

# DRAFT

## 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.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

Relating to sunset of open enrollment law; creating new provisions; amending ORS 339.127 and 339.133; repealing 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 (1) Section 21, chapter 718, Oregon Laws 2011, as amended by section 9, chapter 434, Oregon Laws 2013, is repealed.**

**(2) Section 22, chapter 718, Oregon Laws 2011, is repealed.**

**(3) Section 11, chapter 781, Oregon Laws 2015, is repealed.**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

1 with a power of attorney or other written delegation of parental responsi-  
2 bilities if the person does not have other evidence of a parental relationship.

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

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

8 339.133. (1)(a) Except as provided in subsections (2) to [(6)] (5) of this  
9 section, children between the ages of 4 and 18 shall be considered resident  
10 for school purposes in the school district in which their parents, their  
11 guardians or persons in parental relationship to them reside.

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

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

22 (2) Individuals considered legally emancipated from their parents shall be  
23 considered resident in the district in which they actually reside, irrespective  
24 of the residence of their parents, their guardians or persons in parental re-  
25 lationship.

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

30 (4)(a) Notwithstanding subsection (3) of this section, when a juvenile  
31 court determines that it is in a child's best interest to continue to attend the

1 school that the child attended prior to placement by a public agency, the  
2 child:

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

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

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

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

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

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

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

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

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

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

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

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

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

9 [(7)] **(6)** For the purposes of this section:

10 (a) “Person in parental relationship” means an adult who has physical  
 11 custody of a child or resides in the same household as the child, interacts  
 12 with the child daily, provides the child with food, clothing, shelter and in-  
 13 cidental necessities and provides the child with necessary care, education  
 14 and discipline. “Person in parental relationship” does not mean a person  
 15 with a power of attorney or other written delegation of parental responsi-  
 16 bilities if the person does not have other evidence of a parental relationship.

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

20 **SECTION 4. (1) The amendments to ORS 339.133 by section 3 of this**  
 21 **2016 Act become operative on July 1, 2017.**

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

24 **SECTION 5.** ORS 339.127, as amended by section 3, chapter 655, Oregon  
 25 Laws 2013, section 2, chapter 5, Oregon Laws 2014, and section 2, chapter  
 26 499, Oregon Laws 2015, is amended to read:

27 339.127. (1) A district school board that admits nonresident students by  
 28 giving consent as described in ORS 339.133 (5)(a) may not consider race, re-  
 29 ligion, sex, sexual orientation, ethnicity, national origin, disability, health,  
 30 whether a student has an individualized education program, the terms of an  
 31 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 school board deciding whether to give consent to the student.

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

the student.

(b) Nothing in this subsection prevents a student from voluntarily touring any of the schools or facilities of a school district or from requesting or receiving any information from a school or the school district.

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

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

(A) Have siblings currently enrolled in a school of the same school district for which the student seeks admission;

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

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

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

(5) A district school board that is requested to give consent to allow a resident student to be admitted by another school district as described in 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 from the State School Fund or as Local Revenues, as described in ORS 327.011, to advertise openings for nonresident students if the advertisements are:

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

3 (B) Directed to nonresident students, including:

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

6 (ii) Television or radio advertisements; or

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

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

12 (c) Nothing in this subsection:

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

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

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

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

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

25 (11) Nothing in this section:

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

29 (b) Prevents a district school board from denying admission to a nonres-  
30 ident student as provided by ORS 339.115 (8).

31 (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. This 2016 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2016 Act takes effect on its passage.**