

Sexual Harassment

The Board is committed to the elimination of sexual harassment in ESD activities and programs. Sexual harassment is strictly prohibited and shall not be tolerated. This includes sexual harassment: of students by staff members, other students or third parties; of staff members by students, other staff members or third parties; and of third parties by staff members and students. This policy applies to third parties who are on or immediately adjacent to ESD property, are at any ESD-sponsored activity or program, or are off ESD property, if a student or staff member acts toward the person in a manner that creates a hostile environment for the person while at an ESD-sponsored activity or program.

“Third parties” include, but are not limited to, volunteers, parents, visitors, service contractors or others engaged in ESD business, such as employees of businesses or organizations participating in cooperative work programs with the ESD and others not directly subject to ESD control at interdistrict and intradistrict athletic competitions or other ESD events.

“ESD” includes: ESD facilities; ESD premises and non-ESD property if the student or staff member is at any ESD-sponsored, ESD-approved or ESD-related activity or function, such as field trips or athletic events where students are under the jurisdiction of the ESD; or where the staff member is engaged in ESD business. The prohibition also includes off duty conduct which is incompatible with a staff member’s ESD job responsibilities.

All staff members, students, and third parties are subject to this policy.

Sexual harassment of students, staff members or third parties shall include:

1. A demand or request for sexual favors in exchange for benefits;
2. Unwelcome conduct of a sexual nature that is physical, verbal or nonverbal and that interferes with a student’s educational program or activity or that creates an intimidating, offensive or hostile educational environment; unwelcome conduct of a sexual nature that is physical, verbal or nonverbal and that interferes with the staff member’s ability to perform the job or that creates an intimidating, offensive or hostile work environment; or unwelcome conduct of a sexual nature that is physical, verbal or nonverbal and that creates an intimidating, offensive or hostile environment; and
3. Assault when sexual contact occurs without the students, staff members or third party’s consent because the student, staff member or third party is under the influence of drugs or alcohol, is unconscious or is pressured through physical force, coercion or explicit or implied threats.

Examples of sexual harassment may include, but not be limited to, ¹physical touching or graffiti of a sexual nature; displaying or distributing of sexually explicit drawings; pictures and written materials; sexual gestures or obscene jokes; touching oneself sexually or talking about one’s sexuality in front of

¹ OAR 581-021-0038 requires that the policy include a “list of examples of harassing behaviors covered by policy”. The bracketed list in this policy reflects OSBA’s recommendations. The ESD does have discretion in what is included in this list. If you are listing behaviors not reflected in our recommendations, please make sure that you have your list reviewed by your ESD’s legal counsel.

others; or spreading rumors about or rating other students or others as to appearance, sexual activity or performance.

All complaints or reports about behavior that may violate this policy shall be promptly investigated.

Any staff member who becomes aware of behavior that may violate this policy shall immediately report to an ESD official so that the ESD official (and the reporting staff member when the victim of the harassment is a student or third party) may coordinate efforts to take any action necessary to ensure the:

1. Student is protected and to promote a nonhostile learning environment;
2. Staff member is protected and to promote a nonhostile work environment; or
3. Third party who is subjected to the behavior is protected and to promote a nonhostile environment.

This includes providing resources for support measures to the student, staff member or third party who was subjected to the behavior and taking any actions that are necessary to remove potential future impact on the student, staff member or third party, but are not retaliatory against the student, staff member or third party being harassed or the staff member who reported to the ESD official.

Any student or staff member who feels they are a victim of sexual harassment are encouraged to immediately report their concerns to ESD officials, this includes officials such as the principal, compliance officer or Superintendent. Students may also report concerns to a teacher, counselor or school nurse, who will promptly notify the appropriate ESD official.

Upon receipt of a complaint from a student or the student's parents, a staff member or a third party alleging behavior that may violate this policy, the ESD shall provide written notice as required by Oregon Revised Statute (ORS) 342.704(5) to the complainant.

The person who initiated the complaint and if applicable the student's parents or person's parents shall be notified when the investigation is initiated and concluded and as to whether a violation of this policy was found to have occurred to the extent allowable under state and federal student confidentiality laws.

The initiation of a complaint, and the participation in an investigation, in good faith about behavior that may violate this policy may not adversely affect the educational assignments or any terms or conditions of employment or of work or educational environment of the person who initiated the complaint or who participates in the investigation. There shall be no retaliation by the ESD against any person who, in good faith, reports, files a complaint or otherwise participates in an investigation or inquiry of sexual harassment.

It is the intent of the Board that appropriate corrective action will be taken by the ESD to stop the sexual harassment, prevent its recurrence and address negative consequences. Students in violation of this policy shall be subject to discipline up to and including expulsion and/or counseling or sexual harassment awareness training, as appropriate. The age and maturity of the student(s) involved and other relevant factors will be considered in determining appropriate action. Staff members in violation of this policy shall be subject to discipline, up to and including dismissal and/or additional sexual harassment awareness training, as appropriate. Other individuals whose behavior is found to be in violation of this policy shall be subject to appropriate sanctions as determined and imposed by the superintendent or the Board.

Additionally, the ESD may report individuals in violation of this policy to law enforcement officials. Licensed staff, staff registered with the Teacher Standards and Practices Commission (TSPC) and those participating in practicum programs, as specified by Oregon Administrative Rules, shall be reported to TSPC.

The superintendent shall ensure appropriate periodic sexual harassment awareness training or information is provided to all supervisors, staff members and students and that annually, the name and position of ESD officials responsible for accepting and managing sexual harassment complaints, business phone numbers, addresses or other necessary contact information is readily available. This policy as well as the complaint procedure will be made available upon request to all students, parents of students, staff members and third parties, posted on the ESD website and in ²student/parent and staff handbooks. The ESD’s policy shall be posted on a sign in ³all grade 6 through 12 programs. Posted signs shall be at least 8-1/2 inches by 11 inches in size.

The Superintendent will establish a process of reporting incidents of sexual harassment.

END OF POLICY

Legal Reference(s):

[ORS 243.706](#)

[ORS 334.125](#)

[ORS 342.700](#)

[ORS 342.704](#)

[ORS 342.708](#)

[ORS 342.850](#)

[ORS 342.865](#)

[ORS 659.850](#)

[ORS 659A.006](#)

[ORS 659A.029](#)

[ORS 659A.030](#)

[OAR 581-021-0038](#)

[OAR 584-020-0040](#)

[OAR 584-020-0041](#)

Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (2018).

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e (2018).

Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1683 (2018); Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 34 C.F.R. Part 106 (2019).

Bartsch v. Elkton School District, FDA-13-011 (March 27, 2014).

² If the ESD operates a school, this policy must be published in the student/parent handbook.

³ Posting in “all grade 6 through 12 schools” is the minimum requirement per ORS 342.700.