

581-021-0038

Minimum Requirements for School District Sexual Harassment Policies

(1) For purposes of this rule:

(a) "District" includes school district, education service district, and public charter school.

(b)(A) "Sexual harassment" includes:

(i) A demand or a request for sexual favors in exchange for benefits.

(ii) Unwelcome conduct of a sexual nature that is physical, verbal, or nonverbal and that:

(1) Interferes with a student's educational activity or program;

(2) Interferes with a school or district staff member's ability to perform their job; or

(3) Creates an intimidating, offensive, or hostile environment.

(iii) Assault, when sexual contact occurs without a person's consent because the person is:

(1) Under the influence of drugs or alcohol;

(2) Unconscious;

(3) Coerced; or

(4) Pressured through physical force or explicit or implied threats.

(B) "Sexual harassment" does not include:

(i) Conduct that is necessary because of a job duty of a school or district staff member or because of a service required to be provided by a contractor, agent, or volunteer, if the conduct is not the product of sexual intent.

(ii) Conduct that a person perceives is offensive, if the perception is based entirely on another person's personal expression of sexual orientation or gender identity.

(c) "Third party" means a person who is not a student or a school or district staff member and who is:

(A) On or immediately adjacent to school grounds or district property;

(B) At a school-sponsored or district-sponsored activity or program; or

(C) Off school grounds or district property if a student or a school or district staff member acts toward the person in a manner that creates a hostile environment for the person in an environment described in subparagraphs (A) and (B) of this paragraph.

(2) It is the policy of the Oregon State Board of Education that all students, staff members, and other persons in Oregon schools are entitled to learn and work in an environment that is free of harassment. To that end, sexual harassment will not be tolerated in Oregon schools.

(3) School districts shall adopt policies that meet the requirements set forth in subsection (5) of this rule that address the sexual harassment of:

(a) Students by school and district staff members or by other students;

(b) School and district staff members by students or by other staff members; and

(c) Third parties.

(4) Policies adopted pursuant to this rule must be:

(a) Published in the school or district student handbook;

(b) Published on the school or district website;

(c) Made available at each school office and at the district office;

(d) Posted on a sign in all schools teaching a grade between grade 6 and 12, on a sign that is at least 8.5 by 11 inches in size; and

(e) Made available upon request to students, parents of students, school and district staff members, and third parties.

(5) A policy adopted pursuant to this rule must include, but is not limited to, the following requirements:

(a) A statement of the district's commitment to eliminate sexual harassment;

(b) All students and school and district staff are subject to the policy;

(c) One or more definitions for the types of harassment covered by the policy;

(d) Examples of the kinds of harassing behaviors covered by the policy;

(e) The name and position of each employee responsible for accepting and managing complaints of harassment covered by the policy and how to contact the employee or employees;

(f) A requirement that when a school or district staff member becomes aware of behavior that may violate the policy, the staff member shall report the behavior to a district official, and a

requirement that the district official shall take any action necessary to ensure that the impacted person is protected and to promote a nonhostile work environment, including:

(A) Providing resources and support measures to the impacted person; and

(B) Taking any action that is necessary to remove the potential future impact on the impacted person, provided that the action is not retaliatory against the impacted person or the staff member who reported the behavior;

(g) The initiation of a complaint, reporting of behavior, or participation in an investigation, in good faith about behavior that may violate the policy may not adversely affect:

(A) The educational assignments or educational environment of a student or other person initiating the complaint, reporting the behavior, or participating in the investigation;

(B) Any terms or conditions of employment or of work or educational environment of a school or district staff member or other person initiating the complaint, reporting the behavior, or participating in the investigation;

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

(i) When a student, staff member, or third party files a complaint under the policy, the district must provide notice as required by subsection (6) to:

(A) Each reporting person;

(B) If appropriate, any impacted person who is not a reporting person;

(C) Each reported person; and

(D) Where applicable, a parent or legal guardian of a reporting person, impacted person, or reported person;

(j) Each person receiving notice under paragraph (i) of this subsection shall be notified when the investigation is initiated and is concluded, and whether a violation of the policy was found to have occurred following the investigation, to the extent allowable under state and federal student confidentiality laws;

(k) All complaints about behavior that may violate the policy shall be investigated;

(l) Identification of the means the district will use to investigate incidents of harassment covered by the policy;

(m) Procedures to address sexual harassment of students or school or district staff members by third parties;

(n) Standards for determining whether a hostile environment exists;

(o) Remedial action the district will take to stop harassment covered by the policy and prevent reoccurrence; and

(p) Prohibition of retaliation against persons who initiate a complaint or otherwise report harassment covered by the policy or who participate in an investigation or other related activities

(6) Written notification required under subsection (5)(i) must include, but is not limited to:

(a) Name and contact information for all persons designated by the district to receive complaints;

(b) The rights of the person;

(c) Information about the privacy rights of the person and legally recognized exceptions to those privacy rights;

(d) Information about the complaint process, including any applicable timelines;

(e) Notice that civil and criminal remedies that are not provided by the district may be available to the person through the legal system, and that those remedies may be subject to statutes of limitation;

(f) Information about services available to the person through the district, including any counseling services, nursing services, or peer advising;

(g) Information about and contact information for support services available to the person, including:

(A) For the reporting person, state and community-based resources for persons who have experienced sexual harassment; or

(B) For the reported persons, information about and contact information for state and community-based mental health services;

(h) Notice of the prohibitions of discipline as described in subsection (5)(h); and

(i) Notice of prohibition of retaliation;

(7) The Department of Education will provide technical assistance, including assistance in the development of appropriate training, to districts upon request in the development of appropriate sexual harassment policies as required by this rule.

Statutory/Other Authority: ORS 326.051

Statutes/Other Implemented: ORS 342.700 - 342.708

History:

[ODE 6-2019, amend filed 01/22/2019, effective 01/22/2019](#)

[ODE 34-2018, temporary amend filed 10/31/2018, effective 11/01/2018 through 04/29/2019](#)

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