

Senate Bill 223

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Education)

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**.

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

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

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

A BILL FOR AN ACT

1
2 Relating to the registration of private schools; creating new provisions; and amending ORS 326.603,
3 326.607, 332.075, 339.370 and 345.990.

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

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

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

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

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

13 (3) **"Registered private school" means a private school that is registered with the De-**
14 **partment of Education as provided by sections 1 to 5 of this 2021 Act.**

15 **SECTION 2. (1) The State Board of Education shall adopt by rule criteria for the regis-**
16 **tration of private schools.**

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

19 (a) **The unique qualities of private education while seeking to further the educational**
20 **opportunities of students enrolled in private schools; and**

21 (b) **The recommendations of the advisory committee convened under subsection (3) of**
22 **this section.**

23 (3)(a) **For the purpose of adopting criteria for the registration of private schools, the**
24 **State Board of Education shall convene an advisory committee. Members of the advisory**
25 **committee shall be appointed by the board on recommendation of the Superintendent of**
26 **Public Instruction. Members serve at the pleasure of the board.**

27 (b) **The advisory committee convened under this subsection shall consist of seven mem-**

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 **bers as follows:**

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

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

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

7 **(d) Members of the advisory committee are volunteers and are not entitled to compen-**
 8 **sation.**

9 **(4) After consulting with the advisory committee convened under subsection (3) of this**
 10 **section, the State Board of Education shall establish by rule the criteria for the registration**
 11 **of private schools. At a minimum, the criteria must require a private school to demonstrate**
 12 **that:**

13 **(a) The teachers of the private school possess qualifications necessary to establish fitness**
 14 **as a teacher. Nothing in this paragraph requires that the teachers be licensed to teach.**

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

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

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

22 **(e) The curricula for the educational programs for grades 9 through 12 establish aca-**
 23 **demic standards necessary for students to qualify to attend community colleges and insti-**
 24 **tutions of post-secondary education, both within and without the State of Oregon.**

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

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

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

32 **(2) A person authorized to act on behalf of a private school may submit to the Depart-**
 33 **ment of Education an application to register the private school. The application must be**
 34 **submitted in the form required by the department.**

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

38 **(4) Upon receipt of an application for registration, the Department of Education shall**
 39 **evaluate the application as provided by subsection (3) of this section. The department shall**
 40 **register a private school if the department finds that the school complies with the require-**
 41 **ments for registration. If the department refuses to register the private school, the depart-**
 42 **ment shall provide the private school with notice of the refusal and the reasons for refusal.**

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

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

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

4 (a) ORS 326.603 and 326.607 (criminal records check);

5 (b) ORS 339.285 to 339.303 (use of restraint or seclusion on students);

6 (c) ORS 339.343 (student suicide prevention plan);

7 (d) ORS 339.351 to 339.364 (prohibition on harassment, intimidation or bullying and pro-
8 hibition on cyberbullying);

9 (e) ORS 339.366 and 339.368 (policies on teen dating violence and domestic violence);

10 (f) ORS 339.370 to 339.400 (reporting and investigations of abuse and sexual conduct);

11 (g) ORS 419B.005 to 419B.050 (mandatory reporting of abuse);

12 (h) Any statutes or rules identified by the State Board of Education by rule;

13 (i) Any statutes or rules that expressly apply to private schools; and

14 (j) Any requirements of sections 1 to 5 of this 2021 Act or of rules adopted under sections
15 1 to 5 of this 2021 Act.

16 **SECTION 5.** (1) The Department of Education may suspend or revoke or deny renewal
17 of a private school registration as provided by this section.

18 (2) The department may suspend or revoke or deny renewal of a private school registra-
19 tion if the department finds that:

20 (a) The private school fails to comply with the requirements of sections 1 to 5 of this 2021
21 Act and rules adopted by the State Board of Education as provided by sections 1 to 5 of this
22 2021 Act;

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

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

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

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

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

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

36 **SECTION 6.** ORS 345.990 is amended to read:

37 345.990. (1) Violation of any provision of ORS 345.020, 345.030, 345.070, 345.115 or 345.325 is a
38 Class B misdemeanor.

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

42 **SECTION 7.** ORS 326.603 is amended to read:

43 326.603. (1) For the purposes of requesting a state or nationwide criminal records check under
44 ORS 181A.195, the Department of Education may require the fingerprints of:

45 (a) A school district or private school contractor, whether part-time or full-time, or an employee

1 of a contractor, whether part-time or full-time, who has direct, unsupervised contact with students
2 as determined by the district or private school.

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

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

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

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

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

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

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

16 (3) The Department of Education shall request that the Department of State Police conduct a
17 criminal records check as provided in ORS 181A.195 and may charge the school district or private
18 school a fee as established by rule under ORS 181A.195. The school district or private school may
19 recover its costs or a portion thereof from the person described in subsection (1) of this section. If
20 the person described in subsection (1)(b) or (d) of this section requests, the school district shall and
21 a private school may withhold the amount from amounts otherwise due the person, including a pe-
22 riodic payroll deduction rather than a lump sum payment.

23 (4) Notwithstanding subsection (1) of this section, the Department of Education may not require
24 fingerprints of a person described in subsection (1) of this section if the person or the person's em-
25 ployer was checked in one school district or private school and is currently seeking to work in an-
26 other district or private school unless the person lived outside this state during the interval between
27 the two periods of time of working in the district or private school.

28 (5) Nothing in this section requires a person described in subsection (1)(a), (b) or (d) of this
29 section to submit to fingerprinting until the person has been offered employment or a contract by
30 a school district or private school. Contractor employees may not be required to submit to finger-
31 printing until the contractor has been offered a contract.

32 (6) If a person described in subsection (1) of this section states on a criminal history form pro-
33 vided by the Department of Education that the person has not been convicted of a crime but the
34 criminal records check indicates that the person has a conviction, the department shall determine
35 whether the person knowingly made a false statement as to the conviction. The department shall
36 develop a process and criteria to use for appeals of a determination under this subsection.

37 (7)(a) The Superintendent of Public Instruction shall inform a school district or private school
38 if a person described in subsection (1) of this section has been convicted of a crime listed in ORS
39 342.143 (3) or has knowingly made a false statement on a criminal history form provided by the
40 Department of Education as to the conviction of any crime.

41 (b) If a person described in subsection (1) of this section has been convicted of a crime listed in
42 ORS 342.143 (3), a school district **or registered private school** may not employ or contract with
43 the person and a private school **that is not a registered private school** may choose not to employ
44 or contract with the person. Notification by the superintendent that the school district may not
45 employ or contract with the person shall remove the person from any school district policies, col-

1 lective bargaining provisions regarding dismissal procedures and appeals and the provisions of ORS
2 342.805 to 342.937.

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

7 (8) If a person described in subsection (1) of this section refuses to consent to the criminal re-
8 cords check or refuses to be fingerprinted, the school district **or registered private school** shall
9 terminate the employment or contract status of the person. Termination under this subsection re-
10 moves the person from any school district policies, collective bargaining provisions regarding dis-
11 missal procedures and appeals and the provisions of ORS 342.805 to 342.937.

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

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

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

18 (A) Offers education in prekindergarten, kindergarten or grades 1 through 12, or any combina-
19 tion of those grade levels; and

20 (B) Provides instructional programs that are not limited solely to dancing, drama, music, reli-
21 gious or athletic instruction.

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

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

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

26 (B) The Oregon School for the Deaf.

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

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

29 (E) An education service district.

30 **SECTION 8.** ORS 326.607 is amended to read:

31 326.607. (1)(a) If a school district, [or] public charter school **or registered private school** allows
32 volunteers to have direct, unsupervised contact with school children, the school district board, [or]
33 public charter school governing body **or registered private school governing body** must adopt and
34 implement a policy that requires those volunteers to undergo a background check.

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

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

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

45 (b) A state or nationwide criminal records check under ORS 181A.195 for screening an individ-

1 ual who is a volunteer for the school district, private school or public charter school and who has
 2 direct, unsupervised contact with school children, or for screening applicants for employment.

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

5 (a) \$5 for each request made under subsection (2) of this section for an Oregon criminal records
 6 check using the Law Enforcement Data System.

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

9 **SECTION 9.** ORS 339.370 is amended to read:

10 339.370. As used in ORS 339.370 to 339.400:

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

12 (2) "Agent" means a person acting as an agent for an education provider in a manner that re-
 13 quires the person to have direct, unsupervised contact with students.

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

16 (4)(a) "Education provider" means:

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

18 (B) The Oregon School for the Deaf.

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

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

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

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

23 (G) A private school.

24 (b) "Education provider" does not include:

25 (A) The Oregon Youth Authority;

26 (B) The Department of Corrections; or

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

29 (i) The Oregon School for the Deaf;

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

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

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

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

38 (b) Results in a finding that the report:

39 (A) Is a substantiated report;

40 (B) Cannot be substantiated; or

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

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

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

45 (8) "**Licensed administrator**" includes the principal of a registered private school, as de-

1 **fined in section 1 of this 2021 Act, if the registered private school does not have any licensed**
 2 **administrators.**

3 [(8)] (9) “Private school” means a school that provides to students instructional programs that
 4 are not limited solely to dancing, drama, music, religious or athletic instruction.

5 [(9)] (10) “School board” means the entity charged with adopting policies for an education pro-
 6 vider.

7 [(10)] (11) “School employee” means an employee of an education provider.

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

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

12 (B) Of a sexual nature that are directed toward the student or that have the effect of unrea-
 13 sonably interfering with the student’s educational performance, or of creating an intimidating, hos-
 14 tile or offensive educational environment.

15 (b) “Sexual conduct” does not include touching:

16 (A) That is necessitated by the nature of the school employee’s job duties or by the services
 17 required to be provided by the contractor, agent or volunteer; and

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

19 [(12)] (13) “Student” means any person:

20 (a) Who is:

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

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

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

26 [(13)] (14) “Substantiated report” means a report of abuse or sexual conduct that a law
 27 enforcement agency, the Department of Human Services, the Teacher Standards and Practices
 28 Commission, the Department of Education or an education provider has reasonable cause to believe,
 29 based on the available evidence after conducting an investigation, is founded.

30 [(14)] (15) “Volunteer” means a person acting as a volunteer for an education provider in a
 31 manner that requires the person to have direct, unsupervised contact with students.

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

33 332.075. (1) Any district school board may:

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

35 (b) Adopt textbooks and other instructional materials as provided in ORS 337.120 and 337.141
 36 and courses of study for the use of such schools as provided in ORS 336.035.

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

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

1 (e) Authorize the school district to be a member of and pay fees, if any, to any voluntary or-
 2 ganization that administers interscholastic activities or that facilitates the scheduling and pro-
 3 gramming of interscholastic activities only if the organization:

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

7 (B) Maintains a transparent complaint process that:

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

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

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

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

16 (D) Performs an annual survey of students and their parents to understand and respond to po-
 17 tential violations of policies adopted under subparagraph (A) of this paragraph or violations of ORS
 18 659.850[.]; **and**

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

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

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

27 (A) Describe the acceptable uses of the mascot;

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

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

31 (ii) Prescribe the requirements for approval; and

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

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

37 (3) Notwithstanding subsection (2) of this section, a district school board may, by resolution or
 38 policy, authorize its superintendent or the superintendent's designee to enter into and approve pay-
 39 ment on contracts for products, materials, supplies, capital outlay, equipment and services that are
 40 within appropriations made by the district school board pursuant to ORS 294.456. A district school
 41 board may not authorize its superintendent or the superintendent's designee under this subsection
 42 to enter into and approve payment on contracts that are collective bargaining agreements or service
 43 contracts that include the provision of labor performed by employees of the school district.