

# CASCADE SCHOOL DISTRICT #5

## Regular Meeting

November 9, 2020 - Cascade High School Library

10226 Marion Rd SE

Turner, Oregon 97392 at 7:00 PM

1. Call to Order - Regular Meeting
2. Pledge of Allegiance
3. Visitor's Guest List
4. Approval of Minutes 10-12-2020
5. Prioritize Agenda
6. Reports
  - A. Superintendent's Report
  - B. Food Service Director's Report
  - C. Finance Director's Report 3
  - D. High School Principal's Report
  - E. Online School Director's Report
  - F. Junior High Principal's Report
  - G. Athletic Director's Report
  - H. Elementary Principal's Report
  - I. Technology Director's Report
  - J. Assistant Superintendent's Report
7. Discussion and Communication
  - A. Personnel
    1. Resignation
  - B. All Students Belong 5
  - C. Board Policy ACB & ACB-AR - Immediate Action
  - D. Board Policies - Second Reading 21
  - E. OSBA Elections
  - F. Facility Needs Committee Recommendation
8. Informational Items
  - A. COVID Testing Event, Nov 21
9. Public Comment
10. Resolutions
  - A. Resolution regarding Resignation
  - B. Resolution regarding All Students Belong Board Policies ACB and ACB-AR - Immediate Action
  - C. Resolution regarding Board Policies - 2nd Reading

- D. Resolution regarding OSBA Elections
- E. Resolution regarding Facility Needs Committee Recommendation
- 11. Future Agenda Items
- 12. Adjournment

To: Board of Directors, Cascade School District

Fr: Scott B. Pillar, Director of Finance

Date: 11/3/20

RE: Monthly Board report – written

The financial report (attached) is tracking normally. Again, this is due to the higher than anticipated State School Funding level (9.0b). We will likely see larger than normal estimated ending fund balances from here through the end of the year (if the state school fund is not adjusted).

The next State Revenue Forecast comes out the first week in December. By that time, we will see how our property tax collections are doing. From my experience, the property tax collection rate is reasonably accurate estimator of how our local economy is doing and will provide some helpful indicators for future planning.

On the expense side, we are also tracking normally. Spending on technology purchases is much higher than normal but we have been fortunate to direct some of that spending in the areas of special revenue funds. We have also reduced spending in some areas which is helpful during this time.

Work on the audit continues as normal. We will likely finish the virtual work next month well in time to meet the publishing deadline of 12/31/20. Five years of using Wilcox Arredondo is coming to a close and we will likely put our and RFP for Auditing Services early next month.

Piper Sandler finished updating the levy rate analysis in time for your bond discussion. While the report is straightforward, recall that the assessed value (AV) lags about a year and a half. This means the best estimate for the growth in AV for the current year is reflected in the 2022 line at 3%. It is also worth noting that we have failed to hit a 3% growth rate only once in 14 years. I feel that this AV growth rate is within expected ranges and thus, the amount of estimated revenue generated is reasonable. I am happy to provide more analysis on this report if needed.

It is my recommendation we should seek bonding to address our growing space needs. New construction, while expensive, is countered by a fluid and relatively inexpensive money supply. If the decision is made to hold off on a bond, know that our two facilities funds, 401- Building and Site and 406- Construction Excise Tax have about \$600K and about \$1.6m respectively. We do use some of these funds every year for roofs, boilers and repairs but a portion of these funds could add a small amount of additional space. In addition, there are other credit instruments other than bonding available to school districts. Since our cash position is solid and our audits have been very good the last few years, I would expect to see fairly low borrowing costs and some flexible options for these “lower debt” options.

We have released the RFP for Design and Engineering Services for the Seismic Grant for the Jr. High School with proposals due back to be read and scored in December. Based on discussion with both prior engineering firm and considering this summer will be very short due to an extended school year, we are targeting construction starting in early 2022. Prior experience has revealed that more time to plan, conduct value engineering and booking subcontractors early results in a better quality outcome at less cost.

**Cascade School District**  
**General Fund Cash Flow Analysis**  
**2020-21 Fiscal Year (unaudited)**

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
	Actual	Actual	Actual	Preliminary	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	ADOPTED	OVER
	JUL	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	TOTAL	BUDGET	UNDER BUD
1 CUM BEG FUND BAL	3,022,373	6,224,241	7,222,243	6,995,927	6,778,900	11,406,215	10,849,731	10,609,776	9,836,094	9,141,808	9,216,280	9,833,215	9,833,215	2,965,223	57,150
REVENUES:															
2 LOCAL REVENUE	10,067	193,266	54,899	37,581	5,436,540	90,621	391,095	61,000	141,486	79,907	59,186	148,586	6,703,234	6,568,167	135,067
3 INTERGOVERNMENTAL	0	0	0	0	0	70,893	0	36,447	62,467	35,447	11,616	33,931	280,000	260,000	0
4 STATE SOURCES	3,598,013	1,796,285	1,740,595	1,740,595	1,415,682	1,412,802	1,423,375	1,406,713	1,512,291	2,054,393	2,605,986	0	20,666,729	19,011,279	1,655,450
5 FEDERAL SOURCES	0	0	0	0	0	0	0	0	0	0	0	0	0	500,000	(500,000)
6 SALE ASSETS/TRANS (IN)	0	0	0	0	0	0	0	0	0	0	0	0	0	14,218	(14,218)
7 TOTAL REVENUE	3,608,080	1,949,550	1,795,494	1,778,176	6,851,223	1,574,317	1,814,469	1,503,160	1,716,244	2,169,747	2,676,987	182,517	27,619,963	26,343,664	1,276,299
8 CUMULATIVE REV	3,608,080	5,557,630	7,353,124	9,131,301	15,982,523	17,556,840	19,371,309	20,874,469	22,590,713	24,760,460	27,437,447	27,619,963	29,308,887	1,333,449	
EXPENDITURES:															
9 SALARIES	126,739	263,202	1,061,073	1,060,876	1,009,063	1,009,063	1,029,063	1,009,063	1,009,063	1,019,063	1,009,063	3,047,199	12,652,521	13,277,947	(625,426)
10 BURDEN & BENEFITS	68,574	140,686	699,855	703,584	801,690	787,013	793,726	780,975	796,478	779,806	752,615	1,999,316	9,104,317	9,319,361	(215,044)
11 PURCHASED SVCS	63,001	127,088	122,098	146,143	332,295	271,342	188,937	630,207	328,590	239,754	277,579	370,144	3,097,119	3,372,928	(275,809)
12 SUPPLIES/MATS	104,772	193,176	136,234	56,953	74,367	55,953	34,088	49,096	61,966	33,423	19,751	34,763	854,483	886,664	(32,181)
13 CAPITAL OUTLAY	0	0	0	0	0	0	0	2,483	0	12,617	0	0	15,000	15,000	0
14 MISCELLANEOUS	43,126	227,396	2,655	27,541	6,552	7,431	8,610	5,077	13,433	10,731	1,024	6,387	360,964	329,000	31,964
15 TRANSFERS (OUT)	0	0	0	0	0	0	0	0	0	0	0	0	395,000	395,000	0
16 OTHER USES (RESERVE)	0	0	0	0	0	0	0	0	0	0	0	0	0	1,712,987	(1,712,987)
17 TOTAL EXPENSES	406,212	951,549	2,021,915	1,995,097	2,223,908	2,130,801	2,054,424	2,477,841	2,209,530	2,095,294	2,060,032	5,852,799	26,479,404	29,308,887	(1,116,496)
18 CUMULATIVE EXP	406,212	1,357,761	3,379,676	5,374,773	7,598,681	9,729,482	11,783,906	14,261,748	16,471,278	18,566,572	20,626,605	26,479,404	28,595,900	27,480,404	1,115,496
19 CUM END FUND BAL	6,224,241	7,222,243	6,995,821	6,778,900	11,406,215	10,849,731	10,609,776	9,836,094	9,141,808	9,216,280	9,833,215	9,833,215	4,162,932	4,162,932	0

# All Students Belong Rule

The presence of symbols of hate on the basis of race, color, religion, gender identity, sexual orientation, disability, or national origin including the noose, swastika, or confederate flag create a material and substantial disruption in school activities and the learning environment by creating an atmosphere of fear and intimidation and interfere with the rights of students by denying them full access to the services, activities, and opportunities offered by a school.

First, school districts, public charter schools, the Oregon School for the Deaf, Education Service Districts, Youth Corrections Education Program providers under contract with the Oregon Department of Education, Juvenile Detention Education Program providers under contract with the Oregon Department of Education, or a program that receives money pursuant to ORS 343.243, must prohibit the use or display of any noose, swastika, or confederate flag on school grounds or in any program, service, school, or activity where the program, service, school, or activity is financed in whole or in part by moneys appropriated by the Legislative Assembly except where used in teaching curriculum that is aligned the Oregon State Standards. This applies to both in-person and distance learning environments.

Second, the rule requires districts to adopt policies and procedures for dealing with bias incidents. Initial Guidance This initial guidance document is intended to provide

## **OAR 581-022-2312**

### **All Students Belong**

(1) It is the policy of the State Board of Education that all students, employees, and visitors in public schools are entitled to learn, work, and participate in an environment that is safe and free from discrimination, harassment, and intimidation.

(2) The Oregon Legislature has determined that a person may not be subjected to discrimination in any public elementary, secondary or community college education program or service, school or interschool activity or in any higher education program or service, school or interschool activity where the program, service, school or activity is financed in whole or in part by moneys appropriated by the Legislative Assembly.

(3) The presence of symbols of hate on the basis of race, color, religion, gender identity, sexual orientation, disability or national origin including the noose, swastika, or confederate flag create a material and substantial disruption in school activities and the learning environment by creating an atmosphere of fear and intimidation and interfere with the rights of students by denying them full access to the services, activities, and opportunities offered by a school.

(4) Definitions. For purposes of these rules:

(a) "Bias Incident" means a person's hostile expression of animus toward another person, relating to the other person's perceived race, color, religion, gender identity, sexual orientation, disability or national origin, of which criminal investigation or prosecution is impossible or inappropriate. Bias Incidents may include derogatory language or behavior directed at or about any of the preceding demographic groups.

(b) "Symbol of Hate" means a symbol, image, or object that expresses animus on the basis of race, color, religion, gender identity, sexual orientation, disability or nation origin including the noose, swastika, or confederate flag, and whose display:

(A) Is reasonably likely to cause a substantial disruption of or material interference with school activities, or

(B) Is reasonably likely to interfere with the rights of students by denying them full access to the services, activities, and opportunities offered by a school.

(5) School districts, public charter schools, the Oregon School for the Deaf, Education Service Districts, Youth Corrections Education Program providers under contract with the Oregon Department of Education, Juvenile Detention Education Program providers under contract with the Oregon Department of Education, or a program that receives money pursuant to ORS 343.243, must prohibit the use or display of any noose, swastika, or confederate flag on school grounds or in any program, service, school or activity where the program, service, school or activity is financed in whole or in part by moneys appropriated by the Legislative Assembly except where used in teaching curriculum that is aligned the Oregon State Standards.

(6) On or before January 1, 2021, school districts, public charter schools, the Oregon School for the Deaf, and Education Service Districts must adopt a policy that:

(a) Affirms all students are entitled to a high quality educational experience, free from discrimination or harassment based on perceived race, color, religion, gender identity, sexual orientation, disability or national origin;

(b) Affirms all employees are entitled to work in an environment that is free from discrimination or harassment;

(c) Affirms all visitors are entitled to participate in an environment that is free from discrimination or harassment;

(d) Prohibits the use or display of any symbols of hate, including at a minimum the noose, swastika, or confederate flag, on school grounds or in any program, service, school or activity where the program, service, school or activity is financed in whole or in part by moneys appropriated by the Legislative Assembly except where used in teaching curriculum that is aligned the Oregon State Standards; and

(e) Establishes procedures for addressing bias incidents. The procedures must:

(A) Define persons impacted broadly to include individuals at whom an incident was directed as well as students in the larger school community likely to be impacted by the incident;

(B) Require responding staff to prioritize the safety and well-being of all persons impacted;

(C) Require responding staff to recognize the experience of all persons impacted, acknowledge the impact, commit to taking immediate action, and prevent further harm against those person impacted from taking place;

(D) Include in any redirection procedures educational components that address the history and impact of hate as well as procedural components to ensure the safety, healing, and agency of those impacted by hate, accountability and transformation for people who cause harm as well as transformation of the conditions that perpetuated the harm;

(E) Include communication protocols that provide all persons impacted with information relating to the investigation and outcome of the investigation. At a minimum, the information provided must include:

(i) That an investigation has been initiated;

(ii) When an investigation has been completed;

(iii) The findings of the investigation and the final determination based on those findings;

(iv) Actions taken with the person or persons who committed the harassing behavior to remedy behavior and prevent reoccurrence when the action relate directly to a person impacted by the event; and

(v) If any of the information in sections (i) through (iv) cannot be shared, a citation to the law prohibiting release and an explanation of how that law applies to the current situation.

(F) Direct administrators and school personnel to consider whether the behavior also implicates other civil rights laws and, if so, to respond accordingly. The nature of the conduct must determine the process used, the rights and protections available to persons impacted, and the right to appeal to the Oregon Department of Education or the United States Department of Education Office of Civil Rights; and

(G) Require administrators to develop and implement instructional materials to make this policy and related practices including reporting procedures, educational processes, and possible consequences known to all school employees and students.

**Statutory/Other Authority:** ORS 326.051 & ORS 659.850

**Statutes/Other Implemented:** ORS 659.850

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September 18, 2020

# All Students Belong

## INITIAL GUIDANCE



OREGON  
DEPARTMENT OF  
EDUCATION

*Oregon achieves . . . together!*

## Table of Contents

Cover Letter .....	1
Background .....	4
State Law.....	4
All Students Belong Rule .....	5
Initial Guidance .....	5
1) Acknowledging Harm, Harm Reduction, and Response .....	5
(a) Acknowledging Harm.....	5
(b) Harm Reduction.....	6
(c) Healing-Centered, Trauma-Informed Response.....	6
2) Developing Policy.....	7
3) Developing Procedures.....	9
4) Complaint Process .....	10
5) Resources.....	11

## Cover Letter

Dear Superintendents,

I'm writing to you about an important health and safety rule passed by the State Board of Education: [581-022-2312 All Students Belong](#).

**ODE recognizes that student health and safety are at the cornerstone of education and that all students are entitled to a high-quality educational experience, free from discrimination or harassment based on perceived race, color, religion, gender identity, sexual orientation, disability, or national origin, and without fear or hatred, racism or violence.** All staff and leaders are also entitled to work in environments that are free from discrimination or harassment, and visitors should be able to participate in school activities without fear for their safety.

The **All Students Belong** OAR is an important step in creating safe and inclusive school climates where all who participate in our school communities feel welcome.

### Background

This past July, an Oregon high school student sent a letter to Governor Kate Brown asking for help. In the letter, the student stressed the importance of banning the Confederate flag in

## All Students Belong Initial Guidance

Oregon public schools. In the student's words, "Banning the Confederate flag is far more than just an act to please some people. It shows students and educators that the State of Oregon sees them in their struggles to be considered equal and aiding in the fight against racism... Right now is a great time for Oregon to be a leader for its own citizens and throughout the United States and install this overdue policy."

This student's experience is not alone. In the last few years alone ODE has received complaints or been made aware of multiple incidents involving hate symbols such as swastikas, confederate flags, and nooses. These incidents have disrupted education for students across Oregon.

In response, Governor Brown wrote to the State Board of Education Chair and me urging us "to take immediate action to address and correct the adverse impacts symbols of hate and other manifestations of hate speech have on students in Oregon public schools." She requested that the Board establish rules to ensure that no Oregon student "be subject to actions or expressions of hate, intolerance, marginalization, or racism." The Board received a similar letter from Representatives McKeown and Brock-Smith asking it to take immediate action.

This student and others from across Oregon have come forward to show us the extreme disruption and harm that hate symbols cause. When we hear from students that their safety, mental health, well-being and ability to learn are threatened, we must listen, trust, and take immediate action. This policy change begins that action.

In Oregon, we value both freedom and responsibility, and are charged with ensuring that **All Students Belong**. This means affording our school communities the freedom of expression while removing barriers to students' educational progress, including the prohibition of display of hate symbols that incite fear and violence, and cause emotional distress and trauma. The presence of symbols of hate on the basis of race, color, religion, gender identity, sexual orientation, disability or national origin causes harm, and significantly disrupts the operation of schools. When one person in a school community is treated poorly, everyone suffers.

At the instruction of Governor Brown, the Oregon Board of Education has enacted the **All Students Belong** rule, which prohibits hate symbols, including three of the most recognizable symbols of hate—the swastika, the Confederate flag, and the noose. The temporary OAR takes effect on September 18, 2020. It requires districts to adopt and implement policies and procedures that prohibit the use or display of hate symbols including the noose, swastika, or confederate flag in any program or school-sponsored activity except where used in teaching curriculum that is aligned with the Oregon State Standards by January 1, 2021. This applies to both in-person and distance learning environments.

### **Safety and Health**

As with all OARs, the safety and health of students is our first priority. Discrimination,

## All Students Belong Initial Guidance

exclusion, othering, harassment and the use of hate symbols and hate speech are complex and multifaceted, and often reflect systemic problems rather than individual shortfalls. Swift disciplinary actions, zero-tolerance policies and other punitive responses frequently ignore this multidimensionality in favor of immediate resolution. These approaches do little to alter the attitudes and biases that resulted in the negative, and often violent behavior, and provide little chance for growth, healing or understanding.

Trauma-informed, healing-centered, and educational approaches will be needed to address the root causes and consequences of these harmful acts, and to create opportunities for education and learning while avoiding blame, punishment, or further exacerbating the attitudes and biases that may have prompted the initial event(s). We will continue to support school districts in developing rules, policies, and procedures by providing guidance and resources to support implementation of these policies over the next several months.

Together, we must protect the health of our school communities by removing any and all barriers that impede a student's ability to thrive. Students have asked that the state as a whole follow their lead. We trust in young people and communities throughout Oregon to lead us into a future where all students, staff and families are welcome in our school communities. It is our collective responsibility to make certain that **All Students Belong**.

Thank you for supporting the health and safety of our students and educators. Please review the guidance we've paired with this letter and submit any questions or suggestions to [AllStudentsBelong@state.or.us](mailto:AllStudentsBelong@state.or.us).

Sincerely,



Colt Gill  
Director of the Oregon Department of Education

## Background

Oregon school communities are the bedrock of our children’s learning, development, and flourishing. Each district and school is responsible for ensuring that *all students, families, staff members, and leaders belong*. This involves actively adopting and implementing rules, policies, and practices that promote equity and inclusion, and standing up against harmful and racist acts that run counter to these values.

Oregon’s youth and their families entrust the adults in their schools with students’ health and well-being, and rely on school communities to be welcoming and inclusive. Acts such as bullying, harassment, discrimination, intimidation, dismissal, using hate speech and symbols, and creating environments where some are excluded, marginalized, or discounted give students the message that they are not welcomed, valued, or important. These communications, whether intentional or unintentional, can, and do, cause immediate, and sometimes irreparable harm. No student is immune from being a recipient of these acts, and most will be physically, mentally, or emotionally injured by them in some way.

School districts and the adults within them have the responsibility to make sure that this does not occur, and that all students are safe, included, and free from harm. When students or members of a school community experience hate or racism, whether directly through words, actions, or symbols, or indirectly through exclusion or inequitable access to resources, their safety, health, well-being, and ability to learn and thrive are compromised. These experiences cause stress, which puts everyone involved; those who are harmed, those who cause suffering, and those charged with responding, at elevated risk for physical, emotional, and social illness. In other words, when one person in a school community is treated poorly, everyone is affected.

Discrimination, exclusion, othering, harassment, and the use of hate symbols and hate speech are complex and multifaceted, and often reflect systemic problems rather than individual shortfalls. Swift disciplinary actions, zero-tolerance policies, and other punitive responses frequently ignore this multidimensionality in favor of immediate resolution. They do little to alter the attitudes and biases that resulted in the negative, and often violent behavior, and provide little chance for growth, healing, or understanding.

[Trauma-informed, healing centered](#) approaches that address the root causes and consequences of these harmful acts need to account for these systemic factors by creating opportunities for education and learning while avoiding blame, punishment, and disciplinary strategies that can further exacerbate the attitudes and biases that may have prompted the event(s).

## State Law

The Oregon Legislature has determined that a person may not be subjected to discrimination in any public elementary, secondary, or community college education program or service, school

## All Students Belong Initial Guidance

or interschool activity or in any higher education program or service, school or interschool activity where the program, service, school or activity is financed in whole or in part by moneys appropriated by the Legislative Assembly.

It is the policy of the State Board of Education that all students, employees, and visitors in public schools are entitled to learn, work, and participate in an environment that is safe and free from discrimination, harassment, and intimidation.

## All Students Belong Rule

The presence of symbols of hate on the basis of race, color, religion, gender identity, sexual orientation, disability, or national origin including the noose, swastika, or confederate flag create a material and substantial disruption in school activities and the learning environment by creating an atmosphere of fear and intimidation and interfere with the rights of students by denying them full access to the services, activities, and opportunities offered by a school.

First, school districts, public charter schools, the Oregon School for the Deaf, Education Service Districts, Youth Corrections Education Program providers under contract with the Oregon Department of Education, Juvenile Detention Education Program providers under contract with the Oregon Department of Education, or a program that receives money pursuant to ORS 343.243, must prohibit the use or display of any noose, swastika, or confederate flag on school grounds or in any program, service, school, or activity where the program, service, school, or activity is financed in whole or in part by moneys appropriated by the Legislative Assembly except where used in teaching curriculum that is aligned the Oregon State Standards. This applies to both in-person and distance learning environments.

Second, the rule requires districts to adopt policies and procedures for dealing with bias incidents.

## Initial Guidance

This initial guidance document is intended to provide districts with resources to support their development and implementation of policies and procedures in response to this administrative rule.

### 1) Acknowledging Harm, Harm Reduction, and Response

#### (a) Acknowledging Harm

Although not all incidents of discrimination, exclusion, displaying hate symbols, or using hate speech may be intended to cause harm, their impact is hostile and detrimental nonetheless. For many, viewing symbols such as swastikas, nooses, or the confederate flag, and hearing hate

## All Students Belong Initial Guidance

speech and racial slurs cause [physiological and psychological stress](#) and emotional pain. In addition, they serve as emotional triggers for generational and historical trauma and race-based traumatic stress.

The [impacts of traumatic stress](#) on a person's physical, psychological and social emotional health are potentially long-lasting and widespread. Behaviorally, stress reactions can include increased vigilance and suspicion, intensified sensitivity to threat, sense of a foreshortened future, and reactions such as aggression, depression, anxiety, or substance use. Research examining the effects of stress on development find that chronic childhood stressors are significantly associated with poor long-term health outcomes, and are highly predictive of a heightened physiological stress response, which is tied to structural, functional, and neurochemical brain anomalies, and an increased risk of lifelong behavioral, emotional, psychosocial, and cognitive problems. This is particularly true to those who have experienced [race-based traumatic stress](#), which is often associated with [racial battle fatigue](#).

### **(b) Harm Reduction**

It is essential that all who participate in school communities address the sources and outcomes of the use of hate symbols, hate speech, and other racially-motivated, injurious behaviors swiftly and straightforwardly. For the Oregon Department of Education, and the districts across the state, this means protecting all students, eliminating all policies and procedures that create the conditions for harmful incidents to occur, and preventing or addressing these acts swiftly and directly.

In practice, this means that every school district, public charter school, the Oregon School for the Deaf, Education Service District, Youth Corrections Education Program provider under contract with the Oregon Department of Education, Juvenile Detention Education Program provider under contract with the Oregon Department of Education, or a program that receives money pursuant to ORS 343.243, enacts and enforces rules to prioritize, protect and assure the mental, physical and social health and well-being of students, their families, staff, leaders, community partners and visitors. This includes ensuring that all students, employees, and visitors can learn, work and participate in school activities, occurring on and off school grounds, that are free from discrimination, harassment, and intimidation, and guarantees that all students are welcomed and belong.

### **(c) Healing-Centered, Trauma-Informed Response**

It is important to recognize that bullying, harassment, discrimination, intimidation, dismissal, using hate speech and symbols, and creating environments where some are excluded, marginalized, oppressed, or discounted impact individuals and groups differently. Although most students and adults have, or will experience adversity, not everyone will be traumatized. It is, however, essential that schools and districts recognize that being exposed to hate-based events can cause traumatic stress, and that students and adults may exhibit traumatic stress-related symptoms such as sadness, anger, exhaustion, difficulty concentrating, sleeplessness,

## All Students Belong Initial Guidance

anxiety, hypervigilance, aggression, and avoidance of people and situations for weeks, months or even years after an incident.

In working to address the impact of harmful acts including hate speech, exposure to hate symbols, racism, and discrimination it is essential for those responsible for responding to the event to recognize that:

- Each person must be given the freedom to define their experience for themselves.
- Individuals are not defined by their trauma, behavior, emotions, thoughts, or capacity to communicate, and their experience is distinct from their identity.
- Each person brings ways of knowing, personal, family and community support, and connections to place and space that may be central to their healing.
- Responses to traumatic stress are dynamic, and may vary considerably from moment to moment, or day to day.
- Safe, trusting relationships, and a recognition and affirmation of “what is” are foundational for healing.
- The culture, policies, and practices of the institutions that were designed to protect students, such as schools, may be the [very sources of their distress](#).
- The stigma around seeking support, and the dismissal of their concerns that students often experience may prevent some from engaging in traditional approaches, and may require creative, innovative alternatives to standard care.

Under all circumstances, strengths-based, [healing-centered](#)/trauma-informed, racial equity-centered, multi-tiered systems of support are central to promoting mental health and healing. This means being explicitly responsive to each student’s linguistic and cultural heritage, and honoring each individual’s values, funds of knowledge, and inherent strengths and challenges.

## 2) Developing Policy

The following definitions should be used when developing policies to address bias incidents and prohibit the use of symbols of hate:

- (a) “Bias Incident” means a person’s hostile expression of animus toward another person, relating to the other person’s perceived race, color, religion, gender identity, sexual orientation, disability, or national origin, of which criminal investigation or prosecution is impossible or inappropriate. Bias Incidents may include derogatory language or behavior directed at or about any of the preceding demographic groups.
- (b) “Symbol of Hate” means a symbol, image, or object that expresses animus on the basis of race, color, religion, gender identity, sexual orientation, disability or nation origin including the noose, swastika, or confederate flag, and whose display:

(A) Is reasonably likely to cause a substantial disruption of or material interference with school activities, or

## All Students Belong Initial Guidance

(B) Is reasonably likely to interfere with the rights of students by denying them full access to the services, activities, and opportunities offered by a school.

Most districts have existing policies and procedures for addressing discrimination incidents that pose a threat to students and staff. Districts should use these existing resources as a starting point for developing and implementing a framework for responding to incidents in which hate symbols or hate speech occur in both in-person and in distance learning situations. Pursuant to [OAR 581-022-2312](#), on or before January 1, 2021, school districts, public charter schools, the Oregon School for the Deaf, and Education Service Districts must adopt a policy that:

- (a) Affirms all students are entitled to a high quality educational experience, free from discrimination or harassment based on perceived race, color, religion, gender identity, sexual orientation, disability, or national origin;
  - 1) Affirms all employees are entitled to work in an environment that is free from discrimination or harassment;
  - 2) Affirms all visitors are entitled to participate in an environment that is free from discrimination or harassment;
  - 3) Prohibits the use or display of any symbols of hate, including at a minimum the noose, swastika, or confederate flag, on school grounds or in any program, service, school, or activity where the program, service, school, or activity is financed in whole or in part by moneys appropriated by the Legislative Assembly except where used in teaching curriculum that is aligned the Oregon State Standards.

These policies must also:

- (i) Prioritize, protect, and assure the mental, physical and social health of students, families, staff, and leaders. This includes removing any and all barriers that interfere with a student's well-being, belonging, and ability to thrive; and
- (ii) Assure that every effort will be made to educate those committing the offense regarding the impact of their actions with appropriate, non-punitive remedial measures. Some suggested references include [A Framework for Safe & Successful School's Positive Discipline](#) or [Oakland Unified School District's Restorative Justice Whole School Implementation Guide](#) will be enacted.

We also suggest that you engage in immediate and ongoing communication of the rationale for this rule and associated district policies to all students, families, staff, and school community members.

We have provided a [Toolkit](#) that includes these talking points to assist you in that process in the [resources section](#) at the end of this document.

We recognize that changes to existing policies and procedures may require facilitated conversations with school boards, leaders, key stakeholders, students, families, and community partners. Please consider the following resources.

## All Students Belong Initial Guidance

- Please see the [following example](#) of a policy used by other Oregon school districts.
- Please see this [Decision-Making Tool](#) to guide in your policy making.

### 3) Developing Procedures

School districts, public charter schools, the Oregon School for the Deaf, Education Service Districts, Youth Corrections Education Program providers under contract with the Oregon Department of Education, Juvenile Detention Education Program providers under contract with the Oregon Department of Education, or a program that receives money pursuant to ORS 343.243 must adopt procedures for addressing bias incidents that:

(A) Define persons impacted broadly to include individuals at whom an incident was directed as well as students in the larger school community likely to be impacted by the incident;

(B) Require responding staff to prioritize the safety and well-being of all persons impacted;

(C) Require responding staff to recognize the experience of all persons impacted, acknowledge the impact, commit to taking immediate action, and prevent further harm against those persons impacted from taking place;

(D) Include in any redirection procedures educational components that address the history and impact of hate as well as procedural components to ensure the safety, healing, and agency of those impacted by hate, accountability, and transformation for people who cause harm as well as transformation of the conditions that perpetuate the harm.

- Discrimination, exclusion, othering, harassment, and the use of hate symbols and hate speech are complex and multifaceted, and often reflect systemic problems rather than individual shortfalls.
- Swift disciplinary actions, zero-tolerance policies, and other punitive responses frequently ignore this multidimensionality in favor of immediate resolution. These approaches do little to alter the attitudes and biases that resulted in the negative, and often violent behavior, and provide little chance for growth, healing, or understanding.
- Remediation strategies must include trauma-informed, healing-centered approaches that address the root causes and consequences of these harmful acts, and create opportunities for education and learning while avoiding blame, punishment, or further exacerbation of the attitudes and biases that may have prompted the event(s).

(E) Include communication protocols that provide all persons impacted with information relating to the investigation and outcome of the investigation. At a minimum, the information provided must include:

- (i) That an investigation has been initiated;

## All Students Belong Initial Guidance

(ii) When an investigation has been completed;

(iii) The findings of the investigation and the final determination based on those findings;

(iv) Actions taken with the person or persons who committed the harassing behavior to remedy behavior and prevent reoccurrence when the action relates directly to a person impacted by the event; and

(v) If any of the information in sections (i) through (iv) cannot be shared, a citation to the law prohibiting release and an explanation of how that law applies to the current situation.

(F) Direct administrators and school personnel to consider whether the behavior also implicates other civil rights laws and, if so, to respond accordingly. The nature of the conduct must determine the process used, the rights and protections available to persons impacted, and the right to appeal to the Oregon Department of Education or the United States Department of Education Office of Civil Rights; and

(G) Require administrators to develop and implement instructional materials to make this policy and related practices including reporting procedures, educational processes, and possible consequences known to all school employees and students.

When developing district procedures for addressing these incidents, we recommend using and/or amending existing policies to be aligned with the rules set forth in this document.

Please refer to the following resources for detailed suggestions and recommendations to guide you in your policy and response planning.

- [Confronting White Nationalism in Schools: A Toolkit](#) from the [Western States Center](#) for specific strategies for responding to hateful acts and extremist organizing in schools.
- [What did you just say? Responses to racist comments collected from the field.](#)
- [Responding to Hate and Bias at School: A Guide for Administrators, Counselors and Teachers](#) from [Teaching Tolerance](#).

## 4) Complaint Process

Complaints may be handled under existing policies and procedures for discrimination or harassment (AC and AC-AR; see e.g., [Reynolds School District's Discrimination Complaint Procedure](#)) or (JFCF) or a district may develop new policies and procedures (see e.g., [TTSD Bias Incident and Hate Speech AR](#)).

## All Students Belong Initial Guidance

Regardless of the policy and procedure utilized to address the complaint, the complainant must be informed of their right to appeal the district's final decision to either the U.S. Department of Education Office of Civil Rights or the Oregon Department of Education.

The complaint process must provide for individuals to report their concerns either verbally or in writing. And complainants must be informed of their right to appeal the district's final decision to either the U.S. Department of Education Office of Civil Rights or the Oregon Department of Education.

### **5) Resources**

[Toolkit for Superintendents](#). (Talking points, letter to community from superintendent and school board, letter to staff from superintendent and school board.)

[Lesson on First Amendment in Schools for High school Students](#) (activity download at the top right of the page.)

For questions and more information please email [AllStudentsBelong@ode.state.or.us](mailto:AllStudentsBelong@ode.state.or.us).

# OSBA Model Sample Policy

Code: GBEB  
Adopted:

## Communicable Diseases – Staff

The district shall provide reasonable protection against the risk of exposure to communicable disease for employees while engaged in the performance of their duties. Reasonable protection from communicable disease is generally attained through immunization, exclusion or other measures as provided by Oregon law, by the local health department or in the *Communicable Disease Guidance* published by the Oregon Department of Education (ODE) and the Oregon Health Authority (OHA).

An employee ~~who knows that he or she has or has been exposed to any restrictable disease,~~ may not attend work ~~unless authorized by Oregon law,~~ while in a communicable stage of a restrictable disease or ~~W~~ when an administrator has reason to suspect that ~~any~~ the employee has or has been exposed to any ~~restrictable~~ disease ~~and for which exclusion is required,~~ ~~the administrator shall send the employee home~~ in accordance with law and per administrative regulation GBEB-AR - Communicable Diseases - Staff. If the disease is a reportable disease, the administrator will report the occurrence to the local health department.

Employees shall comply with all other measures adopted by the district and with all rules adopted by Oregon Health Authority, Public Health Division and the local health department.

Employees shall provide services to students as required by law. In cases when a restrictable or reportable disease is diagnosed and confirmed for a student, the administrator shall inform the appropriate employees with a legitimate educational interest to protect against the risk of exposure.

~~Employees who have the responsibility to work with or to provide services to persons other than students, shall provide the services to all such persons as required by law.~~

The district shall protect the confidentiality of an employee's health condition and record to the extent possible and consistent with federal and state law.

The district will include, as part of its emergency plan, a description of the actions to be taken by district staff in the case of a declared public health emergency or other catastrophe that disrupts district operations.

The superintendent will develop administrative regulations necessary to implement this policy.

END OF POLICY

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### Legal Reference(s):

[ORS 332.107](#)

[ORS 431.150 - 431.157](#)

[ORS 433.001 - 433.526](#)

[OAR 333-018](#)

[OAR 333-019-0010](#)

[OAR 333-019-0014](#)

[OAR 333-019-1000](#)

[OAR 437-002-0360](#)

[OAR 437-002-0377](#)

[OAR 581-022-2220](#)

OREGON DEPARTMENT OF EDUCATION and OREGON HEALTH AUTHORITY, *Communicable Disease Guidance* (~~2017~~2020). Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g (~~2012~~2018); Family Educational Rights and Privacy, 34 C.F.R. Part 99 (~~2017~~2019).

Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. §§ 1320d to -1320d-8 (2018); 45 C.F.R. Parts 160, 164 (~~2019~~).

# OSBA Model Sample Policy

Code: GBEB-AR  
Revised/Reviewed:

## Communicable Diseases – Staff

In accordance with state law, administrative rule, the local health authority and the *Communicable Disease Guidance*, the procedures established below will be followed.

1. “Restrictable diseases” are defined by rule and include but are not limited to COVID-19<sup>1</sup>, chickenpox, diphtheria, hepatitis A, hepatitis E, measles, mumps, pertussis, rubella, Salmonella enterica serotype Typhi infection, scabies, Shiga-toxicogenic Escherichia coli (STEC) infection, shigellosis and infectious tuberculosis ~~disease~~, and may include a communicable stage of hepatitis B infection if, in the opinion of the local health officer, the person poses an unusually high risk to others (e.g., a child that exhibits uncontrollable biting or spitting). Restrictable disease also includes any other communicable disease identified in an order issued by the Oregon Health Authority or the local public health officer as posing a danger to the public’s health. A disease is considered to be a restrictable disease if it is listed in Oregon Administrative Rule (OAR) 333-019-0010, or it has been designated to be a restrictable disease ~~by Board policy<sup>2</sup> or~~ by the local public health administrator after determining that it ~~presents a significant public health risk in the school setting~~ poses a danger to the public’s health.
2. “Susceptible” ~~means being at risk of contracting a restrictable disease by virtue of being in one or more categories described in law~~ for an employee means lacking evidence of immunity to the disease.
3. “Reportable diseases” means a ~~human reportable disease, infection, microorganism or condition as specified in OAR Chapter 333, Division 18~~ disease or condition, the reporting of which enables a public health authority to take action to protect or to benefit the public health.

### Restrictable Diseases

1. An employee of the district will not attend or work at a district school or facility while in a communicable stage of a restrictable disease, including a communicable stage of COVID-19<sup>3</sup>, unless authorized to do so under Oregon law. When an administrator has reason to suspect that an employee has a restrictable disease, the administrator shall send the employee home.
2. ~~When a~~ An administrator shall exclude an employee if the administrator has reason to suspect that an employee ~~has or~~ has been exposed to ~~any restrictable disease that requires exclusion, the administrator shall send the employee home~~ measles, mumps, rubella, diphtheria, pertussis, hepatitis A, or hepatitis B, unless the local health officer determines that exclusion is not necessary to protect

<sup>1</sup> Added per OAR 333-019-1000(2).

<sup>2</sup> “OAR 333-019-0010(7) Nothing in these rules prohibits a school or children’s facility from adopting more stringent exclusion standards under ORS 433.284.”

<sup>3</sup> “Communicable stage of COVID-19” means having a positive presumptive or confirmed test of COVID-19.

the public's health. The administrator may request the local health officer to make a determination as allowed by law. If the disease is reportable, the administrator will report the occurrence to the local health department.

3. An administrator shall exclude an employee if the administrator has been notified by a local public health administrator or local public health officer that the employee has had a substantial exposure to an individual with COVID-19 and exclusion is deemed necessary by same.
4. ~~3.~~An employee will be excluded in such instances until such time as the employee presents a certificate from a physician, a physician assistant licensed under Oregon Revised Statute (ORS) 677.505 - 677.525, a nurse practitioner licensed under ORS 678.375 - 678.390, local health department nurse or school nurse stating that the employee does not have or is not a carrier of any restrictable disease.  
~~4.An administrator will exclude a susceptible employee that has been exposed to a restrictable disease that is also a reportable disease unless the local health officer determines that exclusion is not necessary to protect the public's health, or the local health officer states the disease is no longer communicable to others or that adequate precautions have been taken to minimize the risk of transmission. The administrator may request the local health officer to make a determination as allowed by law.~~
5. An administrator may allow attendance of an employee restricted for chickenpox, scabies, staphylococcal skin infections, streptococcal infections, diarrhea or vomiting if the restriction has been removed by a school nurse or health care provider.
6. More stringent exclusion standards for employees from school or work may be adopted by the local health department ~~or by the district through policy adopted by the Board.~~
7. The district's emergency plan shall address the district's plan with respect to a declared public health emergency at the local or state level.

### Reportable Diseases Notification

1. All employees shall comply with all reporting measures adopted by the district and with all rules set forth by Oregon Health Authority, Public Health Division and the local health department.
2. An administrator may seek confirmation and assistance from the local health officer to determine the appropriate district response when the administrator is notified that an employee or a student has been exposed to a restrictable disease that is also a reportable disease.
3. ~~3.~~ District staff with impaired immune responses, that are of childbearing age or some other medically fragile condition, should consult with a medical provider for additional guidance~~1.3~~
4. An administrator shall determine other persons ~~with a legitimate educational interest~~ who may be informed of ~~the communicable nature of an individual student's disease, or~~ an employee's

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<sup>4</sup> Refer to *Communicable Disease Guidance* published by the Oregon Health Authority and the Oregon Department of Education.

communicable disease, or that of a student's when a legitimate educational interest exists or for health and safety reasons, ~~within guidelines allowed by~~ in accordance with law.

### Equipment and Training

1. The administrator or designee shall, on a case-by-case basis, determine what equipment and/or supplies are necessary in a particular classroom or other setting in order to prevent disease transmission.
2. The administrator or designee shall consult with the district's school nurse or other appropriate health officials to provide special training in the methods of protection from disease transmission.
3. All district personnel will be instructed annually ~~by the school health nurse~~ to use the proper precautions pertaining to blood and body fluid exposure per the Occupational Safety and Health Administration (OSHA). (See policy EBBAA).

# OSBA Model Sample Policy

Code: GBN/JBA  
Adopted:

## Sexual Harassment

The district is committed to eliminating sexual harassment. Sexual harassment will not be tolerated in the district. All students, staff members and other persons are entitled to learn and work in an environment that is free of harassment. All staff members, students and third parties are subject to this policy. Any person may report sexual harassment.

The district processes complaints~~X~~ or reports of sexual harassment under Oregon Revised Statute (ORS) 342.700 et. al. and federal Title IX laws found in Title 34 C.F.R. Part 106. Individual complaints may require both of these procedures, and may involve additional complaint procedures.

### General Procedures

When information, a report or complaint regarding sexual harassment is received by the district, the district will review such information, report or complaint to determine which law applies and will follow the appropriate procedures. When the alleged conduct could meet both of the definitions in ORS Chapter 342 and Title IX, both complaint procedures should be processed simultaneously (*see* GBN/JBA-AR(1) - Sexual Harassment Complaint Procedure and GBN/JBA-AR(2) - Federal Law (Title IX) Sexual Harassment Complaint Procedure). The district may also need to use other complaint procedures when the alleged conduct could meet the definitions for other complaint procedures~~X~~.

### OREGON DEFINITION AND PROCEDURES

#### Oregon Definition

Sexual harassment of students, staff members or third parties<sup>3</sup> shall include:

1. A demand or request for sexual favors in exchange for benefits;
2. Unwelcome conduct of a sexual nature that is physical, verbal, or nonverbal and that:
  - a. Interferes with a student's educational activity or program;
  - b. Interferes with a school or district staff member's ability to perform their job; or
  - c. Creates an intimidating, offensive or hostile environment.

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~~{<sup>1</sup> Some districts choose not to use the terms "complaint" and "complainant" because they feel the stigma associated with the terms discourage victims from reporting conduct. The terms used in this policy are consistent with those included in the law. If you choose to change these terms, make sure that you are consistent and clear. Note, "complainant" is defined under federal law.}~~

~~{<sup>2</sup> Common complaint procedures that may also be involved include: Nondiscrimination (Board policy AC), Workplace Harassment (Board policy GBEA), ~~Harassment~~, Intimidation, Bullying, ~~Menacing~~, Cyberbullying, Teen Dating Violence and Domestic Violence – Student (Board policy JFCF), and Reporting Requirements for Suspected Sexual Conduct with Students (Board policy GBNA/JHFF)}~~

<sup>3</sup> "Third party" means a person who is not a student or a school or district staff member and who is: 1) on or immediately adjacent to school grounds or district property; 2) At a school-sponsored activity or program; or 3) Off school grounds or district property if a student or a school or district staff member acts toward the person in a manner that creates a hostile environment for the person while on school or district property, or at a school- or district-sponsored activity.

3. Assault when sexual contact occurs without the student's, staff member's or third party's consent because the student, staff member or third party is under the influence of drugs or alcohol, is unconscious or is pressured through physical force, coercion or explicit or implied threats. ~~X~~

Sexual harassment does not include conduct that is necessary because of a job duty of a school or district staff member or because of a service required to be provided by a contractor, agent, or volunteer, if the conduct is not the product of sexual intent or a person finding another person, or another person's action, offensive because of that other person's sexual orientation or gender identity.

Examples of sexual harassment may include, but not be limited to, ~~X~~ physical touching or graffiti of a sexual nature; displaying or distributing of sexually explicit drawings; pictures and written materials; sexual gestures or obscene jokes; touching oneself sexually or talking about one's sexual behaviors in front of others; or spreading rumors about or rating other students or others as to appearance, sexual activity or performance.

### Oregon Procedures

Reports and complaints of sexual harassment should be made to the following individual(s):

Name	Position	Phone	Email
Dawn Moorefield	Ass't Superintendent	503-749-8010	dmoorefield@cascade.k12.or.us
<del>Darin Drift</del>	<del>Superintendent</del>	<del>503-749-8010</del>	<del>ddrift@cascade.k12.or.us</del>

This/These individual(s) is/are responsible for accepting and managing complaints of sexual harassment. Persons wishing to report should contact them using the above information. ~~This person is also designated as the Title IX Coordinator.~~ <sup>{6}</sup> See GBN/JBA-AR(1) - Sexual Harassment Complaint Procedure.

### Response

Any staff member who becomes aware of behavior that may violate this policy shall ~~immediately~~ report to a district official. The district official (with coordination involving the reporting staff member when appropriate) will take any action necessary to ensure the:

1. Student is protected and to promote a nonhostile learning environment;
2. Staff member is protected and to promote a nonhostile work environment; or
3. Third party who is subjected to the behavior is protected and to promote a nonhostile environment.

This includes providing resources for support measures to the student, staff member or third party who was subjected to the behavior and taking any actions necessary to remove potential future impact on the

<sup>{4}</sup> ~~X~~ The statutory definition (ORS 342.704) for sexual harassment includes separate definitions with slightly different language for students, staff members and third parties. The language used in this policy comes from OAR 581-021-0038(1)(b). If the district would like to include the full statutory definition, it can do so.

<sup>{5}</sup> ~~X~~ OAR 581-021-0038 requires that the policy include a "examples of harassing behaviors covered by policy". The bracketed list in this policy reflects OSBA's recommendations. The district has discretion in what is included in this list. If listing behaviors not reflected in OSBA recommendations, please have the list reviewed by the district's legal counsel.

<sup>{6}</sup> This must be communicated elsewhere, but it is a good reason to specify it here as well.

student, staff member or third party, but are not retaliatory against the student, staff member or third party being harassed or the person who reported to the district official.

Any student or staff member who feels they are a victim of sexual harassment are encouraged to ~~immediately~~ report their concerns to district officials, this includes officials such as the principal, compliance officer or superintendent. Students may also report concerns to a teacher, counselor or school nurse, who will promptly notify the appropriate district official.

## Investigation

All reports and complaints about behavior that may violate this policy shall be investigated. ~~The district may use, but is not limited to, the following means for investigating incidents of possible harassment:~~

- ~~1. Interviews with those involved;~~
- ~~2. Interviews with witnesses;~~
- ~~3. Review of video surveillance;~~
- ~~4. Review of written communications, including electronic communications;~~
- ~~5. Review of any physical evidence; and~~
- ~~6. Use of third party investigator.~~

~~The district will use a reasonable person standard when determining whether a hostile environment exists. A hostile environment exists if a reasonable person with similar characteristics and under similar circumstances would consider the conduct to be so severe as to create a hostile environment.<sup>(7)</sup>~~

~~The district may take, but is not limited to, the following procedures and remedial action to address and stop sexual harassment:~~

- ~~1. [Discipline of staff and students engaging in sexual harassment;~~
- ~~2. Removal of third parties engaged in sexual harassment;~~
- ~~3. Additional supervision in activities;~~
- ~~4. Additional controls for district electronic systems;~~
- ~~5. Trainings and education for staff and students; and~~
- ~~6. Increased notifications regarding district procedures and resources.]~~

~~When a student or staff member is harassed by a third party, the district will consider the following:~~

- ~~1. [Removing that third party's ability to contract or volunteer with the district, or be present on district property;~~

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<sup>7</sup> OSBA strongly recommends that the Board receive input from district administration prior to adopting a standard here. Of note, Title IX's definition of sexual harassment includes "unwelcome conduct determined by a reasonable person to be..." 34 CFR 106.30(a), emphasis added. It is important to consider the different definitions under Oregon law and Title IX when determining which standards will apply for the Oregon process.

- ~~2. If the third party works for an entity that contracts with the district, communicating with the third party's employer;~~
- ~~3. If the third party is a student of another district or school, communicate information related to the incident to the other district or school;~~
- ~~4. Limiting attendance at district events; and~~
- ~~5. Providing for additional supervision, including law enforcement if necessary, at district events.]~~

## **No Retaliation**

Retaliation against persons who initiate complaint or otherwise report sexual harassment or who participate in an investigation or other related activities is prohibited. The initiation of a complaint, reporting of behavior, or participation in an investigation, in good faith about behavior that may violate this policy may not adversely affect the:

1. Educational assignments or educational environment of a student or other person initiating the complaint, reporting the behavior, or participating in the investigation; or
2. Any terms or conditions of employment or of work or educational environment of a school or district staff member or other person initiating the complaint, reporting the behavior, or participating in the investigation.

Students who initiate a complaint or otherwise report harassment covered by the policy or who participate in an investigation may not be disciplined for violations of the district's drug and alcohol policies that occurred in connection with the reported prohibited conduct and that were discovered because of the report or investigation, unless the student gave another person alcohol or drugs without the person's knowledge and with the intent of causing the person to become incapacitated and vulnerable to the prohibited conduct.

## **Notice**

When a person<sup>8</sup> who may have been affected by this policy files a complaint or otherwise reports behavior that may violate the policy, the district shall provide written notification to the following:

1. Each reporting person;
2. If appropriate, any impacted person who is not a reporting person;
3. Each reported person; and
4. Where applicable, a parent or legal guardian of a reporting person, impacted person, or reported person.

The written notification must include<sup>9</sup>:

1. Name and contact information for all person designated by the district to receive complaints;
2. The rights of the person that the notification is going to;

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<sup>8</sup> Student, staff member, or third party, or if applicable, the student or third party's parent. If the person is a minor, the district should consider when to contact the person's parent.

<sup>9</sup> Remember confidentiality laws when providing any information.

3. Information about the internal complaint processes available through the school or district that the ~~[student, student's parents, staff member, person or person's parent]~~ person who filed the complaint may pursue, including the person designated for the school or district for receiving complaints and any timelines.
4. Notice that civil and criminal remedies that are not provided by the school or district may be available to the person through the legal system and that those remedies may be subject to statutes of limitation;
5. Information about services available to the student or staff member through the school or district, including any counseling services, nursing services or peer advising;
6. Information about the privacy rights of the person and legally recognized exceptions to those rights for internal complaint processes and services available through the school or district;
7. Information about, and contact information for, services and resources that are available to the person, including but not limited to:
  - a. For the reporting person, state and community-based resources for persons who have experienced sexual harassment; or
  - b. For the reported persons, information about and contact information for state and community-based mental health services.
8. Notice that students who report about possible prohibited conduct and students who participate in an investigation under this policy may not be disciplined for violations of the district's drug and alcohol policies that occurred in connection with the reported prohibited conduct and that were discovered as a result of a prohibited conduct report or investigation unless the student gave another person alcohol or drugs without the person's knowledge and with the intent of causing the person to become incapacitated and vulnerable to the prohibited conduct; and
9. Prohibition of retaliation.

Notification, to the extent allowable under state and federal student confidentiality laws, must be provided when the investigation is initiated and concluded. The notification at the conclusion must include whether a violation of the policy was found to have occurred.

The notice must:

1. Be written in plain language that is easy to understand;
2. Use print that is of a color, size and font that allows the notification to be easily read; and
3. Be made available to students, students' parents, staff members and member of the public at each office, at the district office and on the website of the school or district.

~~**[Oregon Department of Education (ODE) Support**~~

~~The ODE will provide technical assistance and training upon request.]~~

**FEDERAL DEFINITION AND PROCEDURES**

**Federal Definition**

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the district conditioning the provision of an aid, benefit, or service of the district on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's education program or activity<sup>10</sup>;
3. "Sexual assault": an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation;
4. "Dating violence": violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship and the frequency of interaction between the persons involved in the relationship;
5. "Domestic Violence": felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction; or
6. "Stalking": engaging in a course of conduct directed at a specific person that would cause a reasonable person fear for the person's own safety or the safety of others, or suffer substantial emotional distress.

This definition only applies to sex discrimination occurring against a person who is a subject of this policy in the United States. A district's treatment of a complainant or a respondent in response to a formal complaint of sexual harassment may constitute discrimination on the basis of sex under Title IX.

### **Federal Procedures**

The district will adopt and publish grievance procedures that provide for the prompt and equitable resolution of the student and employee complaints alleging any action that would be prohibited by this policy. *See* GBN/JBA-AR(2) - Federal Law (Title IX) Sexual Harassment Complaint Procedure.

### **Reporting**

Any person may report sexual harassment. This report may be made in person, by mail, by telephone, or by electronic mail, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. The report can be made at any time.

*The Assistant Superintendent*  
~~{Person or position}~~ is designated as the Title IX Coordinator, ~~and can be contacted at [insert phone number]}~~. The Title IX Coordinator will coordinate the district's efforts to comply with its responsibilities related to this AR. The district prominently will display the contact information for the Title IX Coordinator on the district website and in each handbook. <sup>{11}</sup>

### **Response**

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<sup>10</sup> "Education program or activity" includes locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs." (Title 34 C.F.R. § 106.44(a))

{<sup>11</sup> Note the difference in requirements for Title IX and Oregon law. It makes sense to align these requirements.}

The district will promptly respond to information, allegations or reports of sexual harassment when there is actual knowledge of such harassment, even if a formal complaint has not been filed.<sup>12</sup> The district shall treat complainants and respondents equitably by providing supportive measures<sup>13</sup> to the complainant and by following a grievance procedure<sup>14</sup> prior to imposing any disciplinary sanctions or other actions that are not supportive measures against a respondent. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

The Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes, with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.<sup>15</sup>

If after an individualized safety and risk analysis, it is determined that there is an immediate threat to the physical health or safety of any person, an emergency removal of the respondent can take place.<sup>16</sup> The district must provide the respondent with notice and an opportunity to challenge the decision immediately following the removal. A non-student employee may also be placed on non-disciplinary administrative leave pending the grievance process.

### **Notice**

The district shall provide notice to all applicants for admission and employment, students, parents or legal guardians, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the district of the following:

1. The name or title, office address, electronic mail address, and telephone number of the Title IX Coordinator(s);
2. That the district does not discriminate on the basis of sex in the education program or activity that it operates, as required by Title IX. This includes admissions and employment; and
3. The grievance procedure and process, how to file a formal complaint of sex discrimination or sexual harassment, and how the district will respond.

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<sup>12</sup> (Title 34 C.F.R. §106.44(a)) Response cannot be deliberately indifferent. A recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.

<sup>13</sup> (Title 34 C.F.R. § 106.44(a)) Supportive measures means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the district's educational environment, or deter sexual harassment.<sup>13</sup> The district must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide supportive measures. (Title 34 C.F.R. § 99.30(a))

<sup>14</sup> This grievance procedure must meet the requirements of Title 34 C.F.R. § 106.45 (included in accompanying administrative regulation, *see* GBN/JBA-AR(2) - Federal Law (Title IX) Sexual Harassment Complaint Procedure).

<sup>15</sup> The Title IX Coordinator may also discuss that the Title IX Coordinator has the ability to file a formal complaint.

<sup>16</sup> The district may still have obligations under Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973 or the American with Disabilities Act (ADA). (Title 34 C.F.R. § 106.44(c))

~~[Inquiries about the application to Title IX and its requirements may be referred to the Title IX Coordinator or the Assistant Secretary<sup>17</sup>, or both.]~~

### **No Retaliation**

Neither the district or any person may retaliate<sup>18</sup> against an individual for reporting, testifying, providing evidence, being a complainant, otherwise participating or refusing to participate in any investigation or process in accordance with this procedure. The district must keep confidential the identity of parties and participating persons, except as disclosure is allowed under Family Educational Rights and Privacy Act (FERPA), as required by law, or to carry out the proceedings herein. Complaints of retaliation may be filed using these procedures.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding does not constitute retaliation.

### **Publication**

This policy shall be made available to students, parents of students and staff members. This policy and contact information for the Title IX Coordinator shall be prominently published in the [school] [district] student handbook and on the [school] [district] website. This policy shall also be made available at each school office and at the district office. The district shall post this policy on a sign in all grade 6 through 12 schools, on a sign that is at least 8.5 inches by 11 inches in size. A copy of the policy will be made available to any [student, parent of a student, school or district staff member, or third party] [person] upon request.

END OF POLICY

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#### **Legal Reference(s):**

[ORS 243.706](#)  
[ORS 332.107](#)  
[ORS 342.700](#)  
[ORS 342.704](#)  
[ORS 342.708](#)

[ORS 342.850](#)  
[ORS 342.865](#)  
[ORS 659.850](#)  
[ORS 659A.006](#)  
[ORS 659A.029](#)

[ORS 659A.030](#)  
[OAR 581-021-0038](#)  
[OAR 584-020-0040](#)  
[OAR 584-020-0041](#)

Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (2018).

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e (2018).

Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1683 (2018); Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 34 C.F.R. Part 106 (2020).

Bartsch v. Elkton School District, FDA-13-011 (March 27, 2014).

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<sup>17</sup> Of the United States Department of Education.

<sup>18</sup> Retaliation includes, but is not limited to, intimidation, threats, coercion, and discrimination.

# OSBA Model Sample Administrative Regulation

Code: GBN/JBA-AR(1)  
Revised/Reviewed:

## Sexual Harassment Complaint Procedure

{<sup>1</sup>} Reports and complaints of sexual harassment should be made to the following individual(s):

Name	Position	Phone	Email
<u>Dawn Moorefield</u>	<u>Ass't Supt.</u>	<u>503.749.8010</u>	<u>dmoorefield@ cascade.k12.or.us</u>

The district official receiving the complaint shall issue the required written notice as outlined under Oregon Procedures in Board policy GBN/JBA - Sexual Harassment.

Step 1 The district official receiving the report or complaint shall promptly initiate an investigation using procedures and standards, including but not limited to, those identified in Board policy GBN/JBA - Sexual Harassment and will notify the complainant or reporting person, any impacted person who is not a reporting person (if appropriate), each reported person, and where applicable the parents of a reporting person, impacted person, or reported person, when such investigation is initiated. The official will arrange such meetings as may be necessary to discuss the issue with all concerned parties within ~~five~~ <sup>five</sup> working days after receipt of the report or complaint. The parties will have an opportunity to submit evidence and a list of witnesses. All findings of the investigation shall be reduced to writing. The official conducting the investigation shall notify the parties in writing that the investigation is concluded and if a violation of the policy was found to have occurred to the extent allowable by law within ~~30~~ <sup>30</sup> days of receipt of the report or complaint.

A copy of the required written notice(s) and the date and details of notification of the notice of investigation and results of the investigation, together with any other documentation related to the sexual harassment incident, including disciplinary action taken or recommended, shall be forwarded to the superintendent.

Step 2 If a complainant is not satisfied with the decision at Step 1, the complainant may submit a written appeal to the superintendent ~~or designee~~. Such appeal must be filed within ~~10~~ <sup>10</sup> working days after receipt of the Step 1 decision. The superintendent ~~or designee~~ will arrange such meetings with the complainant and other affected parties as deemed necessary to discuss the appeal within ~~5~~ <sup>5</sup> working days of receipt of the appeal. The superintendent ~~or designee~~ shall provide a written decision to the complainant within ~~10~~ <sup>10</sup> working days.

Step 3 If a complainant is not satisfied with the decision at Step 2, the complainant may submit a written appeal to the Board. Such appeal must be filed within ~~10~~ <sup>10</sup> working days after receipt of the Step 2 decision. The Board will review the decision of the superintendent ~~or designee~~ in a public meeting to determine what action is appropriate. The Board may use executive

{<sup>1</sup> Align with same positions identified in policy.}

session if the subject matter qualifies under Oregon law. Appropriate action may include, but is not limited to, holding a hearing, requesting additional information, and adopting the superintendent's or designee's decision. All parties involved, including the school administration, may be asked to attend a hearing for the purposes of making further explanations and clarifying the issues. The Board shall provide a written decision to the complainant within 30 working days following receipt of the appeal.

If the Board chooses not to hear the complaint, the superintendent's or designee's decision in Step 2 is final<sup>2</sup>.

The superintendent is authorized to amend these procedures (including timelines) when the superintendent feels it is necessary for the efficient handling of the complaint. Notice of any amendments will be promptly provided to the parties.

Complaints against the principal may start at Step 2 and may be filed with the superintendent or designee. The superintendent or designee will cause the required notices to be provided. The superintendent or designee will investigate the complaint and will notify the parties in writing that the investigation is concluded and if a violation of the policy was found to have occurred to the extent allowable by law. If the complaint remains unresolved within 10 working days of receipt by the superintendent or designee, the complainant may appeal to the Board in Step 3.

Complaints against the superintendent or a Board member (other than the Board chair) may start at Step 3 and should be referred to the Board chair on behalf of the Board. The Board chair will cause required notices to be provided. The Board chair shall present the complaint to the Board. The Board may use executive session if the subject matter qualifies under Oregon law. If the Board decides an investigation is warranted, the Board may refer the investigation to a third party. When the investigation is complete, the results will be presented to the Board. After receiving the results of the investigation, the Board shall decide, within 20 days, in open session what action, if any, is warranted. The Board chair shall notify the parties in writing that the investigation is concluded and if a violation of the policy was found to have occurred to the extent allowable by law.

Complaints against the Board chair may start at Step 3 and should be referred to the Board vice chair on behalf of the Board. The Board vice chair will cause required notices to be provided. The Board vice chair shall present the complaint to the Board. The Board may use executive session if the subject matter qualifies under Oregon law. If the Board decides an investigation is warranted, the Board may refer the investigation to a third party. When the investigation is complete, the results will be presented to the Board. After receiving the results of the investigation, the Board shall decide, within 20 days, in open session what action, if any, is warranted. The Board vice chair shall notify the parties in writing that the investigation is concluded and if a violation of the policy was found to have occurred to the extent allowable by law.

Direct complaints related to employment may be filed with the U.S. Department of Labor, Equal Employment Opportunity Commission or Oregon Bureau of Labor and Industries.

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<sup>2</sup> [If the Board chooses to accept the superintendent's decision as the district's final decision on the complaint, the superintendent's written decision must meet the requirements of OAR 581-022-2370(4)(b).]

Direct complaints related to educational programs and services may be made to the Regional Civil Rights Director, U.S. Department of Education, Office for Civil Rights, Region X, 915 2nd Ave., Room 3310, Seattle, WA 98174-1099.

Additional information regarding filing of a complaint or report may be obtained through the principal, compliance officer or superintendent.

All documentation related to sexual harassment complaints may become part of the student's education record or employee's personnel file, as appropriate. Additionally, a copy of all sexual harassment complaints or reports and documentation will be maintained as a confidential file and stored in the district office.

The superintendent shall report the name of any person holding a teaching license or registered with Teacher Standards and Practices Commission (TSPC) or participating in a practicum under Oregon Administrative Rule (OAR) Chapter 584, Division 17, when, after appropriate investigation, there is reasonable cause to believe the person may have committed an act of sexual harassment. Reports shall be made to TSPC within 30 days of such a finding. Reports of sexual contact with a student shall be given to a representative from law enforcement or Oregon Department of Human Services, as possible child abuse.

[Name of District]  
[Address] | [Phone]

**SEXUAL HARASSMENT COMPLAINT FORM**

Name of complainant: \_\_\_\_\_

Position of complainant: \_\_\_\_\_

Date of complaint: \_\_\_\_\_

Name of alleged harasser: \_\_\_\_\_

Date and place of incident or incidents: \_\_\_\_\_

Description of misconduct: \_\_\_\_\_

Name of witnesses (if any): \_\_\_\_\_

Evidence of sexual harassment, i.e., letters, photos, etc. (attach evidence if possible): \_\_\_\_\_

Any other information: \_\_\_\_\_

I agree that all the information on this form is accurate and true to the best of my knowledge.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

[Name of District]  
[Address] | [Phone]

**WITNESS DISCLOSURE FORM**

Name of Witness: \_\_\_\_\_

Position of Witness: \_\_\_\_\_

Date of Testimony/Interview: \_\_\_\_\_

Description of Instance Witnessed: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Any Other Information: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

I agree that all the information on this form is accurate and true to the best of my knowledge.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_



# OSBA Model Sample Administrative Regulation

Code: GBN/JBA-AR(2)  
Adopted:

## Federal Law (Title IX) Sexual Harassment Complaint Procedure

### Additional Definitions

“Actual knowledge” means notice of sexual harassment or allegations of sexual harassment to the district’s Title IX Coordinator or any official of the district who has authority to institute corrective measures on behalf of the district, or to any employee of an elementary or secondary school.<sup>1</sup>

“Complainant” means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

“Formal complaint” means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent<sup>2</sup> and requesting that the district investigate the allegation of sexual harassment.<sup>3</sup>

“Supportive measures” means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the recipient’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the district’s educational environment, or deter sexual harassment.<sup>4</sup> The district must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide supportive measures.

### Formal Complaint Procedures

Upon receipt of a formal complaint, the district will provide the parties<sup>5</sup> written notice of the following:

1. Notice of the district’s grievance process, including any informal resolution process.

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<sup>1</sup> This standard is not met when the only official with knowledge is the respondent.

<sup>2</sup> “Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

<sup>3</sup> A complainant must be participating in or attempting to participate in the education program or activity of the district with which the formal complaint is filed.

<sup>4</sup> Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

<sup>5</sup> Parties include the complainant and the respondent, if known.

2. Notice of the allegations of sexual harassment potentially constituting sexual harassment, including sufficient details<sup>6</sup> known at the time and with sufficient time to prepare a response before any initial interview.
3. That the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility be made at the conclusion of the grievance process.
4. That the parties may have an advisor of their choice, who may be, but is not required to be, an attorney.
5. The parties may inspect and review evidence.
6. A reference to any provision in the district's code of conduct~~X~~ that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

The Title IX Coordinator will contact the complainant and the respondent to discuss supportive measures. If necessary, the Title IX Coordinator will arrange for an individualized safety and risk analysis. If necessary, a student or non-student employee may be removed or placed on leave.

### Investigation

The Title IX Coordinator will coordinate the district's investigation. The investigation must:

1. Include objective evaluation of all relevant evidence, including inculpatory and exculpatory evidence.
2. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the district and not on the parties.<sup>8</sup>
3. Provide an equal opportunity for the parties to present witnesses, and other inculpatory and exculpatory evidence.
4. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
5. Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice.<sup>9</sup> The district may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.

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<sup>6</sup> Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known.

~~X~~ <sup>7</sup> The district is encouraged to review Board policy JFC and codes of conduct found in handbooks for applicable language. }

<sup>8</sup> The district cannot access, consider, disclose, or otherwise use a party's records that are made of maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's capacity, and which are maintained in connection with the provision of treatment to the party, unless the district obtains the party's (or eligible student's parent's) voluntary, written consent to do so.

<sup>9</sup> In addition to an advisor, complainants and respondents may also be entitled to other accompaniment as required by law or as necessary for conducting of grievance procedures, including but not limited to translators, services for students with disabilities and parents of minor students.

6. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.
7. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint.<sup>10</sup> Prior to completion of the investigative report, the district must send to each party and party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report;
8. Create an investigative report that fairly summarizes relevant evidence and is sent to each party and party's advisor in electronic format or hard copy at least 10 days prior to any hearing (if required or provided) or other time of determination of responsibility. The party and advisor will be allowed to review and provide a written response.

After the district has sent the investigative report to the parties and before reaching a determination regarding responsibility, the decision maker(s) must afford each party the opportunity to submit written, relevant questions<sup>11</sup> that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.

Credibility determinations are not based on the person's status as a complainant, respondent or witness.

No person designated as a Title IX Coordinator, investigator, decision-maker, or any person designated by the district to facilitate an informal resolution process may have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

If, in the course of an investigation, the district decides to investigate allegations about the complainant or respondent that are not included in the notice previously provided, the district must provide notice of the additional allegations to the parties whose identities are known.

At no point in the process will the district, or anyone participating on behalf of the district, require, allow, rely upon, or otherwise use questions or evidence that constitutes, or seeks disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

### **Determination of Responsibility**

The respondent must be deemed to be not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

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<sup>10</sup> This includes the evidence upon which the district does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to the investigation. The district must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

<sup>11</sup> Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the question and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

The standard to be used for formal complaints in determining whether a violation has occurred is the preponderance of the evidence<sup>12</sup> ~~[clear and convincing evidence<sup>13</sup>]~~ standard.

The person deciding the question of responsibility (the “decision-maker”) must be someone other than the Title IX Coordinator or the investigator(s). The decision-maker must issue a written determination which must include:

1. Identification of the allegations potentially constituting sexual harassment;
2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather evidence, and hearings held;
3. Findings of fact supporting the determination;
4. Conclusions regarding the application of the district’s code of conduct to the facts;
5. A statement of, and rationale for, the result as to each allegation, including:
  - a. A determination regarding responsibility;
  - b. Any disciplinary sanctions the district imposes on the respondent; and
  - c. Whether remedies designed to restore or preserve equal access to the district’s education program or activity will be provided by the district to the complainant; and
6. The district’s procedures and permissible bases for the complainant and respondent to appeal.

The district must provide the written determination to the parties simultaneously.

The determination regarding responsibility becomes final either on the date that the recipient provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

## Remedies

The Title IX Coordinator is responsible for effective implementation of any remedies.

The disciplinary sanctions<sup>14</sup> may include:

1. Discipline up to and including suspension and expulsion;
2. Removal from various activities, committees, extra-curricular, positions, etc.
3. Disqualification for awards and honors;

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<sup>12</sup> A preponderance of the evidence standard is understood to mean concluding that a fact is more likely than not to be true. U.S. Department of Education, Title IX Regulations commentary, p. 1268, FN 1409.

<sup>13</sup> A clear and convincing evidence standard of evidence is understood to mean concluding that a fact is highly probable to be true. U.S. Department of Education, Title IX Regulations commentary, p. 1268, FN 1409.

<sup>14</sup> Districts should review any other disciplinary procedures and requirements prior to imposing any discipline, and should contact legal counsel with questions.

4. Discipline up to and including termination, in accordance with laws, agreements, contracts, handbooks, etc.<sup>15</sup>

~~Other remedies may include:~~

- ~~1. [Educational programming];[.].~~

### **Dismissal of a Formal Complaint**

The district must dismiss a formal complaint with regard to Title IX sexual harassment if the alleged conduct:

1. Would not constitute sexual harassment, even if proved;
2. Did not occur in the district's education program or activity<sup>16</sup>; or
3. Did not occur against a person in the United States.

The district may dismiss a formal complaint with regard to Title IX sexual harassment if at any time during the investigation or hearing, if provided:

1. A complainant notifies the Title IX Coordinator in writing that the complaint would like to withdraw the formal complaint or any allegations therein;
2. The respondent is no longer enrolled or employed by the district; or
3. Specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon dismissal of a formal complaint, the district must promptly send written notice of the dismissal and the reason(s) therefor simultaneously to the parties.

**The dismissal of a formal complaint under Title IX does not preclude the district from continuing any investigation and taking action under a different process. The district may have an obligation to continue an investigation and process under a different process.**

### **Consolidation of Complaints**

The district may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by one or more complainant against one or more respondents, or by one party against another party, where the allegations of sexual harassment arise out of the same facts or circumstances.

### **Informal Resolution**

If the district receives a formal complaint, at any time prior to reaching a determination regarding responsibility, the district may offer an optional informal resolution process, provided that the district:

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<sup>15</sup> It is important to keep supportive measures separate from disciplinary sanctions. Supportive measures must be "non-disciplinary" and "non-punitive."

<sup>16</sup> Includes locations, events, or circumstances over which the district exercised substantial control over both the respondent the respondent and the context in which the sexual harassment occurs[, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution]. (Title 34 C.F.R. §106.44(a))

1. Provides written notice to the parties disclosing:
  - a. The allegations;
  - b. The requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint; and
  - c. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.
2. Obtains the parties' voluntary written consent to the informal resolution process; and
3. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

### Appeals

Either party may file an appeal from a determination regarding responsibility or from a dismissal of a formal complaint, within ~~15~~ <sup>10 working</sup> days of the decision, on the following bases:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; or
3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.
- ~~4. [Additional bases may be allowed, if made available equally to both parties.]~~

When an appeal is filed, the district must:

1. Notify the other party in writing;
2. Implement appeal procedures equally for both parties;
3. Ensure the decision-maker(s) for the appeal is not the same person as the decision-maker(s) who reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
4. Ensure the decision-maker for the appeal is free from conflicts of interest and bias;
5. Give both parties a reasonable equal opportunity to submit a written statement in support of, or challenging the outcome;
6. Issue a written decision describing the result of the appeal and the rationale for the result; and
7. Provide the written decision simultaneously to both parties.

### Timelines

The district will complete the following portions of the grievance process within the specified timelines:

1. General grievance process (from receipt of formal complaint to determination of responsibility: ~~190~~ days;
2. Appeals (from receipt of appeal): ~~160~~ days;
3. Informal resolution process: ~~160~~ days.

Temporary delays of the grievance process, or limited extensions of time will be allowed for good cause<sup>17</sup> with written notice to the parties.

## Records

Records will be created and maintained in accordance with the requirements in Title 34 C.F.R. §106.45(a)(10).<sup>18</sup>

## Training

Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process must receive training on the definition of sexual harassment, the scope of the district's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and information resolution processes. The training must also include avoiding prejudgment of the facts at issue, conflicts of interest and bias.

Decision-makers must receive training on any technology to be used at a live hearing and on issues of relevance of questions and evident, including when questions about evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.

Investigators must receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes, must promote impartial investigations and adjudications of formal complaints of sexual harassment and must be made publicly available on the district's website. ~~X~~

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<sup>17</sup> Good cause may include considerations such as the absence of a party, a party's advisor or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. (Title 34 C.F.R. § 106.45(b)(1)(v))

<sup>18</sup> This includes creating a record for each investigation. This record must include:

- Supportive measures, or reasons why the response what not clearly unreasonable under the circumstances;
- Basis for the conclusion that the district's response was not deliberately indifferent; and
- What measures were taken to restore or preserve equal access to the district's educational program or activity. (Title 34 C.F.R. § 106.45(a)(10)(ii))

Most records (including training) must be retained for at least seven years.

<sup>19</sup> If a ~~X~~ district does not have a website, the district must make these materials available upon request for inspection by members of the public.



# OSBA Model Sample Policy

Code: JBA/GBN

Adopted:

## Sexual Harassment

The district is committed to eliminating sexual harassment. Sexual harassment will not be tolerated in the district. All students, staff members and other persons are entitled to learn and work in an environment that is free of harassment. All staff members, students and third parties are subject to this policy. Any person may report sexual harassment.

The district processes complaints~~X~~ or reports of sexual harassment under Oregon Revised Statute (ORS) 342.700 et. al. and federal Title IX laws found in Title 34 C.F.R. Part 106. Individual complaints may require both of these procedures, and may involve additional complaint procedures.

### General Procedures

When information, a report or complaint regarding sexual harassment is received by the district, the district will review such information, report or complaint to determine which law applies and will follow the appropriate procedures. When the alleged conduct could meet both of the definitions in ORS Chapter 342 and Title IX, both complaint procedures should be processed simultaneously (*see* JBA/GBN-AR(1) - Sexual Harassment Complaint Procedure and JBA/GBN-AR(2) - Federal Law (Title IX) Sexual Harassment Complaint Procedure). The district may also need to use other complaint procedures when the alleged conduct could meet the definitions for other complaint procedures~~X~~.

### OREGON DEFINITION AND PROCEDURES

#### Oregon Definition

Sexual harassment of students, staff members or third parties<sup>3</sup> shall include:

1. A demand or request for sexual favors in exchange for benefits;
2. Unwelcome conduct of a sexual nature that is physical, verbal, or nonverbal and that:
  - a. Interferes with a student's educational activity or program;
  - b. Interferes with a school or district staff member's ability to perform their job; or
  - c. Creates an intimidating, offensive or hostile environment.

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~~X~~ {<sup>1</sup> Some districts choose not to use the terms "complaint" and "complainant" because they feel the stigma associated with the terms discourage victims from reporting conduct. The terms used in this policy are consistent with those included in the law. If you choose to change these terms, make sure that you are consistent and clear. Note, "complainant" is defined under federal law.}

~~X~~ {<sup>2</sup> Common complaint procedures that may also be involved include: Nondiscrimination (Board policy AC), Workplace Harassment (Board policy GBEA), [Hazing, ]Harassment, Intimidation, Bullying, [Menacing, ]Cyberbullying, Teen Dating Violence and Domestic Violence – Student (Board policy JFCF), and Reporting Requirements for Suspected Sexual Conduct with Students (Board policy JHFF/GBNAA)

<sup>3</sup> "Third party" means a person who is not a student or a school or district staff member and who is: 1) on or immediately adjacent to school grounds or district property; 2) At a school-sponsored activity or program; or 3) Off school grounds or district property if a student or a school or district staff member acts toward the person in a manner that creates a hostile environment for the person while on school or district property, or at a school- or district-sponsored activity.

3. Assault when sexual contact occurs without the student's, staff member's or third party's consent because the student, staff member or third party is under the influence of drugs or alcohol, is unconscious or is pressured through physical force, coercion or explicit or implied threats.

Sexual harassment does not include conduct that is necessary because of a job duty of a school or district staff member or because of a service required to be provided by a contractor, agent, or volunteer, if the conduct is not the product of sexual intent or a person finding another person, or another person's action, offensive because of that other person's sexual orientation or gender identity.

Examples of sexual harassment may include, but not be limited to, physical touching or graffiti of a sexual nature; displaying or distributing of sexually explicit drawings; pictures and written materials; sexual gestures or obscene jokes; touching oneself sexually or talking about one's sexual behaviors in front of others; or spreading rumors about or rating other students or others as to appearance, sexual activity or performance.

### Oregon Procedures

Reports and complaints of sexual harassment should be made to the following individual(s):

Name	Position	Phone	Email
Dawn Moorefield	Ass't Superintendent	503-749-8010	dmoorefield@cascode.k12.or.us

This/These individual(s) is/are responsible for accepting and managing complaints of sexual harassment. Persons wishing to report should contact them using the above information. ~~This person is also designated as the Title IX Coordinator.~~<sup>6</sup> See JBA/GBN-AR(1) - Sexual Harassment Complaint Procedure.

### Response

Any staff member who becomes aware of behavior that may violate this policy shall immediately report to a district official. The district official (with coordination involving the reporting staff member when appropriate) will take any action necessary to ensure the:

1. Student is protected and to promote a nonhostile learning environment;
2. Staff member is protected and to promote a nonhostile work environment; or
3. Third party who is subjected to the behavior is protected and to promote a nonhostile environment.

This includes providing resources for support measures to the student, staff member or third party who was subjected to the behavior and taking any actions necessary to remove potential future impact on the

<sup>4</sup> The statutory definition (ORS 342.704) for sexual harassment includes separate definitions with slightly different language for students, staff members and third parties. The language used in this policy comes from OAR 581-021-0038(1)(b). If the district would like to include the full statutory definition, it can do so.

<sup>5</sup> OAR 581-021-0038 requires that the policy include a "examples of harassing behaviors covered by policy". The bracketed list in this policy reflects OSBA's recommendations. The district has discretion in what is included in this list. If listing behaviors not reflected in OSBA recommendations, please have the list reviewed by the district's legal counsel.

<sup>6</sup> This must be communicated elsewhere, but it is a good reason to specify it here as well.

student, staff member or third party, but are not retaliatory against the student, staff member or third party being harassed or the person who reported to the district official.

Any student or staff member who feels they are a victim of sexual harassment are encouraged to [immediately] report their concerns to district officials, this includes officials such as the principal, compliance officer or superintendent. Students may also report concerns to a teacher, counselor or school nurse, who will promptly notify the appropriate district official.

## Investigation

All reports and complaints about behavior that may violate this policy shall be investigated. ~~The district may use, but is not limited to, the following means for investigating incidents of possible harassment:~~

- ~~1. [Interviews with those involved;~~
- ~~2. Interviews with witnesses;~~
- ~~3. Review of video surveillance;~~
- ~~4. Review of written communications, including electronic communications;~~
- ~~5. Review of any physical evidence; and~~
- ~~6. Use of third-party investigator.]~~

~~The district will use [a reasonable person] standard when determining whether a hostile environment exists. [A hostile environment exists if a reasonable person with similar characteristics and under similar circumstances would consider the conduct to be so severe as to create a hostile environment.]<sup>{7}</sup>~~

~~The district may take, but is not limited to, the following procedures and remedial action to address and stop sexual harassment:~~

- ~~1. [Discipline of staff and students engaging in sexual harassment;~~
- ~~2. Removal of third parties engaged in sexual harassment;~~
- ~~3. Additional supervision in activities;~~
- ~~4. Additional controls for district electronic systems;~~
- ~~5. Trainings and education for staff and students; and~~
- ~~6. Increased notifications regarding district procedures and resources.]~~

~~When a student or staff member is harassed by a third party, the district will consider the following:~~

- ~~1. [Removing that third party's ability to contract or volunteer with the district, or be present on district property;~~

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<sup>{7}</sup> OSBA strongly recommends that the Board receive input from district administration prior to adopting a standard here. Of note, Title IX's definition of sexual harassment includes "unwelcome conduct determined *by a reasonable person* to be..." 34 CFR 106.30(a), emphasis added. It is important to consider the different definitions under Oregon law and Title IX when determining which standards will apply for the Oregon process.}

- ~~2. If the third party works for an entity that contracts with the district, communicating with the third party's employer;~~
- ~~3. If the third party is a student of another district or school, communicate information related to the incident to the other district or school;~~
- ~~4. Limiting attendance at district events; and~~
- ~~5. Providing for additional supervision, including law enforcement if necessary, at district events.]~~

## **No Retaliation**

Retaliation against persons who initiate complaint or otherwise report sexual harassment or who participate in an investigation or other related activities is prohibited. The initiation of a complaint, reporting of behavior, or participation in an investigation, in good faith about behavior that may violate this policy may not adversely affect the:

1. Educational assignments or educational environment of a student or other person initiating the complaint, reporting the behavior, or participating in the investigation; or
2. Any terms or conditions of employment or of work or educational environment of a school or district staff member or other person initiating the complaint, reporting the behavior, or participating in the investigation.

Students who initiate a complaint or otherwise report harassment covered by the policy or who participate in an investigation may not be disciplined for violations of the district's drug and alcohol policies that occurred in connection with the reported prohibited conduct and that were discovered because of the report or investigation, unless the student gave another person alcohol or drugs without the person's knowledge and with the intent of causing the person to become incapacitated and vulnerable to the prohibited conduct.

## **Notice**

When a person<sup>8</sup> who may have been affected by this policy files a complaint or otherwise reports behavior that may violate the policy, the district shall provide written notification to the following:

1. Each reporting person;
2. If appropriate, any impacted person who is not a reporting person;
3. Each reported person; and
4. Where applicable, a parent or legal guardian of a reporting person, impacted person, or reported person.

The written notification must include<sup>9</sup>:

1. Name and contact information for all person designated by the district to receive complaints;
2. The rights of the person that the notification is going to;

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<sup>8</sup> Student, staff member, or third party, or if applicable, the student or third party's parent. If the person is a minor, the district should consider when to contact the person's parent.

<sup>9</sup> Remember confidentiality laws when providing any information.

3. Information about the internal complaint processes available through the school or district that the ~~[student, student's parents, staff member, person or person's parent]~~ **[person]** who filed the complaint may pursue, including the person designated for the school or district for receiving complaints and any timelines.
4. Notice that civil and criminal remedies that are not provided by the school or district may be available to the person through the legal system and that those remedies may be subject to statutes of limitation;
5. Information about services available to the student or staff member through the school or district, including any counseling services, nursing services or peer advising;
6. Information about the privacy rights of the person and legally recognized exceptions to those rights for internal complaint processes and services available through the school or district;
7. Information about, and contact information for, services and resources that are available to the person, including but not limited to:
  - a. For the reporting person, state and community-based resources for persons who have experienced sexual harassment; or
  - b. For the reported persons, information about and contact information for state and community-based mental health services.
8. Notice that students who report about possible prohibited conduct and students who participate in an investigation under this policy may not be disciplined for violations of the district's drug and alcohol policies that occurred in connection with the reported prohibited conduct and that were discovered as a result of a prohibited conduct report or investigation unless the student gave another person alcohol or drugs without the person's knowledge and with the intent of causing the person to become incapacitated and vulnerable to the prohibited conduct; and
9. Prohibition of retaliation.

Notification, to the extent allowable under state and federal student confidentiality laws, must be provided when the investigation is initiated and concluded. The notification at the conclusion must include whether a violation of the policy was found to have occurred.

The notice must:

1. Be written in plain language that is easy to understand;
2. Use print that is of a color, size and font that allows the notification to be easily read; and
3. Be made available to students, students' parents, staff members and member of the public at each office, at the district office and on the website of the school or district.

~~**[Oregon Department of Education (ODE) Support**~~

~~The ODE will provide technical assistance and training upon request.]~~

**FEDERAL DEFINITION AND PROCEDURES**

**Federal Definition**

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the district conditioning the provision of an aid, benefit, or service of the district on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's education program or activity<sup>10</sup>;
3. "Sexual assault": an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation;
4. "Dating violence": violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship and the frequency of interaction between the persons involved in the relationship;
5. "Domestic Violence": felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction; or
6. "Stalking": engaging in a course of conduct directed at a specific person that would cause a reasonable person fear for the person's own safety or the safety of others, or suffer substantial emotional distress.

This definition only applies to sex discrimination occurring against a person who is a subject of this policy in the United States. A district's treatment of a complainant or a respondent in response to a formal complaint of sexual harassment may constitute discrimination on the basis of sex under Title IX.

### **Federal Procedures**

The district will adopt and publish grievance procedures that provide for the prompt and equitable resolution of the student and employee complaints alleging any action that would be prohibited by this policy. *See* JBA/GBN-AR(2) - Federal Law (Title IX) Sexual Harassment Complaint Procedure.

### **Reporting**

Any person may report sexual harassment. This report may be made in person, by mail, by telephone, or by electronic mail, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. The report can be made at any time.

*The Assistant Superintendent*  
~~[Person or position]~~ is designated as the Title IX Coordinator, ~~and can be contacted at [insert phone number]].~~ The Title IX Coordinator will coordinate the district's efforts to comply with its responsibilities related to this AR. The district prominently will display the contact information for the Title IX Coordinator on the district website and in each handbook. ~~X~~

<sup>10</sup> "Education program or activity" includes locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs." (Title 34 C.F.R. § 106.44(a))

{<sup>11</sup> ~~X~~ Note the difference in requirements for Title IX and Oregon law. It makes sense to align these requirements.}

## Response

The district will promptly respond to information, allegations or reports of sexual harassment when there is actual knowledge of such harassment, even if a formal complaint has not been filed.<sup>12</sup> The district shall treat complainants and respondents equitably by providing supportive measures<sup>13</sup> to the complainant and by following a grievance procedure<sup>14</sup> prior to imposing any disciplinary sanctions or other actions that are not supportive measures against a respondent. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

The Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes, with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.<sup>15</sup>

If after an individualized safety and risk analysis, it is determined that there is an immediate threat to the physical health or safety of any person, an emergency removal of the respondent can take place.<sup>16</sup> The district must provide the respondent with notice and an opportunity to challenge the decision immediately following the removal. A non-student employee may also be placed on non-disciplinary administrative leave pending the grievance process.

## Notice

The district shall provide notice to all applicants for admission and employment, students, parents or legal guardians, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the district of the following:

1. The name or title, office address, electronic mail address, and telephone number of the Title IX Coordinator(s);
2. That the district does not discriminate on the basis of sex in the education program or activity that it operates, as required by Title IX. This includes admissions and employment; and
3. The grievance procedure and process, how to file a formal complaint of sex discrimination or sexual harassment, and how the district will respond.

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<sup>12</sup> (Title 34 C.F.R. §106.44(a)) Response cannot be deliberately indifferent. A recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.

<sup>13</sup> (Title 34 C.F.R. § 106.44(a)) Supportive measures means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the district's educational environment, or deter sexual harassment.<sup>13</sup> The district must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide supportive measures. (Title 34 C.F.R. § 99.30(a))

<sup>14</sup> This grievance procedure must meet the requirements of Title 34 C.F.R. § 106.45 (included in accompanying administrative regulation, *see* JBA/GBN-AR(2) - Federal Law (Title IX) Sexual Harassment Complaint Procedure).

<sup>15</sup> The Title IX Coordinator may also discuss that the Title IX Coordinator has the ability to file a formal complaint.

<sup>16</sup> The district may still have obligations under Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973 or the American with Disabilities Act (ADA). (Title 34 C.F.R. § 106.44(c))

~~[Inquiries about the application to Title IX and its requirements may be referred to the Title IX Coordinator or the Assistant Secretary<sup>17</sup>, or both.]~~

### **No Retaliation**

Neither the district or any person may retaliate<sup>18</sup> against an individual for reporting, testifying, providing evidence, being a complainant, otherwise participating or refusing to participate in any investigation or process in accordance with this procedure. The district must keep confidential the identity of parties and participating persons, except as disclosure is allowed under Family Educational Rights and Privacy Act (FERPA), as required by law, or to carry out the proceedings herein. Complaints of retaliation may be filed using these procedures.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding does not constitute retaliation.

### **Publication**

This policy shall be made available to students, parents of students and staff members. This policy and contact information for the Title IX Coordinator shall be prominently published in the school district student handbook and on the school district website. This policy shall also be made available at each school office and at the district office. The district shall post this policy on a sign in all grade 6 through 12 schools, on a sign that is at least 8.5 inches by 11 inches in size. A copy of the policy will be made available to any student, parent of a student, school or district staff member, or third party person upon request.

END OF POLICY

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### **Legal Reference(s):**

[ORS 243.706](#)  
[ORS 332.107](#)  
[ORS 342.700](#)  
[ORS 342.704](#)  
[ORS 342.708](#)

[ORS 342.850](#)  
[ORS 342.865](#)  
[ORS 659.850](#)  
[ORS 659A.006](#)  
[ORS 659A.029](#)

[ORS 659A.030](#)  
[OAR 581-021-0038](#)  
[OAR 584-020-0040](#)  
[OAR 584-020-0041](#)

Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (2018).

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e (2018).

Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1683 (2018); Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 34 C.F.R. Part 106 (2020).

Davis v. Monroe County Bd. of Educ., 526 U.S. 629 (1999).

Gebser v. Lago Vista Indep. Sch. Dist., 524 U.S. 274 (1998).

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<sup>17</sup> Of the United States Department of Education.

<sup>18</sup> Retaliation includes, but is not limited to, intimidation, threats, coercion, and discrimination.

# OSBA Model Sample Administrative Regulation

Code: JBA/GBN-AR(1)  
Revised/Reviewed:

## Sexual Harassment Complaint Procedure

Reports and complaints of sexual harassment should be made to the following individual(s):

Name	Position	Phone	Email
Dawn Moorefield	Ass't Superintendent	503.749.8010	dmoorefield@cascade.k12.or.us

The district official receiving the complaint shall issue the required written notice as outlined under Oregon Procedures in Board policy JBA/GBN - Sexual Harassment.

**Step 1** The district official receiving the report or complaint shall promptly initiate an investigation using procedures and standards, including but not limited to, those identified in Board policy JBA/GBN - Sexual Harassment and will notify the complainant or reporting person, any impacted person who is not a reporting person (if appropriate), each reported person, and where applicable the parents of a reporting person, impacted person, or reported person, when such investigation is initiated. The official will arrange such meetings as may be necessary to discuss the issue with all concerned parties within ~~five~~ **10** working days after receipt of the report or complaint. The parties will have an opportunity to submit evidence and a list of witnesses. All findings of the investigation shall be reduced to writing. The official conducting the investigation shall notify the parties in writing that the investigation is concluded and if a violation of the policy was found to have occurred to the extent allowable by law within ~~30~~ **30** days of receipt of the report or complaint.

A copy of the required written notice(s) and the date and details of notification of the notice of investigation and results of the investigation, together with any other documentation related to the sexual harassment incident, including disciplinary action taken or recommended, shall be forwarded to the superintendent.

**Step 2** If a complainant is not satisfied with the decision at Step 1, the complainant may submit a written appeal to the superintendent or designee. Such appeal must be filed within ~~10~~ **10** working days after receipt of the Step 1 decision. The superintendent or designee will arrange such meetings with the complainant and other affected parties as deemed necessary to discuss the appeal within ~~5~~ **5** working days of receipt of the appeal. The superintendent or designee shall provide a written decision to the complainant within ~~10~~ **10** working days.

**Step 3** If a complainant is not satisfied with the decision at Step 2, the complainant may submit a written appeal to the Board. Such appeal must be filed within ~~10~~ **10** working days after receipt of the Step 2 decision. The Board will review the decision of the superintendent or designee in a public meeting to determine what action is appropriate. The Board may use executive

<sup>1</sup> ~~Align~~ with same positions identified in policy.

session if the subject matter qualifies under Oregon law. Appropriate action may include, but is not limited to, holding a hearing, requesting additional information, and adopting the superintendent's or designee's decision. All parties involved, including the school administration, may be asked to attend a hearing for the purposes of making further explanations and clarifying the issues. The Board shall provide a written decision to the complainant within 30 working days following receipt of the appeal.

If the Board chooses not to hear the complaint, the superintendent's or designee's decision in Step 2 is final<sup>2</sup>.

The superintendent is authorized to amend these procedures (including timelines) when the superintendent feels it is necessary for the efficient handling of the complaint. Notice of any amendments will be promptly provided to the parties.

Complaints against the principal may start at Step 2 and may be filed with the superintendent or designee. The superintendent or designee will cause the required notices to be provided. The superintendent or designee will investigate the complaint and will notify the parties in writing that the investigation is concluded and if a violation of the policy was found to have occurred to the extent allowable by law. If the complaint remains unresolved within 10 working days of receipt by the superintendent or designee, the complainant may appeal to the Board in Step 3.

Complaints against the superintendent or a Board member (other than the Board chair) may start at Step 3 and should be referred to the Board chair on behalf of the Board. The Board chair will cause required notices to be provided. The Board chair shall present the complaint to the Board. The Board may use executive session if the subject matter qualifies under Oregon law. If the Board decides an investigation is warranted, the Board may refer the investigation to a third party. When the investigation is complete, the results will be presented to the Board. After receiving the results of the investigation, the Board shall decide, within 20 days, in open session what action, if any, is warranted. The Board chair shall notify the parties in writing that the investigation is concluded and if a violation of the policy was found to have occurred to the extent allowable by law.

Complaints against the Board chair may start at Step 3 and should be referred to the Board vice chair on behalf of the Board. The Board vice chair will cause required notices to be provided. The Board vice chair shall present the complaint to the Board. The Board may use executive session if the subject matter qualifies under Oregon law. If the Board decides an investigation is warranted, the Board may refer the investigation to a third party. When the investigation is complete, the results will be presented to the Board. After receiving the results of the investigation, the Board shall decide, within 20 days, in open session what action, if any, is warranted. The Board vice chair shall notify the parties in writing that the investigation is concluded and if a violation of the policy was found to have occurred to the extent allowable by law.

Direct complaints related to employment may be filed with the U.S. Department of Labor, Equal Employment Opportunity Commission or Oregon Bureau of Labor and Industries.

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<sup>2</sup> [If the Board chooses to accept the superintendent's decision as the district's final decision on the complaint, the superintendent's written decision must meet the requirements of OAR 581-022-2370(4)(b).]

Direct complaints related to educational programs and services may be made to the Regional Civil Rights Director, U.S. Department of Education, Office for Civil Rights, Region X, 915 2nd Ave., Room 3310, Seattle, WA 98174-1099.

Additional information regarding filing of a complaint or report may be obtained through the principal, compliance officer or superintendent.

All documentation related to sexual harassment complaints may become part of the student's education record or employee's personnel file, as appropriate. Additionally, a copy of all sexual harassment complaints or reports and documentation will be maintained as a confidential file and stored in the district office.

The superintendent shall report the name of any person holding a teaching license or registered with Teacher Standards and Practices Commission (TSPC) or participating in a practicum under Oregon Administrative Rule (OAR) Chapter 584, Division 17, when, after appropriate investigation, there is reasonable cause to believe the person may have committed an act of sexual harassment. Reports shall be made to TSPC within 30 days of such a finding. Reports of sexual contact with a student shall be given to a representative from law enforcement or Oregon Department of Human Services, as possible child abuse.

[Name of District]  
[Address] | [Phone]

**SEXUAL HARASSMENT COMPLAINT FORM**

Name of complainant: \_\_\_\_\_

Position of complainant: \_\_\_\_\_

Date of complaint: \_\_\_\_\_

Name of alleged harasser: \_\_\_\_\_

Date and place of incident or incidents: \_\_\_\_\_

Description of misconduct: \_\_\_\_\_

Name of witnesses (if any): \_\_\_\_\_

Evidence of sexual harassment, i.e., letters, photos, etc. (attach evidence if possible): \_\_\_\_\_

Any other information: \_\_\_\_\_

I agree that all the information on this form is accurate and true to the best of my knowledge.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

[Name of District]  
[Address] | [Phone]

**WITNESS DISCLOSURE FORM**

Name of Witness: \_\_\_\_\_

Position of Witness: \_\_\_\_\_

Date of Testimony/Interview: \_\_\_\_\_

Description of Instance Witnessed: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Any Other Information: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

I agree that all the information on this form is accurate and true to the best of my knowledge.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_



# OSBA Model Sample Administrative Regulation

Code: JBA/GBN-AR(2)  
Adopted:

## Federal Law (Title IX) Sexual Harassment Complaint Procedure

### Additional Definitions

“Actual knowledge” means notice of sexual harassment or allegations of sexual harassment to the district’s Title IX Coordinator or any official of the district who has authority to institute corrective measures on behalf of the district, or to any employee of an elementary or secondary school.<sup>1</sup>

“Complainant” means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

“Formal complaint” means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent<sup>2</sup> and requesting that the district investigate the allegation of sexual harassment.<sup>3</sup>

“Supportive measures” means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the recipient’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the district’s educational environment, or deter sexual harassment.<sup>4</sup> The district must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide supportive measures.

### Formal Complaint Procedures

Upon receipt of a formal complaint, the district will provide the parties<sup>5</sup> written notice of the following:

1. Notice of the district’s grievance process, including any informal resolution process.

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<sup>1</sup> This standard is not met when the only official with knowledge is the respondent.

<sup>2</sup> “Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

<sup>3</sup> A complainant must be participating in or attempting to participate in the education program or activity of the district with which the formal complaint is filed.

<sup>4</sup> Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

<sup>5</sup> Parties include the complainant and the respondent, if known.

2. Notice of the allegations of sexual harassment potentially constituting sexual harassment, including sufficient details<sup>6</sup> known at the time and with sufficient time to prepare a response before any initial interview.
3. That the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility be made at the conclusion of the grievance process.
4. That the parties may have an advisor of their choice, who may be, but is not required to be, an attorney.
5. The parties may inspect and review evidence.
6. A reference to any provision in the district's code of conduct~~X~~ that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

The Title IX Coordinator will contact the complainant and the respondent to discuss supportive measures. If necessary, the Title IX Coordinator will arrange for an individualized safety and risk analysis. If necessary, a student or non-student employee may be removed or placed on leave.

### **Investigation**

The Title IX Coordinator will coordinate the district's investigation. The investigation must:

1. Include objective evaluation of all relevant evidence, including inculpatory and exculpatory evidence.
2. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the district and not on the parties.<sup>8</sup>
3. Provide an equal opportunity for the parties to present witnesses, and other inculpatory and exculpatory evidence.
4. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
5. Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice.<sup>9</sup> The district may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.

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<sup>6</sup> Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known.

~~X~~<sup>7</sup> The district is encouraged to review Board policy JFC and codes of conduct found in handbooks for applicable language.

<sup>8</sup> The district cannot access, consider, disclose, or otherwise use a party's records that are made of maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's capacity, and which are maintained in connection with the provision of treatment to the party, unless the district obtains the party's (or eligible student's parent's) voluntary, written consent to do so.

<sup>9</sup> In addition to an advisor, complainants and respondents may also be entitled to other accompaniment as required by law or as necessary for conducting of grievance procedures, including but not limited to translators, services for students with disabilities and parents of minor students.

6. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.
7. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint.<sup>10</sup> Prior to completion of the investigative report, the district must send to each party and party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report;
8. Create an investigative report that fairly summarizes relevant evidence and is sent to each party and party's advisor in electronic format or hard copy at least 10 days prior to any hearing (if required or provided) or other time of determination of responsibility. The party and advisor will be allowed to review and provide a written response.

After the district has sent the investigative report to the parties and before reaching a determination regarding responsibility, the decision maker(s) must afford each party the opportunity to submit written, relevant questions<sup>11</sup> that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.

Credibility determinations are not based on the person's status as a complainant, respondent or witness.

No person designated as a Title IX Coordinator, investigator, decision-maker, or any person designated by the district to facilitate an informal resolution process may have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

If, in the course of an investigation, the district decides to investigate allegations about the complainant or respondent that are not included in the notice previously provided, the district must provide notice of the additional allegations to the parties whose identities are known.

At no point in the process will the district, or anyone participating on behalf of the district, require, allow, rely upon, or otherwise use questions or evidence that constitutes, or seeks disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

### **Determination of Responsibility**

The respondent must be deemed to be not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

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<sup>10</sup> This includes the evidence upon which the district does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to the investigation. The district must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

<sup>11</sup> Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the question and evidence concern specific incidents of the complainants prior sexual behavior with respect to the respondent and are offered to prove consent.

The standard to be used for formal complaints in determining whether a violation has occurred is the preponderance of the evidence<sup>12</sup> ~~clear and convincing evidence<sup>13</sup>~~ standard.

The person deciding the question of responsibility (the “decision-maker”) must be someone other than the Title IX Coordinator or the investigator(s). The decision-maker must issue a written determination which must include:

9. Identification of the allegations potentially constituting sexual harassment;
10. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather evidence, and hearings held;
11. Findings of fact supporting the determination;
12. Conclusions regarding the application of the district’s code of conduct to the facts;
13. A statement of, and rationale for, the result as to each allegation, including:
  - a. A determination regarding responsibility;
  - b. Any disciplinary sanctions the district imposes on the respondent; and
  - c. Whether remedies designed to restore or preserve equal access to the district’s education program or activity will be provided by the district to the complainant; and
14. The district’s procedures and permissible bases for the complainant and respondent to appeal.

The district must provide the written determination to the parties simultaneously.

The determination regarding responsibility becomes final either on the date that the recipient provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

## Remedies

The Title IX Coordinator is responsible for effective implementation of any remedies.

The disciplinary sanctions<sup>14</sup> may include:

15. ~~Discipline up to and including suspension and expulsion;~~
16. Removal from various activities, committees, extra-curricular, positions, etc.
17. Disqualification for awards and honors;

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<sup>12</sup> A preponderance of the evidence standard is understood to mean concluding that a fact is more likely than not to be true. U.S. Department of Education, Title IX Regulations commentary, p. 1268, FN 1409.

<sup>13</sup> ~~A clear and convincing evidence standard of evidence is understood to mean concluding that a fact is highly probable to be true. U.S. Department of Education, Title IX Regulations commentary, p. 1268, FN 1409.~~

<sup>14</sup> Districts should review any other disciplinary procedures and requirements prior to imposing any discipline, and should contact legal counsel with questions.

18. Discipline up to and including termination, in accordance with laws, agreements, contracts, handbooks, etc.<sup>15</sup>

~~Other remedies may include:~~

- ~~19. [Educational programming];[.];[.]~~

### **Dismissal of a Formal Complaint**

The district must dismiss a formal complaint with regard to Title IX sexual harassment if the alleged conduct:

20. Would not constitute sexual harassment, even if proved;
21. Did not occur in the district's education program or activity<sup>16</sup>; or
22. Did not occur against a person in the United States.

The district may dismiss a formal complaint with regard to Title IX sexual harassment if at any time during the investigation or hearing, if provided:

23. A complainant notifies the Title IX Coordinator in writing that the complaint would like to withdraw the formal complaint or any allegations therein;
24. The respondent is no longer enrolled or employed by the district; or
25. Specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon dismissal of a formal complaint, the district must promptly send written notice of the dismissal and the reason(s) therefor simultaneously to the parties.

**The dismissal of a formal complaint under Title IX does not preclude the district from continuing any investigation and taking action under a different process. The district may have an obligation to continue an investigation and process under a different process.**

### **Consolidation of Complaints**

The district may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by one or more complainant against one or more respondents, or by one party against another party, where the allegations of sexual harassment arise out of the same facts or circumstances.

### **Informal Resolution**

If the district receives a formal complaint, at any time prior to reaching a determination regarding responsibility, the district may offer an optional informal resolution process, provided that the district:

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<sup>15</sup> It is important to keep supportive measures separate from disciplinary sanctions. Supportive measures must be "non-disciplinary" and "non-punitive."

<sup>16</sup> Includes locations, events, or circumstances over which the district exercised substantial control over both the respondent the respondent and the context in which the sexual harassment occurs[, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution]. (Title 34 C.F.R. §106.44(a))

26. Provides written notice to the parties disclosing:
  - a. The allegations;
  - b. The requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint; and
  - c. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.
27. Obtains the parties' voluntary written consent to the informal resolution process; and
28. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

### Appeals

Either party may file an appeal from a determination regarding responsibility or from a dismissal of a formal complaint, within ~~15~~ <sup>10 working</sup> days of the decision, on the following bases:

29. Procedural irregularity that affected the outcome of the matter;
30. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; or
31. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.
- ~~32. [Additional bases may be allowed, if made available equally to both parties.]~~

When an appeal is filed, the district must:

33. Notify the other party in writing;
34. Implement appeal procedures equally for both parties;
35. Ensure the decision-maker(s) for the appeal is not the same person as the decision-maker(s) who reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
36. Ensure the decision-maker for the appeal is free from conflicts of interest and bias;
37. Give both parties a reasonable equal opportunity to submit a written statement in support of, or challenging the outcome;
38. Issue a written decision describing the result of the appeal and the rationale for the result; and
39. Provide the written decision simultaneously to both parties.

### Timelines

The district will complete the following portions of the grievance process within the specified timelines:

40. General grievance process (from receipt of formal complaint to determination of responsibility: ~~{90}~~ days;
41. Appeals (from receipt of appeal): ~~{60}~~ days;
42. Informal resolution process: ~~{60}~~ days.

Temporary delays of the grievance process, or limited extensions of time will be allowed for good cause<sup>17</sup> with written notice to the parties.

## Records

Records will be created and maintained in accordance with the requirements in Title 34 C.F.R. §106.45(a)(10).<sup>18</sup>

## Training

Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process must receive training on the definition of sexual harassment, the scope of the district's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and information resolution processes. The training must also include avoiding prejudgment of the facts at issue, conflicts of interest and bias.

Decision-makers must receive training on any technology to be used at a live hearing and on issues of relevance of questions and evident, including when questions about evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.

Investigators must receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes, must promote impartial investigations and adjudications of formal complaints of sexual harassment and must be made publicly available on the district's website. ~~{X}~~

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<sup>17</sup> Good cause may include considerations such as the absence of a party, a party's advisor or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. (Title 34 C.F.R. § 106.45(b)(1)(v))

<sup>18</sup> This includes creating a record for each investigation. This record must include:

- Supportive measures, or reasons why the response what not clearly unreasonable under the circumstances;
- Basis for the conclusion that the district's response was not deliberately indifferent; and
- What measures were taken to restore or preserve equal access to the district's educational program or activity. (Title 34 C.F.R. § 106.45(a)(10)(ii))

Most records (including training) must be retained for at least seven years.

~~{X}~~ <sup>19</sup> If a district does not have a website, the district must make these materials available upon request for inspection by members of the public. ~~{X}~~



# OSBA Model Sample Policy

Code: JHCC  
Adopted:

## Communicable Diseases - Students

The district shall provide reasonable protection against the risk of exposure to communicable disease for students. Reasonable protection from communicable disease is generally attained through immunization, exclusion or other measures as provided by Oregon law, by the local health department or in the *Communicable Disease Guidance* published by the Oregon Department of Education (ODE) and the Oregon Health Authority (OHA). Services will be provided to students as required by law.

A student will not attend school while in a communicable stage of a restrictable disease or ~~When an administrator has reason to suspect that any susceptible student has or has been exposed to any restrictable disease for which the student is required to be excluded in accordance with law, the administrator involved shall exclude the student from school~~ and per administrative regulation JHCC-AR - Communicable Diseases - Students. ~~and if the disease is a reportable disease, the administrator will report the occurrence to the local health department. The administrator will also take whatever reasonable steps it considers necessary to organize and operate its programs in a way which both furthers the education and protects the health of students and others.~~

~~In cases when a restrictable or reportable disease is diagnosed and confirmed for a student, the administrator shall inform the appropriate employees with a legitimate educational interest to protect against the risk of exposure.~~

The district may, for the protection of both the student who has a restrictable disease and the exposed student, provide an educational program in an alternative setting.

The district will include, as a part of its emergency plan, a description of the actions to be taken by district personnel in the case of a declared public health emergency or other catastrophe that disrupts district operations.

The district shall protect the confidentiality of each student's health condition and record to the extent possible and consistent with federal and state law. ~~In cases when a restrictable or reportable disease is diagnosed and confirmed for a student, the administrator shall inform the appropriate employees with a legitimate educational interest to protect against the risk of exposure.~~

The superintendent will develop administrative regulations necessary to implement this policy.

END OF POLICY

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### Legal Reference(s):

[ORS 431.150 - 431.157](#)

[ORS 433.001 - 433.526](#)

[OAR 333-018](#)

[OAR 333-019-0010](#)

[OAR 333-019-0014](#)

[OAR 333-019-1000](#)

[OAR 437-002-0360](#)

[OAR 437-002-0377](#)

[OAR 581-022-2220](#)

OREGON DEPARTMENT OF EDUCATION and OREGON HEALTH AUTHORITY, *Communicable Disease Guidance* (20172020). Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g (20122018); Family Educational Rights and Privacy, 34 C.F.R. Part 99 (20172019).

# OSBA Model Sample Policy

Code: JHCC-AR  
Adopted:

## Communicable Diseases – Student

In accordance with state law, administrative rule, the local health authority and the *Communicable Disease Guidance*, the procedures established below will be followed.

1. “Restrictable diseases” are defined by rule and include but are not limited to COVID-19<sup>1</sup>, chickenpox, diphtheria, hepatitis A, hepatitis E, measles, mumps, pertussis, rubella, Salmonella enterica serotype Typhi infection, scabies, Shiga-toxicogenic Escherichia coli (STEC) infection, shigellosis and infectious tuberculosis-disease, and may include a communicable stage of hepatitis B infection if, in the opinion of the local health officer, the person poses an unusually high risk to others (e.g., a child that exhibits uncontrollable biting or spitting). Restrictable disease also includes any other communicable disease identified in an order issued by the Oregon Health Authority or the local public health officer as posing a danger to the public’s health. A disease is considered to be a restrictable disease if it is listed in Oregon Administrative Rule (OAR) 333-019-0010, or it has been designated to be a restrictable disease by Board policy<sup>2</sup> or by the local public health administrator, after determining that it presents a significant public health risk in the school setting poses a danger to the public’s health.
2. “Susceptible” ~~means being at risk of contracting a restrictable disease by virtue of being in one or more categories described in law~~ for a child means lacking documentation of immunization required under OAR 333-050-0050.
3. “Reportable diseases” means a ~~human reportable disease, infection, microorganism or condition as specified in OAR Chapter 333, Division 18~~ disease or condition, the reporting of which enables a public health authority to take action to protect or to benefit the public health.

### Restrictable Diseases

1. A student of the district will not attend a district school or facility while in a communicable stage of a restrictable disease, including a communicable stage of COVID-19<sup>3</sup>, unless authorized to do so under Oregon law. When an administrator has reason to suspect any child has a restrictable disease, the administrator shall send the student home.
2. ~~1.~~An administrator ~~that~~ shall exclude a susceptible child from school if the administrator has reason to suspect that ~~a~~the student ~~has or~~ has been exposed to ~~any restrictable disease for which the student is required to be excluded, shall exclude that student from school and send him/her home~~ measles, mumps, rubella, diphtheria, pertussis, hepatitis A, or hepatitis B, unless the local health officer

<sup>1</sup> Added per OAR 333-019-1000(2).

<sup>2</sup> ~~“OAR 333-019-0010(710) Nothing in these rules prohibits a school or children’s facility from adopting more stringent exclusion standards under ORS 433.284.”~~

<sup>3</sup> “Communicable stage of COVID-19” means having a positive presumptive or confirmed test of COVID-19.

determines that exclusion is not necessary to protect the public's health. The administrator may request the local health officer to make a determination as allowed by law. If the disease is reportable, the administrator will report the occurrence to the local health department.

3. An administrator shall exclude a student if the administrator has been notified by a local public health administrator or local public health officer that the student has had a substantial exposure to an individual with COVID-19 and exclusion is deemed necessary by same.

4. ~~2.~~The A student will be excluded in such instances until such time as the student or the parent or guardian of the student presents a certificate from a physician, a physician assistant licensed under Oregon Revised Statute (ORS) 677.505 ~~to~~ 677.525, a nurse practitioner licensed under ORS 678.375 ~~to~~ 678.390, local health department nurse or school nurse stating that the student does not have or is not a carrier of any restrictable diseases.

~~3. An administrator will exclude a susceptible student that has been exposed to a restrictable disease that is also a reportable disease unless the local health officer determines that exclusion is not necessary to protect the public's health, or the local health officer states the disease is no longer communicable to others or that adequate precautions have been taken to minimize the risk of transmission. The administrator may request the local health officer to make a determination as allowed by law.~~

5. ~~4.~~The district may, for the protection of both the student who has a restrictable disease and the exposed student, provide an educational program in an alternative setting. A student may remain in an alternative educational setting until such time as a certificate from a physician, physician assistant, nurse practitioner, local health department nurse or school nurse states that the student does not have or is not a carrier of any restrictable disease, or until such time as a local **public health officer** ~~administrator~~ states that the disease is no longer communicable to others or that adequate precautions have been taken to minimize the risk of transmission. A restrictable disease exclusion for chickenpox, scabies, staphylococcal skin infections, streptococcal infections, diarrhea or vomiting may ~~also~~ be removed by a school nurse or health care provider.

6. ~~5.~~More stringent exclusion standards for students from school may be adopted by the local health department ~~or by the district through Board adopted policy.~~

~~6. A disease is considered to be a restrictable disease if it is listed in OAR 333-019-0010, or it has been designated to be a restrictable disease through Board policy or by the local health administrator, after determining that it presents a significant public health risk in the school setting.~~

7. The district's emergency preparedness plan shall address the district's plan with respect to a declared public health emergency at the local or state level.

### Reportable Diseases Notification

1. All employees shall comply with all reporting measures adopted by the district and with all rules set forth by the Oregon Health Authority, Public Health Division and the local health department.
2. An administrator may seek confirmation and assistance from the local health officer to determine the appropriate district response when the administrator is notified that a student or an employee has been exposed to a restrictable disease that is also a reportable disease.

3. An administrator shall determine other persons ~~with a legitimate educational interest~~ who may be informed of ~~the communicable nature of an individual~~ a student's communicable disease, ~~or an employee's communicable disease~~, when a legitimate educational interest exists or for health and safety reasons ~~within guidelines allowed by~~ in accordance with law.

### Education

1. The administrator or designee shall seek information from the district's school nurse or other appropriate health officials regarding the health needs/hazards of all students and the impact on the educational needs of a student diagnosed with a restrictable disease or exposed to a restrictable disease.
2. The administrator or designee shall, utilizing information obtained above, determine an educational program for such a student and implement the program in an appropriate (i.e., regular or alternative) setting.
3. The administrator or designee shall review the appropriateness of the educational program and the educational setting of each individual student diagnosed with a restrictable disease.

### Equipment and Training

1. The administrator or designee shall, on a case-by-case basis, determine what equipment and/or supplies are necessary in a particular classroom or other setting in order to prevent disease transmission.
2. The administrator or designee shall consult with the district's school nurse or other appropriate health officials to provide special training in the methods of protection from disease transmission.
3. All district personnel will be instructed annually ~~[by the school health nurse]~~ to use the proper precautions pertaining to blood and body fluid exposure per the Occupational Safety and Health Administration (OSHA). (See policy EBBAA).

# OSBA Model Sample Policy

Code:  
Adopted:

GBN/JBA

**D**

## Sexual Harassment

*Recommend to delete and replace with new version*

The district is committed to the elimination of sexual harassment in district schools, activities and programs. Sexual harassment is strictly prohibited and shall not be tolerated. This includes sexual harassment: of students by staff members, other students or third parties; of staff members by students, other staff members or third parties; and of third parties by staff members and students. This policy applies to third parties who are on or immediately adjacent to school grounds or district property, are at any school-sponsored or district-sponsored activity or program, or are off school or district property, if a student or staff member acts toward the person in a manner that creates a hostile environment for the person while at school or a school-sponsored or district-sponsored activity or program. "Third parties" include, but are not limited to, school volunteers, parents, school visitors, service contractors or others engaged in district business, such as employees of businesses or organizations participating in cooperative work programs with the district and others not directly subject to district control at interdistrict and intradistrict athletic competitions or other school events. "District" includes: district facilities; district premises and nondistrict property if the student or staff member is at any district-sponsored, district-approved or district-related activity or function, such as field trips or athletic events, where students are under the jurisdiction of the district, or where the staff member is engaged in district business. [The prohibition also includes off duty conduct which is incompatible with a staff member's district job responsibilities.]

All staff members, students, and third parties are subject to this policy.

Sexual harassment of students, staff members or third parties shall include:

1. A demand or request for sexual favors in exchange for benefits;
2. Unwelcome conduct of a sexual nature that is physical, verbal or nonverbal and that interferes with a student's educational program or activity or that creates an intimidating, offensive or hostile educational environment; unwelcome conduct of a sexual nature that is physical, verbal or nonverbal and that interferes with the staff member's ability to perform the job or that creates an intimidating, offensive or hostile work environment; or unwelcome conduct of a sexual nature that is physical, verbal or nonverbal and that creates an intimidating, offensive or hostile environment; and
3. Assault when sexual contact occurs without the student's, staff member's or third party's consent because the student, staff member or third party is under the influence of drugs or alcohol, is unconscious or is pressured through physical force, coercion or explicit or implied threats.

Examples of sexual harassment may include, but not be limited to, <sup>[1]</sup>physical touching or graffiti of a sexual nature; displaying or distributing of sexually explicit drawings; pictures and written materials;

<sup>[1]</sup> OAR 581-021-0038 requires that the policy include a "list of examples of harassing behaviors covered by policy". The bracketed list in this policy reflects OSBA's recommendations. The district does have discretion in what is included in this list. If you are listing behaviors not reflected in our recommendations, please make sure that you have your list reviewed by your school district's legal counsel.]

sexual gestures or obscene jokes; touching oneself sexually or talking about one's sexuality in front of others; or spreading rumors about or rating other students or others as to appearance, sexual activity or performance].

All complaints or reports about behavior that may violate this policy shall be promptly investigated.

Any staff member who becomes aware of behavior that may violate this policy shall [immediately] report to a district official so that the district official (and the reporting staff member when the victim of the harassment is a student or third party) may coordinate efforts to take any action necessary to ensure the:

1. Student is protected and to promote a nonhostile learning environment;
2. Staff member is protected and to promote a nonhostile work environment; or
3. Third party who is subjected to the behavior is protected and to promote a nonhostile environment.

This includes providing resources for support measures to the student, staff member or third party who was subjected to the behavior and taking any actions that are necessary to remove potential future impact on the student, staff member or third party, but are not retaliatory against the student, staff member or third party being harassed or the staff member who reported to the district official.

Any student or staff member who feels they are a victim of sexual harassment are encouraged to [immediately] report their concerns to district officials, this includes officials such as the principal, compliance officer or superintendent. Students may also report concerns to a teacher, counselor or school nurse, who will promptly notify the appropriate district official.

Upon receipt of a complaint from a student or the student's parents, a staff member or a third party alleging behavior that may violate this policy, the district shall provide written notice as required by Oregon Revised Statute (ORS) 342.704(5) to the complainant.

The person who initiated the complaint and if applicable the student's parents or person's parents shall be notified when the investigation is initiated and concluded and as to whether a violation of this policy was found to have occurred to the extent allowable under state and federal student confidentiality laws.

The initiation of a complaint, and the participation in an investigation, in good faith about behavior that may violate this policy may not adversely affect the educational assignments or any terms or conditions of employment or of work or educational environment of the person who initiated the complaint or who participates in the investigation. There shall be no retaliation by the district against any person who, in good faith, reports, files a complaint or otherwise participates in an investigation or inquiry of sexual harassment.

It is the intent of the Board that appropriate corrective action will be taken by the district to stop the sexual harassment, prevent its recurrence and address negative consequences. Students in violation of this policy shall be subject to discipline up to and including expulsion and/or counseling or sexual harassment awareness training, as appropriate. The age and maturity of the student(s) involved and other relevant factors will be considered in determining appropriate action. Staff members in violation of this policy shall be subject to discipline, up to and including dismissal and/or additional sexual harassment awareness training, as appropriate. Other individuals whose behavior is found to be in violation of this policy shall be subject to appropriate sanctions as determined and imposed by the superintendent or the Board.

Additionally, the district may report individuals in violation of this policy to law enforcement officials. Licensed staff, staff registered with the Teacher Standards and Practices Commission (TSPC) and those participating in practicum programs, as specified by Oregon Administrative Rules, shall be reported to TSPC.

The superintendent shall ensure appropriate periodic sexual harassment awareness training or information is provided to all supervisors, staff members and students and that annually, the name and position of district officials responsible for accepting and managing sexual harassment complaints, business phone numbers, addresses or other necessary contact information is readily available. This policy as well as the complaint procedure will be made available upon request to all students, parents of students, staff members and third parties, posted on the district's website and published in student/parent and staff handbooks. The district's policy shall be posted on a sign in <sup>2</sup>[all grade 6 through 12 schools] [all schools]. Posted signs shall be at least 8-1/2 inches by 11 inches in size.

The superintendent will establish a process of reporting incidents of sexual harassment.

END OF POLICY

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**Legal Reference(s):**

[ORS 243.706](#)  
[ORS 332.107](#)  
[ORS 342.700](#)  
[ORS 342.704](#)  
[ORS 342.708](#)

[ORS 342.850](#)  
[ORS 342.865](#)  
[ORS 659.850](#)  
[ORS 659A.006](#)  
[ORS 659A.029](#)

[ORS 659A.030](#)  
[OAR 581-021-0038](#)  
[OAR 584-020-0040](#)  
[OAR 584-020-0041](#)

Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (2018)

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e (2018).

Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1683 (2018); Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 34 C.F.R. Part 106 (2019).

Bartsch v. Elkton School District, FDA-13-011 (March 27, 2014).

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E

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[<sup>2</sup> Posting in "in grade 6 through 12 schools" is the minimum requirement per ORS 342.700.]



# OSBA Model Sample

Code: GBN/JBA-AR  
Revised/Reviewed:

**D**

## Sexual Harassment Complaint Procedure

*Recommend to delete and replace with new version*

[Principals,] [the compliance officer] [and the superintendent] [has] [have] responsibility for reports, complaints and investigations concerning sexual harassment. The investigator(s) shall be a neutral party having had no involvement in the complaint presented.

Step 1 Any sexual harassment information (i.e., reports, complaints, rumors, etc.) shall be presented to district officials, this includes officials such as the principal, compliance officer or superintendent. All such information shall be reduced to writing and will include the specific nature of the sexual harassment and corresponding dates.

The district official receiving the complaint shall cause the district to provide written notice from the district to the complainant that includes:

1. The rights of the student, student's parents, staff member, person or person's parents who filed the complaint;
2. Information about the internal complaint processes available through the school or district that the student, student's parents, staff member, person or person's parents may pursue, including the person designated for the school or district for receiving complaints;
3. Notice that civil and criminal remedies that are not provided by the school or district may be available to the complainant through the legal system and that those remedies may be subject to statutes of limitation;
4. Information about services available to the student or staff member complainant through the school or district including any counseling services, nursing services or peer advising;
5. Information about the privacy rights of the student, student's parents, staff member, person or person's parents and legally recognized exceptions to those rights for internal complaint processes and services available through the school or district;
6. Information about, and contact information for, state and community-based services and resources that are available to persons who have experienced sexual harassment; and
7. Notice that students who report information about possible prohibited conduct and students who participate in an investigation under this policy may not be disciplined for violations of the district's drug and alcohol policies that occurred in connection with the reported prohibited conduct and that were discovered as a result of a prohibited conduct report or investigation unless the student gave another person alcohol or drugs without the person's knowledge and with the intent of causing the person to become incapacitated and vulnerable to the prohibited conduct.

This written notification must:

**D**

1. Be written in plain language that is easy to understand;
2. Use print that is of the color, size and font that allow the notification to be easily read; and
3. Be made available to students, students' parents, staff members and members of the public at each school office, at the district office and on the school or district website.

Step 2

The district official receiving the information or complaint shall promptly initiate an investigation and will notify the complainant when such investigation is initiated. The official will arrange such meetings as may be necessary to discuss the issue with all concerned parties within [five] working days after receipt of the information or complaint. All findings of the investigation, including the response of the alleged harasser, shall be reduced to writing. The official conducting the investigation shall notify the complainant in writing that the investigation is concluded and if a violation of the policy was found to have occurred to the extent allowable by law. The parties will have an opportunity to submit evidence and a list of witnesses.

A copy of the notification letter provided in step 1 and the date and details of notification to the complainant of the results of the investigation, together with any other documentation related to the sexual harassment incident, including disciplinary action taken or recommended, shall be forwarded to the superintendent.

Step 3

If a complainant is not satisfied with the decision at step 2, the complainant may submit a written appeal to the superintendent or designee. Such appeal must be filed within [10] working days after receipt of the step 2 decision. The superintendent or designee will arrange such meetings with the complainant and other affected parties as deemed necessary to discuss the appeal. The superintendent or designee shall provide a written decision to the complainant within [10] working days.

Step 4

If a complainant is not satisfied with the decision at step 3, the complainant may submit a written appeal to the Board. Such appeal must be filed within [10] working days after receipt of the step 3 decision. The Board shall, within [20] working days, conduct a hearing at which time the complainant shall be given an opportunity to present the appeal. The Board may use executive session if the subject matter qualifies under Oregon law. The Board shall provide a written decision to the complainant within [10] working days following completion of the hearing.

Complaints against the principal may start at step 3 and may be filed with the superintendent. The superintendent will cause the notice requirements identified in step 1 to be completed and the notice to the complainant when the investigation is initiated. The superintendent will investigate the complaint and will notify the complainant in writing that the investigation is concluded and if a violation of the policy was found to have occurred to the extent allowable by law. If the complaint remains unresolved within [10] working days of receipt by the superintendent, the complainant may appeal to the Board in step 4.

Complaints against the superintendent may start at step 4 and should be referred to the Board chair on behalf of the Board. The Board chair will cause the notice requirements identified in step 1 to be completed and the notice to the complainant when the investigation is initiated. The Board chair shall

present the complaint to the Board. The Board may use executive session if the subject matter qualifies under Oregon law. If the Board decides an investigation is warranted, the Board may refer the investigation to a third party. When the investigation is complete, the results will be presented to the Board. The Board chair shall notify the complainant in writing that the investigation is concluded and if a violation of the policy was found to have occurred to the extent allowable by law. After receiving the results of the investigation, the Board shall decide, within [20] days, in open session what action, if any, is warranted.

Direct complaints related to employment may be filed with the U.S. Department of Labor, Equal Employment Opportunity Commission or Oregon Bureau of Labor and Industries.

Direct complaints related to educational programs and services may be made to the Regional Civil Rights Director, U.S. Department of Education, Office for Civil Rights, Region X, 915 2nd Ave., Room 3310, Seattle, WA 98174-1099.

Additional information regarding filing of a complaint may be obtained through the principal, compliance officer or superintendent.

All documentation related to sexual harassment complaints may become part of the student's education record or employee's personnel file, as appropriate. Additionally, a copy of all sexual harassment complaints and documentation will be maintained as a confidential file and stored in the district office.

The superintendent shall report the name of any person holding a teaching license or registered with Teacher Standards and Practices Commission (TSPC) or participating in a practicum under Oregon Administrative Rule (OAR) Chapter 584, Division 17, when, after appropriate investigation, there is reasonable cause to believe the person may have committed an act of sexual harassment. Reports shall be made to TSPC within 30 days of such a finding. Reports of sexual contact with a student shall be given to a representative from law enforcement or Oregon Department of Human Services, as possible child abuse.

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[Name of District]  
[Address] | [Phone]

**SEXUAL HARASSMENT COMPLAINT FORM**

**D**

Name of complainant: \_\_\_\_\_

Position of complainant: \_\_\_\_\_

Date of complaint: \_\_\_\_\_

Name of alleged harasser: \_\_\_\_\_

Date and place of incident or incidents: \_\_\_\_\_

Description of misconduct: \_\_\_\_\_

Name of witnesses (if any): \_\_\_\_\_

Evidence of sexual harassment, i.e., letters, photos, etc. (attach evidence if possible): \_\_\_\_\_

Any other information: \_\_\_\_\_

I agree that all the information on this form is accurate and true to the best of my knowledge.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

[Name of District]  
[Address] | [Phone]

WITNESS DISCLOSURE FORM

**D**

Name of Witness: \_\_\_\_\_

Position of Witness: \_\_\_\_\_

Date of Testimony/Interview: \_\_\_\_\_

**E**

Description of Instance Witnessed: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**L**

Any Other Information: \_\_\_\_\_

\_\_\_\_\_

**E**

I agree that all the information on this form is accurate and true to the best of my knowledge.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**T**

**E**



# OSBA Model Sample Policy

Code:

JBA/GBN

Adopted:

D

## Sexual Harassment

*Recommend to delete and replace with new version*

The district is committed to the elimination of sexual harassment in district schools, activities and programs. Sexual harassment is strictly prohibited and shall not be tolerated. This includes sexual harassment: of students by staff members, other students or third parties; of staff members by students, other staff members or third parties; and of third parties by staff members and students. This policy applies to third parties who are on or immediately adjacent to school grounds or district property, are at any school-sponsored or district-sponsored activity or program, or are off school or district property, if a student or staff member acts toward the person in a manner that creates a hostile environment for the person while at school or a school-sponsored or district-sponsored activity or program. "Third parties" include, but are not limited to, school volunteers, parents, school visitors, service contractors or others engaged in district business, such as employees of businesses or organizations participating in cooperative work programs with the district and others not directly subject to district control at interdistrict and intradistrict athletic competitions or other school events. "District" includes: district facilities; district premises and nondistrict property if the student or staff member is at any district-sponsored, district-approved or district-related activity or function, such as field trips or athletic events, where students are under the jurisdiction of the district; or where the staff member is engaged in district business. [The prohibition also includes off duty conduct which is incompatible with a staff member's district job responsibilities.]

All staff members, students, and third parties are subject to this policy.

Sexual harassment of students, staff members or third parties shall include:

1. A demand or request for sexual favors in exchange for benefits;
2. Unwelcome conduct of a sexual nature that is physical, verbal or nonverbal and that interferes with a student's educational program or activity or that creates an intimidating, offensive or hostile educational environment; unwelcome conduct of a sexual nature that is physical, verbal or nonverbal and that interferes with the staff member's ability to perform the job or that creates an intimidating, offensive or hostile work environment; or unwelcome conduct of a sexual nature that is physical, verbal or nonverbal and that creates an intimidating, offensive or hostile environment; and
3. Assault when sexual contact occurs without the student's, staff member's or third party's consent because the student, staff member or third party is under the influence of drugs or alcohol, is unconscious or is pressured through physical force, coercion or explicit or implied threats.

Examples of sexual harassment may include, but not be limited to, <sup>[1]</sup>physical touching or graffiti of a sexual nature; displaying or distributing of sexually explicit drawings; pictures and written materials;

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[<sup>1</sup> OAR 581-021-0038 requires that the policy include a "list of examples of harassing behaviors covered by policy". The bracketed list in this policy reflects OSBA's recommendations. The district does have discretion in what is included in this list. If you are listing behaviors not reflected in our recommendations, please make sure that you have your list reviewed by your school district's legal counsel.]

sexual gestures or obscene jokes; touching oneself sexually or talking about one's sexuality in front of others; or spreading rumors about or rating other students or others as to appearance, sexual activity or performance].

All complaints or reports about behavior that may violate this policy shall be promptly investigated.

Any staff member who becomes aware of behavior that may violate this policy shall [immediately] report to a district official so that the district official (and the reporting staff member when the victim of the harassment is a student or third party) may coordinate efforts to take any action necessary to ensure the:

1. Student is protected and to promote a nonhostile learning environment;
2. Staff member is protected and to promote a nonhostile work environment; or
3. Third party who is subjected to the behavior is protected and to promote a nonhostile environment.

This includes providing resources for support measures to the student, staff member or third party who was subjected to the behavior and taking any actions that are necessary to remove potential future impact on the student, staff member or third party, but are not retaliatory against the student, staff member or third party being harassed or the staff member who reported to the district official.

Any student or staff member who feels they are a victim of sexual harassment are encouraged to [immediately] report their concerns to district officials, this includes officials such as the principal, compliance officer or superintendent. Students may also report concerns to a teacher, counselor or school nurse, who will promptly notify the appropriate district official.

Upon receipt of a complaint from a student or the student's parents, a staff member or a third party alleging behavior that may violate this policy, the district shall provide written notice as required by Oregon Revised Statute (ORS) 342.704(5) to the complainant.

The person who initiated the complaint and if applicable the student's parents or person's parents shall be notified when the investigation is initiated and concluded and as to whether a violation of this policy was found to have occurred to the extent allowable under state and federal student confidentiality laws.

The initiation of a complaint, and the participation in an investigation, in good faith about behavior that may violate this policy may not adversely affect the educational assignments or any terms or conditions of employment or of work or educational environment of the person who initiated the complaint or who participates in the investigation. There shall be no retaliation by the district against any person who, in good faith, reports, files a complaint or otherwise participates in an investigation or inquiry of sexual harassment.

It is the intent of the Board that appropriate corrective action will be taken by the district to stop the sexual harassment, prevent its recurrence and address negative consequences. Students in violation of this policy shall be subject to discipline up to and including expulsion and/or counseling or sexual harassment awareness training, as appropriate. The age and maturity of the student(s) involved and other relevant factors will be considered in determining appropriate action. Staff members in violation of this policy shall be subject to discipline, up to and including dismissal and/or additional sexual harassment awareness training, as appropriate. Other individuals whose behavior is found to be in violation of this policy shall be subject to appropriate sanctions as determined and imposed by the superintendent or the Board.

Additionally, the district may report individuals in violation of this policy to law enforcement officials. Licensed staff, staff registered with the Teacher Standards and Practices Commission (TSPC) and those participating in practicum programs, as specified by Oregon Administrative Rules, shall be reported to TSPC.

The superintendent shall ensure appropriate periodic sexual harassment awareness training or information is provided to all supervisors, staff members and students and that annually, the name and position of district officials responsible for accepting and managing sexual harassment complaints, business phone numbers, addresses or other necessary contact information is readily available. This policy as well as the complaint procedure will be made available upon request to all students, parents of students, staff members and third parties, posted on the district's website and published in student/parent and staff handbooks. The district's policy shall be posted on a sign in <sup>2</sup>[all grade 6 through 12 schools] [all schools]. Posted signs shall be at least 8-1/2 inches by 11 inches in size.

The superintendent will establish a process of reporting incidents of sexual harassment.

END OF POLICY

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**Legal Reference(s):**

[ORS 243.706](#)  
[ORS 332.107](#)  
[ORS 342.700](#)  
[ORS 342.704](#)  
[ORS 342.708](#)

[ORS 342.850](#)  
[ORS 342.865](#)  
[ORS 659.850](#)  
[ORS 659A.006](#)  
[ORS 659A.029](#)

[ORS 659A.030](#)  
[OAR 581-021-0038](#)  
[OAR 584-020-0040](#)  
[OAR 584-020-0041](#)

Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (2018).

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e (2018).

Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1683 (2018); Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 34 C.F.R. Part 106 (2019).

Davis v. Monroe County Bd. of Educ., 526 U.S. 629 (1999).

Gebser v. Lago Vista Indep. Sch. Dist., 524 U.S. 274 (1998).

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[<sup>2</sup> Posting in “in grade 6 through 12 schools” is the minimum requirement per ORS 342.700.]



# OSBA Model Sample

Code: JBA/GBN-AR  
Revised/Reviewed:

**D**

## Sexual Harassment Complaint Procedure

*Recommend to delete and replace with new version*

[Principals,] [the compliance officer] [and the superintendent] [has] [have] responsibility for reports, complaints and investigations concerning sexual harassment. The investigator(s) shall be a neutral party having had no involvement in the complaint presented.

Step 1 Any sexual harassment information (i.e., reports, complaints, rumors, etc.) shall be presented to district officials, this includes officials such as the principal, compliance officer or superintendent. All such information shall be reduced to writing and will include the specific nature of the sexual harassment and corresponding dates.

The district official receiving the complaint shall cause the district to provide written notice from the district to the complainant that includes:

1. The rights of the student, student's parents, staff member, person or person's parents who filed the complaint;
2. Information about the internal complaint processes available through the school or district that the student, student's parents, staff member, person or person's parents may pursue, including the person designated for the school or district for receiving complaints;
3. Notice that civil and criminal remedies that are not provided by the school or district may be available to the complainant through the legal system and that those remedies may be subject to statutes of limitation;
4. Information about services available to the student or staff member complainant through the school or district including any counseling services, nursing services or peer advising;
5. Information about the privacy rights of the student, student's parents, staff member, person or person's parents and legally recognized exceptions to those rights for internal complaint processes and services available through the school or district;
6. Information about, and contact information for, state and community-based services and resources that are available to persons who have experienced sexual harassment; and
7. Notice that students who report information about possible prohibited conduct and students who participate in an investigation under this policy may not be disciplined for violations of the district's drug and alcohol policies that occurred in connection with the reported prohibited conduct and that were discovered as a result of a prohibited conduct report or investigation unless the student gave another person alcohol or drugs without the person's knowledge and with the intent of causing the person to become incapacitated and vulnerable to the prohibited conduct.

This written notification must:

**D**

1. Be written in plain language that is easy to understand;
2. Use print that is of the color, size and font that allow the notification to be easily read; and
3. Be made available to students, students' parents, staff members and members of the public at each school office, at the district office and on the school or district website.

Step 2

The district official receiving the information or complaint shall promptly initiate an investigation and will notify the complainant when such investigation is initiated. The official will arrange such meetings as may be necessary to discuss the issue with all concerned parties within [five] working days after receipt of the information or complaint. All findings of the investigation, including the response of the alleged harasser, shall be reduced to writing. The official conducting the investigation shall notify the complainant in writing that the investigation is concluded and if a violation of the policy was found to have occurred to the extent allowable by law. The parties will have an opportunity to submit evidence and a list of witnesses.

A copy of the notification letter provided in step 1 and the date and details of notification to the complainant of the results of the investigation, together with any other documentation related to the sexual harassment incident, including disciplinary action taken or recommended, shall be forwarded to the superintendent.

Step 3

If a complainant is not satisfied with the decision at step 2, the complainant may submit a written appeal to the superintendent or designee. Such appeal must be filed within [10] working days after receipt of the step 2 decision. The superintendent or designee will arrange such meetings with the complainant and other affected parties as deemed necessary to discuss the appeal. The superintendent or designee shall provide a written decision to the complainant within [10] working days.

Step 4

If a complainant is not satisfied with the decision at step 3, the complainant may submit a written appeal to the Board. Such appeal must be filed within [10] working days after receipt of the step 3 decision. The Board shall, within [20] working days, conduct a hearing at which time the complainant shall be given an opportunity to present the appeal. The Board may use executive session if the subject matter qualifies under Oregon law. The Board shall provide a written decision to the complainant within [10] working days following completion of the hearing.

Complaints against the principal may start at step 3 and may be filed with the superintendent. The superintendent will cause the notice requirements identified in step 1 to be completed and the notice to the complainant when the investigation is initiated. The superintendent will investigate the complaint and will notify the complainant in writing that the investigation is concluded and if a violation of the policy was found to have occurred to the extent allowable by law. If the complaint remains unresolved within [10] working days of receipt by the superintendent, the complainant may appeal to the Board in step 4.

Complaints against the superintendent may start at step 4 and should be referred to the Board chair on behalf of the Board. The Board chair will cause the notice requirements identified in step 1 to be completed and the notice to the complainant when the investigation is initiated. The Board chair shall present the complaint to the Board. The Board may use executive session if the subject matter qualifies under Oregon law. If the Board decides an investigation is warranted, the Board may refer the investigation to a third party. When the investigation is complete, the results will be presented to the Board. The Board chair shall notify the complainant in writing that the investigation is concluded and if a violation of the policy was found to have occurred to the extent allowable by law. After receiving the results of the investigation, the Board shall decide, within [20] days, in open session what action, if any, is warranted.

Direct complaints related to employment may be filed with the U.S. Department of Labor, Equal Employment Opportunity Commission or Oregon Bureau of Labor and Industries.

Direct complaints related to educational programs and services may be made to the Regional Civil Rights Director, U.S. Department of Education, Office for Civil Rights, Region X, 915 2nd Ave., Room 3310, Seattle, WA 98174-1099.

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The superintendent shall report the name of any person holding a teaching license or registered with Teacher Standards and Practices Commission (TSPC) or participating in a practicum under Oregon Administrative Rule (OAR) Chapter 584, Division 17, when, after appropriate investigation, there is reasonable cause to believe the person may have committed an act of sexual harassment. Reports shall be made to TSPC within 30 days of such a finding. Reports of sexual contact with a student shall be given to a representative from law enforcement or Oregon Department of Human Services, as possible child abuse.

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[Name of District]  
[Address] | [Phone]

**SEXUAL HARASSMENT COMPLAINT FORM**

**D**

Name of complainant: \_\_\_\_\_

Position of complainant: \_\_\_\_\_

Date of complaint: \_\_\_\_\_

Name of alleged harasser: \_\_\_\_\_

Date and place of incident or incidents: \_\_\_\_\_

Description of misconduct: \_\_\_\_\_

Name of witnesses (if any): \_\_\_\_\_

Evidence of sexual harassment, i.e., letters, photos, etc. (attach evidence if possible): \_\_\_\_\_

Any other information: \_\_\_\_\_

I agree that all the information on this form is accurate and true to the best of my knowledge.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

[Name of District]  
[Address] | [Phone]

**WITNESS DISCLOSURE FORM**

**D**

Name of Witness: \_\_\_\_\_

Position of Witness: \_\_\_\_\_

Date of Testimony/Interview: \_\_\_\_\_

Description of Instance Witnessed: \_\_\_\_\_

**E**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**L**

Any Other Information: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**E**

I agree that all the information on this form is accurate and true to the best of my knowledge.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**T**

**E**

