

OSBA Model Sample Policy

In September 2020, BOLI made permanent, BLI 7-2020, its temporary rule, BLI 4-2020, that provided sick child leave to include absence to care of an employee’s child whose school or child care provider has been closed in conjunction with a statewide public health emergency declared by a public health official.

BOLI also adopted temporary rule BLI 8-2020 that identifies and defines the scope of what is a “child care provider”, defines “closure” for the purposes of school and child care providers, and allows this use of sick child leave for intermittent school or child care closures.

Code: GCBDA/GDBDA-AR(1)

Adopted: 4/24/00

Revised/Reviewed:

Federal Family and Medical Leave/State Family Medical Leave *

Coverage

The federal Family and Medical Leave Act (FMLA) applies to districts with 50 or more employees within 75 miles of the employee’s work site, based on employment during each working day during any of the 20 or more workweeks in the calendar year in which the leave is to be taken, or in the calendar year preceding the year in which the leave is to be taken. The 50 employee test does not apply to educational institutions for determining employee eligibility.

The Oregon Family Leave Act (OFLA) and the Oregon Military Family Leave Act (OMFLA) applies to districts that employ 25 or more part-time or full-time employees in Oregon, based on employment during each working day during any of the 20 or more workweeks in the calendar year in which the leave is to be taken, or in the calendar year immediately preceding the year in which the leave is to be taken.

Employee Eligibility

FMLA applies to employees who have worked for the district for at least 12 months (not necessarily consecutive) and worked for at least 1,250 hours during the 12-month period immediately preceding the start of the leave.

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 need not requalify as an eligible employee, if the additional leave applied for is in the same leave year and for the same condition.

OFLA applies to employees who work an average of 25 hours or more per week during the 180 calendar days or more immediately prior to the first day of the start of the requested leave.¹ For parental leave purposes, an employee becomes eligible upon completing at least 180 days immediately preceding the date on which the parental leave begins. There is no minimum average number of hours worked per week when determining employee eligibility for parental leave.

An employee who has previously qualified for and has taken some portion of OFLA leave, may request additional OFLA leave within the same leave year. In such instances, the employee must requalify as an eligible employee for each additional leave requested unless one of the following exceptions apply:

1. A female employee who has taken 12 weeks of pregnancy disability leave need not requalify leave in the same leave year for any other purpose;
2. An employee who has taken 12 weeks of parental leave need not requalify to take an additional 12 weeks in the same leave year for sick child leave; and
3. An employee granted leave for a serious health condition for the employee or a family member need not requalify if additional leave is taken in this leave year for the same reason.

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 if an employee has been employed for the preceding 180 calendar days, when applicable, the employer must consider days, e.g., paid or unpaid, an employee is maintained on payroll for any part of a work week. Full-time public school teachers who have been maintained on payroll by a district for 180 consecutive calendar days are thereafter deemed to have been employed for an average of at least 25 hours per week during the 180 days immediately preceding the start date of the OFLA leave. This provision is eligible for rebuttal if for example, the employee was on a nonpaid sabbatical.

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

Qualifying Reason

Eligible employees may access FMLA leave for the following reasons:

1. Serious health condition of the employee or the employee's covered family member:
 - a. Inpatient care;
 - b. Continuing treatment;
 - c. Chronic conditions;
 - d. Permanent, long-term or terminal conditions;
 - e. Multiple treatments;

¹ 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.

- f. Pregnancy and prenatal care.
2. Parental leave² (separate from eligible leave as a result of a child's serious health condition):
 - a. Bonding with and the care for the employee's newborn (within 12 months following birth);
 - b. Bonding with and the care for a newly adopted or newly placed foster child under the age of 18 (within 12 months of placement);
 - c. Care for a newly adopted or newly placed foster child over 18 years of age who is incapable of self-care because of a physical or mental impairment (within 12 months of placement);
 - d. Time to effectuate the legal process required for placement of a foster child or the adoption of a child.
3. Military Caregiver Leave: leave for the care for spouse, son, daughter or next-of-kin who is a covered servicemember/veteran with a serious injury or illness;
4. Qualifying Exigency Leave: leave arising out of the foreign deployment of the employee's spouse, son, daughter or parent.

Eligible employees may access OFLA for the following reasons:

1. Serious health condition of the employee or the employee's covered family member:
 - a. Inpatient care;
 - b. Continuing treatment;
 - c. Chronic conditions;
 - d. Permanent, long-term or terminal conditions;
 - e. Multiple treatments;
 - f. Pregnancy and prenatal care.
2. Parental leave (separate from eligible leave as a result of the child's serious health condition):
 - a. Bonding with and the care for the employee's newborn (within 12 months following birth);
 - b. Bonding with and the care for a newly adopted or newly placed foster child under the age of 18 (within 12 months of placement);
 - c. Care for a newly adopted or newly placed foster child over 18 years of age who is incapable of self-care because of a physical or mental impairment (within 12 months of placement);
 - d. Time to effectuate the legal process required for placement of a foster child or the adoption of a child.
3. Sick Child Leave: leave for non-serious health conditions of the employee's child. For OFLA, sick child leave includes absence to care for an employee's child whose school or child care provider has

² Parental leave must be taken in one continuous block of time within 12 months of the triggering event.

been closed³ in conjunction with a statewide public health emergency declared by a public health official.⁴

4. Bereavement Leave: leave related to the death of a covered family member.⁵
5. Eligible employees may access OMFLA for the purpose of spending time with a spouse or same-gender 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.
6. The eligibility of an employee who takes multiple leaves for different qualified reasons during the same district designated leave period may be reconfirmed at the start of each qualified leave requested.

Definitions

1. Family member:
 - a. For the purposes of FMLA, “family member” means:
 - (1) Spouse⁶;
 - (2) Parent;
 - (3) Child; or
 - (4) Persons who are “in loco parentis”.
 - b. For the purposes of OFLA, “family member” means:
 - (1) Spouse;
 - (2) Registered, same-gender domestic partner;
 - (3) Parent;
 - (4) Parent-in-law;
 - (5) Parent of employee’s registered, same-gender domestic partner;
 - (6) Child;
 - (7) Child of employee’s registered, same-gender domestic partner;

³ “Closure” 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. OAR 839-009-0210(4).

⁴ The district may request verification of the need for sick child leave due to a closure during a statewide 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; and
3. A statement from the employee that no other family member of the child is willing and able to care for the child. 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.

⁵ Bereavement leave under OFLA must be completed within 60 days of when the employee received notice of the death.

⁶ “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.

- (8) Grandchild;
- (9) Grandparent; or
- (10) Persons who are “in loco parentis”.

2. Child:

- a. For the purposes of FMLA, “child” means a biological, adopted or foster child, 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 impairment.
- b. For the purposes of Military Caregiver Leave and Qualifying Exigency Leave under FMLA, “child” means the employee’s son or daughter on covered active duty regardless of that child’s age.
- c. For the purposes of OFLA, “child” means a biological, adopted, foster child or stepchild of the employee, the child of the employee’s same-gender domestic partner, or a child with whom the employee is or was in a relationship of “in loco parentis”.
- d. For the purposes of parental and sick child leave 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 and 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 and Military Caregiver Leave under FMLA, “next of kin” means the nearest blood relative other than the servicemember’s spouse, parent, son or daughter 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 servicemember by court decree or statutory provisions;
- b. Brothers or sisters;
- c. Grandparents;
- d. Aunts and uncles; and
- e. First cousins.

5. Covered servicemembers:

For the purposes of Military Caregiver Leave under FMLA, “covered servicemember” means a current member of the Armed Forces, including a member of the National Guard or Reserves, who is receiving medical treatment, recuperation or therapy, or is in outpatient status, or is on the temporary disability retire list for a serious injury or illness.

6. Covered veteran:

For the purposes of Military Caregiver Leave under FMLA, “covered veteran” means a veteran who is undergoing medical treatment, recuperation or therapy for a serious injury or illness provided ~~he or she was~~ they were:

- 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 before the eligible employee first takes FMLA, Military Caregiver Leave.

Leave Period

For the purposes of calculating an employee’s leave period, the district ~~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]~~ will use [a “rolling” 12-month period measured backward from the date the employee uses any family and medical leave]. The same method for calculating the 12-month period for FMLA and OFLA leave entitlement shall be used for all employees. However, in all instances, the leave period for the purposes of OMFLA and Military Caregiver Leave under FMLA shall be dependent on the start of any such leave regardless of the district’s designated 12-month 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 district’s designated leave period⁷. Spouses who work for the district may be limited to a combined 12 weeks of FMLA leave during the district’s designated leave period when the purpose of the leave is for the birth of a child or to care for a child after birth, placement of an adopted or foster child or the care for an adopted or foster child after placement, or to care for the employee’s parent’s serious medical condition. Except in specific and unique instances, all qualified leave under FMLA counts toward an employee’s leave entitlement within the district’s designated leave period.

For the purposes of OFLA, an eligible employee is generally entitled to a total of 12 weeks of qualified leave during the district’s designated leave period. However, a woman is entitled to an additional, full 12 weeks of parental leave during the district’s designated leave period following the birth of a child regardless of how much OFLA qualified leave she has taken prior to the birth of such child during the district’s designated leave period. Likewise, an employee who uses the full 12 weeks of parental leave during the district designated leave period, will be entitled to an additional 12 weeks of sick child leave under OFLA during the district’s designated leave period for the purpose of caring for a child(ren) with a non-serious health condition requiring home care.⁸ Unlike FMLA, OFLA does not combine the leave

⁷ 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 district’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.

⁸ Sick child leave under OFLA need not be provided if another family member, including a noncustodial biological parent, is willing and able to care for the child.

entitlement for spouses working for the district. However, under OFLA, family members who work for the district may be restricted from taking concurrent OFLA qualified leave.⁹

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 district's designated leave period.

Except as otherwise noted above, qualified leave under FMLA and OFLA for an eligible employee will run concurrently during the district's designated leave period.

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 12¹⁰. If an employee's schedule varies from week-to-week, a weekly average of the hours worked over the 12 weeks worked prior to the beginning of the leave period shall be used for calculating the employee's normal workweek¹¹. 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.

Intermittent Leave

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

Intermittent leave is taken in multiple blocks of time (i.e., hours, days, weeks, etc.) rather than in one continuous block of time and/or requires a modified or reduced work schedule. For OFLA this includes but 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 employee is eligible for OFLA leave, but not FMLA leave, the employer:

1. May allow an exempt employee, as defined by state and federal law, with accrued paid time off to take OFLA leave in blocks of less than a full day; but

⁹ Exceptions to the ability to require family members from taking OFLA qualified leave at different times are when 1) employee is caring for the other employee who has a serious medical condition; 2) one employee is caring for a child with a serious medical condition when the other employee is suffering a serious medical condition; 3) each family member is suffering a serious medical condition; 4) each family member wants to take Bereavement Leave under OFLA; and 5) the employer allows the family members to take concurrent leave.

¹⁰ 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.

¹¹ 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.

2. May not reduce the salary of an employee who is taking intermittent leave when they do not have accrued paid leave available. To do so would result in the loss of exemption under state law.

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.

Holidays or days in which the district is not in operation, are not counted against the eligible employee's intermittent OFLA leave period unless the employee was scheduled and expected to work on any such day.

Alternate Work Assignment

The district may transfer an employee recovering from a serious health condition to an alternate position which accommodates the serious health condition provided:

1. The employee accepts the 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 agreement;
4. The transfer is compliant with state and federal law, including but not limited to the protections provided for in FMLA and/or OFLA; and
5. The transfer is not used to discourage the employee from taking FMLA and/or OFLA leave for a serious health condition or to create a hardship for the employee.

The district may transfer an eligible employee who is on a foreseeable intermittent FMLA and/or OFLA leave to another position with the same or different duties to accommodate the 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;
4. The transfer is compliant with state and federal law, including but not limited to the protections provided for in FMLA and/or OFLA;
5. 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
6. The transfer is not used to discourage the employee from taking intermittent or reduced work schedule leave, or to create a hardship for the employee.

If an eligible employee is transferred to an alternative position, and as a result the employee works fewer hours than the employee was working in the original position, the employee's FMLA and/or OFLA 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.

When an employee is transferred to alternate position as described above but such transfer does not result in a reduced schedule, time worked in any such alternate position shall not be considered for the purpose of FMLA and/or OFLA leave. An employee working in an alternate position retains the right to return to the employee's original position unless all FMLA and/or OFLA leave taken in that leave year plus the period of time worked in the alternate position exceeds 12 weeks.

Special Rules for School Employees

For the purposes of FMLA, "school employee" means those whose principal function is to teach and instruct students in a class, a small group or an individual settlement. Athletic coaches, driving instructors and special education assistants, such as interpreters for the hearing impaired, are included in this definition. This definition does not apply to teacher assistants or aides, counselors, psychologist, curriculum specialists, cafeteria workers, maintenance workers or bus drivers.

For the purposes of OFLA, "school employee" means employees employed principally as instructors in public kindergartens, elementary schools, secondary schools or education service districts.

FMLA and/or OFLA 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. In any such situation, the eligible school 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 school 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 servicemember with a serious medical condition or because of the employee's own serious medical condition, the district may require the eligible school employee 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 the eligible school employee to an 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 original position.

2. Limitation on Leave Near the End of the School Year

When an eligible school employee requests leave near the end of the school year, the district may require the following:

- a. When the qualified leave begins more than five weeks before the end of the school year:

- (1) For the purposes of FMLA leave, the eligible school employee may be required to continue taking leave until the end of the school year provided:
 - (a) The leave will last at least three weeks; and
 - (b) The employee would return to work during the three-week period before the end of the term.
- (2) For the purposes of OFLA leave, if the reason for the leave is because of the eligible school employee's own serious health condition, the eligible school employee may be required to remain in leave until the end of the school year, provided:
 - (a) The leave will last at least three weeks; and
 - (b) The employee's return to work would occur within three weeks of the end of the school year.
- b. For the purposes of FMLA and/or OFLA leave, when the qualified leave begins within five weeks of the end of the school year and the purpose of such leave is parental leave, for the serious health condition of a family member or for the serious health condition of a servicemember, the eligible school employee may be required to remain on leave until the end of the school year provided:
 - (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 school year.
- c. For the purposes of FMLA and/or OFLA leave, when the qualified leave begins within three weeks of the end of the school year and the purpose of such leave is parental leave, for the serious health condition of a family member or for the serious health condition of a servicemember, the eligible school employee may be required to remain on leave until the end of the school year provided the length of the leave will last more than five working days.

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

Paid/Unpaid Leave

FMLA and OFLA do not require the district to pay an eligible employee who is on a qualified leave. Subject to any related provisions in any applicable collective bargaining agreement, ~~[an employee may elect to use any available accrued paid leave including personal and sick leave, or available accrued vacation leave during the leave period.]~~ [the district requires the eligible employee to use any available accrued sick leave, vacation or personal leave days (or other available paid time established by Board policy(ies) and/or collective bargaining agreement) in the order specified by the district and before taking FMLA and/or OFLA leave without pay during the leave period.] ~~[the district requires the eligible~~

¹² [The district must choose one of the following from the three available bracketed options to complete this paragraph, and delete the other two.]

~~employee 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. The employee may select the order in which the available paid leave is used.]]~~

The district will notify the eligible employee that the requested leave has been designated as FMLA and/or OFLA leave and, if required by the district, that available accrued paid leave shall be used during the leave period. In the event the district is aware of an OFLA or FMLA qualifying exigency, the district shall notify the eligible employee of its intent to designate the leave as such regardless of whether a request has been made by the eligible employee. Such notification will be given to the eligible employee prior to the commencement of the leave or within two working days of the employee's notice of an unanticipated or emergency leave, whichever is sooner.

When the district does not have sufficient information to make a determination of whether the leave qualifies as FMLA or OFLA leave, the district will provide the required notice promptly when the information is available but no later than two working days after the district has received the information. Oral notices will be confirmed in writing no later than the following payday. If the payday is less than one week after the oral notice is given, written notice will be provided no later than the subsequent payday.

Eligible employees who request OMFLA leave shall not be required to use any available accrued paid time off during the OMFLA leave period.

Benefits and Insurance

When an eligible employee returns to work following a FMLA or OFLA 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. 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 district's policies provide otherwise.

For the purposes of FMLA and OFLA, the district 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 district'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 district 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 Certification

Prior to the reinstatement of an employee following a leave which was the result of the employee's own serious health condition, the district may require the employee to obtain and present a Fitness-for-Duty Certification. The certification will specifically address the employee's ability to perform the essential functions of the employee's job as they relate to the health condition that was the reason for the leave. If the district is going to require a fitness-for-duty certification upon return to work, the district must notify the employee of such requirement when the leave is designated as FMLA and/or OFLA leave. Failure to provide the certification may result in a delay or denial of reinstatement.

For the purposes of FMLA qualified leave, any costs associated with obtaining the fitness-for-duty certification shall be borne by the employee.

For the purposes of OFLA qualified leave, any out-of-pocket costs associated with obtaining the fitness-for-duty certification shall be borne by the district.

If the leave is qualified under both FMLA and OFLA, any out-of-pocket costs associated with obtaining the fitness-for-duty certification shall be borne by the district.

Application

Under federal and state law, an eligible employee requesting FMLA and/or OFLA 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 district.

The district may request additional information to determine that the requested leave qualifies as FMLA and/or OFLA leave. The district may designate the employee as provisionally on FMLA and/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 FMLA and/or OFLA leave must follow the employer'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 the employee must comply with the employer's normal call-in procedures except in limited and under unique circumstances. Failure of an employee to provide the required notice for FMLA leave may result in the district delaying the employee's leave up to 30 days after the notice is ultimately given.

For the purposes of OFLA, an eligible employee is required to provide oral or written notice within 24 hours of commencement of the leave in unanticipated or emergency leave situations. The employee may designate a family member or friend to notify the district during that period of time. Failure of an employee to provide the required notice for leave covered by OFLA may result in the district 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 district's notice procedures.

When an employee fails to give advance notice for both the FMLA and OFLA above, the district must choose the remedy that is most advantageous to the employee.

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

Medical Certification

The district ~~[may]~~ **[shall]** require an eligible employee to provide medical documentation, when appropriate, to support the stated reason for such leave. The district will provide written notification to an employee of this requirement within five working days of the employee's request for leave. If the employee provides less than 30 days' notice, the employee is required to submit such medical certification no later than 15 calendar days after receipt of the district's notification that medical certification is required.

The district may request re-certification of a condition when the minimum duration of a certification expires if continued leave is requested. If the certification does not indicate a duration or indicates that it is ongoing, the district may request re-certification at least every six months in connection with an absence.

Under federal law, a second medical opinion may be required whenever the district has reason to doubt the validity of the initial medical opinion. The health care provider may be selected by the district. The provider shall not be employed by the district on a regular basis. Should the first and second medical certifications differ, a third opinion may be required. The district and the employee will mutually agree on the selection of the health care provider for a third medical certification. The third opinion will be final. Second and third opinions and the actual travel expenses for an employee to obtain such opinions will be paid for by the district.

Second and Third Opinions

1. For the purposes of FMLA, the district may designate a second health care provider, but that person cannot be utilized by the district on a regular basis except in rural areas where health care is extremely limited. If the opinions of the employee's and the district's designated health care provider(s) differ, the district may require a third opinion at the district's expense. The third health care provider must be designated or approved jointly by the employee and the district. This third opinion shall be final and binding.
2. For the purposes of OFLA, and except for leave related to sick child leave under OFLA, the district may require the employee to obtain a second opinion from a health care provider designated by the district. If the first and second verifications conflict, the employer may require the two health care providers to jointly designate a third health care provider for the purpose of providing a verification. This third verification shall be final and binding.

Notification

Any notice required by federal and state laws explaining employee rights and responsibilities will be posted in all staff rooms and the district office. Additional information may be obtained by contacting the ~~[superintendent]~~ **[personnel director]**.

Record Keeping/Posted Notice

The district 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.

The district will post notice of FMLA and OFLA leave requirements.

Federal vs. State Law

Both federal and state law contain provisions regarding leave for family illness. Federal regulations state an employer must comply with both laws; that the federal law does not supersede any provision of state law that provides greater family leave rights than those established pursuant to federal law; and that OFLA and FMLA leave entitlements run concurrently. State law requires that FMLA and OFLA leave entitlements run concurrently when possible.

For example, due to differences in regulations, an eligible employee who takes OFLA leave after 180 days of employment, but before ~~he/she is~~ they are eligible for FMLA leave, is still eligible to take a full 12 workweeks of FMLA leave after meeting FMLA's eligibility requirements. Thereafter, any eligible leave period will run concurrently, when appropriate.

EMPLOYEE RIGHTS AND RESPONSIBILITIES UNDER THE FAMILY AND MEDICAL LEAVE ACT

Basic Leave Entitlement

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

- For incapacity due to pregnancy, prenatal medical care or child birth;
- To care for the employee's child after birth, or placement for adoption or foster care;
- To care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- For a serious health condition that makes the employee unable to perform the employee's job.

Military Family Leave Entitlements

Eligible employees with a spouse, son, daughter, or parent on covered active duty or call to covered active duty status may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is: (1) 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 (2) a veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran, and who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness*.

***The FMLA definition of "serious injury or illness" for current servicemembers and veterans are distinct from the FMLA definition of "serious health condition".**

Benefits and Protections

During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

Eligibility Requirements

Employees are eligible if they have worked for a covered employer for at least 12 months, have 1,250 hours of service over the previous 12 months, and if at least 50 employees are employed by the employer within 75 miles.

Definition of Serious Health Condition

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than three consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a

chronic condition. Other conditions may meet the definition of continuing treatment.

Use of Leave

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

Substitution of Paid Leave for Unpaid Leave

Employees may choose or employers may require use of accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employer's normal paid leave policies.

Employee Responsibilities

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days' notice is not possible, the employee must provide notice as soon as practicable and generally must comply with an employer's normal call-in procedures.

Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

Employer Responsibilities

Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

Unlawful Acts by Employers

FMLA makes it unlawful for any employer to:

- Interfere with, restrain, or deny the exercise of any right provided under FMLA; and
- Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

Enforcement

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer. FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

FMLA section 109 (29 U.S.C. § 2619) requires FMLA covered employers to post the text of this notice. Regulations 29 C.F.R. § 825.300(a) may require additional disclosures.

For additional information:

1-866-4US-WAGE (1-866-487-9243) TTY: 1-877-889-5627

WWW.WAGEHOUR.DOL.GOV

U.S. Department of Labor | Wage and Hour Division

OSBA Model Sample Policy

In September 2020, BOLI made permanent, BLI 7-2020, its temporary rule, BLI 4-2020, that provided sick child leave to include absence to care of an employee’s child whose school or child care provider has been closed in conjunction with a statewide public health emergency declared by a public health official.

BOLI also adopted temporary rule BLI 8-2020 that identifies and defines the scope of what is a “child care provider”, defines “closure” for the purposes of school and child care providers, and allows this use of sick child leave for intermittent school or child care closures.

Code: GCBDA/GDBDA-AR(2)
Adopted: 4/24/00
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:¹

- Because of the birth of my child and to care for him or her. (District: Use GCBDA/GDBDA-AR(3)(A) Certification Form)

Expected date of birth
Leave to start

Actual date of birth
Expected return date

¹ 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.

2. Because of the placement of a child with me for adoption or foster care. (District: Use GCBDA/GDBDA-AR(3)(A) Certification Form)

Age of child
Leave to start

Date of placement
Expected return date

3. To care for a family member² with a serious health condition. (District: Use GCBDA/GDBDA-AR(3)(B) Certification Form)

Leave to start

Expected return date

Please check one: Spouse³ 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. 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. (District: 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. (District: Use GCBDA/GDBDA-AR(3)(C) Certification Form)

² "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.

³ "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.

8. To care for a spouse, son, daughter, parent, or next of kin⁴ 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 (District: 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 district 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 district 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 scheduled to end. I understand that failure to do so will constitute unequivocal notice of my intent not to return to work and the district may terminate my employment. (A fitness-for-duty certification may be required.)

I authorize the district 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 district'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:

⁴ "Next of kin" means the nearest blood relative of the eligible employee.

OSBA Model Sample Policy

In September 2020, BOLI made permanent, BLI 7-2020, its temporary rule, BLI 4-2020, that provided sick child leave to include absence to care of an employee’s child whose school or child care provider has been closed in conjunction with a statewide public health emergency declared by a public health official.

BOLI also adopted temporary rule BLI 8-2020 that identifies and defines the scope of what is a “child care provider”, defines “closure” for the purposes of school and child care providers, and allows this use of sick child leave for intermittent school or child care closures.

Code: GCBDA/GDBDA-AR(4)
Adopted: 4/24/00
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 spouse¹, 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. **Sick child leave due to the closure of a child’s school or child care provider;**

¹ “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.

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).

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 district 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.² The district 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 district 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).

² Oregon Military Family Leave Act allows for 14 days of leave per deployment.

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 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. 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 district after your FMLA and/or OFLA leave, and the district has paid your share of benefit premiums, you will will not be responsible for reimbursing the district the amount paid on your behalf with the exceptions noted in C.F.R. § 104 (c)(2)(B) of the FMLA.
- 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 district. (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.

OSBA Model Sample Policy

In September 2020, BOLI made permanent, BLI 7-2020, its temporary rule, BLI 4-2020, that provided sick child leave to include absence to care of an employee’s child whose school or child care provider has been closed in conjunction with a statewide public health emergency declared by a public health official.

BOLI also adopted temporary rule BLI 8-2020 that identifies and defines the scope of what is a “child care provider”, defines “closure” for the purposes of school and child care providers, and allows this use of sick child leave for intermittent school or child care closures.

Code: GCBDAAGDBDAA-AR(1)
Adopted: 11.23.20
Revised/Reviewed:

COVID-19 Related Leave *

Emergency Paid Sick Leave Act

The district shall provide paid sick time to employees who are unable to work due to the effects of coronavirus disease 2019 (COVID-19). Full-time employees are entitled to 80 hours of paid sick time,

NEW INFORMATION for 1st Reading – Do not adopt this AR

----- Forwarded message -----

From: **Spencer Lewis** <slewis@osba.org>

Date: Fri, Jan 8, 2021 at 8:10 AM

Subject: OSBA Policy Update: Policy GCBDAAGDBDAA - COVID-19 Related Leave

Dear Policy Update subscribers,

The [Families First Coronavirus Response Act](#) (“FFCRA”) was not renewed in 2021. Policy GCBDAAGDBDAA - COVID-19 Related Leave and GCBDAAGDBDAA-AR(1) (Highly Recommended) and GCBDAAGDBDAA-AR(2) Form (Optional) created to inform about FFCRA **are no longer needed**. If the board adopted this policy and implemented its ARs, rescinding of same is now recommended.

Spencer Lewis, Director of Policy Services

Paid sick time may be used before other paid leave that may be available to the employee. A part-time employee is entitled to such paid sick time for the average number of hours the part-time employee works during an average two-week period. Paid sick time shall not carry over from one year to the next.

The district shall pay the regular rate of pay up to \$511 per day, and \$5,110 in the aggregate, for paid sick time used by an employee who experiences symptoms of COVID-19, or is required or advised to self-quarantine due to concerns related to COVID-19.

The district shall pay two-thirds of the regular rate of pay up to \$200 per day, and \$2,000 in aggregate, for paid sick time used by an employee:

1. To care for an individual subject to quarantine or isolation by governmental order or health care provider advisement;
2. To care for their child because the child's school or child-care provider is closed due to COVID-19 related reasons; or
3. Who is experiencing a substantially similar condition related to COVID-19 as specified by the Secretary of Health and Human Services, in consultation with the Secretary of the Treasury and the Secretary of Labor.

Emergency Family and Medical Leave Expansion Act

A district employee may take public health emergency leave to care for the employee's child during a COVID-19 public health emergency.

The district is not required to pay an employee for the first 10 days of such public health emergency leave. However, an employee may use accrued paid leave during such time. After the 10 days, the district must pay not less than two-thirds of an employee's regular rate of pay for the number of hours per week the employee normally works. The maximum amount of compensation for such leave is \$200 per day and \$10,000 in aggregate.

The district shall restore the employee's former position following the use of public health emergency leave unless, the district:

1. Has fewer than 25 employees;
2. Has made reasonable efforts to retain the employee's position but such position no longer exists due to economic or operating conditions caused by the public health emergency; and
3. Has made reasonable efforts to restore the employee to an equivalent position.

Temporary BOLI Rule affecting Oregon Family Leave Act (OFLA)

¶

~~The temporary BOLI rule extends OFLA's sick child leave to include the absence to care for an employee's child whose school or place of care has been closed in conjunction with a statewide public health emergency declared by a public health official.~~

¶

~~The leave is protected but unpaid, and in most circumstances will run concurrently with leave taken under the Families First Coronavirus Response Act. An employee may elect to use any accrued paid leave time.~~

NEW INFORMATION for 1st Reading – Do not adopt this AR

OSBA Model Sample Policy

In 2019, the Legislature adopted Senate Bill (SB) 1049, which made significant changes to PERS. One key component of the new law was the removal of most restrictions on the number of hours that an employee who has retired under PERS can work. Other provisions of the law were challenged in court last year and OSBA recommended removal of this policy and administrative regulation. In August 2020, the new law was upheld, meaning that public employers can allow individuals who have retired under PERS to work.

PLEASE NOTE: OSBA has begun using an opening brace { and closing brace } for footnote content to inform the subscriber about content and/or other information to help in decision making, and is not intended to be included in the final document.

Code: GCPC/GDPC
Adopted: 02/27/03
Revised:

Retirement of Staff *

{Senate Bill (SB) 1049 (2019) makes it possible for employees to retire under PERS and work for a PERS-covered employer, without hour restrictions in most situations. The law does not require districts to allow PERS-retired employees to work in the district, rather, leaves the decision up to the district. OSBA encourages districts to evaluate the situation (including financial impacts) prior to making a decision regarding these employees. If districts 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 district in its planning efforts, staff members considering retirement are encouraged to notify the district 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. {¹} }~~

~~*{Regarding PERS workback, there are three main options for districts, please choose one of the following.}*~~

~~{When an employee of the district retires under PERS, that employee's employment with the district will terminate. Individuals who have retired under PERS are not eligible for employment in the district.}¶~~

~~¶~~

~~{OR}~~

¹ {The law that allows PERS-retired employees to continue to work for PERS-employers without hour restrictions is set to expire in 2024.}

~~When an employee of the district retires under PERS, that employee's employment with the district will terminate. PERS-retired individuals may apply for open positions with the district.²{³}~~

~~{OR}~~

~~¶
¶~~

~~District employees will be allowed to retire under PERS and return to their position in the district [only for the remainder of the school year]{⁴.⁵}~~

END OF POLICY

Legal Reference(s):

² There must be a break in service for retired employees returning to work.

³ {The law that allows PERS-retired employees to continue to work for PERS-employers without hour restrictions is set to expire in 2024.}

~~⁴ {Districts can limit workback, but must consider equity pay laws when developing any criteria.}¶~~

~~⁵ There must be a break in service for retired employees returning to work.¶~~

1st Reading **Page 27 of 57**

[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.

Parkrose School District 3

Code: GCPC/GDPC-AR

Adopted: 02/27/03

RE-EMPLOYMENT OF PERS-RETIRED STAFF

1. Current District Employees
 - a. In the event that a district employee retires¹ and begins receiving benefits from the Public Retirement Employees System (PERS) prior to the end of the school year, he/she may be retained by the district in his/her current position or another position as deemed appropriate by the district until the end of the school year subject to the provisions of ORS 238.082 and the provisions of any applicable collective bargaining agreement.
 - b. All requests for continued employment by the district must be submitted in writing to the superintendent no later than 60 calendar days before the end of the school year in which the individual has retired from PERS. Requests will be considered based on the following criteria:
 - (1) Length of service. The individual must have been employed by the district a minimum of three years prior to retirement;
 - (2) Need. The individual must be licensed and have experience in a specialty area such as special education, math, science, music, Title I, English as a Second Language, English Language Learners, Non-English Proficient Students or other such areas of identified district shortage of qualified teachers or other district need or have specific training or skills in an area of identified shortage of classified personnel as determined by the district;
 - (3) Evaluations. The individual must have satisfactory performance evaluations. An individual who has been on a program of assistance for improvement or with written directives or written reprimands within the past two years will not be considered for retention by the district.
 - c. A licensed employee's change in PERS status shall not, in and of itself, constitute a break in service. A classified employee's seniority will be determined as defined in the collective bargaining agreement, Board policy or individual employment contract.

¹The period or periods of employment by one or more public employers of any person receiving a service retirement allowance shall not total 1,040 hours or more in any calendar year; but if the person is receiving old-age, survivors or disability insurance benefits under the federal Social Security Act, the person may be employed for the number of hours for which the salary equals the maximum allowed for receipt of the full amount of those benefits to which the person is entitled. The limitations on employment imposed above do not apply to a retired member who has attained normal retirement age and who is employed as a teacher or as an administrator, as those terms are defined in ORS 342.120, if the retired member is employed by a school district or education service district that has its administrative office located within a county with a population of not more than 35,000 inhabitants according to the latest federal decennial census.

- d. Decisions to retain the individual in his/her current position will be made by the superintendent. The individual will not be required to submit to established district application and interview procedures. Decisions to retain the individual in a position other than the individual's current position, such as a new position or another vacant position will be made by the Board based on District needs. The individual may be required to submit to established district application and interview procedures for such positions, as determined by the Board.
 - e. A retired member who is employed as a classified employee or teacher, as defined by ORS 342.120, will remain in the same collective bargaining unit that included the member before retirement, unless retirees or the assignments (e.g., temporary, substitute, etc.) are specifically excluded from the collective bargaining agreement.
 - f. Salary, benefits and length of contract for early retirees who are excluded from the bargaining unit will be determined by the Superintendent.
 - g. Employees who retire during the school year shall not serve past June 30. Decisions on continued employment past that date will be made by the district on a case-by-case basis.
 - h. The maximum hours of work performed by an employee shall not exceed 1039 hours. The employee shall be responsible for submitting a record of his/her hours worked to payroll, at least monthly, to assure that the period of employment does not exceed the statutory maximum.
 - i. The district will immediately submit an Employment of PERS Retiree form to the PERS office as required by law.
2. Former District Employees
- a. A district employee who retired and left district employment may apply for a subsequent vacancy with the district under the same application and interview procedures as all other applicants for district employment.

OSBA Model Sample Policy

New legislation adopted in 2019 revised to say that school districts shall provide a “comprehensive school counseling program supporting students’ academic, career, and personal and social development” and their development of “sense of community involvement” (ORS 329.603). The new law (now published as ORS 329.603) states this program may be designed, delivered or implemented by qualified persons in accordance with law. In response, the Oregon Department of Education updated associated rules which are now reflected, along with new statute, in the recommended updates to the policy and administrative regulation listed below.

The bracketed language in the revised model sample policy IJ, now called School Counseling Program, related to including a child development specialist in the program is optional language, as is the revised model sample administrative regulation IJ-AR - Child Development Specialist Program. Verify the district offers such before including said language.

Code: IJ
Adopted: 10/23/95

School Counseling Program

The district’s coordinated comprehensive school counseling program supports the academic, career, social-emotional, and community involvement development of all students. Each school will have a comprehensive counseling program for students in ~~{grades K-12}~~~~{all grades}~~, which will be based on the Oregon Department of Education’s *Oregon’s Framework for Comprehensive School Counseling Programs*.¹

~~{²} The district’s {comprehensive school counseling} program may include a child development specialist program for grades K-8 students and families who reside in the attendance areas of district schools.}~~

The district will adopt program goals, which will assist students to:

1. Understand and utilize the educational opportunities and alternatives available to them;
2. Meet academic standards;
3. Establish tentative career and educational goals;
4. Create and maintain an education plan and education portfolio;
5. Demonstrate the ability to utilize personal qualities, education and training, in the world of work;
6. Develop decision-making skills;

¹ Oregon Department of Education - [Comprehensive School Counseling](#)

² {See optional associated administrative regulation that includes language supporting a child development specialist program.}

7. Obtain information about self;
8. Accept increasing responsibility for their own actions, including the development of self-advocacy skills;
9. Develop skills in interpersonal relations, including the use of effective and receptive communication;
10. Utilize school and community resources;
11. Demonstrate and discuss personal contributions to the larger community; and
12. Know where and how to utilize personal skills in making contributions to the community.

Materials used in the counseling program will be free of content that may discriminate on the basis of race, color, national origin, religion, sex, sexual orientation, age, disability, or marital status, or that which permits or requires different treatment of students on such basis unless such differences cover the same occupation and interest areas and the use of such different material is shown to be essential to the elimination of discrimination.

Consistent with individual rights and the counselor's obligations as a professional, the counseling relationship and resulting information may be protected as privileged communications by Oregon law.³

END OF POLICY

Legal Reference(s):

³ See ORS 40.245.

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[ORS 40.245](#)
[ORS 326.565](#)
[ORS 326.575](#)
[ORS 329.603](#)

[ORS 336.187](#)
[OAR 581-021-0013](#)
[OAR 581-021-0046\(7\)](#)

[OAR 581-022-2030](#)
[OAR 581-022-2055](#)
[OAR 581-022-2060](#)
[OAR 581-022-2250](#)

Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g (2018); Family Educational Rights and Privacy, 34 C.F.R. Part 99 (2019).
Protection of Pupil Rights, 20 U.S.C. § 1232h (2018); Student Rights in Research, Experimental Programs and Testing, 34 C.F.R. Part 98 (2019).

OSBA Model Sample Policy

New legislation adopted in 2019 revised to say that school districts shall provide a “comprehensive school counseling program supporting students’ academic, career, and personal and social development” and their development of “sense of community involvement” (ORS 329.603). The new law (now published as ORS 329.603) states this program may be designed, delivered or implemented by qualified persons in accordance with law. In response, the Oregon Department of Education updated associated rules which are now reflected, along with new statute, in the recommended updates to the policy and administrative regulation listed below.

The bracketed language in the revised model sample policy IJ, now called School Counseling Program, related to including a child development specialist in the program is optional language, as is the revised model sample administrative regulation IJ-AR - Child Development Specialist Program. Verify the district offers such before including said language.

Code: IJ-AR

Adopted:

Child Development Specialist Program

The district offers the services of a child development specialist to students in grades K ~~through~~ 8 and their families residing in attendance areas of the district. A child development specialist may serve as ~~guidance-counseling~~ staff ~~trained~~ to assist in implementing the district’s comprehensive ~~guidance-~~ ~~and school~~ counseling program.

The district will meet the following requirements:

1. The district will submit a written plan describing the program to the Oregon Department of Education (ODE) for approval;
2. Upon approval of the plan ~~by ODE~~, the district may submit a child development specialist candidate application for ODE approval;
3. The district shall conduct an annual review of the program and submit an updated plan to ODE for re-authorization of the program;
4. Each child development specialist employed by the district shall complete an annual evaluation of the specialist’s child development plan to be included with the district’s updated plan.

OSBA Model Sample Policy

New 2019 legislation, now published in Oregon Revised Statute (ORS) 329.451, allows an eligible student to wear a U.S. Armed Forces uniform at their high school graduation ceremonies. Additional bracketed, optional language has been added about students with disabilities and students participating in district-sponsored alternative education programs.

When updating policies, OSBA has added reviewing the policy via an equity lens. Where deemed appropriate, OSBA has added optional language for the district to consider; policy IKFB includes such language and is optional.

Code: IKFB
Adopted: 4/24/00

Graduation Exercises

The Board believes that completion of the requirements for a diploma, a modified diploma, an extended diploma or an alternative certificate from public schools is an achievement that improves the community as well as the individual. The Board wishes to recognize this achievement in a publicly, celebrated graduation exercise.

Accordingly, appropriate graduation programs may be planned by the [school] on the date selected by the school [the Board].

The [district/school]'s valedictorian(s), salutatorian(s) or others, at the discretion of the principal or designee, may be permitted to speak as part of the district's planned graduation program. All speeches will be reviewed and approved in advance by the building principal or designee.

All students [in good standing] who have successfully completed the requirements for a high school diploma, or qualifies to receive or receives a modified diploma, an extended diploma or an alternative certificate, including [a student participating in a district-sponsored alternative education program and] a student with disabilities receiving a document certifying successful completion of program requirements, may shall have the option to participate in graduation exercises.

A student shall be allowed to wear a dress uniform issued to the student by a branch of the U.S. Armed Forces if the student:

1. Qualifies to receive a high school diploma, a modified diploma, an extended diploma or an alternative certificate; and
2. Has completed basic training for, and is an active member of, a branch of the U.S. Armed Forces.

[A student may be denied participation in graduation exercises for conduct that violates board policy, administrative regulation and/or code of conduct provisions.]

[Graduating students will be allowed to wear items of cultural significance, in accordance with consistently-enforced rules established by the principal or designee.]²

END OF POLICY

Legal Reference(s):

² [See [letter from ODE regarding Graduation Ceremonies](#) (click on [Year] Graduation Ceremonies).] *(This could cause some controversy. OSBA recommends communicating with community cultural leaders and high school administration prior to adopting this language. If one group of students is allowed to wear an item of cultural significance, the same rule must be applied to other students in a non-discriminatory manner.)*

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[ORS 329.451](#)

~~ORS 332.105~~

[ORS 332.107](#)

~~ORS 332.114~~

~~ORS 339.115~~

[ORS 339.505](#)

[ORS 343.295](#)

~~OAR 581-021-0071~~

[OAR 581-021-0050](#)

[OAR 581-021-0055](#)

[OAR 581-021-0060](#)

~~OAR 581-022-2000~~

[OAR 581-022-2010](#)

[OAR 581-022-2015](#)

[OAR 581-022-2020](#)

[OAR 581-022-2505](#)

31 OR. ATTY. GEN. OP. 428 (1964)

Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1683 (2012~~8~~); Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 34 C.F.R. Part 106 (2017~~2020~~).

Kay v. David Douglas Sch. Dist. No. 40, 1987); cert. den., 484 U.S. 1032 (1988).

Doe v. Madison Sch. Dist. No. 321, 177 F.3d 789 (9th Cir. 1999).

Lee v. Weisman, 505 U.S. 577 (1992).

Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260 (1988).

OSBA Model Sample Policy

Several changes in the presented model sample result from the recent comprehensive changes and updates to model policy GBN/JBA - Sexual Harassment, and an effort to remove duplicate language found in Sexual Harassment from policy JB - Equal Educational Opportunity.

The addition of policy language that references an 'Equal Educational Opportunity Plan', while is new model policy language, is not new rule language and comes from OAR 581-021-0046 and is presented as bracketed, optional language.

Additionally, when updating policies, OSBA has included use of an equity lens. Where deemed appropriate, OSBA has added optional language for the district to consider.

Code: JB
Adopted: 11/13/90
Revised:

Equal Educational Opportunity^{}**

Every student of the district will be given equal educational opportunities regardless of age, sex, sexual orientation¹, race, religion, color, national origin, disability, marital status, familial status^[,] ~~[or]~~ parental status^[,] linguistic background, culture, **socioeconomic status**, capability or geographic location[]].

~~[The district shall develop and implement an Equal Educational Opportunity Plan that assures that] Further, **[n]o student will be excluded from participating in, denied the benefits of, or subjected to discrimination under any educational program or activity conducted by the district or denied access to facilities in the district. The district will treat its students without discrimination on the basis of sex as this pertains to course offerings, athletics, counseling, employment assistance and extracurricular activities.**~~

~~The superintendent will designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX. The Title IX coordinator will investigate complaints communicated to the district alleging noncompliance with Title IX. The name, address and telephone number of the Title IX coordinator will be provided to all students and employees.~~

[A student or parent may also access and use the district's general complaint procedure through Board policy KL - Public Complaints.]

All reports, complaints or information will be investigated.

~~The Board will adopt and the district will publish grievance procedures providing for prompt and equitable resolution of student and employee complaints under Title IX. [The district will communicate the availability of policy and available complaint procedures to students and their parents through available district communication systems.]~~

¹ "Sexual orientation" means an individual's actual or perceived heterosexuality, homosexuality, bisexuality or gender identity, regardless of whether the individual's gender identity, appearance, expression or behaviors differs from that traditionally associated with the individual's sex at birth.

A student of the district may not be subjected to retaliation by the district for the reason that the student has in good faith reported information that the student believes is evidence of a violation of a state or federal law, rule or regulation.

END OF POLICY

Legal Reference(s):

[ORS 174.100](#)

[ORS 192.630](#)

[ORS 326.051](#)

[ORS 329.025](#)

[ORS 332.107](#)

[ORS 336.067](#)

[ORS 336.082](#)

[ORS 336.086](#)

[ORS 342.123](#)

[ORS 659.850](#)

[ORS 659.852](#)

[ORS Chapter 659](#)

[ORS Chapter 659A](#)

[ORS 659A.003](#)

[ORS 659A.006](#)

[ORS 659A.030](#)

[ORS 659A.103 - 659A.145](#)

[ORS 659A.400](#)

[ORS 659A.403](#)

[ORS 659A.406](#)

[OAR 581-021-0045](#)

[OAR 581-021-0046](#)

[OAR 581-022-2310](#)

[OAR 839-003-0000](#)

Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (2012); 28 C.F.R. §§ 42.101-42.106 (2019).

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

Rehabilitation Act of 1973, 29 U.S.C. §§ 791, 793-794 (2012); 34 C.F.R. Part 104 (2019).

Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1683, 1701, 1703-1705 (2012); Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 34 C.F.R. Part 106 (2017).

Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101-12213 (2012); 29 C.F.R. Part 1630 (2017); 28 C.F.R. Part 35 (2017).

Americans with Disabilities Act Amendments Act of 2008, 42 U.S.C. §§ 12101-12333 (2018).

OSBA Model Sample Policy

The updates to model sample policy JFCM - Threats of Violence** are reflective of review of statute to better align with language and application of a new equity lens.

Code: JFCM
Adopted: 9/28/09
Revised:

Threats of Violence**

The Board is committed to promoting healthy relationships and a safe learning environment. To this end, student threats of harm to self or others, threatening behavior or acts of violence, including threats to severely damage any district property, shall not be tolerated on district property or at activities under the jurisdiction of the district.

Students shall be instructed of the responsibility to inform a teacher, counselor or administrator regarding any information or knowledge relevant to conduct prohibited by this policy. Parents and others will be encouraged to report such information to the district. Staff shall immediately notify an administrator of any threat, threatening behavior or act of violence ~~he/she~~ the staff member has knowledge of, has witnessed or received. All reports will be promptly investigated.

Students found in violation of this policy shall be subject to discipline up to and including expulsion. ~~The [superintendent or designee] [principal]~~ shall notify the parent or guardian of any student in violation of this policy and the disciplinary action imposed. A referral to law enforcement shall be made for any infraction involving a student bringing, possessing, concealing or using a weapon or destructive device as prohibited by state and federal law and Board policy.

~~The district shall enforce this policy consistently, fairly and without bias against any student, including a student from a protected class as defined in Oregon Revised Statute 659.850.~~

The principal shall, in determining appropriate disciplinary action, consider:

1. Immediately removing from the classroom setting, any student who has threatened to injure another person or to severely damage district property;
2. Placing the student in a setting where the behavior will receive immediate attention from an administrator, counselor, licensed mental health professional or others;
3. Requiring the student to be evaluated by a licensed mental health professional before allowing the student to return to the classroom setting¹.

¹ [A student removed from the classroom setting for an evaluation may not be removed for more than 10 school days unless the principal is able to show good cause that an evaluation could not be completed in that time period.]

The district may enter into contracts with licensed mental health professionals to perform student evaluations. Funds for evaluations, other disciplinary options or other procedures as may be required by law and this policy shall be provided by the district.

The ~~{(2) superintendent or designee}~~ ~~{principal}~~ shall ~~ensure notification is provided to~~ attempt to notify:

1. ~~The parent of any student in violation of this policy and the disciplinary action imposed;~~
 1. The parent or guardian of a student when the student's name appears on a targeted list at school that threatens violence or harm to the students on the list, or when threats of violence or harm to the student are made by another student at school;
 2. Any district employee whose name appears on a targeted list at school threatening violence or harm to the district employee ~~[and when threats of violence or harm are made by a student or others at school]~~.

The ~~{superintendent or designee}~~ ~~{principal}~~ shall attempt to ~~Notification~~ to the above persons ~~shall be attempted~~ by telephone or in person promptly and within 12 hours of discovery of a targeted list or learning of a threat. Regardless, the ~~{superintendent or designee}~~ ~~{principal}~~ shall issue a written follow-up notification ~~shall be sent~~ within 24 hours of discovery of a targeted list or learning of a threat.

The principal will provide necessary information regarding threats of violence to law enforcement, child protective services and health care professionals in connection with a health and safety emergency if knowledge of the information is necessary to protect the health and safety of the student or other individuals. Additionally, ~~he/she~~ the principal may provide such information to other school officials, including teachers within the district or other districts who have a legitimate educational interest in the student(s) consistent with state and federal education records laws and district policies.

The district or person participating in good faith in making the notification required by ORS 339.327 is immune from any liability, civil or criminal, that might otherwise be incurred or imposed with respect to the making or content of the notification.

~~{As a part of the district's proactive safety efforts, the superintendent will plan staff development activities designed to alert staff to early warning signs of possible violent behavior. Students so identified shall be referred to a counselor, licensed mental health professional and/or multidisciplinary team for evaluation and follow-up as appropriate.}~~

END OF POLICY

Legal Reference(s):

² ~~{Statute says "superintendent or superintendent's designee" so allows designation of principal depending on practice in the district.}~~

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[ORS 161.015](#)
[ORS 166.210 - 166.370](#)
[ORS 332.107](#)
[ORS 339.115](#)
[ORS 339.240](#)
[ORS 339.250](#)

[ORS 339.327](#)
~~[ORS 809.135](#)~~
~~[ORS 809.260](#)~~

[OAR 581-021-0050 - 021-0075](#)
[OAR 581-053-0010\(5\)](#)

[OAR 581-053-0230\(9\)\(k\)](#)
[OAR 581-053-0330\(1\)\(r\)](#)
[OAR 581-053-0430\(17\)](#)
[OAR 581-053-0531\(16\)](#)
[OAR 581-053-0630](#)

Gun-Free School Zones Act of 1990, 18 U.S.C. §§ 921(a)(25)-(26), 922(q) (~~2012~~2018).
Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400-1419 (~~2012~~2018).
Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g (~~2012~~2018); Family Educational Rights and Privacy, 34 C.F.R. Part 99 (~~2017~~2019).

OSBA Model Sample Policy

The ability of a public charter schools to allow weighted lottery for historically underserved students in admissions by Senate Bill 820 (2015) expired with the 2020-2021 school year. The associated language has been removed from the new version of administrative regulation (AR), LBE-AR - Public Charter Schools.

In the process of reviewing the model sample AR, OSBA has remodeled this AR and associated policies, LBE - Public Charter Schools and LBEA - Resident Student Denial for Virtual Public Charter School Attendance**.

Model sample policy LBE - Public Charter Schools has been revised in this process to update language and remove language found duplicated in policy LBEA - Resident Student Denial for Virtual Public Charter School Attendance**. For school districts that sponsor public charter schools or choose to **have policy for when a public charter school makes application for sponsorship**, policy LBE and its LBE-AR are highly recommended. Model policy LBEA - Resident Student Denial for Virtual Public Charter School Attendance** is required for all school districts that may deny enrollment of a resident student to a virtual public charter school not sponsored by the district pursuant to OAR 581-026-0305. When updating policy LBE, consider if policy LBEA needs to be adopted alongside to maintain the board's direction on students noticing transfer to a virtual public charter school.

There has been no change in percentage calculations at this time.

Code: LBE
Adopted: 3/13/00
Revised:

Public Charter Schools**

~~The district recognizes that public charter schools offer an opportunity to create new, innovative and more flexible ways of educating students in an atmosphere of learning experiences based on current research and development. Public charter schools shall demonstrate a commitment to the mission and diversity of public education while adhering to one or more of the following goals:¶¶~~

~~¶¶~~

- ~~1. Increase student learning and achievement;¶¶~~
- ~~2. Increase choices of learning opportunities for students;¶¶~~
- ~~3. Better meet individual student academic needs and interests;¶¶~~
- ~~4. Build stronger working relationships among educators, parents and other community members;¶¶~~
- ~~5. Encourage the use of different and innovative learning methods;¶¶~~
- ~~6. Provide opportunities in small learning environments for flexibility and innovation;¶¶~~
- ~~7. Create new professional opportunities for teachers;¶¶~~
- ~~8. Establish additional forms of accountability for schools; and¶¶~~

~~9. Create innovative measurement tools.~~

Public charter schools may be established as a new public school or a virtual public school, from ~~an~~ one or more existing public schools in the district or a portion of the school, or from an existing alternative education program. A public charter school may not convert an existing tuition-based private school into a charter school, affiliate itself with a nonpublic sectarian school or religious institution, or encompass all the schools in the district unless the district is composed of only one school.

~~The Board will not approve any public charter school proposal when it is deemed that its value is outweighed by any direct identifiable, significant and adverse impact on the quality of the public education of students residing in the district.~~

Public charter schools shall demonstrate a commitment to the mission and diversity of public education while adhering to the following goals:

1. Increase student learning and achievement;
2. Increase choices of learning opportunities for students;
3. Better meet individual student academic needs and interests;
4. Build stronger working relationships among educators, parents and other community members;
5. Encourage the use of different and innovative learning methods;
6. Provide opportunities in small learning environments for flexibility and innovation;
7. Create new professional opportunities for teachers;
8. Establish additional forms of accountability for schools; and
9. Create innovative measurement tools.

~~To meet the eligibility criteria for Board approval, a~~ An applicant must submit a complete public charter school proposal ~~must that meets~~ the requirements of Oregon law, Board policy, and regulation, and includes other information required by the district in the application process. ~~Upon request of the Board, the public charter school applicant must furnish in a timely manner any other information the Board deems relevant and necessary to conduct a complete and good faith evaluation of the public charter school proposal.~~

The public charter school employer will be determined with each proposal. If the district is the employer, the terms of the current collective bargaining agreement will be examined to determine which parts of the agreement apply. If the district is not the sponsor of the public charter school, the district shall not be the employer and will not collectively bargain with public charter school employees.

The district will determine if it has any ~~unused vacant or underutilized unused~~ buildings and make a list of such buildings. ~~B~~ Buildings may be made available for public charter school use, subject to Board approval and Board policy. ~~Approved use may be limited to instructional purposes only. Appropriate use fees will be determined by the Board. Public charter school use outside the district's instructional day will be~~

~~subject to Board policy KG – Community Use of District Facilities and accompanying administrative regulation.~~

~~[Public charter school students may, upon request, be allowed to participate in district programs such as physical education, instrumental and vocal music offerings, or other selected options if space and materials are available.¹ Students must adhere to state law, Board policies, regulations, and rules concerning student conduct and discipline.] [Public charter school students shall not be permitted to participate in district curricular programs.²]~~

Public charter school students in grades K-8 may participate in their resident district’s activities that are offered before or after regular school hours. Public charter school students in grades 9-12 may participate in their resident district’s available activities that are sanctioned by the Oregon School Activities Association (OSAA) when the requirements found in Oregon law are met.

The district ~~[will]~~ [will not] provide instructional materials, lesson plans, or curriculum guides for use in a public charter school.

~~The district will [annually [by October 1]] [semiannually [by October 1 and April 1]] [by [December 1]]³, calculate the number of students residing in the district who are enrolled in a virtual public charter school. When the percentage is more than three percent, the district may choose to not approve additional students for enrollment to any virtual public charter school, subject to the requirements in Oregon Administrative Rule (OAR) 581-026-0305(2).¶~~

~~¶~~

~~The district is only required to use data that is reasonably available to the district including but not limited to the following for such calculation:¶~~

~~¶~~

- ~~1. The number of students residing in the district enrolled in the schools within the district;¶~~
- ~~2. The number of students residing in the district enrolled in public charter schools located in the district;¶~~
- ~~3. The number of students residing in the district enrolled in virtual public charter schools;¶~~
- ~~4. The number of home-schooled students who reside in the district and who have registered with the educational service district; and¶~~
- ~~5. The number of students who reside in the district enrolled in private schools located within the school district.¶~~

~~A parent may appeal a decision of a school district to not approve a student for enrollment to a virtual public charter school to the State Board of Education.¶~~

¹ This does not apply to the Oregon law related to OSAA-sanctioned activity participation.

~~² Unless allowed by Oregon law related to OSAA-sanctioned activity participation.¶~~

~~³ [Per OAR 581-026-0305(7)(a) the district must choose annual, semi-annual, or other date used for calculation; dates are provided as a recommendation only.]¶~~

The superintendent will develop administrative regulations ~~for public charter schools to include~~, but not limited to, the proposal process, review, and appeal procedures, ~~and charter agreement provisions~~, and program evaluation, renewal, and termination.

END OF POLICY

Legal Reference(s):

[ORS 327.077](#)

[ORS 327.109](#)

[ORS 332.107](#)

[ORS 338](#)

[ORS 339.141](#)

[ORS 339.147](#)

[ORS 339.450](#)

[ORS 339.460](#)

[OAR 581-026-0005 - 05150710](#)

[OAR 581-026-0700](#)

[OAR 581-026-0710](#)

Every Student Succeeds Act, 20 U.S.C. §§ 6311-6322 (~~2012~~2018).

OSBA Model Sample Policy

The ability of a public charter schools to allow weighted lottery for historically underserved students in admissions by Senate Bill 820 (2015) expired with the 2020-2021 school year. The associated language has been removed from the new version of administrative regulation (AR), LBE-AR - Public Charter Schools.

In the process of reviewing the model sample AR, OSBA has remodeled this AR and associated policies, LBE - Public Charter Schools and LBEA - Resident Student Denial for Virtual Public Charter School Attendance**.

Model sample policy LBE - Public Charter Schools has been revised in this process to update language and remove language found duplicated in policy LBEA - Resident Student Denial for Virtual Public Charter School Attendance**. For school districts that sponsor public charter schools or choose to have policy for when a public charter school makes application for sponsorship, policy LBE and its LBE-AR are highly recommended. Model policy LBEA - Resident Student Denial for Virtual Public Charter School Attendance** is required for all school districts that may deny enrollment of a resident student to a virtual public charter school not sponsored by the district pursuant to OAR 581-026-0305. When updating policy LBE, consider if policy LBEA needs to be adopted alongside to maintain the board's direction on students noticing transfer to a virtual public charter school.

There has been no change in percentage calculations at this time.

Code: LBE-AR

Adopted: NEW

Note: *Content denoted with { } are for information to guide decision making to choose content kept in this administrative regulation for implementation, and should be deleted after final language is selected.*

Public Charter Schools

1. Definitions

- a. "Applicant" means any person or group that develops and submits a written proposal for a public charter school to the district.
- b. "Public charter school" means an elementary or secondary school offering a comprehensive instructional program operating under a written agreement entered into between the district and an applicant.
- c. "Virtual public charter school" means a public charter school that provides online courses, but does not primarily serve students in a physical location as described in Oregon Administrative Rule (OAR) 581-026-0300.
- d. "Remote and necessary school district" means a school district that offers kindergarten through grade 12 and has: (a) an average daily membership (ADM), as defined in Oregon Revised Statute (ORS) 327.006, in the prior fiscal year of less than 110; and (b) a school that is located, by the nearest traveled road, more than 20 miles from the nearest school or from a city with a population of more than 5,000.
- e. "Sponsor" means the district or Board.

2. Proposal Process

- a. ~~¶~~An applicant will issue a written statement of its intent to submit a proposal not less than 30 days prior to the submission date outlined below.~~¶~~
- b. An applicant shall submit a complete proposal for sponsorship of a public charter school by the Board, including items outlined in ORS 338.045,~~¶~~ and any additional requirements as are required in the Board's application for sponsorship,~~¶~~ to the district office {¹}~~¶~~no less than 180 days prior to the proposed starting date of the proposed public charter school~~¶~~ ~~by [October 15]~~ during the hours the district office is open to the public for a start date in a subsequent school year~~¶~~ ~~by [insert district's identified date]]~~. The applicant shall also submit a copy of the same proposal to the State Board of Education.
- c. The district will complete the review process as outlined in Section 3 below.
- d. As part of the proposal, each member of the proposed public charter school's governing body must provide an acknowledgment of understanding of the standards of conduct and the liabilities of a director of a nonprofit organization, as described in ORS Chapter 65, if the public charter school is organized as required by ORS 338.035(2)(a)(B) and (C).

¹ {The date shall be at least 180 days prior to the date that the public charter school would begin operating and give a reasonable period of time for the school district board to complete the approval process and the public charter school to begin operating by the beginning of the desired school year. Choose one of the proposed options or make other edits.}

3. Proposal Review Process

- a. Within 30 business days of receipt of a proposal, the district will notify the applicant as to the completeness of the proposal.
 - (1) If the Board determines the proposal is incomplete, the district will identify the specific elements of the proposal that are not complete and provide the applicant with a reasonable opportunity, as determined by the Board, to complete the proposal.
 - (2) If after given a reasonable opportunity the applicant does not complete the required elements, the Board may disapprove² the proposal.
 - (3) An applicant, that has had a proposal disapproved pursuant to section (2) may appeal the Board's decision to the State Board of Education within 30 days of the disapproval.
 - (4) A good faith disapproval is not a denial for purposes of requesting a review by the State Board of Education under ORS 338.075.
- b. Within 60 days after the receipt of a completed proposal, or a final order issued by the Superintendent of Public Instruction remanding the proposal to the Board for consideration following a decision on an appeal, the Board shall hold a public hearing on the provisions of the public charter school proposal.
- c. The Board must evaluate a proposal in good faith using the following criteria:
 - (1) The demonstrated sustainable support for the proposed charter school by teachers, parents, students and other community members, including comments received at the public hearing;
 - (2) The demonstrated financial stability of the proposed public charter school including the demonstrated ability of the school to have a sound financial management system that is in place at the time the school begins operating and meets requirements of ORS 338.095(1);
 - (3) The capability of the applicant, in terms of support and planning, to provide comprehensive instructional programs;
 - (4) The capability of the applicant, in terms of support and planning, to provide comprehensive instructional programs to students identified as academically low achieving;
 - (5) The adequacy of the information provided as required in the proposal criteria;
 - (6) Whether the value of the public charter school is outweighed by any directly identifiable, significant and adverse impact³ on the quality of the public education of students residing in the district in which the public charter school will be located.
 - (7) Whether there are arrangements for any necessary special education and related services for students with disabilities;

² The term "disapprove" is used for a proposal that is rejected due to being incomplete. See ORS 338.055(1)(c).

³ A determination of whether an impact is directly identifiable, significant and adverse may include, but is not limited to student enrollment, student-teacher ratios, staff with requisite licensure or endorsement, student learning and performance, specialty programs, financial considerations, and maintenance capabilities.

- (9) Whether there are alternative arrangements for students, teachers and other school employees who choose not to attend or who choose not to be employed by the public charter school; and
 - (10) The prior history, if any, of the applicant in operating a public charter school or in providing educational services.
- d. The Board must either approve or deny the proposal within 30 days of the public hearing. Written notice of the Board's action shall be sent to the applicant by the district.
- (1) If approved, the applicant shall also submit a copy of the approval to the State Board of Education.
 - (2) If denied, the notice must include the reasons for the denial with suggested remedial measures. The Board shall provide a reasonable opportunity for the applicant to amend and resubmit the proposal. The Board must either approve or deny the resubmitted proposal within 30 days of receipt. The Board may, with good cause, request an extension in the approval process timelines from the State Board of Education.
- e. If the Board denies the resubmitted proposal, the process ends. An applicant whose resubmitted proposal is not approved by the Board may request a review of that decision to the State Board of Education within 30 days of the disapproval.

4. Terms of the Charter Agreement

- a. Upon the approval of a proposal by the Board, the applicant, in cooperation with the district, must prepare and execute a written charter agreement, subject to Board approval, which shall act as the legal authorization for the establishment of the public charter school.
- b. The charter agreement shall be legally binding and must be in effect for a period of not more than five years but may be renewed by the Board.
- c. The Board and the public charter school may amend a charter agreement through joint agreement.
- d. The agreement shall incorporate the elements of the approved proposal, will address the requirements outlined in OAR 581-026-0100(2) and any additional requirements that may apply to the public charter school including, but not limited to, the following:
 - (1) ^{4} ^{5} ~~Pregnant and parenting students (ORS 336.640);~~
 - (2) ^{6} ~~English language learners (ORS 336.079);~~
 - (3) ^{7} ~~Student conduct (ORS 339.250);~~

⁴ {Many education laws do not directly apply to public charter schools. If the district would like to require a public charter school to follow any of these laws, we recommend that those laws be included here and in the charter agreement. The district can include laws that the public charter school is required to follow for reference.}

⁵ {Will the Board require the public charter school to comply with this statute?}

⁶ {Will the Board require the public charter school to comply with this statute?}

⁷ {Will the Board require the public charter school to comply with this statute? Includes policy requirements, see ORS 339.250.}

- (4) ^{8} {Alcohol and drug abuse policy and plan (ORS 336.222);}
 - (5) ^{9} {Oregon Report Card (ORS 329.115);}
 - (6) {Employment status of public charter school employees pursuant to ORS 338.135;}
 - (7) {Student enrollment, application procedures and whether the public charter school will admit nonresident students and on what basis pursuant to ORS 338.125.¹⁰}
 - (8) {Transportation of students shall comply with ORS 338.145;}
 - (9) {The plan for performance bonding or insuring the public charter school sufficient to protect the public charter school and the district from loss and liability and comply with Oregon law. Documentation shall be submitted prior to agreement approval.}
- e. If the district and the public charter school enter a cooperative agreement with other school districts for the purpose of forming a partnership to provide educational services, then the agreement must be incorporated into the charter of the public charter school.

5. Public Charter School Operation

- a. The public charter school shall operate at all times in accordance with the laws and rules governing public charter school operation in the state of Oregon, including but not limited to ORS Chapter 338 and applicable OAR Chapter 581 Division 22, and the charter agreement.
- b. Upon application by the public charter school, the State Board of Education may grant a waiver of certain public charter school law provisions if the waiver promotes the development of programs by providers, enhances the equitable access by underserved families to the public education of their choice, extends the equitable access to public support by all students or permits high quality programs of unusual cost. This waiver request must specify the reasons the public charter school is seeking the waiver and further requires the public charter school to notify the sponsor if a waiver is being considered.

6. Virtual Public Charter School Operation

In addition to the other requirements for a public charter school, a virtual public charter school must comply with additional requirements pursuant to ORS 338.120.

7. Charter Agreement Review

- a. The public charter school shall report at least annually on the performance of the school and its students to ODE and the district.
- b. The public charter school shall be audited annually in accordance with the Municipal Audit Law. After the audit, the public charter school shall forward a copy of the annual audit to ODE and the following to the sponsoring district:

⁸ {Will the Board require the public charter school to comply with this statute?}

⁹ {Will the Board require the public charter school to comply with this statute and provide the data the district is required to report to ODE?}

¹⁰ Student enrollment shall be voluntary. A public charter school may not limit student enrollment based on ethnicity, national origin, race, religion, disability, sex, sexual orientation, income level, the terms of an individualized education program, proficiency in the English language or athletic ability but may limit admission within a given age group or grade level, and may implement an equitable lottery if applications for enrollment exceed the capacity of a program, class, grade level or building pursuant to ORS 338.125.

- (1) A copy of the annual audit;
 - (2) Any statements from the public charter school that show the results of operations and transactions affecting the financial status of the public charter school during the preceding annual audit period for the school; and
 - (3) A balance sheet containing a summary of the assets and liabilities of the public charter school as of the closing date of the preceding annual audit period for the school.
- c. The district may request at any time an acknowledgment from each member of the public charter school board that the member understands the standards of conduct and liabilities of a director of a nonprofit organization, as those standards and liabilities are described in ORS Chapter 65.
- d. The public charter school shall submit to the district ~~quarterly~~ financial statements that reflect the school's financial operations. The report shall include, but not be limited to, revenues, expenditures, loans and investments.

8. Authorizing Duties

- a. ~~The district shall designate a liaison~~^{11} to the public charter school for ease of communication between the district and the public charter school.
- b. The district shall ensure at all times that both the public charter school and the district are in compliance with the charter agreement, as per ORS 338.065(2).
- c. The district shall conduct:
- (1) A comprehensive annual visit to the public charter school and written evaluation of the charter school's program, which should include an audit of the public charter school's academic, financial, and operational performance.
 - (2) A review of public charter school staff credentials to ensure that public charter school staff are properly licensed and/or registered with TSPC.
 - (3) A collection and review of all deliverables specified in the agreement.
 - (4) A review of data to ensure the public charter school is making progress on reasonable, measurable written goals for academic, financial, and operational performance.
 - (5) A review to ensure the public charter school is providing appropriate services to students who qualify, e.g., English learner supports.

9. Complaints Heard by the Charter School Board

^{12}
~~A final decision reached by the public charter school board for a complaint that alleges a violation of ORS 339.285 - 339.303 or OAR 581-021-0550 - OAR 581-021-0570 (Restraint or Seclusion), ORS 659.850 (Discrimination), ORS 659.852 (Retaliation), or applicable OAR Chapter 581, Division 22 (Division 22 Standards), may be appealed to the Board of the [Parkrose School District~~

¹¹ {This designated staff member may be the superintendent or other designee.}

¹² {The district is strongly encouraged to have a discussion with any sponsored public charter school, about the next step for a complaint – choose one of the presented options. Refer to language chosen in policy AC - Nondiscrimination or its administration regulation and/or KL - Public Complaints or its administrative regulation, if present, and align.}

~~insert full name of district]~~¹³. The complainant may file such appeal with the [superintendent] [Board chair] of the [Parkrose School District~~insert full name of district~~]. A final decision reached by the Board of the [Parkrose School District~~insert full name of district~~] will be the district's final decision and may be appealed to the Oregon Department of Education under OAR 581-002-0003 - 581-002-0005.]

~~OR~~

~~[A final decision reached by the public charter school board for a complaint that alleges a violation of ORS 339.285, 339.303 or OAR 581.021.0550, OAR 581.021.0570 (Restraint or Seclusion), ORS 659.850 (Discrimination), ORS 659.852 (Retaliation), or applicable OAR Chapter 581, Division 22 (Division 22 Standards), is recognized as the final decision regarding this complaint¹⁴ by the Board of [insert full name of district]. A final decision may be appealed to the Oregon Department of Education under OAR 581.002.0003 - 581.002.0005.]~~

10. Charter School Renewal

- a. The first renewal of a charter agreement shall be for the same time period as the initial charter. Subsequent renewals of a charter agreement shall be for a minimum of five years but may not exceed 10 years.
- b. The Board and the public charter school shall follow the timeline listed below, unless a different timeline has been agreed upon by the Board and the public charter school:
 - (1) The public charter school board shall submit a written renewal request to the Board for consideration at least 180 days prior to the expiration of the charter agreement;
 - (2) Within 45 days after receiving a written renewal request from a public charter school, the Board shall hold a public hearing regarding the renewal request;
 - (3) Within 30 days after the public hearing, the Board shall approve the charter renewal or state in writing the reasons for denying charter renewal;
 - (4) If the Board approves the charter renewal, the district and the public charter school shall negotiate a new charter agreement within 90 days unless the district and the public charter school agree to an extension of the time period. Notwithstanding the time period specified in the charter agreement, an expiring charter agreement shall remain in effect until a new charter agreement is negotiated;
 - (5) If the Board does not renew the charter agreement, the public charter school board may address the reasons stated for denial of the renewal and any remedial measures suggested by the district and submit a revised request for renewal to the Board;
 - (6) If the Board does not renew the charter agreement based on the revised request for renewal the public charter school may appeal the Board's decision to the State Board of Education for a review of whether the Board used the process required by Oregon law in denying the charter agreement renewal pursuant to ORS 338.065(6).
 - (7) The Board shall base the charter agreement renewal decision on a good faith evaluation pursuant to ORS 338.065(8) and shall base the renewal evaluation described primarily

¹³ The district Board will hear this appeal as established through ~~[the charter agreement]~~ [Board policy] ~~[resolution]~~.

¹⁴ ~~The public charter school board is given this authority by the district Board as established by [the charter agreement] [Board policy] [resolution].~~

on a review of the public charter school's annual performance reports, annual audit of accounts and annual site visit and review as required by ORS 338.095 and any other information mutually agreed upon by the public charter school board and the Board.

For purposes of this section, the phrase "good faith evaluation" means an evaluation of all criteria required by ORS 338.065 resulting in a conclusion that a reasonable person would come to who is informed of the law and the facts before that person.

11. Charter School Termination

- a. The public charter school may be terminated by the Board for any of the following reasons:
 - (1) Failure to meet the terms of an approved charter agreement or any requirement of ORS Chapter 338 unless waived by the State Board of Education.
 - (2) Failure to meet the requirements for student performance as outlined in the charter agreement.
 - (3) Failure to correct a violation of federal or state law that is described in ORS 338.115.
 - (4) Failure to maintain insurance as described in the charter.
 - (5) Failure to maintain financial stability.
 - (6) Failure to maintain, for one or more consecutive years, a sound financial management system described in the proposal submitted under ORS 338.045 and incorporated into the written charter under ORS 338.065.
 - (7) Failure to maintain the health and safety of the students.
- b. If a public charter school is terminated by the Board for any reason listed in sections a.(1) through a.(6) above, the following shall occur:
 - (1) The Board shall give the public charter school board, at least 60 days prior to the proposed effective date of termination, written notification of its decision which shall state the grounds for termination.
 - (2) If the grounds for termination include failure to maintain financial stability or failure to maintain a sound financial management system, the Board and the public charter school may agree to develop a plan to correct deficiencies. The plan to correct deficiencies will follow a process outlined in ORS 338.105.
 - (3) The public charter school may request a hearing with the Board in relation to a termination or a plan to correct deficiencies. The request must be made in writing and delivered to the business address of the district.
 - (4) Following a hearing, a decision reached by the Board to terminate may be appealed by the public charter school to the State Board of Education.
- c. The Board may terminate a charter immediately and close the public charter school for endangering the health or safety of the students enrolled in the public charter school under ORS 338.105(4):
 - (1) A public charter school board may request, in writing and delivered to the business address of the district, a hearing with the Board.
 - (2) Within 10 days of receiving the request for a hearing, the Board must hold a hearing on the termination.

- (3) If the Board acts to terminate the charter following the hearing, the public charter school may appeal the decision reached by the Board to the State Board of Education.
- (4) The public charter school will remain closed during the appeal process at the discretion of the Board unless the State Board of Education orders the Board not to terminate and to re-open the public charter school.

- d. If the charter agreement is terminated or a public charter school is closed or dissolved by the governing body of the public charter school, it shall be done only at the end of a semester and the public charter school board shall notify the district at least 180 days' prior to the proposed effective date of the termination, closure or dissolution. [Such notice must be made in writing and be delivered to the business address of the district.]
- e. If a charter agreement is terminated or a public charter school is dissolved, assets that were obtained with grant funds will be dispersed according to the terms of the grant. If the grant is absent any reference to ownership or distribution of assets of a terminated, closed or dissolved public charter school, all assets will be given to the State Board of Education for disposal.

OSBA Model Sample Policy

The ability of a public charter schools to allow weighted lottery for historically underserved students in admissions by Senate Bill 820 (2015) expired with the 2020-2021 school year. The associated language has been removed from the new version of administrative regulation (AR), LBE-AR - Public Charter Schools.

In the process of reviewing the model sample AR, OSBA has remodeled this AR and associated policies, LBE - Public Charter Schools and LBEA - Resident Student Denial for Virtual Public Charter School Attendance**.

Model sample policy LBE - Public Charter Schools has been revised in this process to update language and remove language found duplicated in policy LBEA - Resident Student Denial for Virtual Public Charter School Attendance**. For school districts that sponsor public charter schools or choose to have policy for when a public charter school makes application for sponsorship, policy LBE and its LBE-AR are highly recommended. Model policy LBEA - Resident Student Denial for Virtual Public Charter School Attendance** is required for all school districts that may deny enrollment of a resident student to a virtual public charter school not sponsored by the district pursuant to OAR 581-026-0305. When updating policy LBE, consider if policy LBEA needs to be adopted alongside to maintain the board’s direction on students noticing transfer to a virtual public charter school.

There has been no change in percentage calculations at this time.

Code: LBEA
Adopted: 5.26.15
Revised:

Resident Student Denial for Virtual Public Charter School Attendance**

{This policy is required if the district plans to deny a ~~student the right~~ **parent notice of enrollment** to attend a virtual public charter school. ~~Before adopting, first verify if the district has this language already in policy LBE.~~}

The district will ~~{ } {annually, [by October 1]} {semiannually, [by October 1 and April 1]} [by [December 1]]~~, calculate the percentage of the number of students residing in the district, who are enrolled in a virtual public charter school not sponsored by the district. When the established percentage is more than three percent, the district will not approve additional students enrollment to a virtual public charter school, subject to the requirements in Oregon Administrative Rule (OAR) 581-026-0305(2).

The district may send a notice of approval or disapproval to a parent² of a student who has sent a notice to the district of intent to enroll the student in a virtual public charter school not sponsored by the district (See OAR 581-026-0305(3)). **The district may respond with an approval or disapproval to a parent within [five] [eight] business days { } of receipt of the notice from the parent.**

~~¹ {Per OAR 581-026-0305(7)(a) the district must choose annual, semi-annual or other date used for calculation, dates are provided as a recommendation only.}¶~~

² “Parent” means parent, legal guardian or person in “parental relationship” as defined in Oregon Revised Statute (ORS) 339.133.

³ **{If a parent does not receive a notice of approval or disapproval from the district within 14 days of sending the notice of intent to enroll to the district, the student shall be deemed approved for enrollment by the district. }**

The district is only required to use data that is reasonably available to the district, including but not limited to the following for such calculation:

1. The number of students residing in the district enrolled in the schools within the district;
2. The number of students residing in the district enrolled in public charter schools located in the district;
3. The number of students residing in the district enrolled in virtual public charter schools;
4. The number of home-schooled students who reside in the district and who have registered with the educational service district; and
5. The number of students who reside in the district enrolled in private schools located within the school district.

A parent may appeal a decision of a district to not approve a student enrollment to a virtual public charter school to the State Board of Education under OAR 581-026-0310.

END OF POLICY

Legal Reference(s):

[ORS 332.107](#)

[ORS 338.125](#)

~~[OAR 581-002-0040](#)~~

[OAR 581-026-0305](#)

[OAR 581-026-0310](#)