

# Southern Oregon ESD

Code: JB  
Adopted: 4/16/03  
Orig. Code: 5100

## Equal Educational Opportunity[\*\*]

Every student of the ESD will be given equal educational opportunities regardless of age, sex, sexual orientation, gender identity, race<sup>1</sup>, religion, color, national origin, disability, parental status, familial status, marital status, linguistic background, culture, socioeconomic status, capability or geographic location.

No student will be excluded from participating in, denied the benefits of, or subjected to discrimination under any program or service conducted by the ESD or denied access to facilities in the ESD.

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

All reports, complaints or information will be investigated.

~~[The ESD will communicate the availability of policy and available complaint procedures to students and their parents through available ESD communication systems[,] [and] [handbooks] [and will be published to the ESD website and made available at the ESD office during regular business hours].]~~

A student of the ESD may not be subjected to retaliation by the ESD 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 334.125](#)  
[ORS 336.086](#)  
[ORS 659.850](#)

[ORS 659.852](#)  
[ORS 659A.001](#)  
[ORS 659A.003](#)  
[ORS 659A.006](#)  
[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 (2018); 28 C.F.R. §§ 42.101-42.106 (2019).

Rehabilitation Act of 1973, 29 U.S.C. §§ 791, 793-794 (2018) ; 34 C.F.R. Part 104 (2019).

Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1683, 1701, 1703-1705 (2018); Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 34 C.F.R. Part 106 (2020).

Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101-12213 (2018); 29 C.F.R. Part 1630 (2019); 28 C.F.R. Part 35 (2019).

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

<sup>1</sup> Race also includes physical characteristics that are historically associated with race, including but not limited to natural hair, hair texture, hair type and protective hairstyles as defined by ORS 659A.001 (as amended by House Bill 2935 (2021)).



# Southern Oregon ESD

Code:

JBA/GBN

Adopted:

## Sexual Harassment

(Version 2)

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

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

The ESD processes complaints<sup>{1}</sup> or reports of sexual harassment under Oregon Revised Statute (ORS) 342.700 et. al. and federal Title IX laws found in Title 34 C.F.R. Part 106. Individual complaints may require both of these procedures, and may involve additional complaint procedures.

### General Procedures

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

### OREGON DEFINITION AND PROCEDURES

#### Oregon Definition

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

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<sup>1</sup> {Some ESDs choose not to use the terms “complaint” and “complainant” because they feel the stigma associated with the terms discourage victims from reporting conduct. The terms used in this policy are consistent with those included in the law. If the ESD chooses to change these terms, new terms must be consistent and clear. Note, “complainant” is defined under federal law.}

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

<sup>3</sup> “Third party” means a person who is not a student or a school or ESD staff member and who is: 1) on or immediately adjacent to school grounds or ESD property; 2) at a school-sponsored activity or program; or 3) off school grounds or ESD property if a

1. A demand or request for sexual favors in exchange for benefits;
2. Unwelcome conduct of a sexual nature that is physical, verbal, or nonverbal and that:
  - a. Interferes with a student's educational activity or program;
  - b. Interferes with a school or ESD staff member's ability to perform their job; or
  - c. Creates an intimidating, offensive, or hostile environment.
3. Assault when sexual contact occurs without consent<sup>4</sup>.<sup>{5}</sup>

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

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

### Oregon Procedures

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

<sup>{6}</sup> [Name], [position] at [phone] or [email] Ryan Swearingen, Chief Human Resources Officer at 541-776-8590 x1104

[This] [These] individual[s] [is] [are] responsible for accepting and managing complaints of sexual harassment. Persons wishing to report should contact them using the above information. [This person is also designated as the Title IX coordinator.<sup>{7}</sup>] See JBA/GBN-AR(1) - Sexual Harassment Complaint Procedure.

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student or a school or ESD staff member acts toward the person in a manner that creates a hostile environment for the person while on school or ESD property, or at a school- or ESD-sponsored activity.

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

<sup>5</sup> {The statutory definition (ORS 342.704) for sexual harassment includes separate definitions with slightly different language for students, staff members and third parties. The language used in this policy comes from OAR 581-021-0038(1). If the ESD would like to include the full statutory definition, it can do so.}

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

<sup>7</sup> {This must be communicated elsewhere, but it is a good reason to specify it here as well.}

## Response

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

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

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

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

## Investigation

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

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

The ESD will use a reasonable standard when determining whether a hostile environment exists. A hostile environment exists if a reasonable person with similar characteristics and under similar circumstances would consider the conduct to be so severe as to create a hostile environment.

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

1. [Discipline of staff and students engaging in sexual harassment;
2. Removal of third parties engaged in sexual harassment;

3. Additional supervision in activities;
4. Additional controls for ESD electronic systems;
5. Trainings and education for staff and students; and
6. Increased notifications regarding ESD procedures and resources.]

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

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

### **No Retaliation**

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

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

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

### **Notice**

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

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

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

1. Name and contact information for all person designated by the ESD to receive complaints;
2. The rights of the person that the notification is going to;
3. Information about the internal complaint processes available through the school or ESD that the person who filed the complaint may pursue, including the person designated for the school or ESD for receiving complaints and any timelines;
4. Notice that civil and criminal remedies that are not provided by the school or ESD may be available to the person through the legal system and that those remedies may be subject to statutes of limitation;
5. Information about services available to the student or staff member through the school or ESD, including any counseling services, nursing services or peer advising;
6. Information about the privacy rights of the person and legally recognized exceptions to those rights for internal complaint processes and services available through the school or ESD;
7. Information about, and contact information for, services and resources that are available to the person, including but not limited to:
  - a. For the reporting person, state and community-based resources for persons who have experienced sexual harassment; or
  - b. For the reported persons, information about and contact information for state and community-based mental health services;
8. Notice that students who report about possible prohibited conduct and students who participate in an investigation under this policy may not be disciplined for violations of the ESD's drug and alcohol policies that occurred in connection with the reported prohibited conduct and that were discovered as a result of a prohibited conduct report or investigation unless the student gave another person alcohol

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

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

or drugs without the person's knowledge and with the intent of causing the person to become incapacitated and vulnerable to the prohibited conduct; and

9. Prohibition of retaliation.

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

The notice must:

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

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

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

**FEDERAL DEFINITION AND PROCEDURES**

**Federal Definition**

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

1. An employee of the ESD conditioning the provision of an aid, benefit, or service of the ESD on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the ESD's education program or activity<sup>10</sup>;
3. "Sexual assault": an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation;
4. "Dating violence": violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship and the frequency of interaction between the persons involved in the relationship;
5. "Domestic violence": felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or

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



intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction; or

6. "Stalking": engaging in a course of conduct directed at a specific person that would cause a reasonable person fear for the person's own safety or the safety of others, or suffer substantial emotional distress.

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

## Federal Procedures

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

## Reporting

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

The Chief Human Resources Officer is designated as the Title IX coordinator [and can be contacted at [541-776-8590 x1104]]. The Title IX coordinator will coordinate the ESD's efforts to comply with its responsibilities related to this AR. The ESD prominently will display the contact information for the Title IX coordinator on the ESD website and in each handbook.<sup>{11}</sup>

## Response

The ESD will promptly respond to information, allegations or reports of sexual harassment when there is actual knowledge of such harassment, even if a formal complaint has not been filed.<sup>12</sup> The ESD shall treat complainants and respondents equitably by providing supportive measures<sup>13</sup> to the complainant and by

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

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

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

following a grievance procedure<sup>14</sup> prior to imposing any disciplinary sanctions or other actions that are not supportive measures against a respondent. The Title IX coordinator is responsible for coordinating the effective implementation of supportive measures.

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

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

### **Notice**

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

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

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

### **No Retaliation**

Neither the ESD or any person may retaliate<sup>18</sup> against an individual for reporting, testifying, providing evidence, being a complainant, otherwise participating or refusing to participate in any investigation or

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

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

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

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

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

process in accordance with this procedure. The ESD must keep confidential the identity of parties and participating persons, except as disclosure is allowed under Family Educational Rights and Privacy Act (FERPA), as required by law, or to carry out the proceedings herein. Complaints of retaliation may be filed using these procedures.

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

### **Publication**

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

END OF POLICY

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

[ORS 243.706](#)  
[ORS 334.125](#)  
[ORS 342.700](#)  
[ORS 342.704](#)  
[ORS 342.708](#)

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

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

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

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

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

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

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

# Southern Oregon ESD

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

## Sexual Harassment Complaint Procedure

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

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

{<sup>2</sup>} Chief Human Resource Officer at 547-776-8590 x1104.

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

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

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

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

**Step 3** If a complainant is not satisfied with the decision at Step 2, the complainant may submit a written appeal to the Board. Such appeal must be filed within [10] working days after receipt

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

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

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of the Step 2 decision. The Board will review the decision of the superintendent [or designee] in a public meeting to determine what action is appropriate. The Board may use executive session if the subject matter qualifies under Oregon law. Appropriate action may include, but is not limited to, holding a hearing, requesting additional information, and adopting the superintendent's [or designee's] decision. All parties involved, including the school administration, may be asked to attend a hearing for the purposes of making further explanations and clarifying the issues. The Board shall provide a written decision to the complainant within [30] working days following receipt of the appeal.

If the Board chooses not to hear the complaint, the superintendent's [or designee's] decision in Step 2 is final<sup>3</sup>].

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

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

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

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

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<sup>3</sup> [If the Board chooses to accept the superintendent's decision as the ESD's final decision on the complaint, the superintendent's written decision must meet the requirements of OAR 581-022-2370(4)(b).]

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

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

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

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

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

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

**SEXUAL HARASSMENT COMPLAINT FORM**

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

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

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

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

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

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

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

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

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

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

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

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

**WITNESS DISCLOSURE FORM**

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

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

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

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

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

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

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



# Southern Oregon ESD

Code:

JBA/GBN-AR(2)

Adopted:

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

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

### Additional Definitions

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

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

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

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

### Formal Complaint Procedures

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

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

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

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

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

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

1. Notice of the ESD's grievance process, including any informal resolution process.
2. Notice of the allegations of sexual harassment potentially constituting sexual harassment, including sufficient details<sup>6</sup> known at the time and with sufficient time to prepare a response before any initial interview.
3. That the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility be made at the conclusion of the grievance process.
4. That the parties may have an advisor of their choice, who may be, but is not required to be, an attorney.
5. The parties may inspect and review evidence.
6. A reference to any provision in the ESD's code of conduct<sup>7</sup> that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

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

### **Investigation**

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

1. Include objective evaluation of all relevant evidence, including inculpatory and exculpatory evidence.
2. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the ESD and not on the parties.<sup>8</sup>
3. Provide an equal opportunity for the parties to present witnesses, and other inculpatory and exculpatory evidence.
4. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
5. Provide the parties with the same opportunities to have other present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by

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

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

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

the advisor of their choice.<sup>9</sup> The ESD may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.

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

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

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

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

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

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

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

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

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

### **Determination of Responsibility**

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

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

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

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

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

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

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

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

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## Remedies

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

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

1. [Discipline up to and including suspension and expulsion;
2. Removal from various activities, committees, extra-curricular, positions, etc.
3. Disqualification for awards and honors;
4. Discipline up to and including termination, in accordance with laws, agreements, contracts, handbooks, etc. ].<sup>15</sup>

Other remedies may include:

1. [Educational programming]

## Dismissal of a Formal Complaint

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

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

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

1. A complainant notifies the Title IX Coordinator in writing that the complaint would like to withdraw the formal complaint or any allegations therein;
7. The respondent is no longer enrolled or employed by the ESD; or

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

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

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

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

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

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

### **Consolidation of Complaints**

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

### **Informal Resolution**

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

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

### **Appeals**

Either party may file an appeal from a determination regarding responsibility or from a dismissal of a formal complaint, within 15 days of the decision, on the following bases:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; or

3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.
4. [Additional bases may be allowed, if made available equally to both parties.]

When an appeal is filed, the ESD must:

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

### **Timelines**

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

1. General grievance process (from receipt of formal complaint to determination of responsibility: 90 days;
2. Appeals (from receipt of appeal): 60 days;
3. Informal resolution process: 60 days.

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

### **Records**

Records will be created and maintained in accordance with the requirements in 34 CFR 106.45(a)(10).<sup>18</sup>

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

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

- Supportive measures, or reasons why the response was not clearly unreasonable under the circumstances;
- Basis for the conclusion that the ESD's response was not deliberately indifferent; and



## Training

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

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

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

Materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes, must promote impartial investigations and adjudications of formal complaints of sexual harassment and must be made publicly available on the ESD's website.<sup>{19}</sup>

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- What measures were taken to restore or preserve equal access to the ESD's educational program or activity. (Title 34 C.F.R. § 106.45(a)(10)(ii))

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

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

# Southern Oregon ESD

Code: JBB  
Adopted: 5/20/20  
Orig. Code(s): 5920

## Educational Equity

Southern Oregon Education Service District is committed to equity and the success of each and every student. This commitment means we focus on attaining student outcomes that are not predicted by diversity such as race, ethnicity, economic status, mobility, language, country of origin, gender expression, sexual orientation, or disability.

Equity in education ensures inclusion and centers on social justice. Equity is not used interchangeably with principles of equality. The principle of equity goes beyond formal equality where all persons are treated the same. Instead, equity fosters an inclusive and barrier-free environment in which everyone will fully benefit.

The district will apply this principle of equity to all policies, programs, operations, practices and resource allocations where possible. All students will have access and opportunity to a high-quality education.

SOESD commits to the goals of:

1. Being an antiracist and multicultural organization.
2. Identifying and counteracting biased practices that perpetuate achievement disparities and lead to disproportionate levels of student success.
3. Using data, disaggregated by race, ethnicity, language, special education, gender, sexual orientation, socioeconomic background and mobility to inform district decision-making.
4. Incorporating the voice, culture and perspectives of students, staff, families and communities that reflect demographics to support and enhance student success.
5. Ensuring special education for students with disabilities is culturally sustaining and considers race and language.
6. Actively recruiting, hiring, and retaining qualified staff at all organizational levels that reflect student demographics.
7. Supporting employees to engage in culturally responsive practices and delivery of quality instruction and service.

END OF POLICY

### Legal Reference(s):

[ORS 174.100](#)  
[ORS 332.075](#)

[ORS 334.125](#)  
[ORS 342.437 - 342.44](#)

# Southern Oregon ESD

Code: JFC  
Adopted: 4/16/08  
Orig. Code(s): 5300

## Student Conduct\*\*

The Board expects student conduct to contribute to a productive learning climate. Students shall comply with the ESD's written rules, pursue the prescribed course of study, submit to the lawful authority of ESD staff and conduct themselves in an orderly manner at school during the school day or during ESD-sponsored programs and activities.

Careful attention shall be given to procedures and methods whereby fairness and consistency without bias in discipline shall be assured each student. The objectives of disciplining any student must be to help the student develop a positive attitude toward self-discipline, realize the responsibility of one's actions and maintain a productive learning environment. All staff members have responsibility for consistency in establishing and maintaining an appropriate behavioral atmosphere.

A student handbook, code of conduct or other document shall be developed by the superintendent[, in cooperation with staff,] and will be made available and distributed to parents, students and employees outlining student conduct expectations and possible disciplinary actions, including consequences of disorderly conduct and enforced.

Students in violation of Board policy, administrative regulation and/or code of conduct provisions will be subject to discipline up to and including expulsion. [Students are subject to discipline for conduct while traveling to and from school, at the bus stop, at school-sponsored events and at other schools operated by the ESD, and while off campus whenever such conduct causes substantial and material disruption of the educational environment or the invasion of the rights of others.] Additionally, students may be denied participation in ESD-sponsored extracurricular programs and activities. Titles and/or privileges granted to students may also be denied or revoked. A referral to law enforcement may also be made.

Students are prohibited from making knowingly false statements or knowingly submitting false information in bad faith as part of a complaint or report, or associated with an investigation into misconduct.<sup>1</sup>

END OF POLICY

### Legal Reference(s):

[ORS 334.125\(7\)](#)  
[ORS 339.240](#)

[ORS 339.250](#)  
[ORS 659.850](#)

[OAR 581-021-0050 - 0075](#)  
[OAR 581-024-0240](#)

<sup>1</sup> The ESD is prohibited from retaliating against any student "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." ORS 659.852.

Nondiscrimination on the Bases of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 34 C.F.R. Part 106 (2020).  
Tinker v. Des Moines Sch. Dist., 393 U.S. 503 (1969).  
Hazelwood Sch. District v. Kuhlmeier, 484 U.S. 260 (1988).  
Bethel Sch. Dist. v. Fraser, 478 U.S. 675 (1986).  
Shorb v. Grotting and Powers Sch. Dist., Case No. 00CV-0255 (Coos County Circuit Ct.) (2000).  
Ferguson v. Phoenix Talent Sch. Dist. #4, 172 Or. App. 389 (2001).  
Morse v. Frederick, 551 U.S. 393, 127 S. Ct. 2618 (2007).  
C.R. v. Eugene S.D. 4J, No. 12-1042, U.S. District Court of OR (2013).

# Southern Oregon ESD

Code:  
Adopted:

JFCG/JFCH/JFCI

## Use of Tobacco Products, Alcohol, Drugs or Inhalant Delivery Systems\*\*

Student [substance abuse,] possession, use, distribution or sale of tobacco products, inhalant delivery systems, alcohol or unlawful drugs, including drug paraphernalia [or any substance purported to be an unlawful drug], on or near any ESD grounds, including parking lots, or while participating in ESD-sponsored programs and activities is prohibited and will result in disciplinary action. If possession or use occurred on ESD grounds or while participating in ESD-sponsored programs and activities, students will be subject to discipline up to and including expulsion. If possession or use occurred near ESD grounds, disciplinary action [will] [may] include removal from any or all extracurricular activities and forfeiture of any school honors or privileges. A student [may] [shall] be referred to law enforcement officials. Parents will be notified.

For the purpose of this policy, “tobacco products” is defined to include, but not limited to, any lighted or unlighted cigarette, cigar, pipe, bidi, clove cigarette, and any other smoking product, spit tobacco, also known as smokeless, dip, chew or snuff in any form. This does not include products that are USFDA-approved for sale as a tobacco cessation product or for any other therapeutic purpose, if marketed and sold solely for the approved purpose.

For the purpose of this policy, “inhalant delivery system” means a device that can be used to deliver nicotine or cannabinoids in the form of a vapor or aerosol to a person inhaling from the device; or a component of a device or a substance in any form sold for the purpose of being vaporized or aerosolized by a device, whether the component or substance is sold or not sold separately. This does not include products that are USFDA-approved for sale as a tobacco cessation product or for any other therapeutic purpose, if marketed and sold solely for the approved purpose.

[Clothing, bags, hats and other personal items used to display, promote or advertise tobacco products, inhalant delivery systems, alcohol or unlawful drugs are prohibited on all ESD grounds, including parking lots, at ESD-sponsored activities and in ESD vehicles.]

Any person under age 21 possessing a tobacco product or inhalant delivery system on ESD property, in an ESD facility or while attending an ESD-sponsored activity is in violation of state law and is subject to a court-imposed fine.

Any person who distributes, sells or allows to be sold, tobacco products or any substance sold for the purpose of being smoked, vaporized or aerosolized, in any form, a tobacco-burning or inhalant delivery system device, to a person under 21 years of age is in violation of state law and is subject to a court-imposed fine.

An “unlawful drug” is any drug as defined by the Controlled Substances Act including, but not limited to, marijuana, cocaine, opiates, amphetamines and phencyclidine (PCP). As used in this policy, unlawful drug

also means possession, use, sale or supply of prescription and nonprescription drugs in violation of Board policy and any accompanying administrative regulation.

Unlawful delivery of a controlled substance to a student or minor within 1,000 feet of ESD property is a Class A felony, as provided by Oregon Revised Statute (ORS) 475.904.

END OF POLICY

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**Legal Reference(s):**

[ORS 153.018](#)

[ORS 161.605](#)

[ORS 161.625](#)

[ORS 163.575](#)

[ORS 334.125\(7\)](#)

[ORS 336.067](#)

[ORS 336.222](#)

[ORS 336.227](#)

[ORS 339.240](#)

[ORS 339.250](#)

[ORS 339.883](#)

[ORS 431A.175](#)

[ORS 431A.178](#)

[ORS 433.835 to -433.990](#)

[ORS Chapter 475](#)

[OAR 581-021-0050 to -0075](#)

[OAR 581-021-0110](#)

[OAR 581-022-2045](#)

[OAR 581-053-0230\(9\)\(s\)](#)

[OAR 581-053-0330\(1\)\(m\)-\(o\)](#)

[OAR 581-053-0430\(12\)-\(14\)](#)

[OAR 581-053-0531\(11\)-\(13\)](#)

[OAR 581-053-0630](#)

[OAR 584-020-0040](#)

SB 754 (2017)

Controlled Substances Act, 21 U.S.C. § 812 (2012); Schedules of Controlled Substances, 21 C.F.R. §§ 1308.11-1308.15 (2017).  
Pro-Children Act of 1994, 20 U.S.C. §§ 6081-6084 (2012).

Safe and Drug-Free Schools and Communities Act, 20 U.S.C. §§ 7101-7117 (2012).

# Southern Oregon ESD

Code:  
Adopted:

JFCJ

## Weapons\*\*

Students shall not bring, possess, conceal or use a weapon on or at any ESD property under the jurisdiction of the ESD, any activities under the jurisdiction of the ESD or any interscholastic activities administered by a voluntary organization.

In accordance with the federal Gun-Free School Zone Act, possession or discharge of a firearm in a school zone is prohibited. A “school zone,” as defined by federal law means in or on school grounds or within 1,000 feet of school grounds.

~~[The superintendent may authorize persons to possess weapons for courses, programs and activities approved by the ESD and conducted on ESD property [including, but not limited to, hunter safety courses, weapons-related vocational courses or weapons-related sports]. The ESD will post a notice at any site or premise off ESD grounds that at the time is being used exclusively for a school program or activity. The notice shall identify the ESD as the sponsor, the activity as a school function and that the possession of firearms or dangerous weapons in or on the site or premises is prohibited under Oregon Revised Statute (ORS) 166.370.]~~

For purposes of this policy, and as defined by state and federal law, weapon includes:

1. A “dangerous weapon” means any weapon, device, instrument, material or substance, which under the circumstances in which it is used, attempted to be used or threatened to be used is readily capable of causing death or serious physical injury;
2. A “deadly weapon” means any instrument, article or substance specifically designed for and presently capable of causing death or serious physical injury;
3. A “firearm” means any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive, frame or receiver of any such weapon, any firearm muffler or silencer or any destructive device;
4. A “destructive device” includes but is not limited to any explosive, incendiary or poison gas component or any combination of parts either designed or intended for use in converting any device into any destructive device or from which a destructive device may be readily assembled. A destructive device does not include any device which is designed primarily or redesigned primarily for use as a signaling, pyrotechnic, line-throwing, safety or similar device.

[Weapons may also include, but are not limited to, knives, metal knuckles, straight razors, noxious, irritating or poisonous gases, poisons, unlawful drugs or other items fashioned with the intent to use, sell, harm, threaten or harass students, staff members, parents and community members.]

[Replicas of weapons[, fireworks] [and pocket knives] are also prohibited by Board policy. Exceptions to the ESD’s replicas prohibition may be granted only with prior [program supervisor] approval for certain curriculum or ESD-related activities. Violations will result in appropriate discipline.]

Prohibited weapons[, replicas of weapons[, fireworks] [and pocket knives]] are subject to seizure or forfeiture.

In accordance with Oregon law, any ESD employee who has reasonable cause to believe a student or other person, while in a school, is or within the previous 120 days has been in possession of a firearm or destructive device, as defined by this policy, shall immediately report such violation to an administrator or designee or law enforcement. [Any ESD employee who has reasonable cause to believe that a person, while in a school, is or has been in possession of a firearm or destructive device more than 120 days previously, may report to law enforcement.] Employees who report directly to law enforcement shall also immediately inform an administrator.

Administrators shall promptly notify the appropriate law enforcement agency of staff reports received and at any other time there is reasonable cause to believe violations for firearms or destructive devices have occurred or that a student has been expelled for bringing, possessing, concealing or using a dangerous or deadly weapon, firearm or destructive device. Parents will be notified of all conduct by their student that violates this policy.

A person making a report as described above who has reasonable grounds for making the report is immune from liability, civil or criminal, that might otherwise be incurred or imposed with respect to the making or content of the report. The identity of a person participating in a good faith report as described above may not be disclosed except when allowed by law.

Employees shall promptly report all other conduct prohibited by this policy to an administrator.

Students determined to have brought, possessed, concealed or used a firearm, as defined in policy, in violation of this policy or state law will be referred to the student's component district and expelled for a period of not less than one year. The component district superintendent may, on a case-by-case basis, modify this expulsion requirement. The component district superintendent may propose alternative programs of instruction or instruction combined with counseling that are appropriate and accessible to the student, and shall provide such information in writing to the student and the parent in accordance with law<sup>1</sup>.

Appropriate disciplinary and/or legal action will be taken against students or others who assist in activity prohibited by this policy.

Special education students shall be disciplined in accordance with federal law and Board policy JGDA – Discipline of Students with Disabilities and accompanying administrative regulation.

“Gun-Free School Zone” signs [will] [may] be posted in cooperation with city and/or county officials as appropriate. Violations, unless otherwise excepted by law or this policy, shall be reported to the appropriate law enforcement agency.

The superintendent will annually report the name of each school and the number of students from each listed schools expelled for bringing, possessing, concealing or using a firearm to the Oregon Department of Education.

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<sup>1</sup> At least once every six months or at any time the information changes because of the availability of new programs.



## END OF POLICY

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### Legal Reference(s):

[ORS 161.605](#)

[ORS 166.210 – 166.370](#)

[ORS 166.382](#)

[ORS 334.125\(7\)](#)

[ORS 339.115](#)

[ORS 339.240](#)

[ORS 339.250](#)

[ORS 339.315](#)

[OAR 581-021-0050 – 021-0075](#)

[OAR 581-053-0010](#)

[OAR 581-053-0230\(9\)\(k\)](#)

[OAR 581-053-0330\(1\)\(r\)](#)

[OAR 581-053-0430\(17\)](#)

[OAR 581-053-0531\(16\)](#)

Gun-Free School Zones Act of 1990, 18 U.S.C. §§ 921(a)(25)-(26), 922(q) (2018).

Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400-1419 (2018).

Youth Handgun Safety Act, 18 U.S.C. §§ 922(x), 924(a)(6) (2018).

Safe and Drug-Free Schools and Communities Act, 20 U.S.C. §§ 7101, 7111-7121 (2018).

# Southern Oregon ESD

Code:

JFCM

Adopted:

## Threats of Violence\*\*

{If the ESD does not operate a school, review the bracketed language that may be relevant for practice and consider if needed.}

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 ESD property, shall not be tolerated on ESD property or at activities under the jurisdiction of the ESD.

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 ESD. Staff shall immediately notify an administrator of any threat, threatening behavior or act of violence 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] [program administrator] [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 ESD 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 [program administrator] [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 ESD property;
2. Placing the student in a setting where the behavior will receive immediate attention from a program administrator, [principal,] 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 setting<sup>[1]</sup>.]

[The ESD 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 ESD.]

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<sup>1</sup> [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 [<sup>2</sup>superintendent or designee] [program administrator] ~~[principal]~~ shall attempt to notify:

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 ESD employee whose name appears on a targeted list at school threatening violence or harm to the ESD employee [and when threats of violence or harm are made by a student or others at school].]

[The [superintendent or designee] [program administrator] ~~[principal]~~ shall attempt to notify the above persons 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] [program administrator] ~~[principal]~~ shall issue a written follow-up notification within 24 hours of discovery of a targeted list or learning of a threat.]

The ESD administration 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, the [program administrator] [principal] may provide such information to other school officials, including teachers, within the ESD or component districts who have a legitimate educational interest in the student(s) consistent with state and federal education records laws and ESD policies.

The ESD 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 ESD's proactive safety efforts, the superintendent or designee 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):

[ORS 161.015](#)  
[ORS 166.210 - 166.370](#)  
[ORS 334.125\(7\)](#)  
[ORS 339.115](#)  
[ORS 339.240](#)  
[ORS 339.250](#)

[ORS 339.260](#)  
[ORS 339.327](#)  
  
[OAR 581-021-0050 - 021-0075](#)  
[OAR 581-053-0010](#)  
[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) (2018).  
Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400-1419 (2018).  
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).

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<sup>2</sup> {Statute says "superintendent or superintendent's designee" so allows designation of another, e.g., program administrator, principal, depending on practice in the ESD.}

# Southern Oregon ESD

Code:  
Adopted:

JFG

## Student Searches\*\*

The Board seeks to ensure a learning environment which protects the health, safety and welfare of students and staff. To assist the Board in attaining these goals, ESD officials may, subject to the requirements below, search a student's person and property, including property assigned by the ESD for the student's use. Such searches may be conducted at any time on ESD property or when the student is under the jurisdiction of the ESD at ESD-sponsored activities.

All student searches conducted by the ESD shall be subject to the following requirements:

1. The ESD official shall have individualized, "reasonable suspicion" based upon specific and articulated facts to believe that the student personally poses or is in possession of some item that poses an immediate risk or serious harm to the student, school officials and/or others at the school;
2. The search shall be "reasonable in scope." That is, the measures used are reasonably related to the objectives of the search, the unique features of the official's responsibilities and the area(s) which could contain the item(s) sought and not excessively intrusive in light of the age, sex, maturity of the student and nature of the infraction.

Routine inspections of ESD property assigned to students may be conducted at any time.

Use of drug-detection dogs and metal detectors, or similar detection devices, may be used only on the express authorization of the ~~Board~~ [superintendent].

ESD officials may seize any item which is evidence of a violation of law, Board policy, administrative regulation or rule, or which the possession or use of is prohibited by such law, policy, regulation or rule.

Students may be searched by law enforcement officials on ESD property or when the student is under the jurisdiction of the ESD. Law enforcement searches ordinarily shall be based upon a warrant. ~~ESD officials will attempt to notify the student's parent(s) in advance and will be present for all such searches, whenever possible.~~

The superintendent shall develop an administrative regulation for implementing this policy in a manner which protects students' rights and provides a safe learning environment without unreasonable interference. Provisions for staff, student and parent notice of the Board's policy and accompanying regulation shall be included.

END OF POLICY

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### Legal Reference(s):

[ORS 334.125](#)

[OAR 581-021-0050 to -0075](#)

New Jersey v. T.L.O., 469 U.S. 325 (1985).  
State ex. rel. Juv. Dept. v. M.A.D., 233 P3d. 437, 348 Or. 381 (2010).  
State v. B.A.H., 263 P3d. 1046, 245 Or. App. 203 (2011).  
State v. A.J.C., 326 P3d. 1195, 355 Or. 552 (2014).

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# Southern Oregon ESD

Code: JFG-AR  
Revised/Reviewed:

## Student Searches\*\*

1. Definitions
  - a. “Reasonable suspicion” is based upon specific and articulated facts to believe that the student personally poses or is in possession of some item that poses a risk of immediate and serious harm to the student, school officials and/or others at the school. The official’s knowledge may be based upon relevant past experience of the official, observation by the official and/or credible information from another person.
    - (1) “Past experience” may provide the ESD official with information relevant to the violation as well as information which enables the official to evaluate the credibility of information from another person.
    - (2) “Credible information from another person” may include information which the ESD official reasonably believes to be true provided by another ESD employee, a student, a law enforcement or other government official or some other person.
  - b. “Reasonable in scope” means that the manner and extent of the search are reasonably related to the objectives of the search, the unique features of the official’s responsibilities and limited to the particular student or students most likely to be involved in the infraction and the area(s) which could contain the item(s) sought, and not excessively intrusive in light of the student’s age, sex, maturity and the nature of the infraction.
2. Routine Inspection of ESD Property Assigned to Students
  - a. Lockers, desks and other storage areas provided by the ESD and assigned to a particular student(s) are the property of the ESD, remain in the possession of the ESD and are under the control of the superintendent. Students have no expectation of privacy regarding these items/areas.
  - b. Students may use ESD-owned storage areas for the limited purpose of temporarily keeping items needed for attendance and participation in ESD programs only. No other purpose is permitted.
  - c. Students shall be provided notification that ESD-owned storage areas assigned to students are subject to routine inspection without prior notice for the following reasons:
    - (1) Ensure that no item which is prohibited on ESD premises is present;
    - (2) Ensure maintenance of proper sanitation;
    - (3) Ensure mechanical condition and safety;
    - (4) Reclaim overdue library books, texts or other instructional materials, property or equipment belonging to the ESD.

### 3. Voluntary Consent

When an ESD official has the requisite justification to search either a particular ESD-owned storage area assigned to a student or the clothing or the personal property of a student, the official has the option of making a search or asking the student to voluntarily provide the item(s) sought. Before making a search, the official should ordinarily ask for the student's voluntary consent by requesting the student to empty the contents of the storage area, clothing or personal property. If the student refuses consent for his/her personal property, the official may elect to contact the students' parents to obtain consent for the search of personal property.

### 4. Search Procedures

- a. With the requisite justification, a school official may search an individual student, an ESD-owned storage area assigned to a student or the personal property of a student. Personal property of a student includes, but is not limited to, wallets, purses, lunch boxes/sacks, book bag, backpack or other containers used to carry belongings.
- b. All searches of a student or a student's personal property shall be based on the required reasonable suspicion/risk, of immediate and serious harm and shall be reasonable in scope. A "strip search," requiring a student to remove clothing down to the student's underwear or including underwear is prohibited by the ESD.
- c. Searches will generally be conducted by an administrator [or by other school personnel only as authorized by the superintendent]. In certain circumstances an administrator may be assisted by a law enforcement official(s).
- d. The student will generally be permitted to be present during a search of an ESD-owned storage area assigned to the student or during a search of the student's personal property. The student's presence is not required, however.
- e. Search of a student's clothing will be limited to the student's "outer clothing" only. "Outer clothing" means the student's coat, jacket or other such outerwear garments worn by a student. A search of the clothing may include the search of a container inside the clothing, provided that the container is of a size and shape to hold the object of the search.
- f. Searches of a student's outer clothing will be conducted by an ESD official of the same sex as the student.
- g. Where the object of the search may be felt by a "pat down" of clothing or personal property, the ESD official may first pat the clothing or property in an attempt to locate the object before searching inside the clothing or property.
- h. Searches will be conducted in privacy, out of the view of other students, staff and others and in the presence of an adult witness of the same sex as the student.
- i. Any item removed from the student as a result of the above procedures which is not evidence of a violation of a law, Board policy, administrative regulation or rule may be returned to the student, as appropriate.

### 5. [Other Searches]<sup>1</sup>

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<sup>1</sup> Consult with legal counsel prior to implementing procedures in this section, modifying as appropriate to meet local needs.

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- a. Student vehicles may be parked on ESD property on the condition that the student and his/her parent(s) allows the vehicle and its contents, upon reasonable suspicion/risk of immediate serious harm, to be examined.

If a student or parent(s) refuses to allow access to a vehicle when requested under the circumstances described above, the student's privilege of bringing a vehicle onto ESD property will be terminated [for the remainder of the school year]. Law enforcement officials [may] ~~[will]~~ be notified.

- b. Metal detectors, including walk-through and hand-held devices, may be used when the ~~[Board]~~ [superintendent] determines that there is a need for such detectors based upon reasonable information of a history of:

- (1) Weapons or dangerous objects found on ESD property, at an ESD function or in the vicinity of the ESD; or
- (2) Incidents of violence involving weapons on ESD property, at an ESD function or in the vicinity of the ESD.

Upon positive detection, a student will be asked to voluntarily remove the metal item. If the student refuses consent, the student will be held (will not be allowed further entrance into the building) and any personal property will be seized and secured while the parent(s) and law enforcement officials are summoned.

- c. Drug-detection dogs may be used when the ~~[Board]~~ [superintendent] determines that there is a need for use of such dogs based upon reasonable information of a history of:

- (1) Drugs and/or drug paraphernalia use/possession on ESD property, at an ESD function or in the vicinity of the ESD; or
- (2) Incidents of violence or health emergencies involving drugs and/or drug paraphernalia on ESD property, at an ESD function or in the vicinity of the ESD.

After such need has been determined, drug-detection dogs may be used to sniff out contraband in ESD-owned storage areas[ or in student vehicles parked on ESD property upon reasonable suspicion to believe that contraband is in the area or vehicle].

Drug-detection dogs will not be used for general or "dragnet" searches.

- d. Body fluid searches of students for the presence of alcohol or drugs are prohibited.
- e. The ESD may deploy breathalyzer devices at extracurricular events and activities. Students may be subject to testing procedures as a prerequisite to attending the event/activity. If a student refuses testing, he/she will be detained and parents will be contacted to come and take the student home.]

## 6. Discipline

- a. Possession or use of unauthorized, illegal, unhealthy or unsafe materials will result in the following:

- (1) Seizure of the material:

- (a) Property, the possession of which is a violation of law, Board policy, administrative regulation or rule will be returned to the parent or, if also a violation

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of law, turned over to law enforcement officials or destroyed by the ESD as deemed appropriate by the superintendent;

- (b) Stolen property will be returned to its rightful owner;
- (c) Unclaimed property may be disposed of in accordance with Board policy [DN - Disposal of ESD Property].

- (2) Discipline up to and including expulsion and notification given to law enforcement officials as appropriate or as otherwise required by law or Board policy.

## 7. Documentation

- a. Administrators shall document all searches.
- b. Documentation shall consist of the following:
  - (1) Name, age and sex of student;
  - (2) Time and location of search;
  - (3) Justification for search and nature of the reasonable suspicion/risk of immediate and serious harm;
  - (4) Description of the object(s) of the search;
  - (5) Type/Scope of search ( areas/items searched);
  - (6) Results of search, prohibited material(s) found, disposition of the material(s) seized and discipline imposed;
  - (7) Name of the witness to the search;
  - (8) Name of the district official conducting the search;
  - (9) Contacts with law enforcement and name/position of the contact(s).
- c. Documentation will be maintained as a part of the student's education records and retained in accordance with applicable Oregon Administrative Rules governing records' retention.

## 8. Notice

Notice of the Board's policy and this administrative regulation will be provided to staff, students and their parent(s) annually, through staff and student/parent handbooks.

## 9. Cooperation with Law Enforcement Officials

- a. Administrators will meet with law enforcement officials annually to review:
  - (1) Official contact protocols;
  - (2) Applicable Board policies and administrative regulations;
  - (3) Circumstances in which the district will generally be requesting local law enforcement involvement in student searches and suspected crimes;
  - (4) Handling searches and evidence when involving law enforcement officials.

## Student Search Form

1. Name, age and sex of student: \_\_\_\_\_  
\_\_\_\_\_

2. Date, time and location of search: \_\_\_\_\_  
\_\_\_\_\_

3. Basis for search and nature of reasonable suspicion. What factors caused you to have a reasonable suspicion that the search of this student, his/her person or property or property assigned by the district for student use, would turn up evidence of some item that posed a risk of immediate and serious harm to the student, school officials and/or others at the school? Describe.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Describe areas and items searched: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. What did the search yield? Were any prohibited items/materials seized? Were seized items/materials turned over to police? Parents? Other? Why or why not? Explain and include name(s)/position(s) of law enforcement contacts.  
\_\_\_\_\_  
\_\_\_\_\_

6. Was discipline imposed? Why or why not? \_\_\_\_\_  
\_\_\_\_\_

7. Name and title/position of the witness to the search: \_\_\_\_\_  
\_\_\_\_\_

8. Name and title/position of district official conducting the search: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of Witness Date

\_\_\_\_\_  
Signature of District Official Date  
Conducting Search

# Southern Oregon ESD

Code: JG 4/16/08  
Adopted: 5302

## Student Discipline\*\*

Discipline in the ESD is based upon a philosophy designed to produce behavioral changes that will enable students to develop the self-discipline necessary to remain in school and to function successfully in their educational and social environments.

[Students are subject to discipline for conduct while traveling to and from school, at the bus stop, at school-sponsored events and at other schools operated by the ESD, and while off campus whenever such conduct causes substantial and material disruption of the educational environment or the invasion of rights of others.]

The major objectives of the ESD discipline program are to teach the following fundamental concepts for living:

1. Understanding and respect for individual rights, dignity and safety;
2. Understanding and respect for the law, ESD policies, administrative regulations and school rules;
3. Understanding of and respect for public and private property rights.

The Board seeks to ensure a climate which is appropriate for learning and which assures the safety and welfare of personnel and students. The superintendent will develop procedures whereby those students who disrupt the educational setting or who endanger the safety of others will be subject to age appropriate and research effective disciplinary sanctions to correct behavioral problems, while supporting a students' attendance to school and classes. Examples include, but are not limited to, reprimands, conferences, detention and denial of participation in cocurricular and extracurricular activities. Title and/or privileges available or granted to students may be denied and/or revoked (e.g., including but not limited to, field trips, etc.). The superintendent may propose alternative programs of instruction or instruction combined with counseling prior to a student's expulsion or a student leaving school in accordance with law.

The ESD shall enforce consistently, fairly and without bias all student conduct policies, administrative regulations and school rules.

A student whose conduct or condition is seriously detrimental to the ESD's best interests may be suspended. Students may be expelled for conduct that poses a threat to the health or safety of students or employees; when other strategies to change student behavior have been ineffective, except that expulsion may not be used to address truancy; or when required by law. The ESD shall consider the age of the student and the past pattern of the student's behavior prior to imposing the suspension or expulsion. The ESD will ensure careful consideration of the age appropriateness, rights and needs of the individual concerned, as well as the best interests of other students and the ESD program as a whole.

The use of out-of-school suspension or expulsion for discipline of a student in the fifth grade or below, is limited to:

1. Nonaccidental conduct causing serious physical harm to a student or employee;
2. When a school administrator determines, based on the administrator's observation or upon a report from an employee, the student's conduct poses a threat to the health or safety of students or employees; or
3. When the suspension or expulsion is required by law.

When an out-of-school suspension is imposed on a student in the fifth grade or lower, the ESD shall take steps to prevent the recurrence of the behavior that led to the out-of-school suspension, and return the student to a classroom setting to minimize the disruption of the student's academic instruction.

Special education students shall be disciplined in accordance with federal law and Board policy JGDA - Discipline of Students with Disabilities and accompanying administrative regulation.

Parents, students and employees shall be notified by handbook, code of conduct or other document of acceptable behavior, behavior subject to discipline and the procedures to address behavior. These procedures will include a system of consequences designed to correct student misconduct and promote acceptable behavior.

Procedures for excluding students from ESD-operated classrooms shall be developed cooperatively with the component school districts.

## END OF POLICY

### Legal Reference(s):

[ORS 243.650](#)

[ORS 334.125\(1\),\(2\),\(7\)](#)

[ORS 339.240 to -339.280](#)

[ORS 659.850](#)

[OAR 581-021-0045](#)

[OAR 581-021-0050 to -0075](#)

Tinker v. Des Moines Sch. Dist., 393 U.S. 503 (1969).

Shorb v. Grotting and Powers Sch. Dist., Case No. 00CV-0255 (Coos County Circuit Ct.) (2000).

Ferguson v. Phoenix Talent Sch. Dist. #4, 172 Or. App. 389 (2001).

C.R. v. Eugene S.D. 4J, #U.S. District Court of OR (2013).

# Southern Oregon ESD

Code: JGA  
Adopted: 4/16/08  
Orig. Code: 5301

## Corporal Punishment\*\*

The use of corporal punishment in any form is strictly prohibited in the ESD. No student will be subject to the infliction of corporal punishment.

“Corporal punishment” is defined as the willful infliction of, or willfully causing the infliction of, physical pain. Corporal punishment does not include the use of physical force authorized in ORS 161.205 (2), (4) or (5) for the reasons specified therein, or physical pain or discomfort resulting from or caused by participation in athletic competition or other such recreational activity, voluntarily engaged in by a student.

No teacher, administrator, other school personnel or school volunteer will subject a student to corporal punishment or condone the use of corporal punishment by any person under his/her supervision or control. Permission to administer corporal punishment will not be sought or accepted from any parent or school district.

~~[A parent or legal guardian of a minor child may use reasonable physical force upon the minor child when and to the extent the person reasonably believes the physical force is necessary to maintain discipline or promote the welfare of the minor child, unless the physical force constitutes abuse as defined in ORS 418.257 or 419B.005.]~~

A staff member is authorized to employ reasonable physical force upon a student only to the extent the application of physical force is consistent with Oregon Revised Statute (ORS) 339.2850-0339.303 and is not corporal punishment as defined in ORS 339.250(9). Physical force shall not be used to discipline or punish a student.

A staff member found in violation of this policy may be subject to discipline up to and including dismissal. A volunteer found in violation of this policy by administration may be subject to sanctions and/or prohibited from volunteer service in the ESD.

The superintendent shall inform all staff members and volunteers of this policy.

### END OF POLICY

#### Legal Reference(s):

[ORS 161.205](#)  
[ORS 334.125](#)  
[ORS 339.240](#)

[ORS 339.250](#)

[OAR 581-021-0050 - 0075](#)

[OAR 584-020-0040](#)

# Southern Oregon ESD

Code: JGAB  
Adopted: 4/16/08  
Orig. Code: 5303

## Use of Restraint or Seclusion\*\*

{Highly recommended policy. ESDs are subject to the requirements in the law, but are not required to have a policy in place.}

~~Employees will follow the restraint and seclusion policy of the district in which the classroom is located.~~

~~OR~~

~~(If the ESD has it's own classrooms)~~

The Board is dedicated to the development and application of best practices within the ESD's public educational/behavioral programs. The Board establishes this policy and its administrative regulation to define the circumstances that must exist and the requirements that must be met prior to, during, and after the use of restraint or seclusion as an intervention with ESD students.

The use of the following types of restraint on a student in the ESD is prohibited:

1. Chemical restraint.
2. Mechanical restraint.
3. Prone restraint.
4. Supine restraint.
5. Any restraint that involves the intentional and nonincidental use of a solid object<sup>1</sup>, including a wall or the floor, to impede a student's movement, unless the restraint is necessary to prevent an imminent life-threatening injury or to gain control of a weapon.
6. Any restraint that places, or creates a risk of placing, pressure on a student's mouth, neck or throat.
7. Any restraint that places, or creates a risk of placing, pressure on a student's mouth, unless the restraint is necessary for the purpose of extracting a body part from a bite.
8. Any restraint that impedes, or creates a risk of impeding, breathing.
9. Any restraint that involves the intentional placement of the hands, feet, elbow, knee or any object on a student's neck, throat, genitals or other intimate parts.

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<sup>1</sup> The use of a solid object, including furniture, a wall, or the floor, by ESD staff performing a restraint is not prohibited if the object is used for the staff's own stability or support while performing the restraint and not as a mechanism to apply pressure directly to the student's body.

10. Any restraint that causes pressure to be placed, or creates a risk of causing pressure to be placed, on the stomach or back by a knee, foot or elbow bone.
11. Any action designed for the primary purpose of inflicting pain.

The use of a seclusion cell is prohibited.

Restraint or seclusion may not be used for discipline, punishment, retaliation or convenience of staff, contractors or volunteers of the ESD.

Restraint may be imposed on a student in the ESD only under the following circumstances:

12. The student's behavior imposes a reasonable risk of imminent and substantial physical or bodily injury to the student or others; and
13. Less restrictive interventions would not be effective.

Seclusion may be used on a student in the ESD only under the following circumstances:

14. The student's behavior imposes a reasonable risk of imminent and serious bodily injury to the student or others; and
15. Less restrictive interventions would not be effective.

If restraint or seclusion is used on a student, by trained staff or other staff available in the case of an emergency when trained staff are not immediately available due to the unforeseeable nature of the emergency, e.g., teacher, administrator[, or volunteer], it will be used only for as long as the student's behavior poses a reasonable risk of imminent and substantial physical or bodily injury to the student or others and less restrictive interventions would not be effective. Students will be continuously monitored by staff for the duration of the restraint or seclusion.

## **Definitions**

16. "Restraint" means the restriction of a student's actions or movements by holding the student or using pressure or other means.

"Restraint" does not include:

- a. Holding a student's hand or arm to escort the student safely and without the use of force from one area to another;
- b. Assisting a student to complete a task if the student does not resist the physical contact; or
- c. Providing reasonable intervention with the minimal exertion of force necessary if the intervention does not include a restraint prohibited under Oregon Revised Statute (ORS) 339.288 and the intervention is necessary to:
  - (1) Break up a physical fight;
  - (2) Interrupt a student's impulsive behavior that threatens the student's immediate safety, including running in front of a vehicle or climbing on unsafe structures or objects; or

- d. Effectively protect oneself or another from an assault, injury or sexual contact with the minimum physical contact necessary for protection.
17. “Seclusion” means the involuntary confinement of a student alone in a room from which the student is physically prevented from leaving. Seclusion includes, but is not limited to, the involuntary confinement of a student alone in a room with a closed door, whether the door is locked or unlocked.
- “Seclusion” does not include the removal of a student for a short period of time to provide the student with an opportunity to regain self-control if the student is in a setting from which the student is not physically prevented from leaving, or a student being left alone in a room with a closed door for a brief period of time if the student is left alone for a purpose that is unrelated to the student’s behavior.
18. “Seclusion cell” means a freestanding, self-contained unit that is used to isolate the student from other students or physically prevent a student from leaving the unit or cause the student to believe that the student is physically prevented from leaving the unit.
19. “Serious bodily injury” means any significant impairment of the physical condition of a person, as determined by qualified medical personnel, whether self-inflicted or inflicted by someone else.
20. “Substantial physical or bodily injury” means any impairment of the physical condition of a person that requires some form of medical treatment.
21. “Mechanical restraint” means a device used to restrict the movement of a student or the movement or normal function of a portion of the body of a student.

“Mechanical restraint” does not include:

- a. A protective or stabilizing device ordered by a licensed physician; or
  - b. A vehicle safety restraint when used as intended during the transport of a student in a moving vehicle.
22. “Chemical restraint” means a drug or medication that is used on a student to control behavior or restrict freedom of movement that is not prescribed by a licensed physician or other qualified health professional acting under the professionals scope of practice for standard treatment of the student’s medical or psychiatric condition; and administered as prescribed by a licensed physician or other qualified health professional acting under the professional’s scope of practice.
23. “Prone restraint” means a restraint in which a student is held face down on the floor.
24. “Supine restraint” means a restraint in which a student is held face up on the floor.

Any student being restrained or secluded within the scope of the ESD program whether in an emergency or as a part of a plan shall be constantly monitored by staff for the duration of the intervention. Any room used for seclusion of a student must meet the standards as outlined in Oregon Administrative Rule (OAR) 581-021-0568.

The ESD shall only utilize a training program for restraints or seclusion to train staff and use in an ESD which has been approved by the Oregon Department of Education (ODE)



The ESD shall preserve, and may not destroy, any records related to an incident of restraint or seclusion, including an audio or video recording. The records must be preserved in the original format and without alteration in accordance with law.

An annual review of the use of restraint and seclusion during the preceding school year shall be completed and submitted to ODE to ensure compliance with ESD policies and procedures.

The results of the review and annual report shall be documented and shall include at a minimum:

25. The total number of incidents involving restraint;
26. The total number of incidents involving seclusion;
27. The total number of seclusions in a locked room;
28. The total number of students placed in restraint;
29. The total number of students placed in seclusion;
30. The total number of incidents that resulted in injuries or death to students or staff as a result of the use of restraint or seclusion;
31. The total number of students placed in restraint or seclusion more than 10 times in a school year and an explanation of what steps have been taken by the ESD to decrease the use of restraint and seclusion for each student;
32. The total number of restraint or seclusion incidents carried out by untrained individuals;
33. The demographic characteristics<sup>2</sup> of all students upon whom restraint or seclusion was imposed;
34. The total number of rooms available for use by the ESD for seclusion of a student and a description of the dimensions and design of the rooms.

This annual report shall be made available to the public at the ESD's main office and on the ESD's website, to the Board, and to the component school districts of the ESD.

At least once each school year the parents and guardians of students of the ESD shall be notified about how to access the report.

The ESD shall investigate all complaints regarding the use of restraint and/or seclusion practices according to the procedures outlined in Board policy KL - Public Complaints and KL-AR - Public Complaint Procedure. The complaint procedure is available at the ESD's administrative office and is available on the home page of the ESD's website.

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<sup>2</sup> Including race, ethnicity, gender, disability status, migrant status, English proficiency and status as economically disadvantaged, unless the demographic information would reveal personally identifiable information about an individual student.

The complainant, whether an organization or an individual, may appeal a ESD’s final decision to the Oregon Department of Education pursuant to OAR 581-002-0001 - 581-002-0023. [This appeal process is represented in administrative regulation KL-AR(2) - Appeal to the Deputy Superintendent of Public Instruction.]

The superintendent shall develop administrative regulations to carry out the requirements set forth in this policy and to meet any additional requirements established by law related to the use, reporting, and written documentation of the use of restraint or seclusion by ESD staff. A staff member who violates this policy or its administrative regulation may be subject to discipline, up to and including dismissal.

END OF POLICY

**Legal Reference(s):**

[ORS 161.205](#)  
[ORS 339.250](#)  
[ORS 339.285](#)  
[ORS 339.288](#)  
[ORS 339.291](#)  
[ORS 339.294](#)  
[ORS 339.297](#)

[ORS 339.300](#)  
[ORS 339.303](#)  
  
[OAR 581-021-0061](#)  
[OAR 581-021-0550](#)  
[OAR 581-021-0553](#)  
[OAR 581-021-0556](#)

[OAR 581-021-0563](#)  
[OAR 581-021-0566](#)  
[OAR 581-021-0568](#)  
[OAR 581-021-0569](#)  
[OAR 581-021-0570](#)  
[OAR 581-022-2370](#)  
[OAR 581-022-2267](#)

# OSBA Model ESD Sample Policy

Code: JGAB-AR  
Revised/Reviewed:

## Use of Restraint or Seclusion\*\*

{ORS 339.294 requires an ESD to establish procedures to follow after an incident involving the use of restraint or seclusion. This administrative regulation helps support those procedures.}

### Procedure

1. If restraint or seclusion continues for more than 30 minutes, ESD staff will attempt to immediately notify parents or guardians verbally or electronically.
2. Following an incident involving the use of restraint or seclusion, school staff will provide parents or guardians of the student the following:
  - a. Verbal or electronic notice of the incident by the end of the school day when the incident occurred.
  - b. Written documentation of the incident within 24 hours that provides:
    - (1) A description of the restraint or seclusion including:
      - (a) The date of the physical restraint or seclusion;
      - (b) The time the physical restraint or seclusion began and ended; and
      - (c) The location of the incident.
    - (2) A description of the student's activity that prompted the use of restraint or seclusion.
    - (3) The efforts used to de-escalate the situation and the alternatives to restraint or seclusion that were attempted.
    - (4) The names of the staff of the ESD who administered the restraint or seclusion.
    - (5) A description of the training status of the staff of the ESD who administered the restraint or seclusion, including any information that may need to be provided to the parent or guardian.
  - c. Timely notification of a debriefing meeting to be held and of the parent's or guardian's right to attend the meeting.
  - d. Immediate<sup>1</sup>, written notification of the existence of any records<sup>2</sup> related to an incident of restraint or seclusion (including photos or audio or video recording).
3. If the restraint or seclusion was administered by a person without training, the administrator will ensure written notice is issued to the parent or guardian of the student which includes notice of the

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<sup>1</sup> "Immediate" means to act as soon as possible without undue delay, but in no case later than within 24 hours of the incident. (OAR 581-021-0556(2)(e))

<sup>2</sup> {Such records shall be maintained in accordance with ORS 339.294(9).}

lack of training and the reason restraint or seclusion was administered by a person without training. The administrator will ensure written notice of the same to the superintendent.

4. An administrator will be notified as soon as practicable whenever restraint or seclusion has been used.
5. If restraint or seclusion continues for more than 30 minutes the student must be provided with adequate access to bathroom and water every 30 minutes. If restraint or seclusion continues for more than 30 minutes, every 15 minutes after the first 30 minutes an administrator for the ESD must provide written authorization for the continuation of the restraint or seclusion, including providing documentation for the reason the restraint or seclusion must be continued. Whenever restraint or seclusion extends beyond 30 minutes, staff of the ESD will immediately attempt to verbally or electronically notify a parent or guardian.
6. An ESD Restraint and/or Seclusion Incident Report must be completed and copies provided to those attending the debriefing meeting for review and comment. The completed Restraint and/or Seclusion Incident Report Form shall include the following:
  - a. Name of the student;
  - b. Name of staff member(s) administering the restraint or seclusion;
  - c. Date of the restraint or seclusion and the time the restraint or seclusion began and ended;
  - d. Location of the restraint or seclusion;
  - e. A description of the restraint or seclusion;
  - f. A description of the student's activity immediately preceding the behavior that prompted the use of restraint or seclusion;
  - g. A description of the behavior that prompted the use of restraint or seclusion;
  - h. Efforts to de-escalate the situation and alternatives to restraint or seclusion that were attempted;
  - i. Information documenting parent or guardian contact and notification.
7. A documented debriefing meeting must be held within two school days after the use of physical restraint and/or seclusion. The parent or guardian of the student must be invited to attending the meeting<sup>3</sup>, and the meeting will include staff members involved in the intervention and any other appropriate personnel. The debriefing team shall include an administrator. At the debriefing meeting, the ESD shall review, in its entirety, any audio or video recording<sup>[4]</sup> preserved as a record of the

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<sup>3</sup> "Meeting" means the debriefing meeting at which the audio or video recording will be viewed. (OAR 581-021-0556(9))

<sup>4</sup> [To the extent practicable without altering the meaning of the record, the ESD shall segregate or redact from such a record any personally identifiable information of other students before disclosure to the student's parent or guardian. If the ESD is unable to segregate or redact personally identifiable information of other students without altering the meaning of the record, the ESD shall disclose the record to the student's parent or guardian in its original format and without any alteration. "Disclose" means to inform the student's parent or guardian that the record exists; that the record in its original format and without alteration will be available for review by the parent or guardian privately and in the debriefing meeting; and that a copy of the record will be provided to the student's parent or guardian upon request in its original and unaltered format except to the extent that the redaction is needed to protect the personally identifiable information of another student. (ORS 339.294; OAR 581-021-0556(10))]

incident involving restraint or seclusion in accordance with law. Written notes shall be taken and a copy of the written notes shall be provided to the parent or guardian of the student.

The parent or guardian has the right to request another meeting in the event they were unable to attend the debriefing meeting scheduled to be held within two school days of the incident.

8. If serious bodily injury or death of a student occurs in relation to the use of restraint or seclusion:
  - a. Oral notification of the incident must be provided immediately to a parent or guardian of the student and to the Oregon Department of Human Services (DHS); and
  - b. Written notification of the incident must be provided to DHS within 24 hours of the incident.
9. If serious bodily injury or death of a staff member occurs in relation to the use of restraint or seclusion, written notification of the incident must be provided within 24 hours of the incident to the superintendent, to the Superintendent of Public Instruction, and, if applicable, to the union representative for the affected person.
10. The ESD shall maintain a record of each incident in which injuries or death occurs in relation to the use of restraint or seclusion.
11. [The ESD, upon request from DHS regarding an investigation of an incident of restraint or seclusion as suspected child abuse, shall disclose any records preserved to DHS or its designee which are deemed relevant to the subject investigation, in its original format and without any alteration.]

**Restraint or seclusion as a part of a behavioral support plan in the student's Individual Education Program (IEP) or Section 504 plan.**

1. Parent participation in the plan is required.
2. The IEP team that develops the behavioral support plan shall include knowledgeable and trained staff, including a behavioral specialist and an ESD representative who is familiar with the restraint and seclusion training practices adopted by the ESD.
3. Prior to the implementation of any behavioral support plan that includes restraint and/or seclusion a functional behavioral assessment must be completed. The assessment plan must include an individual threshold for reviewing the plan.
4. [When a behavior support plan includes restraint or seclusion the parents [will] [~~may~~] be provided a copy of the ESD Use of Restraint or Seclusion policy at the time the plan is developed.]
5. If a student is involved in five incidents in a school year, the team, including a parent or guardian of the student, will form for the purpose of reviewing and revising the student's behavior plan and ensuring the provision of any necessary behavioral supports.

**Use of restraint or seclusion in an emergency by school administrator, staff or volunteer to maintain order or prevent a student from harming themselves, other students or school staff.**

Use of physical restraint and/or seclusion under these circumstances with a student who does not have physical restraint and/or seclusion as a part of their IEP or Section 504 plan is subject to all of the

requirements established by Board policy and this administrative regulation with the exception of those specific to plans developed in an IEP or Section 504 plan.

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# Southern Oregon ESD

Code:

JHCD

Adopted:

## Medications\*\*/\*

{Required policy. The requirement for policy comes from ORS 339.866 (2) and if the ESD operates a school.}

The ESD recognizes administering a medication to a student and/or permitting a student to administer a medication to themselves, may be necessary to allow the student to attend school. Therefore, the ESD allows medication, including injectable medications, to be administered to a student by designated personnel and the administration of medication by a student to themselves without assistance from designated personnel, subject to criteria established by the ESD and in accordance with Oregon law.

The ESD shall designate personnel authorized to administer medications to students. Medications, including injectable medications, may be administered by designated ESD personnel as part of a formal delegation by a registered nurse. Annual training shall be provided to designated personnel in accordance with law. The training will align with the ODE Medication Administration Training and include discussion of this policy, procedures and materials, including but not limited to, procedures outlined in administrative regulation JHCD-AR - Medications.

When a licensed health care professional is not immediately available, trained personnel designated by the ESD may administer epinephrine, glucagon, treatment for adrenal insufficiency, or another medication to a student as prescribed and/or as otherwise allowed by Oregon law.

A current first-aid/CPR/AED card is required for designated personnel.

The ESD reserves the right to reject a request for administration of medication at school, either by ESD personnel or student self-administration, if the medication is not necessary for the student to remain in school.

The ESD may revoke permission given to a student to self-administer medication if the student does not responsibly self-administer the medication or abuses the use of the medication, as determined by ESD personnel.

Medications will be handled, stored, monitored, disposed of and records maintained in accordance with law and established ESD procedures governing the administration of prescription or nonprescription medications to students, including procedures for the disposal of sharps and glass.

A process shall be established by which, upon parent or guardian written request, a backup medication is kept at a reasonably, secure location in the student's classroom as provided by state law.

A premeasured dose of epinephrine may be administered by trained, designated personnel to any student or other individual on ESD premises who the person believes in good faith is experiencing a severe allergic reaction, regardless of whether the student or individual has a prescription for epinephrine.

[<sup>1</sup>] A non-injectable short-acting opioid antagonist may be administered to any student or other individual by ESD personnel (whether or not they have received training on administering medications) on ESD premises who the individual administering the short-acting opioid antagonist believes in good faith is experiencing an opioid overdose.

A school administrator, teacher or other school employee, may administer a short-acting opioid antagonist to a student who experienced or is experiencing an opioid overdose without written permission and instructions of the student's parents or guardian.]

This policy shall not prohibit, in any way, the administration of recognized first aid to a student by ESD employees in accordance with established state law, Board policy and administrative regulation.

The superintendent shall develop administrative regulations to meet the requirements of law and the implementation of this policy.

END OF POLICY

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**Legal Reference(s):**

[ORS 334.125](#)

[ORS 339.866 - 339.871](#)

[ORS 433.800 - 433.830](#)

[ORS 689.800](#)

[OAR 166-400-0010\(17\)](#)

[OAR 166-400-0060\(29\)](#)

[OAR 333-055-0000 - 0035](#)

[OAR 581-021-0037](#)

[OAR 581-022-2220](#)

[OAR 851-047-0000 - 0030](#)

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).

OREGON HEALTH AUTHORITY AND OREGON DEPARTMENT OF EDUCATION, *Medication Administration: A Manual for School Personnel*.

House Bill 1552 (2024).

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<sup>1</sup> {The ESD is not required to provide or administer this medication. If the ESD is going to provide for, and administer this medication, this policy language is required. If the ESD does not intend to provide or administer this medication, there is no requirement to include this language in this policy.}



# Southern Oregon ESD

Code:  
Adopted:

JHCD-AR

## Medications\*\*/\*

{Required administrative regulation. The requirement comes from ORS 339.866 (2) and if the ESD operates a school.}

Students may, subject to the provisions of this administrative regulation, have prescription or nonprescription medication administered by designated ESD personnel, or may be permitted to administer prescription or nonprescription medication to themselves.

### 1. Definitions<sup>1</sup>

- a. ["Administer" means the direct application of a drug or device whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by: (1) a practitioner or the practitioner's authorized agent; or (2) the patient or research subject at the direction of the practitioner. (ORS 689.005)]
- b. "Adrenal crisis" means a sudden, severe worsening of symptoms associated with adrenal insufficiency, such as severe pain in the lower back, abdomen or legs, vomiting, diarrhea, dehydration, low blood pressure or loss of consciousness. (ORS 433.800)
- c. "Adrenal insufficiency" means a hormonal disorder that occurs when the adrenal glands do not produce enough adrenal hormones. (ORS 433.800)
- d. "Asthma" means a chronic inflammatory disorder of the airways that requires ongoing medical intervention. (ORS 339.866)
- e. "Delegation" means a formal delegation of a nursing procedure by a registered nurse to ESD personnel in accordance with the Oregon Nurse Practice Act. (OAR Chapter 851)
- f. "Designated personnel" means the school personnel designated and trained to administer medication pursuant to ESD policy and procedure.
- g. "Medication" means medication that is not injected; premeasured doses of epinephrine that are injected; medication that is available for treating adrenal insufficiency; and Naloxone or any similar medication that is in any form available for safe administration and that is designed to rapidly reverse an overdose of an opioid drug. "Medication" also means any prescription for bronchodilators or autoinjectable epinephrine prescribed by a student's Oregon licensed health care professional for asthma or severe allergies. "Medication" does not include nonprescription sunscreen. (ORS 339.866; ORS 339.867)
- h. "Nonprescription medication" means nonprescription drugs as defined in ORS 689.005, which means drugs that may be sold without prescription and that are prepackaged for use by the consumer and labeled in accordance with the requirements of the statutes and regulations of this state and the federal government. (OAR 581-021-0037)
- i. "Notice of a diagnosis of adrenal insufficiency" means written notice to the ESD from the parent or guardian of a student who has been diagnosed as adrenal insufficient with a copy of an order from the student's primary care provider that includes the student's diagnosis, description of symptoms indicating the student is in crisis, prescription for medication to treat

<sup>1</sup> There are several laws that apply to medications in schools. Some of these laws have unique definitions that may apply in specific situations. If the applicable law uses a definition that varies from the definition here, use the definition in the law.

adrenal insufficiency crisis, and instructions for follow-up care after medication to treat adrenal insufficiency crisis has been administered. (OAR 581-021-0037)

- j. ["Opioid overdose" means a medical condition that causes depressed consciousness, depressed respiratory function or the impairment of vital bodily functions as a result of ingesting opioids. (ORS 689.800)]
- k. "Prescriber"<sup>2</sup> means a "practitioner" as defined in ORS 689.005, which means a person licensed and operating within the scope of such license to prescribe, dispense, conduct research with respect to or administer drugs in the course of professional practice or research: (a) in this state; or (b) in another state or territory of the U.S. if the person does not reside in Oregon and is registered under the federal Controlled Substances Act. (OAR 581-021-0037)
- l. "Prescription medication" means a "prescription drug" as defined in ORS 689.005, which means a drug that is: required by federal law, prior to being dispensed or delivered, to be labeled with "Caution: Federal law prohibited dispensing without prescription" or "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian"; or required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by practitioners only.
- m. "Severe allergy" means a life-threatening hypersensitivity to a specific substance such as food, pollen, or dust. (ORS 339.866)
- n. "Short-acting opioid antagonist" means any short-acting drug approved by the U.S. Food and Drug Administration for the complete or partial reversal of an opioid overdose. (ORS 689.800)

## 2. Designated Staff/Training

- a. Medications, including injectable medications, may be administered by trained personnel as part of a formal delegation by a registered nurse.
- b. The [program administrator] [principal], in consultation with the school nurse, will designate ESD personnel authorized to administer prescription or nonprescription medication to a student which takes into account when the student is in school, at an ESD-sponsored activity, under the supervision of ESD personnel, or in transit to or from school-or ESD-sponsored activities, and may include when a student is in a before-school or after-school care program on school-owned property when required by law. The [program administrator] [principal] will supervise and ensure building and activity practices and procedures are consistent with the requirements of law, rules, policy and this administrative regulation.
- c. The ESD will provide staff who are designated personnel to administer prescription or nonprescription medication access to a school nurse.
- d. The [program administrator] [principal] will ensure the annual training required by Oregon law is provided to designated ESD personnel. Training must be conducted by a qualified trainer, which is a person who is familiar with the delivery of health services in a school setting and who is either a registered nurse licensed by the Oregon State Board of Nursing or a prescriber. ESD personnel designated to administer epinephrine, glucagon, and medication to treat adrenal insufficiency shall be trained using related training developed by the Oregon Health Authority (OHA). The first training and every third training thereafter shall be provided in-person<sup>3</sup>.

<sup>2</sup> A registered nurse who is employed by an ESD or local public health authority to provide nursing services at the ESD or a district may accept an order from a physician licensed to practice medicine or osteopathy in another state or territory of the U.S. if the order is related to the care or treatment of a student who has been enrolled at the district for not more than 90 days.

<sup>3</sup> An online training may qualify as "in-person" when these measures are met: content is provided via synchronous, interactive online sessions with a trainer and learners visible on screen; trainers must be licensed and work within their scope of practice;

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- e. During subsequent years, designated ESD personnel may complete an online training so long as a trainer is available following the training to answer questions and provide clarification. The training for ESD personnel will provide an overview of applicable provisions of Oregon law, administrative rules, ESD policy and administrative regulations and include, but not be limited to, discussion of the following: safe storage, administration, handling and disposing of medications; accessibility of medication during an emergency; record keeping; whether response to medication should be monitored by designated personnel and the role of designated personnel in such monitoring; emergency medical response procedures following administration of the medication; confidentiality of health information; and assessment of gained knowledge. Training as recommended and/or approved by ODE will be used.
- f. The ESD shall maintain documentation of ESD personnel's completion of training in accordance with OAR 166-400-0010.

### 3. Administering Premeasured Doses of Epinephrine to a Student or Other Individual

A premeasured dose of epinephrine may be administered by trained ESD personnel to any student or other individual on ESD premises who the person believes in good faith is experiencing a severe allergic response, regardless of whether the student or individual has a prescription for epinephrine.

### 4. Administering Short-Acting Opioid Antagonists

[<sup>4</sup>] A short-acting opioid antagonist may be administered by any ESD personnel<sup>5</sup> to any student or other individual, on school premises who the individual administering the short-acting opioid antagonist believes in good faith is experiencing an overdose of an opioid drug.

The [program administrator] [~~principal~~] [~~or~~] [~~school~~] [ESD] nurse shall immediately notify the parent or guardian of a minor student enrolled in a school operated by the ESD when a short-acting opioid antagonist is administered to the student while at school, on school property under the jurisdiction of the ESD or at any activity under the jurisdiction of the ESD.]

The ESD shall provide to the parent or legal guardian of each minor student enrolled in a school in the ESD information regarding short-acting opioid antagonists. The information will include at least:

- a. A description of short-acting opioid antagonists and their purpose;
- b. A statement regarding, in an emergency situation, the risks of administering to an individual a short-acting opioid antagonist and the risks of not administering to an individual a short-acting opioid antagonist;
- c. A statement identifying which schools in the ESD, if any, have short-acting opioid antagonists, and the necessary medical supplies to administer short-acting opioid antagonists, onsite and available for emergency situations; and

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and include in-person, skills demonstration for training developed by the Oregon Health Authority for epinephrine, glucagon, and for medication to treat adrenal insufficiency.

<sup>4</sup> {If the ESD plans to provide for, and administer a short-acting opioid antagonist, this bracketed language is highly recommended. If the ESD does not intend to provide and/or administer this medication, there is no requirement to include this language.}

<sup>5</sup> Including ESD personnel who have not received medication administration training.

- d. A statement that a representative of the ESD may administer a short-acting opioid antagonist to a student in an emergency if the student appears to be unconscious and experiencing an opioid overdose.

#### 5. Administering of Medication to a Student Experiencing Symptoms of Adrenal Crisis

A student experiencing symptoms of adrenal crisis while the student is in school, at an ESD-sponsored activity, while under the supervision of school personnel, in a before-school or after-school care program on school-owned property and/or in transit to or from a school or an ESD-sponsored activity, may be treated by designated personnel and shall be subject to the following:

- a. Upon notice of a diagnosis of adrenal insufficiency, as defined in Oregon Administrative Rule (OAR) 581-021-0037, the [program administrator] [principal] of the school the student attends will designate one or more ESD personnel to receive training and be responsible for administering the medication to treat adrenal insufficiency to a student in the event the student exhibits symptoms the ESD personnel believe in good faith indicate the student is experiencing symptoms of adrenal crisis;
- b. The designated personnel will successfully complete required training to administer medication to treat a student who has adrenal insufficiency and is experiencing symptoms of adrenal crisis;
- c. The student's parent or guardian must provide adequate supply of the student's prescribed medication to the ESD;
- d. The ESD will develop an individualized health care plan for the student;
- e. In the event that a student experiences symptoms of adrenal crisis and the designated personnel determines the medication to treat adrenal insufficiency should be administered, any available ESD staff member will immediately call 911 and the student's parent or guardian.

#### 6. Administering Medication to a Student

- a. A request to permit designated personnel to administer medication to a student may be approved by the ESD and is subject to the following:
  - (1) A written request for designated personnel to administer prescription medication to a student, if because of the prescribed frequency or schedule, the medication must be given while the student is in school, at a school-sponsored activity, while under the supervision of school personnel and in transit to or from school or a school-sponsored activity, must be submitted to the school office and shall include:
    - (a) The written permission of the student's parent or guardian; and
    - (b) The written instruction from the prescriber for the administration of the medication to the student that includes:
      - (i) Name of the student;
      - (ii) Name of the medication;
      - (iii) Method of administration;
      - (iv) Dosage;
      - (v) Frequency of administration;
      - (vi) Other special instructions from the prescriber, if any; and
      - (vii) Signature of the prescriber.

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The prescription medication is provided in the original prescription packaging by the student's parent or guardian. The prescription label prepared by a pharmacist at the direction of the prescriber, will be sufficient to meet this requirement if it contains the information listed in (i)-(vi) above.

- (2) A written request for designated personnel to administer nonprescription medication to a student must be submitted to the school office and is subject to the following:

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- (a) The nonprescription medication is necessary for the student to remain in school;  
(b) The nonprescription medication is:

- (i) Provided in the original manufacturer's container by the student's parent or guardian; or  
(ii) Is part of the ESD's stock medication program in compliance with the Oregon Board of Pharmacy rules including OAR 855-035-0005.

- (c) The written instruction and permission from the student's parent or guardian for the administration of the nonprescription medication<sup>6</sup> includes:

- (i) Name of the student;  
(ii) Name of the medication;  
(iii) Method of administration;  
(iv) Dosage;  
(v) Frequency of administration;  
(vi) Other special instructions, if any; and  
(vii) Signature of the student's parent or guardian.

If the written instruction is not consistent with the manufacturer's guidelines for the nonprescription medication, the written instruction must also include a written order allowing the inconsistent administration signed by a prescriber.

- (d) If the nonprescription medication is not approved by the Food and Drug Administration (FDA), a written order from the student's prescriber is required and will include:

- (i) Name of the student;  
(ii) Name of the medication;  
(iii) Dosage;  
(iv) Method of administration;  
(v) Frequency of administration;  
(vi) A statement that the medication must be administered while the student is in school;  
(vii) Other special instructions, if any; and  
(viii) Signature of the prescriber.

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<sup>6</sup> For nonprescription medication that is not approved by the Food and Drug Administration (FDA), see requirements in 6.a.(2)(d).

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- b. The **[program administrator]** ~~[principal]~~ or designee will require an individualized health care plan or allergy plan be developed for every student with a need to manage asthma or a known life-threatening allergy. A plan will include protocols for preventing exposures to allergens and procedures for responding to life-threatening allergic responses, and include provisions for administering medication and/or responding to emergency situations while the student is in school, at a school-sponsored activity, under the supervision of school personnel, in a before-school or after-school care program on school-owned property and in transit to or from school or a school-sponsored activity;
  - c. A student being administered a medication may be monitored by designated personnel to monitor the student's response to the medication;
  - d. A determination will be made by the ESD on if or when the student may self-carry prescription medication if the student has not been approved to self-administer medication;
  - e. It is the student's parent or guardian's responsibility to ensure that an adequate amount of medication is on hand at the school for the duration of the student's need to take medication;
  - f. It is the student's parent or guardian's responsibility to ensure that the school is informed in writing of any changes in medication instructions;
  - g. In the event a student refuses medication, the parent or guardian will be notified immediately. No attempt will be made to administer medication to a student who refuses a medication;
  - h. Any error in administration of a medication will be reported to the parent or guardian immediately and documented on a medication administration record. Errors include, but are not limited to, administering medication to the wrong student, administering the wrong medication, dose, frequency of administration or method of administration;
  - i. Medication shall not be administered until the necessary permission form and written instructions have been submitted and received as required by the ESD.

7. Administration of Medication by a Student to Themselves

- a. A student, including a student in grade K through 12 with asthma or severe allergies, may be permitted to administer prescription or nonprescription medication to themselves without assistance from designated personnel and is subject to the following:
  - (1) A student must demonstrate the ability, developmentally and behaviorally, to self-administer prescription medication and must have:
    - (a) The written permission from a parent or guardian and other documentation requested by the ESD must be submitted for self-medication of all prescription medications;
    - (b) If the student has asthma or a severe allergy, a medication that is prescribed by a prescriber and a written treatment plan developed by a prescriber or other Oregon licensed health care professional for managing of the student's asthma, diabetes and/or severe allergy, and directs use by the student while the student is in school, at a school-sponsored activity, while under the supervision of school personnel, in a before-school or after-school care program on school-owned property and in transit to or from school or a school-sponsored activity. The prescriber will include acknowledgment that the student has been instructed in the correct and responsible use of the prescribed medication;
    - (c) The permission to self-administer the medication from a building administrator and a prescriber or registered nurse practicing in an ESD setting.

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- (2) A student must demonstrate the ability, developmentally and behaviorally, to self-administer nonprescription medication<sup>7</sup> and must have:
  - (a) The written permission of the student's parent or guardian;
  - (b) The student's name affixed to the manufacturer's original container; and
  - (c) The permission to self-administer medication from a building administrator.
- (3) A student must demonstrate the ability, developmentally and behaviorally, to self-administer nonprescription medication that is not approved by the FDA and must have:
  - (a) The written permission of the student's parent or guardian; and
  - (b) A written order from the student's prescriber that includes:
    - (i) Name of the student;
    - (ii) Name of the medication;
    - (iii) Dosage;
    - (iv) Method of administration;
    - (v) Frequency of administration;
    - (vi) A statement that the medication must be administered while the student is in school, at an ESD-sponsored activity, under the supervision of ESD personnel, or in transit to or from school or ESD-sponsored activities;
    - (vii) Other special instructions, if any; and
    - (viii) Signature of the prescriber.
- b. A determination will be made by the ESD on if or when the student may self-carry prescription medication if the student has not been approved to self-administer medication;
- c. A student may have in their possession only the amount of medication needed for that school day, except for manufacturer's packaging that contains multiple dosage, the student may carry one package, such as, but not limited to, autoinjectable epinephrine or bronchodilators/inhalers;
- d. The sharing and/or borrowing by a student of any medication with another student is strictly prohibited<sup>8</sup>;
- e. The ESD personnel will request backup medication, when the medication is to treat a student's asthma or severe allergy emergency, from the student's parent or guardian. Backup medication, if provided by a student's parent or guardian, will be kept at the student's school in a location to which the student has immediate access in the event the student has an asthma and/or severe allergy emergency;
- f. A student shall not administer medication to themselves until the necessary permission form and written instructions have been submitted as required by the ESD;
- g. The permission for a student to administer medication to themselves may be revoked if the student does not responsibly self-administer the medication or abuses the use of the medication as determined by ESD personnel;
- h. A student may be subject to discipline, up to and including expulsion, as appropriate for violations of these procedures;

<sup>7</sup> For nonprescription medication that is not approved by the Food and Drug Administration (FDA), see requirements in 7.a.(3).

<sup>8</sup> [Except for short-acting opioid antagonists.]



- i. A student permitted to administer medication to themselves may be monitored by designated personnel to monitor the student's response to the medication[.] [;]

- j. [The ESD allows the application of and use by students of nonprescription sunscreen, including sunscreen that contains para-aminobenzoic acid, without any required documentation from a licensed health care professional per ORS 339.874.]

## 8. Handling, Monitoring and Safe Storage of Medication Supplies for Administration of Medication

- a. Any medication must be delivered to the school in its original manufacturer's or current prescription container, accompanied by the permission form and written instructions, as required above.
- b. Prescription medication must always be the most current prescription and kept in the original, labeled container.
- c. Nonprescription medication must be kept in original manufacturer's bottle or box.
- d. [Never administer medication sent to school in unlabeled containers.]
- e. [Never repackage medication into a plastic bag or other container for any reason.]
- f. [Medication in any form categorized as a sedative, stimulant, anti-convulsive, narcotic analgesic or psychotropic medication will be counted or measured by designated personnel or parent or guardian in the presence of another ESD employee upon receipt [and initialed by the two individuals who counted or witnessed the procedure], documented in the student's medication administration record (MAR) and routinely monitored during storage and administration. Any discrepancies will be reported to the {school nurse}[ESD nurse] or [program administrator] {principal}-immediately and documented in the student's MAR. For such medication not in capsule or tablet form, standard measuring and monitoring procedures will apply.]
- g. Designated personnel will follow the written instructions of the prescriber and the student's parent or guardian, and training guidelines as may be recommended by ODE for administering all forms of prescription and/or nonprescription medications.
- h. [Medication will be secured as follows:
  - (1) Nonrefrigerated medications will be stored in a locked cabinet, drawer or box in a secure area;
  - (2) Medications requiring refrigeration will be stored in a locked box in a refrigerator or in a separate refrigerator used solely for the storage of medication in a secure area;
  - (3) Access to medication storage keys will be limited to the [program administrator] {principal} and designated personnel.]
- i. [Designated personnel will be responsible for monitoring all medication supplies and for ensuring medication is secure at all times, not left unattended after administering and that the medication container is properly sealed and returned to storage.]
- j. When medication is running low or an inadequate dosage is on hand to administer the medication, the designated personnel will notify the student's parent or guardian immediately.

## 9. Emergency Response

- a. Designated personnel will immediately call 911 or other appropriate emergency medical response systems and administer first aid, as necessary, in the event of life-threatening side effects and allergic reactions, including the administration of epinephrine. The parent or



guardian[, [school] [ESD] nurse] and [program administrator] [principal] will be notified immediately.

- b. Adverse reactions which result from ESD-administered medication or from student self-medication will be reported to the parent or guardian immediately.
- c. Any available ESD staff will immediately call 911 and the student's parent or guardian if the designated personnel believes the student is experiencing symptoms of adrenal crisis and plans to administer medication.
- d. Any available staff will immediately call 911 when a short-acting opioid antagonist is administered to any student or other individual on ESD premises.

## 10. Disposal of Medications

- a. [Medication not picked up by the student's parent or guardian, at the end of the school year or within [five] school days of the end of the medication period, whichever is earlier, will be disposed of by designated personnel in the presence of another school employee. The medication may be disposed through a designated drug take-back collection program or in a nonrecoverable fashion as follows:
  - (1) Medication will be removed from its original container and personal information will be destroyed;
  - (2) Mix with an undesirable substance, e.g., coffee grounds, used cat litter;
  - (3) Place in a plastic bag or other sealable container, e.g., such as an empty plastic container; and
  - (4) Place the sealed container with the mixture in the trash as close to garbage pickup time as possible, to prevent theft and misuse.]
- b. [Prescriptions will never be flushed down the toilet or drain or burnt with other waste.]
- c. [Sharps and glass will be disposed of in accordance with state guidelines.]
- d. [All medication will be disposed of by designated personnel following DEQ guidelines and documented on the student's MAR as described below.]

## 11. Transcribing, Recording and Record Keeping

- a. A medication administration record (MAR) will be maintained for each student administered medication by the ESD. [The MAR will be in paper<sup>9</sup> or electronic form and will include, but not be limited to:
  - (1) The full name of the student, date of birth, name of medication, dosage, method of administration, date and time of administration, frequency of administration and the name of the person administering the medication;
  - (2) Student refusals of medication;
  - (3) Errors in administration of medication;
  - (4) Incidents of emergency and minor adverse reaction by a student to medication;
  - (5) Discrepancies in medication supply;

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<sup>9</sup> If a paper record is kept, the record will be documented in blue or black ink, and never in pencil or with use of white-out.

(6) Disposal of medication including date, quantity, manner in which the medication was destroyed and the signature of the staff involved.]

- b. A MAR for medication administered as part of an IEP goal should be maintained in the IEP record at the end of each school year.
- c. All records relating to administration of medications, including permissions and written instructions, will be maintained. Records will be retained in accordance with applicable provisions of OAR 166-400-0010(17) and OAR 166-400-0060(29).
- d. All records relating to the training of designated ESD personnel will be maintained by the ESD in accordance with applicable provisions of OAR 166-400-0010.
- e. Student health information will be kept confidential. Access shall be limited to those designated personnel authorized to administer medication to students, the student and their parent or guardian. Information may be shared with school personnel with a legitimate educational interest in the student or others authorized by the parent or guardian in writing or others as allowed under state and federal law.

#### **[Non-liability Provisions for Administration of Prescription and Nonprescription Medications and Short-Acting Opioid Antagonists]**

A school administrator, teacher or other school employee designated by the school administrator is not liable in a criminal action or for civil damages as a result of the administration of nonprescription medication, if the school administrator, teacher or other school employee in good faith administers nonprescription medication to a student pursuant to written permission and instructions of the student's parents or guardian.

A school administrator, teacher or other school employee designated by the school administrator is not liable in a criminal action or for civil damages as a result of the administration of prescription medication, if the school administrator, teacher or other school employee in compliance with the instructions of a physician, physician assistant, nurse practitioner, naturopathic physician or clinical nurse specialist, in good faith administers prescription medication to a student pursuant to written permission and instructions of the student's parents or guardian.

A person may not maintain an action for injury, death or loss that results from acts or omissions of a school administrator, teacher or other school employee during the administration of a short-acting opioid antagonist unless it is alleged and proved by the complaining party that the school administrator, teacher or other school employee was grossly negligent in administering the short-acting opioid antagonist unless other conditions exist and which are outlined in Oregon law in ORS 339.870.

The civil and criminal immunities provided for above do not apply to an act or omission accounting to gross negligence or willful and wanton misconduct.

#### **Non-Liability Provisions for Self-Administration and Autoinjectable Epinephrine**

A school administrator, school nurse, teacher or other school employee designated by the school administrator is not liable in a criminal action or for civil damages as a result of a student's self-administration of medication, as described in ORS 339.866, if the school administrator, school nurse, teacher or other school employee, in compliance with the instructions of the student's Oregon licensed health care professional, in good faith assists the student's self-administration of the

medication, if the medication is available to the student pursuant to written permission and instructions of the student's parent, guardian or Oregon licensed health care professional.

A school administrator, school nurse, teacher or other school employee designated by the school administrator is not liable in a criminal action or for civil damages as a result of the use of medication if the school administrator, school nurse, teacher or other school employee in good faith administers autoinjectable epinephrine to a student or other individual with a severe allergy who is unable to self-administer the medication regardless of whether the student or individual has a prescription for epinephrine.

The ESD and the members of an ESD Board are not liable in a criminal action or for civil damages as a result of the use of medication if any person in good faith administers autoinjectable epinephrine to a student or other individual with a severe allergy who is unable to self-administer the medication, regardless of whether the student or individual has a prescription for epinephrine; and the person administered the autoinjectable epinephrine on school premises, including at a school, on school property under the jurisdiction of the ESD or at an activity under the jurisdiction of the ESD.

The civil and criminal immunities described above (which are identified in ORS 339.871) do not apply to an act or omission to gross negligence or willful and wanton misconduct.]

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# OSBA Model ESD Sample Policy

Code:  
Adopted:

JHFE/GBNAB

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

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

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

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

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

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

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

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

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

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

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

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

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

If the superintendent is the alleged perpetrator the report shall be submitted to the ~~{insert-<sup>{8}</sup>}~~ licensed administrator position title] **Chief Human Resources Officer** who shall refer the report to the Board chair.

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

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

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

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

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

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

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<sup>7</sup> {ORS 339.372 requires the ESD to post the names and contact information of the persons, i.e., a licensed administrator and an alternate licensed administrator, who are designated to receive reports of sexual abuse for a school building in the respective school building. A "licensed administrator" is a person employed as an administrator by the ESD and holds an administrative license issued by TSPC or may be a person employed by the ESD that does not hold an administrative license issued by TSPC if the ESD does not require the administrator to be licensed by TSPC.}

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

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

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

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

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

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

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

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

END OF POLICY

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**Legal Reference(s):**

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

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

[OAR 581-022-2205](#)

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

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# OSBA Model ESD Sample Policy

Code:  
Adopted:

JHFE/GBNAB-AR(1)

## Reporting of Suspected Abuse of a Child

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

### Reporting

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

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

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

If the superintendent is the alleged abuser the report shall be submitted to the ~~insert {<sup>4</sup>} licensed administrator position title~~ **Chief Human Resources Officer** who shall refer the report to the Board chair.

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

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

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

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

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



date and time that the report was made; and name of ESD administrator who received a copy of the written report.

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

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

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

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

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

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

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

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

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

required to be disclosed about an ESD employee under ORS 339.378(1). The ESD will notify the employee that information about substantiated reports may be disclosed to a potential employer.

## **Definitions**

1. Oregon law defines “abuse” in ORS 419B.005(1).
2. “Child” means an unmarried person who is under 18 years of age or a child in care, as defined in ORS 418.257.
3. [A “substantiated report” means a report of abuse that a law enforcement agency or DHS determines is founded.]

## **Confidentiality of Records**

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

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

## **Failure to Comply**

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

## **Cooperation with Investigator**

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

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

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

2. When the subject matter of the interview or investigation is identified to be related to suspected abuse of a child, ESD employees shall not notify parents or anyone else other than DHS or law enforcement agency and any school employee necessary to enable the investigation;
3. The administrator or designee shall advise the investigator of any conditions of disability prior to any interview with the affected child;
4. ESD employees are not authorized to reveal anything that transpires during an investigation in which the employee participates, nor shall the information become part of the student's education records, except that the employee may testify at any subsequent trial resulting from the investigation and may be interviewed by the respective litigants prior to any such trial.

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

# OSBA Model ESD Sample Policy

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

## Abuse of a Child Investigations Conducted on ESD Premises

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

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

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

Investigator Name (Printed)

Name of Agency

Name of Worker's/Investigator's Supervisor

Supervisor Contact Information

Investigator Position and Badge or ID Number

Student Name

School

Investigator Signature

Date

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

### FOR COMPLETION BY ESD STAFF

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

Name of Administrator Notified

Name of Office Staff Involved

Name of Participating Administrator

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

HR10/05/21|SL

Abuse of a Child Investigations Conducted on  
ESD Premises – JHFE/GBNAB-AR(2)

# Southern Oregon ESD

Code: JHFF/GBNAA  
Adopted:

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

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

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

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

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

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

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

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

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

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

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

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

If the superintendent is the alleged perpetrator the report shall be submitted to the ~~insert licensed administrator~~ {<sup>8</sup>} ~~position title~~ Chief Human Resources Officer who shall report the suspected sexual conduct to the Board chair.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

END OF POLICY

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**Legal Reference(s):**

[ORS 334.125](#)

[ORS 339.370 - 339.400](#)

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

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

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# Southern Oregon ESD

Code: JHFF/GBNAA-AR  
Revised/Reviewed:

## Suspected Sexual Conduct Report Procedures and Forms \*

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

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

If the superintendent is the alleged perpetrator the report shall be submitted to the ~~insert licensed administrator position title~~ **Chief Human Resources Officer** who shall refer the report to the Board chair.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **Training**

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

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

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

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

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

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

SUSPECTED SEXUAL CONDUCT REPORT FORM

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

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

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

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

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

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

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

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

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

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

WITNESS DISCLOSURE FORM

Name of witness: \_\_\_\_\_

Position of witness: \_\_\_\_\_

Date of testimony/interview: \_\_\_\_\_

Description of instance witnessed: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

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

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

# Southern Oregon ESD

Code:  
Adopted:

JO/IGBAB

## **Education Records/Records of Students with Disabilities\*\***

Education records are those records maintained by the ESD that are directly related to a student.

The primary reason for the keeping and maintaining of education records for students is to help the individual student in his/her educational development by providing pertinent information for the student, his/her teachers and his/her parents. These records also serve as an important source of information to assist students in seeking productive employment and/or post-high school education.

The ESD shall maintain confidential education records of students in a manner that conforms with state and federal laws and regulations.

Information recorded on official education records should be carefully selected, accurate, verifiable and should have a direct and significant bearing upon the student's educational development.

The ESD annually notifies parents or adult students that it forwards educational records requested by an educational agency or institution in which the student seeks to enroll or receive services, including special education evaluation services.

The ESD shall comply with a request from parents or an adult student to inspect and review records without unnecessary delay. The ESD provides to parents of a student with a disability or to an adult student with a disability the opportunity at any reasonable time to examine all of the records of the district pertaining to the student's identification, evaluation, educational placement and free appropriate public education. The ESD provides parents or an adult student, on request, a list of the types and locations of education records collected, maintained and used by the ESD.

The ESD annually notifies parents of all students, including adult students, currently in attendance that they have to right to:

1. Inspect and review the student's records;
2. Request the amendment of the student's educational records to ensure that they are not inaccurate, misleading or otherwise in violation of the student's privacy or other rights;
3. Consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that the student educational record rules authorize disclosure without consent. (See Board policy JOB – Personally Identifiable Information);
4. File with the U.S. Department of Education a complaint concerning alleged failures by the ESD to comply with the requirements of the Family Educational Rights and Privacy Act; and
5. Obtain a copy of the ESD's education records policy.

The ESD's notice includes criteria for determining legitimate educational interest and the criteria for determining which school officials within the agency have legitimate educational interests. ESD officials may also include a volunteer or contractor who performs an institutional service on behalf of the ESD.

The ESD annually notifies parents and adult students of what it considers to be directory information and the disclosure of such. (see Board policy JOA – Directory Information)

The ESD shall give full rights to education records to either parent, unless the ESD has been provided legal evidence that specifically revokes these rights. Once the student reaches age 18 those rights transfer to the student.

A copy of this policy and administrative regulation shall be made available upon request to parents and students 18 years of age or older or an emancipated student and the general public.

Records requested by another school district or ESD to determine a student's appropriate placement may not be withheld.

END OF POLICY

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**Legal Reference(s):**

[ORS 30.864](#)  
[ORS 107.154](#)  
[ORS 326.565](#)  
[ORS 326.575](#)

[ORS 326.580](#)  
[ORS 339.270](#)  
[ORS 343.177\(3\)](#)  
[OAR 166-400-0010 to 166-400-0065](#)

[OAR 581-021-0220 to -0430](#)  
[OAR 581-022-2260](#)  
[OAR 581-022-2270](#)

Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400-1419 (2012).

Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g (2012); Family Educational Rights and Privacy, 34 C.F.R. Part 99 (2017).

Assistance to States for the Education of Children with Disabilities, 34 C.F.R. § 300.501 (2017).

# Southern Oregon ESD

Code:  
Adopted:

JO/IGBAB-AR

## Education Records/Records of Students with Disabilities Management

### 1. Student Education Record

Student education records are those records that are directly related to a student and maintained by the ESD, or by a party acting for the ESD; however, this does not include the following:

- a. Records of instructional, supervisory and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the record, used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;
- b. Records of the law enforcement unit of the ESD subject to the provisions of Oregon Administrative Rule (OAR) 581-021-0225;
- c. Records relating to an individual who is employed by the ESD that are made and maintained in the normal course of business that relate exclusively to the individual in that individual's capacity as an employee and that are not available for use for any other purpose. Records relating to an individual in attendance at the ESD who is employed as a result of his/her status as a student are education records and are not excepted under this section;
- d. Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are:
  - (1) Made or maintained by a physician, psychiatrist, psychologist or other recognized professional or paraprofessional acting in his/her professional capacity or assisting in a paraprofessional capacity;
  - (2) Made, maintained or used only in connection with treatment of the student; and
  - (3) Disclosed only to individuals providing the treatment. For purposes of this definition, "treatment" does not include remedial educational activities or activities that are part of the program of instruction at the ESD.
- e. Records that only contain information relating to activities in which an individual engaged after he/she is no longer a student at the ESD;
- f. Medical or nursing records which are made or maintained separately and solely by a licensed health care professional who is not employed by the ESD, and which are not used for education purposes or planning.

The ESD shall keep and maintain a permanent record on each student which includes the:

- a. Name and address of educational agency or institution;
- b. Full legal name of the student;
- c. Student birth date and place of birth;
- d. Name of parents;
- e. Date of entry in school;
- f. Name of school previously attended;



- g. Courses of study and marks received;
- h. Data documenting a student's progress toward achievement of state standards and must include a student's Oregon State Assessment results;
- i. Credits earned;
- j. Attendance;
- k. Date of withdrawal from school; and
- l. Such additional information as the district may prescribe.

The ESD may also request the social security number of the student and will include the social security number on the permanent record only if the eligible student or parent complies with the request. The request shall include notification to the eligible student or the student's parent(s) that the provision of the social security number is voluntary and notification of the purpose for which the social security number will be used.

The ESD shall retain permanent records in a minimum one-hour fire-safe place in the ESD, or keep a duplicate copy of the permanent records in a safe depository in another ESD location.

## 2. Confidentiality of Student Records

- a. The ESD shall keep confidential any record maintained on a student in accordance with OAR 581-021-0220 through 581-021-0430.
- b. Each ESD shall protect the confidentiality of personally identifiable information at collection, storage, disclosure and destruction stages.
- c. Each ESD shall identify one official to assume responsibility for ensuring the confidentiality of any personally identifiable information.
- d. All persons collecting or using personally identifiable information shall receive training or instruction on state policies and procedures.

## 3. Rights of Parents and Eligible Students

The ESD shall annually notify parents and eligible students through the ESD student/parent handbook or any other means that are reasonably likely to inform the parents or eligible students of their rights. This notification shall state that the parent(s) or an eligible student has a right to:

- a. Inspect and review the student's education records;
- b. Request the amendment of the student's education records to ensure that they are not inaccurate, misleading or otherwise in violation of the student's privacy or other rights;
- c. Consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that the applicable state or federal law authorizes disclosure without consent;
- d. Pursuant to OAR 581-021-0410, file with the Family Policy Compliance Office, United States Department of Education a complaint under 34 C.F.R. § 99.64 concerning alleged failures by the ESD to comply with the requirements of federal law; and
- e. Obtain a copy of the ESD policy with regard to student education records.

The notification shall also inform parents or eligible students that the ESD forwards education records requested under OAR 581-021-0255. The notification shall also indicate where copies of the ESD policy are located and how copies may be obtained.

If the eligible student or the student's parent(s) has a primary or home language other than English, or has a disability, the ESD shall provide effective notice.

These rights shall be given to either parent unless the ESD has been provided with specific written evidence there is a court order, state statute or legally binding document relating to such matters as divorce, separation or custody that specifically revokes these rights.

When a student becomes an eligible student, which is defined as a student who has reached 18 years of age or is attending only an institution of postsecondary education and is not enrolled in a secondary school, the rights accorded to, and the consent required of, the parents transfer from the parents to the student. Nothing prevents the ESD from giving students rights in addition to those given to parents.

#### 4. Parent's or Eligible Student's Right to Inspect and Review

The ESD shall permit an eligible student or student's parent(s) or a representative of a parent or eligible student, if authorized in writing by the eligible student or student's parent(s), to inspect and review the education records of the student, unless the education records of a student contain information on more than one student. In that case the eligible student or student's parent(s) may inspect, review or be informed of only the specific information about the student.

The ESD shall comply with a request for access to records:

- a. Within a reasonable period of time and without unnecessary delay;
- b. For children with disabilities before any meeting regarding an IEP, or any due process hearing, or any resolution session related to a due process hearing;
- c. In no case more than 45 days after it has received the request.

The ESD shall respond to reasonable requests for explanations and interpretations of the student's education record.

The parent(s) or an eligible student shall comply with the following procedure to inspect and review a student's education record:

- a. Provide a written, dated request to inspect a student's education record; and
- b. State the specific reason for requesting the inspection.

The written request will be permanently added to the student's education record.

The ESD shall not destroy any education record if there is an outstanding request to inspect and review the education record.

While the ESD is not required to give an eligible student or student's parent(s) access to treatment records under the definition of "education records" in OAR 581-021-0220(6)(b)(D), the eligible student or student's parent(s) may, at his/her expense, have those records reviewed by a physician or other appropriate professional of his/her choice.

If an eligible student or student's parent(s) so requests, the ESD shall give the eligible student or student's parent(s) a copy of the student's education record. The ESD may recover a fee for providing a copy of the record, but only for the actual costs of reproducing the record unless the imposition of a fee effectively prevents a parent or eligible student from exercising the right to inspect and review the student's educational records. The ESD may not charge a fee to search for or to retrieve the education records of a student.

The ESD shall not provide the eligible student or student's parent(s) with a copy of test protocols, test questions and answers and other documents described in Oregon Revised Statutes (ORS) 192.345(4) unless authorized by federal law.

The ESD will maintain a list of the types and locations of education records maintained by the ESD and the titles and addresses of officials responsible for the records.

Students' education records will be maintained at the school building at which the student is in attendance except for special education records which may be located at another designated location within the ESD. The administrator/principal or his/her designee shall be the person responsible for maintaining and releasing the education records.

## 5. Release of Personally Identifiable Information

Personally identifiable information shall not be released without prior written consent of the eligible student or student's parent(s) except in the following cases:

- a. The disclosure is to other school officials, including teachers, within the ESD who have a legitimate educational interest.

As used in this section, "legitimate educational interest" means an ESD official employed by the ESD as an administrator, supervisor, instructor or staff support member; a person serving on an ESD or component district Board; who need to review an educational record in order to fulfill his or her professional responsibilities, as delineated by their job description, contract or conditions of employment. Contractors, consultants, volunteers or other parties to whom an agency or institution has outsourced institutional services or functions may be considered a school official provided that party performs an institutional service or function for which the ESD would otherwise use employees, is under the direct control of the district with respect to the use and maintenance of education records, and is subject to district policies concerning the redisclosure of personally identifiable information.

The ESD shall maintain, for public inspection, a listing of the names and positions of individuals within the ESD who have access to personally identifiable information with respect to students with disabilities.

- b. The disclosure is to officials of another department within the ESD;
- c. The disclosure is to authorized representatives of:

The U.S. Comptroller General, U.S. Attorney General, U.S. Secretary of Education or state and local education authorities or the Oregon Secretary of State Audits Division in connection with an audit or evaluation of federal or state-supported education programs or the

enforcement of or compliance with federal or state-supported education programs or the enforcement of or compliance with federal or state regulations.

d. The disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to:

- (1) Determine eligibility for the aid;
- (2) Determine the amount of the aid;
- (3) Determine the conditions for the aid; or
- (4) Enforce the terms and condition of the aid.

As used in this section “financial aid” means any payment of funds provided to an individual that is conditioned on the individual’s attendance at an educational agency or institution.

e. The disclosure is to organizations conducting studies for, or on behalf of, the ESD to:

- (1) Develop, validate or administer predictive tests;
- (2) Administer student aid programs; or
- (3) Improve instruction.

The ESD may disclose information under this section only if disclosure is to an official listed in paragraph (c) above and who enters into a written agreement with the district that:

- (1) Specifies the purpose, scope and duration of the study and the information to be disclosed;
- (2) Limits the organization to using the personally identifiable information only for the purpose of the study;
- (3) The study is conducted in a manner that does not permit personal identification of parents or students by individuals other than representatives of the organization; and
- (4) The information is destroyed when no longer needed for the purposes for which the study was conducted.

For purposes of this section, the term “organization” includes, but is not limited to, federal, state and local agencies, and independent organizations.

f. The district may disclose information under this section only if the disclosure is to an official listed in paragraph (c) above who is conducting an audit related to the enforcement of or compliance with federal or state legal requirements and who enters into a written agreement with the district that:

- (1) Designates the individual or entity as an authorized representative;
- (2) Specifies the personally identifiable information being disclosed;
- (3) Specifies the personally identifiable information being disclosed in the furtherance of an audit, evaluation or enforcement or compliance activity of the federal or state-supported education programs;
- (4) Describes the activity with sufficient specificity to make clear it falls within the audit or evaluation exception; this must include a description of how the personally identifiable information will be used;
- (5) Requires information to be destroyed when no longer needed for the purpose for which the study was conducted;

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- (6) Identifies the time period in which the personally identifiable information must be destroyed; and
  - (7) Establishes policies and procedures which are consistent with FERPA and other federal and state confidentiality and privacy provisions to insure the protection of the personally identifiable information from further disclosure and unauthorized use.
- g. The disclosure is to accrediting organizations to carry out their accrediting functions;
  - h. The disclosure is to comply with a judicial order or lawfully issued subpoena. The ESD may disclose information under this section only if the ESD makes a reasonable effort to notify the eligible student or student's parent(s) of the order or subpoena in advance of compliance, unless an order or subpoena of a federal court or agency prohibits notification to the parent(s) or student;
  - i. The disclosure is to comply with a judicial order or lawfully issued subpoena when the parent is a party to a court proceeding involving child abuse and neglect or dependency matters;
  - j. The disclosure is to the parent(s) of a dependent student, as defined in Section 152 of the Internal Revenue Code of 1986;
  - k. The disclosure is in connection with a health or safety emergency. The ESD shall disclose personally identifiable information from an education record to law enforcement, child protective services and health care professionals, and other appropriate parties 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. If the ESD determines that there is an articulable and significant threat, the ESD will document the information available at that time of determination and the rationale basis for the determination for the disclosure of the information from the educational records.

In making a determination whether a disclosure may be made under the health or safety emergency, the district may take into account the totality of the circumstances pertaining to a threat to the health to safety of a student or other individuals. As used in this section a "health or safety emergency" includes, but is not limited to, law enforcement efforts to locate a child who may be a victim of kidnap, abduction or custodial interference and law enforcement or child protective services efforts to respond to a report of child abuse or neglect pursuant to applicable state law, or other such reasons that the ESD may in good faith determine a health or safety emergency.

- l. The disclosure is information the ESD has designated as "directory information" (See Board policy JOA – Directory Information);
- m. The disclosure is to the parent(s) of a student who is not an eligible student or to an eligible student;
- n. The disclosure is to officials of another school, school system, institution of postsecondary education, an education service district (ESD), state regional program or other educational agency that has requested the records and in which the student seeks or intends to enroll or is enrolled or in which the student receives services. The term "receives services" includes, but is not limited to, an evaluation or reevaluation for purposes of determining whether a student has a disability;
- o. The disclosure is to the Board during an executive session pursuant to ORS 332.061.

The ESD will use reasonable methods to identify and authenticate the identity of the parents, students, school officials and any other parties to whom the district discloses personally identifiable information from educational records;

- p. The disclosure is to a caseworker or other representative, who has the right to access the student's case plan, of a state or local child welfare agency or tribal organization that are legally responsible for the care and protection of the student, provided the personally identifiable information will not be disclosed unless allowed by law.

## 6. Record-Keeping Requirements

The ESD shall maintain a record of each request for access to and each disclosure of personally identifiable information from the education records of each student. Exceptions to the record-keeping requirements shall include the parent, eligible student, school official or his/her assistant responsible for custody of the records and parties authorized by state and federal law for auditing purposes. The ESD shall maintain the record with the education records of the student as long as the records are maintained. For each request or disclosure the record must include:

- a. The party or parties who have requested or received personally identifiable information from the education records; and
- b. The legitimate interests the parties had in requesting or obtaining the information.

The following parties may inspect the record of request for access and disclosure to a student's personally identifiable information:

- a. The parent(s) or an eligible student;
- b. The ESD official or his/her assistants who are responsible for the custody of the records;
- c. Those parties authorized by state or federal law for purposes of auditing the record-keeping procedures of the district.

## 7. Request for Amendment of Student's Education Record

If an eligible student or student's parent(s) believes the education records relating to the student contain information that is inaccurate, misleading or in violation of the student's rights of privacy or other rights, he/she may ask the building level principal/ESD official where the record is maintained to amend the record.

The principal/ESD official shall decide, after consulting with the necessary staff, whether to amend the record as requested within a reasonable time after the request to amend has been made.

The request to amend the student's education record shall become a permanent part of the student's education record.

If the principal/ESD official decides not to amend the record as requested, the eligible student or the student's parent(s) shall be informed of the decision and of his/her right to appeal the decision by requesting a hearing.

## 8. Hearing Rights of Parents or Eligible Students

If the building level principal/ESD official decides not to amend the education record of a student as requested by the eligible student or the student's parent(s), the eligible student or student's parent(s) may request a formal hearing for the purpose of challenging information in the education record as inaccurate, misleading or in violation of the privacy or other rights of the student. The ESD shall

appoint a hearings officer to conduct the formal hearing requested by the eligible student or student's parent. The hearing may be conducted by any individual, including an official of the ESD, who does not have a direct interest in the outcome of the hearing. The hearings officer will establish a date, time and location for the hearing, and give the student's parent or eligible student notice of date, time and location reasonably in advance of the hearing. The hearing will be held within 10 working days of receiving the written or verbal request for the hearing.

The hearings officer will convene and preside over a hearing panel consisting of:

- a. The principal/ESD official or his/her designee;
- b. A member chosen by the eligible student or student's parent(s); and
- c. A disinterested, qualified third party appointed by the superintendent.

The parent or eligible student may, at his/her own expense, be assisted or represented by one or more individuals of his/her own choice, including an attorney. The hearing shall be private. Persons other than the student, parent, witnesses and counsel shall not be admitted. The hearings officer shall preside over the panel. The panel will hear evidence from the school staff and the eligible student or student's parent(s) to determine the point(s) of disagreement concerning the records. Confidential conversations between a licensed employee or district counselor and a student shall not be part of the records hearing procedure. The eligible student or student's parent(s) has the right to insert written comments or explanations into the record regarding the disputed material. Such inserts shall remain in the education record as long as the education record or a contested portion is maintained and exists. The panel shall make a determination after hearing the evidence and make its recommendation in writing within 10 working days following the close of the hearing. The panel will make a determination based solely on the evidence presented at the hearing and will include a summary of the evidence and the reason for the decision. The findings of the panel shall be rendered in writing not more than 10 working days following the close of the hearing and submitted to all parties.

If, as a result of the hearing, the panel decides that the information in the education record is not inaccurate, misleading or otherwise in violation of the privacy or other rights of the student, it shall inform the eligible student or the student's parent(s) of the right to place a statement in the record commenting on the contested information in the record or stating why he/she disagrees with the decision of the panel. If a statement is placed in an education record, the district/ESD will ensure that the statement:

- a. Is maintained as part of the student's records as long as the record or a contested portion is maintained by the district/ESD; and
- b. Is disclosed by the district/ESD to any party to whom the student's records or the contested portion are disclosed.

If, as a result of the hearing, the panel decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the student, it shall:

- a. Amend the record accordingly; and
- b. Inform the eligible student or the student's parent(s) of the amendment in writing.

## 9. Duties and Responsibilities When Requesting Education Records

The ESD shall, within 10 days of a student seeking initial enrollment in or services from the district, notify the public or private school, ESD, institution, agency or detention facility or youth care center in which the student was formerly enrolled, and shall request the student's education records.

## 10. Duties and Responsibilities When Transferring Education Records

The ESD shall transfer originals of all requested student education records, including any ESD records, relating to the particular student to the new educational agency when a request to transfer the education records is made to the ESD. The transfer shall be made no later than 10 days after receipt of the request. For students in substitute care programs, the transfer must take place within five days of a request. Readable copies of the following documents shall be retained:

- a. The student's permanent records, for one year;
- b. Such special education records as are necessary to document compliance with state and federal audits, for five years after the end of the school year in which the original was created. In the case of records documenting speech pathology and physical therapy services, until the student reaches age 21 or 5 years after last seen, whichever is longer.

Note: Education records shall not be withheld for student fees, fines and charges if requested in circumstances described in ORS 326.575 and applicable rules of the State Board of Education or such records are requested for use in the appropriate placement of a student.



## Disclosure Statement

Required for use in collecting personally identifiable information  
related to social security numbers.

On any form that requests the social security number (SSN), the following statement shall appear just above the space for the SSN:

“Providing your social security number (SSN) is voluntary. If you provide it, the ESD will use your SSN for record-keeping, research, and reporting purposes only. The ESD will not use your SSN to make any decision directly affecting you or any other person. Your SSN will not be given to the general public. If you choose not to provide your SSN, you will not be denied any rights as a student. Please read the statement on the back of this form that describes how your SSN will be used. Providing your SSN means that you consent to the use of your SSN in the manner described.”

On the back of the same form, or attached to it, the following statement shall appear:

“OAR 581-021-0250 (1)(j) authorizes districts<sup>1</sup> to ask you to provide your social security number (SSN). The SSN will be used by the district for reporting, research and record keeping. Your SSN will also be provided to the Oregon Department of Education. The Oregon Department of Education gathers information about students and programs to meet state and federal statistical reporting requirements. It also helps districts and the state research, plan and develop educational programs. This information supports the evaluation of educational programs and student success in the workplace.”

The district and Oregon Department of Education may also match your SSN with records from other agencies as follows:

The Oregon Department of Education uses information gathered from the Oregon Employment Division to learn about education, training and job market trends. The information is also used for planning, research and program improvement.

State and private universities, colleges, community colleges and vocational schools use the information to find out how many students go on with their education and their level of success.

Other state agencies use the information to help state and local agencies plan educational and training services to help Oregon citizens get the best jobs available.

Your SSN will be used only for statistical purposes as listed above. State and federal law protects the privacy of your records.

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<sup>1</sup> OAR 581-021-0220(5) defines school districts to include ESDs.

# Southern Oregon ESD

Code:  
Adopted:

JOA

## Directory Information\*\*

“Directory information” means those items of personally identifiable information contained in a student education record which is not generally considered harmful or an invasion of privacy if released. The following categories are designated as directory information. The following directory information<sup>[1]</sup> may be released to the public through appropriate procedures:

1. Student’s name;
2. Student’s address;
3. Student’s telephone listing;
4. Student’s electronic address;
5. Student’s photograph;
6. Date and place of birth;
7. Major field of study;
8. Participation in officially recognized sports and activities;
9. Weight and height of athletic team members;
10. Dates of attendance;
11. Grade level;
12. Diploma, honors or awards received;
13. Most recent previous school or program attended.

### Public Notice

The district will give annual public notice to parents of students in attendance and students 18 years of age or emancipated. The notice shall identify the types of information considered to be directory information, the district’s option to release such information and the requirement that the district must, by law upon request, release secondary students’ names, addresses and telephone numbers to military recruiters and/or institutions of higher education, unless parents or eligible students request the district withhold this information. Such notice will be given prior to release of directory information.

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<sup>1</sup> [For the health, safety and welfare of students, the district may want to consider limiting this list. Consider deleting #2, 3, 4, 6, 7, 10, 11, 12 and/or 13; recommend deleting the word ‘diploma’ in #12 if kept.]

## Exclusions

Exclusions from any or all directory categories named as directory information or release of information to military recruiters and/or institutions of higher education must be submitted in writing to the principal by the parent, student 18 years of age or emancipated student within 15 days of annual public notice. A parent or student 18 years of age or an emancipated student may not opt out of directory information to prevent the district from disclosing or requiring a student to disclose their names[, identifier, institutional email address in a class in which the student is enrolled] or from requiring a student to disclose a student ID card or badge that exhibits information that has been properly designated directory information by the district in this policy.

Directory information shall be released only with administrative direction.

Directory information considered by the district to be detrimental will not be released.

Information will not be given over the telephone except in health and safety emergencies.

At no point will a student's Social Security Number or student identification number be considered directory information. The ESD shall not, in accordance with state law, disclose personal information for the purpose of enforcement of federal immigration laws.

END OF POLICY

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### Legal Reference(s):

[ORS 30.864](#)  
[ORS 107.154](#)  
[ORS 180.805](#)

[ORS 326.565](#)  
[ORS 326.575](#)  
[ORS 336.187](#)

[OAR 581-021-0220 - 0430](#)  
[OAR 581-022-2060](#)

Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400-1419 (2012).

Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g (2012); Family Educational Rights and Privacy, 34 C.F.R. Part 99 (2017).

Every Student Succeeds Act, 20 U.S.C. § 7908 (2012).

# Southern Oregon ESD

Code:  
Adopted:

JOB

## Personally Identifiable Information\*\*

Personally identifiable information includes, but is not limited to:

1. Student's name, if excluded from directory information, as requested by the student/parent in writing;
2. Name of the student's parent(s) or other family member;
3. Address of the student or student's family, if excluded from directory information, as requested by the student/parent in writing;
4. Personal identifier such as the student's social security number or student ID number or biometric record;
5. A list of personal characteristics that would make the student's identity easily traceable such as student's date of birth, place of birth and mother's maiden name;
6. Other information alone or in combination that would make the student's identity easily traceable;
7. Other information requested by a person who the ESD reasonably believes knows the identity of the student to whom the educational record relates.

### Prior Consent to Release

Personally identifiable information will not be released without prior signed and dated consent of the parent or the student 18 years of age or older or an emancipated student.

Notice of and/or request for release of personally identifiable information shall specify the records to be disclosed, the purpose of disclosure and the identification of person(s) to whom the disclosure is to be made. Upon request of the parent or eligible student, the ESD will provide a copy of the disclosed record.

### Exceptions to Prior Consent

The ESD may disclose personally identifiable information without prior consent under the following conditions:

1. To personnel within the district who have legitimate educational interests;
2. To personnel of an education service district or state regional program where the student is enrolled or is receiving services;
3. To personnel of another school, another district, state regional program or institution of postsecondary education where the student seeks or intends to enroll;

4. To authorized representatives of the U.S. Comptroller General, U.S. Attorney General, U.S. Secretary of Education or state and local education authorities or the Oregon Secretary of State Audits Division in connection with an audit or evaluation of federal or state-supported education programs or the enforcement of or compliance with federal or state-supported education programs or the enforcement of or compliance with federal or state regulations;
5. To personnel determining a financial aid request for the student;
6. To personnel conducting studies for or on behalf of the district;
7. To personnel in accrediting organizations fulfilling accrediting functions;
8. To comply with a judicial order or lawfully issued subpoena;
9. For health or safety emergency;
10. By request of a parent of a student who is not 18 years of age;
11. By request of a student who is 18 years of age or older or emancipated;
12. Because information has been identified as “directory information”;
13. To the courts when legal action is initiated;
14. To a court and state and local juvenile justice agencies;
15. A judicial order or lawfully issued subpoena when the parent is a party to a court proceeding involving child abuse and neglect or dependent matters;
16. To a caseworker or other representative of a state or local child welfare agency or tribal organization that are legally responsible for the care and protection of the student including educational stability of children in foster care.

END OF POLICY

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**Legal Reference(s):**

[ORS 30.864](#)  
[ORS 107.154](#)  
[ORS 326.565](#)

[ORS 326.575](#)  
[ORS 336.187](#)

[OAR 581-015-2000](#)  
[OAR 581-021-0220 to -0430](#)  
[OAR 581-022-2260](#)

Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400-1419 (2012).  
Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g (2012).  
Family Educational Rights and Privacy, 34 C.F.R. Part 99 (2012).  
Uninterrupted Scholars Act (USA), 2013 (P.L. 112-278, Jan. 14, 2013), 20 U.S.C. § 1221 (2012).