

Enrolled
Senate Bill 821

Sponsored by COMMITTEE ON EDUCATION AND WORKFORCE DEVELOPMENT

CHAPTER

AN ACT

Relating to private school procedures related to employee conduct; amending ORS 339.372, 339.374, 339.378 and 339.388; and declaring an emergency.

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

SECTION 1. ORS 339.388, as amended by section 4, chapter 92, Oregon Laws 2012, is amended to read:

339.388. (1)(a) A school employee having reasonable cause to believe that a child with whom the employee comes in contact has suffered abuse by another school employee or by a student, or that another school employee or a student with whom the employee comes in contact has abused a child, shall immediately report the information to:

(A) The person designated in the policy adopted under ORS 339.372; and

(B) A law enforcement agency, the Department of Human Services or a designee of the department as required by ORS 419B.010 and 419B.015.

(b) A school employee having reasonable cause to believe that a student with whom the employee comes in contact has been subjected to sexual conduct by another school employee, or that another school employee with whom the employee comes in contact has engaged in sexual conduct, shall immediately report the information to the person designated in the policy adopted under ORS 339.372.

(2) A person who receives a report under subsection (1) of this section shall follow the procedures required by the policy adopted by the school board under ORS 339.372.

(3)(a) Except as provided in subsection (4) of this section, when an education provider receives a report of suspected abuse or sexual conduct by one of its employees, and the education provider's designee determines that there is reasonable cause to support the report, the education provider:

(A) In the case of suspected abuse, shall place the school employee on paid administrative leave; or

(B) In the case of suspected sexual conduct, may place the school employee on paid administrative leave or in a position that does not involve direct, unsupervised contact with children.

(b) A school employee who is placed on paid administrative leave under paragraph (a)(A) of this subsection shall remain on administrative leave until:

(A) The Department of Human Services or a law enforcement agency determines that the report cannot be substantiated or that the report will not be pursued; or

(B) The Department of Human Services or a law enforcement agency determines that the report is substantiated and the education provider takes the appropriate disciplinary action against the school employee.

(4) An education provider may reinstate a school employee placed on paid administrative leave for suspected abuse as provided under subsection (3) of this section or may take the appropriate disciplinary action against the employee if the Department of Human Services or a law enforcement agency is unable to determine, based on a report of suspected abuse, whether abuse occurred.

(5) If, following an investigation, an education provider determines that a report of suspected abuse or sexual conduct by a school employee is a substantiated report, the education provider shall:

(a) Inform the school employee that the education provider has determined that the report has been substantiated.

(b) Provide the school employee with information about the appropriate appeal process for the determination made by the education provider. The appeal process may be the process provided by a collective bargaining agreement or a process administered by a neutral third party and paid for by the school district.

(c) Following notice of a school employee's decision not to appeal the determination or following the determination of an appeal that sustained the substantiated report, create a record of the substantiated report and place the record in the personnel file of the school employee. Records created pursuant to this paragraph are confidential and are not public records as defined in ORS 192.410. An education provider may use the record as a basis for providing the information required to be disclosed under ORS 339.378.

(d) Inform the school employee that information about substantiated reports may be disclosed to a potential employer as provided by subsection [(7)] (8) of this section and ORS 339.378.

(6)(a) Notwithstanding the requirements of subsections (3), (4) and (5) of this section, an education provider that is a private school:

(A) May discipline or terminate a school employee according to:

(i) The provisions of subsections (3) and (4) of this section; or

(ii) The standards and policies of the private school if the standards and policies provide the same or greater safeguards for the protection of children compared to the safeguards described in subsections (3) and (4) of this section.

(B) May follow the procedures described in subsection (5) of this section or may follow any appeals process established by the private school related to suspected child abuse or sexual conduct.

(b) A private school that chooses to discipline or terminate a school employee according to the standards and policies of the school must provide the information required to be disclosed under ORS 339.378.

[(6)] (7) Upon request from a law enforcement agency, the Department of Human Services or the Teacher Standards and Practices Commission, a school district shall provide the records of investigations of suspected abuse by a school employee or former school employee.

[(7)(a)] (8)(a) The disciplinary records of a school employee or former school employee convicted of a crime listed in ORS 342.143 are not exempt from disclosure under ORS 192.501 or 192.502.

(b) If a school employee is convicted of a crime listed in ORS 342.143, the education provider that is the employer of the employee shall disclose the disciplinary records of the employee to any person upon request.

(c) If a former school employee is convicted of a crime listed in ORS 342.143, the education provider that was the employer of the former employee when the crime was committed shall disclose the disciplinary records of the former employee to any person upon request.

[(8)] (9) Prior to disclosure of a disciplinary record under subsection [(7)] (8) of this section, an education provider shall remove any personally identifiable information from the record that would disclose the identity of a child, a crime victim or a school employee or former school employee who is not the subject of the disciplinary record.

SECTION 2. ORS 339.372, as amended by section 3, chapter 92, Oregon Laws 2012, is amended to read:

339.372. Each school board shall adopt policies on the reporting of abuse and sexual conduct by school employees and the reporting of abuse by students. The policies shall:

(1) Specify that abuse and sexual conduct by school employees and abuse by students are not tolerated;

(2) Specify that all school employees and students are subject to the policies;

(3) Require all school employees who have reasonable cause to believe that another school employee has engaged in abuse or sexual conduct or that a student has engaged in abuse to:

(a) Report suspected abuse to a law enforcement agency, the Department of Human Services or a designee of the department as required by ORS 419B.010 and 419B.015; and

(b) Report suspected abuse or sexual conduct to the person designated as provided by subsection (4) of this section;

(4) Designate a person, and an alternate in the event the designated person is the suspected abuser, to receive reports of suspected abuse or sexual conduct by school employees or suspected abuse by students and specify the procedures to be followed by that person upon receipt of a report;

(5) Require the posting in each school building of the name and contact information for the person designated for the school building to receive reports of suspected abuse or sexual conduct by school employees or suspected abuse by students and the procedures the person will follow upon receipt of a report;

(6) Specify that the initiation of a report in good faith about suspected abuse or sexual conduct may not adversely affect any terms or conditions of employment or the work environment of the complainant;

(7) Specify that the school board or any school employee will not discipline a student for the initiation of a report in good faith about suspected abuse or sexual conduct by a school employee or suspected abuse by a student;

(8) Require notification by the education provider to the person who initiated the report about actions taken by the education provider based on the report; and

(9) Require the education provider to furnish to a school employee at the time of hire the following:

(a) A description of conduct that may constitute abuse or sexual conduct; and

(b) A description of the information and records that will be disclosed as provided by ORS 339.378 or 339.388 [(7)] (8) if a report of suspected abuse or sexual conduct is substantiated.

SECTION 3. ORS 339.374, as amended by section 5, chapter 92, Oregon Laws 2012, is amended to read:

339.374. Except as provided in ORS 339.384, before an education provider may hire an applicant for a position with the education provider, the education provider shall:

(1) Require the applicant to provide:

(a) A list of the applicant's current and former employers who are education providers.

(b) A written authorization that authorizes the applicant's current and former employers that are education providers to disclose the information requested under subsection (2) of this section.

(c) A written statement of whether the applicant:

(A) Has been the subject of a substantiated report of abuse or sexual conduct; or

(B) Is the subject of an ongoing investigation related to a report of suspected abuse or sexual conduct.

(2) Conduct a review of the employment history of the applicant by contacting the three most recent employers of the applicant who are education providers and requesting:

(a) The following information:

(A) The dates of employment of the applicant by the education provider;

(B) Whether the applicant was the subject of any substantiated reports of abuse or sexual conduct related to the applicant's employment with the education provider;

(C) The dates of any substantiated reports;

(D) The definitions of abuse and sexual conduct used by the education provider when the education provider determined that any reports were substantiated; and

(E) The standards used by the education provider to determine whether any reports were substantiated.

(b) Any disciplinary records required to be released as provided by ORS 339.388 [(7)] (8).

(3) For an applicant who is licensed, registered or certified with the Teacher Standards and Practices Commission, access online information provided by the commission to verify:

(a) That the applicant is licensed, registered or certified by the commission; and

(b) Whether the commission has provided any information relating to conduct by the applicant that may constitute abuse or sexual conduct.

(4) Conduct a nationwide criminal records check if required by ORS 326.603.

SECTION 4. ORS 339.378, as amended by section 6, chapter 92, Oregon Laws 2012, is amended to read:

339.378. (1) Not later than 20 days after receiving a request under ORS 339.374, an education provider that has or has had an employment relationship with the applicant shall disclose the information requested and any disciplinary records that must be disclosed as provided by ORS 339.388 [(7)] (8).

(2) An education provider may disclose the information on a standardized form and is not required to provide any additional information related to a substantiated report of abuse or sexual conduct other than the information that is required by ORS 339.374 (2).

(3) Information received under this section is confidential and is not a public record as defined in ORS 192.410. An education provider may use the information only for the purpose of evaluating an applicant's eligibility to be hired.

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 Senate April 11, 2013

Received by Governor:

Repassed by Senate June 18, 2013

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

Approved:

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Robert Taylor, Secretary of Senate

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

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Peter Courtney, President of Senate

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John Kitzhaber, Governor

Passed by House June 13, 2013

Filed in Office of Secretary of State:

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Tina Kotek, Speaker of House

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

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Kate Brown, Secretary of State