

D R A F T

SUMMARY

Removes sunset on provisions that allow students whose legal residence is not within school district to attend school in district as resident if student receives written consent.

Removes sunset on authority of institution of higher education to sponsor public charter school.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to sunsets in education laws; creating new provisions; amending ORS 338.055, 338.075, 339.127 and 339.133; repealing section 12, chapter 695, Oregon Laws 2011, sections 21 and 22, chapter 718, Oregon Laws 2011, and section 11, chapter 781, Oregon Laws 2015; and declaring an emergency.

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

SECTION 1. (1) **Section 21, chapter 718, Oregon Laws 2011, as amended by section 9, chapter 434, Oregon Laws 2013, is repealed.**

(2) Section 22, chapter 718, Oregon Laws 2011, is repealed.

(3) Section 11, chapter 781, Oregon Laws 2015, is repealed.

SECTION 2. ORS 339.133, as amended by section 10, chapter 781, Oregon Laws 2015, is amended to read:

339.133. (1)(a) Except as provided in subsections (2) to (6) of this section, children between the ages of 4 and 18 shall be considered resident for school purposes in the school district in which their parents, their guardians or persons in parental relationship to them reside.

(b) Nonemancipated individuals between the ages of 4 and 18 living out-

side the geographic area of the school district for such reasons as attending college, military service, hospital confinement or employment away from home shall be considered resident in the district in which their parents, their guardians or persons in parental relationship to them reside.

(c) Persons living temporarily in a school district for the primary purpose of attending a district school may not be considered resident in the district in which they are living temporarily, but shall be considered resident in the district in which they, their parents, their guardians or persons in parental relationship to them reside.

(2) Individuals considered legally emancipated from their parents shall be considered resident in the district in which they actually reside, irrespective of the residence of their parents, their guardians or persons in parental relationship.

(3) Children placed by public or private agencies who are living in licensed, certified or approved substitute care programs shall be considered resident in the school district in which they reside because of placement by a public or private agency.

(4)(a) Notwithstanding subsection (3) of this section, when a juvenile court determines that it is in a child's best interest to continue to attend the school that the child attended prior to placement by a public agency, the child:

(A) Shall be considered resident for school purposes in the school district in which the child resided prior to the placement; and

(B) May continue to attend the school the child attended prior to the placement through the highest grade level of the school.

(b) The public agency that has placed the child shall be responsible for providing the child with transportation to and from school when the need for transportation is due to the placement by the public agency.

(c) Paragraph (b) of this subsection applies only to a public agency for which funds have been designated for the specific purpose of providing a child with transportation to and from school under this subsection.

(5) Except as provided in ORS 327.006 (7) and 335.090, persons whose legal residence is not within the district but who attend school in the district are considered residents in the district in which the persons attend school if those persons receive:

(a) Written consent from both of the affected district school boards as provided by policies adopted by the boards[.]; or

(b) **Written consent from the district school board for the district in which the school is located as provided by section 9, chapter 718, Oregon Laws 2011.**

(6)(a) **Children who are foreign exchange students and who are residing in Oregon in a dormitory operated by a school district are considered to be residents of the school district in which the dormitory is located.**

(b) **For the purpose of this subsection:**

(A) **A child may not be considered to be a foreign exchange student for more than one school year.**

(B) **A child may be considered to be a resident of a school district as provided by this subsection only if, for the 2010-2011 school year, the school district had foreign exchange students who would have been considered residents under the provisions of this subsection.**

(C) **The number of children who may be considered residents under the provisions of this subsection may not increase relative to the number who would have been considered residents under the provisions of this subsection for the 2010-2011 school year.**

(c) **As used in this subsection, “foreign exchange student” means a student who attends school in Oregon under a cultural exchange program and whose parent, guardian or person in parental relationship resides in another country.**

[(6)] (7) **For the purposes of this section:**

(a) **“Person in parental relationship” means an adult who has physical custody of a child or resides in the same household as the child, interacts**

with the child daily, provides the child with food, clothing, shelter and incidental necessities and provides the child with necessary care, education and discipline. "Person in parental relationship" does not mean a person with a power of attorney or other written delegation of parental responsibilities if the person does not have other evidence of a parental relationship.

(b) "Substitute care program" means family foster care, family group home care, parole foster care, family shelter care, adolescent shelter care and professional group care.

SECTION 3. ORS 339.133, as amended by section 10, chapter 781, Oregon Laws 2015, and section 2 of this 2016 Act, is amended to read:

339.133. (1)(a) Except as provided in subsections (2) to [(6)] **(5)** of this section, children between the ages of 4 and 18 shall be considered resident for school purposes in the school district in which their parents, their guardians or persons in parental relationship to them reside.

(b) Nonemancipated individuals between the ages of 4 and 18 living outside the geographic area of the school district for such reasons as attending college, military service, hospital confinement or employment away from home shall be considered resident in the district in which their parents, their guardians or persons in parental relationship to them reside.

(c) Persons living temporarily in a school district for the primary purpose of attending a district school may not be considered resident in the district in which they are living temporarily, but shall be considered resident in the district in which they, their parents, their guardians or persons in parental relationship to them reside.

(2) Individuals considered legally emancipated from their parents shall be considered resident in the district in which they actually reside, irrespective of the residence of their parents, their guardians or persons in parental relationship.

(3) Children placed by public or private agencies who are living in licensed, certified or approved substitute care programs shall be considered resident in the school district in which they reside because of placement by

1 a public or private agency.

2 (4)(a) Notwithstanding subsection (3) of this section, when a juvenile
3 court determines that it is in a child's best interest to continue to attend the
4 school that the child attended prior to placement by a public agency, the
5 child:

6 (A) Shall be considered resident for school purposes in the school district
7 in which the child resided prior to the placement; and

8 (B) May continue to attend the school the child attended prior to the
9 placement through the highest grade level of the school.

10 (b) The public agency that has placed the child shall be responsible for
11 providing the child with transportation to and from school when the need for
12 transportation is due to the placement by the public agency.

13 (c) Paragraph (b) of this subsection applies only to a public agency for
14 which funds have been designated for the specific purpose of providing a
15 child with transportation to and from school under this subsection.

16 (5) Except as provided in ORS 327.006 (7) and 335.090, persons whose legal
17 residence is not within the district but who attend school in the district are
18 considered residents in the district in which the persons attend school if
19 those persons receive:

20 (a) Written consent from both of the affected district school boards as
21 provided by policies adopted by the boards; or

22 (b) Written consent from the district school board for the district in
23 which the school is located as provided by section 9, chapter 718, Oregon
24 Laws 2011.

25 *[(6)(a) Children who are foreign exchange students and who are residing*
26 *in Oregon in a dormitory operated by a school district are considered to be*
27 *residents of the school district in which the dormitory is located.]*

28 *[(b) For the purpose of this subsection:]*

29 *[(A) A child may not be considered to be a foreign exchange student for*
30 *more than one school year.]*

31 *[(B) A child may be considered to be a resident of a school district as*

provided by this subsection only if, for the 2010-2011 school year, the school district had foreign exchange students who would have been considered residents under the provisions of this subsection.]

[(C) The number of children who may be considered residents under the provisions of this subsection may not increase relative to the number who would have been considered residents under the provisions of this subsection for the 2010-2011 school year.]

[(c) As used in this subsection, “foreign exchange student” means a student who attends school in Oregon under a cultural exchange program and whose parent, guardian or person in parental relationship resides in another country.]

[(7)] **(6)** For the purposes of this section:

(a) “Person in parental relationship” means an adult who has physical custody of a child or resides in the same household as the child, interacts with the child daily, provides the child with food, clothing, shelter and incidental necessities and provides the child with necessary care, education and discipline. “Person in parental relationship” does not mean a person with a power of attorney or other written delegation of parental responsibilities if the person does not have other evidence of a parental relationship.

(b) “Substitute care program” means family foster care, family group home care, parole foster care, family shelter care, adolescent shelter care and professional group care.

SECTION 4. (1) The amendments to ORS 339.133 by section 3 of this 2016 Act become operative on July 1, 2017.

(2) The amendments to ORS 339.133 by section 3 of this 2016 Act first apply to the 2017-2018 school year.

SECTION 5. ORS 339.127, as amended by section 3, chapter 655, Oregon Laws 2013, section 2, chapter 5, Oregon Laws 2014, and section 2, chapter 499, Oregon Laws 2015, is amended to read:

339.127. (1) A district school board that admits nonresident students by giving consent as described in ORS 339.133 (5)(a) may not consider race, re-

ligion, sex, sexual orientation, ethnicity, national origin, disability, health, whether a student has an individualized education program, the terms of an individualized education program, income level, residence, proficiency in the English language, athletic ability or academic records when:

(a) Determining whether to give consent; or

(b) Establishing any terms of consent.

(2) A district school board that is considering whether to admit a non-resident student by giving consent may require only the following information prior to deciding whether to give consent:

(a) The name, contact information, date of birth and grade level of the student;

(b) Information about whether the school district may be prevented or otherwise limited from providing consent as provided by ORS 339.115 (8);

(c) Information about whether the student may be given priority as provided by subsection (4) of this section; and

(d) Information about which schools the student prefers to attend.

(3)(a) A district school board that is considering whether to admit a nonresident student by giving consent may not:

(A) Request or require any person to provide or have provided any of the following information related to a student prior to the district school board deciding whether to give consent to the student:

(i) Information about the student's race, religion, sex, sexual orientation, ethnicity, national origin, disability, health, whether a student has an individualized education program, the terms of an individualized education program, income level, residence, proficiency in the English language or athletic ability; or

(ii) Academic records, including eligibility for or participation in a talented and gifted program or special education and related services.

(B) Request or require the student to participate in an interview, to tour any of the schools or facilities of the school district or to otherwise meet with any representatives of a school or a school district prior to the district

1 school board deciding whether to give consent to the student.

2 (C) Request any information used to supplement the information described
3 in subsection (2) of this section prior to deciding whether to give consent to
4 the student.

5 (b) Nothing in this subsection prevents a student from voluntarily touring
6 any of the schools or facilities of a school district or from requesting or re-
7 ceiving any information from a school or the school district.

8 (4)(a) A district school board that gives consent as described in ORS
9 339.133 (5)(a) may limit the number of students to whom consent is given.
10 The district school board must make the determination whether to limit the
11 number of students to whom consent is given by an annual date established
12 by the board.

13 (b) If the number of students seeking consent exceeds any limitations
14 imposed by the district school board, the board must give consent to students
15 based on an equitable lottery selection process. The process may give priority
16 to students who:

17 (A) Have siblings currently enrolled in a school of the same school dis-
18 trict for which the student seeks admission;

19 (B) Previously had received consent as provided by subsection (10) of this
20 section because of a change in legal residence; or

21 (C) Attended a public charter school located in the same district for
22 which the student seeks admission for at least three consecutive years,
23 completed the highest grade offered by the public charter school and did not
24 enroll in and attend school in another district following completion of the
25 highest grade offered by the public charter school.

26 (c) A district school board may revise the maximum number of students
27 to whom consent will be given at a time other than the annual date estab-
28 lished by the board if there are no pending applications for consent.

29 (5) A district school board that is requested to give consent to allow a
30 resident student to be admitted by another school district as described in
31 ORS 339.133 (5)(a) may not consider race, religion, sex, sexual orientation,

ethnicity, national origin, disability, health, whether a student has an individualized education program, the terms of an individualized education program, income level, residence, proficiency in the English language, athletic ability or academic records when determining whether to give consent.

(6) If a district school board decides to not give consent to a student, the board must provide a written explanation to the student.

(7)(a) For a nonresident student who receives consent to be admitted to a school district as described in ORS 339.133 (5)(a), a district school board may:

(A) Determine the length of time for which consent is given; and

(B) Revoke consent for failure to comply with minimum standards for behavior or attendance, but may not revoke consent for failure to meet standards for academics.

(b) Any limitations in length of time for consent, as allowed under paragraph (a) of this subsection, must be applied consistently among all students to whom consent is given. The length of time for which consent is given shall not be affected by any changes in the legal residence of the student if the student wishes to continue to attend the schools of the school district.

(c) If consent is revoked as provided by paragraph (a) of this subsection, a student may not request consent from the same school district that revoked the consent for the school year following the school year in which the consent was revoked.

(8) For a resident student who receives consent to be admitted to another school district as described in ORS 339.133 (5)(a), a district school board may not impose any limitations on the length of time for which consent is given to the student. The board may not require the student to receive consent more than one time to be admitted to the same school district, regardless of any time limitations imposed by the district school board under paragraph (a) of this subsection.

(9)(a) A school district that provides consent to nonresident students to attend the schools of the school district may not expend moneys received

1 from the State School Fund or as Local Revenues, as described in ORS
2 327.011, to advertise openings for nonresident students if the advertisements
3 are:

4 (A) Located outside the boundaries of the school district, including ad-
5 vertisements that are made by signage or billboards; or

6 (B) Directed to nonresident students, including:

7 (i) Advertisements that are targeted to nonresident students through di-
8 rect mail or online marketing;

9 (ii) Television or radio advertisements; or

10 (iii) Newspaper advertisements, unless the advertisement is in a newspa-
11 per that primarily serves the residents of the school district.

12 (b) Notwithstanding paragraph (a)(A) of this subsection, if a school is
13 located outside the boundaries of the school district, the school district may
14 advertise openings for nonresident students on the property of the school.

15 (c) Nothing in this subsection:

16 (A) Prohibits a school district from providing information or advertise-
17 ments to nonresident students if the parents of the students request the in-
18 formation or advertisements.

19 (B) Prohibits a public charter school from advertising openings.

20 (10) Notwithstanding any other provision of this section, a district school
21 board that is requested to give consent as described in ORS 339.133 (5)(a)
22 must give consent to a student whose legal residence changes to a different
23 school district:

24 (a) During the school year, to enable the student to complete the school
25 year in the school district; or

26 (b) During the summer prior to the school year, to enable the student to
27 complete the school year following the summer in the school district.

28 (11) Nothing in this section:

29 (a) Requires a district school board to admit students for whom priority
30 may be given under subsection (4)(b) of this section if the board imposes
31 limitations on the number of students admitted by consent.

(b) Prevents a district school board from denying admission to a nonresident student as provided by ORS 339.115 (8).

(c) Prevents a district school board from requesting information or giving consent to a student in the event of:

(A) An emergency to protect the health, safety or welfare of the student; or

(B) A hardship of the student, as determined based on rules adopted by the State Board of Education.

(d) Prevents a district school board from establishing minimum standards for behavior and attendance that a student must maintain to remain enrolled in the schools of the school district.

SECTION 6. Section 12, chapter 695, Oregon Laws 2011, as amended by section 30, chapter 718, Oregon Laws 2011, is repealed.

SECTION 7. ORS 338.055, as amended by section 10, chapter 695, Oregon Laws 2011, section 4, chapter 265, Oregon Laws 2013, and section 5, chapter 327, Oregon Laws 2013, is amended to read:

338.055. (1)(a) Upon receipt of a proposal submitted under ORS 338.045, the school district board shall determine whether the proposal is complete. A proposal is complete if the proposal addresses, at least minimally, each element required by ORS 338.045 (2) and (3).

(b) The school district board shall notify an applicant within 30 days after receipt of a proposal if the proposal is not complete and identify the specific elements of the proposal that are not complete. The school district board shall provide the applicant with a reasonable opportunity to complete the proposal.

(c) A proposal may be disapproved if the applicant has received a reasonable opportunity to complete the proposal and the applicant does not provide a proposal that is complete.

(d) If the school district board disapproves a proposal as provided by paragraph (c) of this subsection, the applicant may appeal the decision to the State Board of Education. The State Board of Education may review the

proposal only for completeness and may determine that the proposal is:

(A) Not complete and uphold the decision of the school district board; or

(B) Complete and remand the proposal to the school district board for consideration.

(2) Within 60 days after receipt of a completed proposal, the school district board shall hold a public hearing on the provisions of the proposal.

(3) The school district board shall evaluate a proposal in good faith using the following criteria:

(a) The demonstrated, sustainable support for the public charter school by teachers, parents, students and other community members, including comments received at the public hearing held under subsection (2) of this section;

(b) The demonstrated financial stability of the public charter school, including the demonstrated ability of the school to have a sound financial management system that is in place at the time the school begins operating and that meets the requirements of ORS 338.095 (1);

(c) The capability of the applicant, in terms of support and planning, to provide comprehensive instructional programs to students pursuant to an approved proposal;

(d) The capability of the applicant, in terms of support and planning, to specifically provide, pursuant to an approved proposal, comprehensive instructional programs to students identified by the applicant as academically low achieving;

(e) The adequacy of the information provided as required by ORS 338.045 (2) and (3);

(f) Whether the value of the public charter school is outweighed by any directly identifiable, significant and adverse impact on the quality of the public education of students residing in the school district in which the public charter school will be located;

(g) Whether there are arrangements for any necessary special education and related services for children with disabilities pursuant to ORS 338.165;

(h) Whether there are alternative arrangements for students and for teachers and other school employees who choose not to attend or who choose not to be employed by the public charter school; and

(i) The prior history, if any, of the applicant in operating a public charter school or in providing educational services.

(4) The school district board must approve a proposal or state in writing the reasons for disapproving a proposal within 30 days after the public hearing held under subsection (2) of this section.

(5)(a) Written notice of the school district board's action shall be sent to the applicant. If the proposal is not approved:

(A) The reasons for the denial and suggested remedial measures, if any, shall be clearly stated in the notice sent by the school district board to the applicant; and

(B) The applicant may amend the proposal to address objections and any suggested remedial measures and resubmit the proposal to the school district board.

(b) The school district board shall approve or disapprove the resubmitted proposal within 30 days after receiving it. If the proposal is not approved, the applicant may:

(A) Appeal the decision of the school district board to the State Board of Education[.] **as provided by ORS 338.075; or**

(B) **Submit a proposal to an institution of higher education as provided by ORS 338.075.**

(c) When the State Board of Education receives an appeal under this subsection, the board may review the resubmitted proposal only to determine whether:

(A) The school district board used the process required by this section in denying the proposal;

(B) The proposal meets the criteria described in subsection (3) of this section; and

(C) The reasons stated by the school district board for the denial are

valid.

(d) Following a review described in paragraph (c) of this subsection, the State Board of Education may:

(A) Uphold the decision of the school district board to disapprove the proposal; or

(B) Remand the proposal to the school district board for reconsideration.

(6)(a) Individual elements in a public charter school proposal may be changed through the proposal and chartering process by mutual agreement of the school district board and the applicant.

(b) If the school district board and the applicant are unable to agree on a change during the proposal or chartering process, the school district board or the applicant may request mediation by the State Board of Education.

(c) If the school district board and the applicant are unable to reach an agreement following mediation as described in paragraph (b) of this subsection, the proposal submitted under ORS 338.045, without the change that was the subject of mediation, shall be the proposal that governs the public charter school and:

(A) The parties may execute the charter for the public charter school based on the proposal;

(B) The applicant may withdraw the proposal; or

(C) The school district board may disapprove the proposal.

(7) Before an existing public school is converted to a public charter school, the proposal for the conversion must be approved by the school district board of the public school.

(8) Entities described in ORS 338.005 (5) may not charge any fee to applicants for the proposal process.

(9) Upon request by a school district, the State Board of Education may grant an extension of any timeline required by this section if the district has good cause for requesting the extension.

SECTION 8. ORS 338.075, as amended by section 29, chapter 718, Oregon Laws 2011, section 5, chapter 91, Oregon Laws 2012, and section 6, chapter

265, Oregon Laws 2013, is amended to read:

338.075. (1) If a school district board disapproves a proposal to establish a public charter school following reconsideration of a proposal pursuant to ORS 338.055 (5), the applicant may:

(a) Request that the State Board of Education review the decision of the school district board[.]; **or**

(b) Submit a proposal to an institution of higher education.

(2)(a) If the State Board of Education reviews a decision of the school district board, as provided by subsection (1) of this section, the State Board of Education may review the decision only to determine whether:

(A) The school district board used the process required by ORS 338.055 in denying the proposal;

(B) The proposal meets the criteria described in ORS 338.055 (3); and

(C) The reasons stated by the school district board for the denial are valid.

(b) Following a review described in paragraph (a) of this subsection, the State Board of Education may:

(A) Uphold the decision of the school district board to disapprove the proposal;

(B) Remand the proposal to the school district board for reconsideration if the school district board and applicant agree to the remand; or

(C) Consider becoming the sponsor of the public charter school if the applicant agrees to the sponsorship.

(3) An applicant may seek judicial review of an order of the State Board of Education pursuant to ORS 183.484. If the court finds that the decision of the State Board of Education is not supported by substantial evidence in the record, the court shall enter a judgment directing the State Board of Education to sponsor the public charter school.

(4)(a) An applicant seeking sponsorship by an institution of higher education may submit to the institution of higher education the same proposal that was submitted to the school district board under ORS

338.045 or a proposal that is modified to take into consideration the characteristics of the institution of higher education evaluating the proposal under this subsection.

(b) Upon receipt of a proposal, an institution of higher education may evaluate the proposal. The institution of higher education shall:

(A) Approve or disapprove the proposal using the criteria described in ORS 338.055 (3)(b) to (i) and approve the proposal only if the institution of higher education may become a sponsor as provided by paragraphs (e) and (f) of this subsection; or

(B) Disapprove the proposal based on the institution's determination that the proposal does not align with the mission of the institution of higher education.

(c)(A) The following decisions by an institution of higher education are final and not subject to appeal:

(i) Whether to evaluate a proposal for a public charter school; and

(ii) The approval or disapproval of a proposal for a public charter school.

(B) The process by which an institution of higher education makes a decision described in subparagraph (A) of this paragraph is not subject to appeal.

(d) Within 60 days after receiving a proposal, the institution of higher education must approve the proposal or, if disapproving the proposal, state in writing the reasons for disapproving the proposal.

[(4)(a)] (e) An institution of higher education may [*sponsor a public charter school*] approve a proposal evaluated under this subsection only if[.]

[(A)] the main campus of the institution of higher education is located within 25 miles of the proposed public charter school, based on the nearest traveled road. [; and]

[(B) *The institution of higher education first became a sponsor of the public charter school prior to July 1, 2017.*]

1 ~~[(b)]~~ (f) An institution of higher education may sponsor only one public
2 charter school in this state, regardless of the number of campuses or lo-
3 cations of the institution of higher education.

4 ~~[(c)]~~ (g) If a public charter school has a sponsor that is an institution of
5 higher education and the public charter school enters into a contract with
6 a third-party entity to provide educational services for the public charter
7 school:

8 (A) A member of the governing body of the public charter school or the
9 governing body of the sponsor may not be an employee of the third-party
10 entity, be a member of the governing board of the third-party entity or be
11 any other representative of the third-party entity;

12 (B) An employee or a member of the governing board of the third-party
13 entity may not attend an executive session of the sponsor;

14 (C) An employee of the public charter school may not promote the sale
15 or benefits of private supplemental services or classes offered by the third-
16 party entity; and

17 (D) The educational services provided by the third-party entity must
18 comply with state standards and requirements, and any provision of the
19 contract with the third-party entity that does not allow for the provision of
20 educational services that comply with state standards and requirements is
21 void.

22 **SECTION 9. This 2016 Act being necessary for the immediate pres-**
23 **ervation of the public peace, health and safety, an emergency is de-**
24 **clared to exist, and this 2016 Act takes effect on its passage.**