

Executive Numbered Memorandum 009-2015-16 - Reduced School Days

To: All School Superintendents and Special Education Directors
From: Sarah Drinkwater, Assistant Superintendent, Student Services
Re: Instructional Time & School Discipline: Senate Bills 553, 556;
OAR 581-022-1620; Reduced School Days

Summary

This memorandum:

- Provides an overview of Senate Bills 553 & 556;
- Provides an overview of Oregon’s administrative rule on instructional time—OAR 581-022-1620;
- Discusses OAR 581-022-1620 in the context of reduced school days and access to instruction

Background

Maximizing instructional time for students is a critical step to closing the achievement gap and aligns with ODE’s strategic plan and the state’s 40-40-20 goal. Reducing suspension and expulsion in Oregon public schools is a fundamental part of this endeavor. Excessive removal of students from classroom instruction for disciplinary reasons has been shown to negatively impact students, particularly students of color and students with disabilities. This problem is well documented at both the national and state level. To this end, House Bill 2192, passed in the 2013 legislative session, revamped Oregon’s school discipline statute. The bill sought to move district policies from a “zero tolerance” paradigm to one focused on keeping students in school by identifying alternatives to suspension and expulsion. Senate Bills 553 and 556, both passed in the 2015 legislative session, further underscore the importance of keeping students in school to the highest degree possible. These two bills became effective on July 1, 2015.¹ In January of 2015, the Oregon State Board of Education adopted several changes to Oregon Administrative Rules (OAR) regarding instructional time. These requirements are set forth in OAR 581-022-1620.

Key provisions of these statutes and regulations are discussed below, accompanied by policy and practice considerations where relevant. For ease of reference, **statutory and regulatory language is bolded within quotation marks.**

¹ These two bills have not yet been officially codified in the Oregon Revised Statutes (ORS). They are currently found in Chapter 237 of the Oregon Laws-2015 Session, located here: https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2015orLaw0237.pdf

Senate Bill 553

Creates additional requirements for the use of out-of-school suspension or expulsion for students in fifth grade or lower. District school boards must adopt these in their written school discipline policies.

- Written policies must **“require consideration of the age of a student and the past pattern of behavior of a student prior to imposing suspension or expulsion.”**
- For students in fifth grade or lower, policies must **“limit the use of out-of-school suspension or of expulsion to the following circumstances:**
 - **For nonaccidental conduct causing serious physical harm to a student or school employee;**
 - **When a school administrator determines, based upon the administrator’s observation or upon a report from a school employee, that the student’s conduct poses a direct threat to the health or safety of students or school employees; or**
 - **When the suspension or expulsion is required by law.”**²
- Policies must **“require the school district to take steps to prevent the recurrence of the behavior that led to the out-of-school suspension and return the student to a classroom setting so that the disruption of the student’s academic instruction is minimized.”**
- The statute also clarifies the process for calculating removal days:
 - **“As a half day if the student is out for less than or equal to half of the scheduled school day; and [a]s a full day if the student is out of school for more than half of the scheduled school day.”**

Senate Bill 556

Adds to the limitations on the use of expulsion stating, **“expulsion may not be used to address truancy.”**

² Under the federal Gun Free Schools Act, states must have laws requiring school districts to expel students who bring or possess firearms at school. State laws must allow the chief administering officer of a local educational agency to modify such an expulsion on a case-by-case basis. 20 U.S.C. § 7151(b)(1).

Instructional Time-OAR 581-022-1620

Sets forth requirements for instructional time for Oregon public schools. Under the rule, districts have a four-year period in which to achieve the target requirements outlined below:

“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.”**

This rule applies to *all* students—including students with disabilities. In some circumstances, it may be necessary to adjust the minutes of instructional time for a student with a disability. For example, this may apply for a student with a medical condition for whom a full school day is difficult due to endurance or other factors. In some very limited circumstances, it may be appropriate to shorten a school day for a student with a disability who engages in severe behaviors that threaten school safety. For students who receive special education services, a decrease in instructional time likely constitutes a significant change to the Individual Education Program (IEP) and/or a change in placement, triggering the procedural safeguard requirements of the Individuals with Disabilities Education Act (IDEA). It is important to note that a reduction for these students should be reserved only for students with the most severe behaviors, and implemented when a continuum of alternative placements that are less restrictive have failed.

Preliminary steps should include:

- 1) A thorough and comprehensive functional behavior assessment (FBA) and behavior intervention plan (BIP) implemented with fidelity;
- 2) Collection and review of behavior data;
- 3) A record to show that data have been reviewed regularly to monitor progress and revisions made to the BIP based on that analysis;

4) Documentation (including qualitative and quantitative data) to show that a reduction is the most appropriate and least restrictive intervention at the time, and that parents were meaningfully included in the review and discussion of the proposed plan; and

5) Documentation that parents were provided with sufficient prior written notice³ *before* the reduction of instructional time. A reduction should be accompanied by a clear and measurable plan for increasing the student's participation to a full school day as soon as possible.

The following practices are considered ineffective, and may result in a violation of a student's access to a free appropriate public education. Therefore, they should serve as indicators that a school or district review of policies and practices is warranted:

- Behavior contracts that set a quota for "good behavior days" that govern whether a student can enter, reenter, or remain in a less restrictive educational setting.
- A pattern or practice of calling parents in the middle of a school day to come to school to pick up their student due to behavior issues.
- Policies (either written or understood) whereby students may receive no more than a certain number of instructional hours regardless of individual circumstances (e.g., a five or ten hour per week limit to home based tutoring services).
- IEP goals, objectives, or services are modified or reduced to "fit" a reduced instructional day.

Access to a full school day is critical to meeting our statewide goal of increasing educational achievement for *all* students. ODE stands ready to partner with and support districts in meeting this important objective and is available to provide additional information and technical assistance as appropriate.

Please contact John Inghish, Education Specialist at 503.947.5797; john.inglish@ode.state.or.us if you desire additional information.

³ Prior written notice is required when a district acts to initiate or change the identification, evaluation, or educational placement of a child or the provision of FAPE to the child. [34 CFR 300.503](#) (a); Prior written notice must include: A description of the action proposed or refused by the district; An explanation of why the district proposes or refuses to take the action; A description of each evaluation procedure, assessment, record, or report the district used as a basis for the proposed or refused action; A statement that the parents have protection under Part B's procedural safeguards, and, if the notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; Sources for parents to contact to obtain assistance in understanding the provisions of Part B; A description of other options that the IEP team considered and the reasons why those options were rejected; A description of other factors relevant to the district's proposal or refusal. [34 CFR 300.503](#) (b). See also *Letter to Atkins-Lieberman*, [56 IDELR 141](#) (OSEP 2010); and *Letter to Anonymous*, [59 IDELR 14](#) (OSEP 2012).