

## Southern Oregon ESD Board Policy Review

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# Southern Oregon ESD

Code: GBN/JBA

Adopted:

## Sexual Harassment

(Version 2)

{Required policy. The requirement for this policy comes from ORS 342.700 et. al., OAR 581-021-0038 and federal Title IX laws. *This is the April 2024 published version of this policy and is the policy recommendation following the invalidation of the 2024 Title IX regulations.*}

The ESD is committed to eliminating sexual harassment. Sexual harassment will not be tolerated in the ESD. 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 ESD processes complaints<sup>{1}</sup> 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 ESD, the ESD 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 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 ESD may also need to use other complaint procedures when the alleged conduct could meet the definitions for other complaint procedures<sup>{2}</sup>.

### 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:

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<sup>1</sup> {Some ESDs 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 the ESD chooses to change these terms, new terms must be consistent and clear. Note, “complainant” is defined under federal law.}

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

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

- a. Interferes with a student’s educational activity or program;
- b. Interferes with a school or ESD staff member’s ability to perform their job; or
- c. Creates an intimidating, offensive, or hostile environment.

3. Assault when sexual contact occurs without consent<sup>4</sup>.<sup>{5}</sup>

Sexual harassment does not include conduct that is necessary because of a job duty of a school or ESD 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 actions, 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)

<sup>{6}</sup> [Human Resources], [position] at [(541) 776-8590] or [Human Resources Staff@soesd.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>{7}</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 report to a ESD official. The ESD 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

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<sup>4</sup> “Without consent” means an act performed: (a) without the knowing, voluntary and clear agreement by all parties to participate in the specific act; or (b) when a person who is a party to the act is incapacitated by drugs or alcohol; unconscious; or pressured through physical force, coercion or explicit or implied threats to participate in the act.

<sup>5</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). If the ESD would like to include the full statutory definition, it can do so.}

<sup>6</sup> {The district must designate person(s) to receive reports or complaints regarding sexual harassment. More than one staff member may be designated to receive reports or complaints of sexual harassment.}

<sup>7</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 ESD official.

Any student or staff member who feels they are a victim of sexual harassment are encouraged to report their concerns to ESD 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 ESD official.

## Investigation

All reports and complaints about behavior that may violate this policy shall be investigated. The ESD 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 ESD will use a reasonable 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.

The ESD 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 ESD electronic systems;
5. Trainings and education for staff and students; and
6. Increased notifications regarding ESD procedures and resources.]

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

1. [Removing that third party's ability to contract or volunteer with the ESD, or be present on ESD property;
2. If the third party works for an entity that contracts with the ESD, communicating with the third party's employer;
3. If the third party is a student of another district, ESD or school, communicate information related to the incident to the other district, ESD or school;
4. Limiting attendance at ESD events; and

5. Providing for additional supervision, including law enforcement if necessary, at ESD 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 ESD 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 ESD'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 ESD 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 ESD to receive complaints;
2. The rights of the person that the notification is going to;
3. Information about the internal complaint processes available through the school or ESD that the person who filed the complaint may pursue, including the person designated for the school or ESD for receiving complaints and any timelines;
4. Notice that civil and criminal remedies that are not provided by the school or ESD may be available to the person through the legal system and that those remedies may be subject to statutes of limitation;

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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 ESD should consider when to contact the person's parent.

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

5. Information about services available to the student or staff member through the school or ESD, 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 ESD;
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 ESD'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 ESD office and on the website of the school or ESD.

### **[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 ESD conditioning the provision of an aid, benefit, or service of the ESD 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 ESD’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 ESD’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 ESD 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) - Title IX Sexual Harassment Grievance Procedures.

### **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 Chief Human Resources Officer] is designated as the Title IX coordinator [~~and can be contacted at [insert phone number]~~]. The Title IX coordinator will coordinate the ESD’s efforts to comply with its responsibilities related to this AR. The ESD prominently will display the contact information for the Title IX coordinator on the ESD 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 ESD 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 ESD 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 ESD 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 ESD 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 ESD 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 ESD 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 ESD 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 ESD's educational environment, or deter sexual harassment.<sup>13</sup> The ESD 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 ESD 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 ESD 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 ESD 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 [ESD student handbook and ] on the ESD website. This policy shall also be made available at each school office and at the ESD office. The ESD 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 person upon request.

END OF POLICY

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## Legal Reference(s):

[ORS 243.706](#)  
[ORS 334.125](#)  
[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 ESD Sample Administrative Regulation

Code: GBN/JBA-AR(1)

Revised/Reviewed:

## Sexual Harassment Complaint Procedure

{Required administrative regulation. This is the July 2020 published version of this administrative regulation (AR) and is the sample AR recommendation following the invalidation of the 2024 Title IX regulations.}

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

{<sup>2</sup>} [Chief Human Resources Officer], [position] at [(541) 776-8590] or [Human Resources Staff@soesd.k12.or.us]

The ESD 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 ESD 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] 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] 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] 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] working days of receipt of the appeal. The superintendent [or designee] shall provide a written decision to the complainant within [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] working days after receipt

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

<sup>2</sup> {The district must designate person(s) to receive reports or complaints regarding sexual harassment. More than one staff member may be designated to receive reports or complaints of sexual harassment.}

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 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>3</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>3</sup> [If the Board chooses to accept the superintendent's decision as the ESD'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 ESD 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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**Southern Oregon ESD**  
101 N. Grape St., Medford, OR 97501  
541-776-8590

**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: \_\_\_\_\_

**Southern Oregon ESD**  
101 N. Grape St., Medford, OR 97501  
541-776-8590

**WITNESS DISCLOSURE FORM**

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

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

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

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

\_\_\_\_\_

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\_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

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

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

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

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**D**

# Southern Oregon ESD

Code: GBN/JBA-AR(2)

Adopted:

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

*{This is the July 2020 published version of this administrative regulation (AR) and is the sample AR recommendation following the invalidation of the 2024 Title IX regulations.}*

### Additional Definitions

“Actual knowledge” means notice of sexual harassment or allegations of sexual harassment to the ESD’s Title IX Coordinator or any official of the ESD who has authority to institute corrective measures on behalf of the ESD, 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 ESD 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 ESD’s educational environment, or deter sexual harassment.<sup>4</sup> The ESD 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 ESD will provide the parties<sup>5</sup> written notice of the following:

1. Notice of the ESD’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 ESD 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 ESD's code of conduct<sup>{7}</sup> 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 ESD'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 ESD 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 other present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by

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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.

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

<sup>8</sup> The ESD 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 ESD obtains the party's (or eligible student's parent's) voluntary, written consent to do so.



the advisor of their choice.<sup>9</sup> The ESD 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.

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

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<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.

<sup>10</sup> This includes the evidence upon which the ESD 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 ESD 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.

At no point in the process will the ESD, or anyone participating on behalf of the ESD, 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.

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 ESD’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 ESD imposes on the respondent; and
  - c. Whether remedies designed to restore or preserve equal access to the ESD’s education program or activity will be provided by the ESD to the complainant; and
6. The ESD’s procedures and permissible bases for the complainant and respondent to appeal.

The ESD 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.

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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.

## 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;
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 ESD 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 ESD’s education program or activity<sup>16</sup>; or
3. Did not occur against a person in the United States.

The ESD 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 ESD; or
3. Specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

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

<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 ESD 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))

Upon dismissal of a formal complaint, the ESD 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 ESD from continuing any investigation and taking action under a different process. The ESD may have an obligation to continue an investigation and process under a different process.**

### **Consolidation of Complaints**

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

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 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 ESD 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 ESD 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): 90 days;
2. Appeals (from receipt of appeal): 60 days;
3. 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 34 CFR 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 ESD's

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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 was not clearly unreasonable under the circumstances;
- Basis for the conclusion that the ESD's response was not deliberately indifferent; and
- What measures were taken to restore or preserve equal access to the ESD'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.

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 evidence, 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 ESD's website. <sup>19</sup>

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

# Southern Oregon ESD

Code: GBNA  
Adopted:

## Hazing, Harassment, Intimidation, Bullying, Menacing, or Cyberbullying – Staff

The Board is committed to providing a positive and productive learning and working environment.

Hazing, harassment, intimidation, bullying, menacing, and acts of cyberbullying of staff or third parties by students, staff, or third parties is strictly prohibited and shall not be tolerated in the ESD.

Retaliation against a victim, any person who reports, is thought to have reported, files a complaint, or otherwise participates in an investigation or inquiry is strictly prohibited. Such retaliation shall be considered a serious violation of Board policy and independent of whether a complaint is substantiated. False charges shall also be regarded as a serious offense and will result in disciplinary action or other appropriate sanctions.

Staff whose behavior is found to be in violation of this policy will be subject to consequences and appropriate remedial action which may include discipline, up to and including dismissal. Third parties 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. Students whose behavior is found to be in violation of this policy will be subject to consequences and appropriate remedial action which may include discipline, up to and including expulsion.

Individuals may also be referred to law enforcement officials. Licensed staff may be reported to Teacher Standards and Practices Commission if required by Oregon Administrative Rules (OAR) 584-020-0041.

The superintendent is directed to develop administrative regulations to implement this policy. Regulations shall include descriptions of prohibited conduct, reporting, and investigative procedures and provisions to ensure [annual] notice of this policy is provided to staff, students, and third parties.

END OF POLICY

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### Legal Reference(s):

[ORS 163.190](#)  
[ORS 163.197](#)  
[ORS 166.065](#)  
[ORS 166.155 - 166.165](#)  
[ORS 174.100](#)

[ORS 334.125](#)  
[ORS 339.250](#)  
[ORS 659A.006](#)  
[ORS 659A.029](#)  
[ORS 659A.030](#)

[ORS 659A.103 - 659A.143](#)  
[ORS 659A.199 - 659A.224](#)  
[OAR 839-003-0000](#)  
[OAR 839-005-0021](#)  
[OAR 839-005-0030](#)

Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (2012).

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et. Seq. (2012).

Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621-634 (2012); 29 C.F.R. Part 1626 (2018)

Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101-12213 (2012); 29 C.F.R. Part 1630 (2018); 28 C.F.R. Part 35 (2018).

Americans with Disabilities Act Amendments Act of 2008, 42 U.S.C. §§ 12101-12133 (2012).

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

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Hazing, Harassment, Intimidation, Bullying, Menacing,  
or Cyberbullying – Staff – GBNA

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# Southern Oregon ESD

Code: GBNA-AR  
Revised/Reviewed:

## Hazing, Harassment, Intimidation, Bullying, Menacing, or Cyberbullying Reporting Procedures – Staff

The following definitions and procedures shall be used for reporting, investigating, and resolving reports of hazing, harassment, intimidation, bullying, cyberbullying, and menacing of staff or third parties.

### Definitions

1. “Third parties” include, but are not limited to, coaches, school volunteers, parents, school visitors, service contractors, or others engaged in ESD business, such as employees of businesses or organizations participating in cooperative work programs with the ESD and others not directly subject to ESD control at other ESD-sponsored programs and activities.
2. “ESD” includes ESD facilities, ESD premises, and non-ESD property if the employee is at any ESD-sponsored, ESD-approved, or ESD-related activity or function, such as field trips, athletic events or where the employee is engaged in ESD business.
3. “Hazing” includes, but is not limited to, any act that recklessly or intentionally endangers the mental health, physical health or safety of a staff member for the purpose of initiation or as a condition or precondition of attaining membership in, or affiliation with, any ESD-sponsored activity, work group or work assignment, or other such activities intended to degrade or humiliate regardless of the person’s willingness to participate.
4. “Harassment” is unwelcome conduct that is based on race, color, religion, sex (including pregnancy), sexual orientation, gender identity, national origin, age (40 or older), disability or genetic information. Harassment becomes unlawful when 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.
5. “Intimidation” includes, but is not limited to, any threat or act intended to tamper, substantially damage or interfere with another’s property, cause substantial inconvenience, subject another to offensive physical contact or inflict serious physical injury on the perception of the other’s race, color, religion, national origin, disability, sexual orientation or gender identity.
6. “Bullying” is a pattern of repeated mistreatment that harms, intimidates, undermines, offends, degrades, or humiliates an employee.
7. “Cyberbullying” means the use of any electronic device to [convey a message in any form (e.g., text, image, audio, or video) that intimidates, harasses, or otherwise harms, insults, or humiliates another in a deliberate, repeated, or hostile and unwanted manner under a person’s true or false identity. In addition, any communication of this form which substantially disrupts or prevents a safe and positive working environment may also be considered cyberbullying.][harass, intimidate, or bully.] Staff will

refrain from using personal electronic devices or ESD equipment to harass or stalk another person or people.

8. “Menacing” includes, but is not limited to, any act intended to place an ESD employee, student, or third party in fear of imminent serious physical injury.

## Reporting Procedures

The [principals] [designated ESD administrators] [and the] [superintendent] [have] [has] responsibility for investigations concerning reports of hazing, harassment, intimidation, bullying, menacing, or acts of cyberbullying of staff or third parties. The investigator(s) shall be a neutral party having had no involvement in the report presented.

Any employee or third party who has knowledge of conduct in violation of Board policy GBNA – Hazing, Harassment, Intimidation, Bullying, Menacing, or Cyberbullying – Staff and this administrative regulation or feels they have been hazed, harassed, intimidated, bullied, menaced, or cyberbullied in violation of Board policy or this administrative regulation [shall] [~~is encouraged to~~] immediately report concerns to the [~~component district designated administrator~~] [ESD designated administrator].

Any ESD employee or third party who has knowledge of conduct in violation of Board policy prohibiting acts of hazing, harassment, intimidation, bullying, menacing, acts of cyberbullying, or incidents of teen dating violence involving any [~~component district~~] [~~or~~] [ESD school] student shall immediately report concerns to the [~~component district designated administrator~~] [ESD designated administrator].

Reports and information will be promptly investigated in accordance with the following procedures:

- Step 1 Any reports or information on acts of hazing, harassment, intimidation, bullying, menacing, or acts of cyberbullying (e.g., complaints, rumors) shall be presented to the ESD [administrator] [~~principal~~] [~~or~~] [superintendent]. Reports against the ESD administrator or principal shall be filed with the superintendent. Information may be presented anonymously. Reports against the superintendent shall be filed with the Board chair. All such information will be reduced to writing and will include the specific nature of the offense and corresponding dates.
- Step 2 The ESD official receiving the report shall promptly investigate. [~~Parents will be notified of the nature of any report involving their student.~~] The ESD official will arrange such meetings as may be necessary with all concerned parties within [five] working days after receipt of the information or report. The parties will have an opportunity to submit evidence and a list of witnesses. All findings related to the report will be reduced to writing. The ESD official(s) conducting the investigation shall notify the person making the report within [10] working days of receipt of the information or report, [and parents as appropriate,] [~~in writing~~] when the investigation is concluded and a decision regarding disciplinary action, as warranted, is determined.

[A copy of the notification letter or the date and details of notification to the person making the report, together with any other documentation related to the incident, including disciplinary action taken or recommended, shall be forwarded to the superintendent.]

Step 3 **P** If the person making the report is not satisfied with the decision at Step 2, they 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 person making the report and other affected parties as deemed necessary to discuss the appeal. The superintendent or designee shall provide a written decision to the appeal within [10] working days.

Step 4 **R** If the person making the report is not satisfied with the decision at Step 3, a written appeal may be filed with 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 person making the report shall be given an opportunity to present the information or report. The Board shall provide a written decision to the person making the report within [10] working days following completion of the hearing.

**O** Reports against the superintendent should be referred to the Board chair on behalf of the Board. The Board chair shall present the report to the Board. 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.

**P** Reports against the Board as a whole or against an individual Board member should be made to the Board chair on behalf of the Board. The Board chair shall present the report to the Board. 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.

**O** Reports against the Board chair may be made directly to the ~~[ESD counsel]~~ [Board Vice Chair] on behalf of the Board. The ~~[ESD counsel]~~ [Board Vice Chair] shall present the report to the Board. 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.

**S** Timelines may be extended upon written agreement between both parties. This also applies to reports filed against the superintendent or any Board member.

**E** Direct complaints of discriminatory harassment related to employment may be filed with the Oregon Bureau of Labor and Industries, Civil Rights Division or the U.S. Department of Labor, Equal Employment Opportunities Commission.

**D** Documentation related to the incident may be maintained as a part of the employee's personnel file. [Additionally, a copy of all reported acts of hazing, harassment, intimidation, bullying, menacing, or cyberbullying and documentation will be maintained as a confidential file in the ESD office.]

# Southern Oregon ESD

Code: GBNAA/JHFF  
Adopted:

## Suspected Sexual Conduct with Students and Reporting Requirements \* (Version 2)

{Required policy. ORS 339.372 establishes the requirement for boards to adopt policy on suspected sexual conduct.}

Sexual conduct by ESD employees, contractors<sup>1</sup>, agents<sup>2</sup>, and volunteers<sup>3</sup> is prohibited and will not be tolerated. All ESD employees, contractors, agents, volunteers, and students<sup>4</sup> are subject to this policy.

<sup>5</sup>“Sexual conduct,” means verbal or physical conduct or verbal, written or electronic communications by a school employee, a contractor, an agent or a volunteer that involve a student and that are sexual advances or requests for sexual favors directed toward the student, or of a sexual nature that are directed toward the student or that have the effect of unreasonably interfering with a student’s educational performance, or of creating an intimidating or hostile educational environment. “Sexual conduct” does not include touching or other physical contact that is necessitated by the nature of the school employee’s job duties or by the services required to be provided by the contractor, agent or volunteer, and for which there is no sexual intent; verbal, written or electronic communications that are provided as part of an education program that meets state educational standards or a policy approved by the Board; or conduct or communications described in the definition of sexual conduct herein if the school employee, contractor, agent or volunteer is also a student and the conduct or communications arise out of a consensual relationship between students, do not create an intimidating or hostile educational environment and are not prohibited by law, any policies of the ESD or any applicable employment agreements.

“Student” means any person who is in any grade from prekindergarten through grade 12 or 21 years of age or younger and receiving educational or related services from the ESD that is not a post-secondary institution of education, or who was previously known as a student by the person engaging in sexual conduct and who left school or graduated from high schools within one calendar year prior to the sexual conduct.

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<sup>1</sup> “Contractor” means a person providing services to the ESD under a contract in a manner that requires the person to have direct, unsupervised contact with students.

<sup>2</sup> “Agent” means a person acting as an agent for the ESD in a manner that requires the person to have direct, unsupervised contact with students.

<sup>3</sup> “Volunteer” means a person acting as a volunteer for the ESD in a manner that requires the person to have direct, unsupervised contact with students.

<sup>4</sup> Student conduct may only be sexual conduct if the student is also an employee, contractor, agent, or volunteer.

<sup>5</sup> This definition of “sexual conduct” affects all conduct that occurs before, on or after June 23, 2021, for purposes of reports that are made, investigations that are initiated, or a collective bargaining agreement, an employment contract, an agreement for resignation or termination, a severance agreement or any similar contract or agreement entered into, on or after June 23, 2021.

The ESD will post in each school building the names and contact information of the employees designated for the respective school building(s) to receive reports of suspected sexual conduct and the procedures the designee will follow upon receipt of the report.

Any ESD employee [{}<sup>6</sup>, contractor, agent or volunteer] who has reasonable cause to believe that a student has been subjected to sexual conduct by another ESD employee, contractor, agent or volunteer, or that another ESD employee, contractor, agent or volunteer has engaged in sexual conduct with a student, shall immediately report such suspected sexual conduct to the [{}<sup>7</sup>]designated licensed administrator], or the [alternate designated licensed administrator] in the event the designated licensed administrator is the suspected perpetrator, for their school building. If the conduct also constitutes child abuse, the employee must make mandatory reports in accordance with Board policy GBNAB/JHFE – Suspected Abuse of a Child Reporting Requirements.

If the superintendent is the alleged perpetrator the report shall be submitted to the [assistant superintendent] who shall report the suspected sexual conduct to the Board chair.

[If an employee fails to report suspected sexual conduct or fails to maintain confidentiality of records, the employee will be disciplined up to and including dismissal.]

When a designated licensed administrator receives a report of suspected sexual conduct by an ESD employee, contractor, agent or volunteer, the administrator will follow procedures established by the ESD and set forth in the ESD’s administrative regulation GBNAA/JHFF-AR - Suspected Sexual Conduct Report Procedures and Form. All such reports will be reported to the Oregon Department of Education (ODE) or Teacher Standards and Practices Commission (TSPC) in accordance with such administrative regulation. The agency receiving a report will complete an investigation regardless of any changes in the relationship or duties of the person who is the alleged perpetrator.

When there is reasonable cause to support the report, an ESD employee suspected of sexual conduct shall be placed on paid administrative leave pending an investigation and the ESD will take necessary actions to ensure the student’s safety.

When there is reasonable cause to support the report, an ESD contractor, agent or volunteer suspected of sexual conduct shall be removed from providing services to the ESD and the ESD will take necessary actions to ensure the student’s safety.

The ESD will notify, as allowed by state and federal law, the person who was subjected to the suspected sexual conduct about any actions taken by the ESD as a result of the report.

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<sup>6</sup> {The following language in brackets, i.e., [, contractor, agent or volunteer], is optional language for the ESD to consider including. If the language is kept, the ESD must make these groups aware of the policy and its administrative regulation and their responsibilities under both. This may also be included in contracts with agents and contractors and include reference to this policy.}

<sup>7</sup> {ORS 339.372 requires the ESD to have a policy that designates the licensed administrators and requires the ESD to post the names and contact information of the designees in the school building. A “licensed administrator” is a person employed as an administrator by the ESD and holds an administrative license issued by TSPC or may be a person employed by the ESD that does not hold an administrative license issued by TSPC if the ESD does not require the administrator to be licensed by TSPC.}

An ESD employee, contractor or agent will not assist another ESD employee, contractor or agent in obtaining a new job if the individual knows, or has reasonable cause to believe the ESD employee, contractor or agent engaged in sexual conduct. Nothing in this policy prevents the ESD from disclosing information required by law or providing the routine transmission of administrative and personnel files pursuant to law.

The initiation of a report in good faith about suspected sexual conduct may not adversely affect any terms or conditions of employment or the work environment of the person who initiated the report or who may have been subject to sexual conduct. If a student initiates a report of suspected sexual conduct by an ESD employee, contractor, agent or volunteer in good faith, the student will not be disciplined by the ESD or any ESD employee, contractor, agent or volunteer.

The ESD will provide to employees at the time of hire, or to a contractor, agent or volunteer at the time of beginning service for the ESD, the following:

1. A description of conduct that may constitute sexual conduct;
2. A description of the investigatory process and possible consequences if a report of suspected sexual conduct is substantiated; and
3. A description of the prohibitions imposed on ESD employees, contractors and agents when they attempt to obtain a new job, pursuant to ORS 339.378(2).

All ESD employees are subject to Board policy GCAB - Personal Electronic Devices and Social Media - Staff regarding appropriate electronic communications with students.

Any electronic communications with students by a contractor, agent or volunteer for the ESD will be appropriate and only when directed by ESD administration. When communicating with students electronically regarding school-related matters, contractors, agents or volunteers shall use mailing lists and/or other internet messaging approved by the ESD to a group of students rather than individual students or as directed by ESD administration. Texting or electronically communicating with a student through contact information gained as a contractor, agent or volunteer for the ESD is **strongly discouraged** ~~prohibited~~.

The superintendent shall develop administrative regulations to implement this policy and to comply with state law.

END OF POLICY

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**Legal Reference(s):**

[ORS 334.125](#)

[ORS 339.370 - 339.400](#)

[ORS 419B.005 - 419B.045](#)

Every Student Succeeds Act, 20 U.S.C. § 7926 (2018).  
House Bill 4160 (2024).

# Southern Oregon ESD

Code: GBNAA/JHFF-AR  
Revised/Reviewed:

## Suspected Sexual Conduct Report Procedures and Forms \*

The ESD posts in each school building the names and contact information of the ESD employees<sup>{ 1 }</sup> designated for the respective school building to receive reports of suspected sexual conduct and the procedures the designee(s) will follow upon receipt of the report.

When a designated licensed administrator<sup>2</sup> receives a report of suspected sexual conduct that may have been committed by a commission licensee<sup>3</sup>, the designee shall notify Teacher Standards and Practices Commission (TSPC). The designee shall notify the Oregon Department of Education (ODE) if the administrator receives a report of suspected sexual conduct that may have been committed by a school employee, contractor, agent or volunteer that is not a commission licensee.

If the superintendent is the alleged perpetrator the report shall be submitted to the [assistant superintendent] who shall refer the report to the Board chair.

The ESD will investigate all reports of suspected sexual conduct, unless otherwise requested by TSPC or ODE as appropriate.

When the designee receives a report of suspected sexual conduct by an ESD employee, and there is reasonable cause to support the report, the ESD shall place the ESD employee on paid administrative leave<sup>4</sup> and take necessary actions to ensure the student's safety. The employee shall remain on leave until TSPC<sup>5</sup> or ODE<sup>6</sup> determines that the report is substantiated and the ESD takes appropriate employment action against the employee, or cannot be substantiated or is not a report of sexual conduct and the ESD determines either: 1) an employment policy was violated and the ESD will take appropriate employment

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<sup>1</sup> ORS 339.372 requires the ESD to post the names and contact information of the persons, i.e., a licensed administrator and an alternate licensed administrator, who are designated to receive reports of sexual conduct for a school building in the respective school building. A "licensed administrator" is a person employed as an administrator by the ESD and holds an administrative license issued by TSPC or may be a person employed by the ESD that does not hold an administrative license issued by TSPC if the ESD does not require the administrator to be licensed by TSPC.

<sup>2</sup> A "licensed administrator" is a person employed as an administrator by the ESD and holds an administrative license issued by TSPC or may be a person employed by the ESD that does not hold an administrative license issued by TSPC if the ESD does not require the administrator to be licensed by TSPC.

<sup>3</sup> "Commission licensee," as is defined in ORS 342.120 (as amended by HB 2136 (2021)), means a person whom the TSPC has authority to investigate or discipline because the person is enrolled in an approved educator preparation program, is an applicant for a TSPC license or registration, holds a license or registration issued by TSPC, or has held a license or registration issued by the TSPC at any time during the previous five years.

<sup>4</sup> The ESD employee cannot be required to use any accrued leave during the imposed paid administrative leave.

<sup>5</sup> TSPC investigates reports on commission licensees.

<sup>6</sup> ODE investigates reports on persons who are not commission licensees.



action against the employee; or 2) an employment policy has not been violated and an employment action against the employee is not required.

When the designee receives a report of suspected sexual conduct by a contractor<sup>{7}</sup>, an agent or a volunteer, the ESD [may] [shall] prohibit the contractor, agent or volunteer from providing services to the ESD. [If the ESD determines there is reasonable cause to support a report of suspected sexual conduct, the ESD shall prohibit the contractor, agent or volunteer from providing services.] [The ESD may reinstate the contractor, agent or volunteer, and such reinstatement may not occur until such time as a report of suspected sexual conduct has been investigated and a determination has been made by TSPC or ODE, as appropriate, that the report is unsubstantiated.]

Upon request from ODE or TSPC the ESD will provide requested documents or materials to the extent allowed by state and federal law.

The name, address and other identifying information about the employee who made the report are confidential and are not accessible for public inspection.

[An “investigation” means a detailed inquiry into the factual allegations of a report of suspected sexual conduct that is based on interviews with the person who initiated the report, the person who may have been subjected to sexual conduct, witnesses and the person who is the subject of the report, and results in a finding that the report is a substantiated report, cannot be substantiated, or is not a report of sexual conduct. If the subject of the report is an ESD employee represented by a contract or a collective bargaining agreement, the investigation must meet any negotiated standards of such employment contract or agreement.]

Nothing prevents the ESD from conducting its own investigation, unless another agency requests to lead the investigation or requests the ESD to suspend their investigation, or taking an employment action based on information available to the ESD before an investigation conducted by another agency is completed. The ESD will cooperate with agencies assigned to conduct such investigations.

[A “substantiated report” means a report of sexual conduct that TSPC or ODE determines is founded.]

If, following the investigation, the ESD decides to take an employment action, the ESD will inform the ESD employee of the employment action to be taken and provide information about the appropriate appeal process. [~~The employee may appeal the employment action taken through the appeal process provided by the applicable collective bargaining agreement.~~] [~~The employee may appeal the employment action taken through an appeal process administered by a neutral third party.~~]

If the ESD is notified that the employee decided not to appeal the employment action or if the determination of an appeal sustained the employment action, the ESD shall create a record of the findings of the substantiated report and the employment action taken by the ESD will be placed in the records on the school employee maintained by the ESD. Such records created are confidential and not public records as defined in Oregon Revised Statute (ORS) 192.311, however the ESD may use the record as a basis for providing information required to be disclosed about an ESD employee under ORS 339.378(1). The ESD

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<sup>7</sup> {The ESD is encouraged to duplicate this language in the contract. If the contract is with a company and the person assigned to do the work is the alleged perpetrator, the ESD shall notify the company and request another company employee be assigned to complete the work.}



will notify the employee that information about substantiated reports may be disclosed to a potential employer.

## **P** **Training**

The ESD shall provide information and training each school year to ESD employees on the following:

1. Prevention and identification of sexual conduct;
2. Obligations of ESD employees under ORS 339.388 and 419B.005 - 419B.050 and under adopted board policies to report suspected sexual conduct; and
3. Appropriate electronic communications with students.

The ESD shall make available each school year the training described above to contractors, agents, volunteers and to parents and legal guardians of students attending ESD-operated schools, and will be made available separately from the training provided to ESD employees.

The ESD shall provide to contractors, agents and volunteers each school year information on the following:

1. Prevention and identification of sexual conduct;
2. Obligations of ESD employees under adopted board policies to report suspected sexual conduct; and
3. Appropriate electronic communications with students.

The ESD shall make available each school year training that is designed to prevent sexual conduct to students attending ESD-operated schools.

SUSPECTED SEXUAL CONDUCT REPORT FORM

P

Name of person making report: \_\_\_\_\_

Position of person making report: \_\_\_\_\_

R

Name of person suspected of sexual conduct: \_\_\_\_\_

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

O

Description of suspected sexual conduct: \_\_\_\_\_

\_\_\_\_\_

P

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

\_\_\_\_\_

O

Evidence of suspected sexual conduct, e.g., letters, photos, etc. (attach evidence if possible): \_\_\_\_\_

\_\_\_\_\_

S

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

\_\_\_\_\_

E

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

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

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

D

WITNESS DISCLOSURE FORM

P

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: \_\_\_\_\_

E

D

# OSBA Model ESD Sample Policy

Code:  
Adopted:

GBNAB/JHFE

## Suspected Abuse of a Child Reporting Requirements\*\*

{Required policy. ORS 339.372 requires school boards to adopt policy on reporting of suspected child abuse.}

Any ESD employee who has reasonable cause to believe that **any child** with whom the employee has come in contact has suffered abuse<sup>1</sup> shall immediately make a report to Oregon Department of Human Services (DHS) through the centralized child abuse reporting system<sup>[2]</sup> or to a law enforcement agency within the county where the person making the report is located at the time of the contact. Any ESD employee who has reasonable cause to believe that **any person**<sup>3</sup> with whom the employee is in contact has abused a child shall immediately report in the same manner. The report must contain, if known, the names and addresses of the child and the parents of the child or other persons responsible for the child's care, the child's age, the nature and extent of the suspected abuse, including any evidence of previous abuse, the explanation given for the suspected abuse, any other information that the person making the report believes might be helpful in establishing the possible cause of the abuse and the identity of a possible perpetrator.

Abuse of a child by ESD employees, contractors<sup>4</sup>, agents<sup>5</sup>, volunteers<sup>6</sup>, or students is prohibited and will not be tolerated. All ESD employees, contractors, agents, volunteers and students are subject to this policy and the accompanying administrative regulations.

Any ESD employee who has reasonable cause to believe that another ESD employee, contractor, agent, volunteer or student has engaged in abuse, or that a student has been subjected to abuse by another ESD employee, contractor, agent, volunteer or student shall immediately report such to DHS through its centralized child abuse reporting system or to a law enforcement agency, and to a designated licensed administrator.

The ESD will designate a <sup>{7}</sup>licensed administrator and an alternate licensed administrator, in the event that the designated licensed administrator is the suspected abuser, for each school building to receive reports of suspected abuse of a child by ESD employees, contractors, agents, volunteers or students.

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<sup>1</sup> Includes the neglect of a child as it is defined in ORS 419B.005.

<sup>2</sup> [How to report abuse or neglect: [Oregon DHS](#). Call 855-503-SAFE (7233)]

<sup>3</sup> "Person" could include adult, student or other child.

<sup>4</sup> "Contractor" means a person providing services to the ESD under a contract in a manner that requires the person to have direct, unsupervised contact with students.

<sup>5</sup> "Agent" means a person acting as an agent for the ESD in a manner that requires the person to have direct, unsupervised contact with students.

<sup>6</sup> "Volunteer" means a person acting as a volunteer for the ESD in a manner that requires the person to have direct, unsupervised contact with students.

<sup>7</sup> {ORS 339.372 requires the ESD to post the names and contact information of the persons, i.e., a licensed administrator and an alternate licensed administrator, who are designated to receive reports of sexual abuse for a school building in the respective school building. A "licensed administrator" is a person employed as an administrator by the ESD and holds an administrative

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If the superintendent is the alleged perpetrator the report shall be submitted to the <sup>{8}</sup>assistant superintendent] who shall refer the report to the Board chair.

The ESD will post the names and contact information of the designees for each school building designated to receive reports of suspected abuse and the procedures in GBNAB/JHFE-AR(1) ) - Reporting of Suspected Abuse of a Child the designee will follow upon receipt of a report, the contact information for making a report to law enforcement or the centralized child abuse reporting system of DHS, and a statement that this duty to report suspected abuse is in addition to the requirements of reporting to the designated licensed administrator.

When a designee receives a report of suspected abuse, the designee will follow procedure established by the ESD and set forth in administrative regulation GBNAB/JHFE-AR(1) - Reporting of Suspected Abuse of a Child. All such reports of suspected abuse will be reported to a law enforcement agency or DHS for investigation, and the agency will complete an investigation regardless of any changes in the relationship or duties of the person who is the alleged abuser.

When there is reasonable cause to support a report, an ESD employee suspected of abuse shall be placed on paid administrative leave pending an investigation and the ESD will take necessary actions to ensure the student's safety. When there is reasonable cause to support a report, an ESD contractor, agent or volunteer suspected of abuse shall be removed from providing services to the ESD and the ESD will take necessary actions to ensure the student's safety.

The ESD will notify the person, as allowed by state and federal law, who was subjected to the suspected abuse about any actions taken by the ESD as a result of the report.

A substantiated report of abuse by an employee shall be documented in the employee's personnel file. A substantiated report of abuse by a student shall be documented in the student's education record.

The initiation of a report in good faith, pursuant to this policy, may not adversely affect any terms or conditions of employment or the work environment of the person initiating the report or who may have been subjected to abuse. If a student initiates a report of suspected abuse of a child by an ESD employee, contractor, agent, volunteer or student, in good faith, the student will not be disciplined by the ESD or any ESD employee, contractor, agent or volunteer. Intentionally making a false report of abuse of a child is a Class A violation.

The ESD shall provide information and training each school year to ESD employees on the prevention and identification of abuse, the obligations of ESD employees under ORS 339.388 and ORS 419B.005 - 419B.050 and as directed by Board policy to report suspected abuse of a child, and appropriate electronic communications with students. The ESD shall make available each school year the training described above to contractors, agents, volunteers, and parents and legal guardians of students attending ESD-operated schools, and will be made available separately from the training provided to ESD employees. The ESD shall provide each school year information on the prevention and identification of abuse, the obligations of ESD employees under Board policy to report abuse, and appropriate electronic

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license issued by TSPC or may be a person employed by the ESD that does not hold an administrative license issued by TSPC if the ESD does not require the administrator to be licensed by TSPC.}

<sup>8</sup> {A "licensed administrator" is a person employed as an administrator by the ESD and holds an administrative license issued by TSPC or may be a person employed by the ESD that does not hold an administrative license issued by TSPC if the ESD does not require the administrator to be licensed by TSPC.}

communications with students to contractors, agents and volunteers. The ESD shall make available each school year training that is designed to prevent abuse to students attending ESD-operated schools.

The ESD shall provide to an ESD employee at the time of hire, or to a contractor, agent, or volunteer at the time of beginning service for the ESD, the following:

1. A description of conduct that may constitute abuse;
2. A description of the investigatory process and possible consequences if a report of suspected abuse is substantiated; and
3. A description of the prohibitions imposed on ESD employees, contractors, and agents when they attempt to obtain a new job, as provided under ORS 339.378. [An ESD employee, contractor or agent will not assist another ESD employee, contractor or agent in obtaining a new job if the individual knows, or has reasonable or probable cause to believe the ESD employee, contractor or agent engaged in abuse, unless criteria found in ORS 339.378(2)(c) are applicable.]

Nothing in this policy prevents the ESD from disclosing information required by law or providing the routine transmission of administrative and personnel files pursuant to law.

The ESD shall make available to students, ESD employees, contractors, agents, and volunteers a policy of appropriate electronic communications with students.

Any electronic communications with students by a contractor, agent or volunteer for the ESD will be appropriate and only when directed by ESD administration. When communicating with students electronically regarding school-related matters, contractors, agents or volunteers shall use mailing lists and/or other internet messaging approved by the ESD to a group of students rather than individual students or as directed by ESD administration. Texting or electronically communicating with a student through contact information gained as a contractor, agent or volunteer for the ESD is **[[strongly] [discouraged] [prohibited]**.

The superintendent shall develop administrative regulations as are necessary to implement this policy and to comply with state law.

END OF POLICY

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**Legal Reference(s):**

[ORS 339.370 - 339.400](#)  
[ORS 418.257 - 418.259](#)

[ORS 419B.005 - 419B.050](#)

[OAR 581-022-2205](#)

Greene v. Camreta, 588 F.3d 1011 (9th Cir. 2009), vacated in part by, remanded by Camreta v. Greene, 131 S. Ct. 2020 (U.S. 2011); vacated in part, remanded by Greene v. Camreta 661 F.3d 1201 (9<sup>th</sup> Cir. 2011).

# OSBA Model ESD Sample Policy

Code:  
Adopted:

GBNAB/JHFE-AR(1)

## Reporting of Suspected Abuse of a Child

{Required administrative regulation. ORS 339.372 requires school boards to have procedures for reporting on, and responding to reports of, suspected abuse of a child.}

### Reporting

Any ESD employee having reasonable cause to believe that **any child** with whom the employee comes in contact has suffered abuse<sup>1</sup> shall make a report immediately to the Oregon Department of Human Services (DHS) through the centralized child abuse reporting system<sup>[2]</sup> or to a law enforcement agency within the county where the person making the report is at the time of their contact. Any ESD employee who has reasonable cause to believe that **any person**<sup>3</sup> with whom the employee is in contact has abused a child shall immediately report in the same manner.

Any ESD employee who has reasonable cause to believe that another ESD employee, contractor, agent, volunteer or student has engaged in abuse, or that a student has been subjected to abuse by another ESD employee, contractor, agent, volunteer or student shall immediately report such to DHS through its centralized child abuse reporting system or to a law enforcement agency, and to the designated licensed administrator or alternate licensed administrator for their school building.

The report must contain, if known, the names and addresses of the child and the parents of the child or other persons responsible for the child's care, the child's age, the nature and extent of the suspected abuse, including any evidence of previous abuse, the explanation given for the suspected abuse, any other information that the person making the report believes might be helpful in establishing the possible cause of the suspected abuse and the identity of a possible perpetrator.

If the superintendent is the alleged abuser the report shall be submitted to the **[4] assistant superintendent** who shall refer the report to the Board chair.

A written record of the abuse report shall be made by the employee reporting the suspected abuse of a student and will include: name and position of the person making the report; name of the student; name and position of any witness; description of the nature and extent of the abuse, including any information which could be helpful in establishing cause of abuse and identity of the abuser; description of how the report was made (i.e., phone or other method); name of the agency and individual who took the report; date and time that the report was made; and name of ESD administrator who received a copy of the written report.

<sup>1</sup> Includes the neglect of a child; abuse is defined in ORS 419B.005.

<sup>2</sup> [How to report abuse or neglect: [Oregon DHS](#). Call 855-503-SAFE (7233)]

<sup>3</sup> "Person" could include adult, student or other child.

<sup>4</sup> {A "licensed administrator" is a person employed as an administrator by the ESD and holds an administrative license issued by TSPC or may be a person employed by the ESD that does not hold an administrative license issued by TSPC if the ESD does not require the administrator to be licensed by TSPC.}

The written record of the abuse report shall not be placed in the student’s educational record. A copy of the written report shall be retained by the employee making the report and a copy shall be provided to the designee that received the report.

When the designee receives a report of suspected abuse of a child by an ESD employee, and there is reasonable cause to support the report, the ESD shall place the ESD employee on paid administrative leave<sup>5</sup> and take necessary actions to ensure the student’s safety. The employee shall remain on leave until DHS or law enforcement determines that the report is substantiated and the ESD takes the appropriate employment action, or cannot be substantiated or is not a report of abuse and the ESD determines that either 1) an employment policy was violated and the ESD will take appropriate employment action against the employee, or 2) an employment policy has not be violated and no action is required by the ESD against the employee.

When the designee receives a report of suspected abuse by a contractor<sup>{6}</sup>, agent or volunteer, the ESD [may] [shall] prohibit the contractor, agent or volunteer from providing services to the ESD. [If the ESD determines there is reasonable cause to support the report of suspected abuse, the ESD shall prohibit the contractor agent or volunteer from providing services.] [The ESD may reinstate the contractor, agent or volunteer, and such reinstatement may not occur until such time as a report of suspected abuse has been investigated<sup>7</sup> and a determination has been made by law enforcement or DHS that the report is unsubstantiated.]

The written record of each reported incident of abuse of a child, action taken by the ESD and any findings as a result of the report shall be maintained by the ESD.

If, following the investigation, the ESD decides to take an employment action, the ESD will inform the ESD employee of the employment action to be taken and provide information about the appropriate appeal process. [~~The employee may appeal the employment action taken through the appeal process provided by the applicable collective bargaining agreement.~~] [~~The employee may appeal the employment action taken through an appeal process administered by a neutral third party.~~]

If the ESD is notified that the employee decided not to appeal the employment action or if the determination of an appeal sustained the employment action, a record of the findings of the substantiated report and the employment action taken by the ESD will be placed in the records on the school employee maintained by the ESD. Such records created are confidential and not public records as defined in Oregon Revised Statute (ORS) 192.311, however the ESD may use the record as a basis for providing information required to be disclosed about an ESD employee under ORS 339.378(1). The ESD will notify the employee that information about substantiated reports may be disclosed to a potential employer.

## Definitions

1. Oregon law defines “abuse” in ORS 419B.005(1).

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<sup>5</sup> The ESD employee cannot be required to use any accrued leave during the imposed paid administrative leave.

<sup>6</sup> {The ESD is encouraged to duplicate this language in the contract. If the contract is with a company and the person assigned to do the work is the alleged perpetrator, the ESD shall notify the company and request another company employee be assigned to complete the work.}

<sup>7</sup> The ESD will investigate all reports of suspected abuse, unless otherwise requested by DHS or its designee or law enforcement pursuant to law.



2. “Child” means an unmarried person who is under 18 years of age or a child in care, as defined in ORS 418.257.
3. [A “substantiated report” means a report of abuse that a law enforcement agency or DHS determines is founded.]

### **Confidentiality of Records**

The name, address and other identifying information about the employee who made the report are confidential and are not accessible for public inspection.

Upon request from law enforcement or DHS the ESD shall immediately provide requested documents or materials to the extent allowed by state and federal law.

### **Failure to Comply**

Any ESD employee who fails to report a suspected abuse of a child as provided by this policy and the prescribed Oregon law commits a violation punishable by law. An ESD employee who fails to comply with the confidentiality of records requirements commits a violation punishable by the prescribed law. If an employee fails to report suspected abuse of a child or fails to maintain confidentiality of records as required by policy or this administrative regulation, the employee will be disciplined up to and including dismissal.

### **Cooperation with Investigator**

The ESD staff shall make every effort in suspected abuse of a child cases to cooperate with investigating officials as follows:

1. Any investigation of abuse of a child will be directed by the DHS or law enforcement officials as required by law. DHS or law enforcement officials wishing to interview a student shall present themselves at the school office and contact the school administrator unless the school administrator is the subject of the investigation. [When an administrator is notified that the DHS or law enforcement would like to interview a student at school, the administrator must request that the investigating official fill out the appropriate form (See GBNAB/JHFE-AR(2) – Abuse of a Child Investigations Conducted on ESD Premises). The administrator or designee should not deny the interview based on the investigator’s refusal to sign the form.] If the student is to be interviewed at the school, the administrator or designee shall make a private space available. The administrator or designee of the school may, at the discretion of the investigator, be present to facilitate the interview. If the investigating official does not have adequate identification the administrator shall refuse access to the student.

Law enforcement officials wishing to remove a student from the premises shall present themselves at the office and contact the administrator or designee. The law enforcement official shall sign the student out in accordance with ESD procedures;

2. When the subject matter of the interview or investigation is identified to be related to suspected abuse of a child, ESD employees shall not notify parents or anyone else other than DHS or law enforcement agency and any school employee necessary to enable the investigation;

3. The administrator or designee shall advise the investigator of any conditions of disability prior to any interview with the affected child;
4. ESD employees are not authorized to reveal anything that transpires during an investigation in which the employee participates, nor shall the information become part of the student's education records, except that the employee may testify at any subsequent trial resulting from the investigation and may be interviewed by the respective litigants prior to any such trial.

Nothing prevents the ESD from conducting its own investigation, unless another agency requests to lead the investigation or requests the ESD to suspend their investigation, or taking an employment action based on information available to the ESD before an investigation conducted by another agency is completed. The ESD will cooperate with agencies assigned to conduct such investigations.

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# OSBA Model ESD Sample Policy

Code: GBNAB/JHFE-AR(2)  
Revised/Reviewed:

## Abuse of a Child Investigations Conducted on ESD Premises

The Department of Human Services (DHS) or a law enforcement agency has the authority to conduct an investigation of a report of child abuse on school premises according to Oregon Revised Statute (ORS) 419B.045. The school administrator must be notified that the investigation is to take place, unless the administrator is a subject of the investigation. The investigator is not required to reveal information about the investigation to the school as a condition of conducting the investigation.

After the investigator provides adequate identification, school staff shall allow access to the child and provide a private space for conducting the interview. The investigator shall be advised by a school administrator or a school staff member of a child's relevant disabling conditions, if any, prior to any interview with the child. The school administrator or designee may, at the investigator's discretion, be present to facilitate the investigation.

School staff may only notify DHS, the law enforcement agency or school employees that are necessary to enable the investigation. School staff may not notify any other persons, including the child's parent(s) or guardian(s).

Investigator Name (Printed)

Name of Agency

Name of Worker's/Investigator's Supervisor

Supervisor Contact Information

Investigator Position and Badge or ID Number

Student Name

School

Investigator Signature

Date

Investigator refused to sign. ESD staff should not deny entry based on refusal to sign.

### FOR COMPLETION BY ESD STAFF

- Student not available for interview
- Student refused to be interviewed
- Administrator participated in interview

Name of Administrator Notified

Name of Office Staff Involved

Name of Participating Administrator

This form should be placed in a separate secure file and not in the student's file.

# Southern Oregon ESD

Code: GCAB  
Adopted: 7/13/16  
Orig. Code: 8700;8701; 8702; 8703;  
8704; 8705; 8706; 8707;  
8708

## Personal Electronic Devices and Social Media - Staff\*\*

Staff possession or use of personal electronic devices on ESD property, in ESD facilities during the work day and while the staff is on duty in attendance at ESD-sponsored activities may be permitted subject to the limitations set forth in this policy and consistent with any additional school rules as may be established by the superintendent. At no time, whether on or off duty, will a personal electronic device be used in a manner that interferes with staff duty and responsibility for the supervision of students.

A “personal electronic device” is a device not issued by the district and that is capable of electronically communicating, sending, receiving, storing, recording, reproducing and/or displaying information and data.

Staff may be allowed to use and possess personal electronic devices during the work day and on ESD property, in ESD facilities, or at ESD-sponsored activities, provided such devices are not used in any manner that may disrupt the learning environment, interfere with work duties or ESD sponsored activities, or violate Board policies, administrative regulations, and any additional rules as may be established by the superintendent. At no time, whether on or off duty, will a personal electronic device be used in a manner that interferes with staff duty and responsibility for the supervision of students.

Devices which have the capability to take photographs or record video or audio shall not be used for such purposes while on ESD property or while a staff member is on duty in ESD-sponsored activities, unless as expressly authorized by the supervisor or designee for use directly related to and consistent with the employee’s assigned duties. Computers, tablets, iPads or similar devices brought to school will be restricted to academic activities during on duty time.

The ESD will not be liable for loss or damage to personal electronic devices brought to ESD property and ESD-sponsored activities.

Staff members, while on or off duty, will utilize social media websites, public websites and blogs, judiciously by not posting confidential information about students, staff or ESD business. Staff may not post images of staff, students, volunteers or parents without written authorization from persons with authority to grant such a release. Staff members, while on or off duty, will treat fellow employees, students and the public with respect while posting on social media websites, etc., in order to prevent substantial disruption in school. Communication with students using personal electronic devices will be appropriate and professional. Communication with students using personal electronic devices regarding non-school-related matters is prohibited during working hours and strongly discouraged at all other times. If communicating with students electronically regarding school matters, staff should use ESD e-mail using mailing lists to a group of students rather than individual students. Texting students during work hours is [discouraged] [prohibited]. Texting students while off duty is strongly discouraged.

Exceptions to the prohibitions set forth in this policy may be made for health, safety or emergency reasons with superintendent or designee approval.

Staff are subject to disciplinary action up to and including dismissal for using a personal electronic device in any manner that is illegal or violates the terms of this policy. Staff actions on social media websites, public sites and blogs, while on or off duty, which disrupt the school environment, are subject to disciplinary action up to and including dismissal. A “disruption” for purposes of this policy includes, but is not limited to: one or more parent threatens to remove their children from a particular class or particular school, actual withdrawal of a student or students from a particular class or particular school and /or a threatened or actual negative impact on the learning environment. The taking, disseminating, transferring or sharing of obscene, pornographic or otherwise illegal images or photographs, whether by electronic data transfer or otherwise (commonly called texting, sexting, emailing etc.) may constitute a crime under state and/or federal law. Any person taking, disseminating, transferring or sharing obscene, pornographic or otherwise illegal images or photographs, will be reported to law enforcement and/or other appropriate state or federal agencies.

Licensed staff are subject at all times to the Standards of Competent and Ethical Performance for Teachers.

The superintendent shall ensure that this policy is available to all employees.

END OF POLICY

**Legal Reference(s):**

[ORS 167.057](#)  
[ORS 163.432](#)  
[ORS 163.433](#)  
[ORS 163.684](#)  
[ORS 163.686](#)  
[ORS 163.687](#)

[ORS 163.688](#)  
[ORS 163.689](#)  
[ORS 163.693](#)  
[ORS 163.700](#)  
[ORS 326.011](#)  
[ORS 326.051](#)

[ORS 332.072](#)  
[ORS 334.125](#)  
[ORS 336.840](#)

[[OAR 584-020-0000](#) to -0035]

Copyrights, Title 17, as amended, United States Code; 19 CFR Part 133 (2014).

Melzer v. Bd. Of Educ., City of New York, 336 F.3d 185 (2d Cir. 2003).

Ross v. Springfield Sch. Dist., No. FDA 80-1, aff'd, 56 Or. App. 197, rev'd and remanded, 294 Or. 357 (1982), order on remand (1983), aff'd, 71 Or. App. 111 (1984), rev'd and remanded, 300 Or. 507 (1986), order on second remand (1987), revised order on second remand (1988).

# Southern Oregon ESD

Code: GCBDA/GDBDA  
Adopted:

## Family and Medical Leave \* (Version )

{The law does not require ESDs to have a board-adopted policy, but the ESD is required to follow the law; having policy and an administrative regulation in place can assist with compliance. This policy is intended for ESDs with 50 or more employees as counted in accordance with ORS 659A.153. If the ESD has between 25 and 50 employees, the ESD should use version 2 of GCBDA/GDBDA – Family Leave \*. If the ESD does not have 25 employees, the ESD should not adopt this policy.}

When applicable, the ESD will comply with the provisions of the Family and Medical Leave Act (FMLA)<sup>{1}</sup>, the Oregon Family Leave Act (OFLA)<sup>{2}</sup>, the Oregon Military Family Leave Act (OMFLA), Paid Family and Medical Leave Insurance (PFMLI) and other applicable provisions of state and federal law, Board policies and collective bargaining agreements regarding family medical leave.

In order for an employee to be eligible for the benefits under FMLA, the employee must have been employed by the ESD for at least 12 months, have worked at least 1,250 hours during the past 12-month period and works at a worksite that employs 50 or more ESD employees within 75 miles of the worksite.

Generally, in order for an employee to be eligible for the benefits under OFLA, the employee must work an average of 25 hours or more per week during the 180 calendar days immediately prior to the first day of the start of the requested leave. Special requirements apply during public health emergencies.

OMFLA applies to employees who work an average of at least 20 hours per week; there is no minimum number of days worked when determining an employee’s eligibility for OMFLA.

PFMLI is generally available to ESD employees who have earned \$1,000 in subject wages or taxable income during the alternate or base years<sup>3</sup>, contributed to the PFMLI fund in the alternate or base years and are otherwise eligible.<sup>4</sup> PFMLI can be taken for family leave, medical leave or safe leave.<sup>5</sup>

Leave taken under OFLA and PFMLI cannot be taken currently; however, OFLA leave may run concurrent with sick time (ORS 653) or other types of leave if provided by the district. Any leave taken under PFMLI must be taken concurrently with any leave taken under FMLA.

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<sup>1</sup> {Generally, FMLA applies only to entities with 50 or more employees, however, FMLA applies to all public elementary and secondary educational institutions. See 29 CFR 825.600(b). The rule regarding individual employee eligibility does apply: an employee is only eligible if the employee “is employed at a worksite where 50 or more employees are employed by the employer within 75 miles of that worksite.” See 29 CFR 825.110(a)(3). Consequently, FMLA applies to ESDs with fewer than 50 employees, but individual employees will not be eligible to receive benefits.}

<sup>2</sup> {OFLA applies to employers with 25 or more employees in Oregon (ORS 659A.153) and OMFLA applies to all public-sector employers in Oregon. (ORS 659A.090(2)) (Oregon BOLI Leave Laws – 2023 Edition)}

<sup>3</sup> The wages are not required to have been earned for work in the ESD.

<sup>4</sup> See OAR 471-070-1010 for additional information.

<sup>5</sup> Time to effectuate the legal process for the placement of a child in foster care or a child being adopted qualifies for PFMLI starting January 1, 2025. Until then, leave is available through OFLA. {See SB 1515 (2024) Sections 4, 13, 21 and 25.}

The superintendent [or designee] will develop administrative regulations as necessary for the implementation of the provisions of both federal and state law.

**P**  
END OF POLICY

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**Legal Reference(s):**

[ORS 657B.010](#)  
[ORS 657B.025](#)  
[ORS 659A.090](#)

**R**

[ORS 659A.093](#)  
[ORS 659A.096](#)  
[ORS 659A.099](#)

[ORS 659A.150 - 659A.186](#)  
[OAR 839-009-0210 - 0460](#)

Family and Medical Leave Act, 29 U.S.C. §§ 2601-2654; 5 U.S.C. §§ 6381-6387 (2018); Family and Medical Leave Act, 29 C.F.R. Part 825 (2023).  
Americans with Disabilities Act, 42 U.S.C. §§ 12101-12133 (2018); 29 C.F.R. Part 1630 (2023); 28 C.F.R. Part 35 (2023).  
Escriba v. Foster Poultry Farms, Inc. 743 F.3d 1236 (9<sup>th</sup> Cir. 2014).  
Senate Bill 1515 (2024).

**O**

**P**

**O**

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**E**

**D**

# Southern Oregon ESD

Code: GCBDA/GDBDA-AR(1)

Revised/Reviewed:

## Family and Medical Leave \*

(Version )

{The law does not require ESDs to have this information in an administrative regulation (AR), but the ESD is required to follow the law; having an AR in place can assist with compliance. This AR is intended for ESDs with 50 or more employees. If the ESD has between 25 and 50 employees, use version 2 (Oregon Family Leave Act (OFLA)) of GCBDA/GDBDA-AR(1) - Family Leave \*. If the ESD does not have 25 employees, the ESD should not use this AR.}

### Employee Eligibility

FMLA benefits are available to employees who have been employed by the ESD for at least 12 months, have worked at least 1,250 hours during the past 12-month period and work at a worksite that employs 50 ESD employees within 75 miles of the worksite.

An employee who has previously qualified for and has taken some portion of FMLA leave may request additional FMLA leave within the same leave year. In such instances, the employee may not need to requalify as an eligible employee.

Generally, in order for an employee to be eligible for the benefits under OFLA, the employee must work an average of 25 hours or more per week during the 180 calendar days<sup>1</sup> immediately prior to the first day of the start of the requested leave.<sup>2</sup>

An employee is eligible to take leave for any purposes of OFLA during a period of time covered by a public health emergency except:

1. An employee who has worked for the ESD for fewer than 30 days immediately before the date on which the family leave would commence; or
2. An employee who has worked for the ESD for an average of fewer than 25 hours per week in the 30 days immediately before the date on which the family leave would commence.

An employee of the ESD is eligible to take leave for purposes of OFLA if the employee:

1. Separates from employment with the ESD, irrespective of any reason:
  - a. Is eligible to take leave OFLA at the time the employee separates; and
  - b. Is reemployed by the ESD within 180 days of separation from employment; or
2. Is eligible to take OFLA leave:

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<sup>1</sup> Thirty days during a declared public health emergency.

<sup>2</sup> The requirements of OFLA do not apply to any employer offering eligible employees a nondiscriminatory cafeteria plan, as defined by section 125 of the Internal Revenue Code of 1986, which provides as one of its options employee leave at least as generous as the leave required by OFLA.



- a. At the beginning of a temporary cessation of scheduled hours of 180 days or less; and
- b. Returns to work at the end of the temporary cessation of scheduled hours of 180 days or less.

Any OFLA leave taken by the employee within any one-year period continues to count against the length of time of OFLA leave the employee is entitled. The amount of time that an employee is deemed to have worked for the ESD prior to a break in service due to a separation from employment or a temporary cessation of scheduled hours shall be restored to the employee when the employee is reemployed by the ESD within 180 days of separation from employment or when the employee returns to work at the end of the temporary cessation of scheduled hours of 180 days or less.

When an employee requests OFLA leave, or when the ESD acquires knowledge that an employee's leave may be for a purpose that constitutes OFLA leave, the ESD will notify the employee of the employee's eligibility to take OFLA leave within five business days, absent extenuating circumstances. Whether an employee is an "eligible employee" as defined in OAR 839-009-0210 is determined, a notice must be provided, at the commencement of the first instance of each purpose for leave listed in OAR 839-009-0240 during the OFLA leave year. If an employee is an "eligible employee" as defined in OAR 839-009-0210 for the purpose listed in OAR 839-009-0240, the employee's eligibility for that purpose does not change during the applicable 12-month period. In addition:

1. An employee taking, in any order, some or all of 12 weeks of OFLA pregnancy disability leave and some or all of 12 weeks of OFLA leave for any other purpose, need not requalify each time the employee takes OFLA leave within the same leave year;
2. An employee who has taken 2 weeks of OFLA child placement leave need not requalify for up to an additional 12 weeks of leave within the same leave year when used for the purposes of OFLA sick child leave;
3. An employee unable to work because of a disabling compensable injury<sup>3</sup> need not requalify under OAR 839-009-0210 in order to use OFLA leave following a period the employee is off work due to the compensable injury.

In determining if an employee has been employed for the preceding 180 calendar days under OFLA, the ESD must consider days, paid or unpaid, an employee is maintained on payroll.

Leave under the Oregon Military Family Leave Act (OMFLA) applies to employees who work an average of at least 20 hours per week. There is no minimum number of days worked when determining employee eligibility for OMFLA.

In determining average workweek, under FMLA and OFLA, the employer must count the actual hours worked using the Fair Labor Standards Act (FLSA) guidelines.

### **Qualifying Reason**

Eligible employees may access FMLA leave entitlements for the following reasons:

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<sup>3</sup> As defined in ORS 656.005.

1. Serious health condition of the employee or the employee’s covered family member. “Serious health condition” means an illness, injury, impairment or physical or mental condition that involves inpatient care<sup>4</sup> or continuing treatment by a health care provider<sup>5</sup>.
2. Parental leave<sup>6</sup> (separate from eligible leave as a result of a child’s serious health condition):
  - a. Bonding with and caring for the employee’s newborn child (within 12 months following birth);
  - b. Bonding with and caring for a newly adopted child or newly placed child in foster care<sup>{7}</sup> under the age of 18 (within 12 months of placement);
  - c. Caring for a newly adopted child or newly placed child in foster care 18 years of age or older who is incapable of self-care because of a mental or physical disability (within 12 months of placement);
  - d. Time to effectuate the legal process required for placement of a child in foster care or the adoption of a child.
3. Military caregiver leave: leave for the care for spouse, child or next-of-kin who is a covered servicemember with a serious injury or illness;
4. Qualifying exigency leave: leave arising out of deployment to a foreign country of the employee’s spouse, child or parent who is a military member on active duty or call to covered active duty status.

Eligible employees may access OFLA leave entitlements for the following reasons:

1. Pregnancy disability leave: leave taken by an employee for their own disability related to pregnancy, including pregnancy termination or childbirth, whether the disability occurs before, during or after the birth of the child or for prenatal care, including fertility or infertility treatment.
2. Sick child leave: leave taken for an employee’s child suffering from an illness, injury, or condition that requires home care. Under OFLA, sick child leave includes leave to care for an employee’s child whose school or child care provider has been closed<sup>8</sup> in conjunction with a statewide public health emergency declared by a public health official.<sup>9</sup>

<sup>4</sup> Inpatient care means an overnight stay in a hospital, hospice, or residential medical facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care. 29 CFR § 825.114.

<sup>5</sup> Continuing treatment includes incapacity and treatment, pregnancy or prenatal care, chronic conditions, permanent or long-term conditions, conditions requiring multiple treatments, and absences attributable to incapacity. See 29 CFR § 815.115.

<sup>6</sup> Parental leave must be taken in one continuous block of time within 12 months of the triggering event.

<sup>7</sup> {ORS 659A.159 uses the term “foster child.” ESDs can choose to use either “foster child” or “child in foster care” throughout this AR.}

<sup>8</sup> “Closure” (OAR 839-009-0210(5)) for the purpose of sick child leave during a statewide public health emergency declared by a public health official means a closure that is ongoing, intermittent, or recurring and restricts physical access to the child’s school or child care provider as defined in OAR 839-009-0210(4).

<sup>9</sup> The ESD may request verification of the need for sick child leave under OFLA due to a closure during a statewide public health emergency. Verification may include:

1. The name of the child being cared for;
2. The name of the school or child care provider that has closed or become unavailable;
3. A statement from the employee that no other family member of the child is willing and able to care for the child; and

3. Bereavement leave: leave taken to deal with the death of a covered family member and includes leave taken to attend the funeral or alternative to a funeral of the family member, to make arrangements necessitated by the death of the family member, or to grieve the death of the family member.<sup>10</sup>

Eligible employees may also access OMFLA for the purpose of spending time with a spouse or domestic partner who is in the military and has been notified of an impending call or order to active duty, or who has been deployed during a period of military conflict.

## Definitions

1. Family member:

- a. For the purposes of FMLA, “family member” means:

- (1) Spouse<sup>11</sup>;
- (2) Parent<sup>12</sup>;
- (3) Child; or
- (4) Persons who are “in loco parentis.”

- b. For the purposes of OFLA, “family member” means an eligible employee’s:

- (1) Spouse or domestic partner;
- (2) Child or the child’s spouse or domestic partner;
- (3) Parent or the parent’s spouse or domestic partner;
- (4) Sibling or stepsibling, or the sibling’s or stepsibling’s spouse or domestic partner;
- (5) Grandparent or the grandparent’s spouse or domestic partner;
- (6) Grandchild or the grandchild’s spouse or domestic partner; or
- (7) Any individual related by blood or affinity whose close association with an eligible employee is the equivalent of a family relationship.<sup>13</sup>

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4. With the care of a child older than 14, a statement that special circumstances exist requiring the employee to provide care to the child during daylight hours.

<sup>10</sup> Bereavement leave under OFLA must be completed within 60 days of the date the employee received notice of the death. The notice of the death of a family member may be by any means and from any source.

<sup>11</sup> “Spouse” means individuals in a marriage, including “common law” marriage and same-sex marriage.

<sup>12</sup> “Parent” means a biological, adoptive, step or foster parent, or any other individual who stood “in loco parentis” to the employee when the employee was a child as defined herein. This does not include parents “in law.”

<sup>13</sup> “Affinity” means a relationship for which there is a significant personal bond that, when examined under the totality of the circumstances, is like a family relationship. This bond may be demonstrated by, but is not limited to the following factors, with no single factor being determinative:

1. Shared personal financial responsibility, including shared leases, common ownership of real or personal property, joint liability for bills or beneficiary designations;
2. Emergency contact designation of the employee by the other individual in the relationship or the emergency contact designation of the other individual in the relationship by the employee;
3. The expectation to provide care because of the relationship or the prior provision of care;
4. Cohabitation and its duration and purpose;
5. Geographic proximity; and
6. Any other factor that demonstrates the existence of a family-like relationship.

2. Child:

- F**a. For the purposes of FMLA, “child” means the eligible employee’s biological or adopted child, a child the employee is fostering, a stepchild, a legal ward or a child of a person standing “in loco parentis”, who is either under the age of 18, or who is 18 years of age or older and who is incapable of self-care because of a physical or mental disability.
- b. For the purposes of Military Caregiver Leave and Qualifying Exigency Leave under FMLA, “child” means the employee’s child on covered active duty regardless of that child’s age.
- c. For the purposes of OFLA, “child” means the eligible employees biological or adopted child, a child the employee is fostering, a stepchild, the child of the employee’s spouse or domestic partner, or a child with whom the employee is or was in a relationship of “in loco parentis.”
- d. For the purposes of child placement leave and sick child leave only under OFLA, the child must be under the age of 18 or an adult dependent child substantially limited by a physical or mental impairment.

3. In loco parentis:

- a. For the purposes of FMLA, “in loco parentis” means persons with day-to-day responsibility to care for or financially support a child, or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.
- b. For the purposes of OFLA, “in loco parentis” means person in the place of the parent, having financial or day-to-day responsibility for the care of a child. A legal or biological relationship is not required.

4. Next of kin:

For the purposes of FMLA , “next of kin” means the nearest blood relative other than the covered servicemember’s spouse, parent or child in the following order of priority (unless otherwise designated in writing by the servicemember):

- a. Blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions;
- b. Siblings;
- c. Grandparents;
- d. Siblings of parents and their spouses; and
- e. First cousins.

5. Covered servicemembers:

For the purposes of FMLA, “covered servicemember” means a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list for a serious injury or illness; or a covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.

6. Covered veteran:

For the purposes of FMLA, “covered veteran” means an individual who was:

- a. A member of the Armed Forces (including a member of the National Guard or Reserves);
- b. Discharged or released under conditions other than dishonorable; and
- c. Discharged within the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.

7. Public health emergency:

For OFLA a public health emergency means;

- a. A public health emergency declared under ORS 433.441.
- b. An emergency declared under ORS 401.165 if related to a public health emergency as defined in ORS 433.442.

**Leave Period**

For the purposes of calculating an employee’s leave period for FMLA, the ESD will use ~~[the calendar year] [any fixed 12-month “leave year”]~~ **[the 12-month period measured forward from the date the employee’s leave begins]** ~~[a “rolling” 12-month period measured backward from the date the employee uses any FMLA leave].~~

For the purposes of calculating an employee’s leave period for OFLA, the ESD will use a period of 52 consecutive weeks beginning on the Sunday immediately preceding the date on which family leave commences.

The methods for calculating the leave period for FMLA or OFLA leave entitlement shall be used for all employees.

The leave period for the purposes of Military Caregiver Leave under FMLA shall be dependent on the start of any such leave regardless of the ESD’s designated leave period described above.

**Leave Duration**

For the purposes of FMLA, an eligible employee is generally entitled to a total of 12 weeks of qualified leave during the ESD’s designated leave period (12-month period)<sup>14</sup>. Spouses who work for the ESD and are eligible for FMLA leave may be limited to a combined total of 12 weeks of FMLA leave during the ESD’s designated leave period when the purpose of the leave is for:

- 1. Birth of a child or to care for a child after birth;
- 2. Placement of an adopted child or child in foster care, the care for an adopted child or child in foster care after placement; or
- 3. Care for the employee’s parent with a serious medical condition.

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<sup>14</sup> An eligible employee taking Military Caregiver Leave under FMLA is entitled to up to 26 weeks of leave in the 12-month period beginning with the first day of such leave and regardless of any FMLA leave taken previously during the ESD’s leave period. However, once the 12-month period begins for the purposes of Military Caregiver Leave under FMLA, any subsequent FMLA qualified leave, regardless of reason for such leave, will count toward the employee’s 26-week entitlement under Military Caregiver Leave under FMLA.

Except in specific and unique instances, all qualified leave under FMLA counts toward an employee's leave entitlement within the designated leave period.

For the purposes of OFLA, an eligible employee is generally entitled to a total of up to 12 weeks of OFLA leave, for sick child leave and bereavement leave, during the designated leave period. An eligible employee is entitled to a total of two weeks of bereavement leave upon the death of each family member of the employee within a leave year, except that the eligible employee may not take more than four weeks of bereavement leave within a leave year.

An employee may also be entitled to take a total of 12 weeks of OFLA pregnancy disability leave within the same leave year.

Under OFLA, the employee may use all or part of the 12 weeks of sick child or bereavement leave and all or part of the 12 weeks of pregnancy disability leave in any order.

[In addition to the 24 weeks of possible OFLA leave identified above, an eligible employee is entitled to a total of two weeks of child placement leave within an OFLA leave year until January 1, 2025. The adoption or foster placement of multiple children at one time entitles the employee to take only one two-week period of child placement leave.]

Unlike FMLA, OFLA does not combine the leave entitlement when two or more family members work for the ESD. Under OFLA, family members who work for the ESD may be restricted from taking concurrent OFLA qualified leave.<sup>15</sup>

For the purposes of OMFLA, an eligible employee is entitled to 14 days of leave per call or order to active duty or notification of a leave from deployment. When an employee also meets the eligibility requirements of OFLA, the duration of the OMFLA leave counts toward that employee's leave entitlement during the designated leave period.

Qualified leave under FMLA and OFLA for an eligible employee will run concurrently during the designated leave period if for the same qualifying reason. Qualified leave under FMLA will run concurrently with other qualified leave covered under Paid Family and Medical Leave Insurance (PFMLI) and/or available sick leave under ORS 653.601 - 653.661 for eligible employees. Qualified leave under OFLA may also run concurrently with leave taken under the sick leave law in ORS 653.601 - 653.661 if for the same qualifying reason, but not concurrent with PFMLI.

For the purpose of tracking the number of leave hours an eligible employee is entitled and/or has used during each week of the employee's leave, leave entitlement is calculated by multiplying the number of hours the eligible employee normally works per week by 12.<sup>16</sup> If an employee's schedule varies from week-to-week, a weekly average of the hours worked over the 12 months worked prior to the beginning of

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<sup>15</sup> Exceptions to the ability to require family members to take OFLA qualified leave at different times are when one employee needs to care for a child for a purpose described in ORS 659A.159 (1)(a) while another employee is taking pregnancy disability leave or, on or more of the employees is taking bereavement leave.

<sup>16</sup> For example, an employee normally employed to work 30 hours per week is entitled to 12 times 30 hours, or a total of 360 hours of leave.

the leave period shall be used for calculating the employee's normal workweek<sup>17</sup>. If an employee takes intermittent or reduced work schedule leave, only the actual number of hours of leave taken may be counted toward the 12 weeks of leave to which the employee is entitled.

Holidays which occur within the week taken as FMLA may be counted against FMLA entitlement.<sup>18</sup> However, for leave taken in increments of less than one week, holidays in which employees generally are not expected to report do not count against the employees FMLA leave entitlement.

Under OFLA, days in which the ESD is not in operation, are not counted toward intermittent or reduced work schedule OFLA leave.

### **Intermittent Leave**

[With the exception of parental leave under FMLA which must be taken in one continuous block of time, an] [An] eligible employee is permitted under FMLA or OFLA to take intermittent leave for any qualifying reason.

Intermittent leave is taken in separate periods of time (i.e., hours, days, weeks, etc.), rather than in one continuous period of time, and/or requiring an altered or reduced work schedule. For OFLA this includes but is not limited to sick child leave taken requiring an altered or reduced work schedule because the intermittent or recurring closure of a child's school or child care provider due to a statewide public health emergency declared by a public health official.

When an exempt employee is eligible for both OFLA and FMLA leave, and the employee takes intermittent leave in blocks of less than one day, if done in accordance with 29 CFR § 825.206, the ESD may reduce the employee's salary for the part-day absence without the loss of the employee's exempt status in accordance with OAR 839-020-0004(32).

When OFLA leave is not covered by FMLA leave, and the employee takes intermittent leave in blocks of less than one day, the ESD will jeopardize the employee's exempt status if the ESD reduces the employee's salary for the part-day absence.

An employee's FMLA and/or OFLA intermittent leave time is determined by calculating the difference between the employee's normal work schedule and the number of hours the employee actually works during the leave period. The result of such calculation is credited against the eligible employee's leave entitlement.

### **Alternate Work Assignment**

Under FMLA, the ESD may transfer an employee taking intermittent leave or leave on a reduced leave schedule that is foreseeable based on planned medical treatment to an alternate position for which the employee is qualified and which better accommodates an employee's recovery from a serious health condition, a serious health condition of a spouse, parent, son, or daughter, or a serious injury of illness of a



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<sup>17</sup> For example, an employee working an average of 25 hours per week is entitled to 12 times 25 hours, or a total of 300 hours of leave.

<sup>18</sup> See 29 CFR § 825.200(h).

covered servicemember. However, the ESD may not transfer the employee to an alternative position in order to discourage the employee from taking leave or otherwise work a hardship on the employee.

Under FMLA, when an employee who is taking leave intermittently or on a reduced leave schedule and has been transferred to an alternative position no longer needs to continue on leave and is able to return to full-time work, the employee will be placed in the same or equivalent job as the job they left when the leave commenced. An employee may not be required to take more leave than necessary to address the circumstance that precipitated the need for leave.

Under OFLA, the ESD may transfer an employee on intermittent OFLA leave or reduced work schedule into an alternate position with the same or different duties to accommodate leave, provided:

1. The employee accepts the position voluntarily and without coercion;
2. The transfer is temporary, lasts no longer than necessary to accommodate the leave and has equivalent pay and benefits;
3. The transfer is compliant with any applicable collective bargaining agreement, as well as with state and federal law;
4. The transfer to an alternate position is used only when there is no other reasonable option available that would allow the employee to use intermittent leave or reduced work schedule; and
5. The transfer is not used to discourage the employee from taking leave or to create a hardship for the employee.

Under OFLA, An employee transferred to an alternate position for the purpose of a reduced work schedule must be returned to the employee's former position when the employee notifies the employer that the employee is ready to return to the former position at the end of the alternate duty leave.

The ESD may transfer an eligible employee to an alternate position that accommodates OFLA pregnancy disability leave provided:

1. The employee accepts the transfer position voluntarily and without coercion;
2. The transfer is temporary, lasts no longer than necessary and has equivalent pay and benefits;
3. The transfer is compliant with any applicable collective bargaining agreements, as well as with state and federal law;
4. The transfer is not used to discourage the employee from taking OFLA leave or to create a hardship for the employee.

Under OFLA, if an eligible employee is transferred to an alternative position and as a result the employee works fewer hours than the employee worked in the original position, the employee's OFLA leave time is determined by calculating the difference between the number of hours the employee worked in the original position and the number of hours the employee actually works in the alternative position.

An employee is not on OFLA leave if the employee has been transferred – as provided for in OAR 839-009-0245 (5) – to an alternate position for the purpose of alternate work duties that the employee is able to



perform within the limitations of the employee’s pregnancy disability, but not requiring a reduced workweek. An employee working in an alternate position retains the right to return to the employee’s original position at any time during the employee’s OFLA leave. This does not impair the right of an employee to a reasonable accommodation or the application of any other state or federal law.

### Special Rules for School Employees

For the purposes of FMLA, “instructional employee” means those whose principal function is to teach and instruct students in a class, a small group or an individual setting. Athletic coaches, driving instructors and special education assistants, such as interpreters<sup>19</sup> for the hearing impaired, are included in this definition. This definition does not include teacher assistants or aides who do not have as their principal job actual teaching or instructing, auxiliary personnel such as counselors, psychologists, curriculum specialists, cafeteria workers, maintenance workers or bus drivers.

FMLA leave that is taken for a period that ends with the school year and begins with the next semester is considered consecutive rather than intermittent. The period during the summer vacation when the employee would not have been required to report for duty is not counted against the employee’s FMLA leave entitlement. In any such situation, the eligible instructional employee will receive any benefits during the break period that employees would normally receive if they had been working at the end of the school year.

#### 1. Foreseeable Intermittent Leave Exceeding 20 Percent of Working Days

When the qualified leave is foreseeable, will encompass more than 20 percent of the eligible instructional employee’s regular work schedule during the leave period, and the purpose of such leave is to care for a family member with a serious medical condition, for a covered servicemember or for the employee’s own serious medical condition, the ESD may require the eligible instructional employee to choose either to:

- a. Take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or
- b. Temporarily transfer to an available alternate position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave than the employee’s regular position.

2. If an instructional employee does not give required notice of foreseeable FMLA leave to be taken intermittently or on a reduced leave schedule, the ESD may require the employee to take leave of a particular duration, or to transfer temporarily to an alternative position. Alternatively, the ESD may require the employee to delay the taking of leave until the notice provision is met.

#### 3. Limitation on Leave Near the End of the Term<sup>20</sup>

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<sup>19</sup> 29 CFR 825.600(c) uses “signers.”

<sup>20</sup> “Academic term” means the school semester, which typically ends near the end of the calendar year and the end of spring each school year. In no case may a school have more than two academic terms or semesters each year for purposes of FMLA. 29 CFR § 825.602(b)



When an eligible instructional employee requests leave near the end of the term, the ESD may require the following:

- F**a. When the qualified leave begins more than five weeks before the end of the term, the ESD may require the employee to continue taking leave until the end of the term if:
- (1) The leave will last at least three weeks; and
  - (2) The employee would return to work during the three-week period before the end of the term.
- b. When the qualified leave begins during a five-week period before the end of the term and the purpose of such leave is parental leave, for the serious health condition of a family member or to care for a covered servicemember, the eligible instructional employee may be required by the ESD to remain on leave until the end of the term if:
- (1) The leave will last more than two weeks; and
  - (2) The employee would return to work during the two-week period before the end of the term.
- c. When the qualified leave begins within three weeks of the end of the term and the purpose of such leave is parental leave, for the serious health condition of a family member or to care for a covered servicemember, the eligible instructional employee may be required to remain on leave until the end of the term if the length of the leave will last more than five working days.

If the ESD requires an eligible instructional employee to remain on leave until the end of the term as described above, additional leave required by the ESD until the end of the school term shall not count against the eligible instructional employee's leave entitlement.

For the purposes of OFLA leave, if an employee<sup>21</sup> begins a period of bereavement leave during the three-week period before the end of the term and the duration of the leave is greater than five working days, the ESD may require the employee continue on family leave until the end of the term.

### **Paid/Unpaid Leave**

FMLA and OFLA do not require the ESD to pay an eligible employee who is on a qualified leave. Paid Family and Medical Leave Insurance (PFMLI) leave taken via Paid Leave Oregon or an equivalent plan will run concurrently with FMLA and leave available under ORS 653.601 - 653.661 when taken for the same purpose. An employee may elect to use any available accrued paid leave including personal, sick or vacation leave during the leave period<sup>{22}</sup> [to the extent that the total combined amount of accrued paid leave and benefits received from PFMLI does not exceed an amount equal to the employee's full wage replacement during the period of leave]. [The total combined amount received by using accrued leave and PFMLI may exceed the employee's full wage replacement during the period of leave.] The ESD will notify the eligible employee when the requested leave has been designated as FMLA or OFLA leave and ask the employee about the use of available accrued paid leave.

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<sup>21</sup> Applies only to an employee who is employed principally in an instructional capacity by the ESD.

<sup>22</sup> {Select one of the two bracketed options based on ESD practice, i.e., keep the ending to this sentence OR delete this ending and keep the following bracketed sentence. See ORS 657B.030(2) (as amended by SB 1515 (2024) for additional guidance).}

Eligible employees taking OMFLA leave are entitled to use available accrued paid time off during the OMFLA leave period.

## **Benefits and Insurance**

When an eligible employee returns to work following a FMLA-, OFLA- or OMFLA-qualified leave, the employee must be reinstated to the same position the employee held when the leave commenced, or to an equivalent position with equivalent benefits, pay and other terms and conditions of employment.

During an OFLA qualified leave an eligible employee does not accrue seniority or other benefits that would have accrued while the employee was working, unless the terms of a collective bargaining agreement, other agreement or other ESD policy provide otherwise.<sup>23</sup> The eligible employee is also subject to layoff to the same extent similarly situated employees not taking OFLA leave are subject unless the terms of an applicable collective bargaining agreement, other agreement or the ESD's policies provide otherwise.

For the purposes of FMLA and OFLA, the ESD will continue to pay the employer portion of the eligible employee's group health insurance contribution (if applicable) during the qualified leave period. The eligible employee is required to pay the employee portion of any such group health insurance contribution as a condition of continued coverage.

For the purposes of FMLA qualified leave, the ESD's obligation to maintain the employee's group health insurance coverage will cease if the employee's contribution is remitted more than 30 calendar days late. The ESD will provide written notice that the premium payment is more than 30 calendar days late. Such notice will be provided within 15 calendar days before coverage is to cease.

For the purposes of OMFLA, the eligible employee is entitled to a continuation of benefits.

## **Fitness-for-Duty Verification**

For purposes of FMLA, prior to the reinstatement of an employee following a leave which was the result of the employee's own serious health condition, the ESD may require the employee to obtain and present a Fitness-for-Duty Certification. If the ESD is going to require a Fitness-for-Duty Certification upon return to work, the ESD must notify the employee of such requirement when the leave is designated as FMLA leave and that failure to provide the certification may result in a delay or denial of reinstatement. Any costs associated with obtaining the certification shall be borne by the employee.

## **Application**

For purposes of FMLA, an eligible employee requesting FMLA leave shall provide at least 30 days' notice prior to the leave date if the leave is foreseeable. The notice shall be written and include the anticipated start date, duration and reasons for the requested leave. When appropriate, the eligible employee must make a reasonable effort to schedule treatment, including intermittent leave and reduced leave, so as not to unduly disrupt the operation of the ESD. An eligible employee able to give advance notice of the need to take FMLA leave must follow the ESD's known, reasonable and customary procedures for requesting any kind of leave.

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<sup>23</sup> See also ORS 342.934(4)(d) in reduction force situations.

For purposes of OFLA, an eligible employee shall provide at least [{}<sup>24</sup>}30] days' written notice of the need for foreseeable leave before starting family leave. An employee may commence family leave without prior notice in the event of: an unexpected illness, injury or condition of a child of the employee that requires home care; the death of a family member; or an illness, injury or condition related to the employee's own pregnancy or childbirth that disables the employee from performing any available job duties offered by the ESD. If an employee commences leave without prior notice as allowed above, the employee must give oral notice<sup>25</sup> to the employer within 24 hours of the commencement of the leave and must provide the written notice within three days after returning to work. Failure of an employee to provide the required notice for leave may result in the ESD deducting up to three weeks from the employee's unused OFLA leave in that one-year leave period. The employee may be subject to disciplinary action for not following the ESD's notice procedures.

The ESD may request additional information<sup>26</sup> to determine the requested leave qualifies as FMLA or OFLA leave. The ESD may designate the employee as provisionally on FMLA or OFLA leave until sufficient information is received to properly make a determination. An eligible employee able to give advance notice of the need to take leave must follow the ESD's known, reasonable and customary procedures for requesting any kind of leave.

For the purposes of FMLA, if advance notice is not possible, an employee eligible for FMLA leave must provide notice as soon as practicable. "As soon as practicable," for the purpose of FMLA leave, means as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case. In most situations, as soon as practicable will be within one business day of an employee becoming aware of the need. Failure of an employee to provide the required notice for FMLA leave may result in the ESD delaying the employee's leave up to 30 days after the notice is ultimately given.<sup>27</sup>

For the purposes of OFLA, an eligible employee is taking leave in an unforeseeable situation, an employee must give oral or written notice<sup>28</sup> within 24 hours before or after commencement of the leave.

In all cases, proper documentation must be submitted no later than three working days following the employee's return to work.

For purposes of OMFLA, an employee must provide the ESD with notice of the intention to take leave within five business days of receiving official notice of an impending call or order to active duty or of a leave from deployment.

## Medical Verification

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<sup>24</sup> {This number of days should align with the days provided in the leave request form.}

<sup>25</sup> Oral notice may be given by any other person on behalf of the employee taking the leave.

<sup>26</sup> Except in cases to verify OFLA bereavement leave unless the ESD requires the use of an attestation form for purposes of determining affinity.

<sup>27</sup> See 29 CFR § 825.304.

<sup>28</sup> Notice may be given by any other person on behalf of the employee taking the leave.

Under FMLA, the ESD may require an eligible employee to provide medical certification, when appropriate<sup>29</sup>, to support the stated reason for such leave. In most cases, the ESD will provide written notification to an employee of this requirement within five working days of the employee's request for leave. The employee is required to submit such medical certification no later than 15 calendar days after receipt of the ESD's notification that medical certification is required, unless not practicable. Any additional certifications, including second and third opinions, will be in accordance with applicable law.

Under OFLA, the ESD may require an eligible employee to provide medical verification, when appropriate<sup>30</sup>, to support the stated reason for qualifying OFLA leave. The ESD will provide written notification to an employee of this requirement and state the consequences for failure to provide the requested medical verification. If the employee gives advance written notice of foreseeable leave, the ESD may require the employee to provide medical verification for OFLA leave before the leave starts. If the employee begins unforeseeable OFLA leave without prior notice, the employee is required to submit such medical verification within 15 calendar days after receipt of the ESD's request for medical verification. The employee may be subject to disciplinary action for not providing the requested medical verification.

For the purposes of OFLA qualified leave, costs associated with obtaining the medical verification shall be borne by the ESD, or be paid as otherwise allowed by law. The ESD will not delay the use of qualifying OFLA leave when medical verification is not received before the commencement of unforeseeable leave. The ESD may not require an employee to obtain a second opinion.

Under OFLA, the ESD may request verification for the need for leave to care for a child who requires home care due to the closure of the child's school or child care provider as a result of a public health emergency. A request for verification may include a request for:

1. The name of the child requiring home care;
2. The name of the school or child care provider that is subject to the closure;
3. A statement from the employee that no other family member of the child is willing and able to care for the child; and
4. A statement that special circumstances exist that require the employee to provide home care for the child during the day, if the child is older than 14 years of age.

### **Posted Notice**

The ESD will post the Bureau of Labor and Industries Family Leave notice in each building or worksite in an area that is accessible to and regularly frequented by employees.<sup>31</sup> The ESD will also post a notice

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<sup>29</sup> Medical documentation is not allowed in every situation. Review current laws and guidance for more information.

<sup>30</sup> Medical verification is not allowed in every situation. Review current laws and guidance for more information. (OAR 839-009-0260)

<sup>31</sup> [https://www.oregon.gov/boli/employers/Documents/BOLI\\_Printable\\_FamilyMedLv.pdf](https://www.oregon.gov/boli/employers/Documents/BOLI_Printable_FamilyMedLv.pdf); electronic posting is not sufficient to satisfy this requirement, but may be used to supplement the physical posting.

explaining the provisions of FMLA and providing information concerning the procedures for filing complaints.<sup>32</sup>

### **Record Keeping**

The ESD will maintain all records as required by federal and state laws including dates leave is taken by employees, identified separately from other leave; hours/days of leave; copies of general and specific notices to employees, including Board policy(ies) and regulations; premium payments of employee health benefits while on leave and records of any disputes with employees regarding granting of leave.

Medical documentation will be maintained separately from personnel files as confidential medical records.

### **Federal vs. State Law**

Both federal and state law contain provisions for family and medical leave. Federal regulations state an employer must comply with all leave laws; that the federal law does not supersede any provision of state law that provides greater family or medical leave rights than those established pursuant to federal law; and if leave qualifies for FMLA and OFLA leave, the leave used counts against the employee's entitlement under both laws. State law requires that FMLA and OFLA or other state leave entitlements run concurrently when for the same purpose.

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<sup>32</sup> <https://www.dol.gov/sites/dolgov/files/WHd/legacy/files/fmlaen.pdf>; electronic posting is sufficient as long as it is posted prominently where it can be readily seen by employees and applicants for employees. The poster and the text must be large enough to be easily read and contain fully legible text.

# Southern Oregon ESD

Code: GCBDA/GDBDA-AR(2)  
Revised/Reviewed:

## Request for Family and Medical Leave

Employee Request for Family and Medical Leave (FMLA) and/or Oregon Family Leave (OFLA)

PLEASE PRINT

Where the need for the leave may be anticipated, written request for family and medical leave must be made, if practical, at least 30 days prior to the date the requested leave is to begin. Failure to request leave in a timely manner could result in either the leave being postponed or the amount of leave available reduced up to three weeks.

Name \_\_\_\_\_ Effective date of the leave \_\_\_\_\_

Department \_\_\_\_\_ Title \_\_\_\_\_

Status:  Full-time  Part-time  Temporary

Hire date \_\_\_\_\_ Length of service \_\_\_\_\_

Have you taken a family leave in the past 12 months?  Yes  No

If yes, how many work days? \_\_\_\_\_ Reason for leave \_\_\_\_\_

I request family or medical leave for one or more of the following reasons:<sup>1</sup>

1.  Because of the birth of my child and to care for him or her. (ESD: Use GCBDA/GDBDA-AR(3)(A) Certification Form)  
Expected date of birth \_\_\_\_\_ Actual date of birth \_\_\_\_\_  
Leave to start \_\_\_\_\_ Expected return date \_\_\_\_\_
2.  Because of the placement of a child with me for adoption or foster care. (ESD: Use GCBDA/GDBDA-AR(3)(A) Certification Form)  
Age of child \_\_\_\_\_ Date of placement \_\_\_\_\_  
Leave to start \_\_\_\_\_ Expected return date \_\_\_\_\_
3.  To care for a family member<sup>2</sup> with a serious health condition. (ESD: Use GCBDA/GDBDA-AR(3)(B) Certification Form)  
Leave to start \_\_\_\_\_ Expected return date \_\_\_\_\_

<sup>1</sup> A physician's certification may be required to support a request for family and medical leave. In addition, a fitness-for-duty certification may be required before reinstatement following the leave.

<sup>2</sup> "Family member," for purposes of FMLA and OFLA leave, means the spouse, custodial parent, noncustodial parent, adoptive parent, stepparent or foster parent, biological parent, child of the employee (biological, adopted, foster or step child, a legal ward or child of the employee standing in loco parentis) or a person with whom the employee is or was in a relationship of "in loco parentis." Additionally, when defining "family member" under OFLA (but not FMLA leave), the definition includes a grandparent, grandchild, parents-in-law or the parents of the employee's registered domestic partner.

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Please check one:  Spouse<sup>3</sup>  Child  Parent  Individual who was in *loco parentis* when the employee was a child  Parent-in-law or the parent of the employee’s registered domestic partner (OFLA leave only)  Custodial parent  Noncustodial parent  Adoptive parent  Stepparent  Foster parent  Grandparent (OFLA leave only)  Grandchild (OFLA leave only).

Please state name and address of relation:

Name \_\_\_\_\_ Address \_\_\_\_\_

Does the condition render the family member unable to perform daily activities?

- 4.  A sick child leave due to the closure of a child’s school or child care provider.
- 5.  For a serious health condition which prevents me from performing my job functions. (ESD: Use GCBDA/ GDBDA-AR(3)(A) Certification Form)

Describe \_\_\_\_\_

Leave to start \_\_\_\_\_ Expected return date \_\_\_\_\_

Regarding 3 or 4 above, request intermittent (reduced workday hours) or reduced leave (fewer workdays each workweek) schedule or alternate duty (if applicable, subject to employer’s approval). Please describe schedule of when you anticipate you will be unavailable to work:

- 6.  To care for a child with a condition requiring home care which does not meet the definition of serious health condition and is not life threatening or terminal (OFLA leave only).
- 7.  A qualifying exigency arising from an employee’s spouse, son, daughter, or parent who is a covered servicemember as defined in GCBDA/GDBDA-AR(1), or leave for the spouse per each deployment of the spouse when the spouse has either been notified of an impending call to active duty, has been ordered to active duty, or has been deployed or on leave from deployment. (ESD: Use GCBDA/GDBDA-AR(3)(C) Certification Form)
- 8.  To care for a spouse, son, daughter, parent, or next of kin<sup>4</sup> who is a covered servicemember with a serious illness or injury incurred in the line of duty or active duty in the armed forces. Has leave been taken for the same servicemember and the same injury?  Yes  No (ESD: Use GCBDA/GDBDA-AR(3)(D) Certification Form) If yes, when was the leave taken and for how many work days? \_\_\_\_\_
- 9.  For the death of a family member (OFLA only).

I understand that [I may use any available accrued paid leave, including personal and sick leave or available accrued vacation leave during the leave period.] [~~the ESD requires me to use any available accrued sick leave, vacation, personal leave days or other available paid time established by Board policy(ies) and/or collective bargaining agreement) in the order specified by the ESD and before taking leave without pay during the leave period.~~] [I am required to use any available accrued paid leave, including personal and sick leave or available accrued vacation leave before taking FMLA and/or OFLA leave without pay during the leave period. I may select the order in which the available paid leave is used.]

If my request for a leave is approved, it is my understanding that without an authorized extension when the need for an extension could be anticipated, I must report to duty on the first workday following the date my leave is

<sup>3</sup> “Spouse” means individuals in a marriage including “common law” marriage and same-sex marriage. For OFLA, spouse also includes same-sex individuals with a Certificate of Registered Domestic Partnership.

<sup>4</sup> “Next of kin” means the nearest blood relative of the eligible employee.



scheduled to end. I understand that failure to do so will constitute unequivocal notice of my intent not to return to work and the ESD may terminate my employment. (A fitness-for-duty certification may be required.)

I authorize the ESD to deduct from my paychecks any employee contributions for health insurance premiums, life insurance or long-term disability insurance which remain unpaid after my leave, consistent with state and/or federal law.

I have been provided a copy of the ESD's family and medical leave policy and a copy of my rights and responsibilities under the Family Medical Leave Act leave request form.

Signature of Employee: \_\_\_\_\_ Date: \_\_\_\_\_

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# Southern Oregon ESD

Code: GCBDA/GDBDA-AR(3)(A)  
Revised/Reviewed:

## Certification of Health Care Provider Employee's Serious Health Condition

### To be Completed by the ESD:

The Family Medical Leave Act (FMLA) provides that an ESD may require an employee seeking FMLA leave protections because of a need for leave due to a serious health condition to submit a medical certification issued by the employee's health care provider. Employees may not be asked to provide more information than allowed under the FMLA regulations. The ESD will maintain records and documents relating to medical certification, recertifications or medical histories of employee's family members, created for FMLA purposes, as confidential medical records in separate files from personnel files and in accordance with 29 C.F.R. § 1630.14(c)(1), if the Americans with Disabilities Act applies, and in accordance with 29 C.F.R. § 1635.9, if the Genetic Information Discrimination Act applies.

ESD contact person: \_\_\_\_\_

Employee's job title: \_\_\_\_\_ Regular work schedule: \_\_\_\_\_

Employee's essential job functions: \_\_\_\_\_

Check if job description is attached:

Return this completed form on \_\_\_\_\_ (date) (must be at least 15 days after employee is notified of this requirement).

### To be Completed by the Employee:

Complete the information below before giving this form to your family member or his/her medical provider. The return of this form is required to obtain or retain the benefit for FMLA protections. Failure to provide a complete and sufficient medical certification may result in a denial of your FMLA request.

Employee's name: \_\_\_\_\_  
First Middle Last

### To be Completed by Health Care Provider:

Your patient has requested leave under the FMLA. Answer fully and completely, all applicable parts below. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be the best estimate based upon your medical knowledge, experience and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown" or "indeterminate" may not be sufficient to determine FMLA coverage. Limit your responses to the condition for which the employee is seeking leave. Do not provide information about genetic tests, as defined in 29 C.F.R. § 1635.3(f), genetic services, as defined in 29 C.F.R. § 1635.3(e) or the manifestation of disease or disorder in the employee's family members, as defined in 29 C.F.R. 1635.3(b). Extra space is provided, should you need it. Please be sure to sign the form on the last page.

Provider's name and business address: \_\_\_\_\_

Type of practice/medical specialty: \_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_

Email: \_\_\_\_\_

**Medical Facts**

1. The approximate date the condition commenced: \_\_\_\_\_

The probable duration of the condition: \_\_\_\_\_

Was the patient admitted for an overnight stay in a hospital, hospice or residential medical care facility?

Yes  No If yes, dates of admission: \_\_\_\_\_

List the date(s) you treated the patient for the condition: \_\_\_\_\_

Was medication, other than over-the-counter medication, prescribed?  Yes  No

Will the patient need to have treatment visits at least twice per year due to the condition?  Yes  No

Was the patient referred to other health care provider(s) for evaluation or treatment (e.g. physical therapist)?

Yes  No

If yes, state the nature of such treatments and expected duration of treatment:

\_\_\_\_\_  
\_\_\_\_\_

2. Is the medical condition pregnancy?  Yes  No

If yes, expected delivery date: \_\_\_\_\_

3. Use the information provided by the ESD in the "To be Completed by the ESD" section to answer this question. If the ESD fails to provide a list of the employee's essential functions or a job description, answer these questions based upon the employee's own description of his/her job functions.

Is the employee unable to perform any of his/her job functions due to the condition?  Yes  No

If yes, identify the job functions the employee is unable to perform:

\_\_\_\_\_

4. Describe other relevant medical facts, if any, related to the condition for which the employee seeks leave (such medical facts may include symptoms, diagnosis or any regimen of continuing treatment such as the use of specialized equipment):

\_\_\_\_\_

\_\_\_\_\_

**Amount of Leave Needed**

1. Will the employee be incapacitated for a single continuous period of time due to his/her medical condition, including any time for treatment and recovery?  Yes  No

If yes, estimate the beginning and ending dates for the period of incapacity: \_\_\_\_\_

2. Will the employee need to attend follow-up treatment appointments or work part-time or on a reduced schedule because of the employee’s medical condition?  Yes  No

If yes, are the treatments or the reduced number of hours of work medically necessary?  Yes  No

Estimate treatment schedule, if any, including the dates of any scheduled appointments and the time required for each appointment, including any recovery period:

\_\_\_\_\_

Estimate the part-time or reduced work schedule the employee needs, if any:

\_\_\_\_\_ hour(s) per day; \_\_\_\_\_ days per week from \_\_\_\_\_ through \_\_\_\_\_

3. Will the condition cause episodic flare-ups periodically preventing the employee from performing his/her job functions?  Yes  No

Is it medically necessary for the employee to be absent from work during the flare-ups?  Yes  No

If yes, explain: \_\_\_\_\_

\_\_\_\_\_

Based upon the employee’s medical history and your knowledge of the medical condition, estimate the frequency of flare-ups and the duration of related incapacity that the employee may have over the next six months (e.g. one episode every three months lasting one to two days):

Frequency: \_\_\_\_\_ times per \_\_\_\_\_ week(s) \_\_\_\_\_ month(s)

Duration: \_\_\_\_\_ hours or \_\_\_\_\_ day(s) per episode

**Additional Information (Identify the question number with your additional answer):**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature of health care provider

Date

# Southern Oregon ESD

Code: GCBDA/GDBDA-AR(3)(B)  
Revised/Reviewed:

## Certification of Health Care Provider Family Member's Serious Health Condition

### To be Completed by the ESD:

The Family Medical Leave Act (FMLA) provides that an ESD may require an employee seeking FMLA leave protections because of a need for leave to care for a covered family member with a serious health condition to submit a medical certification issued by the health care provider of the covered family member. Employees may not be asked to provide more information than allowed under the FMLA regulations. The ESD will maintain records and documents relating to medical certification, recertifications or medical histories of the employee's family members, created for FMLA purposes, as confidential medical records in separate files from personnel files and in accordance with 29 C.F.R. § 1630.14(c)(1), if the Americans with Disabilities Act applies, and in accordance with 29 C.F.R. § 1635.9, if the Genetic Information Nondiscrimination Act applies.

ESD contact person: \_\_\_\_\_

Employee's job title: \_\_\_\_\_ Regular work schedule: \_\_\_\_\_

Employee's essential job functions: \_\_\_\_\_

Check if job description is attached:

Return this completed form on \_\_\_\_\_ (date) (must be at least 15 days after employee is notified of this requirement).

### To be Completed by the Employee:

Complete the information below before giving this form to your family member or his/her medical provider. The return of this form is required to obtain or retain the benefit for FMLA protections. Failure to provide a complete and sufficient medical certification may result in a denial of your FMLA request.

Employee's name: \_\_\_\_\_  
First Middle Last

Relationship and name of family member for whom employee will provide care: \_\_\_\_\_  
Relationship

First Middle Last

If the family member is your child, please provide his/her date of birth: \_\_\_\_\_

Describe the care you will provide to your family member and estimate the leave needed to provide such care:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Employee signature \_\_\_\_\_

Date \_\_\_\_\_

**To be Completed by Health Care Provider:**

The employee listed above has requested leave under the FMLA to care for your patient. Answer fully and completely, all applicable parts below. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be the best estimate based upon your medical knowledge, experience and examination of the patient. Be as specific as you can; terms such as “lifetime,” “unknown,” or “indeterminate” may not be sufficient to determine FMLA coverage. Limit your responses to the condition for which the patient needs leave. Do not provide information about genetic tests, as defined in 29 C.F.R. § 1635.3(f), C.F.R. § 1635.3(b). Extra space is provided, should you need it. Please be sure to sign the form on the last page.

Provider’s name and business address: \_\_\_\_\_

Type of practice/medical specialty: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_ Fax: ( ) \_\_\_\_\_

Email: \_\_\_\_\_

**Medical Facts**

1. The approximate date the condition commenced: \_\_\_\_\_

The probable duration of the condition: \_\_\_\_\_

Was the patient admitted for an overnight stay in a hospital, hospice or residential medical care facility?

Yes  No If yes, dates of admission: \_\_\_\_\_

List the dates(s) you treated the patient for their condition: \_\_\_\_\_

Was medication, other than over-the-counter medication, prescribed?  Yes  No

Will the patient need to have treatment visits at least twice per year due to the condition?  Yes  No

Was the patient referred to other health care provider(s) for evaluation or treatment (e.g. physical therapist)?

Yes  No

If yes, state the nature of such treatments and expected duration of treatment:

\_\_\_\_\_  
\_\_\_\_\_

2. Is the medical condition pregnancy?  Yes  No

If yes, expected delivery date: \_\_\_\_\_

3. Describe other relevant medical facts, if any, related to the condition for which the employee seeks leave (such medical facts may include symptoms, diagnosis or any regimen of continuing treatment such as the use of specialized equipment):

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### Amount of Leave Needed

When answering these questions, keep in mind that your patient's need for care from the employee seeking leave may include assistance with basic medical, hygienic, nutritional, safety or transportation needs, or the provision of physical or psychological care:

1. Will the patient be incapacitated for a single continuous period of time, including any time for treatment and recovery?  Yes  No

If yes, estimate the beginning and ending dates for the period of incapacity: \_\_\_\_\_

During this time, will the patient need care?  Yes  No

Explain the care needed by the patient and why such care is medically necessary:

2. Will the patient require follow-up treatments, including any time for recovery?  Yes  No

Estimate treatment schedule, if any, including the dates of any scheduled appointments and the time required for each appointment, including any recovery period: \_\_\_\_\_

Explain the care needed by the patient, and why such care is medically necessary: \_\_\_\_\_

3. Will the patient require care on an intermittent or reduced schedule basis, including any time for recovery?  Yes  No

Estimate the hours the patient needs care on an intermittent basis, if any:

\_\_\_\_\_ hour(s) per day; \_\_\_\_\_ days per week from \_\_\_\_\_ through \_\_\_\_\_

Explain the care needed by the patient, and why such care is medically necessary: \_\_\_\_\_

4. Will the condition cause episodic flare-ups periodically preventing the patient from participating in normal daily activities?  Yes  No

**P** Based upon the patient's medical history and your knowledge of the medical condition, estimate the frequency of flare-ups and the duration of related incapacity that the patient may have over the next six months (e.g. one episode every three months lasting one to two days):

Frequency: \_\_\_\_\_ times per \_\_\_\_\_ week(s) \_\_\_\_\_ month(s)

**R** Duration: \_\_\_\_\_ hours or \_\_\_\_\_ day(s) per episode

Does the patient need care during these flare-ups?  Yes  No

Explain the care needed by the patient, and why such care is medically necessary: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**O** Additional Information (Identify the question number with your additional answer):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**P**  
**O**  
\_\_\_\_\_  
Signature of health care provider

\_\_\_\_\_  
Date

**S**

**E**

**D**



# Southern Oregon ESD

Code: GCBDA/GDBDA-AR(3)(C)  
Revised/Reviewed:

## Military Family Leave

Certification of Qualifying Exigency for Military Family Leave

### Section 1: (To be completed by the ESD)

The Family Medical Leave Act (FMLA) and the Oregon Military Family Leave Act (OMFLA) provide that an ESD may require an employee seeking FMLA or OMFLA leave due to a qualifying exigency or due to notification of impending call to active duty or deployment to submit a certification. Employees may not be asked to provide more information than allowed under the FMLA or OMFLA regulations.

ESD Name and Address: Southern Oregon ESD, 101 N Grape Street, Medford OR 97501

Information: human\_resources\_staff@soesd.k12.or.us

### Section 2: (To be completed by the employee)

Complete the information below fully and completely. The FMLA or OMFLA permits the ESD to require that you submit a timely, complete and sufficient certification to support a request for FMLA or OMFLA leave due to a qualifying exigency or due to notification of impending call to active duty or deployment. Several questions in this section seek a response as to the frequency or duration of the qualifying exigency. Be as specific as you can; terms such as “lifetime,” “unknown” or “indeterminate” may not be sufficient to determine FMLA or OMFLA coverage. Your response is required to obtain a benefit. While you are not required to provide this information, failure to do so may result in a denial of your request for qualifying leave. The ESD must give you at least 15 calendar days to return this form to the ESD.

Employee's name: \_\_\_\_\_  
First Middle Last

Name of covered military member on active duty or call to active duty status in support of a contingency operation:  
\_\_\_\_\_  
First Middle Last

Relationship of covered military member to you: \_\_\_\_\_

Period of covered military member's active duty: \_\_\_\_\_

A complete and sufficient certification to support a request for FMLA leave due to a qualifying exigency includes written documentation confirming a covered military member's active duty or call to active duty status in support of a contingency operation. Please check one of the following and attach the indicated document to support that the military member is on covered active duty or called to covered active duty status:

- A copy of the covered military member's active duty orders is attached.
- Other documentation from the military certifying that the covered military member is on active duty (or has been notified of an impending call to active duty).
- I have previously provided the ESD with sufficient written documentation confirming the covered military member's active duty or call to active duty status.

**Part A: Qualifying Reason for Leave**

1. Describe the reason you are requesting qualifying leave due to a qualifying exigency (include the specific reason you are requesting leave):

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2. Describe the reason you are requesting OMFLA leave (include the specific reason below, either a) an impending call or order to active duty, or b) impending leave from deployment):

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3. A complete and sufficient certification to support a request for qualifying leave due to a qualifying exigency includes any available written documentation which supports the need for leave; such documentation may include a copy of a meeting announcement for information briefings sponsored by the military a document confirming the military member's Rest and Recuperation Leave; a document confirming an appointment with a third party, such as a counselor, school official or staff at a care facility; or a copy of a bill for services for the handling of legal or financial affairs. Is available written documentation supporting this request for leave attached?  Yes  No  None available

**Part B: Amount of Leave Needed**

1. The approximate date the qualifying exigency or deployment commenced or will commence is:

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The probable duration of such exigency or deployment is: \_\_\_\_\_

2. Will you need to be absent from work for a single continuous period of time due to the qualifying exigency or deployment?  Yes  No

If yes, estimate the beginning and ending dates for the period of absence: \_\_\_\_\_

3. Will you need to be absent from work periodically to address this qualifying exigency or deployment?  Yes  No

If yes, estimate the schedule of leave, including the dates of any scheduled meetings or appointments:

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4. Estimate the frequency and duration of each appointment, meeting or leave event, including any travel time (i.e. one deployment-related meeting every month lasting four hours) (FMLA only):

Frequency: \_\_\_\_\_ times per \_\_\_\_\_ week(s) \_\_\_\_\_ month(s)

Duration: \_\_\_\_\_ hours or \_\_\_\_\_ day(s) per event

**Part C: Third Party Certification**

If leave is requested to meet with a third party (such as to arrange for childcare, to attend counseling, to attend meetings with school or childcare providers, to make financial or legal arrangements, to act as the covered military member’s representative before a federal, state or local agency for purposes of obtaining, arranging or appealing military service benefits, or to attend any event sponsored by the military or military service organizations), a complete and sufficient certification includes the name, address and appropriate contact information of the individual or entity with whom you are meeting (i.e. either the telephone or fax number or email address of the individual or entity). This information may be used by the ESD to verify that the information contained on this form is accurate (FMLA only).

Name of individual: \_\_\_\_\_ Title: \_\_\_\_\_

Organization: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_ Fax: ( ) \_\_\_\_\_

Email: \_\_\_\_\_

Describe the nature of the meeting: \_\_\_\_\_

**Part D: Employee Signature**

I certify that the information I provided above is true and correct. (For OMFLA leave purposes, notice must be given by the employee within five business days of receiving an official notice.)

\_\_\_\_\_  
Signature of employee

\_\_\_\_\_  
Date

# Southern Oregon ESD

Code: GCBDA/GDBDA-AR(3)(D)  
Revised/Reviewed:

## Military Family Leave

Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave

### Notice and instructions to the ESD:

The Family Medical Leave Act (FMLA) provides that an ESD may require an employee seeking FMLA leave due to a serious injury or illness of a covered servicemember to submit a certification providing sufficient facts to support the request for leave. Employees may not be asked to provide more information than allowed under the FMLA regulations 29 C.F.R. § 825.310. The ESD will maintain records and documents relating to medical certification, recertifications or medical histories of employees or employees' family member, created for FMLA purposes, as confidential medical records in separate files from personnel files and in accordance with 29 C.F.R. § 1630.14(c)(1), if the Americans with Disabilities Act applies.

### Section 1

#### Part A: Employee Information

Complete the employee and covered servicemember information below before giving this form to your family member or his/her medical provider.

ESD Name and Address

Name of employee requesting leave to care for covered servicemember:

First

Middle

Last

Name of covered servicemember for whom employee is requesting leave to care for:

First

Middle

Last

Relationship of employee to covered servicemember requesting leave to care for:

Spouse    Parent    Child    Next of kin

#### Part B: Covered Servicemember Information

1. Is the covered servicemember a current member of the regular Armed Forces, the National Guard or Reserves, or a veteran?    Yes    No

If a current servicemember, please provide the covered servicemember's military branch, rank and unit currently assigned to:

\_\_\_\_\_  
\_\_\_\_\_

If a qualifying veteran, when was the date of discharge? \_\_\_\_\_

Is the covered servicemember assigned to a military medical treatment facility as an outpatient or to a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients (such as medical hold or warrior transition unit)?  Yes  No

If yes, provide the name of the medical facility or unit:

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2. Is the covered servicemember on the Temporary Disability Retired List (TDRL)?  Yes  No

**Part C: Care to be Provided to the Covered Servicemember**

Describe the care to be provided to the covered servicemember and an estimate of the leave needed to provide the care:

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**Section 2:**

(For completion by a United States Department of Defense (DOD) Health Care Provider or a Health Care Provider who is either: (1) a United States Department of Veterans Affairs (VA) health care provider; (2) a DOD TRICARE network authorized private health care provider; (3) a DOD non-network TRICARE authorized private health care provider; or (4) a health care provider as defined in 29 C.F.R. § 825.125.)

If you are unable to make certain of the military-related determinations contained below in Part B, you are permitted to rely upon determinations from an authorized DOD representative (such as a DOD recovery care coordinator). Please ensure that Section 1 above has been completed before completing this section. Please be sure to sign the form on the last page.

**Part A: Health Care Provider Information**

Health care provider's name and business address:

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Type of practice/medical specialty: \_\_\_\_\_

Please state whether you are either: (1) a DOD health care provider; (2) a VA health care provider; (3) a DOD TRICARE network authorized private health care provider; (4) a DOD non-network TRICARE authorized private care provider; or (5) a health care provider as defined in 29 C.F.R. § 825.125.

Telephone: ( ) \_\_\_\_\_ Fax: ( ) \_\_\_\_\_ Email: \_\_\_\_\_

**Part B: Medical Status**

- Covered servicemember's medical condition is classified as (check one of the appropriate boxes):
  - (VSI) Very Seriously Ill/Injured – Illness/Injury is of such a severity that life is imminently endangered. Family members are requested at the bedside immediately. (Please note this is an internal DOD casualty assistance designation used by DOD health care providers.)
  - (SI) Seriously Ill/Injured – Illness/Injury is of such severity that there is cause for immediate concern, but there is no imminent danger to life. Family members are requested at bedside. (Please note this is an internal DOD casualty assistance designation used by DOD health care providers.)

Other Ill/Injured – A serious injury or illness that may render the servicemember medically unfit to perform the duties of the member’s office, grade, rank or rating.

**P**  None of the above. (Note to employee: If this box is checked, you may still be eligible to take leave to care for a covered family member with a “serious health condition”. If such leave is requested, you may be required to complete the form *Certification of Health Care Provider for Family Member’s Serious Health Condition.*)

2. Was the condition for which the covered servicemember is being treated incurred in the line of duty on active duty in the Armed Forces?  Yes  No

If no, did the condition exist before the beginning of active duty and aggravated by service in the line of duty while on active duty?  Yes  No

3. Appropriate date condition commenced: \_\_\_\_\_

4. Probable duration of condition and/or need for care: \_\_\_\_\_

5. Is the covered servicemember undergoing medical treatment, recuperation or therapy?  Yes  No  
If yes, please describe medical treatment, recuperation or therapy:

\_\_\_\_\_  
\_\_\_\_\_

**Part C: Covered Servicemember’s Need for Care by Family Member**

1. Will the covered servicemember need care for a single continuous period of time, including any time for treatment and recovery?  Yes  No  
If yes, estimate the beginning and ending dates for this period of time: \_\_\_\_\_

2. Will the covered servicemember require periodic follow-up treatment appointments?  Yes  No  
If yes, estimate the treatment schedule: \_\_\_\_\_

3. Is there a medical necessity for the servicemember to have periodic care for these follow-up treatment appointment?  
 Yes  No

4. Is there a medical necessity for the covered servicemember to have periodic care for other than scheduled follow-up treatment appointments (e.g. episodic flare-ups of medical conditions)?  Yes  No  
If yes, estimate the frequency and duration of the periodic care.

\_\_\_\_\_

\_\_\_\_\_  
Signature of health care provider

\_\_\_\_\_  
Date

# Southern Oregon ESD

Code: GCBDA/GDBDA-AR(4)  
Revised/Reviewed:

## FMLA/OFLA Eligibility Notice to Employee

DATE: \_\_\_\_\_

TO: \_\_\_\_\_  
(Employee's name)

FROM: \_\_\_\_\_  
(Name of appropriate employer representative)

SUBJECT: Request for FMLA and/or OFLA Leave

On \_\_\_\_\_ (date) you notified us of your need to take family/medical leave due to:

1. \_\_\_\_\_ The birth of your child or the placement of a child with you for adoption or foster care;
2. \_\_\_\_\_ A serious health condition that makes you unable to perform the essential functions of your job;
3. \_\_\_\_\_ A serious health condition of your  spouse<sup>1</sup>,  child (including the biological, grandchild, adopted or foster child or stepchild of an employee or a child with whom the employee is or was in a relationship of "in loco parentis"),  parent (biological parent of an employee or an individual who stood "in loco parentis" to an employee when the employee was a child),  grandparent (OFLA leave only),  parent-in-law or the parent of an employee's registered domestic partner (OFLA leave only),  custodial parent,  noncustodial parent,  adoptive parent,  foster parent for which you are needed to provide care;
4. \_\_\_\_\_ A sick child leave due to the closure of a child's school or child care provider;
5. \_\_\_\_\_ An illness or injury to your child which requires home care but is not a serious health condition (OFLA leave only);
6. \_\_\_\_\_ A qualifying exigency arising from a spouse, child or parent in the Armed Forces on covered active duty, or in the National Guard or Reserves on covered active duty;
7. \_\_\_\_\_ Your spouse has been notified of an impending call to active duty, has been ordered to active duty or has been deployed or on leave from deployment;
8. \_\_\_\_\_ A serious illness or injury, incurred in the line of duty, of a covered service member who is your spouse, child, parent or next of kin;
9. \_\_\_\_\_ For the death of a family member (OFLA only).

<sup>1</sup> "Spouse" means individuals in a marriage, including "common law" marriage and same-sex marriage. For OFLA, spouse also includes same-sex individuals with a Certificate of Registered Domestic Partnership.

You notified us that you need this leave beginning on \_\_\_\_\_ (date) and that you expect leave to continue until on or about \_\_\_\_\_ (date). The FMLA requires that you notify the ESD as soon as possible if dates of scheduled leave changes or are extended, or were initially unknown.

Except as explained below, you have a right under the FMLA and/or OFLA for up to 12 workweeks of unpaid leave in a 12-month period for the reasons listed above.<sup>2</sup> The ESD will use ~~[the calendar year]~~ ~~[any fixed 12-month “leave year”]~~ **[the 12-month period measured forward from the date the employee’s leave begins]** ~~[a “rolling” 12-month period measured backward from the date the employee uses any family medical leave]~~. FMLA leave and OFLA leave generally run concurrently. In order to care for an injured service member, you are entitled to up to 26 weeks of leave in a single 12-month period.

Also, your health benefits under FMLA and OFLA must be maintained during any period of unpaid leave under the same conditions as if you continued to work, including you continuing to pay the same portion of the premiums you currently pay. You will be reinstated to the same position, or in some cases under state or federal law, to an equivalent position.

If you do not return to work following FMLA and/or OFLA leave for a reason other than: (1) the continuation, recurrence or onset of a serious health condition which would entitle you to FMLA and/or OFLA; or (2) other circumstances beyond your control, you may be required to reimburse the ESD for health insurance premiums paid on your behalf during your FMLA and/or OFLA leave.

This is to inform you that (*check appropriate boxes, explain where indicated*):

1. You are  eligible  not eligible for leave under  FMLA  OFLA  both FMLA and OFLA.
2. The requested leave may be counted against your annual  FMLA leave entitlement  OFLA leave entitlement  FMLA and OFLA leave entitlements.
3. You  will  will not be required to furnish a medical certification of a serious health condition. If required, you must furnish the certification by \_\_\_\_\_ (date) (must be at least 15 days after you are notified of this requirement).
4. You may elect to substitute accrued paid leave for unpaid FMLA leave. We  will  will not require that you substitute accrued paid leave for unpaid FMLA and/or OFLA leave. If paid leave will be used, the following conditions will apply: (*Explain*)
  5. a. If you normally pay a portion of the premiums for your health insurance, these payments will continue during the period of FMLA and/or OFLA leave. Arrangements for payment have been discussed with you and it is agreed that you will make premium payments as follows: (*Set forth dates, e.g., the 10th of each month or pay periods, etc., that specifically cover the agreement with the employee.*)
  5. b. You have a minimum  30-day  Other: \_\_\_\_\_ (*indicate longer period, if applicable*) grace period in which to make premium payments. If payment is not timely made, your group health insurance may be canceled. We will notify you in writing at least 15 days before the date that your health coverage will lapse. At our option, we may also pay your share of the premiums during your FMLA and/or OFLA leave as provided by Board policy and/or collective bargaining agreement, and recover

<sup>2</sup> Oregon Military Family Leave Act allows for 14 days of leave per deployment.



these payments from you upon your return to work. We  will  will not pay your share of health insurance premiums while you are on FMLA and/or OFLA leave.

5. **P** c. We  will  will not do the same with other benefits (e.g., life insurance, disability insurance, etc.) while you are on FMLA and/or OFLA leave. If we do pay your premiums for other benefits, when you return from leave you  will  will not be expected to reimburse us for the payments made on your behalf.
5. d. Except as noted above, in the event you do not return to work for the ESD after your FMLA and/or OFLA leave, and the ESD has paid your share of benefit premiums, you  will  will not be responsible for reimbursing the ESD the amount paid on your behalf with the exceptions noted in C.F.R. § 104 (c)(2)(B) of the FMLA.
6.  You will be required to present a fitness-for-duty certification prior to being restored to employment following leave for your own serious health condition. If such certification is required but not received, your return to work may be delayed until the certification is provided. A list of essential functions for your position is attached. The fitness-for-duty certification must address your ability to perform these functions.
- You will not be required to present a fitness-for-duty certification prior to being restored to employment following leave for your own serious health condition.
7. a. You  are  are not a “key employee” as described in C.F.R. § 825.218 of the FMLA regulations. If you are a “key employee,” reinstatement to employment may be denied following FMLA leave on the grounds that such restoration will cause substantial and grievous economic injury to the ESD. (FMLA leave only.)
7. b. We  have  have not determined that restoring you to employment at the conclusion of FMLA leave will cause substantial and grievous economic harm to us. (FMLA leave only.) (*Explain (a) and/or (b) below.*)
8. While on FMLA and/or OFLA leave you  will  will not be required to furnish us with periodic reports every \_\_\_\_\_ (*indicate interval of periodic reports, as appropriate for the particular leave situation*) of your status and intent to return to work. If the circumstances of your leave change and you are able to return to work earlier than the date indicated on this form, you  will  will not be required to notify us at least two workdays prior to the date you intend to report for work.
9. You  will  will not be required to furnish recertification relating to a serious health condition. (FMLA leave only.) (*Explain below, if necessary, including the interval between certifications as prescribed in C.F.R. § 825.308 of the FMLA regulations.*)
10. You are notified that all leave taken for the purposes of the death of a family member, counts toward the total period of authorized family leave.

# Southern Oregon ESD

Code: GCBDA/GDBDA-AR(5)  
Revised/Reviewed:

## Sample Designation Letter to Employee - FMLA/OFLA Leave

*The following is a sample cover letter to an employee notifying the employee that the employer is treating a request for leave as a request for FMLA and/or OFLA leave (either paid or unpaid) that will reduce the employee's FMLA and/or OFLA leave entitlement. This letter, along with the Designation Notice form GCBDA/GDBDA-AR(6) or the FMLA/OFLA Eligibility Notice form GCBDA/GDBDA-AR(4), should be mailed to the employee within five working days after receiving enough information to determine whether the leave qualifies under FMLA or OFLA.*

Dear Employee:

On \_\_\_\_ (date) \_\_\_\_ you advised the ESD that you were requesting a leave that may qualify for protected time under the Family and Medical Leave Act (FMLA) and/or the Oregon Family Leave Act (OFLA). Under our policy, a leave of absence that qualifies for family and medical leave under federal law (FMLA), may run concurrently with other types of leave such as sick leave, vacation leave, short-term disability leave, OFLA and leave for a workers' compensation injury or illness. A leave of absence that qualifies for family and medical leave under state law (OFLA), may run concurrently with other types of leave such as sick leave, vacation leave, short-term disability leave, but cannot run concurrently with a leave for a workers' compensation injury or illness (unless you refuse a light-duty assignment).

[IF APPROVED: [We have determined the purpose of your requested leave qualifies as family or medical leave under [state] [and/or federal] law. Accordingly, this letter is to notify you that the leave will be counted against your annual family and medical leave entitlement. Also attached is a form titled Designation Notice which contains other information for you regarding federal and state family medical leave rights, including an estimate of time that will count toward your protected time.]]

[IF NOT APPROVED: [We have determined the purpose of your requested leave does NOT qualify as family or medical leave under state and/or federal law. You may be entitled to other leave time, under Board policy or the collective bargaining agreement, however the protections of FMLA/OFLA will not be observed for this leave.]]

If you have any questions regarding your leave, now or at any time during your leave, please contact, [the human resources office] as soon as possible.

Sincerely,

[Superintendent]

Enclosure (FMLA and/or OFLA Designation Notice form)

# Southern Oregon ESD

Code: GCBDA/GDBDA-AR(6)  
Revised/Reviewed:

## Designation Notice – FMLA/OFLA

Leave covered under the Family and Medical Leave Act (FMLA) and/or Oregon Family Leave Act (OFLA) must be designated as FMLA and/or OFLA-protected, and the ESD must inform the employee of the amount of leave that will be counted against the employee's FMLA and/or OFLA leave entitlement.

In order to determine whether leave is covered under the FMLA and/or OFLA, the ESD may request that the leave be supported by a physician's certification. If the certification is incomplete or insufficient, the ESD will state in writing what additional information is necessary to make the certification complete and sufficient.

Employee Name: \_\_\_\_\_ Date: \_\_\_\_\_

We have reviewed your request for leave under the FMLA and/or OFLA and any supporting documentation that you have provided. We received your most recent information on \_\_\_\_\_.

Please be advised:

- Your request is approved for FMLA. All leave taken for this reason will be designated as FMLA leave.
- Your request is approved for FMLA and OFLA. This designation of leave will run concurrently.
- Your request is approved for OFLA. All leave taken for this reason will be designated as OFLA leave.

The FMLA and/or OFLA requires that you notify us as soon as practicable if dates of scheduled leave change or are extended, or were initially unknown. Based on the information you have provided to date, we are providing the following information about the amount of time that will be counted against your entitlement:

- Provided there is no deviation from your anticipated leave schedule, the following number of hours, days or weeks will be counted against your leave entitlement:  
\_\_\_\_\_

- Because the leave you requested will be rescheduled, it is not possible to provide the hours, days or weeks that will be counted against your FMLA and/or OFLA entitlement at this time. You have the right to request this information once in a 30-day period (if leave was taken in the 30-day period).

Please be advised (check if applicable):

- You have requested to use paid leave during your FMLA and/or OFLA leave. Any paid leave taken for this reason will count against your FMLA and/or OFLA leave entitlement.
- We are requiring you to substitute or use paid leave during your FMLA and/or OFLA leave.

- You will be required to present a fitness-for-duty certification to be reinstated to your position. If such certification is not timely received, your return to work may be delayed until certification is provided. The Fitness-for-Duty Certification form is attached, please have your medical provider complete this form prior to the termination of your leave. A list of the essential functions of your position  is  is not attached. If attached, the fitness-for-duty certification must address your ability to perform these functions:
- 

- Additional information is needed to determine if your FMLA and/or OFLA leave request can be approved.
- 

- The certification you have provided is incomplete and insufficient to determine whether the FMLA and/or OFLA applies to your leave procedures. You must provide the following information no later than \_\_\_\_\_ (date) (at least 15 calendar days), unless it is not practicable under the particular circumstances despite your diligent good faith efforts, or your leave may be denied. The information needed to make the certification complete and sufficient is<sup>1</sup>:
- 
- 

- We are exercising our right to have you obtain a second or third opinion medical certification at our expense, and we will provide further details at a later time.

\*\*\*\*\*

- Your FMLA leave request is NOT APPROVED.
- The FMLA does not apply to your leave request.
- You have exhausted your FMLA leave entitlement in the applicable 12-month period. (Note: Federal Military Family Leave is on a separate 12-month period.)
- Your OFLA leave request is NOT APPROVED.
- The OFLA does not apply to your leave request.
- You have exhausted your OFLA leave entitlement in the applicable 12-month period.

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<sup>1</sup> If you fail to provide a complete and sufficient certification by the due date, we may (a) delay the commencement of your leave; or (b) withdraw any designation of FMLA leave, in which case your leave of absence may be unauthorized and subject to discipline, up to and including termination.

# Southern Oregon ESD

Code: GCBDA/GDBDA-AR(7)  
Revised/Reviewed:

## Fitness-for-Duty Certification

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

From: \_\_\_\_\_

Subject: Fitness-for-Duty Certification

Family and medical leave for your own serious health condition ends on (date) \_\_\_\_\_. Prior to returning to work you must provide a Fitness-for-Duty Certification verifying whether you are able to return to work, if you have any job-related restrictions and the duration of any restrictions. Please take this Fitness-for-Duty Certification to your health care provider for completion. The ESD will use this Fitness-for-Duty Certification to determine if you are able to return to work after your leave.

**Return the completed Fitness-for-Duty Certification to the ESD prior to the end of your Family and Medical Leave or by (date) \_\_\_\_\_.**

## Fitness-for-Duty Certification

### Health Care Provider Completes this Section

**Instructions:** Please complete all sections in order for the ESD to determine if the employee is able to return to duty. The employee's position description or a list of essential duties (ESD specifies which) is attached to this form.

1. The employee is able to return to work full-time without restrictions:  Yes  No
    - a. If yes, list the effective date: \_\_\_\_\_.
    - b. If no, complete the following:
      - (1) The employee will be able to return to work with no limitation on (date) \_\_\_\_\_.
      - (2) I certify that from (date) \_\_\_\_\_ to (date) \_\_\_\_\_ the above named employee will be:
        - (a) Unable to perform the physical requirements of their work; or
        - (b) Is medically incapacitated:  Totally  Partially\*\*
- \*\*If partially medically incapacitated, complete the following:
- (c) Number of hours per day employee is able to work: \_\_\_\_\_.
  - (d) Number of days per week employee is able to work: \_\_\_\_\_.

(3) List any restrictions on the employee's work: \_\_\_\_\_

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Printed name of health care provider

\_\_\_\_\_  
Type of practice

\_\_\_\_\_  
Signature of health care provider

\_\_\_\_\_  
Date

**Health care provider: Please return the completed form to the employee/patient.**

Attached: Position description/description of essential duties (ESD specifies which).

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# OSBA Model ESD Sample Policy

Code:  
Adopted:

GCBDB/GDBDB

## Early Return to Work

Efforts will be made, on a case-by-case basis, to reinstate ill or injured employees to work. The reinstatement will be within the requirements of the injury, the limitations of the law and the limitations of the ESD.

In the event an employee is not able to perform essential job functions completely after an illness or injury, the ESD will determine whether reasonable accommodations are appropriate that would provide a temporary light-duty assignment, restructuring of a position to include modified workdays, shift or part-time work, hours of work or modifications in facilities, equipment, special aids and services. Reasonable accommodations must not result in an undue hardship on the ESD.

If an employee cannot be reasonably accommodated in their current position, the ESD will review alternative assignments. The employee, if qualified, will be offered an available vacant position with or without reasonable accommodations. If recovery is ongoing, sick leave is exhausted and no other assignment is possible, the ESD may provide temporary unpaid leave as an accommodation in accordance with state and federal law.

The ESD will maintain current job descriptions for each position. Physical requirements for appropriate job categories will be established.

The [superintendent] will develop procedures as necessary to implement this policy.

END OF POLICY

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### Legal Reference(s):

[ORS 659A.043](#)  
[ORS 659A.046](#)

[OAR 436-110-0003 to -0900](#)  
[OAR 581-024-0240](#)

Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101-12213 (2012); 29 C.F.R. Part 1630 (2016); 28 C.F.R. Part 35 (2016).

# Southern Oregon ESD

Code: GCBDC/GDBDC

Adopted:

## **Domestic Violence, Harassment, Sexual Assault, Bias, or Stalking Leave (Safe Leave) \***

{Applies to employers who employ six or more employees in Oregon and meet the definition of “covered employer.”}

When applicable, the ESD will comply with the provisions of protected leave identified in ORS 659A.272 to address domestic violence, harassment, sexual assault, bias, or stalking.

The ESD (covered employer<sup>1</sup>) shall allow an eligible employee<sup>2</sup> to take reasonable leave from employment for any of the following reasons:

1. To seek legal or law enforcement assistance or remedies to ensure the health and safety of the employee or the employee’s minor child or dependent, including preparing for and participating in protective order proceedings or other civil or criminal legal proceedings related to domestic violence, harassment, sexual assault, bias, or stalking;
2. To seek medical treatment for or to recover from injuries caused by domestic violence or sexual assault to, harassment or stalking of, or the commission of a bias crime against the eligible employee or the employee’s minor child or dependent;
3. To obtain, or to assist a minor child or dependent in obtaining counseling from a licensed mental health professional related to an experience of domestic violence, harassment, sexual assault, bias, or stalking;
4. To obtain services from a victim services provider for the eligible employee or the eligible employee’s minor child or dependent; or
5. To relocate<sup>3</sup> or take steps to secure an existing home to ensure health and safety of the eligible employee or the employee’s minor child or dependent.

The ESD may limit the amount of leave if the eligible employee’s leave creates an undue hardship on the ESD.

The ESD shall not deny leave to an eligible employee or discharge, threaten to discharge, demote, suspend or in any manner discriminate or retaliate against an employee with regards to promotion, compensation or

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<sup>1</sup> “Covered employer” means an employer who employs six or more individuals in the State of Oregon for each working day during each of 20 or more calendar workweeks in the year in which an eligible employee takes leave to address domestic violence, harassment, sexual assault, bias or stalking, or in the year immediately preceding the year in which an eligible employee takes leave to address domestic violence, harassment, sexual assault, bias or stalking.

<sup>2</sup> “Eligible employee” means an employee who is a victim of domestic violence, harassment, sexual assault, bias or stalking or is the parent or guardian of a minor child or dependent who is a victim of domestic violence, harassment, sexual assault, bias or stalking.

<sup>3</sup> “Relocate” is described in OAR 839-009-0345 (5).



other terms, conditions or privileges of employment because the employee makes inquiries about, applies for, or takes such leave.

The eligible employee shall give the ESD reasonable advanced notice of the employee's intention to take leave unless giving advance notice is not feasible.

The ESD may require the eligible employee to provide certification that:

1. The employee or employee's minor child or dependent is a victim of domestic violence, harassment, sexual assault, bias, or stalking; and
2. The leave is taken for one of the identified purposes in this policy.

The eligible employee shall provide a certification within a reasonable time after receiving the ESD's request for the certification.

Sufficient certification to support a request for such leave includes:

1. A copy of a report from law enforcement indicating the eligible employee or the employee's minor child or dependent was a victim of domestic violence, harassment, sexual assault, bias, or stalking;
2. A copy of a protective order or other evidence from a court, administrative agency or attorney that the eligible employee appeared in or is preparing for a civil or criminal administrative proceeding related to domestic violence, harassment, sexual assault, bias, or stalking; or
3. Documentation from an attorney, law enforcement officer, health care professional, licensed mental professional or counselor, member of the clergy, employee of the Department of Justice division providing victim and survivor services or victim services provider that the eligible employee or the employee's minor child or dependent was undergoing treatment or counseling, obtaining services or relocating as a result of domestic violence, harassment, sexual assault, bias, or stalking.

All records and information kept by the ESD regarding the employee's leave under ORS 659A.270 – 659A.285, including the fact the employee has requested or obtained such leave, are confidential and may not be released without the express permission of the employee unless otherwise required by law. This information will be kept in a file separate from the employee's personnel file.

The employee may use any accrued paid leave, including sick leave, vacation leave or any other paid leave offered by the ESD. [~~The ESD may choose the order in which paid accrued leave is to be used when more than one type of paid leave is available, consistent with Board policies, any applicable collective bargaining agreement or other agreement.~~]

## **Definitions**

1. "Protective order" means an order authorized by ORS 30.866, 107.095 (1)(c), 107.700 to 107.735, 124.005 to 124.040, 163.730 to 163.750 or 163.760 to 163.777 or any other order that restrains an individual from contact with an eligible employee or the employee's minor child or dependent.

2. “Victim of bias” means an individual who has been a victim of a bias crime as defined in ORS 147.380; or any other individual designated as a victim of bias by rule adopted under ORS 659A.805.
3. “Victim of domestic violence” means an individual who has been a victim of abuse, as defined in ORS 107.705; or any other individual designated as a victim of domestic violence by rule adopted under ORS 659A.805.
4. “Victim of harassment” means an individual against whom harassment has been committed as described in ORS 166.065; or any other individual designated as a victim of harassment by rule adopted under ORS 659A.805.
5. “Victim of sexual assault” means an individual against whom a sexual offense has been committed as described in ORS 163.305 to 163.467, 163.472 or 163.525; or any other individual designated as a victim of sexual assault by rule adopted under ORS 659A.805.
6. “Victim of stalking” means an individual against whom stalking has been committed as described in ORS 163.732; an individual designated as a victim of stalking by rule adopted under ORS 659A.805; or an individual who has obtained a court’s stalking protective order or a temporary court’s stalking protective order under ORS 30.866.
7. “Victim services provider” means a prosecutor-based victim assistance program or a nonprofit program offering safety planning, counseling, support or advocacy related to domestic violence, harassment, sexual assault, bias or stalking.

END OF POLICY

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**Legal Reference(s):**

[ORS 192.355\(38\)](#)

[ORS 659A.270 - 659A.290](#)

[OAR 839-009-0325 - 0365](#)

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# Southern Oregon ESD

Code: GCBDC/GDBDC-AR  
Revised/Reviewed:

## Request for Domestic Violence, Harassment, Sexual Assault, Bias, or Stalking Leave

{Applies to employers who employ six or more employees in Oregon and meet the definition of “covered employer.”}

When the need for leave may be anticipated, a written request for leave under Oregon Revised Statute (ORS) 659A.270 - 659A.285 shall be made at least **[30]** days prior to the date the requested leave is to begin unless giving advance notice is not feasible. When it is not feasible, oral or written notice as soon as practical is allowed.

PLEASE PRINT

Name of employee \_\_\_\_\_

Department \_\_\_\_\_ Title \_\_\_\_\_

Effective Date of the Leave \_\_\_\_\_

Status:  Full-time  Part-time  Temporary Hire Date \_\_\_\_\_

The requested leave is for:

- Myself
- A minor child or dependent for which I am a parent or guardian

The leave is for:

- To seek legal or law enforcement assistance or remedies to ensure the health and safety of the eligible employee or the eligible employee’s minor child or dependent, including preparing for and participating in protective order proceedings or other civil or criminal legal proceedings related to domestic violence, harassment, sexual assault, bias, or stalking.
- To seek medical treatment for or to recover from injuries caused by domestic violence or sexual assault to, harassment or stalking of or the commission of a bias crime against the eligible employee or the eligible employee’s minor child or dependent.
- To obtain, or to assist the eligible employee’s minor child or dependent in obtaining counseling from a licensed mental health professional related to an experience of domestic violence, harassment, sexual assault, bias, or stalking.
- To obtain services from a victim services provider for the eligible employee or the eligible employee’s minor child or dependent.
- To relocate<sup>1</sup> or take steps to secure an existing home to ensure the health and safety of the eligible employee or the eligible employee’s minor child or dependent.

The following has been provided to certify the need for the requested leave:

<sup>1</sup> “Relocate” is described in OAR 839-009-0345 (5).

- A copy of a report from law enforcement indicating that myself or my minor child or dependent is a victim of domestic violence, harassment, sexual assault, bias, or stalking.
- A copy of a protective order or other evidence from a court, administrative agency or attorney that I or my minor child or dependent appeared in or is preparing for a civil or criminal administrative proceeding related to domestic violence, harassment, sexual assault, bias, or stalking.
- Documentation from an attorney, law enforcement officer, health care professional, licensed mental health professional or counselor, member of the clergy, employee of the Department of Justice division providing victim or survivor services or victim services provider that I or my minor child or dependent is receiving services.

I understand I may use any accrued paid leave, including sick leave, vacation leave or any other paid leave that is offered by the employer ~~[in the order specified by the [ESD] [applicable collective bargaining agreement]].~~

If my request for a leave is approved, I understand that without an authorized extension when the need for an extension could be anticipated, I must report to duty on the first workday following the date my leave is scheduled to end. I understand if I am unable to return to work following the period of authorized leave, I will notify the ESD as soon as practical and provide any required information which will allow the ESD to determine my eligibility for an extension of leave.

I authorize the ESD to deduct from my paychecks or seek to recover any amounts paid for insurance coverage by the ESD on my behalf which remain unpaid after my leave, consistent with state law.

Signature of employee: \_\_\_\_\_ Date: \_\_\_\_\_

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# Southern Oregon ESD

Code: GCBDD/GDBDD

Adopted:

## Sick Time \*

{The recommendation for highly recommended comes from the requirement for ESDs to implement a sick time policy (ORS 653.606) and provide notice to employees of sick time policies and procedures. Some ESDs may bargain aspects of this leave; policy language should not conflict with language in the collective bargaining agreements.}

“Employee” means an individual who renders personal services at a fixed rate to the ESD if the ESD either pays or agrees to pay for personal services or permits the individual to perform personal services. The definition does not include volunteers or independent contractors.

Employees qualify to begin earning and accruing sick time on the first day of employment with the ESD and are eligible to use sick time beginning on the 91st calendar day of employment with the ESD and may use sick time as it is accrued.

[The ESD employs <sup>{1}</sup> 10 or more employees and therefore shall allow an eligible employee to access up to 40 hours of paid sick time per year. [Paid sick time shall accrue at the rate of at least one hour of paid sick time for every 30 hours the employee works, or 1-1/3 hours for every 40 hours the employee works.] [Paid sick time of 40 hours shall be <sup>{2}</sup> front-loaded to an employee at the beginning of each year.]]

**OR**

[~~The ESD employs <sup>{3}</sup> 10 or more employees and has established and invokes the “undue hardship” exception of ORS 653.261 (1)(b); therefore, 56 hours of paid sick time shall be <sup>{4}</sup> front-loaded to an eligible employee at the beginning of each year.~~]

The employee may carry up to 40 hours of unused sick time from one year to the subsequent year. [<sup>{5}</sup> An employee is limited to [accruing no more than 80 hours of sick time] [and] [using no more than 40 hours of sick time in a year].]

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<sup>1</sup> {If the ESD is located in a city with a population exceeding 500,000, the threshold is whether the ESD employs at least six employees working anywhere in this state.}

<sup>2</sup> {For employees employed by an employer for less than a full year, “front-load” means to assign and make available to an employee as soon as the employee becomes eligible to use sick time a number of hours of sick time that is the pro rata percentage of the hours the employee would be entitled to for an entire year based on the number of hours the employee was actually employed by the employer for the year. ORS 653.601(5)(b)}

<sup>3</sup> {If the ESD is located in a city with a population exceeding 500,000, the threshold is whether the ESD employs at least six employees working anywhere in this state.}

<sup>4</sup> {For employees employed by an employer for less than a full year, “front-load” means to assign and make available to an employee as soon as the employee becomes eligible to use sick time a number of hours of sick time that is the pro rata percentage of the hours the employee would be entitled to for an entire year based on the number of hours the employee was actually employed by the employer for the year. ORS 653.601(5)(b)}

<sup>5</sup> {If the ESD chooses to limit the accrual or usage, the ESD must choose language in the bracketed sentence and keep this sentence in policy. The application of these limits need not be applied to employers with less than 10 employees and who front-}

[Sick time shall be taken in hourly increments] ~~[[<sup>6</sup>Sick time shall be taken in increments of more than [one] hour[s]] [Sick time may be used in increments of less than one hour]~~ and may be used for the employee's or a family member's<sup>7</sup> mental or physical illness, injury or health condition, need for medical diagnosis, care or treatment of a mental or physical illness, injury or health condition or need for preventive care, or for reasons consistent with qualifying Family Medical Leave (FMLA), Paid Family and Medical Leave Insurance (PFMLI) or Oregon Family Leave (OFLA). Sick time may also be used in the event of a public health emergency or for leave to address domestic violence, harassment, sexual assault, bias, or stalking under ORS 659A.272. ~~[When sick time is used to care for, or to deal with the death of, an individual related by blood or affinity whose close association with the ESD employee is the equivalent of a family relationship, the ESD requires an attestation form signed and submitted by the employee.]~~

The use of sick time may not lead to, or result in, an adverse employment action against the employee.

The ESD reserves the right, **[after an employee uses sick time for more than [three] consecutive scheduled workdays]**, to require verification or certification in accordance with law of the need for the sick time, including a medical verification or certification<sup>8</sup> paid for by the ESD. If an employee fails to provide verification or certification or fails to provide other evidence as required by the ESD, the employee shall be subject to appropriate disciplinary action, up to and including dismissal.

When the reason for sick time is consistent with FMLA, PFMLI or OFLA leave, sick time leave and qualifying FMLA, PFMLI or OFLA leave may run concurrently.

When the reason for sick time is consistent with ORS 332.507, sick time leave and leave pursuant to ORS 332.507 may run concurrently.

If the reason for sick time is a foreseeable absence, the ESD requires an employee to provide advance notice of the intention to use sick time <sup>{<sup>9</sup>}</sup> 10 days prior to when the requested sick time is to begin or as soon as otherwise practicable. When an employee uses sick time for a foreseeable absence, the employee shall take reasonable effort to schedule the sick time in a manner that does not unduly disrupt the operations of the ESD (e.g., grading deadlines, inservice training, mandatory meetings). **[The ESD may discipline an employee if the employee fails to make a reasonable effort to schedule leave in a manner that does not unduly disrupt the operations of the ESD.]**

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load at least 40 hours of unpaid sick time or unpaid time off at the beginning of each year used to calculate the accrual and usage of sick time or time off. (ORS 653.606 (1)(d))

<sup>6</sup> {This bracketed option only applies if the ESD claims “undue hardship” (as is defined in OAR 839-007-0000(7)) and front-loads 56 hours of paid sick time per year. The ESD may require the employee to use paid sick time in increments of more than one hour; however in the case of front-loading 56 hours of paid sick time, the ESD cannot require an employee to use sick time in increments that exceed four hours, however the employee may choose to do so. OAR 839-007-0025}

<sup>7</sup> “Family member” is defined in OAR 839-007-0000.

<sup>8</sup> In the case of need for leave under ORS 659A.272, the ESD may not require the verification or certification to explain the nature of the illness or details related to the domestic violence, sexual assault, harassment, bias, or stalking, which necessitates the use of sick time.

<sup>9</sup> {ORS 653.621(3): “...not to exceed 10 days”}

If the reason for sick time is unforeseeable, such as an emergency, accident or sudden illness, the employee shall notify the ESD [consistent with the reporting time established by the ESD] [~~at least 24 hours in advance~~] [before the start of the employee’s shift], or when circumstances prevent the employee from providing notice as required, as soon as practicable.

[The ESD may discipline an employee for violating workplace policies and procedures if the employee fails to provide notice as required.]

The ESD shall establish a standard process to track the eligibility for sick time of a substitute.

END OF POLICY

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**Legal Reference(s):**

[ORS 332.507](#)  
[ORS 342.545](#)

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[ORS 342.610](#)  
[ORS 653.601 - 653.661](#)

[ORS 659A.150 - 659A.186](#)  
[OAR 839-007-0020 - 0065](#)

Americans with Disabilities Act/Americans with Disabilities Act Amendments Act, 42 U.S.C. §§ 12101-12213 (2018); 29 C.F.R. Part 1630 (2023); 28 C.F.R. Part 35 (2023).  
Family and Medical Leave Act, 29 U.S.C. §§ 2601-2654 (2018); Family and Medical Leave Act, 29 C.F.R. Part 825 (2018).

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# Southern Oregon ESD

Code: GCBDF/GDBDF  
Adopted:

## Paid Family and Medical Leave Insurance \* (Version )

{This version is designed for ESDs who are participating in Paid Leave Oregon. If the ESD is using an approved equivalent plan, the ESD should not adopt this version or use the accompanying administrative regulation: this includes simply replacing “the Department” with the entity administering an equivalent plan. If the ESD is using an equivalent plan, the ESD should work with the provider to communicate with staff. Some ESDs are bargaining aspects of this leave; policy language should not conflict with language in collective bargaining agreements.}

The ESD participates in Paid Family and Medical Leave Insurance (PFMLI) and Paid Leave Oregon<sup>1</sup>. This includes submitting employee and employer contributions to the Oregon Employment Department (“Department”) as required by state law.<sup>2</sup> The ESD does not administer PFMLI or Paid Leave Oregon. All applications and related questions should be directed to the Department.

### Definitions

1. “Family leave” means leave from work taken by a covered individual:
  - a. To care for and bond with a child during the first year after the child’s birth or during the first year after the placement of the child through foster care or adoption; or
  - b. <sup>3</sup>To effectuate the legal process required for placement of a foster child or the adoption of a child; or
  - c. To care for a family member with a serious health condition.
2. “Family leave” does not mean:
  - a. Leave described in Oregon Revised Statute (ORS) 659A.159 (1)(a) (i.e., care for a child who is suffering from an illness, injury or condition that requires home care or who requires home care due to closure of the child’s school or child care provider as a result of a public health emergency) except for leave to care for a child who requires home care due to an illness, injury or condition that is a serious health condition;
  - b. Leave described in ORS 659A.159 (1)(b) (death of a family member); or
  - c. Leave authorized under ORS 659A.093 (leave for spouses of members of the military upon deployment or call to active duty).

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<sup>1</sup> Paid Leave Oregon is the program developed by the Oregon Department of Employment to administer Paid Family and Medical Leave Insurance.

<sup>2</sup> The overall contribution will be determined by the Department director, and is initially set at 1 percent (up to \$132,900). *{For ESDs with 25 or more employees:} The employer contribution is 40 percent and the employee contribution is 60 percent of this amount. {For ESDs with fewer than 25 employees:} The employee contribution is 60 percent of this amount and the employer contribution is waived.* The amount will be set annually by November 15. See ORS 657B.150. *{ESDs may agree to pay the employee contribution, see any applicable employment agreements.}*

<sup>3</sup> This provision becomes effective on January 1, 2025.



3. “Family member” means:

- a. The spouse of a covered individual;
- b. A child or the child’s spouse or domestic partner;
- c. A parent or the parent’s spouse or domestic partner;
- d. A sibling or stepsibling of a covered individual or the sibling’s or stepsibling’s spouse or domestic partner;
- e. A grandparent of a covered individual or the grandparent’s spouse or domestic partner;
- f. A grandchild of a covered individual or the grandchild’s spouse or domestic partner;
- g. The domestic partner of a covered individual; or
- h. Any individual related by blood or affinity whose close association with a covered individual is the equivalent of a family relationship.

4. “Medical leave” means leave from work taken by a covered individual that is made necessary by the individual’s own serious health condition.

5. “Safe leave” means leave related to domestic violence, harassment, sexual assault, bias, or stalking and relocation for health and safety reasons as provided in ORS 659A.272.

6. Serious health condition” means:

- a. An illness, injury, impairment or physical or mental condition that requires inpatient care in a hospital, hospice, or residential medical care facility;
- b. An illness, disease or condition that in the medical judgement of the treating health care provider poses an imminent danger of death, is terminal in prognosis with a reasonable possibility of death in the near future, or requires constant care;
- c. Any period of disability due to pregnancy, or period of absence for prenatal care; or
- d. Any period of absence for the donation of a body part, organ or tissue, including preoperative or diagnostic services, surgery, post-operative treatment and recovery.

## Eligibility

1. To be eligible for Paid Leave Oregon benefits, an individual must:

- a. Be an employee of the ESD<sup>4</sup>;
- b. Earn at least \$1,000 in the base or alternate base year<sup>5</sup>;
- c. Contribute to Paid Leave Oregon in accordance with state law;
- d. Experience an event qualifying the employee for:
  - (1) Family leave;
  - (2) Medical leave; or
  - (3) Safe leave.
- e. Submit an application to Department;
- f. Have not exceeded maximum paid leave in the active benefit year; and

<sup>4</sup> PFMLI is a state-wide benefit, and not unique to the ESD. An eligible individual does not need to be an employee of the ESD in order to be eligible for PFMLI, but this policy only applies to employees of the ESD.

<sup>5</sup> Pay could come from another Oregon employer.

- g. Have no current disqualifications<sup>6</sup>.

## Leave

Paid Leave Oregon can be used for family leave, medical leave or safe leave. Up to 12 weeks of paid leave can be taken per benefit year.<sup>7</sup> Leave can be taken in one-day increments and can be consecutive or nonconsecutive.

Any family leave or medical leave taken under Paid Leave Oregon must be taken concurrently with any leave taken by an eligible employee under the federal Family and Medical Leave Act of 1993 (P.L. 103-3, FMLA) for the same purposes. Leave taken under Paid Leave Oregon is in addition to, and may not be taken concurrently with, any leave taken pursuant to ORS 659A.150 - 659A.186 (Oregon Family Leave Act (OFLA)).

The ESD will maintain an employee’s existing health benefits while the employee is using leave. The employee will be required to pay the employee’s contribution to premiums.

END OF POLICY

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### Legal Reference(s):

[ORS 657B](#)

[ORS 659A.162](#)

[OAR 471-070](#)

[Senate Bill 1515](#) (2024).

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<sup>6</sup> Disqualifications may include eligibility for Workers’ Compensation or Unemployment or determination of a willful false statement or failure to report a material fact in order to obtain benefits. See OAR 471-070-1010(1)(h).

<sup>7</sup> In some pregnancy-related situations (e.g., pregnancy, childbirth, or a related medical condition), employees may be able to take two additional weeks, for a total for 14 weeks per benefit year.

# Southern Oregon ESD

Code: GCBDF/GDBDF-AR  
Revised/Reviewed:

## **Paid Family and Medical Leave Insurance (PFMLI) \***

{This administrative regulation is for use only with version 1 of policy GCBDF/GDBDF – Paid Family leave Insurance \* and is not intended to be used with an equivalent plan. OSBA does not recommend simply replacing “Employment Department” with the name of the entity administering an equivalent plan.}

### **Application**

Employees may submit applications for Paid Leave Oregon<sup>1</sup> to the Oregon Employment Department (“Department”).<sup>2</sup> Applications may be submitted up to 30 days prior to the start of the leave and up to 30 days after the start of the leave.<sup>3</sup> The Department may require verification from the employee.<sup>4</sup> The Department will make all decisions regarding acceptance and denial of an application, including determining the amount of the benefit.<sup>5</sup> The ESD cannot accept, file, process or make decisions on applications.

An employee may appeal an approval or denial of claim, the amount of a weekly benefit or a disqualification from receipt of benefits to the Department in accordance with Oregon Revised Statute (ORS) 657B.010 and Oregon Administrative Rule (OAR) 471-070-2220.

### **Employee Notice to ESD**

If the leave is foreseeable<sup>6</sup>, the employee must provide the ESD with written notice<sup>7</sup> at least 30 calendar days prior to the leave.<sup>8</sup> If the leave is not foreseeable<sup>9</sup> the employee must give oral notice to the ESD

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<sup>1</sup> “Paid Leave Oregon” means the Paid Family and Medical Leave Insurance program described in ORS 657B.

<sup>2</sup> For application requirements see Oregon Administrative Regulation (OAR) 471-070-1100. Applications can be submitted at <https://frances.oregon.gov/> to the Employment Department through the Paid Leave Oregon program.

<sup>3</sup> Exceptions may be granted when the applicant can demonstrate good cause for late submission.

<sup>4</sup> See verification requirements in OAR 471-070-1110 - OAR 471-070-1130.

<sup>5</sup> The benefit may be less than the employee’s salary. See ORS 657B.050.

<sup>6</sup> Examples of foreseeable leave include, but are not limited to, an expected birth, planned placement of a child, or a scheduled medical treatment for a serious health condition of the eligible employee or a family member of the eligible employee. See OAR 471-070-1310.

<sup>7</sup> Written notice includes, but it not limited to, handwritten or typed notices, and electronic communication such as text messages and email.

<sup>8</sup> *{OAR 471-017-1310(6) states “An employer that requires eligible employees to provide a written notice before the eligible employee commences leave, must outline the requirement in the employer’s written policy and procedures.”}*

<sup>9</sup> Leave circumstances that are not foreseeable include, but are not limited to, an unexpected serious health condition of the eligible employee or a family member of the eligible employee, a premature birth, an unexpected adoption, an unexpected foster placement by or with the eligible employee, or for safe leave.

within 24 hours of the start of the leave, and must provide written notice within 3 days after the start of leave.<sup>10</sup> The ESD requests as much advanced notice as possible.

The notice must include:

1. The employee's first and last name;
2. Type of leave;
3. Explanation of the need for leave; and
4. Anticipated timing and duration of leave, including if it is continuous or intermittent.

Notice need only be given one time, but the employee shall notify the ESD as soon as practicable if dates of scheduled leave change, are extended, or were initially unknown. This notice does not need to mention PFMLI or Paid Leave Oregon to satisfy the notice requirements.<sup>{11}</sup> Notice may be provided by another party on behalf of the employee in accordance with state law.

Failure to comply with these notice requirements may result in a penalty imposed by the Department. The Department may reduce the amount of the benefit by 25 percent in accordance with OAR 471-070-1310(9)-(10).

#### **Concurrent Use of ESD-Provided Paid Leave<sup>{12}</sup>**

The employee will be allowed to use available ESD-provided paid leave (e.g., sick, vacation or otherwise) for days that Paid Leave Oregon is received <sup>{13}</sup>[to the extent that the total combined amount of accrued paid leave and benefits received by the employee does not exceed an amount equal to the employee's full wage replacement during the period of leave]. [The total combined amount received by using accrued leave and Paid Leave Oregon may exceed the employee's full wage replacement during the period of leave.]. [\*The ESD will determine the particular order in which accrued leave is used when more than one type of accrued leave is available to the employee.]

Example: The Department determines that the rate of pay will be 75 percent of the employee's regular salary. The employee will be allowed to use available ESD-provided paid leave (sick, vacation or otherwise), subject to any applicable collective bargaining agreement or other agreement for days Paid Leave Oregon benefits are received. The employee [may use such leave to the extent that the total combined amount of accrued paid leave and Paid Leave Oregon benefits received by

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<sup>10</sup> An eligible employee who takes safe leave shall give the employer reasonable advance notice of the individual's intention to take safe leave, unless giving the advance notice is not feasible. If other leave also applies, notice requirements for those types of leave may also apply.

<sup>11</sup> {An ESD requiring written notice must outline the requirements in policy and procedures. A copy of the written policy and procedure must be provided to all eligible employees at the time of hire and each time the policy and procedure changes and in the language that the employer typically uses to communicate with the employee.}

<sup>12</sup> {Consider any collective bargaining requirements prior to adopting this language.}

<sup>13</sup> {Select one of the two bracketed options based on ESD practice, i.e., keep the ending to this sentence OR delete this ending and keep the following bracketed sentence. See ORS 657B.030(2) (as amended by SB 1515 (2024) for additional guidance).}

the employee does not exceed an amount equal to the employee's full wage replacement during the period of leave] [will be able to choose how much other paid leave to use (which may result in the employee receiving more than 100 percent of their typical salary)].

## **Return to Work**

Upon completion of leave, the employee is entitled to return to the position held in the ESD prior to the leave, if that position still exists and if the employee had been employed in the ESD for 90 days prior to taking leave.<sup>14</sup> [*For ESDs with 25 or more employees:*] If the position no longer exists, the employee is entitled to be restored to any available equivalent position, with equivalent employment benefits, pay and other terms and conditions of employment. [*For ESDs with fewer than 25 employees:*] If the position no longer exists, the employee may be placed in a different position with similar job duties and with the same employment benefits and pay.]

## **Communications Between the ESD and the Department**

Upon receipt of an application or update in information from an ESD employee for Paid Leave Oregon, the Department will notify the ESD. The ESD may provide additional information to the Department within 10 days. This information may include, but is not limited to, information about the employee's notice to the ESD or verification of the employee's continued employment with the ESD. If the ESD does not report such information to the Department, the Department will proceed using available information. The ESD can provide additional information to the Department as it becomes available.

If the Department requests additional information from the ESD, the ESD will respond within 10 calendar days.

Once the Department has issued a decision regarding an application submitted by an employee of the ESD, the Department will notify the ESD regarding the approval or denial and any applicable dates and periods of leave.

## **ESD Notice to Employees**

At the time of hire and each time the policy or procedure changes, the ESD must provide notice to employees. This notice must be in the language that the employer typically uses to communicate with employees and will include:

1. The right of an eligible employee to claim and receive family and medical leave insurance benefits;
2. The procedure for filing a claim for benefits;
3. That an eligible employee must provide notice to the ESD before the employee commences leave, and a description of the penalties for failure to comply with the notice requirements;
4. The right of an eligible employee to job protection and benefits continuation;

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<sup>14</sup> If the employee's leave also qualifies for FMLA protection, see also Board policy GCBDA/GDBDA and its accompanying administrative regulations.

5. The right of an eligible employee to appeal a decision or determination made by the Department director;
6. That discrimination and retaliatory personnel actions against an employee for inquiring about the PFMLI or Paid Leave Oregon program, giving notification of leave under the program, taking leave under the program or claiming PFMLI or Paid Leave Oregon benefits are prohibited;
7. The right of an employee to bring a civil action or to file a complaint for violation of ORS 657B.060 or 657B.070; and
8. That any health information related to family leave, medical leave or safe leave provided to the ESD by an employee is confidential and may not be released without the permission of the employee unless state or federal law or a court order permits or requires disclosure.<sup>15</sup>

The ESD will display the Department’s notice poster in an area that is accessible to and regularly frequented by employees in each building or worksite. The ESD will provide this notice poster to employees working remotely by hand delivery, regular mail or through an electronic delivery method at the time of hire or assignment to remote work.

**ESD Filings**

The ESD will file the Oregon Quarterly Tax Report, the Oregon Employee Detail Report and any other reports required by law. If the ESD fails to submit required filings or report, or fails to pay all required contributions, the ESD may be penalized in accordance with OAR 471-070-8520.

~~{For ESDs with fewer than 25 employees:} [The ESD may apply for an assistance grant.<sup>16</sup>]~~

**Employee Protections**

No employee or prospective employee will be discriminated or retaliated against for inquiring about PFMLI or Paid Leave Oregon, giving notification of leave under Paid Leave Oregon, taking such leave or claiming such benefits. Eligible employees have a right to file a complaint and/or bring a civil action for violations of ORS 657B.060 or ORS 657B.070.

Any health information related to family leave, medical leave or safe leave provided to the ESD by an employee is confidential and may not be released without the permission of the employee unless state or federal law or a court order permits or requires disclosure.




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<sup>15</sup> Paid Leave Oregon has provided a model notice, <https://paidleave.oregon.gov/DocumentsForms/Paid-Leave-ModelNotice-Poster-EN.pdf>.

<sup>16</sup> See OAR 471-070-3705 - 3710 for eligibility and application requirements.

# Southern Oregon ESD

Code: GCC  
Adopted: 6/18/14  
Orig. Code: 3403

## Recruitment of Licensed Staff \*

The superintendent will develop and maintain a recruitment program designed to attract licensed personnel to the ESD.

It is the responsibility of the superintendent, with the assistance of other ESD administrators, to determine the personnel needs of the ESD and to locate suitable candidates to recommend for employment by the ESD. Those factors considered will include, but not be limited to, the diverse characteristics of the ESD.

The search for licensed staff members may extend to a variety of educational institutions and geographical areas.

Present employees who meet the stated requirements are encouraged to apply for any vacant ESD position.

The superintendent shall recommend to the Board for hire qualified contracted/licensed employees according to the needs of the District and within the resources of the budget.

END OF POLICY

### Legal Reference(s):

[ORS 326.051](#)  
[ORS 334.125\(5\)](#)  
[ORS 342.934](#)  
[ORS 659.805](#)  
[ORS 659.850](#)  
[ORS 659A.009](#)  
[ORS 659A.029](#)

[ORS 659A.030](#)  
[ORS 659A.040 to -659A.052](#)  
[ORS 659A.109](#)  
[ORS 659A.142](#)  
[ORS 659A.145](#)  
[ORS 659A.233](#)  
[ORS 659A.236](#)

[ORS 659A.309](#)  
[ORS 659A.409](#)  
[OAR 581-021-0045](#)  
[OAR 581-024-0245](#)

Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (2012).  
Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e (2012).  
Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621-634 (2012); 29 C.F.R Part 1626 (2016).  
Age Discrimination Act of 1975, 42 U.S.C. §§ 6101-6107 (2012).  
Equal Pay Act of 1963, 29 U.S.C. § 206(d) (2012).  
Rehabilitation Act of 1973, 29 U.S.C. §§ 503, 791, 793-794 (2012).  
Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1683 (2012); Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 34 C.F.R. Part 106 (2016).  
The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. § 4212 (2012).  
Title II of the Genetic Information Nondiscrimination Act of 2008.

# OSBA Model ESD Sample Policy

Code: GCDA/GDDA

Adopted:

## Criminal Records Checks and Fingerprinting \*

(Version 2)

{Required policy. Requirement/Authority for policy comes from OAR 581-021-0510 - 021-0512 and ORS 326.603 - 326.607.}

In a continuing effort to ensure the safety and welfare of students and staff, the ESD shall require certain individuals to submit to a criminal records check and fingerprinting as required by law. This includes employees, contractors, volunteers and others.

### Requirements for Employees <sup>{1}</sup> not Licensed, Certified or Registered by the Teachers Standards Practices Commission (TSPC)

All newly hired employees<sup>2</sup> not identified under Oregon Revised Statutes (ORS) 342.223<sup>3</sup> are required to submit to a criminal records check and fingerprinting as required by law. A newly hired employee is not subject to fingerprinting if the ESD has evidence on file that the person successfully completed a state and national criminal records check for a previous employer that was a school district<sup>4</sup> or private school, and has not resided outside the state between the two periods of employment<sup>{5}</sup>.

An individual shall be subject to the collection of fingerprint information, only after the offer of employment from the ESD. Fees associated with criminal records checks and fingerprinting for individuals applying for employment with the ESD and not requiring licensure shall be paid by the [ESD.] [individual]. An individual may request the fee be withheld from the amount otherwise due the individual. The ESD will withhold this amount only upon request of the subject individual.]

The ESD [may<sup>6</sup>] [shall not] begin the employment of an individual [on a probationary basis pending] [before] the return and disposition of the required criminal records checks.

When the criminal records check indicates an individual has been convicted of any crimes<sup>7</sup> prohibiting employment, the individual will not be employed, or if employed will be terminated. When the criminal

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<sup>1</sup> {If the ESD wants to include the larger section on TSPC-licensed employees (see p. 2), keep this bracketed language. If the ESD does not want to include the larger section on TSPC-licensed individuals, omit this bracketed language.}

<sup>2</sup> Any individual hired within the last three months. This does not include an employee hired within the last three months if the ESD has evidence on file that meets the definition in Oregon Administrative Rule (OAR) 581-021-0510(11)(b).

<sup>3</sup> ORS 342.223 includes teachers, administrators, personnel specialist, school nurses, persons participating in supervised clinical practice experience, practicum or internship as a teacher, administrator or personnel specialist. See statute for details.

<sup>4</sup> As is defined in OAR 581-021-0510(9); includes school districts, the Oregon School for the Deaf, and educational program under the Youth Corrections Education Program, ESDs and public charter schools.

<sup>5</sup> {Additional exception applies through July 1, 2024. See ORS 326.603(4)(b).}

<sup>6</sup> Decisions regarding which employees may begin before the return of the required criminal records checks must be made in a nondiscriminatory manner.

<sup>7</sup> See OAR 581-021-0511(8).



records check indicates an individual has knowingly made a false statement as to the conviction of any crime, the individual [may] [will not] be employed by the ESD, or if employed by the ESD [may] [will] be terminated. An individual who fails to disclose the presence of convictions that would not otherwise prohibit employment or contract with the ESD as provided by law [may] [will not] be employed by the ESD. Employment termination shall remove the individual from any ESD policies, collective bargaining provisions regarding dismissal procedures and appeals and the provisions of Accountability for Schools for the 21st Century Law.

~~[Requirements for individuals in positions requiring licensure, certification or registration with Teacher Standards and Practices Commission (TSPC) are outlined in ORS 342.223.]~~

OR

### **[Requirements for TSPC Licensed, Certified or Registered Individuals**

1. Any individual who is applying for a license as a teacher, administrator or personnel specialist is subject to a criminal records check and fingerprinting, unless the individual has submitted to such a check through the Teacher Standards and Practices Commission (TSPC) within the previous three years, or has remained continuously licensed by or registered with TSPC for a different license or registration for which the individual has already submitted to a criminal records check and fingerprinting.
2. Any individual who is applying for an initial certificate under ORS 342.475 as a school nurse shall submit to a criminal records check and fingerprinting with TSPC.
3. Any individual who is applying for a registration as a public charter school teacher or administrator with TSPC shall submit to a criminal records check and fingerprinting with TSPC.
4. Any individual applying for reinstatement of an Oregon license or registration as a teacher, administrator or personnel specialist, or a certificate as a school nurse with the TSPC, whose license, registration or certificate has lapsed for at least three years, shall submit to a criminal records check and fingerprinting with TSPC.
5. Any individual registering with the TSPC for student teaching, practicum or internship as a teacher, administrator or personnel specialist, if the individual does not hold a current license issued by TSPC and has not submitted to a criminal records check by TSPC within the previous three years for student teaching, practicum or internship as a teacher, administrator or personnel specialist, shall be required to submit to a criminal records check and fingerprinting with TSPC.]

Requirements for Contractors<sup>{8}</sup>

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<sup>8</sup> {The ESD should include language regarding background checks in any contract that includes direct, unsupervised contact with students whenever applicable.}

All individuals employed as or by a contractor and considered by the ESD to have direct, unsupervised contact with students<sup>9</sup> or unsupervised access to children are required to submit to a criminal records check and a fingerprint-based criminal records check.

The superintendent [or designee] will identify contractors who are subject to such requirements.

A contractor or an employee of a contractor required to submit to a criminal records check and fingerprinting in accordance with law and Board policy will be terminated from contract status, or withdrawal of offer of contract will be made by the ESD upon:

1. Refusal to consent to a criminal records check and fingerprinting; or
2. Notification<sup>10</sup> from the Superintendent of Public Instruction that the individual has a conviction of any crimes listed in ORS 342.143, or the substantial equivalent of any of those crimes if the conviction occurred in another jurisdiction or in Oregon under a different statutory name or number.

A subject individual [may] [will] be terminated from contract status upon notification from the Superintendent of Public Instruction that the individual has knowingly made a false statement as to the conviction of any crime.

### Requirements for Volunteers

[<sup>11</sup>] The ESD shall require a fingerprint-based criminal records check for volunteers allowed direct, unsupervised contact with students, in the following positions:

1. Head coach;
1. Assistant coach;
2. Overnight chaperone;
3. Volunteers transporting students, other than their own, in a private vehicle off ESD property for an ESD-sponsored activity;
4. List of other positions subject to this fingerprinting, if any.

[The service of a volunteer into a position identified by the ESD as requiring a fingerprint-based criminal records check [may] [will not] begin [on a probationary basis pending] [before] the return and disposition of a state and national criminal records check based on fingerprints.]

<sup>9</sup> “Direct, unsupervised contact with students” means contact with students that provides the person opportunity and probability for personal communication or touch when not under direct supervision. (OAR 581-021-0510)

<sup>10</sup> Prior to making a determination that results in this notification and opportunity for a hearing, the Superintendent of Public Instruction may cause an investigation pursuant to OAR 581-021-0511; involved parties shall cooperate with the investigation pursuant to law.

<sup>11</sup> {If the ESD requires fingerprinting for certain volunteer positions, the ESD is required to list those volunteer positions in board policy. The bracketed language is only possible examples; modify to identify the positions in the ESD which require such fingerprinting.}

{<sup>12</sup>} Volunteers allowed by the ESD into a position designated by the ESD to have direct, unsupervised contact with students shall submit to an in-state criminal records check.

[The service of a volunteer allowed to have direct, unsupervised contact with students ~~may~~ [will not] begin ~~[on a probationary basis pending]~~ [before] the return and disposition of a criminal records check.]

[A volunteer that is not likely to have direct, unsupervised contact with students, as determined by the ESD, [will] ~~[will not]~~ be required to submit to an in-state criminal records check.]

[A volunteer who knowingly made a false statement on an ESD volunteer application form or has a conviction of a crime listed in ORS 342.143, or the substantial equivalent of any of those crimes if the conviction occurred in another jurisdiction or in Oregon under a different statutory name or number ~~may~~ [will] result in immediate termination from the ability to volunteer in the ESD.]

[Fees associated with a required fingerprinting for volunteers shall be paid by the ~~individual~~ [ESD].] Fees associated with required non-fingerprinting criminal records checks for volunteers shall be paid by the ~~individual~~ [ESD].

[A volunteer who refuses to submit, when required, to a criminal records check or a fingerprint-based criminal records check in accordance with law and Board policy will be denied such ability to volunteer in the ESD.]

### Requirements for Others

Any community college faculty member providing instruction at the site of an early childhood education program, at a school site as part of an early childhood program or at a grade K through 12 school site during the regular school day is required to submit to a criminal records check and a fingerprint-based criminal records check.

Any individual who is an employee of a public charter school and not identified under ORS 342.223 is required to submit to a criminal records check and a fingerprint-based criminal records check.

### Notification

The ESD will provide written notice about the requirements of fingerprinting and criminal records checks through means such as staff handbooks, employment applications, contracts or [volunteer] forms.

The ESD will provide the following notification to individuals subject to criminal records checks and fingerprinting:

1. Such criminal records checks and fingerprinting are required by law or Board policy;
2. All employment or contract offers ~~[or the ability to volunteer]~~ are contingent upon the results of such checks;

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<sup>12</sup> {If the ESD allows volunteer service and the volunteers have direct, unsupervised contact with students, this policy language is required, and ESDs are required to conduct criminal records checks on these volunteers.}

3. A refusal to consent to a required criminal records check and fingerprinting shall result in immediate termination from employment[,] [or] contract status[ or the ability to volunteer in the ESD];
4. A determination by the Oregon Department of Education (ODE) which affects an individual's eligibility to be employed, or contracted with, by the ESD may be appealed to the Superintendent of Public Instruction under ORS 183.413 – 183.470;
5. An individual determined to have knowingly made a false statement as to the conviction of any crime on ESD employment applications, contracts[,] [or] ODE forms [(written or electronic)] [may] [will] result in immediate termination from employment or contract status;
6. An individual determined to have been convicted of any crime that would prohibit employment or contract will be immediately terminated from employment or contract status[;] [.]
7. [A volunteer candidate who knowingly made a false statement or has a conviction of the crimes listed in ORS 342.143, or the substantial equivalent of any of those crimes if the conviction occurred in another jurisdiction or in Oregon under a different statutory name or number [may] [will] result in immediate termination from the ability to volunteer in the ESD.] [The ESD [may] [will] remove the volunteer from the position allowing direct, unsupervised contact with students.]

### Processing and Reporting Procedures

Immediately following an offer and acceptance of employment or contract, an individual subject to criminal records checks and fingerprinting shall complete the appropriate forms authorizing such checks and report to an authorized fingerprinter as directed by the ESD. The ESD shall send such authorization, any collection of fingerprint information, and the request to ODE pursuant to law.

Fingerprints may be collected by one of the following:

1. Employing ESD staff;
2. Contracted agent of employing ESD;
3. Local or state law enforcement agency; or
4. Statewide vendor identified by the Oregon Department of Administrative Services.

To ensure the integrity of the fingerprinting collection and prevent any compromise of the process, the ESD will provide the name of the individual to be fingerprinted to the authorized fingerprinter.

The authorized fingerprinter will obtain the necessary identification and fingerprinting and notify ODE of the results. ODE will then review and notify the ESD of said results as well as the identity of any individual it believes has knowingly made a false statement as to conviction of a crime or has a conviction of a crime prohibiting employment[,] [or] contract, [or volunteering].

A copy of the fingerprinting results will be kept by the ESD. The ESD's use of criminal history must be relevant to the specific requirements of the position, services or employment.

END OF POLICY

**Legal Reference(s):**

[ORS 181A.180](#)  
[ORS 181A.230](#)  
[ORS 326.603](#)  
[ORS 326.607](#)  
[ORS 334.125](#)

[ORS 336.631](#)  
[ORS 342.143](#)  
[ORS 342.223](#)  
[OAR 414-061-0010 – 061-0030](#)  
[OAR 581-021-0510 – 021-0512](#)

[OAR 581-022-2430](#)  
[OAR 584-050-0012](#)  
[OAR 584-050-0100](#)

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

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# Southern Oregon ESD

Code:  
Adopted:

GCN/GDN

## Evaluation of Staff \* (Version 2)

An effective evaluation program is essential to a quality educational program. It is an important tool to determine the current level of a teacher's performance of the teaching responsibilities. It is also an important assessment of classified employees and current performance of their job assignments. Under Board policy, administrators are charged with the responsibility of evaluating the staff. An evaluation program provides a tool for supervisors who are responsible for making decisions about promotion, demotion, contract extension, contract non-extension, contract renewal or non-renewal, dismissal and discipline.

### Licensed Staff

The evaluations for licensed staff shall be based on the core teaching standards adopted by the Oregon State Board of Education. The standards shall be customized based on collaborative efforts with teachers and any exclusive representatives of the licensed staff.

Evaluation and support systems established by the ESD for teachers must be designed to meet or exceed the requirements defined in the Oregon Framework for Teacher and Administrator Evaluation and Support Systems, including:

1. Four performance level ratings of effectiveness;
2. Classroom-level student learning and growth goals set collaboratively between the teacher and the evaluator;
3. Consideration of multiple measures of teacher practice and responsibility which may include, but are not limited to:
  - a. Classroom-based assessments including observations, lesson plans and assignments;
  - b. Portfolios of evidence;
  - c. Supervisor reports; and
  - d. Self-reflections and assessments.
4. Consideration of evidence of student academic growth and learning based on multiple measures of student progress, including performance data of students, that is both formative and summative. Evidence may also include other indicators of student success;
5. A summative evaluation method for considering multiple measures of professional practice, professional responsibilities, and student learning and growth to determine the teacher's professional growth path;
6. Customized by each ESD, which may include individualized weighting and application of standards.

An evaluation using the core teaching standards must attempt to:

1. Strengthen the knowledge, skills, disposition and classroom practices of teachers;
2. Refine the support, assistance and professional growth opportunities offered to a teacher, based on the individual needs of the teacher and the needs of the students, the school and the ESD;
3. Allow the teacher to establish a set of classroom practices and student learning objectives that are based on the individual circumstances of the teacher, including the classroom and other assignments;
4. Establish a formative growth process for each teacher that supports professional learning and collaboration with other teachers;
5. Use evaluation methods and professional development, support and other activities that are based on curricular standards and are targeted to the needs of the teacher; and
6. Address ways to help all educators strengthen their culturally responsive practices.

Evaluation and support systems established by the ESD must evaluate teachers on a regular cycle. The superintendent shall regularly report to the Board on implementation of the evaluation and support systems and educator effectiveness.

Each probationary teacher shall be evaluated at least annually, but with multiple observations. The purpose of the evaluation is to aid the teacher in making continuing professional growth and to determine the teacher's performance of the teaching responsibilities. Evaluations shall be based upon at least two observations and other relevant information developed by the ESD.

### **Classified Staff**

All classified employees will be formally evaluated [by their immediate supervisor] at least [within the first six months of employment] during their first year of employment and at least [once every two years] thereafter.

END OF POLICY

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

[ORS 243.650](#)  
[ORS 334.125\(5\)](#)

[ORS 342.815 to -342.934](#)

[OAR 581-024-0245](#)

# Southern Oregon ESD

Code: GCPB/GDPB  
Adopted: 3/19/03  
Orig. Code: 3700; 4700; 3701; 4701;  
3702; 3703; 4703; 3704;  
4704

## Resignation of Staff \*

All resignations of contracted/licensed employees shall be acted upon by the superintendent. Resignations of classified employees shall be acted upon by the appropriate director.

A licensed staff member must give a written notice of at least 60 days, upon or at the time of resignation. The superintendent is authorized to accept the resignation effective the day it is received and either release the teacher immediately from further teaching or administrative obligations or inform the teacher that he/she must continue teaching for part or all of the 60-day period.

Where less than a 60-day notice is given, the Board may request the Teacher Standards and Practices Commission to discipline the licensee. Exceptions due to emergency or other extenuating circumstances may be considered by the Board.

END OF POLICY

### Legal Reference(s):

[ORS 342.553](#)  
[ORS 652.140](#)

[OAR 581-024-0245](#)  
[OAR 584-050-0020](#)

Pierce v. Douglas County Sch. Dist., 297 Or. 363 (1984).



# OSBA Model ESD Sample Policy

Code: GCPC/GDPC

Adopted:

## Retirement of Staff \*

{Senate Bill (SB) 1049 (2019) made it possible for employees to retire under PERS and work for a PERS-covered employer, without hour restrictions in most situations. House Bill (HB) 2296 (2023) extends this law to 2034. The law does not require ESDs to allow PERS-retired employees to work in the ESD, rather, leaves the decision up to the ESD. OSBA encourages ESDs to evaluate the situation (including financial impacts) prior to making a decision regarding these employees. If ESDs do allow retired employees to return to work, OSBA recommends working with legal counsel to develop criteria and procedures that can be consistently implemented. Also consider the bargaining impacts of the selected practice.}

To assist the ESD in its planning efforts, staff members considering retirement are encouraged to notify the ESD as early as possible, preferably at the beginning of the school year in which the retirement will take place.

[Retiring employees are encouraged to coordinate with PERS and the [Human Resources Department] to ensure that all requirements are met. The superintendent will develop requirements, limitations and procedures for employment as a PERS-retiree. <sup>{1}</sup>]

*{Regarding PERS workback, there are three main options for ESDs, please choose one of the following:}*

~~[When an employee of the ESD retires under PERS, that employee's employment with the ESD will terminate. Individuals who have retired under PERS are not eligible for employment in the ESD.]~~

*{OR}*

~~[When an employee of the ESD retires under PERS, that employee's employment with the ESD will terminate. PERS-retired individuals may apply for open positions with the ESD. <sup>2</sup>{<sup>3</sup>}~~

*{OR}*

~~[ESD employees will be allowed to retire under PERS and return to their position in the ESD [only for the remainder of the school year]{<sup>4</sup>.<sup>5</sup> }~~

END OF POLICY

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<sup>1</sup> {House Bill 2296 (2023) modified Senate Bill 1049 (2019), which allows PERS-retired employees to continue to work for PERS-employers without hour restrictions; this provision is now set to expire at the end of 2034.}

<sup>2</sup> There must be a break in service for retired employees returning to work.

<sup>3</sup> {House Bill 2296 (2023) modified Senate Bill 1049 (2019), which allows PERS-retired employees to continue to work for PERS-employers without hour restrictions; this provision is now set to expire at the end of 2034.}

<sup>4</sup> {ESDs can limit workback, but must consider equity pay laws when developing any criteria.}

<sup>5</sup> There must be a break in service for retired employees returning to work.

**Legal Reference(s):**

[ORS Chapter 237](#)  
[ORS Chapter 238](#)

[ORS Chapter 238A](#)  
[ORS 243.303](#)

[ORS 342.120](#)

Consolidated Omnibus Budget Reconciliation Act of 1985, 29 U.S.C. §§ 1161-1169 (2018).  
Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001-1461 (2018).  
OR. CONST., art. IX, §§ 10-13.  
[House Bill 2296](#) (2023).

# Southern Oregon ESD

Code: GCPD  
Adopted:

## Discipline and Dismissal of Licensed Staff \* (Version 2)

The Board will use due process and comply with relevant portions of the collective bargaining agreement when disciplining and/or dismissing employees.

END OF POLICY

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### Legal Reference(s):

[ORS 243.672](#)  
[ORS 243.706](#)  
[ORS 243.756](#)

[ORS 342.835](#)  
[ORS 342.865](#) to -342.910  
[ORS 342.934](#)

[ORS 652.140](#)  
[OAR 584-020-0040](#)

# Southern Oregon ESD

Code: GCPD-AR  
Revised/Reviewed:

## Discipline and Dismissal of Licensed Staff \*

The Board will use due process and comply with relevant portions of the collective bargaining agreement when disciplining and/or dismissing employees.

### Discipline

Staff members will be disciplined according to the severity and frequency of the conduct at issue. Discipline may be in the form of verbal reprimand, written reprimand or suspension depending on the circumstances of each case.

1. “Verbal Reprimand”: The administrator will hold a conference with the employee. He/She will outline the nature of the problem and listen to any comments from the employee. The administrator will indicate compliance with specified procedures or cessation of certain conduct is required and future consequences if directives are ignored.
2. “Written Reprimand”: The administrator will hold a conference with the employee. The employee may have a representative present of his/her choice. The administrator will outline the nature of the problem and listen to any comments from the employee. The administrator will indicate compliance with specified procedures or cessation of certain conduct is required and future consequences if directives are ignored. A “letter of reprimand” shall be written and placed in the employee’s personnel file.
3. “Suspension”: Employees may be suspended in order to maintain the health and/or safety of other employees and/or students. Employees may also be suspended pending investigation of complaints regarding their job performance or conduct.

### Dismissal

1. Probationary Teachers
  - a. Contracts of probationary teachers may be non-renewed for any reason or reasons deemed in good faith sufficient by the Board. Written notice of intended non-renewal and reason(s) for non-renewal must be given to the teacher by March 15 or sooner if so specified in a collective bargaining agreement. Written notice must be given prior to Board action on the non-renewal. The teacher may request a hearing before the Board.
  - b. Probationary teachers may be dismissed at any time for any reason or reasons deemed in good faith sufficient by the Board. Written notice of intended dismissal and reason(s) for dismissal must be given to the teacher prior to Board action on the dismissal. The teacher may request a hearing before the Board.
  - c. The following procedures apply to hearings before the Board:
    - (1) The employee shall receive notice of the time, date and place of the hearing;

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- (2) The hearing shall be in executive session unless the employee has requested an open session;
- (3) The employee shall have an opportunity to be present and be represented by anyone of his/her choice;
- (4) The ESD may be represented by anyone of its choice;
- (5) Both parties shall have the opportunity to make opening statements, to call witnesses and to cross-examine the other party's witnesses, to present documentary evidence and to make closing statements;
- (6) The Board shall provide a written statement of the reasons for the final action taken (non-renewal of contract or dismissal); and
- (7) The Board may, at its option, designate an individual to preside over and conduct the actual hearing.

NOTE: These procedures are guidelines only and are subject to change depending on state and/or federal legislation and the actions of state and/or federal courts. These procedures may also be modified by existing collective bargaining agreements or individual employment contracts. These guidelines should be carefully reviewed by the ESD's attorney before their adoption and implementation.

## 2. Contract Teachers

- a. Contract teachers may be dismissed or their employment contract non-extended when their job performance or conduct falls within one or more of the broad reasons listed in ORS 342.865: inefficiency, immorality, insubordination, neglect of duty including duties specified by written rules, physical or mental incapacity, conviction of a felony or of a crime involving moral turpitude, inadequate performance, failure to comply with such reasonable requirements as the Board may prescribe to show normal improvement and evidence of professional training and growth, or any cause which constitutes grounds for the revocation of such contract teacher's teaching license.
- b. The superintendent and employee shall meet to discuss the superintendent's proposed recommendation to the Board regarding dismissal or contract non-extension. The employee may be accompanied by anyone of his/her choice.
- c. The employee shall be notified if the superintendent intends to recommend dismissal or contract non-extension.
  - (1) The notice shall contain:
    - (a) The statutory grounds upon which the superintendent believes such dismissal or non-extension is justified;
    - (b) A plain and concise statement of the facts relied on to support the statutory grounds for dismissal or non-extension;
    - (c) A copy of ORS 342.805 to -342.934; and
    - (d) The day and time of the Board meeting during which the recommendation will be made.
  - (2) A notice of intended dismissal must be given at least 20 days prior to the time a dismissal recommendation is made to the Board. It must be delivered in person or must be sent by certified mail.

(3) Notice of intended dismissal must be sent to the Board and to the Fair Dismissal Appeals Board.

- d. The employee may be present at the Board meeting and be accompanied by anyone of his/her choice.
- e. The employee shall receive notice of the Board's action and the reasons for such actions. Notice shall be sent by certified mail, return receipt requested, or in the manner provided by law for the service of a summons in a civil action.

3. ~~Illness/Other Circumstances~~

Sickness or other unavoidable circumstances which prevent the teacher from teaching 20 school days immediately following exhaustion of sick leave accumulated under ORS 332.507 may be sufficient reason for the Board to place the teacher on leave without pay for the remainder of the regular school year. The ESD may terminate the teacher's employment without penalty on August 1 if the Board determines that the teacher is unable to resume teaching responsibilities at the beginning of the next fall term and the teacher is not on workers' compensation leave or federal or state family illness leave.

4. Wages

Whenever an employee is dismissed or where such employment is terminated by mutual agreement all wages earned and unpaid at the time of discharge or termination shall be payable no later than the end of the first business day after discharge or termination.

# Southern Oregon ESD

Code: GDC  
Adopted: 6/18/14  
Orig. Code: 4403

## Recruitment of Classified Staff \*

The superintendent will develop and maintain a recruitment program designed to attract classified personnel to the ESD.

It is the responsibility of the superintendent, with the assistance of other ESD administrators, to determine the ESD's personnel needs and to locate most suitably qualified candidates to recommend for district employment.

The search for classified staff members may extend to a wide variety of educational institutions and geographical areas. Those factors considered will include, but not be limited to, the ESD's diverse characteristics.

Present employees are encouraged to apply for any position.

END OF POLICY

### Legal Reference(s):

[ORS 326.051](#)  
[ORS 334.125\(7\)](#)  
[ORS 659.805](#)  
[ORS 659.850](#)  
[ORS 659A.009](#)  
[ORS 659A.029](#)

[ORS 659A.030](#)  
[ORS 659A.040](#) to [-659A.052](#)  
[ORS 659A.109](#)  
[ORS 659A.142](#)  
[ORS 659A.145](#)  
[ORS 659A.233](#)

[ORS 659A.236](#)  
[ORS 659A.309](#)  
[ORS 659A.409](#)  
[OAR 581-021-0045](#)  
[OAR 581-024-0245](#)

Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (2012).  
Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e (2012).  
Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621-634 (2012); 29 C.F.R Part 1626 (2016).  
Age Discrimination Act of 1975, 42 U.S.C. §§ 6101-6107 (2012).  
Equal Pay Act of 1963, 29 U.S.C. § 206(d) (2012).  
Rehabilitation Act of 1973, 29 U.S.C. §§ 503, 791, 793-794 (2012).  
Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1683 (2012); Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 34 C.F.R. Part 106 (2012).  
The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. § 4212 (2012).  
Title II of the Genetic Information Nondiscrimination Act of 2008.