

LC 128
2020 Regular Session
1/10/20 (HRL/ps)

D R A F T

SUMMARY

Modifies definitions of “sexual conduct” and “student” for purposes of requirements for education providers related to abuse of and sexual conduct toward students.

Modifies confidentiality requirements related to documents, materials and reports produced by Teacher Standards and Practices Commission when conducting investigation related to licensed school employee, contractor, agent or volunteer.

Requires members of education service district board to be mandatory reporters of abuse of children.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1 Relating to education; creating new provisions; amending ORS 339.370,
2 339.390 and 419B.005; and declaring an emergency.

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

5 **SECTION 1.** ORS 339.370 is amended to read:

6 339.370. As used in ORS 339.370 to 339.400:

7 (1) “Abuse” has the meaning given that term in ORS 419B.005.

8 (2) “Agent” means a person acting as an agent for an education provider
9 in a manner that requires the person to have direct, unsupervised contact
10 with students.

11 (3) “Contractor” means a person providing services to an education pro-
12 vider under a contract in a manner that requires the person to have direct,
13 unsupervised contact with students.

14 (4)(a) “Education provider” means:

15 (A) A school district, as defined in ORS 332.002.

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 Oregon School for the Deaf.
- 2 (C) An educational program under the Youth Corrections Education Pro-
- 3 gram.
- 4 (D) A public charter school, as defined in ORS 338.005.
- 5 (E) An education service district, as defined in ORS 334.003.
- 6 (F) Any state-operated program that provides educational services to stu-
- 7 dents.
- 8 (G) A private school.
- 9 (b) "Education provider" does not include:
 - 10 (A) The Oregon Youth Authority;
 - 11 (B) The Department of Corrections; or
 - 12 (C) The Department of Education, except when functioning as an educa-
 - 13 tion provider on behalf of:
 - 14 (i) The Oregon School for the Deaf;
 - 15 (ii) An educational program under the Youth Corrections Education Pro-
 - 16 gram; or
 - 17 (iii) A public charter school, as defined in ORS 338.005, that is sponsored
 - 18 by the Department of Education.
- 19 (5) "Investigation" means a detailed inquiry into the factual allegations
- 20 of a report of suspected abuse or suspected sexual conduct that:
 - 21 (a) Is based on interviews with the person who initiated the report, the
 - 22 person who may have been subjected to abuse or sexual conduct, witnesses
 - 23 and the person who is the subject of the report; and
 - 24 (b) Results in a finding that the report:
 - 25 (A) Is a substantiated report;
 - 26 (B) Cannot be substantiated; or
 - 27 (C) Is not a report of abuse or sexual conduct.
- 28 (6) "Law enforcement agency" has the meaning given that term in ORS
- 29 419B.005.
- 30 (7) "License" includes a license, registration or certificate issued by the
- 31 Teacher Standards and Practices Commission.

1 (8) "Private school" means a school that provides to students instructional programs that are not limited solely to dancing, drama, music, religious or athletic instruction.

4 (9) "School board" means the entity charged with adopting policies for
5 an education provider.

6 (10) "School employee" means an employee of an education provider.

7 (11)(a) "Sexual conduct" means verbal or physical conduct or verbal,
8 written or electronic communications by a school employee, a contractor, an
9 agent or a volunteer that involve a student and that are:

10 (A) Sexual advances or requests for sexual favors directed toward the
11 student; or

12 (B) Of a sexual nature that are directed toward the student or that have
13 the effect of unreasonably interfering with the student's educational per-
14 formance, or of creating an intimidating, hostile or offensive educational
15 environment.

16 (b) "Sexual conduct" does not include:

17 **(A) Touching or other physical contact:**

18 [(A)] (i) That is necessitated by the nature of the school employee's job
19 duties or by the services required to be provided by the contractor, agent or
20 volunteer; and

21 [(B)] (ii) For which there is no sexual intent.

22 **(B) Verbal, written or electronic communications that are provided:**

23 **(i) As part of an education program that meets state educational
24 standards or a policy approved by the school board; or**

25 **(ii) In response to a student request for counseling or for other as-
26 sistance in resolving personal problems or answering personal
27 questions as long as:**

28 **(I) There is no sexual intent; and**

29 **(II) The response is not prohibited by law, any policies of the edu-
30 cation provider or any applicable employment agreements.**

31 **(C) Conduct or communications described in paragraph (a) of this**

1 subsection if:

2 (i) The school employee, contractor, agent or volunteer is also a
3 student; and

4 (ii) The conduct or communications:

5 (I) Would not be a sexual offense under ORS 163.305 to 163.467,
6 163.472 or 163.665 to 163.693; or

7 (II) Would be a sexual offense under ORS 163.305 to 163.467, 163.472
8 or 163.665 to 163.693 but the school employee, contractor, agent or
9 volunteer may use a defense described in ORS 163.325 or 163.345.

10 (12) "Student" means any person:

11 (a) Who is:

12 (A) In any grade from prekindergarten through grade 12; or

13 (B) Twenty-one years of age or younger and receiving educational or re-
14 lated services from an education provider that is not a post-secondary insti-
15 tution of education; or

16 (b) Who was previously known as a student by the person engaging in
17 sexual conduct and who left school or graduated from high school within 90
18 days prior to the sexual conduct.

19 (13) "Substantiated report" means a report of abuse or sexual conduct
20 that a law enforcement agency, the Department of Human Services, the
21 Teacher Standards and Practices Commission, the Department of Education
22 or an education provider has reasonable cause to believe, based on the
23 available evidence after conducting an investigation, is founded.

24 (14) "Volunteer" means a person acting as a volunteer for an education
25 provider in a manner that requires the person to have direct, unsupervised
26 contact with students.

27 **SECTION 2. The amendments to ORS 339.370 by section 1 of this**
28 **2020 Act apply to conduct that occurs before, on or after the effective**
29 **date of this 2020 Act for purposes of:**

30 (1) Reports of suspected sexual conduct that are made on or after
31 the effective date of this 2020 Act.

1 **(2) Investigations of suspected sexual conduct that are initiated on**
2 **or after the effective date of this 2020 Act.**

3 **(3) A collective bargaining agreement, an employment contract, an**
4 **agreement for resignation or termination, a severance agreement or**
5 **any similar contract or agreement entered into on or after the effec-**
6 **tive date of this 2020 Act.**

7 **SECTION 3.** ORS 339.390 is amended to read:

8 339.390. (1)(a) When the Teacher Standards and Practices Commission re-
9 ceives a report of suspected sexual conduct that may have been committed
10 by a licensed school employee, contractor, agent or volunteer, the commis-
11 sion shall immediately initiate an investigation.

12 (b) An investigation and final determination related to a report received
13 under paragraph (a) of this subsection must be completed and notification
14 of the final determination must be made to the education provider within 90
15 calendar days following the date on which the report was filed with the
16 commission.

17 (c) Notwithstanding paragraph (b) of this subsection, the prescribed
18 timeline for an investigation and final determination may be extended if, for
19 good cause, a longer period of time is necessary.

20 (2) The commission shall appoint an investigator and shall furnish the
21 investigator with appropriate professional and other special assistance rea-
22 sonably required to conduct an investigation. An investigator appointed un-
23 der this subsection is empowered to:

24 (a) Issue subpoenas to require the attendance of witnesses or the pro-
25 duction of documents;

26 (b) Subpoena witnesses; and

27 (c) Swear witnesses and compel obedience in the same manner as provided
28 under ORS 183.440 (2).

29 (3)(a) Following the completion of an investigation, the investigator shall
30 report in writing any findings and recommendations to the executive director
31 of the Teacher Standards and Practices Commission.

1 (b) If, based on the findings, the executive director believes there is an
2 immediate threat to a student, the executive director shall request that the
3 commission meet in executive session.

4 (4) The executive director or the investigator shall report in writing the
5 findings and any recommendations to the commission. The commission shall
6 decide if there is sufficient cause to justify holding a hearing under ORS
7 342.177.

8 (5) If the commission finds that there is sufficient cause to justify holding
9 a hearing under ORS 342.177, the commission shall notify in writing:

10 (a) The person charged, enclosing a statement of the charges and a notice
11 of opportunity for hearing;

12 (b) The student and, if applicable, the student's parents;

13 (c) The education provider; and

14 (d) The person who provided the report of suspected sexual conduct.

15 (6) If the commission finds that there is not sufficient cause to justify
16 holding a hearing under ORS 342.177, the commission shall notify in writing:

17 (a) The person charged;

18 (b) The student and, if applicable, the student's parents;

19 (c) The education provider; and

20 (d) The person who provided the report of suspected sexual conduct.

21 (7)(a) *[Except as provided in paragraph (b) of this subsection,]* The docu-
22 ments and materials used in the investigation undertaken under this section,
23 and the report related to the investigation, are confidential and not subject
24 to public inspection:

25 (A) Unless the commission makes a final determination to suspend or
26 revoke a license, discipline a person holding a license or revoke the right to
27 apply for a license, as provided under ORS 342.175.

28 **(B) Except as provided by paragraphs (b) to (d) of this subsection.**

29 **(b) Documents, materials and reports that are confidential under**
30 **paragraph (a) of this subsection may be disclosed to an entity listed**
31 **in paragraph (c) or (d) of this subsection only as provided by this**

1 subsection and rules adopted by the commission. The entity that re-
2 ceives documents, materials or reports must maintain their
3 confidentiality unless disclosure is allowed or required under this sec-
4 tion or other state or federal law.

5 [(b)] (c) To the extent allowed by state and federal law, the commission
6 shall make available any documents, materials and reports **that are confi-**
7 **dential under paragraph (a) of this subsection** to:

8 (A) A law enforcement agency or the Department of Human Services for
9 the purpose of conducting an investigation under ORS 419B.005 to 419B.050;
10 **or**

11 (B) The Department of Education for the purpose of conducting an in-
12 vestigation under ORS 339.391[; or].

13 [(C)] (d)(A) **The commission shall make available the commission's**
14 **investigative report to:**

15 (i) An education provider for the purpose of **the education provider**
16 taking any disciplinary actions or making changes in the employment re-
17 lationship or duties of the school employee, contractor, agent or
18 volunteer[.]; **and**

19 (ii) **The school employee, contractor, agent or volunteer who is the**
20 **subject of the report.**

21 (B) **The commission must redact the executive director's recom-**
22 **mendation from the report made available under this paragraph.**

23 (C) **A school employee, contractor, agent or volunteer who receives**
24 **a report under this paragraph may share the report with the person's**
25 **attorney or union representative. An attorney or union representative**
26 **who receives a report under this subparagraph must maintain the**
27 **report's confidentiality unless disclosure is allowed or required under**
28 **this section or other state or federal law.**

29 [(c)] (e) The commission shall retain documents and materials related to
30 any report received under this section, regardless of whether the commission
31 found sufficient cause to justify holding a hearing under this section.

1 (8) Notwithstanding ORS 192.660 (6), the commission may make its
2 findings under this section in executive session. The provisions of ORS
3 192.660 (4) apply to executive sessions held pursuant to this subsection.

4 (9) The commission shall adopt any rules necessary for the administration
5 of this section, including a process to appeal the findings of the commission
6 under this section.

7 **SECTION 4.** ORS 419B.005 is amended to read:

8 419B.005. As used in ORS 419B.005 to 419B.050, unless the context re-
9 quires otherwise:

10 (1)(a) "Abuse" means:

11 (A) Any assault, as defined in ORS chapter 163, of a child and any phys-
12 ical injury to a child which has been caused by other than accidental means,
13 including any injury which appears to be at variance with the explanation
14 given of the injury.

15 (B) Any mental injury to a child, which shall include only observable and
16 substantial impairment of the child's mental or psychological ability to
17 function caused by cruelty to the child, with due regard to the culture of the
18 child.

19 (C) Rape of a child, which includes but is not limited to rape, sodomy,
20 unlawful sexual penetration and incest, as those acts are described in ORS
21 chapter 163.

22 (D) Sexual abuse, as described in ORS chapter 163.

23 (E) Sexual exploitation, including but not limited to:

24 (i) Contributing to the sexual delinquency of a minor, as defined in ORS
25 chapter 163, and any other conduct which allows, employs, authorizes, per-
26 mits, induces or encourages a child to engage in the performing for people
27 to observe or the photographing, filming, tape recording or other exhibition
28 which, in whole or in part, depicts sexual conduct or contact, as defined in
29 ORS 167.002 or described in ORS 163.665 and 163.670, sexual abuse involving
30 a child or rape of a child, but not including any conduct which is part of
31 any investigation conducted pursuant to ORS 419B.020 or which is designed

1 to serve educational or other legitimate purposes; and

2 (ii) Allowing, permitting, encouraging or hiring a child to engage in
3 prostitution as described in ORS 167.007 or a commercial sex act as defined
4 in ORS 163.266, to purchase sex with a minor as described in ORS 163.413
5 or to engage in commercial sexual solicitation as described in ORS 167.008.

6 (F) Negligent treatment or maltreatment of a child, including but not
7 limited to the failure to provide adequate food, clothing, shelter or medical
8 care that is likely to endanger the health or welfare of the child.

9 (G) Threatened harm to a child, which means subjecting a child to a
10 substantial risk of harm to the child's health or welfare.

11 (H) Buying or selling a person under 18 years of age as described in ORS
12 163.537.

13 (I) Permitting a person under 18 years of age to enter or remain in or
14 upon premises where methamphetamines are being manufactured.

15 (J) Unlawful exposure to a controlled substance, as defined in ORS
16 475.005, or to the unlawful manufacturing of a cannabinoid extract, as de-
17 fined in ORS 475B.015, that subjects a child to a substantial risk of harm to
18 the child's health or safety.

19 (b) "Abuse" does not include reasonable discipline unless the discipline
20 results in one of the conditions described in paragraph (a) of this subsection.

21 (2) "Child" means an unmarried person who:

22 (a) Is under 18 years of age; or

23 (b) Is under 21 years of age and residing in or receiving care or services
24 at a child-caring agency as that term is defined in ORS 418.205.

25 (3) "Higher education institution" means:

26 (a) A community college as defined in ORS 341.005;

27 (b) A public university listed in ORS 352.002;

28 (c) The Oregon Health and Science University; and

29 (d) A private institution of higher education located in Oregon.

30 (4)(a) "Investigation" means a detailed inquiry into or assessment of the
31 safety of a child alleged to have experienced abuse.

1 (b) "Investigation" does not include screening activities conducted upon
2 the receipt of a report.

3 (5) "Law enforcement agency" means:
4 (a) A city or municipal police department.
5 (b) A county sheriff's office.
6 (c) The Oregon State Police.

7 (d) A police department established by a university under ORS 352.121 or
8 353.125.

9 (e) A county juvenile department.

10 (6) "Public or private official" means:

11 (a) Physician or physician assistant licensed under ORS chapter 677 or
12 naturopathic physician, including any intern or resident.

13 (b) Dentist.

14 (c) School employee, including an employee of a higher education insti-
15 tution.

16 (d) Licensed practical nurse, registered nurse, nurse practitioner, nurse's
17 aide, home health aide or employee of an in-home health service.

18 (e) Employee of the Department of Human Services, Oregon Health Au-
19 thority, Early Learning Division, Department of Education, Youth Develop-
20 ment Division, Office of Child Care, the Oregon Youth Authority, a local
21 health department, a community mental health program, a community de-
22 velopmental disabilities program, a county juvenile department, a child-
23 caring agency as that term is defined in ORS 418.205 or an alcohol and drug
24 treatment program.

25 (f) Peace officer.

26 (g) Psychologist.

27 (h) Member of the clergy.

28 (i) Regulated social worker.

29 (j) Optometrist.

30 (k) Chiropractor.

31 (L) Certified provider of foster care, or an employee thereof.

- 1 (m) Attorney.
- 2 (n) Licensed professional counselor.
- 3 (o) Licensed marriage and family therapist.
- 4 (p) Firefighter or emergency medical services provider.
- 5 (q) A court appointed special advocate, as defined in ORS 419A.004.
- 6 (r) A child care provider registered or certified under ORS 329A.030 and
- 7 329A.250 to 329A.450.
- 8 (s) Member of the Legislative Assembly.
- 9 (t) Physical, speech or occupational therapist.
- 10 (u) Audiologist.
- 11 (v) Speech-language pathologist.
- 12 (w) Employee of the Teacher Standards and Practices Commission directly
- 13 involved in investigations or discipline by the commission.
- 14 (x) Pharmacist.
- 15 (y) An operator of a preschool recorded program under ORS 329A.255.
- 16 (z) An operator of a school-age recorded program under ORS 329A.257.
- 17 (aa) Employee of a private agency or organization facilitating the pro-
- 18 vision of respite services, as defined in ORS 418.205, for parents pursuant to
- 19 a properly executed power of attorney under ORS 109.056.
- 20 (bb) Employee of a public or private organization providing child-related
- 21 services or activities:
 - 22 (A) Including but not limited to youth groups or centers, scout groups or
 - 23 camps, summer or day camps, survival camps or groups, centers or camps
 - 24 that are operated under the guidance, supervision or auspices of religious,
 - 25 public or private educational systems or community service organizations;
 - 26 and
- 27 (B) Excluding community-based, nonprofit organizations whose primary
- 28 purpose is to provide confidential, direct services to victims of domestic vi-
- 29 olence, sexual assault, stalking or human trafficking.
- 30 (cc) A coach, assistant coach or trainer of an amateur, semiprofessional
- 31 or professional athlete, if compensated and if the athlete is a child.

- 1 (dd) Personal support worker, as defined in ORS 410.600.
- 2 (ee) Home care worker, as defined in ORS 410.600.
- 3 (ff) Animal control officer, as defined in ORS 609.500.
- 4 (gg) Member of a school district board [*or*], **an education service dis-**
- 5 **trict board or a** public charter school governing body.
- 6 (hh) An individual who is paid by a public body, in accordance with ORS
- 7 430.215, to provide a service identified in an individualized written service
- 8 plan of a child with a developmental disability.

9 **SECTION 5. The amendments to ORS 419B.005 by section 4 of this**
10 **2020 Act become operative on January 1, 2021.**

11 **SECTION 6. This 2020 Act being necessary for the immediate pres-**
12 **ervation of the public peace, health and safety, an emergency is de-**
13 **clared to exist, and this 2020 Act takes effect on its passage.**

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