

Senate Bill 821

Sponsored by COMMITTEE ON EDUCATION AND WORKFORCE DEVELOPMENT

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**.

Allows private school to discipline or terminate school employee according to standards and policies of private school. Requires private school to comply with specified reporting requirements. Declares emergency, effective July 1, 2013.

A BILL FOR AN ACT

1
2 Relating to private school procedures related to employee conduct; amending ORS 339.372, 339.374,
3 339.378 and 339.388; and declaring an emergency.

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

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

7 339.388. (1)(a) A school employee having reasonable cause to believe that a child with whom the
8 employee comes in contact has suffered abuse by another school employee or by a student, or that
9 another school employee or a student with whom the employee comes in contact has abused a child,
10 shall immediately report the information to:

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

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

14 (b) A school employee having reasonable cause to believe that a student with whom the em-
15 ployee comes in contact has been subjected to sexual conduct by another school employee, or that
16 another school employee with whom the employee comes in contact has engaged in sexual conduct,
17 shall immediately report the information to the person designated in the policy adopted under ORS
18 339.372.

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

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

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

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

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

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

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

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

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

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

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

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

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

24 **(6)(a) Notwithstanding the requirements of subsections (3), (4) and (5) of this section, an**
 25 **education provider that is a private school may discipline or terminate a school employee**
 26 **according to:**

27 **(A) The provisions of subsections (3), (4) and (5) of this section; or**

28 **(B) The standards and policies of the private school.**

29 **(b) A private school that chooses to discipline or terminate a school employee according**
 30 **to the standards and policies of the school must provide:**

31 **(A) The information required to be disclosed under ORS 339.378; or**

32 **(B) Other information sufficient to give notice to an education provider that an applicant**
 33 **engaged in child abuse or sexual conduct during the course of the applicant's employment**
 34 **with the private school.**

35 [(6)] (7) Upon request from a law enforcement agency, the Department of Human Services or the
 36 Teacher Standards and Practices Commission, a school district shall provide the records of investi-
 37 gations of suspected abuse by a school employee or former school employee.

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

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

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

1 [(8)] (9) Prior to disclosure of a disciplinary record under subsection [(7)] (8) of this section, an
 2 education provider shall remove any personally identifiable information from the record that would
 3 disclose the identity of a child, a crime victim or a school employee or former school employee who
 4 is not the subject of the disciplinary record.

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

7 339.372. Each school board shall adopt policies on the reporting of abuse and sexual conduct
 8 by school employees and the reporting of abuse by students. The policies shall:

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

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

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

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

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

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

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

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

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

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

33 (9) Require the education provider to furnish to a school employee at the time of hire the fol-
 34 lowing:

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

36 (b) A description of the information and records that will be disclosed as provided by ORS
 37 339.378 or 339.388 [(7)] (8) if a report of suspected abuse or sexual conduct is substantiated.

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

40 339.374. Except as provided in ORS 339.384, before an education provider may hire an applicant
 41 for a position with the education provider, the education provider shall:

42 (1) Require the applicant to provide:

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

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

1 (c) A written statement of whether the applicant:

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

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

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

7 (a) The following information:

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

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

11 (C) The dates of any substantiated reports;

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

14 (E) The standards used by the education provider to determine whether any reports were sub-
15 stantiated.

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

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

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

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

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

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

25 339.378. (1) Not later than 20 days after receiving a request under ORS 339.374, an education
26 provider that has or has had an employment relationship with the applicant shall disclose the in-
27 formation requested and any disciplinary records that must be disclosed as provided by ORS 339.388
28 [(7)] (8).

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

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

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