

D R A F T

SUMMARY

Allows private school to discipline or terminate school employee according to standards and policies of private school. Requires private school to comply with specified reporting requirements.

Declares emergency, effective July 1, 2013.

A BILL FOR AN ACT

1
2 Relating to private school procedures related to employee conduct; amending
3 ORS 339.372, 339.374, 339.378 and 339.388; and declaring an emergency.

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

5 **SECTION 1.** ORS 339.388, as amended by section 4, chapter 92, Oregon
6 Laws 2012, is amended to read:

7 339.388. (1)(a) A school employee having reasonable cause to believe that
8 a child with whom the employee comes in contact has suffered abuse by an-
9 other school employee or by a student, or that another school employee or
10 a student with whom the employee comes in contact has abused a child, shall
11 immediately report the information to:

12 (A) The person designated in the policy adopted under ORS 339.372; and

13 (B) A law enforcement agency, the Department of Human Services or a
14 designee of the department as required by ORS 419B.010 and 419B.015.

15 (b) A school employee having reasonable cause to believe that a student
16 with whom the employee comes in contact has been subjected to sexual
17 conduct by another school employee, or that another school employee with
18 whom the employee comes in contact has engaged in sexual conduct, shall
19 immediately report the information to the person designated in the policy
20 adopted under ORS 339.372.

1 (2) A person who receives a report under subsection (1) of this section
2 shall follow the procedures required by the policy adopted by the school
3 board under ORS 339.372.

4 (3)(a) Except as provided in subsection (4) of this section, when an edu-
5 cation provider receives a report of suspected abuse or sexual conduct by one
6 of its employees, and the education provider's designee determines that there
7 is reasonable cause to support the report, the education provider:

8 (A) In the case of suspected abuse, shall place the school employee on
9 paid administrative leave; or

10 (B) In the case of suspected sexual conduct, may place the school em-
11 ployee on paid administrative leave or in a position that does not involve
12 direct, unsupervised contact with children.

13 (b) A school employee who is placed on paid administrative leave under
14 paragraph (a)(A) of this subsection shall remain on administrative leave un-
15 til:

16 (A) The Department of Human Services or a law enforcement agency de-
17 termines that the report cannot be substantiated or that the report will not
18 be pursued; or

19 (B) The Department of Human Services or a law enforcement agency de-
20 termines that the report is substantiated and the education provider takes
21 the appropriate disciplinary action against the school employee.

22 (4) An education provider may reinstate a school employee placed on paid
23 administrative leave for suspected abuse as provided under subsection (3) of
24 this section or may take the appropriate disciplinary action against the em-
25 ployee if the Department of Human Services or a law enforcement agency is
26 unable to determine, based on a report of suspected abuse, whether abuse
27 occurred.

28 (5) If, following an investigation, an education provider determines that
29 a report of suspected abuse or sexual conduct by a school employee is a
30 substantiated report, the education provider shall:

31 (a) Inform the school employee that the education provider has deter-

1 mined that the report has been substantiated.

2 (b) Provide the school employee with information about the appropriate
3 appeal process for the determination made by the education provider. The
4 appeal process may be the process provided by a collective bargaining
5 agreement or a process administered by a neutral third party and paid for
6 by the school district.

7 (c) Following notice of a school employee's decision not to appeal the
8 determination or following the determination of an appeal that sustained the
9 substantiated report, create a record of the substantiated report and place
10 the record in the personnel file of the school employee. Records created
11 pursuant to this paragraph are confidential and are not public records as
12 defined in ORS 192.410. An education provider may use the record as a basis
13 for providing the information required to be disclosed under ORS 339.378.

14 (d) Inform the school employee that information about substantiated re-
15 ports may be disclosed to a potential employer as provided by subsection
16 [(7)] (8) of this section and ORS 339.378.

17 **(6)(a) Notwithstanding the requirements of subsections (3), (4) and**
18 **(5) of this section, an education provider that is a private school may**
19 **discipline or terminate a school employee according to:**

20 **(A) The provisions of subsections (3), (4) and (5) of this section; or**

21 **(B) The standards and policies of the private school.**

22 **(b) A private school that chooses to discipline or terminate a school**
23 **employee according to the standards and policies of the school must**
24 **provide:**

25 **(A) The information required to be disclosed under ORS 339.378; or**

26 **(B) Other information sufficient to give notice to an education**
27 **provider that an applicant engaged in child abuse or sexual conduct**
28 **during the course of the applicant's employment with the private**
29 **school.**

30 [(6)] (7) Upon request from a law enforcement agency, the Department of
31 Human Services or the Teacher Standards and Practices Commission, a

1 school district shall provide the records of investigations of suspected abuse
2 by a school employee or former school employee.

3 [(7)(a)] **(8)(a)** The disciplinary records of a school employee or former
4 school employee convicted of a crime listed in ORS 342.143 are not exempt
5 from disclosure under ORS 192.501 or 192.502.

6 (b) If a school employee is convicted of a crime listed in ORS 342.143, the
7 education provider that is the employer of the employee shall disclose the
8 disciplinary records of the employee to any person upon request.

9 (c) If a former school employee is convicted of a crime listed in ORS
10 342.143, the education provider that was the employer of the former employee
11 when the crime was committed shall disclose the disciplinary records of the
12 former employee to any person upon request.

13 [(8)] **(9)** Prior to disclosure of a disciplinary record under subsection
14 [(7)] **(8)** of this section, an education provider shall remove any personally
15 identifiable information from the record that would disclose the identity of
16 a child, a crime victim or a school employee or former school employee who
17 is not the subject of the disciplinary record.

18 **SECTION 2.** ORS 339.372, as amended by section 3, chapter 92, Oregon
19 Laws 2012, is amended to read:

20 339.372. Each school board shall adopt policies on the reporting of abuse
21 and sexual conduct by school employees and the reporting of abuse by stu-
22 dents. The policies shall:

23 (1) Specify that abuse and sexual conduct by school employees and abuse
24 by students are not tolerated;

25 (2) Specify that all school employees and students are subject to the pol-
26 icies;

27 (3) Require all school employees who have reasonable cause to believe
28 that another school employee has engaged in abuse or sexual conduct or that
29 a student has engaged in abuse to:

30 (a) Report suspected abuse to a law enforcement agency, the Department
31 of Human Services or a designee of the department as required by ORS

1 419B.010 and 419B.015; and

2 (b) Report suspected abuse or sexual conduct to the person designated as
3 provided by subsection (4) of this section;

4 (4) Designate a person, and an alternate in the event the designated per-
5 son is the suspected abuser, to receive reports of suspected abuse or sexual
6 conduct by school employees or suspected abuse by students and specify the
7 procedures to be followed by that person upon receipt of a report;

8 (5) Require the posting in each school building of the name and contact
9 information for the person designated for the school building to receive re-
10 ports of suspected abuse or sexual conduct by school employees or suspected
11 abuse by students and the procedures the person will follow upon receipt of
12 a report;

13 (6) Specify that the initiation of a report in good faith about suspected
14 abuse or sexual conduct may not adversely affect any terms or conditions
15 of employment or the work environment of the complainant;

16 (7) Specify that the school board or any school employee will not disci-
17 pline a student for the initiation of a report in good faith about suspected
18 abuse or sexual conduct by a school employee or suspected abuse by a stu-
19 dent;

20 (8) Require notification by the education provider to the person who ini-
21 tiated the report about actions taken by the education provider based on the
22 report; and

23 (9) Require the education provider to furnish to a school employee at the
24 time of hire the following:

25 (a) A description of conduct that may constitute abuse or sexual conduct;
26 and

27 (b) A description of the information and records that will be disclosed as
28 provided by ORS 339.378 or 339.388 [(7)] (8) if a report of suspected abuse or
29 sexual conduct is substantiated.

30 **SECTION 3.** ORS 339.374, as amended by section 5, chapter 92, Oregon
31 Laws 2012, is amended to read:

1 339.374. Except as provided in ORS 339.384, before an education provider
2 may hire an applicant for a position with the education provider, the edu-
3 cation provider shall:

4 (1) Require the applicant to provide:

5 (a) A list of the applicant's current and former employers who are edu-
6 cation providers.

7 (b) A written authorization that authorizes the applicant's current and
8 former employers that are education providers to disclose the information
9 requested under subsection (2) of this section.

10 (c) A written statement of whether the applicant:

11 (A) Has been the subject of a substantiated report of abuse or sexual
12 conduct; or

13 (B) Is the subject of an ongoing investigation related to a report of sus-
14 pected abuse or sexual conduct.

15 (2) Conduct a review of the employment history of the applicant by con-
16 tacting the three most recent employers of the applicant who are education
17 providers and requesting:

18 (a) The following information:

19 (A) The dates of employment of the applicant by the education provider;

20 (B) Whether the applicant was the subject of any substantiated reports
21 of abuse or sexual conduct related to the applicant's employment with the
22 education provider;

23 (C) The dates of any substantiated reports;

24 (D) The definitions of abuse and sexual conduct used by the education
25 provider when the education provider determined that any reports were
26 substantiated; and

27 (E) The standards used by the education provider to determine whether
28 any reports were substantiated.

29 (b) Any disciplinary records required to be released as provided by ORS
30 339.388 [(7)] (8).

31 (3) For an applicant who is licensed, registered or certified with the

1 Teacher Standards and Practices Commission, access online information
2 provided by the commission to verify:

3 (a) That the applicant is licensed, registered or certified by the commis-
4 sion; and

5 (b) Whether the commission has provided any information relating to
6 conduct by the applicant that may constitute abuse or sexual conduct.

7 (4) Conduct a nationwide criminal records check if required by ORS
8 326.603.

9 **SECTION 4.** ORS 339.378, as amended by section 6, chapter 92, Oregon
10 Laws 2012, is amended to read:

11 339.378. (1) Not later than 20 days after receiving a request under ORS
12 339.374, an education provider that has or has had an employment relation-
13 ship with the applicant shall disclose the information requested and any
14 disciplinary records that must be disclosed as provided by ORS 339.388 [(7)]
15 (8).

16 (2) An education provider may disclose the information on a standardized
17 form and is not required to provide any additional information related to a
18 substantiated report of abuse or sexual conduct other than the information
19 that is required by ORS 339.374 (2).

20 (3) Information received under this section is confidential and is not a
21 public record as defined in ORS 192.410. An education provider may use the
22 information only for the purpose of evaluating an applicant's eligibility to
23 be hired.

24 **SECTION 5.** **This 2013 Act being necessary for the immediate pres-**
25 **ervation of the public peace, health and safety, an emergency is de-**
26 **clared to exist, and this 2013 Act takes effect July 1, 2013.**

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