

House Bill 2833

Sponsored by Representative EVANS

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**.

Restricts number of faculty personnel files that community college may maintain. Provides that faculty member may respond to information in personnel files.

Prohibits community college or public university from basing evaluation of faculty member on information from personnel files other than authorized personnel files. Permits faculty member to bring action for damages or other equitable relief against community college or individuals who participate in evaluation in violation of prohibition.

Becomes operative January 1, 2020.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to personnel files kept for faculty members at institutions of higher education; creating new
3 provisions; amending ORS 352.226; and prescribing an effective date.

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

5 **SECTION 1. Section 2 of this 2019 Act is added to and made a part of ORS chapter 341.**

6 **SECTION 2. (1) As used in this section, "personnel record" means a record with infor-**
7 **mation that a community college keeps concerning a faculty member that the faculty mem-**
8 **ber or others submit at the faculty member's request or at the community college's request**
9 **including, but not limited to, information concerning discipline, membership activity, em-**
10 **ployment performance or other personal records of individual persons.**

11 **(2) The board may adopt standards and specific orders for a community college that is**
12 **under the board's control to govern access to personnel records that the community college**
13 **maintains and that are less than 25 years old. The president of the community college shall**
14 **implement the board's standards and orders.**

15 **(3) In adopting standards under subsection (2) of this section, a board shall require re-**
16 **stricted access to personnel records unless the president of a community college finds that**
17 **disclosing the personnel records would not adversely affect individual rights to privacy. The**
18 **board may limit access to personnel records on the basis of designated classes of informa-**
19 **tion, to specified persons or to stated times and conditions. The board may not limit access**
20 **to personnel records that are more than 25 years old.**

21 **(4) A community college may not use any standard, order or other action to deny to a**
22 **faculty member full access to any of the faculty member's personnel files or records that the**
23 **community college keeps, except that the community college may deny the faculty member**
24 **access to information that would identify a person that submitted information to the com-**
25 **munity college in confidence, as provided in subsection (8) of this section.**

26 **(5)(a) Except with respect to a file that contains names and identifying information for**
27 **persons that submit materials for a personnel file in confidence, as provided in subsection**
28 **(8) of this section, a community college may not keep more than three personnel files for a**

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 faculty member for any purpose or in any form or format. The community college shall keep
2 the personnel files in a designated location that is available to the faculty member for whom
3 the personnel file records any information.

4 (b) A community college that has a faculty member personnel file that does not meet the
5 requirements of this section shall destroy the personnel file and may not use any information
6 from the personnel file for the purpose of evaluating a faculty member.

7 (6) A community college shall document in each of a faculty member's personnel files any
8 information that the community college receives by telephone for inclusion in a personnel
9 file by means of a written summary of the conversation that identifies the names of the
10 conversants.

11 (7) A faculty member is entitled to submit, for placement in any personnel file a com-
12 munity college keeps, evidence that rebuts, corrects, amplifies or explains any information
13 in the personnel file and other material that the member believes might assist in the evalu-
14 ation process.

15 (8)(a) A community college shall maintain letters and other information concerning a
16 faculty member, that were submitted in confidence to the Higher Education Coordinating
17 Commission, a board or a community college, in personnel files for the faculty member that
18 are authorized under this section. If a faculty member requests access to the personnel files,
19 the community college shall protect the anonymity of the person that submitted the letters
20 and other information by making the full text of the letter or other information available
21 and excising portions of the text that would serve to identify the person that submitted the
22 letter or other information. A community college may keep only the names of the contribu-
23 tors and the excised portions of the documents in a file other than the three authorized
24 under subsection (5) of this section.

25 (b) Confidential letters and other information that the Higher Education Coordinating
26 Commission, a board or a community college received or solicited before employing a faculty
27 member are exempt from this section, except that the community college must place the
28 information described in this paragraph into the personnel file for a faculty member that the
29 community college currently employs. If a faculty member requests access to the faculty
30 member's personnel files, the community college shall protect the anonymity of the con-
31 tributor of confidential preemployment letters and other preemployment information by
32 making the full text of the letters or other information available and excising portions of the
33 text that would serve to identify the person that submitted the letters or other information.
34 A community college may keep only the names of the contributors and the excised portions
35 of the documents in a file other than the three files authorized under subsection (5) of this
36 section.

37 (9) Classroom survey evaluation by students of a faculty member's classroom or labora-
38 tory performance must be anonymous. A community college shall place the record of evalu-
39 ation reports in at least one of the personnel files authorized under subsection (5) of this
40 section. The community college shall return to the faculty member all survey instruments
41 used to obtain evaluation data.

42 (10) The Higher Education Coordinating Commission, a board and a community college
43 may not solicit or accept letters, documents or other materials, given orally or in written
44 form, from individuals or groups who wish anonymity or who want the community college
45 to keep information that the individuals or groups provide confidential.

1 (11) Notwithstanding any provision of any employment contract between a community
 2 college and an individual faculty member or the faculty member's appropriate bargaining
 3 unit, as defined in ORS 243.650, the faculty member may appeal an evaluation that a com-
 4 munity college bases on information from a personnel file to the board. A right of appeal
 5 under this subsection extends to a faculty member if the faculty member previously received
 6 satisfactory performance ratings for a consecutive period of 10 years or for 11 of 13 non-
 7 consecutive years.

8 (12)(a) A community college may not evaluate a faculty member with information from
 9 a personnel file other than a personnel file authorized under this section.

10 (b) A faculty member may bring an action for damages or for other equitable relief in a
 11 court of this state against a community college or any individual involved in an evaluation
 12 that is based on information from a personnel file other than a personnel file authorized
 13 under this section.

14 (c) The Governor, without the consent of a board or the Higher Education Coordinating
 15 Commission, may remove from a position at a community college any individual that par-
 16 ticipates in a faculty evaluation that violates paragraph (a) of this subsection.

17 (13) A standard or order promulgated under this section does not limit the authority of
 18 a community college to prepare from personnel records statistical or demographic reports
 19 that do not identify individuals who have not consented to the identification.

20 (14) Any category of personnel records that is specifically designated as confidential un-
 21 der valid standards or orders under this section is not a public record for the purposes of
 22 ORS 192.314.

23 **SECTION 3.** ORS 352.226 is amended to read:

24 352.226. (1) A governing board as defined in ORS 352.029 may, for the public university under
 25 *[its]* **the governing board's** control, adopt standards and specific orders by or through the president
 26 of each public university governing access to personnel records of the public university or office,
 27 department or activity that are less than 25 years old.

28 (2) Standards adopted under subsection (1) of this section *[shall]* **must** require that personnel
 29 records be subjected to restrictions on access unless upon a finding by the president of the public
 30 university that the public interest in maintaining individual rights to privacy in an adequate edu-
 31 cational environment would not suffer by disclosure of such records. Access to such records may
 32 be limited to designated classes of information or persons, or to stated times and conditions, or to
 33 both, but cannot be limited for records more than 25 years old.

34 (3) A *[standard or order promulgated pursuant to this section]* **public university** may not use
 35 **any standard, order or other action to** deny to a faculty member full access to the member's
 36 personnel file or records kept by the public university, except **that the public university may deny**
 37 **the faculty member access to information that would identify a person that submitted in-**
 38 **formation to the public university in confidence,** as provided in subsections (7) and (8) of this
 39 section.

40 *[(4) The number of files relating to the evaluation of a faculty member is limited to three, to be kept*
 41 *in designated, available locations.]*

42 (4)(a) **Except with respect to a file that contains names and identifying information for**
 43 **persons that submit materials for a personnel file in confidence, as provided in subsections**
 44 **(7) and (8) of this section, a public university may not keep more than three personnel files**
 45 **for a faculty member for any purpose or in any form or format. The public university shall**

1 **keep the personnel files in a designated location that is available to the faculty member for**
 2 **whom the personnel file records any information.**

3 **(b) A public university that has a faculty member personnel file that does not meet the**
 4 **requirements of this section shall destroy the personnel file and may not use any information**
 5 **from the personnel file for the purpose of evaluating a faculty member.**

6 (5) Any evaluation received by telephone must be documented in each of the faculty member's
 7 files by means of a written summary of the conversation with the names of the conversants identi-
 8 fied.

9 (6) A faculty member is entitled to submit, for placement in [*the three files*] **any personnel file**
 10 **a public university keeps**, evidence rebutting, correcting, amplifying or explaining any document
 11 contained therein and other material that the member believes might be of assistance in the evalu-
 12 ation process.

13 (7) Letters and other information submitted in confidence to the State Board of Higher Educa-
 14 tion or [*its*] **the board's** public universities, offices, departments or activities prior to July 1, 1975,
 15 [*shall*] **must** be maintained in the files designated by the governing board of the public university
 16 currently employing the faculty member. However, if a faculty member requests access to those files,
 17 the anonymity of the contributor of letters and other information obtained prior to July 1, 1975,
 18 [*shall*] **must** be protected. The full text [*shall*] **must** be made available except that portions of the
 19 text that would serve to identify the contributor [*shall*] **must** be excised by a faculty committee.
 20 Only the names of the contributors and the excised portions of the documents may be kept in a file
 21 other than the three prescribed by subsection (4) of this section.

22 (8)(a) Confidential letters and other information submitted to or solicited after July 1, 1975, by
 23 the State Board of Higher Education or [*its*] **the board's** public universities, offices, departments
 24 or activities prior to the employment of a prospective faculty member are exempt from the pro-
 25 visions of this section. However, if the member is currently employed by a public university or its
 26 offices, departments or activities, the confidential preemployment materials [*shall*] **must** be placed
 27 in the three authorized files. If a faculty member requests access to the member's files, the ano-
 28 nymity of the contributor of confidential preemployment letters and other preemployment informa-
 29 tion [*shall*] **must** be protected. The full text [*shall*] **must** be made available, except that portions
 30 of the text that would serve to identify the contributor [*shall*] **must** be excised and retained in a file
 31 other than the three designated in subsection (4) of this section.

32 (b) Confidential letters and other information submitted to or solicited by a public university
 33 listed in ORS 352.002 after the date that the university obtained a governing board, and prior to the
 34 employment of a prospective faculty member are exempt from the provisions of this section. How-
 35 ever, if the member is employed by the university, the confidential preemployment materials [*shall*]
 36 **must** be placed in the three authorized files. If a faculty member requests access to the member's
 37 files, the anonymity of the contributor of confidential preemployment letters and other preemploy-
 38 ment information [*shall*] **must** be protected. The full text shall be made available, except that
 39 portions of the text that would serve to identify the contributor [*shall*] **must** be excised and retained
 40 in a file other than the three designated in subsection (4) of this section.

41 (9) Classroom survey evaluation by students of a faculty member's classroom or laboratory per-
 42 formance [*shall*] **must** be anonymous. The record of tabulated reports [*shall*] **must** be placed in at
 43 least one of the files designated in subsection (4) of this section. All survey instruments used to
 44 obtain evaluation data [*shall*] **must** be returned to the faculty member.

45 (10) A public university listed in ORS 352.002 and, after July 1, 1975, but before the date on

1 which the public university obtained a governing board, the State Board of Higher Education and
 2 [its] the board's public universities, offices, departments or activities, when evaluating its employed
 3 faculty members, may not solicit or accept letters, documents or other materials, given orally or in
 4 written form, from individuals or groups who wish their identity kept anonymous or the information
 5 they provide kept confidential.

6 **(11) Notwithstanding any provision of any employment contract between a public uni-**
 7 **versity and an individual faculty member or the faculty member's appropriate bargaining**
 8 **unit, as defined in ORS 243.650, the faculty member may appeal an evaluation that a public**
 9 **university bases on information from a personnel file to the public university's governing**
 10 **board. A right of appeal under this subsection extends to a faculty member without tenure**
 11 **if the faculty member previously received satisfactory performance ratings for a consecutive**
 12 **period of 10 years or for 11 of 13 nonconsecutive years.**

13 **(12)(a) A public university may not evaluate a faculty member with information from a**
 14 **personnel file other than a personnel file authorized under this section.**

15 **(b) A faculty member may bring an action for damages or for other equitable relief in a**
 16 **court of this state against a public university or any individual involved in an evaluation that**
 17 **is based on information from a personnel file other than a personnel file authorized under**
 18 **this section.**

19 **(c) The Governor, without the consent of a public university's governing board or the**
 20 **Higher Education Coordinating Commission, may remove from a position at the public uni-**
 21 **versity any individual that participates in a faculty evaluation that violates paragraph (a) of**
 22 **this subsection.**

23 [(11)] **(13) A standard or order promulgated pursuant to this section does not limit the authority**
 24 **of a public university to [prepare, without identification of individual persons who have not consented**
 25 **thereto,] use personnel records to prepare statistical or demographic reports [from personnel re-**
 26 **ords] that do not identify individuals who have not consented to the identification.**

27 [(12)] **(14) Any category of personnel records specifically designated as confidential pursuant to**
 28 **valid standards or orders pursuant to this section is not a public record for the purposes of ORS**
 29 **192.314.**

30 [(13)] **(15) As used in this section, "personnel records" means records containing information**
 31 **kept by the public university, office, department or activity concerning a faculty member and fur-**
 32 **nished by the faculty member or by others about the faculty member at the request of the faculty**
 33 **member or the public university, office, department or activity, including, but not limited to, infor-**
 34 **mation concerning discipline, membership activity, employment performance or other personal re-**
 35 **ords of individual persons.**

36 **SECTION 4. Section 2 of this 2019 Act and the amendments to ORS 352.226 by section 3**
 37 **of this 2019 Act apply to faculty evaluations that occur on or after the operative date speci-**
 38 **fied in section 5 of this 2019 Act.**

39 **SECTION 5. (1) Section 2 of this 2019 Act and the amendments to ORS 352.226 by section**
 40 **3 of this 2019 Act become operative January 1, 2020.**

41 **(2) The Higher Education Coordinating Commission, the State Board of Education, a**
 42 **board of education of a community college district, a public university or a community col-**
 43 **lege may adopt rules and take any other action before the operative date specified in sub-**
 44 **section (1) of this section that is necessary to enable the commission, board, public**
 45 **university or community college to exercise, on and after the operative date specified in**

1 subsection (1) of this section, all of the duties, functions and powers conferred on the com-
2 mission, board, public university or community college by section 2 of this 2019 Act and the
3 amendments to ORS 352.226 by section 3 of this 2019 Act.

4 SECTION 6. This 2019 Act takes effect on the 91st day after the date on which the 2019
5 regular session of the Eightieth Legislative Assembly adjourns sine die.

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