

# Enrolled House Bill 2136

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Oregon Teacher Standards and Practices Commission)

CHAPTER .....

AN ACT

Relating to the disciplinary authority of the Teacher Standards and Practices Commission; amending ORS 339.370, 339.374, 339.378, 339.388, 339.390, 339.391, 342.120, 342.175 and 342.176.

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

**SECTION 1.** ORS 342.120 is amended to read:

342.120. As used in this chapter, unless the context requires otherwise:

(1) "Administrator" includes but is not limited to all superintendents, assistant superintendents, principals and academic program directors in public schools or education service districts who have direct responsibility for supervision or evaluation of licensed teachers and who are compensated for their services from public funds.

(2) "Administrative license" means a license issued under ORS 342.125 (3)(f) or (g).

(3) "Approved educator preparation program" means a licensure program that is offered by an approved educator preparation provider and meets the standards of the Teacher Standards and Practices Commission.

(4) "Approved educator preparation provider" means an entity that meets the standards of the Teacher Standards and Practices Commission for preparation of licensed educators for preprimary programs through grade 12.

**(5) "Commission licensee" means a person whom the Teacher Standards and Practices Commission has the authority to investigate or discipline because the person:**

**(a) Is enrolled in an approved educator preparation program;**

**(b) Is an applicant for a Teacher Standards and Practices Commission license or registration;**

**(c) Holds a license or registration issued by the Teacher Standards and Practices Commission; or**

**(d) Has held a license or registration issued by the Teacher Standards and Practices Commission at any time during the previous five years.**

[(5)] **(6)** "Instruction" includes preparation of curriculum, assessment and direction of learning in class, in small groups, in individual situations, online, in the library and in guidance and counseling, but does not include the provision of related services, as defined in ORS 343.035, to a child identified as a child with a disability pursuant to ORS 343.146 to 343.183 when provided in accordance with ORS 343.221.

[(6)] **(7)** "Instructional assistant" means a classified school employee who does not require a license to teach, who is employed by a school district or education service district and whose as-

signment consists of and is limited to assisting a licensed teacher in accordance with rules established by the Teacher Standards and Practices Commission.

[(7)] (8) "Teacher" includes all licensed employees in the public schools or employed by an education service district who have direct responsibility for instruction or coordination of educational programs and who are compensated for their services from public funds. "Teacher" does not include a school nurse as defined in ORS 342.455 or an instructional assistant.

[(8)] (9) "Teaching license" means a license issued under ORS 342.125 or 342.144.

[(9)] (10) "Underrepresented person" means:

- (a) A person having origins in any of the black racial groups of Africa, but who is not Hispanic;
- (b) A person of Hispanic culture or origin;
- (c) A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands; or
- (d) An American Indian or Alaskan Native having origins in any of the original peoples of North America.

**SECTION 2.** ORS 342.175 is amended to read:

342.175. (1) The Teacher Standards and Practices Commission may suspend or revoke the license or registration of a [*teacher or administrator*] **commission licensee**, discipline a [*teacher or administrator*] **commission licensee**, or suspend or revoke the right of any person to apply for a license or registration[, *if the licensee, registrant or applicant has held a license or registration at any time within five years prior to issuance of the notice of charges under ORS 339.390 or 342.176*] based on the following:

- (a) Conviction of a crime not listed in ORS 342.143 (3);
- (b) Gross neglect of duty;
- (c) Any gross unfitness;
- (d) Conviction of a crime for violating any law of this state or any state or of the United States involving the illegal use, sale or possession of controlled substances;
- (e) Conviction of a crime described in ORS 475B.010 to 475B.545;
- (f) Any false statement knowingly made in an application for issuance, renewal or reinstatement of a license or registration; or
- (g) Failure to comply with any condition of reinstatement under subsection (4) of this section or any condition of probation under ORS 342.177 (3)(b).

(2) If a person is enrolled in an approved educator preparation program under ORS 342.147, the commission may issue a public reprimand or may suspend or revoke the right to apply for a license or registration based on the following:

- (a) Conviction of a crime listed in ORS 342.143 (3) or a crime described by the commission by rule;
- (b) Conviction of a crime for violating any law of this state or any state or of the United States involving the illegal use, sale or possession of controlled substances; or
- (c) Any conduct that may cause the commission to issue a public reprimand for a [*teacher*] **commission licensee** or to suspend or revoke the license or registration of a [*teacher*] **commission licensee**.

(3) The commission shall revoke any license or registration and shall revoke the right of any person to apply for a license or registration if the person has been convicted of any crime listed in ORS 342.143 (3).

(4)(a) Except for convictions for crimes listed in ORS 342.143 (3) and subject to subsection (5) of this section, any person whose license or registration has been revoked, or whose right to apply for a license or registration has been revoked, may apply to the commission for reinstatement of the license or registration after one year from the date of the revocation.

(b) Any person whose license or registration has been suspended, or whose right to apply for a license or registration has been suspended, may apply to the commission for reinstatement of the license or registration.

(c) The commission may require an applicant for reinstatement to furnish evidence satisfactory to the commission of good moral character, mental and physical health and such other evidence as the commission may consider necessary to establish the applicant's fitness. The commission may impose a probationary period and such conditions as the commission considers necessary upon approving an application for reinstatement.

(5) The commission shall reconsider immediately a license or registration suspension or revocation or the situation of a person whose right to apply for a license or registration has been revoked, upon application therefor, when the license or registration suspension or revocation or the right revocation is based on a criminal conviction that is reversed on appeal.

(6) Violation of rules adopted by the commission relating to competent and ethical performance of professional duties shall be admissible as evidence of gross neglect of duty or gross unfitness.

(7) A copy of the record of conviction, certified to by the clerk of the court entering the conviction, shall be conclusive evidence of a conviction described in this section.

**SECTION 3.** ORS 342.176 is amended to read:

342.176. (1)(a) A person may file a complaint with the Teacher Standards and Practices Commission regarding a [*person licensed by the*] commission **licensee**. If a complaint concerns an allegation of sexual conduct that may have been committed by a [*licensed school employee, contractor, agent or volunteer*] **commission licensee**, the complaint process provided by this section does not apply and the commission shall investigate the complaint as provided by ORS 339.390.

(b) Prior to beginning an investigation based on a complaint filed under paragraph (a) of this subsection, the commission may require verification that attempts were made to resolve the complaint through the complaint process of the school district that employs the person against whom the complaint was filed.

(c) After receiving sufficient verification as provided by paragraph (b) of this subsection, the commission shall promptly undertake an investigation upon receipt of a complaint or information that may constitute grounds for:

(A) Refusal to issue a license or registration, as provided under ORS 342.143;

(B) Suspension or revocation of a license or registration, discipline of a [*person holding a license or registration*] **commission licensee**, or suspension or revocation of the right to apply for a license or registration, as provided under ORS 342.175; or

(C) Discipline for failure to provide appropriate notice prior to resignation, as provided under ORS 342.553.

(2) The commission may appoint an investigator and shall furnish the investigator with appropriate professional and other special assistance reasonably required to conduct the investigation, and the investigator is empowered to issue subpoenas to require the attendance of witnesses or the production of documents over the signature of the executive director of the Teacher Standards and Practices Commission, subpoena witnesses over the signature of the executive director, swear witnesses and compel obedience in the same manner as provided under ORS 183.440 (2).

(3) Following completion of the investigation, the executive director or the executive director's designee shall report in writing any findings and recommendations to:

(a) The commission, meeting in executive session, at its next regular meeting following completion of the investigation; and

(b) The person against whom the charge is made, following consideration by the commission.

(4)(a) Except as provided in paragraph (b) of this subsection, the documents and materials used in the investigation undertaken as provided by this section and the report related to the investigation are confidential and not subject to public inspection unless the commission makes a final determination to:

(A) Refuse to issue a license or registration, as provided under ORS 342.143;

(B) Suspend or revoke a license or registration, discipline a [*person holding a license or registration*] **commission licensee**, or suspend or revoke the right to apply for a license or registration, as provided under ORS 342.175; or

(C) Discipline a person for failure to provide appropriate notice prior to resignation, as provided under ORS 342.553.

(b) Records made available to the commission under ORS 419B.035 (1)(h) shall be kept confidential.

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

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

(b) The complainant; and

(c) The employing district or public charter school, if any.

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

(a) The person charged;

(b) The complainant; and

(c) The employing district or public charter school, if any.

(7) Notwithstanding ORS 192.660 (6), the commission may make its findings under this section in executive session. However, the provisions of ORS 192.660 (4) apply to the sessions.

**SECTION 4.** 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) "Commission licensee" has the meaning given that term in ORS 342.120.**

[(3)] **(4) "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)] **(5)(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)] **(6) "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)] **(7) "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" means a person who holds an administrative license, as that term is defined in ORS 342.120.**

*[(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 performance, or of creating an intimidating, hostile or offensive educational environment.*

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

*(A) 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*

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

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

*(a) Who is:*

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

*(B) Twenty-one years of age or younger and receiving educational or related services from an education provider that is not a post-secondary institution of education; or*

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

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

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

**SECTION 5.** ORS 339.374 is amended to read:

339.374. (1) Except as provided in ORS 339.384, before an education provider may hire an applicant for a position with the education provider as a school employee, the education provider shall:

(a) Require the applicant to provide:

(A) A list of the applicant's current and former employers who are education providers.

(B) A written authorization that authorizes education providers identified in subparagraph (A) of this paragraph to disclose the information requested under paragraph (b) of this subsection.

(C) A written statement of whether the applicant:

(i) Has been the subject of a substantiated report of abuse or sexual conduct; or

(ii) Is the subject of an ongoing investigation related to a report of suspected abuse or suspected sexual conduct.

(b) Conduct a review of the employment history of the applicant with education providers by contacting the three most recent education providers identified in paragraph (a)(A) of this subsection and requesting from each education provider:

(A) The dates of employment of the applicant by the education provider.

(B) Whether the education provider conducted an investigation and determined that the applicant was the subject of any substantiated reports of abuse or sexual conduct related to the applicant's employment with the education provider and, if so, the following additional information:

(i) The dates of any substantiated reports;

(ii) The definitions of “abuse” and “sexual conduct” used by the education provider when the education provider determined that any reports were substantiated; and

(iii) The standards used by the education provider to determine whether any reports were substantiated.

(c) For an applicant who is [*licensed with the Teacher Standards and Practices Commission*] a **commission licensee**, request the commission to verify:

(A) That the applicant is [*licensed by the commission*] a **commission licensee**; and

(B) Whether the commission has an ongoing investigation or has a substantiated report relating to conduct by the applicant that may constitute sexual conduct.

(d) For an applicant who is not [*licensed with the Teacher Standards and Practices Commission*] a **commission licensee**, request the Department of Education to verify whether the department has an ongoing investigation or has a substantiated report relating to conduct by the applicant that may constitute sexual conduct.

(e) Conduct a nationwide criminal records check if required by ORS 326.603.

(2) Before an education provider may accept the services of a contractor, agent or volunteer, the education provider shall:

(a) For a person who is [*licensed with the Teacher Standards and Practices Commission*] a **commission licensee**, request the commission to verify whether the commission has an ongoing investigation or has a substantiated report relating to conduct by the person that may constitute sexual conduct.

(b) For a person who is not [*licensed with the Teacher Standards and Practices Commission*] a **commission licensee**, request the Department of Education to verify whether the department has an ongoing investigation or has a substantiated report relating to conduct by the person that may constitute sexual conduct.

(c) Conduct any background checks required under ORS 326.603, 326.604 or 326.607.

**SECTION 6.** ORS 339.378 is amended to read:

339.378. (1)(a) Not later than 20 days after receiving a request under ORS 339.374 (1)(b), an education provider that has or has had an employment relationship with the applicant shall disclose the information requested.

(b) An education provider may disclose the information on a standardized form and is not required to provide any additional information related to a substantiated report of abuse or sexual conduct other than the information that is required by ORS 339.374 (1)(b).

(c) Information received under this section is confidential and is not a public record as defined in ORS 192.311. An education provider may use the information only for the purpose of evaluating an applicant’s eligibility to be hired.

(2)(a) Except as provided by paragraphs (b) and (c) of this subsection, an individual who is a school employee, a contractor or an agent may not assist another school employee, contractor or agent in obtaining any new job if the individual knows, or has reasonable cause to believe, that the school employee, contractor or agent engaged in abuse or sexual conduct.

(b) Nothing in paragraph (a) of this subsection prevents an education provider from:

(A) Disclosing the information described in subsection (1) of this section; or

(B) Providing the routine transmission of administrative and personnel files.

(c) The prohibition prescribed by paragraph (a) of this subsection does not apply if the school employee, contractor or agent knows, or has reasonable cause to believe:

(A) That the suspected abuse or suspected sexual conduct was reported to a law enforcement agency, the Department of Human Services, the Teacher Standards and Practices Commission or the Department of Education; and

(B) Any of the following are true:

(i) The report could be neither substantiated nor found to be unsubstantiated following an investigation;

(ii) The report was found to be unsubstantiated;

(iii) The report was found to be a substantiated report; or

(iv) The investigation into the report remains ongoing after four years.

(3)(a) The commission may take disciplinary action against a *[licensed]* school employee **who is a commission licensee** for failure to disclose information as required by subsection (1)(a) of this section. In determining whether to take disciplinary action, the commission may take into consideration any evidence presented by the school employee that a longer period of time was necessary for good cause.

(b) Any violation of the provisions of subsection (2) of this section shall be considered gross neglect of duty under ORS 342.175.

**SECTION 7.** ORS 339.388 is amended to read:

339.388. (1)(a) A school employee shall immediately submit a report as provided by paragraph (b) of this subsection if the school employee has reasonable cause to believe that:

(A) A student has been subjected to abuse by another school employee or by a contractor, an agent, a volunteer or a student;

(B) A student has been subjected to sexual conduct by another school employee or by a contractor, an agent or a volunteer; or

(C) Another school employee or a contractor, an agent or a volunteer has engaged in sexual conduct.

(b) The report required under paragraph (a) of this subsection shall be made to:

(A) The licensed administrator designated in the policies adopted under ORS 339.372, for all reports of suspected abuse or suspected sexual conduct; and

(B) A law enforcement agency, the Department of Human Services or a designee of the department as required by ORS 419B.010 and 419B.015, for all reports of suspected abuse.

(2) The licensed administrator who receives a report under subsection (1) of this section shall follow the procedures required by the policies adopted by the school board under ORS 339.372, including:

(a) Notifying the Teacher Standards and Practices Commission as soon as possible of any reports of suspected sexual conduct that may have been committed by a person who is *[licensed by the commission]* **a commission licensee**; and

(b) Notifying the Department of Education as soon as possible of any reports of suspected sexual conduct that may have been committed by a person who is not *[licensed by the commission]* **a commission licensee**.

(3)(a) When a licensed administrator receives a report of suspected abuse or suspected sexual conduct by a school employee and there is reasonable cause to support the report, the education provider shall:

(A) Place the school employee on paid administrative leave; and

(B) Take necessary actions to ensure the student's safety.

(b) A school employee who is placed on paid administrative leave under paragraph (a) of this subsection shall remain on administrative leave until:

(A) For a report of suspected abuse, a law enforcement agency or the Department of Human Services determines that the report:

(i) Is substantiated and the education provider takes the appropriate employment action against the school employee; or

(ii) Cannot be substantiated or is not a report of abuse and the education provider:

(I) Determines that an employment policy has been violated and takes appropriate employment action against the school employee; or

(II) Determines that an employment policy has not been violated and employment action against the school employee is not required.

(B) For a report of suspected sexual conduct, the Teacher Standards and Practices Commission or the Department of Education determines that the report:

(i) Is substantiated and the education provider takes the appropriate employment action against the school employee; or

(ii) Cannot be substantiated or is not a report of sexual conduct and the education provider:

(I) Determines that an employment policy has been violated and takes appropriate employment action against the school employee; or

(II) Determines that an employment policy has not been violated and that employment action against the school employee is not required.

(c) When a school employee is placed on paid administrative leave under paragraph (a) of this subsection, the education provider may not require the school employee to use any accrued leave during the paid administrative leave.

(4)(a) Except as provided in paragraph (c) of this subsection, when a licensed administrator receives a report of suspected abuse or suspected sexual conduct by a contractor, an agent or a volunteer, the education provider:

(A) May immediately prohibit the contractor, agent or volunteer from providing services to the education provider.

(B) Shall prohibit the contractor, agent or volunteer from providing services to the education provider if the education provider determines that there is reasonable cause to support a report of abuse or sexual conduct.

(b) Except as provided in paragraph (c) of this subsection, an education provider is not required to reinstate a contractor, an agent or a volunteer. Any reinstatement of a contractor, an agent or a volunteer that does occur may not occur until:

(A) For a report of suspected abuse, a law enforcement agency or the Department of Human Services determines that the report:

(i) Is substantiated and the education provider takes the appropriate actions to protect students;  
or

(ii) Cannot be substantiated or is not a report of abuse and the education provider:

(I) Takes the appropriate actions to protect students; or

(II) Determines that no other actions are required to protect students.

(B) For a report of suspected sexual conduct, the Teacher Standards and Practices Commission or the Department of Education determines that the report:

(i) Is substantiated and the education provider takes the appropriate actions to protect students;  
or

(ii) Cannot be substantiated or is not a report of sexual conduct and the education provider:

(I) Takes the appropriate actions to protect students; or

(II) Determines that no other actions are required to protect students.

(c) If a contract under which a contractor provides services to an education provider or an agreement under which an agent provides services to an education provider sets forth any negotiated standards for the relationship between the contractor or agent and the education provider, the education provider shall comply with those standards but may not in any instance grant the contractor or agent more rights than granted to a school employee under subsection (3) of this section.

(d) Nothing in this subsection:

(A) Establishes an employment relationship between an education provider and a contractor or an agent; or

(B) Confers onto a contractor or an agent any rights of employment.

(5)(a) When a report of suspected abuse or suspected sexual conduct is investigated by a law enforcement agency, the Department of Human Services, the Teacher Standards and Practices Commission or the Department of Education, an education provider may use the findings of the entity that conducted the investigation for the purpose of subsection (3) or (4) of this section and for making any determinations described in subsection (6) of this section.

(b) Nothing in this subsection prohibits an education provider from:

(A) Conducting an investigation related to a report of suspected abuse or suspected sexual conduct, except that the education provider must:

(i) If requested, allow the investigation to be led by an entity identified in paragraph (a) of this subsection, as applicable;

(ii) Follow any protocols and procedures of entities identified in paragraph (a) of this subsection that are involved in the investigation; and

(iii) Cooperate with the entities identified in paragraph (a) of this subsection that are involved in the investigation, including by:

(I) Suspending any investigations of the education provider at the request of the entity; and

(II) Sharing information with the entity as provided by subsection (10) of this section.

(B) Taking an employment action, based on information available to the education provider, before an investigation conducted by an entity identified in paragraph (a) of this subsection is completed.

(6)(a) For each report of suspected abuse or suspected sexual conduct by a school employee, an education provider must determine if:

(A) An employment policy of the education provider was violated; and

(B) The education provider will take any employment actions, including disciplinary action against the school employee or changes to the employment relationship or duties of the school employee.

(b) Determinations made under paragraph (a) of this subsection must be based on the findings of an investigation conducted by:

(A) A law enforcement agency, the Department of Human Services, the Teacher Standards and Practices Commission or the Department of Education; or

(B) The education provider, if the education provider conducts an investigation.

(c) A final determination by a law enforcement agency, the Department of Human Services, the Teacher Standards and Practices Commission or the Department of Education that a report of suspected abuse or suspected sexual conduct cannot be substantiated or is not a report of abuse or sexual conduct does not:

(A) Relieve an education provider of the requirement to make determinations under paragraph (a) of this subsection; or

(B) Prohibit an education provider from taking any employment actions against a school employee.

(d) Except as provided by paragraph (e) of this subsection, determinations made under paragraph (a) of this subsection must be made:

(A) Within 60 calendar days from the date the education provider received from a law enforcement agency, the Department of Human Services, the Teacher Standards and Practices Commission or the Department of Education a final determination that a report of suspected abuse or suspected sexual conduct involving a school employee is a substantiated report; or

(B) Within 90 calendar days from the date the education provider:

(i) Received from a law enforcement agency, the Department of Human Services, the Teacher Standards and Practices Commission or the Department of Education a final determination that a report of suspected abuse or suspected sexual conduct involving a school employee cannot be substantiated or is not a report of abuse or sexual conduct; or

(ii) Received a report of suspected abuse or suspected sexual conduct if the education provider conducts an investigation.

(e) The timelines prescribed by paragraph (d) of this subsection may be extended if, for good cause, a longer period of time is necessary. For an education provider that conducts an investigation, good cause may include suspending an investigation as required by subsection (5)(b) of this section.

(7) If, in the course of an investigation by an education provider, the education provider becomes aware of new information that gives rise to a reasonable cause to believe that abuse or sexual conduct occurred, the education provider shall ensure that a report is made to a law enforcement agency, the Department of Human Services, a designee of the department as required by ORS 419B.010 and 419B.015, the Teacher Standards and Practices Commission or the Department of Education.

(8) If, following an investigation, an education provider determines that the education provider will take an employment action, the education provider shall:

(a) Inform the school employee of the employment action that will be taken by the education provider.

(b) Provide the school employee with information about the appropriate appeal process for the employment action taken by the education provider. The appeal process may be the process provided by a collective bargaining agreement or a process administered by a neutral third party and paid for by the education provider.

(c) Following notice of a school employee's decision not to appeal the employment action of an education provider or following the determination of an appeal that sustained the employment action taken by the education provider, create a record of the findings of the substantiated report and the employment action taken by the education provider and place the record in any documents maintained by the education provider on the school employee. Records created pursuant to this paragraph are confidential and are not public records as defined in ORS 192.311. An education provider may use the record as a basis for providing the information required to be disclosed about a school employee under ORS 339.378 (1).

(d) Inform the school employee that information about substantiated reports may be disclosed to a potential employer as provided by ORS 339.378 (1).

(9)(a) Notwithstanding the requirements of this section, an education provider that is a private school:

(A) May take an employment action in relation to a school employee, a contractor, an agent or a volunteer according to:

(i) The provisions of this section; or

(ii) The standards and policies of the private school if the standards and policies provide the same or greater safeguards for the protection of students compared to the safeguards described in this section.

(B) May follow the procedures described in subsection (8) of this section or may follow any appeals process established by the private school related to suspected abuse or suspected sexual conduct.

(b) A private school that chooses to take an employment action or other action in relation to a school employee, a contractor, an agent or a volunteer according to the standards and policies of the private school must provide the information required to be disclosed under ORS 339.378 (1).

(10) Upon request from a law enforcement agency, the Department of Human Services, the Teacher Standards and Practices Commission or the Department of Education, in conducting an investigation related to suspected abuse or suspected sexual conduct, an education provider shall immediately provide any requested documents or materials, to the extent allowed by state and federal law, including laws protecting a person from self-incrimination.

**SECTION 8.** ORS 339.390 is amended to read:

339.390. (1)(a) When the Teacher Standards and Practices Commission receives a report of suspected sexual conduct that may have been committed by a [*licensed school employee, contractor, agent or volunteer*] **commission licensee**, the commission shall immediately initiate an investigation.

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

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

(2) The commission shall appoint an investigator and shall furnish the investigator with appropriate professional and other special assistance reasonably required to conduct an investigation. An investigator appointed under this subsection is empowered to:

(a) Issue subpoenas to require the attendance of witnesses or the production of documents;

(b) Subpoena witnesses; and

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

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

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

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

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

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

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

(c) The education provider; and

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

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

(a) The person charged;

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

(c) The education provider; and

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

(7)(a) Except as provided in paragraph (b) of this subsection, the documents and materials used in the investigation undertaken under this section, and the report related to the investigation, are confidential and not subject to public inspection unless the commission makes a final determination [to suspend or revoke a license, discipline a person holding a license or revoke the right to apply for a license] **to discipline a commission licensee**, as provided under ORS 342.175.

(b) To the extent allowed by state and federal law, the commission shall make available any documents, materials and reports to:

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

(B) The Department of Education for the purpose of conducting an investigation under ORS 339.391; or

(C) An education provider for the purpose of taking any disciplinary actions or making changes in the employment relationship or duties of the [school employee, contractor, agent or volunteer] **commission licensee**.

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

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

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

**SECTION 9.** ORS 339.391 is amended to read:

339.391. (1)(a) When the Department of Education receives a report of suspected sexual conduct that may have been committed by a school employee, contractor, agent or volunteer that is not [licensed with the Teacher Standards and Practices Commission] **a commission licensee**, the department shall immediately initiate an investigation.

(b) An investigation and final determination related to the report received under paragraph (a) of this subsection must be completed and notification of the final determination must be made to the

education provider within 90 calendar days following the date on which the report was filed with the department.

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

(2) The department shall appoint an investigator and shall furnish the investigator with appropriate professional and other special assistance reasonably required to conduct an investigation. An investigator appointed under this subsection is empowered to:

- (a) Issue subpoenas to require the attendance of witnesses or the production of documents;
- (b) Subpoena witnesses; and
- (c) Swear witnesses and compel obedience in the same manner as provided under ORS 183.440

(2).

(3)(a) Following the completion of an investigation, the Department of Education shall notify:

- (A) The person charged;
- (B) The student and, if applicable, the student's parents;
- (C) The education provider;
- (D) The person who provided the report of suspected sexual conduct; and
- (E) Any regulatory board that is not the Teacher Standards and Practices Commission and that

licenses, registers, certifies or otherwise authorizes the school employee, contractor, agent or volunteer to practice a profession or to provide professional services.

(b) The notification required under paragraph (a) of this subsection shall include the following information as allowed by state and federal law:

- (A) The statutory authority of the department to conduct the investigation;
- (B) The procedural background for the investigation;
- (C) The legal standards and arguments used for the investigation;
- (D) The department's findings of fact from the investigation;
- (E) The department's final determination based on the investigation; and
- (F) The right to an appeal, as provided by subsection (5) of this section.

(4)(a) Except as provided in paragraph (b) of this subsection, the documents and materials used in the investigation undertaken under this section, and the report related to the investigation, are confidential and not subject to public inspection.

(b) To the extent allowed by state and federal law, the department shall make available any documents, materials and reports to:

(A) A law enforcement agency or the Department of Human Services if necessary to conduct an investigation under ORS 419B.005 to 419B.050;

(B) The Teacher Standards and Practices Commission if necessary for the commission to conduct an investigation under ORS 339.390; and

(C) An education provider if necessary for the education provider to take any disciplinary action or changes in the employment relationship or duties of the school employee, contractor, agent or volunteer.

(c) The Department of Education shall 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.

(5) A person may appeal the final determination made by the department under this section as a contested case under ORS chapter 183.

(6) The State Board of Education shall adopt any rules necessary for the administration of this section.

**Passed by House April 12, 2021**

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

**Passed by Senate May 20, 2021**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M.,....., 2021

**Approved:**

.....M.,....., 2021

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Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2021

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Shemia Fagan, Secretary of State