prohibits using abbreviated school days as a behavior management tool, for administrative convenience, due to budgets or due to staffing shortages. If passed, IEP teams will continue to meet as they do today. They will consider all options for a student and only consider an abbreviated day placement based on the individualized needs of the student. If the team determines that an abbreviated day placement is indeed needed for the student, they can still make that placement. It will simply require signed consent from the child's parent. This is an essential step to ensure due process for the student who will lose learning time.

Federal guidance, ODE guidance and education experts all agree that abbreviated days should be rare and when they occur they should be brief and time limited. That's why the bill requires that the IEP Team reconvene 30 days after the initial placement to assess the student's progress and whether the abbreviated day will continue. If it does, the parent will have the opportunity to determine how frequently the team will meet based on the specific needs of the student. They can meet as frequently as every 30 days, but can choose to meet only every 90 days the student is on the abbreviated day placement. Students on 504 plans can have their teams meet just once a year after the initial meeting. It's important to note that this should be a consideration that is rarely needed, as most abbreviated school day placements should not exceed 90 days.

While a student is on an abbreviated school day, parents can revoke consent in writing at any time. When consent is revoked, the district must return the student within 5 school days of receiving that written revocation. Failure to meet this timeline could result in discipline for the superintendent or withholding of state school funds from the district. Students are also entitled to one hour of compensatory education for every two hours of time lost after that first five days.

The district is required to submit reporting about its use of abbreviated school days to ODE every 30 days, consistent with current practice. This involves uploading a spreadsheet with basic information about each student in the district that has been on an abbreviated school day for more than 30 days. If a student is on an abbreviated day for more than 90 days, the district superintendent needs to review the placement to ensure that it is compliant. If the student is in high school, she also must consider if any additional action is needed to ensure the student stays on track for on time graduation.

That's it. That's all it does. A meeting. Consent. Follow up meetings and simple reporting that is consistent with current practice.

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You may have heard some objections to this measure, and I wanted to address a couple of them head on.

Does SB 819A with the -13 amendment conflict with federal law?

No. Our current situation is noncompliant with federal law. SB 819A is needed to ensure our districts come into compliance. In addition to harming students, the current widespread misuse of abbreviated days creates a legal risk for districts and the state.

This bill is consistent with federal guidance on abbreviated days issued through policy guidance, dear colleague letters and enforcement actions including here in Oregon.

Isn't the consent option contrary to IDEA and doesn't it give parents control over all placemnents and the IEP?

No. While it is true that consent is not required by IDEA after the initial placement, IDEA does not preclude it. IDEA is a floor for special education—not a ceiling. In this case the consent is needed because existing due process is inadequate for parents. The harm from lost learning time is too great to force a family through a process that can take months or years to resolve.

It's also worth noting that the requirement in SB 819A for parental consent for an abbreviated day placement is not novel. Ten states require parental consent for changes in placement and other changes to IEPs, and other states are considering such requirements. Oregon will not be an outlier, and the requirement in this bill is far more modest than what is required in the ten "consent states".

Aren't districts required to have abbreviated days as part of a continuum of placements?

No. ODE Guidance states this quite clearly.

Does this bill require compensatory services if a student does not graduate on time?

No. SB 819 only requires compensatory services after a district fails to return a student to school within five school days of a parent revoking consent for the abbreviated placement. The compensatory education applies only to hours denied after those five days.

The meetings are too burdensome.

The A-13 amendments allow flexibility with the meeting requirements. Students on IEPs can have meetings as infrequently as every 90 days while on abbreviated school day placements, and students on 504s can have meetings just once a year. A 90 day meeting schedule would result in 3 meetings per year. Parents can request a meeting at any time and the measure requires the district to convene a meeting within 14 days of receiving the request.

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A frequent meeting schedule is consistent with other states and with the recommendations of the court appointed neutral expert, the Oregon Department of Education, the federal government and several other states. Frequent meetings to review an abbreviated school day is far less burdensome for parents than job loss due to imposed homeschooling. It is also a small ask for districts given the limited time and services devoted to students on abbreviated school days despite still being allocated full funding for them. Finally, parents are not raising this issue. Parents should speak for themselves about what is too burdensome.

Is the paperwork too burdensome?

The reporting required in this bill is minimal. It continues an existing requirement to submit monthly data to ODE regarding abbreviated days. The A13 amendments align the requirements to the existing data collection, so it does not impose new reporting requirements. Districts are already required to mail disclosures to parents and obtain signed acknowledgements. Although the frequency will increase with this measure, they can be sent in alignment with the 30 day reporting and the letter does not have to be rewritten each time. I've included a sample disclosure letter in OLIS. Finally, the superintendent review is only required at 90 days. Very few abbreviated day placements should last that long. When they do, it is essential to have this level of oversight which protects the student and the superintendent.

What about behavior?

Federal law prohibits the use of abbreviated days to manage behaviors. Any use of abbreviated days for that purpose is discriminatory and at risk of a negative finding. I do agree that behavior and school climate is a serious issue in Oregon, and it is not limited to students with disabilities. I am committed to increased training, pay and supports for staff and students.

Remember SB 819 does not preclude suspension or expulsion or removal to an alternate setting if the student poses a significant risk to self or others. IEPs already require consideration of special needs related to behaviors and school districts should be implementing behavioral assessments and positive behavior plans as soon as they notice a pattern of behaviors that interferes with the student's learning or that of others.

The vast majority of students on an abbreviated school day are children in elementary school. This is the time students need the most support to learn social skills and successful behavior strategies.

It's worth noting that over the course of the entire 21-22 school year, only 317 students age 3-21 were removed from school for more than 10 days through a suspension or expulsion process that provided them with due process. However, at the end of March of this year, nearly 900 students had been on an abbreviated school day for at least 30 days (many, far more) this school year. This suggests that abbreviated days create a hidden system of expulsions and

suspensions that deprive students of due process and the services that come to address challenging behaviors through the formal discipline process.

Will staff quit if SB 819 passes?

I hope not. I was disappointed to read this in the written testimony. This is simply about allowing students with disabilities to attend public school and restoring the rights of children who have been removed without due process. It is heartbreaking to think that staff would leave because students with disabilities would be welcomed into their school communities.

What about the cost to districts? What about transportation? What about staff shortages?

Federal law prohibits the use of abbreviated school days for any of these reasons. An abbreviated school day program can only be implemented when it is required by the specific, individualized needs of the student.

Also, the state is already funding education for these students. Even though these kids aren't served all day, districts still receive full funding. A student receiving 4 hours a week of instruction at home receives the same funding under the SSF formula as a student who attends all day long. That means that our funding formula creates a perverse financial incentive for districts to shorten school days. The March ODE report about abbreviated school days includes the minutes provided to students when they are assigned to a school that six or more children on abbreviated days. Using that data, we see that statewide, students on abbreviated days are receiving on average 52% of instruction and education service hours when considering the bell to bell schedule. Considering only ADMw, the allocation to districts for these 142 students in the 22-23 school year would be $2,843,694.84. The value of the 48% of hours denied to these students is $1,364,973.52. Despite this, many of these districts are also claiming high cost disability grant--- some in excess of the savings they experience by not serving students all day.

If calculated across 875 students at the same service level, the value of undelivered services raises to $8,235,700.72. This raises serious questions about equity between districts as those districts doing the right thing by serving kids all day do not benefit from such excess funds.

What about magnet programs and charter schools?

The provisions of SB 819 only apply to students with disabilities and only when there is actually reduced school time. We had trouble finding any example of a charter school or magnet school that has reduced school days.

Summary

I know this is a lot of information, and I promise there is a lot more if you are interested! Representative Hudson is going to speak in more detail about the changes we've made sense

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the measure passed the Senate and you will hear directly from families about the impact shortened days have on the people that matter most—the kids. You'll also hear from legal experts about the legal exposure we face as a state and that is faced by individual school districts. Individual district liability is newly increased based on the recent Supreme Court Ruling allowing students to file for money damages against districts under ADA and Section 504 without being required to first exhaust their IDEA remedies.

I will close with this. Kids need to go to school. We are all here because we believe that to our core. We know that chronic absenteeism hurts kids. We know that we have much work to do with raising achievement in Oregon and meeting the needs of all kids at school. That's why a policy that allows such overwhelming misuse of abbreviated school days is nonsensical.

It's also, quite simply, cruel. My heart breaks when parents tell me about their children crying in the back seat as they drop their nondisabled siblings off at school. They don't know why they can't go in to participate in reading group, PE, assemblies and field trips. They don't understand why they don't have the same opportunities as their brothers and sisters. Neither do I, and I bet you don't either.

We can fix this problem, and it is long past time we do. These kids, just like our own, deserve nothing less. Thank you for your consideration!

Sincerely,

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