

Enrolled Senate Bill 242

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Education)

CHAPTER

AN ACT

Relating to education; creating new provisions; amending ORS 339.370, 339.390 and 419B.005; repealing section 8, chapter __, Oregon Laws 2021 (Enrolled House Bill 2136); and declaring an emergency.

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

SECTION 1. ORS 339.370 is amended to read:

339.370. As used in ORS 339.370 to 339.400:

- (1) "Abuse" has the meaning given that term in ORS 419B.005.
- (2) "Agent" means a person acting as an agent for an education provider in a manner that requires the person to have direct, unsupervised contact with students.
- (3) "Contractor" means a person providing services to an education provider under a contract in a manner that requires the person to have direct, unsupervised contact with students.
- (4)(a) "Education provider" means:
 - (A) A school district, as defined in ORS 332.002.
 - (B) The Oregon School for the Deaf.
 - (C) An educational program under the Youth Corrections Education Program.
 - (D) A public charter school, as defined in ORS 338.005.
 - (E) An education service district, as defined in ORS 334.003.
 - (F) Any state-operated program that provides educational services to students.
 - (G) A private school.
- (b) "Education provider" does not include:
 - (A) The Oregon Youth Authority;
 - (B) The Department of Corrections; or
 - (C) The Department of Education, except when functioning as an education provider on behalf of:
 - (i) The Oregon School for the Deaf;
 - (ii) An educational program under the Youth Corrections Education Program; or
 - (iii) A public charter school, as defined in ORS 338.005, that is sponsored by the Department of Education.
- (5) "Investigation" means a detailed inquiry into the factual allegations of a report of suspected abuse or suspected sexual conduct that:

(a) Is based on interviews with the person who initiated the report, the person who may have been subjected to abuse or sexual conduct, witnesses and the person who is the subject of the report; and

(b) Results in a finding that the report:

(A) Is a substantiated report;

(B) Cannot be substantiated; or

(C) Is not a report of abuse or sexual conduct.

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

(7) "License" includes a license, registration or certificate issued by the Teacher Standards and Practices Commission.

(8) "Private school" means a school that provides to students instructional programs that are not limited solely to dancing, drama, music, religious or athletic instruction.

(9) "School board" means the entity charged with adopting policies for an education provider.

(10) "School employee" means an employee of an education provider.

(11)(a) "Sexual conduct" means verbal or physical conduct or verbal, written or electronic communications by a school employee, a contractor, an agent or a volunteer that involve a student and that are:

(A) Sexual advances or requests for sexual favors directed toward the student; or

(B) Of a sexual nature that are directed toward the student or that have the effect of unreasonably interfering with the student's educational performance, or of creating an intimidating[,] or hostile [*or offensive*] educational environment.

(b) "Sexual conduct" does not include:

(A) Touching **or other physical contact:**

[(A)] (i) That is necessitated by the nature of the school employee's job duties or by the services required to be provided by the contractor, agent or volunteer; and

[(B)] (ii) For which there is no sexual intent.

(B) Verbal, written or electronic communications that are provided as part of an education program that meets state educational standards or a policy approved by the school board.

(C) Conduct or communications described in paragraph (a) of this subsection if the school employee, contractor, agent or volunteer is also a student and the conduct or communications:

(i) Arise out of a consensual relationship between students;

(ii) Do not create an intimidating or hostile educational environment; and

(iii) Are not prohibited by law, any policies of the education provider or any applicable employment agreements.

(12) "Student" means any person:

(a) Who is:

(A) In any grade from prekindergarten through grade 12; or

(B) Twenty-one years of age or younger and receiving educational or related services from an education provider that is not a post-secondary institution of education; or

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

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

(14) "Volunteer" means a person acting as a volunteer for an education provider in a manner that requires the person to have direct, unsupervised contact with students.

SECTION 2. The amendments to ORS 339.370 by section 1 of this 2021 Act apply to conduct that occurs before, on or after the effective date of this 2021 Act for purposes of:

(1) Reports of suspected sexual conduct that are made on or after the effective date of this 2021 Act.

(2) Investigations of suspected sexual conduct that are initiated on or after the effective date of this 2021 Act.

(3) A collective bargaining agreement, an employment contract, an agreement for resignation or termination, a severance agreement or any similar contract or agreement entered into on or after the effective date of this 2021 Act.

SECTION 3. ORS 339.390 is amended to read:

339.390. (1)(a) When the Teacher Standards and Practices Commission receives a report of suspected sexual conduct that may have been committed by a licensed school employee, contractor, agent or volunteer, the commission shall immediately initiate an investigation.

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

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

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

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

(b) Subpoena witnesses; and

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

(2).

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

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

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

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

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

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

(c) The education provider; and

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

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

(a) The person charged;

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

(c) The education provider; and

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

(7)(a) [*Except as provided in paragraph (b) of this subsection,*] The documents and materials used in the investigation undertaken under this section, and the report related to the investigation, are confidential and not subject to public inspection:

(A) Unless the commission makes a final determination to suspend or revoke a license, discipline a person holding a license or revoke the right to apply for a license, as provided under ORS 342.175.

(B) Except as provided by paragraphs (b) to (d) of this subsection.

(b) Documents, materials and reports that are confidential under paragraph (a) of this subsection may be disclosed to an entity listed in paragraph (c) or (d) of this subsection only as provided by this subsection and rules adopted by the commission. The entity that receives documents, materials or reports must maintain their confidentiality unless disclosure is allowed or required under this section or other state or federal law.

~~[(b)] (c)~~ To the extent allowed by state and federal law, the commission shall make available any documents, materials and reports **that are confidential under paragraph (a) of this subsection** to:

(A) A law enforcement agency or the Department of Human Services for the purpose of conducting an investigation under ORS 419B.005 to 419B.050; **or**

(B) The Department of Education for the purpose of conducting an investigation under ORS 339.391[; *or*].

~~[(C)] (d)~~**(A) The commission shall make available the commission's investigative report to:**

(i) An education provider for the purpose of **the education provider** taking any disciplinary actions or making changes in the employment relationship or duties of the school employee, contractor, agent or volunteer[.]; **and**

(ii) **The school employee, contractor, agent or volunteer who is the subject of the report.**

(B) The commission must redact the executive director's recommendation from the report made available under this paragraph.

(C) A school employee, contractor, agent or volunteer who receives a report under this paragraph may share the report with the person's attorney or union representative. An attorney or union representative who receives a report under this subparagraph must maintain the report's confidentiality unless disclosure is allowed or required under this section or other state or federal law.

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

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

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

SECTION 3a. If House Bill 2136 becomes law, section 8, chapter __, Oregon Laws 2021 (Enrolled House Bill 2136) (amending ORS 339.390), is repealed and ORS 339.390, as amended by section 3 of this 2021 Act, is amended to read:

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

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

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

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

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

(b) Subpoena witnesses; and

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

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

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

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

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

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

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

(c) The education provider; and

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

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

(a) The person charged;

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

(c) The education provider; and

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

(7)(a) The documents and materials used in the investigation undertaken under this section, and the report related to the investigation, are confidential and not subject to public inspection:

(A) Unless the commission makes a final determination [*to suspend or revoke a license, discipline a person holding a license or revoke the right to apply for a license*] **to discipline a commission licensee**, as provided under ORS 342.175.

(B) Except as provided by paragraphs (b) to (d) of this subsection.

(b) Documents, materials and reports that are confidential under paragraph (a) of this subsection may be disclosed to an entity listed in paragraph (c) or (d) of this subsection only as provided by this subsection and rules adopted by the commission. The entity that receives documents, materials or reports must maintain their confidentiality unless disclosure is allowed or required under this section or other state or federal law.

(c) To the extent allowed by state and federal law, the commission shall make available any documents, materials and reports that are confidential under paragraph (a) of this subsection to:

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

(B) The Department of Education for the purpose of conducting an investigation under ORS 339.391.

(d)(A) The commission shall make available the commission's investigative report to:

(i) An education provider for the purpose of the education provider taking any disciplinary actions or making changes in the employment relationship or duties of the [*school employee, contractor, agent or volunteer*] **commission licensee**; and

(ii) The [*school employee, contractor, agent or volunteer*] **commission licensee** who is the subject of the report.

(B) The commission must redact the executive director's recommendation from the report made available under this paragraph.

(C) A [*school employee, contractor, agent or volunteer*] **commission licensee** who receives a report under this paragraph may share the report with the person's attorney or union representative. An attorney or union representative who receives a report under this subparagraph must maintain the report's confidentiality unless disclosure is allowed or required under this section or other state or federal law.

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

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

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

SECTION 4. ORS 419B.005 is amended to read:

419B.005. As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:

(1)(a) "Abuse" means:

(A) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child which has been caused by other than accidental means, including any injury which appears to be at variance with the explanation given of the injury.

(B) Any mental injury to a child, which shall include only observable and substantial impairment of the child's mental or psychological ability to function caused by cruelty to the child, with due regard to the culture of the child.

(C) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual penetration and incest, as those acts are described in ORS chapter 163.

(D) Sexual abuse, as described in ORS chapter 163.

(E) Sexual exploitation, including but not limited to:

(i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage in the performing for people to observe or the photographing, filming, tape recording or other exhibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not including any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or which is designed to serve educational or other legitimate purposes; and

(ii) Allowing, permitting, encouraging or hiring a child to engage in prostitution as described in ORS 167.007 or a commercial sex act as defined in ORS 163.266, to purchase sex with a minor as described in ORS 163.413 or to engage in commercial sexual solicitation as described in ORS 167.008.

(F) Negligent treatment or maltreatment of a child, including but not limited to the failure to provide adequate food, clothing, shelter or medical care that is likely to endanger the health or welfare of the child.

(G) Threatened harm to a child, which means subjecting a child to a substantial risk of harm to the child's health or welfare.

(H) Buying or selling a person under 18 years of age as described in ORS 163.537.

(I) Permitting a person under 18 years of age to enter or remain in or upon premises where methamphetamines are being manufactured.

(J) Unlawful exposure to a controlled substance, as defined in ORS 475.005, or to the unlawful manufacturing of a cannabinoid extract, as defined in ORS 475B.015, that subjects a child to a substantial risk of harm to the child's health or safety.

(b) "Abuse" does not include reasonable discipline unless the discipline results in one of the conditions described in paragraph (a) of this subsection.

(2) "Child" means an unmarried person who:

(a) Is under 18 years of age; or

(b) Is under 21 years of age and residing in or receiving care or services at a child-caring agency as that term is defined in ORS 418.205.

(3) "Higher education institution" means:

(a) A community college as defined in ORS 341.005;

(b) A public university listed in ORS 352.002;

- (c) The Oregon Health and Science University; and
 - (d) A private institution of higher education located in Oregon.
- (4)(a) "Investigation" means a detailed inquiry into or assessment of the safety of a child alleged to have experienced abuse.
- (b) "Investigation" does not include screening activities conducted upon the receipt of a report.
- (5) "Law enforcement agency" means:
- (a) A city or municipal police department.
 - (b) A county sheriff's office.
 - (c) The Oregon State Police.
 - (d) A police department established by a university under ORS 352.121 or 353.125.
 - (e) A county juvenile department.
- (6) "Public or private official" means:
- (a) Physician or physician assistant licensed under ORS chapter 677 or naturopathic physician, including any intern or resident.
 - (b) Dentist.
 - (c) School employee, including an employee of a higher education institution.
 - (d) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide or employee of an in-home health service.
 - (e) Employee of the Department of Human Services, Oregon Health Authority, Early Learning Division, Department of Education, Youth Development Division, Office of Child Care, the Oregon Youth Authority, a local health department, a community mental health program, a community developmental disabilities program, a county juvenile department, a child-caring agency as that term is defined in ORS 418.205 or an alcohol and drug treatment program.
 - (f) Peace officer.
 - (g) Psychologist.
 - (h) Member of the clergy.
 - (i) Regulated social worker.
 - (j) Optometrist.
 - (k) Chiropractor.
 - (L) Certified provider of foster care, or an employee thereof.
 - (m) Attorney.
 - (n) Licensed professional counselor.
 - (o) Licensed marriage and family therapist.
 - (p) Firefighter or emergency medical services provider.
 - (q) A court appointed special advocate, as defined in ORS 419A.004.
 - (r) A child care provider registered or certified under ORS 329A.030 and 329A.250 to 329A.450.
 - (s) Member of the Legislative Assembly.
 - (t) Physical, speech or occupational therapist.
 - (u) Audiologist.
 - (v) Speech-language pathologist.
 - (w) Employee of the Teacher Standards and Practices Commission directly involved in investigations or discipline by the commission.
 - (x) Pharmacist.
 - (y) An operator of a preschool recorded program under ORS 329A.255.
 - (z) An operator of a school-age recorded program under ORS 329A.257.
 - (aa) Employee of a private agency or organization facilitating the provision of respite services, as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS 109.056.
 - (bb) Employee of a public or private organization providing child-related services or activities:
 - (A) Including but not limited to youth groups or centers, scout groups or camps, summer or day camps, survival camps or groups, centers or camps that are operated under the guidance, super-

vision or auspices of religious, public or private educational systems or community service organizations; and

(B) Excluding community-based, nonprofit organizations whose primary purpose is to provide confidential, direct services to victims of domestic violence, sexual assault, stalking or human trafficking.

(cc) A coach, assistant coach or trainer of an amateur, semiprofessional or professional athlete, if compensated and if the athlete is a child.

(dd) Personal support worker, as defined in ORS 410.600.

(ee) Home care worker, as defined in ORS 410.600.

(ff) Animal control officer, as defined in ORS 609.500.

(gg) Member of a school district board [or], **an education service district board or a public charter school governing body.**

(hh) An individual who is paid by a public body, in accordance with ORS 430.215, to provide a service identified in an individualized written service plan of a child with a developmental disability.

SECTION 5. The amendments to ORS 419B.005 by section 4 of this 2021 Act become operative on January 1, 2022.

SECTION 6. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.

Passed by Senate April 8, 2021

Received by Governor:

Repassed by Senate June 8, 2021

.....M.,....., 2021

Approved:

.....
Lori L. Brocker, Secretary of Senate

.....M.,....., 2021

.....
Peter Courtney, President of Senate

.....
Kate Brown, Governor

Passed by House June 3, 2021

Filed in Office of Secretary of State:

.....M.,....., 2021

.....
Tina Kotek, Speaker of House

.....
Shemia Fagan, Secretary of State