



STATE OF OREGON
Legislative Counsel Committee

April 9, 2013

To: Richard Donovan, Committee Administrator,
Senate Committee on Education and Workforce Development

From: Hannah Lai, Senior Deputy Legislative Counsel

Subject: Senate Bill 821 — Exemption for private schools

You asked if Senate Bill 821 requires higher standards for private schools and whether there is a guarantee that the practices of the private schools will remain more rigorous than existing law.

Senate Bill 821 amends ORS 339.388 to allow private schools to discipline or terminate a school employee who may have engaged in child abuse or sexual conduct. The exemption applies only to subsections (3), (4) and (5) of ORS 339.388. Subsection (3) relates to instances when an employee must be placed on paid administrative leave and the length of that paid administrative leave. Subsection (4) addresses when an employee may be removed from paid administrative leave if the outcome of an abuse investigation is indeterminate. Subsection (5) provides notification and appellate procedures for the school employee following an investigation.

Under subsection (6), a private school may discipline or terminate a school employee according to subsections (3), (4) and (5) or the standards and policies of the private school. The statute does not require higher standards for private schools, and a private school could implement more restrictive or more lenient standards than the statute requires; however, those standards may be implemented in only a narrow scope of activities. For example, more restrictive standards may require paid administrative leave in the case of suspected sexual conduct (the statute allows, but does not require, the education provider to place the school employee on paid administrative leave), while more lenient standards may allow a school employee to continue to work in all situations instead of being placed on paid administrative leave. Other standards may affect an employee's relation with the employer, such as a right to appeal an investigative finding. If you wish to require that only the strictest of standards be applied (whether those standards be the statute's standards or the school's standards), I could prepare amendments that specify that requirement.

Finally, under my initial review of the statute, I was concerned that some recordkeeping requirements imposed on public entities would not be imposed on private entities as a result of the exemption provided in subsection (6) to the requirements of subsection (5). Upon further review, however, I do not believe that is a problem. Between the requirements of subsection (6)(b) and the language of subsection (6)(a) that limits the exemption to discipline and termination, I believe that private schools would be subject to the same recordkeeping requirements as public schools.

I hope this helps. Please let me know if you have any other questions.