



November 2019

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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

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.

## **MANDATORY REPORTERS**

### **Summary**

Recent passing of Senate Bill (SB) 415 (2019) designates members of a school district board as mandatory reporters of suspected child abuse.

### **Legal Reference**

[Senate Bill 415 \(2019\)](#)

ORS 419B.005

ORS 419B.010

ORS 419B.015

### **Collective Bargaining Impact**

None

### **Local District Responsibility**

Review the recommended revisions and optional new policy and consider if in the best interest of the district to adopt.

### **Policy Implications**

BBF – Board Member Standards of Conduct, Highly Recommended (Versions 1 or 2)

BBFC – Reporting of Suspected Abuse of a Child, *New* Optional

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## **EXECUTIVE SESSION - STUDENT RECORDS**

### **Summary**

House Bill 2514 (2019) expands the privacy of student records allowed in executive session to include “confidential records of a student” deleting the language limiting to medical records and student educational programs.

### **Legal Reference**

None

### **Collective Bargaining Impact**

None

### **Local District Responsibility**

If the district has either optional policy BDC - Executive Sessions or BDDG - Minutes of Board Meetings, and has required policy JGE - Expulsion, it is recommended that the district review the revised language and readopt.

### **Policy Implications**

BDC - Executive Sessions, Optional

BDDG - Minutes of Board Meetings, Optional

JGE - Expulsion, Required

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## **DRONES**

### **Summary**

The revisions in this policy reflect changes in federal law, Senate Bill 581 (2019) and meets PACE insurance requirements.

### **Legal Reference**

[Senate Bill 581 \(2019\)](#)

### **Collective Bargaining Impact**

None

### **Local District Responsibility**

If the district uses drones as part of any curriculum or district-sponsored activity this policy is required. The district should review the recommended language revisions and readopt the policy.

If the district does not use drones as part of any curriculum or district-sponsored activity this policy is not needed.

### **Policy Implications**

ECACB – Unmanned Aircraft System (UAS) a.k.a. Drone, Conditionally Required

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## **MILITARY CHILD OR VOLUNTARILY PLACED AND RESIDENT DISTRICT**

### **Summary**

Senate Bill 802 (2019) permits school residency to nonresident military children in cases of official military transfers prior to the family moving into the district. This applies to military families covered by the Interstate Compact on Educational Opportunity for Military Children. Parents are required to provide proof of residency within 10 days after the date of military transfer indicated on the official military order. Students are not required to comply with compulsory attendance requirements until 10 days after the date of the transfer.

Senate Bill (SB) 905 (2019) clarifies and aligns with the Every Student Succeeds Act to say that the care for a student whose parent or guardian has voluntarily placed the student outside the student's home with a public or private agency and for whom the student's parent or guardian retains legal guardianship, does not meet the definition of "foster care". It establishes general rule that the student, whose parent or guardian voluntarily places the student in substitute care while retaining legal guardianship, is a resident of the district where the substitute care program is located. It also provides, under special circumstances outlined in SB 905, exceptions to allow the student (voluntarily placed by the parent or guardian) to attend school in the district where the parents or guardian resides.

Both bills are effective now.

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**Legal Reference**

[Senate Bill 802 \(2019\)](#)

[Senate Bill 905 \(2019\)](#)

**Collective Bargaining Impact**

None

**Local District Responsibility**

If the district has highly recommended policy JEA – Compulsory Attendance, optional policy JEC – Admission or highly recommended policy JECA – Admission of Resident Student in its policy manual, review the new language and readopt. Update required policy EEA - Student Transportation Services with the recommended changes and readopt.

**Policy Implications**

EEA - Student Transportation Services, Required

JEA – Compulsory Attendance, Highly Recommended

JEC – Admissions, Optional

JECA – Admission of Resident Student, Highly Recommended

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**EQUAL EMPLOYMENT OPPORTUNITY**

**Summary**

House Bill 2341 (2019) makes it an unlawful employment practice for an employer to deny employment opportunities, fail to make reasonable accommodations, or take certain actions because of known limitations of an employee or applicant's pregnancy, childbirth, or related medical condition. The bill provides exemptions for a reasonable accommodation that requires significant difficulty or expense that imposes an undue hardship on district operations. It exempts districts with fewer than six employees.

Additionally, Senate Bill 479 (2019) made ORS 659A.082 part of the definition of workplace harassment involving discrimination of an employee's service in a uniformed service.

**Legal Reference**

Amends ORS 695A.885

**Collective Bargaining Impact**

None

**Local District Responsibility**

If the district has required policy GBA – Equal Employment Opportunity in its policy manual, review the new language and readopt.

## **Policy Implications**

GBA – Equal Employment Opportunity, Required

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## **WORKPLACE HARASSMENT**

### **Summary**

Senate Bill 479 (2019) institutes a requirement for all public employers to adopt policy prohibiting “workplace harassment” which means “conduct that constitutes discrimination prohibited by ORS 659A.030, including conduct that constitutes sexual assault or that constitutes conduct prohibited by ORS 659A.082 or 659A.112”. This legislation requires new board policy and an administrative regulation (AR) to support implementation of this law. A complaint may be filed through the new complaint process AR, with the Bureau of Labor and Industries (BOLI), or under any other available law.

### **Legal Reference**

See new sample policy and administrative regulation.

### **Collective Bargaining Impact**

The district should review the collective bargaining agreement (CBA) for any provisions that require the employee to choose between the complaint procedure outlined in the CBA and filing a BOLI or Equal Employment Opportunity Commission (EEOC) complaint.

### **Local District Responsibility**

New policy GBEA and its administrative regulation (AR) are required by SB 479; the AR does not require adoption but does need submitted to the Board for review.

## **Policy Implications**

GBEA – Workplace Harassment \*, *New Required*

GBEA-AR – Workplace Harassment Reporting and Procedure, *New Required*

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## **DRUG AND ALCOHOL TESTING AND RECORD QUERY – TRANSPORTATION PERSONNEL**

### **Summary**

The federal Department of Transportation (DOT) adopted rules in 2016 called the “Commercial Driver’s License Drug and Alcohol Clearinghouse”. The rules required implementation of a clearinghouse to support collection and maintenance of records on drivers made subject to testing by the Omnibus Transportation Employee Testing Act (OTETA). The Federal Motor Carrier Safety Administration (FMCSA) Drug and Alcohol Clearinghouse has implemented its mandatory use effective January 6, 2020. The rules require districts that employ drivers subject to testing to also conduct pre-employment queries through the Federal Motor Carrier Safety Administration (FMCSA) query program. The new program also requires the district to report testing data on employees subject to other testing required by law, e.g., post-accident, random, reasonable suspicion, etc.

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**Legal Reference**

None

**Collective Bargaining Impact**

None

**Local District Responsibility**

This policy and administrative regulation are required if the district owns and operates its own student transportation services, or if any district employee is required to have a CDL. If the district has previously adopted the conditionally required policy GBEDA – Drug and Alcohol Testing – Transportation Personnel and its administrative regulation (AR), review the new language for both and readopt.

**Policy Implications**

GBEDA – Drug and Alcohol Testing and Record Query – Transportation Personnel, (Version 1 or 2) Conditionally Required

GBEDA-AR – Drug and Alcohol Testing and Record Query – Transportation Personnel, Conditionally Required (requires board adoption)

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**RESTRAINT OR SECLUSION**

**Summary**

The State Board of Education adopted revisions to the restraint and seclusion Oregon Administrative Rules to reflect Senate Bill 963 (2019) and clarify the complaint procedure.

**Legal Reference**

None

**Collective Bargaining Impact**

None

**Local District Responsibility**

The district should review, and update required policy JGAB - Use of Restraint or Seclusion with the revised language and readopt.

**Policy Implications**

JGAB – Use of Restraint or Seclusion, Required

## **MEDICATIONS - NALOXONE**

### **Summary**

Senate Bill 665 (2019) gives a district the option to provide and administer naloxone or any similar medication that is designed to reverse an overdose of an opioid drug. If a district plans to provide (it is not required) and administer this medication the bracketed policy language is required; otherwise there is no need to adopt specific naloxone language).

### **Legal Reference**

[Senate Bill 665 \(2019\)](#)

### **Collective Bargaining Impact**

Review your collective bargaining agreement for language addressing staff and the administration of medication and align as needed.

### **Local District Responsibility**

If the district is planning to provide and administer naloxone, review the recommended naloxone related bracketed language and adopt language in both policy and in the administration regulation.

If the district is not planning to provide or administer this medication do not adopt naloxone related language. However, review and adopt other recommended changes.

### **Policy Implications**

JHCD/JHCDA – Medications, Required

JHCD/JHCDA-AR – Medications, Required (requires board adoption)

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## **SUSPECTED SEXUAL CONDUCT AND SUSPECTED CHILD ABUSE**

### **Summary**

Senate Bill (SB) 155 (2019) amended statute on reporting suspected sexual conduct and suspected child abuse. The following is a brief summary of some changes to law; access the bill in its entirety and the new model sample policies and administrative regulations for additional information.

SB 155 assigned investigative responsibilities to ODE for non-licensed employees for reports of suspected sexual conduct and investigative responsibilities to TSPC for employees licensed through TSPC. The SB redefines sexual conduct, adds a definition for student in relation to sexual conduct, amends reporting requirements, makes volunteers subject to law, and maintains applicability to contractors and agents.

The SB adds applicability of the law on suspected child abuse to contractors, agents and volunteers to protect students.

The SB requires districts to designate a licensed administrator and alternate licensed administrator for each school building assigned to receive reports of suspected abuse or suspected sexual conduct, and their contact information and other required information found in the amended policies and administrative regulations. In cases of suspected abuse, the district must also post contact information for the local Department of Human Services office and other required information noted in the amended policies and administrative regulations.

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There are new reporting requirements for the designated administrators to TSPC or ODE when they receive a report of suspected sexual conduct.

Nothing in the bill prevents a district from conducting their own investigation and acting on information gained from the investigation prior to completion of an investigation and determination from another agency. Refer to the model sample policies and administrative regulations for additional information.

The model sample policies and their administrative regulations have had extensive rewriting and therefore are presented in clean form in this *Policy Update*. The deleting/rescinding of previous versions and adoption of new versions is recommended.

The code for JHFF - Reporting Requirements of Suspected Sexual Conduct was modified to add a second code to implement a place in section G - Personnel of the board policy manual, e.g., JHFF/GBNAA. Additionally, a new administrative regulation has been created and is presented as JHFF/GBNAA-AR, and includes the additional reporting requirements and procedures the administrators will follow when a report of suspected sexual conduct is received. The alternate form of this policy and AR, e.g., GBNAA/JHFF and GBNAA/JHFF-AR are included just not listed.

### **Legal Reference**

[Senate Bill 155 \(2019\)](#)

### **Collective Bargaining Impact**

None

### **Local District Responsibility**

Consider rescinding previous versions of the corresponding policies and administrative regulations in the board's policy manual and adopt the new versions presented herein. Administrative regulation JHFE-AR(1) is designated to be board adopted; the administrative regulation JHFF/GBNAA-AR is noted with needing board review.

If the board has a policy, GBNAA/JFCFA - Cyberbullying, in their manual, it is recommended for deletion; cyberbullying content is found in recent versions of JFCF and GBNA and therefore a policy with code GBNAA/JFCFA would not be needed (prior to deleting verify the board has a recent version of GBNA and JFCF that includes cyberbullying language).

### **Policy Implications**

GCA – License Requirements, Optional

GCAB – Personal Electronic Devices and Social Media – Staff, Highly Recommended

IICC – Volunteers, Optional

JHFE – Reporting of Suspected Abuse of a Child, *New Required*

JHFE-AR(1) – Reporting of Suspected Abuse of a Child, *New Required*

JHFF/GBNAA – Reporting of Suspected Sexual Conduct with Students, *New Required*

JHFF/GBNAA-AR – Suspected Sexual Conduct Report Procedures and Form, *New Required*

LBE-AR – Public Charter Schools, Highly Recommended

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## **COMPLAINT PROCEDURES**



**2019-2020**

**STAFF/STUDENT  
HANDBOOKS AND  
KEY DATES  
CALENDAR  
(Available Now):**

OSBA's Model Staff and Student Handbooks and Key Dates Calendar are revised annually to reflect recent legislation and other changes.

Samples and online ordering of these tools for purchase can be found on the OSBA website through this link: [www.osba.org](http://www.osba.org). (Can be purchased in the *Online Store* from *Downloads*)

**Summary**

Adoption of new and revised complaint and appeal Oregon Administrative Rules (OAR) by the State Board of Education in March 2019 affected several policies and administrative regulations – most changes were released in July. OSBA has been collaborating with the Oregon Department of Education (ODE) to establish how the new rules affect public charter schools. Through statute, school districts that sponsor a public charter school have jurisdiction over the public charter school for certain complaints. OSBA and ODE recommends a discussion with the public charter school and their sponsoring district to establish delegation of final decision making for complaints involving restraint or seclusion, discrimination, retaliation, or applicable Division 22 Standards, for which the school's sponsor has jurisdiction. Acknowledgement of whether a complainant may appeal to the board of the public charter school's sponsor is recommended through a resolution by the sponsoring board, adoption of policy language, or by a provision in the charter agreement. Policy language is included to help the sponsoring school board decide if they will uphold the decision of the charter board, or hear the appeal from the complainant.

The OARs 581-002-0003 - 581-002-0005 describe the complaints that may be appealed to ODE, and only complaints that have already reached a final decision by the school's sponsor for which the sponsor has jurisdiction pursuant to law.

Questions may be directed to OSBA and/or ODE.

**Legal Reference**

See model samples for suggested revisions

**Collective Bargaining Impact**

None

**Local District Responsibility**

Review the recommended revisions in the attached documents for consideration and adoption. Please note that AC-AR requires board adoption while the other administrative regulations may be presented as an information item for review by the board.

**Policy Implications**

AC-AR - Discrimination Complaint Procedure, Required (board adoption required)

KL – Public Complaints\*/\*\* (Versions 1 thru 4), Highly Recommended

KL-AR[(1)] – Public Complaint Procedure, Highly Recommended

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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.

Sample 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 policies to determine which policies your district should develop or

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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.

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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: AC-AR

Adopted:

### Discrimination Complaint Procedure

Complaints regarding discrimination or harassment, on any basis protected by law, shall be processed in accordance with the following procedures:

Step 1: <sup>[1]</sup>Complaints may be oral or in writing and must be filed with the [principal]. Any staff member that receives an oral or written complaint shall report the complaint to the [principal].

The [principal] shall investigate and determine the action to be taken, if any, and reply in writing, to the complainant within [10] school days of receipt of the complaint.

Step 2: If the complainant wishes to appeal the decision of the [principal], the complainant may submit a written appeal to the superintendent [or designee] within [10] school days after receipt of the [principal]'s response to the complaint.

The superintendent [or designee] shall review the [principal]'s decision within [15] school days and may meet with all parties involved. The superintendent [or designee] will review the merits of the complaint and the [principal]'s decision. The superintendent [or designee] will respond in writing to the complainant within [30] school days.

Step 3: If the complainant is not satisfied with the decision of the superintendent [or designee], a written appeal may be filed with the Board within [five] school days of receipt of the superintendent's [or designee's] response to Step 2. The Board may decide to hear or deny the request for appeal at a Board meeting. If the Board decides to hear the appeal, the Board may meet with the concerned parties and their representative [a Board meeting]. The Board's decision will be final and will address each allegation in the complaint and contain reasons for the Board's decision. A copy of the Board's final decision shall be sent to the complainant in writing or electronic form within [15] days of this meeting.

If the [principal] is the subject of the complaint, the individual may start at Step 2 and should file a complaint with the superintendent [or designee].

If the superintendent is the subject of the complaint, the complaint may start at Step 3 and should be referred to the Board chair. [The Board may refer the investigation to a third party.]

Complaints against the Board as a whole or against an individual Board member, may start at Step 3 and should be submitted to the Board chair and may be referred to district counsel. Complaints against the Board chair may start at Step 3 and be referred directly to the [district counsel] OR [Board vice chair].

<sup>1</sup> [For district information. The district's timeline established by each step of the district's complaint procedure must be within 30 days of the submission of the complaint at any step, unless the district and complainant have agreed in writing to a longer time period for that step. The district's complaint procedure should not exceed a total of 90 days from the initial filing of the complaint, regardless of the number of steps involved, unless the district and the complainant have agreed in writing to a longer time period. (OAR 581-002-0005)]

The timelines established in each step of this procedure may be extended upon mutual consent of the district and the complainant in writing[, but will not be longer than 30 days from the date of the submission of the complaint at any step]. The overall timeline of this complaint procedure may be extended beyond 90 days from the initial filing of the complaint upon written mutual consent of the district and the complainant.

The complainant, if a person who resides in the district[, ] ~~or~~ a parent or guardian of a student who attends school in the district [or a student,] is not satisfied after exhausting local complaint procedures, the district fails to render a written decision within 30 days of submission of the complaint at any step or fails to resolve the complaint within 90 days of the initialing filing of the complaint, may appeal<sup>2</sup> the district's final decision to the Deputy Superintendent of Public Instruction under Oregon Administrative Rules (OAR) 581-002-0001 – 581-002-0023.

PROPOSED

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<sup>2</sup> An appeal must meet the criteria found in OAR 581-002-0005(1)(a).

**DISCRIMINATION COMPLAINT FORM**

Name of Person Filing Complaint \_\_\_\_\_ Date \_\_\_\_\_ School or Activity \_\_\_\_\_

Student/Parent ☐ Employee ☐ Job applicant ☐ Other ☐ \_\_\_\_\_

Type of discrimination:

- |  |  |   |
|--|--|---|
| <input type="checkbox"/> Race                      | <input type="checkbox"/> Mental or physical disability | <input type="checkbox"/> Age  |
| <input type="checkbox"/> Color                     | <input type="checkbox"/> Marital status                | <input type="checkbox"/> Sexual orientation                             |
| <input type="checkbox"/> Religion                  | <input type="checkbox"/> Familial status               | <input type="checkbox"/> Pregnancy                                      |
| <input type="checkbox"/> Sex                       | <input type="checkbox"/> Economic status               | <input type="checkbox"/> Discriminatory use of a Native American mascot |
| <input type="checkbox"/> National or ethnic origin | <input type="checkbox"/> Veterans' status              | <input type="checkbox"/> Other _____                                    |

Specific complaint: (Please provide detailed information including names, dates, places, activities and results of the discussion.) \_\_\_\_\_

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Who should we talk to and what evidence should we consider? \_\_\_\_\_

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Suggested solution/resolution/outcome: \_\_\_\_\_

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This complaint form should be mailed or submitted to the [principal].

Direct complaints related to educational programs and services may be made to the U.S. Department of Education, Office for Civil Rights. Direct complaints related to employment may be filed with the Oregon Bureau of Labor and Industries, Civil Rights Division, or the U.S. Department of Labor, Equal Employment Opportunities Commission.

## OSBA Model Sample Policy

Code: BBF  
Adopted:

### Board Member Standards of Conduct (Version 1)

Individual Board members and the Board as a public entity must comply with ethics laws for public officials.

Board members will treat other Board members, the superintendent, staff and the public with dignity and courtesy and will provide an opportunity for all parties to be heard **with** due respect for their opinions.

Board members will recognize the superintendent as the chief executive officer to whom the Board has delegated administrative authority to establish regulations and oversee the implementation of Board policy.

~~A Board member has the right to express personal opinions.~~ When ~~expressing such opinions~~ a Board member expresses personal opinions in public, the Board member should clearly identify the opinions as personal.

A Board member will respect the privacy rights of individuals when dealing with confidential information gained through association with the district.

A Board member will keep information and documents discussed in executive session confidential.

A Board member will ~~utilize social media websites judiciously by not posting~~ not post confidential information or documents about students, staff or district business online, including but not limited to, on social media.

Board members will treat fellow Board members, staff, students and the public with respect while posting online or to social media and will adhere to Oregon Public Meetings Laws, including when communicating with other Board members via websites or other electronic means.

A Board member is a mandatory reporter of child abuse. A Board member having reasonable cause to believe that any child with whom the Board member comes in contact with has suffered abuse or that any person with whom the Board member comes in contact with has abused a child shall immediately make an oral report by telephone or otherwise to the local Department of Human Services (DHS), to the designee of the department or to a local law enforcement within the county where the person making the report is located at the time of contact.

END OF POLICY

**Legal Reference(s):**

[ORS 162.015](#) - 162.035  
[ORS 162.405](#) - 162.425  
[ORS 192.610](#) - 192.710  
[ORS 244.040](#)

[ORS Chapter 244](#)  
[ORS 332.055](#)  
[ORS 419B.005](#)  
[ORS 419B.010](#)

[ORS 419B.015](#)  
[Senate Bill 415 \(2019\)](#)

PROPOSED

## OSBA Model Sample Policy

Code: BBFC

Adopted:

### Reporting of Suspected Abuse of a Child

A Board member is a mandatory reporter of child abuse. A Board member having reasonable cause to believe that any child with whom the Board member comes in contact with has suffered abuse or that any person with whom the Board member comes in contact with has abused a child shall immediately notify the Oregon Department of Human Services (DHS) or local law enforcement pursuant to Oregon Revised Statute (ORS) 419B.015.

The Board member making a report of child abuse, as required by ORS 419B.010, shall make an oral report by telephone or otherwise to the local office of the Department of Human Services, to the designee of the department or to a law enforcement agency within the county where the Board member making the report is located at the time of the contact.

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

END OF POLICY

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#### Legal Reference(s):

[ORS 332.107](#)  
[ORS 419B.005](#)

[ORS 419B.010](#)  
[ORS 419B.015](#)

[Senate Bill 415 \(2019\)](#)



## OSBA Model Sample Policy

Code: BDC  
Adopted:

### Executive Sessions

The Board may meet in executive session to discuss subjects allowed by statute but may not take final action except for the expulsion of a student~~s~~ and matters pertaining to or examination of the confidential ~~medical~~ records of ~~a the student, including that student's educational program.~~

An executive session may be convened by order of the Board chair, upon request of three Board members or by common consent of the Board for a purpose authorized under Oregon Revised Statute (ORS) 192.660 during a regular, special or emergency meeting. The presiding officer will announce the executive session by identifying the authorization under ORS 192.660 for holding such session and by noting the subject of the executive session.

The Board may hold an executive session:

1. To consider the employment of a public officer, employee, staff member or individual agent. (ORS 192.660(2)(a))
2. To consider the dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent who does not request an open hearing. (ORS 192.660(2)(b))
3. To conduct deliberations with persons designated by the governing body to carry on labor negotiations. (ORS 192.660(2)(d))
4. To conduct deliberations with persons designated by the governing body to negotiate real property transactions. (ORS 192.660(2)(e))
5. To consider information or records that are exempt by law from public inspection. (ORS 192.660(2)(f))
6. To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed. (ORS 192.660(2)(h))
7. To review and evaluate the employment-related performance of the chief executive officer of any public body, a public officer, employee or staff member who does not request an open hearing. (ORS 192.660(2)(i))
8. To consider matters relating to school safety or a plan that responds to safety threats made toward a school. (ORS 192.660(2)(k))
9. To review the expulsion of a minor student from a public elementary or secondary school. (ORS 332.061(1)(a))

10. To discuss matters pertaining to or examination of the confidential ~~medical~~ records of a student, ~~including that student's educational program~~. (ORS 332.061(1)(b))

Members of the press may attend executive sessions except those matters pertaining to:

1. Deliberations with persons designated by the Board to carry on labor negotiations;
2. Hearings on the expulsion of a minor student~~s~~ or examination of the confidential ~~medical~~ records of a student ~~including, that student's educational program~~; and
3. Current litigation or litigation likely to be filed if the member of the news media is a party to the litigation or is an employee, agent or contractor of a news media organization that is a party to the litigation.

If an executive session is held pursuant to ORS 332.061, the following shall not be made public: the name of the minor student; the issue, including the student's confidential ~~medical~~ records ~~and educational program~~; the discussion; and each Board member's vote on the issue.

Minutes shall be kept for all executive sessions.

Content discussed in executive sessions is confidential.

END OF POLICY

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**Legal Reference(s):**

~~ORS 192.610-660-192.710~~  
~~ORS 332.045~~

[ORS 332.061](#)

House Bill 2514 (2019)

## OSBA Model Sample Policy

Code: BDDG  
Adopted:

### Minutes of Board Meetings

The Board secretary will take written minutes of all Board meetings. The written minutes will be a true reflection of the matters discussed at the meeting and the views of the participants. The minutes will include, but not be limited to, the following information:

1. All members of the Board who were present;
2. All motions, proposals, resolutions, orders and measures proposed and their disposition;
3. The results of all votes and the vote of each member by name;
4. The substance of any discussion on any matter;
5. Any other information required by law.

All minutes shall be available to the public within a reasonable time. The public and patrons of the district may receive, upon request, copies of minutes from the [administration office]. A copy of the minutes of each regular and special Board meeting as they are drafted for approval will be distributed after such meeting to each Board member and administrator.

The district will maintain a hard copy<sup>1</sup> of the meeting minutes and make them available to staff and other interested patrons.

Minutes of executive sessions will be kept in accordance with the requirements of Oregon's Public Meetings Law with essentially the same level of detail as for public sessions. If disclosure of material in the executive session minutes would be inconsistent with the purpose for which executive session was held under Oregon Revised Statute (ORS) 192.660, the material may be withheld from disclosure.

If an executive session is held pursuant to ORS 332.061, the following shall not be made public: the name of the minor student; the issue, including a student's confidential ~~medical records and that student's educational program~~; the discussion; and each Board member's vote on the issue.

END OF POLICY

#### Legal Reference(s):

[ORS 192.610 - 192.710](#)

[ORS 332.061](#)

House Bill 2514 (2019)

Letter Opinion, Office of the OR Attorney General (Nov. 20, 1970).

<sup>1</sup> Oregon Administrative Rule 166-400-0010(9)

## OSBA Model Sample Policy

Code: ECACB

Adopted:

### Unmanned Aircraft System (UAS) a.k.a. Drone

Any employee, volunteer, or representative of the district operating an unmanned aircraft system (UAS) shall do so in accordance with this policy, ~~and~~ all applicable Federal Aviation Administration (FAA) and Oregon Department of Aviation (ODA) regulations and local laws.

~~An “unmanned aircraft system” (UAS) means an unmanned flying machine, commonly known as a drone, and its associated elements, including communication links and the components that control the machine.~~

A small unmanned aircraft, as defined by law, may be operated by the district. A small unmanned aircraft must weigh less than 55 pounds, including the weight of anything attached to or carried by the aircraft and must be registered through the FAA and ODA. The district will register as a user of such with ODA.

Publicly supported kindergarten through grade 12 school programs and publicly-supported entities that support K-12 schools or after school K-12 programs are exempt from the requirement to pay the ODA registration fee.

[The district recognizes the academic value of student operation of a UAS as one component of curricula pertaining to principles of flight, aerodynamics, and airplane design and construction, ~~which~~ and can also serve as an academic tool in other areas such as television, film production, or the arts in general.] ~~Therefore, in compliance with the Federal Aviation Administration Modernization and Reform Act of 2012, Section 336, students may operate a UAS as part of a course requirement, as long as that student does not receive compensation directly or incidentally from such operation. District staff teaching a class that allows use of a UAS may provide limited assistance to a student operating a UAS, provided the student maintains operational control of the model aircraft such that the staff member’s manipulation of the model aircraft’s controls is incidental and secondary to the student’s. The staff member’s de minimis participation must be limited to the student’s operation of the UAS as part of the course.~~

Prior to operating a UAS, the district will review all airspace, certification, registration, and other requirements. When operating in the National Airspace System (NAS), the supervisor (instructor/teacher) of the educational UAS shall hold a current pilot certification described in 14 C.F.R. Part 107 or have a Certificate of Authorization as described in 49 U.S.C. § 44801, so any student(s) can fly under their direct supervision, and to be in compliance with current FAA<sup>1</sup> regulations. District staff will not operate more than one UAS at the same time.

District employees shall work with administrators to ensure that proper insurance, registration ~~with both~~ required by FAA and ODA, reporting to ~~ODA~~ FAA, and authorization from district administration are in place prior to ~~adoption of curriculum that allows operation of a UAS~~ use as a part of the district’s curriculum.

<sup>1</sup> [https://www.faa.gov/uas/educational\\_users/](https://www.faa.gov/uas/educational_users/)

A UAS shall be operated in accordance with the policies of the Oregon School Activities Association (OSAA)<sup>2</sup> at OSAA-sanctioned events.

A student in violation of this policy may be subject to disciplinary action, up to and including suspension and/or expulsion.

A staff member in violation of this policy may be subject to disciplinary action, up to and including dismissal.

All data gathered by the district as part of a UAS operation will belong to the district. The data gathering by the district will follow appropriate state and federal laws. Retention of such data will follow state and federal laws.

The superintendent shall develop procedures<sup>3</sup> for the implementation of this policy. The district shall post a copy of this policy, associated procedures, and a copy of Oregon Revised Statute (ORS) 192.345 on the district's website.

The district will report accidents involving a UAS to FAA no later than 10 calendar days after the accident when it involves:

1. Serious injury to any person or any loss of consciousness; or
2. Damage to any property, other than the small UAS, unless the cost of repair (including materials and labor) does not exceed \$500, or the fair market value of the property does not exceed \$500 in the event of total loss.

### [Third Party Use

Third party use of a UAS on district property or at district-sponsored events or activities on district property for any purpose is prohibited, unless granted permission from the [superintendent or designee].

If permission is granted by the [superintendent or designee], the third party operating a UAS will comply with all FAA and ODA registration and use regulations and shall provide the following to the district:

1. Proof of insurance that meets the liability limits established by the district;
2. ~~Appropriate~~ Proof of UAS registration and authorization (including a certificate identified in 14 C.F.R. Part 107 or a Certificate of Authorization described in 49 U.S.C. § 44801) issued by ~~the~~ FAA, and proof of user registration with ODA when required<sup>4</sup>; and

<sup>2</sup> <http://www.osaa.org/governance/handbooks/osaa-#87> <http://www.osaa.org/governance/handbooks>

[<sup>3</sup> Procedures must include: the length of time data will be retained by the district; specifications for third party storage of data, including handling, security and access to the data by the third party; a policy on disclosure of data through intergovernmental agreements.]

<sup>4</sup> A public body, as defined in ORS 174.109, operating an unmanned aircraft system must register as a user with ODA. (ORS 837.360)

3. A signed agreement holding the district harmless from any claims of harm to individuals or damage to property.]

END OF POLICY

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**Legal Reference(s):**

[ORS 164.885](#)

[ORS 174.109](#)

[ORS 192.345](#)

[ORS 837.300 - 837.390](#)

[ORS 837.995](#)

[OAR 738-080-0015 - 080-0045](#)

[Senate Bill 581 \(2019\)](#)

~~Federal Aviation Administration Modernization and Reform Act of 2012, P.L. 112-95 § 336 (2012).~~

~~Federal Aviation Administration, Educational Use of Unmanned Aircraft Systems (UAS) Memorandum, May 4, 2016.~~

~~Federal Aviation Administration Reauthorization Act of 2018, 49 U.S.C. §§ 44801-44810 (2012).~~

~~Small Unmanned Aircraft Systems, 14 C.F.R. Part 107 (2018).~~

~~Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (2012).~~

~~OREGON SCHOOL ACTIVITIES ASSOCIATION HANDBOOK #87.~~

## OSBA Model Sample Policy

Code: EEA

Adopted:

### Student Transportation Services \*

(Even if the district contracts for student transportation services, this is a required policy.)

School transportation services will be provided for students to and from school [and for] [transporting students to and from curricular and extracurricular activities sponsored by the district] [transporting from one school or facility to another] [school-sponsored field trips that are extensions of classroom learning experiences]. Transportation will be provided for homeless students to and from the student's school of origin<sup>1</sup> as required by the Every Student Succeeds Act of 2015 (ESSA). ~~These s~~Services shall be provided throughout the regularly scheduled year and during the regular school day as determined by the [Board].

[Elementary students [in grades K-8] who live more than one mile from school will be transported. Secondary students [in grades 9-12] who live more than one and one-half miles from school will be transported. Mileage exceptions for health, safety or disability will be made in accordance with the district's approved supplemental plan.]

OR

[Students living within specified attendance boundaries shall receive transportation services to their respective schools. In addition, students, including those receiving special education, may be eligible for transportation for health or safety reasons.]

Miles from school will be determined by the [transportation supervisor] in accordance with Oregon Administrative Rule (OAR) 581-023-0040(1)(e).

[The district may use Type 10 School Activity Vehicles to transport students from home to school, school to home and from district-sponsored activities.]

The district may also provide transportation using federal funds<sup>2</sup> or through cooperative agreements with local victims assistance units for a student to attend a safe district school<sup>3</sup> out of the student's attendance area for any student who is a victim of a violent criminal offense occurring in or on the grounds of the school the student attends or the student attends a school identified as persistently dangerous. If there are no other schools within the district a student may transfer to, the district may establish a cooperative agreement with other districts in the area for a transfer. Transportation for students who transfer for such purposes will be provided in accordance with the agreement.

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<sup>1</sup> "School of origin" means the school that a student attended when permanently housed or the school in which the student was last enrolled.

When the student has completed the final grade served by the school of origin, the term "school of origin" shall include the designated receiving school at the next grade level for all feeder schools.

<sup>2</sup> "Federal funds" means funds available through Title IV, Part A, and Title V, Part A.

<sup>3</sup> If there is not another school in the district to which students can transfer, districts are encouraged, but not required, to explore other appropriate options, i.e., an agreement with a neighboring district.



Students attending any private, parochial or public charter school under the compulsory school attendance laws will, where the private, parochial or public charter school is along or near the bus route, be provided equally the riding privileges given to public school students.

Transportation will be provided for students whose parent or guardian voluntarily placed the child outside the child's home with a public or private agency and who is living in a licensed, certified or approved substitute care program, and whose residency is established pursuant to Oregon Revised Statute (ORS) 339.134.

Preschool students with disabilities who have transportation as a related service and children from birth to age three who are enrolled in an eligible program shall be provided home to school transportation.

A seat that fully supports each person and meets the minimum standards and specifications of law will be provided at all times. A person who weighs 40 pounds or less must be properly secured with a child safety system that meets the minimum standards and specifications established by the Oregon Department of Transportation under ~~Oregon Revised Statute (ORS)~~ 815.055. A person over 40 pounds or who has reached the upper weight limit for the forward-facing car seat must use a booster seat until he/she is four feet nine inches tall or age eight and the adult belt properly fits.<sup>4</sup> A person who is taller than four feet nine inches or eight years of age or older must be properly secured with a safety belt or harness that meets the requirements under ORS 815.055. In accordance with ORS 811.210 and 811.215 vehicles in excess of 10,000 pounds used for student transportation are exempt from statutory requirements unless they have been equipped with lap belts. Vehicles in excess of 10,000 pounds that have been equipped with lap belts must meet child car seat requirements as set forth in law.

School buses carrying students will be considered extensions of the school experience. All students using school transportation will abide by the code of conduct posted in each school bus [or school activity vehicle]. Violations of such code, as well as other conduct which is improper or which jeopardizes the safety of self or others, will be reported by the school bus [or vehicle] driver to [the supervisor]. [The transportation supervisor] will, as soon as possible, inform the appropriate principal of such occurrence. Violators may be denied use of transportation for a period of time as deemed proper by the principal [and/or] transportation supervisor.

The [principal] or designee shall ensure transportation officials and drivers receive notification of students having special medical or behavioral protocols identified in student records.

Appropriate training related to specific protocols, including confidentiality requirements, will be provided to drivers.

Aides or assistants that ride a school bus shall receive training on emergency procedures and their role in the safe transportation of all students on the bus.

The school bus [or vehicle] driver will be responsible for the school bus [or vehicle] at all times from departure until return. The driver will not participate in any activities that might impair his/her driving abilities.

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<sup>4</sup> "Proper fit" means the lap belt of the safety belt or safety harness is positioned low across the thighs and the shoulder belt is positioned over the collarbone and away from the neck.



The district will comply with all state and federal laws and regulations pertaining to school bus transportation.

END OF POLICY

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**Legal Reference(s):**

<a href="#">ORS 327.006</a>	<a href="#">ORS 815.080</a>	<a href="#">OAR 581-053-0040</a>
<a href="#">ORS 327.033</a>	<a href="#">ORS 820.100 - 820.190</a>	<a href="#">OAR 581-053-0053</a>
<a href="#">ORS 327.043</a>		<a href="#">OAR 581-053-0060</a>
<a href="#">ORS 332.405</a>	<a href="#">OAR 581-021-0050 - 0075</a>	<a href="#">OAR 581-053-0070</a>
<a href="#">ORS 332.415</a>	<a href="#">OAR 581-022-2345</a>	<a href="#">OAR 581-053-0210</a>
<a href="#">ORS 339.240 - 339.250</a>	<a href="#">OAR 581-023-0040</a>	<a href="#">OAR 581-053-0220</a>
<a href="#">ORS 343.155 - 343.246</a>	<a href="#">OAR 581-053-0002</a>	<a href="#">OAR 581-053-0230</a>
<a href="#">ORS 343.533</a>	<a href="#">OAR 581-053-0003</a>	<a href="#">OAR 581-053-0240</a>
<a href="#">ORS 811.210</a>	<a href="#">OAR 581-053-0004</a>	<a href="#">OAR 735-102-0010</a>
<a href="#">ORS 811.215</a>	<a href="#">OAR 581-053-0010</a>	
<a href="#">ORS 815.055</a>	<a href="#">OAR 581-053-0031</a>	Senate Bill 905 (2019)

Every Student Succeeds Act of 2015, 20 U.S.C. §§ 6315, 7912 (2012~~8~~).  
McKinney-Vento Homeless Assistance Act, 42 U.S.C. §§ 11431-11435 (2012).

# OSBA Model Sample Policy

Code: GBA  
Adopted:

## Equal Employment Opportunity

Equal employment opportunity and treatment shall be practiced by the district regardless of race, color, religion, sex, sexual orientation<sup>1</sup>, national origin, marital status, pregnancy, childbirth or a related medical condition<sup>2</sup>, age, veterans' status<sup>3</sup>, service in uniformed service, familial status, genetic information, an individual's juvenile record that has been expunged, and disability<sup>4</sup> if the employee, with or without reasonable accommodation, is able to perform the essential functions of the position.

The superintendent will appoint an employee to serve as the officer in charge of compliance with the Americans with Disabilities Act of 1990, the Americans with Disabilities Act Amendments Act of 2008 (ADA), and Section 504 of the Rehabilitation Act of 1973. The superintendent will also designate a Title IX coordinator to comply with the requirements of Title IX of the Education Amendments of 1972. The Title IX coordinator will investigate complaints communicated to the district alleging noncompliance with Title IX. The name, address and telephone number of the Title IX coordinator will be provided to all students and employees.

The superintendent will develop other specific recruiting, interviewing and evaluation procedures as are necessary to implement this policy.

END OF POLICY

### Legal Reference(s):

[ORS 174.100](#)  
~~[ORS 192.630](#)~~  
~~[ORS 243.672](#)~~  
[ORS 326.051](#)  
[ORS 332.505](#)  
[ORS 342.934](#)  
[ORS 408.225](#)  
[ORS 408.230](#)  
[ORS 408.235](#)

[ORS 652.210 - 652.220](#)  
[ORS 659.850](#)  
[ORS 659.870](#)  
[ORS 659A.003](#)  
[ORS 659A.006](#)  
[ORS 659A.009](#)  
[ORS 659A.029](#)  
[ORS 659A.030](#)  
[ORS 659A.040](#)

[ORS 659A.082](#)  
[ORS 659A.109](#)  
[ORS 659A.112](#)  
~~[ORS 659A.142](#)~~  
~~[ORS 659A.145](#)~~  
[ORS 659A.233](#)  
[ORS 659A.236](#)  
[ORS 659A.309](#)  
[ORS 659A.321](#)

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

<sup>2</sup> This unlawful employment practice related to pregnancy, childbirth or a related medical condition as described in House Bill 2341 (2019) (added to ORS 659A) applies to employers who employ six or more persons.

<sup>3</sup> The district grants a preference in hiring and promotion to veterans and disabled veterans. A veteran is eligible to use the preference any time when applying for a position at any time after discharge or release from service in the Armed Forces of the United States.

<sup>4</sup> This unlawful employment practice related to disability as described in ORS 659A.112 applies to employers who employ six or more persons (ORS 659A.106).

## PROPOSED POLICY UPDATES BASED ON OSBA RECOMMENDATION - JCSD 509J 8/10/20

[ORS 659A.409](#)

~~ORS 659A.805~~

[ORS 659A.820](#)

[OAR 581-021-0045](#)

[OAR 581-022-2405](#)

[OAR 839-003-0000](#)

[OAR 839-006-0435](#)

[OAR 839-006-0440](#)

[OAR 839-006-0450](#)

[OAR 839-006-0455](#)

[OAR 839-006-0460](#)

[OAR 839-006-0465](#)

House Bill 2341 (2019)

Senate Bill 479 (2019)

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

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

Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621-634 (2012~~8~~); 29 C.F.R Part 1626 (2016~~9~~).

Age Discrimination Act of 1975, 42 U.S.C. §§ 6101-6107 (2012).

Equal Pay Act of 1963, 29 U.S.C. § 206(d) (2012~~8~~).

Rehabilitation Act of 1973, 29 U.S.C. §§ ~~503~~, 791, ~~793~~-794 (2012); 34 C.F.R. Part 104 (2019).

Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1683, 1701, 1703-1705, 1720 (2012~~8~~); Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 34 C.F.R. Part 106 (2016~~9~~).

Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101-12213 (2012); 29 C.F.R. Part 1630 (2016~~9~~); 28 C.F.R. Part 35 (2016~~9~~).

Wygant v. Jackson Bd. of Educ., 476 U.S. 267 (1989).

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

The Vietnam Era Veterans' Readjustment Assistance Act of 1974, ~~as amended~~, 38 U.S.C. § 4212 (2012~~8~~).

~~Title II of the~~ Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. § 2000ff-1 (2012).

Chevron USA Inc. v. Echazabal, 536 U.S. 736 (2002).

## OSBA Model Sample Policy

Code: GBEA  
Adopted:

### Workplace Harassment \*

Workplace harassment is prohibited and shall not be tolerated. This includes workplace harassment that occurs between district employees or between a district employee and the district in the workplace or at a work-related event that is off district premises and coordinated by or through the district, or between a district and a district employee off district premises. Elected school board members, volunteers and interns are subject to this policy.

Any district employee who believes they have been a victim of workplace harassment may file a report with the district employee designated in the administrative regulation GBEA-AR - Workplace Harassment Reporting and Procedure, may file a report through the Bureau of Labor and Industries' (BOLI) complaint resolution process or under any other available law. The reporting of such information is voluntary. The district employee making the report is advised to document any incidents of workplace harassment.

“Workplace harassment” means conduct that constitutes discrimination prohibited by Oregon Revised Statute (ORS) 659A.030 (discrimination in employment based on race, color, religion, sex, sexual orientation, national origin, marital status, age, or expunged juvenile record), including conduct that constitutes sexual assault<sup>1</sup> or that constitutes conduct prohibited by ORS 659A.082 (discrimination against person in uniformed service) or 659A.112 (discrimination in employment based on disability).

The district, upon receipt of a report from a district employee who believes they are a victim of workplace harassment, shall provide information about legal resources and counseling and support services, including any available employee assistance services. The district employee receiving the report, whether a supervisor of the employer or the district employee designated to receive reports, is advised to document any incidents of workplace harassment, and shall provide a copy of this policy and accompanying administrative regulation to the victim upon their disclosure about alleged workplace harassment.

All incidents of behavior that may violate this policy shall be promptly investigated.

Any person who reports workplace harassment has the right to be protected from retaliation.

The district may not require or coerce a district employee to enter into a nondisclosure<sup>2</sup> or no disparagement<sup>3</sup> agreement.



<sup>1</sup> “Sexual assault” means unwanted conduct of a sexual nature that is inflicted upon a person or compelled through the use of physical force, manipulation, threat or intimidation.

<sup>2</sup> A “nondisclosure” agreement or provision prevents either party from disclosing the contents of or circumstances surrounding the agreement.

<sup>3</sup> A “nondisparagement” agreement or provision prevents either party from making disparaging statements about the other party.

The district may not enter into an agreement with an employee or prospective employee, as a condition of employment, continued employment, promotion, compensation, or the receipt of benefits, that contains a nondisclosure provision, a no disparagement provision or any other provision that has the purpose or effect of preventing the employee from disclosing or discussing workplace harassment that occurred between district employees or between a district employee and the district, in the workplace or at a work-related event that is off district premises and coordinated by or through the district, or between a district employee and employer off district premises.

The district may enter into a settlement agreement, separation or severance agreement that includes one or more of the following provisions only when a district employee claiming to be aggrieved by workplace harassment requests to enter into the agreement: 1) a nondisclosure or no disparagement provision; 2) a provision that prevents disclosure of factual information relating to the claim of workplace harassment; or 3) a no-rehire provision that prohibits the employee from seeking reemployment with the district as a term or condition of the agreement. The agreement must provide the district employee at least seven days after signing the agreement to revoke it.

If the district determines in good faith that an employee has engaged in workplace harassment, the district may enter into a settlement, separation or severance agreement that includes one or more of the provisions described in the previous paragraph.

It is the intent of the Board that appropriate corrective action will be taken by the district to stop workplace harassment, prevent its recurrence and address negative consequences. Staff members in violation of this policy shall be subject to discipline, up to and including dismissal and/or additional workplace harassment awareness training, as appropriate. Other individuals (e.g., board members, witnesses, and volunteers) 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.

The district shall make this policy available to all district employees and shall be made a part of district orientation materials provided and copied to new district employees at the time of hire.

The superintendent will establish a process of reporting incidents of workplace harassment and the prompt investigation.

END OF POLICY

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**Legal Reference(s):**

[ORS 659A.001](#)  
[ORS 659A.003](#)  
[ORS 659A.006](#)  
[ORS 659A.029](#)  
[ORS 659A.030](#)

[ORS 659A.082](#)  
[ORS 659A.112](#)  
[ORS 659A.820](#)  
[ORS 659A.875](#)  
[ORS 659A.885](#)

[OAR 584-020-0040](#)  
[OAR 584-020-0041](#)  
  
Senate Bill 479 (2019)

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 (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).

## OSBA Model Sample Policy

Code: GBEA-AR  
Revised/Reviewed:

### Workplace Harassment Reporting and Procedure

Any district employee who believes they have been a victim of workplace harassment may file an oral or written report consistent with this administration regulation, may file a report through the Bureau of Labor and Industries' (BOLI) complaint resolution process, or under any other available law.

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

A complaint alleging an unlawful employment practice as described in ORS 659A.030, 659A.082 or 659A.112 or section 4 of Senate Bill 479 (2019) must be filed no later than five years after the occurrence of the alleged unlawful employment practice.

All documentation related to workplace harassment complaints may become part of the personnel file of the employee who is the alleged harasser, as appropriate. Additionally, a copy of all workplace harassment reports, complaints, and documentation will be maintained by the district as a separate confidential file and stored in the district office.

### Investigation Procedure

The [superintendent or designee] is responsible for investigating reports concerning workplace harassment. The investigator(s) shall be a neutral party having had no involvement in the report presented. If the alleged workplace harassment involves [position title(s)], the employee may report to [alternative position title(s)]. All reports of alleged workplace harassment behavior shall be investigated.

The investigator shall:

1. Document the alleged, reported incident of workplace harassment;
2. Provide information about legal resources and counseling and support services, which may include district-provided assistance services available to the district employee;
3. Provide a copy of the district's Board policy GBEA - Workplace Harassment and this administrative regulation to the district employee; and
4. Complete the following steps:

Step 1 Promptly initiate an investigation. The investigator will arrange such meetings as may be necessary to discuss the issue with all concerned parties within [ten] working days after receipt of the report. The parties will have an opportunity to submit evidence and a list of witnesses. All findings of the investigation, including the response of the alleged harasser, shall be reduced to writing. The investigator shall notify the complainant 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.

~~[A copy of the report, complaint, or other documentation about the incident, and the date and details of notification to the complainant of the results of the investigation, together with any other documentation related to the workplace harassment incident, including disciplinary action taken or recommended, shall be forwarded to the [superintendent] [human resources office].]~~

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] shall review the investigators report and findings. The [superintendent] [or designee] will arrange such meetings with the complainant and other affected parties as deemed necessary by the [superintendent or designee] to discuss the appeal. The [superintendent or designee] shall provide a written decision to the complainant within [10] working days after receipt of the appeal.

[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 findings and conclusion of the [superintendent or designee] in a public meeting to determine what action is appropriate. Appropriate action may include, but is not limited to, holding a hearing, requesting additional information, and adopting the [superintendent or designee] decision as the district's final decision.

If the Board conducts a hearing, the complainant shall be given an opportunity to present the appeal at a Board meeting. The Board may hold the hearing in executive session if the subject matter qualifies under Oregon law. The parties involved may be asked to attend such hearing for the purposes of making further explanations and clarifying the issues. The Board shall decide, within [20] days, in open session what action, if any, is warranted. The Board shall provide a written decision to the complainant within [10] working days following completion of the hearing.

If the Board chooses not to hear the appeal, the [superintendent's] decision in Step 2 is final.]

Reports involving the superintendent should be referred to the Board chair on behalf of the Board. The Board chair will cause the information<sup>1</sup> required to be issued to the complainant as described in this administrative regulation. The Board chair shall present the complaint to the Board at a Board meeting. 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. The Board may hold the hearing in executive session if the subject matter qualifies under Oregon law. The Board shall decide, within [30] days, in open session what action if any is warranted. The Board chair shall notify the

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<sup>1</sup> Provide information about legal resources and counseling and support services, which may include district-provided assistance services available to the district employee, and a copy the district's Board policy GBEA - Workplace Harassment and this administrative regulation to the district employee.



complainant in writing within [10] days that the investigation is concluded and if a violation of the policy was found to have occurred to the extent allowable by law.

### **Follow-up Procedures**

The [position title] will follow up with the district employee of the alleged harassment once every three months for the calendar year following the date on which the [position title] received a report of harassment, to determine whether the alleged harassment has stopped or if the employee has experienced retaliation. The [position title] will document the record of this follow-up. The [position title] will continue follow-up in this manner until and unless the employee directs the [position title] in writing to stop.

### **Other Reporting Options and Filing Information**

Nothing in this policy prevents an employee from filing a formal grievance in accordance with a collective bargaining agreement (CBA) or a formal complaint with BOLI or the Equal Employment Opportunity Commission (EEOC); or if applicable, the U.S. Department of Labor (USDOL) Civil Rights Center. Review the CBA for any provision that requires an employee to choose between the complaint procedure outlined in the CBA and filing a BOLI or EEOC complaint.

Nothing in Board policy GBEA - Workplace Harassment or this administrative regulation prevents any person from seeking remedy under any other available law, whether civil or criminal.

An employee or claimant must provide advance notice of claim against the employer as required by ORS 30.275.

### **Filing a report with the U.S. Department of Labor (USDOL) Civil Rights Center.**

An employee whose agency receives federal financial assistance from the USDOL under the Workforce Innovation and Opportunity Act, Mine Safety and Health Administration, Occupational Safety and Health Administration, or Veterans' Employment and Training Service, may file a complaint with the state of Oregon Equal Opportunity Officer or directly through the USDOL Civil Rights Center. The complaint must be written, signed and filed within 180 days of when the alleged discrimination or harassment occurred.



[Name of District]  
[Address] | [Phone]

**WORKPLACE HARASSMENT REPORTING OR COMPLAINT FORM**

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

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

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

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

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

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

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

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

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

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

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

[Name of District]  
[Address] | [Phone]

**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 Policy

Code: GBEDA  
Adopted:

### **Drug and Alcohol Testing and Record Query - Transportation Personnel \***

(This policy is required if the district operates their own transportation services, or if any district staff is required to have a commercial driver's license (CDL).)

(Version 1)

In a continuing effort to prevent accidents and injuries resulting from the use of drugs and misuse of alcohol by drivers of commercial motor vehicles, the district shall establish a drug and alcohol misuse prevention program. The district's program shall meet the requirements of the Omnibus Transportation Employee Testing Act of 1991. The district or its transportation provider shall have an in-house drug and alcohol testing program or be a member of a consortium that provides testing that meets the federal regulations, and shall annually certify this information to the Oregon Department of Education (ODE). ~~The district's program shall meet the requirements of the Omnibus Transportation Employee Testing Act of 1991.~~ The district or its transportation provider shall comply with the reporting and pre-employment and annual query requirements of the Federal Motor Carrier Safety Administration (FMCSA).

The superintendent will develop administrative regulations as needed to implement the district's program including such provisions for pre-employment, reasonable suspicion, random, post-accident, return-to-duty and follow-up testing as may be necessary. The regulations will include training, education and other assistance to employees to promote a drug- and alcohol-free environment.

END OF POLICY

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#### Legal Reference(s):

[ORS 657.176](#)  
[ORS 825.415](#)  
[ORS 825.418](#)

[OAR 581-053-0220\(3\)\(h\)](#)  
[OAR 581-053-0230\(9\)\(t\)](#)  
[OAR 581-053-0420\(4\)\(b\)\(B\)\(ii\)](#)  
[OAR 581-053-0430\(13\),\(14\)](#)

[OAR 581-053-0531\(12\),\(13\)](#)  
[OAR 581-053-0615\(2\)\(c\)\(D\)\(ii\)](#)  
[OAR 581-053-0620\(1\)\(d\)](#)

Omnibus Transportation Employee Testing Act of 1991, 49 U.S.C. §§ 31301-31317 (2012); 49 C.F.R. Parts 40, 382, 391-395 (2017).

## OSBA Model Sample Policy

Code: GBEDA-AR

Adopted:

### **Drug and Alcohol Testing and Record Query - Transportation Personnel \***

(This administrative regulation is required if the district operates their own transportation services, or if any district staff are required to have a commercial driver's license (CDL).)

The following procedures shall govern the district's drug use and alcohol misuse prevention program:

#### 1. Program Coordinator

The [superintendent or designee] will be designated as the district's drug use and alcohol misuse prevention program coordinator. The [superintendent or designee] will coordinate the district's responsibilities and compliance efforts with the applicable provisions of the Omnibus Transportation Employee Testing Act of 1991 (OTETA). The [superintendent or designee] will:

- a. Ensure that all covered employees receive written materials explaining the district's drug use and alcohol misuse prevention program requirements including:
  - (1) The district policy and administrative regulations;
  - (2) A contact person knowledgeable about the materials, policy, administrative regulations and the OTETA;
  - (3) Categories of employees covered;
  - (4) Information about the safety-sensitive functions and what period of the workday the employee is required to be in compliance. Safety-sensitive functions shall include such responsibilities as all on-duty time waiting to be dispatched, driving time, assisting or supervising loading or unloading, repairing, obtaining assistance or remaining in attendance upon a disabled vehicle. All time spent providing drug and alcohol samples, including travel time to and from the collection or testing site as needed to comply with random, reasonable suspicion, post-accident, return-to-duty or follow-up testing, will also be considered as on-duty time;
  - (5) Specific information concerning prohibited conduct;
  - (6) Circumstances under which employees will be tested;
  - (7) Procedures used in the testing process;
  - (8) The requirement that covered employees submit to drug and alcohol testing, administered in accordance with 49 C.F.R. Part 382;
  - (9) Explanation of what constitutes a refusal to submit to a drug and/or alcohol test;
  - (10) Consequences of violations (e.g., discipline up to and including dismissal as may be required by the district and removal from safety-sensitive functions as required by the OTETA) and notification of resources available to the driver in evaluating and resolving problems associated with the misuse of alcohol and the use of drugs including the names, addresses and telephone numbers of substance abuse professionals (SAP) and counseling and treatment programs. Such information will include the consequences for covered employees found to have a breath alcohol concentration rate of 0.02 or greater, but less than 0.04, and for those employees found to have a breath alcohol content level greater than 0.04. Minimally, no driver tested and found to have a breath alcohol concentration rate of 0.02 or greater but less than 0.04 shall be permitted to perform or continue to perform safety-sensitive functions until the start of the driver's next regularly scheduled duty period, but not less than 24 hours following administration of the test;
  - (11) Information on the effects of drug use and alcohol misuse on an individual's health, work and personal life; signs and symptoms of an alcohol or drug problem (driver's or coworker's); and available methods of intervening when such problems are suspected,

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Drug and Alcohol Testing and Record Query -  
Transportation Personnel \* – GBEDA-AR

1-13

including confrontation, referral to an employee assistance program as available and/or referral to the administration;<sup>1</sup> and

(12) Requirement of the district to collect, maintain and report the following information to the Federal Motor Carrier Safety Administration (FMCSA) Drug and Alcohol Clearinghouse<sup>1</sup>:

- (a) A verified positive, adulterated, or substituted drug test result;
- (b) An alcohol confirmation test with a concentration of 0.04 or higher;
- (c) A refusal to submit to any test required by subpart C of 49 C.F.R. Part 382;
- (d) An employer's report of actual knowledge (as defined at 49 C.F.R. § 382.107) of a violation of regulations, including:
  - (i) On duty alcohol use;
  - (ii) Pre-duty alcohol use;
  - (iii) Alcohol use following an accident;
  - (iv) Controlled substance use.
- (e) A SAP's report of the successful completion of the return-to-duty process;
- (f) A negative return-to-duty test; and
- (g) An employer's report of completion of follow-up testing.

- b. Ensure that employees sign statements certifying that they have received the materials;
- c. Ensure that administrators or their designee, designated to determine reasonable suspicion, receive at least 60 minutes of drug abuse training and an additional 60 minutes of alcohol misuse training. Training will include the physical, behavioral, speech and performance indicators of probable drug use and alcohol misuse;
- d. Ensure district compliance with applicable provisions of the OTETA's requirements regarding the district's management information system, retention and confidentiality of records;
- e. Ensure selection of a site with appropriately trained personnel for the collection of specimens for drug testing;
- f. Ensure selection of a site with a certified breath alcohol technician and evidential breath testing devices for alcohol testing;
- g. Ensure selection of a laboratory certified by the ~~Department of Health and Human Services (DHHS)~~ Oregon Health Authority, Public Health Division ("OHA") to conduct drug specimen analysis;
- h. Ensure selection of a qualified medical or osteopathic doctor to serve as a medical review officer (MRO) to verify laboratory drug test results;
- i. Ensure selection of qualified personnel to provide education and training to employees and supervisors in accordance with employee assistance program requirements as specified in the OTETA;
- j. Ensure the district's drug use and alcohol misuse prevention program is maintained in at least outline form, on file and available for inspection at the district office. The district shall maintain the following:
  - (1) Information on the effects and consequences of drug and alcohol use on personal health, safety and the work environment;
  - (2) Information on the manifestations and behavioral changes that may indicate drug and alcohol use or abuse;
  - (3) Documentation that drug training for all supervisory personnel has consisted of at least 60 minutes;
  - (4) Documentation that alcohol training for all supervisory personnel has consisted of at least 60 minutes;

<sup>1</sup> <https://clearinghouse.fmcsa.dot.gov/>

- (5) Documentation of training given to employees.
- k. Ensure the establishment of clearly defined communication procedures to include the method (e.g., mail, facsimile) and frequency (e.g., monthly, daily, weekly) as well as the authorized individuals to impart and receive information to meet the documentation and confidentiality requirements of the OTETA;
- l. Ensure employee organizations receive written notice of the availability of all pertinent drug use and alcohol misuse prevention program information;
- m. [²]Ensure compliance with stand-down prohibitions as set forth by the OTETA. “Stand-down” means the practice of temporarily removing an employee from the performance of safety-sensitive functions, based on a report from a laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test or a substituted test, before the MRO has completed verification of the test results. The district will not stand-down employees, except as provided by the ~~Federal Motor Carrier Safety Administration (FMCSA)~~ below:
- (1) The district may seek a waiver of the prohibition against standing down an employee;
- (2) Requests which include all required information will be submitted to FMCSA for approval.]

## 2. Pre-employment and Annual Queries from, and Required Reporting to FMCSA

The district is required to conduct a pre-employment query with FMCSA on drivers who are subject to controlled substance and alcohol testing regulation, and is required to report information obtained through its controlled substance and alcohol testing program to FMCSA. All offers of employment for positions identified by the district, as required by the OTETA, will be contingent upon the results of a pre-employment query.

- a. The district will obtain written or electronic consent from a driver subject to controlled substances and alcohol testing to conduct a pre-employment query with FMCSA. The consent will include consent to obtain the following information:
- (1) If the driver has a verified positive, adulterated, or substituted controlled substances test result;
- (2) If the driver has an alcohol confirmation test with a concentration of 0.04 or higher;
- (3) If the driver has refused to submit to a test (in violation of 49 C.F.R. § 382.211); or
- (4) If the driver has a report submitted by another employer on actual knowledge (as defined at 49 C.F.R. § 382.107) of a violation of regulations that included:
- (a) On duty alcohol use;
- (b) Pre-duty alcohol use;
- (c) Alcohol use following an accident; or
- (d) Controlled substance use.

The district will conduct annual queries<sup>3</sup> with the FMCSA on employees subject to such queries as required by law.

[² This is optional language. Keep if the district desires to implement a stand-down policy pursuant to law.]

<sup>3</sup> Written consent from the driver is required. This may be a limited query when allowed. If the limited query indicates that the FMCSA contains information on the driver, the district will conduct a full query within 24 hours and must not allow driver to perform safety-sensitive functions.

b. The district will report<sup>4</sup> to FMCSA the following personal information about a driver that is collected and maintained in connection with the district's testing program:

- (1) An alcohol confirmation test with an alcohol concentration of 0.04 or greater;
- (2) A refusal to submit to an alcohol test pursuant to conditions found in 49 C.F.R. § 40.261 or a refusal to drug test determination made in accordance with 49 C.F.R. § 40.191(a)(1)-(4), (a)(8)-(11) or (d)(1), but in the case of a refusal to test under (a)(11), the district may report only those admissions made to the specimen collector;
- (3) A SAP's report of the successful completion of the return-to-duty process;
- (4) A negative return-to-duty test; and
- (5) An employer's report of completion of follow-up testing.

The report will include, as applicable:

- (1) Reason for the test;
- (2) Driver's name, date of birth, and CDL number and State of issuance;
- (3) Employer name, address, and USDOT number;
- (4) Date of the test;
- (5) Date the result was reported; and
- (6) Test result. The test result must be one of the following:
  - (a) Negative (only required for return-to-duty tests administered in accordance with law);
  - (b) Positive; or
  - (c) Refusal to take a test.

(7) An employer's report of a driver's refusal to submit<sup>5</sup> to alcohol or drug testing must include the following information:

- (a) Documentation, including, but not limited to, electronic mail or other contemporaneous record of the time and date the driver was notified to appear at a testing site; and the time, date and testing site location at which the employee was directed to appear, or an affidavit providing evidence of such notification;
- (b) Documentation, including, but not limited to, electronic mail or other correspondence, or an affidavit, indicating the date the employee was terminated or resigned (if applicable); and
- (c) Documentation, including a certificate of service or other evidence, showing that the employer provided the employee with all documentation reported herein.

(8) An employer's report of a violation of one of the following will occur by the close of the third business day following the date on which the employer obtains actual knowledge (as defined at 49 C.F.R. § 382.107):

- (a) On duty alcohol use;
- (b) Pre-duty alcohol use;
- (c) Alcohol use following an accident;
- (d) Controlled substance use.

This report will include the following information:

<sup>4</sup> The district will complete such reporting to FMCSA by close of the third business day following receipt of the information.

<sup>5</sup> 49 C.F.R. § 40.261(a)(1) or 40.191(a)(1)



- (a) Driver's name, date of birth, CDL number and State of issuance;
- (b) Employer name, address, and USDOT number, if applicable;
- (c) Date the employer obtained actual knowledge of the violation;
- (d) Witnesses to the violation, if any, including contact information;
- (e) Description of the violation;
- (f) Evidence supporting each fact alleged in the description of the violation required under paragraph above in this section, which may include, but is not limited to, affidavits, photographs, video or audio recordings, employee statements (other than admissions pursuant to §382.121), correspondence, or other documentation; and
- (g) A certificate of service or other evidence showing that the employer provided the employee with all information reported under paragraph above in this section.

If the district's program coordinator is the subject of the testing, the district will ensure compliance with applicable consent, testing, and reporting requirements pursuant to law.

### 3. Pre-employment Testing

The district shall conduct pre-employment testing as follows:

- a. All offers of employment for positions as identified by Board policy and as required by the OTETA will be contingent upon drug [and alcohol] test results;
- b. Individuals offered employment with the district and employees transferring to positions subject to the OTETA contingent on drug [and alcohol] testing, must provide written consent for the release of any prior employer positive drug and failed alcohol testing results, refusals to be tested, other violations of testing regulations and, with respect to any employee who violated drug and alcohol regulations, documentation of the employee's successful completion of return-to-duty requirements (including SAP evaluations and follow-up tests) within the preceding two years;
- c. The district shall obtain and review such drug and alcohol information from previous employers of the past two years [no later than 14 calendar days after] [before] the driver is used for the first time. The district will provide the ~~driver's~~ written permission ~~of the driver~~, for release of information, to the previous employers;
- d. The district will maintain a written, confidential record of information obtained from another employer or the good faith efforts to obtain such information, and will maintain the same for three years from the date the driver's service began.
- e. <sup>6</sup>Requests received by the district for ~~R~~release of such information ~~may be by telephone, letters or any other method~~ to another employer must include written consent from the subject driver. Records will be released immediately in any written form (e.g., fax, email, letter) that ensures confidentiality. The district will maintain a written, ~~confidential record of each past employer contacted~~ record and summary of information released, the date, and to whom the information was released;
- f. The district ~~will not use~~ must ask a driver ~~with a~~, and will not use such driver, if they have a positive drug test or a failed alcohol test while employed with a previous employer or who refused to test while under employment with a previous employer ~~in the past two years~~ unless the driver is in compliance with the SAP's treatment program and the OTETA's return-to-duty test requirements;
- g. Prior to being directed by the district to a collection site for drug [and alcohol] testing, the applicant will be notified that the urine sample collected shall be tested for the presence of drugs [and the breath or saliva sample shall be tested for the presence of alcohol];

<sup>6</sup> Pertains to requests received by the district from other employers.



- h. Failure to report to the collection site for testing within the time frame specified by the district shall constitute a refusal to report for testing and result in immediate withdrawal of the employment or transfer offer;
- i. Pre-employment drug [and alcohol] testing will be paid for by the [district] [employee];
- j. Tests must indicate negative drug test results [and a breath alcohol content level below a 0.02]. Individuals who fail to meet such drug [and alcohol] requirements [will] [may] not be hired or transferred voluntarily or involuntarily to covered positions;
- k. Such testing will also be required of covered employees each time an employee returns to work after a layoff period if the employee was removed from the random testing pool. As long as the employee remains in the random testing pool, additional testing or subsequent pre-employment drug [and alcohol] testing will not be necessary following a layoff;
- l. The district will notify individuals offered employment with the district contingent on drug testing of the results of such testing upon request within 60 days of being notified of the disposition of the employment application;
- m. Refusal to submit to drug [and alcohol] testing and/or to provide signed permission for the release of past testing information as required by the district shall result in immediate termination from employment or transfer consideration;
- n. [The individual may request a screening of the split specimen at his/her/their own expense. All such requests must be received in writing by the district no later than 72 hours following notification to the applicant of the positive test results.]

4. Post-accident Testing

The district shall conduct post-accident testing as follows:

- a. It is the responsibility of the employee to report for post-accident drug and alcohol testing as soon as practicable following a motor vehicle accident which occurs while the employee is performing district safety-sensitive functions in which there is a fatality or the employee receives a citation for a moving traffic violation in connection with an injury or tow-away accident:
  - (1) The employee will report to the designated collection site for post-accident drug and alcohol testing as soon as practicable following the occurrence of the accident;
  - (2) If alcohol testing has not been administered within two hours, the district ~~will~~ shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered;
  - (3) If alcohol testing is not administered within eight hours, the district ~~will~~ shall cease attempts to administer an alcohol test and ~~will prepare~~ shall state and maintain on file a record specifying why the test was not administered;
  - (4) If drug testing has not been administered within 32 hours following the accident, the district will cease attempts to administer such tests and will document why the test was not administered;
  - (5) The employee will contact the [district drug use and alcohol misuse prevention program coordinator] [district official] or designee as soon as practicable following the accident giving as much detailed information about the accident as possible (e.g., fatalities, injuries, tow-a-ways, traffic citation issued, etc.).
- b. The district will provide employees with necessary post-accident testing information, procedures and instructions as a part of its employee training program. Additionally, written instructions to follow in the event of an accident will be provided in district vehicles as appropriate. Instructions will include locations of drug specimen collection and alcohol testing sites and telephone number of the district drug use and alcohol misuse prevention program coordinator or other district officials to contact;
- c. The employee shall remain readily available for testing or may be deemed by the district to have refused to submit to testing. Such refusal is treated as if the district received an alcohol

test result of 0.04 or greater or received a positive drug test. Nothing in this requirement shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit an employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care;

- d. Results of a breath or blood test for the use of alcohol or a urine test for the use of drugs conducted by on-site federal, state and/or local law enforcement officials having independent authority for the test shall be considered to meet necessary requirements provided results of the test are obtained by the district and the tests conform to all applicable federal, state and/or local requirements;
- e. An employee who is involved in an accident involving a fatality, injury and/or tow-away as described by the OTETA is prohibited from using alcohol for eight hours after the accident or until the employee undergoes a post-accident alcohol test, whichever occurs first.

## 5. Random Testing

The district shall conduct random drug and alcohol testing annually as follows:

- a. Not less than 25 percent of the average number of driver positions shall be tested for drugs and not less than 10 percent shall be tested for alcohol in accordance with current minimum random testing requirements of the OTETA. Any unfilled, covered positions will be included as part of the total number of positions counted by the district for testing rate purposes.
  - (1) The district will **[meet]** minimum testing rates.
  - (2) **[\*]**In exceeding minimum testing rates, the district requires that [ ] percent of covered employees shall be randomly tested annually for drugs and [ ] percent shall be randomly tested annually for alcohol.]
- b. The testing rate may be adjusted by FMCSA based on industrywide data;
- c. The testing process shall, in fact, be random. Unless advised otherwise by their consortium, all employees will remain in the pool of drivers for each subsequent period, including vacations, holiday periods and summer recesses, whether or not they have been chosen for testing in the past;
- d. The selection of employees for random testing shall be made by a scientifically valid method. The process selected by the district will ensure that all employees shall have an equal chance of being tested each time selections are made. The district will use the following system:

[<sup>7</sup>][Computerized system]<sup>[8]</sup>:

A random number generating program will be loaded into a computer along with the employees' social security number, payroll identification number or other comparable identification number for the drivers.]

**OR**

[Manual system:

- (1) Individual, identically sized slips of paper or cards with the names or identification numbers of the covered drivers will be used;
- (2) Cards will be placed into a container from which the required number will be drawn;

[<sup>7</sup> The district should select either "computerized system" or "manual system" language reflected in brackets.]

[<sup>8</sup> The computerized system, when it can be utilized by the district, is the preferred selection method, under FMCSA guidance.]

- (3) The individual selected by the district to do the drawing will be unbiased;
- (4) All names in the pool will be checked prior to the drawing to assure any necessary additions or deletions are made.]

- e. All such testing shall be unannounced and dates selected spread reasonably throughout the calendar year to avoid predictability and the perception that testing is “done for the year[.]” [Districts with six or less covered employees may annually select a single calendar date for random drug and alcohol testing<sup>9</sup>. The date selected will be kept confidential to ensure that testing is unannounced as required by law.][;]
- f. Following notification of testing, selected employees shall proceed to the district-selected collection site immediately or as soon as practicable;
- g. Each employee selected for testing shall be tested during the selection period;
- h. Employees shall only be tested for alcohol just before the driver is scheduled to perform ~~his/her~~ safety-sensitive functions, during or just after performing such functions;
- i. Employees off work due to leave of absence, vacation and layoff will be informed that they remain subject to random testing. Employees drawn for such testing will be notified and tested as soon as practicable upon return to duty but no later than the next selection cycle (e.g., monthly, quarterly, etc.).

## 6. Reasonable Suspicion Testing

The district shall conduct reasonable suspicion drug and alcohol testing as follows:

- a. The district will test covered employees when there is reasonable suspicion to believe that the employee has engaged in drug use or alcohol misuse;
- b. Reasonable suspicion will be based on specific contemporaneous, articulable observations made by a trained supervisor as designated by the district, concerning appearance, behavior, speech or body odors indicative of employee use of drugs or the misuse of alcohol. Observations of drug use may include indications of chronic and withdrawal effects of drugs and noticeable degradation of job performance that may be associated with the use of drugs;
- c. Hearsay or secondhand information is not sufficient to require an employee to submit to testing;
- d. Alcohol testing may be authorized only if observations resulting in reasonable suspicion are made during, just preceding or just after the period of the workday that the employee is required to be in compliance with this policy, administrative regulations and applicable OTETA provisions;
- e. A written record shall be made of the observations leading to a reasonable suspicion drug test and signed by the administrator or ~~his/her~~ designee authorized to make such observations within 24 hours of the observed behavior or before the results of the drug test are released, whichever is earlier;
- f. The district will ensure that the employee under reasonable suspicion is transported to the designated collection or testing site.

## 7. Referrals, Evaluation and Treatment

The district shall provide information related to referrals, evaluation and treatment as follows:

- a. The district shall advise covered employees, who violate the drug and alcohol prohibitions, of referral services available for evaluating and resolving problems associated with the use of drugs and the misuse of alcohol. Such information will include the names, addresses and telephone numbers of SAPs and counseling and treatment programs;
- b. An employee who engages in such prohibited conduct shall be evaluated by a SAP;

<sup>9</sup> The next “calendar year date” for random testing starts from the day after the random testing date.

- c. The SAP will determine what assistance if any the employee needs in resolving problems associated with drug use and alcohol misuse;
- d. This requirement applies only to current employees and not to job applicants who refuse testing or who test positive for drugs;
- e. This requirement shall not be interpreted to require the district to provide or pay for any rehabilitation costs or to hold a job open for an employee with or without salary;
- f. SAPs, as referred to in these administrative regulations, means:
  - (1) Licensed physicians with knowledge of and clinical experience in the diagnosis and treatment of alcohol-related disorders;
  - (2) Licensed or certified psychologists, social workers or employee assistance professionals with like knowledge; and
  - (3) Alcohol and drug abuse counselors certified by the ~~National Association of Alcoholism and Drug Abuse Counselors~~ Association for Addiction Professionals (NAADAC). This does not include state-certified counselors.

#### 8. Return-to-Duty Testing

Employees, if they continue employment and before they return to duty, shall comply with the following:

- a. When an employee has previously tested greater than or equal to 0.04 for alcohol, the employee must retest (return-to-duty test) with an alcohol concentration of less than 0.02;
- b. When an employee has previously tested positive for drug use, the employee must retest (return-to-duty test) with a verified negative test result.

#### 9. Follow-up Testing

Employees, if they continue employment, shall comply with the following:

- a. Follow-up testing will be conducted whenever a SAP determines that an employee is in need of resolving problems associated with drug use and/or alcohol misuse;
- b. Follow-up alcohol testing will be conducted only when the employee is performing safety-sensitive functions, just before or just after the driver has performed safety-sensitive functions;
- c. Follow-up drug and alcohol testing will be unannounced<sup>10</sup>;
- d. The number and frequency of such tests shall be determined by the SAP. Minimally, there shall be:
  - (1) At least 6 unannounced tests in the first 12 months following the driver's return to duty;
  - (2) Testing shall not exceed 60 months from the date of the employee's return to duty. The SAP, however, may terminate the follow-up testing at any time after the first six tests if ~~he/she~~ the SAP determines the testing is no longer needed.

#### 10. Drug and Alcohol Testing Procedures

The district, in cooperation with contracted collection and testing facilities, shall maintain drug and alcohol testing procedures as follows:

- a. Drugs
  - (1) The applicant or employee reports to the district-designated collection site and provides positive identification (e.g., photo ID);

<sup>10</sup> A follow-up test shall not also serve as a random test, and vice versa.

- (2) A urine sample for drug testing is provided. A “split specimen” (two urine specimen bottles) is prepared from the urine sample;
- (3) Following completion of a chain-of-custody form, both specimen bottles are forwarded to the ~~DHHS~~-OHA certified laboratory for analysis. The split specimen is stored at the laboratory for later testing as may be necessary. Initial testing is performed only on one specimen bottle;
- (4) Testing results are reported to the district-selected MRO by mail or electronic transmission. Results may not be given over the phone;
- (5) The MRO will verify ~~both~~ negative and positive testing results;
- (6) The MRO will report the verified negative testing results to the district;
- (7) The MRO will report verified positive testing results to the applicant or employee, discuss the type of illegal substance found and determine whether there is any valid medical reason for the positive testing results;
- (8) A verified valid medical reason for a positive test result will be reported as a negative test result to the district;
- (9) If no legitimate medical reason exists for positive drug testing, the MRO will report a confirmed positive test result and identity of the substance(s) to the district;
- (10) The employee or applicant may request within 72 hours of a positive test notice that the split specimen (second bottle) be screened. Such screening costs will be paid for by the [employee] [district];
- (11) Unlike the original specimen analyzed for specific levels of controlled substances, the split specimen is analyzed only for the presence of drugs;
- (12) The MRO will report results of the second screening to the employee and the district;
- (13) The MRO will meet all the OTETA requirements including review of chain-of-custody control form, administrative processing of negative test results, verification of positive testing results, ~~report to the FMCSA~~, and maintenance of confidentiality requirements as may be applicable;
- (14) Detailed drug testing procedures may be obtained by contacting the district’s drug use and alcohol misuse prevention coordinator or designee.

b. Alcohol

- (1) The employee reports to the district-designated testing site and provides positive identification;
- (2) Under the alcohol testing rule, an alcohol test result will be considered failing even if over-the-counter or legally prescribed medication is involved;
- (3) All alcohol screening tests will be conducted by: <sup>[11]</sup>[a qualified breath alcohol technician using evidential breath testing devices;] **OR** [a qualified screening test technician using an alcohol screening device other than an evidential breath testing device;]
- (4) Testing may be conducted at an ~~DHHS~~-OHA certified laboratory or other location including mobile facilities equipped for such testing as may meet the requirements of the OTETA;
- (5) District supervisors should generally not be used as a breath alcohol or screening test technician for covered employees. Under certain circumstances, a properly trained district supervisor may conduct such testing in the absence of another technician;
- (6) The employee submits to breath or saliva testing;
- (7) If the result of the testing indicates an alcohol concentration rate of 0.02 or greater, a confirmation breath test is administered after at least 15 minutes, but no longer than 30 minutes, after the initial testing. All confirmation tests will be conducted using evidential breath testing devices;

[<sup>11</sup> The district should select one of the bracketed language options.]



- (8) The technician will report any invalid tests, confirmed failing and passing results to the district;
- (9) Employee refusal to sign forms as required (i.e., Step 2 on the Alcohol Testing Form) shall be considered as refusal to be tested;
- (10) The breath alcohol or screening test technician will meet all OTETA requirements including such testing procedures, Alcohol Testing Form and confidentiality requirements as may be required;
- (11) Detailed alcohol testing procedures may be obtained by contacting the district's drug use and alcohol misuse prevention program coordinator or designee.

#### 11. Positive Test Result

When the MRO determines a positive test result is valid, the MRO will report the finding to the Oregon Department of Transportation (ODOT) and the Oregon Department of Education. The person who is the subject of the test results will be notified by ODOT that the person has a right to a hearing to determine whether the test results reported will be placed in the employee's employment driving record.

#### 12. Record Keeping/Record Reporting

The district shall maintain records of its drug use and alcohol misuse prevention program as follows:

##### a. Records related to the collection process:

- (1) [Collection logbook, if used;]
- (2) Documents relating to the random selection process;
- (3) Documents generated in connection with decisions to administer reasonable suspicion drug or alcohol testing;
- (4) Documents generated in connection with decisions on post-accident testing;
- (5) Documents verifying the existence of an explanation of the inability of an employee to provide adequate breath or to provide a urine specimen for testing;
- (6) An annual calendar year report summarizing results of the district's drug use and alcohol misuse prevention program will be prepared and maintained when requested by FMCSA as part of an inspection, investigation, special study or for statistical purposes. ~~[If alcohol testing is provided directly by the district, include the following additional record-keeping requirements.]~~
- ~~(7) [Collection logbooks, if used;]~~
- ~~(8)(7) [[<sup>12</sup>] Calibration documentation for evidential breath testing devices;]~~
- ~~(9)(8) Documentation of breath alcohol or screening test technician training while the individual performs the functions which require the training.]~~

##### b. Records related to each query:

- (1) Documents related to consent of any query;
- (2) Documents related to information received for a pre-employment or annual query;
- (3) Documents related to meeting reporting requirements.

##### c. Records related to pre-employment verification with a driver's previous employer;

##### d. Records related to a driver's test results, including:

- (1) The district's copy of the alcohol testing form, including the test results;
- (2) The district's copy of the controlled substance test custody and control form;

<sup>[12]</sup> If alcohol testing is provided directly by the district, include the additional record-keeping requirements.]

- (3) Documents sent by the MRO to the district;
  - (4) Documents related to the refusal of any employee to submit to drug and/or alcohol testing;
  - (5) Documents presented by a driver to dispute the results of a drug and/or alcohol test administered in connection with the requirements of the OTETA.
- e. Records related to evaluations as follows:
- (1) Records pertaining to a determination by a SAP concerning ~~his/her~~ an evaluation of a covered employees' ~~who tested positive for drugs, or failed an alcohol test or refused to test~~ need for assistance;
  - (2) Records concerning a driver's compliance with recommendations of the SAP.
- f. Records related to education and training as follows:
- (1) Materials on drug use awareness and alcohol misuse including a copy of the district's policy and administrative regulations on drug use and alcohol misuse and related information;
  - (2) Driver's signed receipt of education materials;
  - (3) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for drug and/or alcohol testing based on reasonable suspicion;
  - (4) Certification that any training conducted in compliance with the OTETA meets all pertinent requirements for such training.
- g. Records related to alcohol and drug testing as follows:
- (1) Agreements with collection site facilities, laboratories, MROs and consortia (includes breath alcohol technicians, screening test technicians and third party providers), as applicable;
  - (2) Names and positions of officials and their role in the district's drug and alcohol testing program(s);
  - (3) Semiannual laboratory statistical summaries of urinalysis as required by the OTETA and as reported by the laboratory. The district will document laboratory failures to provide statistical summaries and any district follow-up efforts to obtain such reports.
- h. Records will be retained by the district as follows:
- (1) Five Years:
    - (a) Records of employee alcohol-testing results with results indicating an alcohol concentration of 0.02 or greater;
    - (b) Records of verified positive drug testing results;
    - (c) Documentation of refusals to take required drug and/or alcohol tests;
    - ~~(d) Drug testing custody and control forms;~~
    - ~~(e)(d)~~ Employee evaluation and referrals;
    - ~~(f)(e)~~ Testing program records including violations;
    - ~~(g)(f)~~ A copy of each annual calendar year report summary ~~(f)(f);~~
    - ~~(h)(g)~~ Equipment calibration documentation ~~as applicable~~ when required (See ~~11~~ 12. a. ~~(6), (7) and (87)).~~
  - (2) Three Years:

- (a) Records related to each query and all information received in response to each query. Documentation of a consent will be retained for three years from the date of the last query.
- (b) Pre-employment records obtained, or good faith efforts to obtain, from a previous employer about a driver.

(3) Two Years:

Records related to the drug and alcohol collection process (except calibration of evidential breath testing devices).

(4) One Year:

Records of negative and cancelled drug-testing results and alcohol test results with a concentration of less than 0.02.

(5) Indefinite Period:

Records related to the education and training of breath alcohol technicians, screening test technicians, supervisors and drivers shall be maintained by the district while the individual performs the functions which require training and for two years after ceasing to perform those functions.

i. Records will be maintained in a secure location with controlled access to ensure confidentiality requirements are met as follows:

- (1) Drug use and alcohol misuse prevention program records will be maintained at the district office. Records relating to individual employee drug and/or alcohol testing, evaluation and treatment will be maintained separately from the employee's personnel file;
- (2) Employees are entitled upon written request to obtain copies;
- (3) The district may disclose information in connection with employee benefit proceedings, Department of Transportation agency action against an employee or National Transportation Safety Board safety investigations;
- (4) The district shall disclose such information<sup>13</sup> to subsequent employers upon written request from the employee (in accordance with 49 C.F.R. § 382.413(a)(1)) [.] [.]
- (5) [The district will provide access to any drug and alcohol collection and/or testing facility records maintained by the district as described by the OTETA (i.e., those federal agencies, state and local officials who have regulatory authority over the district's covered employees).]

<sup>13</sup> Information that must be disclosed to subsequent employers upon receipt of proper authorization form/release signed by the employer's ex-driver: (a) Failed alcohol tests (breath alcohol content of 0.04 or greater); (b) Verified positive drug test; (c) Refusals to test.



## OSBA Model Sample Policy

Code: GBNAA/JHFF  
Adopted:

### Reporting Requirements for Suspected Sexual Conduct with Students \*

Sexual conduct by district employees, contractors<sup>1</sup>, agents<sup>2</sup>, and volunteers<sup>3</sup> is not tolerated. All district employees, contractors, agents, and volunteers are subject to this policy.

“Sexual conduct,” means verbal or physical conduct or verbal, written or electronic communications by a school employee, a contractor, an agent or a volunteer that involve a student and that are sexual advances or requests for sexual favors directed toward the student, or of a sexual nature that are directed toward the student or that have the effect of unreasonably interfering with a student’s educational performance, or of creating an intimidating, hostile or offensive educational environment. “Sexual conduct” does not include touching that is necessitated by the nature of the school employee’s job duties or by the services required to be provided by the contractor, agent or volunteer, and for which there is no sexual intent.

“Student” means any person who is in any grade from prekindergarten through grade 12 or 21 years of age or younger and receiving educational or related services from the district that is not a post-secondary institution of education, or who was previously known as a student by the person engaging in sexual conduct and who left school or graduated from high school within 90 days prior to the sexual conduct.

Any district employee [<sup>4</sup>], **contractor, agent or volunteer** who has reasonable cause to believe that a student has been subjected to sexual conduct by another district employee, contractor, agent or volunteer, or that another district employee, contractor, agent or volunteer has engaged in sexual conduct with a student shall immediately report such suspected sexual conduct to the [<sup>5</sup>]designated licensed administrator or the alternate designated licensed administrator for their school building. If the superintendent is the alleged perpetrator the report shall be submitted to the [licensed administrator position title] who shall report the suspected sexual conduct to the Board chair.

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

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

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

[<sup>4</sup> The following language in brackets, i.e., [, contractor, agent or volunteer], is optional language for the district to consider including. If the language is kept, the district must make these groups aware of the policy and its administrative regulation and their responsibilities under both. This may also be included in contracts with agents and contractors and include reference to this policy.]

[<sup>5</sup> Senate Bill 155 (2019) requires the district to designate a licensed administrator to receive reports of suspected sexual conduct, and designate an alternate licensed administrator for each school building.]

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

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

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

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

The district will post in each school building the names and contact information of the employees<sup>[6]</sup> designated for the school building to receive reports of suspected sexual conduct and the procedures the designee will follow upon receipt of the report.

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

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

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

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

1. A description of conduct that may constitute sexual conduct;

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<sup>[6]</sup> Senate Bill 155 (2019) requires the district to designate a licensed administrator and an alternate licensed administrator for each school building.]

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

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

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

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

END OF POLICY

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**Legal Reference(s):**

[ORS 332.107](#)

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

Senate Bill 155 (2019)

[ORS 339.370 - 339.400](#)

Every Student Succeeds Act, 20 U.S.C. § 7926 (2018).

## OSBA Model Sample Policy

Code: GBNAA/JHFF-AR

Revised/Reviewed:

### **Suspected Sexual Conduct Report Procedures and Form \***

When the designee receives a report of suspected sexual conduct that may have been committed by a person licensed<sup>1</sup> through Teacher Standards and Practices Commission (TSPC), the designee shall notify TSPC as soon as possible. When the designee receives a report of suspected sexual conduct that may have been committed by a person who is not licensed through TSPC, the designee shall notify the Oregon Department of Education (ODE) as soon as possible.

The district posts in each school building the names and contact information of the employees<sup>[2]</sup> in each school building designated to receive reports of suspected sexual conduct and the procedures the designee will follow upon receipt of the report.

If the superintendent is the alleged perpetrator the report shall be submitted to the [licensed administrator position title] who shall refer the report to the Board chair.

When the designee receives a report of suspected sexual conduct by a district employee, and there is reasonable cause to support the report, the district shall place the district employee on paid administrative leave<sup>3</sup> and take necessary actions to ensure the student's safety. The employee shall remain on leave until TSPC or ODE determines that the report is substantiated and the district takes appropriate employment action against the employee, or cannot be substantiated or is not a report of sexual conduct and the district determines either: 1) an employment policy was violated and the district will take appropriate employment action against the employee; or 2) an employment policy has not been violated and an employment action against the employee is not required. The district will investigate all reports of suspected sexual conduct by persons who are licensed by the TSPC, unless otherwise requested by TSPC, and all reports of suspected sexual conduct by persons who are not licensed by TSPC, unless otherwise requested by ODE.

When the designee receives a report of suspected sexual conduct by a contractor<sup>[4]</sup>, an agent or a volunteer, the district [may] [shall] prohibit the contractor, agent or volunteer from providing services to the district. If the district determines there is reasonable cause to support a report of suspected sexual conduct, the district shall prohibit the contractor, agent or volunteer from providing services. [The district may reinstate the contractor, agent or volunteer, and such reinstatement may not occur until such time as a report of suspected sexual conduct has been investigated and a determination has been made by TSPC or ODE that the report is unsubstantiated.]

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<sup>1</sup> "License" includes a license, registration or certificate issued by the Teacher Standards and Practices Commission.

<sup>[2]</sup> Senate Bill 155 (2019) requires the district to designate a licensed administrator and an alternate licensed administrator for each school building.]

<sup>3</sup> The district employee cannot be required to use any accrued leave during the imposed paid administrative leave.

<sup>[4]</sup> The district is encouraged to duplicate this language in the contract. If the contract is with a company and the person assigned to do the work is the alleged perpetrator, the district shall notify the company and request another company employee be assigned to complete the work.]

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

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

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

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

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

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

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

## **Training**

The district shall provide training each school year to district employees on the following:

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

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

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

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

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

[Name of School District]

**SUSPECTED SEXUAL CONDUCT REPORT FORM**

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

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

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

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

\_\_\_\_\_

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

\_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

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

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



[Name of School District]

**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 Policy

Code: GCA  
Adopted:

### License Requirements

The Board, in adhering to Oregon Revised Statutes (ORS), shall require all applicants selected for employment for positions that require licensing, to hold a valid Oregon license issued by the Teacher Standards and Practices Commission (TSPC) as a condition of employment. The district must be able to verify the current license of applicants offered employment before the Board will consider approving their employment.

[If an applicant's teaching license application with the TSPC is pending, the applicant may teach for 90 calendar days after the date of submission of the application, if the applicant has:

1. Submitted an application in the manner and form required by the TSPC, including payment of all required fees;
2. Completed a background clearance conducted by the TSPC that includes having:
  - a. Furnished fingerprints, if required;
  - b. Provided satisfactory responses to character questions in the form and manner required by the TSPC; and
  - c. Completed a criminal records check pursuant to state law and a background check through the interstate clearinghouse for revoked or suspended licenses, and is eligible for a teaching license.
3. Not been employed by the district under this 90 calendar day provision during the previous 12 months with a pending application for the same license.

The district will complete a review of the applicant's employment history and verify through TSPC if there is an ongoing investigation or a substantiated report that may constitute sexual conduct as required by law prior to beginning employment.

The district will verify through TSPC the employee is properly licensed on the 91st calendar day after the application was submitted to the TSPC, if the employee's license application is pending and the employee is teaching in the district.]

This 90-calendar day teaching option will only be applied to those positions of high need, specialty areas or emergency assignments as determined by the district.

The verification of licensure includes all license endorsements. It shall be each licensed staff member's responsibility to keep all endorsements current [and to submit them to the [superintendent's] office.

END OF POLICY

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**Legal Reference(s):**

[ORS 339.374](#)  
[ORS 342.120](#) - 342.203

[OAR 584-050-0035](#)  
[OAR 584-200-0020](#)

Senate Bill 155 (2019)  
Senate Bill 216 (2019)

PROPOSED

## OSBA Model Sample Policy

Code: GCAB

Adopted:

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

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

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

Personal electronic devices shall be silenced during instructional [or class] time, while on duty or at any other time where such use of the device would cause a disruption of school activities or interfere with a work assignment. Devices, which have the capability to take photographs or record video or audio, shall not be used for such purposes while on district property or while a staff member is on duty at district-sponsored activities, unless as expressly authorized by the principal or designee for a use directly related to and consistent with the employee’s assigned duties. Computers, tablets, iPads or similar devices brought to school will be restricted to academic activities during on duty time.

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

Staff members, while on duty and off duty, will utilize social media websites, public websites and blogs, judiciously by not posting confidential information about students, staff or district business.<sup>1</sup> Staff may not post images of district facilities, staff, students, volunteers or parents without written authorization from persons with authority to grant such a release. Staff members, while on duty and off duty, will treat fellow employees, students and the public with respect while posting on social media websites, etc., in order to prevent substantial disruption in school.

Communication with students using personal electronic devices will be appropriate and professional. Communication with students using personal electronic devices regarding nonschool-related matters is prohibited during work hours and strongly discouraged at all other times. If communicating with students electronically regarding school-related matters, staff [will] use district e-mail using mailing lists and/or other internet messaging to a group of students rather than individual students. Texting a students during work hours is [prohibited]. Texting a students while off duty is strongly discouraged.

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

<sup>1</sup> Nothing in this policy is intended in any form to limit the right of employees to engage in protected labor activities via the use of social media.

Staff are subject to disciplinary action up to and including dismissal for using a personal electronic device in any manner that is illegal or violates the terms of this policy. Staff actions on social media websites, public websites and blogs, while on or off duty, which disrupt the school **community** environment, are subject to disciplinary action up to and including dismissal. [A “disruption”<sup>2</sup> for purposes of this policy includes, but is not limited to, one or more parent threatens to remove their children from a particular class or particular school, actual withdrawal of a student or students from a particular class or particular school and/or a threatened or actual negative impact on the learning environment.]

The taking, disseminating, transferring or sharing of obscene, pornographic or otherwise illegal images or photographs, whether by electronic data transfer or otherwise (commonly called texting, sexting, emailing, etc.) may constitute a crime under state and/or federal law. Any person taking, disseminating, transferring or sharing obscene, pornographic or otherwise illegal images or photographs, will be reported to law enforcement and/or other appropriate state or federal agencies.

[Licensed staff are subject at all times to the Standards for Competent and Ethical Performance of Oregon Educators. (See Board policy GCAA)]

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

END OF POLICY

#### Legal Reference(s):

[ORS 163.432](#)  
[ORS 163.433](#)  
[ORS 163.684](#)  
[ORS 163.686](#)  
[ORS 163.687](#)  
[ORS 163.688](#)  
[ORS 163.689](#)

[ORS 163.693](#)  
[ORS 163.700](#)  
[ORS 167.057](#)  
[ORS 326.011](#)  
[ORS 326.051](#)  
[ORS 332.072](#)  
[ORS 332.107](#)

[ORS 336.840](#)  
[ORS 339.372](#)

[[OAR 584-020-0000](#) – 020-0035]

Senate Bill 155 (2019)

18 U.S.C. § 1466A (2018).  
 18 U.S.C. § 1470 (2018).  
 20 U.S.C. § 7131 (2018).  
 20 U.S.C. § 7906 (2018).

Copyrights, Title 17, as amended, United States Code (2018); 19 C.F.R. Part 133 (2014, 19).

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

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

<sup>2</sup> Ibid. p. 1

## Jefferson County School District 509J

Code: IICC  
Adopted: 6/09/14  
Readopted: 7/23/18; 2/11/19; 11/04/19  
Orig. Code: IICC

### Volunteers

Community patrons who voluntarily contribute their time and talents to the improvement and enrichment of the public schools' instructional and other programs are valuable assets. The Board encourages constructive participation of groups and individuals in the school to perform appropriate tasks during and after school hours under the direction and supervision of professional personnel.

Any person authorized by the district for volunteer service that allows direct, unsupervised contact with students shall be required to undergo a state and national criminal records check.

Any volunteer allowed to have direct, unsupervised contact with students, in a position identified by the district as requiring fingerprinting, shall be required to undergo a state and national criminal records check based on fingerprints. (See Board policy GCDA/GDDA - Criminal Records Checks and Fingerprinting and its accompanying administrative regulation.)

**Texting or electronically communicating with a student through contact information gained as a volunteer for the district is prohibited.**

Any person authorized by the district for volunteer service that will not likely have direct, unsupervised contact with students will not be required to undergo a criminal records check.

Any volunteer who knowingly makes a false statement, as determined by the district, on a district volunteer application form may be denied the ability to volunteer in the district.

Nonexempt employees<sup>1</sup> may be permitted to volunteer to perform services for the district provided the volunteer activities do not involve the same or similar type of services<sup>2</sup> as the employee's regularly assigned duties. In the event a nonexempt employee volunteers to perform services for the district that are the same or similar as the employee's regularly assigned duties, the Board recognizes that under the Fair Labor Standards Act (FLSA), overtime or compensatory time must be provided.<sup>3</sup>

The administration is responsible for the recruitment, use, coordination and training of volunteers. These assignments will be carried out as directed or delegated by the superintendent. Every effort should be made to use volunteer resources in a manner which will ensure maximum contributions to the welfare and educational growth of students.

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<sup>1</sup>There are three types of FLSA exemptions: those for executive, administrative and professional employees. Generally, employees who are exempt under the executive, administrative or professional exceptions must primarily perform executive, administrative or professional duties at least 50 percent of the employee's time.

<sup>2</sup>Instructional assistant duties are generally viewed to be the same type of service, supervising and instructing students, as coaching.

<sup>3</sup>Districts should review the use of non-exempt employees in extracurricular activity positions such as coaching, cheerleading advisors and other district-sponsored activities with legal counsel for FLSA district impact.

## PROPOSED POLICY UPDATES BASED ON OSBA RECOMMENDATION - JCSD 509J 8/10/20

Principals shall retain the right to exercise their discretion in determining whether and who to use as volunteers at their school. Volunteer services may be terminated for the reasons listed on the following pages or for any other reason deemed appropriate by the principal.

END OF POLICY

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### Legal Reference(s):

[ORS Chapter 243](#)

[ORS 326.607](#)

[ORS 332.107](#)

[ORS 339.372](#)

[OAR 581-021-0510 – 021-0512](#)

[OAR 839-020-0005](#)

Senate Bill 155 (2019)

Fair Labor Standards Act of 1938, 29 U.S.C. §§ 206-207 (2012).

### Cross Reference(s):

GCDA/GDDA - Criminal Records Checks and Fingerprinting



## OSBA Model Sample Policy

Code: JEA  
Adopted:

### Compulsory Attendance\*\*

Except when exempt by Oregon law, all students between ages 6 and 18 who have not completed the 12th grade are required to regularly attend a public, full-time school during the entire school term.

All students five years of age who have been enrolled in a public school are required to attend regularly while enrolled in the public school.

Persons having legal control of a student between the ages 6 and 18, who has not completed the 12th grade, are required to have the student attend and maintain the child in regular attendance during the entire school term. Persons having legal control of a student, who is five years of age and has enrolled the child in a public school, are required to have the student attend and maintain the child in regular attendance during the school term.

Attendance supervisors shall monitor and report any violation of the compulsory attendance law to the superintendent or designee. Failure to send a student and to maintain a student in regular attendance is a Class C violation.

The district will develop procedures for issuing a citation.

A parent who is not supervising ~~his/her~~ their student by requiring school attendance may also be in violation of Oregon Revised Statute (ORS) 163.577(1)(c). Failing to supervise a child is a Class A violation.

~~[In addition, under Board policy JHFDA—Suspension of Driving Privileges, the district may report students with 10 consecutive days of unexcused absences or 15 cumulative days unexcused absences in a single semester to the Oregon Department of Transportation.]~~

### Exemptions from Compulsory School Attendance

In the following cases, students shall not be required to attend public, full-time schools:

1. Students being taught in a private or parochial school in courses of study usually taught in kindergarten through grade 12 in the public schools, and in attendance for a period equivalent to that required of students attending public schools.
2. Students proving to the Board's satisfaction that they have acquired equivalent knowledge to that acquired in the courses of study taught in kindergarten through grade 12 in the public schools.
3. Students who have received a high school diploma or a modified diploma.
4. Students being taught, by a private teacher, the courses of study usually taught in kindergarten through grade 12 in the public school for a period equivalent to that required of students attending public schools.

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Compulsory Attendance\*\* – JEA  
1-3

5. Students being educated in the home by a parent or guardian:
  - a. [When a student is taught or is withdrawn from a public school to be taught by a parent or private teacher, the parent or teacher must notify the [ ] Education Service District (ESD) in writing within 10 days of such occurrence. In addition, when a home-schooled student moves to a new ESD, the parent shall notify the new ESD in writing, within 10 days, of the intent to continue home schooling. The ESD superintendent shall acknowledge receipt of any notification in writing within 90 days of receipt of the notification. The ESD is to notify, at least annually, school districts of home-schooled students who reside in their district;
  - b. Each student being taught by a parent or private teacher shall be examined no later than August 15, following grades 3, 5, 8 and 10:
    - (1) If the student was withdrawn from public school, the first examination shall be administered at least 18 months after the date the student withdrew;
    - (2) If the student never attended public or private school, the first examination shall be administered prior to the end of grade 3;
    - (3) Procedures for home-schooled students with disabilities are set out in Oregon Administrative Rule (OAR) 581-021-0029.
  - c. Examinations testing each student shall be from the list of approved examinations from the State Board of Education;
  - d. The examination must be administered by a neutral individual qualified to administer tests on the approved list provided by the Oregon Department of Education;
  - e. The person administering the examination shall score the examination and report the results to the parent. Upon request of the ESD superintendent, the parent shall submit the results of the examination to the ESD;
  - f. All costs for the test instrument, administration and scoring are the responsibility of the parent;
  - g. In the event the ESD superintendent finds that the student is not showing satisfactory educational progress, the ESD superintendent shall provide the parent with a written statement of the reasons for the finding, based on the test results and shall follow the guidelines in Oregon Revised Statutes and Oregon Administrative Rules.]
6. Children whose sixth birthday occurred on or before September 1 immediately preceding the beginning of the current school year, if the parent or guardian notified the child's resident district in writing that the parent or guardian is delaying the enrollment of their child for one school year to better meet the child's needs for cognitive, social or physical development, as determined by the parent or guardian.
7. Children who are present in the United States on a nonimmigrant visa and who are attending a private, accredited English language learner program in preparation for attending a private high school or college.
8. Students excluded from attendance as provided by law.

9. Students who are eligible military children<sup>1</sup> are exempt up to 10 days after the date of military transfer or pending transfer indicated in the official military order.
10. An exemption may be granted to the parent or guardian of any student 16 or 17 years of age who is lawfully employed full-time, or who is lawfully employed part-time and enrolled in school, a community college or an alternative education program as defined in ORS 336.615.
11. An exemption may be granted to any child who is an emancipated minor or who has initiated the procedure for emancipation under ORS 419B.550 to 419B.558.

END OF POLICY

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**Legal Reference(s):**

[ORS 153.018](#)  
[ORS 163.577](#)  
[ORS 336.615](#) - 336.665  
[ORS 339.010](#) - 339.090  
[ORS 339.095](#)  
[ORS 339.257](#)

[ORS 339.990](#)  
[ORS 419B.550](#) - 419B.558  
[ORS 807.065](#)  
[ORS 807.066](#)  
[OAR 581-021-0026](#)  
[OAR 581-021-0029](#)

[OAR 581-021-0071](#)  
[OAR 581-021-0077](#)  
[Senate Bill 802 \(2019\)](#)

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<sup>1</sup> "Military child" means a child who is in a military family covered by the Interstate Compact on Educational Opportunity for Military Children, as determined under rules adopted by the State Board of Education.

## OSBA Model Sample Policy

Code: JECA  
Adopted:

### Admission of Resident Students\*\*

Resident students may be admitted under the following conditions:

1. A school-age student who lives within the district attendance area between the ages of 5 and 19 shall be allowed to attend school without paying tuition.
2. A student who turns 19 years of age during the school year shall continue to be eligible for a free and appropriate public education for the remainder of the school year.
3. The Board may admit an otherwise eligible student who is not receiving special education and who has not yet attained 21 years of age prior to the beginning of the current school year if ~~he/she~~ **the student** is shown to be in need of additional education in order to receive a diploma or a modified diploma. This student may attend school without paying tuition for the remainder of the school year.
4. The Board shall admit an otherwise eligible student who has not yet attained age 21 prior to the beginning of the current school year if the student is receiving special education services and:
  - a. Has not yet received a regular high school diploma; or
  - b. Has received a modified diploma, an extended diploma or an alternative certificate.

~~A student with disabilities shall be considered a resident in which the child's parent or guardian resides under criteria identified in Oregon Revised Statute (ORS) 339.134.~~

~~A student with disabilities voluntarily placed outside the home by his/her parent or guardian may continue to attend the school the student was attending prior to the placement as a district resident, when the student's parent or guardian and school staff can demonstrate it is in the student's best interest.~~

5. Students whose parent or guardian voluntarily placed the child outside the child's home with a public or private agency and who is living in a licensed, certified or approved substitute care program, and whose residency is established pursuant to Oregon Revised Statute (ORS) 339.134.
6. Students who are military children<sup>1</sup> are considered resident of the district, if the district is the district of military residence<sup>2</sup> for the military child. Parents of military students must provide proof of residency within 10 days after the date of military transfer or pending transfer indicated on the official military order.

<sup>1</sup> "Military child" means a child who is in a military family covered by the Interstate Compact on Educational Opportunity for Military Children, as determined under rules adopted by the State Board of Education.

<sup>2</sup> "School district of military residence" means the school district in which 1) the family of a military child intends to reside as the result of a military transfer; or 2) if the school district in which the family intends to reside is unknown, the school district in which the military installation identified in the official military order is located.

7. The Board [will] [will not] [may, based on district criteria,] deny regular school admission to a student who has become a resident student and who is under expulsion from another district for reasons other than a weapons policy violation.
8. The Board shall deny, for at least one calendar year from the date of the expulsion, regular school admission to a student who has become a resident student and who is under expulsion from another district for a weapons policy violation.
9. The Board [will] [will not] [may, based on district criteria,] provide alternative programs of instruction to a student expelled for a weapons policy violation.

END OF POLICY

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**Legal Reference(s):**

[ORS 109.056](#)  
[ORS 327.006](#)  
[ORS 339.115](#)

[ORS 339.133](#)  
[ORS 339.134](#)  
[ORS 433.267](#)

[Senate Bill 802 \(2019\)](#)  
[Senate Bill 905 \(2019\)](#)

## OSBA Model Sample

Code: JGAB

Adopted:

### Use of Restraint or Seclusion\*\*

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

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

1. Chemical restraint.
2. Mechanical restraint.
3. Prone restraint.
4. Supine restraint.
5. Any restraint that involves the intentional and no incidental use of a solid object<sup>1</sup>, including a wall or the floor, to impede a student's movement, unless the restraint is necessary to prevent an imminent life-threatening injury or to gain control of a weapon.
6. Any restraint that places, or creates a risk of placing, pressure on a student's mouth, neck or throat.
7. Any restraint that places, or creates a risk of placing, pressure on a student's mouth, unless the restraint is necessary for the purpose of extracting a body part from a bite.
8. Any restraint that impedes, or creates a risk of impeding, breathing.
9. Any restraint that involves the intentional placement of the hands, feet, elbow, knee or any object on a student's neck, throat, genitals or other intimate parts.
10. Any restraint that causes pressure to be placed, or creates a risk of causing pressure to be placed, on the stomach or back by a knee, foot or elbow bone.
11. Any action designed for the primary purpose of inflicting pain.

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

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

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

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

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

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

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

## Definitions

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

"Restraint" does not include:

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

2. "Seclusion" means the involuntary confinement of a student alone in a room from which the student is physically prevented from leaving. Seclusion includes, but is not limited to, the involuntary confinement of a student alone in a room with a closed door, whether the door is locked or unlocked.

"Seclusion" does not include the removal of a student for a short period of time to provide the student with an opportunity to regain self-control if the student is in a setting from which the student is not physically prevented from leaving, or a student being left alone in a room with a closed door for a brief period of time if the student is left alone for a purpose that is unrelated to the student's behavior.

3. "Serious bodily injury" means any significant impairment of the physical condition of a person, as determined by qualified medical personnel, whether self-inflicted or inflicted by someone else.



4. “Substantial physical or bodily injury” means any impairment of the physical condition of a person that requires some form of medical treatment.
5. “Mechanical restraint” means a device used to restrict the movement of a student or the movement or normal function of a portion of the body of a student.  
  
“Mechanical restraint” does not include:
  - a. A protective or stabilizing device ordered by a licensed physician; or
  - b. A vehicle safety restraint when used as intended during the transport of a student in a moving vehicle.
6. “Chemical restraint” means a drug or medication that is used on a student to control behavior or restrict freedom of movement that is not prescribed by a licensed physician or other qualified health professional acting under the professional’s scope of practice for standard treatment of the student’s medical or psychiatric condition; and administered as prescribed by a licensed physician or other qualified health professional acting under the professional’s scope of practice.
7. “Prone restraint” means a restraint in which a student is held face down on the floor.
8. “Supine restraint” means a restraint in which a student is held face up on the floor.

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

The district shall utilize the [ **CPI** <sup>2</sup>] training program of restraint or seclusion for use in the district. As required by state regulation, the selected program shall be one approved by the Oregon Department of Education (ODE) and include, but not limited to, positive behavior support, conflict prevention, de-escalation and crisis response techniques. Any program selected by the district must be in compliance with state and federal law with respect to the use of restraint and seclusion.

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

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

1. The total number of incidents involving restraint;
2. The total number of incidents involving seclusion;
3. The total number of seclusions in a locked room;
4. The total number of students placed in restraint;
5. The total number of students placed in seclusion;
6. The total number of incidents that resulted in injuries or death to students or staff as a result of the use of restraint or seclusion;

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[<sup>2</sup> The district must identify the program utilized for training.]

## PROPOSED POLICY UPDATES BASED ON OSBA RECOMMENDATION - JCSD 509J 8/10/20

7. The total number of students placed in restraint or seclusion more than 10 times in a school year and an explanation of what steps have been taken by the district to decrease the use of restraint and seclusion for each student;
8. The total number of restraint or seclusion incidents carried out by untrained individuals;
9. The demographic characteristics<sup>3</sup> of all students upon whom restraint or seclusion was imposed;
10. The total number of rooms available for use by the district for seclusion of a student and a description of the dimensions and design of the rooms.

This annual report shall be made available to the public at the district's main office and on the district's website, and to the Board.

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

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

The complainant, ~~who is [a student,] a parent or guardian of a student attending school in the district or a person who resides in the district~~ whether an organization or an individual, may appeal a district's final decision to the ~~Deputy Superintendent of Public Instruction~~ Oregon Department of Education pursuant to ~~OAR 581-022-2370~~ 581-002-0001 - 581-002-0023. [ This appeal process is identified in administrative regulation KL-AR(2) - Appeal to the Deputy Superintendent of Public Instruction.]

The superintendent shall develop administrative regulations to carry out the requirements set forth in this policy and to meet any additional requirements established by law related to the use, reporting, and written documentation of the use of restraint or seclusion by district staff.

END OF POLICY

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### Legal Reference(s):

[ORS 161.205](#)  
[ORS 339.250](#)  
[ORS 339.285](#)  
[ORS 339.288](#)  
[ORS 339.291](#)  
[ORS 339.294](#)  
[ORS 339.297](#)  
[ORS 339.300](#)

[ORS 339.303](#)  
[OAR 581-021-0061](#)  
[OAR 581-021-0550](#)  
[OAR 581-021-0553](#)  
[OAR 581-021-0556](#)  
[OAR 581-021-0559](#)  
[OAR 581-021-0563](#)

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

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<sup>3</sup> Including race, ethnicity, gender, disability status, migrant status, English proficiency and status as economically disadvantaged, unless the demographic information would reveal personally identifiable information about an individual student.

## OSBA Model Sample Policy

Code: JGE  
Adopted:

### Expulsion\*\*

A principal, after reviewing available information, may recommend to the superintendent that a student be expelled. Expulsion of a student shall not extend beyond one calendar year.

A student may be expelled for any of the following circumstances:

1. When a student's conduct poses a threat to the health or safety of students or employees;
2. When other strategies to change the student's behavior have been ineffective, except that expulsion may not be used to address truancy; or
3. When required by law.

The use of expulsion for discipline of a student in fifth grade or lower is limited to:

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

The age of the student and the past pattern of behavior will be considered prior to imposing the expulsion.

No student may be expelled without a hearing unless the student's parents, or the student if 18 years of age, waive the right to a hearing, either in writing or by failure to appear at a scheduled hearing. By waiving the right to a hearing, the student and parent agree to abide by the findings of a hearings officer.

When an expulsion hearing is not waived, the following procedure is required:

1. Notice will be given to the student and the parent by personal service<sup>1</sup> or by certified mail<sup>2</sup> at least [five] days prior to the scheduled hearing. Notice shall include:
  - a. The specific charge or charges;
  - b. The conduct constituting the alleged violation, including the nature of the evidence of the violation and reason for expulsion;
  - c. A recommendation for expulsion;

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<sup>1</sup> The person serving the notice shall file a return of service. (OAR 581-021-0070)

<sup>2</sup> When "certified mail is given to a parent of a suspended student, the notice shall be placed in the mail at least five days before the date of the hearing." (OAR 581-021-0070)

- d. The student's right to a hearing;
  - e. When and where the hearing will take place; and
  - f. The right to representation.
2. The Board may expel, or may delegate the authority to decide on an expulsion to the superintendent or superintendent's designee, who may also act as the hearings officer. The district may contract with an individual who is not employed by the district to serve as the hearings officer. The hearings officer designated by the Board will conduct the hearing and will not be associated with the initial actions of the building administrators;
  3. Expulsion hearings will be conducted in private and will not be open to the general public unless the student or the student's parents request an open session;
  4. In case the parent or student has difficulty understanding the English language or has other serious communication disabilities, the district will provide a translator;
  5. The student shall be permitted to have representation present at the hearing to advise and to present arguments. The representation may be an attorney and/or parent. The district's attorney may be present;
  6. The student shall be afforded the right to present ~~his/her~~ their version of the events underlying the expulsion recommendation and to introduce evidence by testimony, writings or other exhibits;
  7. The student shall be permitted to be present and to hear the evidence presented by the district;
  8. The hearings officer or the student may record the hearing;
  9. Strict rules of evidence shall not apply to the proceedings. However, this shall not limit the hearings officer's control of the hearing;
  10. If the Board is conducting the expulsion hearing, the Board may designate the Board chair or a third party as the hearings officer. The hearings officer will determine the facts of each case on the evidence presented at the hearing. Evidence may include the relevant past history and student education records. The hearings officer will provide to the Board, findings as to the facts, the recommended decision and whether or not the student has committed the alleged conduct. This will include the hearings officer's recommended decision on disciplinary action, if any, including the duration of any expulsion. This material will be available in identical form to the Board, the student if age 18 or over and the students' parents at the same time. Following the review by the Board of the hearings officer's recommendation, the Board will make the final decision regarding the expulsion;
  11. If the Board has delegated authority to the superintendent [or designee] to act as the hearings officer, the superintendent may designate ~~him or herself~~ themselves, or a third party, as the hearings officer. The hearings officer's decision is final. However, a decision of the hearings officer may be appealed by the parent or the student if age 18 or over to the Board for review. If the decision of the hearings officer is appealed to the Board for review, the findings as to the facts and the hearings officer's decision will be submitted to the Board, and will be available in identical form to the Board, the student and the student's parents at the same time. At its next regular or special meeting the Board will review the hearings officer's decision and will affirm, modify or reverse the decision;

12. A Board review of the hearings officer's decision will be conducted in executive session unless the student or the student's parent requests a public hearing. If an executive session is held by the Board or a private hearing held by the hearings officer, the following will not be made public:
- The name of the minor student;
  - The issues involved, including a student's confidential ~~medical records~~ ~~and that student's educational program~~;
  - The discussion;
  - The vote of Board members, which may be taken in executive session when considering an expulsion.

Prior to expulsion, the district must propose alternative programs of instruction or instruction combined with counseling to a student subject to expulsion for reasons other than a weapons policy violation. The district must document to the parent of the student that proposals of alternative education programs have been made.

END OF POLICY

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**Legal Reference(s):**

[ORS 192.660](#)  
[ORS 332.061](#)  
[ORS 336.615 - 336.665](#)

[ORS 339.115](#)  
[ORS 339.240](#)  
[ORS 339.250](#)

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

[House Bill 2514 \(2019\)](#)

## OSBA Model Sample Policy

Code: JHCD/JHCDA

Adopted:

### Medications\*\*/\*

The district recognizes that administering a medication to a student and/or permitting a student to administer a medication to them self, may be necessary when the failure to take such medication during school hours would prevent the student from attending school, and recognizes a need to ensure the health and well-being of a student who requires regular doses or injections of a medication as a result of experiencing a life-threatening allergic reaction or adrenal crisis<sup>1</sup>, or a need to manage hypoglycemia, asthma or diabetes. Accordingly, the district may administer or a student may be permitted to administer to them self prescription (injectable and noninjectable) and/or nonprescription (noninjectable) medication at school.

The district shall designate personnel authorized to administer medications to students. Annual Training shall be provided to designated personnel as required by law in accordance with guidelines approved by the Oregon Department of Education (ODE). When a licensed health care professional is not immediately available, trained personnel designated by the district may administer epinephrine, glucagon or another medication to a student as prescribed and/or allowed by Oregon law.

[Current first-aid and CPR cards are strongly encouraged for designated personnel.] [A current first-aid and CPR card is required for designated personnel.]

~~When a licensed health care professional is not immediately available, personnel designated by the district may administer to a student, epinephrine, glucagon or another medication to a student as prescribed and/or allowed by Oregon law.~~

The district reserves the right to reject a request for ~~district personnel to administer, or to permit a student to administer to them self, a when such medication~~ administration of medication at school, either by district personnel or student self-administration, if the medication is not necessary for the student to remain in school.

The superintendent and/or designee will require that an individualized health care plan and allergy plan is developed for every student with a known life-threatening allergy or a need to manage asthma, and an individualized health care plan for every student for whom the district has been given proper notice of a diagnosis of adrenal insufficiency. Such a plan will include provisions for administering medication and/or responding to emergency situations while the student is in school, at a school-sponsored activity, under the supervision of school personnel, in a before-school or after-school care program on school-owned property and in transit to or from school or a school-sponsored activity.

A student may be allowed to self-administer a medication for asthma, diabetes, hypoglycemia or severe allergies as prescribed by an Oregon licensed health care professional, upon written and signed request of the parent or guardian and subject to age-appropriate guidelines. This self-administration provision also

<sup>1</sup> Under proper notice given to the district by a student or student's parent or guardian.



requires a written and signed confirmation the student has been instructed by the Oregon licensed health care professional on the proper use of and responsibilities for the prescribed medication.

A request to the district to administer or allow a student to self-administer prescription medication ~~or a nonprescription medication that is not approved by the Food and Drug Administration (FDA)~~ shall include a signed prescription and treatment plan from a prescriber<sup>2</sup> ~~or an Oregon licensed health care professional~~.

A request to the district to administer or allow a student to self-administer nonprescription that is not approved by the Food and Drug Administration (FDA) shall include a written order from the student's prescriber that meets the requirements of law.

A written request and permission form signed by a student's parent or guardian, unless the student is allowed to access medical care without parental consent under state law<sup>3</sup>, is required and will be kept on file.

If the student is deemed to have violated Board policy or medical protocol by the district, the district may revoke the permission given to a student to self-administer medication.

Prescription and nonprescription medication will be handled, stored, monitored, disposed of and records maintained in accordance with established district administrative regulations governing the administration of prescription or nonprescription medications to students, including procedures for the disposal of sharps and glass.

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

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

[<sup>4</sup>Naloxone or any similar medication that is in any form available for safe administration and that is designed to rapidly reverse an overdose of an opioid drug may be administered by trained, designated personnel to any student or other individual on school premises who the person believes in good faith is experiencing an overdose of an opioid drug.]

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

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

<sup>3</sup> Subject to ORS 109.610, 109.640 and 109.675.

[<sup>4</sup> The district is not required to provide or administer this medication. If the district plans on providing and administering this medication this policy language and other associated bracketed policy language is required. If the district does not plan to provide or administer this medication, do not include this language or other associated bracketed language in this policy.]



A school administrator, teacher or other district employee designated by the school administrator is not liable in a criminal action or for civil damages as a result of the administration, in good faith and pursuant to state law, of prescription and/or nonprescription medication, ~~subject to state law~~.

A school administrator, school nurse, teacher or other district employee designated by the school administrator is not liable in a criminal action or for civil damages as a result of a student's self-administration of medication, as described in Oregon Revised Statute (ORS) 339.866, ~~when~~ if that person in good faith and pursuant to state law, assisted the student in self-administration of the medication, ~~subject to state law~~.

A school administrator, school nurse, teacher or other district employee designated by the school administration is not liable in a criminal action or for civil damages, ~~when~~ as a result of the use of medication if that person in good faith administers autoinjectable epinephrine to a student or other individual with a severe allergy, who is unable to self-administer the medication, ~~subject to state law~~ regardless of whether the student or individual has a prescription for epinephrine[, or administers naloxone or any similar medication that is in any form available for safe administration and that is designed to rapidly reverse an overdose of an opioid drug to a student or other individual who that person believes in good faith is experiencing an overdose of an opioid drug].

The district and the members of the Board are not liable in a criminal action or for civil damages ~~when a student or individual is unable to self-administer medication, when~~ as a result of the use of medication if any person in good faith, on school premises, including at a school, on school property under the jurisdiction of the district or at an activity under the jurisdiction of the district, administers autoinjectable epinephrine to a student or other individual, ~~subject to state law~~ with a severe allergy who is unable to self-administer the medication, regardless of whether the student or individual has a prescription for epinephrine[, or administers naloxone or any similar medication that is in any form available for safe administration and that is designed to rapidly reverse an overdose of an opioid drug to a student or other individual who the person believes in good faith is experiencing an overdose of an opioid drug].

The superintendent shall develop administrative regulations as needed to meet the requirements of law; ~~Oregon Administrative Rules~~ and the implementation of this policy.

## END OF POLICY

### Legal Reference(s):

<a href="#">ORS 109.610</a>	<a href="#">ORS 475.005 - 475.285</a>	<a href="#">OAR 581-022-2220</a>
<a href="#">ORS 109.640</a>		<a href="#">OAR 851-047-0030</a>
<a href="#">ORS 109.675</a>	<a href="#">OAR 166-400-0010(17)</a>	<a href="#">OAR 851-047-0040</a>
<a href="#">ORS 332.107</a>	<a href="#">OAR 166-400-0060(29)</a>	
<a href="#">ORS 339.866 - 339.871</a>	<a href="#">OAR 333-055-0000 -055-<del>0035</del>0115</a>	Senate Bill 665 (2019)
<a href="#">ORS 433.800 - 433.830</a>	<a href="#">OAR 581-021-0037</a>	

Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g (2012~~8~~); Family Educational Rights and Privacy, 34 C.F.R. Part 99 (2017~~9~~).

OREGON HEALTH AUTHORITY AND OREGON DEPARTMENT OF EDUCATION, *Medication Administration* ~~in Oregon Schools~~: A Manual for School Personnel ~~(2016)~~.

# OSBA Model Sample Policy

Code: JHCD/JHCDA-AR

Adopted:

## Medications\*\*/\*

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

### 1. Definitions

- a. "Medication" means any drug, chemical compound, suspension or preparation in suitable form for use as a curative or remedial substance taken internally or externally but not injected except for premeasured doses of epinephrine, medication to treat adrenal insufficiency and glucagon to treat severe hypoglycemia. Medication includes any prescription for bronchodilators or **auto injectable** epinephrine prescribed by a student's Oregon licensed health care professional for asthma or severe allergies. <sup>[1]</sup> Medication also includes naloxone or any similar medication that is in any form available for the safe administration and that is designed to rapidly reverse an overdose of an opioid drug.]
- b. "Prescription medication" means any medication that under federal or state law requires a prescription by a prescriber.
- c. "Nonprescription medication" means medication that under federal law does not require a prescription from a prescriber.
- d. "Adrenal crisis" means adrenal crisis as defined in Oregon Revised Statute (ORS) 433.800.
- e. "Adrenal insufficiency" means adrenal insufficiency as defined in ORS 433.800.
- f. "Notice of a diagnosis of adrenal insufficiency" means written notice to the district from a student or the parent or guardian of a student who has been diagnosed as adrenal insufficient with a copy of an order from the student's primary care provider that includes the student's diagnosis, description of symptoms indicating the student is in crisis, prescription for medication to treat adrenal insufficiency crisis and instructions for follow-up care after medication to treat adrenal insufficiency crisis has been administered.
- g. "Prescriber"<sup>2</sup> means a doctor of medicine or osteopathy, a physician assistant licensed to practice by the Board of Medical Examiners for the state of Oregon, an Oregon-licensed, advance practice registered nurse with prescriptive authority, a dentist licensed by the Board of Dentistry for the state of Oregon, an optometrist licensed by the Board of Optometry for the state of Oregon, a naturopathic physician licensed by the Board of Naturopathy for the state of Oregon or a pharmacist licensed by the Board of Pharmacy for the state of Oregon.

<sup>[1]</sup> If the district plans to provide and/or administer naloxone in the district this language and other associated bracketed language is required. If the district does not plan to provide and/or administer naloxone in the district do not include this language or other associated bracketed language.]

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

- h. “Qualified trainer” means a person who is familiar with the delivery of health services in a school setting and who is a registered nurse licensed by the Oregon State Board of Nursing, a doctor of medicine or osteopathy or a physician assistant licensed by the Board of Medical Examiners for the state of Oregon or a pharmacist licensed by the Board of Pharmacy for the state of Oregon.
- i. “Severe allergy” means a life-threatening hypersensitivity to a specific substance such as food, pollen, dust or insect sting.
- j. “Asthma” means a chronic inflammatory disorder of the airways that requires ongoing medical intervention.
- k. “Designated personnel” means the school personnel designated to administer medication pursuant to district policy and procedure.

## 2. Designated Staff/Training

- a. The principal will designate personnel authorized to administer prescription or nonprescription medication to a student while the student is in school, at a school-sponsored activity, under the supervision of school personnel, in a before-school or after-school care program on school-owned property and in transit to or from school or a school-sponsored activity, as required by Oregon law. The principal will supervise and ensure building and activity practices and procedures are consistent with the requirements of law, rules and this administrative regulation.
- b. The principal will ensure the training required by Oregon law is provided to designated personnel. Training must be conducted by a qualified trainer. Training will be provided annually to designated personnel authorized to administer medication to students. The first year and every third year of training requires in-person instruction; during the intervening years, designated personnel may complete an online training that has been approved by the Oregon Department of Education (ODE) so long as a trainer is available within a reasonable amount of time following the training to answer questions and provide clarification.
- c. Training will provide an overview of applicable provisions of Oregon law, administrative rules, district policy and administrative regulations and include, but not be limited to, the following: safe storage, handling, monitoring medication supplies, disposing of medications, record keeping and reporting of medication administration and errors in administration, emergency medical response for life-threatening side effects, allergic reactions or adrenal insufficiency and student confidentiality. Materials as recommended and/or approved by the ODE will be used.
- d. A copy of the district’s policy and administrative regulation will be provided to all staff authorized to administer medication to students and others, as appropriate.
- e. [A statement that the designated personnel has received the required training will be signed by the staff member and filed in the district office.]

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

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

4. [3Administering Naloxone or Other Similar Medication to a Student or Other Individual

Naloxone or any other similar medication that is in any form available for safe administration and that is designed to rapidly reverse an overdose of an opioid drug may be administered by trained, designated personnel to any student or other individual on school premises who the person believes in good faith is experiencing an opioid overdose.]

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

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

- a. Upon notice of a diagnosis of adrenal insufficiency, as defined in Oregon Administrative Rule (OAR) 581-021-0037, the building principal will designate one or more school personnel to be responsible for administering the medication to treat adrenal insufficiency;
- b. The designated personnel will successfully complete training to administer medication to treat a student who has adrenal insufficiency and is experiencing symptoms of adrenal crisis in accordance with the rules adopted by the Oregon Health Authority;
- c. The student or the student's parent or guardian must provide adequate supply of the student's prescribed medication to the district;
- d. The district will require the development of an individualized health care plan for the student that includes protocols for preventing exposures to allergens, and establishes if or when a student may self-carry prescription medication when the student has not been approved to self-administer medication;
- e. In the event that a student experiences symptoms of adrenal crisis and the designated personnel determines the medication to treat adrenal insufficiency should be administered, any available staff member will immediately call 911 and the student's parent or guardian.

6. Administering Medication to a Student

- a. A request to permit designated personnel to administer medication to a student may be approved by the district and is subject to the following:
  - (1) A written request for designated personnel to administer prescription medication to a student, if because of the prescribed frequency or schedule, the medication must be given while the student is in school, at a school-sponsored activity, while under the supervision of school personnel and in transit to or from school or a school-sponsored activity, must be submitted to the school office and shall include:
    - (a) The written permission of the student's parent or guardian or the student if the student is allowed to seek medical care without parental consent pursuant to ORS 109.610, 109.640 or 109.675; and
    - (b) The written instruction from the prescriber for the administration of the medication to the student that includes:

[3 Ibid. p. 1.]

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

The prescription label prepared by a pharmacist at the direction of the prescriber, will be considered to meet this requirement if it contains the information listed in (i)-(vi) above.

- (2) A written request for designated personnel to administer nonprescription medication to a student must be submitted to the school office and is subject to the following:
  - (a) The nonprescription medication is necessary for the student to remain in school;
  - (b) The nonprescription medication is provided in the original manufacturer's container by the parent or guardian of the student;
  - (c) The written instruction from the student's parent or guardian for the administration of the nonprescription medication includes:

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

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

- (d) If the nonprescription medication is not approved by the Food and Drug Administration (FDA), a written order from the student's prescriber is required and will include:
  - (i) Name of the student;
  - (ii) Name of the medication;
  - (iii) Dosage;
  - (iv) Method of administration;
  - (v) Frequency of administration;
  - (vi) A statement that the medication must be administered while the student is in school;
  - (vii) Other special instructions, if any; and
  - (viii) Signature of the prescriber.

- b. An individualized health care and allergy plan will be developed for a student with a known life-threatening allergy and will include protocols for preventing exposures to allergens and procedures for responding to life-threatening allergic reactions while the student is in school,

at a school-sponsored activity, while under the supervision of school personnel, in a before-school or after-school care program on school-owned property and in transit to or from school or a school-sponsored activity, and will include a determination on if or when the student may self-carry prescription medication if the student has not been approved to self-administer medication;

- c. It is the student's parent or guardian's, or the student's if the student is allowed to seek medical care without parental consent, responsibility to ensure that an adequate amount of medication is on hand at the school for the duration of the student's need to take medication;
- d. It is the student's parent or guardian's, or the student's if the student is allowed to seek medical care without parental consent, responsibility to ensure that the school is informed in writing of any changes in medication instructions;
- e. In the event a student refuses medication, the parent or guardian will be notified immediately, except where a student is allowed to seek medical care without parental consent. No attempt will be made to administer medication to a student who refuses a medication;
- f. Any error in administration of a medication will be reported to the parent or guardian immediately, except where a student is allowed to seek medical care without parental consent [, and documentation will be made on the district's Accident/Incident Report form]. Errors include, but are not limited to, administering medication to the wrong student, administering the wrong medication, dose, frequency of administration or method of administration;
- g. Medication shall not be administered until the necessary permission form and written instructions have been submitted as required by the district.

7. Administration of Medication by a Student to **Them self**

- a. A student, including a student in grade K through 12 with asthma or severe allergies, may be permitted to administer medication to them self without assistance from designated personnel and is subject to the following:

(1) A student must demonstrate the ability, developmentally and behaviorally, to self-administer prescription medication and must have:

- (a) A permission form from a parent or guardian, except when the student is allowed to seek medical care without parental consent pursuant to ORS 109.610, 109.640 or 109.675, and other documentation requested by the district must be submitted for self-medication of all prescription medications;
- (b) If the student has asthma, diabetes and/or a severe allergy, a medication that is prescribed by a prescriber and a written treatment plan developed by a prescriber or other Oregon licensed health care professional for managing of the student's asthma, diabetes and/or severe allergy, and directs use by the student while the student is in school, at a school-sponsored activity, while under the supervision of school personnel, in a before-school or after-school care program on school-owned property and in transit to or from school or a school-sponsored activity. The prescriber will include acknowledgment that the student has been instructed in the correct and responsible use of the prescribed medication;
- (c) The permission to self-administer the medication from a building administrator and a prescriber or registered nurse practicing in a school setting.



- (2) A student must demonstrate the ability, developmentally and behaviorally, to self-administer nonprescription medication and must have:
  - (a) The written permission of the student's parent or guardian, except when the student is allowed to seek medical care without parental consent pursuant to ORS 109.610, 109.640 or 109.675;
  - (b) The student's name affixed to the manufacturer's original container; and
  - (c) The permission to self-administer medication from a building administrator.
- (3) A student must demonstrate the ability, developmentally and behaviorally, to self-administer nonprescription medication that is not approved by the FDA and must have:
  - (a) The written permission of the student's parent or guardian, except when the student is allowed to seek medical care without parental consent pursuant to ORS 109.610, 109.640 or 109.675; and
  - (b) A written order from the student's prescriber that includes:
    - (i) Name of the student;
    - (ii) Name of the medication;
    - (iii) Dosage;
    - (iv) Method of administration;
    - (v) Frequency of administration;
    - (vi) A statement that the medication must be administered while the student is in school;
    - (vii) Other special instructions, if any; and
    - (viii) Signature of the prescriber.
- b. The student may have in ~~his/her~~ their possession only the amount of medication needed for that school day, except for manufacturer's packaging that contains multiple dosage, the student may carry one package, such as, but not limited to, auto injectable epinephrine or bronchodilators/inhalers;
- c. Sharing and/or borrowing of any medication with another student is strictly prohibited;
- d. For a student who has been prescribed bronchodilators or epinephrine, the designated personnel will request that the parent or guardian provide backup medication for emergency use by that student. Backup medication, if provided, will be kept at the student's school in a location to which the student has immediate access in the event the student has an asthma and/or severe allergy emergency;
- e. Upon written request from a parent or guardian, and with a prescriber's written statement that the lack of immediate access to a backup auto injectable epinephrine may be life threatening to a student, and the location the school stores backup medication is not located in the student's classroom, a process shall be established to allow the backup auto injectable epinephrine to be kept in a reasonably secure location in the student's classroom;
- f. A student shall not administer medication to them self until the necessary permission form and written instructions have been submitted as required by the district;
- g. Permission for a student to administer medication to them self may be revoked if the student violates the Board policy and/or this administrative regulation;
- h. A student may be subject to discipline, up to and including expulsion, as appropriate;
- i. A student permitted to administer medication to them self may be monitored by designated personnel to monitor the student's response to the medication.



8. Handling, Monitoring and Safe Storage of Medication Supplies for Administering Medication to Students
  - a. Medication administered by designated personnel to a student or self-administered by a student, must be delivered to the school in its original container, accompanied by the permission form and written instructions, as required above.
  - b. Medication in capsule or tablet form and categorized as a sedative, stimulant, anticonvulsant, narcotic analgesic or psychotropic medication will be counted by designated personnel in the presence of another district employee upon receipt, documented in the student's medication log and routinely monitored during storage and administration. Discrepancies will be reported to the principal immediately and documented in the student's medication log. For such medication not in capsule or tablet form, standard measuring and monitoring procedures will apply.
  - c. Designated personnel will follow the written instructions of the prescriber and the student or the student's parent or guardian, and training guidelines as may be recommended by the ODE for administering all forms of prescription and/or nonprescription medications.
  - d. Medication will be secured as follows:
    - (1) No refrigerated medications will be stored in a locked cabinet, drawer or box [used solely for the storage of medication];
    - (2) Medications requiring refrigeration will be stored in a [locked box in a refrigerator] [separate refrigerator used solely for the storage of medication];
    - (3) Access to medication storage keys will be limited to the principal and designated personnel.
  - e. Designated personnel will be responsible for monitoring all medication supplies and for ensuring medication is secure at all times, not left unattended after administering and that the medication container is properly sealed and returned to storage.
  - f. In the event medication is running low or an inadequate dosage is on hand to administer the medication, the designated personnel will notify the student's parent or guardian or the student (in situations involving ORS 109.610, 109.640 and 109.675) immediately.
9. Emergency Response
  - a. Designated personnel will notify 911 or other appropriate emergency medical response systems and administer first aid, as necessary, in the event of life-threatening side effects that result from district-administered medication or from student self-medication or allergic reactions. The parent or guardian [, school nurse] and principal will be notified immediately.
  - b. Minor adverse reactions that result from district-administered medication or from student self-medication will be reported to the parent or guardian immediately, except when the student is allowed to seek medical care without parental consent pursuant to ORS 109.610, 109.640 or 109.675.
  - c. Any available district staff will immediately call 911 and the student's parent or guardian if the designated personnel believes the student is experiencing symptoms of adrenal crisis and plans to administer medication.
10. Disposal of Medications
  - a. Medication not picked up by the student's parent or guardian, or the student when allowed pursuant to ORS 109.610, 109.640 and 109.675, at the end of the school year or within [five]

school days of the end of the medication period, whichever is earlier, will be disposed of by designated personnel in a no recoverable fashion as follows:

- (1) Medication will be removed from its original container and personal information will be destroyed;
- (2) Solid medications will be crushed, mixed or dissolved in water, liquid medications will be mixed or dissolved in water; and
- (3) Mixed with an undesirable substance, e.g., coffee grounds, kitty litter, flour; and
- (4) Placed in impermeable non-descriptive containers, e.g., empty cans or sealable bags, and placed in the trash.

Prescriptions will be flushed down the toilet **only** if the accompanying patient information specifically instructs it is safe to do so.

Other medication will be disposed of in accordance with established training procedures including sharps and glass.

- b. All medication will be disposed of by designated personnel in the presence of another school employee and documented as described in Section 10, below.

#### 11. Transcribing, Recording and Record Keeping

- a. A medication log will be maintained for each student administered medication by the district. The medication log will include, but not be limited to:
  - (1) The name of the student, name of medication, dosage, method of administration, date and time of administration, frequency of administration and the name of the person administering the medication;
  - (2) Student refusals of medication;
  - (3) Errors in administration of medication;
  - (4) Incidents of emergency and minor adverse reaction by a student to medication;
  - (5) Discrepancies in medication supply;
  - (6) Disposal of medication including date, quantity, manner in which the medication was destroyed and the signature of the staff involved.
- b. All records relating to administration of medications, including permissions and written instructions, will be maintained in a separate medical file apart from the student's education record file unless otherwise related to the student's educational placement and/or individualized education program. Records will be retained in accordance with applicable provisions of OAR 166-400-0010(17) and OAR 166-400-0060(29).
- c. Student health information will be kept confidential. Access shall be limited to those designated personnel authorized to administer medication to students, the student and ~~his/her~~ their parent or guardian. Information may be shared with other staff with a legitimate educational interest in the student or others as may be authorized by the parent or guardian in writing or others as allowed under state and federal law.

## OSBA Model Sample Policy

Code: JHFE

Adopted:

### Reporting of Suspected Abuse of a Child

Any district employee who has reasonable cause to believe that **any child** with whom the employee has come in contact has suffered abuse<sup>1</sup> shall orally report or cause an oral report immediately by telephone or otherwise to the local office of the Oregon Department of Human Services (DHS) or its designee or to the law enforcement agency within the county where the person making the report is located at the time of the contact pursuant to Oregon Revised Statute (ORS) 419B.010. Any district employee who has reasonable cause to believe that **any adult or student** with whom the employee is in contact has abused a child shall immediately report or cause a report to be made in the same manner to DHS or its designee or to the law enforcement agency within the county where the person making the report is located at the time of the contact pursuant to ORS 419.010. If known, the report shall contain the names and addresses of the child and the parents of the child or other persons responsible for the child's care, the child's age, the nature and extent of the suspected abuse, including any evidence of previous abuse, the explanation given for the suspected abuse, any other information that the person making the report believes might be helpful in establishing the possible cause of the abuse and the identity of a possible perpetrator.

Abuse of a child by district employees, contractors<sup>2</sup>, agents<sup>3</sup>, volunteers<sup>4</sup>, or students will not be tolerated. All district employees, contractors, agents, volunteers and students are subject to this policy and the accompanying administrative regulation.

Any district employee who has reasonable cause to believe that another district employee, contractor, agent, volunteer or student has engaged in abuse, or that a student has been subjected to abuse by another district employee, contractor, agent, volunteer or student shall immediately report such to the Oregon Department of Human Services (DHS) or its designee or the local law enforcement agency pursuant to ORS 419B.015, and to the designated licensed administrator.

The district will designate a [<sup>5</sup>]licensed administrator and an alternate licensed administrator, in the event that the designated licensed administrator is the suspected abuser, for each school building to receive reports of suspected abuse of a child by district employees, contractors, agents, volunteers or students.

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

<sup>2</sup> "Contractor" means a person providing services to the district under a contract in a manner that requires the person to have direct, unsupervised contact with students.

<sup>3</sup> "Agent" means a person acting as an agent for the district in a manner that requires the person to have direct, unsupervised contact with students.

<sup>4</sup> "Volunteer" means a person acting as a volunteer for the district in a manner that requires the person to have direct, unsupervised contact with students.

[<sup>5</sup> Senate Bill 155 (2019) requires the district to designate a licensed administrator and an alternate licensed administrator in the event the licensed administrator is the alleged abuser for each school building to receive these reports.]

If the superintendent is the alleged perpetrator the report shall be submitted to the [Director of Human Services] who shall also report to the Board chair.

The district will post the name and contact information of the designees for each school building designated to receive reports of suspected abuse and the procedures the designee will follow upon receipt of a report, the contact information for local law enforcement and the local DHS office or its designee and a statement that the duty to report suspect abuse is in addition to the requirements of reporting to a designated licensed administrator.

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

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

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

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

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

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

## PROPOSED POLICY UPDATES BASED ON OSBA RECOMMENDATION - JCSD 509J 8/10/20

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

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

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

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

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

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

END OF POLICY

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### Legal Reference(s):

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

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

[OAR 581-022-2205](#)  
[Senate Bill 155 \(2019\)](#)

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

## OSBA Model Sample Policy

Code: JHFE  
Adopted:

### Reporting of Suspected Abuse of a Child

*(Recommend delete this version; See new JHFE)*

Any district employee who has reasonable cause to believe that any child with whom the employee has come in contact has suffered abuse or neglect, as defined in state law, by any adult or by a student with whom the employee is in contact has abused a child, will immediately notify the Oregon Department of Human Services (DHS) or the local law enforcement agency. The district employee shall also immediately inform his/her supervisor, the principal or the superintendent.

Abuse of a child by district employees or by students will not be tolerated. All district employees are subject to this policy and the accompanying administrative regulation. If a district employee is a suspected abuser, reporting requirements remain the same. The district will designate the [personnel director] [superintendent] to receive reports of abuse of a child by district employees and specify the procedures to be followed upon receipt of an abuse report. In the event the designated person is the suspected abuser, the [personnel director][superintendent][Board chair] shall receive the report of abuse. The district will post in each school building the name and contact information of the person designated to receive child abuse reports, as well as the procedures the [personnel director][superintendent] will follow upon receipt of a report. When the [personnel director][superintendent] takes action on the report, the person who initiated the report must be notified.

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

Upon request, the district shall provide records of investigations of suspected abuse of a child by a district employee or former district employee to law enforcement, DHS or the Teacher Standards and Practices Commission.

Any district employee participating in good faith in the making of a report, pursuant to this policy and Oregon law and who has reasonable grounds for the making thereof, shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed with respect to the making or content of any such report. Further, the initiation of a report in good faith about suspected abuse of a child may not adversely affect any terms or conditions of employment or the work environment of the complainant. If a student initiates a report of suspected abuse of a child by a district employee or a student, in good faith, the student will not be disciplined by the Board or any district employee. Intentionally making a false report of abuse of a child is a Class A violation.

The district shall establish written procedures to provide annual training: 1) for district staff in the prevention and identification of the abuse of a child and on the obligations of district employees under Oregon Revised Statute (ORS) 419B.005, as directed by Board policy, to report suspected abuse of a child; 2) for parents and legal guardians of students attending district schools on the prevention, identification of abuse of a child and the obligation of district employees to report suspected abuse of a child, separate from district staff training; and 3) designed to prevent abuse of a child available to students attending district-operated schools.

## PROPOSED POLICY UPDATES BASED ON OSBA RECOMMENDATION - JCSD 509J 8/10/20

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

END OF POLICY

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### Legal Reference(s):

[ORS 339](#).370 to -339.400

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

[OAR 581-022](#)-2205

[ORS 418](#).746 to -418.751

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



## OSBA Model Sample Policy

Code: JHFE-AR(1)

Adopted:

### Reporting of Suspected Abuse of a Child

#### Reporting

Any district employee having reasonable cause to believe that **any child** with whom the employee comes in contact has suffered abuse<sup>1</sup> shall orally report or cause an oral report immediately by telephone or otherwise to the local office of the Oregon Department of Human Services (DHS) or to a law enforcement agency within the county where the person making the report is at the time of their contact. Any district employee who has reasonable cause to believe that **any adult or student** with whom the employee is in contact has abused a child shall immediately report or cause a report to be made in the same manner to DHS or its designee or to the law enforcement agency within the county where the person making the report is located at the time of the contact pursuant to ORS 419.010.

Any district employee who has reasonable cause to believe that another district employee, contractor, agent, volunteer or student has engaged in abuse, or that a student has been subjected to abuse by another district employee, contractor, agent, volunteer or student shall immediately report such to the DHS or its designee or the local law enforcement agency pursuant to ORS 419B.015, and to the designated licensed administrator or alternate licensed administrator for their school building.

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

If the superintendent is the alleged abuser the report shall be submitted to the [licensed administrator position title] who shall refer the report to the Board chair.

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

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

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

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

When the designee receives a report of suspected abuse by a contractor<sup>[3]</sup>, agent or volunteer, the district **[shall]** prohibit the contractor, agent or volunteer from providing services to the district. If the district determines there is reasonable cause to support the report of suspected abuse, the district shall prohibit the contractor agent or volunteer from providing services. **[The district may reinstate the contractor, agent or volunteer, and such reinstatement may not occur until such time as a report of suspected abuse has been investigated<sup>4</sup> and a determination has been made by law enforcement or DHS that the report is unsubstantiated.]**

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

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

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

## Definitions

1. Oregon law recognizes these types of abuse:
  - a. Physical;
  - b. Neglect;
  - c. Mental injury;

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<sup>2</sup> The district employee cannot be required to use any accrued leave during the imposed paid administrative leave.

<sup>[3]</sup> The district is encouraged to duplicate this language in the contract. If the contract is with a company and the person assigned to do the work is the alleged perpetrator, the district shall notify the company and request another company employee be assigned to complete the work.]

<sup>4</sup> The district will investigate all reports of suspected abuse, unless otherwise requested by DHS or its designee or law enforcement pursuant to law.

- d. Threat of harm;
  - e. Sexual abuse and sexual exploitation.
2. “Child” means an unmarried person who is under 18 years of age.
  3. [A “substantiated report” means a report of abuse that a law enforcement agency or DHS determines is founded.]

### **Confidentiality of Records**

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

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

### **Failure to Comply**

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

### **Cooperation with Investigator**

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

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

Law enforcement officers wishing to remove a student from the premises shall present themselves at the office and contact the administrator or designee. The officer shall sign the student out on a form to be provided by the school;

2. When the subject matter of the interview or investigation is identified to be related to suspected abuse of a child, district employees shall not notify parents;

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

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

## OSBA Model Sample Policy

Code: JHFE-AR(1)

Adopted:

### Reporting of Suspected Abuse of a Child

*(Recommend delete this version; See new JHFE-AR(1))*

#### Reporting

Any district employees having reasonable cause to believe that any child with whom the employee comes in contact has suffered abuse, or that any person with whom the employee comes in contact has abused a child, shall orally report or cause an oral report to be immediately made by telephone or otherwise to the local office of the Oregon Department of Human Services (DHS) or to a law enforcement agency within the county where the person making the report is at the time of his/her contact. The district employee should also immediately inform his/her supervisor, principal or superintendent. If known, such report shall contain the names and addresses of the child and the parents of the child or other persons responsible for the child's care, the child's age, the nature and extent of the suspected abuse, the explanation given for the suspected abuse, any other information which the person making the report believes might be helpful in establishing the possible cause of the suspected abuse and the identity of a possible perpetrator.

A written record of the abuse report shall be made by the employee suspecting the abuse of a child. [The written record may be made using the district's abuse reporting form which includes at a minimum:

1. The name and position of the person making the report;
2. The names and addresses of the child and of the parents of the child or other persons responsible for the child's care and the age of the child;
3. The name and position of any witness to the report;
4. A description of the nature and extent of the abuse, including any information which could be helpful in establishing cause of abuse and identity of the abuser;
5. A description of how the report was made (i.e., phone or other method);
6. The name of the agency and individual who took the report;
7. The date and time that the report was made; and
8. The names of persons who received a copy of the written report.]

The written record of the abuse report shall not be placed in the student's educational record. A copy of the written report shall be retained by the employee making the report and a copy shall be provided to the employee's supervisor [and/or superintendent][and/or personnel director].

When the district receives a report of suspected abuse of a child by one of its employees, and the [personnel director][superintendent] determines that there is reasonable cause to support the report, the district shall place the district employee on paid administrative leave until the DHS or a law enforcement agency either: 1) determines that the report is unfounded or that the report will not be pursued; or 2) determines that the report is founded and the education provider takes the appropriate disciplinary action

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Reporting of Suspected Abuse of a Child – JHFE-AR(1)

1-3

against the district employee. If the DHS or a law enforcement agency is unable to determine whether the abuse of a child occurred the district may either reinstate the employee or take disciplinary action at the district's discretion.

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

### **Definitions**

1. Oregon law recognizes these types of abuse:
  - a. Physical;
  - b. Neglect;
  - c. Mental injury;
  - d. Threat of harm;
  - e. Sexual abuse and sexual exploitation.
2. "Child" means an unmarried person who is under 18 years of age.

### **Confidentiality of Records**

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

The disciplinary records of a district employee or former 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. Therefore, if a district employee or former employee is convicted of a crime listed in ORS 342.143, the district that is or was the employer of that employee when the crime was committed shall disclose the disciplinary records of the employee to any person upon request. However, prior to the disclosure of a disciplinary record 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.

### **Failure to Comply**

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

### **Cooperation with Investigator**

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

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

Law enforcement officers wishing to remove a student from the premises shall present themselves at the office and contact the administrator or designee. The officer shall sign the student out on a form to be provided by the school;

2. When the subject matter of the interview or investigation is identified to be related to suspected abuse of a child, district employees shall not notify parents;
3. The principal or representative shall advise the investigator of any conditions of disability prior to any interview with the affected child;
4. District employees are not authorized to reveal anything that transpires during an investigation in which the employee participates, nor shall the information become part of the student’s education records, except that the employee may testify at any subsequent trial resulting from the investigation and may be interviewed by the respective litigants prior to any such trial.



## OSBA Model Sample Policy

Code: JHFF  
Adopted:

### Reporting Requirements Regarding Sexual Conduct with Students

*(Recommend delete this version; See new JHFF/GBNAA)*

Sexual conduct by district employees, contractors or agents<sup>1</sup> of the district will not be tolerated. All district employees, contractors and agents of the district are subject to this policy.

“Sexual conduct,” as defined by Oregon law, is any verbal or physical [or other] conduct by a school employee that is sexual in nature; directed toward a kindergarten through grade 12 student; unreasonably interferes with a student’s educational performance; and creates an intimidating, hostile or offensive educational environment. The definition for sexual conduct does not include behavior that would be considered child abuse as outlined by Oregon law and district Board policy JHFE and JHFE-AR - Reporting of Suspected Abuse of a Child.

Any district employee, contractor or agent of the district [or volunteer] who has reasonable cause to believe that another district employee, contractor[,] [or] agent of the district [or volunteer] has engaged in sexual conduct with a student must immediately notify his/her [immediate supervisor] [the person identified by the district to receive such reports].

When the district receives a report of suspected sexual conduct by a district employee, the district may decide to place the employee on paid administrative leave or in a position that does not involve direct, unsupervised contact with students while conducting an investigation. When the district receives a report of suspected sexual conduct by a contractor<sup>[2]</sup> or agent of the district, the district may decide to suspend services of that contractor or place the agent in a position that does not involve direct, unsupervised contact with students while conducting an investigation. An “investigation” is a detailed inquiry into the factual allegations of a report of suspected sexual conduct that is based on interviews with the complainant, witnesses, the district employee, the contractor, the agent of the district or the student who is the subject of the report. If the subject of the report is a district employee represented by a contract or a collective bargaining agreement, the investigation must meet any negotiated standards of such employment contract or agreement.

If, following the investigation, the report is substantiated, the district will inform the district employee, contractor or agent of the district that the report has been substantiated and provide information regarding the appeal process. [The employee may appeal the district’s decision through the appeal process provided by the district’s collective bargaining agreement, if applicable.] [The employee, contractor or agent of the district may appeal the district’s decision through an appeal process administered by a neutral third party.] [A volunteer may appeal the district’s decision through the district’s complaint procedure.] [A “substantiated report” means a report of abuse or sexual conduct that: a) an educational provider has reasonable cause to believe is founded based on the available evidence after conducting an investigation; and b) involves conduct that the educational provider determines is sufficiently serious to be documented

<sup>1</sup> An “agent” is a person authorized to act on behalf of another (called the principal) to create legal relations with a third party.

<sup>2</sup> [The district is encouraged to duplicate this language in the contract. If the contract is with a company and the person assigned to do the work is the alleged perpetrator, the district shall notify the company and request another company employee be assigned to complete the work.]

in the employee's personnel file or the student's education record, and in the administrative file for the contractor or agent of the district.]

If the district employee, contractor or agent of the district decides not to appeal the determination or if the determination is sustained after an appeal, a record of the substantiated report will be placed in the employee's personnel file or in the administrative file for the contractor or agent of the district. The employee, contractor or agent of the district will be notified that this information may be disclosed to a potential employer. The district will not serve as a reference for a contractor or agent of the district that has a substantiated report.

The district will post in each school building the name and contact information of the person designated to receive sexual conduct reports, as well as the procedures the [personnel director] [superintendent] [Board chair] will follow upon receipt of a report. In the event that the designated person is the suspected perpetrator, the [personnel director] [superintendent] [Board chair] shall receive the report. [If the superintendent is the alleged perpetrator, the Board chair shall receive the report.] When the [personnel director] [superintendent] [Board] takes action on the report, the person who initiated the report must be notified.

The initiation of a report in good faith about suspected sexual conduct may not adversely affect any terms or conditions of employment or the work environment of the complainant. If a student initiates a report of suspected sexual conduct by a district employee, a contractor or an agent of the district in good faith, the student will not be disciplined by the Board or any district employee.

The district will provide annual training to district employees, parents and students regarding the prevention and identification of sexual conduct. The district will provide to employees, contractors or agents of the district at the time of hire a description of conduct that may constitute sexual conduct and a description of records subject to disclosure if a sexual conduct report is substantiated.

Educational providers shall follow hiring and reporting procedures as outlined in ORS 339.374 for all district employees.

END OF POLICY

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**Legal Reference(s):**

[ORS 339.370 - 339.400](#)

[ORS 418.746 - 418.751](#)

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

Every Student Succeeds Act, 20 U.S.C. § 7926 (2012).

## OSBA Model Sample Policy

Code: JHFF-AR  
Revised/Reviewed:

### Sexual Conduct Complaint Form

*(Delete this JHFF-AR; See new JHFF/GBNAA-AR)*

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

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

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

Name of person allegedly engaging in sexual conduct: \_\_\_\_\_

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

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

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

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

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

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

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

[Name of School District]

**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 Policy

Code: JHFF/GBNAA-AR

Revised/Reviewed:

### Suspected Sexual Conduct Report Procedures and Form \*

When the designee receives a report of suspected sexual conduct that may have been committed by a person licensed<sup>1</sup> through Teacher Standards and Practices Commission (TSPC), the designee shall notify TSPC as soon as possible. When the designee receives a report of suspected sexual conduct that may have been committed by a person who is not licensed through TSPC, the designee shall notify the Oregon Department of Education (ODE) as soon as possible.

The district posts in each school building the names and contact information of the employees<sup>[2]</sup> in each school building designated to receive reports of suspected sexual conduct and the procedures the designee will follow upon receipt of the report.

If the superintendent is the alleged perpetrator the report shall be submitted to the [Director of Human Resources] who shall refer the report to the Board chair.

When the designee receives a report of suspected sexual conduct by a district employee, and there is reasonable cause to support the report, the district shall place the district employee on paid administrative leave<sup>3</sup> and take necessary actions to ensure the student's safety. The employee shall remain on leave until TSPC or ODE determines that the report is substantiated and the district takes appropriate employment action against the employee, or cannot be substantiated or is not a report of sexual conduct and the district determines either: 1) an employment policy was violated and the district will take appropriate employment action against the employee; or 2) an employment policy has not be violated and an employment action against the employee is not required. The district will investigate all reports of suspected sexual conduct by persons who are licensed by the TSPC, unless otherwise requested by TSPC, and all reports of suspected sexual conduct by persons who are not licensed by TSPC, unless otherwise requested by ODE.

When the designee receives a report of suspected sexual conduct by a contractor <sup>[4]</sup>, an agent or a volunteer, the district [may] [shall] prohibit the contractor, agent or volunteer from providing services to the district. If the district determines there is reasonable cause to support a report of suspected sexual conduct, the district shall prohibit the contractor, agent or volunteer from providing services. [The district may reinstate the contractor, agent or volunteer, and such reinstatement may not occur until such time as a report of suspected sexual conduct has been investigated and a determination has been made by TSPC or ODE that the report is unsubstantiated.]

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<sup>1</sup> "License" includes a license, registration or certificate issued by the Teacher Standards and Practices Commission.

<sup>[2]</sup> Senate Bill 155 (2019) requires the district to designate a licensed administrator and an alternate licensed administrator for each school building.]

<sup>3</sup> The district employee cannot be required to use any accrued leave during the imposed paid administrative leave.

<sup>[4]</sup> The district is encouraged to duplicate this language in the contract. If the contract is with a company and the person assigned to do the work is the alleged perpetrator, the district shall notify the company and request another company employee be assigned to complete the work.]

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

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

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

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

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

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

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

## **Training**

The district shall provide training each school year to district employees on the following:

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

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

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

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

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



[Name of School District]

**SUSPECTED SEXUAL CONDUCT REPORT FORM**

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

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

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

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

\_\_\_\_\_

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

\_\_\_\_\_

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

\_\_\_\_\_

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

\_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

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

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

[Name of School District]

**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 Policy

Code: **KL**  
Adopted:

Note: Our board updated this in November 2019. Please be sure the times and wording matches that of our previous version. The Charter School section does not apply to our district.

### Public Complaints \*/\*\* (Version 4)

(This version of sample policy KL does not need an accompanying administrative regulation, it is a stand-alone policy. If this policy is chosen by the Board, recommend delete any other existing complaint procedure.)

Board members recognize that complaints about schools may be voiced by **[employees,]** **[students,]** parents of students who attend a school in the district[,], and persons who reside in the district. [When such complaints are made to a Board member, the Board member shall refer the person making the complaint to the superintendent or designee. A Board member shall not attempt to respond, review, handle or resolve such complaints as the individual board member has no authority to do so.]

A complaint of retaliation against a student who in good faith reported information that the student believes is evidence of a violation of state or federal law, rule or regulation, should be made to the superintendent.

A person may initiate a complaint by discussing the matter with the **[administrator]** **[principal]**. That **[administrator]** **[principal]** shall attempt to resolve the complaint within **[10]** working days of initiation of the complaint ~~by discussion~~ with the **[administrator]** **[principal]**. If the complainant is dissatisfied, the complainant may file a written complaint with the superintendent within **[15]** working days of the decision from the **[administrator]** **[principal]**. The superintendent will attempt to resolve the complaint. If the complaint remains unresolved after **[10]** working days of receipt of the complaint by the superintendent, the complainant may appeal to the Board. A written complaint referred to the Board may be considered[ at the next regularly scheduled or special Board meeting]. A final written decision regarding the complaint shall be made by the Board within **[30]** days from receipt of the complaint. The written decision of the Board will be final and will address each allegation in the complaint and reasons for the district's decision. If the Board chooses not to hear the complaint, the superintendent's decision is final. The Board may hold the hearing in executive session if the subject matter qualifies under Oregon law.

The timelines may be extended upon written agreement between the district the complainant.<sup>[1]</sup>

The district may offer mediation or another alternative dispute resolution process as an option if all parties to the complaint agree in writing to participate in such mediation or resolution.

Complaints against the principal should be filed with the superintendent. The superintendent will attempt to resolve the complaint. If the complaint remains unresolved within **[15]** working days of receipt by the superintendent, the complainant may request to place the complaint on the Board agenda [at the next regularly scheduled or special Board meeting]. The Board may use executive session if the subject matter qualifies under Oregon law. The Board shall decide, within **[20]** days, in open session what action, if any,

<sup>1</sup> [For district information. The district's timeline established by each step of the district's complaint procedure for alleging a violation found in OAR 581-002-0003 must be within 30 days of the submission of the complaint at any step, unless the district and complainant have agreed in writing to a longer time period for that step. However, the district's complaint procedure should not exceed a total of 90 days from the initial filing of the complaint, regardless of the number of steps involved, unless the district and the complainant have agreed in writing to a longer time period. (OAR 581-002-0005)]

is warranted. A final written decision regarding the complaint shall be issued by the Board within [10] days. The written decision of the Board will address each allegation in the complaint and reasons for the district's decision.

Complaints against the superintendent should be referred to the Board chair on behalf of the Board. The Board chair shall present the complaint to the Board in a Board meeting. 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. The Board may use executive session if the subject matter qualifies under Oregon law. The Board shall decide, within [20] days, in open session what action, if any, is warranted. A final written decision regarding the complaint shall be issued by the Board within [10] days. The written decision of the Board will address each allegation in the complaint and reasons for the district's decision.

Complaints against the Board as a whole or against an individual Board member should be referred to the Board chair on behalf of the Board. The Board chair shall present the complaint to the Board in a Board meeting. 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. The Board shall decide, within [20] days, in open session what action, if any, is warranted. A final written decision regarding the complaint shall be issued by the Board within [10] days. The written decision of the Board will address each allegation in the complaint and reasons for the district's decision.

Complaints against the Board chair should be made directly to [district counsel] [the Board vice chair] on behalf of the Board. The [district counsel] [Board vice chair] shall present the complaint to the Board in a Board meeting. 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. The Board shall decide, within [20] days, in open session what action, if any, is warranted. A final written decision regarding the complaint shall be issued by the Board within [10] days. The written decision of the Board will address each allegation in the complaint and reasons for the district's decision.

A complainant must file a complaint within the later of either time limit set below, in accordance with State law:

1. Within two years after the alleged violation or unlawful incident occurred or the complainant discovered the alleged violation or unlawful incident. For incidents that are continuing in nature, the time limitation must run from the date of the most recent incident; or
2. Within one year after the affected student has graduated from, moved away from or otherwise left the district.

The district's final decision for a complaint processed under this Board policy that alleges a violation of Oregon Administrative Rule (OAR) Chapter 581, Division 22 (Division 22 Standards), ORS 339.285 - 339.303 or OAR 581-021-0550 - 581-021-0570 (Restraint and Seclusion), or ORS 659.852 (Retaliation), will be issued in writing or electronic form. The final decision will address each allegation in the complaint and contain reasons for the district's decision. If the complainant is a [student,] parent or guardian of a student attending school in the district or a person that resides in the district, and the

complaint is not resolved through the complaint process above, the complainant may file an appeal<sup>2</sup> to the Deputy Superintendent of Public Instruction under OAR 581-002-0001 – 581-002-0023 [(See KL-AR(2) - Appeal to the Deputy Superintendent of Public Instruction)].

#### **Charter Schools of which the District Board is a Sponsor**

[The district Board, [through its charter agreement with [name of public charter school sponsored by the district board]] [through a board resolution] [through this policy], will review an appeal of a decision reached by the Board of [name of public charter school] on a complaint alleging a violation of ORS 339.285 – 339.303 or OAR 581-021-0550 – 581-021-0570 (Restraint or Seclusion), ORS 659.852 (Retaliation), or applicable OAR Chapter 581, Division 22 (Division 22 Standards). A complainant may appeal and will submit such appeal to the [superintendent] [Board chair] on behalf of the district Board within [30] days of receipt of the decision from the public charter school board. A final decision reached by the district Board may be appealed to the Oregon Department of Education under OAR 581-002-0001 – 581-002-0023.]

OR

[The district Board, [through its charter agreement with [name of public charter school sponsored by the district board]] [through a board resolution] [through this policy], will not review an appeal of a decision reached by the Board of the [name of public charter school] on a complaint alleging a violation of ORS 339.285 – 339.303 or OAR 581-021-0550 – 581-021-0570 (Restraint or Seclusion), ORS 659.852 (Retaliation), or applicable OAR Chapter 581, Division 22 (Division 22 Standards), for which the district Board has jurisdiction, and recognizes a decision reached by the Board of [name of public charter school] as the district Board's final decision. A final decision reached by this district Board may be appealed to the Oregon Department of Education under OAR 581-002-0001 – 581-002-0023.]

#### **[<sup>3</sup> Review Process for a Public School Board Complaint Decision**

The appeal of a complaint from a public charter school to be reviewed by the district Board will be presented by the Board chair and reviewed by the Board at a Board meeting. The Board may use executive session if the subject matter qualifies under Oregon law. The Board will review the appeal and make a decision about appropriate action, which may include, but is not limited to, holding a hearing, requesting information, and recognizing the decision reached by the public charter school board. A decision will be reached, within [20] days, in open session, unless allowed in executive session. A final written decision regarding the appeal shall be issued by the district Board within [10] days. The written decision of the district Board will address each allegation in the complaint and include reasons for the district Board's decision.]

END OF POLICY

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<sup>2</sup> An appeal must meet the criteria found in OAR 581-002-0005(1)(a).

[<sup>3</sup> If the district Board elects to hear appeals on public charter school complaints for which the district Board has jurisdiction, as decided by statements in the charter agreement, Board policy, or a board resolution, this language is recommended for this policy to delineate the process.]

**Legal Reference(s):**

[ORS 192](#).660  
[ORS 332](#).107

[ORS 659](#).852  
[OAR 581](#)-002-0001 - 002-0005

[OAR 581](#)-022-2370

Anderson v. Central Point Sch. Dist., 746 F.2d 505 (9th Cir. 1984).  
Connick v. Myers, 461 U.S. 138 (1983).

PROPOSED

## OSBA Model Sample Policy

Code: LBE-AR  
Revised/Reviewed:

### Public Charter Schools

#### 1. Definitions

- a. “Applicant” means any person or group that develops and submits a written proposal for a public charter school to the district.
- b. “Public charter school” means an elementary or secondary school offering a comprehensive instructional program operating under a written agreement entered into between the district and an applicant.
- c. “Virtual public charter school” means a public charter school that provides online courses, but does not primarily serve students in a physical location.
  - (1) For the purpose of this definition, an “online course” is a course in which instruction and content are delivered on a computer using the internet, other electronic network or other technology such as CDs or DVDs; the student and teacher are in different physical locations for the majority of instructional time; the student is not required to be in a physical location of a school while participating in the course; and the online instruction is integral to the academic program of the charter school.
  - (2) For the purpose of this definition, “primarily serving students in a physical location” means that more than 50 percent of the core courses offered are not online courses; more than 50 percent of the total number of students attending the school are not receiving instructional services in an online course; and more than 50 percent of the school’s required instructional hours are not through an online course.
- d. “Remote and necessary school district” means a school district that offers kindergarten through grade 12 and has: (a) an average daily membership (ADM), as defined in Oregon Revised Statute (ORS) 327.006, in the prior fiscal year of less than 110; and (b) a school that is located, by the nearest traveled road, more than 20 miles from the nearest school or from a city with a population of more than 5,000.
- e. “Sponsor” means the district Board.

#### 2. Proposal Process

- a. The public charter school applicant shall submit the proposal to the district no later than [180 days prior to the proposed starting date] [by the date determined by the district] [insert district’s identified date]<sup>1</sup>.

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<sup>1</sup> The date shall be at least 180 days prior to the date that the public charter school would begin operating and give a reasonable period of time for the school district board to complete the approval process and the public charter school to begin operating by the beginning of the school year.



- b. To be considered complete, the proposal for a public charter school shall include the following:
- (1) The identification of the applicant;
  - (2) The name of the proposed public charter school;
  - (3) A description of the philosophy and mission of the public charter school [and how it differs from the district's current program and philosophy];
  - (4) A description of any distinctive learning or teaching techniques to be used;
  - (5) A description of the curriculum of the public charter school;
  - (6) A description of the expected results of the curriculum and the verified methods of measuring and reporting results that will allow comparisons with district schools;
  - (7) The governance structure [public charter school board membership, selection, duties and responsibilities];
  - (8) The projected enrollment including the ages or grades to be served;
  - (9) The target population of students the public charter school is designed to serve;
  - (10) The legal address, facilities and physical location of the public charter school [and applicable occupancy permits and health and safety approvals];
  - (11) A description of admission policies and application procedures;
  - (12) The statutes and rules that shall apply to the public charter school;
  - (13) The proposed budget and financial plan including evidence that the proposed budget and financial plan are financially sound;
  - (14) A financial management system that includes:
    - (a) A description of a financial management system for the public charter school. The financial management system must include a budget and accounting system that:
      - (i) Is compatible with the budget and accounting system of the sponsor of the school; and
      - (ii) Complies with the requirements of the uniform budget and accounting system adopted by the State Board of Education under Oregon Administrative Rule (OAR) 581-023-0035.
    - (b) A plan for having the financial management system in place at the time the school begins operating.
  - (15) The standards for behavior and the procedures for the discipline, suspension or expulsion of students;
  - (16) The proposed school calendar, including the length of the school day and length of the school year;
  - (17) A description of the proposed school staff and required qualifications of teachers [including a breakdown of professional staff who hold a valid teaching license issued by the Teacher Standards and Practices Commission (TSPC) and those who do not hold a license but are registered with the TSPC] (At least one-half of the full-time equivalent teaching and administrative staff of the public charter school shall be licensed.);
  - (18) The date upon which the public charter school would begin operating;
  - (19) The arrangements for any necessary special education and related services for students with disabilities who qualify under the Individuals with Disabilities Education Act (IDEA) and special education or regular education and related services for students who

- qualify under Section 504 of the Rehabilitation Act of 1973 who may attend the public charter school;
- (20) Information on the manner in which community groups may be involved in the planning and development process of the public charter school;
- (21) The term of the charter;
- (22) The plan for performance bonding or insuring the public charter school, including buildings and liabilities;
- (23) A proposed plan for the placement of public charter school teachers, other employees and students upon termination or nonrenewal of a charter;
- (24) The manner in which the public charter school program review and fiscal audit will be conducted;
- (25) In the case of a district school's conversion to charter status, the following additional criteria must be addressed:
  - (a) The alternate arrangements for students who choose not to attend the public charter school and for teachers and other school employees who choose not to participate in the public charter school;
  - (b) The relationship that will exist between the public charter school and its employees including terms and conditions of employment.
- (26) The district will not complete the review required under ORS 338.055 of an application that does not contain the required components listed in ORS 338.045(2)(a)-(y). A good faith determination of incompleteness is not a denial for purposes of requesting state board review under ORS 338.075;
- (27) In addition to the minimum requirements enumerated in ORS 338.045(2)(a)-(y), the district, under ORS 338.045(3), may require the applicant to submit any of the following information as necessary to add detail or clarity to the minimum requirements or that the Board considers relevant to the formation or operation of the public charter school:
  - (a) Curriculum, Instruction and Assessment
    - (i) [Description of a curriculum for each grade of students, which demonstrates in detail alignment with Oregon's academic content standards;
    - (ii) Description of instructional goals in relationship to Oregon's academic content standards and benchmarks;
    - (iii) A planned course statement for courses taught in the program, including related content standards, course criteria, assessment practices and state required work samples that will be collected;
    - (iv) Documentation that reflects consideration of credits for public charter school course work a student may perform at any other public school;
    - (v) Explanation of grading practices for all classes and how student performance is documented;
    - (vi) Explanation of how the proposed academic program will be aligned with that of the district. (If an applicant is proposing an elementary level public charter school, please describe how the curriculum is aligned at each grade level with the district's curriculum, including an explanation of how a student in the public charter school will be adequately prepared to re-enter the district's public school system after completing the charter school's program.);

- (vii) Description of the student assessment system, including how student academic progress will be measured at each grade level and any specific assessment instruments that will be used;
- (viii) Description of the plan for reporting student progress to parents, students and the community;
- (ix) Description of policies and procedures regarding diplomas and graduation;
- (x) Description of policies and practices for meeting the needs of students who are not successful in the regular program;
- (xi) Identification of primary instructional materials by publisher, copyright date, version and edition for each academic content area in each grade;
- (xii) Identification of major supplementary material in core academic content areas and the criteria for use with students;
- (xiii) Description of how the public charter school will meet the unique learning needs of students working above and below grade level, including but not limited to, talented and gifted students;
- (xiv) Description of how the public charter school staff will identify and address students' rates and levels of learning;
- (xv) Description of strategies the public charter school staff will use to create a climate conducive to learning and positive student engagement;
- (xvi) Documentation that demonstrates improvements in student academic performance over time (both individual and program/grade level) from any private alternative school operated by the public charter school applicant, if applicable;
- (xvii) Description of how teachers will utilize current student knowledge and skills to assist in the design of appropriate instruction;
- (xviii) Identification of how the public charter school will provide access to national assessments such as PSAT, SAT and ACT, if applicable;
- (xix) Description of parental involvement, content of planned meetings and how the school will adjust any meeting to meet the needs of working parents;
- (xx) Description of distance learning options available to students, including the grade levels and amount of instruction offered to students, if applicable.]

(b) State and Federal Mandates/Special Education

- (i) [Description of how the public charter school will meet any and all requirements of Every Student Succeeds Act (ESSA), which also specifically addresses adequate yearly progress (AYP) and the safe schools aspects of the law;
- (ii) Description of how the public charter school will collect AYP information on all subgroup populations in the school;
- (iii) Description of specific program information regarding curriculum and how specially designed instruction is delivered for special education students. (Include methodologies, data collection systems and service delivery models used.);
- (iv) Description of how the public charter school will serve the needs of talented and gifted students, including screening, identification and services;
- (v) Description of how the public charter school will deliver services and instruction to English Language Learners (ELL), including descriptions of curriculum, methodology and program accommodations;

- (vi) Description of how the public charter school will work with the district to comply with Section 504 accessibility requirements and nondiscrimination requirements in admissions and staff hiring;
  - (vii) Explanation of how the public charter school will work with the district to implement Child Find requirements;
  - (viii) Explanation of how the public charter school will work with the district to manage IDEA 2004 mandates regarding eligibility, individualized education program (IEP) and placement meetings;
  - (ix) Explanation of how the public charter school will work with the district in which the public charter school is located to implement accommodations and modifications contained in the IEP or Section 504 plan;
  - (x) Explanation of how the public charter school will work with the district to include parents in implementing IEPs;
  - (xi) Explanation of how the public charter school intends to work with the district in which the public charter school is located to provide special education services for eligible students.]
- (c) Teacher Certification
- (i) [Identification regarding the training and/or certification of staff, including areas of industry training, endorsements and the TSPC licensure;
  - (ii) Explanation of how the public charter school will comply with the TSPC requirements for all staff, including all TSPC Oregon Administrative Rules pertaining to its staff.]
- (d) Professional Development
- (i) [Provide the public charter school's plan for comprehensive professional development for all staff;
  - (ii) Identification of how the public charter school's licensed staff will obtain their required Continuing Professional Development units for licensure renewal.]
- (e) Budget
- (i) [Explanation of projected budget item for the Public Employees Retirement System (PERS) contributions that would be required of the public charter school;
  - (ii) Description of planned computer and technology support;
  - (iii) Description of planned transportation costs, if applicable;
  - (iv) Explanation of projected budget items for teaching salaries and other personnel contracts;
  - (v) Explanation on facilities costs, including utilities, repairs, and rent;
  - (vi) Copies of municipal audits for any other public charter school operated by the public charter school applicant, if applicable.]

(f) Policy

[Copies of any policy that the public charter school intends to adopt:

- (i) Which address expectations of academic standards for students and transcripting of credits;
- (ii) On student behavior, classroom management, suspensions and expulsions, which must contain an explanation of how the charter school will handle a student expelled from another district for reasons other than a weapons violation;
- (iii) Regarding corporal punishment including descriptions;
- (iv) Regarding dispensing of medication to students who are in need of regular medication during school hours;
- (v) Regarding reviewing and selecting instructional materials;
- (vi) Regarding solicitation/advertising/fundraising by nonschool groups;
- (vii) Regarding field trips;
- (viii) Regarding student promotion and retention;
- (ix) Regarding student publications;
- (x) Regarding staff/student vehicle parking and use;
- (xi) Regarding diplomas and graduation, and also participation in graduation exercises;
- (xii) Regarding student/parent/public complaints;
- (xiii) Regarding visitors;
- (xiv) Regarding staff discipline, suspension or dismissal.]

(g) Other Information

- (i) [Plans for use of any unique district facilities including, but not limited to, gymnasiums, auditoriums, athletic fields, libraries, cafeterias, computer labs and music facilities;
- (ii) Plans for child nutrition program(s);
- (iii) Plans for student participation in extracurricular activities pursuant to Oregon School Activities Association and Board policy, regulations and rules;
- (iv) Plans for counseling services;
- (v) Explanation of contingency plans for the hiring of substitute professional and classified staff;
- (vi) Description of how the public charter school will address the rights and responsibilities of students;
- (vii) Description of how the public charter school will handle situations involving student, possession, use or distribution of illegal drugs, weapons, flammable devices and other items that may be used to injure others;
- (viii) Description of procedures on how the public charter school will handle disciplinary referrals and how they will impact student promotion and advancement;
- (ix) Copies of program reviews conducted by other school districts that may have referred students to another public charter school operated by the public charter school applicant, if applicable;

- (x) Description of the typical school day for a student, including a master schedule, related activities, breaks and extracurricular options;
- (xi) Description of how student membership will be calculated, including a description of the type of instruction and location of instruction that contributes to ADM;
- (xii) Documentation and description of how long most students remain in the program, and documentation of student improvement in academic performance, disciplinary referrals, juvenile interventions or any other disciplinary action while in the program;
- (xiii) Explanation of the legal relationship between the public charter school and any other public charter school, if applicable. (Please provide any contracts or legal documents that will create the basis of the relationship between the entities. Please also provide all financial audits and auditor's reports.);
- (xiv) If a public charter school applicant is operating any other public charter school, documentation that the public charter school applicant has established a separate Oregon nonprofit corporation, legally independent of any other public charter school in operation;
- (xv) If a public charter school applicant has not secured a facility at the time of submitting a public charter school proposal, a written and signed declaration of intent that states:

If given any type of approval (conditional or unconditional), the public charter school applicant promises to provide to the school district liaison, at least [sixty (60)] days before the intended date to begin operation of the public charter school, proof that it will be able to secure, at least [thirty (30)] days before the intended date to begin operation of the public charter school, a suitable facility, occupancy and safety permits and insurance policies with minimum coverages required by the school district in school board policy and administrative regulation LBE that sets forth the requirements and process for the school board in reviewing, evaluating and approving a public charter school.

If the public charter school applicant fails to provide proof of an ability to secure a facility and all necessary occupancy and safety permits and insurance that is required by the school district as a condition of approval by the due date, it will withdraw its application to begin operation of a public charter school for the upcoming school year.

By signing this document, I affirm that I am authorized to make the promises stated above on behalf of the public charter school applicant. I understand that failure to fulfill the conditions listed above will result in an approval becoming void, and will automatically revoke any type of approval that the school board previously granted to the public charter school applicant.

---

Name

Date

On behalf of the [ADD APPLICANT'S NAME] ]



The public charter school applicant will organize and label all information required in section 27 to correspond to the requested numbers.

- (28) Each member of the proposed public charter school’s governing body must provide an acknowledgment of understanding of the standards of conduct and the liabilities of a director of a nonprofit organization in ORS 65.

### 3. Proposal Review Process

- a. [The superintendent may appoint an advisory committee to review public charter school proposals and submit a recommendation to the Board. The committee will consist of district representatives, community members and others as deemed appropriate.]
- b. Within 30 business days of receipt of a proposal, the district will notify the applicant as to the completeness of the proposal and identify the specific elements of the proposal that are not complete. The district shall provide the applicant with a reasonable opportunity to complete the proposal.
- c. Within 60 days after the receipt of a completed proposal that meets the requirements of law and the district, the Board shall hold a public hearing on the provisions of the public charter school proposal.
- d. The Board must evaluate a proposal in good faith using the following criteria:
  - (1) The demonstrated sustainable support for the proposal by teachers, parents, students and other community members, including comments received at the public hearing;
  - (2) The demonstrated financial stability of the proposed public charter school including the demonstrated ability of the school to have a sound financial management system that:
    - (a) Is in place at the time the school begins operating;
    - (b) Is compatible with the budget and accounting system of the sponsor of the school; and
    - (c) Complies with the requirements of the uniform budget and accounting system adopted by the State Board of Education under OAR 581-023-0035.
  - (3) The capability of the applicant in terms of support and planning to provide comprehensive instructional programs;
  - (4) The capability of the applicant in terms of support and planning to provide comprehensive instructional programs to students identified by the applicant as academically low achieving;
  - (5) The adequacy of the information provided as required in the proposal criteria;
  - (6) Whether the value of the public charter school is outweighed by any directly identifiable, significant and adverse impact on the quality of the public education of students residing in the district[.][;]

[A “directly identifiable, significant and adverse impact” is defined as an adverse loss or reduction in staff, student, program or funds that may reduce the quality of existing district educational programs. This may include, but not be limited to, the following current data as compared to similar data from preceding years:

- (a) Student enrollment;
- (b) Student teacher ratio;



- (c) Staffing with appropriately licensed or endorsed personnel;
  - (d) Student learning and performance;
  - (e) Specialty programs or activities such as music, physical education, foreign language, talented and gifted and English as a second language;
  - (f) Revenue;
  - (g) Expenditure for maintenance and upkeep of district facilities.]
- (7) Whether there are arrangements for any necessary special education and related services;
  - (8) Whether there are alternative arrangements for students, teachers and other school employees who choose not to attend or be employed by the public charter school if the public charter school is converting an existing district school;
  - (9) The prior history, if any, of the applicant in operating a public charter school or in providing educational services.
- e. The Board must either approve or deny the proposal within 30 days of the public hearing.
  - f. Written notice of the Board's action shall be sent to the applicant. If denied, the notice must include the reasons for the denial with suggested remedial measures. The applicant may then resubmit the proposal. The Board must either approve or deny the resubmitted proposal within 30 days. The Board may, with good cause, request an extension in the approval process timelines from the State Board of Education.

#### 4. Terms of the Charter Agreement

- a. Upon Board approval of the proposal, the Board will become the sponsor of the public charter school. The district and the applicant must develop a written charter agreement, subject to Board approval, which shall act as the legal authorization for the establishment of the public charter school.
- b. The charter agreement shall be legally binding and must be in effect for a period of not more than five years but may be renewed by the district.
- c. The district and the public charter school may amend a charter agreement through joint agreement.
- d. It is the intent of the Board that the charter agreement be detailed and specific to protect the mutual interests of the public charter school and the district. The agreement shall incorporate the elements of the approved proposal and will address additional matters, statutes and rules not fully covered by law or the proposal that shall apply to the public charter school including, but not limited to, the following:
  - (1) [Sexual harassment (ORS 342.700, 342.704);]
  - (2) [Pregnant and parenting students (ORS 336.640);]
  - (3) [~~Special English classes for certain children~~ English language learners (ORS 336.079);]
  - (4) [Student conduct (ORS 339.250);]
  - (5) [Alcohol and drug abuse ~~program~~ policy and plan (ORS 336.222);]
  - (6) [Student records (ORS 326.565);]
  - (7) [Oregon Report Card (ORS 329.115);]
  - (8) [Recovery of costs associated with property damage (ORS 339.270);]
  - (9) [Use of school facilities (ORS 332.172);]
  - (10) Employment status of public charter school employees:

- (a) Public charter school law requires the following:

- (i) Employee assignment to a public charter school shall be voluntary;
  - (ii) A public charter school or the sponsor of the public charter school may be considered the employer of any employees of the public charter school;
  - (iii) If the Board is not the sponsor of the public charter school, it shall not be the employer and shall not collectively bargain with the employees;
  - (iv) A public charter school employee may be a member of a labor organization or organize with other employees to bargain collectively. The bargaining unit may be separate from other bargaining units of the district;
  - (v) The public charter school governing body shall control the selection of employees at the public charter school;
  - (vi) The Board shall grant a leave of absence to any employee who chooses to work in the public charter school. The length and terms of the leave of absence shall be set by collective bargaining agreement or by Board policy; however, the length of leave of absence may not be less than two years unless:
    - 1) The charter of the public school is terminated, or the public charter school is dissolved or closed during the leave of absence; or
    - 2) The employee and the Board have mutually agreed to a different length of time.
  - (vii) An employee of a public charter school operating within the district who is granted a leave of absence and returns to employment with the district shall retain seniority and benefits as an employee, pursuant to the terms of the leave of absence.
- (b) The terms and conditions of employment addressed in the agreement may include, but not limited to, the following provisions:
- (i) A proposed plan for the placement of teachers and other school employees upon termination or nonrenewal of the charter;
  - (ii) Arrangements for employees who choose not to be employed or participate in the public charter school, if a district school has been converted to a public charter school;
  - (iii) [Salary for professional staff or wages for classified staff;]
  - (iv) [Health benefits;]
  - (v) [Leaves, including timing, commencement and duration of leave; voluntary and involuntary termination and return to work; whether the leave is paid or unpaid; and a description of benefits upon termination of leave (i.e., same, similar or available position and salary schedule placement);]
  - (vi) [Work year;]
  - (vii) [Working hours;]
  - (viii) [Discipline and dismissal procedures;]
  - (ix) [Arrangements to secure substitutes;]
  - (x) [Arrangements to ensure that 50 percent of the total full-time equivalent teaching and administrative staff are licensed;]
  - (xi) [Hiring practices;]
  - (xii) [Evaluation procedures.]

- (11) Student enrollment, application procedures and whether the public charter school will admit nonresident students and on what basis:
- (a) Public charter school law requires the following:
- (i) Student enrollment shall be voluntary. If the number of applicants exceeds the capacity, students shall be selected through a lottery process. An equitable lottery may incorporate a weighted lottery for historically underserved students. [All resident applicants will have their names written on a uniform-sized card to be placed in a covered container. Names will be drawn individually until all available slots are filled. If slots remain after resident applicants are placed, the remaining slots may be filled by nonresident applicants using an identical process. The drawing shall be made in the presence of at least two employees of the public charter school and two employees of the district.] If the public charter school has been in operation one or more years, priority enrollment may be given to those students who:
- 1) Were enrolled in the public charter school the prior year;
  - 2) Have siblings who are presently enrolled in the public charter school and who were enrolled the prior year;
  - 3) [<sup>2</sup>][Only when the public charter school is party to a cooperative agreement for the purpose of forming a partnership to provide educational services, reside in:
    - a) The public charter school's sponsoring district; or
    - b) A district which is a party to the cooperative agreement.]
- [OR]
- 3) [<sup>2</sup>][Reside in the public charter school's sponsoring district or a district which is a party to a cooperative agreement with the sponsoring district.]
- (ii) A public charter school may not limit student admission based on ethnicity, national origin, race, religion, disability, sex, sexual orientation, income level, proficiency in the English language or athletic ability but may limit admission within a given age group or grade level and may implement a weighted lottery for historically underserved students. Historically underserved students are at risk because of any combination of two or more factors including their race, ethnicity, English language proficiency, socioeconomic status, gender, sexual orientation, disability and geographic location.

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<sup>2</sup> [District should choose one of the options presented as "3)" above.]

(12) Transportation of students:

(a) Public charter school law requires the following:

- (i) The public charter school shall be responsible for providing transportation for its students and may negotiate with the district for the provision of transportation services;
- (ii) The district shall provide transportation for public charter school students pursuant to ORS 327.043. Resident public charter school students will be transported under the same conditions as students attending private or parochial schools located along or near established district bus routes. The district shall not be required to add or extend existing bus routes;
- (iii) Public charter school students who reside outside the district may use existing bus routes and transportation services of the district in which the public charter school is located;
- (iv) Any transportation costs incurred by the district shall be considered approved transportation costs.

(13) The plan for performance bonding or insuring the public charter school sufficient to protect the district. Documentation shall be submitted prior to agreement approval.

(a) [Insurance<sup>3</sup>:

- (i) Commercial General Liability Insurance in an amount of not less than \$1,000,000 combined single limit per occurrence/\$3,000,000 annual aggregate covering the public charter school, the governing board, employees and volunteers against liability for damages because of personal injury, bodily injury, death or damage to property including the loss of use thereof. Coverage to include, but not limited to, contractual liability, advertisers' liability, employee benefits liability, professional liability and teachers' liability;
- (ii) Liability Insurance for Directors and Officers in an amount not less than \$1,000,000 each loss/\$3,000,000 annual aggregate covering the public charter school, the governing board, employees and volunteers against liability arising out of wrongful acts and employment practices. Continuous "claims made" coverage will be acceptable, provided the retroactive date is on the effective date of the charter;
- (iii) Automobile Liability Insurance in an amount not less than \$1,000,000 combined single limit covering the public charter school, the governing board, employees and volunteers against liability for damages because of bodily injury, death or damage to property, including the loss of use thereof arising out of the ownership, operation, maintenance or use of any automobile. The policy will include underinsured and uninsured motorist vehicle coverage at the limits equal to bodily injury limits;
- (iv) Workers' Compensation Insurance shall also be maintained pursuant to Oregon laws (ORS Chapter 656). Employers' liability insurance with limits

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<sup>3</sup> Insurance requirements for individual public charter schools may vary and should be reviewed by legal counsel and an insurance representative.

- of \$100,000 each accident, \$100,000 disease each employee and \$500,000 each policy limit;
  - (v) Honesty Bond to cover all employees and volunteers. Limits to be determined by the governing board, but no less than \$25,000. Coverage shall include faithful performance and loss of moneys and securities;
  - (vi) Property Insurance shall be required on all owned or leased buildings or equipment. The insurance shall be written to cover the full replacement cost of the building and/or equipment on an “all risk of direct physical loss basis,” including earthquake and flood perils.
- (b) Additional requirements:
- (i) The district shall be an additional insured on commercial general and automobile liability insurance. The policies shall provide for a 90-day written notice of cancellation or material change. A certificate evidencing all of the above insurance shall be furnished to the district;
  - (ii) The public charter school shall also hold harmless and defend the district from any and all liability, injury, damages, fees or claims arising out of the operations of the public charter school operations or activities;
  - (iii) The district shall be loss payee on the property insurance if the public charter school leases any real or personal district property;
  - (iv) The coverage provided and the insurance carriers must be acceptable to the district.]
- e. If the district and the public charter school enter a cooperative agreement with other school districts for the purpose of forming a partnership to provide educational services, then the agreement must be incorporated into the charter of the public charter school.
- f. In addition to any other terms required to be in the charter agreement, a virtual public charter school must have in the charter of the school, a requirement that the school:
- (1) Monitor and track student progress and attendance; and
  - (2) Provide student assessments in a manner that ensures that an individual student is being assessed and that the assessment is valid.

## 5. Public Charter School Operation

- a. The public charter school shall operate at all times in accordance with the public charter school law, the terms of the approved proposal and the charter agreement.
- b. Statutes and rules that apply to the district shall not apply to the public charter school except the following, as required by law, shall apply:
  - (1) Federal law, including applicable provisions of the ESSA;
  - (2) ORS 30.260 to 30.300 (tort claims);
  - (3) ORS 192.410~~311~~ to 192.505~~478~~ (Public Records Law);
  - (4) ORS 192.610 to 192.690 (Public Meetings Law);
  - (5) ORS Chapters 279A, 279B and 279C (Public Contracting Code);
  - (6) ORS 326.565, 326.575 and 326.580 (student records);
  - (7) ORS 297.405 to 297.555 and 297.990 (Municipal Audit Law);
  - (8) ORS 181A.195, 326.603, 326.607 and 342.223 (criminal records checks);
  - (9) ORS 336.840 (use of personal electronic devices);

- (10) ORS 337.150 (textbooks);
  - (11) ORS 339.119 (considerations for educational services);
  - (12) ORS 339.141, 339.147 and 339.155 (tuition and fees);
  - (13) ORS 342.856 (core teaching standards);
  - (14) ORS 659.850, ~~659.855~~ ~~to~~ and 659.860 (discrimination);
  - (15) ORS Chapter 657 (Employment Department Law);
  - (16) Health and safety statutes and rules;
  - (17) Any statute or rule listed in the charter;
  - (18) The statewide assessment system developed by the Oregon Department of Education (ODE) for mathematics, science and English under ORS 329.485 (2);
  - (19) ORS 329.045 (academic content standards and instruction);
  - (20) ORS 329.496 (physical education);
  - (21) Any statute or rule that establishes requirements for instructional time;
  - (22) ORS 339.250 (~~429~~) (prohibition of infliction of corporal punishment);
  - (23) ORS 339.326 (notice concerning students subject to juvenile court petitions);
  - (24) ORS 339.370, 339.372, 339.388 and 339.400 (reporting of suspected abuse of a child and ~~suspected~~ sexual conduct, and training on prevention and identification of abuse and sexual conduct);
  - (25) ORS 329.451 (diploma, modified diploma, extended diploma and alternative certificate standards);
  - (26) Statutes and rules that expressly apply to public charter schools;
  - (27) Statutes and rules that apply to special government body as defined in ORS 174.117, or public body as defined in ORS 174.109; and
  - (28) ORS Chapter 338.
- c. The public charter school may employ as a teacher or administrator a person who is not licensed by the TSPC; however, at least one-half of the total full-time equivalent teaching and administrative staff at the public charter school shall be licensed by the commission, pursuant to ORS ~~342.135~~, 342.136 or 342.138.
  - d. A board member of the school district in which the public charter school is located may not serve as a voting member of the public charter school's board, yet may serve in an advisory capacity.
  - e. The public charter school shall participate in the PERS.
  - f. The public charter school shall not violate the Establishment Clause of the First Amendment to the United States Constitution or Section 5, Article I of the Oregon Constitution, or be religion based.
  - g. The public charter school shall maintain an active enrollment of at least 25 students, unless the public charter school is providing educational services under a cooperative agreement entered into for the purpose of forming a partnership to provide educational services.
  - h. The public charter school may sue or be sued as a separate legal entity.
  - i. The public charter school may enter into contracts and may lease facilities and services from the district, education service district, state institution of higher education, other governmental unit or any person or legal entity.
  - j. The public charter school may not levy taxes or issue bonds under which the public incurs liability.
  - k. The public charter school may receive and accept gifts, grants and donations from any source for expenditure to carry out the lawful functions of the school.
  - l. The district shall offer a high school diploma, modified diploma, extended diploma, alternative certificate to any public charter school student located in the district who meets the district's



and state's standards for a high school diploma, modified diploma, extended diploma, alternative certificate.

- m. A high school diploma, modified diploma, extended diploma, alternative certificate issued by a public charter school shall grant to the holder the same rights and privileges as a high school diploma, modified diploma, extended diploma, alternative certificate issued by a nonchartered public school.
- n. Upon application by the public charter school, the State Board of Education may grant a waiver of certain public charter school law provisions if the waiver promotes the development of programs by providers, enhances the equitable access by underserved families to the public education of their choice, extends the equitable access to public support by all students or permits high quality programs of unusual cost. This waiver request must specify the reasons the public charter school is seeking the waiver and further requires the public charter school to notify the sponsor if a waiver is being considered.

#### 6. Virtual Public Charter School Operation

- a. In addition to the other requirements for a public charter school, a virtual public charter school must have:
  - (1) A plan for academic achievement that addresses how the school will improve student learning and meet academic content standards required by ORS 329.045;
  - (2) Performance criteria the school will use to measure the progress of the school in meeting the academic performance goals set by the school for its first five years of operation;
  - (3) A plan for implementing the proposed education program of the school by directly and significantly involving parents and guardians of students enrolled in the school and involving the professional employees of the school;
  - (4) A budget, business plan and governance plan for the operation of the school;
  - (5) An agreement that the school will operate using an interactive, Internet-based technology platform that monitors and tracks student progress and attendance in conjunction with performing other student assessment functions;
  - (6) A plan that ensures:
    - (a) All superintendents, assistant superintendents and principals of the schools are licensed by the TSPC to administrate; and
    - (b) Teachers who are licensed to teach by the TSPC, teach at least 95 percent of the school's instructional hours.
  - (7) A plan for maintaining student records and school records, including financial records, at a designated central office of operations;
  - (8) A plan to provide equitable access to the education program of the school by ensuring that each student enrolled in the school:
    - (a) Has access to and use of a computer and printer equipment as needed;
    - (b) Is offered an Internet service cost reimbursement arrangement under which the school reimburses the parent or guardian of the student, at a rate set by the school, for the costs of obtaining Internet service at the minimum connection speed required to effectively access the education program provided by the school; or
    - (c) Has access to and use of computer and printer equipment and is offered Internet service cost reimbursement.



- (9) A plan to provide access to a computer and printer equipment and the Internet service cost reimbursement as described in (98) above by students enrolled in the school who are from families that qualify as low-income under Title I of the ESSA;
  - (10) A plan to conduct school-sponsored optional educational events at least six times each school year at locations selected to provide convenient access to all students in the school who want to participate;
  - (11) A plan to conduct biweekly meetings between teachers and students enrolled in the school, either in person or through the use of conference calls or other technology;
  - (12) A plan to provide opportunities for face-to-face meetings between teachers and students enrolled in the school at least six times each school year;
  - (13) A plan to provide written notice to both the sponsoring district and the district in which the student resides upon enrollment or withdrawal for a reason other than graduation from high school:
    - (a) If notice is provided due to enrollment, then the notice must include the student's name, age, address and school at which the student was formerly enrolled;
    - (b) If notice is provided due to withdrawal for a reason other than graduation from high school, then notice must include the student's name, age, address, reason for withdrawal (if applicable) and the name of the school in which the student intends to enroll (if known).
  - (14) An agreement to provide a student's education records to the student's resident school district or to the sponsor upon request of the resident school district or sponsor.
- b. The sponsor of a virtual public charter school or a member of the public may request access to any of the documents described in a. above.
  - c. If a virtual public charter school or the sponsor of a virtual public charter school contracts with a for-profit entity to provide educational services through the virtual public charter school, the for-profit entity may not be the employer of any employees of the virtual public charter school.
  - d. The following limitations apply:
    - (1) School board members of the virtual public charter school's sponsoring district may not be:
      - (a) An employee of the virtual public charter school;
      - (b) A member of the governing body of the virtual public charter school;
      - (c) An employee or other representative of any third-party entity with which the virtual public charter school has entered into a contract to provide educational services.
    - (2) Members of the governing body of the virtual public charter school may not be an employee of a third-party entity with which the virtual public charter school intends to enter or has entered into a contract to provide educational services;
    - (3) If a third-party entity contracts with a virtual public charter school to provide educational services to the school, then:
      - (a) No third-party entity's employee or governing board member may attend an executive session of the sponsoring district's school board;
      - (b) No virtual public charter school employee may promote the sale or benefits of private supplemental services or classes offered by the third-party entity;

- (c) The educational services must be consistent with state standards and requirements;
- (d) The virtual public charter school must have on file the third-party entity's budget for the provision of educational services, including itemization of:
  - (i) The salaries of supervisory and management personnel and consultants who are providing educational or related services for a virtual public charter school in this state; and
  - (ii) The annual operating expenses and profit margin of the third-party entity for providing educational services to a virtual public charter school in this state.

7. Charter Agreement Review

- a. The public charter school shall report at least annually on the performance of the school and its students to the State Board of Education and the district.
- b. The Board or designee shall visit the public charter school at least annually to assure compliance with the terms and provisions of the charter.
- c. The public charter school shall be audited annually in accordance with the Municipal Audit Law. After the audit, the public charter school shall forward a copy of the audit to ODE and the following to the sponsoring district:
  - (1) A copy of the annual audit;
  - (2) Any statements from the public charter school that show the results of operations and transactions affecting the financial status of the charter school during the preceding annual audit period for the school; and
  - (3) Any balance sheet containing a summary of the assets and liabilities of the public charter school and related operating budget documents as of the closing date of the preceding annual audit period for the school.
- d. The sponsoring district may request at any time an acknowledgment from each member of the public charter school governing body that the member understands the standards of conduct and liabilities of a director of a nonprofit organization.
- e. [The public charter school shall submit to the Board quarterly financial statements that reflect the school's financial operations. The report shall include, but not be limited to, revenues, expenditures, loans and investments.]

8. Charter School Renewal

- a. The first renewal of a charter shall be for the same time period as the initial charter. Subsequent renewals of a charter shall be for a minimum of five years but may not exceed 10 years.
- b. The Board and the public charter school shall follow the timeline listed below, unless a different timeline has been agreed upon by the Board and the public charter school:
  - (1) The public charter school shall submit a written renewal request to the Board for consideration at least 180 days prior to the expiration of the charter;
  - (2) Within 45 days after receiving a written renewal request from a public charter school, the Board shall hold a public hearing regarding the renewal request;
  - (3) Within 30 days after the public hearing, the Board shall approve the charter renewal or state in writing the reasons for denying charter renewal;

- (4) If the Board approves the charter renewal, the Board and the public charter school shall negotiate a new charter within 90 days unless the Board and the public charter school agree to an extension of the time period. Notwithstanding the time period specified in the charter, an expiring charter shall remain in effect until a new charter is negotiated;
- (5) If the Board does not renew the charter, the public charter school may address the reasons stated for denial of the renewal and any remedial measures suggested by the Board and submit a revised request for renewal to the Board;
- (6) If the Board does not renew the charter based on the revised request for renewal or the parties do not negotiate a charter contract within the timeline established in this policy, the public charter school may appeal the Board's decision to the State Board of Education for a review of whether the Board used the process required by Oregon law in denying the charter renewal.
  - (a) If the State Board of Education finds that the Board used the appropriate process in denying the request for renewal, it shall affirm the decision of the Board. A public charter may seek judicial review of this order.
  - (b) If the State Board of Education finds that the Board did not use the appropriate process in denying the request for renewal, it shall order the Board to reconsider the request for renewal. If after reconsideration the Board does not renew the charter, the public charter school may seek judicial review of the Board's decision.
- (7) The Board shall base the charter renewal decision on a good faith evaluation of whether the public charter school:
  - (a) Is in compliance with all applicable state and federal laws;
  - (b) Is in compliance with the charter of the public charter school;
  - (c) Is meeting or working toward meeting the student performance goals and agreements specified in the charter or any other written agreements between the Board and the public charter school;
  - (d) Is fiscally stable and used the sound financial management system described in the proposal submitted under ORS 338.045 and incorporated into the written charter agreement; and
  - (e) Is in compliance with any renewal criteria specified in the charter of the public charter school.
- (8) The Board shall base the renewal evaluation described above primarily on a review of the public charter school's annual performance reports, annual audit of accounts and annual site visit and review and any other information mutually agreed upon by the public charter school and the Board;
- (9) For purposes of this section, the phrase "good faith evaluation" means an evaluation of all criteria required by this section resulting in a conclusion that a reasonable person would come to who is informed of the law and the facts before that person.

## 9. Charter School Termination

- a. The public charter school may be terminated by the Board for any of the following reasons:
  - (1) Failure to meet the terms of an approved charter agreement or any requirement of ORS Chapter 338 unless waived by the State Board of Education;

- (2) Failure to meet the requirements for student performance as outlined in the charter agreement;
  - (3) Failure to correct a violation of federal or state law;
  - (4) Failure to maintain insurance;
  - (5) Failure to maintain financial stability;
  - (6) Failure to maintain, for two or more consecutive years, a sound financial management system described in the proposal submitted under ORS 338.045 and incorporated into the written charter under ORS 338.065;
  - (7) Failure to maintain the health and safety of the students.
- b. If a public charter school is terminated by the Board for any reason listed in sections a. (1) through a. (7) **above**, the following shall occur:
- (1) The district shall give the public charter school a 60-day written notification of its decision;
  - (2) If the grounds for termination include failure to maintain financial stability or failure to maintain a sound financial management system, the sponsor and the public charter school may agree to develop a plan to correct deficiencies. The plan to correct deficiencies will follow the process as per ORS 338.105;
  - (3) The district shall state the grounds for termination and deliver notification to the business office of the public charter school;
  - (4) The public charter school may request a hearing by the district. The request must be made in writing and delivered to the business address of the sponsor;
  - (5) Within 30 days of receiving the request for a hearing, the sponsor must provide the public charter school with the opportunity for a hearing on the proposed termination;
  - (6) The public charter school may appeal the decision to terminate to the State Board of Education;
  - (7) If the public charter school appeals the decision to terminate to the State Board of Education, the public charter school will remain open until the State Board issues its final order;
  - (8) If the State Board's final order upholds the decision to terminate and at least 60 days have passed since the notice of intent to terminate was received by the public charter school, the district's sponsorship of the public charter school will terminate;
  - (9) The final order of the State Board may be appealed under the provision of ORS 183.484;
  - (10) Throughout the ORS 183.484 judicial appeals process the public charter school shall remain closed;
  - (11) If terminated or dissolved, assets of the public charter school purchased by the public charter school with public funds, shall be given to the State Board of Education.
- c. If the public charter school is terminated by the Board for any reason related to student health or safety as provided in section a. (7) **above**, the following shall occur:
- (1) If the district reasonably believes that a public charter school is endangering the health or safety of the students enrolled in the public charter school, the district may act to immediately terminate the approved charter and close the public charter school without providing the notice required in section b. (1) **above**;
  - (2) A public charter school closed due to health or safety concerns may request a hearing by the sponsor. Such a request must be made in writing and delivered to the business address of the district;

- (3) Within 10 days of receiving the request for a hearing, the district must provide the public charter school with the opportunity for a hearing on the termination;
  - (4) If the district acts to terminate the charter following the hearing, the public charter school may appeal the decision to the State Board of Education;
  - (5) The State Board will hold a hearing on the appeal within 10 days of receiving the request;
  - (6) The public charter school will remain closed during the appeal process unless the State Board orders the district not to terminate and to re-open the public charter school; and
  - (7) The final order of the State Board may be appealed under the provisions of ORS 183.484.
- d. If the public charter school is terminated, closed or dissolved by the governing body of the public charter school, it shall be done only at the end of a semester and with 180 days' notice to the district, unless the health and safety of the students are in jeopardy. Such notice must be made in writing and be delivered to the business address of the sponsor.

Assets of a terminated, closed or dissolved public charter school that were obtained with grant funds will be dispersed according to the terms of the grant. If the grant is absent any reference to ownership or distribution of assets of a terminated, closed or dissolved public charter school, all assets will be given to the State Board of Education for disposal.

#### 10. District Immunity

The district, members of the Board and employees of the district are immune from civil liability with respect to the public charter school's activities.