

House Bill 2906

Sponsored by COMMITTEE ON JUDICIARY (at the request of American Civil Liberties Union of Oregon)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Allows person claiming to be aggrieved by unlawful discrimination in public kindergarten through grade 12 program, service, school or interschool activity to file civil action in circuit court. Declares emergency, effective July 1, 2007.

A BILL FOR AN ACT

1
2 Relating to discrimination in education; creating new provisions; amending ORS 338.115 and 659.860;
3 and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 659.860 is amended to read:

6 659.860. (1) Any person claiming to be aggrieved by unlawful discrimination [*in higher*
7 *education*] as prohibited by ORS 659.850 may file a civil action in circuit court for equitable relief
8 or, subject to the terms and conditions of ORS 30.265 to 30.300, damages, or both. The court may
9 order such other relief as may be appropriate. Damages shall be \$200 or actual damages, whichever
10 is greater.

11 (2) The action authorized by this section shall be filed within one year of the filing of a grievance.
12

13 (3) No action shall be filed unless, within 180 days of the alleged discrimination, a grievance has
14 been filed with the **school district board, public charter school governing body**, community col-
15 lege board of education or [*the*] State Board of Higher Education.

16 (4) No action may be filed until 90 days after filing a grievance unless only injunctive relief is
17 sought pursuant to ORCP 79. The right to temporary or preliminary injunctive relief shall be inde-
18 pendent of the right to pursue any administrative remedy available to complainants pursuant to ORS
19 659.850.

20 (5) No action may be filed if the **school district board, public charter school governing body**,
21 community college board of education or [*the*] State Board of Higher Education has obtained a
22 conciliation agreement with the person filing the grievance or if a final determination of a grievance
23 has been made except as provided in ORS 183.480.

24 (6) Notwithstanding the filing of a grievance, pursuant to subsection (3) of this section, any
25 person seeking to maintain an action under this section shall also file a notice of claim within 180
26 days of the alleged discrimination as required by ORS 30.275.

27 (7) The court shall award reasonable attorney fees to a prevailing plaintiff in any action under
28 this section. The court may award reasonable attorney fees and expert witness fees incurred by a
29 defendant who prevails in the action if the court determines that the plaintiff had no objectively
30 reasonable basis for asserting a claim or no objectively reasonable basis for appealing an adverse
31 decision of a trial court.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (8) Nothing in this section is intended to reduce the obligations of the education agencies under
 2 this section and ORS 659.850 and 659.855.

3 **SECTION 2. The amendments to ORS 659.860 by section 1 of this 2007 Act apply to**
 4 **actions arising on or after the effective date of this 2007 Act.**

5 **SECTION 3.** ORS 338.115 is amended to read:

6 338.115. (1) Statutes and rules that apply to school district boards, school districts or other
 7 public schools do not apply to public charter schools. However, the following laws do apply to public
 8 charter schools:

- 9 (a) Federal law;
- 10 (b) ORS 192.410 to 192.505 (public records law);
- 11 (c) ORS 192.610 to 192.690 (public meetings law);
- 12 (d) ORS 297.405 to 297.555 and 297.990 (Municipal Audit Law);
- 13 (e) ORS 181.534, 181.539, 326.603, 326.607 and 342.232 (criminal records checks);
- 14 (f) ORS 337.150 (textbooks);
- 15 (g) ORS 339.141, 339.147 and 339.155 (tuition and fees);
- 16 (h) ORS 659.850, [and] 659.855 **and 659.860** (discrimination);
- 17 (i) ORS 30.260 to 30.300 (tort claims);
- 18 (j) Health and safety statutes and rules;
- 19 (k) Any statute or rule that is listed in the charter;
- 20 (L) The statewide assessment system developed by the Department of Education for mathemat-
 21 ics, science and English under ORS 329.485 (1);
- 22 (m) ORS 329.045 (academic content standards and instruction);
- 23 (n) Any statute or rule that establishes requirements for instructional time provided by a school
 24 during each day or during a year;
- 25 (o) ORS 339.250 (12) (prohibition on infliction of corporal punishment);
- 26 (p) ORS 339.370, 339.372 and 339.375 (reporting of child abuse); and
- 27 (q) This chapter.

28 (2) Notwithstanding subsection (1) of this section, a charter may specify that statutes and rules
 29 that apply to school district boards, school districts and other public schools may apply to a public
 30 charter school.

31 (3) If a statute or rule applies to a public charter school, then the terms “school district” and
 32 “public school” include public charter school as those terms are used in that statute or rule.

33 (4) A public charter school may not violate the Establishment Clause of the First Amendment
 34 to the United States Constitution or section 5, Article I of the Oregon Constitution, or be religion
 35 based.

36 (5) A public charter school shall maintain an active enrollment of at least 25 students.

37 (6) A public charter school may sue or be sued as a separate legal entity.

38 (7) The sponsor, members of the governing board of the sponsor acting in their official capacities
 39 and employees of a sponsor acting in their official capacities are immune from civil liability with
 40 respect to all activities related to a public charter school within the scope of their duties or em-
 41 ployment.

42 (8) A public charter school may enter into contracts and may lease facilities and services from
 43 a school district, education service district, state institution of higher education, other governmental
 44 unit or any person or legal entity.

45 (9) A public charter school may not levy taxes or issue bonds under which the public incurs li-

1 ability.

2 (10) A public charter school may receive and accept gifts, grants and donations from any source
3 for expenditure to carry out the lawful functions of the school.

4 (11) The school district in which the public charter school is located shall offer a high school
5 diploma, certificate, Certificate of Initial Mastery or Certificate of Advanced Mastery to any public
6 charter school student who meets the district's and state's standards for a high school diploma,
7 certificate, Certificate of Initial Mastery or Certificate of Advanced Mastery. If the school district
8 offers a Certificate of Initial Mastery subject area endorsement to students who attend school in the
9 district, then the school district shall offer the endorsement to any public charter school student
10 who meets the district's and state's standards for the endorsement.

11 (12) A high school diploma, certificate, Certificate of Initial Mastery, Certificate of Initial Mas-
12 tery subject area endorsement or Certificate of Advanced Mastery issued by a public charter school
13 grants to the holder the same rights and privileges as a high school diploma, certificate, Certificate
14 of Initial Mastery, Certificate of Initial Mastery subject area endorsement or Certificate of Ad-
15 vanced Mastery issued by a nonchartered public school.

16 (13) Prior to beginning operation, the public charter school shall show proof of insurance to the
17 sponsor as specified in the charter.

18 (14) A public charter school may receive services from an education service district in the same
19 manner as a nonchartered public school in the school district in which the public charter school is
20 located.

21 **SECTION 4.** ORS 336.631 is amended to read:

22 336.631. (1) Prior to contracting with or distributing any public funds to a private alternative
23 education program, a district school board shall:

24 (a) Annually approve the private alternative education program;

25 (b) Determine that the private alternative education program is registered with the Department
26 of Education; and

27 (c) Determine that the private alternative education program complies with the requirements
28 of subsection (2) of this section and ORS 336.625 (3)(c).

29 (2) The following laws apply to private alternative education programs that are registered with
30 the Department of Education under ORS 336.635 in the same manner as the laws apply to school
31 districts and public schools:

32 (a) Federal law;

33 (b) ORS 181.534, 181.539, 326.603, 326.607 and 342.232 (criminal records checks);

34 (c) ORS 337.150, 339.141, 339.147 and 339.155 (tuition and fees);

35 (d) ORS 659.850, [and] 659.855 **and 659.860** (discrimination);

36 (e) Health and safety statutes and rules; and

37 (f) Any statute, rule or school district policy that is specified in a contract between the school
38 district board and the private alternative education program.

39 (3) Prior to placement of a student in a private alternative education program, the resident
40 district shall determine whether the proposed placement best serves the student's educational needs
41 and interests and assists the student in achieving the district and state academic standards.

42 (4) Contracts between a school district and a private alternative education program shall be
43 included in the assessment of effectiveness provided for in ORS 329.085.

44 **SECTION 5. This 2007 Act being necessary for the immediate preservation of the public**
45 **peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect**

1 **July 1, 2007.**

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