

Enrolled Senate Bill 867

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CHAPTER

AN ACT

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

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:

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

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

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

(A) **Providing the student with access to the missed educational or extracurricular activity, full access to the educational service or the difference in the aid, benefit or service; or**

(B) **Reimbursing the student or the student's parent or legal guardian for any reasonable costs incurred in obtaining a comparable educational or extracurricular activity, receiving full access to comparable educational services or receiving comparable aid, benefits or services.**

(c) **Withholding of all or part of state funding[, as established by rule of the State Board of Education].**

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

(3) Any public university listed in ORS 352.002 determined by the Higher Education Coordinating Commission to be in noncompliance with provisions of ORS 659.850 and 659.852 and this section

shall be subject to appropriate sanctions, which may include withholding of all or part of state funding, as established by rule of the commission.

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

ODE AUTHORITY RELATED TO INVESTIGATIONS OF ABUSE AND SEXUAL CONDUCT

SECTION 2. ORS 339.370, as amended by section 1, chapter 45, Oregon Laws 2024, 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) An approved recovery school, as defined in ORS 336.680.

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

(H) 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[.]; or

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

(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:

(A) Is a substantiated report;

(B) Cannot be substantiated; or

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

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

(8) “Licensed administrator” means a person who is employed as an administrator of an education provider and who:

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

(b) Does not hold an administrative license issued by the commission because the person is employed by an education provider that does not require administrators to be licensed by the commission.

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

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

(11) "School employee" means an employee of an education provider.

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

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

(B) Of a sexual nature that are directed toward the student or that have the effect of unreasonably interfering with the student's educational performance, or of creating an intimidating or hostile educational environment.

(b) "Sexual conduct" does not include:

(A) Touching or other physical contact:

(i) That is necessitated by the nature of the school employee's job duties or by the services required to be provided by the contractor, agent or volunteer; and

(ii) For which there is no sexual intent.

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

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

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

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

(iii) Are not prohibited by law, any policies of the education provider or any applicable employment agreements.

(13) "Student" means any person:

(a) Who is:

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

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

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

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

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

SECTION 3. 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. **The department may investigate and make a final determination for any person who provided services as a school employee, a contractor, an agent or a volunteer within two calendar years prior to when the suspected sexual conduct was committed.**

(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, the student's parents or legal guardians, or both the student and the student's parents or legal guardians; **and**

(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.

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

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

(i) Is a substantiated report;

(ii) Cannot be substantiated; or

(iii) Is not a report of sexual conduct.

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

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

(ii) The department knows that the regulatory board licensed, registered, certified or otherwise authorized the school employee, contractor, agent or volunteer to practice a profession or to provide professional services.

(4)(a) Except as provided in paragraphs (b) and (c) 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) Documents, materials and reports that are confidential under paragraph (a) of this subsection may be disclosed to an entity listed in paragraph (c) of this subsection, or in the manner described in subsection (3) of this section, only as provided by this section and by rules adopted by the State Board of Education. The person or 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 department 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 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.

(d) 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 4. ORS 419B.035, as amended by section 68, chapter 73, Oregon Laws 2024, 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 associate 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 associate or nurse practitioner, regarding any child brought to the physician, physician associate or nurse practitioner or coming before the physician, physician associate 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 Department of Early Learning and Care for the purpose of carrying out the functions of the department, 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 Department of Early Learning and Care for purposes of applications described in ORS 329A.030 (11)(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;

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

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

(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[.]; **and**

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

(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, **the Department of Education for investigations conducted under ORS 339.391**, 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, the State Board of Parole and Post-Prison Supervision, *[or]* the Teacher Standards and Practices Commission **or the Department of Education** or to a physician, physician associate 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 associate 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) A record of sexual orientation, gender identity or gender expression, as defined in ORS 409.225, is exempt from disclosure under subsection (1) of this section unless:

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

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

(c) The child consents to the disclosure.

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

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

MISCELLANEOUS

SECTION 5. The unit captions used in this 2025 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2025 Act.

Passed by Senate March 4, 2025

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Obadiah Rutledge, Secretary of Senate

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Rob Wagner, President of Senate

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Julie Fahey, Speaker of House

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Approved:

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Tina Kotek, Governor

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Tobias Read, Secretary of State