

# D R A F T

## SUMMARY

Prohibits district school board from charging tuition for nonresident students.

Declares emergency, effective July 1, 2013.

## A BILL FOR AN ACT

Relating to tuition for nonresident students; creating new provisions; amending ORS 327.006, 335.090, 339.115 and 339.141; and declaring an emergency.

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

**SECTION 1.** ORS 339.115 is amended to read:

339.115. (1) Except as provided in ORS 339.141, authorizing tuition for courses not part of the regular school program, the district school board shall admit free of charge to the schools of the district all persons between the ages of 5 and 19 who reside within the school district. A person whose 19th birthday occurs during the school year shall continue to be eligible for a free and appropriate public education for the remainder of the school year. A district school board may admit nonresident persons[,] **and** determine who is not a resident of the district [*and fix rates of tuition for nonresidents*].

(2)(a) A district must admit an otherwise eligible person who has not yet attained 21 years of age prior to the beginning of the current school year if the person is:

(A) Receiving special education and has not yet received a high school diploma as described in ORS 329.451 (2); or

(B) Receiving special education and has received a modified diploma, an

1 extended diploma or an alternative certificate as described in ORS 329.451.

2 (b) A district may admit an otherwise eligible person who is not receiving  
3 special education and who has not yet attained 21 years of age prior to the  
4 beginning of the current school year if the person is shown to be in need of  
5 additional education in order to receive a high school diploma.

6 (3) The obligation to make a free appropriate public education available  
7 to individuals with disabilities 18 through 21 years of age who are  
8 incarcerated in an adult correctional facility applies only to those individ-  
9 uals who, in their last educational placement prior to their incarceration in  
10 the adult correctional facility:

11 (a) Were identified as being a child with a disability as defined in ORS  
12 343.035; or

13 (b) Had an individualized education program as described in ORS 343.151.

14 (4) For purposes of subsection (3) of this section, “adult correctional fa-  
15 cility” means:

16 (a) A local correctional facility as defined in ORS 169.005;

17 (b) A regional correctional facility as defined in ORS 169.620; or

18 (c) A Department of Corrections institution as defined in ORS 421.005.

19 (5) An otherwise eligible person under subsection (2) of this section whose  
20 21st birthday occurs during the school year shall continue to be eligible for  
21 a free appropriate public education for the remainder of the school year.

22 (6) The person may apply to the board of directors of the school district  
23 of residence for admission after the 19th birthday as provided in subsection  
24 (1) of this section. A person aggrieved by a decision of the local board may  
25 appeal to the State Board of Education. The decision of the state board is  
26 final and not subject to appeal.

27 (7) Notwithstanding ORS 339.133 (1)(a), a school district shall not exclude  
28 from admission a child located in the district solely because the child does  
29 not have a fixed place of residence or solely because the child is not under  
30 the supervision of a parent, guardian or person in a parental relationship.

31 (8) Notwithstanding subsection (1) of this section, a school district:

1 (a) May for the remaining period of an expulsion deny admission to the  
2 regular school to a resident student who is expelled from another school  
3 district; and

4 (b) Shall for at least one calendar year from the date of the expulsion and  
5 if the expulsion is for more than one calendar year, may for the remaining  
6 period of time deny admission to the regular school program to a student  
7 who is under expulsion from another school district for an offense that con-  
8 stitutes a violation of a school district policy adopted pursuant to ORS  
9 339.250 (6).

10 (9) A child entering the first grade during the fall term shall be consid-  
11 ered to be six years of age if the sixth birthday of the child occurs on or  
12 before September 1. A child entering kindergarten during the fall term shall  
13 be considered to be five years of age if the fifth birthday of the child occurs  
14 on or before September 1. However, nothing in this section prevents a dis-  
15 trict school board from admitting free of charge a child whose needs for  
16 cognitive, social and physical development would best be met in the school  
17 program, as defined by policies of the district school board, to enter school  
18 even though the child has not attained the minimum age requirement but is  
19 a resident of the district.

20 **SECTION 2.** ORS 327.006 is amended to read:

21 327.006. As used in ORS 327.006 to 327.133, 327.348 and 327.731:

22 (1) "Aggregate days membership" means the sum of days present and ab-  
23 sent, according to the rules of the State Board of Education, of all resident  
24 pupils when school is actually in session during a certain period. The ag-  
25 gregate days membership of kindergarten pupils shall be calculated on the  
26 basis of a half-day program.

27 (2)(a) "Approved transportation costs" means those costs as defined by  
28 rule of the State Board of Education and is limited to those costs attribut-  
29 able to transporting or room and board provided in lieu of transporting:

30 (A) Elementary school students who live at least one mile from school;

31 (B) Secondary school students who live at least 1.5 miles from school;

1 (C) Any student required to be transported for health or safety reasons,  
2 according to supplemental plans from districts that have been approved by  
3 the state board identifying students who are required to be transported for  
4 health or safety reasons, including special education;

5 (D) Preschool children with disabilities requiring transportation for early  
6 intervention services provided pursuant to ORS 343.224 and 343.533;

7 (E) Students who require payment of room and board in lieu of transpor-  
8 tation;

9 (F) A student transported from one school or facility to another school  
10 or facility when the student attends both schools or facilities during the day  
11 or week; and

12 (G) Students participating in school-sponsored field trips that are exten-  
13 sions of classroom learning experiences.

14 (b) "Approved transportation costs" does not include the cost of con-  
15 structing boarding school facilities.

16 (3) "Average daily membership" or "ADM" means the aggregate days  
17 membership of a school during a certain period divided by the number of  
18 days the school was actually in session during the same period. However, if  
19 a district school board adopts a class schedule that operates throughout the  
20 year for all or any schools in the district, average daily membership shall  
21 be computed by the Department of Education so that the resulting average  
22 daily membership will not be higher or lower than if the board had not  
23 adopted such schedule.

24 (4) "Consumer Price Index" means the Consumer Price Index for All Ur-  
25 ban Consumers of the Portland, Oregon, Metropolitan Statistical Area, as  
26 compiled by the United States Department of Labor, Bureau of Labor Sta-  
27 tistics.

28 (5) "Kindergarten" means a kindergarten program that conforms to the  
29 standards and rules adopted by the State Board of Education.

30 (6) "Net operating expenditures" means the sum of expenditures of a  
31 school district in kindergarten through grade 12 for administration, instruc-

1 tion, attendance and health services, operation of plant, maintenance of  
 2 plant[,] **and** fixed charges [*and tuition for resident students attending in an-*  
 3 *other district*], as determined in accordance with the rules of the State Board  
 4 of Education, but net operating expenditures does not include transportation,  
 5 food service, student body activities, community services, capital outlay, debt  
 6 service or expenses incurred for nonresident students.

7 (7)(a) “Resident pupil” means any pupil:

8 (A) Whose legal school residence is within the boundaries of a school  
 9 district reporting the pupil, if the district is legally responsible for the edu-  
 10 cation of the pupil, except that “resident pupil” does not include a pupil  
 11 [*who pays tuition or for whom the parent pays tuition or*] for whom the dis-  
 12 trict does not pay tuition for placement outside the district; or

13 (B) Whose legal residence is not within the boundaries of the district re-  
 14 porting the pupil but who attends school in the district with the written  
 15 consent of the district school board where the school is located as provided  
 16 by ORS 339.133 (5).

17 (b) A pupil is not considered to be a resident pupil under paragraph (a)(A)  
 18 of this subsection if the pupil is attending school in another school district  
 19 pursuant to a contract under ORS 339.125 and in the prior year was consid-  
 20 ered to be a resident pupil in another school district under paragraph (a)(B)  
 21 of this subsection. The pupil shall continue to be considered a resident of  
 22 another school district under paragraph (a)(B) of this subsection.

23 (c) A pupil is not considered to be a resident pupil under paragraph (a)(B)  
 24 of this subsection if the pupil is attending school in a school district pursu-  
 25 ant to ORS 339.133 (5) and in the prior year was considered to be a resident  
 26 pupil under paragraph (a)(A) of this subsection because the pupil was at-  
 27 tending school in another school district pursuant to a contract under ORS  
 28 339.125. The pupil shall continue to be considered a resident pupil under  
 29 paragraph (a)(A) of this subsection.

30 (d) “Resident pupil” includes a pupil admitted to a school district under  
 31 ORS 339.115 (7).

1 (8) "Standard school" means a school meeting the standards set by the  
2 rules of the State Board of Education.

3 (9) "Tax" and "taxes" includes all taxes on property, excluding exempt  
4 bonded indebtedness, as those terms are defined in ORS 310.140.

5 **SECTION 3.** ORS 327.006, as amended by section 7, chapter 704, Oregon  
6 Laws 2011, is amended to read:

7 327.006. As used in ORS 327.006 to 327.133, 327.348 and 327.731:

8 (1) "Aggregate days membership" means the sum of days present and ab-  
9 sent, according to the rules of the State Board of Education, of all resident  
10 pupils when school is actually in session during a certain period. The ag-  
11 gregate days membership of kindergarten pupils shall be calculated on the  
12 basis of a half-day program for half-day kindergarten and on the basis of a  
13 full-day program for full-day kindergarten.

14 (2)(a) "Approved transportation costs" means those costs as defined by  
15 rule of the State Board of Education and is limited to those costs attribut-  
16 able to transporting or room and board provided in lieu of transporting:

17 (A) Elementary school students who live at least one mile from school;

18 (B) Secondary school students who live at least 1.5 miles from school;

19 (C) Any student required to be transported for health or safety reasons,  
20 according to supplemental plans from districts that have been approved by  
21 the state board identifying students who are required to be transported for  
22 health or safety reasons, including special education;

23 (D) Preschool children with disabilities requiring transportation for early  
24 intervention services provided pursuant to ORS 343.224 and 343.533;

25 (E) Students who require payment of room and board in lieu of transpor-  
26 tation;

27 (F) A student transported from one school or facility to another school  
28 or facility when the student attends both schools or facilities during the day  
29 or week; and

30 (G) Students participating in school-sponsored field trips that are exten-  
31 sions of classroom learning experiences.

1 (b) "Approved transportation costs" does not include the cost of con-  
2 structing boarding school facilities.

3 (3) "Average daily membership" or "ADM" means the aggregate days  
4 membership of a school during a certain period divided by the number of  
5 days the school was actually in session during the same period. However, if  
6 a district school board adopts a class schedule that operates throughout the  
7 year for all or any schools in the district, average daily membership shall  
8 be computed by the Department of Education so that the resulting average  
9 daily membership will not be higher or lower than if the board had not  
10 adopted such schedule.

11 (4) "Consumer Price Index" means the Consumer Price Index for All Ur-  
12 ban Consumers of the Portland, Oregon, Metropolitan Statistical Area, as  
13 compiled by the United States Department of Labor, Bureau of Labor Sta-  
14 tistics.

15 (5) "Kindergarten" means a kindergarten program that conforms to the  
16 standards and rules adopted by the State Board of Education.

17 (6) "Net operating expenditures" means the sum of expenditures of a  
18 school district in kindergarten through grade 12 for administration, instruc-  
19 tion, attendance and health services, operation of plant, maintenance of  
20 plant[,] **and** fixed charges [*and tuition for resident students attending in an-*  
21 *other district*], as determined in accordance with the rules of the State Board  
22 of Education, but net operating expenditures does not include transportation,  
23 food service, student body activities, community services, capital outlay, debt  
24 service or expenses incurred for nonresident students.

25 (7)(a) "Resident pupil" means any pupil:

26 (A) Whose legal school residence is within the boundaries of a school  
27 district reporting the pupil, if the district is legally responsible for the edu-  
28 cation of the pupil, except that "resident pupil" does not include a pupil  
29 [*who pays tuition or for whom the parent pays tuition or*] for whom the dis-  
30 trict does not pay tuition for placement outside the district; or

31 (B) Whose legal residence is not within the boundaries of the district re-

1 porting the pupil but who attends school in the district with the written  
2 consent of the district school board where the school is located as provided  
3 by ORS 339.133 (5).

4 (b) A pupil is not considered to be a resident pupil under paragraph (a)(A)  
5 of this subsection if the pupil is attending school in another school district  
6 pursuant to a contract under ORS 339.125 and in the prior year was consid-  
7 ered to be a resident pupil in another school district under paragraph (a)(B)  
8 of this subsection. The pupil shall continue to be considered a resident of  
9 another school district under paragraph (a)(B) of this subsection.

10 (c) A pupil is not considered to be a resident pupil under paragraph (a)(B)  
11 of this subsection if the pupil is attending school in a school district pursu-  
12 ant to ORS 339.133 (5) and in the prior year was considered to be a resident  
13 pupil under paragraph (a)(A) of this subsection because the pupil was at-  
14 tending school in another school district pursuant to a contract under ORS  
15 339.125. The pupil shall continue to be considered a resident pupil under  
16 paragraph (a)(A) of this subsection.

17 (d) "Resident pupil" includes a pupil admitted to a school district under  
18 ORS 339.115 (7).

19 (8) "Standard school" means a school meeting the standards set by the  
20 rules of the State Board of Education.

21 (9) "Tax" and "taxes" includes all taxes on property, excluding exempt  
22 bonded indebtedness, as those terms are defined in ORS 310.140.

23 **SECTION 4.** ORS 335.090 is amended to read:

24 335.090. (1) The high school education of all children of school age resi-  
25 dent within a school district that does not operate a high school or that is  
26 not a component part of a union high school district shall be the responsi-  
27 bility of the district.

28 (2) The district shall pay the tuition of all pupils resident within the  
29 district who are qualified to attend and are attending a standard public high  
30 school [*either within or*] outside the state.

31 (3) The district shall provide for transportation to the nearest standard

1 public high school which pupils may attend. Reasonable board and room  
2 may be furnished instead of transportation if desired. If the district arranges  
3 for the attendance of pupils at a standard public high school other than the  
4 nearest one pupils may attend, then the district shall provide for transpor-  
5 tation to the standard public high school which the pupils are attending.

6 (4) The estimated cost of tuition and transportation or board and room  
7 instead of transportation shall be included in and be a part of the budget  
8 and shall be levied as provided in ORS 335.095.

9 **SECTION 5.** ORS 339.141 is amended to read:

10 339.141. (1) For the purposes of this section:

11 (a) "Public charter school" has the meaning given that term in ORS  
12 338.005.

13 (b) "Regular school program" means the regular curriculum provided in  
14 the required full-time day sessions in the schools of the district, including  
15 public charter schools, for grades 1 through 12 and the school program for  
16 kindergarten during the period of approximately nine months each year when  
17 the schools of the district or public charter schools are normally in operation  
18 and does not include summer sessions or evening sessions.

19 (c) "Tuition" means payment for the cost of instruction and does not in-  
20 clude fees authorized under ORS 339.155.

21 (2) Except as provided in subsection (3) of this section, district school  
22 boards and public charter schools may establish tuition rates to be paid by  
23 pupils receiving instruction in educational programs, classes or courses of  
24 study, including traffic safety education, which are not a part of the regular  
25 school program. Tuition charges, if made, shall not exceed the estimated cost  
26 to the district or public charter school of furnishing the program, class or  
27 course of study.

28 (3) Except as provided in ORS 336.805 for traffic safety education:

29 (a) No tuition shall be charged to any [*resident*] pupil regularly enrolled  
30 in the regular school program for special instruction received at any time  
31 in connection therewith.

1 (b) No program, class or course of study for which tuition is charged,  
2 except courses of study beyond the 12th grade, shall be eligible for re-  
3 imbursement from state funds.

4 **SECTION 6.** ORS 339.141, as amended by section 5, chapter 704, Oregon  
5 Laws 2011, is amended to read:

6 339.141. (1) For the purposes of this section:

7 (a) "Public charter school" has the meaning given that term in ORS  
8 338.005.

9 (b) "Regular school program" means the regular curriculum that is pro-  
10 vided in the schools of the school district, including public charter schools,  
11 and that is provided:

12 (A) As required full-day sessions in grades 1 through 12;

13 (B) As required half-day sessions in kindergarten or as optional full-day  
14 sessions in kindergarten; and

15 (C) During the hours and months when the schools of the school district  
16 or public charter schools are normally in operation, except summer sessions  
17 or evening sessions.

18 (c) "Tuition" means payment for the cost of instruction and does not in-  
19 clude fees authorized under ORS 339.155.

20 (2) Except as provided in subsection (3) of this section, district school  
21 boards and public charter schools may establish tuition rates to be paid by  
22 pupils receiving instruction in educational programs, classes or courses of  
23 study, including traffic safety education, which are not a part of the regular  
24 school program. Tuition charges, if made, shall not exceed the estimated cost  
25 to the district or public charter school of furnishing the program, class or  
26 course of study.

27 (3) Except as provided in ORS 336.805 for traffic safety education:

28 (a) No tuition shall be charged to any [*resident*] pupil regularly enrolled  
29 in the regular school program for special instruction received at any time  
30 in connection therewith.

31 (b) No program, class or course of study for which tuition is charged,

1 except courses of study beyond the 12th grade, shall be eligible for re-  
2 imbursement from state funds.

3 **SECTION 7. The amendments to ORS 327.006, 335.090, 339.115 and**  
4 **339.141 by sections 1 to 6 of this 2013 Act first apply to the 2013-2014**  
5 **school year.**

6 **SECTION 8. This 2013 Act being necessary for the immediate pres-**  
7 **ervation of the public peace, health and safety, an emergency is de-**  
8 **clared to exist, and this 2013 Act takes effect July 1, 2013.**

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