

**A-Engrossed**  
**Senate Bill 370**

Ordered by the Senate March 13  
Including Senate Amendments dated March 13

Sponsored by Senators COURTNEY, DEVLIN (Presession filed.)

**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.

Establishes minimum amount of participation in physical education by kindergarten through grade 8 public school students. Specifies requirements for physical education instruction.

**Requires Department of Education to award grants to schools for purpose of meeting physical education requirements. Appropriates moneys from General Fund to department for grants distribution.**

**Declares emergency, effective July 1, 2007.**

**A BILL FOR AN ACT**

1  
2 Relating to physical education; creating new provisions; amending ORS 336.631, 338.025 and 338.115;  
3 appropriating money; and declaring an emergency.

4 Whereas in Oregon 28 percent of eighth graders and 21 percent of eleventh graders are cur-  
5 rently overweight; and

6 Whereas between 1994 and 2001, obesity among Oregon adults had increased by 59 percent, with  
7 Oregon's current adult obesity rate estimated at 22 percent - the highest in any state west of the  
8 Rockies; and

9 Whereas physical inactivity and a poor diet together account for at least 400,000 deaths among  
10 adults in the United States each year, which is second only to tobacco use as the leading cause of  
11 preventable death in the United States; and

12 Whereas inadequate participation in physical activity is the major contributor to the "epidemic  
13 of obesity" that has plagued the nation's young people during the past two decades; and

14 Whereas the Centers for Disease Control and Prevention, in their Guide to Community Preven-  
15 tive Services, have given their highest level of evidence-based endorsement to increasing children's  
16 physical activity and aerobic capacity through physical education; and

17 Whereas physical activity offers young people many health benefits, including controlling  
18 weight, building lean muscle and reducing fat, improving aerobic endurance and muscular strength,  
19 building greater bone mass to prevent osteoporosis in adulthood, reducing the risk of diabetes, pre-  
20 venting or reducing high blood pressure, and developing healthy habits that will last a lifetime; now,  
21 therefore,

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

23 **SECTION 1. Section 2 of this 2007 Act is added to and made a part of ORS chapter 329.**

24 **SECTION 2. (1) Every public school student in kindergarten through grade 8 shall par-**  
25 **ticipate in physical education for the entire school year. Students in kindergarten through**  
26 **grade 5 shall participate in physical education for at least 150 minutes during each school**

**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 week. Students in grades 6 through 8 shall participate in physical education for at least 225  
2 minutes during each school week.

3 (2) School districts and public charter schools shall offer instruction in physical educa-  
4 tion that meets the academic content standards for physical education adopted by the State  
5 Board of Education under ORS 329.045. The instruction shall be a sequential, developmentally  
6 appropriate curriculum that is designed, implemented and evaluated to help students develop  
7 the knowledge, motor skills, self-management skills, attitudes and confidence needed to  
8 adopt and maintain physical activity throughout their lives.

9 (3) School districts and public charter schools shall devote at least 50 percent of physical  
10 education class time to actual physical activity in each school week, with as much class time  
11 as possible spent in moderate physical activity.

12 (4)(a) Notwithstanding subsections (1) and (3) of this section, a student with disabilities  
13 shall have suitably adapted physical education incorporated as part of the individualized ed-  
14 ucation program developed for the student under ORS 343.151.

15 (b) Notwithstanding subsections (1) and (3) of this section, a student who does not have  
16 an individualized education program but has chronic health problems, other disabling condi-  
17 tions or other special needs that preclude the student from participating in regular physical  
18 education instruction shall have suitably adapted physical education incorporated as part of  
19 an individualized health plan developed for the student by the school district or public char-  
20 ter school.

21 (5) School districts and public charter schools shall assess school curriculums at regular  
22 intervals to measure the attainment of the minimum number of minutes that students are  
23 required to participate in physical education under this section.

24 (6) All teachers of physical education for public school students in kindergarten through  
25 grade 8 shall be adequately prepared and shall regularly participate in professional develop-  
26 ment activities to effectively deliver the physical education program.

27 **SECTION 3.** ORS 336.631 is amended to read:

28 336.631. (1) Prior to contracting with or distributing any public funds to a private alternative  
29 education program, a district school board shall:

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

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

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

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

38 (a) Federal law;

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

40 (c) **Section 2 of this 2007 Act (physical education);**

41 [(c)] (d) ORS 337.150, 339.141, 339.147 and 339.155 (tuition and fees);

42 [(d)] (e) ORS 659.850 and 659.855 (discrimination);

43 [(e)] (f) Health and safety statutes and rules; and

44 [(f)] (g) Any statute, rule or school district policy that is specified in a contract between the  
45 school district board and the private alternative education program.

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

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

6 **SECTION 4.** ORS 338.115 is amended to read:

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

- 10 (a) Federal law;
- 11 (b) ORS 192.410 to 192.505 (public records law);
- 12 (c) ORS 192.610 to 192.690 (public meetings law);
- 13 (d) ORS 297.405 to 297.555 and 297.990 (Municipal Audit Law);
- 14 (e) ORS 181.534, 181.539, 326.603, 326.607 and 342.232 (criminal records checks);
- 15 (f) ORS 337.150 (textbooks);
- 16 (g) ORS 339.141, 339.147 and 339.155 (tuition and fees);
- 17 (h) ORS 659.850 and 659.855 (discrimination);
- 18 (i) ORS 30.260 to 30.300 (tort claims);
- 19 (j) Health and safety statutes and rules;
- 20 (k) Any statute or rule that is listed in the charter;
- 21 (L) The statewide assessment system developed by the Department of Education for mathemat-  
22 ics, science and English under ORS 329.485 (1);
- 23 (m) ORS 329.045 (academic content standards and instruction);
- 24 **(n) Section 2 of this 2007 Act (physical education);**
- 25 [(n)] **(o)** Any statute or rule that establishes requirements for instructional time provided by a  
26 school during each day or during a year;
- 27 [(o)] **(p)** ORS 339.250 (12) (prohibition on infliction of corporal punishment);
- 28 [(p)] **(q)** ORS 339.370, 339.372 and 339.375 (reporting of child abuse); and
- 29 [(q)] **(r)** This chapter.

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

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

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

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

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

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

44 (8) A public charter school may enter into contracts and may lease facilities and services from  
45 a school district, education service district, state institution of higher education, other governmental

1 unit or any person or legal entity.

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

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

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

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

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

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

23 **SECTION 5.** ORS 338.025 is amended to read:

24 338.025. (1) The State Board of Education may adopt any rules necessary for the implementation  
25 of this chapter. The rules shall follow the intent of this chapter.

26 (2) Upon application by a public charter school, the State Board of Education may grant a  
27 waiver of any provision of this chapter if the waiver promotes the development of programs by  
28 providers, enhances the equitable access by underserved families to the public education of their  
29 choice, extends the equitable access to public support by all students or permits high quality pro-  
30 grams of unusual cost. The State Board of Education may not waive any appeal provision in this  
31 chapter or any provision under ORS 338.115 (1)(a) to [(p)] (q).

32 **SECTION 6. Section 2 of this 2007 Act and the amendments to ORS 336.631, 338.025 and**  
33 **338.115 by sections 3 to 5 of this 2007 Act first apply to the 2008-2009 school year.**

34 **SECTION 7. (1) The Department of Education shall award grants to school districts and**  
35 **public charter schools for the purpose of meeting the physical education requirements of**  
36 **section 2 of this 2007 Act.**

37 **(2) A district or school that receives a grant may use the grant to:**

38 **(a) Hire teachers who specialize in physical education; and**

39 **(b) Provide in-service training to teachers on the academic content standards for physical**  
40 **education and the requirements of section 2 of this 2007 Act.**

41 **(3) The department shall determine:**

42 **(a) The amount of a grant;**

43 **(b) The criteria for awarding a grant; and**

44 **(c) The process for awarding grants.**

45 **(4) The State Board of Education may adopt any rules necessary to administer this sec-**

1 tion.

2 **SECTION 8. There is appropriated to the Department of Education, for the biennium**  
3 **beginning July 1, 2007, out of the General Fund, the amount of \$5,904,000 for the purpose of**  
4 **distributing grants to school districts and public charter schools under section 7 of this 2007**  
5 **Act.**

6 **SECTION 9. This 2007 Act being necessary for the immediate preservation of the public**  
7 **peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect**  
8 **July 1, 2007.**

9

---