

## Enrolled House Bill 2192

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Education for Youth Rights and Justice)

CHAPTER .....

AN ACT

Relating to disciplinary policies of schools; creating new provisions; amending ORS 161.205, 336.665, 338.115, 339.115, 339.250 and 339.252 and section 12, chapter 665, Oregon Laws 2011, and section 1, chapter 30, Oregon Laws 2013 (Enrolled House Bill 2756); repealing section 7, chapter 665, Oregon Laws 2011; and declaring an emergency.

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

**SECTION 1. Section 7, chapter 665, Oregon Laws 2011, is repealed.**

**SECTION 1a.** Section 1, chapter 30, Oregon Laws 2013 (Enrolled House Bill 2756), as amended by section 2, chapter 30, Oregon Laws 2013 (Enrolled House Bill 2756), is amended to read:

**Sec. 1.** (1) As used in this section:

(a) "Public education program" means a program that:

(A) Is for students in early childhood education, elementary school or secondary school;

(B) Is under the jurisdiction of a school district, an education service district or another educational institution or program; and

(C) Receives, or serves students who receive, support in any form from any program supported, directly or indirectly, with funds appropriated to the Department of Education.

(b) "Seclusion cell" means a freestanding, self-contained unit that is used to:

(A) Isolate a student from other students; or

(B) Physically prevent a student from leaving the unit or cause the student to believe that the student is physically prevented from leaving the unit.

(2) A public education program may not:

(a) Purchase, build or otherwise take possession of a seclusion cell; or

(b) Use a seclusion cell.

**(3) Nothing in this section prevents a public education program from using seclusion as allowed under sections 1 to 6, chapter 665, Oregon Laws 2011.**

**SECTION 1b. Notwithstanding section 3, chapter 30, Oregon Laws 2013 (Enrolled House Bill 2756) (amending section 7, chapter 665, Oregon Laws 2011), section 7, chapter 665, Oregon Laws 2011, is repealed by section 1 of this 2013 Act.**

**SECTION 2.** Section 12, chapter 665, Oregon Laws 2011, is amended to read:

**Sec. 12.** (1) Sections 1 to 5 [of this 2011 Act], **chapter 665, Oregon Laws 2011**, and the amendments to ORS 161.205 and 339.250 by sections 8 and 10 [of this 2011 Act], **chapter 665, Oregon Laws 2011**, become operative on July 1, 2012.

(2) The amendments to ORS 161.205 and 339.250 by sections 9 and 11 [*of this 2011 Act*], **chapter 665, Oregon Laws 2011, and sections 3 and 4 of this 2013 Act** become operative on [*June 30, 2017*] **July 1, 2013.**

**SECTION 3.** ORS 339.250, as amended by section 9, chapter 665, Oregon Laws 2011, is amended to read:

339.250. (1) Public school students shall comply with rules for the government of such schools, pursue the prescribed course of study, use the prescribed textbooks and submit to the teachers' authority.

(2) Pursuant to the written policies of a district school board, an individual who is a teacher, administrator, school employee or school volunteer may use reasonable physical force upon a student when and to the extent the [*individual reasonably believes it necessary to maintain order in the school or classroom or at a school activity or event, whether or not it is held on school property*] **application of force is consistent with section 3, chapter 665, Oregon Laws 2011.** The district school board shall adopt written policies to implement this subsection and shall inform such individuals of the existence and content of these policies.

(3) The district school board may authorize the discipline, suspension or expulsion of any refractory student and may suspend or expel any student who assaults or menaces a school employee or another student. The age of a student and the past pattern of behavior of a student shall be considered prior to a suspension or expulsion of a student. As used in this subsection "menace" means by word or conduct the student intentionally attempts to place a school employee or another student in fear of imminent serious physical injury.

(4)(a) Willful disobedience, willful damage or injury to school property, use of threats, intimidation, harassment or coercion against any fellow student or school employee, open defiance of a teacher's authority or use or display of profane or obscene language is sufficient cause for discipline, suspension or expulsion from school.

(b) District school boards shall develop policies on managing students who threaten violence or harm in public schools. The policies adopted by a school district shall include staff reporting methods and shall require an administrator to consider:

(A) Immediately removing from the classroom setting any student who has threatened to injure another person or to severely damage school property.

(B) Placing the student in a setting where the behavior will receive immediate attention, including, but not limited to, the office of the school principal, vice principal, assistant principal or counselor or a school psychologist licensed by the Teacher Standards and Practices Commission or the office of any licensed mental health professional.

(C) Requiring the student to be evaluated by a licensed mental health professional before allowing the student to return to the classroom setting.

(c) The administrator shall notify the parent or legal guardian of the student's behavior and the school's response.

(d) District school boards may enter into contracts with licensed mental health professionals to perform the evaluations required under paragraph (b) of this subsection.

(e) District school boards shall allocate any funds necessary for school districts to implement the policies adopted under paragraph (b) of this subsection.

(5) Expulsion of a student shall not extend beyond one calendar year and suspension shall not extend beyond 10 school days.

(6)(a) Notwithstanding subsection (5) of this section, a school district shall have a policy that requires the expulsion from school for a period of not less than one year of any student who is determined to have:

(A) Brought a weapon to a school, to school property under the jurisdiction of the district or to an activity under the jurisdiction of the school district;

(B) Possessed, concealed or used a weapon in a school or on school property or at an activity under the jurisdiction of the district; or

(C) Brought to or possessed, concealed or used a weapon at an interscholastic activity administered by a voluntary organization.

(b) The policy shall allow an exception for courses, programs and activities approved by the school district that are conducted on school property, including but not limited to hunter safety courses, Reserve Officer Training Corps programs, weapons-related sports or weapons-related vocational courses. In addition, the State Board of Education may adopt by rule additional exceptions to be included in school district policies.

(c) The policy shall allow a superintendent to modify the expulsion requirement for a student on a case-by-case basis.

(d) The policy shall require a referral to the appropriate law enforcement agency of any student who is expelled under this subsection.

(e) For purposes of this subsection, "weapon" includes a:

(A) "Firearm" as defined in 18 U.S.C. 921;

(B) "Dangerous weapon" as defined in ORS 161.015; or

(C) "Deadly weapon" as defined in ORS 161.015.

(7) The Department of Education shall collect data on any expulsions required pursuant to subsection (6) of this section including:

(a) The name of each school;

(b) The number of students expelled from each school; and

(c) The types of weapons involved.

(8) Notwithstanding ORS 336.010, a school district may require a student to attend school during nonschool hours as an alternative to suspension.

(9) Unless a student is under expulsion for an offense that constitutes a violation of a school district policy adopted pursuant to subsection (6) of this section, a school district board shall consider and propose to the student prior to expulsion or leaving school, and document to the parent, legal guardian or person in parental relationship, alternative programs of instruction or instruction combined with counseling for the student that are appropriate and accessible to the student in the following circumstances:

(a) When a student is expelled pursuant to subsection (4) of this section;

(b) Following a second or subsequent occurrence within any three-year period of a severe disciplinary problem with a student;

(c) When it has been determined that a student's attendance pattern is so erratic that the student is not benefiting from the educational program; or

(d) When a parent or legal guardian applies for a student's exemption from compulsory attendance on a semiannual basis as provided in ORS 339.030 (2).

(10) A school district board may consider and propose to a student who is under expulsion or to a student prior to expulsion for an offense that constitutes a violation of a school district policy adopted pursuant to subsection (6) of this section, and document to the parent, legal guardian or person in parental relationship, alternative programs of instruction or instruction combined with counseling for the student that are appropriate and accessible to the student.

(11) Information on alternative programs provided under subsections (9) and (10) of this section shall be in writing. The information need not be given to the student and the parent, guardian or person in parental relationship more often than once every six months unless the information has changed because of the availability of new programs.

(12)(a) The authority to discipline a student does not authorize the infliction of corporal punishment. Every resolution, bylaw, rule, ordinance or other act of a district school board, a public charter school or the Department of Education that permits or authorizes the infliction of corporal punishment upon a student is void and unenforceable.

(b) As used in this subsection, "corporal punishment" means the willful infliction of, or willfully causing the infliction of, physical pain on a student.

(c) As used in this subsection, "corporal punishment" does not mean:

(A) The use of physical force authorized by ORS 161.205 for the reasons specified therein; or

(B) Physical pain or discomfort resulting from or caused by participation in athletic competition or other such recreational activity, voluntarily engaged in by a student.

**SECTION 4.** ORS 161.205, as amended by section 11, chapter 665, Oregon Laws 2011, is amended to read:

161.205. The use of physical force upon another person that would otherwise constitute an offense is justifiable and not criminal under any of the following circumstances:

(1)(a) A parent, guardian or other person entrusted with the care and supervision of a minor or an incompetent person may use reasonable physical force upon such minor or incompetent person when and to the extent the person reasonably believes it necessary to maintain discipline or to promote the welfare of the minor or incompetent person.

(b) *[A teacher]* **Personnel of a public education program, as that term is defined in section 1, chapter 665, Oregon Laws 2011,** may use reasonable physical force upon a student when and to the extent the *[teacher reasonably believes it necessary to maintain order in the school or classroom or at a school activity or event, whether or not it is held on school property]* **application of force is consistent with section 3, chapter 665, Oregon Laws 2011.**

(2) An authorized official of a jail, prison or correctional facility may use physical force when and to the extent that the official reasonably believes it necessary to maintain order and discipline or as is authorized by law.

(3) A person responsible for the maintenance of order in a common carrier of passengers, or a person acting under the direction of the person, may use physical force when and to the extent that the person reasonably believes it necessary to maintain order, but the person may use deadly physical force only when the person reasonably believes it necessary to prevent death or serious physical injury.

(4) A person acting under a reasonable belief that another person is about to commit suicide or to inflict serious physical self-injury may use physical force upon that person to the extent that the person reasonably believes it necessary to thwart the result.

(5) A person may use physical force upon another person in self-defense or in defending a third person, in defending property, in making an arrest or in preventing an escape, as hereafter prescribed in chapter 743, Oregon Laws 1971.

**SECTION 5.** ORS 339.250, as amended by section 9, chapter 665, Oregon Laws 2011, and section 3 of this 2013 Act, is amended to read:

339.250. (1) Public school students shall comply with rules for the government of such schools, pursue the prescribed course of study, use the prescribed textbooks and submit to the teachers' authority.

*[(2) Pursuant to the written policies of a district school board, an individual who is a teacher, administrator, school employee or school volunteer may use reasonable physical force upon a student when and to the extent the application of force is consistent with section 3, chapter 665, Oregon Laws 2011. The district school board shall adopt written policies to implement this subsection and shall inform such individuals of the existence and content of these policies.]*

*[(3) The district school board may authorize the discipline, suspension or expulsion of any refractory student and may suspend or expel any student who assaults or menaces a school employee or another student. The age of a student and the past pattern of behavior of a student shall be considered prior to a suspension or expulsion of a student. As used in this subsection "menace" means by word or conduct the student intentionally attempts to place a school employee or another student in fear of imminent serious physical injury.]*

*[(4)(a) Willful disobedience, willful damage or injury to school property, use of threats, intimidation, harassment or coercion against any fellow student or school employee, open defiance of a teacher's authority or use or display of profane or obscene language is sufficient cause for discipline, suspension or expulsion from school.]*

*[(b) District school boards shall develop policies on managing students who threaten violence or harm in public schools. The policies adopted by a school district shall include staff reporting methods and shall require an administrator to consider:]*

*[(A) Immediately removing from the classroom setting any student who has threatened to injure another person or to severely damage school property.]*

*[(B) Placing the student in a setting where the behavior will receive immediate attention, including, but not limited to, the office of the school principal, vice principal, assistant principal or counselor or a school psychologist licensed by the Teacher Standards and Practices Commission or the office of any licensed mental health professional.]*

*[(C) Requiring the student to be evaluated by a licensed mental health professional before allowing the student to return to the classroom setting.]*

*[(c) The administrator shall notify the parent or legal guardian of the student's behavior and the school's response.]*

*[(d) District school boards may enter into contracts with licensed mental health professionals to perform the evaluations required under paragraph (b) of this subsection.]*

*[(e) District school boards shall allocate any funds necessary for school districts to implement the policies adopted under paragraph (b) of this subsection.]*

*[(5) Expulsion of a student shall not extend beyond one calendar year and suspension shall not extend beyond 10 school days.]*

*[(6)(a) Notwithstanding subsection (5) of this section, a school district shall have a policy that requires the expulsion from school for a period of not less than one year of any student who is determined to have:]*

*[(A) Brought a weapon to a school, to school property under the jurisdiction of the district or to an activity under the jurisdiction of the school district;]*

*[(B) Possessed, concealed or used a weapon in a school or on school property or at an activity under the jurisdiction of the district; or]*

*[(C) Brought to or possessed, concealed or used a weapon at an interscholastic activity administered by a voluntary organization.]*

*[(b) The policy shall allow an exception for courses, programs and activities approved by the school district that are conducted on school property, including but not limited to hunter safety courses, Reserve Officer Training Corps programs, weapons-related sports or weapons-related vocational courses. In addition, the State Board of Education may adopt by rule additional exceptions to be included in school district policies.]*

*[(c) The policy shall allow a superintendent to modify the expulsion requirement for a student on a case-by-case basis.]*

*[(d) The policy shall require a referral to the appropriate law enforcement agency of any student who is expelled under this subsection.]*

*[(e) For purposes of this subsection, "weapon" includes a:]*

*[(A) "Firearm" as defined in 18 U.S.C. 921;]*

*[(B) "Dangerous weapon" as defined in ORS 161.015; or]*

*[(C) "Deadly weapon" as defined in ORS 161.015.]*

*[(7) The Department of Education shall collect data on any expulsions required pursuant to subsection (6) of this section including:]*

*[(a) The name of each school;]*

*[(b) The number of students expelled from each school; and]*

*[(c) The types of weapons involved.]*

*[(8) Notwithstanding ORS 336.010, a school district may require a student to attend school during nonschool hours as an alternative to suspension.]*

*[(9) Unless a student is under expulsion for an offense that constitutes a violation of a school district policy adopted pursuant to subsection (6) of this section, a school district board shall consider and propose to the student prior to expulsion or leaving school, and document to the parent, legal guardian or person in parental relationship, alternative programs of instruction or instruction combined with counseling for the student that are appropriate and accessible to the student in the following circumstances:]*

*[(a) When a student is expelled pursuant to subsection (4) of this section;]*

*[(b) Following a second or subsequent occurrence within any three-year period of a severe disciplinary problem with a student;]*

*[(c) When it has been determined that a student's attendance pattern is so erratic that the student is not benefiting from the educational program; or]*

*[(d) When a parent or legal guardian applies for a student's exemption from compulsory attendance on a semiannual basis as provided in ORS 339.030 (2).]*

*[(10) A school district board may consider and propose to a student who is under expulsion or to a student prior to expulsion for an offense that constitutes a violation of a school district policy adopted pursuant to subsection (6) of this section, and document to the parent, legal guardian or person in parental relationship, alternative programs of instruction or instruction combined with counseling for the student that are appropriate and accessible to the student.]*

*[(11) Information on alternative programs provided under subsections (9) and (10) of this section shall be in writing. The information need not be given to the student and the parent, guardian or person in parental relationship more often than once every six months unless the information has changed because of the availability of new programs.]*

**(2) Each district school board shall adopt written policies for the discipline, suspension or expulsion of any refractory student. The policies:**

**(a) May allow discipline, suspension or expulsion for conduct that includes, but is not limited to:**

**(A) Willful disobedience;**

**(B) Open defiance of the authority of a school employee;**

**(C) Possession or distribution of tobacco, alcohol, drugs or other controlled substances;**

**(D) Use or display of profane or obscene language;**

**(E) Willful damage or injury to school property;**

**(F) Use of threats, intimidation, harassment or coercion against a student or a school employee;**

**(G) Assault of a school employee or another student; or**

**(H) Intentional attempts, by word or conduct, to place a school employee or another student in fear of imminent serious physical injury.**

**(b) Must limit the use of expulsion to the following circumstances:**

**(A) For conduct that poses a threat to the health or safety of students or school employees;**

**(B) When other strategies to change student conduct have been ineffective; or**

**(C) When the expulsion is required by law.**

**(c) Must require consideration of the age of a student and the past pattern of behavior of a student prior to imposing the suspension or expulsion of a student.**

**(d) Must be limited so that:**

**(A) The duration of an expulsion may not be more than one calendar year.**

**(B) The duration of a suspension may not be more than 10 school days.**

**(e) Notwithstanding ORS 336.010, may require a student to attend school during non-school hours as an alternative to suspension if the total number of hours does not exceed the equivalent of 10 school days.**

**(3) Pursuant to the policies adopted as provided by subsection (2) of this section, each school district shall develop a student handbook, code of conduct or other document that:**

**(a) Defines and helps create a learning environment that students respect;**

**(b) Defines acceptable norms of behavior for students and the types of behavior that are subject to discipline;**

**(c) Establishes procedures to address behavior or circumstances that pose a threat to the safety of students or employees of the school;**

**(d) Establishes a system of consequences that are designed to correct student misconduct and promote behavior within acceptable norms; and**

(e) Makes the system of consequences known to the school community through the dissemination of information to students, parents, legal guardians and school district employees.

(4) Each district school board shall adopt written policies on managing students who threaten violence or harm in public schools. The policies adopted by a district school board under this section shall include all of the following:

(a) Staff reporting methods.

(b) Provisions that allow an administrator to consider and implement any of the following options:

(A) Immediately removing from the classroom setting any student who has threatened to injure another person or to severely damage school property.

(B) Placing the student in a setting where the behavior will receive immediate attention, including, but not limited to, the office of the school principal, vice principal, assistant principal, counselor or a school psychologist licensed by the Teacher Standards and Practices Commission or the office of any licensed mental health professional.

(C) Requiring that a school obtain an evaluation of a student by a licensed mental health professional before allowing the student to return to the classroom setting. A student who is removed from the classroom setting for an evaluation may not be removed for more than 10 school days unless the administrator is able to show good cause that an evaluation could not be completed in that time period. The policy must describe the circumstances under which the district school board may enter into contracts with licensed mental health professionals to perform any evaluations required under this subparagraph.

(c) The requirement that an administrator provide to the parent or legal guardian of the student notification that describes the student's behavior and the school's response.

(d) A provision for the allocation of any funds necessary for the school district to implement the policies described in this subsection.

(5) In establishing and enforcing discipline, suspension and expulsion policies, a district school board shall ensure that the policy is designed to:

(a) Protect students and school employees from harm;

(b) Provide opportunities for students to learn from their mistakes;

(c) Foster positive learning communities;

(d) Keep students in school and attending class;

(e) Impose disciplinary sanctions without bias against students from a protected class, as defined in ORS 339.351;

(f) Implement a graduated set of age-appropriate responses to misconduct that are fair, nondiscriminatory and proportionate in relation to each student's individual conduct;

(g) Employ a range of strategies for prevention, intervention and discipline that take into account a student's developmental capacities and that are proportionate to the degree and severity of the student's misbehavior;

(h) Propose, prior to a student's expulsion or leaving school, alternative programs of instruction or instruction combined with counseling for the student that are appropriate and accessible to the student in the following circumstances:

(A) Following a second or subsequent occurrence within any three-year period of a severe disciplinary problem with the student;

(B) When it has been determined that the student's attendance pattern is so erratic that the student is not benefiting from the educational program; or

(C) When a parent or legal guardian applies for the student's exemption from compulsory attendance on a semiannual basis as provided in ORS 339.030 (2);

(i) To the extent practicable, use approaches that are shown through research to be effective in reducing student misbehavior and promoting safe and productive social behavior; and

(j) Ensure that school conduct and discipline codes comply with all state and federal laws concerning the education of students with disabilities.

(6) Except for policies adopted under subsection (7) of this section, any policies adopted under this section must provide for the dissemination of information about alternative programs of instruction or instruction combined with counseling, as described in subsection (5)(h) of this section, in writing to the student and the parent, legal guardian or person in parental relationship with the student at least once every six months, unless the information has changed because of the availability of new programs.

(7) Each district school board shall adopt a written policy involving firearms, as defined in 18 U.S.C. 921. The policy shall:

(a) Require expulsion from school for a period of not less than one year of any student who is determined to have:

(A) Brought a firearm to a school, to school property under the jurisdiction of the school district or to an activity under the jurisdiction of the school district;

(B) Possessed, concealed or used a firearm in a school, on school property under the jurisdiction of the school district or at an activity under the jurisdiction of the school district; or

(C) Brought to or possessed, concealed or used a firearm at an interscholastic activity administered by a voluntary organization.

(b) Allow exceptions:

(A) For courses, programs and activities approved by the school district that are conducted on school property, including, but not limited to, hunter safety courses, Reserve Officer Training Corps programs, firearm-related sports or firearm-related vocational courses; and

(B) Identified by and adopted by the State Board of Education by rule.

(c) Allow a superintendent of a school district to:

(A) Modify the expulsion requirement for a student on a case-by-case basis.

(B) Propose alternative programs of instruction or instruction combined with counseling for a student that are appropriate and accessible to the student. If alternative programs are appropriate for a student, the superintendent shall ensure that information about programs of instruction or instruction combined with counseling is provided in writing to the student and the parent, legal guardian or person in parental relationship with the student at least once every six months, or at any time the information changes because of the availability of new programs.

(d) Require a referral to the appropriate law enforcement agency of any student who is expelled under this subsection.

(e) Require an annual reporting to the Department of Education of the name of each school that had an expulsion under this subsection and the number of students expelled from each school.

(8) Each district school board shall adopt and disseminate written policies for the use of physical force upon a student. The policies must allow an individual who is a teacher, administrator, school employee or school volunteer to use reasonable physical force upon a student when and to the extent the application of force is consistent with section 3, chapter 665, Oregon Laws 2011.

[(12)(a)] (9)(a) The authority to discipline a student does not authorize the infliction of corporal punishment. Every resolution, bylaw, rule, ordinance or other act of a district school board, a public charter school or the Department of Education that permits or authorizes the infliction of corporal punishment upon a student is void and unenforceable.

(b) As used in this subsection[,]:

(A) "Corporal punishment" means the willful infliction of, or willfully causing the infliction of, physical pain on a student.

[(c)] (B) [As used in this subsection,] "Corporal punishment" does not [mean] include:

[A] (i) The use of physical force authorized by ORS 161.205 for the reasons specified therein;  
or

[B] (ii) Physical pain or discomfort resulting from or caused by participation in athletic competition or other such recreational activity, voluntarily engaged in by a student.

**SECTION 6. (1) The amendments to ORS 339.250 by section 5 of this 2013 Act become operative July 1, 2014.**

**(2) The amendments to ORS 339.250 by section 5 of this 2013 Act first apply to the 2014-2015 school year.**

**SECTION 7.** ORS 336.665 is amended to read:

336.665. (1) The Superintendent of Public Instruction shall find a school district to be deficient within the meaning of ORS 327.103 if the district fails to cause the proposal of alternative programs to be made under ORS 339.250 [(9) or (10)] **(5)(h) or (7)(c)(B)**.

(2) The failure to cause the proposal of alternative programs shall not be grounds for a civil action against the school district.

**SECTION 8.** ORS 338.115, as amended by section 9, chapter 92, Oregon Laws 2012, is amended to read:

338.115. (1) Statutes and rules that apply to school district boards, school districts or other public schools do not apply to public charter schools. However, the following laws do apply to public charter schools:

- (a) Federal law;
- (b) ORS 30.260 to 30.300 (tort claims);
- (c) ORS 192.410 to 192.505 (public records law);
- (d) ORS 192.610 to 192.690 (public meetings law);
- (e) ORS 297.405 to 297.555 and 297.990 (Municipal Audit Law);
- (f) ORS 326.565, 326.575 and 326.580 (student records);
- (g) ORS 181.534, 326.603, 326.607, 342.223 and 342.232 (criminal records checks);
- (h) ORS 329.045 (academic content standards and instruction);
- (i) ORS 329.451 (high school diploma, modified diploma, extended diploma and alternative certificate);
- (j) The statewide assessment system developed by the Department of Education for mathematics, science and English under ORS 329.485 (2);
- (k) ORS 337.150 (textbooks);
- (L) ORS 339.141, 339.147 and 339.155 (tuition and fees);
- (m) ORS 339.250 [(12)] **(9)** (prohibition on infliction of corporal punishment);
- (n) ORS 339.326 (notice concerning students subject to juvenile court petitions);
- (o) ORS 339.370, 339.372, 339.388 and 339.400 (reporting of abuse and sexual conduct and training on prevention and identification of abuse and sexual conduct);
- (p) ORS chapter 657 (Employment Department Law);
- (q) ORS 659.850, 659.855 and 659.860 (discrimination);
- (r) Any statute or rule that establishes requirements for instructional time provided by a school during each day or during a year;
- (s) Health and safety statutes and rules;
- (t) Any statute or rule that is listed in the charter;
- (u) ORS 339.119 (consideration for educational services); and
- (v) This chapter.

(2) Notwithstanding subsection (1) of this section, a charter may specify that statutes and rules that apply to school district boards, school districts and other public schools may apply to a public charter school.

(3) If a statute or rule applies to a public charter school, then the terms "school district" and "public school" include public charter school as those terms are used in that statute or rule.

(4) A public charter school may not violate the Establishment Clause of the First Amendment to the United States Constitution or section 5, Article I of the Oregon Constitution, or be religion based.

(5)(a) A public charter school shall maintain an active enrollment of at least 25 students.

(b) For a public charter school that provides educational services under a cooperative agreement described in ORS 338.080, the public charter school is in compliance with the requirements of this subsection if the public charter school provides educational services under the cooperative agreement to at least 25 students, without regard to the school districts in which the students are residents.

(6) A public charter school may sue or be sued as a separate legal entity.

(7) The sponsor, members of the governing board of the sponsor acting in their official capacities and employees of a sponsor acting in their official capacities are immune from civil liability with respect to all activities related to a public charter school within the scope of their duties or employment.

(8) A public charter school may enter into contracts and may lease facilities and services from a school district, education service district, public university listed in ORS 352.002, other governmental unit or any person or legal entity.

(9) A public charter school may not levy taxes or issue bonds under which the public incurs liability.

(10) A public charter school may receive and accept gifts, grants and donations from any source for expenditure to carry out the lawful functions of the school.

(11) The school district in which the public charter school is located shall offer a high school diploma, a modified diploma, an extended diploma or an alternative certificate to any public charter school student who meets the district's and state's standards for a high school diploma, a modified diploma, an extended diploma or an alternative certificate.

(12) A high school diploma, a modified diploma, an extended diploma or an alternative certificate issued by a public charter school grants to the holder the same rights and privileges as a high school diploma, a modified diploma, an extended diploma or an alternative certificate issued by a nonchartered public school.

(13) Prior to beginning operation, the public charter school shall show proof of insurance to the sponsor as specified in the charter.

(14) A public charter school may receive services from an education service district in the same manner as a nonchartered public school in the school district in which the public charter school is located.

**SECTION 9.** ORS 338.115, as amended by section 7, chapter 839, Oregon Laws 2007, section 12, chapter 50, Oregon Laws 2008, section 4, chapter 618, Oregon Laws 2009, section 3, chapter 53, Oregon Laws 2010, section 3, chapter 94, Oregon Laws 2011, section 118, chapter 637, Oregon Laws 2011, section 5, chapter 682, Oregon Laws 2011, and section 10, chapter 92, Oregon Laws 2012, is amended to read:

338.115. (1) Statutes and rules that apply to school district boards, school districts or other public schools do not apply to public charter schools. However, the following laws do apply to public charter schools:

(a) Federal law;

(b) ORS 30.260 to 30.300 (tort claims);

(c) ORS 192.410 to 192.505 (public records law);

(d) ORS 192.610 to 192.690 (public meetings law);

(e) ORS 297.405 to 297.555 and 297.990 (Municipal Audit Law);

(f) ORS 326.565, 326.575 and 326.580 (student records);

(g) ORS 181.534, 326.603, 326.607, 342.223 and 342.232 (criminal records checks);

(h) ORS 329.045 (academic content standards and instruction);

(i) ORS 329.451 (high school diploma, modified diploma, extended diploma and alternative certificate);

- (j) ORS 329.496 (physical education);
- (k) The statewide assessment system developed by the Department of Education for mathematics, science and English under ORS 329.485 (2);
- (L) ORS 337.150 (textbooks);
- (m) ORS 339.141, 339.147 and 339.155 (tuition and fees);
- (n) ORS 339.250 [(12)] (9) (prohibition on infliction of corporal punishment);
- (o) ORS 339.326 (notice concerning students subject to juvenile court petitions);
- (p) ORS 339.370, 339.372, 339.388 and 339.400 (reporting of abuse and sexual conduct and training on prevention and identification of abuse and sexual conduct);
- (q) ORS chapter 657 (Employment Department Law);
- (r) ORS 659.850, 659.855 and 659.860 (discrimination);
- (s) Any statute or rule that establishes requirements for instructional time provided by a school during each day or during a year;
- (t) Health and safety statutes and rules;
- (u) Any statute or rule that is listed in the charter;
- (v) ORS 339.119 (consideration for educational services); and
- (w) This chapter.

(2) Notwithstanding subsection (1) of this section, a charter may specify that statutes and rules that apply to school district boards, school districts and other public schools may apply to a public charter school.

(3) If a statute or rule applies to a public charter school, then the terms “school district” and “public school” include public charter school as those terms are used in that statute or rule.

(4) A public charter school may not violate the Establishment Clause of the First Amendment to the United States Constitution or section 5, Article I of the Oregon Constitution, or be religion based.

(5)(a) A public charter school shall maintain an active enrollment of at least 25 students.

(b) For a public charter school that provides educational services under a cooperative agreement described in ORS 338.080, the public charter school is in compliance with the requirements of this subsection if the public charter school provides educational services under the cooperative agreement to at least 25 students, without regard to the school districts in which the students are residents.

(6) A public charter school may sue or be sued as a separate legal entity.

(7) The sponsor, members of the governing board of the sponsor acting in their official capacities and employees of a sponsor acting in their official capacities are immune from civil liability with respect to all activities related to a public charter school within the scope of their duties or employment.

(8) A public charter school may enter into contracts and may lease facilities and services from a school district, education service district, public university listed in ORS 352.002, other governmental unit or any person or legal entity.

(9) A public charter school may not levy taxes or issue bonds under which the public incurs liability.

(10) A public charter school may receive and accept gifts, grants and donations from any source for expenditure to carry out the lawful functions of the school.

(11) The school district in which the public charter school is located shall offer a high school diploma, a modified diploma, an extended diploma or an alternative certificate to any public charter school student who meets the district’s and state’s standards for a high school diploma, a modified diploma, an extended diploma or an alternative certificate.

(12) A high school diploma, a modified diploma, an extended diploma or an alternative certificate issued by a public charter school grants to the holder the same rights and privileges as a high school diploma, a modified diploma, an extended diploma or an alternative certificate issued by a nonchartered public school.

(13) Prior to beginning operation, the public charter school shall show proof of insurance to the sponsor as specified in the charter.

(14) A public charter school may receive services from an education service district in the same manner as a nonchartered public school in the school district in which the public charter school is located.

**SECTION 10.** ORS 339.115 is amended to read:

339.115. (1) Except as provided in ORS 339.141, authorizing tuition for courses not part of the regular school program, the district school board shall admit free of charge to the schools of the district all persons between the ages of 5 and 19 who reside within the school district. A person whose 19th birthday occurs during the school year shall continue to be eligible for a free and appropriate public education for the remainder of the school year. A district school board may admit nonresident persons, determine who is not a resident of the district and fix rates of tuition for nonresidents.

(2)(a) A district must admit an otherwise eligible person who has not yet attained 21 years of age prior to the beginning of the current school year if the person is:

(A) Receiving special education and has not yet received a high school diploma as described in ORS 329.451 (2); or

(B) Receiving special education and has received a modified diploma, an extended diploma or an alternative certificate as described in ORS 329.451.

(b) A district may admit an otherwise eligible person who is not receiving special education and who has not yet attained 21 years of age prior to the beginning of the current school year if the person is shown to be in need of additional education in order to receive a high school diploma.

(3) The obligation to make a free appropriate public education available to individuals with disabilities 18 through 21 years of age who are incarcerated in an adult correctional facility applies only to those individuals who, in their last educational placement prior to their incarceration in the adult correctional facility:

(a) Were identified as being a child with a disability as defined in ORS 343.035; or

(b) Had an individualized education program as described in ORS 343.151.

(4) For purposes of subsection (3) of this section, "adult correctional facility" means:

(a) A local correctional facility as defined in ORS 169.005;

(b) A regional correctional facility as defined in ORS 169.620; or

(c) A Department of Corrections institution as defined in ORS 421.005.

(5) An otherwise eligible person under subsection (2) of this section whose 21st birthday occurs during the school year shall continue to be eligible for a free appropriate public education for the remainder of the school year.

(6) The person may apply to the board of directors of the school district of residence for admission after the 19th birthday as provided in subsection (1) of this section. A person aggrieved by a decision of the local board may appeal to the State Board of Education. The decision of the state board is final and not subject to appeal.

(7) Notwithstanding ORS 339.133 (1)(a), a school district shall not exclude from admission a child located in the district solely because the child does not have a fixed place of residence or solely because the child is not under the supervision of a parent, guardian or person in a parental relationship.

(8) Notwithstanding subsection (1) of this section, a school district:

(a) May for the remaining period of an expulsion deny admission to the regular school to a resident student who is expelled from another school district; and

(b) Shall for at least one calendar year from the date of the expulsion and if the expulsion is for more than one calendar year, may for the remaining period of time deny admission to the regular school program to a student who is under expulsion from another school district for an offense that constitutes a violation of a school district policy adopted pursuant to ORS 339.250 [(6)] (7).

(9) A child entering the first grade during the fall term shall be considered to be six years of age if the sixth birthday of the child occurs on or before September 1. A child entering kindergarten

during the fall term shall be considered to be five years of age if the fifth birthday of the child occurs on or before September 1. However, nothing in this section prevents a district school board from admitting free of charge a child whose needs for cognitive, social and physical development would best be met in the school program, as defined by policies of the district school board, to enter school even though the child has not attained the minimum age requirement but is a resident of the district.

**SECTION 11.** ORS 339.252 is amended to read:

339.252. (1) As used in this section, "child with a disability" has the meaning given that term in ORS 343.035.

(2) A child with a disability continues to be entitled to a free appropriate public education if the child has been removed for disciplinary reasons from the child's current educational placement for more than 10 school days in a school year.

(3) A disciplinary removal is considered a change in educational placement and the school district shall follow special education due process procedures under ORS 343.155 (5) if:

(a) The removal is for more than 10 consecutive school days; or

(b) The child is removed for more than 10 cumulative school days in a school year, and those removals constitute a pattern based on the length and total time of removals and the proximity of the removals to one another.

(4) A child with a disability shall not be removed for disciplinary reasons under subsection (3) of this section for misconduct that is a manifestation of the child's disability, except as provided under ORS 343.177.

(5) Notwithstanding ORS 339.250 [(9) and (10)] **(5)(h) or (7)(c)(B)**, a school district shall provide a free appropriate public education in an alternative setting to a child with a disability even if the basis for expulsion was a weapon violation pursuant to ORS 339.250 [(6)] **(7)**.

(6) School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.

**SECTION 12. The amendments to ORS 336.665, 338.115, 339.115 and 339.252 by sections 7 to 11 of this 2013 Act become operative July 1, 2014.**

**SECTION 13. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.**

**Passed by House April 23, 2013**

**Repassed by House May 23, 2013**

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Ramona J. Line, Chief Clerk of House

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Tina Kotek, Speaker of House

**Passed by Senate May 21, 2013**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M,....., 2013

**Approved:**

.....M,....., 2013

.....  
John Kitzhaber, Governor

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

.....M,....., 2013

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Kate Brown, Secretary of State