



# POLICY OPTIONS FOR ADDRESSING SCHOOL BOARD ACTIONS

## ISSUE BRIEF

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This Issue Brief was prepared for the Senate Education Committee at the request of its Chair, Senator Michael Dembrow. The list of policy options is neither exhaustive nor should any of the options presented herein be viewed as recommendations.

### SUMMARY

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This Issue Brief summarizes the statutory and constitutional context in which school boards operate and lists some policy options for addressing those concerns as well as relevant policies in other states.

**Context.** In general, Oregon's education statutes provide local control to school districts, within the context of the Legislative Assembly's authority over statewide policy and the delegation of authority to the State Board of Education. While the Oregon Department of Education (ODE) can find a district to be deficient for not complying with state laws or administrative rules, state law establishes a time-intensive process in which districts file plans to come into compliance and have the ability to get extensions up to 12 months before complying. Although there are certain statutes in which accountability for compliance is placed on licensed individuals with suspension or revocation as a means of enforcement, accountability for a district's overall compliance with state laws and standards established by the State Board of Education is placed at the district level, and the withholding of state funding is the only means of enforcement.

**Policy Options.** The Legislative Assembly could explore policy options for:

- establishing support and training for district leaders;
- enacting protections for district superintendents;
- modifying school board election laws;
- modifying the timeline for ODE's oversight;
- modifying open meetings and government ethics requirements for school boards; and
- modifying accountability for individual district leaders.

### BACKGROUND

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During the summer of 2021, several events took place that led the Chair of the Senate Education Committee to explore legislative changes to the way school boards are regulated in Oregon. Among these events were:

- the dismissal of Superintendent Melissa Goff from Greater Albany Public Schools on June 14, 2021, prior to the end of her contract;

- the vote by the Newberg School Board on August 10, 2021, to enact a policy prohibiting the display of certain symbols or flags by school staff;
- a vote by the Newberg School Board on August 24, 2021, that violated the state's open meetings law;
- reports by school board members that meetings in several districts were disrupted by members of the public not adhering to customary rules of decorum in public meetings;
- efforts by the Superintendent of the Alsea School District to undermine state policies governing mask-wearing in public schools; and
- the dismissal of Superintendent Kevin Purnell in the Adrian School District on September 7, 2021, prior to the end of his contract.

## STATUTORY AND CONSTITUTIONAL CONTEXT

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Oregon law provides a means for the Oregon Department of Education (ODE) to hold districts accountable for adhering to state law, establishes requirements for school board elections, and provides a means of holding individuals elected to public office accountable for their actions. Additionally, state law sets out the powers and duties of locally elected school boards.

### District-level Accountability

[ORS 327.103 \(2019\)](#) establishes a process for ODE to find school districts to be deficient and withhold funds. The statute requires that, for deficiencies not corrected before the beginning of the school year following the date ODE finds a district deficient and where an extension has not been granted, ODE may withhold portions of State School Fund distributions allocated to the district for operating expenses until the deficiencies are corrected. The law requires districts found deficient to submit a plan within 90 days for meeting the standardization requirements and allows ODE to give districts extensions up to 12 months to come into compliance before withholding funds. The law prohibits school districts that fail to submit a plan for meeting requirements from receiving State School Fund distributions and allows for extensions in the cases of human-created or natural disasters.

In practice, the State Board of Education has established in rule a set of standards based on state statutes, commonly referred to as the Division 22 Standards.<sup>1</sup> Near the end of each school year, districts are required to submit a checklist to ODE indicating whether they meet each of the Division 22 standards. Additionally, ODE manages a complaint process in which students, parents, employees, or community members may file complaints about districts' non-adherence to state law or rule. ODE relies on the results of both the Division 22 reporting process and the complaint process to determine whether a district must file a plan to come into compliance with any specific statute or rule and thereby resolve its deficiencies.

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<sup>1</sup> [OAR 581-022-0102 through 581-022-2510](#)

## School Board Elections

[ORS 255.335 \(2019\)](#) sets election dates for special districts as the third Tuesday in May of each odd-numbered year, with terms of office set to begin on July 1. [ORS 332.005 \(2019\)](#) and subsequent statutes set the number of board members and terms of office, with school districts of more than 300,000 residents required to have seven-member boards and the remaining school districts allowed to have either five- or seven-member boards.

## School Board Powers and Duties

[ORS 332.072 \(2019\)](#) establishes the legal status of school districts as corporate bodies. It authorizes school boards to transact all business coming within the jurisdiction of the district and to sue and be sued. The locally elected boards are given control of the district's schools and responsibility of educating children residing in the district.

[ORS 332.075 \(2019\)](#) establishes the powers of locally elected school boards to establish school calendars, adopt textbooks and instructional materials, authorize the use of school buildings, develop and operate cooperative career and technical education programs, join interscholastic activity associations, implement policies addressing the use of derogatory or inappropriate language at interscholastic activities, accept donations of money or property, enter into written agreements with federally recognized Native American tribes for the use of mascots, enter into contracts, and delegate certain contract authority to the district superintendent. One of the central responsibilities of locally elected school boards is that of hiring district superintendents, who generally are hired via contract for a certain number of years.

[ORS 332.107 \(2019\)](#) requires district boards to establish rules for their schools that are consistent with the rules of the State Board of Education.

## Open Meetings and Government Ethics Laws

Violations of public meetings laws are prohibited by [ORS 192.680 \(2019\)](#). The decision made by a board that meets in violation of the open meetings law can be voided if any person affected by the decision sues in circuit court. The court can void the decision of the governing body and order equitable relief. Additionally, if the court finds that the violation is the result of willful misconduct by any member of the governing body, that member can be held liable for the amount paid by the body. Lawsuits under this section must be initiated within 60 days.

In general, [ORS Chapter 244 \(2019\)](#) and related statutes prohibit the use of public office for financial gain, require disclosure of economic interests and conflicts of interest, and provide sanctions and procedures for enforcement of violations, which are overseen by the Oregon Government Ethics Commission (OGE). [ORS 192.685 \(2019\)](#) also allows for complaints to be made to the OGE for review, investigation, and possible imposition of civil penalties only in instances of potential violations of the executive session provisions of Oregon's public meetings law. [ORS 244.350 \(2019\)](#) limits the fine to \$1,000 for executive session violations.

The statutes establishing OGEC give it purview over the state's ethics laws; it does not have authority to oversee public officials who intentionally act in ways contrary to other types of state laws.

### Accountability for School Board Members

The only mechanism in state law for holding school board members individually accountable is removal. Article VII, Section 6, of the Oregon Constitution states:

*Section 6. Incompetency or malfeasance of public officer. Public officers shall not be impeached; but incompetency, corruption, malfeasance or delinquency in office may be tried in the same manner as criminal offenses, and judgment may be given of dismissal from office, and such further punishment as may have been prescribed by law. [Created through initiative petition filed July 7, 1910, and adopted by the people Nov. 8, 1910]*

The criminal statutes that allow for removal from office in Oregon law are [ORS 162.405 \(2019\)](#) or [162.415 \(2019\)](#):

**162.405 Official misconduct in the second degree.**

(1) A public servant commits the crime of official misconduct in the second degree if the person knowingly violates any statute relating to the office of the person.

(2) Official misconduct in the second degree is a Class C misdemeanor. [1971 c.743 section 214]

**162.415 Official misconduct in the first degree.**

(1) A public servant commits the crime of official misconduct in the first degree if:

(a) With intent to obtain a benefit or to harm another:

(A) The public servant knowingly fails to perform a duty imposed upon the public servant by law or one clearly inherent in the nature of office; or

(B) The public servant knowingly performs an act constituting an unauthorized exercise in official duties; or

(b) The public servant, while acting as a supervisory employee, violates ORS 162.405 and is aware of and consciously disregards the fact that the violation creates a risk of:

(A) Physical injury to a vulnerable person;

(B) The commission of a sex crime as defined in ORS 163A.005 against a vulnerable person; or

(C) The withholding from a vulnerable person of necessary and adequate food, physical care or medical attention.

(2) Official misconduct in the first degree is a Class A misdemeanor.

(3) As used in this section:

(a) "Supervisory employee" means a person having the authority, in the interest of an employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees.

(b) "Vulnerable person" has the meaning given that term in ORS 136.427. [1971 c.743 section 215; 2017 c.519 section1]

These are both criminal statutes and, under current law, would require criminal prosecution by the County District Attorney (DA), or by the Attorney General if appointed as a special prosecutor by the local DA.

An appellate court decision from 1898 (*Harris v. Burr*)<sup>2</sup> may allow the Legislative Assembly to treat school board officials differently than other public officials in the state and enact a non-criminal process for removal from office. This case centered on voting rights, specifically on a conflict between the existing constitutional requirement that voters be male, and a statute enacted by the Legislative Assembly that allowed any property owner, including women, to vote in school board elections. The court held that the existence of Article VIII, Section 3 of the Constitution, which states that “The Legislative Assembly shall provide by law for the establishment of a uniform, and general system of Common schools,” gives the Legislative Assembly authority to establish statutes for the state’s education system that may differ from constitutional requirements that apply to other areas of state governance.

## POLICY OPTIONS

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The following are some policy options available to legislators related to school boards’ compliance with state law.

### Support and Training for Board Members and Superintendents

One option is requiring school board members and superintendents to receive training about their roles and responsibilities and the state laws that apply to their work. In 2021, the Senate Committee on Education passed [Senate Bill 334 \(not enacted\)](#), which would have established training requirements for individuals in leadership positions of public school districts, including both superintendents and school board members. The measure would have required each district to conduct a self-assessment every two years and develop a professional learning plan for its leaders and would have required ODE to establish an advisory group on professional learning and training. The measure had a fiscal impact of \$239,915 and did not receive a hearing or work session in the Joint Committee on Ways and Means. Along these lines, some states have enacted training requirements:

- [Massachusetts](#) has enacted a requirement that all elected officials certify their receipt of open meetings requirements, with training provided by the state Attorney General’s office.<sup>3</sup>
- In [Washington](#), all members of governing bodies must complete public meetings training within 90 days of taking the oath of office or otherwise assuming their duties, and must complete the training every four years.<sup>4</sup>

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<sup>2</sup> [Harris v. Burr 32 Or. 348 \(1898\)](#)

<sup>3</sup> [Mass. General Laws, ch. 30A, sect. 20.](#)

<sup>4</sup> Wash. Rev. Code [42.30.205](#)

- [Texas](#) requires all members of governmental bodies to complete training within 90 days from the date the member takes the oath of office or otherwise assumes their duties. Training is given by the Attorney General's office.<sup>5</sup>
- [Illinois](#) requires members of public bodies to complete training within 90 days of taking their oath of office or otherwise assuming their duties.<sup>6</sup>

## Protections for Superintendents

Another option is establishing certain job protections for superintendents. Specifically, the Legislative Assembly could establish prohibitions on ending a superintendent's contract early for specific instances or could establish permissive reasons for which a school board would be allowed to end a superintendent's contract prior to its expiration.

Among considerations for the Legislative Assembly would be determining where to place the burden of proof, and which agency would adjudicate contested dismissals. Additionally, any new statute protecting superintendents' jobs could reference Oregon's already-established anti-discrimination protections as codified in [ORS Chapters 659 \(2019\)](#) and [659A \(2019\)](#).

## School Board Elections

The governance of school board elections is statutory and can be modified by the Legislative Assembly. Currently, school board and other special district members are elected in May of odd-numbered years. Although no comprehensive statewide data on turnout in special district elections is compiled at the state level, a brief survey of randomly selected county elections data reveals the disparities in turnout shown in Table 1.

**Table 1: Differences in Turnout Between Special District Elections, Primary Elections, and General Elections in Select Counties**

County	Special District Elections		Primary Elections		General Elections	
	May 2019	May 2021	May 2018	May 2020	November 2018	November 2020
Coos	unknown	25%	38%	47%	66%	78%
Clackamas	19%	28%	29%	47%	71%	85%
Deschutes	25%	31%	37%	45%	72%	84%
Jackson	19%	22%	34%	48%	68%	80%
Multnomah	16%	25%	31%	52%	72%	82%
Yamhill	17%	24%	34%	47%	68%	81%

Data: County elections official canvass reports  
Source: Legislative Policy and Research Office

Generally, the placement of school board and other special district elections in May of odd-numbered years ensures that these races will receive low voter turnout compared to primary or general elections held in even-numbered years. One policy option is

<sup>5</sup> [Tex. Government Code, 551.005](#)

<sup>6</sup> Ch. 5 [Ill. Comp. Stat., 120/1.01](#)



moving school board elections to May or November of even-numbered years. However, moving school board elections to November would mean that newly elected school board members would either be taking office in the midst of a school year or would be waiting nearly nine months after their election before taking office.

Another policy option is to limit the number of board members elected in any single year to no more than two for five-member boards or three for seven-member boards, to ensure that a majority of the board members are not newly elected in a single election. This change would require extending board member terms of office to six years.

### **Accountability at the District Level**

The Legislative Assembly could modify the district accountability provisions of [ORS 327.103 \(2019\)](#) to allow ODE to take action more quickly when it receives reports or complaints that districts are in violation of state law or administrative rules, and to intervene in ways other than withholding State School Fund money. For example, the Legislative Assembly could enact a statute giving ODE the authority to determine when a violation is egregious enough to warrant immediate action and establish a time frame requiring ODE to act.

Another option is to copy an existing state policy such as provisions in the Student Success Act's technical assistance, coaching, or intensive programs that allow ODE to provide support or coaching teams and/or monitor a district to ensure compliance. A third option would be a review of the state's civil law statutes with the possibility of providing a private right of action for students that are harmed when a district is out of compliance with state law or administrative rule.

A fourth option would be enacting a statute to enable state-level review of local decisions. Examples of this type of statute can be found in the following states:

- [New York](#) allows parties aggrieved by school board or superintendent actions to appeal those actions to the Commissioner of Education for redress, and allows the commissioner to stay local proceedings, regulate the practices being contested, dismiss an appeal, and make orders (including directing spending) necessary to affect the decision.<sup>7</sup>
- [Massachusetts](#) allows the State Board of Education to withhold state and federal funds from school boards that fail to comply with state laws and regulations governing the operation of public schools, and requires the State Board to ensure that local school boards comply with all laws relating to the operation of public schools. In the event of noncompliance, the Commissioner of Education is required to refer cases to the Attorney General for action to obtain compliance.<sup>8</sup>
- [Texas](#) allows individuals to appeal to the Commissioner of Education to review school laws of the state as well as local board decisions that may violate either state education laws or employment contracts.<sup>9</sup> The Commissioner may hold a

<sup>7</sup> New York Education Law [tit 1, art. 7, sect. 310 and 311](#).

<sup>8</sup> [Mass. Gen. Laws, ch. 69, sect. 1B](#)

<sup>9</sup> [Tex. Education Code, ch 7, sect. 7.057](#)

hearing, and has authority for discovery and conduct of a hearing. The Commissioner has 180 days to hold a hearing, and 240 days to issue a decision.

- In Florida, school boards are subject to the requirements of the state's [Administrative Procedure Act](#).<sup>10</sup> In addition, the legislature has provided the State Board of Education with oversight and enforcement authority over district school boards.<sup>11</sup> State law in Florida allows the Commissioner of Education to investigate allegations of noncompliance with law or rule and determine probable cause. The Commissioner then issues a report to the State Board, which can then require the local board to document its compliance with law or rule. The Commissioner is required to report to the State Board any instances in which the state's Auditor General finds a local school board is acting without statutory authority or contrary to state law. The State Board can order a local board to come into compliance with state law within a specified timeframe, and if it finds a local board unable or unwilling to comply, can take the following action:
  - report noncompliance to the legislature and recommend action to be taken by the legislature;
  - withhold state funds;
  - declare the school district ineligible for competitive grants; or
  - require monthly or periodic reporting on the situation related to noncompliance until it is remedied.
- [Iowa](#) allows affected students, parents, or guardians to appeal decisions and orders enacted by their local school board up to 30 days after the decision.<sup>12</sup> Appeals are made to the State Board of Education by filing an affidavit. The State Board then has five days to notify the district of the appeal, at which time the district must send to the State Board a complete transcript of the proceedings in question. The State Board is authorized to issue subpoenas, compel attendance, and compel witness testimony. State law allows it to function similarly to a district court, with the cost of the appeal being deducted from the state funds allocated either to the district in question or the appellant, whoever loses. The State Board is authorized to delegate its power to hear appeals to the director of the department of education or the director's designee.

## Open Meetings and Government Ethics Laws

The Legislative Assembly could act to expand oversight of and enact penalties for public officials who knowingly or willfully violate open meetings laws. An example is the open meetings law in New York, which is similar to Oregon's law in that it allows a court to nullify the actions of a board that were taken in violation of open meetings law, but it also authorizes the court to require members of the public body to participate in a training session on the law and their responsibilities.<sup>13</sup> In Maryland, an [Open Meetings Compliance Board](#), under the authority of the state's Attorney General, takes complaints about public bodies violating open meetings laws. While the board issues advisory opinions to the public body about whether a violation occurred or not, Maryland relies on

<sup>10</sup> [Florida Statutes tit. X, ch 120 \(2021\)](#)

<sup>11</sup> [Florida Statutes, tit. XLVIII, ch. 1008, sect. 1008.32 \(2021\)](#)

<sup>12</sup> [Iowa Code, tit. VII, ch. 290, sect. 290.1 through 290.6 \(2020\)](#)

<sup>13</sup> [New York, Public Officers Law, art. 7, sect. 107.](#)



the courts for enforcement, similar to Oregon's current system.<sup>14</sup> In contrast, [Massachusetts](#) places the responsibility for enforcement of its open meetings law with the Attorney General after a complaint is filed with the public body itself. The Massachusetts Attorney General is authorized by state law to impose civil penalties after holding a hearing.<sup>15</sup> The Attorney General's office in Massachusetts has a Division of Open Government, which is responsible for training members of public bodies as well as adjudicating complaints. Additionally, both [Idaho](#) and [Georgia](#) have statutes that impose fines on board members who knowingly violate open meetings laws.<sup>16</sup> [Texas](#) imposes a fine as well as possible jail time for members of public bodies who hold closed meetings.<sup>17</sup>

Another option is to expand the authority of the Oregon Government Ethics Commission to include investigations of violations of Oregon's open meetings law or investigations of instances when a public official may have committed official misconduct. This option will affect other state and local governing bodies, as well as state and local elected and appointed officials.

Additionally, Secretary of State auditors have recommended adding school board members to the list of public officials required to submit Statements of Economic Interest (SEI) due to the large amount of state funding controlled by board members. A recent audit identified that school board members are omitted from current requirements to file those statements.<sup>18</sup> The list of public officials who are required to submit SEI is included in [ORS 244.050 \(2019\)](#).

## Accountability for Individual Board Members

There are several policy options open to the Legislative Assembly to enhance the accountability of school board members individually:

- Review and amend Oregon's official misconduct statutes ([ORS 162.405 and 162.415 \(2019\)](#)) to provide greater accountability.
- Give the Attorney General, in addition to local District Attorneys, jurisdiction over prosecutions of official misconduct by local officials.
- Amend [ORS 332.005 \(2019\)](#) to include specific language for school board members' oath of office, including language about adhering to state laws and administrative rules and possible consequences for violating that oath.
- Request official legal opinions from Legislative Counsel and/or the Department of Justice about the implications of *Harris v. Burr* and the ability of the Legislative Assembly to establish a process for removing school board members that may differ from the requirements of Article VII, Section 6 of the Oregon Constitution.

<sup>14</sup> [Maryland Attorney General, Maryland Open Meetings Act Manual, 10<sup>th</sup> ed., ch. 7 \(January, 2021\)](#).

<sup>15</sup> [Mass. Gen. Laws, ch. 30A, sect. 23](#)

<sup>16</sup> [Idaho Code, sect. 74-208; Ga. Code Ann., sect. 50-14-6](#)

<sup>17</sup> [Tex. Government Code, sect. 551.144](#)

<sup>18</sup> [Oregon Secretary of State, Audits Division, Oregon's Ethics Commission and Laws Could Be Better Leveraged to Improve Ethical Culture and Trust in Government, Report 2021-14, 19 \(May 2021\)](#).

It is important to note that some of these policy options would impact not just school board members, but other locally elected officials as well.

At least eight states have statutory or constitutional provisions requiring specific oaths of office for school board members. Provisions enacted in [Colorado](#), [Florida](#), [Ohio](#), [Oklahoma](#), [South Carolina](#), [Wisconsin](#), [Washington](#), and [West Virginia](#) specify the language required in school board members' oaths. In some cases, the required language of the oath applies not just to school board members but to other public officials as well.<sup>19</sup> While most of these states' oaths require the school board member to support the constitutions of the United States and their state, Colorado requires school board members to swear to support "the constitution of the State of Colorado and the laws made pursuant thereto."

Several states also provide a variety of means for removing school board members for various reasons. Some states' statutes are specific to abuse of office for personal gain while others include reasons such as neglect of duty. New York has a statute that allows its Commissioner of Education to remove local board members if they are found to have violated state law. In [Education Law \(EDN\), Title I, Article 7, Section 306](#), New York has enacted the following statute:

*Section 306. Removal of school officers; withholding public money. 1. Whenever it shall be proved to his satisfaction that any trustee, member of a board of education, clerk, collector, treasurer, district superintendent, superintendent of schools or other school officer is a member of an organization listed as subversive by the board of regents pursuant to the provisions of section three thousand twenty-two of this chapter, or has been guilty of any wilful violation or neglect of duty under this chapter, or any other act pertaining to common schools or other educational institution participating in state funds, or wilfully disobeying any decision, order, rule or regulation of the regents or of the commissioner of education, said commissioner, after a hearing at which the school officer shall have the right of representation by counsel, may, by an order under his hand and seal, which order shall be recorded in his office, remove such school officer from his office. 2. Said commissioner of education may also withhold from any district or city its share of the public money of the state for wilfully disobeying any provision of law or any decision, order or regulation as aforesaid.*

Other states also have provisions for the removal (for cause) of elected officials generally. These statutes are separate from recall statutes, and several of them place the authority to decide on removal from office with the court system.

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<sup>19</sup> [Colo. Rev. Stat. 22-31-125](#)  
[Fla. Stat. tit. XLVI, ch. 876, sect. 876.05](#)  
[Ohio Rev. Code, sect. 3313.10](#)  
[Okla. Stat. tit. 70, sect. 5-116](#)  
[S. C. Const. art. III, sect. 26](#)  
[Wis. Stat., ch. 19, sect. 19.01](#)  
[Washington Rev. Code, sect. 28A.343.360](#)  
[W. V. Const., art IV, sect. 5](#)

[Ohio](#) allows complaints to be filed in the court system and requires a trial to determine whether the elected official was guilty of “gross neglect of duty, gross immorality, drunkenness, misfeasance, malfeasance, or nonfeasance [or] misconduct in office.”<sup>20</sup> [New Hampshire](#) and [Nevada](#) also place the authority to remove elected officials with the courts, and [Tennessee](#) has a court-based process in place to oust county officials.<sup>21</sup> Ousters in Tennessee are considered civil proceedings and can be initiated by the attorney general, district attorney, or county attorney. County officials may be ousted from office for knowing or willful misconduct and knowing or willful neglect of duties, among other things.

[Pennsylvania](#) enacted an amendment to its constitution in 1966 that allows the Governor to remove “civil officers elected by the people” for reasonable cause after a hearing and vote of two-thirds of the Senate.<sup>22</sup>

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<sup>20</sup> [Ohio Rev. Code Ann. sect. 3.07](#) and [3.08](#)

<sup>21</sup> [N.H. Rev. Stat. Ann., tit. I, ch. 4, sect. 4:1](#)  
[Nev. Rev. Stat. sect. 283.300 et seq](#)

[Tenn. Code Ann. sect. 8-47-101 et seq](#)  
<sup>22</sup> [P.A. Const. 1966 amendment, Section 7](#)