

## OSBA Model Sample Policy

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Code: BDDH  
Adopted: 11/08/76  
Revised:

### Public Comment at Board Meetings

All Board meetings, with the exception of executive sessions, will be open to the public. The Board invites district community members to attend Board meetings to become acquainted with the program and operation of the district. Members of the public also are encouraged to share their ideas and opinions with the Board when appropriate.

It is the intent of the Board to ensure communications with individuals with disabilities are as effective as communications with others. Individuals with hearing, vision or speech impairments will be given an equal opportunity to participate in Board meetings. Primary consideration will be given to requests of qualified individuals with disabilities in selecting appropriate auxiliary aids<sup>1</sup> and services.

Auxiliary aids and services for persons with disabilities will be available at no charge to the individual. All auxiliary aids and/or service requests must be made with appropriate advance notice. Should the Board demonstrate such requests would result in a fundamental alteration in the service, program or activity or in undue financial and administrative burdens, an alternative, equally effective means of communication will be used.

#### Audience

During a session of a Board meeting open to the public, members of the public may be invited to present comments during the designated portion of the agenda. At the discretion of the Board chair, further public comment may be allowed.

#### Request for an Item on the Agenda

A member of the public may request the {superintendent} or {Board chair} consider placing an item on the agenda of a regular Board meeting. This request should be made in writing and presented to the {superintendent} or {Board chair} for consideration at least {five working days} prior to the scheduled meeting.

#### Procedures for Public Comment at Meetings

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<sup>1</sup> Auxiliary aids may include, but are not limited to, such services and devices as qualified interpreters, assistive listening systems, note takers, readers, taped texts, Braille materials and large print.

The Board will establish procedures for public comment in open meetings. The purpose of these procedures will be to inform the public how to effectively participate in Board meetings for the best interests of the individual, the district and the patrons. The information will be easily accessible and available to all patrons attending a public Board meeting.

1. Discussion or presentation concerning a published agenda item is limited to its designated place on the agenda, unless otherwise authorized by the Board chair.
2. A visitor speaking during the meeting may introduce a topic not on the published agenda. The Board, at its discretion, may require that a proposal, inquiry or request be submitted in writing, and reserves the right to refer the matter to the administration for action or study.
3. Any person who is invited by the Board chair to speak to the Board during a meeting should state his/her name and address and, if speaking for an organization, the name and identity of the organization. A spokesperson should be designated to represent a group with a common purpose.
4. Statements by members of the public should be brief and concise. The Board chair may use discretion to establish a time limit on discussion or oral presentation by visitors.
5. Questions asked by the public, when possible, will be answered by the Board chair or referred to the superintendent for reply. Questions requiring investigation may, at the discretion of the Board chair, be referred to the superintendent for response at a later time.
6. At the discretion of the Board chair, anyone wishing to speak before the Board, either as an individual or as a member of a group, on any agenda item or other topic, may do so by providing the Board secretary with a completed registration card or sign-in sheet, prior to the Board meeting in order to allow the chair to provide adequate time for each agenda item.

The Board chair should be alert to see that all visitors have been acknowledged and thanked for their presence and for any contributed comments on agenda issues. Similar courtesy should be extended to members of staff who have been in attendance. Their return for future meetings should be welcomed.

### **Petitions**

Petitions may be accepted at any Board meeting. No action will be taken in response to a petition before the next regular meeting. Petitions will be referred to the superintendent for consideration and recommendation.

### **Comments Regarding Staff Members**

Speakers may offer objective criticism of district operations and programs. The Board will not hear comments regarding any individual district staff member. The Board chair will direct the visitor to the procedures in Board policy {KL - Public Complaints} for Board consideration of a legitimate complaint involving a staff member. {The association contract governing the

employee's rights will be followed.† A commendation involving a staff member should be sent to the superintendent†, who will forward it to the †employee, his/her supervisor and the Board†.

END OF POLICY

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**Legal Reference(s):**

[ORS 165.535](#)  
[ORS 165.540](#)

[ORS 192.610 to -192.690](#)  
[ORS 332.057](#)

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

Americans with Disabilities Act Amendments Act of 2008.

*Baca v. Moreno Valley Unified Sch. Dist.*, 936 F. Supp. 719 (C.D. Cal. 1996).

*Leventhal v. Vista Unified Sch. Dist.*, 973 F. Supp. 951 (S.D. Cal. 1997).

# OSBA Model Sample Policy

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Code: BDDH-AR  
Adopted: 10/23/95  
Revised/Reviewed:

## Public Comment at Board Meetings

The Board requests that a public comment add information or a perspective that has not already been mentioned previously, and that the patron refrains from repeating a similar point.

To make a comment or present a topic during public comment, if the opportunity is available on the Board agenda, please complete the ~~Intent to Speak~~ **Public Comment** card and submit it to the Board secretary prior to the start of the meeting. An individual that has submitted an ~~Intent to Speak~~ **Public Comment** card and has been invited to speak by the Board chair, will be allowed ~~three~~ minutes. During virtual Board meetings Public Comment may be submitted via an electronic Public Comment card, those will be read aloud by the Board chair.

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Any person, who is invited by the Board chair to speak to the Board during a meeting, should state his/her name and address and, if speaking for an organization, the name of the organization. A spokesperson should be designated to represent a group with a common purpose.

Please keep in mind that reference to a specific employee or group of employees, is prohibited as follows:

Board policy BDDH - Public Comment at Board Meetings:

“Comments Regarding Staff Members -

Speakers may offer objective criticism of district operations and programs. The Board will not hear comments regarding any individual district staff member. The Board chair will direct the visitor to the procedures in Board policy ~~KL - Public Complaints~~ for Board consideration of a legitimate complaint involving a staff member. ~~The association contract governing the employee’s rights will be followed.~~ A commendation involving a staff member should be sent to the superintendent, who will forward it to the ~~employee, his/her supervisor and the Board.~~”

### ~~INTENT TO SPEAK~~

~~The Board welcomes your input. Please submit this completed card to the Board secretary prior the start of the meeting.~~

Name: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_

Email (optional): \_\_\_\_\_

Topic or comment to be presented (brief description): \_\_\_\_\_

~~A complaint brought before the Board shall be referred to the proper school authorities. A complaint shall be processed in accordance with [Board policy KL – Public Complaints and KL-AR – Public Complaints Procedure]. A hearing conducted before the Board regarding personnel shall take place in an executive session.~~

~~The Board requests that a topic or comment is limited to three minutes or less.~~

Comment [1]: we will use a separate comment card (on yellow cardstock)

# OSBA Model Sample Policy

The recommended staff policy (GBEB) and administrative regulation are highly recommended per OAR 581-022-2220; full replacement considered by the board and readopted; the accompanying administrative regulation (AR) may be reviewed by the board and therefore submitted as an information item. The student policy (JHCC) and AR are required per OAR 581-022-2220; revisions to policy and the AR should be considered by the board and readopted. Members should consult language in current board policy BFC - Adoption and Revision of Policies.

Code: GBEB  
Adopted: 10/23/95

## Communicable Diseases – Staff

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

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

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

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

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

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

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

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

END OF POLICY

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**Legal Reference(s):**

[ORS 332.107](#)

[ORS 431.150 - 431.157](#)

[ORS 433.001 - 433.526](#)

[OAR 333-018](#)

[OAR 333-019-0010](#)

[OAR 333-019-0014](#)

[OAR 333-019-1000](#)

[OAR 437-002-0360](#)

[OAR 437-002-0377](#)

[OAR 581-022-2220](#)

OREGON DEPARTMENT OF EDUCATION and OREGON HEALTH AUTHORITY, *Communicable Disease Guidance* (~~2017~~2020).

Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g (~~2012~~2018); Family Educational Rights and Privacy, 34 C.F.R. Part 99 (~~2017~~2019).

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

# OSBA Model Sample Policy

The recommended staff policy (GBEB) and administrative regulation are highly recommended per OAR 581-022-2220; full replacement considered by the board and readopted; the accompanying administrative regulation (AR) may be reviewed by the board and therefore submitted as an information item. The student policy (JHCC) and AR are required per OAR 581-022-2220; revisions to policy and the AR should be considered by the board and readopted. Members should consult language in current board policy BFC - Adoption and Revision of Policies.

Code: GBEB-AR  
Revised/Reviewed:

## Communicable Diseases – Staff

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

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

### Restrictable Diseases

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

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



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

### Reportable Diseases Notification

1. All employees shall comply with all reporting measures adopted by the district and with all rules set forth by Oregon Health Authority, Public Health Division and the local health department.

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

2. An administrator may seek confirmation and assistance from the local health officer to determine the appropriate district response when the administrator is notified that an employee or a student has been exposed to a restrictable disease that is also a reportable disease.
3. [District staff with impaired immune responses, that are of childbearing age or some other medically fragile condition, should consult with a medical provider for additional guidance<sup>4</sup>.]
4. An administrator shall determine other persons ~~with a legitimate educational interest~~ who may be informed of ~~the communicable nature of an individual student's disease, or an employee's communicable disease,~~ or that of a student's when a legitimate educational interest exists or for health and safety reasons, ~~within guidelines allowed by~~ in accordance with law.

### Equipment and Training

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

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

# OSBA Model Sample Policy

Senate Bill 155 (2019) updated statute affecting release of personnel records when requests are received.

Code: GBL  
Adopted: 2000

## Personnel Records \*

An official personnel file will be established for each person employed by the district. Personnel files will be maintained in a central location.

All records containing employee medical condition information such as workers' compensation reports and release or permission to return to work forms will be kept confidential, in a separate file from personnel records. Such records will be released only in accordance with the requirements of the Americans with Disabilities Act or other applicable law.

The superintendent will be responsible for establishing procedures regarding the control, use, safety and maintenance of all personnel records. Employees will be given a copy of evaluations, complaints and written disciplinary actions ~~to be~~ placed in their personnel file. All charges resulting in disciplinary action shall be considered a permanent part of a teacher's personnel file and shall not be removed for any reason. Employees may submit a written response to any materials placed in their personnel file.

Except as provided below, or required by law, district employees' personnel records will be available for use and inspection only by the following:

1. The individual employee. An employee ~~or designee~~ may arrange with the [personnel] office to inspect the contents of ~~his/her~~ their personnel file on any day the [personnel] office is open for business;
2. Others designated ~~in writing~~ by the employee in writing may arrange to inspect the contents of the employee's personnel file in the same manner described above;
3. The comptroller or auditor, when such inspection is pertinent to carrying out ~~his/her~~ their respective duties, or as otherwise specifically authorized by the Board. Information so obtained will be kept confidential. No files will be removed from their central location for personal inspection;
4. A Board member when specifically authorized by the Board. Information will be kept confidential. No files will be removed from their central location for personal inspection;
5. The superintendent and members of the central administrative staff ~~designated by the superintendent~~;
6. District administrators and supervisors who currently or prospectively supervise the employee;

7. ~~Employees of the personnel office~~;
8. Attorneys for the district or the district’s designated representative on matters of district business;
9. ~~The disciplinary records<sup>1</sup> of a district employee convicted of a crime listed in Oregon Revised Statute (ORS) 342.143 are not exempt from disclosure under ORS 192.345 or 192.355 and shall be released to any person upon request. Prior to the release of disciplinary records the district shall remove any personally identifiable information from the record that would disclose the identity of a child, a crime victim or a district employee who is not the subject of the disciplinary record.~~ Records created pursuant to ORS 339.388(8)(c) are confidential and are not public records as defined in ORS 192.311. The district may use the record as a basis for providing the information required to be disclosed about an employee under ORS 339.378(1);
10. Upon request from a law enforcement agency, the Oregon Department of Human Services, ~~or the Teacher Standards and Practices Commission, or the Oregon Department of Education,~~ a district shall provide the records of investigations of suspected child abuse by a district employee in conducting an investigation related to suspected abuse or suspected sexual conduct, to the extent allowable by state and federal law, including laws protecting a person from self-incrimination.

The superintendent may permit persons other than those specified above to use and to inspect personnel records when, in ~~his/her~~ their opinion, the person requesting access has a legitimate official purpose. The superintendent will determine in each case, the appropriateness and extent of such access.

Release of personnel records to parties other than those listed above, will be in line with ~~the district’s public records procedures~~ [Board policy KBA - Public Records]. ~~The district will attempt to notify the employee of the request and that the district believes it is legally required to disclose certain records.~~

END OF POLICY

**Legal Reference(s):**

<sup>1</sup> ~~“Disciplinary records” is defined as records related to a personnel discipline action or materials or documents supporting that action.~~

[ORS 339.370](#) – 339.374

[ORS 339.388](#) ~~(7)-(9)~~

[ORS 342.143](#)

[ORS 342.850](#)

[ORS 652.750](#)

[OAR 581-022-2405](#)

OSEA v. Lake County Sch. District, 93 Or. App. 481 (1988).

Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101-12113 ~~112~~ (2012~~8~~); 29 C.F.R. Part 1630 (2016~~9~~); 28 C.F.R. Part 35 (2016~~9~~).

Americans with Disabilities Act Amendments Act of 2008, 42 U.S.C. § 2000ff-1 (2018).

# OSBA Model Sample Policy

Senate Bill 155 (2019) updated statute affecting release of personnel records when requests are received.

Code: GBLA  
Adopted: 2000

## Disclosure of Information

Authorized district officials may disclose information about a former employee's job performance to a prospective employer. District officials are immune from civil liability for such disclosures under the following conditions:

1. The disclosure of information regarding the former employee's job performance is upon request of the prospective employer or the former employee. This disclosure is presumed to be in good faith. Presumption of good faith is rebutted by showing the information disclosed was:
  - a. Knowingly false;
  - b. Deliberately misleading;
  - c. Rendered with malicious purpose; or
  - d. Violated civil rights of the former employee protected under Oregon Revised Statute (ORS) 659 or ORS 659A.
2. ~~The disclosure is of the disciplinary records<sup>1</sup> of a district employee who has been convicted of a crime listed in Oregon Revised Statute (ORS) 342.143. These records are generally not exempt from disclosure under ORS 192.345 or ORS 192.355. Prior to the disclosure of a disciplinary record an education provider shall remove any personally identifiable information from the record that would disclose the identity of a child, a crime victim or a school employee who is not the subject of the disciplinary record.~~ Records created pursuant to ORS 339.388(8)(c) are confidential and are not public records as defined in ORS 192.311. The district may use the record as a basis for providing the information required to be disclosed about an employee under ORS 339.378(1);
3. ~~The disclosure is the result of a request from a law enforcement agency, the Department of Human Services or the Teacher Standards and Practices Commission regarding the records of investigations of suspected child abuse by a district employee.~~ The disclosure is a result of a request from law enforcement, Oregon Department of Human Services, Teacher Standards and Practices Commission, or the Oregon Department of Education in conducting an investigation related to suspected abuse or suspected sexual conduct to the

<sup>1</sup> ~~"Disciplinary records" is defined as records related to a personnel discipline action or materials or documents supporting that action.~~

extent allowable by state and federal law, including laws protecting a person from self-incrimination;

4. No later than 20 days after receiving a request under ORS 339.374(1)(b), ~~an education provider that~~, the district, if it has or has had an employment relationship with the applicant shall disclose the information requested ~~and any disciplinary records that must be disclosed as provided by ORS 339.388(7).~~

END OF POLICY

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**Legal Reference(s):**

[ORS 30.178](#)  
[ORS 339.370 - 339.374](#)

[ORS 339.378](#)  
[ORS 339.388\(7\),\(8\),\(9\)](#)

[ORS Chapter 659](#)  
[ORS Chapter 659A](#)

OR. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL.

## OSBA Model Sample Policy

The updates issued for policy and administrative regulations for sexual harassment result from release of revised Federal regulations for Title IX protections, and the release of updates to Oregon Administrative Rules revised to reflect new Oregon statute adopted in the 2019 Legislative session amending Oregon's sexual harassment definition and its policy and procedures requirements.

Code: GBN/JBA  
Adopted: 10/23/95

### Sexual Harassment

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

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

#### OREGON DEFINITION AND PROCEDURES

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

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



## Oregon Definition

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

1. A demand or request for sexual favors in exchange for benefits;
2. Unwelcome conduct of a sexual nature that is physical, verbal, or nonverbal and that:
  - a. Interferes with a student’s educational activity or program;
  - b. Interferes with a school or district staff member’s ability to perform their job; or
  - c. Creates an intimidating, offensive or hostile environment.
3. Assault when sexual contact occurs without the student’s, staff member’s or third party’s consent because the student, staff member or third party is under the influence of drugs or alcohol, is unconscious or is pressured through physical force, coercion or explicit or implied threats.<sup>4</sup>

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

Examples of sexual harassment may include, but not be limited to, <sup>5</sup>physical touching or graffiti of a sexual nature; displaying or distributing of sexually explicit drawings; pictures and written materials; sexual gestures or obscene jokes; touching oneself sexually or talking about one’s sexual behaviors in front of others; or spreading rumors about or rating other students or others as to appearance, sexual activity or performance.

## Oregon Procedures

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

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

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

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

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[Incidents involving students contact: [Julie Sams, Director of Student Services, 503-408-2118, julie\\_sams@parkrose.k12.or.us,](mailto:julie_sams@parkrose.k12.or.us)

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Incidents involving adults contact: Mary Bradbury-Jones, Director of Human Resources, 503-408-2112, [mary\\_bradburyjones@parkrose.k12.or.us.](mailto:mary_bradburyjones@parkrose.k12.or.us) ==

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

### Response

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

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

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

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

### Investigation

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

1. ¶ Interviews with those involved;

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

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.<sup>7</sup>

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

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

1. ~~Discipline of staff and students engaging in sexual harassment;~~
2. Removal of third parties engaged in sexual harassment;
3. Additional supervision in activities;
4. Additional controls for district electronic systems;
5. Trainings and education for staff and students; and
6. Increased notifications regarding district procedures and resources.<sup>7</sup>

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

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

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

5. Providing for additional supervision, including law enforcement if necessary, at district events.†

### **No Retaliation**

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

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

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

### **Notice**

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

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

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

1. Name and contact information for all person designated by the district to receive complaints;

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

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

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

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

The notice must:

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

## **†Oregon Department of Education (ODE) Support**

The ODE will provide technical assistance and training upon request.†

### **FEDERAL DEFINITION AND PROCEDURES**

#### **Federal Definition**

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

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

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

#### **Federal Procedures**

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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))

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

## Reporting

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

~~The Director of Student Services or the Director of Human Resources{Person or position} is designated as the Title IX Coordinator {and can be contacted at 503-408-2100 {insert phone number}}. The Title IX Coordinator will coordinate the district's efforts to comply with its responsibilities related to this AR. The district prominently will display the contact information for the Title IX Coordinator on the district website and in each handbook.{++}~~

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## Response

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

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

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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 district's educational environment, or deter sexual harassment. The district must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide supportive measures. (Title 34 C.F.R. § 99.30(a))

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

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

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

### **Notice**

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

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

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

### **No Retaliation**

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

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

### **Publication**

This policy shall be made available to students, parents of students and staff members. This policy and contact information for the Title IX Coordinator shall be prominently published in the school/district student handbook and on the school/district website. This policy shall also be made available at each school office and at the district office. The district shall post this

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

<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.



policy on a sign in all grade 6 through 12 schools, on a sign that is at least 8.5 inches by 11 inches in size. A copy of the policy will be made available to any †student, parent of a student, school or district staff member, or third party†~~person~~ upon request.

END OF POLICY

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**Legal Reference(s):**

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

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

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

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

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

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

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

# OSBA Model Sample Administrative Regulation

The updates issued for policy and administrative regulations for sexual harassment result from release of revised Federal regulations for Title IX protections, and the release of updates to Oregon Administrative Rules revised to reflect new Oregon statute adopted in the 2019 Legislative session amending Oregon’s sexual harassment definition and its policy and procedures requirements.

Code: GBN/JBA-AR(1)  
Adopted: 3/13/00  
Revised/Reviewed:

## Sexual Harassment Complaint Procedure

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

Name	Position	Phone	Email
[Incidents involving students contact: Julie Sams, Director of Student Services, 503-408-2118, <a href="mailto:julie_sams@parkrose.k12.or.us">julie_sams@parkrose.k12.or.us</a>			
Incidents involving adults contact: Mary Bradbury-Jones, Director of Human Resources, 503-408-2112, <a href="mailto:mary_bradburyjones@parkrose.k12.or.us">mary_bradburyjones@parkrose.k12.or.us</a> .			

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

Step 1 The district official receiving the report or complaint shall promptly initiate an investigation using procedures and standards, including but not limited to, those identified in Board policy GBN/JBA - Sexual Harassment and will notify the complainant or reporting person, any impacted person who is not a reporting person (if appropriate), each reported person, and where applicable the parents of a reporting person, impacted person, or reported person, when such investigation is initiated. The official will arrange such meetings as may be necessary to discuss the issue with all concerned parties within {five} 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

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

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 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>2</sup>.

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

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

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

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

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

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

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

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

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

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

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

**WITNESS DISCLOSURE FORM**

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

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

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

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

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

# OSBA Model Sample Administrative Regulation

The updates issued for policy and administrative regulations for sexual harassment result from release of revised Federal regulations for Title IX protections, and the release of updates to Oregon Administrative Rules revised to reflect new Oregon statute adopted in the 2019 Legislative session amending Oregon’s sexual harassment definition and its policy and procedures requirements.

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

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

### Additional Definitions

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

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

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

“Supportive measures” means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the recipient’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the district’s educational environment, or deter sexual harassment.<sup>4</sup> The district must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that

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

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

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

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

maintaining such confidentiality would not impair the ability of the recipient to provide supportive measures.

### **Formal Complaint Procedures**

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

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

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

### **Investigation**

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

1. Include objective evaluation of all relevant evidence, including inculpatory and exculpatory evidence.
2. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the district and not on the parties.<sup>8</sup>

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

<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 district is encouraged to review Board policy JFC and codes of conduct found in handbooks for applicable language.}~~

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



3. Provide an equal opportunity for the parties to present witnesses, and other inculpatory and exculpatory evidence.
4. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
5. Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice.<sup>9</sup> The district may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.
6. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.
7. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint.<sup>10</sup> Prior to completion of the investigative report, the district must send to each party and party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report;
8. Create an investigative report that fairly summarizes relevant evidence and is sent to each party and party's advisor in electronic format or hard copy at least 10 days prior to any hearing (if required or provided) or other time of determination of responsibility. The party and advisor will be allowed to review and provide a written response.

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

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

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

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

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

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

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

### **Determination of Responsibility**

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

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 district’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 district imposes on the respondent; and
  - c. Whether remedies designed to restore or preserve equal access to the district’s education program or activity will be provided by the district to the complainant; and

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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.~~

13. The district’s procedures and permissible bases for the complainant and respondent to appeal.

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

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

### **Remedies**

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

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

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

Other remedies may include:

1. [Educational programming][;][.]

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

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

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

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<sup>14</sup> Districts should review any other disciplinary procedures and requirements prior to imposing any discipline, and should contact 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 district exercised substantial control over both the respondent the respondent and the context in which the sexual harassment occurs[, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution]. (Title 34 C.F.R. §106.44(a))

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

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

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

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

### **Consolidation of Complaints**

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

### **Informal Resolution**

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

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;
4. 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
5. 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.
6. {Additional bases may be allowed, if made available equally to both parties.}

When an appeal is filed, the district must:

1. Notify the other party in writing;
7. Implement appeal procedures equally for both parties;
8. Ensure the decision-makers(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;
9. Ensure the decision-maker for the appeal is free from conflicts of interest and bias;
10. Give both parties a reasonable equal opportunity to submit a written statement in support of, or challenging the outcome;
11. Issue a written decision describing the result of the appeal and the rationale for the result; and
12. Provide the written decision simultaneously to both parties.

## Timelines

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

1. General grievance process (from receipt of formal complaint to determination of responsibility: {90} days;
13. Appeals (from receipt of appeal): {60} days;
14. 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

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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))

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

## Training

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

Decision-makers must receive training on any technology to be used at a live hearing and on issues of relevance of questions and 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 district's website.<sup>19</sup>

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<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 district's response was not deliberately indifferent; and
- What measures were taken to restore or preserve equal access to the district's educational program or activity. (Title 34 C.F.R. § 106.45(a)(10)(ii))

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

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

# OSBA Model Sample Policy

In response to the coronavirus disease (COVID-19) pandemic the U.S. Congress passed the Families First Coronavirus Response Act (2020), that includes the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act. The Oregon Bureau of Labor and Industries adopted a temporary rule that amended the Oregon Family Leave Act for the purpose of allowing eligible employees to take leave during the statewide public health emergency.

Code: GCBDAAGDBDAA  
Adopted: **NEW**

## COVID-19 Related Leave \*

When applicable, the district will comply with the provisions of the Families First Coronavirus Response Act (FFCRA) which includes the Emergency Paid Sick Leave Act (EPSLA) and the Emergency Family and Medical Leave Expansion Act (EFMLEA). The district will also comply with the Oregon Bureau of Labor and Industries' (BOLI) temporary rule BLI 4-2020 that amends Oregon Administrative Rule 839-009-0230 for the purpose of taking leave during the statewide public health emergency. This policy and its accompanying administrative regulation will be in effect until each of the above laws have expired.

Employees are eligible for EFMLEA leave if they have been employed for at least 30 days.

EPSLA applies to all employees no matter how long they have been employed or how many hours they have worked.

The district may exclude from the EPSLA and EFMLEA employees who are health care providers, including anyone employed at any post-secondary educational institution offering health care instruction.

The BOLI rule applies to districts with employees who are eligible for leave under the Oregon Family Leave Act.

The district shall post a notice of FFCRA requirements in conspicuous places at district facilities. The district may meet the notice requirement by emailing the notice to employees or posting notice on an internal or external website made available to employees.

The district is prohibited from retaliating against an employee who takes leave or takes actions to enforce the requirements of these acts.

This policy does not affect employee rights or benefits under any other law, collective bargaining agreement, or district policy. The district is not required to pay an employee for unused emergency paid sick time if an employee resigns, retires, or is terminated.

## END OF POLICY

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### Legal Reference(s):

[ORS 332.507](#)

[ORS 342.545](#)

[ORS 659A.090](#)

[ORS 659A.093](#)

[ORS 659A.096](#)

[ORS 659A.099](#)

[ORS 659A.150 - 659A.186](#)

[OAR 839-009-0200 - 0320](#)

BOLI Temporary Administrative Order BLI 4-2020

Families First Coronavirus Response Act, Public Law No: 116-127, Mar. 18, 2020.

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

Family and Medical Leave Act, 29 U.S.C. §§ 2601-2654 (2018); 5 U.S.C. §§ 6381-6387 (2018); Family and Medical Leave Act, 29 C.F.R. Part 825 (2019).

Americans with Disabilities Act Amendments Act of 2008, 42 U.S.C. § 2000ff-1 (2018).

Escriba v. Foster Poultry Farms, Inc. 743 F.3d 1236 (9<sup>th</sup> Cir. 2014).



# OSBA Model Sample Policy

In response to the coronavirus disease (COVID-19) pandemic the U.S. Congress passed the Families First Coronavirus Response Act (2020), that includes the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act. The Oregon Bureau of Labor and Industries adopted a temporary rule that amended the Oregon Family Leave Act for the purpose of allowing eligible employees to take leave during the statewide public health emergency.

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

## COVID-19 Related Leave \*

### Emergency Paid Sick Leave Act

The district shall provide paid sick time to employees who are unable to work due to the effects of coronavirus disease 2019 (COVID-19). Full-time employees are entitled to 80 hours of paid sick time, which is available immediately for use if the employee:

1. Is subject to a governmental quarantine or isolation order;
2. Has been advised by a health-care provider to self-quarantine;
3. Is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. Is caring for an individual who is subject to quarantine or isolation by governmental order or health care provider advisement;
5. Is caring for their son or daughter whose school or child-care provider is closed; or
6. Is experiencing a substantially similar condition related to COVID-19 as specified by the Secretary of Health and Human Services, in consultation with the Secretary of the Treasury and the Secretary of Labor.

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

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

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

1. To care for an individual subject to quarantine or isolation by governmental order or health care provider advisement;

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

### **Emergency Family and Medical Leave Expansion Act**

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

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

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

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

### **Temporary BOLI Rule affecting Oregon Family Leave Act (OFLA)**

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

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

# OSBA Model Sample Policy

In response to the coronavirus disease (COVID-19) pandemic the U.S. Congress passed the Families First Coronavirus Response Act (2020), that includes the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act. The Oregon Bureau of Labor and Industries adopted a temporary rule that amended the Oregon Family Leave Act for the purpose of allowing eligible employees to take leave during the statewide public health emergency.

Code: GCBDAAGDBDAA-AR(2)  
Revised/Reviewed:

## COVID-19 Related Leave \*

Employee's Name: \_\_\_\_\_ Date: \_\_\_\_\_

Dates for which the leave is requested: \_\_\_\_\_

Qualifying reason for leave:

- Is subject to governmental-quarantined or isolation order.
- Has been advised by health-care provider to self-quarantine.
- Is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
- Is caring for an individual who is subject to a quarantine or isolation by governmental order or health care provider advisement.
- Is caring for their son or daughter whose school or child-care provider is closed.
- Is experiencing a substantially similar condition related to COVID-19 as specified by the Secretary of Health and Human Services, in consultation with the Secretary of the Treasury and the Secretary of Labor.

The employee is unable to work, including telework due to: \_\_\_\_\_

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

Documentation supporting the qualifying reason for requesting leave: \_\_\_\_\_

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

For quarantine or isolation orders, provide the name of the health care provider who advised the self-quarantine:

\_\_\_\_\_  
Name of health care provider

\_\_\_\_\_  
Contact information

For emergency Family Medical Leave Act (FMLA) leave and paid sick leave taken for COVID-19 related school or child care closings, provide documentation to support the need for leave, i.e., notice posted on government, school or day care website, published in a newspaper, or an email from an official of the school, place of care, or child care provider.

# OSBA Model Sample Policy

**When we were asking OSBA about policies referencing law enforcement we found this “highly recommended” policy was missing from our collection.**

Code: IGAEC  
Adopted:

## **Anabolic Steroids and Performance-Enhancing Substances**

The district will not tolerate the possession, selling or use of unlawful drugs or hormonal substances chemically or pharmacologically related to testosterone. In addition, the district will utilize an evidence based instructional grade K-12 health education program that shall prevent the use of anabolic steroids and performance-enhancing substances. The program will meet additional minimum requirements as defined by law.

### **Definitions**

“Anabolic steroid” includes any drug or hormonal substance chemically or pharmacologically related to testosterone, all prohormones, including dehydroepiandrosterone and all substances listed in the Anabolic Steroid Control Act of 2004. Anabolic steroid does not include estrogens, progestins, corticosteroids and mineralocorticoids.

“Performance-enhancing substance” means a manufactured product for oral ingestion, intranasal application or inhalation containing compounds that contain a stimulant, amino acid, hormone precursor, herb or other botanical or any other substance other than an essential vitamin or mineral; and are intended to increase athletic performance, promote muscle growth, induce weight loss or increase an individual’s endurance or capacity for exercise.

“School district employee” means an administrator, teacher or other person employed by a school district; a person who volunteers for a school district; and a person who is performing services on behalf of a school district pursuant to a contract.

The Board directs the superintendent to ensure that anabolic steroid and performance-enhancing substance abuse by students is addressed and may be a part of the district’s Prevention Program (OAR 581-022-2045).

The district is committed to an aggressive K-12 education program to eliminate abuse of anabolic steroid and performance-enhancing substance by students.

The program shall include training for staff who are athletic directors and/or coaches, including volunteers, at least once every four years.

Each year students and parents shall receive a code of conduct explaining expected behaviors and related consequences for violations of the code of conduct which may include discipline up to and including expulsion. Students violating the code of conduct prohibiting substance abuse, possessing, selling and/or using unlawful drugs or alcohol or other prohibited substances may be subject to an assessment and, if appropriate, referred to law enforcement officials. When considering disciplinary action for a student with disabilities, the district must follow the requirements of Board policy JGDA – Discipline of Students with Disabilities, including those involving functional behavioral assessment, change or placement, manifestation determination and an interim alternative educational setting.

END OF POLICY

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**Legal Reference(s):**

[ORS 326.051](#)  
[ORS 332.107](#)  
[ORS 342.721](#)  
[ORS 342.726](#)

[OAR 581-022-2045](#)  
[OAR 581-022-2210](#)  
[OAR 581-022-2400](#)  
[OAR 581-022-2405](#)

[OAR 581-022-2415](#)  
[OAR 581-022-2420](#)  
[OAR 581-022-2425](#)

Controlled Substances Act, 21 U.S.C. § 812 (2012); Schedules of Controlled Substances, 21 C.F.R. §§ 1308.11-1308.15 (2017).

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

# OSBA Model Sample Policy

At its March 2020 meeting the Oregon State Board of Education adopted revisions to Oregon Administrative Rule (OAR) 581-015-2115 resulting from passage of Senate Bills 13 and 16 (2019).

Code: IGBAH-AR  
Adopted: 2001

## Special Education - Evaluation and Eligibility Procedures\*\*

1. Request for Initial Evaluation
  - a. Consistent with its child find and parent consent obligations, the district responds promptly to requests initiated by a parent or public agency for an initial evaluation to determine if a child is a child with a disability.
  - b. Upon receiving a request from a parent or public agency for an initial evaluation, the district designates a team to determine whether an initial evaluation will be conducted.
    - (1) The district team includes the parent and at least two professionals, at least one of whom is a specialist knowledgeable and experienced in the evaluation and education of children with disabilities.
      - (a) The team may make the decision to evaluate with or without a meeting.
      - (b) The district documents team members' input, including parents, whether or not the district convenes a meeting.
  - c. If a meeting is held, the district invites parents to participate.
  - d. If the district agency refuses an evaluation requested by the parent, the district provides the parent with prior written notice of its refusal to conduct an evaluation.
  - e. The district acknowledges the parent's rights to challenge its refusal to conduct an evaluation.
2. The initial evaluation consists of procedures:
  - a. To determine if the child has a disability; and
  - b. To identify the child's educational needs.
3. The district conducts the initial evaluation within 60 school days of receiving parental consent for evaluation unless:
  - a. The district and the parents agree in writing to extend the timeline for an evaluation to determine eligibility for specific learning disabilities;
  - b. The child moves from another district during the evaluation, the district is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and the district agree in writing to a specific time when the evaluation will be completed; or
  - c. The parent repeatedly fails or refuses to produce the child for evaluation.

#### 4. Re-evaluation

- a. The district conducts re-evaluations:
  - (1) When the educational or related services needs, including improved academic achievement and functional performance of the child, warrant an evaluation;
  - (2) When the child's parents or teacher request a re-evaluation; and
  - (3) At least every three years, unless that parent and the district agree that a re-evaluation is unnecessary.
- b. The district does not conduct re-evaluation more than once a year, unless the parent and district agree otherwise.

#### 5. Evaluation Planning

- a. ~~The district, or designated referral and evaluation agency for preschool children, ensures that,~~ As part of an initial evaluation (if appropriate), and as part of any re-evaluation, the child's individualized education program (IEP) or individualized family service plan (IFSP) team, including the parents and other qualified professionals, as appropriate, must review and document their review of existing evaluation data information on the child, including:
  - (1) Evaluations and information provided by the child's parents;
  - (2) Current classroom-based, local or state assessments and classroom-based observations;
  - (3) Observations by teachers and related service providers; and
  - (4) Medical, sensory, and health information.
- b. On the basis of that review and input from the child's parents, identify what additional data if any is needed to determine:
  - (1) Whether the child has a disability;
  - (2) The child's present levels of academic achievement and related development needs;
  - (3) Whether the child needs, or continues to need, early intervention/early childhood special education (EI/ECSE) or special education and related services; and
  - (4) For re-evaluation, whether the child needs any additions or modifications to the special education and related services or, for a preschool child, any additions or modification to ECSE services:
    - (a) To enable the child to meet the measurable annual goals in the child's IEP or IFSP; and
    - (b) To participate, as appropriate, in the general education curriculum or, for preschool children, appropriate activities.

#### 6. Evaluation Procedures

- a. The district assesses the child in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status and motor abilities.



- b. The evaluation is sufficiently comprehensive to identify all of the child’s special education and related needs, whether or not commonly linked to the disability category in which the child has been classified.
  - c. The evaluation includes information provided by the parent and a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about the child that assist in determining:
    - (1) Whether the child has a disability; and
    - (2) The content of the child’s IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities).
  - d. The district ensures that assessments and other evaluation materials, including those tailored to assess specific areas of educational need, used to assess a child:
    - (1) Are selected and administered so as not to be discriminatory on a racial or cultural basis;
    - (2) Are provided and administered in the child’s native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally and functionally, unless it is clearly not feasible to do so;
    - (3) Are used for the purposes for which the assessments or measures are valid and reliable;
    - (4) Are administered by trained and knowledgeable personnel; and
    - (5) Are administered in accordance with any instructions provided by the producer of the assessments.
  - e. The district selects and administers assessments to ensure that if an assessment is administered to a child with impaired sensory, manual or speaking skills, the assessment results accurately reflect the child’s aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child’s impaired sensory, manual or speaking skills (unless those skills are the factors that the test purports to measure).
  - f. The district uses technically sound instruments that may assess the relative contribution of cognitive factors and behavioral factors in addition to physical or developmental factors.
  - g. The district does not use any single measure of assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child.
7. Requirements if Additional Evaluation Data is not Needed to Determine Eligibility
- a. If the child’s IEP or IFSP team determines that no additional data is needed to determine whether or not the child is or continues to be a child with a disability, and to determine the child’s educational and developmental needs, the district provides prior written notice of that decision, the reasons for it, and the right of parents to request an assessment.
  - b. When the IEP or IFSP team determines that no additional data is needed to determine eligibility, the district does not conduct an assessment of the child unless requested to do so by the parents.
8. Evaluation Procedures for Transfer Students

When a child with disabilities transfers from one district to another district in the same school year, the district coordinates with the previous district to complete any pending assessment as quickly as possible.

## 9. Eligibility Determination

- a. Once evaluation is completed, the district designates an eligibility team to determine whether the child is eligible for special education services.
- b. This team includes:
  - (1) Two or more professionals, one of whom will be knowledgeable and experienced in evaluating and teaching students with the suspected disability; and
  - (2) The student's parent(s).
- c. For consideration of eligibility in the area of specific learning disabilities, the district eligibility team includes:
  - (1) A group of qualified professionals and the parent;
  - (2) The child's regular classroom teacher or, if the child does not have a regular classroom teacher, a regular classroom teacher qualified to teach a child of his or her age, or for a child of less than school age, a preschool teacher; and
  - (3) A person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist or other qualified professional.
- d. In interpreting evaluation data, each district team carefully considers and documents information from a variety of sources, including but not limited to, aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background and adaptive behavior and all required elements of the evaluation.
- e. Each eligibility team prepares a written eligibility statement that includes:
  - (1) Identification of the evaluation data considered in determining the child's eligibility, including the required evaluation components for the disability under consideration;
  - (2) A determination of whether the child meets the minimum evaluation criteria for one or more of the disability categories in Oregon Administrative Rule;
  - (3) A determination of whether the primary basis for the suspected disability is:
    - (a) A lack of appropriate instruction in reading (including the essential components of reading) or math; or
    - (b) Limited English proficiency.
  - (4) A determination of whether the child's disability has an adverse impact on the child's educational performance;
  - (5) A determination of whether, as a result of the disability, the child needs special education services;
  - (6) The signature of every team member and an indication of whether each agrees with the eligibility determination;
  - (7) For a child suspected of having a specific learning disability, the team's written report includes additional specific documentation as required by Oregon Administrative Rule.

- f. The team does not find a child eligible as a child with a disability if the determinant factor for that eligibility decision is:
  - (1) Lack of appropriate instruction in reading, including the essential components of reading instruction or lack of appropriate instruction in math; or
  - (2) Limited English proficiency; and
  - (3) The child does not otherwise meet the eligibility criteria found in Oregon Administrative Rule for the category(ies) of disability under consideration.
- g. The team finds a child eligible if the child has a disability and needs special education and related services, even though the child is advancing from grade to grade.
- h. A child may have disabilities in more than one disability category, but the team needs to find the child eligible in only one category. However, the district evaluates the child in all areas related to the suspected disability or disabilities, and the child's IEP addresses all of the child's special education needs.

## OSBA Model Sample Policy

The recommended staff policy (GBEB) and administrative regulation are highly recommended per OAR 581-022-2220; full replacement considered by the board and readopted; the accompanying administrative regulation (AR) may be reviewed by the board and therefore submitted as an information item. The student policy (JHCC) and AR are required per OAR 581-022-2220; revisions to policy and the AR should be considered by the board and readopted. Members should consult language in current board policy BFC - Adoption and Revision of Policies.

Code: JHCC  
Adopted: 10/23/95

### Communicable Diseases - Students

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

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

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

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

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

The district shall protect the confidentiality of each student's health condition and record to the extent possible and consistent with federal and state law. ~~In cases when a restrictable or~~

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

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

END OF POLICY

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**Legal Reference(s):**

[ORS 431.150](#) - 431.157

[OAR 333-019-0010](#)

[OAR 437-002-0377](#)

[ORS 433.001](#) - 433.526

[OAR 333-019-0014](#)

[OAR 581-022-2220](#)

[OAR 333-018](#)

[OAR 333-019-1000](#)

[OAR 437-002-0360](#)

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OREGON DEPARTMENT OF EDUCATION and OREGON HEALTH AUTHORITY, *Communicable Disease Guidance* (20172020).

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Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g (20122018); Family Educational Rights and Privacy, 34 C.F.R. Part 99 (20172019).

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# OSBA Model Sample Policy

The recommended staff policy (GBEB) and administrative regulation are highly recommended per OAR 581-022-2220; full replacement considered by the board and readopted; the accompanying administrative regulation (AR) may be reviewed by the board and therefore submitted as an information item. The student policy (JHCC) and AR are required per OAR 581-022-2220; revisions to policy and the AR should be considered by the board and readopted. Members should consult language in current board policy BFC - Adoption and Revision of Policies.

Code: JHCC-AR  
Adopted:

## Communicable Diseases – Student

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

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

### Restrictable Diseases

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

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

1. A student of the district will not attend a district school or facility while in a communicable stage of a restrictable disease, including a communicable stage of COVID-19<sup>3</sup>, unless authorized to do so under Oregon law. When an administrator has reason to suspect any child has a restrictable disease, the administrator shall send the student home.
2. ~~1.~~An administrator ~~that~~ shall exclude a susceptible child from school if the administrator has reason to suspect that ~~at the~~ student ~~has or~~ has been exposed to ~~any restrictable disease for which the student is required to be excluded, shall exclude that student from school and send him/her home~~ measles, mumps, rubella, diphtheria, pertussis, hepatitis A, or hepatitis B, unless the local health officer determines that exclusion is not necessary to protect the public's health. The administrator may request the local health officer to make a determination as allowed by law. If the disease is reportable, the administrator will report the occurrence to the local health department.
3. An administrator shall exclude a student if the administrator has been notified by a local public health administrator or local public health officer that the student has had a substantial exposure to an individual with COVID-19 and exclusion is deemed necessary by same.
4. ~~2.~~~~The~~A student will be excluded in such instances until such time as the student or the parent or guardian of the student presents a certificate from a physician, a physician assistant licensed under Oregon Revised Statute (ORS) 677.505 ~~to~~ 677.525, a nurse practitioner licensed under ORS 678.375 ~~to~~ 678.390, local health department nurse or school nurse stating that the student does not have or is not a carrier of any restrictable diseases.
 

~~3.~~An administrator will exclude a susceptible student that has been exposed to a restrictable disease that is also a reportable disease unless the local health officer determines that exclusion is not necessary to protect the public's health, or the local health officer states the disease is no longer communicable to others or that adequate precautions have been taken to minimize the risk of transmission. The administrator may request the local health officer to make a determination as allowed by law.
5. ~~4.~~The district may, for the protection of both the student who has a restrictable disease and the exposed student, provide an educational program in an alternative setting. A student may remain in an alternative educational setting until such time as a certificate from a physician, physician assistant, nurse practitioner, local health department nurse or school nurse states that the student does not have or is not a carrier of any restrictable disease, or until such time as a local ~~public health officer~~ administrator states that the disease is no longer communicable to others or that adequate precautions have been taken to minimize the risk of transmission. A restrictable disease exclusion for chickenpox, scabies, staphylococcal skin infections, streptococcal infections, diarrhea or vomiting may ~~also~~ be removed by a school nurse or health care provider.
6. ~~5.~~More stringent exclusion standards for students from school may be adopted by the local health department ~~or by the district through Board adopted policy.~~

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

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

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

### **Reportable Diseases Notification**

1. All employees shall comply with all reporting measures adopted by the district and with all rules set forth by the Oregon Health Authority, Public Health Division and the local health department.
2. An administrator may seek confirmation and assistance from the local health officer to determine the appropriate district response when the administrator is notified that a student or an employee has been exposed to a restrictable disease that is also a reportable disease.
3. An administrator shall determine other persons ~~with a legitimate educational interest~~ who may be informed of ~~the communicable nature of an individual~~ a student's communicable disease, ~~or an employee's communicable disease,~~ when a legitimate educational interest exists or for health and safety reasons ~~within guidelines allowed by~~ in accordance with law.

### **Education**

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

### **Equipment and Training**

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



# OSBA Model Sample Policy

Senate Bill (SB) 52, also known as Adi's Act and passed by the 2019 Legislature, directs districts to adopt a policy requiring a comprehensive plan on student suicide prevention for students in kindergarten through grade 12.

Code: JHH  
Adopted: NEW

## Student Suicide Prevention\*\*

The district shall develop a comprehensive student suicide prevention plan for students in kindergarten through grade 12.

‡The district may consult with state or national suicide prevention organizations, the Oregon Department of Education (ODE), school-based mental health professionals, parents, guardians, employees, students, administrators and school boards associations when developing the required plan.‡

The plan shall include, at a minimum:

1. Procedures relating to suicide prevention, intervention and activities that reduce risk and promote healing after a suicide;
2. Identification of the school officials responsible for responding to reports of suicidal risk;
3. A procedure by which a person may request the district to review the actions of a school in responding to suicidal risk;
4. Methods to address the needs of high-risk groups, including:
  - a. Youth bereaved by suicide;
  - b. Youth with disabilities, mental illness or substance abuse disorders;
  - c. Youth experiencing homelessness or out of home settings, such as foster care; and
  - d. Lesbian, gay, bisexual, transgender, queer and other minority gender identity and sexual orientation, Native American, Black, Latinx, and Asian students.
5. A description of, and materials for, any training to be provided to employees as part of the plan, which must include:
  - a. When and how to refer youth and their families to appropriate mental health services; and
  - b. Programs that can be completed through self-review of suitable suicide prevention materials.
6. Supports that are culturally and linguistically responsive;

7. Procedures for reentry into a school environment following a hospitalization or behavioral health crisis<sup>1</sup>; and
8. A process for designating staff to be trained in an evidence-based suicide prevention program.<sup>2</sup>

The plan must be written to ensure that a district employee acts only within the authorization and scope of the employee's credentials or licenses.

The plan must be available annually to the community of the district, including district students, their parents and guardians, and employees and volunteers of the district, and readily available at the district office and on the district website.

END OF POLICY

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**Legal Reference(s):**

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<sup>1</sup> "Behavioral health crisis" as defined by Oregon Administrative Rule (OAR) 581-022-2510, means a disruption in an individual's mental or emotional stability or functioning resulting in an urgent need for immediate treatment to prevent a serious deterioration in the individual's mental or physical health.

<sup>2</sup> ODE will provide a list of available programs.

