

Senate Bill 51

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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**.

Removes designation of Department of Education as education provider of certain programs for purposes of provisions related to reports of suspected abuse or suspected sexual conduct.

Modifies investigatory procedures for department upon receipt of reports of suspected sexual conduct.

Expands eligibility of persons who can be designated as licensed administrator for purposes of receiving and responding to reports of suspected abuse or suspected sexual conduct.

Prescribes requirements and restrictions involving information received by department related to reports of abuse.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to interpersonal boundary invasions affecting youth; creating new provisions; amending
3 ORS 339.370, 339.391, 419B.019, 419B.020 and 419B.035; and declaring an emergency.

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

5 **SECTION 1.** ORS 339.370 is amended to read:

6 339.370. As used in ORS 339.370 to 339.400:

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

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

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

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

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

14 (B) The Oregon School for the Deaf.

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

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

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

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

19 (G) A private school.

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

21 (A) The Oregon Youth Authority;

22 (B) The Department of Corrections; or

23 (C) The Department of Education, except when functioning as an education provider on behalf
24 of[.]

25 [(i)] the Oregon School for the Deaf.[;]

26 [(ii)] *An educational program under the Youth Corrections Education Program; or*]

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 *[(iii) A public charter school, as defined in ORS 338.005, that is sponsored by the Department of*
 2 *Education.]*

3 (5) “Investigation” means a detailed inquiry into the factual allegations of a report of suspected
 4 abuse or suspected sexual conduct that:

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

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

9 (A) Is a substantiated report;

10 (B) Cannot be substantiated; or

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

12 (6) “Law enforcement agency” has the meaning given that term in ORS 419B.005.

13 (7) “License” includes a license, registration or certificate issued by the Teacher Standards and
 14 Practices Commission.

15 **(8) “Licensed administrator” means a person who is employed as an administrator of an**
 16 **education provider and who:**

17 **(a) Holds an administrative license issued by the Teacher Standards and Practices Com-**
 18 **mission; or**

19 **(b) Does not hold an administrative license issued by the commission because the person**
 20 **is employed by an education provider that does not require administrators to be licensed by**
 21 **the commission.**

22 [(8)] **(9)** “Private school” means a school that provides to students instructional programs that
 23 are not limited solely to dancing, drama, music, religious or athletic instruction.

24 [(9)] **(10)** “School board” means the entity charged with adopting policies for an education pro-
 25 vider.

26 [(10)] **(11)** “School employee” means an employee of an education provider.

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

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

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

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

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

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

38 [(12)] **(13)** “Student” means any person:

39 (a) Who is:

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

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

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

45 [(13)] **(14)** “Substantiated report” means a report of abuse or sexual conduct that a law

1 enforcement agency, the Department of Human Services, the Teacher Standards and Practices
 2 Commission, the Department of Education or an education provider has reasonable cause to believe,
 3 based on the available evidence after conducting an investigation, is founded.

4 [(14)] (15) “Volunteer” means a person acting as a volunteer for an education provider in a
 5 manner that requires the person to have direct, unsupervised contact with students.

6 **SECTION 2.** ORS 339.391 is amended to read:

7 339.391. (1)(a) When the Department of Education receives a report of suspected sexual conduct
 8 that may have been committed by a school employee, contractor, agent or volunteer that is not li-
 9 censed with the Teacher Standards and Practices Commission, the department shall immediately
 10 initiate an investigation.

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

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

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

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

22 (b) Subpoena witnesses; and

23 (c) Swear witnesses and compel obedience in the same manner as provided under ORS 183.440
 24 (2).

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

26 (A) The person charged;

27 (B) The student and, if applicable, the student’s parents **or legal guardians**;

28 (C) The education provider;

29 (D) The person who provided the report of suspected sexual conduct, **if known by the depart-**
 30 **ment**; and

31 (E) **For a substantiated report only**, any regulatory board that:

32 (i) Is not the Teacher Standards and Practices Commission [*and that licenses, registers, certifies*
 33 *or otherwise authorizes*]; **and**

34 (ii) **The department knows licensed, registered, certified or otherwise authorized** the
 35 school employee, contractor, agent or volunteer to practice a profession or to provide professional
 36 services.

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

39 (A) The statutory authority of the department to conduct the investigation;

40 (B) The procedural background for the investigation;

41 (C) The legal standards and arguments used for the investigation;

42 (D) The department’s findings of fact from the investigation;

43 (E) The department’s final determination based on the investigation; and

44 (F) The right to an appeal, as provided by subsection (5) of this section.

45 (4)(a) Except as provided in paragraph (b) of this subsection **and subsection (3) of this**

1 **section**, the documents and materials used in the investigation undertaken under this section, and
 2 the report related to the investigation, are confidential and not subject to public inspection.

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

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

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

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

12 (c) The Department of Education shall retain documents and materials related to any report
 13 received under this section[, *regardless of whether the department found sufficient cause to justify*
 14 *holding a hearing under this section*] **for a period of 25 years.**

15 (5) A person **who is the subject of an investigation under this section** may appeal [*the*] a
 16 final determination [*made by the department under this section*] **that the report related to the in-**
 17 **vestigation is a substantiated report** as a contested case under ORS chapter 183.

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

20 **SECTION 3. Section 4 of this 2021 Act is added to and made a part of ORS 339.370 to**
 21 **339.400.**

22 **SECTION 4. (1) When the Department of Education receives from the Department of**
 23 **Human Services notification of a report of abuse or receives a report on the outcomes of an**
 24 **investigation of abuse, as provided by ORS 419B.019 or 419B.020, and the notification or re-**
 25 **port involves a child and a person who is a school employee, contractor, agent or volunteer,**
 26 **the Department of Education shall notify, as soon as practicable:**

27 (a) Any education provider named in the notification or report; and

28 (b) Any other education provider that the Department of Education determines must be
 29 notified to ensure the safety of children.

30 (2) When providing notice to an education provider under subsection (1) of this section,
 31 the Department of Education:

32 (a) Shall include any information the department determines is necessary to ensure the
 33 safety of children, including the name of the school and the name of the person who allegedly
 34 committed the suspected abuse.

35 (b) May not disclose the name and address of, or any other identifying information about,
 36 the person who made the report of suspected abuse.

37 (3) The Department of Education may provide information related to the notification or
 38 report received as described in subsection (1) of this section to the Teacher Standards and
 39 Practices Commission if the department determines that:

40 (a) The commission must be notified to ensure the safety of children; and

41 (b) The notification or report involves a person who is licensed by the commission.

42 (4)(a) Notwithstanding ORS 192.311 to 192.478, any information received as provided by
 43 this section is not a public record and is not subject to public inspection.

44 (b) Any person or entity who receives information under this section may not release the
 45 information, unless as otherwise provided by law.

1 **(5) The State Board of Education may adopt rules for the purposes of implementing this**
 2 **section.**

3 **SECTION 5.** ORS 419B.019 is amended to read:

4 419B.019. (1) As used in this section:

5 (a) “Agent” means a person who:

6 (A) Acts as an agent for an education provider in a manner that requires the person to have
 7 direct, unsupervised contact with children; and

8 (B) Interacts with a child because of the person’s status as an agent for an education provider.

9 (b) “Contractor” means a person who:

10 (A) Provides services to an education provider under a contract in a manner that requires the
 11 person to have direct, unsupervised contact with children; and

12 (B) Interacts with a child because of the person’s status as a contractor for an education pro-
 13 vider.

14 (c) “Education provider” has the meaning given that term in ORS 339.370.

15 (d) “School employee” means a person who:

16 (A) Is an employee of an education provider; and

17 (B) Interacts with a child because of the person’s status as an employee of an education pro-
 18 vider.

19 (e) “Volunteer” means a person who:

20 (A) Acts as a volunteer for an education provider in a manner that requires the person to have
 21 direct, unsupervised contact with children; and

22 (B) Interacts with a child because of the person’s status as a volunteer of an education provider.

23 (2) A law enforcement agency or the Department of Human Services must conduct an investi-
 24 gation as provided by ORS 419B.020 if the law enforcement agency or department receives a report
 25 of abuse that involves a child and a person who is a school employee, contractor, agent or volunteer.

26 (3) A law enforcement agency shall notify the department as provided by ORS 419B.015 if the
 27 law enforcement agency receives a report described in subsection (2) of this section. The department
 28 shall notify a law enforcement agency as provided by ORS 419B.015 if the department receives a
 29 report described in subsection (2) of this section. The department shall ensure that an investigation
 30 related to the report is conducted if the report is not investigated by a law enforcement agency.

31 (4)(a) Within three business days of receiving a report or notification of a report described in
 32 subsection (2) of this section, the department shall notify:

33 (A) The Teacher Standards and Practices Commission, if the department believes the school
 34 employee, contractor, agent or volunteer is licensed, [or] registered **or certified** by the commission;
 35 or

36 (B) The Department of Education, if the Department of Human Services believes the report of
 37 suspected abuse:

38 (i) Occurred in a school or was related to a school-sponsored activity; or

39 (ii) Involves a child and a person who is a school employee, contractor, agent or volunteer.

40 (b) For the purpose of notification made under this subsection, the Department of Human Ser-
 41 vices may not disclose the name and address of, and other identifying information about, the person
 42 who made the report, but the department shall make available any information necessary to ensure
 43 the safety of the child, including the name of the school and the name of the person who may have
 44 conducted the suspected abuse. **Except as provided by section 4 of this 2021 Act**, any person or
 45 entity to whom notification is made under this subsection may not release any information not au-

1 thORIZED by this subsection.

2 (c) When the Department of Education receives notification under this subsection, the depart-
 3 ment shall [*immediately notify the appropriate education providers to ensure the safety of the child*]
 4 **act under, and is subject to, section 4 of this 2021 Act.**

5 (5) The Department of Human Services may adopt any rules necessary for the administration
 6 of this section.

7 **SECTION 6.** ORS 419B.020 is amended to read:

8 419B.020. (1) If the Department of Human Services or a law enforcement agency receives a re-
 9 port of child abuse, the department or the agency shall immediately:

10 (a) Cause an investigation to be made to determine the nature and cause of the abuse of the
 11 child; and

12 (b) Make the following notifications:

13 (A) To the Office of Child Care if the alleged child abuse occurred in a child care facility as
 14 defined in ORS 329A.250; or

15 (B) To the Department of Education if the alleged child abuse occurred in a school or was re-
 16 lated to a school-sponsored activity.

17 (2) The Department of Human Services shall ensure that an investigation required by subsection
 18 (1) of this section is completed if the report is not investigated by a law enforcement agency.

19 (3) If the abuse reported in subsection (1) of this section is alleged to have occurred at a child
 20 care facility or in a school or was related to a school-sponsored activity:

21 (a) The Department of Human Services and the law enforcement agency shall jointly determine
 22 the roles and responsibilities of the department and the agency in their respective investigations;
 23 and

24 (b) The department and the agency shall each report the outcomes of their investigations [*to the*
 25 *Office of Child Care or to the Department of Education.*]:

26 **(A) To the Office of Child Care if the alleged child abuse occurred in a child care facility**
 27 **as defined in ORS 329A.250; or**

28 **(B) To the Department of Education if the alleged child abuse occurred in a school or**
 29 **was related to a school-sponsored activity.**

30 (4) If the law enforcement agency conducting the investigation finds reasonable cause to believe
 31 that abuse has occurred, the law enforcement agency shall notify by oral report followed by written
 32 report the local office of the department. The Department of Human Services shall provide protec-
 33 tive social services of its own or of other available social agencies if necessary to prevent further
 34 abuses to the child or to safeguard the child's welfare.

35 (5) If a child is taken into protective custody by the department, the department shall promptly
 36 make reasonable efforts to ascertain the name and address of the child's parents or guardian.

37 (6)(a) If a child is taken into protective custody by the department or a law enforcement official,
 38 the department or law enforcement official shall, if possible, make reasonable efforts to advise the
 39 parents or guardian immediately, regardless of the time of day, that the child has been taken into
 40 custody, the reasons the child has been taken into custody and general information about the child's
 41 placement, and the telephone number of the local office of the department and any after-hours tele-
 42 phone numbers.

43 (b) Notice may be given by any means reasonably certain of notifying the parents or guardian,
 44 including but not limited to written, telephonic or in-person oral notification. If the initial notifica-
 45 tion is not in writing, the information required by paragraph (a) of this subsection also shall be

1 provided to the parents or guardian in writing as soon as possible.

2 (c) The department also shall make a reasonable effort to notify the noncustodial parent of the
3 information required by paragraph (a) of this subsection in a timely manner.

4 (d) If a child is taken into custody while under the care and supervision of a person or organ-
5 ization other than the parent, the department, if possible, shall immediately notify the person or
6 organization that the child has been taken into protective custody.

7 (7) If a law enforcement officer or the department, when taking a child into protective custody,
8 has reasonable cause to believe that the child has been affected by sexual abuse and rape of a child
9 as defined in ORS 419B.005 (1)(a)(C) and that physical evidence of the abuse exists and is likely to
10 disappear, the court may authorize a physical examination for the purposes of preserving evidence
11 if the court finds that it is in the best interest of the child to have such an examination. Nothing
12 in this section affects the authority of the department to consent to physical examinations of the
13 child at other times.

14 (8) A minor child of 12 years of age or older may refuse to consent to the examination described
15 in subsection (7) of this section. The examination shall be conducted by or under the supervision
16 of a physician licensed under ORS chapter 677, a physician assistant licensed under ORS 677.505 to
17 677.525 or a nurse practitioner licensed under ORS chapter 678 and, whenever practicable, trained
18 in conducting such examinations.

19 (9) When the department completes an investigation under this section, if the person who made
20 the report of child abuse provided contact information to the department, the department shall no-
21 tify the person about whether contact with the child was made, whether the department determined
22 that child abuse occurred and whether services will be provided. The department is not required to
23 disclose information under this subsection if the department determines that disclosure is not per-
24 mitted under ORS 419B.035.

25 **(10) When the Department of Education receives a notification under subsection (1) of**
26 **this section or a report on the outcomes of an investigation under subsection (3) of this**
27 **section, the department shall act under, and is subject to, section 4 of this 2021 Act.**

28 **SECTION 7.** ORS 419B.035 is amended to read:

29 419B.035. (1) Notwithstanding the provisions of ORS 192.001 to 192.170, 192.210 to 192.478 and
30 192.610 to 192.810 relating to confidentiality and accessibility for public inspection of public records
31 and public documents, reports and records compiled under the provisions of ORS 419B.010 to
32 419B.050 are confidential and may not be disclosed except as provided in this section. The Depart-
33 ment of Human Services shall make the records available to:

34 (a) Any law enforcement agency or a child abuse registry in any other state for the purpose of
35 subsequent investigation of child abuse;

36 (b) Any physician, physician assistant licensed under ORS 677.505 to 677.525 or nurse practi-
37 tioner licensed under ORS 678.375 to 678.390, at the request of the physician, physician assistant
38 or nurse practitioner, regarding any child brought to the physician, physician assistant or nurse
39 practitioner or coming before the physician, physician assistant or nurse practitioner for examina-
40 tion, care or treatment;

41 (c) Attorneys of record for the child or child's parent or guardian in any juvenile court pro-
42 ceeding;

43 (d) Citizen review boards established by the Judicial Department for the purpose of periodically
44 reviewing the status of children, youths and youth offenders under the jurisdiction of the juvenile
45 court under ORS 419B.100 and 419C.005. Citizen review boards may make such records available to

1 participants in case reviews;

2 (e) A court appointed special advocate in any juvenile court proceeding in which it is alleged
3 that a child has been subjected to child abuse or neglect;

4 (f) The Office of Child Care for certifying, registering or otherwise regulating child care facili-
5 ties;

6 (g) The Office of Children's Advocate;

7 (h) The Teacher Standards and Practices Commission for investigations conducted under ORS
8 339.390 or 342.176 involving any child or any student;

9 (i) Any person, upon request to the Department of Human Services, if the reports or records
10 requested regard an incident in which a child, as the result of abuse, died or suffered serious phys-
11 ical injury as defined in ORS 161.015. Reports or records disclosed under this paragraph must be
12 disclosed in accordance with ORS 192.311 to 192.478;

13 (j) The Office of Child Care for purposes of ORS 329A.030 (10)(g), (h) and (i);

14 (k) With respect to a report of abuse occurring at a school or in an educational setting that
15 involves a child with a disability, Disability Rights Oregon;

16 (L) The Department of Education for purposes of investigations conducted under ORS 339.391;
17 and

18 (m) An education provider for the purpose of making determinations under ORS 339.388.

19 (2)(a) When disclosing reports and records pursuant to subsection (1)(i) of this section, the De-
20 partment of Human Services may exempt from disclosure the names, addresses and other identifying
21 information about other children, witnesses, victims or other persons named in the report or record
22 if the department determines, in written findings, that the safety or well-being of a person named in
23 the report or record may be jeopardized by disclosure of the names, addresses or other identifying
24 information, and if that concern outweighs the public's interest in the disclosure of that information.

25 (b) If the Department of Human Services does not have a report or record of abuse regarding
26 a child who, as the result of abuse, died or suffered serious physical injury as defined in ORS
27 161.015, the department may disclose that information.

28 (3) The Department of Human Services may make reports and records compiled under the pro-
29 visions of ORS 419B.010 to 419B.050 available to any person, administrative hearings officer, court,
30 agency, organization or other entity when the department determines that such disclosure is neces-
31 sary to administer its child welfare services and is in the best interests of the affected child, or that
32 such disclosure is necessary to investigate, prevent or treat child abuse and neglect, to protect
33 children from abuse and neglect or for research when the Director of Human Services gives prior
34 written approval. The Department of Human Services shall adopt rules setting forth the procedures
35 by which it will make the disclosures authorized under this subsection or subsection (1) or (2) of this
36 section. The name, address and other identifying information about the person who made the report
37 may not be disclosed pursuant to this subsection and subsection (1) of this section.

38 (4) A law enforcement agency may make reports and records compiled under the provisions of
39 ORS 419B.010 to 419B.050 available to other law enforcement agencies, district attorneys, city at-
40 torneys with criminal prosecutorial functions and the Attorney General when the law enforcement
41 agency determines that disclosure is necessary for the investigation or enforcement of laws relating
42 to child abuse and neglect or necessary to determine a claim for crime victim compensation under
43 ORS 147.005 to 147.367.

44 (5) A law enforcement agency, upon completing an investigation and closing the file in a specific
45 case relating to child abuse or neglect, shall make reports and records in the case available upon

1 request to any law enforcement agency or community corrections agency in this state, to the De-
 2 partment of Corrections or to the State Board of Parole and Post-Prison Supervision for the purpose
 3 of managing and supervising offenders in custody or on probation, parole, post-prison supervision
 4 or other form of conditional or supervised release. A law enforcement agency may make reports and
 5 records compiled under the provisions of ORS 419B.010 to 419B.050 available to law enforcement,
 6 community corrections, corrections or parole agencies in an open case when the law enforcement
 7 agency determines that the disclosure will not interfere with an ongoing investigation in the case.
 8 The name, address and other identifying information about the person who made the report may not
 9 be disclosed under this subsection or subsection (6)(b) of this section.

10 (6)(a) Any record made available to a law enforcement agency or community corrections agency
 11 in this state, to the Department of Corrections or the State Board of Parole and Post-Prison Super-
 12 vision or to a physician, physician assistant or nurse practitioner in this state, as authorized by
 13 subsections (1) to (5) of this section, shall be kept confidential by the agency, department, board,
 14 physician, physician assistant or nurse practitioner. Any record or report disclosed by the Depart-
 15 ment of Human Services to other persons or entities pursuant to subsections (1) and (3) of this sec-
 16 tion shall be kept confidential.

17 (b) Notwithstanding paragraph (a) of this subsection:

18 (A) A law enforcement agency, a community corrections agency, the Department of Corrections
 19 and the State Board of Parole and Post-Prison Supervision may disclose records made available to
 20 them under subsection (5) of this section to each other, to law enforcement, community corrections,
 21 corrections and parole agencies of other states and to authorized treatment providers for the pur-
 22 pose of managing and supervising offenders in custody or on probation, parole, post-prison super-
 23 vision or other form of conditional or supervised release.

24 (B) A person may disclose records made available to the person under subsection (1)(i) of this
 25 section if the records are disclosed for the purpose of advancing the public interest.

26 (7) **Except as provided by section 4 of this 2021 Act**, an officer or employee of the Department
 27 of Human Services or of a law enforcement agency or any person or entity to whom disclosure is
 28 made pursuant to subsections (1) to (6) of this section may not release any information not author-
 29 ized by subsections (1) to (6) of this section.

30 (8) As used in this section, "law enforcement agency" has the meaning given that term in ORS
 31 181A.010.

32 (9) A person who violates subsection (6)(a) or (7) of this section commits a Class A violation.

33 **SECTION 8. This 2021 Act being necessary for the immediate preservation of the public**
 34 **peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect**
 35 **on its passage.**

36