

SB 223 should not be enacted into Oregon law as it likely violates the Supreme Court decision in *Pierce v. Society of Sisters* (1925). Nearly 100 years ago, the State of Oregon enacted the racist, anti-religion Compulsory Education Act, requiring all children ages 8-16 to attend public schools with limited exceptions, including private instruction approved by government leaders, much like SB 223. The United States Supreme Court unanimously rejected Oregon's Compulsory Education Act and preserved the unfettered right of parents to choose private education for their children and the right of private schools to provide such education without undue interference from the state. SB 223 vaguely proposes unlimited interference in private school education, as well as overregulation of childcare providers. In addition to its unconstitutionality, there are several reasons the bill should be rejected.

First, SB 223 is overbroad in that it lumps prekindergarten and kindergarten programs with 1st-12th grade programs, whereas currently prekindergarten and kindergarten programs are handled uniquely by the Early Learning Division. Prekindergarten and kindergarten are not required years of instruction in Oregon and should not be treated the way 1st-12th grades are treated. Many kindergarten programs are licensed as daycares, not as schools—a fact of utmost importance during the last year when schools were ordered to be closed but working parents were in desperate need of childcare, particularly for the youngest students. The common treatment of programs for 3-6 year olds would deprive parents of necessary childcare should the governor choose to close schools again for any reason. This is unfair to children and parents, particularly working mothers who have struggled to juggle caring for their children while simultaneously working without community support. ODE should not have control over curriculum for non-required educational years.

Second, parents must be free to choose appropriate education for their children. For some families, this means selecting a religious education, a right vigorously protected by the Supreme Court. *Espinoza v. Montana Dept. of Revenue* (June 30, 2020). *But for many families, finding an appropriate education has nothing to do with religion.* For example, one of my close friends has an autistic son. His public education through third grade impaired his ability to function effectively in society. Over the summer of 2020, this friend investigated several private school options and found one in rural Washington County with a principal who had previously worked extensively with autistic students. Instead of being stuck in online education administered by the Beaverton School District special education program, this fourth-grader is thriving in an in-person classroom with neurotypical children. It was critical for my friend to find a school with smaller class sizes, individualized attention, and an environment that helped her son become conversant, articulate, and confident. The United Nations shares the view that “Parents have a prior right to choose the kind of education that shall be given to their children.” *UN Universal Declaration of Human Rights*, Article 26 (3). SB 223 threatens these fundamental rights of parents.

Third, SB 223 is concerningly vague regarding the curriculum requirements that will be imposed on private schools. Many parents choose private schools because they are *dissatisfied* with the curriculum at public schools. Either they think it does not adequately challenge their children or they find certain aspects of the required curriculum to be objectionable to their deeply held personal and religious beliefs. In my family’s experience we

found the public school curriculum to be lacking in core subjects necessary for our children's advancement, namely phonics, spelling, writing, critical thinking, science, and social studies. Class newsletters and reports from our first grader informed us that the bulk of instruction time was focused on social emotional learning and conflict resolution. While these are important skills to learn, they should not dominate instruction to the extent that math, reading, and writing are simply untaught. Furthermore, the overuse of technology in the primary grades became a tipping point for our family. As I volunteered in the classroom in a public school class in the Beaverton School District, I was sorely disappointed that the children spent the bulk of the day playing games on iPads instead of engaging with their peers and teacher. We decided to send our children to private school and have been pleased with the limited use of technology in the classroom and strong emphasis on subjects not at all covered in the public school. ODE should focus on improving public school education (and getting all children back in the classroom) rather than imposing undue burdens on private schools. Parents will leave private schools if they feel the curriculum is inadequate. The vague curriculum regulation proposed by SB 223 is unnecessary.

It is ironic that the Oregon legislature would attempt to interfere with private schools when the majority of public school students lack access to a full public education. To propose SB 223 now, of all times, shows a disregard for the critical needs of students. ODE, the Oregon legislature, and Governor Kate Brown should focus their limited time and monetary resources on getting students back in the classroom and fully caught up to grade level. If the state can achieve this, parents truly will have the choice to return to public school and perhaps feel comfortable with the experience their children are receiving.

In summary, SB 223 violates the precedent set forth by the United States Supreme Court both with regard to the due process rights granted to private schools and the right parents have to choose where their students attend school. SB 223 is overbroad in the range of students governed in that it includes children ages 3-6 years old and covers a wide range of programs that are not narrowly tailored to the exceptions in Section 1 (1). SB 223 interferes with the clear right of parents to find adequate educational opportunities to meet the needs of each child. And finally, SB 223 is concerningly vague in giving ODE unlimited power to dictate the curriculum at private schools and daycares. SB 223 should not become Oregon law.