

# Chapter 338

2007 EDITION

## Public Charter Schools

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**GENERAL PROVISIONS**

**338.005 Definitions.** As used in this chapter, unless the context requires otherwise:

(1) "Applicant" means any person or group that develops and submits a written proposal for a public charter school to a sponsor.

(2) "Public charter school" means an elementary or secondary school offering a comprehensive instructional program operating under a written agreement entered into between a sponsor and an applicant and operating pursuant to this chapter.

(3) "Remote and necessary school district" means a school district that offers kindergarten through grade 12 and has:

(a) An average daily membership (ADM), as defined in ORS 327.006, in the prior fiscal year of less than 110; and

(b) A school that is located, by the nearest traveled road, more than 20 miles from the nearest school or from a city with a population of more than 5,000.

(4) "Sponsor" means:

(a) The board of the common school district or the union high school district in which the public charter school is located that has developed a written charter with an applicant to create a public charter school.

(b) The State Board of Education pursuant to ORS 338.075. [1999 c.200 §2; 2007 c.575 §2]

**Note:** Section 3, chapter 575, Oregon Laws 2007, provides:

**Sec. 3.** The amendments to ORS 338.005 and 338.035 by sections 1 and 2 of this 2007 Act apply to a public charter school that:

(1) First begins operation as a public charter school on or after the effective date of this 2007 Act [July 1, 2007]; or

(2) Renews its charter on or after the effective date of this 2007 Act. [2007 c.575 §3]

**338.010** [Amended by 1965 c.100 §153; renumbered 332.405]

**338.015 Legislative intent; goals.** It is the intent of this chapter that new types of schools, called public charter schools, be created as a legitimate avenue for parents, educators and community members to take responsible risks to create new, innovative and more flexible ways of educating children within the public school system. The Legislative Assembly seeks to create an atmosphere in Oregon's public school system where research and development of new learning opportunities are actively pursued. The provisions of this chapter should be interpreted liberally to support the goals of this section and to advance a renewed commitment by this state to the mission, goals and diversity of public education. It is the intent that public charter schools may serve

as models and catalysts for the improvement of other public schools and the public school system. The goals of public charter schools shall be to:

(1) Increase student learning and achievement;

(2) Increase choices of learning opportunities for students;

(3) Better meet individual student academic needs and interests;

(4) Build stronger working relationships among educators, parents and other community members;

(5) Encourage the use of different and innovative learning methods;

(6) Provide opportunities in small learning environments for flexibility and innovation, which may be applied, if proven effective, to other public schools;

(7) Create new professional opportunities for teachers;

(8) Establish additional forms of accountability for schools; and

(9) Create innovative measurement tools. [1999 c.200 §1]

**338.020** [Repealed by 1965 c.100 §456]

**338.025 Rules; waiver of provisions of chapter; exceptions.** (1) The State Board of Education may adopt any rules necessary for the implementation of this chapter. The rules shall follow the intent of this chapter.

(2) Upon application by a public charter school, the State Board of Education may grant a waiver of any provision of this chapter if the waiver promotes the development of programs by providers, enhances the equitable access by underserved families to the public education of their choice, extends the equitable access to public support by all students or permits high quality programs of unusual cost. The State Board of Education may not waive any appeal provision in this chapter or any provision under ORS 338.115 (1)(a) to (r). [1999 c.200 §13; 2001 c.810 §3; 2005 c.367 §5; 2007 c.575 §4; 2007 c.660 §4]

**Note:** The amendments to 338.025 by section 8, chapter 839, Oregon Laws 2007, become operative July 1, 2017, and first apply to the 2017-2018 school year. See section 9, chapter 839, Oregon Laws 2007. The text that is operative on and after July 1, 2017, is set forth for the user's convenience.

**338.025.** (1) The State Board of Education may adopt any rules necessary for the implementation of this chapter. The rules shall follow the intent of this chapter.

(2) Upon application by a public charter school, the State Board of Education may grant a waiver of any provision of this chapter if the waiver promotes the development of programs by providers, enhances the equitable access by underserved families to the public education of their choice, extends the equitable access to public support by all students or permits high quality programs of unusual cost. The State Board of Education

may not waive any appeal provision in this chapter or any provision under ORS 338.115 (1)(a) to (s).

**338.030** [Repealed by 1965 c.100 §456]

### FORMATION

**338.035 Establishment requirements; proposal submission timeline; prohibitions.** (1) A public charter school may be established:

- (a) As a new public school;
  - (b) From an existing public school or a portion of the school; or
  - (c) From an existing alternative education program, as defined in ORS 336.615.
- (2)(a) Before a public charter school may operate as a public charter school, it must:
- (A) Be approved by a sponsor;
  - (B) Be established as a nonprofit organization under the laws of Oregon; and
  - (C) Have applied to qualify as an exempt organization under section 501(c)(3) of the Internal Revenue Code.

(b) Notwithstanding paragraph (a) of this subsection, the requirements of paragraph (a)(B) and (C) of this subsection do not apply to:

- (A) A school in a school district that is composed of only one school; and
- (B) A school in a school district that is a remote and necessary school district on the date the school first begins operation as a public charter school.

(3) An applicant seeking to establish a public charter school shall submit a proposal pursuant to ORS 338.045 to the school district board of the school district within which the public charter school will be located at least 120 days prior to the date upon which the public charter school would begin operating. However, it is recommended that an applicant consult with the school district board prior to submitting a proposal.

(4) An applicant seeking to establish a public charter school shall provide to the State Board of Education a copy of any proposal submitted to a school district board under ORS 338.045 and a copy of any subsequent approval by the school district board.

(5)(a) One or more, but not all, schools in a school district may become public charter schools.

(b) Notwithstanding paragraph (a) of this subsection, a school in a school district that is composed of only one school may become a public charter school.

(6)(a) A school district board or the State Board of Education may not approve a public charter school proposal that authorizes the conversion of any private school that is tuition based to a public charter school.

(b) Notwithstanding paragraph (a) of this subsection, a school district board or the State Board of Education may authorize the conversion of an existing alternative education program, as defined in ORS 336.615, to a public charter school.

(7) A school district board or the State Board of Education may not approve a public charter school proposal that is affiliated with a nonpublic sectarian school or a religious institution. [1999 c.200 §3; 2003 c.313 §1; 2005 c.209 §26; 2007 c.575 §1]

**Note:** See note under 338.005.

**338.040** [Repealed by 1965 c.100 §456]

**338.045 Proposal requirements; technical assistance; buildings.** (1) An applicant seeking to establish a public charter school shall submit a written proposal to a school district board.

(2) The proposal shall include, but need not be limited to:

- (a) The identification of the applicant;
- (b) The name of the proposed public charter school;
- (c) A description of the philosophy and mission of the public charter school;
- (d) A description of the curriculum of the public charter school;
- (e) A description of the expected results of the curriculum and the verified methods of measuring and reporting objective results that will show the growth of knowledge of students attending the public charter school and allow comparisons with public schools;
- (f) The governance structure of the public charter school;
- (g) The projected enrollment to be maintained and the ages or grades to be served;
- (h) The target population of students the public charter school will be designed to serve;
- (i) A description of any distinctive learning or teaching techniques to be used in the public charter school;

(j) The legal address, facilities and physical location of the public charter school, if known;

(k) A description of admission policies and application procedures;

(L) The statutes and rules that shall apply to the public charter school;

(m) The proposed budget and financial plan for the public charter school and evidence that the proposed budget and financial plan for the public charter school are financially sound;

(n) The standards for behavior and the procedures for the discipline, suspension or expulsion of students;

(o) The proposed school calendar for the public charter school, including the length of the school day and school year;

(p) A description of the proposed staff members and required qualifications of teachers at the public charter school;

(q) The date upon which the public charter school would begin operating;

(r) The arrangements for any necessary special education and related services provided pursuant to ORS 338.165 for children with disabilities who may attend the public charter school;

(s) Information on the manner in which community groups may be involved in the planning and development process of the public charter school;

(t) The term of the charter;

(u) The plan for performance bonding or insuring the public charter school, including buildings and liabilities;

(v) A proposed plan for the placement of public charter school teachers, other school employees and students of the public charter school upon termination or nonrenewal of a charter;

(w) The manner in which the program review and fiscal audit will be conducted; and

(x) In the case of an existing public school being converted to charter status:

(A) The alternative arrangements for students who choose not to attend the public charter school and for teachers and other school employees who choose not to participate in the public charter school; and

(B) The relationship that will exist between the public charter school and its employees, including evidence that the terms and conditions of employment have been addressed with affected employees and their recognized representative, if any.

(3) In addition to the requirements of subsection (2) of this section, the school district board may require any additional information the board considers relevant to the formation or operation of a public charter school.

(4) At the request of the applicant, the school district board may provide technical assistance in developing the proposal for operation of the public charter school.

(5) School districts, education service districts and other public bodies, as defined in ORS 174.109, shall make available to the public lists of vacant and unused public buildings and portions of buildings that may be suitable for the operation of a public charter school. The lists shall be provided to developing or operating public charter

schools within 30 days of a written request. Nothing in this subsection requires the owner of a building on the list to sell or lease the building or any portion of the building to a public charter school or a public charter school governing body. [1999 c.200 §6; 2007 c.671 §1]

**338.050** [Repealed by 1965 c.100 §456]

**338.055 Approval process; public hearing; evaluation criteria; notice of decision; fees prohibited; timeline extensions.**

(1) Within 60 days of receipt of a proposal submitted under ORS 338.045, the school district board shall hold a public hearing on the provisions of the proposal.

(2) 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 (1) of this section;

(b) The demonstrated financial stability of the public charter school;

(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 extent to which the proposal addresses the information required in ORS 338.045;

(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; and

(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.

(3) 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 (1) of this section.

(4) Written notice of the school district board's action shall be sent to the applicant. If the proposal is not approved, 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. If the proposal is not approved, the applicant may amend the proposal to address objections and any suggested remedial measures and resubmit the proposal to the school district board. The school district board shall approve or disapprove the resubmitted proposal within 20 days after receiving it. If the proposal is not approved, the applicant may appeal the decision of the school district board to the State Board of Education.

(5) Individual elements in a public charter school proposal may be changed through the proposal and chartering process.

(6) A proposal to convert an existing public school to a public charter school must be approved by the school district board of the public school.

(7) The school district board or the State Board of Education shall not charge any fee to applicants for the proposal process.

(8) 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. [1999 c.200 §7; 2005 c.209 §27]

**338.060** [Renumbered 332.415]

**338.065 Terms and form of charter; amendment of charter; renewal; appeal.**

(1) Upon approval of a proposal by a school district board under ORS 338.055, the school district board shall become the sponsor of the public charter school. The sponsor and applicant shall develop a written charter that contains the provisions of the proposal that have been duly approved by the sponsor and public charter school governing body. The sponsor and the applicant may agree to change elements of the proposal prior to incorporating them into the charter or exclude elements of the proposal from the charter. The charter, when duly executed by the sponsor and the public charter school governing body, shall act as the legal authorization for the establishment of the public charter school. The charter shall be legally binding on both the sponsor and the public charter school governing body.

(2) The sponsor and the public charter school governing body may amend a charter by joint agreement.

(3)(a) The initial charter shall be in effect for a period of not more than five years and shall be renewed upon the authorization of

the sponsor using the process established under this section.

(b) The first renewal of a charter shall be for the same time period as the initial charter.

(c) Subsequent renewals of a charter shall be for a minimum of five years but may not exceed 10 years.

(4)(a) The renewal of a charter shall use the process required by this section.

(b) The public charter school governing body shall submit a written renewal request to the sponsor for consideration at least 180 days prior to the expiration of the charter.

(c) Within 45 days after receiving a written renewal request from a public charter school governing body, the sponsor shall hold a public hearing regarding the request for renewal.

(d) Within 10 days after the public hearing, the sponsor shall notify the public charter school governing body of the sponsor's intent about the renewal of the charter.

(e) Within 20 days after the public hearing, the sponsor shall approve the renewal of the charter or state in writing the reasons for denying the renewal of the charter.

(f) If the sponsor approves the renewal of the charter, the sponsor and the public charter school governing body shall negotiate a new charter within 90 days after the date on which the sponsor approved the renewal of the charter unless the sponsor and the public charter school governing body agree to an extension of the time period.

(g) If the sponsor does not renew the charter, the public charter school governing body may address the reasons stated under paragraph (e) of this subsection and any remedial measures suggested by the sponsor and submit a revised request for renewal to the sponsor.

(h) Notwithstanding paragraphs (b) to (g) of this subsection, a sponsor and a public charter school governing body may agree in the charter of the school to a timeline for renewing the charter that is different from the timeline required by paragraphs (b) to (g) of this subsection.

(5)(a) If the sponsor does not renew the charter based on the revised request for renewal submitted under subsection (4)(g) of this section, the public charter school governing body may appeal the decision of the sponsor to the State Board of Education for a review of whether the sponsor used the process required by this section in denying the renewal of the charter.

(b) If the board finds that the sponsor used the process required by this section in denying the request for renewal, the board

shall affirm the decision of the sponsor. A public charter school governing body may seek judicial review of an order of the board pursuant to ORS 183.484.

(c) If the board finds that the sponsor did not use the process required by this section in denying the request for renewal, the board shall order the sponsor to reconsider the request for renewal.

(d) If after reconsideration pursuant to paragraph (c) of this subsection the sponsor does not renew the charter, the public charter school governing body may seek judicial review of an order of the sponsor pursuant to ORS 183.484.

(e) If the board is the sponsor of a public charter school and the board does not renew the charter based on the revised request for renewal submitted under subsection (4)(g) of this section, the public charter school governing body may seek judicial review of an order of the board pursuant to ORS 183.484 for a review of whether the board used the process required by this section in denying the request for renewal.

(6)(a) The sponsor shall base the charter renewal decision on a good faith evaluation of whether the public charter school:

(A) Is in compliance with this chapter and all other applicable state and federal laws;

(B) Is in compliance with the charter of the public charter school;

(C) Is meeting or working toward meeting the student performance goals and agreements specified in the charter or any other written agreements between the sponsor and the public charter school governing body;

(D) Is fiscally stable; and

(E) Is in compliance with any renewal criteria specified in the charter of the public charter school.

(b) The sponsor shall base the renewal evaluation described in paragraph (a) of this subsection primarily on a review of the public charter school's annual performance reports, annual audit of accounts and annual site visit and review as required by ORS 338.095 and any other information mutually agreed upon by the public charter school governing body and the sponsor. [1999 c.200 §8; 2005 c.522 §1]

**338.070** [Amended by 1965 c.100 §154; 1965 c.123 §2; renumbered 332.425]

**338.075 Review of school district board decision; sponsorship by State Board of Education; judicial review.** (1) If a school district board does not approve a proposal to start a public charter school pursuant to ORS 338.055, the applicant may request that

the State Board of Education review the decision of the school district board.

(2) Upon receipt of a request for review, the State Board of Education:

(a) Shall attempt to mediate a resolution between the applicant and the school district board.

(b) May recommend to the applicant and school district board revisions to the proposal.

(c) If the school district board does not accept the revisions to the proposal and the applicant agrees to the sponsorship, may become the sponsor of the public charter school.

(3) Upon receipt of a request for review, in addition to actions described in subsection (2) of this section and at any time during the review process, the State Board of Education may reject a proposal to start a public charter school if the school fails to meet the requirements of this chapter.

(4) 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. [1999 c.200 §9; 2001 c.376 §1; 2005 c.209 §28]

## OPERATION

### **338.095 Annual report, visit and audit.**

(1) A public charter school shall report to the sponsor and the State Board of Education at least annually on the performance of the school and its students. A public charter school shall disclose in its report information necessary to make a determination of compliance with the requirements of this chapter. The sponsor or the sponsor's designee at least annually shall visit the public charter school site and review the public charter school's compliance with the terms and provisions of the charter.

(2) The public charter school shall have an annual audit of the accounts of the public charter school prepared in accordance with the Municipal Audit Law, ORS 297.405 to 297.555 and 297.990. The annual audit shall be forwarded to the sponsor, the State Board of Education and the Department of Education.

(3) The State Board of Education may require public charter schools to file reports with the Department of Education as necessary to enable the department to gather information on public charter schools for inclusion in the Oregon Report Card issued pursuant to ORS 329.115. [1999 c.200 §10]

**338.105 Termination of charter; appeal; rules; dissolution or closure of school.** (1) During the term of a charter, the sponsor may terminate the charter on any of the following grounds:

(a) Failure to meet the terms of an approved charter or this chapter.

(b) Failure to meet the requirements for student performance stated in the charter.

(c) Failure to correct a violation of a federal or state law that is described in ORS 338.115.

(d) Failure to maintain insurance as described in the charter.

(e) Failure to maintain financial stability.

(2) If a charter is terminated under subsection (1) of this section, the sponsor shall notify the public charter school governing body at least 60 days prior to the proposed effective date of the termination. The notice shall state the grounds for the termination. The public charter school governing body may request a hearing by the sponsor.

(3) A public charter school governing body may appeal any decision of a sponsor that is:

(a) A school district board to the State Board of Education. The State Board of Education shall adopt by rule procedures to ensure a timely appeals process to prevent disruption of students' education.

(b) The State Board of Education to the circuit court pursuant to ORS 183.484.

(4)(a) Notwithstanding subsection (2) of this section, a sponsor may terminate a charter immediately and close a public charter school if the public charter school is endangering the health or safety of the students enrolled in the public charter school.

(b) The public charter school governing body may request a hearing from the sponsor on the termination of the charter under this subsection. The sponsor shall hold a hearing within 10 days after receiving the request.

(c) The public charter school governing body may appeal a decision of a sponsor under this subsection to the State Board of Education. The State Board of Education shall hold a hearing within 10 days after receiving the appeal request.

(d) Throughout the appeals process, the public charter school shall remain closed at the discretion of the sponsor unless the State Board of Education orders the sponsor to open the public charter school and not terminate the charter.

(5) Termination of a charter shall not abridge the public charter school's legal au-

thority to operate as a private or nonchartered public school.

(6) If a charter is terminated or a public charter school is dissolved, the assets of the public charter school that were purchased with public funds shall be given to the State Board of Education. The State Board of Education may disburse the assets of the public charter school to school districts or other public charter schools.

(7) A public charter school governing body may only terminate a charter, dissolve or close a public charter school at the end of a semester. If a charter is terminated by the public charter school governing body or a public charter school is closed or dissolved, the public charter school governing body shall notify the sponsor at least 180 days prior to the proposed effective date of the termination, closure or dissolution. [1999 c.200 §11]

**338.115 Applicability of laws; restrictions; powers; student diplomas and alternative certificates.** (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 192.410 to 192.505 (public records law);

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

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

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

(f) ORS 337.150 (textbooks);

(g) ORS 339.141, 339.147 and 339.155 (tuition and fees);

(h) ORS 659.850, 659.855 and 659.860 (discrimination);

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

(j) Health and safety statutes and rules;

(k) Any statute or rule that is listed in the charter;

(L) The statewide assessment system developed by the Department of Education for mathematics, science and English under ORS 329.485 (2);

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

(n) Any statute or rule that establishes requirements for instructional time provided by a school during each day or during a year;

(o) ORS 339.250 (12) (prohibition on infliction of corporal punishment);



(p) ORS 339.370, 339.372, 339.375 and 339.377 (reporting of child abuse and training on prevention and identification of child abuse);

(q) ORS 329.451 (diploma, modified diploma and alternative certificate);

(r) ORS chapter 657 (Employment Department Law); and

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

(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, state institution of higher education, 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, modified diploma or alternative certificate to any public charter school student who meets the district’s and state’s standards for a high school diploma, modified diploma or alternative certificate.

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

tive 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. [1999 c.200 §12; 2001 c.810 §4; 2003 c.303 §15; 2005 c.367 §4; 2005 c.730 §16; 2007 c.35 §6; 2007 c.256 §3; 2007 c.501 §3; 2007 c.575 §5; 2007 c.660 §17; 2007 c.858 §33]

**Note 1:** The amendments to 338.115 by section 17, chapter 660, Oregon Laws 2007, and section 33, chapter 858, Oregon Laws 2007, first apply to the 2008-2009 school year. See section 17, chapter 660, Oregon Laws 2007, and section 41, chapter 858, Oregon Laws 2007. The text that applies prior to the 2008-2009 school year, including amendments by section 6, chapter 35, Oregon Laws 2007, section 3, chapter 256, Oregon Laws 2007, section 3, chapter 501, Oregon Laws 2007, and section 5, chapter 575, Oregon Laws 2007, is set forth for the user’s convenience.

**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 192.410 to 192.505 (public records law);
- (c) ORS 192.610 to 192.690 (public meetings law);
- (d) ORS 297.405 to 297.555 and 297.990 (Municipal Audit Law);
- (e) ORS 181.534, 326.603, 326.607, 342.223 and 342.232 (criminal records checks);
- (f) ORS 337.150 (textbooks);
- (g) ORS 339.141, 339.147 and 339.155 (tuition and fees);
- (h) ORS 659.850, 659.855 and 659.860 (discrimination);
- (i) ORS 30.260 to 30.300 (tort claims);
- (j) Health and safety statutes and rules;
- (k) Any statute or rule that is listed in the charter;
- (L) The statewide assessment system developed by the Department of Education for mathematics, science and English under ORS 329.485 (1);
- (m) ORS 329.045 (academic content standards and instruction);
- (n) Any statute or rule that establishes requirements for instructional time provided by a school during each day or during a year;
- (o) ORS 339.250 (12) (prohibition on infliction of corporal punishment);
- (p) ORS 339.370, 339.372, 339.375 and 339.377 (reporting of child abuse and training on prevention and identification of child abuse);
- (q) ORS chapter 657 (Employment Department Law); and
- (r) 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 public charter school shall maintain an active enrollment of at least 25 students.

(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, state institution of higher education, 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, certificate, Certificate of Initial Mastery or Certificate of Advanced Mastery to any public charter school student who meets the district’s and state’s standards for a high school diploma, certificate, Certificate of Initial Mastery or Certificate of Advanced Mastery. If the school district offers a Certificate of Initial Mastery subject area endorsement to students who attend school in the district, then the school district shall offer the endorsement to any public charter school student who meets the district’s and state’s standards for the endorsement.

(12) A high school diploma, certificate, Certificate of Initial Mastery, Certificate of Initial Mastery subject area endorsement or Certificate of Advanced Mastery issued by a public charter school grants to the holder the same rights and privileges as a high school diploma, certificate, Certificate of Initial Mastery, Certificate of Initial Mastery subject area endorsement or Certificate of Advanced Mastery 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.

**Note 2:** The amendments to 338.115 by section 7, chapter 839, Oregon Laws 2007, become operative July 1, 2017, and first apply to the 2017-2018 school year. See section 9, chapter 839, Oregon Laws 2007. The text that is operative on and after July 1, 2017, is set forth for the user’s convenience.

**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 192.410 to 192.505 (public records law);
- (c) ORS 192.610 to 192.690 (public meetings law);
- (d) ORS 297.405 to 297.555 and 297.990 (Municipal Audit Law);

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

(f) ORS 337.150 (textbooks);

(g) ORS 339.141, 339.147 and 339.155 (tuition and fees);

(h) ORS 659.850, 659.855 and 659.860 (discrimination);

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

(j) Health and safety statutes and rules;

(k) Any statute or rule that is listed in the charter;

(L) The statewide assessment system developed by the Department of Education for mathematics, science and English under ORS 329.485 (2);

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

(n) ORS 329.496 (physical education);

(o) Any statute or rule that establishes requirements for instructional time provided by a school during each day or during a year;

(p) ORS 339.250 (12) (prohibition on infliction of corporal punishment);

(q) ORS 339.370, 339.372, 339.375 and 339.377 (reporting of child abuse and training on prevention and identification of child abuse);

(r) ORS 329.451 (diploma, modified diploma and alternative certificate);

(s) ORS chapter 657 (Employment Department Law); and

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

(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, state institution of higher education, 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, modified diploma or alternative certificate to any public charter school student who meets the district’s and state’s standards for a high school diploma, modified diploma or alternative certificate.

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

**338.125 Student admissions; fund-raising activities; online courses.** (1) Student enrollment in a public charter school shall be voluntary. All students who reside within the school district where the public charter school is located are eligible for enrollment at a public charter school. If the number of applications from students who reside within the school district exceeds the capacity of a program, class, grade level or building, the public charter school shall select students through an equitable lottery selection process. However, after a public charter school has been in operation for one or more years, the public charter school may give priority for admission to students:

(a) Who were enrolled in the school in the prior year; or

(b) Who have siblings who are presently enrolled in the school and who were enrolled in the school in the prior year.

(2)(a) If space is available a public charter school may admit students who do not reside in the school district in which the public charter school is located.

(b) Notwithstanding paragraph (a) of this subsection, if a public charter school offers any online courses as part of the curriculum of the school, then 50 percent or more of the students who attend the public charter school must reside in the school district in which the public charter school is located.

(3) A public charter school may not limit student admission based on ethnicity, national origin, race, religion, disability, gender, income level, proficiency in the English language or athletic ability, but may limit admission to students within a given age group or grade level.

(4) A public charter school may conduct fund-raising activities. However, a public charter school shall not require a student to participate in fund-raising activities as a condition of admission to the public charter school. [1999 c.200 §14; 2001 c.810 §8; 2005 c.834 §5]

**Note:** The amendments to 338.125 by section 23, chapter 100, Oregon Laws 2007, are the subject of a referendum petition that may be filed with the Secretary of State not later than September 26, 2007. If the referendum petition is filed with the required number of signatures of electors, chapter 100, Oregon Laws 2007, will be submitted to the people for their approval or rejection at the regular general election held on No-

vember 4, 2008. If approved by the people at the general election, chapter 100, Oregon Laws 2007, takes effect December 4, 2008. If the referendum petition is not filed with the Secretary of State or does not contain the required number of signatures of electors, the amendments to 338.125 by section 23, chapter 100, Oregon Laws 2007, take effect January 1, 2008. 338.125, as amended by section 23, chapter 100, Oregon Laws 2007, is set forth for the user's convenience.

**338.125.** (1) Student enrollment in a public charter school shall be voluntary. All students who reside within the school district where the public charter school is located are eligible for enrollment at a public charter school. If the number of applications from students who reside within the school district exceeds the capacity of a program, class, grade level or building, the public charter school shall select students through an equitable lottery selection process. However, after a public charter school has been in operation for one or more years, the public charter school may give priority for admission to students:

(a) Who were enrolled in the school in the prior year; or

(b) Who have siblings who are presently enrolled in the school and who were enrolled in the school in the prior year.

(2)(a) If space is available a public charter school may admit students who do not reside in the school district in which the public charter school is located.

(b) Notwithstanding paragraph (a) of this subsection, if a public charter school offers any online courses as part of the curriculum of the school, then 50 percent or more of the students who attend the public charter school must reside in the school district in which the public charter school is located.

(3) A public charter school may not limit student admission based on race, religion, sex, sexual orientation, ethnicity, national origin, disability, income level, proficiency in the English language or athletic ability, but may limit admission to students within a given age group or grade level.

(4) A public charter school may conduct fund-raising activities. However, a public charter school may not require a student to participate in fund-raising activities as a condition of admission to the public charter school.

**338.135 Employees; licensure and registration requirements; collective bargaining; prohibition on waiver of right to sponsor charter school.** (1) Employee assignment to a public charter school shall be voluntary.

(2) A public charter school or the sponsor of the public charter school may be considered the employer of any employees of the public charter school. If a school district board is not the sponsor of the public charter school, the school district board shall not be the employer of the employees of the public charter school and the school district board may not collectively bargain with the employees of the public charter school. The public charter school governing body shall control the selection of employees at the public charter school.

(3) The school district board of the school district within which the public charter school is located shall grant a leave of absence to any employee who chooses to work in the public charter school. The length and

terms of the leave of absence shall be set by negotiated agreement or by board policy. However, the length of the leave of absence may not be less than two years unless:

(a) The charter of the public charter school is terminated or the public charter school is dissolved or closed during the leave of absence; or

(b) The employee and the school district board have mutually agreed to a different length of time.

(4) An employee of a public charter school operating within a school district who is granted a leave of absence from the school district and returns to employment with the school district shall retain seniority and benefits as an employee pursuant to the terms of the leave of absence. Notwithstanding ORS 243.650 to 243.782, a school district that was the employer of an employee of a public charter school not operating within the school district may make provisions for the return of the employee to employment with the school district.

(5) For purposes of ORS chapters 238 and 238A, a public charter school shall be considered a public employer and as such shall participate in the Public Employees Retirement System.

(6) For teacher licensing, employment experience in public charter schools shall be considered equivalent to experience in public schools.

(7)(a) Any person employed as an administrator in a public charter school shall be licensed or registered to administer by the Teacher Standards and Practices Commission.

(b) Any person employed as a teacher in a public charter school shall be licensed or registered to teach by the commission.

(c) Notwithstanding paragraph (a) or (b) of this subsection, at least one-half of the total full-time equivalent (FTE) teaching and administrative staff at the public charter school shall be licensed by the commission pursuant to ORS 342.135, 342.136, 342.138 or 342.140.

(8) Notwithstanding ORS 243.650, a public charter school shall be considered a school district for purposes of ORS 243.650 to 243.782. An employee of a public charter school may be a member of a labor organization or organize with other employees to bargain collectively. Bargaining units at the public charter school may be separate from other bargaining units of the sponsor or of the school district in which the public charter school is located. Employees of a public charter school may be part of the bargaining units of the sponsor or of the school district in which the public charter school is located.

(9) A school district or the State Board of Education may not waive the right to sponsor a public charter school in a collective bargaining agreement. [1999 c.200 §17; 1999 c.199 §1; 2003 c.733 §73; 2007 c.575 §6]

**338.145 Responsibility for student transportation services; costs.** (1) The public charter school shall be responsible for providing transportation to students who reside within the school district and who attend the public charter school. The public charter school may negotiate with a school district for the provision of transportation to students attending the public charter school.

(2) Notwithstanding subsection (1) of this section, the school district within which the public charter school is located shall be responsible for the transportation of students attending the public charter school pursuant to ORS 327.043 in the same manner as students attending nonchartered public schools if the student is a resident of the school district. However, a school district may not be required to add or extend existing bus routes or other transportation services pursuant to this subsection.

(3) Students who attend public charter schools and who reside outside of the school district may use existing bus routes and transportation services of the school district in which a public charter school is located.

(4) Any transportation costs incurred by a school district under this section shall be considered approved transportation costs for purposes of ORS 327.013 in the same manner as transportation costs incurred by the school district for transporting students who attend nonchartered public schools are considered approved transportation costs for purposes of ORS 327.013. [1999 c.200 §19; 2003 c.715 §25]

## FUNDING

**338.155 Minimum amount required; grants available to charter schools.** (1) Students of a public charter school shall be considered to be residents of the school district in which the public charter school is located for purposes of distribution of the State School Fund.

(2) A school district shall contractually establish, with any public charter school that is sponsored by the board of the school district, payment for provision of educational services to the public charter school's students. The payment shall equal an amount per weighted average daily membership (ADMw) of the public charter school that is at least equal to:

(a) Eighty percent of the amount of the school district's General Purpose Grant per ADMw as calculated under ORS 327.013 for

students who are enrolled in kindergarten through grade eight; and

(b) Ninety-five percent of the amount of the school district's General Purpose Grant per ADMw as calculated under ORS 327.013 for students who are enrolled in grades 9 through 12.

(3) A school district shall contractually establish, with any public charter school that is sponsored by the State Board of Education and within the boundaries of the school district, payment for provision of educational services to the public charter school's students. The payment shall equal an amount per weighted average daily membership (ADMw) of the public charter school that is at least equal to:

(a) Ninety percent of the amount of the school district's General Purpose Grant per ADMw as calculated under ORS 327.013 for students who are enrolled in kindergarten through grade eight; and

(b) Ninety-five percent of the amount of the school district's General Purpose Grant per ADMw as calculated under ORS 327.013 for students who are enrolled in grades 9 through 12.

(4) The estimated amount of each school district's General Purpose Grant per ADMw shall be determined each year by the Department of Education and made available to all school districts.

(5) The school district in which the public charter school is located shall transfer an amount per weighted average daily membership (ADMw) of the public charter school that is equal to 50 percent of the amount of the school district's General Purpose Grant per ADMw as calculated under ORS 327.013 that is not paid to the public charter school through a contract created pursuant to subsections (2) or (3) of this section to:

(a) Any school district in which the parent or guardian of or person in parental relationship to a student of a public charter school resides pursuant to ORS 339.133 and 339.134; or

(b) The Department of Education if the State Board of Education is the sponsor of the public charter school.

(6) The department may use any money received under this section for activities related to public charter schools.

(7) A school district and a public charter school may negotiate to establish a payment for the provision of educational services to the public charter school's students that is more than the minimum amounts specified in subsection (2) or (3) of this section.

(8) A school district shall send payment to a public charter school based on a con-

tract negotiated under this section within 10 days after receiving payments from the State School Fund pursuant to ORS 327.095.

(9)(a) A public charter school may apply for any grant that is available to school districts or nonchartered public schools from the Department of Education. The department shall consider the application of the public charter school in the same manner as an application from a school district or nonchartered public school.

(b) The department shall award any grant that is available to school districts based solely on the weighted average daily membership (ADMw) of the school district directly to the public charter school. This paragraph does not apply to any grant from the State School Fund. [1999 c.200 §20]

**338.157 Adjusting number of students for poverty level.** For purposes of calculating the weighted average daily membership (ADMw) of a public charter school, it shall be assumed that the public charter school has the same percentage of children in poverty families, as calculated under ORS 327.013 (7)(a)(E)(i), as the school district in which the public charter school is located. Based on this percentage, an additional amount shall be added to the average daily membership (ADM) of the public charter school. [2001 c.810 §6]

**338.165 Special education students; payment for services.** (1) Notwithstanding ORS 338.155 (1), for purposes of this section, the "resident school district" of a student who is eligible for special education and related services shall be the school district in which the student's parent or guardian or person in parental relationship to the student reside pursuant to ORS 339.133 and 339.134.

(2) For students who attend public charter schools and are eligible for special education and related services:

(a) The resident school district of the student shall be responsible for providing any required special education and related services to the student; and

(b) Amounts from the State School Fund for those students shall be distributed through the resident school district pursuant to this section.

(3) Notwithstanding ORS 338.155 (2), a resident school district of a student who is eligible for special education and related services shall contractually establish, with any public charter school in which the student is enrolled, payment for provision of special education and related services to the student. If a student is enrolled in a public charter school and is eligible for special education and related services an additional amount shall be added to the ADM of the

public charter school as described in ORS 327.013 (7)(a)(A). The payment per ADMw in the public charter school that is attributable to the student who is eligible for special education and related services shall equal an amount that is at least equal to:

(a) 40 percent of the amount of the school district's General Purpose Grant per ADMw as calculated under ORS 327.013 for students who are enrolled in kindergarten through grade eight; and

(b) 47.5 percent of the amount of the school district's General Purpose Grant per ADMw as calculated under ORS 327.013 for students who are enrolled in grades 9 through 12.

(4) If the resident school district is not the sponsor of a public charter school, the resident school district for each ADMw that is attributable to a student enrolled in a public charter school who is eligible for special education and related services shall transfer five percent of the amount of the school district's General Purpose Grant per ADMw as calculated under ORS 327.013 to the sponsor of the public charter school.

(5) Notwithstanding subsection (3) of this section, a school district and a public charter school may negotiate on a case-by-case basis for an alternative distribution of funds other than the distribution prescribed by subsection (3) of this section. [1999 c.200 §21]

**338.175 Public Charter School Development Fund.** (1) There is established a

Public Charter School Development Fund, separate and distinct from the General Fund, consisting of all funds received from the federal government or from other sources for public charter school development and any loans repaid under ORS 338.185. All expenses incurred in the administration of ORS 338.185 shall be borne by the Public Charter School Development Fund. Interest earned by the fund shall be credited to the fund.

(2) The moneys in the fund are appropriated continuously to the Department of Education. [1999 c.200 §22]

**338.185 Grant and loan program; rules.** (1) The Department of Education shall award grants and loans to public charter schools that have a charter approved by a sponsor or to applicants that wish to establish or expand a public charter school. The purpose of the grants and loans is to promote development of high quality public charter schools.

(2) Pursuant to rules adopted by the State Board of Education, the Department of Education shall award grants and loans on the basis of need. Priority for awarding grants and loans shall be to those public charter schools serving at-risk youth.

(3) The State Board of Education shall adopt by rule criteria for awarding grants and loans under this section. [1999 c.200 §23]

**338.990** [Repealed by 1965 c.100 §456]