

D R A F T

SUMMARY

Removes sunset on provisions related to use of restraint or seclusion on student in public education program.

Declares emergency, effective July 1, 2013.

A BILL FOR AN ACT

Relating to sunset for provisions related to safety in public education programs; amending ORS 161.205 and 339.250 and section 12, chapter 665, Oregon Laws 2011; repealing section 7, chapter 665, Oregon Laws 2011; and declaring an emergency.

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

SECTION 1. Section 7, chapter 665, Oregon Laws 2011, is repealed.

SECTION 2. Section 12, chapter 665, Oregon Laws 2011, is amended to read:

Sec. 12. (1) Sections 1 to 5 [*of this 2011 Act*], **chapter 665, Oregon Laws 2011**, and the amendments to ORS 161.205 and 339.250 by sections 8 and 10 [*of this 2011 Act*], **chapter 665, Oregon Laws 2011**, become operative on July 1, 2012.

(2) The amendments to ORS 161.205 and 339.250 by sections 9 and 11 [*of this 2011 Act*], **chapter 665, Oregon Laws 2011**, become operative on [*June 30, 2017*] **July 1, 2013.**

SECTION 3. ORS 339.250, as amended by section 9, chapter 665, Oregon Laws 2011, is amended to read:

339.250. (1) Public school students shall comply with rules for the government of such schools, pursue the prescribed course of study, use the pre-

1 scribed textbooks and submit to the teachers' authority.

2 (2) Pursuant to the written policies of a district school board, an indi-
3 vidual who is a teacher, administrator, school employee or school volunteer
4 may use reasonable physical force upon a student when and to the extent the
5 [*individual reasonably believes it necessary to maintain order in the school or*
6 *classroom or at a school activity or event, whether or not it is held on school*
7 *property*] **application of force is consistent with section 3, chapter 665,**
8 **Oregon Laws 2011.** The district school board shall adopt written policies to
9 implement this subsection and shall inform such individuals of the existence
10 and content of these policies.

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

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

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

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

30 (B) Placing the student in a setting where the behavior will receive im-
31 mediate attention, including, but not limited to, the office of the school

1 principal, vice principal, assistant principal or counselor or a school psy-
2 chologist licensed by the Teacher Standards and Practices Commission or the
3 office of any licensed mental health professional.

4 (C) Requiring the student to be evaluated by a licensed mental health
5 professional before allowing the student to return to the classroom setting.

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

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

11 (e) District school boards shall allocate any funds necessary for school
12 districts to implement the policies adopted under paragraph (b) of this sub-
13 section.

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

16 (6)(a) Notwithstanding subsection (5) of this section, a school district
17 shall have a policy that requires the expulsion from school for a period of
18 not less than one year of any student who is determined to have:

19 (A) Brought a weapon to a school, to school property under the jurisdic-
20 tion of the district or to an activity under the jurisdiction of the school
21 district;

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

24 (C) Brought to or possessed, concealed or used a weapon at an inter-
25 scholastic activity administered by a voluntary organization.

26 (b) The policy shall allow an exception for courses, programs and activ-
27 ities approved by the school district that are conducted on school property,
28 including but not limited to hunter safety courses, Reserve Officer Training
29 Corps programs, weapons-related sports or weapons-related vocational
30 courses. In addition, the State Board of Education may adopt by rule addi-
31 tional exceptions to be included in school district policies.

1 (c) The policy shall allow a superintendent to modify the expulsion re-
2 quirement for a student on a case-by-case basis.

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

5 (e) For purposes of this subsection, “weapon” includes a:

6 (A) “Firearm” as defined in 18 U.S.C. 921;

7 (B) “Dangerous weapon” as defined in ORS 161.015; or

8 (C) “Deadly weapon” as defined in ORS 161.015.

9 (7) The Department of Education shall collect data on any expulsions re-
10 quired pursuant to subsection (6) of this section including:

11 (a) The name of each school;

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

13 (c) The types of weapons involved.

14 (8) Notwithstanding ORS 336.010, a school district may require a student
15 to attend school during nonschool hours as an alternative to suspension.

16 (9) Unless a student is under expulsion for an offense that constitutes a
17 violation of a school district policy adopted pursuant to subsection (6) of this
18 section, a school district board shall consider and propose to the student
19 prior to expulsion or leaving school, and document to the parent, legal
20 guardian or person in parental relationship, alternative programs of in-
21 struction or instruction combined with counseling for the student that are
22 appropriate and accessible to the student in the following circumstances:

23 (a) When a student is expelled pursuant to subsection (4) of this section;

24 (b) Following a second or subsequent occurrence within any three-year
25 period of a severe disciplinary problem with a student;

26 (c) When it has been determined that a student’s attendance pattern is
27 so erratic that the student is not benefiting from the educational program;
28 or

29 (d) When a parent or legal guardian applies for a student’s exemption
30 from compulsory attendance on a semiannual basis as provided in ORS
31 339.030 (2).

1 (10) A school district board may consider and propose to a student who
2 is under expulsion or to a student prior to expulsion for an offense that
3 constitutes a violation of a school district policy adopted pursuant to sub-
4 section (6) of this section, and document to the parent, legal guardian or
5 person in parental relationship, alternative programs of instruction or in-
6 struction combined with counseling for the student that are appropriate and
7 accessible to the student.

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

13 (12)(a) The authority to discipline a student does not authorize the in-
14 fliction of corporal punishment. Every resolution, bylaw, rule, ordinance or
15 other act of a district school board, a public charter school or the Depart-
16 ment of Education that permits or authorizes the infliction of corporal pun-
17 ishment upon a student is void and unenforceable.

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

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

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

23 (B) Physical pain or discomfort resulting from or caused by participation
24 in athletic competition or other such recreational activity, voluntarily en-
25 gaged in by a student.

26 **SECTION 4.** ORS 161.205, as amended by section 11, chapter 665, Oregon
27 Laws 2011, is amended to read:

28 161.205. The use of physical force upon another person that would other-
29 wise constitute an offense is justifiable and not criminal under any of the
30 following circumstances:

31 (1)(a) A parent, guardian or other person entrusted with the care and

1 supervision of a minor or an incompetent person may use reasonable physical
2 force upon such minor or incompetent person when and to the extent the
3 person reasonably believes it necessary to maintain discipline or to promote
4 the welfare of the minor or incompetent person.

5 (b) *[A teacher]* **Personnel of a public education program, as that term**
6 **is defined in section 1, chapter 665, Oregon Laws 2011,** may use reason-
7 able physical force upon a student when and to the extent the *[teacher rea-*
8 *sonably believes it necessary to maintain order in the school or classroom or*
9 *at a school activity or event, whether or not it is held on school property]* **ap-**
10 **plication of force is consistent with section 3, chapter 665, Oregon**
11 **Laws 2011.**

12 (2) An authorized official of a jail, prison or correctional facility may use
13 physical force when and to the extent that the official reasonably believes
14 it necessary to maintain order and discipline or as is authorized by law.

15 (3) A person responsible for the maintenance of order in a common carrier
16 of passengers, or a person acting under the direction of the person, may use
17 physical force when and to the extent that the person reasonably believes it
18 necessary to maintain order, but the person may use deadly physical force
19 only when the person reasonably believes it necessary to prevent death or
20 serious physical injury.

21 (4) A person acting under a reasonable belief that another person is about
22 to commit suicide or to inflict serious physical self-injury may use physical
23 force upon that person to the extent that the person reasonably believes it
24 necessary to thwart the result.

25 (5) A person may use physical force upon another person in self-defense
26 or in defending a third person, in defending property, in making an arrest
27 or in preventing an escape, as hereafter prescribed in chapter 743, Oregon
28 Laws 1971.

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

