

# House Bill 2136

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Oregon Teacher Standards and Practices Commission)

## 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**.

Clarifies terminology of persons who may be investigated or disciplined by Teacher Standards and Practices Commission.

## A BILL FOR AN ACT

1  
2 Relating to the disciplinary authority of the Teacher Standards and Practices Commission; amending  
3 ORS 339.370, 339.374, 339.378, 339.388, 339.390, 339.391, 342.120, 342.175 and 342.176.

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

5 **SECTION 1.** ORS 342.120 is amended to read:

6 342.120. As used in this chapter, unless the context requires otherwise:

7 (1) "Administrator" includes but is not limited to all superintendents, assistant superintendents,  
8 principals and academic program directors in public schools or education service districts who have  
9 direct responsibility for supervision or evaluation of licensed teachers and who are compensated for  
10 their services from public funds.

11 (2) "Administrative license" means a license issued under ORS 342.125 (3)(f) or (g).

12 (3) "Approved educator preparation program" means a licensure program that is offered by an  
13 approved educator preparation provider and meets the standards of the Teacher Standards and  
14 Practices Commission.

15 (4) "Approved educator preparation provider" means an entity that meets the standards of the  
16 Teacher Standards and Practices Commission for preparation of licensed educators for preprimary  
17 programs through grade 12.

18 (5) "**Commission licensee**" means a person whom the Teacher Standards and Practices  
19 Commission has the authority to investigate or discipline because the person:

20 (a) **Is enrolled in an approved educator preparation program;**

21 (b) **Is an applicant for a Teacher Standards and Practices Commission license or regis-**  
22 **tration;**

23 (c) **Holds a license or registration issued by the Teacher Standards and Practices Com-**  
24 **mission; or**

25 (d) **Has held a license or registration issued by the Teacher Standards and Practices**  
26 **Commission at any time during the previous five years.**

27 [(5)] (6) "Instruction" includes preparation of curriculum, assessment and direction of learning  
28 in class, in small groups, in individual situations, online, in the library and in guidance and coun-  
29 seling, but does not include the provision of related services, as defined in ORS 343.035, to a child  
30 identified as a child with a disability pursuant to ORS 343.146 to 343.183 when provided in accord-  
31 ance with ORS 343.221.

**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)] (7) “Instructional assistant” means a classified school employee who does not require a li-  
 2        cense to teach, who is employed by a school district or education service district and whose as-  
 3        signment consists of and is limited to assisting a licensed teacher in accordance with rules  
 4        established by the Teacher Standards and Practices Commission.

5        [(7)] (8) “Teacher” includes all licensed employees in the public schools or employed by an ed-  
 6        ucation service district who have direct responsibility for instruction or coordination of educational  
 7        programs and who are compensated for their services from public funds. “Teacher” does not include  
 8        a school nurse as defined in ORS 342.455 or an instructional assistant.

9        [(8)] (9) “Teaching license” means a license issued under ORS 342.125 or 342.144.

10       [(9)] (10) “Underrepresented person” means:

11       (a) A person having origins in any of the black racial groups of Africa, but who is not Hispanic;

12       (b) A person of Hispanic culture or origin;

13       (c) A person having origins in any of the original peoples of the Far East, Southeast Asia, the  
 14       Indian subcontinent or the Pacific Islands; or

15       (d) An American Indian or Alaskan Native having origins in any of the original peoples of North  
 16       America.

17       **SECTION 2.** ORS 342.175 is amended to read:

18       342.175. (1) The Teacher Standards and Practices Commission may suspend or revoke the license  
 19       or registration of a [*teacher or administrator*] **commission licensee**, discipline a [*teacher or admin-*  
 20       *istrator*] **commission licensee**, or suspend or revoke the right of any person to apply for a license  
 21       or registration[, *if the licensee, registrant or applicant has held a license or registration at any time*  
 22       *within five years prior to issuance of the notice of charges under ORS 339.390 or 342.176*] based on  
 23       the following:

24       (a) Conviction of a crime not listed in ORS 342.143 (3);

25       (b) Gross neglect of duty;

26       (c) Any gross unfitness;

27       (d) Conviction of a crime for violating any law of this state or any state or of the United States  
 28       involving the illegal use, sale or possession of controlled substances;

29       (e) Conviction of a crime described in ORS 475B.010 to 475B.545;

30       (f) Any false statement knowingly made in an application for issuance, renewal or reinstatement  
 31       of a license or registration; or

32       (g) Failure to comply with any condition of reinstatement under subsection (4) of this section  
 33       or any condition of probation under ORS 342.177 (3)(b).

34       (2) If a person is enrolled in an approved educator preparation program under ORS 342.147, the  
 35       commission may issue a public reprimand or may suspend or revoke the right to apply for a license  
 36       or registration based on the following:

37       (a) Conviction of a crime listed in ORS 342.143 (3) or a crime described by the commission by  
 38       rule;

39       (b) Conviction of a crime for violating any law of this state or any state or of the United States  
 40       involving the illegal use, sale or possession of controlled substances; or

41       (c) Any conduct that may cause the commission to issue a public reprimand for a [*teacher*]  
 42       **commission licensee** or to suspend or revoke the license or registration of a [*teacher*] **commission**  
 43       **licensee**.

44       (3) The commission shall revoke any license or registration and shall revoke the right of any  
 45       person to apply for a license or registration if the person has been convicted of any crime listed in

1 ORS 342.143 (3).

2 (4)(a) Except for convictions for crimes listed in ORS 342.143 (3) and subject to subsection (5)  
 3 of this section, any person whose license or registration has been revoked, or whose right to apply  
 4 for a license or registration has been revoked, may apply to the commission for reinstatement of the  
 5 license or registration after one year from the date of the revocation.

6 (b) Any person whose license or registration has been suspended, or whose right to apply for a  
 7 license or registration has been suspended, may apply to the commission for reinstatement of the  
 8 license or registration.

9 (c) The commission may require an applicant for reinstatement to furnish evidence satisfactory  
 10 to the commission of good moral character, mental and physical health and such other evidence as  
 11 the commission may consider necessary to establish the applicant’s fitness. The commission may  
 12 impose a probationary period and such conditions as the commission considers necessary upon ap-  
 13 proving an application for reinstatement.

14 (5) The commission shall reconsider immediately a license or registration suspension or revoca-  
 15 tion or the situation of a person whose right to apply for a license or registration has been revoked,  
 16 upon application therefor, when the license or registration suspension or revocation or the right  
 17 revocation is based on a criminal conviction that is reversed on appeal.

18 (6) Violation of rules adopted by the commission relating to competent and ethical performance  
 19 of professional duties shall be admissible as evidence of gross neglect of duty or gross unfitness.

20 (7) A copy of the record of conviction, certified to by the clerk of the court entering the con-  
 21 viction, shall be conclusive evidence of a conviction described in this section.

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

23 342.176. (1)(a) A person may file a complaint with the Teacher Standards and Practices Com-  
 24 mission regarding a [*person licensed by the*] commission **licensee**. If a complaint concerns an  
 25 allegation of sexual conduct that may have been committed by a [*licensed school employee, contractor,*  
 26 *agent or volunteer*] **commission licensee**, the complaint process provided by this section does not  
 27 apply and the commission shall investigate the complaint as provided by ORS 339.390.

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

32 (c) After receiving sufficient verification as provided by paragraph (b) of this subsection, the  
 33 commission shall promptly undertake an investigation upon receipt of a complaint or information  
 34 that may constitute grounds for:

- 35 (A) Refusal to issue a license or registration, as provided under ORS 342.143;
- 36 (B) Suspension or revocation of a license or registration, discipline of a [*person holding a license*  
 37 *or registration*] **commission licensee**, or suspension or revocation of the right to apply for a license  
 38 or registration, as provided under ORS 342.175; or
- 39 (C) Discipline for failure to provide appropriate notice prior to resignation, as provided under  
 40 ORS 342.553.

41 (2) The commission may appoint an investigator and shall furnish the investigator with appro-  
 42 priate professional and other special assistance reasonably required to conduct the investigation,  
 43 and the investigator is empowered to issue subpoenas to require the attendance of witnesses or the  
 44 production of documents over the signature of the executive director of the Teacher Standards and  
 45 Practices Commission, subpoena witnesses over the signature of the executive director, swear wit-

1 nesses and compel obedience in the same manner as provided under ORS 183.440 (2).

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

4 (a) The commission, meeting in executive session, at its next regular meeting following com-  
5 pletion of the investigation; and

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

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

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

12 (B) Suspend or revoke a license or registration, discipline a [*person holding a license or regis-*  
13 *tration*] **commission licensee**, or suspend or revoke the right to apply for a license or registration,  
14 as provided under ORS 342.175; or

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

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

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

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

23 (b) The complainant; and

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

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

27 (a) The person charged;

28 (b) The complainant; and

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

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

32 **SECTION 4.** ORS 339.370 is amended to read:

33 339.370. As used in ORS 339.370 to 339.400:

34 (1) "Abuse" has the meaning given that term in ORS 419B.005.

35 (2) "Agent" means a person acting as an agent for an education provider in a manner that re-  
36 quires the person to have direct, unsupervised contact with students.

37 **(3) "Commission licensee" has the meaning given that term in ORS 342.120.**

38 [(3)] **(4) "Contractor"** means a person providing services to an education provider under a con-  
39 tract in a manner that requires the person to have direct, unsupervised contact with students.

40 [(4)(a)] **(5)(a) "Education provider"** means:

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

42 (B) The Oregon School for the Deaf.

43 (C) An educational program under the Youth Corrections Education Program.

44 (D) A public charter school, as defined in ORS 338.005.

45 (E) An education service district, as defined in ORS 334.003.

- 1 (F) Any state-operated program that provides educational services to students.  
 2 (G) A private school.  
 3 (b) “Education provider” does not include:  
 4 (A) The Oregon Youth Authority;  
 5 (B) The Department of Corrections; or  
 6 (C) The Department of Education, except when functioning as an education provider on behalf  
 7 of:  
 8 (i) The Oregon School for the Deaf;  
 9 (ii) An educational program under the Youth Corrections Education Program; or  
 10 (iii) A public charter school, as defined in ORS 338.005, that is sponsored by the Department of  
 11 Education.  
 12 [(5)] (6) “Investigation” means a detailed inquiry into the factual allegations of a report of sus-  
 13 pected abuse or suspected sexual conduct that:  
 14 (a) Is based on interviews with the person who initiated the report, the person who may have  
 15 been subjected to abuse or sexual conduct, witnesses and the person who is the subject of the re-  
 16 port; and  
 17 (b) Results in a finding that the report:  
 18 (A) Is a substantiated report;  
 19 (B) Cannot be substantiated; or  
 20 (C) Is not a report of abuse or sexual conduct.  
 21 [(6)] (7) “Law enforcement agency” has the meaning given that term in ORS 419B.005.  
 22 [(7)] “License” includes a license, registration or certificate issued by the Teacher Standards and  
 23 Practices Commission.]  
 24 (8) “Licensed administrator” means a person who holds an administrative license, as that  
 25 term is defined in ORS 342.120.  
 26 [(8)] (9) “Private school” means a school that provides to students instructional programs that  
 27 are not limited solely to dancing, drama, music, religious or athletic instruction.  
 28 [(9)] (10) “School board” means the entity charged with adopting policies for an education pro-  
 29 vider.  
 30 [(10)] (11) “School employee” means an employee of an education provider.  
 31 [(11)(a)] (12)(a) “Sexual conduct” means verbal or physical conduct or verbal, written or elec-  
 32 tronic communications by a school employee, a contractor, an agent or a volunteer that involve a  
 33 student and that are:  
 34 (A) Sexual advances or requests for sexual favors directed toward the student; or  
 35 (B) Of a sexual nature that are directed toward the student or that have the effect of unrea-  
 36 sonably interfering with the student’s educational performance, or of creating an intimidating, hos-  
 37 tile or offensive educational environment.  
 38 (b) “Sexual conduct” does not include touching:  
 39 (A) That is necessitated by the nature of the school employee’s job duties or by the services  
 40 required to be provided by the contractor, agent or volunteer; and  
 41 (B) For which there is no sexual intent.  
 42 [(12)] (13) “Student” means any person:  
 43 (a) Who is:  
 44 (A) In any grade from prekindergarten through grade 12; or  
 45 (B) Twenty-one years of age or younger and receiving educational or related services from an

1 education provider that is not a post-secondary institution of education; or

2 (b) Who was previously known as a student by the person engaging in sexual conduct and who  
 3 left school or graduated from high school within 90 days prior to the sexual conduct.

4 ~~[(13)]~~ (14) “Substantiated report” means a report of abuse or sexual conduct that a law  
 5 enforcement agency, the Department of Human Services, the Teacher Standards and Practices  
 6 Commission, the Department of Education or an education provider has reasonable cause to believe,  
 7 based on the available evidence after conducting an investigation, is founded.

8 ~~[(14)]~~ (15) “Volunteer” means a person acting as a volunteer for an education provider in a  
 9 manner that requires the person to have direct, unsupervised contact with students.

10 **SECTION 5.** ORS 339.374 is amended to read:

11 339.374. (1) Except as provided in ORS 339.384, before an education provider may hire an ap-  
 12 plicant for a position with the education provider as a school employee, the education provider shall:

13 (a) Require the applicant to provide:

14 (A) A list of the applicant’s current and former employers who are education providers.

15 (B) A written authorization that authorizes education providers identified in subparagraph (A)  
 16 of this paragraph to disclose the information requested under paragraph (b) of this subsection.

17 (C) A written statement of whether the applicant:

18 (i) Has been the subject of a substantiated report of abuse or sexual conduct; or

19 (ii) Is the subject of an ongoing investigation related to a report of suspected abuse or suspected  
 20 sexual conduct.

21 (b) Conduct a review of the employment history of the applicant with education providers by  
 22 contacting the three most recent education providers identified in paragraph (a)(A) of this sub-  
 23 section and requesting from each education provider:

24 (A) The dates of employment of the applicant by the education provider.

25 (B) Whether the education provider conducted an investigation and determined that the appli-  
 26 cant was the subject of any substantiated reports of abuse or sexual conduct related to the  
 27 applicant’s employment with the education provider and, if so, the following additional information:

28 (i) The dates of any substantiated reports;

29 (ii) The definitions of “abuse” and “sexual conduct” used by the education provider when the  
 30 education provider determined that any reports were substantiated; and

31 (iii) The standards used by the education provider to determine whether any reports were sub-  
 32 stantiated.

33 (c) For an applicant who is *[licensed with the Teacher Standards and Practices Commission]* a  
 34 **commission licensee**, request the commission to verify:

35 (A) That the applicant is *[licensed by the commission]* a **commission licensee**; and

36 (B) Whether the commission has an ongoing investigation or has a substantiated report relating  
 37 to conduct by the applicant that may constitute sexual conduct.

38 (d) For an applicant who is not *[licensed with the Teacher Standards and Practices Commission]*  
 39 a **commission licensee**, request the Department of Education to verify whether the department has  
 40 an ongoing investigation or has a substantiated report relating to conduct by the applicant that may  
 41 constitute sexual conduct.

42 (e) Conduct a nationwide criminal records check if required by ORS 326.603.

43 (2) Before an education provider may accept the services of a contractor, agent or volunteer,  
 44 the education provider shall:

45 (a) For a person who is *[licensed with the Teacher Standards and Practices Commission]* a

1 **commission licensee**, request the commission to verify whether the commission has an ongoing  
 2 investigation or has a substantiated report relating to conduct by the person that may constitute  
 3 sexual conduct.

4 (b) For a person who is not [*licensed with the Teacher Standards and Practices Commission*] a  
 5 **commission licensee**, request the Department of Education to verify whether the department has  
 6 an ongoing investigation or has a substantiated report relating to conduct by the person that may  
 7 constitute sexual conduct.

8 (c) Conduct any background checks required under ORS 326.603, 326.604 or 326.607.

9 **SECTION 6.** ORS 339.378 is amended to read:

10 339.378. (1)(a) Not later than 20 days after receiving a request under ORS 339.374 (1)(b), an ed-  
 11 ucation provider that has or has had an employment relationship with the applicant shall disclose  
 12 the information requested.

13 (b) An education provider may disclose the information on a standardized form and is not re-  
 14 quired to provide any additional information related to a substantiated report of abuse or sexual  
 15 conduct other than the information that is required by ORS 339.374 (1)(b).

16 (c) Information received under this section is confidential and is not a public record as defined  
 17 in ORS 192.311. An education provider may use the information only for the purpose of evaluating  
 18 an applicant's eligibility to be hired.

19 (2)(a) Except as provided by paragraphs (b) and (c) of this subsection, an individual who is a  
 20 school employee, a contractor or an agent may not assist another school employee, contractor or  
 21 agent in obtaining any new job if the individual knows, or has reasonable cause to believe, that the  
 22 school employee, contractor or agent engaged in abuse or sexual conduct.

23 (b) Nothing in paragraph (a) of this subsection prevents an education provider from:

24 (A) Disclosing the information described in subsection (1) of this section; or

25 (B) Providing the routine transmission of administrative and personnel files.

26 (c) The prohibition prescribed by paragraph (a) of this subsection does not apply if the school  
 27 employee, contractor or agent knows, or has reasonable cause to believe:

28 (A) That the suspected abuse or suspected sexual conduct was reported to a law enforcement  
 29 agency, the Department of Human Services, the Teacher Standards and Practices Commission or the  
 30 Department of Education; and

31 (B) Any of the following are true:

32 (i) The report could be neither substantiated nor found to be unsubstantiated following an in-  
 33 vestigation;

34 (ii) The report was found to be unsubstantiated;

35 (iii) The report was found to be a substantiated report; or

36 (iv) The investigation into the report remains ongoing after four years.

37 (3)(a) The commission may take disciplinary action against a [*licensed*] school employee **who is**  
 38 **a commission licensee** for failure to disclose information as required by subsection (1)(a) of this  
 39 section. In determining whether to take disciplinary action, the commission may take into consid-  
 40 eration any evidence presented by the school employee that a longer period of time was necessary  
 41 for good cause.

42 (b) Any violation of the provisions of subsection (2) of this section shall be considered gross  
 43 neglect of duty under ORS 342.175.

44 **SECTION 7.** ORS 339.388 is amended to read:

45 339.388. (1)(a) A school employee shall immediately submit a report as provided by paragraph (b)

1 of this subsection if the school employee has reasonable cause to believe that:

2 (A) A student has been subjected to abuse by another school employee or by a contractor, an  
3 agent, a volunteer or a student;

4 (B) A student has been subjected to sexual conduct by another school employee or by a con-  
5 tractor, an agent or a volunteer; or

6 (C) Another school employee or a contractor, an agent or a volunteer has engaged in sexual  
7 conduct.

8 (b) The report required under paragraph (a) of this subsection shall be made to:

9 (A) The licensed administrator designated in the policies adopted under ORS 339.372, for all  
10 reports of suspected abuse or suspected sexual conduct; and

11 (B) A law enforcement agency, the Department of Human Services or a designee of the depart-  
12 ment as required by ORS 419B.010 and 419B.015, for all reports of suspected abuse.

13 (2) The licensed administrator who receives a report under subsection (1) of this section shall  
14 follow the procedures required by the policies adopted by the school board under ORS 339.372, in-  
15 cluding:

16 (a) Notifying the Teacher Standards and Practices Commission as soon as possible of any reports  
17 of suspected sexual conduct that may have been committed by a person who is [*licensed by the*  
18 *commission*] **a commission licensee**; and

19 (b) Notifying the Department of Education as soon as possible of any reports of suspected sexual  
20 conduct that may have been committed by a person who is not [*licensed by the commission*] **a com-**  
21 **mission licensee**.

22 (3)(a) When a licensed administrator receives a report of suspected abuse or suspected sexual  
23 conduct by a school employee and there is reasonable cause to support the report, the education  
24 provider shall:

25 (A) Place the school employee on paid administrative leave; and

26 (B) Take necessary actions to ensure the student's safety.

27 (b) A school employee who is placed on paid administrative leave under paragraph (a) of this  
28 subsection shall remain on administrative leave until:

29 (A) For a report of suspected abuse, a law enforcement agency or the Department of Human  
30 Services determines that the report:

31 (i) Is substantiated and the education provider takes the appropriate employment action against  
32 the school employee; or

33 (ii) Cannot be substantiated or is not a report of abuse and the education provider:

34 (I) Determines that an employment policy has been violated and takes appropriate employment  
35 action against the school employee; or

36 (II) Determines that an employment policy has not been violated and employment action against  
37 the school employee is not required.

38 (B) For a report of suspected sexual conduct, the Teacher Standards and Practices Commission  
39 or the Department of Education determines that the report:

40 (i) Is substantiated and the education provider takes the appropriate employment action against  
41 the school employee; or

42 (ii) Cannot be substantiated or is not a report of sexual conduct and the education provider:

43 (I) Determines that an employment policy has been violated and takes appropriate employment  
44 action against the school employee; or

45 (II) Determines that an employment policy has not been violated and that employment action

1 against the school employee is not required.

2 (c) When a school employee is placed on paid administrative leave under paragraph (a) of this  
 3 subsection, the education provider may not require the school employee to use any accrued leave  
 4 during the paid administrative leave.

5 (4)(a) Except as provided in paragraph (c) of this subsection, when a licensed administrator re-  
 6 ceives a report of suspected abuse or suspected sexual conduct by a contractor, an agent or a vol-  
 7 unteer, the education provider:

8 (A) May immediately prohibit the contractor, agent or volunteer from providing services to the  
 9 education provider.

10 (B) Shall prohibit the contractor, agent or volunteer from providing services to the education  
 11 provider if the education provider determines that there is reasonable cause to support a report of  
 12 abuse or sexual conduct.

13 (b) Except as provided in paragraph (c) of this subsection, an education provider is not required  
 14 to reinstate a contractor, an agent or a volunteer. Any reinstatement of a contractor, an agent or  
 15 a volunteer that does occur may not occur until:

16 (A) For a report of suspected abuse, a law enforcement agency or the Department of Human  
 17 Services determines that the report:

18 (i) Is substantiated and the education provider takes the appropriate actions to protect students;  
 19 or

20 (ii) Cannot be substantiated or is not a report of abuse and the education provider:

21 (I) Takes the appropriate actions to protect students; or

22 (II) Determines that no other actions are required to protect students.

23 (B) For a report of suspected sexual conduct, the Teacher Standards and Practices Commission  
 24 or the Department of Education determines that the report:

25 (i) Is substantiated and the education provider takes the appropriate actions to protect students;  
 26 or

27 (ii) Cannot be substantiated or is not a report of sexual conduct and the education provider:

28 (I) Takes the appropriate actions to protect students; or

29 (II) Determines that no other actions are required to protect students.

30 (c) If a contract under which a contractor provides services to an education provider or an  
 31 agreement under which an agent provides services to an education provider sets forth any negoti-  
 32 ated standards for the relationship between the contractor or agent and the education provider, the  
 33 education provider shall comply with those standards but may not in any instance grant the con-  
 34 tractor or agent more rights than granted to a school employee under subsection (3) of this section.

35 (d) Nothing in this subsection:

36 (A) Establishes an employment relationship between an education provider and a contractor or  
 37 an agent; or

38 (B) Confers onto a contractor or an agent any rights of employment.

39 (5)(a) When a report of suspected abuse or suspected sexual conduct is investigated by a law  
 40 enforcement agency, the Department of Human Services, the Teacher Standards and Practices  
 41 Commission or the Department of Education, an education provider may use the findings of the en-  
 42 tity that conducted the investigation for the purpose of subsection (3) or (4) of this section and for  
 43 making any determinations described in subsection (6) of this section.

44 (b) Nothing in this subsection prohibits an education provider from:

45 (A) Conducting an investigation related to a report of suspected abuse or suspected sexual

1 conduct, except that the education provider must:

2 (i) If requested, allow the investigation to be led by an entity identified in paragraph (a) of this  
3 subsection, as applicable;

4 (ii) Follow any protocols and procedures of entities identified in paragraph (a) of this subsection  
5 that are involved in the investigation; and

6 (iii) Cooperate with the entities identified in paragraph (a) of this subsection that are involved  
7 in the investigation, including by:

8 (I) Suspending any investigations of the education provider at the request of the entity; and

9 (II) Sharing information with the entity as provided by subsection (10) of this section.

10 (B) Taking an employment action, based on information available to the education provider, be-  
11 fore an investigation conducted by an entity identified in paragraph (a) of this subsection is com-  
12 pleted.

13 (6)(a) For each report of suspected abuse or suspected sexual conduct by a school employee, an  
14 education provider must determine if:

15 (A) An employment policy of the education provider was violated; and

16 (B) The education provider will take any employment actions, including disciplinary action  
17 against the school employee or changes to the employment relationship or duties of the school em-  
18 ployee.

19 (b) Determinations made under paragraph (a) of this subsection must be based on the findings  
20 of an investigation conducted by:

21 (A) A law enforcement agency, the Department of Human Services, the Teacher Standards and  
22 Practices Commission or the Department of Education; or

23 (B) The education provider, if the education provider conducts an investigation.

24 (c) A final determination by a law enforcement agency, the Department of Human Services, the  
25 Teacher Standards and Practices Commission or the Department of Education that a report of sus-  
26 pected abuse or suspected sexual conduct cannot be substantiated or is not a report of abuse or  
27 sexual conduct does not:

28 (A) Relieve an education provider of the requirement to make determinations under paragraph  
29 (a) of this subsection; or

30 (B) Prohibit an education provider from taking any employment actions against a school em-  
31 ployee.

32 (d) Except as provided by paragraph (e) of this subsection, determinations made under paragraph  
33 (a) of this subsection must be made:

34 (A) Within 60 calendar days from the date the education provider received from a law enforce-  
35 ment agency, the Department of Human Services, the Teacher Standards and Practices Commission  
36 or the Department of Education a final determination that a report of suspected abuse or suspected  
37 sexual conduct involving a school employee is a substantiated report; or

38 (B) Within 90 calendar days from the date the education provider:

39 (i) Received from a law enforcement agency, the Department of Human Services, the Teacher  
40 Standards and Practices Commission or the Department of Education a final determination that a  
41 report of suspected abuse or suspected sexual conduct involving a school employee cannot be sub-  
42 stantiated or is not a report of abuse or sexual conduct; or

43 (ii) Received a report of suspected abuse or suspected sexual conduct if the education provider  
44 conducts an investigation.

45 (e) The timelines prescribed by paragraph (d) of this subsection may be extended if, for good

1 cause, a longer period of time is necessary. For an education provider that conducts an investi-  
 2 gation, good cause may include suspending an investigation as required by subsection (5)(b) of this  
 3 section.

4 (7) If, in the course of an investigation by an education provider, the education provider becomes  
 5 aware of new information that gives rise to a reasonable cause to believe that abuse or sexual  
 6 conduct occurred, the education provider shall ensure that a report is made to a law enforcement  
 7 agency, the Department of Human Services, a designee of the department as required by ORS  
 8 419B.010 and 419B.015, the Teacher Standards and Practices Commission or the Department of Ed-  
 9 ucation.

10 (8) If, following an investigation, an education provider determines that the education provider  
 11 will take an employment action, the education provider shall:

12 (a) Inform the school employee of the employment action that will be taken by the education  
 13 provider.

14 (b) Provide the school employee with information about the appropriate appeal process for the  
 15 employment action taken by the education provider. The appeal process may be the process provided  
 16 by a collective bargaining agreement or a process administered by a neutral third party and paid  
 17 for by the education provider.

18 (c) Following notice of a school employee's decision not to appeal the employment action of an  
 19 education provider or following the determination of an appeal that sustained the employment action  
 20 taken by the education provider, create a record of the findings of the substantiated report and the  
 21 employment action taken by the education provider and place the record in any documents main-  
 22 tained by the education provider on the school employee. Records created pursuant to this para-  
 23 graph are confidential and are not public records as defined in ORS 192.311. An education provider  
 24 may use the record as a basis for providing the information required to be disclosed about a school  
 25 employee under ORS 339.378 (1).

26 (d) Inform the school employee that information about substantiated reports may be disclosed  
 27 to a potential employer as provided by ORS 339.378 (1).

28 (9)(a) Notwithstanding the requirements of this section, an education provider that is a private  
 29 school:

30 (A) May take an employment action in relation to a school employee, a contractor, an agent or  
 31 a volunteer according to:

32 (i) The provisions of this section; or

33 (ii) The standards and policies of the private school if the standards and policies provide the  
 34 same or greater safeguards for the protection of students compared to the safeguards described in  
 35 this section.

36 (B) May follow the procedures described in subsection (8) of this section or may follow any ap-  
 37 peals process established by the private school related to suspected abuse or suspected sexual con-  
 38 duct.

39 (b) A private school that chooses to take an employment action or other action in relation to  
 40 a school employee, a contractor, an agent or a volunteer according to the standards and policies  
 41 of the private school must provide the information required to be disclosed under ORS 339.378 (1).

42 (10) Upon request from a law enforcement agency, the Department of Human Services, the  
 43 Teacher Standards and Practices Commission or the Department of Education, in conducting an in-  
 44 vestigation related to suspected abuse or suspected sexual conduct, an education provider shall im-  
 45 mediately provide any requested documents or materials, to the extent allowed by state and federal

1 law, including laws protecting a person from self-incrimination.

2 **SECTION 8.** ORS 339.390 is amended to read:

3 339.390. (1)(a) When the Teacher Standards and Practices Commission receives a report of sus-  
 4 pected sexual conduct that may have been committed by a [*licensed school employee, contractor, agent*  
 5 *or volunteer*] **commission licensee**, the commission shall immediately initiate an investigation.

6 (b) An investigation and final determination related to a report received under paragraph (a)  
 7 of this subsection must be completed and notification of the final determination must be made to the  
 8 education provider within 90 calendar days following the date on which the report was filed with  
 9 the commission.

10 (c) Notwithstanding paragraph (b) of this subsection, the prescribed timeline for an investigation  
 11 and final determination may be extended if, for good cause, a longer period of time is necessary.

12 (2) The commission shall appoint an investigator and shall furnish the investigator with appro-  
 13 priate professional and other special assistance reasonably required to conduct an investigation. An  
 14 investigator appointed under this subsection is empowered to:

15 (a) Issue subpoenas to require the attendance of witnesses or the production of documents;

16 (b) Subpoena witnesses; and

17 (c) Swear witnesses and compel obedience in the same manner as provided under ORS 183.440  
 18 (2).

19 (3)(a) Following the completion of an investigation, the investigator shall report in writing any  
 20 findings and recommendations to the executive director of the Teacher Standards and Practices  
 21 Commission.

22 (b) If, based on the findings, the executive director believes there is an immediate threat to a  
 23 student, the executive director shall request that the commission meet in executive session.

24 (4) The executive director or the investigator shall report in writing the findings and any rec-  
 25 ommendations to the commission. The commission shall decide if there is sufficient cause to justify  
 26 holding a hearing under ORS 342.177.

27 (5) If the commission finds that there is sufficient cause to justify holding a hearing under ORS  
 28 342.177, the commission shall notify in writing:

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

31 (b) The student and, if applicable, the student's parents;

32 (c) The education provider; and

33 (d) The person who provided the report of suspected sexual conduct.

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

36 (a) The person charged;

37 (b) The student and, if applicable, the student's parents;

38 (c) The education provider; and

39 (d) The person who provided the report of suspected sexual conduct.

40 (7)(a) Except as provided in paragraph (b) of this subsection, the documents and materials used  
 41 in the investigation undertaken under this section, and the report related to the investigation, are  
 42 confidential and not subject to public inspection unless the commission makes a final determination  
 43 [*to suspend or revoke a license, discipline a person holding a license or revoke the right to apply for*  
 44 *a license*] **to discipline a commission licensee**, as provided under ORS 342.175.

45 (b) To the extent allowed by state and federal law, the commission shall make available any

1 documents, materials and reports to:

2 (A) A law enforcement agency or the Department of Human Services for the purpose of con-  
 3 ducting an investigation under ORS 419B.005 to 419B.050;

4 (B) The Department of Education for the purpose of conducting an investigation under ORS  
 5 339.391; or

6 (C) An education provider for the purpose of taking any disciplinary actions or making changes  
 7 in the employment relationship or duties of the [*school employee, contractor, agent or volunteer*]  
 8 **commission licensee**.

9 (c) The commission shall retain documents and materials related to any report received under  
 10 this section, regardless of whether the commission found sufficient cause to justify holding a hearing  
 11 under this section.

12 (8) Notwithstanding ORS 192.660 (6), the commission may make its findings under this section  
 13 in executive session. The provisions of ORS 192.660 (4) apply to executive sessions held pursuant to  
 14 this subsection.

15 (9) The commission shall adopt any rules necessary for the administration of this section, in-  
 16 cluding a process to appeal the findings of the commission under this section.

17 **SECTION 9.** ORS 339.391 is amended to read:

18 339.391. (1)(a) When the Department of Education receives a report of suspected sexual conduct  
 19 that may have been committed by a school employee, contractor, agent or volunteer that is not [*li-*  
 20 *icensed with the Teacher Standards and Practices Commission*] **a commission licensee**, the depart-  
 21 ment shall immediately initiate an investigation.

22 (b) An investigation and final determination related to the report received under paragraph (a)  
 23 of this subsection must be completed and notification of the final determination must be made to the  
 24 education provider within 90 calendar days following the date on which the report was filed with  
 25 the department.

26 (c) Notwithstanding paragraph (b) of this subsection, the prescribed timeline for an investigation  
 27 and final determination may be extended if the department determines that, for good cause, a longer  
 28 period of time is necessary.

29 (2) The department shall appoint an investigator and shall furnish the investigator with appro-  
 30 priate professional and other special assistance reasonably required to conduct an investigation. An  
 31 investigator appointed under this subsection is empowered to:

32 (a) Issue subpoenas to require the attendance of witnesses or the production of documents;

33 (b) Subpoena witnesses; and

34 (c) Swear witnesses and compel obedience in the same manner as provided under ORS 183.440  
 35 (2).

36 (3)(a) Following the completion of an investigation, the Department of Education shall notify:

37 (A) The person charged;

38 (B) The student and, if applicable, the student's parents;

39 (C) The education provider;

40 (D) The person who provided the report of suspected sexual conduct; and

41 (E) Any regulatory board that is not the Teacher Standards and Practices Commission and that  
 42 licenses, registers, certifies or otherwise authorizes the school employee, contractor, agent or vol-  
 43 unteer to practice a profession or to provide professional services.

44 (b) The notification required under paragraph (a) of this subsection shall include the following  
 45 information as allowed by state and federal law:

- 1 (A) The statutory authority of the department to conduct the investigation;
- 2 (B) The procedural background for the investigation;
- 3 (C) The legal standards and arguments used for the investigation;
- 4 (D) The department's findings of fact from the investigation;
- 5 (E) The department's final determination based on the investigation; and
- 6 (F) The right to an appeal, as provided by subsection (5) of this section.

7 (4)(a) Except as provided in paragraph (b) of this subsection, the documents and materials used  
8 in the investigation undertaken under this section, and the report related to the investigation, are  
9 confidential and not subject to public inspection.

10 (b) To the extent allowed by state and federal law, the department shall make available any  
11 documents, materials and reports to:

12 (A) A law enforcement agency or the Department of Human Services if necessary to conduct  
13 an investigation under ORS 419B.005 to 419B.050;

14 (B) The Teacher Standards and Practices Commission if necessary for the commission to conduct  
15 an investigation under ORS 339.390; and

16 (C) An education provider if necessary for the education provider to take any disciplinary action  
17 or changes in the employment relationship or duties of the school employee, contractor, agent or  
18 volunteer.

19 (c) The Department of Education shall retain documents and materials related to any report  
20 received under this section, regardless of whether the department found sufficient cause to justify  
21 holding a hearing under this section.

22 (5) A person may appeal the final determination made by the department under this section as  
23 a contested case under ORS chapter 183.

24 (6) The State Board of Education shall adopt any rules necessary for the administration of this  
25 section.

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