

House Bill 2764

Sponsored by Representative THATCHER (Pre-session 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 **as introduced**.

Requires school district to have policy that requires expulsion from school of student who is required to report as sex offender. Allows other school districts to deny admission to student.

Declares emergency, effective July 1, 2011.

A BILL FOR AN ACT

1
2 Relating to expulsion from school; amending ORS 336.665, 338.115, 339.115, 339.250 and 339.252; and
3 declaring an emergency.

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

5 **SECTION 1.** ORS 339.250 is amended to read:

6 339.250. (1) Public school students shall comply with rules for the government of such schools,
7 pursue the prescribed course of study, use the prescribed textbooks and submit to the teachers' au-
8 thority.

9 (2) Pursuant to the written policies of a district school board, an individual who is a teacher,
10 administrator, school employee or school volunteer may use reasonable physical force upon a stu-
11 dent when and to the extent the individual reasonably believes it necessary to maintain order in the
12 school or classroom or at a school activity or event, whether or not it is held on school property.
13 The district school board shall adopt written policies to implement this subsection and shall inform
14 such individuals of the existence and content of these policies.

15 (3) The district school board may authorize the discipline, suspension or expulsion of any
16 refractory student and may suspend or expel any student who assaults or menaces a school em-
17 ployee or another student. The age of a student and the past pattern of behavior of a student shall
18 be considered prior to a suspension or expulsion of a student. As used in this subsection "menace"
19 means by word or conduct the student intentionally attempts to place a school employee or another
20 student in fear of imminent serious physical injury.

21 (4)(a) Willful disobedience, willful damage or injury to school property, use of threats, intim-
22 idation, harassment or coercion against any fellow student or school employee, open defiance of a
23 teacher's authority or use or display of profane or obscene language is sufficient cause for discipline,
24 suspension or expulsion from school.

25 (b) District school boards shall develop policies on managing students who threaten violence or
26 harm in public schools. The policies adopted by a school district shall include staff reporting meth-
27 ods and shall require an administrator to consider:

28 (A) Immediately removing from the classroom setting any student who has threatened to injure
29 another person or to severely damage school property.

30 (B) Placing the student in a setting where the behavior will receive immediate attention, in-
31 cluding, but not limited to, the office of the school principal, vice principal, assistant principal 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 counselor or a school psychologist licensed by the Teacher Standards and Practices Commission or
 2 the office of any licensed mental health professional.

3 (C) Requiring the student to be evaluated by a licensed mental health professional before al-
 4 lowing the student to return to the classroom setting.

5 (c) The administrator shall notify the parent or legal guardian of the student's behavior and the
 6 school's response.

7 (d) District school boards may enter into contracts with licensed mental health professionals to
 8 perform the evaluations required under paragraph (b) of this subsection.

9 (e) District school boards shall allocate any funds necessary for school districts to implement
 10 the policies adopted under paragraph (b) of this subsection.

11 (5) Expulsion of a student shall not extend beyond one calendar year and suspension shall not
 12 extend beyond 10 school days.

13 (6)(a) Notwithstanding subsection (5) of this section, a school district shall have a policy that
 14 requires the expulsion from school for a period of not less than one year of any student who is de-
 15 termined to have:

16 (A) Brought a weapon to a school, to school property under the jurisdiction of the district or
 17 to an activity under the jurisdiction of the school district;

18 (B) Possessed, concealed or used a weapon in a school or on school property or at an activity
 19 under the jurisdiction of the district; or

20 (C) Brought to or possessed, concealed or used a weapon at an interscholastic activity admin-
 21 istered by a voluntary organization approved by the State Board of Education under ORS 339.430.

22 (b) The policy shall allow an exception for courses, programs and activities approved by the
 23 school district that are conducted on school property, including but not limited to hunter safety
 24 courses, Reserve Officer Training Corps programs, weapons-related sports or weapons-related voca-
 25 tional courses. In addition, the State Board of Education may adopt by rule additional exceptions
 26 to be included in school district policies.

27 (c) The policy shall allow a superintendent to modify the expulsion requirement *[for a student]*
 28 **under this subsection** on a case-by-case basis.

29 (d) The policy shall require a referral to the appropriate law enforcement agency of any student
 30 who is expelled under this subsection.

31 (e) For purposes of this subsection, "weapon" includes a:

32 (A) "Firearm" as defined in 18 U.S.C. 921;

33 (B) "Dangerous weapon" as defined in ORS 161.015; or

34 (C) "Deadly weapon" as defined in ORS 161.015.

35 (7) The Department of Education shall collect data on any expulsions required pursuant to
 36 subsection (6) of this section including:

37 (a) The name of each school;

38 (b) The number of students expelled from each school; and

39 (c) The types of weapons involved.

40 **(8) Notwithstanding subsection (5) of this section, a school district shall have a policy**
 41 **that requires the expulsion from school of any student who is required to report as a sex**
 42 **offender under ORS 181.595, 181.596 or 181.597. This subsection does not apply to a virtual**
 43 **public charter school as defined in ORS 338.005.**

44 *[(8)]* (9) Notwithstanding ORS 336.010, a school district may require a student to attend school
 45 during nonschool hours as an alternative to suspension.

1 [(9)] (10) Unless a student is under expulsion for an offense that constitutes a violation of a
 2 school district policy adopted pursuant to subsection (6) of this section, a school district board shall
 3 consider and propose to the student prior to expulsion or leaving school, and document to the par-
 4 ent, legal guardian or person in parental relationship, alternative programs of instruction or in-
 5 struction combined with counseling for the student that are appropriate and accessible to the
 6 student in the following circumstances:

7 (a) When a student is expelled pursuant to subsection (4) **or** (8) of this section;

8 (b) Following a second or subsequent occurrence within any three-year period of a severe dis-
 9 ciplinary problem with a student;

10 (c) When it has been determined that a student’s attendance pattern is so erratic that the stu-
 11 dent is not benefiting from the educational program; or

12 (d) When a parent or legal guardian applies for a student’s exemption from compulsory attend-
 13 ance on a semiannual basis as provided in ORS 339.030 (2).

14 [(10)] (11) A school district board may consider and propose to a student who is under expulsion
 15 or to a student prior to expulsion for an offense that constitutes a violation of a school district
 16 policy adopted pursuant to subsection (6) of this section, and document to the parent, legal guardian
 17 or person in parental relationship, alternative programs of instruction or instruction combined with
 18 counseling for the student that are appropriate and accessible to the student.

19 [(11)] (12) Information on alternative programs provided under subsections [(9) and (10)] (10) **and**
 20 (11) of this section shall be in writing. The information need not be given to the student and the
 21 parent, guardian or person in parental relationship more often than once every six months unless
 22 the information has changed because of the availability of new programs.

23 [(12)(a)] (13)(a) The authority to discipline a student does not authorize the infliction of corporal
 24 punishment. Every resolution, bylaw, rule, ordinance or other act of a district school board, a public
 25 charter school or the Department of Education that permits or authorizes the infliction of corporal
 26 punishment upon a student is void and unenforceable.

27 (b) As used in this subsection, “corporal punishment” means the willful infliction of, or willfully
 28 causing the infliction of, physical pain on a student.

29 (c) As used in this subsection, “corporal punishment” does not mean:

30 (A) The use of physical force authorized by ORS 161.205 for the reasons specified therein; or

31 (B) Physical pain or discomfort resulting from or caused by participation in athletic competition
 32 or other such recreational activity, voluntarily engaged in by a student.

33 **SECTION 2.** ORS 339.115 is amended to read:

34 339.115. (1) Except as provided in ORS 339.141, authorizing tuition for courses not part of the
 35 regular school program, the district school board shall admit free of charge to the schools of the
 36 district all persons between the ages of 5 and 19 who reside within the school district. A person
 37 whose 19th birthday occurs during the school year shall continue to be eligible for a free and ap-
 38 propriate public education for the remainder of the school year. A district school board may admit
 39 nonresident persons, determine who is not a resident of the district and fix rates of tuition for
 40 nonresidents.

41 (2)(a) A district must admit an otherwise eligible person who has not yet attained 21 years of
 42 age prior to the beginning of the current school year if the person is:

43 (A) Receiving special education and has not yet received a high school diploma as described in
 44 ORS 329.451 (2); or

45 (B) Receiving special education and has received a modified diploma, an extended diploma or

1 an alternative certificate as described in ORS 329.451.

2 (b) A district may admit an otherwise eligible person who is not receiving special education and
 3 who has not yet attained 21 years of age prior to the beginning of the current school year if the
 4 person is shown to be in need of additional education in order to receive a high school diploma.

5 (3) The obligation to make a free appropriate public education available to individuals with
 6 disabilities 18 through 21 years of age who are incarcerated in an adult correctional facility applies
 7 only to those individuals who, in their last educational placement prior to their incarceration in the
 8 adult correctional facility:

9 (a) Were identified as being a child with a disability as defined in ORS 343.035; or

10 (b) Had an individualized education program as described in ORS 343.151.

11 (4) For purposes of subsection (3) of this section, “adult correctional facility” means:

12 (a) A local correctional facility as defined in ORS 169.005;

13 (b) A regional correctional facility as defined in ORS 169.620; or

14 (c) A Department of Corrections institution as defined in ORS 421.005.

15 (5) An otherwise eligible person under subsection (2) of this section whose 21st birthday occurs
 16 during the school year shall continue to be eligible for a free appropriate public education for the
 17 remainder of the school year.

18 (6) The person may apply to the board of directors of the school district of residence for ad-
 19 mission after the 19th birthday as provided in subsection (1) of this section. A person aggrieved by
 20 a decision of the local board may appeal to the State Board of Education. The decision of the state
 21 board is final and not subject to appeal.

22 (7) Notwithstanding ORS 339.133 (1), a school district shall not exclude from admission a child
 23 located in the district solely because the child does not have a fixed place of residence or solely
 24 because the child is not under the supervision of a parent, guardian or person in a parental re-
 25 lationship.

26 (8)(a) Notwithstanding subsection (1) of this section, a school district:

27 [(a)] (A) May for the remaining period of an expulsion deny admission to the regular school to
 28 a resident student who is expelled from another school district; and

29 [(b)] (B) Shall for at least one calendar year from the date of the expulsion and, if the expulsion
 30 is for more than one calendar year, may for the remaining period of time deny admission to the
 31 regular school program to a student who is under expulsion from another school district for [*an of-*
 32 *fense that constitutes*] a violation of a school district policy adopted pursuant to ORS 339.250 (6) **or**
 33 **(8).**

34 **(b) For the purposes of ORS 339.250 (8), paragraph (a)(B) of this subsection does not apply**
 35 **to a virtual public charter school as defined in ORS 338.005.**

36 (9) A child entering the first grade during the fall term shall be considered to be six years of
 37 age if the sixth birthday of the child occurs on or before September 1. A child entering kindergarten
 38 during the fall term shall be considered to be five years of age if the fifth birthday of the child oc-
 39 curs on or before September 1. However, nothing in this section prevents a district school board
 40 from admitting free of charge a child whose needs for cognitive, social and physical development
 41 would best be met in the school program, as defined by policies of the district school board, to enter
 42 school even though the child has not attained the minimum age requirement but is a resident of the
 43 district.

44 **SECTION 3.** ORS 336.665 is amended to read:

45 336.665. (1) The Superintendent of Public Instruction shall find a school district to be deficient

1 within the meaning of ORS 327.103 if the district fails to cause the proposal of alternative programs
 2 to be made under ORS 339.250 [(9) or (10)] **(10) or (11)**.

3 (2) The failure to cause the proposal of alternative programs shall not be grounds for a civil
 4 action against the school district.

5 **SECTION 4.** ORS 338.115, as amended by section 2, chapter 53, Oregon Laws 2010, is amended
 6 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, 326.603, 326.607, 342.223 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, 659.855 and 659.860 (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 (2);
- 23 (m) ORS 329.045 (academic content standards and instruction);
- 24 (n) Any statute or rule that establishes requirements for instructional time provided by a school
 25 during each day or during a year;
- 26 (o) ORS 339.250 [(12)] **(13)** (prohibition on infliction of corporal punishment);
- 27 (p) ORS 339.370, 339.372, 339.388 and 339.400 (reporting of child abuse and training on pre-
 28 vention and identification of child abuse);
- 29 (q) ORS 329.451 (high school diploma, modified diploma, extended diploma and alternative cer-
 30 tificate);
- 31 (r) ORS chapter 657 (Employment Department Law);
- 32 (s) ORS 339.326;
- 33 (t) Section 1, chapter 53, Oregon Laws 2010 (consideration for educational services); and
- 34 (u) This chapter.

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

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

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

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

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

45 (7) The sponsor, members of the governing board of the sponsor acting in their official capacities

1 and employees of a sponsor acting in their official capacities are immune from civil liability with
 2 respect to all activities related to a public charter school within the scope of their duties or em-
 3 ployment.

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

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

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

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

15 (12) A high school diploma, a modified diploma, an extended diploma or an alternative certificate
 16 issued by a public charter school grants to the holder the same rights and privileges as a high
 17 school diploma, a modified diploma, an extended diploma or an alternative certificate issued by a
 18 nonchartered public school.

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

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

24 **SECTION 5.** ORS 338.115, as amended by section 7, chapter 839, Oregon Laws 2007, section 12,
 25 chapter 50, Oregon Laws 2008, section 4, chapter 618, Oregon Laws 2009, and section 3, chapter 53,
 26 Oregon Laws 2010, is amended to read:

27 338.115. (1) Statutes and rules that apply to school district boards, school districts or other
 28 public schools do not apply to public charter schools. However, the following laws do apply to public
 29 charter schools:

- 30 (a) Federal law;
- 31 (b) ORS 192.410 to 192.505 (public records law);
- 32 (c) ORS 192.610 to 192.690 (public meetings law);
- 33 (d) ORS 297.405 to 297.555 and 297.990 (Municipal Audit Law);
- 34 (e) ORS 181.534, 326.603, 326.607, 342.223 and 342.232 (criminal records checks);
- 35 (f) ORS 337.150 (textbooks);
- 36 (g) ORS 339.141, 339.147 and 339.155 (tuition and fees);
- 37 (h) ORS 659.850, 659.855 and 659.860 (discrimination);
- 38 (i) ORS 30.260 to 30.300 (tort claims);
- 39 (j) Health and safety statutes and rules;
- 40 (k) Any statute or rule that is listed in the charter;
- 41 (L) The statewide assessment system developed by the Department of Education for mathemat-
 42 ics, science and English under ORS 329.485 (2);
- 43 (m) ORS 329.045 (academic content standards and instruction);
- 44 (n) ORS 329.496 (physical education);
- 45 (o) Any statute or rule that establishes requirements for instructional time provided by a school

1 during each day or during a year;

2 (p) ORS 339.250 [(12)] (13) (prohibition on infliction of corporal punishment);

3 (q) ORS 339.370, 339.372, 339.388 and 339.400 (reporting of child abuse and training on pre-
4 vention and identification of child abuse);

5 (r) ORS 329.451 (high school diploma, modified diploma, extended diploma and alternative cer-
6 tificate);

7 (s) ORS chapter 657 (Employment Department Law);

8 (t) ORS 339.326;

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

10 (v) This chapter.

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

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

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

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

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

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

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

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

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

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

36 (12) A high school diploma, a modified diploma, an extended diploma or an alternative certificate
37 issued by a public charter school grants to the holder the same rights and privileges as a high
38 school diploma, a modified diploma, an extended diploma or an alternative certificate issued by a
39 nonchartered public school.

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

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

45 **SECTION 6.** ORS 339.252 is amended to read:

1 339.252. (1) As used in this section, “child with a disability” has the meaning given that term
2 in ORS 343.035.

3 (2) A child with a disability continues to be entitled to a free appropriate public education if the
4 child has been removed for disciplinary reasons from the child’s current educational placement for
5 more than 10 school days in a school year.

6 (3) A disciplinary removal is considered a change in educational placement and the school dis-
7 trict shall follow special education due process procedures under ORS 343.155 (5) if:

8 (a) The removal is for more than 10 consecutive school days; or

9 (b) The child is removed for more than 10 cumulative school days in a school year, and those
10 removals constitute a pattern based on the length and total time of removals and the proximity of
11 the removals to one another.

12 (4) A child with a disability shall not be removed for disciplinary reasons under subsection (3)
13 of this section for misconduct that is a manifestation of the child’s disability, except as provided
14 under ORS 343.177.

15 (5) Notwithstanding ORS 339.250 [(9) and (10)] **(10) and (11)**, a school district shall provide a
16 free appropriate public education in an alternative setting to a child with a disability even if the
17 basis for expulsion was a weapon violation pursuant to ORS 339.250 (6).

18 (6) School personnel may consider any unique circumstances on a case-by-case basis when de-
19 termining whether to order a change in placement for a child with a disability who violates a code
20 of student conduct.

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