

# DRAFT

## SUMMARY

Requires Department of Education to approve training program in restraint and seclusion of student only if program is one of nationally recognized programs that has been designated by Department of Human Services as satisfying department's certification requirements for use of restraint and seclusion. Requires restraint and seclusion of student in public education program to be used only when imposed by certified personnel.

Provides that violation of restraint or seclusion law is abuse for purposes of Department of Human Services investigations of allegations of child abuse.

Allows Department of Human Services to find public education program is responsible for abuse related to use of restraint and seclusion by personnel of public education program in certain circumstances. Authorizes Superintendent of Public Instruction to find public education program is non-standard when specified violations involving restraint or seclusion occur.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1

2 Relating to qualifications for use of physical restraint in schools; creating  
3 new provisions; amending ORS 339.291, 339.294, 339.297, 339.300 and  
4 419B.005; and declaring an emergency.

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

6 **SECTION 1.** ORS 339.300 is amended to read:

7 339.300. [*The Department of Education shall approve training programs in*  
8 *restraint and seclusion that:*]

9 [(1) *Teach evidence-based techniques that are shown to be effective in the*  
10 *prevention and safe use of restraint or seclusion;*]

11 [(2) *Provide evidence-based skills training related to positive behavior sup-*  
12 *port, conflict prevention, de-escalation and crisis response techniques; and*]

**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     *[(3) Are consistent with the philosophies, practices and techniques for re-*  
2 *straint and seclusion that are established by rule or policy of the Department*  
3 *of Human Services.]* **The State Board of Education shall adopt by rule**  
4 **the training requirements for purposes of ORS 339.285 to 339.303. The**  
5 **rules must provide:**

6     **(1) That the Department of Education shall approve a training**  
7 **program that teaches the use of restraint and seclusion only if the**  
8 **program is one of the nationally recognized programs that has been**  
9 **designated by the Department of Human Services under ORS 418.529**  
10 **(1)(b) as meeting the training and certification standards adopted un-**  
11 **der ORS 418.529. Only a program approved under this subsection may**  
12 **be used to satisfy the training requirements of ORS 339.285 to 339.303.**

13     **(2) The standards by which the Department of Education may ap-**  
14 **prove training programs that supplement the training program de-**  
15 **scribed in subsection (1) of this section, including training programs**  
16 **related to positive behavior support, conflict prevention, de-escalation**  
17 **and crisis response techniques. A supplemental training program ap-**  
18 **proved under this subsection may not be used to teach the use of re-**  
19 **straint or seclusion or to satisfy the training requirements of ORS**  
20 **339.285 to 339.303.**

21     **SECTION 2.** ORS 339.291 is amended to read:

22     339.291. (1) Restraint or seclusion may not be used for discipline, punish-  
23 ment, retaliation or convenience of personnel, contractors or volunteers of  
24 a public education program.

25     (2)(a) Restraint may be used on a student in a public education program  
26 only under the following circumstances:

27     (A) The student's behavior imposes a reasonable risk of imminent and  
28 substantial physical or bodily injury to the student or others; and

29     (B) Less restrictive interventions would not be effective.

30     (b) Seclusion may be used on a student in a public education program  
31 only under the following circumstances:

1 (A) The student's behavior imposes a reasonable risk of imminent and  
2 serious bodily injury to the student or others; and

3 (B) Less restrictive interventions would not be effective.

4 (3) If restraint or seclusion is used on a student, the restraint or seclusion  
5 must be:

6 (a) Used only for as long as the student's behavior poses a reasonable risk  
7 as described in subsection (2) of this section;

8 (b) Imposed by personnel of the public education program who are[:]**cur-**  
9 **rently certified regarding the use of restraint and seclusion by a cur-**  
10 **rently certified trainer authorized by a program approved under ORS**  
11 **339.300 (1); and**

12 *[(A) Trained to use restraint or seclusion through programs described in*  
13 *ORS 339.300; or]*

14 *[(B) Otherwise available in the case of an emergency circumstance when*  
15 *personnel described in subparagraph (A) of this paragraph are not imme-*  
16 *diately available due to the unforeseeable nature of the emergency circum-*  
17 *stance; and]*

18 (c) Continuously monitored by personnel of the public education program  
19 for the duration of the restraint or seclusion.

20 (4) In addition to the requirements described in subsection (3) of this  
21 section[,]:

22 **(a) If restraint or seclusion continues for more than 10 minutes,**  
23 **every five minutes after the first 10 minutes of the restraint or seclu-**  
24 **sion, an administrator for the public education program must provide**  
25 **written authorization for the continuation of the restraint or seclu-**  
26 **sion, including providing documentation for the reason the restraint**  
27 **or seclusion must be continued.**

28 **(b) If restraint or seclusion continues for more than 30 minutes:**

29 *[(a)]* **(A)** The student must be provided with adequate access to the  
30 bathroom and water every 30 minutes; **and**

31 *[(b)]* **(B)** Personnel of the public education program must immediately

1 attempt to verbally or electronically notify a parent or guardian of the stu-  
2 dent. [*; and*]

3 [*(c) Every 15 minutes after the first 30 minutes of the restraint or seclusion,*  
4 *an administrator for the public education program must provide written au-*  
5 *thorization for the continuation of the restraint or seclusion, including pro-*  
6 *viding documentation for the reason the restraint or seclusion must be*  
7 *continued.*]

8 **SECTION 3.** ORS 339.294 is amended to read:

9 339.294. (1) Each entity that has jurisdiction over a public education  
10 program must establish procedures for the public education program to fol-  
11 low after an incident involving the use of restraint or seclusion.

12 (2) Following an incident involving the use of restraint or seclusion, the  
13 following must be provided to a parent or guardian of the student:

14 (a) Verbal or electronic notification of the incident by the end of the  
15 school day when the incident occurred.

16 (b) Written documentation of the incident within 24 hours of the incident  
17 that provides:

18 (A) A description of the restraint or seclusion, including:

19 (i) The date of the restraint or seclusion;

20 (ii) The times when the restraint or seclusion began and ended; and

21 (iii) The location of the restraint or seclusion.

22 (B) A description of the student's activity that prompted the use of re-  
23 straint or seclusion.

24 (C) The efforts used to de-escalate the situation and the alternatives to  
25 restraint or seclusion that were attempted.

26 (D) The names of the personnel of the public education program who ad-  
27 ministered the restraint or seclusion.

28 (E) A description of the training status of the personnel of the public  
29 education program who administered the restraint or seclusion, including  
30 any information that may need to be provided to the parent or guardian  
31 under subsection (3) of this section.

1 (c) Timely notification of a debriefing meeting to be held as provided by  
2 subsection [(4)] (5) of this section and the parent's or guardian's right to  
3 attend the meeting.

4 (3) If the personnel of the public education program who administered the  
5 restraint or seclusion [*had not received training as provided by ORS*  
6 *339.300*] **is not currently certified regarding the use of restraint and**  
7 **seclusion through a program approved under ORS 339.300 (1)**, the ad-  
8 ministrator of the public education program shall ensure that a parent or  
9 guardian of the student, [*and*] the district superintendent **and the Depart-**  
10 **ment of Education** receive written notification of:

11 (a) The lack of [*training*] **certification**; and

12 (b) The reason the restraint or seclusion was administered by a person  
13 without [*training*] **certification**.

14 (4) **If the restraint or seclusion was administered in violation of**  
15 **ORS 339.285 to 339.303 or 339.308, the administrator of the public edu-**  
16 **cation program shall immediately notify the Department of Human**  
17 **Services as required by ORS 419B.010 and 419B.015.**

18 [(4)(a)] (5)(a) A debriefing meeting related to the use of restraint or se-  
19 clusion must be held within two school days of the incident and must include  
20 all personnel of the public education program who were involved in the in-  
21 cident and any other appropriate personnel.

22 (b) Written notes must be taken of the debriefing meeting, and a copy of  
23 the written notes must be provided to a parent or guardian of the student.

24 [(5)] (6) If a student is involved in five incidents in a school year in-  
25 volving restraint or seclusion, a team consisting of personnel of the public  
26 education program and a parent or guardian of the student must be formed  
27 for the purposes of reviewing and revising the student's behavior plan and  
28 ensuring the provision of any necessary behavioral supports.

29 [(6)] (7) If serious bodily injury or death of a student occurs in relation  
30 to the use of restraint or seclusion[,]:

31 (a) **Oral notification of the incident must be provided immediately**

1 **to the parent of the student and to the Department of Human Ser-**  
2 **vices; and**

3 (b) Written notification of the incident must be provided within 24 hours  
4 of the incident to **the parent of the student and** the Department of Human  
5 Services.

6 [(7)] (8) If serious bodily injury or death of personnel of the public edu-  
7 cation program occurs in relation to the use of restraint or seclusion, written  
8 notification of the incident must be provided within 24 hours of the incident  
9 to:

10 (a) **The Superintendent of Public Instruction;**

11 (b) The district superintendent [*and*,]; **and**

12 (c) If applicable, to the union representative for the affected party.

13 [(8)] (9) Each public education program must maintain a record of each  
14 incident in which injuries or death occurs in relation to the use of restraint  
15 or seclusion.

16 (10)(a) **For at least six months following an incident involving re-**  
17 **straint or seclusion, a public education program must preserve all re-**  
18 **ords related to the incident, including video and audio recordings.**  
19 **Records must be preserved in the original format and without any al-**  
20 **terations.**

21 (b) **Unless otherwise directed by the Department of Human Services**  
22 **or law enforcement, a public education program must disclose records**  
23 **described in paragraph (a) of this subsection, and any other records**  
24 **made following an incident, immediately upon request by the Depart-**  
25 **ment of Human Services, a person authorized by the Department of**  
26 **Human Services to conduct a child abuse investigation or the**  
27 **student's parent or guardian.**

28 **SECTION 4.** ORS 339.297 is amended to read:

29 339.297. (1) Each entity that has jurisdiction over a public education  
30 program must prepare and submit to the Department of Education an annual  
31 report detailing the use of restraint and seclusion for the preceding school

1 year, including, at a minimum:

2 (a) The total number of incidents involving restraint.

3 (b) The total number of incidents involving seclusion.

4 (c) The total number of seclusions in a locked room.

5 (d) The total number of rooms available for use by the public education  
6 program for seclusion of a student and a description of the dimensions and  
7 design of the rooms.

8 (e) The total number of students placed in restraint.

9 (f) The total number of students placed in seclusion.

10 (g) The total number of incidents that resulted in injuries or death to  
11 students or personnel as a result of the use of restraint or seclusion.

12 (h) The number of students who were placed in restraint or seclusion  
13 more than 10 times in the course of a school year and an explanation of what  
14 steps have been taken by the public education program to decrease the use  
15 of restraint and seclusion for each student.

16 (i) The number of incidents in which the personnel of the public education  
17 program administering restraint or seclusion were not [*trained as provided*  
18 *by ORS 339.300*] **currently certified regarding the use of restraint and**  
19 **seclusion through a program approved under ORS 339.300 (1).**

20 (j) The demographic characteristics of all students upon whom restraint  
21 or seclusion was imposed, including race, ethnicity, gender, disability status,  
22 migrant status, English proficiency and status as economically disadvan-  
23 taged, unless the demographic information would reveal personally identifi-  
24 able information about an individual student.

25 (2)(a) Each entity that has jurisdiction over a public education program  
26 shall make its annual report about restraint and seclusion available to:

27 (A) The public at the entity's main office and the website of the entity;

28 (B) The board or governing body overseeing the entity;

29 (C) If the entity is an education service district, the component school  
30 districts of the education service district; and

31 (D) If the entity is a public charter school, the sponsor of the public

1 charter school.

2 (b) Parents and guardians of students in a public education program shall  
3 be advised at least once each school year about how to access the report.

4 (3) A public education provider that does not comply with the requirement  
5 to submit a report to the Department of Education under subsection (1) of  
6 this section or to make the report available as described in subsection (2)  
7 of this section is considered nonstandard under ORS 327.103.

8 **SECTION 5. (1) The amendments to ORS 339.291, 339.294, 339.297 and**  
9 **339.300 by sections 1 to 4 of this 2023 Act become operative on July 1,**  
10 **2024.**

11 **(2) Notwithstanding the operative date set forth in subsection (1)**  
12 **of this section, the State Board of Education and the Department of**  
13 **Education may take any action before the operative date set forth in**  
14 **subsection (1) of this section that is necessary for the State Board of**  
15 **Education and the Department of Education, on and after the opera-**  
16 **tive date set forth in subsection (1) of this section, to exercise all of**  
17 **the duties, functions and powers conferred on the State Board of Ed-**  
18 **ucation and the Department of Education by the amendments to ORS**  
19 **339.291, 339.294, 339.297 and 339.300 by sections 1 to 4 of this 2023 Act.**

20 **SECTION 6. ORS 419B.005, as amended by section 8, chapter 90, Oregon**  
21 **Laws 2022, is amended to read:**

22 419B.005. As used in ORS 419B.005 to 419B.050, unless the context re-  
23 quires otherwise:

24 (1)(a) "Abuse" means:

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

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



1 child.

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

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

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

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

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

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

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

25 (H) Buying or selling a person under 18 years of age as described in ORS  
26 163.537.

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

29 (J) Unlawful exposure to a controlled substance, as defined in ORS  
30 475.005, or to the unlawful manufacturing of a cannabinoid extract, as de-  
31 fined in ORS 475C.009, that subjects a child to a substantial risk of harm to

1 the child's health or safety.

2 **(K) The restraint or seclusion of a child in violation of ORS 339.285**  
3 **to 339.303 or 339.308.**

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

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

7 (a) Is under 18 years of age; or

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

10 (3) "Higher education institution" means:

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

12 (b) A public university listed in ORS 352.002;

13 (c) The Oregon Health and Science University; and

14 (d) A private institution of higher education located in Oregon.

15 (4)(a) "Investigation" means a detailed inquiry into or assessment of the  
16 safety of a child alleged to have experienced abuse.

17 (b) "Investigation" does not include screening activities conducted upon  
18 the receipt of a report.

19 (5) "Law enforcement agency" means:

20 (a) A city or municipal police department.

21 (b) A county sheriff's office.

22 (c) The Oregon State Police.

23 (d) A police department established by a university under ORS 352.121 or  
24 353.125.

25 (e) A county juvenile department.

26 (6) "Public or private official" means:

27 (a) Physician or physician assistant licensed under ORS chapter 677 or  
28 naturopathic physician, including any intern or resident.

29 (b) Dentist.

30 (c) School employee, including an employee of a higher education insti-  
31 tution.

- 1 (d) Licensed practical nurse, registered nurse, nurse practitioner, nurse's  
2 aide, home health aide or employee of an in-home health service.
- 3 (e) Employee of the Department of Human Services, Oregon Health Au-  
4 thority, Early Learning Division, Department of Education, Youth Develop-  
5 ment Division, Office of Child Care, the Oregon Youth Authority, a local  
6 health department, a community mental health program, a community de-  
7 velopmental disabilities program, a county juvenile department, a child-  
8 caring agency as that term is defined in ORS 418.205 or an alcohol and drug  
9 treatment program.
- 10 (f) Peace officer.
- 11 (g) Psychologist.
- 12 (h) Member of the clergy.
- 13 (i) Regulated social worker.
- 14 (j) Optometrist.
- 15 (k) Chiropractor.
- 16 (L) Certified provider of foster care, or an employee thereof.
- 17 (m) Attorney.
- 18 (n) Licensed professional counselor.
- 19 (o) Licensed marriage and family therapist.
- 20 (p) Firefighter or emergency medical services provider.
- 21 (q) A court appointed special advocate, as defined in ORS 419A.004.
- 22 (r) A child care provider registered or certified under ORS 329A.030 and  
23 329A.250 to 329A.450.
- 24 (s) An elected official of a branch of government of this state or a state  
25 agency, board, commission or department of a branch of government of this  
26 state or of a city, county or other political subdivision in this state.
- 27 (t) Physical, speech or occupational therapist.
- 28 (u) Audiologist.
- 29 (v) Speech-language pathologist.
- 30 (w) Employee of the Teacher Standards and Practices Commission directly  
31 involved in investigations or discipline by the commission.

- 1 (x) Pharmacist.
- 2 (y) An operator of a preschool recorded program under ORS 329A.255.
- 3 (z) An operator of a school-age recorded program under ORS 329A.255.
- 4 (aa) Employee of a private agency or organization facilitating the pro-  
5 vision of respite services, as defined in ORS 418.205, for parents pursuant to  
6 a properly executed power of attorney under ORS 109.056.
- 7 (bb) An employee of a public or private organization providing child-  
8 related services or activities:
  - 9 (A) Including but not limited to an employee of a:
    - 10 (i) Youth group or center;
    - 11 (ii) Scout group or camp;
    - 12 (iii) Summer or day camp;
    - 13 (iv) Survival camp; or
    - 14 (v) Group, center or camp that is operated under the guidance, super-  
15 vision or auspices of a religious, public or private educational system or a  
16 community service organization; and
  - 17 (B) Excluding an employee of a qualified victim services program as de-  
18 fined in ORS 147.600 that provides confidential, direct services to victims of  
19 domestic violence, sexual assault, stalking or human trafficking.
- 20 (cc) A coach, assistant coach or trainer of an amateur, semiprofessional  
21 or professional athlete, if compensated and if the athlete is a child.
- 22 (dd) Personal support worker, as defined in ORS 410.600.
- 23 (ee) Home care worker, as defined in ORS 410.600.
- 24 (ff) Animal control officer, as defined in ORS 609.500.
- 25 (gg) Member of a school district board, an education service district board  
26 or a public charter school governing body.
- 27 (hh) An individual who is paid by a public body, in accordance with ORS  
28 430.215, to provide a service identified in an individualized written service  
29 plan of a child with a developmental disability.
- 30 (ii) Referral agent, as defined in ORS 418.351.

31 **SECTION 7.** ORS 419B.005, as amended by section 58, chapter 631,

1 Oregon Laws 2021, section 16, chapter 27, Oregon Laws 2022, and section 7,  
2 chapter 90, Oregon Laws 2022, is amended to read:

3 419B.005. As used in ORS 419B.005 to 419B.050, unless the context re-  
4 quires otherwise:

5 (1)(a) "Abuse" means:

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

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

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

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

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

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

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

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

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

6 (H) Buying or selling a person under 18 years of age as described in ORS  
7 163.537.

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

10 (J) Unlawful exposure to a controlled substance, as defined in ORS  
11 475.005, or to the unlawful manufacturing of a cannabinoid extract, as de-  
12 fined in ORS 475C.009, that subjects a child to a substantial risk of harm to  
13 the child's health or safety.

14 **(K) The restraint or seclusion of a child in violation of ORS 339.285**  
15 **to 339.303 or 339.308.**

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

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

19 (a) Is under 18 years of age; or

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

22 (3) "Higher education institution" means:

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

24 (b) A public university listed in ORS 352.002;

25 (c) The Oregon Health and Science University; and

26 (d) A private institution of higher education located in Oregon.

27 (4)(a) "Investigation" means a detailed inquiry into or assessment of the  
28 safety of a child alleged to have experienced abuse.

29 (b) "Investigation" does not include screening activities conducted upon  
30 the receipt of a report.

31 (5) "Law enforcement agency" means:

- 1 (a) A city or municipal police department.
- 2 (b) A county sheriff's office.
- 3 (c) The Oregon State Police.
- 4 (d) A police department established by a university under ORS 352.121 or  
5 353.125.
- 6 (e) A county juvenile department.
- 7 (6) "Public or private official" means:
- 8 (a) Physician or physician assistant licensed under ORS chapter 677 or  
9 naturopathic physician, including any intern or resident.
- 10 (b) Dentist.
- 11 (c) School employee, including an employee of a higher education insti-  
12 tution.
- 13 (d) Licensed practical nurse, registered nurse, nurse practitioner, nurse's  
14 aide, home health aide or employee of an in-home health service.
- 15 (e) Employee of the Department of Human Services, Oregon Health Au-  
16 thority, Department of Early Learning and Care, Department of Education,  
17 Youth Development Division, Office of Child Care, the Oregon Youth Au-  
18 thority, a local health department, a community mental health program, a  
19 community developmental disabilities program, a county juvenile department,  
20 a child-caring agency as that term is defined in ORS 418.205 or an alcohol  
21 and drug treatment program.
- 22 (f) Peace officer.
- 23 (g) Psychologist.
- 24 (h) Member of the clergy.
- 25 (i) Regulated social worker.
- 26 (j) Optometrist.
- 27 (k) Chiropractor.
- 28 (L) Certified provider of foster care, or an employee thereof.
- 29 (m) Attorney.
- 30 (n) Licensed professional counselor.
- 31 (o) Licensed marriage and family therapist.

- 1 (p) Firefighter or emergency medical services provider.
- 2 (q) A court appointed special advocate, as defined in ORS 419A.004.
- 3 (r) A child care provider registered or certified under ORS 329A.250 to  
4 329A.450.
- 5 (s) An elected official of a branch of government of this state or a state  
6 agency, board, commission or department of a branch of government of this  
7 state or of a city, county or other political subdivision in this state.
- 8 (t) Physical, speech or occupational therapist.
- 9 (u) Audiologist.
- 10 (v) Speech-language pathologist.
- 11 (w) Employee of the Teacher Standards and Practices Commission directly  
12 involved in investigations or discipline by the commission.
- 13 (x) Pharmacist.
- 14 (y) An operator of a preschool recorded program under ORS 329A.255.
- 15 (z) An operator of a school-age recorded program under ORS 329A.255.
- 16 (aa) Employee of a private agency or organization facilitating the pro-  
17 vision of respite services, as defined in ORS 418.205, for parents pursuant to  
18 a properly executed power of attorney under ORS 109.056.
- 19 (bb) An employee of a public or private organization providing child-  
20 related services or activities:
- 21 (A) Including but not limited to an employee of a:
- 22 (i) Youth group or center;
- 23 (ii) Scout group or camp;
- 24 (iii) Summer or day camp;
- 25 (iv) Survival camp; or
- 26 (v) Group, center or camp that is operated under the guidance, super-  
27 vision or auspices of a religious, public or private educational system or a  
28 community service organization; and
- 29 (B) Excluding an employee of a qualified victim services program as de-  
30 fined in ORS 147.600 that provides confidential, direct services to victims of  
31 domestic violence, sexual assault, stalking or human trafficking.



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

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

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

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

6 (gg) Member of a school district board, an education service district board  
7 or a public charter school governing body.

8 (hh) An individual who is paid by a public body, in accordance with ORS  
9 430.215, to provide a service identified in an individualized written service  
10 plan of a child with a developmental disability.

11 (ii) Referral agent, as defined in ORS 418.351.

12 **SECTION 8. Section 9 of this 2023 Act is added to and made a part**  
13 **of ORS 339.285 to 339.303.**

14 **SECTION 9. (1) As used in this section:**

15 (a) **“Behavior intervention plan” has the meaning given that term**  
16 **in ORS 343.154.**

17 (b) **“504 Plan” means an education plan developed for a student in**  
18 **accordance with section 504 of the Rehabilitation Act of 1973, 29 U.S.C.**  
19 **794.**

20 (c) **“Individualized education program” has the meaning given that**  
21 **term in ORS 343.035.**

22 (2) **When the Department of Human Services conducts an investi-**  
23 **gation under ORS 419B.019 of a report of suspected abuse that involves**  
24 **the use of restraint or seclusion and the department finds that the**  
25 **report of abuse is founded, the department may determine that the**  
26 **public education program is responsible for the abuse instead of, or in**  
27 **addition to, the personnel of the public education program who im-**  
28 **posed the restraint or seclusion if:**

29 (a) **The public education program failed to ensure that a sufficient**  
30 **number of personnel who are certified regarding the use of restraint**  
31 **and seclusion through a program approved under ORS 339.300 (1) were**

1 available to comply with the individualized education programs, 504  
2 Plans and behavior intervention plans of the students who were pres-  
3 ent in the setting where the abuse occurred at the time the abuse oc-  
4 curred and the personnel who imposed the restraint or seclusion  
5 reasonably believed failure to do so would lead to serious bodily injury  
6 of the student or others; or

7 (b) The personnel who imposed the restraint or seclusion in vio-  
8 lation of ORS 339.285 to 339.303 or 339.308 did so because the personnel  
9 were ordered to do so by a superior and reasonably believed that fail-  
10 ure to comply with the order would result in termination or discipline.

11 (3) If the Department of Education is notified by the Department  
12 of Human Services that, within a 12-month period, the Department of  
13 Human Services made the finding that three or more reports involving  
14 allegations of abuse related to restraint or seclusion and involving the  
15 same public education program were founded, the Superintendent of  
16 Public Instruction shall find the public education program nonstand-  
17 ard under ORS 327.103 or 334.217.

18 SECTION 10. (1) Section 9 of this 2023 Act and the amendments to  
19 ORS 419B.005 by sections 6 and 7 of this 2023 Act become operative on  
20 July 1, 2024.

21 (2) Section 9 of this 2023 Act and the amendments to ORS 419B.005  
22 by sections 6 and 7 of this 2023 Act apply to incidents involving the  
23 use of restraint or seclusion occurring on or after July 1, 2024.

24 SECTION 11. This 2023 Act being necessary for the immediate  
25 preservation of the public peace, health and safety, an emergency is  
26 declared to exist, and this 2023 Act takes effect on its passage.

27