

Abbreviated School Day Programs under SB 819 (2023)

SB 819, passed in 2023, set forth additional requirements for school districts related to the use of abbreviated school day programs (ASDPs) to ensure students with disabilities have meaningful access to the same number of hours of instruction and educational services as the majority of students in their appropriate comparison group, which is typically the majority of other students who are in the same grade within the student's resident school district.

SB 819 established significant procedures related to the use of ASDPs that ensure that students with disabilities and their parents or foster parents are aware of their right to, and ongoing availability of, meaningful access to a full school day – unless the parent or foster parent provides voluntary informed and written consent for an ASDP.

Updates to SB 819 Requirements Pursuant to SB 1558

SB 1558 (2024) provides additional specificity related to requirements for use of abbreviated school day programs for students with disabilities. Under SB 819, ASDP requirements applied to students with disabilities based on the specifics of their educational programs and/or circumstances, with limited exceptions and exemptions. For instance, in SB 819, there are exemptions for students in specific programs (e.g., parentally-placed private school students) and exceptions related to asynchronous instruction when provided by a virtual public charter school that operates in compliance with ORS Chapter 338. However, under SB 819, students who were on track to graduate and those who were enrolled in asynchronous instruction that did not meet that limited exception were subject to the ASDP requirements. SB 1558 updates the requirements related to ASDPs for certain students within these groups.

On Track to Graduate

SB 1558 adds a new exemption from the requirements of SB 819 when a student with a disability voluntarily does not schedule a class for one or more class periods if:

- (a) The student is in 11th or 12th grade and on track to graduate with a high school diploma or modified diploma within 4 years of starting grade 9,
OR
- (b) The student is on track to fulfill all state requirements for graduation with a high school diploma or modified diploma by the end of the current school year.

When a student meets one or both of these criteria, the requirements of SB 819 no longer apply, even if they have meaningful access to fewer hours of instruction and educational services as compared to the majority of students in their appropriate comparison group. As schedules and circumstances change over the course of a school year, whether a student with a disability meets these criteria for exemption may also change. Therefore, ODE suggests that school districts should regularly review each eligible student's circumstances when these exemptions may apply, especially when a schedule change occurs, to make appropriate fact-specific determinations that comply with all federal and state laws.

Asynchronous Instruction that is Exempt from SB 819 Requirements

In order to provide meaningful access to instruction and educational services for a student with a disability under SB 819, those services had to be synchronous, unless they were provided by a virtual public charter school that operates in compliance with ORS chapter 338. Therefore, under SB 819, school districts had to carefully consider whether students with disabilities who received asynchronous instruction were receiving meaningful access based on that instruction. If that determination concluded that a student with a disability was receiving fewer hours of meaningful access to instruction and educational services than the majority of students in their appropriate comparison group, the student with a disability was placed on an ASDP and the provisions of SB 819 applied.

SB 1558 exempts from SB 819's requirements certain students who receive asynchronous instruction. In order to qualify for this exemption, the asynchronous instruction must meet all five of the criteria below:

- (1) The instruction is only for one class per term/semester.
- (2) The instruction satisfies a credit requirement for a high school diploma or a modified diploma.
- (3) The instruction is a credit recovery class or is a class not otherwise available to the student.
- (4) The instruction is offered to students on a voluntary basis and is not restricted to only students with a disability.
- (5) The instruction is accessible to a student while the student is at school and while staff of the school are immediately available to the student.

When all five of those criteria are met, districts may consider those students exempt from the requirements of SB 819 as they relate to the single asynchronous course. However, if any of the five criteria are not met or the student is otherwise subject to the requirements of SB 819 (e.g., not on track to graduate and has a period in which no class is scheduled in addition to an asynchronous course), districts may not consider those students exempt from the requirements of SB 819. In all cases, school districts must comply with all federal and state laws related to abbreviated school day programs. Therefore, ODE suggests that school districts may want to seek legal advice where an individual student with a disability's circumstances make it unclear whether SB 819's requirements apply.

Updating Documentation of a Student's ADSP to Align with New Requirements

While the law does not describe any specific requirements related to updating a student with a disability's abbreviated school day program, IEP, or 504 Plan, when these new exemptions apply and SB 819's requirements no longer need to be met, ODE suggests that districts use the following process:

Changes to Abbreviated School Day Programs: New Exemptions under SB 1558 (2024)

- (1) Determine if the student is placed on an Abbreviated School Day Program (ASDP) for which SB 819's requirements must be met. School districts may wish to use the "Steps to Determine Whether a Placement Constitutes an Abbreviated School Day Program" resource that ODE developed for this purpose.
 - a. If, based on the student's circumstances, the school district determines that **the student continues to be placed on an ASDP not exempted from SB 819's requirements**, all SB 819 requirements continue to apply and must be adhered to, including notice and acknowledgement of rights, informed and written consent from the parent or foster parent, meeting cadence requirements, and data submission requirements.
 - b. If, based on the student's circumstances, the school district determines that the student's ASDP is **exempt from the requirements of SB 819**, ODE recommends districts reconvene the student's IEP or 504 team, including the parent or foster parent, in order to review and revise the student's educational program as appropriate to enable the provision of a free appropriate public education (FAPE) in the student's appropriate least restrictive environment (LRE).
- (2) If the team determines that the student is exempt from the requirements of SB 819 due to the additional exemptions included in SB 1558, or as otherwise appropriate in light of the student's individual circumstances, district data coordinators must update the Abbreviated Day data collection to reflect the appropriate "Abbreviated School Day Program End Date." Unless other circumstances apply that would change the date, the Abbreviated School Day Program End Date would be the date that the student's appropriate team determines that the exemption from SB 819's requirements granted by SB 1558 applies to the student.