

Enrolled
House Bill 2753

Sponsored by COMMITTEE ON EDUCATION

CHAPTER

AN ACT

Relating to sunset for provisions related to safety in public education programs; creating new provisions; amending ORS 161.205 and 339.250 and section 12, chapter 665, Oregon Laws 2011, and section 1, chapter 30, Oregon Laws 2013 (Enrolled House Bill 2756); 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 Section 7, chapter 665, Oregon Laws 2011, is repealed.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 1a. If House Bill 2756 becomes law, section 1, chapter 30, Oregon Laws 2013 (Enrolled House Bill 2756), as amended by section 2, chapter 30, Oregon Laws 2013 (Enrolled House Bill 2756), is amended to read:

Sec. 1. (1) As used in this section:

(a) "Public education program" means a program that:

(A) Is for students in early childhood education, elementary school or secondary school;

(B) Is under the jurisdiction of a school district, an education service district or another educational institution or program; and

(C) Receives, or serves students who receive, support in any form from any program supported, directly or indirectly, with funds appropriated to the Department of Education.

(b) "Seclusion cell" means a freestanding, self-contained unit that is used to:

(A) Isolate a student from other students; or

(B) Physically prevent a student from leaving the unit or cause the student to believe that the student is physically prevented from leaving the unit.

(2) A public education program may not:

(a) Purchase, build or otherwise take possession of a seclusion cell; or

(b) Use a seclusion cell.

(3) Nothing in this section prevents a public education program from using seclusion as allowed under sections 1 to 6, chapter 665, Oregon Laws 2011.

SECTION 1b. Notwithstanding section 3, chapter 30, Oregon Laws 2013 (Enrolled House Bill 2756) (amending section 7, chapter 665, Oregon Laws 2011), if House Bill 2756 becomes law, section 7, chapter 665, Oregon Laws 2011, is repealed by section 1 of this 2013 Act.

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 prescribed textbooks and submit to the teachers' authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) Brought to or possessed, concealed or used a weapon at an interscholastic activity administered by a voluntary organization.

(b) The policy shall allow an exception for courses, programs and activities approved by the school district that are conducted on school property, including but not limited to hunter safety

courses, Reserve Officer Training Corps programs, weapons-related sports or weapons-related vocational courses. In addition, the State Board of Education may adopt by rule additional exceptions to be included in school district policies.

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

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

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

- (A) "Firearm" as defined in 18 U.S.C. 921;
- (B) "Dangerous weapon" as defined in ORS 161.015; or
- (C) "Deadly weapon" as defined in ORS 161.015.

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

- (a) The name of each school;
- (b) The number of students expelled from each school; and
- (c) The types of weapons involved.

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

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

- (a) When a student is expelled pursuant to subsection (4) of this section;
- (b) Following a second or subsequent occurrence within any three-year period of a severe disciplinary problem with a student;
- (c) When it has been determined that a student's attendance pattern is so erratic that the student is not benefiting from the educational program; or
- (d) When a parent or legal guardian applies for a student's exemption from compulsory attendance on a semiannual basis as provided in ORS 339.030 (2).

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

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

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

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

(c) As used in this subsection, "corporal punishment" does not mean:

- (A) The use of physical force authorized by ORS 161.205 for the reasons specified therein; or
- (B) Physical pain or discomfort resulting from or caused by participation in athletic competition or other such recreational activity, voluntarily engaged in by a student.

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

161.205. The use of physical force upon another person that would otherwise constitute an offense is justifiable and not criminal under any of the following circumstances:

(1)(a) A parent, guardian or other person entrusted with the care and supervision of a minor or an incompetent person may use reasonable physical force upon such minor or incompetent person when and to the extent the person reasonably believes it necessary to maintain discipline or to promote the welfare of the minor or incompetent person.

(b) [A teacher] **Personnel of a public education program, as that term is defined in section 1, chapter 665, Oregon Laws 2011,** may use reasonable physical force upon a student when and to the extent the [teacher reasonably believes it necessary to maintain order in the school or classroom or at a school activity or event, whether or not it is held on school property] **application of force is consistent with section 3, chapter 665, Oregon Laws 2011.**

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

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

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

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

SECTION 5. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect July 1, 2013.

Passed by House March 6, 2013

Received by Governor:

Repassed by House May 7, 2013

.....M.,....., 2013

Approved:

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Ramona J. Line, Chief Clerk of House

.....M.,....., 2013

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Tina Kotek, Speaker of House

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John Kitzhaber, Governor

Passed by Senate May 2, 2013

Filed in Office of Secretary of State:

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Peter Courtney, President of Senate

.....M.,....., 2013

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Kate Brown, Secretary of State