



# Oregon

Tina Kotek, Governor



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**Dr. Charlene Williams**

Director of the Department of Education

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**To:** Oregon Department of Education

**From:** Recovery Schools Advisory Committee

**Date:** December 20, 2023

**RE:** Approved Recovery School Flexibility and Applicability of Laws Recommendation

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The Recovery Schools Advisory Committee (RSAC) formally recommends to the Oregon Department of Education (ODE) the following legislative changes and policies to assist in the creation and sustainability of approved recovery schools.

**Background:** [HB 2767](#) (2023) establishes new types of publicly funded schools operated by agreement with the Oregon Department of Education called “approved recovery schools” to provide students enrolled in the school with a holistic approach to educational services for grades 9 through 12; and health care services related to recovery from substance use disorders. These schools will be funded with a mixture of State School Funds and monies from the Statewide Education Initiative Account.

**Issue with HB 2767 Applicability of Laws for Approved Recovery Schools:** HB 2767 applies ORS 338.115 to approved recovery schools. This section of law refers to the applicability of laws to public charter schools where it grants exemption from laws that apply to regular public schools and districts and then listing laws and rules that apply without waiver. Instead of borrowing this language and applying the same exemptions to approved recovery schools it applies the full list of laws and additional requirements of public charter schools, including the whole of ORS Chapter 338, to approved recovery schools. RSAC does not believe this was the legislative intent but rather the intent was to grant similar flexibility to approved recovery schools with their own list of applicable laws.

**Currently, Section 1(4):** Directs the State Board to adopt rules to establish the standards for approved recovery schools. It includes multiple subparagraphs describing specific requirements to be included in the standards including subparagraph (E) which applies the same laws that apply to public charter schools to approved recovery schools.

**HB 2767 Language:**

**SECTION 1.**

(4) The State Board of Education shall adopt by rule the standards for a recovery school to become and operate as an approved recovery school. The standards must provide that:

(a) The recovery school must align, to the extent identified by the board, with standards for accreditation established by a nonprofit accrediting organization composed of representatives of recovery schools and individuals who support the growth of recovery schools. The standards must include requirements that:

(A) The recovery school, in compliance with timelines established by the department, be accredited by a nonprofit accrediting organization that establishes standards for recovery schools. Nothing in this subparagraph requires the recovery school to be accredited at the time the superintendent first enters into a contract with the recovery school.

(B) Student enrollment in the recovery school is voluntary. No school district or state or local agency may compel or otherwise require a student to enroll in a recovery school. Students enrolled in an approved recovery school may not be counted in determining the number of pupils in average daily membership for purposes of ORS 334.175 (5).

(C) All students who reside in this state and who meet the eligibility criteria established under subsection (8) of this section may enroll in an approved recovery school if space is available. If space is not available, the approved recovery school may prioritize for enrollment student groups identified in ORS 327.180 (2)(b).

(D) The school district, education service district or public charter school with which the department has entered into a contract for a recovery school must agree to award high school diplomas, modified diplomas, extended diplomas and alternative certificates as provided by ORS 329.451 and 339.877. An entity that awards high school diplomas as provided by this subparagraph:

(i) May not impose requirements for a high school diploma that are in addition to the requirements prescribed by ORS 329.451 (2)(a) or by rule of the State Board of Education; and

(ii) Must accept any credits previously earned by students in another school or educational program in this state and apply those credits toward the requirements prescribed by ORS 329.451 (2)(a) or by rule of the State Board of Education.

(E) Except as provided by subparagraph (F) of this paragraph, the recovery school must satisfy the same laws that apply to public charter schools under ORS 338.115.

(F) All administrators and teachers at the recovery school must be licensed by the Teacher Standards and Practices Commission.

**Issue:** As written, this will make all laws listed in ORS 338.115 apply to approved recovery schools without granting any of the exemption from laws that apply to public schools and districts. This is particularly problematic because this section includes the entire Chapter 338 effectively making all approved recovery schools public charter schools and requires a minimum enrollment of at least 25 students.

**Recommendation Rationale:** Approved recovery schools need flexibility to operate small schools serving students with specific and complex needs. It is not reasonable or appropriate to require a minimum enrollment of 25 students because approved recovery schools will often start very small and most will remain relatively small. An additional area where approved recovery schools need flexibility is teacher assignments. Operating small high schools is very expensive and difficult to fully staff across all subject areas. Adding the same teacher assignment flexibility granted to alternative education programs to approved recovery schools will allow smaller schools more ability to scale up reasonably. By adding the

language below, approved recovery schools are explicitly granted some flexibility while maintaining fundamental public school requirements.

**Specific Recommendation:** Remove Section 1(4)(a)(E)-(F) and add the following language to the law.

1. Statutes and rules that apply only to school district boards, school districts or other public schools do not apply to approved recovery schools. However, the following laws do apply to approved recovery schools:
  - a. Federal law;
  - b. ORS 30.260 to 30.300 (tort claims);
  - c. ORS 192.311 to 192.478 (public records law);
  - d. ORS 192.610 to 192.690 (public meetings law);
  - e. ORS chapters 279A, 279B and 279C (Public Contracting Code);
  - f. ORS 297.405 to 297.555 and 297.990 (Municipal Audit Law);
  - g. ORS 326.565, 326.575 and 326.580 (student records);
  - h. ORS 181A.195, 326.603, 326.607 and 342.223 (criminal records checks);
  - i. ORS 329.045 (academic content standards and instruction);
  - j. ORS 329.451 (high school diploma, modified diploma, extended diploma and alternative certificate);
  - k. ORS 329.496 (physical education);
  - l. The statewide assessment system developed by the Department of Education for mathematics, science and language arts under ORS 329.485 (2);
  - m. ORS 336.840 (use of personal electronic devices);
  - n. ORS 337.150 (textbooks);
  - o. ORS 339.119 (consideration for educational services);
  - p. ORS 339.141, 339.147 and 339.155 (tuition and fees);
  - q. ORS 339.250 (9) (prohibition on infliction of corporal punishment);
  - r. ORS 339.326 (notice concerning students subject to juvenile court petitions);
  - s. ORS 339.370 to 339.400 (reporting of suspected abuse and suspected sexual conduct);
  - t. ORS 342.856 (core teaching standards);
  - u. ORS chapter 657 (Employment Department Law);
  - v. ORS 659.850, 659.855 and 659.860 (discrimination);
  - w. Any statute or rule that establishes requirements for instructional time provided by a school during each day or during a year;
  - x. Statutes and rules that expressly apply to approved recovery schools;
  - y. Health and safety statutes and rules; and
  - z. Any statute or rule that is listed in the agreement to operate an approved recovery school.
2. Notwithstanding subsection (1) of this section, an agreement to operate an approved recovery school may specify that statutes and rules that apply only to school district boards, school districts, education service district schools, and other public schools may apply to an approved recovery school.
3. If a statute or rule applies to an approved recovery school, then the terms “school district” and “public school” include approved recovery school as those terms are used in that statute or rule.
4. An approved recovery school may not violate the Establishment Clause of the First Amendment to the United States Constitution or Article I, section 5, of the Oregon Constitution, or be religion based.

5. An approved recovery school may enter into contracts and may lease facilities and services from a school district, education service district, public university listed in ORS 352.002, other governmental unit or any person or legal entity.
6. An approved recovery school may receive and accept gifts, grants and donations from any source for expenditure to carry out the lawful functions of the school.
7. Except when an approved recovery school is operated by a public charter school, all administrators and teachers at the recovery school must be licensed by the Teacher Standards and Practices Commission.
  - a. Notwithstanding paragraph (9), any preliminary teaching license, professional teaching license or distinguished teacher leader license issued by the Teacher Standards and Practices Commission is valid for teaching all subjects and grade levels in an approved recovery school.