

Senate Bill 995

Sponsored by COMMITTEE ON HUMAN SERVICES

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**.

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 nonstandard 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 new provisions; amending
3 ORS 339.291, 339.294, 339.297, 339.300 and 419B.005; and declaring an emergency.

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

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

6 339.300. [*The Department of Education shall approve training programs in restraint and seclusion*
7 *that:*]

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

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

12 [(3) *Are consistent with the philosophies, practices and techniques for restraint and seclusion that*
13 *are established by rule or policy of the Department of Human Services.*]

14 **The State Board of Education shall adopt by rule the training requirements for purposes of ORS 339.285 to 339.303.**

15 **The rules must provide:**

16 (1) **That the Department of Education shall approve a training program that teaches the**
17 **use of restraint and seclusion only if the program is one of the nationally recognized pro-**
18 **grams that has been designated by the Department of Human Services under ORS 418.529**
19 **(1)(b) as meeting the training and certification standards adopted under ORS 418.529. Only a**
20 **program approved under this subsection may be used to satisfy the training requirements**
21 **of ORS 339.285 to 339.303.**

22 (2) **The standards by which the Department of Education may approve training programs**
23 **that supplement the training program described in subsection (1) of this section, including**
24 **training programs related to positive behavior support, conflict prevention, de-escalation and**
25 **crisis response techniques. A supplemental training program approved under this subsection**

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 **may not be used to teach the use of restraint or seclusion or to satisfy the training re-**
 2 **quirements of ORS 339.285 to 339.303.**

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

4 339.291. (1) Restraint or seclusion may not be used for discipline, punishment, retaliation or
 5 convenience of personnel, contractors or volunteers of a public education program.

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

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

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

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

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

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

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

17 (a) Used only for as long as the student's behavior poses a reasonable risk as described in sub-
 18 section (2) of this section;

19 (b) Imposed by personnel of the public education program who are **currently certified re-**
 20 **garding the use of restraint and seclusion by a currently certified trainer authorized by a**
 21 **program approved under ORS 339.300 (1); and**

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

23 *[(B) Otherwise available in the case of an emergency circumstance when personnel described in*
 24 *subparagraph (A) of this paragraph are not immediately available due to the unforeseeable nature of*
 25 *the emergency circumstance; and]*

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

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

29 **(a) If restraint or seclusion continues for more than 10 minutes, every five minutes after**
 30 **the first 10 minutes of the restraint or seclusion, an administrator for the public education**
 31 **program must provide written authorization for the continuation of the restraint or seclu-**
 32 **sion, including providing documentation for the reason the restraint or seclusion must be**
 33 **continued.**

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

35 *[(a)]* **(A) The student must be provided with adequate access to the bathroom and water every**
 36 **30 minutes; and**

37 *[(b)]* **(B) Personnel of the public education program must immediately attempt to verbally or**
 38 **electronically notify a parent or guardian of the student. [; and]**

39 *[(c) Every 15 minutes after the first 30 minutes of the restraint or seclusion, an administrator for*
 40 *the public education program must provide written authorization for the continuation of the restraint*
 41 *or seclusion, including providing documentation for the reason the restraint or seclusion must be con-*
 42 *tinued.]*

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

44 339.294. (1) Each entity that has jurisdiction over a public education program must establish
 45 procedures for the public education program to follow after an incident involving the use of re-

1 strait or seclusion.

2 (2) Following an incident involving the use of restraint or seclusion, the following must be pro-
3 vided to a parent or guardian of the student:

4 (a) Verbal or electronic notification of the incident by the end of the school day when the inci-
5 dent occurred.

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

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

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

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

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

11 (B) A description of the student's activity that prompted the use of restraint or seclusion.

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

14 (D) The names of the personnel of the public education program who administered the restraint
15 or seclusion.

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

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

21 (3) If the personnel of the public education program who administered the restraint or seclusion
22 [had not received training as provided by ORS 339.300] **is not currently certified regarding the**
23 **use of restraint and seclusion through a program approved under ORS 339.300 (1),** the admin-
24 istrator of the public education program shall ensure that a parent or guardian of the student,
25 [and] the district superintendent **and the Department of Education** receive written notification
26 of:

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

28 (b) The reason the restraint or seclusion was administered by a person without [training] cer-
29 **tification.**

30 (4) **If the restraint or seclusion was administered in violation of ORS 339.285 to 339.303**
31 **or 339.308, the administrator of the public education program shall immediately notify the**
32 **Department of Human Services as required by ORS 419B.010 and 419B.015.**

33 [(4)(a)] (5)(a) A debriefing meeting related to the use of restraint or seclusion must be held
34 within two school days of the incident and must include all personnel of the public education pro-
35 gram who were involved in the incident and any other appropriate personnel.

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

38 [(5)] (6) If a student is involved in five incidents in a school year involving restraint or seclu-
39 sion, a team consisting of personnel of the public education program and a parent or guardian of the
40 student must be formed for the purposes of reviewing and revising the student's behavior plan and
41 ensuring the provision of any necessary behavioral supports.

42 [(6)] (7) If serious bodily injury or death of a student occurs in relation to the use of restraint
43 or seclusion[.]:

44 (a) **Oral notification of the incident must be provided immediately to the parent of the**
45 **student and to the Department of Human Services; and**

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

3 [(7)] (8) If serious bodily injury or death of personnel of the public education program occurs in
 4 relation to the use of restraint or seclusion, written notification of the incident must be provided
 5 within 24 hours of the incident to:

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

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

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

9 [(8)] (9) Each public education program must maintain a record of each incident in which inju-
 10 rries or death occurs in relation to the use of restraint or seclusion.

11 (10)(a) **For at least six months following an incident involving restraint or seclusion, a**
 12 **public education program must preserve all records related to the incident, including video**
 13 **and audio recordings. Records must be preserved in the original format and without any al-**
 14 **terations.**

15 (b) **Unless otherwise directed by the Department of Human Services or law enforcement,**
 16 **a public education program must disclose records described in paragraph (a) of this sub-**
 17 **section, and any other records made following an incident, immediately upon request by the**
 18 **Department of Human Services, a person authorized by the Department of Human Services**
 19 **to conduct a child abuse investigation or the student's parent or guardian.**

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

21 339.297. (1) Each entity that has jurisdiction over a public education program must prepare and
 22 submit to the Department of Education an annual report detailing the use of restraint and seclusion
 23 for the preceding school year, including, at a minimum:

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

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

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

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

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

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

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

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

36 (i) The number of incidents in which the personnel of the public education program administer-
 37 ing restraint or seclusion were not [*trained as provided by ORS 339.300*] **currently certified re-**
 38 **garding the use of restraint and seclusion through a program approved under ORS 339.300**
 39 **(1).**

40 (j) The demographic characteristics of all students upon whom restraint or seclusion was im-
 41 posed, including race, ethnicity, gender, disability status, migrant status, English proficiency and
 42 status as economically disadvantaged, unless the demographic information would reveal personally
 43 identifiable information about an individual student.

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

1 (A) The public at the entity’s main office and the website of the entity;

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

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

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

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

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

11 **SECTION 5. (1) The amendments to ORS 339.291, 339.294, 339.297 and 339.300 by sections**
12 **1 to 4 of this 2023 Act become operative on July 1, 2024.**

13 **(2) Notwithstanding the operative date set forth in subsection (1) of this section, the**
14 **State Board of Education and the Department of Education may take any action before the**
15 **operative date set forth in subsection (1) of this section that is necessary for the State Board**
16 **of Education and the Department of Education, on and after the operative date set forth in**
17 **subsection (1) of this section, to exercise all of the duties, functions and powers conferred**
18 **on the State Board of Education and the Department of Education by the amendments to**
19 **ORS 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 Laws 2022, is amended
21 to read:

22 419B.005. As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:

23 (1)(a) “Abuse” means:

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

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

30 (C) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual pene-
31 tration and incest, as those acts are described in ORS chapter 163.

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

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

34 (i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any
35 other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage
36 in the performing for people to observe or the photographing, filming, tape recording or other ex-
37 hibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or
38 described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not in-
39 cluding any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or
40 which is designed to serve educational or other legitimate purposes; and

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

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

1 welfare of the child.

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

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

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

7 (J) Unlawful exposure to a controlled substance, as defined in ORS 475.005, or to the unlawful
8 manufacturing of a cannabinoid extract, as defined in ORS 475C.009, that subjects a child to a sub-
9 stantial risk of harm to the child's health or safety.

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

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

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

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

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

17 (3) "Higher education institution" means:

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

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

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

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

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

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

25 (5) "Law enforcement agency" means:

26 (a) A city or municipal police department.

27 (b) A county sheriff's office.

28 (c) The Oregon State Police.

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

30 (e) A county juvenile department.

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

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

34 (b) Dentist.

35 (c) School employee, including an employee of a higher education institution.

36 (d) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide
37 or employee of an in-home health service.

38 (e) Employee of the Department of Human Services, Oregon Health Authority, Early Learning
39 Division, Department of Education, Youth Development Division, Office of Child Care, the Oregon
40 Youth Authority, a local health department, a community mental health program, a community de-
41 velopmental disabilities program, a county juvenile department, a child-caring agency as that term
42 is defined in ORS 418.205 or an alcohol and drug treatment program.

43 (f) Peace officer.

44 (g) Psychologist.

45 (h) Member of the clergy.

- 1 (i) Regulated social worker.
- 2 (j) Optometrist.
- 3 (k) Chiropractor.
- 4 (L) Certified provider of foster care, or an employee thereof.
- 5 (m) Attorney.
- 6 (n) Licensed professional counselor.
- 7 (o) Licensed marriage and family therapist.
- 8 (p) Firefighter or emergency medical services provider.
- 9 (q) A court appointed special advocate, as defined in ORS 419A.004.
- 10 (r) A child care provider registered or certified under ORS 329A.030 and 329A.250 to 329A.450.
- 11 (s) An elected official of a branch of government of this state or a state agency, board, com-
12 mission or department of a branch of government of this state or of a city, county or other political
13 subdivision in this state.
- 14 (t) Physical, speech or occupational therapist.
- 15 (u) Audiologist.
- 16 (v) Speech-language pathologist.
- 17 (w) Employee of the Teacher Standards and Practices Commission directly involved in investi-
18 gations or discipline by the commission.
- 19 (x) Pharmacist.
- 20 (y) An operator of a preschool recorded program under ORS 329A.255.
- 21 (z) An operator of a school-age recorded program under ORS 329A.255.
- 22 (aa) Employee of a private agency or organization facilitating the provision of respite services,
23 as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS
24 109.056.
- 25 (bb) An employee of a public or private organization providing child-related services or activ-
26 ities:
 - 27 (A) Including but not limited to an employee of a:
 - 28 (i) Youth group or center;
 - 29 (ii) Scout group or camp;
 - 30 (iii) Summer or day camp;
 - 31 (iv) Survival camp; or
 - 32 (v) Group, center or camp that is operated under the guidance, supervision or auspices of a re-
33 ligious, public or private educational system or a community service organization; and
 - 34 (B) Excluding an employee of a qualified victim services program as defined in ORS 147.600 that
35 provides confidential, direct services to victims of domestic violence, sexual assault, stalking or hu-
36 man trafficking.
- 37 (cc) A coach, assistant coach or trainer of an amateur, semiprofessional or professional athlete,
38 if compensated and if the athlete is a child.
- 39 (dd) Personal support worker, as defined in ORS 410.600.
- 40 (ee) Home care worker, as defined in ORS 410.600.
- 41 (ff) Animal control officer, as defined in ORS 609.500.
- 42 (gg) Member of a school district board, an education service district board or a public charter
43 school governing body.
- 44 (hh) An individual who is paid by a public body, in accordance with ORS 430.215, to provide a
45 service identified in an individualized written service plan of a child with a developmental disability.

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

2 **SECTION 7.** ORS 419B.005, as amended by section 58, chapter 631, Oregon Laws 2021, section
 3 16, chapter 27, Oregon Laws 2022, and section 7, chapter 90, Oregon Laws 2022, is amended to read:
 4 419B.005. As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:

5 (1)(a) “Abuse” means:

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

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

12 (C) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual pene-
 13 tration and incest, as those acts are described in ORS chapter 163.

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

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

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

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

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

29 (G) Threatened harm to a child, which means subjecting a child to a substantial risk of harm
 30 to the child’s health or welfare.

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

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

34 (J) Unlawful exposure to a controlled substance, as defined in ORS 475.005, or to the unlawful
 35 manufacturing of a cannabinoid extract, as defined in ORS 475C.009, that subjects a child to a sub-
 36 stantial risk of harm to the child’s health or safety.

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

38 (b) “Abuse” does not include reasonable discipline unless the discipline results in one of the
 39 conditions described in paragraph (a) of this subsection.

40 (2) “Child” means an unmarried person who:

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

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

44 (3) “Higher education institution” means:

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

- 1 (b) A public university listed in ORS 352.002;
- 2 (c) The Oregon Health and Science University; and
- 3 (d) A private institution of higher education located in Oregon.
- 4 (4)(a) "Investigation" means a detailed inquiry into or assessment of the safety of a child alleged
- 5 to have experienced abuse.
- 6 (b) "Investigation" does not include screening activities conducted upon the receipt of a report.
- 7 (5) "Law enforcement agency" means:
- 8 (a) A city or municipal police department.
- 9 (b) A county sheriff's office.
- 10 (c) The Oregon State Police.
- 11 (d) A police department established by a university under ORS 352.121 or 353.125.
- 12 (e) A county juvenile department.
- 13 (6) "Public or private official" means:
- 14 (a) Physician or physician assistant licensed under ORS chapter 677 or naturopathic physician,
- 15 including any intern or resident.
- 16 (b) Dentist.
- 17 (c) School employee, including an employee of a higher education institution.
- 18 (d) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide
- 19 or employee of an in-home health service.
- 20 (e) Employee of the Department of Human Services, Oregon Health Authority, Department of
- 21 Early Learning and Care, Department of Education, Youth Development Division, Office of Child
- 22 Care, the Oregon Youth Authority, a local health department, a community mental health program,
- 23 a community developmental disabilities program, a county juvenile department, a child-caring
- 24 agency as that term is defined in ORS 418.205 or an alcohol and drug treatment program.
- 25 (f) Peace officer.
- 26 (g) Psychologist.
- 27 (h) Member of the clergy.
- 28 (i) Regulated social worker.
- 29 (j) Optometrist.
- 30 (k) Chiropractor.
- 31 (L) Certified provider of foster care, or an employee thereof.
- 32 (m) Attorney.
- 33 (n) Licensed professional counselor.
- 34 (o) Licensed marriage and family therapist.
- 35 (p) Firefighter or emergency medical services provider.
- 36 (q) A court appointed special advocate, as defined in ORS 419A.004.
- 37 (r) A child care provider registered or certified under ORS 329A.250 to 329A.450.
- 38 (s) An elected official of a branch of government of this state or a state agency, board, com-
- 39 mission or department of a branch of government of this state or of a city, county or other political
- 40 subdivision in this state.
- 41 (t) Physical, speech or occupational therapist.
- 42 (u) Audiologist.
- 43 (v) Speech-language pathologist.
- 44 (w) Employee of the Teacher Standards and Practices Commission directly involved in investi-
- 45 gations 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 provision of respite services,
5 as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS
6 109.056.

7 (bb) An employee of a public or private organization providing child-related services or activ-
8 ities:

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, supervision or auspices of a re-
15 ligious, public or private educational system or a community service organization; and

16 (B) Excluding an employee of a qualified victim services program as defined in ORS 147.600 that
17 provides confidential, direct services to victims of domestic violence, sexual assault, stalking or hu-
18 man trafficking.

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

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

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

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

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

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

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

29 **SECTION 8. Section 9 of this 2023 Act is added to and made a part of ORS 339.285 to**
30 **339.303.**

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

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

33 (b) **“504 Plan” means an education plan developed for a student in accordance with sec-**
34 **tion 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794.**

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

36 (2) **When the Department of Human Services conducts an investigation under ORS**
37 **419B.019 of a report of suspected abuse that involves the use of restraint or seclusion and**
38 **the department finds that the report of abuse is founded, the department may determine**
39 **that the public education program is responsible for the abuse instead of, or in addition to,**
40 **the personnel of the public education program who imposed the restraint or seclusion if:**

41 (a) **The public education program failed to ensure that a sufficient number of personnel**
42 **who are certified regarding the use of restraint and seclusion through a program approved**
43 **under ORS 339.300 (1) were available to comply with the individualized education programs,**
44 **504 Plans and behavior intervention plans of the students who were present in the setting**
45 **where the abuse occurred at the time the abuse occurred and the personnel who imposed the**

1 restraint or seclusion reasonably believed failure to do so would lead to serious bodily injury
2 of the student or others; or

3 (b) The personnel who imposed the restraint or seclusion in violation of ORS 339.285 to
4 339.303 or 339.308 did so because the personnel were ordered to do so by a superior and rea-
5 sonably believed that failure to comply with the order would result in termination or disci-
6 pline.

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

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

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

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