

# House Bill 3353

Sponsored by Representative HELFRICH; Representatives BOICE, HIEB, JAVADI

## 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**.

Revises definition of term "sexual conduct" for purposes of certain laws involving students.  
Declares emergency, effective July 1, 2023.

## A BILL FOR AN ACT

Relating to the definition of sexual conduct for certain laws involving students; creating new provisions; amending ORS 339.370; 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) "Commission licensee" has the meaning given that term in ORS 342.120.

(4) "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.

(5)(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 the Oregon School for the Deaf.

(6) "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:

**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 (A) Is a substantiated report;
- 2 (B) Cannot be substantiated; or
- 3 (C) Is not a report of abuse or sexual conduct.
- 4 (7) "Law enforcement agency" has the meaning given that term in ORS 419B.005.
- 5 (8) "Licensed administrator" means a person who is employed as an administrator of an educa-
- 6 tion provider and who:
  - 7 (a) Holds an administrative license issued by the Teacher Standards and Practices Commission
  - 8 under ORS 342.125 (3)(f) or (g); or
  - 9 (b) Does not hold an administrative license issued by the commission because the person is em-
  - 10 ployed by an education provider that does not require administrators to be licensed by the com-
  - 11 mission.
  - 12 (9) "Private school" means a school that provides to students instructional programs that are
  - 13 not limited solely to dancing, drama, music, religious or athletic instruction.
  - 14 (10) "School board" means the entity charged with adopting policies for an education provider.
  - 15 (11) "School employee" means an employee of an education provider.
  - 16 [(12)(a) "Sexual conduct" means verbal or physical conduct or verbal, written or electronic com-
  - 17 munications by a school employee, a contractor, an agent or a volunteer that involve a student and that
  - 18 are:]
    - 19 [(A) Sexual advances or requests for sexual favors directed toward the student; or]
    - 20 [(B) Of a sexual nature that are directed toward the student or that have the effect of unreasonably
    - 21 interfering with the student's educational performance, or of creating an intimidating or hostile educa-
    - 22 tional environment.]
    - 23 [(b) "Sexual conduct" does not include:]
      - 24 [(A) Touching or other physical contact:]
        - 25 [(i) That is necessitated by the nature of the school employee's job duties or by the services required
        - 26 to be provided by the contractor, agent or volunteer; and]
        - 27 [(ii) For which there is no sexual intent.]
      - 28 [(B) Verbal, written or electronic communications that are provided as part of an education pro-
      - 29 gram that meets state educational standards or a policy approved by the school board.]
    - 30 [(C) Conduct or communications described in paragraph (a) of this subsection if the school em-
    - 31 ployee, contractor, agent or volunteer is also a student and the conduct or communications:]
      - 32 [(i) Arise out of a consensual relationship between students;]
      - 33 [(ii) Do not create an intimidating or hostile educational environment; and]
      - 34 [(iii) Are not prohibited by law, any policies of the education provider or any applicable employ-
      - 35 ment agreements.]
  - 36 (12)(a) "Sexual conduct" means conduct of a school employee, a contractor, an agent or
  - 37 a volunteer with a student that includes:
    - 38 (A) The intentional touching of the breast or of the sexual or other intimate parts of a
    - 39 student;
    - 40 (B) Causing, encouraging or permitting a student to touch the breast or the sexual or
    - 41 other intimate parts of a school employee, contractor, agent or volunteer;
    - 42 (C) Sexual advances or requests for sexual favors directed toward a student;
    - 43 (D) Verbal or physical conduct of a sexual nature when directed toward a student or
    - 44 when the conduct has the effect of unreasonably interfering with a student's educational
    - 45 performance or creates an intimidating, hostile or offensive educational environment; or

1       **(E) Verbal or physical conduct that has the effect of unreasonably interfering with a**  
2 **student’s educational performance or creates an intimidating, hostile or offensive educa-**  
3 **tional environment.**

4       **(b) “Sexual conduct” does not include abuse.**

5       (13) “Student” means any person:

6       (a) Who is:

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

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

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

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

16       (15) “Volunteer” means a person acting as a volunteer for an education provider in a manner  
17 that requires the person to have direct, unsupervised contact with students.

18       **SECTION 2. The amendments to ORS 339.370 by section 1 of this 2023 Act apply to sexual**  
19 **conduct that occurs before, on or after the effective date of this 2023 Act for purposes of:**

20       **(1) Making reports of suspected sexual conduct on or after the effective date of this 2023**  
21 **Act;**

22       **(2) Investigations of suspected sexual conduct that are pending or initiated on or after**  
23 **the effective date of this 2023 Act; and**

24       **(3) A collective bargaining agreement, an employment contract, an agreement for resig-**  
25 **nation or termination, a severance agreement or any similar contract or agreement entered**  
26 **into on or after the effective date of this 2023 Act.**

27       **SECTION 3. This 2023 Act being necessary for the immediate preservation of the public**  
28 **peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect**  
29 **July 1, 2023.**

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