

D R A F T

SUMMARY

Provides process by which private school may become registered with Department of Education. Prescribes requirements for registration.

Provides that representation as registered private school when private school is not registered is punishable by not more than 30 days' imprisonment, \$1,250 fine, or both.

Prohibits school district from being member of voluntary organization that administers interscholastic activities unless organization limits participation in interscholastic activities to private schools that are registered.

A BILL FOR AN ACT

Relating to the registration of private schools; creating new provisions; and amending ORS 326.603, 326.607, 332.075, 339.370 and 345.990.

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

SECTION 1. As used in sections 1 to 5 of this 2021 Act:

(1) "Educational program" means an instructional program for any grade from prekindergarten through grade 12 that is not limited solely to dancing, drama, music, religion or athletics.

(2)(a) "Private school" means a school that provides an educational program and that is operated by an individual or by a private entity.

(b) "Private school" does not include an educational program provided as described in ORS 339.030 (1)(d) or (e).

(3) "Registered private school" means a private school that is registered with the Department of Education as provided by sections 1 to 5 of this 2021 Act.

SECTION 2. (1) The State Board of Education shall adopt by rule criteria for the registration of private schools.

1 **(2) In adopting criteria for the registration of private schools, the**
2 **board shall take into consideration:**

3 **(a) The unique qualities of private education while seeking to fur-**
4 **ther the educational opportunities of students enrolled in private**
5 **schools; and**

6 **(b) The recommendations of the advisory committee convened un-**
7 **der subsection (3) of this section.**

8 **(3)(a) For the purpose of adopting criteria for the registration of**
9 **private schools, the State Board of Education shall convene an advi-**
10 **sory committee. Members of the advisory committee shall be ap-**
11 **pointed by the board on recommendation of the Superintendent of**
12 **Public Instruction. Members serve at the pleasure of the board.**

13 **(b) The advisory committee convened under this subsection shall**
14 **consist of seven members as follows:**

15 **(A) Six members shall be selected from nominees of organizations**
16 **of private schools and other segments of private education.**

17 **(B) One member shall be a lay person who is not associated with a**
18 **private school.**

19 **(c) Members of the advisory committee shall serve for a term of**
20 **four years. A member is not eligible to serve more than two terms**
21 **consecutively.**

22 **(d) Members of the advisory committee are volunteers and are not**
23 **entitled to compensation.**

24 **(4) After consulting with the advisory committee convened under**
25 **subsection (3) of this section, the State Board of Education shall es-**
26 **tablish by rule the criteria for the registration of private schools. At**
27 **a minimum, the criteria must require a private school to demonstrate**
28 **that:**

29 **(a) The teachers of the private school possess qualifications neces-**
30 **sary to establish fitness as a teacher. Nothing in this paragraph re-**
31 **quires that the teachers be licensed to teach.**

(b) The teachers and other school employees are qualified by a combination of education and experience to provide an educational program at the grade level or in the program to which they are assigned.

(c) The facility at which the private school is located, and the operation of the private school, are adequate to protect the health and safety of students.

(d) The curricula for the educational programs of the private school are sound and comprehensive and emphasize the establishment of high practical standards.

(e) The curricula for the educational programs for grades 9 through 12 establish academic standards necessary for students to qualify to attend community colleges and institutions of post-secondary education, both within and without the State of Oregon.

(f) Courses for educational programs are taught for a period of time equivalent to the period of time required for students attending public schools.

(g) The private school complies with the criteria of sections 1 to 5 of this 2021 Act and any rules adopted by the State Board of Education pursuant to sections 1 to 5 of this 2021 Act.

SECTION 3. (1) A private school may become a registered private school in the manner provided by sections 1 to 5 of this 2021 Act.

(2) A person authorized to act on behalf of a private school may submit to the Department of Education an application to register the private school. The application must be submitted in the form required by the department.

(3) In an application for registration, the private school must demonstrate to the satisfaction of the department that the private school complies with the criteria adopted by the State Board of Education under section 2 of this 2021 Act.

(4) Upon receipt of an application for registration, the Department

of Education shall evaluate the application as provided by subsection (3) of this section. The department shall register a private school if the department finds that the school complies with the requirements for registration. If the department refuses to register the private school, the department shall provide the private school with notice of the refusal and the reasons for refusal.

(5) Registration of a private school expires each year on October 14. Registration is renewable annually before October 15. Registration not renewed before October 15 shall be considered lapsed and may be renewed only in the manner required for initial registration.

SECTION 4. (1) Except as provided by this section, a registered private school is not required to comply with statutes and rules that apply to public schools.

(2) A registered private school is required to comply with the following laws:

- (a) ORS 326.603 and 326.607 (criminal records check);
- (b) ORS 339.285 to 339.303 (use of restraint or seclusion on students);
- (c) ORS 339.343 (student suicide prevention plan);
- (d) ORS 339.351 to 339.364 (prohibition on harassment, intimidation or bullying and prohibition on cyberbullying);
- (e) ORS 339.366 and 339.368 (policies on teen dating violence and domestic violence);
- (f) ORS 339.370 to 339.400 (reporting and investigations of abuse and sexual conduct);
- (g) ORS 419B.005 to 419B.050 (mandatory reporting of abuse);
- (h) Any statutes or rules identified by the State Board of Education by rule;
- (i) Any statutes or rules that expressly apply to private schools; and
- (j) Any requirements of sections 1 to 5 of this 2021 Act or of rules adopted under sections 1 to 5 of this 2021 Act.

SECTION 5. (1) The Department of Education may suspend or re-

voke or deny renewal of a private school registration as provided by this section.

(2) The department may suspend or revoke or deny renewal of a private school registration if the department finds that:

(a) The private school fails to comply with the requirements of sections 1 to 5 of this 2021 Act and rules adopted by the State Board of Education as provided by sections 1 to 5 of this 2021 Act;

(b) The private school fails to comply with any statutes or laws as provided in section 4 of this 2021 Act;

(c) A false statement is made in the application for registration; or

(d) A false statement is made in relation to any information or reports required under sections 1 to 5 of this 2021 Act or the information or reports are not provided when required.

(3) The procedures for suspension or revocation or for refusal to issue or renew a registration under sections 1 to 5 of this 2021 Act shall be considered a contested case within the meaning of ORS chapter 183 and the procedures applicable to a contested case shall apply.

(4) Every registered private school shall promptly provide any reports or information required by the Department of Education.

(5) The State Board of Education or the Department of Education may consult with the advisory committee convened as provided by section 2 of this 2021 Act on any matters related to the administration of this section.

SECTION 6. ORS 345.990 is amended to read:

345.990. (1) Violation of any provision of ORS 345.020, 345.030, 345.070, 345.115 or 345.325 is a Class B misdemeanor.

(2) Representation by a private school that it is registered with the Department of Education as provided by sections 1 to 5 of this 2021 Act when it is not registered is a Class C misdemeanor.

SECTION 7. ORS 326.603 is amended to read:

326.603. (1) For the purposes of requesting a state or nationwide criminal

records check under ORS 181A.195, the Department of Education may require the fingerprints of:

(a) A school district or private school contractor, whether part-time or full-time, or an employee of a contractor, whether part-time or full-time, who has direct, unsupervised contact with students as determined by the district or private school.

(b) A person newly hired, whether part-time or full-time, by a school district or private school in a capacity not described in ORS 342.223 (1).

(c) A person who is a community college faculty member providing instruction:

(A) At the site of an early childhood education program or at a school site as part of an early childhood education program; or

(B) At a kindergarten through grade 12 school site during the regular school day.

(d) A person who is an employee of a public charter school.

(2)(a) A school district **or a registered private school** shall send to the Department of Education for purposes of a criminal records check any information, including fingerprints, for each person described in subsection (1) of this section.

(b) A private school **that is not a registered private school** may send to the Department of Education for purposes of a criminal records check any information, including fingerprints, for each person described in subsection (1)(a), (b) or (c) of this section.

(3) The Department of Education shall request that the Department of State Police conduct a criminal records check as provided in ORS 181A.195 and may charge the school district or private school a fee as established by rule under ORS 181A.195. The school district or private school may recover its costs or a portion thereof from the person described in subsection (1) of this section. If the person described in subsection (1)(b) or (d) of this section requests, the school district shall and a private school may withhold the amount from amounts otherwise due the person, including a periodic payroll

1 deduction rather than a lump sum payment.

2 (4) Notwithstanding subsection (1) of this section, the Department of Ed-
3 ucation may not require fingerprints of a person described in subsection (1)
4 of this section if the person or the person's employer was checked in one
5 school district or private school and is currently seeking to work in another
6 district or private school unless the person lived outside this state during
7 the interval between the two periods of time of working in the district or
8 private school.

9 (5) Nothing in this section requires a person described in subsection
10 (1)(a), (b) or (d) of this section to submit to fingerprinting until the person
11 has been offered employment or a contract by a school district or private
12 school. Contractor employees may not be required to submit to fingerprinting
13 until the contractor has been offered a contract.

14 (6) If a person described in subsection (1) of this section states on a
15 criminal history form provided by the Department of Education that the
16 person has not been convicted of a crime but the criminal records check in-
17 dicates that the person has a conviction, the department shall determine
18 whether the person knowingly made a false statement as to the conviction.
19 The department shall develop a process and criteria to use for appeals of a
20 determination under this subsection.

21 (7)(a) The Superintendent of Public Instruction shall inform a school dis-
22 trict or private school if a person described in subsection (1) of this section
23 has been convicted of a crime listed in ORS 342.143 (3) or has knowingly
24 made a false statement on a criminal history form provided by the Depart-
25 ment of Education as to the conviction of any crime.

26 (b) If a person described in subsection (1) of this section has been con-
27 victed of a crime listed in ORS 342.143 (3), a school district **or registered**
28 **private school** may not employ or contract with the person and a private
29 school **that is not a registered private school** may choose not to employ
30 or contract with the person. Notification by the superintendent that the
31 school district may not employ or contract with the person shall remove the

person from any school district policies, collective bargaining provisions regarding dismissal procedures and appeals and the provisions of ORS 342.805 to 342.937.

(c) If a person described in subsection (1) of this section has knowingly made a false statement on a criminal history form provided by the Department of Education as to the conviction of a crime not listed in ORS 342.143 (3), a school district or private school may choose to employ or contract with the person.

(8) If a person described in subsection (1) of this section refuses to consent to the criminal records check or refuses to be fingerprinted, the school district **or registered private school** shall terminate the employment or contract status of the person. Termination under this subsection removes the person from any school district policies, collective bargaining provisions regarding dismissal procedures and appeals and the provisions of ORS 342.805 to 342.937.

(9) A school district **or registered private school** may not hire or continue to employ or contract with or allow the contractor to continue to assign a person to the school project if the person described in subsection (1) of this section has been convicted of a crime according to the provisions of ORS 342.143.

(10) As used in this section and ORS 326.607:

(a) "Private school" means a school that:

(A) Offers education in prekindergarten, kindergarten or grades 1 through 12, or any combination of those grade levels; and

(B) Provides instructional programs that are not limited solely to dancing, drama, music, religious or athletic instruction.

(b) "Registered private school" means a private school that is registered as provided by sections 1 to 5 of this 2021 Act.

[(b)] (c) "School district" means:

(A) A school district as defined in ORS 330.003.

(B) The Oregon School for the Deaf.

(C) An educational program under the Youth Corrections Education Program.

(D) A public charter school as defined in ORS 338.005.

(E) An education service district.

SECTION 8. ORS 326.607 is amended to read:

326.607. (1)(a) If a school district, [or] public charter school **or registered private school** allows volunteers to have direct, unsupervised contact with school children, the school district board, [or] public charter school governing body **or registered private school governing body** must adopt and implement a policy that requires those volunteers to undergo a background check.

(b) If a private school **that is not a registered private school** allows volunteers to have direct, unsupervised contact with school children, the governing body of the private school may adopt and implement a policy that requires those volunteers to undergo a background check.

(2) Upon request from a school district, a private school or a public charter school or a school district, private school or public charter school contractor and with consent from the individual, the Department of Education may conduct:

(a) An Oregon criminal records check using the Law Enforcement Data System for screening an individual who is a volunteer for the school district, private school or public charter school and who has direct, unsupervised contact with school children, or for screening applicants for employment.

(b) A state or nationwide criminal records check under ORS 181A.195 for screening an individual who is a volunteer for the school district, private school or public charter school and who has direct, unsupervised contact with school children, or for screening applicants for employment.

(3) The department may charge the requesting school district, private school, public charter school or school district, private school or public charter school contractor a fee not to exceed:

(a) \$5 for each request made under subsection (2) of this section for an

Oregon criminal records check using the Law Enforcement Data System.

(b) The fee established by rule under ORS 181A.195 for each request made under subsection (2) of this section for a state or national criminal records check under ORS 181A.195.

SECTION 9. ORS 339.370 is amended to read:

339.370. As used in ORS 339.370 to 339.400:

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

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

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

(4)(a) “Education provider” means:

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

(B) The Oregon School for the Deaf.

(C) An educational program under the Youth Corrections Education Program.

(D) A public charter school, as defined in ORS 338.005.

(E) An education service district, as defined in ORS 334.003.

(F) Any state-operated program that provides educational services to students.

(G) A private school.

(b) “Education provider” does not include:

(A) The Oregon Youth Authority;

(B) The Department of Corrections; or

(C) The Department of Education, except when functioning as an education provider on behalf of:

(i) The Oregon School for the Deaf;

(ii) An educational program under the Youth Corrections Education Program; or

(iii) A public charter school, as defined in ORS 338.005, that is sponsored by the Department of Education.

(5) “Investigation” means a detailed inquiry into the factual allegations of a report of suspected abuse or suspected sexual conduct that:

(a) Is based on interviews with the person who initiated the report, the person who may have been subjected to abuse or sexual conduct, witnesses and the person who is the subject of the report; and

(b) Results in a finding that the report:

(A) Is a substantiated report;

(B) Cannot be substantiated; or

(C) Is not a report of abuse or sexual conduct.

(6) “Law enforcement agency” has the meaning given that term in ORS 419B.005.

(7) “License” includes a license, registration or certificate issued by the Teacher Standards and Practices Commission.

(8) “Licensed administrator” includes the principal of a registered private school, as defined in section 1 of this 2021 Act, if the registered private school does not have any licensed administrators.

[(8)] (9) “Private school” means a school that provides to students instructional programs that are not limited solely to dancing, drama, music, religious or athletic instruction.

[(9)] (10) “School board” means the entity charged with adopting policies for an education provider.

[(10)] (11) “School employee” means an employee of an education provider.

[(11)(a)] (12)(a) “Sexual conduct” means verbal or physical conduct or verbal, written or electronic communications by a school employee, a contractor, an agent or a volunteer that involve a student and that are:

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

(B) Of a sexual nature that are directed toward the student or that have the effect of unreasonably interfering with the student’s educational per-

1 formance, or of creating an intimidating, hostile or offensive educational
2 environment.

3 (b) "Sexual conduct" does not include touching:

4 (A) That is necessitated by the nature of the school employee's job duties
5 or by the services required to be provided by the contractor, agent or vol-
6 unteer; and

7 (B) For which there is no sexual intent.

8 [(12)] (13) "Student" means any person:

9 (a) Who is:

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

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

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

17 [(13)] (14) "Substantiated report" means a report of abuse or sexual con-
18 duct that a law enforcement agency, the Department of Human Services, the
19 Teacher Standards and Practices Commission, the Department of Education
20 or an education provider has reasonable cause to believe, based on the
21 available evidence after conducting an investigation, is founded.

22 [(14)] (15) "Volunteer" means a person acting as a volunteer for an edu-
23 cation provider in a manner that requires the person to have direct, unsu-
24 pervised contact with students.

25 **SECTION 10.** ORS 332.075 is amended to read:

26 332.075. (1) Any district school board may:

27 (a) Fix the days of the year and the hours of the day when schools shall
28 be in session.

29 (b) Adopt textbooks and other instructional materials as provided in ORS
30 337.120 and 337.141 and courses of study for the use of such schools as pro-
31 vided in ORS 336.035.

(c) Authorize the use of the schools for purposes of training students of an approved educator preparation provider, as defined in ORS 342.120, and for such purposes may enter into contracts with the approved educator preparation provider on such terms as may be agreed upon. Such contracts as they relate to student teachers shall have the same effect and be subject to the same regulations as a contract between a licensed teacher and a district school board.

(d) Develop and operate with other school districts or community college districts secondary career and technical education programs for pupils of more than one district and fix by agreement the duration of the district's obligation to continue such activity, subject to the availability of funds therefor.

(e) Authorize the school district to be a member of and pay fees, if any, to any voluntary organization that administers interscholastic activities or that facilitates the scheduling and programming of interscholastic activities only if the organization:

(A) Implements policies that address the use of derogatory or inappropriate names, insults, verbal assaults, profanity or ridicule that occurs at an interscholastic activity, including by spectators of the interscholastic activity;

(B) Maintains a transparent complaint process that:

(i) Has a reporting system to allow participants of interscholastic activities or members of the public to make complaints about student, coach or spectator behavior;

(ii) Responds to a complaint made under sub-subparagraph (i) of this subparagraph within 48 hours of the complaint being received; and

(iii) Strives to resolve a complaint received under sub-subparagraph (i) of this subparagraph within 30 days of the complaint being received;

(C) Develops and implements a system of sanctions against schools, students, coaches and spectators if a complaint made under subparagraph (B) of this paragraph is verified; *[and]*

(D) Performs an annual survey of students and their parents to understand and respond to potential violations of policies adopted under subparagraph (A) of this paragraph or violations of ORS 659.850[.]; **and**

(E) Limits participation in interscholastic activities by private schools to private schools that are registered, as provided by sections 1 to 5 of this 2021 Act.

(f) Accept money or property donated for the use or benefit of the school district and, consistent with the laws of this state, use such money or property for the purpose for which it was donated.

(g) Enter into an approved written agreement with the governing body of a federally recognized Native American tribe in Oregon to allow the use of a mascot that represents, is associated with or is significant to the Native American tribe entering into the agreement. An agreement entered into under this paragraph must:

(A) Describe the acceptable uses of the mascot;

(B) Comply with rules adopted by the State Board of Education that:

(i) Are adopted after consultation with the federally recognized tribes in Oregon pursuant to ORS 182.164 (3); and

(ii) Prescribe the requirements for approval; and

(C) Be approved by the State Board of Education, which the board must provide if the agreement meets the requirements of this paragraph and the rules adopted under this paragraph.

(2) All contracts of the school district must be approved by the district school board before an order can be drawn for payment. If a contract is made without the authority of the district school board, the individual making such contract shall be personally liable.

(3) Notwithstanding subsection (2) of this section, a district school board may, by resolution or policy, authorize its superintendent or the superintendent's designee to enter into and approve payment on contracts for products, materials, supplies, capital outlay, equipment and services that are within appropriations made by the district school board pursuant to ORS

1 294.456. A district school board may not authorize its superintendent or the
2 superintendent's designee under this subsection to enter into and approve
3 payment on contracts that are collective bargaining agreements or service
4 contracts that include the provision of labor performed by employees of the
5 school district.

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