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SB 155 (2019) & ODE's Investigation Unit

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House Education Committee

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Senate Bill 155 (2019)

Senate Bill 155 (2019) established new responsibilities for the Oregon Department of Human Services (ODHS), the Teacher Standards and Practices Commission (TSPC), ODE and education providers with respect to suspected abuse or sexual conduct involving school employees, contractors, agents, or volunteers and students.

ODE Responsibilities:

- Requires ODE to investigate allegations of sexual conduct involving student an individual who is a school employee, contractor, agent, or volunteer who is not licensed with TSPC.
- Requires ODE to provide verification information to education providers when they are hiring an individual as a school employee or bringing on a contractor, agent, or volunteer to provide services in schools and that person is not licensed with TSPC.
- Requires ODE to provide notification to education providers when it receives notification from DHS a report of abuse involving a child and a person who is a school employee, contractor, agent or volunteer has been made.

Reporting Suspected Sexual Conduct to ODE

Who should report?

School employees must report suspected sexual conduct to the designated licensed administrator.

The designated licensed administrator must report suspected sexual conduct to:

- TSPC - for licensed employees, contractors, agents, or volunteers
- ODE - for non-licensed employees, contractors, agents, or volunteers

Anyone (students, parents, members of the community, etc.) may submit a report of suspected sexual conduct to ODE.

Reporting Suspected Sexual Conduct to ODE

How to report

Make reports using ODE's [Sexual Misconduct Report Form](#)

Two options for submitting forms to ODE:

1. [Secure File Transfer](#) to ODE.ReportSexualMisconduct@ode.state.or.us
2. Mail to: Investigation and Complaints Unit
Oregon Department of Education
255 Capitol Street NE
Salem, OR 97310

What happens when ODE receives a report?

First, ODE determines whether or not to open an investigation based on the following questions:

- Does the report allege something that, if true, would constitute sexual conduct?
- Does the report involve a student as defined in ORS 339.370(12)?
- Is the person who is alleged to have committed the sexual conduct a school employee, contractor, agent, or volunteer?
- Is that school employee, contractor, agent, or volunteer someone who is not licensed with TSPC?

If the answer to those questions is yes, ODE opens an investigation and notifies the education provider and subject of the report.

What happens when ODE receives a report?

After opening an investigation, ODE proceeds to conduct a detailed inquiry into the factual allegations raised in the report. ODE's investigation includes, as appropriate, the gathering of pertinent evidence and interviews with the reporter, student, subject, and any other witnesses.

Education providers are required to cooperate with ODE's sexual conduct investigations, including providing any documents or materials immediately upon request.

Based on the evidence gathered during the investigation, ODE prepares its final determination, which includes its factual findings. ODE must complete investigations and issue its determination within 90 days. ODE can extend the 90-day deadline for good cause.

If a report of sexual conduct is found to be substantiated, ODE notifies the subject of the right to request a contested case hearing.

Verification Checks

What is required?

Before hiring an individual who is NOT licensed with TSPC as school employee, or accepting services from any contractor, agent, or volunteer who is NOT licensed with TSPC, an education provider must verify with ODE whether the individual has an ongoing investigation or a substantiated report of sexual conduct.

How do education providers do a verification check?

Education providers use ODE's verification system called Sexual Misconduct Verification System (SMVS).

SMVS went live October 26, 2020, and provides education providers instant access to the verification information that they need prior to hiring a non-licensed school employee or bringing on a non-licensed contractor, agent, or volunteer to provide services.

One Year into Implementation

What have we accomplished

- Hired and onboarded a team
- Drafted administrative rules
- Created a webpage with information about ODE's implementation of SB 155 (2019)
- Created a paper verification check process to be used while ODE was building its online system for education providers to use to conduct these checks
- Manually processed 7700+ verifications through the paper verification process (which continues to be used by those education providers who do not yet have access to SMVS)
- Built and launched SMVS
- Built a process for reporting sexual conduct
- Hosted multiple webinars and created additional resources to train education providers on how to report and how to verify
- Provided technical assistance to education providers
- Ensured ODE investigators are trained in trauma informed investigation techniques
- Identified technical fixes and prepared SB 51 A

One Year into Implementation

Next steps in implementation:

- Increase the number of investigators on staff
 - ODE has requested additional position authority
- Work with TSPC to enter into a data share agreement
 - The goal is to have all of the verification information - for licensed and non-licensed individuals - in SMVS so that education providers can complete all required verifications through SMVS.
- Develop FAQs for the ODE [website](#)
- Continue to offer webinars and other training opportunities and tools for education providers



QUESTIONS



One Year into Implementation

SB 51 A (ODE's technical fix bill) - House Committee on Human Services

Licensed administrator

- ORS 339.372 requires education providers to designate a licensed administrator and an alternate licensed administrator to receive reports of suspected sexual conduct. However, private school administrators are not required to be licensed and charter schools may have a licensed or registered administrator.
- SB 51 A amends ORS 339.370 by adding a definition for licensed administrator to provide that a licensed administrator can include an individual who does not hold an administrative license issued by TSPC if the person is employed by an education provider that does not require administrators to be licensed.

One Year into Implementation

SB 51 A (ODE's technical fix bill) - House Committee on Human Services

Definition of "education provider"

- SB 155 (2019) assigns certain responsibilities to "education providers." ODE is included in the definition of education provider when it is "functioning as an education provider" on behalf of the Youth Corrections Education Program (YCEP), or a public charter school that is sponsored by the State Board of Education. The designation is inaccurate, creates overlapping responsibilities, and assigns ODE responsibilities it is not able to carry out.
- SB 51 A amends the ORS 339.370 definition of education provider, by removing the designation of ODE as an education provider for educational programs under YCEP and the four state-sponsored charter schools.

One Year into Implementation

SB 51 A (ODE's technical fix bill) - House Committee on Human Services

Notifications

- ODE is required to provide various notifications. In the process of implementing the bill, ODE staff discovered issues that prevent ODE from completing these notifications as required.
- SB 51 A provides ODE with the necessary authority to complete the required notifications.

Appeal

- SB 155 (2019) does not set any limits on who may appeal a final determination made by ODE.
- SB 51 A amends ORS 339.391 to allow only a subject of an investigation who receives a substantiated report to appeal a final determination.

One Year into Implementation

SB 51 A (ODE's technical fix bill) - House Committee on Human Services

Records Retention

- ORS 339.391 requires ODE to “retain documents and materials related to any report received under this section, regardless of whether the department found sufficient cause to justify holding a hearing under this section.”
- SB 51 A amends ORS 339.391 to require retention of documents/materials for 25 years, to be consistent with TSPC. An amendment has been introduced in the House Committee on Human Services to increase ODE's retention period to 75 years.

One Year into Implementation

SB 51 A (ODE's technical fix bill) - House Committee on Human Services

Amendment offered in the Senate and adopted

- The amendment was a collaboration between ODE and ODHS.
- ODE has been essentially functioning as a “middle man” between ODHS and education providers. Education providers currently receive duplicative notifications separately from both ODHS and ODE, which often leads to confusion.
- The adopted amendment makes ODHS responsible for notifying education providers of any reports of abuse and removes ODE from the role as “middle man.” This change still allows ODE to notify an education provider if need be, but does not require ODE to send another notification on top of what ODHS is already communicating.

Definitions

Who is an agent?

“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.

Who is a contractor?

“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.

Who is an education provider?

“Education provider” means:

- A school district, as defined in ORS 332.002.
- The Oregon School for the Deaf.
- An educational program under the Youth Corrections Education Program.
- A public charter school, as defined in ORS 338.005.
- An education service district, as defined in ORS 334.003.
- Any state-operated program that provides educational services to students.
- A private school.

Definitions

What is sexual conduct?

“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:

- Sexual advances or requests for sexual favors directed toward the student; or
- Of a sexual nature that are directed toward the student or that have the effect of unreasonably interfering with the student’s educational performance, or of creating an intimidating, hostile, or offensive educational environment.

“Sexual conduct” does not include touching:

- That is necessitated by the nature of the school employee’s job duties or by the services required to be provided by the contractor, agent, or volunteer; and
- For which there is no sexual intent.

What does it mean to be licensed by TSPC?

Under ORS 339.370, “license” is defined as including “a license, registration or certificate issued by the Teacher Standards and Practices Commission.”