

House Bill 2062

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Education)

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**.

Requires applicant for position with school district to submit list of current and past employers and to provide written authorization and release of information and documentation from those employers. Requires school district to conduct background check on applicants.

Prohibits school district board, school district or school from entering into agreement or contract that suppresses information about employee's sexual misconduct or abuse or that affects duty to investigate suspected child abuse, report suspected child abuse or discipline employee.

Allows parent or legal guardian of student abused by school employee to bring action against education provider if school employee previously committed abuse and education provider did not investigate or report abuse.

Requires public schools to submit reports to school district board regarding certain employee activity.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to misconduct by school employees; creating new provisions; amending ORS 339.370, 339.372
3 and 339.375; and declaring an emergency.

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

5 **SECTION 1. (1) Before a school district may hire an applicant for a position with the**
6 **district, the district shall:**

7 (a) **Require the applicant to provide:**

8 (A) **A list of the applicant's current and past employers, including out-of-state employers,**
9 **that are schools or school districts.**

10 (B) **A written authorization and release described in subsection (2) of this section for the**
11 **district to provide to current and past employers that are schools or school districts.**

12 (b) **Request the applicant's current and past employers that are schools or school dis-**
13 **tricts to disclose to the district any information or any investigative, personnel or other**
14 **documents not otherwise protected by law that relate to an allegation of sexual misconduct,**
15 **as that term is defined by the State Board of Education by rule, or abuse, as that term is**
16 **defined in ORS 419B.005.**

17 (c) **For applicants who are licensed or registered with the Teacher Standards and Prac-**
18 **tices Commission, request from the commission verification of licensure or registration**
19 **status and any information relating to sexual misconduct or abuse that lawfully may be**
20 **disclosed by the commission.**

21 (d) **Conduct a criminal records check if required by ORS 326.603.**

22 (2) **The authorization and release required under subsection (1)(a) of this section must:**

23 (a) **Authorize the applicant's current and past employers to disclose the information or**
24 **documentation requested under subsection (1)(b) of this section.**

25 (b) **Release the applicant's current and past employers, and employees acting on behalf**

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 of those employers, from any liability for providing information and documentation requested
 2 under subsection (1)(b) of this section.

3 (3)(a) Not later than 20 days after receiving a request under subsection (1)(b) of this
 4 section, a school district shall disclose the information and documentation requested.

5 (b) A school district, or an employee acting on behalf of the school district, that in good
 6 faith discloses information or documentation under this subsection is immune from civil li-
 7 ability for the disclosure.

8 (4) Except as provided in subsection (5) of this section, a school district may not hire or
 9 continue to employ or contract with an applicant who refuses to provide a list or a written
 10 authorization and release described in subsection (1)(a) of this section. A refusal to hire,
 11 employ or enter into a contract under this subsection removes the applicant from any school
 12 district policies, any collective bargaining provisions regarding dismissal procedures and ap-
 13 peals, and any provisions of ORS 342.805 to 342.937.

14 (5)(a) A school district may employ an applicant on a conditional basis pending the dis-
 15 trict's review of information and documentation received under subsection (1)(b) of this
 16 section.

17 (b) A school district may not deny employment to an applicant solely because the appli-
 18 cant has an out-of-state employer and the laws or rules of that state prevent the release of
 19 information or documents or the out-of-state employer fails or refuses to cooperate with the
 20 request.

21 (6) Information and documentation received under subsection (1)(b) of this section are
 22 confidential and are not public records. A school district may use the information and doc-
 23 umentation only for the purpose of evaluating an applicant's qualifications for employment.

24 **SECTION 2.** ORS 339.375 is amended to read:

25 339.375. (1) Any school employee having reasonable cause to believe that any child with whom
 26 the employee comes in contact has suffered abuse by another school employee, or that another
 27 school employee with whom the employee comes in contact has abused a child, shall immediately
 28 report the information to:

29 (a) A supervisor or other person designated by the school board; and

30 (b) A law enforcement agency, the Department of Human Services or a designee of the depart-
 31 ment as required by ORS 419B.010 and 419B.015.

32 (2) A supervisor or other person designated by the school board who receives a report under
 33 subsection (1) of this section, shall follow the procedures required by the policy adopted by the
 34 school board under ORS 339.372.

35 (3) Except as provided in subsection (4) of this section, when an education provider receives a
 36 report of suspected child abuse by one of its employees, and the education provider's designee de-
 37 termines that there is reasonable cause to support the report, the education provider shall place the
 38 school employee on paid administrative leave until either:

39 (a) The Department of Human Services or a law enforcement agency determines that the report
 40 is unfounded or that the report will not be pursued; or

41 (b) The Department of Human Services or a law enforcement agency determines that the report
 42 is founded and the education provider takes the appropriate disciplinary action against the school
 43 employee.

44 (4) If the Department of Human Services or a law enforcement agency is unable to determine,
 45 based on a report of suspected child abuse, whether child abuse occurred, an education provider

1 may reinstate a school employee placed on paid administrative leave under subsection (3) of this
 2 section or may take the appropriate disciplinary action against the employee.

3 (5) Upon request from a law enforcement agency, the Department of Human Services, [or] the
 4 Teacher Standards and Practices Commission **or a hiring school district making a request under**
 5 **section 1 of this 2009 Act**, a school district shall provide the records of investigations of suspected
 6 child abuse by a school employee or former school employee.

7 (6) The disciplinary records of a school employee or former school employee convicted of a
 8 crime listed in ORS 342.143 are not exempt from disclosure under ORS 192.501 or 192.502. If a school
 9 employee is convicted of a crime listed in ORS 342.143, the education provider that is the employer
 10 of the employee shall disclose the disciplinary records of the employee to any person upon request.
 11 If a former school employee is convicted of a crime listed in ORS 342.143, the education provider
 12 that was the employer of the former employee when the crime was committed shall disclose the
 13 disciplinary records of the former employee to any person upon request.

14 (7) Prior to disclosure of a disciplinary record under subsection (6) of this section, an education
 15 provider shall remove any personally identifiable information from the record that would disclose
 16 the identity of a child, a crime victim or a school employee or former school employee who is not
 17 the subject of the disciplinary record.

18 **SECTION 3. Section 1 of this 2009 Act and the amendments to ORS 339.375 by section 2**
 19 **of this 2009 Act apply to school districts hiring applicants for a position that begins on or**
 20 **after the effective date of this 2009 Act.**

21 **SECTION 4. (1) A school district board, school district or school may not:**

22 (a) **Enter into a collective bargaining agreement, employment contract, agreement for**
 23 **resignation or termination, severance agreement or any other contract or agreement that:**

24 (A) **Has the effect of suppressing information relating to sexual misconduct, as defined**
 25 **by the State Board of Education by rule, or abuse, as defined by ORS 419B.005, by a current**
 26 **or past employee; or**

27 (B) **Affects the duties of the school district board, school district or school to investigate**
 28 **suspected child abuse, to report suspected sexual child abuse or to discipline a current or**
 29 **past employee as those duties are required by statute, rule or school board policy; or**

30 (b) **Expunge information about sexual misconduct or child abuse from any documents in**
 31 **the personnel, investigative or other files of a current or past employee unless the informa-**
 32 **tion could not be substantiated.**

33 (2) **Any provision of a contract or agreement that is contrary to this section is void and**
 34 **unenforceable.**

35 **SECTION 5. Section 4 of this 2009 Act applies to:**

36 (1) **Agreements or contracts entered into or renewed on or after the effective date of this**
 37 **2009 Act.**

38 (2) **Records management of personnel, investigative or other employee files occurring on**
 39 **or after the effective date of this 2009 Act.**

40 **SECTION 6. ORS 339.372 is amended to read:**

41 339.372. Each school board shall adopt policies on the reporting of child abuse. The policies
 42 shall:

43 (1) Specify that child abuse by school employees is not tolerated;

44 (2) Specify that all school employees are subject to the policies;

45 (3) Require that all school employees report suspected child abuse to a law enforcement agency,

1 the Department of Human Services or a designee of the department as required by ORS 419B.010
 2 and 419B.015 and report suspected child abuse to the employees' supervisors or other persons des-
 3 ignated by the school board;

4 **(4) Specify that an education provider and a current or former school employee suspected**
 5 **of sexual misconduct or child abuse are prohibited from entering into an employment con-**
 6 **tract, an agreement for resignation or termination, a severance agreement or any other**
 7 **contract or agreement that:**

8 **(a) Has the effect of suppressing information relating to sexual misconduct, as defined**
 9 **by the State Board of Education by rule, or abuse, as defined by ORS 419B.005; or**

10 **(b) Affects the duties of the education provider to investigate suspected child abuse, to**
 11 **report suspected child abuse or to discipline the employee as those duties are required by**
 12 **statute, rule or school board policy;**

13 [(4)] **(5) Designate a person to receive reports of suspected child abuse by school employees and**
 14 **specify the procedures to be followed by that person upon receipt of a report;**

15 [(5)] **(6) Require the posting in each school building of the name and contact information for the**
 16 **person designated for the school building to receive reports of suspected child abuse by school em-**
 17 **ployees and the procedures the person will follow upon receipt of a report;**

18 [(6)] **(7) Specify that the initiation of a report in good faith about suspected child abuse may not**
 19 **adversely affect any terms or conditions of employment or the work environment of the complainant;**

20 [(7)] **(8) Specify that the school board or any school employee will not discipline a student for**
 21 **the initiation of a report in good faith about suspected child abuse by a school employee; and**

22 [(8)] **(9) Require notification by the education provider to the person who initiated the report**
 23 **about actions taken by the education provider based on the report.**

24 **SECTION 7. (1) A parent or legal guardian of a student who is the victim of child abuse**
 25 **by a school employee may file a civil action in circuit court against an education provider if**
 26 **the school employee committed a previous act of child abuse and the education provider, or**
 27 **the designee of the education provider:**

28 **(a) Received a report described in ORS 339.375 (1) regarding the previous act of child**
 29 **abuse by the school employee and did not follow the procedures required by the policy**
 30 **adopted by the school board under ORS 339.372; or**

31 **(b) Had reasonable cause to believe that the school employee committed the previous act**
 32 **of child abuse and did not report that information or otherwise act as required by statute,**
 33 **rule or school board policy.**

34 **(2) An action may be brought under this section regardless of whether the previous act**
 35 **of child abuse was committed against the same child or a different child.**

36 **(3) An action filed under this section may be for equitable relief or, subject to the terms**
 37 **and conditions of ORS 30.260 to 30.300, for damages, or both. The court may order such other**
 38 **relief as may be appropriate.**

39 **(4) In an action brought under this section, the court may allow the plaintiff party costs,**
 40 **disbursements and reasonable attorney fees.**

41 **SECTION 8. ORS 339.370 is amended to read:**

42 339.370. As used in this section, [and] ORS 339.372, 339.375 and 339.377 **and section 7 of this**
 43 **2009 Act:**

44 (1) "Abuse" has the meaning given that term in ORS 419B.005.

45 (2) "Disciplinary records" means the records related to a personnel discipline action or materi-

1 als or documents supporting that action.

2 (3) "Education provider" means:

3 (a) A school district as defined in ORS 332.002.

4 (b) The Oregon School for the Blind.

5 (c) The Oregon School for the Deaf.

6 (d) An educational program under the Youth Corrections Education Program.

7 (e) A public charter school as defined in ORS 338.005.

8 (f) An education service district as defined in ORS 334.003.

9 (g) Any state-operated program that provides educational services to kindergarten through grade
10 12 students.

11 (h) A private school.

12 (4) "Law enforcement agency" has the meaning given that term in ORS 419B.005.

13 (5) "Private school" means a school that provides educational services as defined in ORS 345.505
14 to kindergarten through grade 12 students.

15 (6) "School board" means the governing board or governing body of an education provider.

16 (7) "School employee" means an employee of an education provider.

17 **SECTION 9. Section 7 of this 2009 Act applies only to child abuse that is committed by**
18 **a school employee on or after the effective date of this 2009 Act and that gives rise to a cause**
19 **of action under section 7 of this 2009 Act.**

20 **SECTION 10. (1) Except as provided in subsection (2) of this section, on or before July 1**
21 **of each year, each public school shall submit a report to the school district board of the**
22 **school that shows:**

23 (a) **Suspensions and terminations of employees made by the school during the previous**
24 **12 months, including the reasons for the suspensions and terminations.**

25 (b) **Reports of child abuse submitted pursuant to ORS 339.375, and any action taken as**
26 **the result of those reports.**

27 (2) **A public charter school may submit the information required by this section as part**
28 **of the report required by ORS 338.095.**

29 **SECTION 11. This 2009 Act being necessary for the immediate preservation of the public**
30 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
31 **on its passage.**

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