

Workplace Harassment *

Workplace harassment is prohibited and shall not be tolerated. This includes workplace harassment that occurs between ESD employees or between an ESD employee and the ESD in the workplace or at a work-related event that is off ESD premises and coordinated by or through the ESD, or between an ESD and an ESD employee off ESD premises. Elected school board members, volunteers and interns are subject to this policy.

Any ESD employee who believes they have been a victim of workplace harassment may file a report with the ESD employee designated in the administrative regulation GBEA-AR - Workplace Harassment Reporting and Procedure, may file a report through the Bureau of Labor and Industries' (BOLI) complaint resolution process or under any other available law. The reporting of such information is voluntary. The ESD employee making the report is advised to document any incidents of workplace harassment.

“Workplace harassment” means conduct that constitutes discrimination prohibited by Oregon Revised Statute (ORS) 659A.030 (discrimination in employment based on race, color, religion, sex, sexual orientation, gender identity, national origin, marital status, age, or expunged juvenile record), including conduct that constitutes sexual assault¹ or that constitutes conduct prohibited by ORS 659A.082 (discrimination against person in uniformed service) or 659A.112 (discrimination in employment based on disability).

The ESD, upon receipt of a report from an ESD employee who believes they are a victim of workplace harassment, shall provide information about legal resources and counseling and support services, including any available employee assistance services. The ESD employee receiving the report, whether a supervisor of the employer or the ESD employee designated to receive reports, is advised to document any incidents of workplace harassment, and shall provide a copy of this policy and accompanying administrative regulation to the victim upon their disclosure about alleged workplace harassment.

All incidents of behavior that may violate this policy shall be promptly investigated.

Any person who reports workplace harassment has the right to be protected from retaliation.

The ESD may not require or coerce an ESD employee to enter into a nondisclosure² or nondisparagement³ agreement.

¹ “Sexual assault” means unwanted conduct of a sexual nature that is inflicted upon a person or compelled through the use of physical force, manipulation, threat or intimidation.

² A “nondisclosure” agreement or provision prevents either party from disclosing the contents of or circumstances surrounding the agreement.

³ A “nondisparagement” agreement or provision prevents either party from making disparaging statements about the other party.

The ESD may not enter into an agreement with an employee or prospective employee, as a condition of employment, continued employment, promotion, compensation, or the receipt of benefits, that contains a nondisclosure provision, a nondisparagement provision or any other provision that has the purpose or effect of preventing the employee from disclosing or discussing workplace harassment that occurred between ESD employees or between an ESD employee and the ESD, in the workplace or at a work-related event that is off ESD premises and coordinated by or through the ESD, or between an ESD employee and employer off ESD premises.

The ESD may enter into a settlement agreement, separation or severance agreement that includes one or more of the following provisions only when an ESD employee claiming to be aggrieved by workplace harassment requests to enter into the agreement: 1) a nondisclosure or nondisparagement provision; 2) a provision that prevents disclosure of factual information relating to the claim of workplace harassment; or 3) a no-rehire provision that prohibits the employee from seeking reemployment with the ESD as a term or condition of the agreement. The agreement must provide the ESD employee at least seven days after signing the agreement to revoke it.

If the ESD determines in good faith that an employee has engaged in workplace harassment, the ESD may enter into a settlement, separation or severance agreement that includes one or more of the provisions described in the previous paragraph.

It is the intent of the Board that appropriate corrective action will be taken by the ESD to stop workplace harassment, prevent its recurrence and address negative consequences. Staff members in violation of this policy shall be subject to discipline, up to and including dismissal and/or additional workplace harassment awareness training, as appropriate. Other individuals (e.g., board members and volunteers) 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.

The ESD shall make this policy available to all ESD employees and shall be made a part of ESD orientation materials provided and copied to new ESD employees at the time of hire.

The Superintendent will establish a process of reporting incidents of workplace harassment and the prompt investigation.

END OF POLICY

Legal Reference(s):

ORS 174.100	ORS 659A.082	OAR 584-020-0040
ORS 659A.001	ORS 659A.112	OAR 584-020-0041
ORS 659A.003	ORS 659A.370	
ORS 659A.006	ORS 659A.820	Senate Bill 479 (2019)
ORS 659A.029	ORS 659A.875	
ORS 659A.030	ORS 659A.885	

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 (2020).
Bartsch v. Elkton School District, FDA-13-011 (March 27, 2014).
House Bill 3041 (2021).