

House Bill 2863

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**.

Directs State Board of Education to appoint Chief Privacy Officer to be responsible for ensuring that student information contained in student education records is adequately protected.

Directs education entity to provide certain information to students, parents, legal guardians and teachers related to personal data collected by education entity.

Allows student, parent or legal guardian to refuse to provide personal data or to agree to provide personal data but request that data not be shared.

Declares emergency, effective July 1, 2013.

A BILL FOR AN ACT

1
2 Relating to student education records; creating new provisions; amending ORS 326.565, 326.580 and
3 338.115; and declaring an emergency.

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

5 **SECTION 1. (1) The State Board of Education shall appoint a Chief Privacy Officer who**
6 **shall serve at the pleasure of the board.**

7 **(2) The Chief Privacy Officer is responsible for ensuring that information contained in**
8 **student education records is adequately protected by:**

9 **(a) Recommending to the board standards for:**

10 **(A) The creation, use, custody and disclosure of student education records that are con-**
11 **sistent with the requirements of state and federal law; and**

12 **(B) The content and format of electronic student records that are consistent with the**
13 **requirements of state and federal law.**

14 **(b) Issuing an assessment of any data system, program or contract involving personally**
15 **identifiable information from student education records that:**

16 **(A) Is about a student or a parent or guardian of a student; and**

17 **(B) Is not required to be collected under federal law, not required for recordkeeping**
18 **purposes or not required for the administration of a school, a school district or an education**
19 **service district, as determined under rules adopted by the board.**

20 **(c) Making assessments issued under paragraph (b) of this subsection available on the**
21 **website of the Department of Education.**

22 **(d) Imposing sanctions against any school, school district or education service district for**
23 **any disclosure of personally identifiable information from a student's records that is pro-**
24 **hibited by the rules of the board.**

25 **(e) Administering the Oregon electronic student record program described in ORS**
26 **326.580.**

27 **(f) Any other duties related to student education records assigned by the board.**

28 **(3) When developing standards as provided by subsection (2)(a) of this section, the Chief**

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 **Privacy Officer shall ensure that the disclosure of personally identifiable information is**
 2 **minimized to the greatest extent practicable as allowed under state and federal law.**

3 **SECTION 2.** ORS 326.565 is amended to read:

4 326.565. (1) The State Board of Education, **in consultation with the Chief Privacy Officer,**
 5 shall adopt by rule standards for the creation, use, custody and disclosure, including access, of stu-
 6 dent education records that are consistent with the requirements of applicable state and federal law.

7 (2) The [state] board shall distribute the rules that are adopted to all school districts. The school
 8 districts shall make those rules available to the public schools in the district and to the public.

9 (3) The [state] board may differentiate the standards applicable to persons 18 years of age or
 10 older or enrolled in post-secondary institutions.

11 (4) The standards shall include requirements under which public and private schools and edu-
 12 cation service districts transfer student education records pursuant to ORS 326.575.

13 **SECTION 3.** ORS 326.580 is amended to read:

14 326.580. (1) As used in this section, “educational institution” means:

- 15 (a) An “educational institution” as defined in ORS 326.575.
- 16 (b) A state agency.
- 17 (c) A local correctional facility.

18 (2) The State Board of Education [may], **in consultation with the Chief Privacy Officer, shall**
 19 adopt by rule standards for the content and format of an Oregon electronic student record. An
 20 Oregon electronic student record may be used to transfer student record information from one edu-
 21 cational institution to another.

22 (3) The board may define the Oregon electronic student record to constitute a full and complete
 23 copy of the official student permanent record, student education record and certificate of immu-
 24 nization status that are required by state and federal law.

25 (4) The standards established by the board shall include procedures and criteria for participation
 26 in the Oregon electronic student record program by educational institutions. An educational insti-
 27 tution may apply to the Department of Education for a certificate of participation in the Oregon
 28 electronic student record program.

29 (5) An educational institution that is approved for participation in the Oregon electronic student
 30 record program by the Department of Education:

- 31 (a) Shall not be required to forward by mail or other means physical items such as original
 32 documents or photocopies to a receiving educational institution that also is approved for partic-
 33 ipation in the program. This paragraph does not apply to special education records that are specif-
 34 ically required by federal law to be physically transferred.
- 35 (b) May elect to designate the Oregon electronic student record as the official student record.
- 36 (c) Shall retain the official student record in compliance with state and federal law.

37 **SECTION 4.** (1) **As used in this section:**

38 (a) **“Education entity” means a school district, the schools of a school district or an ed-**
 39 **ucation service district.**

40 (b) **“Personal data” means:**

41 (A) **Personally identifiable information about a student or a parent or guardian of a stu-**
 42 **dent; and**

43 (B) **Any other information not required to be collected under state or federal law, not**
 44 **required for recordkeeping purposes or not required for the administration of the education**
 45 **entity, as determined under rules adopted by the State Board of Education.**

1 **(2)(a) An education entity shall provide information to students and the parents or legal**
 2 **guardians of students about the purposes for which personal data collected by the education**
 3 **entity will be used. The information must be provided:**

4 **(A) Within one week of the beginning of the school year or one week of the student en-**
 5 **rolling in a school served by the education entity; and**

6 **(B) At any other time when the education entity collects personal data.**

7 **(b) An education entity shall provide information to the teachers employed by the edu-**
 8 **cation entity about the purposes for which personal data collected by the education entity**
 9 **will be used. The information must be provided:**

10 **(A) Within one week of the beginning of the school year; and**

11 **(B) At any other time when the education entity collects personal data and the education**
 12 **entity determines that teachers should receive information about the personal data collected.**

13 **(3) Information provided by the education entity under subsection (2) of this section must**
 14 **include a description of the personal data collected, an identification of who will use the**
 15 **personal data and an explanation of why the personal data will be used.**

16 **(4) A student, parent or legal guardian may:**

17 **(a) Refuse to provide personal data only if the personal data meets the requirements**
 18 **described in subsection (1)(b)(B) of this section; or**

19 **(b) Agree to provide personal data but request in writing that the personal data not be**
 20 **shared with any other public or private entity.**

21 **SECTION 5. Section 4 of this 2013 Act first applies to the 2013-2014 school year.**

22 **SECTION 6. ORS 338.115, as amended by section 9, chapter 92, Oregon Laws 2012, is amended**
 23 **to read:**

24 338.115. (1) Statutes and rules that apply to school district boards, school districts or other
 25 public schools do not apply to public charter schools. However, the following laws do apply to public
 26 charter schools:

27 (a) Federal law;

28 (b) ORS 30.260 to 30.300 (tort claims);

29 (c) ORS 192.410 to 192.505 (public records law);

30 (d) ORS 192.610 to 192.690 (public meetings law);

31 (e) ORS 297.405 to 297.555 and 297.990 (Municipal Audit Law);

32 (f) ORS 326.565, 326.575 and 326.580 **and section 4 of this 2013 Act** (student records);

33 (g) ORS 181.534, 326.603, 326.607, 342.223 and 342.232 (criminal records checks);

34 (h) ORS 329.045 (academic content standards and instruction);

35 (i) ORS 329.451 (high school diploma, modified diploma, extended diploma and alternative cer-
 36 tificate);

37 (j) The statewide assessment system developed by the Department of Education for mathematics,
 38 science and English under ORS 329.485 (2);

39 (k) ORS 337.150 (textbooks);

40 (L) ORS 339.141, 339.147 and 339.155 (tuition and fees);

41 (m) ORS 339.250 (12) (prohibition on infliction of corporal punishment);

42 (n) ORS 339.326 (notice concerning students subject to juvenile court petitions);

43 (o) ORS 339.370, 339.372, 339.388 and 339.400 (reporting of abuse and sexual conduct and training
 44 on prevention and identification of abuse and sexual conduct);

45 (p) ORS chapter 657 (Employment Department Law);

- 1 (q) ORS 659.850, 659.855 and 659.860 (discrimination);
 2 (r) Any statute or rule that establishes requirements for instructional time provided by a school
 3 during each day or during a year;
 4 (s) Health and safety statutes and rules;
 5 (t) Any statute or rule that is listed in the charter;
 6 (u) ORS 339.119 (consideration for educational services); and
 7 (v) This chapter.
- 8 (2) Notwithstanding subsection (1) of this section, a charter may specify that statutes and rules
 9 that apply to school district boards, school districts and other public schools may apply to a public
 10 charter school.
- 11 (3) If a statute or rule applies to a public charter school, then the terms “school district” and
 12 “public school” include public charter school as those terms are used in that statute or rule.
- 13 (4) A public charter school may not violate the Establishment Clause of the First Amendment
 14 to the United States Constitution or section 5, Article I of the Oregon Constitution, or be religion
 15 based.
- 16 (5)(a) A public charter school shall maintain an active enrollment of at least 25 students.
- 17 (b) For a public charter school that provides educational services under a cooperative agree-
 18 ment described in ORS 338.080, the public charter school is in compliance with the requirements of
 19 this subsection if the public charter school provides educational services under the cooperative
 20 agreement to at least 25 students, without regard to the school districts in which the students are
 21 residents.
- 22 (6) A public charter school may sue or be sued as a separate legal entity.
- 23 (7) The sponsor, members of the governing board of the sponsor acting in their official capacities
 24 and employees of a sponsor acting in their official capacities are immune from civil liability with
 25 respect to all activities related to a public charter school within the scope of their duties or em-
 26 ployment.
- 27 (8) A public charter school may enter into contracts and may lease facilities and services from
 28 a school district, education service district, public university listed in ORS 352.002, other govern-
 29 mental unit or any person or legal entity.
- 30 (9) A public charter school may not levy taxes or issue bonds under which the public incurs li-
 31 ability.
- 32 (10) A public charter school may receive and accept gifts, grants and donations from any source
 33 for expenditure to carry out the lawful functions of the school.
- 34 (11) The school district in which the public charter school is located shall offer a high school
 35 diploma, a modified diploma, an extended diploma or an alternative certificate to any public charter
 36 school student who meets the district’s and state’s standards for a high school diploma, a modified
 37 diploma, an extended diploma or an alternative certificate.
- 38 (12) A high school diploma, a modified diploma, an extended diploma or an alternative certificate
 39 issued by a public charter school grants to the holder the same rights and privileges as a high
 40 school diploma, a modified diploma, an extended diploma or an alternative certificate issued by a
 41 nonchartered public school.
- 42 (13) Prior to beginning operation, the public charter school shall show proof of insurance to the
 43 sponsor as specified in the charter.
- 44 (14) A public charter school may receive services from an education service district in the same
 45 manner as a nonchartered public school in the school district in which the public charter school is

1 located.

2 **SECTION 7.** ORS 338.115, as amended by section 7, chapter 839, Oregon Laws 2007, section 12,
 3 chapter 50, Oregon Laws 2008, section 4, chapter 618, Oregon Laws 2009, section 3, chapter 53,
 4 Oregon Laws 2010, section 3, chapter 94, Oregon Laws 2011, section 118, chapter 637, Oregon Laws
 5 2011, section 5, chapter 682, Oregon Laws 2011, and section 10, chapter 92, Oregon Laws 2012, is
 6 amended to read:

7 338.115. (1) Statutes and rules that apply to school district boards, school districts or other
 8 public schools do not apply to public charter schools. However, the following laws do apply to public
 9 charter schools:

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- 11 (b) ORS 30.260 to 30.300 (tort claims);
- 12 (c) ORS 192.410 to 192.505 (public records law);
- 13 (d) ORS 192.610 to 192.690 (public meetings law);
- 14 (e) ORS 297.405 to 297.555 and 297.990 (Municipal Audit Law);
- 15 (f) ORS 326.565, 326.575 and 326.580 **and section 4 of this 2013 Act** (student records);
- 16 (g) ORS 181.534, 326.603, 326.607, 342.223 and 342.232 (criminal records checks);
- 17 (h) ORS 329.045 (academic content standards and instruction);
- 18 (i) ORS 329.451 (high school diploma, modified diploma, extended diploma and alternative cer-
 19 tificate);
- 20 (j) ORS 329.496 (physical education);
- 21 (k) The statewide assessment system developed by the Department of Education for mathematics,
 22 science and English under ORS 329.485 (2);
- 23 (L) ORS 337.150 (textbooks);
- 24 (m) ORS 339.141, 339.147 and 339.155 (tuition and fees);
- 25 (n) ORS 339.250 (12) (prohibition on infliction of corporal punishment);
- 26 (o) ORS 339.326 (notice concerning students subject to juvenile court petitions);
- 27 (p) ORS 339.370, 339.372, 339.388 and 339.400 (reporting of abuse and sexual conduct and training
 28 on prevention and identification of abuse and sexual conduct);
- 29 (q) ORS chapter 657 (Employment Department Law);
- 30 (r) ORS 659.850, 659.855 and 659.860 (discrimination);
- 31 (s) Any statute or rule that establishes requirements for instructional time provided by a school
 32 during each day or during a year;
- 33 (t) Health and safety statutes and rules;
- 34 (u) Any statute or rule that is listed in the charter;
- 35 (v) ORS 339.119 (consideration for educational services); and
- 36 (w) This chapter.

37 (2) Notwithstanding subsection (1) of this section, a charter may specify that statutes and rules
 38 that apply to school district boards, school districts and other public schools may apply to a public
 39 charter school.

40 (3) If a statute or rule applies to a public charter school, then the terms “school district” and
 41 “public school” include public charter school as those terms are used in that statute or rule.

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 43 to the United States Constitution or section 5, Article I of the Oregon Constitution, or be religion
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 4 agreement to at least 25 students, without regard to the school districts in which the students are
 5 residents.

6 (6) A public charter school may sue or be sued as a separate legal entity.

7 (7) The sponsor, members of the governing board of the sponsor acting in their official capacities
 8 and employees of a sponsor acting in their official capacities are immune from civil liability with
 9 respect to all activities related to a public charter school within the scope of their duties or em-
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18 (11) The school district in which the public charter school is located shall offer a high school
 19 diploma, a modified diploma, an extended diploma or an alternative certificate to any public charter
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22 (12) A high school diploma, a modified diploma, an extended diploma or an alternative certificate
 23 issued by a public charter school grants to the holder the same rights and privileges as a high
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 25 nonchartered public school.

26 (13) Prior to beginning operation, the public charter school shall show proof of insurance to the
 27 sponsor as specified in the charter.

28 (14) A public charter school may receive services from an education service district in the same
 29 manner as a nonchartered public school in the school district in which the public charter school is
 30 located.

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