

Disabilities

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team considered at least one other option and they must document the reasons an abbreviated day is needed.

One example of when a shortened school day might be permitted under the law is if a child was undergoing chemotherapy and didn't have the energy to attend a full day of class, said Tom Stenson, Disability Rights Oregon's deputy legal director.

But in lawsuits and complaints, parents said their kids didn't need shortened days or that the proper process wasn't followed when they were put on a modified schedule. And when the parents try to change that schedule, they said, they're met with a confusing, lengthy complaint process.

Complaints about being denied equal access to education have to go through the teacher, the school administration, the superintendent and the school board before they make it to the Oregon Department of Education, Gelser Blouin said. This means the complaints could be going through people who are already aware of what is happening, and even sanctioned it.

The current complaint process can take a year or more.

"What was the point [of the shortened schools days legislation] if nobody has to follow it and if there's no consequence for not following it?" she said. "So the next goal is creating enforcement mechanisms."

This legislative session, Gelser Blouin tried to push through a bipartisan fix.

Senate Bill 1578 would have allowed certain complaints — a violation of state or federal law that led to physical harm or the denial of instructional days — to go directly to the Oregon Department of Education.

The bill had broad support in the Legislature, with both Democratic and Republican sponsors. It passed out of the Senate Committee on Education without opposition.

But this year was Oregon's short 35-day session, limiting the opportunity for bills to be introduced and crafted into law. Gelser Blouin was told by legislative leadership there wasn't time to fully consider her proposal this session. The Legislature ended the session without advancing the bill and, unless an emergency session is scheduled, won't convene again until early 2023.

In the meantime, students with disabilities will likely continue to face shortened hours and other challenges to their right to a free and equal public education, families say.

Those in support of the bill said they plan to keep bringing attention to the issue. And they'll work to support families within the current system.

Benjamin's story: Four days in person, one online

Nicole Silverman's son, Benjamin, is one of many kids whose parents say they are not receiving equal access to educational time.

Benjamin is medically complex and nonverbal, with autism and cerebral palsy. The 13-year-old attends life enrichment classes through Clackamas Education Service District, which provides support to the 10 school districts in Clackamas County.

The pandemic made school tough for the Silvermans. With Benjamin's medical needs, it was nearly impossible for him to do anything online.

His mom said during that time, they saw a "horrible regression." He stopped walking and reverted to crawling. He regressed in his ability to communicate, sit through things, listen and learn. His energy levels dropped dramatically and now he can't make it through the day without a nap.

Even though public schools across Oregon returned to full-time, in-person learning months ago, Silverman said Benjamin still isn't allowed to attend five days a week.

He is on a 4/1 schedule, meaning he attends in-person school four days a week and then attends virtually one day a week. Silverman said none of the able-bodied students in the Clackamas area public schools are on that schedule, only the students with disabilities.

"This [schedule] was implemented in the fall because of staffing shortages in our special education team," Shirley Skidmore, Clackamas ESD communications director, said.

Skidmore said this particular program needs significant staffing to ensure the students' safety while at school and they don't have those numbers right now. She said they are particularly lacking in educational assistants.

Because of this weekly day of virtual schooling, along with other days with no class like holidays and snow days, Benjamin was able to attend school in person a mere seven days in February, Silverman said.

This inconsistency takes a toll on Benjamin for several reasons. For one, Benjamin relies on schedules to keep him calm and focused. On top of that, school is his main outlet to develop communication skills and socialize with his peers. Virtual school takes that almost completely away from him.

"We're supposed to be talking about how to move these children forward ... because they've lost so much education in two years and they've regressed so much, but we can't even get our kids back to baseline, let alone moving forward," Silverman said.

So far, there's been no recourse from the district.

Skidmore told the Statesman Journal they're working to get students back to five days in person, but they don't have the staffing right now to make that possible.

Silverman said she filed a complaint with the U.S. Department of Education's Office of Civil Rights a couple months ago alleging this model is discrimination because it applies only to students with disabilities.

She said they haven't decided how to proceed and by the time anything would come from it, school could be over for the summer and Benjamin will have missed more than a dozen additional in-person instructional days.

"You cannot make up that time. It is lost. And that's heartbreaking," Silverman said. "There has to be more immediate answers and resources and solutions."

Despite legal protections, she said, there's little enforcement of the law, making these situations possible everywhere.

"I feel like our system is on fire and people are not actually grasping what is really going on in the disability community," Silverman said.

'Such a pervasive problem'

There are two policies that districts or schools employ to shorten the days of students with disabilities, Disability Rights Oregon said.

Some parents are told explicitly their child's bus will pick them up and drop them off at certain times, hours different from students without disabilities.

Other parents get a more informal shortening of their child's school day, organization officials said. In theory, these kids are scheduled for the same time as their peers, but their parents will get calls once or twice a week, every week, telling them they have to come pick up their child.

And this isn't just happening in one or two districts.

"It's such a pervasive problem that is happening in so many districts and affecting so many kids, that it really calls out for a statewide solution," Stenson said.

Parents don't always know what to do when their children's school hours are cut. Gelser Blouin's legislation would have made it easier for them to get help from the state, instead of having to go through the current years-long process or take legal action.

These complaints take a huge toll on families. They have to proactively advocate for their child at each step, and the burden of proof is on them. Parents have to prove their child is being denied educational time, instead of the district having to prove that they have provided equal access, Gelser Blouin said.

"Most people don't have the energy to file a complaint or know how to do it. Those that do, and do it in an effective way, get pulled aside and their situation gets fixed for their kid, not for anybody else," Gelser Blouin said.

Even if complaints make their way up the levels, it can take years — all while the child continues to miss out on learning.

"If a school district just doesn't want to cooperate, doesn't want to provide the services and just digs their heels in, they can make the process last years and years. And that's not how education is supposed to work," Stenson said.

A long-time issue

This issue has existed in the disability community for years.

In 2018, a judge ruled that over the course of two years, Dallas School District violated the law in five special education cases, including cases regarding shortened school days.

"[Shortened school days are] happening in dozens of different school districts all over the state and it's a very deliberate and calculated way of avoiding

cluding neighbor states California and Washington.

In Oregon, the \$2.25 million effort has been slowly rolled out. OHA first held listening groups and demoed it with communities that have been disproportionately impacted by the pandemic, Public Health director Rachael Banks shared with members of the Oregon House Interim Special Committee on COVID-19 Response on Nov. 17.

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giving education to kids with disabilities," Stenson said.

Gelser Blouin thinks it's getting worse, possibly due to challenges related to COVID-19.

"When I heard about this problem in the past, it was almost always kids that had significant behavioral support needs, but the population that it's impacting is much broader now," Gelser Blouin said.

One of the biggest things districts cite when they reduce in-person instruction for students is staffing, according to both families and the districts themselves.

Across the nation, schools are struggling with staffing shortages and teacher burnout. Locally these shortages have greatly impacted special education, especially when it comes to having an adequate number of educational assistants, Skidmore said.

Sam's story: a lack of trained staff

Karen Houston's son, Sam, has felt the full weight of untrained staff.

Sam, who has autism and apraxia, was allowed back at his school full time this year. But the 11-year-old, who Houston said should have been in general education classes, is rarely in those classes.

"He was essentially being babysat in a different room, alone with a grown-up that he didn't know, who let him watch Disney movies or wander around in the schoolyard outside," Houston said.

This took an immense toll on Sam's stress and anxiety, his mom said.

"His body was physically there, but it was just chaos. And there was no attempt to educate him because there wasn't anybody to take the lead on it," Houston said.

This is Sam's first year in middle school. Going in, Houston said, the school east of Portland assured Houston that they had the perfect staff person to provide consistent 1-on-1 support to Sam. The family was told there would be a staff member who knew how to do things like use Sam's "talker," his augmented communication device.

That didn't happen, Houston said.

Instead, Houston said, Sam has had substitute after substitute, with a new support person coming almost weekly as staffing shortages left the district scrambling.

"The message that our family got was that you are less and so we will put sub after sub after sub with you," Houston said.

That didn't work for Sam. He needed someone who understood his complex needs, knew how to communicate with him and was able to form a relationship. This is the accommodation Sam needs to be able to attend general education classes.

"Without any familiar or trained staff ... and without having any sort of routine to his day, he quickly crashed and burned," Houston said.

Sam began to act out. He became a distraction in school. He was pulled out of his classes and put in a room by himself, Houston said.

The issues compounded and the Houstons took him out of school completely to regroup and begin to ease him back into schooling. Now, he's going to school from 8 a.m. to 12:30 p.m. every day and slowly introducing more.

To Houston, her family's experiences and others across the state prove the

system is in desperate shape.

Looking forward

Gelser Blouin said she will bring the issue back in some capacity next legislative session. But she and other advocates said the state must find a way to address the issues now. They don't want children to have to wait another year.

"What we're going to do is file all these complaints ... and that's also going to really demonstrate why it's broken when we come back," Gelser Blouin said of the complaints sent directly to her.

Gelser Blouin said her bill was misunderstood. She believes the decision was made to cut the bill because people thought they could solve the problem by putting more money in the budget for advocates and investigators.

But, that wouldn't fix the system, she said. To ensure kids are given access to full-time schooling efficiently and quickly, a statutory change is necessary, the senator said.

Gelser Blouin and families are also trying to bring more public attention to the issue. In a Twitter thread last week, the senator detailed some of the complaints she had received from parents.

She wrote of a family in West Salem who said their child with down syndrome had their educational days and hours cut in half. Her peers continue to attend in person, full time.

She wrote of a blind student in Klamath Falls whose family said was assigned videos to watch and received 20 minutes of online instruction per day. Over the course of the year, he'll get 57 hours of virtual instruction time while his peers get 1,000 hours.

And she wrote of a student in Lane County who missed 40 days of class this school year, after the district told his family they didn't have staffing.

She said the people within the districts breaking these laws need to be held personally accountable.

But more broadly, Disability Rights Oregon and other groups have a class-action lawsuit against the Oregon Department of Education in litigation right now. The lawsuit alleges ODE has not done enough to ensure students with disabilities have equal access to education, thus violating federal disability law.

The parties involved have brought an expert in to examine the situation for disabled students statewide, Stenson said. The expert will then suggest changes, with a report expected in June.

How to get help

Organizations such as Disability Rights Oregon and FACT Oregon can offer help to parents and guardians who feel their child's right to equal access to education is being violated. They can provide advice and suggest potential next steps.

To reach Disability Rights Oregon, call 503-243-2081 or 1-800-452-1694 between 9 a.m. and noon or 1-5 p.m. Monday through Friday.

To reach FACT Oregon, call or text (503) 786-6082 or email support@factoregon.org.

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Digital

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Spanish, simplified Chinese, traditional Chinese, Vietnamese, Russian, Korean, Portuguese, Hmong, Somali, Marshallese, Chuukese and Arabic.

Digital vaccine cards have been widely available across the county, in-

Enrollment is optional. The option comes the same month the state will drop its mask mandate in public spaces as COVID-19 cases and hospitalizations fall. Moving forward, private entities, businesses and venues will have the choice to require masks or vaccination.

"While community virus levels are currently declining, OHA anticipates that the tool will still be an important option for individuals who may need a

copy of their COVID-19 vaccination either for their own records or to share with others in the future," OHA spokesperson Rudy Owens said in an email Friday.

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