

To: Senate Education Committee

From: Mark Siegel, Executive Director, Oregon Federation of Independent Schools

Oregon Private Schools Oppose SB 223

SB 223 is an unnecessary and unjustified burden on Oregon's private schools with high costs to both private schools and the state of Oregon with little if any benefit, and should not be adopted.

Oregon Private Schools Are Recognized As An Oregon Asset

Note: Governor Brown declared February 4, 2021, as Oregon Private Schools Appreciation Day, and Education Department Director Colt Gill wrote a letter in support.

The Oregon Department of Education's website states:

"Non-public education is recognized as a vital part of Oregon's educational system. Parents have the option of providing their child's education through Private or Home School. Private schools do not have to register with the State of Oregon, unless they are contracting with public school district for services."

Oregon private schools add to the richness of educational options for Oregon families. SB 223 would severely limit those options.

Summary of Arguments in Opposition to SB 223

Our opposition is both practical and philosophic.

Please know that Oregon private schools do care about the health and safety of the children in our care. We are generally willing to comply with the same rules of conduct and reporting that apply to all Oregon educators.

SB 223 unfairly treats individuals not under TSPC jurisdiction and the schools that employ them.

- 1) SB 223 is the wrong tool to address the Committee's and has many undesirable unintended consequences
- 2) Implementation of SB 223 private school registration is expensive to both ODE and to private schools. Voluntary registration was repealed at ODE request for good reason.
- 3) Since the adoption in 2019 of SB 155, SB 223 is not needed. SB 155 provides for ODE investigation of sexual misconduct allegations and for schools to consult both ODE and TSPC.

- 4) Desired compliance with existing laws can be very simply achieved by adding penalties and consequences to specific laws of concern where they don't exist now and should apply to public and private employees equally. Some of the laws referenced in SB 223 are public-school centric and would be hard for private schools to comply with because of how they are written.
- 5) SB 223 exceeds the power of the state to regulate private schools.
- 6) OFIS is willing to come to the table in a work-group setting and see how to best and most efficiently address the Committee's concerns, as we are doing with Senator Prozanski regarding SB 409. In fact, we suggest that one work-group address both bills because of their overlap.

Full Discussion

Private school registration was abolished by SB 26 in 2011 at the request of ODE because it was no longer needed for TSPC rule-compliance, expensive, ineffective and not aligned with ODE goals.

Private school registration is not needed in 2021. Registration is expensive to the state. It creates an unnecessary and time-consuming burden on private schools with no benefit.

The private school community views SB 223 as an over-reach by the state in a Constitutionally-protected area. In 1925 in the case of *Pierce v. Society of Sisters*, the US Supreme Court threw out an Oregon law requiring all students to attend public school. The court said:

The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.

Private schools could choose not to register under SB 223, and create an alternative student activities association if desired. This would prevent students from those schools from interacting with students from OSAA schools, and is not desired by OSAA or the private school community.

SB 223 **requires** (in a complicated way) Oregon private schools to register with the Oregon Department (ODE) in order for students to participate in any OSAA interscholastic activities.

Oregon repealed **voluntary** private school registration in 2011 for good reason. Starting in 1975, voluntary registration allowed private school teachers to maintain TSPC licenses per TSPC regulation. In 2009 TSPC repealed those rules. In 2011 at Oregon Superintendent of Public

Instruction Susan Castillo's request, the Oregon legislature passed SB 26 which repealed voluntary registration.

SB 26 Staff Measure Summary for the House Committee on Rules notes discussion of the low threshold for registration and potential savings of \$100,000 per biennium.:

"During the 2009-10 interim, a work group was convened to review and make recommendations on reducing education provider mandates. Senate Bill 26 represents one of the recommendations from the workgroup."

SB 26 Staff Measure Summary for the Senate Committee on Education & Workforce Development, noted

"Registration provides no verification of the information or oversight of registered private schools. Elimination of private school registration reduces ODE workloads and expenditures. Private school registration is not in line with ODE's core mission of public education.

ODE has not taken a position on SB 223, but did issue comments that included the following:

"The bill will have a fiscal impact on ODE as it adds new responsibilities to the agency. We estimate we will need two staff positions to meet the requirements as proposed in SB 223...

"This bill would add a significant burden to existing private schools and early learning providers. It would also create confusion and scheduling issues with OSAA. A section of the law states that school district can only be a member of an organization (OSAA?) that limits interscholastic activities to registered private schools.

"Some additional thoughts:

"There is some overlap between private schools and private alternative education programs. This bill could cause some confusion as to whether private alternative education programs need to register for both. It would help to know the goal of having designated registered private schools in order to provide suggestions as to how to clear up this confusion."

Private school registration is not needed because of 2019's adoption of SB 155. Before Oregon adopted SB 155 in 2019, there was no regulation of educators who were not under TSPC jurisdiction. SB 155's implementation addresses any issues raised by SB 223, making its adoption unnecessary. The legislature could expand ODE's investigative powers, without needing to have private schools register with ODE.

SB 155 is explained at the ODE website (<https://www.oregon.gov/ode/students-and-family/healthsafety/Pages/Sexual-Misconduct-Reporting-and-Investigation.aspx>):

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.

If there are concerns about private school compliance with the seven laws raised in SB 223 on page 3, lines 3-11, these could much more easily and effectively be addressed by a simple amendment to SB155 to allow investigation of violations of those laws.

Some private schools will likely rebel and walk away from OSAA by not registering their schools, causing unintended consequences including lack of interaction between public and private school students. Imagine teams from both leagues having to drive by non-member schools and travel farther to participate in competitive activities farther from home. This is an unintended consequence of SB 223.

SB 223 would create an unnecessary financial burden on ODE - \$100,000 in the 2011 biennium and hiring two new staff in 2021. It would put private schools through the costly and time-consuming process of preparing an extensive initial application as well as the preparation of annual reports.

OFIS is willing to come to the table in a work-group setting and see how to best and most efficiently address the Committee's concerns, as we are doing with Senator Prozanski regarding

SB 409. In fact, we suggest that one work-group be convened to address both bills because of their overlapping concerns.

Because SB 223 is an unnecessary and unjustified burden on Oregon's private schools with high costs to both private schools and the state of Oregon with little if any benefit, and its goals can be achieved in much more direct ways at much lower costs, SB 223 should not be adopted.

Sincerely,

Mark Siegel
Executive Director
Oregon Federation of Independent Schools