

Enrolled Senate Bill 218

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 Governor Kate Brown for Teacher Standards and Practices Commission)

CHAPTER

AN ACT

Relating to investigations conducted by the Teacher Standards and Practices Commission; amending ORS 339.390, 339.391, 342.176 and 419B.035.

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

SECTION 1. ORS 339.391 is amended to read:

339.391. (1)(a) When the Department of Education receives a report of suspected sexual conduct that may have been committed by a school employee, contractor, agent or volunteer that is not a commission licensee, the department shall immediately initiate an investigation.

(b) An investigation and final determination related to the 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 department.

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

(2) The department 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 Department of Education shall notify:

- (A) The person charged;
- (B) The student and, if applicable, the student’s parents or legal guardians;
- (C) The education provider;
- (D) The person who provided the report of suspected sexual conduct, if known by the department; and
- (E) For a substantiated report only, any regulatory board that:
 - (i) Is not the Teacher Standards and Practices Commission; and
 - (ii) The department knows licensed, registered, certified or otherwise authorized the school employee, contractor, agent or volunteer to practice a profession or to provide professional services.

(b) The notification required under paragraph (a) of this subsection shall include the following information as allowed by state and federal law:

- (A) The statutory authority of the department to conduct the investigation;
- (B) The procedural background for the investigation;
- (C) The legal standards and arguments used for the investigation;
- (D) The department's findings of fact from the investigation;
- (E) The department's final determination based on the investigation; and
- (F) The right to an appeal, as provided by subsection (5) of this section.

(4)(a) Except as provided in paragraph (b) of this subsection and subsection (3) of this section, 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.

(b) To the extent allowed by state and federal law, the department shall make available any documents, materials and reports to:

(A) A law enforcement agency or the Department of Human Services if necessary to conduct an investigation under ORS 419B.005 to 419B.050;

(B) The Teacher Standards and Practices Commission if necessary for the commission to conduct an investigation under ORS 339.390 **or 342.176**; and

(C) An education provider if necessary for the education provider to take any disciplinary action or changes in the employment relationship or duties of the school employee, contractor, agent or volunteer.

(c) The Department of Education shall retain documents and materials related to any report received under this section for a period of 75 years.

(5) A person who is the subject of an investigation under this section may appeal a final determination that the report related to the investigation is a substantiated report as a contested case under ORS chapter 183.

(6) The State Board of Education shall adopt any rules necessary for the administration of this section.

SECTION 2. ORS 419B.035, as amended by section 10, chapter 27, Oregon Laws 2022, and section 9, chapter 90, Oregon Laws 2022, is amended to read:

419B.035. (1) Notwithstanding the provisions of ORS 192.001 to 192.170, 192.210 to 192.478 and 192.610 to 192.810 relating to confidentiality and accessibility for public inspection of public records and public documents, reports and records compiled under the provisions of ORS 419B.010 to 419B.050 are confidential and may not be disclosed except as provided in this section. The Department of Human Services shall make the records available to:

(a) Any law enforcement agency or a child abuse registry in any other state for the purpose of subsequent investigation of child abuse;

(b) Any physician, physician assistant licensed under ORS 677.505 to 677.525 or nurse practitioner licensed under ORS 678.375 to 678.390, at the request of the physician, physician assistant or nurse practitioner, regarding any child brought to the physician, physician assistant or nurse practitioner or coming before the physician, physician assistant or nurse practitioner for examination, care or treatment;

(c) Attorneys of record for the child or child's parent or guardian in any juvenile court proceeding;

(d) Citizen review boards established by the Judicial Department for the purpose of periodically reviewing the status of children, youths and adjudicated youths under the jurisdiction of the juvenile court under ORS 419B.100 and 419C.005. Citizen review boards may make such records available to participants in case reviews;

(e) A court appointed special advocate in any juvenile court proceeding in which it is alleged that a child has been subjected to child abuse or neglect;

(f) The Early Learning Division for the purpose of carrying out the functions of the division, including the certification, registration or regulation of child care facilities and child care providers and the administration of enrollment in the Central Background Registry;

- (g) The Office of Children's Advocate;
- (h) The Teacher Standards and Practices Commission for investigations conducted under ORS 339.390 or 342.176 involving any child or any student;
- (i) Any person, upon request to the Department of Human Services, if the reports or records requested regard an incident in which a child, as the result of abuse, died or suffered serious physical injury as defined in ORS 161.015. Reports or records disclosed under this paragraph must be disclosed in accordance with ORS 192.311 to 192.478;
- (j) The Office of Child Care for purposes of applications described in ORS 329A.030 (10)(c)(G) to (J);
- (k) With respect to a report of abuse occurring at a school or in an educational setting that involves a child with a disability, Disability Rights Oregon;
- (L) The Department of Education for purposes of investigations conducted under ORS 339.391; and
- (m) An education provider for the purpose of making determinations under ORS 339.388.

(2)(a) When disclosing reports and records pursuant to subsection (1)(i) of this section, the Department of Human Services may exempt from disclosure the names, addresses and other identifying information about other children, witnesses, victims or other persons named in the report or record if the department determines, in written findings, that the safety or well-being of a person named in the report or record may be jeopardized by disclosure of the names, addresses or other identifying information, and if that concern outweighs the public's interest in the disclosure of that information.

(b) If the Department of Human Services does not have a report or record of abuse regarding a child who, as the result of abuse, died or suffered serious physical injury as defined in ORS 161.015, the department may disclose that information.

(3) The Department of Human Services may make reports and records compiled under the provisions of ORS 419B.010 to 419B.050 available to any person, administrative hearings officer, court, agency, organization or other entity when the department determines that such disclosure is necessary to administer its child welfare services and is in the best interests of the affected child, or that such disclosure is necessary to investigate, prevent or treat child abuse and neglect, to protect children from abuse and neglect or for research when the Director of Human Services gives prior written approval. The Department of Human Services shall adopt rules setting forth the procedures by which it will make the disclosures authorized under this subsection or subsection (1) or (2) of this section. The name, address and other identifying information about the person who made the report may not be disclosed pursuant to this subsection and subsection (1) of this section.

(4) A law enforcement agency may make reports and records compiled under the provisions of ORS 419B.010 to 419B.050 available to other law enforcement agencies, district attorneys, city attorneys with criminal prosecutorial functions and the Attorney General when the law enforcement agency determines that disclosure is necessary for the investigation or enforcement of laws relating to child abuse and neglect or necessary to determine a claim for crime victim compensation under ORS 147.005 to 147.367.

(5)(a) A law enforcement agency, upon completing an investigation and closing the file in a specific case relating to child abuse or neglect, shall make reports and records in the case available upon request to:

(A) Any law enforcement agency or community corrections agency in this state, to the Department of Corrections, to the Oregon Youth Authority or to the State Board of Parole and Post-Prison Supervision for the purpose of managing and supervising offenders in custody or on probation, parole, post-prison supervision or other form of conditional or supervised release; **and**

(B) The Teacher Standards and Practices Commission for investigations conducted under ORS 339.390 and 342.176.

(b) A law enforcement agency may make reports and records compiled under the provisions of ORS 419B.010 to 419B.050 available to the Oregon Youth Authority, **the Teacher Standards and Practices Commission for investigations conducted under ORS 339.390 and 342.176**, law enforcement, community corrections, corrections or parole agencies in an open case when the law

enforcement agency determines that the disclosure will not interfere with an ongoing investigation in the case.

(c) The name, address and other identifying information about the person who made the report may not be disclosed under this subsection or subsection (6)(b) of this section.

(6)(a) Any record made available to a law enforcement agency or community corrections agency in this state, to the Department of Corrections, the Oregon Youth Authority, [or] the State Board of Parole and Post-Prison Supervision **or the Teacher Standards and Practices Commission** or to a physician, physician assistant or nurse practitioner in this state, as authorized by subsections (1) to (5) of this section, shall be kept confidential by the agency, department, board, **commission**, physician, physician assistant or nurse practitioner. Any record or report disclosed by the Department of Human Services to other persons or entities pursuant to subsections (1) and (3) of this section shall be kept confidential.

(b) Notwithstanding paragraph (a) of this subsection:

(A) A law enforcement agency, a community corrections agency, the Department of Corrections, the Oregon Youth Authority and the State Board of Parole and Post-Prison Supervision may disclose records made available to them under subsection (5) of this section to each other, to law enforcement, community corrections, corrections and parole agencies of other states and to authorized treatment providers for the purpose of managing and supervising offenders in custody or on probation, parole, post-prison supervision or other form of conditional or supervised release.

(B) The Department of Corrections and the Oregon Youth Authority may disclose records made available to them under subsection (5) of this section regarding a person in the custody of the Department of Corrections or the Oregon Youth Authority to each other, to the court, to the district attorney and to the person's attorney for the purpose of the person's hearing under ORS 420A.200 to 420A.206.

(C) A person may disclose records made available to the person under subsection (1)(i) of this section if the records are disclosed for the purpose of advancing the public interest.

(7) Except as provided by ORS 339.389, an officer or employee of the Department of Human Services or of a law enforcement agency or any person or entity to whom disclosure is made pursuant to subsections (1) to (6) of this section may not release any information not authorized by subsections (1) to (6) of this section.

(8) As used in this section, "law enforcement agency" has the meaning given that term in ORS 181A.010.

(9) A person who violates subsection (6)(a) or (7) of this section commits a Class A violation.

SECTION 3. ORS 342.176 is amended to read:

342.176. (1)(a) A person may file a complaint with the Teacher Standards and Practices Commission regarding a commission licensee. If a complaint concerns an allegation of sexual conduct that may have been committed by a commission licensee, the complaint process provided by this section does not apply and the commission shall investigate the complaint as provided by ORS 339.390.

(b) Prior to beginning an investigation based on a complaint filed under paragraph (a) of this subsection, the commission may require verification that attempts were made to resolve the complaint through the complaint process of the school district that employs the person against whom the complaint was filed. **If the commission does not receive verification within 12 months of providing notice that verification is required, the commission no longer has a duty to investigate the complaint.**

(c) After receiving sufficient verification as provided by paragraph (b) of this subsection, the commission shall promptly undertake an investigation upon receipt of a complaint or information that [*may constitute*] **constitutes** grounds for:

(A) Refusal to issue a license or registration, as provided under ORS 342.143;

(B) Suspension or revocation of a license or registration, discipline of a commission licensee, or suspension or revocation of the right to apply for a license or registration, as provided under ORS 342.175; or

(C) Discipline for failure to provide appropriate notice prior to resignation, as provided under ORS 342.553.

(2) The commission may appoint an investigator and shall furnish the investigator with appropriate professional and other special assistance reasonably required to conduct the investigation, and the investigator is empowered to issue subpoenas to require the attendance of witnesses or the production of documents over the signature of the executive director of the Teacher Standards and Practices Commission, subpoena witnesses over the signature of the executive director, swear witnesses and compel obedience in the same manner as provided under ORS 183.440 (2).

(3) Following completion of *[the]* **an** investigation, the executive director or the executive director's designee shall:

(a) Forward to the commission a report related to any investigation that concluded that a violation occurred under ORS 342.143, 342.175 or 342.553; or

(b) Determine whether to forward to the commission a report related to any investigation not described in paragraph (a) of this subsection.

(4) If a report is to be forwarded to the commission as described in subsection (3) of this section, the executive director or the executive director's designee shall report in writing *[any]* the findings and recommendations to impose disciplinary sanctions to:

(a) The commission, meeting in executive session, at its next regular meeting following completion of the investigation; and

(b) The person against whom the charge is made, following consideration by the commission.

[(4)(a)] **(5)(a)** Except as provided in paragraph (b) of this subsection, the documents and materials used in the investigation undertaken as provided by this section and the report related to the investigation are confidential and not subject to public inspection unless the commission makes a final determination to:

(A) Refuse to issue a license or registration, as provided under ORS 342.143;

(B) Suspend or revoke a license or registration, discipline a commission licensee, or suspend or revoke the right to apply for a license or registration, as provided under ORS 342.175; or

(C) Discipline a person for failure to provide appropriate notice prior to resignation, as provided under ORS 342.553.

(b) Records made available to the commission under ORS 419B.035 (1)(h) shall be kept confidential.

[(5)] **(6)** If the commission finds from the report 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 complainant; and

(c) The employing district or public charter school, if any.

[(6)] **(7)** If *[the commission finds from the report 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 complainant; and

(c) The employing district or public charter school, if any.

[(7)] **(8)** Notwithstanding ORS 192.660 (6), the commission may make its findings under this section in executive session. However, the provisions of ORS 192.660 (4) apply to the sessions.

SECTION 4. 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 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] **the findings and recommendations to the executive director of the Teacher Standards and Practices Commission. The executive director or the executive director's designee shall forward to the commission the report for any investigation that concluded that a violation occurred.**

(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 impose disciplinary sanctions** 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 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 commission licensee; and

(ii) The 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 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.

Passed by Senate April 11, 2023

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

.....
Rob Wagner, President of Senate

Passed by House May 18, 2023

.....
Dan Rayfield, Speaker of House

Received by Governor:

.....M,....., 2023

Approved:

.....M,....., 2023

.....
Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M,....., 2023

.....
Secretary of State