

# House Bill 2748

Sponsored by COMMITTEE ON EDUCATION

## 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**.

Prohibits district school board from charging tuition for nonresident students.  
Declares emergency, effective July 1, 2013.

## A BILL FOR AN ACT

1  
2 Relating to tuition for nonresident students; creating new provisions; amending ORS 327.006, 335.090,  
3 339.115 and 339.141; and declaring an emergency.

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

5 **SECTION 1.** ORS 339.115 is amended to read:

6 339.115. (1) Except as provided in ORS 339.141, authorizing tuition for courses not part of the  
7 regular school program, the district school board shall admit free of charge to the schools of the  
8 district all persons between the ages of 5 and 19 who reside within the school district. A person  
9 whose 19th birthday occurs during the school year shall continue to be eligible for a free and ap-  
10 propriate public education for the remainder of the school year. A district school board may admit  
11 nonresident persons[,] **and** determine who is not a resident of the district [*and fix rates of tuition for*  
12 *nonresidents*].

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

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

17 (B) Receiving special education and has received a modified diploma, an extended diploma or  
18 an alternative certificate as described in ORS 329.451.

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

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

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

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

28 (4) For purposes of subsection (3) of this section, "adult correctional facility" means:

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

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

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

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

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

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

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

13 (a) May for the remaining period of an expulsion deny admission to the regular school to a  
 14 resident student who is expelled from another school district; and

15 (b) Shall for at least one calendar year from the date of the expulsion and if the expulsion is for  
 16 more than one calendar year, may for the remaining period of time deny admission to the regular  
 17 school program to a student who is under expulsion from another school district for an offense that  
 18 constitutes a violation of a school district policy adopted pursuant to ORS 339.250 (6).

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

27 **SECTION 2.** ORS 327.006 is amended to read:

28 327.006. As used in ORS 327.006 to 327.133, 327.348 and 327.731:

29 (1) "Aggregate days membership" means the sum of days present and absent, according to the  
 30 rules of the State Board of Education, of all resident pupils when school is actually in session during  
 31 a certain period. The aggregate days membership of kindergarten pupils shall be calculated on the  
 32 basis of a half-day program.

33 (2)(a) "Approved transportation costs" means those costs as defined by rule of the State Board  
 34 of Education and is limited to those costs attributable to transporting or room and board provided  
 35 in lieu of transporting:

36 (A) Elementary school students who live at least one mile from school;

37 (B) Secondary school students who live at least 1.5 miles from school;

38 (C) Any student required to be transported for health or safety reasons, according to supple-  
 39 mental plans from districts that have been approved by the state board identifying students who are  
 40 required to be transported for health or safety reasons, including special education;

41 (D) Preschool children with disabilities requiring transportation for early intervention services  
 42 provided pursuant to ORS 343.224 and 343.533;

43 (E) Students who require payment of room and board in lieu of transportation;

44 (F) A student transported from one school or facility to another school or facility when the  
 45 student attends both schools or facilities during the day or week; and

1 (G) Students participating in school-sponsored field trips that are extensions of classroom  
2 learning experiences.

3 (b) “Approved transportation costs” does not include the cost of constructing boarding school  
4 facilities.

5 (3) “Average daily membership” or “ADM” means the aggregate days membership of a school  
6 during a certain period divided by the number of days the school was actually in session during the  
7 same period. However, if a district school board adopts a class schedule that operates throughout  
8 the year for all or any schools in the district, average daily membership shall be computed by the  
9 Department of Education so that the resulting average daily membership will not be higher or lower  
10 than if the board had not adopted such schedule.

11 (4) “Consumer Price Index” means the Consumer Price Index for All Urban Consumers of the  
12 Portland, Oregon, Metropolitan Statistical Area, as compiled by the United States Department of  
13 Labor, Bureau of Labor Statistics.

14 (5) “Kindergarten” means a kindergarten program that conforms to the standards and rules  
15 adopted by the State Board of Education.

16 (6) “Net operating expenditures” means the sum of expenditures of a school district in  
17 kindergarten through grade 12 for administration, instruction, attendance and health services, op-  
18 eration of plant, maintenance of plant[,] **and** fixed charges [*and tuition for resident students attending*  
19 *in another district*], as determined in accordance with the rules of the State Board of Education, but  
20 net operating expenditures does not include transportation, food service, student body activities,  
21 community services, capital outlay, debt service or expenses incurred for nonresident students.

22 (7)(a) “Resident pupil” means any pupil:

23 (A) Whose legal school residence is within the boundaries of a school district reporting the pu-  
24 pil, if the district is legally responsible for the education of the pupil, except that “resident pupil”  
25 does not include a pupil [*who pays tuition or for whom the parent pays tuition or*] for whom the dis-  
26 trict does not pay tuition for placement outside the district; or

27 (B) Whose legal residence is not within the boundaries of the district reporting the pupil but  
28 who attends school in the district with the written consent of the district school board where the  
29 school is located as provided by ORS 339.133 (5).

30 (b) A pupil is not considered to be a resident pupil under paragraph (a)(A) of this subsection if  
31 the pupil is attending school in another school district pursuant to a contract under ORS 339.125  
32 and in the prior year was considered to be a resident pupil in another school district under para-  
33 graph (a)(B) of this subsection. The pupil shall continue to be considered a resident of another  
34 school district under paragraph (a)(B) of this subsection.

35 (c) A pupil is not considered to be a resident pupil under paragraph (a)(B) of this subsection if  
36 the pupil is attending school in a school district pursuant to ORS 339.133 (5) and in the prior year  
37 was considered to be a resident pupil under paragraph (a)(A) of this subsection because the pupil  
38 was attending school in another school district pursuant to a contract under ORS 339.125. The pupil  
39 shall continue to be considered a resident pupil under paragraph (a)(A) of this subsection.

40 (d) “Resident pupil” includes a pupil admitted to a school district under ORS 339.115 (7).

41 (8) “Standard school” means a school meeting the standards set by the rules of the State Board  
42 of Education.

43 (9) “Tax” and “taxes” includes all taxes on property, excluding exempt bonded indebtedness, as  
44 those terms are defined in ORS 310.140.

45 **SECTION 3.** ORS 327.006, as amended by section 7, chapter 704, Oregon Laws 2011, is amended

1 to read:

2 327.006. As used in ORS 327.006 to 327.133, 327.348 and 327.731:

3 (1) "Aggregate days membership" means the sum of days present and absent, according to the  
 4 rules of the State Board of Education, of all resident pupils when school is actually in session during  
 5 a certain period. The aggregate days membership of kindergarten pupils shall be calculated on the  
 6 basis of a half-day program for half-day kindergarten and on the basis of a full-day program for  
 7 full-day kindergarten.

8 (2)(a) "Approved transportation costs" means those costs as defined by rule of the State Board  
 9 of Education and is limited to those costs attributable to transporting or room and board provided  
 10 in lieu of transporting:

11 (A) Elementary school students who live at least one mile from school;

12 (B) Secondary school students who live at least 1.5 miles from school;

13 (C) Any student required to be transported for health or safety reasons, according to supple-  
 14 mental plans from districts that have been approved by the state board identifying students who are  
 15 required to be transported for health or safety reasons, including special education;

16 (D) Preschool children with disabilities requiring transportation for early intervention services  
 17 provided pursuant to ORS 343.224 and 343.533;

18 (E) Students who require payment of room and board in lieu of transportation;

19 (F) A student transported from one school or facility to another school or facility when the  
 20 student attends both schools or facilities during the day or week; and

21 (G) Students participating in school-sponsored field trips that are extensions of classroom  
 22 learning experiences.

23 (b) "Approved transportation costs" does not include the cost of constructing boarding school  
 24 facilities.

25 (3) "Average daily membership" or "ADM" means the aggregate days membership of a school  
 26 during a certain period divided by the number of days the school was actually in session during the  
 27 same period. However, if a district school board adopts a class schedule that operates throughout  
 28 the year for all or any schools in the district, average daily membership shall be computed by the  
 29 Department of Education so that the resulting average daily membership will not be higher or lower  
 30 than if the board had not adopted such schedule.

31 (4) "Consumer Price Index" means the Consumer Price Index for All Urban Consumers of the  
 32 Portland, Oregon, Metropolitan Statistical Area, as compiled by the United States Department of  
 33 Labor, Bureau of Labor Statistics.

34 (5) "Kindergarten" means a kindergarten program that conforms to the standards and rules  
 35 adopted by the State Board of Education.

36 (6) "Net operating expenditures" means the sum of expenditures of a school district in  
 37 kindergarten through grade 12 for administration, instruction, attendance and health services, op-  
 38 eration of plant, maintenance of plant[,] **and** fixed charges [*and tuition for resident students attending*  
 39 *in another district*], as determined in accordance with the rules of the State Board of Education, but  
 40 net operating expenditures does not include transportation, food service, student body activities,  
 41 community services, capital outlay, debt service or expenses incurred for nonresident students.

42 (7)(a) "Resident pupil" means any pupil:

43 (A) Whose legal school residence is within the boundaries of a school district reporting the pu-  
 44 pil, if the district is legally responsible for the education of the pupil, except that "resident pupil"  
 45 does not include a pupil [*who pays tuition or for whom the parent pays tuition or*] for whom the dis-

1 trict does not pay tuition for placement outside the district; or

2 (B) Whose legal residence is not within the boundaries of the district reporting the pupil but  
 3 who attends school in the district with the written consent of the district school board where the  
 4 school is located as provided by ORS 339.133 (5).

5 (b) A pupil is not considered to be a resident pupil under paragraph (a)(A) of this subsection if  
 6 the pupil is attending school in another school district pursuant to a contract under ORS 339.125  
 7 and in the prior year was considered to be a resident pupil in another school district under para-  
 8 graph (a)(B) of this subsection. The pupil shall continue to be considered a resident of another  
 9 school district under paragraph (a)(B) of this subsection.

10 (c) A pupil is not considered to be a resident pupil under paragraph (a)(B) of this subsection if  
 11 the pupil is attending school in a school district pursuant to ORS 339.133 (5) and in the prior year  
 12 was considered to be a resident pupil under paragraph (a)(A) of this subsection because the pupil  
 13 was attending school in another school district pursuant to a contract under ORS 339.125. The pupil  
 14 shall continue to be considered a resident pupil under paragraph (a)(A) of this subsection.

15 (d) "Resident pupil" includes a pupil admitted to a school district under ORS 339.115 (7).

16 (8) "Standard school" means a school meeting the standards set by the rules of the State Board  
 17 of Education.

18 (9) "Tax" and "taxes" includes all taxes on property, excluding exempt bonded indebtedness, as  
 19 those terms are defined in ORS 310.140.

20 **SECTION 4.** ORS 335.090 is amended to read:

21 335.090. (1) The high school education of all children of school age resident within a school  
 22 district that does not operate a high school or that is not a component part of a union high school  
 23 district shall be the responsibility of the district.

24 (2) The district shall pay the tuition of all pupils resident within the district who are qualified  
 25 to attend and are attending a standard public high school *[either within or]* outside the state.

26 (3) The district shall provide for transportation to the nearest standard public high school which  
 27 pupils may attend. Reasonable board and room may be furnished instead of transportation if desired.  
 28 If the district arranges for the attendance of pupils at a standard public high school other than the  
 29 nearest one pupils may attend, then the district shall provide for transportation to the standard  
 30 public high school which the pupils are attending.

31 (4) The estimated cost of tuition and transportation or board and room instead of transportation  
 32 shall be included in and be a part of the budget and shall be levied as provided in ORS 335.095.

33 **SECTION 5.** ORS 339.141 is amended to read:

34 339.141. (1) For the purposes of this section:

35 (a) "Public charter school" has the meaning given that term in ORS 338.005.

36 (b) "Regular school program" means the regular curriculum provided in the required full-time  
 37 day sessions in the schools of the district, including public charter schools, for grades 1 through 12  
 38 and the school program for kindergarten during the period of approximately nine months each year  
 39 when the schools of the district or public charter schools are normally in operation and does not  
 40 include summer sessions or evening sessions.

41 (c) "Tuition" means payment for the cost of instruction and does not include fees authorized  
 42 under ORS 339.155.

43 (2) Except as provided in subsection (3) of this section, district school boards and public charter  
 44 schools may establish tuition rates to be paid by pupils receiving instruction in educational pro-  
 45 grams, classes or courses of study, including traffic safety education, which are not a part of the

1 regular school program. Tuition charges, if made, shall not exceed the estimated cost to the district  
2 or public charter school of furnishing the program, class or course of study.

3 (3) Except as provided in ORS 336.805 for traffic safety education:

4 (a) No tuition shall be charged to any [*resident*] pupil regularly enrolled in the regular school  
5 program for special instruction received at any time in connection therewith.

6 (b) No program, class or course of study for which tuition is charged, except courses of study  
7 beyond the 12th grade, shall be eligible for reimbursement from state funds.

8 **SECTION 6.** ORS 339.141, as amended by section 5, chapter 704, Oregon Laws 2011, is amended  
9 to read:

10 339.141. (1) For the purposes of this section:

11 (a) "Public charter school" has the meaning given that term in ORS 338.005.

12 (b) "Regular school program" means the regular curriculum that is provided in the schools of  
13 the school district, including public charter schools, and that is provided:

14 (A) As required full-day sessions in grades 1 through 12;

15 (B) As required half-day sessions in kindergarten or as optional full-day sessions in kindergarten;  
16 and

17 (C) During the hours and months when the schools of the school district or public charter  
18 schools are normally in operation, except summer sessions or evening sessions.

19 (c) "Tuition" means payment for the cost of instruction and does not include fees authorized  
20 under ORS 339.155.

21 (2) Except as provided in subsection (3) of this section, district school boards and public charter  
22 schools may establish tuition rates to be paid by pupils receiving instruction in educational pro-  
23 grams, classes or courses of study, including traffic safety education, which are not a part of the  
24 regular school program. Tuition charges, if made, shall not exceed the estimated cost to the district  
25 or public charter school of furnishing the program, class or course of study.

26 (3) Except as provided in ORS 336.805 for traffic safety education:

27 (a) No tuition shall be charged to any [*resident*] pupil regularly enrolled in the regular school  
28 program for special instruction received at any time in connection therewith.

29 (b) No program, class or course of study for which tuition is charged, except courses of study  
30 beyond the 12th grade, shall be eligible for reimbursement from state funds.

31 **SECTION 7.** The amendments to ORS 327.006, 335.090, 339.115 and 339.141 by sections 1  
32 to 6 of this 2013 Act first apply to the 2013-2014 school year.

33 **SECTION 8.** This 2013 Act being necessary for the immediate preservation of the public  
34 peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect  
35 July 1, 2013.