

**Sexual Conduct Investigations and Abuse Notifications**  
**Mark Mayer, 4/30/2020**

**OAR 581-055-0001**

**Definitions**

For purposes of OAR 581-055-0014 to OAR 581-055-0017:

(1) “Agent” means a person acting on behalf of an education provider in a manner that requires the person to have direct, unsupervised contact with students.

(2) “Contractor” means a person providing services to an education provider under a contract in a manner that requires the person to have direct, unsupervised contact with students.

(3)(a) “Education provider” means:

(A) A school district, as defined in ORS 332.002;

(B) The Oregon School for the Deaf;

(C) An educational program under the Youth Corrections Education Program;

(D) A public charter school, as defined in ORS 338.005;

(E) An education service district, as defined in ORS 334.003;

(F) Any state-operated program that provides educational services to students; and

(G) A private school.

(b) “Education provider” does not include:

(A) The Oregon Youth Authority;

(B) The Department of Corrections; or

(C) The Department of Education, except when functioning as an education provider on behalf of:

(i) The Oregon School for the Deaf;

(ii) An educational program under the Youth Corrections Education Program; or

(iii) A public charter school, as defined in ORS 338.005, that is sponsored by the Department of Education.

(4) "Investigation" means a detailed inquiry into the factual allegations of a report of suspected sexual conduct that:

(a) 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

(b) Results in a finding that the allegations are substantiated, cannot be substantiated, or do not constitute sexual conduct.

(5) "Private school" means a school that provides to students instructional programs that are not limited solely to dancing, drama, music, religious, or athletic instruction.

(6) "School employee" means an employee of an education provider.

(7)(a) "Sexual Conduct" means:

(A) Conduct by a school employee, a contractor, an agent, or a volunteer that is verbal or physical in nature, that involves a student, and that is:

(i) A sexual advancement or request for sexual favors directed toward a student; or

(ii) Of a sexual nature that is directed toward a student or that has the effect of unreasonably interfering with a student's educational performance, or of creating an intimidating, hostile, or offensive educational environment.

(B) Communications by a school employee, a contractor, an agent, or a volunteer that are verbal, written, or electronic in nature, that involve a student, and that are:

(i) Sexual advances or requests for sexual favors directed toward a student; or

(ii) Of a sexual nature that are directed toward a 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.

(b) "Sexual conduct" does not include touching for which there is no sexual intent and that is necessitated by the nature of a school employee's job duties or by the services required to be provided by a contractor, agent, or volunteer.

(8) "Student" means any person:

- (a) Who is in any grade from prekindergarten through grade 12;
  - (b) Who is twenty-one years of age or younger and receives educational or related services from an education provider that is not a post-secondary institution of education; or
  - (c) Who was previously known as a student by the person engaging in sexual conduct and who left school or graduated from high school 90 or fewer days before the date on which the sexual conduct occurred.
- (9) “Substantiated” means a finding, based on the evidence available after the conclusion of an investigation, that there is reasonable cause to believe that sexual conduct occurred.
- (10) “Volunteer” means a person acting as a volunteer for an education provider in a manner that requires the person to have direct, unsupervised contact with students.

Statutory/Other Authority: ORS 326.051, 339.391

Statutes/Other Implemented: ORS 339.391, 419B.019

#### **OAR 581-055-0004**

#### **Sexual Conduct Investigations by the Department of Education**

- (1) When the Department of Education receives a report of suspected sexual conduct that may have been committed by a school employee, contractor, agent, or volunteer who is not licensed by the Teacher Standards and Practices Commission, the department shall initiate an investigation of the alleged sexual conduct within a reasonable time after receiving the report.
- (2)(a) When the department receives a report under subsection (1) of this rule, the department shall determine:
- (A) Whether the report alleges sexual conduct; and
  - (B) If the report alleges sexual conduct, whether a school employee, contractor, agent, or volunteer who is not licensed by the commission allegedly committed the sexual conduct.
- (b) If the department determines that the report alleges sexual conduct and a school employee, contractor, agent, or volunteer allegedly committed the sexual conduct, the department shall initiate an investigation as described in subsection (3) of this rule.
- (3)(a) To initiate an investigation described in subsection (1) of this rule, the department shall send notice of the investigation to:

(A) The education provider for which the school employee, contractor, agent, or volunteer alleged to have committed the sexual conduct was working, acting, or performing services when the abuse allegedly occurred; and

(B) Any other education provider that the Department of Education determines must receive notice to ensure the safety of students.

(b) Except as prohibited by law, notice sent under this subsection must include: \_\_\_\_\_.

(4) A person appointed to conduct an investigation under this rule may:

(a) Issue subpoenas to require the attendance of witnesses or the production of documents;

(b) Subpoena witnesses; and

(c) Swear witnesses and compel obedience in the same manner as provided by law for state agencies in contested cases.

Statutory/Other Authority: ORS 326.051, 339.391

Statutes/Other Implemented: ORS 339.391

#### **OAR 581-055-0007**

##### **Sexual Conduct Final Reports by the Department of Education**

(1) After completing an investigation under OAR 581-055-0004, the Department of Education shall send notice of the investigation to the following:

(a) The person alleged to have committed the sexual conduct;

(b) The student involved and, if applicable, the student's parent or legal guardian;

(c) Each education provider that received notice of the investigation;

(d) Each person who made the report of suspected sexual conduct; and

(e) Any regulatory board other than the Teacher Standards and Practices Commission that licenses, registers, certifies, or otherwise authorizes the actions of or the performance of services by the school employee, contractor, agent, or volunteer to practice a profession or provide professional services.

(2) Notice sent under this rule must include the following information:

(a) A cite to the department's statutory authority to conduct the investigation;

- (b) The procedural background of the investigation;
  - (c) The legal standards and arguments used for the investigation;
  - (d) The department's findings of fact from the investigation;
  - (e) The department's final determination based on the findings of fact; and
  - (f) The right to an appeal under either OAR 137-003-0000 to 137-003-0092 or 137-137-0501 to 137-003-0700, as described in OAR 581-055-0011.
- (3)(a) Notice sent under subsection (1) of this rule must be sent in 90 or fewer calendar days after the department receives the report of suspected sexual conduct under OAR 581-055-0004.
- (b) The department may extend the time by which the department must send notice under paragraph (a) of this subsection if, for good cause, the department determines that a longer period of time is necessary.

Statutory/Other Authority: ORS 326.051, 339.391  
Statutes/Other Implemented: ORS 339.391

#### **OAR 581-055-0011**

##### **Appeal of Matters Asserted**

- (1) In \_\_\_ of fewer calendar days after sending notice of the investigation under OAR 581-055-0007, the Department of Education shall send notice of a right to a contested case hearing under OAR 137-003-0000 to 137-003-0092 or 137-003-0501 to 137-003-0700, as specified in the notice sent under subsection (2) of this rule, to the parties who received the notice of investigation pursuant to OAR 581-055-0007(1).
- (2) In \_\_\_ or fewer calendar days after receiving notice under this rule, a person may request from the department a contested case hearing to appeal the matter asserted in the notice. Contested cases requested under this section are subject to the provisions established for contested case hearings under OAR 137-003-0000 to 137-003-0092 or 137-003-0501 to 137-003-0700, as specified in the notice sent under subsection (2) of this rule.

Statutory/Other Authority: ORS 326.051, 339.391  
Statutes/Other Implemented: ORS 339.391

#### **OAR 581-055-0014**

## **Confidentiality of Documents, Materials, and Reports**

(1) Except as provided in subsection (2) of this rule, documents and materials used in an investigation conducted pursuant to OAR 581-055-0004, and reports related to the investigation, are confidential and not subject to public inspection.

(2) To the extent allowed by state and federal law, upon request, the department shall make documents, materials, and reports described in subsection (1) of this rule available to:

(a) A law enforcement agency or the Department of Human Services, if necessary to conduct an investigation of abuse;

(b) The Teacher Standards and Practices Commission, if necessary to conduct an investigation of suspected sexual conduct by a school employee, contractor, agent, or volunteer who is licensed by the commission; and

(c) An education provider, if necessary for the education provider to take disciplinary action against, make changes to the employment of, or make changes to the duties of a school employee, contractor, agent, or volunteer.

Statutory/Other Authority: ORS 326.051, 339.391

Statutes/Other Implemented: ORS 339.391

## **OAR 581-055-0017**

### **Notice of Abuse from the Department of Human Services**

(1) When the Department of Education receives notice from the Department of Human Services of a report of suspected abuse pursuant to ORS 419B.019, the Department of Education, in three or fewer business days after receiving notice from the Department of Human Services, shall send notice to:

(a) The education provider for which the school employee, contractor, agent, or volunteer alleged to have conducted the sexual conduct was working, acting, or performing services when the abuse allegedly occurred; and

(b) Any other education provider that the Department of Education determines must receive notice to ensure the safety of students.

(2) Except as prohibited by law, notice sent under this rule must include: \_\_\_\_\_.

Statutory/Other Authority: ORS 326.051

Statutes/Other Implemented: ORS 419B.019