



# Oregon

Kate Brown, Governor



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## GOOD GOVERNANCE

### **SB 51 A: SB 155 (2019) Changes** **House Human Services Committee** **April 28, 2021**

Chair Williams, Vice-Chairs Leif and Ruiz, and members of the committee, I am Emily Nazarov, Government and Legal Affairs Manager for the Oregon Department of Education (ODE). Thank you for the opportunity to provide testimony in support of Senate Bill 51 A.

In 2019, the Oregon Legislature passed and the Governor signed into law Senate Bill 155, to help ensure the safety of all pre-K-12 students in Oregon. In building its program for the work required under SB 155 (2019), the Oregon Department of Education (ODE) has become aware of several issues that need clarification under the law.

### **Bill Summary**

Senate Bill 155 (2019) established new responsibilities for the Oregon Department of Human Services (ODHS), the Teacher Standards and Practices Commission (TSPC), ODE and education providers with respect to suspected abuse or sexual conduct involving school employees, contractors, agents, or volunteers and students.

SB 51 A makes a variety of technical fixes to SB 155 (2019) for the work that ODE is responsible for under that bill. These proposed changes are technical in nature and there are no anticipated fiscal impacts to any programs.

### **Background**

Senate Bill 155 directs ODE to do three things.

First, the bill requires ODE to investigate allegations of suspected sexual conduct that involve a student and an individual who is a school employee, contractor, agent, or volunteer who is not licensed with the Teacher Standards and Practices Commission (TSPC). The bill directs ODE to begin those investigations starting on July 1, 2020.

Second, the bill directs ODE to provide verification information to education providers when they are hiring an individual as a school employee or bringing on a contractor, agent, or volunteer to provide services in schools. Education providers are required to verify with ODE

whether it has an ongoing investigation or a substantiated report of sexual conduct for an applicant who is not licensed with TSPC before hiring that individual as a school employee. Education providers also are required to verify with ODE whether it has an ongoing investigation or a substantiated report of sexual conduct for any contractor, agent, or volunteer who is not licensed with TSPC before the education provider accepts any services from that individual.

Finally, the bill requires ODE to provide notification to education providers when it receives notification from the Department of Human Services that a report of abuse involving a child and a person who is a school employee, contractor, agent or volunteer has been made.

## **SB 51 A**

### Licensed administrator

ORS 339.372 requires education providers to designate a licensed administrator and an alternate licensed administrator to receive reports of suspected sexual conduct. However, private school administrators are not required to be licensed and charter schools may have a licensed or registered administrator.

SB 51 A amends ORS 339.370 by adding a definition for licensed administrator to provide that a licensed administrator can include an individual who does not hold an administrative license issued by TSPC if the person is employed by an education provider that does not require administrators to be licensed.

Note it has been previously suggested to add the language “active” in front of the license to ensure no one with a lapsed license is designated; we do believe this is a moot point and an unnecessary change. The definition of lapsed is “no longer valid; expired.” If an administrator has let their license lapse, they are no longer licensed and cannot be the designated administrator under ORS 339.372.

### Definition of “education provider”

ORS 339.370 defines education provider to include public charter schools and an educational program under the Youth Corrections Education Program (YCEP). ODE is also included in the definition of education provider when it is “functioning as an education provider” on behalf of the Oregon School for the Deaf, YCEP, or a public charter school that is sponsored by ODE. The designation of ODE as an education provider with respect to the state-sponsored charter schools and YCEP is inaccurate, creates overlapping responsibilities, and assigns ODE responsibilities it is not able to carry out.

SB 51 A amends the ORS 339.370 definition of education provider, by removing the designation of ODE as an education provider for educational programs under YCEP and the four state-sponsored charter schools.

### Notifications

ORS 339.391(3) requires ODE to notify certain persons upon completing an investigation. However, ODE was not provided with an exemption from the confidentiality provision to allow for that notification. In addition, that provision requires ODE to notify a regulatory board that licenses an individual who is the subject of a report. But, notifying licensing boards of reports that cannot be substantiated may unjustifiably affect the livelihoods of those individuals. In addition, there may be times when ODE is not aware that an individual is licensed by a regulatory board. ODE should not be required to provide notification to a board of which it is not aware.

ORS 419B.019 requires ODE to provide education providers with notification upon receipt of a notice of a report of abuse from the ODHS. However, it does not provide ODE with explicit rulemaking authority to implement that requirement. The law also does not provide ODE with an exemption from the confidentiality laws that require that information about ODHS reports and investigations be kept confidential. Finally, the law does not direct ODE to notify education providers about additional steps in the investigatory process, even though the law requires education providers to make decisions based on the results of the investigations.

SB 51 A:

- 1) Amends ORS 339.391 to allow for greater flexibility in notifications to certain individuals, to require notification to regulatory boards only if a report is substantiated and ODE is aware that the individual involved in the report is licensed with that board and to add an exception to the confidentiality provision allowing for the required notifications
- 2) Creates a new provision in the ORS 339.370 to 339.400 series that requires ODE to provide notifications to education providers upon receipt of notification of a report of abuse from ODHS; requires similar notification for the outcome of an ODHS investigation; provides what information may be included in such notifications; allows ODE to provide notice to TSPC if needed to protect children; and allows ODE to adopt rules to implement the provision;
- 3) Amends ORS 419B.019 to: a) create an exception to the prohibition on releasing information received from ODHS for purposes of ODE's notifications to education providers

under the new provision, and b) direct ODE to act as directed under the new provision created in item 4 when it receives notification of an ODHS report;

4) Amends ORS 419B.020 to: a) clarify when ODHS outcomes need to be reported to the Office of Child Care and when they need to be reported to ODE, and b) direct ODE to act as directed under the new provision created in item 4 when it receives notification of an ODHS report or an ODHS investigation outcome; and

5) Amends ORS 419B.035 to include an exception to the prohibition on releasing information disclosed by ODHS to allow ODE to make notifications to education providers upon receipt of notification of an ODHS report or the outcome of an ODHS investigation.

### Appeal

ORS 339.391 currently states “[a] person may appeal the final determination made by the department under this section as a contested case under ORS chapter 183.” Further, the statute does not limit appeals to substantiated reports.

SB 51 A amends ORS 339.391 to allow only a subject of an investigation who receives a substantiated report to appeal the department’s determination.

### Records Retention

ORS 339.391 requires ODE to “retain documents and materials related to any report received under this section, regardless of whether the department found sufficient cause to justify holding a hearing under this section.”

SB 51 A amends ORS 339.391 to require retention of documents/materials for a specified period of time. Under current retention schedules, ODE retains for 20 years, and TSPC retains for 25 years. Senate Bill 155 required ODE to retain, but did not specify for how long; for that reason, ODE has proposed in SB 51 A to align with TSPC’s retention schedule.

### **Amendment Adopted in the Senate**

ODE has been essentially functioning as a “middle man” between ODHS and education providers. Education providers currently receive duplicative notifications separately from both ODHS and ODE, which often leads to confusion. The adopted amendment previously put forth by ODE and ODHS makes ODHS responsible for notifying education providers of any reports of abuse and removes ODE from the role as “middle man.” This change still allows ODE to notify an

education provider if need be, but does not require ODE to send another notification on top of what ODHS is already communicating.

Thank you for the opportunity to provide comments, and we welcome any questions you may have.

Respectfully submitted,

Emily Nazarov

Government and Legal Affairs Manager