

Senate Bill 156

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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**.

Revises definitions of terms "school employee," "sexual conduct" and "student" for purposes of certain laws related to abuse and sexual conduct by school employees.

Establishes timelines for Teacher Standards and Practices Commission to conduct investigation after receiving complaint regarding behavior that may be dangerous to children.

Requires school district to complete all initiated investigations involving reports of suspected abuse or sexual conduct by school employees, regardless of any changes in employment relationship or duties of school employee.

Prohibits education provider from entering into contract or agreement that has effect of impairing or terminating ongoing investigation related to report of suspected abuse or sexual conduct.

Declares emergency, effective July 1, 2019.

A BILL FOR AN ACT

1
2 Relating to improper conduct by school employees; creating new provisions; amending ORS 339.370,
3 339.372, 339.392 and 342.176; 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) "Disciplinary records" means the records related to a personnel discipline action or materi-
9 als or documents supporting that action.

10 (3) "Education provider" means:

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

12 (b) The Oregon School for the Deaf.

13 (c) An educational program under the Youth Corrections Education Program.

14 (d) A public charter school, as defined in ORS 338.005.

15 (e) An education service district, as defined in ORS 334.003.

16 (f) Any state-operated program that provides educational services to kindergarten through grade
17 12 students.

18 (g) A private school.

19 (4) "Investigation" means a detailed inquiry into the factual allegations of a report of suspected
20 abuse or sexual conduct that:

21 (a) Is based on interviews with the complainant, witnesses and the school employee or student
22 who is the subject of the report; and

23 (b) If the subject of the report is a school employee, meets any negotiated standards of an em-
24 ployment contract or agreement.

25 (5) "Law enforcement agency" has the meaning given that term in ORS 419B.005.

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 (6) "Private school" means a school that provides to kindergarten through grade 12 students
 2 instructional programs that are not limited solely to dancing, drama, music, religious or athletic
 3 instruction.

4 (7) "School board" means the governing board or governing body of an education provider.

5 [(8) "School employee" means an employee of an education provider.]

6 [(9)(a) "Sexual conduct" means any verbal or physical conduct by a school employee that:]

7 [(A) Is sexual in nature;]

8 [(B) Is directed toward a kindergarten through grade 12 student;]

9 [(C) Has the effect of unreasonably interfering with a student's educational performance; and]

10 [(D) Creates an intimidating, hostile or offensive educational environment.]

11 (8) "School employee" means:

12 (a) An employee of an education provider; or

13 (b) An employee of a contractor who has direct, unsupervised contact with students.

14 (9)(a) "Sexual conduct" means conduct of a school employee with a student that includes:

15 (A) The intentional touching of the breast or of the sexual or other intimate parts of a
 16 student;

17 (B) Causing, encouraging or permitting a student to touch the breast or the sexual or
 18 other intimate parts of a school employee;

19 (C) Sexual advances or requests for sexual favors directed toward a student; or

20 (D) Verbal or physical conduct of a sexual nature when directed toward a student or
 21 when the conduct has the effect of unreasonably interfering with a student's educational
 22 performance or creates an intimidating, hostile or offensive educational environment.

23 (b) "Sexual conduct" does not include abuse.

24 (10) "Student" includes a person who:

25 (a) Is in any grade from prekindergarten through grade 12; or

26 (b) Was previously known to the school employee as a student and who left school or
 27 graduated from high school within the 90 days prior to the sexual conduct.

28 [(10)] (11) "Substantiated report" means a report of abuse or sexual conduct that:

29 (a) An education provider has reasonable cause to believe is founded based on the available
 30 evidence after conducting an investigation; and

31 (b) Involves conduct that the education provider determines is sufficiently serious to be docu-
 32 mented in the school employee's personnel file or the student's education record.

33 **SECTION 2.** The amendments to ORS 339.370 by section 1 of this 2019 Act apply to con-
 34 duct that occurs before, on or after the effective date of this 2019 Act for purposes of:

35 (1) Making reports of suspected abuse or sexual conduct;

36 (2) Investigations of abuse or suspected sexual conduct that are pending or initiated on
 37 or after the effective date of this 2019 Act; and

38 (3) A collective bargaining agreement, an employment contract, an agreement for resig-
 39 nation or termination, a severance agreement or any similar contract or agreement entered
 40 into on or after the effective date of this 2019 Act.

41 **SECTION 3.** ORS 342.176 is amended to read:

42 342.176. (1)(a) A person may file a complaint with the Teacher Standards and Practices Com-
 43 mission regarding a person licensed by the commission. **The commission must complete an in-**
 44 **vestigation and make a final determination related to a complaint within 180 calendar days**
 45 **following the date the complaint was filed with the commission if the complaint regards be-**

1 **havior that indicates a danger to children, as defined by the commission by rule and includ-**
 2 **ing a complaint of abuse or sexual conduct as described in ORS 339.370 to 339.400. The**
 3 **timeline prescribed by this paragraph may be extended if the commission determines that a**
 4 **longer period of time is necessary for good cause.**

5 (b) Prior to beginning an investigation based on a complaint filed under paragraph (a) of this
 6 subsection, the commission may require verification that attempts were made to resolve the com-
 7 plaint through the complaint process of the school district that employs the person against whom
 8 the complaint was filed.

9 (c) After receiving sufficient verification as provided by paragraph (b) of this subsection, the
 10 Teacher Standards and Practices Commission shall promptly undertake an investigation upon receipt
 11 of a complaint or information that may constitute grounds for:

12 (A) Refusal to issue a license or registration, as provided under ORS 342.143;

13 (B) Suspension or revocation of a license or registration, discipline of a person holding a license
 14 or registration, or suspension or revocation of the right to apply for a license or registration, as
 15 provided under ORS 342.175; or

16 (C) Discipline for failure to provide appropriate notice prior to resignation, as provided under
 17 ORS 342.553.

18 (2) The commission [*may*] **shall promptly** appoint an investigator and shall furnish the investi-
 19 gator with appropriate professional and other special assistance reasonably required to conduct the
 20 investigation. [*and*] The investigator is empowered to issue subpoenas to require the attendance
 21 of witnesses or the production of documents over the signature of the executive director of the
 22 commission, subpoena witnesses over the signature of the executive director, swear witnesses and
 23 compel obedience in the same manner as provided under ORS 183.440 (2).

24 (3) Following completion of the investigation, the executive director or the executive director's
 25 designee shall report in writing any findings and recommendations to:

26 (a) The commission, meeting in executive session[, *at its next regular meeting following com-*
 27 *pletion of the investigation*]; and

28 (b) The person against whom the charge is made, following consideration by the commission.

29 (4)(a) Except as provided in paragraph (b) of this subsection, the documents and materials used
 30 in the investigation undertaken as provided by this section and the report related to the investi-
 31 gation are confidential and not subject to public inspection unless the commission makes a final
 32 determination to:

33 (A) Refuse to issue a license or registration, as provided under ORS 342.143;

34 (B) Suspend or revoke a license or registration, discipline a person holding a license or regis-
 35 tration, or suspend or revoke the right to apply for a license or registration, as provided under ORS
 36 342.175; or

37 (C) Discipline a person for failure to provide appropriate notice prior to resignation, as provided
 38 under ORS 342.553.

39 (b) Records made available to the commission under ORS 419B.035 (1)(h) shall be kept confi-
 40 dential.

41 (5) If the commission finds from the report that there is sufficient cause to justify holding a
 42 hearing under ORS 342.177, the commission shall notify in writing:

43 (a) The person charged, enclosing a statement of the charges and a notice of opportunity for
 44 hearing;

45 (b) The complainant; and

1 (c) The employing district or public charter school, if any.

2 (6) If the commission finds from the report that there is not sufficient cause to justify holding
 3 a hearing under ORS 342.177, the commission shall notify in writing:

4 (a) The person charged;

5 (b) The complainant; and

6 (c) The employing district or public charter school, if any.

7 (7) Notwithstanding ORS 192.660 (6), the commission may make its findings under this section
 8 in executive session. However, the provisions of ORS 192.660 (4) apply to the sessions.

9 **SECTION 4. The amendments to ORS 342.176 by section 3 of this 2019 Act apply to com-**
 10 **plaints received on or after the effective date of this 2019 Act.**

11 **SECTION 5.** ORS 339.372 is amended to read:

12 339.372. Each school board shall adopt policies on the reporting of abuse and sexual conduct
 13 by school employees and the reporting of abuse by students. The policies shall:

14 (1) Specify that abuse and sexual conduct by school employees and abuse by students are not
 15 tolerated;

16 (2) Specify that all school employees and students are subject to the policies;

17 (3) Require all school employees who have reasonable cause to believe that another school em-
 18 ployee has engaged in abuse or sexual conduct or that a student has engaged in abuse to:

19 (a) Report suspected abuse to a law enforcement agency, the Department of Human Services or
 20 a designee of the department as required by ORS 419B.010 and 419B.015; and

21 (b) Report suspected abuse or sexual conduct to the person designated as provided by subsection
 22 (4) of this section;

23 (4) Designate a person, and an alternate in the event the designated person is the suspected
 24 abuser, to receive reports of suspected abuse or sexual conduct by school employees or suspected
 25 abuse by students and specify the procedures to be followed by that person upon receipt of a report;

26 **(5) Specify the procedures to be followed during an investigation, including the require-**
 27 **ment that all initiated investigations be completed regardless of any changes in employment**
 28 **relationship or duties of the school employee about whom a report was made;**

29 [(5)] (6) Require the posting in each school building of the name and contact information for the
 30 person designated for the school building to receive reports of suspected abuse or sexual conduct
 31 by school employees or suspected abuse by students and the procedures the person will follow upon
 32 receipt of a report;

33 [(6)] (7) Specify that the initiation of a report in good faith about suspected abuse or sexual
 34 conduct may not adversely affect any terms or conditions of employment or the work environment
 35 of the complainant;

36 [(7)] (8) Specify that the school board or any school employee will not discipline a student for
 37 the initiation of a report in good faith about suspected abuse or sexual conduct by a school em-
 38 ployee or suspected abuse by a student;

39 [(8)] (9) Require notification by the education provider to the person who initiated the report
 40 about actions taken by the education provider based on the report; and

41 [(9)] (10) Require the education provider to furnish to a school employee at the time of hire the
 42 following:

43 (a) A description of conduct that may constitute abuse or sexual conduct; and

44 (b) A description of the information and records that will be disclosed as provided by ORS
 45 339.378 or 339.388 (8) if a report of suspected abuse or sexual conduct is substantiated.

1 **SECTION 6.** ORS 339.392 is amended to read:

2 339.392. (1) An education provider may not enter into a collective bargaining agreement, an
3 employment contract, an agreement for resignation or termination, a severance agreement or any
4 other contract or agreement that:

5 (a) Has the effect of **impairing or terminating an ongoing investigation or** suppressing in-
6 formation relating to an ongoing investigation related to a report of suspected abuse or sexual
7 conduct [*or*];

8 **(b) Has the effect of suppressing information** relating to a substantiated report of abuse or
9 sexual conduct by a current or former employee;

10 [(b)] **(c) Affects the duties of the education provider to report suspected abuse or sexual conduct**
11 or to discipline a current or former employee for a substantiated report of abuse or sexual conduct;

12 [(c)] **(d) Impairs the ability of the education provider to discipline an employee for a substanti-**
13 ated report of abuse or sexual conduct; or

14 [(d)] **(e) Requires the education provider to expunge substantiated information about abuse or**
15 sexual conduct from any documents maintained by an education provider.

16 (2) Any provision of an employment contract or agreement that is contrary to this section is
17 void and unenforceable.

18 (3) Nothing in this section prevents an education provider from entering into a collective bar-
19 gaining agreement that includes:

20 (a) Standards for investigation of a report of abuse or sexual conduct; or

21 (b) An appeal process from the determination by an education provider that a report of abuse
22 or sexual conduct has been substantiated as provided in ORS 339.388 (5).

23 **SECTION 7. The amendments to ORS 339.392 by section 6 of this 2019 Act first apply to**
24 **agreements and contracts entered into on or after the effective date of this 2019 Act.**

25 **SECTION 8. This 2019 Act being necessary for the immediate preservation of the public**
26 **peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect**
27 **July 1, 2019.**

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