

DRAFT

SUMMARY

Requires Department of Education to investigate allegations of noncompliance with laws related to discrimination, restraint and seclusion and religious activity when department receives complaint of noncompliance or department determines there is evidence of noncompliance. Authorizes department to order corrective action or to impose sanctions when noncompliance found.

A BILL FOR AN ACT

Relating to noncompliance with laws by public education providers; creating new provisions; and amending ORS 327.109, 336.631, 338.115, 339.303, 339.347, 659.855 and 659.860.

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

SECTION 1. Section 2 of this 2023 Act is added to and made a part of ORS chapter 659.

SECTION 2. (1) As used in this section, “public elementary or secondary school or program” includes a public charter school.

(2) The Department of Education must investigate whether a public elementary or secondary school or program is noncompliant under ORS 659.850 or 659.852 when the department:

(a) Receives a written complaint of noncompliance from any person; or

(b) Determines on its own motion that there is evidence of noncompliance.

(3) If the department determines that a public elementary or secondary school or program is noncompliant under ORS 659.850 or

659.852, the department must:

(a) Order the school or program to undergo corrective action in a time and manner prescribed by the department. Corrective action imposed under this paragraph may include reviewing and rewriting policies, participating in specified training or receiving other technical assistance identified by the department.

(b) Order a school or program that is noncompliant under ORS 659.850 to provide the person subjected to discrimination with compensatory services, as identified by the State Board of Education by rule.

(c) Impose sanctions if the school or program fails to perform any action ordered pursuant to paragraph (a) or (b) of this subsection. Sanctions imposed under this paragraph may include withholding all or part of state funding, as provided by the State Board of Education by rule.

SECTION 3. ORS 659.855 is amended to read:

659.855. [(1) Any public elementary or secondary school or program determined by the Superintendent of Public Instruction to be in noncompliance with provisions of ORS 659.850 and 659.852 and this section shall be subject to appropriate sanctions, which may include withholding of all or part of state funding, as established by rule of the State Board of Education.]

[(2)] (1) Any public community college determined by the Higher Education Coordinating Commission to be in noncompliance with provisions of ORS 659.850 and 659.852 and this section shall be subject to appropriate sanctions, which may include withholding of all or part of state funding, as established by rule of the commission.

[(3)] (2) Any public university listed in ORS 352.002 determined by the Higher Education Coordinating Commission to be in noncompliance with provisions of ORS 659.850 and 659.852 and this section shall be subject to appropriate sanctions, which may include withholding of all or part of state funding, as established by rule of the commission.

[(4) Any public charter school determined by the sponsor of the school or the superintendent to be in noncompliance with the provisions of ORS 659.850 and 659.852 and this section shall be subject to appropriate sanctions, which may include the withholding of all or part of state funding by the sponsor or superintendent, as established by rule of the State Board of Education.]

SECTION 4. ORS 336.631 is amended to read:

336.631. (1) Prior to contracting with or distributing any public funds to a private alternative education program, a district school board shall:

(a) Annually approve the private alternative education program;

(b) Determine that the private alternative education program is registered with the Department of Education; and

(c) Determine that the private alternative education program complies with the requirements of subsection (2) of this section and ORS 336.625 (3)(c).

(2) The following laws apply to private alternative education programs that are registered with the Department of Education under ORS 336.635 in the same manner as the laws apply to school districts and public schools:

(a) Federal law;

(b) ORS 181A.195, 326.603, 326.607 and 342.223 (criminal records checks);

(c) ORS 329.496 (physical education);

(d) ORS 337.150, 339.141, 339.147 and 339.155 (tuition and fees);

(e) ORS 659.850[, 659.855] and 659.860 **and section 2 of this 2023 Act** (discrimination);

(f) ORS 339.122 (advertisement requirements);

(g) Health and safety statutes and rules; and

(h) Any statute, rule or school district policy that is specified in a contract between the school district board and the private alternative education program.

(3) Prior to placement of a student in a private alternative education program, the resident district shall determine whether the proposed placement best serves the student's educational needs and interests and assists the student in achieving the district and state academic standards.

(4) Contracts between a school district and a private alternative education program shall be included in the assessment of effectiveness provided for in ORS 329.085.

SECTION 5. ORS 338.115 is amended to read:

338.115. (1) Statutes and rules that apply only to school district boards, school districts or other public schools do not apply to public charter schools. However, the following laws do apply to public charter schools:

- (a) Federal law;
- (b) ORS 30.260 to 30.300 (tort claims);
- (c) ORS 192.311 to 192.478 (public records law);
- (d) ORS 192.610 to 192.690 (public meetings law);
- (e) ORS chapters 279A, 279B and 279C (Public Contracting Code);
- (f) ORS 297.405 to 297.555 and 297.990 (Municipal Audit Law);
- (g) ORS 326.565, 326.575 and 326.580 (student records);
- (h) ORS 181A.195, 326.603, 326.607 and 342.223 (criminal records checks);
- (i) ORS 329.045 (academic content standards and instruction);
- (j) ORS 329.451 (high school diploma, modified diploma, extended diploma and alternative certificate);
- (k) ORS 329.496 (physical education);
- (L) The statewide assessment system developed by the Department of Education for mathematics, science and language arts under ORS 329.485 (2);
- (m) ORS 336.840 (use of personal electronic devices);
- (n) ORS 337.150 (textbooks);
- (o) ORS 339.119 (consideration for educational services);
- (p) ORS 339.141, 339.147 and 339.155 (tuition and fees);
- (q) ORS 339.250 (9) (prohibition on infliction of corporal punishment);
- (r) ORS 339.326 (notice concerning students subject to juvenile court petitions);
- (s) ORS 339.370 to 339.400 (reporting of suspected abuse and suspected sexual conduct);
- (t) ORS 342.856 (core teaching standards);

(u) ORS chapter 657 (Employment Department Law);

(v) ORS 659.850[, 659.855] and 659.860 **and section 2 of this 2023 Act** (discrimination);

(w) Any statute or rule that establishes requirements for instructional time provided by a school during each day or during a year;

(x) Statutes and rules that expressly apply to public charter schools;

(y) Statutes and rules that apply to a special government body, as defined in ORS 174.117, or a public body, as defined in ORS 174.109;

(z) Health and safety statutes and rules;

(aa) Any statute or rule that is listed in the charter; and

(bb) This chapter.

(2) Notwithstanding subsection (1) of this section, a charter may specify that statutes and rules that apply only to school district boards, school districts and other public schools may apply to a public charter school.

(3) If a statute or rule applies to a public charter school, then the terms “school district” and “public school” include public charter school as those terms are used in that statute or rule.

(4) A public charter school may not violate the Establishment Clause of the First Amendment to the United States Constitution or Article I, section 5, of the Oregon Constitution, or be religion based.

(5)(a) A public charter school shall maintain an active enrollment of at least 25 students.

(b) For a public charter school that provides educational services under a cooperative agreement described in ORS 338.080, the public charter school is in compliance with the requirements of this subsection if the public charter school provides educational services under the cooperative agreement to at least 25 students, without regard to the school districts in which the students are residents.

(6) A public charter school may sue or be sued as a separate legal entity.

(7) The sponsor, members of the governing board of the sponsor acting in their official capacities and employees of a sponsor acting in their official

capacities are immune from civil liability with respect to all activities related to a public charter school within the scope of their duties or employment.

(8) A public charter school may enter into contracts and may lease facilities and services from a school district, education service district, public university listed in ORS 352.002, other governmental unit or any person or legal entity.

(9) A public charter school may not levy taxes or issue bonds under which the public incurs liability.

(10) A public charter school may receive and accept gifts, grants and donations from any source for expenditure to carry out the lawful functions of the school.

(11) The school district in which the public charter school is located shall offer a high school diploma, a modified diploma, an extended diploma or an alternative certificate to any public charter school student who meets the district's and state's standards for a high school diploma, a modified diploma, an extended diploma or an alternative certificate.

(12) A high school diploma, a modified diploma, an extended diploma or an alternative certificate issued by a public charter school grants to the holder the same rights and privileges as a high school diploma, a modified diploma, an extended diploma or an alternative certificate issued by a non-chartered public school.

(13) Prior to beginning operation, the public charter school shall show proof of insurance to the sponsor as specified in the charter.

(14) A public charter school may receive services from an education service district in the same manner as a nonchartered public school in the school district in which the public charter school is located.

SECTION 6. ORS 339.347 is amended to read:

339.347. (1) As used in this section:

(a)(A) "Bias incident" means a person's hostile expression of animus toward another person, relating to the other person's perceived race, color,

1 religion, gender identity, sexual orientation, disability or national origin, of
2 which criminal investigation or prosecution is impossible or inappropriate.

3 (B) “Bias incident” may include derogatory language or behavior.

4 (b) “Education program” means any program, service, school or activity
5 sponsored by an education provider.

6 (c) “Education provider” means:

7 (A) A school district;

8 (B) A public charter school;

9 (C) The Oregon School for the Deaf;

10 (D) An education service district;

11 (E) An educational program under the Youth Corrections Education Pro-
12 gram or the Juvenile Detention Education Program, as those terms are de-
13 fined in ORS 326.695; or

14 (F) A program that receives moneys pursuant to ORS 343.243.

15 (d) “School property” means any property under the control of an educa-
16 tion provider.

17 (e) “Symbol of hate” means nooses, symbols of neo-Nazi ideology or the
18 battle flag of the Confederacy.

19 (2)(a) To comply with the prohibition on discrimination required by ORS
20 659.850, an education provider must prohibit the display of symbols of hate
21 on school property or in an education program.

22 (b) The prohibition required by this subsection does not apply to displays
23 that align with and are used in conjunction with state standards of education
24 for public schools.

25 (3) To comply with the prohibition on discrimination required by ORS
26 659.850, each education provider must adopt a policy to address bias inci-
27 dents and displays of symbols of hate. The policy must:

28 (a) Affirm that all students are entitled to a high quality educational
29 experience free from discrimination or harassment based on perceived race,
30 color, religion, gender identity, sexual orientation, disability or national or-
31 igin.

(b) Affirm that all employees of education providers are entitled to work in an environment that is free from discrimination or harassment based on perceived race, color, religion, gender identity, sexual orientation, disability or national origin.

(c) Affirm that all visitors of an education provider are entitled to participate in a school or educational environment that is free from discrimination or harassment based on perceived race, color, religion, gender identity, sexual orientation, disability or national origin.

(d) Prohibit the display of symbols of hate on school property or in an education program.

(e) Establish procedures for addressing bias incidents and displays of symbols of hate. The procedures must:

(A) Apply broadly to include persons directly targeted by an act, as well as the community of students as a whole who are likely to be impacted by the act.

(B) Require the education provider to prioritize the safety and well-being of all persons impacted by the act.

(C) Require the education provider to recognize the experience of all persons impacted by the act, acknowledge the impact, commit to taking immediate action and commit to preventing further harm against those persons impacted.

(D) Include educational components that:

(i) Address the history and impact of bias and hate;

(ii) Advance the safety and healing of those impacted by bias and hate; and

(iii) Promote accountability and transformation for people who cause harm as well as transformation of the conditions that perpetuated the harm.

(E) Include communication protocols that provide all persons impacted by the act with information relating to the investigation and outcome of the investigation, including:

(i) Notice that an investigation has been initiated;

(ii) Notice when an investigation has been completed;

(iii) The findings of the investigation and the final determination based on those findings;

(iv) Actions taken to remedy a person's behavior and prevent reoccurrence; and

(v) When applicable, the legal citation of any law prohibiting the disclosure of any of the information described in this subparagraph and an explanation of how that law applies to the current situation.

(F) Direct the education provider to consider whether the act implicates other civil rights laws and, if so, to respond accordingly. The nature of the act must determine:

(i) The process used to respond to the act;

(ii) The rights and protections available to the person impacted by the act; and

(iii) The right to appeal to the Department of Education or to the United States Department of Education.

(G) Require the education provider to develop and implement instructional materials to make this policy and related practices, including reporting procedures, educational processes and possible consequences, known to all employees and students of the education provider.

(4) Any education provider that violates this section or a policy adopted under this section shall be:

(a) Considered to be in noncompliance with the provisions of ORS 659.850;

(b) Subject to the **corrective actions or** sanctions for noncompliance of ORS 659.850 under [ORS 659.855] **section 2 of this 2023 Act**; and

(c) Subject to the enforcement provisions of ORS 659.850 by ORS 659.860.

SECTION 7. ORS 659.860 is amended to read:

659.860. (1) Any person claiming to be aggrieved by unlawful discrimination as prohibited by ORS 659.850 may file a civil action in circuit court for equitable relief or, subject to the terms and conditions of ORS 30.265 to 30.300, damages, or both. The court may order such other relief as may be

appropriate. Damages shall be \$200 or actual damages, whichever is greater.

(2) The action authorized by this section shall be filed within one year of the filing of a grievance.

(3) An action may not be filed unless, within 180 days of the alleged discrimination, a grievance has been filed with the school district board, public charter school governing body, community college board of education or governing board of a public university listed in ORS 352.002.

(4) An action may not be filed until 90 days after filing a grievance unless only injunctive relief is sought pursuant to ORCP 79. The right to temporary or preliminary injunctive relief shall be independent of the right to pursue any administrative remedy available to complainants pursuant to ORS 659.850.

(5) An action may not be filed if the school district board, public charter school governing body, community college board of education or governing board of a public university listed in ORS 352.002 has obtained a conciliation agreement with the person filing the grievance or if a final determination of a grievance has been made except as provided in ORS 183.480.

(6) Notwithstanding the filing of a grievance, pursuant to subsection (3) of this section, any person seeking to maintain an action under this section shall also file a notice of claim within 180 days of the alleged discrimination as required by ORS 30.275.

(7) The court shall award reasonable attorney fees to a prevailing plaintiff in any action under this section. The court may award reasonable attorney fees and expert witness fees incurred by a defendant who prevails in the action if the court determines that the plaintiff had no objectively reasonable basis for asserting a claim or no objectively reasonable basis for appealing an adverse decision of a trial court.

(8) Nothing in this section is intended to reduce the obligations of the education agencies under this section and ORS 659.850 and [659.855] **section 2 of this 2023 Act.**

SECTION 8. Section 9 of this 2023 Act is added to and made a part

of ORS 339.285 to 339.303.

SECTION 9. (1) The Department of Education must investigate whether a public education program is noncompliant under ORS 339.285 to 339.303 when the department:

(a) Receives a written complaint of noncompliance from any person; or

(b) Determines on its own motion that there is evidence of non-compliance.

(2) If the department determines that a public education program is noncompliant under ORS 339.285 to 339.303, the department must:

(a) Order the program to undergo corrective action in a time and manner prescribed by the department. Corrective action imposed under this paragraph may include reviewing and rewriting policies, participating in specified training or receiving other technical assistance identified by the department.

(b) Impose sanctions if the program fails to perform any action ordered pursuant to paragraph (a) of this subsection. Sanctions imposed under this paragraph may include withholding all or part of state funding, as provided by the State Board of Education by rule.

SECTION 10. ORS 339.303 is amended to read:

339.303. The State Board of Education shall adopt by rule[:]

[(1) A process for an organization or an individual to submit to the Superintendent of Public Instruction a written, signed complaint alleging that a public education program is violating or has violated a provision of ORS 339.285 to 339.303. The complaint must indicate that, prior to submitting the complaint to the superintendent, the organization or individual attempted to seek a remedy for the complaint from the board or governing body overseeing the entity that has jurisdiction over the public education program against which the complaint is being submitted.]

[(2) A process for investigating a complaint submitted under subsection (1) of this section.]

1 [(3)] the minimum standards for any rooms used by a public education
2 program for seclusion of a student. The standards must:

3 [(a)] (1) Take into account the health and safety of students and personnel
4 of the public education program and the respect and dignity of students; and

5 [(b)] (2) Include consideration of the size, safety features, lighting and
6 ventilation of the rooms.

7 **SECTION 11.** ORS 327.109 is amended to read:

8 327.109. [(1) Upon receipt from a citizen of Oregon of a complaint that on
9 its face is colorable that a school district or public charter school sponsors,
10 financially supports or is actively involved with religious activity, the Super-
11 intendent of Public Instruction or the superintendent's designated represen-
12 tative shall undertake promptly a preliminary investigation of the facts alleged
13 in the complaint.]

14 (1) **A school district or public charter school may not sponsor, fi-
15 nancially support or be actively involved with religious activity.**

16 (2) **The Department of Education must investigate if a school dis-
17 trict or a public charter school is noncompliant with subsection (1) of
18 this section when the department:**

19 (a) **Receives a written complaint of noncompliance from any person;
20 or**

21 (b) **Determines on its own motion that there is evidence of non-
22 compliance.**

23 [(2)] (3) If, after the preliminary investigation, the [superintendent] **de-
24 partment** finds that there is a substantial basis to believe that the school
25 district or public charter school [sponsors, financially supports or is actively
26 involved with religious activity] **is noncompliant with subsection (1) of
27 this section,** the [superintendent] **department** shall:

28 (a) In the case of a school district:

29 (A) Notify the complainant and the school district;

30 (B) Withhold immediately all funds due the school district under ORS
31 327.095; and

(C) Schedule a contested case hearing to be conducted in accordance with ORS 183.413 to 183.470.

(b) In the case of a public charter school:

(A) Notify the complainant, the public charter school, the school district in which the public charter school is located and the sponsor of the public charter school;

(B) Withhold immediately all funds for the public charter school that, pursuant to ORS 338.155, are due under ORS 327.095 to the school district in which the public charter school is located;

(C) Order the school district in which the public charter school is located to withhold immediately all funds due the public charter school under ORS 338.155; and

(D) Schedule a contested case hearing to be conducted in accordance with ORS 183.413 to 183.470.

[(3)(a)] **(4)(a)** In the case of a school district if, after the preliminary investigation, the [superintendent] **department** finds that there is no substantial basis to believe that the school district [sponsors, financially supports or is actively involved with religious activity] **is in noncompliance with subsection (1) of this section**, the [superintendent] **department** shall notify the complainant and the district of that finding and shall not withhold funds due the district under ORS 327.095 or schedule a hearing.

(b) In the case of a public charter school if, after the preliminary investigation, the [superintendent] **department** finds that there is no substantial basis to believe that the public charter school [sponsors, financially supports or is actively involved with religious activity] **is in noncompliance with subsection (1) of this section**, the [superintendent] **department** shall notify the complainant, the public charter school, the school district in which the public charter school is located and the sponsor of the public charter school of that finding and shall not schedule a hearing or withhold funds for the public charter school that, pursuant to ORS 338.155, are due under ORS 327.095 to the school district in which the public charter school is located.

The *[superintendent]* **department** shall also order the school district in which the public charter school is located not to withhold funds due the public charter school under ORS 338.155.

~~[(4)]~~ **(5)** During the preliminary investigation, the school district or public charter school shall cooperate to a reasonable degree with the *[superintendent]* **department** and provide any evidence that the *[superintendent]* **department** considers necessary for the investigation. If the school district or public charter school fails or refuses to cooperate to a reasonable degree with the *[superintendent]* **department** during the investigation, the *[superintendent]* **department** shall presume that there is a substantial basis to believe that the school district or public charter school *[sponsors, financially supports or is actively involved with religious activity]* **is in noncompliance with subsection (1) of this section** and shall proceed as provided in subsection ~~[(2)]~~ **(3)** of this section.

~~[(5)]~~ **(6)** If the *[superintendent]* **department** makes a finding under subsection ~~[(2) or (4)]~~ **(3) or (5)** of this section, the school district or public charter school shall receive no funds under ORS 327.095 or 338.155 from the date of the *[superintendent's]* **department's** finding until the *[superintendent]* **department** finds that the school district or public charter school is no longer *[sponsoring, financially supporting or actively involved with religious activity]* **in noncompliance with subsection (1) of this section.**

~~[(6)]~~ **(7)** The funds withheld under this section shall be held in an escrow account and shall be removed from that account only as follows:

(a) If the *[superintendent]* **department** determines, after a contested case hearing, or a court on appeal rules, that the school district or public charter school never *[sponsored, financially supported or was actively involved with religious activity]* **was in noncompliance with subsection (1) of this section**, the entire amount, including interest thereon, in the escrow account shall be released to the school district or public charter school.

(b) If the *[superintendent]* **department** determines, after a contested case

1 hearing, or a court on appeal rules, that the school district or public charter
 2 school *[sponsored, financially supported or was actively involved with reli-*
 3 *gious activity]* **was in noncompliance with subsection (1) of this section**
 4 in the past but has ceased to *[do so]* **be in noncompliance**, that portion of
 5 the amount, including interest thereon, in the escrow account that accrued
 6 to the school district or public charter school after the school district or
 7 public charter school ceased *[the proscribed conduct]* **to be in noncompli-**
 8 **ance** shall be paid to the school district or public charter school. Any
 9 amount, including interest thereon, permanently withheld from the school
 10 district or public charter school shall revert to the State School Fund or to
 11 the General Fund, if the biennium has ended.

12 (c) If the school district or public charter school does not cease *[the pro-*
 13 *scribed conduct]* **to be in noncompliance** by the beginning of the next
 14 school year, the *[superintendent]* **department** shall notify the State Treas-
 15 urer who shall cause the amount in the escrow account, including interest
 16 thereon, to revert to the State School Fund or to the General Fund, if the
 17 biennium has ended.

18 [(7)] (8) If the *[superintendent]* **department** schedules a contested case
 19 hearing, as provided in subsection [(2)] (3) of this section, the
 20 *[superintendent]* **department** may conduct such further investigation of the
 21 facts relevant to the complaint as the *[superintendent]* **department** considers
 22 necessary. In conducting the investigation, the *[superintendent]* **department**
 23 shall have the power of subpoena to compel production of documents and
 24 attendance of witnesses at depositions and may do all things necessary to
 25 secure a full and thorough investigation.

26 [(8)] (9) If a person or school district or public charter school fails to
 27 comply with any subpoena issued under subsection [(7)] (8) of this section,
 28 a judge of the circuit court of any county, on application of the *[super-*
 29 *intendent]* **department**, shall compel obedience by proceedings for contempt
 30 as in the case of disobedience of the requirements of a subpoena issued from
 31 circuit court.

