

# Enrolled House Bill 2062

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Education)

CHAPTER .....

AN ACT

Relating to misconduct by school employees; creating new provisions; amending ORS 339.370, 339.372, 339.375 and 339.377; and prescribing an effective date.

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

**SECTION 1.** ORS 339.370 is amended to read:

339.370. As used in [this section and ORS 339.372, 339.375 and 339.377] **sections 7 to 11 of this 2009 Act:**

- (1) "Abuse" has the meaning given that term in ORS 419B.005.
- (2) "Disciplinary records" means the records related to a personnel discipline action or materials or documents supporting that action.
- (3) "Education provider" means:
  - (a) A school district, as defined in ORS 332.002.
  - (b) The Oregon School for the Blind.
  - (c) The Oregon School for the Deaf.
  - (d) An educational program under the Youth Corrections Education Program.
  - (e) A public charter school, as defined in ORS 338.005.
  - (f) An education service district, as defined in ORS 334.003.
  - (g) Any state-operated program that provides educational services to kindergarten through grade 12 students.
  - (h) A private school.
- (4) **"Investigation" means a detailed inquiry into the factual allegations of a report of suspected child abuse or sexual conduct that:**
  - (a) **Is based on interviews with the complainant, witnesses and the school employee who is the subject of the report; and**
  - (b) **Meets any negotiated standards of an employment contract or agreement.**
- [4] (5) "Law enforcement agency" has the meaning given that term in ORS 419B.005.
- [5] (6) "Private school" means a school that provides educational services, as defined in ORS 345.505, to kindergarten through grade 12 students.
- [6] (7) "School board" means the governing board or governing body of an education provider.
- [7] (8) "School employee" means an employee of an education provider.
- (9)(a) **"Sexual conduct" means any verbal or physical conduct by a school employee that:**
  - (A) **Is sexual in nature;**
  - (B) **Is directed toward a kindergarten through grade 12 student;**

(C) **Has the effect of unreasonably interfering with a student's educational performance;**  
and

(D) **Creates an intimidating, hostile or offensive educational environment.**

(b) **"Sexual conduct" does not include abuse.**

(10) **"Substantiated report" means a report of child abuse or sexual conduct that:**

(a) **An education provider has reasonable cause to believe is founded based on the available evidence after conducting an investigation; and**

(b) **Involves conduct that the education provider determines is sufficiently serious to be documented in the school employee's personnel file.**

**SECTION 2.** ORS 339.372 is amended to read:

339.372. Each school board shall adopt policies on the reporting of child abuse **and sexual conduct by school employees.** The policies shall:

(1) Specify that child abuse **and sexual conduct** by school employees [*is*] **are** not tolerated;

(2) Specify that all school employees are subject to the policies;

(3) Require [*that*] all school employees **who have reasonable cause to believe that another school employee has engaged in child abuse or sexual conduct to:**

(a) Report suspected child abuse to a law enforcement agency, the Department of Human Services or a designee of the department as required by ORS 419B.010 and 419B.015; and

(b) Report suspected child abuse **or sexual conduct** to the employees' supervisors or other persons designated by the school board;

(4) Designate a person to receive reports of suspected child abuse **or sexual conduct** by school employees and specify the procedures to be followed by that person upon receipt of a report;

(5) Require the posting in each school building of the name and contact information for the person designated for the school building to receive reports of suspected child abuse **or sexual conduct** by school employees and the procedures the person will follow upon receipt of a report;

(6) Specify that the initiation of a report in good faith about suspected child abuse **or sexual conduct** may not adversely affect any terms or conditions of employment or the work environment of the complainant;

(7) Specify that the school board or any school employee will not discipline a student for the initiation of a report in good faith about suspected child abuse **or sexual conduct** by a school employee; [*and*]

(8) Require notification by the education provider to the person who initiated the report about actions taken by the education provider based on the report[.]; **and**

(9) **Require the education provider to furnish to a school employee at the time of hire the following:**

(a) **A description of conduct that may constitute child abuse or sexual conduct; and**

(b) **A description of the information and records that will be disclosed as provided by ORS 339.375 (7) or section 8 of this 2009 Act if a report of suspected child abuse or sexual conduct is substantiated.**

**SECTION 3. Notwithstanding ORS 339.372 (9), the information required to be furnished to school employees under ORS 339.372 (9) must be provided to all school employees in this state within 30 days of the effective date of this 2009 Act.**

**SECTION 4.** ORS 339.375 is amended to read:

339.375. (1)(a) [*Any*] **A school employee having reasonable cause to believe that [*any*] a child with whom the employee comes in contact has suffered abuse by another school employee, or that another school employee with whom the employee comes in contact has abused a child, shall immediately report the information to:**

[*(a)*] **(A)** A supervisor or other person designated by the school board; and

[*(b)*] **(B)** A law enforcement agency, the Department of Human Services or a designee of the department as required by ORS 419B.010 and 419B.015.

**(b) A school employee having reasonable cause to believe that a student with whom the employee comes in contact has been subjected to sexual conduct by another school employee,**

**or that another school employee with whom the employee comes in contact has engaged in sexual conduct, shall immediately report the information to a supervisor or other person designated by the school board.**

(2) A supervisor or other person designated by the school board who receives a report under subsection (1) of this section, shall follow the procedures required by the policy adopted by the school board under ORS 339.372.

(3)(a) Except as provided in subsection (4) of this section, when an education provider receives a report of suspected child abuse **or sexual conduct** by one of its employees, and the education provider's designee determines that there is reasonable cause to support the report, the education provider:

(A) **In the case of suspected child abuse**, shall place the school employee on paid administrative leave; or

(B) **In the case of suspected sexual conduct**, may place the school employee on paid administrative leave or in a position that does not involve direct, unsupervised contact with children.

(b) **A school employee who is placed on paid administrative leave under paragraph (a)(A) of this subsection shall remain on administrative leave** until [either]:

[(a)] (A) The Department of Human Services or a law enforcement agency determines that the report [is unfounded] **cannot be substantiated** or that the report will not be pursued; or

[(b)] (B) The Department of Human Services or a law enforcement agency determines that the report is [founded] **substantiated** and the education provider takes the appropriate disciplinary action against the school employee.

(4) [If the Department of Human Services or a law enforcement agency is unable to determine, based on a report of suspected child abuse, whether child abuse occurred,] An education provider may reinstate a school employee placed on paid administrative leave **for suspected child abuse as provided** under subsection (3) of this section or may take the appropriate disciplinary action against the employee[.] **if the Department of Human Services or a law enforcement agency is unable to determine, based on a report of suspected child abuse, whether child abuse occurred.**

(5) **If, following an investigation, an education provider determines that the report of suspected child abuse or sexual conduct is a substantiated report, the education provider shall:**

(a) **Inform the school employee that the education provider has determined that the report has been substantiated.**

(b) **Provide the school employee with information about the appropriate appeal process for the determination made by the education provider. The appeal process may be the process provided by a collective bargaining agreement or a process administered by a neutral third party and paid for by the school district.**

(c) **Following notice of a school employee's decision not to appeal the determination or following the determination of an appeal that sustained the substantiated report, create a record of the substantiated report and place the record in the personnel file of the school employee. Records created pursuant to this paragraph are confidential and are not public records as defined in ORS 192.410. An education provider may use the record as a basis for providing the information required to be disclosed under section 8 of this 2009 Act.**

(d) **Inform the school employee that information about substantiated reports may be disclosed to a potential employer as provided by subsection (7) of this section and section 8 of this 2009 Act.**

[(5)] (6) Upon request from a law enforcement agency, the Department of Human Services or the Teacher Standards and Practices Commission, a school district shall provide the records of investigations of suspected child abuse by a school employee or former school employee.

[(6)] (7)(a) The disciplinary records of a school employee or former school employee convicted of a crime listed in ORS 342.143 are not exempt from disclosure under ORS 192.501 or 192.502.

(b) If a school employee is convicted of a crime listed in ORS 342.143, the education provider that is the employer of the employee shall disclose the disciplinary records of the employee to any person upon request.

(c) If a former school employee is convicted of a crime listed in ORS 342.143, the education provider that was the employer of the former employee when the crime was committed shall disclose the disciplinary records of the former employee to any person upon request.

[(7)] (8) Prior to disclosure of a disciplinary record under subsection [(6)] (7) of this section, an education provider shall remove any personally identifiable information from the record that would disclose the identity of a child, a crime victim or a school employee or former school employee who is not the subject of the disciplinary record.

**SECTION 5.** ORS 339.377 is amended to read:

339.377. (1) An education provider shall provide to school employees training each school year on the prevention and identification of child abuse **and sexual conduct** and on the obligations of school employees under ORS 419B.005 to 419B.050 and under policies adopted by the school board to report child abuse **and sexual conduct**.

(2) An education provider shall make the training provided under subsection (1) of this section available each school year to parents and legal guardians of children who attend a school operated by the education provider. The training shall be provided separately from the training provided to school employees under subsection (1) of this section.

(3) An education provider shall make training that is designed to prevent child abuse **and sexual conduct** available each school year to children who attend a school operated by the education provider.

**SECTION 6.** ORS 339.370, 339.372, 339.375 and 339.377 are added to and made a part of sections 7 to 11 of this 2009 Act.

**SECTION 7.** Except as provided in section 9 of this 2009 Act, before an education provider may hire an applicant for a position with the education provider, the education provider shall:

(1) **Require the applicant to provide:**

(a) **A list of the applicant's current and former employers who are education providers.**

(b) **A written authorization that authorizes the applicant's current and former employers that are education providers to disclose the information requested under subsection (2) of this section.**

(c) **A written statement of whether the applicant:**

(A) **Has been the subject of a substantiated report of child abuse or sexual conduct; or**

(B) **Is the subject of an ongoing investigation related to a report of suspected child abuse or sexual conduct.**

(2) **Conduct a review of the employment history of the applicant by contacting the three most recent employers of the applicant who are education providers and requesting:**

(a) **The following information:**

(A) **The dates of employment of the applicant by the education provider;**

(B) **Whether the applicant was the subject of any substantiated reports of child abuse or sexual conduct related to the applicant's employment with the education provider;**

(C) **The dates of any substantiated reports;**

(D) **The definitions of child abuse and sexual conduct used by the education provider when the education provider determined that any reports were substantiated; and**

(E) **The standards used by the education provider to determine whether any reports were substantiated.**

(b) **Any disciplinary records required to be released as provided by ORS 339.375 (7).**

(3) **For an applicant who is licensed, registered or certified with the Teacher Standards and Practices Commission, access online information provided by the commission to verify:**

(a) **That the applicant is licensed, registered or certified by the commission; and**

(b) Whether the commission has provided any information relating to conduct by the applicant that may constitute child abuse or sexual conduct.

(4) Conduct a nationwide criminal records check if required by ORS 326.603.

**SECTION 8.** (1) Not later than 20 days after receiving a request under section 7 of this 2009 Act, an education provider that has or has had an employment relationship with the applicant shall disclose the information requested and any disciplinary records that must be disclosed as provided by ORS 339.375 (7).

(2) An education provider may disclose the information on a standardized form and is not required to provide any additional information related to a substantiated report of child abuse or sexual conduct other than the information that is required by section 7 (2) of this 2009 Act.

(3) Information received under this section is confidential and is not a public record as defined in ORS 192.410. An education provider may use the information only for the purpose of evaluating an applicant's eligibility to be hired.

**SECTION 9.** (1) An education provider may not hire an applicant who does not comply with the requirements of section 7 (1) of this 2009 Act. A refusal to hire an applicant under this subsection removes the applicant from any education provider policies, any collective bargaining provisions regarding dismissal procedures and appeals and any provisions of ORS 342.805 to 342.937.

(2) An education provider may hire an applicant on a conditional basis pending the education provider's review of information and records received under section 8 of this 2009 Act.

(3) An education provider may not deny an applicant employment solely because:

(a) A current or former employer of an applicant fails or refuses to comply with the requirements of section 8 of this 2009 Act; or

(b) The applicant has or had an out-of-state employer and the laws or rules of that state prevent the release of information or records requested under section 8 of this 2009 Act.

**SECTION 10.** (1) An education provider may not enter into a collective bargaining agreement, an employment contract, an agreement for resignation or termination, a severance agreement or any other contract or agreement that:

(a) Has the effect of suppressing information relating to an ongoing investigation related to a report of suspected child abuse or sexual conduct or relating to a substantiated report of child abuse or sexual conduct by a current or former employee;

(b) Affects the duties of the education provider to report suspected child abuse or sexual conduct or to discipline a current or former employee for a substantiated report of child abuse or sexual conduct;

(c) Impairs the ability of the education provider to discipline an employee for a substantiated report of child abuse or sexual conduct; or

(d) Requires the education provider to expunge substantiated information about child abuse or sexual conduct from any documents maintained by an education provider.

(2) Any provision of an employment contract or agreement that is contrary to this section is void and unenforceable.

(3) Nothing in this section prevents an education provider from entering into a collective bargaining agreement that includes:

(a) Standards for investigation of a report of child abuse or sexual conduct; or

(b) An appeal process from the determination by an education provider that a report of child abuse or sexual conduct has been substantiated as provided in ORS 339.375 (5).

**SECTION 11.** Nothing in sections 7 to 11 of this 2009 Act creates a new public or private cause of action or precludes an existing cause of action.

**SECTION 12.** Section 10 of this 2009 Act applies to agreements or contracts specified in section 10 of this 2009 Act that are entered into or renewed on or after the effective date of this 2009 Act.

**SECTION 13.** This 2009 Act takes effect on July 1, 2010.

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**Passed by House March 18, 2009**

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Chief Clerk of House

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Speaker of House

**Passed by Senate May 7, 2009**

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President of Senate

**Received by Governor:**

.....M,....., 2009

**Approved:**

.....M,....., 2009

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Governor

**Filed in Office of Secretary of State:**

.....M,....., 2009

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Secretary of State