

## Nondiscrimination Evaluation Tool: Responding to Notice of Discrimination

This tool is designed to help Oregon K-12 Civil Rights Coordinators quickly evaluate and respond to notice of possible discrimination under ORS 659.850 and related state/federal laws.

Every situation should be approached on a case-by-case basis. When any questions arise:

- Contact relevant coordinators: \_\_\_\_\_
- Check regulatory requirements under state and federal nondiscrimination laws
- Consult legal counsel

### 1. Is it discrimination?

***Discrimination:*** Does it involve a protected class?

- Race,
- Color,
- National origin,
- Religion,
- Age,
- Disability,
- Sex,
- Sexual orientation,
- Gender identity,
- Marital status

Includes actions or inaction by the recipient, and **retaliation**.

***Discrimination*** Examples:

- Different treatment,
- hostile environment harassment (unwelcome, subjectively and objectively offensive, severe, persistent, or pervasive, limits or denies access to an educational program or activity),
- Conduct that is fair in form but discriminatory in operation, or
- Other specific offenses (e.g. stalking)

### 2. Do other Oregon policies or school-specific practices apply?

***External Reporting:***

- [Mandatory Reporting of Child Abuse](#)
- [Sexual Misconduct \(SB 155\)](#)

***Possible Overlapping Internal Processes:***

- Bias Incident Response Protocols
- Behavior Safety Assessment
- Sexual Incident Response (SIRC)

***Possible Overlapping Policies:***

- [Oregon Sexual Harassment Policies](#)
- [Every Student Belongs](#)
- [Bullying, Harassment, and Intimidation](#) (policy requires parental notification)
- \_\_\_\_\_
- \_\_\_\_\_

*This is a sample resource prepared by the Oregon Department of Education for Oregon K-12 schools in alignment with Oregon's nondiscrimination law, ORS 659.850. This document is not legal advice and should not be taken as such. You may wish to consult with legal counsel. Contact [ode.civilrights@ode.oregon.gov](mailto:ode.civilrights@ode.oregon.gov) for more information.*

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### 3. Is IDEA or Section 504 support needed?

Do any of the parties involved have an IEP or 504 plan? **IF YES:**

- Consult with the party's IEP or 504 team throughout the process, including when developing supportive measures, before removal of a party, and throughout investigation.
- **CONSIDER:** What do we need to do to ensure FAPE throughout the process?

### 4. What supportive measures or safety plans are needed to ensure access?

Supportive measures should be offered to the complainant upon receiving notice. Supportive measures should be designed to restore or preserve access to the educational environment (including safety measures) and/or to provide support during the grievance process. Examples may include:

- Increased adult supervision
- Academic accommodations
- No contact agreements
- Check-in/check-out systems
- Schedule adjustments
- Counseling services

### 5. Are any immediate actions needed?

Examples of immediate actions include:

#### Immediate Remedies

Based on the information known, are there any immediate steps (non-disciplinary) the school could take to remedy the discrimination? Examples: staff training, procedural revision, program access.

#### Exclusion/Removal

Is the alleged behavior so severe that it merits temporary exclusion or removal of the respondent during the investigation? Be sure to consider removal/exclusion provisions under Section 504/IDEA/ASDP and Title IX.

### 6. What are the complainant's wishes?

What options does the complainant want to pursue? ***Provide unbiased information about all options without pressuring the complainant.***

- Formal complaint process
- Informal resolution (if available and appropriate; cannot be used in cases of employee-on-student sex-based harassment)
- Supportive measures only

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## 7. Will a formal investigation be initiated?

If a complaint has been filed, **YES**. In the absence of a filed complaint, consider if an investigation needs to be initiated by the school. May initiate if:

- Imminent and serious threat to the health or safety of complainant or another person
- Alleged conduct prevents recipient from ensuring equal access to programs and activities
- Discrimination is unlikely to resolve without a formal investigation

In considering whether to initiate, CRCs should evaluate:

- Complainant's wishes, safety concerns, risk of additional discrimination, severity, age and relationship of parties, scope of the discrimination (including patterns and number of victims), availability of evidence, and whether alternative resolutions are available