



March 15, 2021

VIA EMAIL

Jack Louman, President
Oregon Family Council, Inc.
12035 NE Marx Street
Portland, OR 97220
jack@oregonfamilycouncil.org

Re: Legal Analysis of 2021 SB 223

Dear Jack:

[2021 SB 223](#), if made law, would effectively mandate all private schools in Oregon to apply for registration with the Oregon Department of Education (“ODE”) under rules adopted by the State Board of Education. If a private school does not obtain registration with the ODE, that school cannot represent it is a registered private school or else it and its principals can face up to 30 days’ imprisonment, a \$1,250 fine, or both. See SB 223 §6(2). Further SB 223 would prohibit all public school districts from participating in interscholastic activities with any private school that does not obtain registration with the ODE. See SB 223 §10(e)(E).

What are the requirements a private school must meet to become “registered” with the ODE? They must satisfy the state’s requirements regarding teacher qualifications, school facilities, curricula, and instruction time — which must be “equivalent to the period of time required for students attending public school.” See SB 223 §2(4)(f). Further, the private school applicant must comply with “any rules adopted by the State Board of Education pursuant to . . . this 2021 Act.” See SB 223 §2(4)(g). Ultimately, unelected bureaucrats at the ODE will determine whether to accept or reject a private school’s application to be registered. See SB 223 §3(3) (stating, in part, “. . . the private school must demonstrate to the satisfaction of the department that the private school complies with the criteria adopted by the State Board of Education . . .”).

Under SB 223, the ODE may suspend or revoke or deny renewal of a private school’s registration at any time, should the ODE determine the school fails to comply with any criteria adopted by the State Board of Education. See SB 223 §5(1)-(2). Moreover, any registered private school “shall promptly provide any reports or information required by the Department of Education.” SB 223 §5(4). Registration is not automatic, it must be applied for annually. SB 223 §3(5).

In 1975 the Oregon Legislature enacted HB 3270, which allowed for *voluntary* registration of private schools with the ODE. Voluntary registration remained in statute until it was repealed in 2011. The voluntary registration statute allowed a private school applicant to register with the ODE so long as the

Main Office

15350 SW Sequoia Parkway
Suite 250
Portland, OR 97224

T 503.968.1475
F 503.968.2003
W hbclawyers.com

private school demonstrated, among other things, (a) teachers were qualified, although not licensed by the state; (b) the facility was adequate to protect the health and safety of children enrolled; (c) curricula considered the goals of modern education and the requirements of a sound, comprehensive curriculum; and (d) students attended for time equivalent to public schools in the 1994-1995 school year. SB 223 is strikingly more authoritarian than HB 3270.

Proponents of SB 223 argue news reports of sexual misconduct and failures to make mandatory reports at private schools require these draconian measures. The proponents fail to address the weighty tort remedies already available to students and parents. Proponents of SB 223 also characterize the bill as “voluntary.” In practice, it is not. As mentioned above, SB 223 would impose substantial consequences for private schools that opt out of registration or have their registration revoked. Also, as discussed above, any private school that is not registered or has its registration revoked, would be banned from interscholastic activities with any public school. That is, all public school districts would be prohibited from being a member of any “voluntary organization” that allows non-registered private schools to be members. See SB 223 §10(e)(E). This effectively forces “voluntary organizations” – such as the National Honors Society and the FFA – to choose between excluding non-registered private schools or excluding public schools. These voluntary organizations will choose public schools over non-registered private schools, thus denying such non-registered private school students opportunities.

In short, SB 223 is an audacious move to compel private schools to adopt public school curriculum or face erasure. SB 223 is a direct strike on private schools in Oregon.

Very truly yours,

HARRIS BERNE CHRISTENSEN LLP



Shawn M. Lindsay, Esq.