

Guidance on Discriminatory Harassment and Bullying

Overview

The Oregon Department of Education (ODE) fosters excellence for every learner and recognizes that academic success depends on a safe school environment. As an organization, we value equity for every student; this includes an educational environment safe and free from discrimination and harassment, ensuring that every student has equal access to educational programs and activities.

Under Oregon law, “[a] person may not be subjected to discrimination in any public elementary, secondary or community college education program or service, school or interschool activity or in any higher education program or service, school or interschool activity where the program, service, school or activity is financed in whole or in part by moneys appropriated by the Legislative Assembly.”¹ Discrimination includes “any act that unreasonably differentiates treatment, intended or unintended, or any act that is fair in form but discriminatory in operation, either of which is based on race, color, religion, sex, sexual orientation, national origin, marital status, age or disability.”²

Federal law, under Title VI of the Civil Rights Act of 1964, prohibits discrimination on the basis of race, color, or national origin in programs or activities that receive federal financial assistance. Discrimination based on race, color or national origin includes discrimination based on a person’s actual or perceived race, color, national origin, ethnicity or ancestry. This includes discrimination based on the country, world region or place where people or their ancestors come from; a person’s English learner or limited English proficiency; or a person’s actual or perceived shared ancestry or ethnic characteristics, including membership in a religion that may be perceived to exhibit such characteristics (such as Hindu, Jewish, Muslim and Sikh individuals).³

Discriminatory Harassment and Bullying

Harassing conduct may take many forms, including verbal acts and name-calling; graphic and written statements, which include use of cell phones or the Internet; or other conduct that may be physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Harassment creates a hostile environment when the conduct is sufficiently severe, pervasive or persistent, so as to interfere with or limit a student’s ability to participate in or benefit from the services, activities, or opportunities offered by a school. When such harassment is based on race, color or national origin it violates civil rights laws that Oregon enforces.

A school is responsible for addressing harassment incidents about which it knows or reasonably should have known. In some situations, the obvious signs of harassment are sufficient to put a school/district on notice. These include harassment that is in plain sight, widespread, or well known to students and staff, such as harassment occurring in hallways during academic or physical education classes, during extra-curricular activities, at recess, on a school bus, or through graffiti in public areas.

In other situations, the school may become aware of misconduct, triggering an investigation that could lead to the discovery of additional incidents that, taken together, may constitute a hostile environment. In all cases, schools should have well publicized policies available in languages of the communities served, prohibiting

harassment and providing procedures for reporting and resolving complaints that will alert the school to incidents.

Appropriate steps to end harassment may include separating the accused harasser and the recipient of the harassment, providing counseling for the recipient and/or harasser, or taking disciplinary action against the harasser. These steps should not penalize the student who was harassed. For example, any separation of the recipient from an alleged harasser should be designed to minimize the burden on the recipient's educational program (e.g., not requiring the recipient to change class schedule).

Finally, a school should take steps to stop further harassment and prevent any retaliation against the person who made the complaint (or was the subject of the harassment) or against those who provided information as witnesses. At a minimum, the school's responsibilities include making sure that the harassed students and their families know how to report any subsequent problems. Schools must also conduct follow-up inquiries to see if there have been any new incidents or instances of retaliation, and respond promptly and appropriately to address continuing or new problems.

These actions are important because of the possible impact of discriminatory harassment, which may include:

- Lowered academic achievement and aspirations
- Increased anxiety
- Loss of self-esteem and confidence
- Depression and Post Traumatic Stress
- General deterioration in physical health
- Self-harm and suicidal thinking
- Feelings of alienation in the school environment, such as fear of other children, staff or parents
- Absenteeism from school

Example: Over the course of a school year, school employees at a junior high school received reports of several incidents of anti-Semitic conduct at a school. Anti-Semitic graffiti, including swastikas, were scrawled on the walls of the school bathroom. When custodians discovered the graffiti and reported it to the school administrators, the administrators ordered the graffiti removed, but took no further action.

Analysis: The school administrators failed to recognize that anti-Semitic harassment can trigger responsibilities under discrimination laws. Groups that face discrimination on the basis of actual or perceived shared ancestry or ethnic characteristics may not be denied protection under discrimination laws on the ground that they also share a common faith. These principals apply not only to Jewish students, but also to students from any discrete religious group that shares, or is perceived to share ancestry or ethnic characteristics (e.g., Muslims or Sikhs). A school also has responsibilities under discrimination laws when its students are harassed based on their actual or perceived citizenship or residency in a country whose residence share a dominant religion or distinct religious identity.

1 ORS 659.850(2)

2 ORS 659.850(1)

3 Department of Education, Office for Civil Rights, Race and National Origin Discrimination FAQ,