

TO: Senate Education Committee

FROM: Mark Siegel, Executive Director, Oregon Federation of Independent Schools
Opposition to SB 409

The Oregon Federation of Independent Schools generally supports laws that address student health and safety when the laws are applied fairly to both public and private school educators.

The Oregon Federation of Independent Schools objects to SB 409 because

- 1) Adding student-to-student misconduct to an existing statute is actually very complicated and will have a whole range of consequences that need to be explored with public and private school representatives before being adopted.
- 2) it is not needed since the adoption of SB 155 in 2019
- 3) It is unfair and discriminatory because of inequitable consequences for the same behavior - allowing lawsuits only against non-TSPC licensed individuals primarily those in private schools.
- 4) It is unfair because SB 409 is a mandatory reporting statute and no other mandatory reporter in Oregon (and it is a very long list beyond TSPC-licensed individuals) is punished for non-reporting by permitting a cause of action against them.
- 5) It is not needed because the reporting of the prohibited conduct outlined in SB 409 appears to come under existing mandatory reporting. If not, it could easily be added to the mandatory reporting statutes. The failure to make those reports are Class A violations, and that applies to TSPC and non-TSPC licensed individuals.

While many private school educators have TSPC licenses, the majority of individuals not under TSPC jurisdiction are in private school settings, and they are the only ones who can be sued under SB 409. That is discriminatory and unjustified, especially in light of the 2019 adoption of SB 155 and the ability to add failure to report this misconduct to mandatory reporting laws if needed.

Why SB 155 (2019) solved the problem (and it can be amended if needed)

Oregon's 2019 adoption of SB 155 addresses the issue of those not under TSPC jurisdiction, which includes some public school employees and many private school employees. SB 155 requires the Oregon Dept of Ed to investigate claims of sexual misconduct against school employees not under TSPC jurisdiction. It requires all

schools to check both TPSC and ODE records for both ongoing investigations and findings of sexual misconduct before hiring school employees. ODE SB 155 investigations parallel the investigations done by TSPC for similar allegations and address SB 409 concerns.

SB 155 is now fully in place and explained on ODE's website (<https://www.oregon.gov/ode/students-and-family/healthsafety/Pages/Sexual-Misconduct-Reporting-and-Investigation.aspx>) which states:

In 2019, the Oregon Legislature passed and the Governor signed into law Senate Bill 155, to help ensure the safety of all K-12 students in Oregon.

Senate Bill 155 directs the Oregon Department of Education (department) to do three things.

First, the bill requires the department to investigate allegations of suspected sexual misconduct that involve a student and an individual who is a school employee, contractor, agent, or volunteer who is not licensed with the Teacher Standards and Practices Commission (TSPC). The bill directs the department to begin those investigations starting on July 1, 2020.

Second, the bill directs the department to provide verification information to education providers when they are hiring an individual as a school employee or bringing on a contractor, agent, or volunteer to provide services in schools. Education providers are required to verify with the department whether it has an ongoing investigation or a substantiated report of sexual misconduct for an applicant who is not licensed with TSPC before hiring that individual as a school employee. Education providers also are required to verify with the department whether it has an ongoing investigation or a substantiated report of sexual misconduct for any contractor, agent, or volunteer who is not licensed with TSPC before the education provider accepts any services from that individual.

Finally, the bill requires the department to provide notification to education providers when it receives notification from the Department of Human Services that a report of abuse involving a child and a person who is a school employee, contractor, agent or volunteer has been made.

A careful reading of SB 409 shows that SB 155 is in place in the existing law SB 409 seeks to amend. For example SB 409 (page 5, lines 4-5), shows that existing law provides sexual conduct notification to ODE as follows (with only a number change):

(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.

In other words, reporting statutes are now in place that apply both to persons not licensed by TSPC and to those with TSPC licenses.

If TSPC's highest penalties for non-reporting are limited to revocation of licensure and being on a published list, and no other mandatory reporter in Oregon is subject to a cause of action for non-reporting, non-TSPC jurisdiction penalties under SB 155 of being put on a similar list is fair and equitable. In either case, the violator will not be hired elsewhere. It is unfair and unreasonable to have an additional cause of action only for non-TSPC jurisdiction employees.

SB 155 may need to be amended to meet specific legislator SB 409 concerns. OFIS generally supports health and safety measures that apply to both TSPC and non-TSPC employees regardless of where they are working and would be happy work with the Committee to address these concerns.

For all of these reasons, SB 409 should not be adopted.

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