Philomath School District 17J

Code: JBA/GBN
Adopted: 8/17/06
Revised/Readopted: 8/19/19; 12/16/19; 5/16/24
Orig. Code: JBA/GBN

Sexual Harassment

The district is committed to eliminating sexual harassment. Sexual harassment will not be tolerated in the district. All students, staff members and other persons are entitled to learn and work in an environment that is free of harassment. All staff members, students and third parties are subject to this policy. Any person may report sexual harassment.

The district processes complaints[1] or reports of sexual harassment under Oregon Revised Statute (ORS) 342.700 et. al. and federal Title IX laws found in Title 34 C.F.R. Part 106. Individual complaints may require both of these procedures, and may involve additional complaint procedures.

General Procedures

When information, a report or complaint regarding sexual harassment is received by the district, the district will review such information, report or complaint to determine which law applies and will follow the appropriate procedures. When the alleged conduct could meet both of the definitions in ORS Chapter 342 and Title IX, both complaint procedures should be processed simultaneously (*see* JBA/GBN-AR(1) - Sexual Harassment Complaint Procedure and JBA/GBN-AR(2) - Federal Law (Title IX) Sexual Harassment Complaint Procedure). The district may also need to use other complaint procedures when the alleged conduct could meet the definitions for other complaint procedures.

OREGON DEFINITION AND PROCEDURES

Oregon Definition

Sexual harassment of students, staff members or third parties[2] 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:

    a. Interferes with a student's educational activity or program;
    b. Interferes with a school or district staff member's ability to perform their job; or
    c. Creates an intimidating, offensive, or hostile environment.

[1] The District acknowledges that the terms "complaint" and "complainant" have a stigma associated with them that discourages victims from reporting conduct. The terms used in this policy are consistent with those included in the law.

[2] "Third party" means a person who is not a student or a school or district staff member and who is: 1) on or immediately adjacent to school grounds or district property; 2) at a school-sponsored activity or program; or 3) off school grounds or district property if a student or a school or district staff member acts toward the person in a manner that creates a hostile environment for the person while on school or district property, or at a school- or district-sponsored activity.

3. Assault when sexual contact occurs without consent[3].

Sexual harassment does not include conduct that is necessary because of a job duty of a school or district staff member or because of a service required to be provided by a contractor, agent, or volunteer, if the conduct is not the product of sexual intent or a person finding another person, or another person's actions, offensive because of that other person's sexual orientation or gender identity.

Examples of sexual harassment may include, but not be limited to, physical 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 sexual behaviors in front of others; or spreading rumors about or rating other students or others as to appearance, sexual activity or performance.

Oregon Procedures

Reports and complaints of sexual harassment should be made to the following individual(s):

Name	Position	Phone	Email
Susan Halliday	Superintendent	541-929-3169	susan.halliday@philomath.k12.or.us

This individual is responsible for accepting and managing complaints of sexual harassment. Persons wishing to report should contact them using the above information. This person is also designated as the Title IX coordinator. *See* JBA/GBN-AR(1) - Sexual Harassment Complaint Procedure.

Response

Any staff member who becomes aware of behavior that may violate this policy shall immediately report to a district official. The district official (with coordination involving the reporting staff member when appropriate) will 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 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 person who reported to the district official.

Any student or staff member who feels they are a victim of sexual harassment are encouraged to immediately report their concerns to district 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 district official.

[3] "Without consent" means an act performed: (a) without the knowing, voluntary and clear agreement by all parties to participate in the specific act; or (b) when a person who is a party to the act is incapacitated by drugs or alcohol; unconscious; or pressured through physical force, coercion or explicit or implied threats to participate in the act.

Investigation

All reports and complaints about behavior that may violate this policy shall be investigated. The district may use, but is not limited to, the following means for investigating incidents of possible harassment:

1. Interviews with those involved;

2. Interviews with witnesses;

3. Review of video surveillance;

4. Review of written communications, including electronic communications;

5. Review of any physical evidence; and

6. Use of third-party investigator.

The district will use a reasonable person standard when determining whether a hostile environment exists. A hostile environment exists if a reasonable person with similar characteristics and under similar circumstances would consider the conduct to be so severe as to create a hostile environment.

The district may take, but is not limited to, the following procedures and remedial action to address and stop sexual harassment:

1. Discipline of staff and students engaging in sexual harassment;

2. Removal of third parties engaged in sexual harassment;

3. Additional supervision in activities;

4. Additional controls for district electronic systems;

5. Trainings and education for staff and students; and

6. Increased notifications regarding district procedures and resources.

When a student or staff member is harassed by a third party, the district will consider the following:

1. Removing that third party's ability to contract or volunteer with the district, or be present on district property;

2. If the third party works for an entity that contracts with the district, communicating with the third party's employer;

3. If the third party is a student of another district or school, communicate information related to the incident to the other district or school;

4. Limiting attendance at district events; and

5. Providing for additional supervision, including law enforcement if necessary, at district events.

No Retaliation

Retaliation against persons who initiate complaint or otherwise report sexual harassment or who participate in an investigation or other related activities is prohibited. The initiation of a complaint, reporting of behavior, or participation in an investigation, in good faith about behavior that may violate this policy may not adversely affect the:

1. Educational assignments or educational environment of a student or other person initiating the complaint, reporting the behavior, or participating in the investigation; or

2. Any terms or conditions of employment or of work or educational environment of a school or district staff member or other person initiating the complaint, reporting the behavior, or participating in the investigation.

Students who initiate a complaint or otherwise report harassment covered by the policy or who participate in an investigation may not be disciplined for violations of the district's drug and alcohol policies that occurred in connection with the reported prohibited conduct and that were discovered because of the report or investigation, unless the student gave another person alcohol or drugs without the person's knowledge and with the intent of causing the person to become incapacitated and vulnerable to the prohibited conduct.

Notice

When a person[4] who may have been affected by this policy files a complaint or otherwise reports behavior that may violate the policy, the district shall provide written notification to the following:

1. Each reporting person;

2. If appropriate, any impacted person who is not a reporting person;

3. Each reported person; and

4. Where applicable, a parent or legal guardian of a reporting person, impacted person, or reported person.

The written notification must include[5]:

1. Name and contact information for all person designated by the district to receive complaints;

2. The rights of the person that the notification is going to;

3. Information about the internal complaint processes available through the school or district that the person who filed the complaint may pursue, including the person designated for the school or district for receiving complaints and any timelines;

4. Notice that civil and criminal remedies that are not provided by the school or district may be available to the person through the legal system and that those remedies may be subject to statutes of limitation;

[4] Student, staff member, or third party, or if applicable, the student or third party's parent. If the person is a minor, the district should consider when to contact the person's parent.

[5] Remember confidentiality laws when providing any information.

5. Information about services available to the student or staff member through the school or district, including any counseling services, nursing services or peer advising;

6. Information about the privacy rights of the person and legally recognized exceptions to those rights for internal complaint processes and services available through the school or district;

7. Information about, and contact information for, services and resources that are available to the person, including but not limited to:

    a. For the reporting person, state and community-based resources for persons who have experienced sexual harassment; or
    b. For the reported persons, information about and contact information for state and community-based mental health services.

8. Notice that students who report about possible prohibited conduct and students who participate in an investigation under this policy may not be disciplined for violations of the district's drug and alcohol policies that occurred in connection with the reported prohibited conduct and that were discovered as a result of a prohibited conduct report or investigation unless the student gave another person alcohol or drugs without the person's knowledge and with the intent of causing the person to become incapacitated and vulnerable to the prohibited conduct; and

9. Prohibition of retaliation.

Notification, to the extent allowable under state and federal student confidentiality laws, must be provided when the investigation is initiated and concluded. The notification at the conclusion must include whether a violation of the policy was found to have occurred.

The notice must:

1. Be written in plain language that is easy to understand;

2. Use print that is of a color, size and font that allows the notification to be easily read; and

3. Be made available to students, students' parents, staff members and member of the public at each office, at the district office and on the website of the school or district.

Oregon Department of Education (ODE) Support

The ODE will provide technical assistance and training upon request.

FEDERAL DEFINITION AND PROCEDURES

Federal Definition

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the district conditioning the provision of an aid, benefit, or service of the district on an individual's participation in unwelcome sexual conduct;

2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's education program or activity[6];

3. "Sexual assault": an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation;

4. "Dating violence": violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship and the frequency of interaction between the persons involved in the relationship;

5. "Domestic violence": felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction; or

6. "Stalking": engaging in a course of conduct directed at a specific person that would cause a reasonable person fear for the person's own safety or the safety of others, or suffer substantial emotional distress.

This definition only applies to sex discrimination occurring against a person who is a subject of this policy in the United States. A district's treatment of a complainant or a respondent in response to a formal complaint of sexual harassment may constitute discrimination on the basis of sex under Title IX.

Federal Procedures

The district will adopt and publish grievance procedures that provide for the prompt and equitable resolution of the student and employee complaints alleging any action that would be prohibited by this policy. *See* JBA/GBN-AR(2) - Federal Law (Title IX) Sexual Harassment Complaint Procedure.

Reporting

Any person may report sexual harassment. This report may be made in person, by mail, by telephone, or by electronic mail, or by any other means that results in the Title IX coordinator receiving the person's verbal or written report. The report can be made at any time.

The Superintendent is designated as the Title IX coordinator and can be contacted at 541-929-3169. The Title IX coordinator will coordinate the district's efforts to comply with its responsibilities related to this policy. The district prominently will display the contact information for the Title IX coordinator on the district website and in each handbook.

[6] "Education program or activity" includes locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs." (Title 34 C.F.R. § 106.44(a))

Response

The district will promptly respond to information, allegations or reports of sexual harassment when there is actual knowledge of such harassment, even if a formal complaint has not been filed.[7] The district shall treat complainants and respondents equitably by providing supportive measures[8] to the complainant and by following a grievance procedure[9] prior to imposing any disciplinary sanctions or other actions that are not supportive measures against a respondent. The Title IX coordinator is responsible for coordinating the effective implementation of supportive measures.

The Title IX coordinator must promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes, with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.[10]

If after an individualized safety and risk analysis, it is determined that there is an immediate threat to the physical health or safety of any person, an emergency removal of the respondent can take place.[11] The district must provide the respondent with notice and an opportunity to challenge the decision immediately following the removal. A non-student employee may also be placed on non-disciplinary administrative leave pending the grievance process.

Notice

The district shall provide notice to all applicants for admission and employment, students, parents or legal guardians, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the district of the following:

1. The name or title, office address, electronic mail address, and telephone number of the Title IX coordinator(s);

2. That the district does not discriminate on the basis of sex in the education program or activity that it operates, as required by Title IX. This includes admissions and employment; and

[7] (Title 34 C.F.R. § 106.44(a)) Response cannot be deliberately indifferent. A recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.

[8] (Title 34 C.F.R. § 106.44(a)) Supportive measures means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the district's educational environment, or deter sexual harassment.[8] The district must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide supportive measures. (Title 34 C.F.R. § 99.30(a))

[9] This grievance procedure must meet the requirements of Title 34 C.F.R. § 106.45 (included in accompanying administrative regulation, *see* JBA/GBN-AR(2) - Federal Law (Title IX) Sexual Harassment Complaint Procedure).

[10] The Title IX coordinator may also discuss that the Title IX coordinator has the ability to file a formal complaint.

[11] The district may still have obligations under Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973 or the American with Disabilities Act (ADA). (Title 34 C.F.R. § 106.44(c))

3. The grievance procedure and process, how to file a formal complaint of sex discrimination or sexual harassment, and how the district will respond.

No Retaliation

Neither the district or any person may retaliate[12] against an individual for reporting, testifying, providing evidence, being a complainant, otherwise participating or refusing to participate in any investigation or process in accordance with this procedure. The district must keep confidential the identity of parties and participating persons, except as disclosure is allowed under Family Educational Rights and Privacy Act (FERPA), as required by law, or to carry out the proceedings herein. Complaints of retaliation may be filed using these procedures.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding does not constitute retaliation.

Publication

This policy shall be made available to students, parents of students and staff members. This policy shall be prominently published in the school student handbook and on the district website. This policy shall also be made available at each school office and at the district office. The district shall post this policy on a sign in all grade 6 through 12 schools, on a sign that is at least 8.5 inches by 11 inches in size. A copy of the policy will be made available to any person upon request.

END OF POLICY

Legal Reference(s):

ORS 243.706
ORS 332.107
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 (2020).
Davis v. Monroe County Bd. of Educ., 526 U.S. 629 (1999).
Gebser v. Lago Vista Indep. Sch. Dist., 524 U.S. 274 (1998).

Cross Reference(s):

GBN/JBA - Sexual Harassment
JFCF - Hazing/Harassment/Intimidation/Menacing/Bullying/Cyberbullying/Teen Dating Violence, or Domestic Violence - Student

[12] Retaliation includes, but is not limited to, intimidation, threats, coercion, and discrimination.