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### Summary

Bullying can be based on any characteristic, including immigration status. Therefore, the policies that schools must adopt and enforce to protect students from bullying include protecting students from bullying based on immigration status.

### Discussion

In Oregon, students are protected from bullying, harassment, and discrimination based on race, color, national origin, and immigration status. The Oregon Department of Education (ODE) and Oregon school districts follow Oregon's nondiscrimination laws, including ORS 659.850, to safeguard students against discriminatory practices.

### Legal Protections Under Federal and State Law

Several state and federal laws require that schools adopt and enforce policies that protect students from bullying, which can include bullying based on immigration status. Those state and federal laws are:

- The Equal Protection Clause of the U.S. Constitution, as interpreted by the U.S. Supreme Court in *Plyler v. Doe*, protects immigrant students' right to access public education.
- FERPA (20 U.S.C. § 1232g) and Oregon Administrative Rules (OAR 581-021-0220, OAR 581-021-0665) protect students' personally identifiable information from unauthorized disclosure.

### Enrollment and Immigration Information Protections

Schools/districts may not restrict access to educational programs and activities based on a student's immigration status. This can include enrollment policies that may discourage families from enrolling their student.

Legal precedent and statutes demonstrating this protection are:

- The U.S. Supreme Court has found that immigrant students are protected under the Equal Protection Clause of the U.S. Constitution. *Plyler v. Doe*, 457 U.S. 202 (1982). The Family Educational Rights and Privacy Act ("FERPA") protects personally identifiable information (such as place of birth) in students' education records from unauthorized

disclosure. [20 U.S.C. § 1232g](#). Oregon also has comparable student record laws that prohibit unauthorized disclosure. [OAR 581-021-0220](#), [OAR 581-021-0665](#).

- Oregon sanctuary laws prohibit public bodies, including public schools, from disclosing certain personal information about any person for the purpose of enforcing federal immigration laws except under limited circumstances. Under Oregon’s sanctuary laws, public schools in the state of Oregon may not provide information or assistance to immigration officials in the enforcement of federal civil immigration law, except: 1. As may be required by a judicial subpoena issued as part of a court proceeding; or 2. To the extent that the requested information is available to the general public and under the same terms and conditions as the information is available to the general public. ORS 180.805; [ORS 181A.820, et. seq.](#)

## Bullying, Harassment, and Bias Incidents

Bullying can be based on any characteristic, including immigration status. Oregon requires school districts to adopt and enforce policies that prohibit bullying, harassment, and bias incidents.

Under Oregon law ([ORS 339.356](#); [ORS 339.347](#)), harassment, intimidation, or bullying means any act that:

- a) substantially interferes with a student’s educational benefits, opportunities or performance;
- b) takes place on or immediately adjacent to school grounds, at any school-sponsored activity, on school-provided transportation, or at any official school bus stop;
- c) Has the effect of:
  - (A) Physically harming a student or damaging a student’s property;
  - (B) Knowingly placing a student in reasonable fear of physical harm to the student or damage to the student’s property; or
  - (C) Creating a hostile educational environment, including interfering with the psychological well-being of a student; and
- d) May be based on, but not be limited to, the protected class status of a person. [ORS 339.351](#).

## Nondiscrimination in Public Education

Public schools are not permitted to discriminate against students based on their race, color, or national origin.

[ORS 659.850](#) prohibits discrimination on the basis of race, color, or national origin in any public elementary or secondary school, program, or interschool activity. While immigration status is not necessarily the same thing as race, color, and national origin as a protected class, it is

inherently intertwined. And immigration status is often used as a pretext for unlawful discrimination. Without specific knowledge of an individual's immigration status, any action taken on that basis is necessarily influenced by a perception of that individual's race or national origin because of characteristics that can be perceived by others, such as skin color, facial features, accent, primary language, family structures, etc. When these factors are used to determine whether a student will be treated differently from others because of their immigration status, that differential treatment is unlawful discrimination based on their race and/or national origin.

## **Conclusion**

Oregon law supports schools' adoption and enforcement policies that protect students from bullying based on immigration status. Differential treatment that a public school in Oregon takes or allows to be taken against a student purportedly based on their immigration status is potentially unlawful discrimination and within the agency's jurisdiction to investigate on appeal. Current federal protections based on race, color, and national origin complement Oregon law, but Oregon's nondiscrimination law, including ORS 659.850, will continue to be enforced by ODE, as necessary, to protect individuals from discriminatory acts.