



## A NOTICE FROM THE DIRECTOR OF POLICY SERVICES

“The is my last *Policy Update* as I am retiring June 30, 2020 after 13 years at OSBA and 45 years in education. I want to thank you for all you do for the children of Oregon and it has been an honor and a pleasure to serve as your director of policy services.”

—Peggy Holstedt

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*Policy Update* is a quarterly subscription publication of the Oregon School Boards Association

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If you have questions regarding this publication or OSBA, please call our offices: 503-588-2800 or 800-578-6722

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## RELEASE OF PERSONNEL RECORDS

### Summary

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

### Legal Reference

None

### Collective Bargaining Impact

Review collective bargaining language related to personnel records.

### Local District Responsibility

Review the recommendations and consider adopting the recommended changes.

### Policy Implications

- GBL – Personnel Records \*, Required
- GBLA – Disclosure of Information, Highly Recommended

This publication is designed to provide accurate and authoritative information regarding the subject matter covered. It is furnished with the understanding that policies should be reviewed by the district’s legal counsel.

## **SEXUAL HARASSMENT**

### **Summary**

House Bill 3077 (2019) provides a new definition of sexual harassment (includes sexual assault), clarifies certain aspects of the reporting and investigating process, and requires the allocation of resources to support individuals who report sexual harassment.

### **Legal Reference**

None

### **Collective Bargaining Impact**

None

### **Local District Responsibility**

It is recommended that the district review the recommended language, revise and recommend the Board readopt the policy and revise and review the administrative regulation.

### **Policy Implications**

GBN/JBA – Sexual Harassment, Required

GBN/JBA-AR – Sexual Harassment Complaint Procedure, Required

JBA/GBN – Sexual Harassment, Required

JBA/GBN-AR – Sexual Harassment Complaint Procedure, Required

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## **SPECIAL EDUCATION - EVALUATION AND ELIGIBILITY PROCEDURES**

### **Summary**

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).

### **Legal Reference**

None

### **Collective Bargaining Impact**

None

### **Local District Responsibility**

It is recommended that the district review the recommended revisions and adopt this required administrative regulation.

### **Policy Implications**

IGBAH-AR – Special Education – Evaluation and Eligibility Procedures\*\*, Required

## STUDENT SUICIDE PREVENTION

### Summary

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.

### Legal Reference

None

### Collective Bargaining Impact

None

### Local District Responsibility

It is recommended that the district review the new required sample model board policy JHH - Student Suicide Prevention and board adopt as required by Oregon Revised Statute (ORS) 339.343.

### Policy Implications

JHH – Student Suicide Prevention\*\*, Required, *New*

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## ABOUT POLICY UPDATE

*Policy Update* is a quarterly subscription newsletter providing a brief discussion of current policy issues of concern to Oregon school districts, education service districts, community colleges, and public charter schools.

Sample model policies reflecting these issues and changes in state and federal law, if applicable, are part of this newsletter. These samples are offered as a starting point for drafting local policy and may be modified to meet particular local needs. They do not replace district legal counsel advice.

To make the best use of *Policy Update*, we suggest you discuss the various issues it presents and use the sample model policies to determine which policies your district should develop or revise, get ideas for what a policy should contain, and as a starting point for editing, modifying and discussing your district's policy position.

If you have questions about *Policy Update*, sample policies or policy in general, call OSBA Policy Services, 800-578-6722 or 503-588-2800.

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## TRY OUR ONLINE POLICY DEMO

OSBA's online policy service has a demo site for districts interested in a public online policy manual. This service saves time, resources and reams of paper. With one centrally located policy manual updated electronically, you have instant access to current district policies.

Go to [policy.osba.org](http://policy.osba.org) and select "Policy Online Demo." The online manual includes a subscription to *Policy Update* and policy manual maintenance service to help keep policies current.

OSBA offers several options. Contact Policy Services to determine the best option for you, 800-578-6722 or 503-588-2800.

## OSBA Model Sample Policy

Code: GBL  
Adopted:

### 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>+</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

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**Legal Reference(s):**

[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. §§ 12101-12112 (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).

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

## OSBA Model Sample Policy

Code: GBLA  
Adopted:

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

**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

Code: GBN/JBA  
Adopted:

### Sexual Harassment

*(This version of Sexual Harassment model policy is recommended for deletion; see new version in this May 2020 Policy Update issue.)*

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

Sexual harassment of students, staff members or third parties shall include, but is not limited to, unwelcome sexual advances, requests for sexual favors and other verbal, nonverbal or physical conduct of a sexual nature when:

1. The conduct or communication has the purpose or effect of demanding sexual favors in exchange for benefits;
2. Submission to or rejection of the conduct or communication is used as the basis for educational decisions affecting a student or employment or assignment of staff members;
3. The conduct or communication is so severe, persistent or pervasive that it has the purpose or effect of unreasonably interfering with a student's educational performance or with a staff member's ability to perform job responsibilities; or creates an intimidating, offensive or hostile educational or working environment. Relevant factors to be considered will include, but not be limited to, did the individual view the environment as hostile; was it reasonable to view the environment as hostile; the nature of the conduct; how often the conduct occurred and how long it continued; age and sex of the complainant; whether the alleged harasser was in a position of power over the student or staff member subjected to the harassment; number of individuals involved; age of the alleged harasser; where the harassment occurred; and other incidents of sexual harassment at the school involving the same or other students, staff members or third parties.

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



All complaints about behavior that may violate this policy shall be promptly investigated. Any students, staff members or third parties who has knowledge of conduct in violation of this policy or feels they are a victim of sexual harassment must immediately report their concerns to the principal, compliance officer or superintendent, who has overall responsibility for all investigations. Students may also report concerns to a teacher, counselor or school nurse, who will promptly notify the appropriate district official.

Upon receipt of a complaint by a student, student's parents, a staff member or a third party alleging behavior that may violate this policy, the district shall provide written notice as required by Oregon Revised Statute (ORS) 342.704(4) to the complainant.

The student and/or the student's parents, the staff member or the third party who initiated the complaint shall be notified that the investigation has been concluded and as to whether a violation of this policy was found to have occurred to the extent allowable under state and federal confidentiality laws.

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

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

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

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

<sup>1</sup> [Posting in "in grade 6 through 12 schools" is the minimum requirement per ORS 342.700.]

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

END OF POLICY

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**Legal Reference(s):**

[ORS 243.706](#)

[ORS 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](#)

HB 4150 (2018)

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

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

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

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

## OSBA Model Sample Policy

Code: GBN/JBA  
Adopted:

### Sexual Harassment

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

END OF POLICY

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**Legal Reference(s):**

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

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

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

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

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

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

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

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

## OSBA Model Sample Policy

Code: IGBAH-AR  
Adopted:

### 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,~~ ~~a~~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

Code: JBA/GBN  
Adopted:

### Sexual Harassment

*(This version of Sexual Harassment model policy is recommended for deletion; see new version in this May 2020 Policy Update issue.)*

The Board is committed to the elimination of sexual harassment in district schools and activities. Sexual harassment is strictly prohibited and shall not be tolerated. This includes sexual harassment of students, staff members, or third parties on or immediately adjacent to district property, at any district-sponsored activity, on any district-provided transportation or at any official district bus stop by other students, staff members, Board members or third parties. "Third parties" include, but are not limited to, school volunteers, parents, school visitors, service contractors or others engaged in district business, such as employees of businesses or organizations participating in cooperative work programs with the district and others not directly subject to district control at interdistrict and intradistrict athletic competitions or other school events. "District" includes: district facilities; district premises and nondistrict property if the student or staff member is at any district-sponsored, district-approved or district-related activity or function, such as field trips or athletic events, where students are under the jurisdiction of the district; or where the staff member is engaged in district business. The prohibition also includes off duty conduct which is incompatible with district job responsibilities.

Sexual harassment of students, staff members or third parties shall include, but is not limited to, unwelcome sexual advances, requests for sexual favors and other verbal, nonverbal or physical conduct of a sexual nature when:

1. The conduct or communication has the purpose or effect of demanding sexual favors in exchange for benefits;
2. Submission to or rejection of the conduct or communication is used as the basis for educational decisions affecting a student or employment or assignment of staff members;
3. The conduct or communication is so severe, persistent or pervasive that it has the purpose or effect of unreasonably interfering with a student's educational performance or with a staff member's ability to perform job responsibilities; or creates an intimidating, offensive or hostile educational or working environment. Relevant factors to be considered will include, but not be limited to, did the individual view the environment as hostile; was it reasonable to view the environment as hostile; the nature of the conduct; how often the conduct occurred and how long it continued; age and sex of the complainant; whether the alleged harasser was in a position of power over the student or staff member subjected to the harassment; number of individuals involved; age of the alleged harasser; where the harassment occurred; and other incidents of sexual harassment at the school involving the same or other students, staff members or third parties.

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

All complaints about behavior that may violate this policy shall be promptly investigated. Any students, staff members or third parties who has knowledge of conduct in violation of this policy or feels they are a victim of sexual harassment must immediately report their concerns to the principal, compliance officer or superintendent, who has overall responsibility for all investigations. Students may also report concerns to a teacher, counselor or school nurse, who will promptly notify the appropriate district official.

Upon receipt of a complaint by a student, student's parents, staff member or a third party alleging behavior that may violate this policy, the district shall provide written notice as required by Oregon Revised Statute (ORS) 342.704(4) to the complainant.

The student and/or the student's parents, the staff member or the third party who initiated the complaint shall be notified that the investigation has been concluded and as to whether a violation of this policy was found to have occurred to the extent allowable under state and federal confidentiality laws.

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

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

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

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

<sup>1</sup> [Posting in "all grade 6 through 12 schools" is the minimum requirement per ORS 342.700.]

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

END OF POLICY

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**Legal Reference(s):**

[ORS 243.706](#)  
[ORS 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](#)  
HB 4150 (2018)

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

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

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

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

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

## OSBA Model Sample Policy

Code: JBA/GBN  
Adopted:

### Sexual Harassment

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

END OF POLICY

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**Legal Reference(s):**

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

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

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

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

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

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

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

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

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



## OSBA Model Sample Policy

Code: JHH  
Adopted:

### 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

<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.



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):**

[ORS 332.107](#)

[ORS 339.343](#)

[OAR 581-022-2510](#)

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