

A-Engrossed Senate Bill 867

Ordered by the Senate February 26
Including Senate Amendments dated February 26

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 Tina Kotek for Department of Education)

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. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: Makes many changes to the powers and duties of ODE for investigations at a school or school district. (Flesch Readability Score: 61.6).

Prescribes sanctions that the Department of Education may impose when an elementary or secondary school or program is found to be in noncompliance with a discrimination prohibition.

Clarifies the applicability of provisions related to abuse and sexual conduct in schools when an education provider serves only students who have not yet entered kindergarten.

Specifies that provisions related to abuse and sexual conduct in schools apply to any person who provided services as an employee, a contractor, an agent or a volunteer within two calendar years prior to when the incident of suspected sexual conduct was committed.

Eliminates certain information that must be disclosed to certain persons following the completion of an investigation involving suspected sexual conduct at a school.

Requires law enforcement to make available to the department certain information received during investigations of suspected child abuse.

[Modifies standards for determining if a school district or public charter school is involved in religious activity.]

A BILL FOR AN ACT

1
2 Relating to investigations by the Department of Education; creating new provisions; and amending
3 ORS 339.370, 339.391, 419B.035 and 659.855.

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

SANCTIONS WHEN DISCRIMINATION IN EDUCATION IS FOUND

SECTION 1. ORS 659.855 is amended to read:

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8
9 659.855. (1) Any public elementary or secondary school or program determined by the Super-
10 intendent of Public Instruction to be in noncompliance with provisions of this section and ORS
11 332.505 (2), 659.850 and 659.852 shall be subject to appropriate sanctions, **as established by rule**
12 **of the State Board of Education**, which may include:

13 (a) **Entering an order for the school or program to adopt or revise a policy, undergo**
14 **training, publicly disseminate information or receive technical assistance.**

15 (b) **For a violation of ORS 659.850 involving a student when the discrimination caused the**
16 **student to miss an educational or extracurricular activity, not have full access to educational**
17 **services or be treated differently with respect to any aid, benefit or service otherwise avail-**
18 **able to students:**

19 (A) **Providing the student with access to the missed educational or extracurricular ac-**

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 tivity, full access to the educational service or the difference in the aid, benefit or service;
2 or

3 (B) Reimbursing the student or the student’s parent or legal guardian for any reasonable
4 costs incurred in obtaining a comparable educational or extracurricular activity, receiving
5 full access to comparable educational services or receiving comparable aid, benefits or ser-
6 vices.

7 (c) Withholding of all or part of state funding[, *as established by rule of the State Board of Ed-*
8 *ucation*].

9 (2) Any public community college determined by the Higher Education Coordinating Commission
10 to be in noncompliance with provisions of ORS 659.850 and 659.852 and this section shall be subject
11 to appropriate sanctions, which may include withholding of all or part of state funding, as estab-
12 lished by rule of the commission.

13 (3) Any public university listed in ORS 352.002 determined by the Higher Education Coordinat-
14 ing Commission to be in noncompliance with provisions of ORS 659.850 and 659.852 and this section
15 shall be subject to appropriate sanctions, which may include withholding of all or part of state
16 funding, as established by rule of the commission.

17 (4) Any public charter school determined by the sponsor of the school or the superintendent to
18 be in noncompliance with the provisions of this section and ORS 332.505 (2), 659.850 and 659.852
19 shall be subject to appropriate sanctions, which may include the withholding of all or part of state
20 funding by the sponsor or superintendent, as established by rule of the State Board of Education.

21
22 **ODE AUTHORITY RELATED TO INVESTIGATIONS OF ABUSE AND**
23 **SEXUAL CONDUCT**
24

25 **SECTION 2.** ORS 339.370, as amended by section 1, chapter 45, Oregon Laws 2024, is amended
26 to read:

27 339.370. As used in ORS 339.370 to 339.400:

28 (1) “Abuse” has the meaning given that term in ORS 419B.005.

29 (2) “Agent” means a person acting as an agent for an education provider in a manner that re-
30 quires the person to have direct, unsupervised contact with students.

31 (3) “Commission licensee” has the meaning given that term in ORS 342.120.

32 (4) “Contractor” means a person providing services to an education provider under a contract
33 in a manner that requires the person to have direct, unsupervised contact with students.

34 (5)(a) “Education provider” means:

35 (A) A school district, as defined in ORS 332.002.

36 (B) The Oregon School for the Deaf.

37 (C) An educational program under the Youth Corrections Education Program.

38 (D) A public charter school, as defined in ORS 338.005.

39 (E) An education service district, as defined in ORS 334.003.

40 (F) An approved recovery school, as defined in ORS 336.680.

41 (G) Any state-operated program that provides educational services to students.

42 (H) A private school.

43 (b) “Education provider” does not include:

44 (A) The Oregon Youth Authority;

45 (B) The Department of Corrections; [or]

1 (C) The Department of Education, except when functioning as an education provider on behalf
2 of the Oregon School for the Deaf[.]; or

3 **(D) An education provider that only serves students who have not yet entered**
4 **kindergarten, except when the education provider is under the direct control of an education**
5 **provider for students in any grade from kindergarten through grade 12.**

6 (6) “Investigation” means a detailed inquiry into the factual allegations of a report of suspected
7 abuse or suspected sexual conduct that:

8 (a) Is based on interviews with the person who initiated the report, the person who may have
9 been subjected to abuse or sexual conduct, witnesses and the person who is the subject of the re-
10 port; and

11 (b) Results in a finding that the report:

12 (A) Is a substantiated report;

13 (B) Cannot be substantiated; or

14 (C) Is not a report of abuse or sexual conduct.

15 (7) “Law enforcement agency” has the meaning given that term in ORS 419B.005.

16 (8) “Licensed administrator” means a person who is employed as an administrator of an educa-
17 tion provider and who:

18 (a) Holds an administrative license issued by the Teacher Standards and Practices Commission
19 under ORS 342.125 (3)(f) or (g); or

20 (b) Does not hold an administrative license issued by the commission because the person is em-
21 ployed by an education provider that does not require administrators to be licensed by the com-
22 mission.

23 (9) “Private school” means a school that provides to students instructional programs that are
24 not limited solely to dancing, drama, music, religious or athletic instruction.

25 (10) “School board” means the entity charged with adopting policies for an education provider.

26 (11) “School employee” means an employee of an education provider.

27 (12)(a) “Sexual conduct” means verbal or physical conduct or verbal, written or electronic
28 communications by a school employee, a contractor, an agent or a volunteer that involve a student
29 and that are:

30 (A) Sexual advances or requests for sexual favors directed toward the student; or

31 (B) Of a sexual nature that are directed toward the student or that have the effect of unrea-
32 sonably interfering with the student’s educational performance, or of creating an intimidating or
33 hostile educational environment.

34 (b) “Sexual conduct” does not include:

35 (A) Touching or other physical contact:

36 (i) That is necessitated by the nature of the school employee’s job duties or by the services re-
37 quired to be provided by the contractor, agent or volunteer; and

38 (ii) For which there is no sexual intent.

39 (B) Verbal, written or electronic communications that are provided as part of an education
40 program that meets state educational standards or a policy approved by the school board.

41 (C) Conduct or communications described in paragraph (a) of this subsection if the school em-
42 ployee, contractor, agent or volunteer is also a student and the conduct or communications:

43 (i) Arise out of a consensual relationship between students;

44 (ii) Do not create an intimidating or hostile educational environment; and

45 (iii) Are not prohibited by law, any policies of the education provider or any applicable em-

1 ployment agreements.

2 (13) "Student" means any person:

3 (a) Who is:

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

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

7 (b) Who was previously known as a student by the person engaging in sexual conduct and who
8 left school or graduated from high school within one calendar year prior to the sexual conduct.

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

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

15 **SECTION 3.** ORS 339.391 is amended to read:

16 339.391. (1)(a) When the Department of Education receives a report of suspected sexual conduct
17 that may have been committed by a school employee, contractor, agent or volunteer that is not a
18 commission licensee, the department shall immediately initiate an investigation. **The department**
19 **may investigate and make a final determination for any person who provided services as a**
20 **school employee, a contractor, an agent or a volunteer within two calendar years prior to**
21 **when the suspected sexual conduct was committed.**

22 (b) An investigation and final determination related to the report received under paragraph (a)
23 of this subsection must be completed and notification of the final determination must be made to the
24 education provider within 90 calendar days following the date on which the report was filed with
25 the department.

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

29 (2) The department shall appoint an investigator and shall furnish the investigator with appro-
30 priate professional and other special assistance reasonably required to conduct an investigation. An
31 investigator appointed under this subsection is empowered to:

32 (a) Issue subpoenas to require the attendance of witnesses or the production of documents;

33 (b) Subpoena witnesses; and

34 (c) Swear witnesses and compel obedience in the same manner as provided under ORS 183.440
35 (2).

36 (3)(a) Following the completion of an investigation, the Department of Education shall notify:

37 (A) The person charged;

38 (B) The student, the student's parents or legal guardians, or both the student and the student's
39 parents or legal guardians; **and**

40 (C) The education provider[;].

41 [(D) *The person who provided the report of suspected sexual conduct, if known by the department;*
42 *and*]

43 [(E) *For a substantiated report only, any regulatory board that;*]

44 [(i) *Is not the Teacher Standards and Practices Commission; and*]

45 [(ii) *The department knows licensed, registered, certified or otherwise authorized the school em-*

1 *ployee, contractor, agent or volunteer to practice a profession or to provide professional services.]*

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

4 (A) The statutory authority of the department to conduct the investigation;

5 (B) The procedural background for the investigation;

6 (C) The legal standards and arguments used for the investigation;

7 (D) The department's findings of fact from the investigation;

8 (E) The department's final determination based on the investigation; and

9 (F) The right to an appeal, as provided by subsection (5) of this section.

10 (c) **Following the completion of an investigation, the department shall:**

11 (A) **Inform the person who provided the report of suspected sexual conduct, if known by**
12 **the department, whether the department found that the report:**

13 (i) **Is a substantiated report;**

14 (ii) **Cannot be substantiated; or**

15 (iii) **Is not a report of sexual conduct.**

16 (B) **For a substantiated report only, inform a regulatory board that the department found**
17 **that the report is substantiated, if the regulatory board:**

18 (i) **Is not the Teacher Standards and Practices Commission; and**

19 (ii) **The department knows that the regulatory board licensed, registered, certified or**
20 **otherwise authorized the school employee, contractor, agent or volunteer to practice a pro-**
21 **fession or to provide professional services.**

22 (4)(a) Except as provided in paragraphs (b) and (c) of this subsection and subsection (3) of this
23 section, the documents and materials used in the investigation undertaken under this section, and
24 the report related to the investigation, are confidential and not subject to public inspection.

25 (b) Documents, materials and reports that are confidential under paragraph (a) of this subsection
26 may be disclosed to an entity listed in paragraph (c) of this subsection, or in the manner described
27 in subsection (3) of this section, only as provided by this section and by rules adopted by the State
28 Board of Education. The person or entity that receives documents, materials or reports must main-
29 tain their confidentiality unless disclosure is allowed or required under this section or other state
30 or federal law.

31 (c) To the extent allowed by state and federal law, the department shall make available any
32 documents, materials and reports that are confidential under paragraph (a) of this subsection to:

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

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

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

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

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

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

1 section.

2 **SECTION 4.** ORS 419B.035, as amended by section 68, chapter 73, Oregon Laws 2024, is
3 amended to read:

4 419B.035. (1) Notwithstanding the provisions of ORS 192.001 to 192.170, 192.210 to 192.478 and
5 192.610 to 192.810 relating to confidentiality and accessibility for public inspection of public records
6 and public documents, reports and records compiled under the provisions of ORS 419B.010 to
7 419B.050 are confidential and may not be disclosed except as provided in this section. The Depart-
8 ment of Human Services shall make the records available to:

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

11 (b) Any physician, physician associate licensed under ORS 677.505 to 677.525 or nurse practi-
12 tioner licensed under ORS 678.375 to 678.390, at the request of the physician, physician associate
13 or nurse practitioner, regarding any child brought to the physician, physician associate or nurse
14 practitioner or coming before the physician, physician associate or nurse practitioner for examina-
15 tion, care or treatment;

16 (c) Attorneys of record for the child or child's parent or guardian in any juvenile court pro-
17 ceeding;

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

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

24 (f) The Department of Early Learning and Care for the purpose of carrying out the functions
25 of the department, including the certification, registration or regulation of child care facilities and
26 child care providers and the administration of enrollment in the Central Background Registry;

27 (g) The Office of Children's Advocate;

28 (h) The Teacher Standards and Practices Commission for investigations conducted under ORS
29 339.390 or 342.176 involving any child or any student;

30 (i) Any person, upon request to the Department of Human Services, if the reports or records
31 requested regard an incident in which a child, as the result of abuse, died or suffered serious phys-
32 ical injury as defined in ORS 161.015. Reports or records disclosed under this paragraph must be
33 disclosed in accordance with ORS 192.311 to 192.478;

34 (j) The Department of Early Learning and Care for purposes of applications described in ORS
35 329A.030 (11)(c)(G) to (J);

36 (k) With respect to a report of abuse occurring at a school or in an educational setting that
37 involves a child with a disability, Disability Rights Oregon;

38 (L) The Department of Education for purposes of investigations conducted under ORS 339.391;

39 (m) An education provider for the purpose of making determinations under ORS 339.388; and

40 (n) A national nonprofit organization designated by the Department of Human Services that
41 provides assistance with locating, recovering or providing services to children or youth determined
42 by the department to be missing.

43 (2)(a) When disclosing reports and records pursuant to subsection (1)(i) of this section, the De-
44 partment of Human Services may exempt from disclosure the names, addresses and other identifying
45 information about other children, witnesses, victims or other persons named in the report or record

1 if the department determines, in written findings, that the safety or well-being of a person named in
 2 the report or record may be jeopardized by disclosure of the names, addresses or other identifying
 3 information, and if that concern outweighs the public's interest in the disclosure of that information.

4 (b) If the Department of Human Services does not have a report or record of abuse regarding
 5 a child who, as the result of abuse, died or suffered serious physical injury as defined in ORS
 6 161.015, the department may disclose that information.

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

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

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

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

30 (B) The Teacher Standards and Practices Commission for investigations conducted under ORS
 31 339.390 and 342.176[.]; **and**

32 **(C) The Department of Education for investigations conducted under ORS 339.391.**

33 (b) A law enforcement agency may make reports and records compiled under the provisions of
 34 ORS 419B.010 to 419B.050 available to the Oregon Youth Authority, the Teacher Standards and
 35 Practices Commission for investigations conducted under ORS 339.390 and 342.176, **the Department**
 36 **of Education for investigations conducted under ORS 339.391**, law enforcement, community
 37 corrections, corrections or parole agencies in an open case when the law enforcement agency de-
 38 termines that the disclosure will not interfere with an ongoing investigation in the case.

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

41 (6)(a) Any record made available to a law enforcement agency or community corrections agency
 42 in this state, to the Department of Corrections, the Oregon Youth Authority, the State Board of
 43 Parole and Post-Prison Supervision, *[or]* the Teacher Standards and Practices Commission **or the**
 44 **Department of Education** or to a physician, physician associate or nurse practitioner in this state,
 45 as authorized by subsections (1) to (5) of this section, shall be kept confidential by the agency, de-

1 partment, board, commission, physician, physician associate or nurse practitioner. Any record or
2 report disclosed by the Department of Human Services to other persons or entities pursuant to
3 subsections (1) and (3) of this section shall be kept confidential.

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

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

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

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

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

22 (8) A record of sexual orientation, gender identity or gender expression, as defined in ORS
23 409.225, is exempt from disclosure under subsection (1) of this section unless:

24 (a) The department determines, in written findings, that failure to disclose the record is rea-
25 sonably likely to jeopardize the child's safety or well-being;

26 (b) The department determines, in written findings, that disclosure of the record is necessary to
27 provide services to the child or the child's family; or

28 (c) The child consents to the disclosure.

29 (9) As used in this section, "law enforcement agency" has the meaning given that term in ORS
30 181A.010.

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

32
33 **MISCELLANEOUS**

34
35 **SECTION 5. The unit captions used in this 2025 Act are provided only for the convenience**
36 **of the reader and do not become part of the statutory law of this state or express any leg-**
37 **islative intent in the enactment of this 2025 Act.**