

Enrolled House Bill 2047

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor John A. Kitzhaber for Department of Human Services)

CHAPTER

AN ACT

Relating to private residential boarding schools; creating new provisions; and amending ORS 418.205, 418.210, 418.325 and 418.327.

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

SECTION 1. ORS 418.205, as amended by section 1, chapter 60, Oregon Laws 2010, is amended to read:

418.205. As used in ORS 418.205 to 418.310 and 418.992 to 418.998, unless the context requires otherwise:

(1) "Child" means an unmarried person under 18 years of age.

(2)(a) "Child-caring agency" means any private **school, private** agency or private organization providing:

(A) Day treatment for children with emotional disturbances;

(B) Adoption placement services;

(C) Residential care, including but not limited to foster care or residential treatment for children;

(D) Residential care in combination with academic education and therapeutic care, including but not limited to treatment for emotional, behavioral or mental health disturbances;

[(D)] **(E)** Outdoor youth programs; or

[(E)] **(F)** Other similar services for children.

(b) "Child-caring agency" does not include:

(A) Residential facilities or foster care homes certified or licensed by the Department of Human Services under ORS 443.400 to 443.455, 443.830 and 443.835 for children receiving developmental disability services; *[or]*

(B) Any private agency or organization facilitating the provision of respite services for parents pursuant to a properly executed power of attorney under ORS 109.056. For purposes of this subparagraph, "respite services" means the voluntary assumption of short-term care and control of a minor child without compensation or reimbursement of expenses for the purpose of providing a parent in crisis with relief from the demands of ongoing care of the parent's child; **or**

(C) A private residential boarding school as defined in subsection (5)(b) of this section.

(3)(a) "Outdoor youth program" means a program that provides, in an outdoor living setting, services to children who have behavioral problems, mental health problems or problems with abuse of alcohol or drugs.

(b) "Outdoor youth program" does not include any program, facility or activity:

(A) Operated by a governmental entity;

- (B) Operated or affiliated with the Oregon Youth Conservation Corps; or
- (C) Licensed by the Department of Human Services under other authority of the department.
- (4) "Private" means not owned, operated or administered by any governmental agency or unit.
- (5) **"Private residential boarding school" means either of the following as the context requires:**

(a) A child-caring agency that is a private school that provides residential care in combination with academic education and therapeutic care, including but not limited to treatment for emotional, behavioral or mental health disturbances; or

(b) A private school providing residential care that is primarily engaged in educational work under ORS 418.327.

SECTION 2. ORS 418.210, as amended by section 2, chapter 60, Oregon Laws 2010, is amended to read:

418.210. ORS 418.205 to 418.325 shall not apply to:

(1) Homes established and maintained by fraternal organizations wherein only members, their wives, widows and children are admitted as residents;

(2) Any family foster home that is subject to ORS 418.625 to 418.645;

(3) Any child care facility that is subject to ORS 657A.030 and 657A.250 to 657A.450;

(4) Any individual, or home of an individual, providing respite services, as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS 109.056; [or]

(5) Any private agency or organization facilitating the provision of respite services, as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS 109.056;

or

(6) A private residential boarding school as defined in ORS 418.205 (5)(b).

SECTION 3. ORS 418.325 is amended to read:

418.325. (1) A child-caring agency shall safeguard the health of each ward or other dependent or delinquent child in its care by providing for medical examinations of each child by a qualified physician at the following intervals:

(a) Three examinations during the first year of the child's life;

(b) One examination during the second year of the child's life;

(c) One examination at the age of four;

(d) One examination at the age of six;

(e) One examination at the age of nine; and

(f) One examination at the age of 14.

(2) If an examination under subsection (1) of this section has not occurred within six months prior to the transfer for adoption of the custody of a child by a child-caring agency to the prospective adoptive parents of such child, a child-caring agency shall provide for a medical examination of such child within six months prior to such transfer.

(3) Any testing that occurs at intervals other than those specified in subsections (1) and (2) of this section shall not be considered to be in lieu of the required examinations. However, nothing in subsections (1) and (2) of this section is intended to limit more frequent examinations that are dictated by the general state of the child's health or by any particular condition.

(4) Within 90 days of obtaining guardianship over a child under six years of age, a child-caring agency shall provide for such child to be:

(a) Inoculated as determined appropriate by the county public health department; and

(b) Tested for:

(A) Phenylketonuria pursuant to ORS 433.285;

(B) Visual and aural acuity consistent with the child's age;

(C) Sickle-cell anemia;

(D) Effects of rubella, if any;

(E) Effects of parental venereal disease, if any; and

(F) The hereditary or congenital effects of parental use of drugs or controlled substances.

(5) Within six months prior to the transfer for adoption of the custody of a child by a child-caring agency to the prospective adoptive parents of such child, the child-caring agency shall provide for such child to have a complete physical examination by a physician, including but not limited to inspection for evidence of child abuse in accordance with rules of the Department of Human Services, and be tested for visual and aural acuity consistent with the child's age.

(6) A child-caring agency shall record the results of tests provided a child pursuant to subsections (1) to (5) of this section in the child's health record. The child's health record shall be kept as a part of the agency's total records of that child. The child's health record shall be made available to both natural parents and to both prospective foster or adoptive parents of that child. A qualified member of a child-caring agency under the supervision of a qualified physician shall explain to adoptive parents the medical factors possible as a result of a child's birth history, hereditary or congenital defects, or disease or disability experience.

(7) This section does not apply to a private residential boarding school as defined in ORS 418.205 (5)(a).

SECTION 4. ORS 418.327 is amended to read:

418.327. (1) Inspections and reviews of [*private schools*] **private residential boarding schools that are primarily engaged in educational work** or other organizations offering residential programs for children may be conducted by the Department of Human Services at times and frequencies of the department's choosing. The department shall consult with representatives of the [*private schools*] **private residential boarding schools** and organizations in developing the standards that shall be the basis for inspections and reviews.

(2) Upon finding that the facilities and operation of a school or organization described in subsection (1) of this section meet the standards of the department for the physical health, care and safety of the children, the department shall issue a license to operate the residential program. The license shall be valid for a period of two years, unless sooner suspended or revoked by the department. However, the department may require that application be made for amendment to an existing license when changes in a facility or program are to occur. The department shall charge no fee for its own inspections or reviews, nor for issuing licenses, but may charge fees to cover costs of inspections done by other governmental agencies for the department.

(3) No person or organization shall operate a facility described in subsection (1) of this section without having a current, valid license issued by the department.

(4) Any person, including the Director of Human Services, may file a complaint with the department alleging that children attending a [*private school which provides boarding or residential programs*] **private residential boarding school described in subsection (1) of this section**, or that children within the control of any other organization [*which*] **that** provides boarding or residential programs, are not receiving shelter, food, guidance, training or education necessary to the health, safety, welfare or social growth of the children or necessary to serve the best interests of society.

(5) The department shall investigate complaints made under subsection (4) of this section and, if a reasonable basis for sustaining the complaint appears, shall set a hearing to examine publicly the complaint. The department shall conduct its investigation under the standards and authority provided under ORS 418.215 to 418.325. Except as provided in subsection (7) of this section, at least two weeks' written notice of the hearing and substance of the complaint and the evidence in support thereof shall be provided to the operator of the school or organization. The parents of the child or children involved shall be notified if such persons can be conveniently located. Notice shall be served personally on the operator of the school or organization, but may be served by mail at the last-known or determined address of the parent or other adult responsible for the child.

(6) The hearing shall comply with the provisions of ORS chapter 183 as to procedures, findings and orders. Where the evidence at the hearing justifies such an order, the department is authorized to order the [*private*] school or organization to correct the conditions not in conformity with standards. If corrections are not made within time limits set by the department, the department may

suspend or revoke the license or may refuse to renew the license and is empowered to make any other lawful orders necessary to the protection of the child or children involved.

(7) Where a condition exists that immediately endangers the health or safety of a child, the Director of Human Services may issue an interim order without any notice, or with such notice as is practical under the circumstances, requiring the school or organization to alter the conditions under which the child lives or receives schooling. Such interim emergency order shall remain in force until a final order, after a hearing as provided in subsection (5) of this section, is entered.

(8) Any school or organization shall cooperate with the department in making any inspection or review or investigating any complaint made under this section.

(9) The Superintendent of Public Instruction shall cooperate with the department upon request by advising the department as to whether or not the educational program conducted at the school or organization meets minimum standards required of public educational institutions.

(10) Nothing in this section applies to public or private institutions of higher education, community colleges, common or union high school districts that provide board and room in lieu of transportation or any other child-caring program already subject to state licensing procedures by any agency of this state.

(11) Subject to ORS chapter 183, the department may adopt rules to implement this section.

(12) In addition to remedies otherwise provided under this section and under ORS [412.991 and] 418.990, the department may commence an action to enjoin operation of a [private school] **private residential boarding school described in subsection (1) of this section** or other organization offering residential programs for children:

(a) If the school or organization is being operated without a valid license issued under subsection (2) of this section; or

(b) If the [private] school or organization fails to correct the conditions not in conformity with standards, as set out in an order issued under subsection (6) of this section, within the time specified in the order.

SECTION 5. The amendments to ORS 418.205, 418.210, 418.325 and 418.327 by sections 1 to 4 of this 2011 Act apply to private residential boarding schools operating before, on or after the effective date of this 2011 Act.

Passed by House February 14, 2011

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Passed by Senate May 24, 2011

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2011

Approved:

.....M.,....., 2011

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2011

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Kate Brown, Secretary of State