



STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

February 15, 2022

Representative Mark Owens
900 Court Street NE H475
Salem OR 97301

Re: Senate Bill 1521 analysis

Dear Representative Owens:

You requested definitions of the terms used in the definition of “state or federal law” in Senate Bill 1521. As discussed below, the definition in the bill has some ambiguity and should be reworked to provide greater clarity.

In an email you sent on February 11, 2022, you asked for definitions for each of the terms used in the definition of “state or federal law.” When drafting SB 1521, I included the definition for “state or federal law” to clarify the applicability of certain sources of law, including executive orders and administrative rules and regulations. The definition I used was based on Enrolled House Bill 4402 (2020 third special session), which limited the liability of school districts for certain claims arising during the COVID-19 emergency period. The similarity in the purposes of the bills seemed to lend well to a similarity in the terminology and defined terms.

Using the definition from HB 4402 may have not been the best decision. In the interest of time, I am not repeating the definitions I provided to you in my responding email. The process of crafting definitions for each of the terms made clear, however, that the terms used in the bill have some ambiguity. For example, a policy usually establishes a goal instead of a directive. From a practical standpoint, compliance with a goal may be difficult while from a policy standpoint, strict adherence to a goal is not always desired. Another term of confusion was the term “guidance,” which may have elements required by law but also recommendations that do not need to be followed.¹ After defining each term in your request, I concluded that a more accurate definition of “state or federal law” would specify that the term addresses directives that have the force of law, regardless of the terminology used to describe the directive.

My recommendation is to amend the definition of “state or federal law” to provide greater clarity. Possible language may provide that a state or federal law means “a state or federal directive having the force of law, including a statute, a court decision, an administrative rule or regulation, an order issued in compliance with ORS chapter 183, an executive order or any other directive, declaration or statement issued in compliance with the law as having the force of law.” There can be some flexibility in the language used after “including” to provide examples

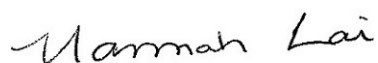
¹ See, e.g., “Ready Schools, Safe Learners: Guidance for School Year 2020-21” (May 28, 2021), <https://www.oregon.gov/ode/students-and-family/healthsafety/documents/ready%20schools%20safe%20learners%202020-21%20guidance.pdf>.

that are useful to district school boards and to assist the boards in complying with the law. The key point is to specify that the state or federal law has the force of law.

I hope this helps. If you have any additional questions or concerns, please let me know.

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Very truly yours,

A handwritten signature in black ink that reads "Hannah Lai". The signature is written in a cursive, flowing style.

Hannah Lai
Senior Deputy Legislative Counsel