

# House Bill 2029

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Superintendent of Public Instruction Susan Castillo for Department of 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 landlord to provide notice to school district and Department of Education if tenant evicted from premises and landlord has knowledge that tenant is education provider, tenant allowed education provider to occupy premises, tenant stored student education records on premises or tenant allowed student education records to be stored on premises. Allows school district or department to take possession of student education records.

Requires transfer of student education records to school district when charter is terminated or public charter school is dissolved.

Applies student education record statutes to public charter schools.

Declares emergency, effective July 1, 2011.

## A BILL FOR AN ACT

1  
2 Relating to student education records; amending ORS 105.165, 338.025, 338.105 and 338.115; and de-  
3 claring an emergency.

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

5 **SECTION 1.** ORS 105.165 is amended to read:

6 105.165. (1) If ORS chapter 90 applies to a dwelling unit, following restitution of the premises  
7 to the plaintiff by the sheriff pursuant to ORS 105.161, the plaintiff shall remove, store and dispose  
8 of any personal property left by the defendant on the premises as provided in ORS 90.425 or 90.675.

9 (2) If ORS chapter 90 **or subsection (3) of this section** does not apply to a premises, the  
10 plaintiff or landlord shall remove, store and dispose of any personal property left by the defendant  
11 or tenant upon the premises following recovery of possession of the premises by the plaintiff or  
12 landlord:

13 (a) Pursuant to any landlord's lien available under ORS 87.162;

14 (b) As provided by any rental agreement between the plaintiff or landlord and the defendant or  
15 tenant; or

16 (c) At the plaintiff or landlord's discretion, by following the process described in ORS 90.425 (2),  
17 (3) and (5) to (11) and (13) to (16) except that:

18 (A) The plaintiff or landlord may require payment of any amount owed by the defendant or  
19 tenant to the plaintiff or landlord prior to allowing the defendant or tenant to remove or recover  
20 the personal property if the payment requirement is stated in the written notice; and

21 (B) ORS 90.425 may be applied to address only the rights and obligations of the plaintiff or  
22 landlord and defendant or tenant in the personal property and not the rights of other parties.

23 **(3)(a) Prior to removing, storing or disposing of any personal property left by the de-**  
24 **fendant or tenant upon the premises following recovery of possession of the premises by the**  
25 **plaintiff or landlord, the plaintiff or landlord shall provide notice of the recovery to the ad-**  
26 **ministrative office for the school district in which the premises are located and to the De-**  
27 **partment of Education if the plaintiff or landlord has knowledge that the defendant or**

**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 **tenant:**

2 (A) Is an education provider;

3 (B) Allowed an education provider to occupy the premises; or

4 (C) Stored student education records on the premises or allowed student education re-  
5 cords to be stored on the premises.

6 (b) The notice required by this subsection must:

7 (A) Be provided in writing and may be delivered by mail or in person to the administra-  
8 tive office and department;

9 (B) State the name and contact information of the plaintiff or landlord, the name of the  
10 defendant or tenant, the address of the premises and, if known, the name of the education  
11 provider;

12 (C) Include a copy of any writ of execution of judgment of restitution and any eviction  
13 trespass notice; and

14 (D) State that the school district or department has a minimum of 10 business days to  
15 take possession of the student education records.

16 (c) A school district or the department may take possession of education records from  
17 a plaintiff or landlord.

18 (d) For the purpose of this subsection, "education provider" means a kindergarten  
19 through grade 12 school, a public charter school, an alternative education program or a ca-  
20 reer school.

21 [(3)] (4) Any cost incurred by the plaintiff for execution pursuant to ORS 105.151 or 105.158 to  
22 105.161 or for removal, storage or sale of the defendant's property under this section and not re-  
23 covered pursuant to ORS 90.425 (13) or 90.675 (13) shall be added to the judgment.

24 [(4)] (5) If the plaintiff fails to permit the defendant to recover possession of the defendant's  
25 personal property under subsection (1) of this section, the defendant may recover from the plaintiff,  
26 in addition to any other amount provided by law, twice the actual damages or twice the monthly  
27 rent, whichever is greater.

28 **SECTION 2.** ORS 338.105, as amended by section 12, chapter 691, Oregon Laws 2009, is  
29 amended to read:

30 338.105. (1) During the term of a charter, the sponsor may terminate the charter on any of the  
31 following grounds:

32 (a) Failure to meet the terms of an approved charter or this chapter.

33 (b) Failure to meet the requirements for student performance stated in the charter.

34 (c) Failure to correct a violation of a federal or state law that is described in ORS 338.115.

35 (d) Failure to maintain insurance as described in the charter.

36 (e) Failure to maintain financial stability.

37 (f) Failure to maintain, for two or more consecutive years, a sound financial management system  
38 described in the proposal submitted under ORS 338.045 and incorporated into the written charter  
39 under ORS 338.065.

40 (2) If a charter is terminated under subsection (1) of this section, the sponsor shall notify the  
41 public charter school governing body at least 60 days prior to the proposed effective date of the  
42 termination. The notice shall state the grounds for the termination. The public charter school gov-  
43 erning body may request a hearing by the sponsor.

44 (3) A public charter school governing body may appeal any decision of a sponsor that is:

45 (a) A school district board to the State Board of Education. The State Board of Education shall

1 adopt by rule procedures to ensure a timely appeals process to prevent disruption of students' edu-  
 2 cation.

3 (b) The State Board of Education to the circuit court pursuant to ORS 183.484.

4 (4)(a) Notwithstanding subsection (2) of this section, a sponsor may terminate a charter imme-  
 5 diately and close a public charter school if the public charter school is endangering the health or  
 6 safety of the students enrolled in the public charter school.

7 (b) The public charter school governing body may request a hearing from the sponsor on the  
 8 termination of the charter under this subsection. The sponsor shall hold a hearing within 10 days  
 9 after receiving the request.

10 (c) The public charter school governing body may appeal a decision of a sponsor under this  
 11 subsection to the State Board of Education. The State Board of Education shall hold a hearing  
 12 within 10 days after receiving the appeal request.

13 (d) Throughout the appeals process, the public charter school shall remain closed at the dis-  
 14 cretion of the sponsor unless the State Board of Education orders the sponsor to open the public  
 15 charter school and not terminate the charter.

16 (5) Termination of a charter shall not abridge the public charter school's legal authority to op-  
 17 erate as a private or nonchartered public school.

18 (6) If a charter is terminated or a public charter school is dissolved[,]:

19 (a) The assets of the public charter school that were purchased with public funds shall be given  
 20 to the State Board of Education. The State Board of Education may disburse the assets of the public  
 21 charter school to school districts or other public charter schools.

22 (b) **All student education records of the public charter school shall be transferred to the**  
 23 **administrative office of the school district in which the public charter school was located.**

24 (7) A public charter school governing body may only terminate a charter, dissolve or close a  
 25 public charter school at the end of a semester. If a charter is terminated by the public charter  
 26 school governing body or a public charter school is closed or dissolved, the public charter school  
 27 governing body shall notify the sponsor at least 180 days prior to the proposed effective date of the  
 28 termination, closure or dissolution.

29 **SECTION 3.** ORS 338.115, as amended by section 2, chapter 53, Oregon Laws 2010, is amended  
 30 to read:

31 338.115. (1) Statutes and rules that apply to school district boards, school districts or other  
 32 public schools do not apply to public charter schools. However, the following laws do apply to public  
 33 charter schools:

34 [(a) *Federal law*;]

35 [(b) *ORS 192.410 to 192.505 (public records law)*;]

36 [(c) *ORS 192.610 to 192.690 (public meetings law)*;]

37 [(d) *ORS 297.405 to 297.555 and 297.990 (Municipal Audit Law)*;]

38 [(e) *ORS 181.534, 326.603, 326.607, 342.223 and 342.232 (criminal records checks)*;]

39 [(f) *ORS 337.150 (textbooks)*;]

40 [(g) *ORS 339.141, 339.147 and 339.155 (tuition and fees)*;]

41 [(h) *ORS 659.850, 659.855 and 659.860 (discrimination)*;]

42 [(i) *ORS 30.260 to 30.300 (tort claims)*;]

43 [(j) *Health and safety statutes and rules*;]

44 [(k) *Any statute or rule that is listed in the charter*;]

45 [(L) *The statewide assessment system developed by the Department of Education for mathematics,*

1 *science and English under ORS 329.485 (2);]*

2 *[(m) ORS 329.045 (academic content standards and instruction);]*

3 *[(n) Any statute or rule that establishes requirements for instructional time provided by a school*  
4 *during each day or during a year;]*

5 *[(o) ORS 339.250 (12) (prohibition on infliction of corporal punishment);]*

6 *[(p) ORS 339.370, 339.372, 339.388 and 339.400 (reporting of child abuse and training on prevention*  
7 *and identification of child abuse);]*

8 *[(q) ORS 329.451 (high school diploma, modified diploma, extended diploma and alternative certif-*  
9 *icate);]*

10 *[(r) ORS chapter 657 (Employment Department Law);]*

11 *[(s) ORS 339.326;]*

12 *[(t) Section 1, chapter 53, Oregon Laws 2010 (consideration for educational services); and]*

13 *[(u) This chapter.]*

14 **(a) Federal law;**

15 **(b) ORS 30.260 to 30.300 (tort claims);**

16 **(c) ORS 192.410 to 192.505 (public records law);**

17 **(d) ORS 192.610 to 192.690 (public meetings law);**

18 **(e) ORS 297.405 to 297.555 and 297.990 (Municipal Audit Law);**

19 **(f) ORS 326.565, 326.575 and 326.580 (student records);**

20 **(g) ORS 181.534, 326.603, 326.607, 342.223 and 342.232 (criminal records checks);**

21 **(h) ORS 329.045 (academic content standards and instruction);**

22 **(i) ORS 329.451 (high school diploma, modified diploma, extended diploma and alternative**  
23 **certificate);**

24 **(j) The statewide assessment system developed by the Department of Education for**  
25 **mathematics, science and English under ORS 329.485 (2);**

26 **(k) ORS 337.150 (textbooks);**

27 **(L) ORS 339.141, 339.147 and 339.155 (tuition and fees);**

28 **(m) ORS 339.250 (12) (prohibition on infliction of corporal punishment);**

29 **(n) ORS 339.326 (notice concerning students subject to juvenile court petitions);**

30 **(o) ORS 339.370, 339.372, 339.388 and 339.400 (reporting of child abuse and training on**  
31 **prevention and identification of child abuse);**

32 **(p) ORS chapter 657 (Employment Department Law);**

33 **(q) ORS 659.850, 659.855 and 659.860 (discrimination);**

34 **(r) Any statute or rule that establishes requirements for instructional time provided by**  
35 **a school during each day or during a year;**

36 **(s) Health and safety statutes and rules;**

37 **(t) Any statute or rule that is listed in the charter;**

38 **(u) Section 1, chapter 53, Oregon Laws 2010 (consideration for educational services); and**

39 **(v) This chapter.**

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

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

45 (4) A public charter school may not violate the Establishment Clause of the First Amendment

1 to the United States Constitution or section 5, Article I of the Oregon Constitution, or be religion  
2 based.

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

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

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

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

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

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

16 (11) The school district in which the public charter school is located shall offer a high school  
17 diploma, a modified diploma, an extended diploma or an alternative certificate to any public charter  
18 school student who meets the district's and state's standards for a high school diploma, a modified  
19 diploma, an extended diploma or an alternative certificate.

20 (12) A high school diploma, a modified diploma, an extended diploma or an alternative certificate  
21 issued by a public charter school grants to the holder the same rights and privileges as a high  
22 school diploma, a modified diploma, an extended diploma or an alternative certificate issued by a  
23 nonchartered public school.

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

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

29 **SECTION 4.** ORS 338.115, as amended by section 7, chapter 839, Oregon Laws 2007, section 12,  
30 chapter 50, Oregon Laws 2008, section 4, chapter 618, Oregon Laws 2009, and section 3, chapter 53,  
31 Oregon Laws 2010, is amended to read:

32 338.115. (1) Statutes and rules that apply to school district boards, school districts or other  
33 public schools do not apply to public charter schools. However, the following laws do apply to public  
34 charter schools:

35 [(a) *Federal law*;]

36 [(b) *ORS 192.410 to 192.505 (public records law)*;]

37 [(c) *ORS 192.610 to 192.690 (public meetings law)*;]

38 [(d) *ORS 297.405 to 297.555 and 297.990 (Municipal Audit Law)*;]

39 [(e) *ORS 181.534, 326.603, 326.607, 342.223 and 342.232 (criminal records checks)*;]

40 [(f) *ORS 337.150 (textbooks)*;]

41 [(g) *ORS 339.141, 339.147 and 339.155 (tuition and fees)*;]

42 [(h) *ORS 659.850, 659.855 and 659.860 (discrimination)*;]

43 [(i) *ORS 30.260 to 30.300 (tort claims)*;]

44 [(j) *Health and safety statutes and rules*;]

45 [(k) *Any statute or rule that is listed in the charter*;]

1        *[(L) The statewide assessment system developed by the Department of Education for mathematics,*  
 2 *science and English under ORS 329.485 (2);]*

3        *[(m) ORS 329.045 (academic content standards and instruction);]*

4        *[(n) ORS 329.496 (physical education);]*

5        *[(o) Any statute or rule that establishes requirements for instructional time provided by a school*  
 6 *during each day or during a year;]*

7        *[(p) ORS 339.250 (12) (prohibition on infliction of corporal punishment);]*

8        *[(q) ORS 339.370, 339.372, 339.388 and 339.400 (reporting of child abuse and training on prevention*  
 9 *and identification of child abuse);]*

10       *[(r) ORS 329.451 (high school diploma, modified diploma, extended diploma and alternative certif-*  
 11 *icate);]*

12       *[(s) ORS chapter 657 (Employment Department Law);]*

13       *[(t) ORS 339.326;]*

14       *[(u) Section 1, chapter 53, Oregon Laws 2010 (consideration for educational services); and]*

15       *[(v) This chapter.]*

16       **(a) Federal law;**

17       **(b) ORS 30.260 to 30.300 (tort claims);**

18       **(c) ORS 192.410 to 192.505 (public records law);**

19       **(d) ORS 192.610 to 192.690 (public meetings law);**

20       **(e) ORS 297.405 to 297.555 and 297.990 (Municipal Audit Law);**

21       **(f) ORS 326.565, 326.575 and 326.580 (student records);**

22       **(g) ORS 181.534, 326.603, 326.607, 342.223 and 342.232 (criminal records checks);**

23       **(h) ORS 329.045 (academic content standards and instruction);**

24       **(i) ORS 329.451 (high school diploma, modified diploma, extended diploma and alternative**  
 25 **certificate);**

26       **(j) ORS 329.496 (physical education);**

27       **(k) The statewide assessment system developed by the Department of Education for**  
 28 **mathematics, science and English under ORS 329.485 (2);**

29       **(L) ORS 337.150 (textbooks);**

30       **(m) ORS 339.141, 339.147 and 339.155 (tuition and fees);**

31       **(n) ORS 339.250 (12) (prohibition on infliction of corporal punishment);**

32       **(o) ORS 339.326 (notice concerning students subject to juvenile court petitions);**

33       **(p) ORS 339.370, 339.372, 339.388 and 339.400 (reporting of child abuse and training on**  
 34 **prevention and identification of child abuse);**

35       **(q) ORS chapter 657 (Employment Department Law);**

36       **(r) ORS 659.850, 659.855 and 659.860 (discrimination);**

37       **(s) Any statute or rule that establishes requirements for instructional time provided by**  
 38 **a school during each day or during a year;**

39       **(t) Health and safety statutes and rules;**

40       **(u) Any statute or rule that is listed in the charter;**

41       **(v) Section 1, chapter 53, Oregon Laws 2010 (consideration for educational services); and**

42       **(w) This chapter.**

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

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

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

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

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

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

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

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

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

19 (11) The school district in which the public charter school is located shall offer a high school  
 20 diploma, a modified diploma, an extended diploma or an alternative certificate to any public charter  
 21 school student who meets the district’s and state’s standards for a high school diploma, a modified  
 22 diploma, an extended diploma or an alternative certificate.

23 (12) A high school diploma, a modified diploma, an extended diploma or an alternative certificate  
 24 issued by a public charter school grants to the holder the same rights and privileges as a high  
 25 school diploma, a modified diploma, an extended diploma or an alternative certificate issued by a  
 26 nonchartered public school.

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

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

32 **SECTION 5.** ORS 338.025, as amended by section 4, chapter 53, Oregon Laws 2010, and section  
 33 3, chapter 72, Oregon Laws 2010, is amended to read:

34 338.025. (1) The State Board of Education may adopt any rules necessary for the implementation  
 35 of this chapter. The rules shall follow the intent of this chapter.

36 (2) Upon application by a public charter school, the State Board of Education may grant a  
 37 waiver of any provision of this chapter if the waiver promotes the development of programs by  
 38 providers, enhances the equitable access by underserved families to the public education of their  
 39 choice, extends the equitable access to public support by all students or permits high quality pro-  
 40 grams of unusual cost. The State Board of Education may not waive any appeal provision in this  
 41 chapter or any provision under ORS 338.115 (1)(a) to [(t)] (u) or 338.120.

42 **SECTION 6.** ORS 338.025, as amended by section 8, chapter 839, Oregon Laws 2007, section 14,  
 43 chapter 50, Oregon Laws 2008, section 5, chapter 53, Oregon Laws 2010, and section 4, chapter 72,  
 44 Oregon Laws 2010, is amended to read:

45 338.025. (1) The State Board of Education may adopt any rules necessary for the implementation

1 of this chapter. The rules shall follow the intent of this chapter.

2 (2) Upon application by a public charter school, the State Board of Education may grant a  
3 waiver of any provision of this chapter if the waiver promotes the development of programs by  
4 providers, enhances the equitable access by underserved families to the public education of their  
5 choice, extends the equitable access to public support by all students or permits high quality pro-  
6 grams of unusual cost. The State Board of Education may not waive any appeal provision in this  
7 chapter or any provision under ORS 338.115 (1)(a) to [(u)] (v) or 338.120.

8 **SECTION 7. This 2011 Act being necessary for the immediate preservation of the public**  
9 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**  
10 **July 1, 2011.**

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