

**BEND-LA PINE SCHOOLS**

Administrative School District No. 1

Deschutes County, Oregon

**ADMINISTRATIVE POLICY**

Name: Non-Discrimination

Section:

Code: AC-AP\*

The district is committed to ensuring the right of every student and employee to a safe, positive, and productive learning and working environment, and it is the policy of the Board to comply fully with the requirements of Title VI, Title VII, Title IX, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act and all accompanying regulations as well as applicable state law. To that end, the district prohibits and will not tolerate discrimination, harassment (including sexual harassment), intimidation, bullying, cyberbullying, menacing, hazing, teen dating violence, or prohibited sexual conduct. All students, employees, contractors, agents, and volunteers of the District are subject to this policy. This prohibition applies to all district programs, services and district-sponsored and approved activities or functions regardless of where the program, service, activity or function takes place. This prohibition also applies on district-provided transportation and at any official school bus stop, to conduct occurring on or immediately adjacent to school grounds or district property, and to conduct occurring outside of district grounds and/or outside of school or work hours if a student or employee acts toward a person in a manner that creates a hostile environment for the person while at school or a school-sponsored or district-sponsored activity or program or as otherwise permissible under applicable law.

**Definitions**

“Agent” means a person acting as an agent for the district in a manner that requires the person to have direct, unsupervised contact with students.

“Contractor” means a person providing services to the district under a contract in a manner that requires the person to have direct, unsupervised contact with students.

“Cyberbullying” means the use of any electronic communication device to harass, intimidate or bully.

“Discrimination” means any act that unreasonably differentiates treatment, intended or unintended, or any act that is fair in form but discriminatory in operation, either of which is based on status as a member of a protected class.

“Harassment, intimidation or bullying,” when directed at a student of the district, means any act that substantially interferes with a student’s educational benefits, opportunities or performance, that takes place on or immediately adjacent to district grounds, at any district-sponsored activity, on district-provided transportation, at any official school bus stop, may be based on, but not limited to, the protected class status of a person, or that 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;
- c. Creating a hostile education environment, including interfering with the psychological well being of a student.

“Harassment, intimidation or bullying,” when directed at a district employee, means any act that substantially interferes with an employee’s ability to perform the employee’s job functions, that takes place on or immediately adjacent to district grounds, at any district-sponsored activity, or on district-provided transportation, may be based on, but not limited to, the protected class status of a person, or that has the effect of:

- a. Physically harming the employee or damaging an employee’s property;

- b. Knowingly placing an employee in reasonable fear of physical harm to the employee or damage to the employee's property;
- c. Creating a hostile working environment, including interfering with the psychological well being of an employee.

"Hazing" includes, but is not limited to, any act that recklessly or intentionally endangers the mental health, physical health or safety of a student for the purpose of initiation or as a condition or precondition of attaining membership in, or affiliation with, any district-sponsored activity or grade level attainment, i.e., forced consumption of any drink, alcoholic beverage, drug or controlled substance, forced exposure to the elements, forced prolonged exclusion from social contact, sleep deprivation or any other forced activity that could adversely affect the mental or physical health or safety of a student; requires, encourages, or permits another to be subject to wearing or carrying any obscene or physically burdensome article, assignment of pranks to be performed or other such activities intended to degrade or humiliate.

"Menacing" includes, but is not limited to, any act intended to place a district employee, student, or third party in fear of imminent serious physical injury.

"Protected Class" means a group of persons distinguished, or perceived to be distinguished, by race, color, religion, sex, sexual orientation, national origin, marital status, familial status, source of income, or disability.

"Sexual conduct" prohibited by Oregon law is any verbal or physical conduct or verbal, written or electronic communications by a district employee, contractor, agent, or volunteer that involves a student and that are:

- a. Sexual advances or requests for sexual favors directed toward the student, or
- b. Of a sexual nature that are directed toward the student or that have the effect of unreasonably interfering with the student's educational performance, or of creating an intimidating, hostile, or offensive educational environment.

This prohibition applies not only to current district students, but also to a person who was previously known as a student by the person engaging in sexual conduct and who left school or graduated from high school within 90 days prior to the sexual conduct. The District's Title IX Coordinator must be informed immediately of all complaints alleging sexual conduct with a student by a district employee.

Sexual conduct does not include touching that is necessitated by the nature of the district employee's job duties or by the services required to be provided by the contractor, agent, or volunteer, and for which there is no sexual intent. The definition of sexual conduct also does not include behavior that would be considered child abuse as outlined by Oregon law, JHFE-AP: Reporting of Suspected Child Abuse and JHFE-AR: Reporting of Suspected Child Abuse. In any situation in which a district employee or volunteer suspects a district employee, volunteer, contractor, or agent of engaging in sexual conduct towards a student, but is uncertain as to whether the conduct meets the statutory definition of abuse of a child, the district employee or volunteer shall follow the reporting procedures set forth in ORS 339.372 and in JHFE-AP: Reporting of Suspected Child Abuse for abuse of a child.

"Sexual harassment" of students by employees, other students, board members, or third parties, or of employees by students, other staff, board members, or third parties, includes:

- a. A demand or request of sexual favors in exchange for benefits;

- b. Unwelcome conduct of a sexual nature that is physical, verbal or nonverbal and that interferes with a student's educational program or activity, a staff person's ability to perform his or her job, or that creates an intimidating, offensive, or hostile environment; and
- c. Assault when sexual contact occurs without a person's consent because the person is under the influence of drugs or alcohol, is unconscious, has an intellectual or other disability preventing the student from having the capacity to give consent, or is pressured through physical force, coercion or explicit or implied threats.

Examples of sexual harassment may include, but not be limited to: physical touching or graffiti of a sexual nature, displaying or distribution of sexually explicit drawings, pictures, written materials or coded language, sexual gestures or obscene jokes, touching oneself sexually or talking about one's sexuality in front of others, or spreading rumors about or rating other students or others as to appearance, sexual activity or performance.

When determining whether a hostile environment exists, relevant factors to be considered will include, but not be limited to: whether the individual viewed the environment as hostile; was it reasonable for the individual to view the environment as hostile; the nature of the conduct; how often the conduct occurred and how long it continued; age and sex of the complainant; whether the alleged harasser was in a position of power over the student or district employee subjected to the harassment; number of individuals involved; age of the alleged harasser; where the harassment occurred; and other incidents of sexual harassment at the location involving the same or other students or employees. The District's Title IX Coordinator must be informed of all sexual harassment complaints.

"Teen dating violence" means a pattern of behavior in which a person uses or threatens to use physical, mental or emotional abuse to control another person who is in a dating relationship with the person where one or both persons are 13 to 19 years of age; or behavior by which a person uses or threatens to use sexual violence against another person who is in a dating relationship with the person, where one or both persons are 13 to 19 years of age. The district's Title IX Coordinator must be informed of all complaints alleging teen dating violence.

"Third parties" include, but are not limited to: coaches, volunteers, parents, visitors, agents, contractors, or others engaged in district business, such as employees of businesses or other organizations participating in cooperative work programs with the district and others not directly subject to district control at inter-district and intra-district athletic competitions or other district events.

### **Complaint Procedures**

The Superintendent will publish complaint procedures providing for prompt and equitable resolution of complaints alleging a violation of this policy, and providing for thorough investigation of such complaints by a neutral party with no conflict(s) of interest related to the complaint. The complaint procedures must ensure that the district takes prompt and effective action calculated to end conduct prohibited under this policy, prevent its recurrence, and, as appropriate, remedy its effects. The complaint procedures will also protect due process and collective bargaining agreement rights of the accused.

Any district employee who witnesses or has reasonable cause to believe that a student has been subjected to discrimination, harassment (including, but not limited to, sexual harassment), bullying, intimidation, hazing, menacing, teen dating violence, or prohibited sexual conduct in violation of this policy must immediately report his/her concerns to the building principal, Superintendent, or designee. Failure to make such a report may subject the employee to remedial action, up to and including dismissal. A student, volunteer, contractor, or agent who witnesses or has information that a student has been the subject of discrimination, harassment (including, but not limited to, sexual harassment), bullying, intimidation, hazing, menacing, teen dating violence, or prohibited sexual conduct in violation of this policy

should report the act to a district employee. A report by a student or volunteer may be made anonymously.

Individuals may also be referred to law enforcement officials if the alleged conduct is potentially criminal in nature. Staff may be reported to Teacher Standards and Practices Commission, as provided by OAR 584-020-0041. Allegations of prohibited sexual conduct by a district employee, contractor, agent, or volunteer will be reported to the Teacher Standards and Practices Commission (TSPC) or the Oregon Department of Education (ODE) in accordance with ORS 339.372.

In addition to a complaint filed under this policy, complainants may file a simultaneous criminal complaint if the alleged behavior is potentially criminal in nature. Direct complaints related to educational programs and services may be made to the U.S. Department of Education, Office for Civil Rights. Direct complaints related to employment may be filed with the Oregon Bureau of Labor and Industries, Civil Rights Division, or the U.S. Department of Labor, Equal Employment Opportunities Commission. The district will conduct an independent investigation of an alleged violation of this policy regardless of whether the complaint has been referred to an outside agency. If the complaint alleges discrimination, and the complainant is not satisfied after exhausting local complaint procedures, or 90 days has elapsed, whichever occurs first, he or she may appeal in writing to the Oregon Department of Education per OAR 581-021-0049.

### **Corrective Action / Discipline**

If a complaint is substantiated, the district will take steps to prevent recurrence of the behavior. Students whose behavior is found to be in violation of this policy and students who intentionally make a false report regarding a violation of this policy will be subject to discipline, up to and including expulsion. The district may also file a request with the Oregon Department of Transportation to suspend the driving privileges of a student 15 years of age or older who has been suspended or expelled at least twice for menacing another student or employee, causing willful damage of or injury to district property or for the use of threats, intimidation, harassment or coercion. Employees whose behavior is found to be in violation of this policy and employees who intentionally make a false report regarding a violation of this policy will be subject to discipline, up to and including dismissal. Third parties whose behavior is found to be in violation of this policy shall be subject to appropriate sanctions as determined and imposed by the Superintendent.

An employee, contractor, or agent of the district may not assist another employee, contractor or agent in obtaining any new job if the individual knows, or has reasonable cause to believe, that the school employee, contractor, or agent engaged in sexual conduct unless the individual knows, or has reasonable cause to believe, that the suspected sexual conduct was reported TSPC or ODE and the report could be neither substantiated nor found to be unsubstantiated following an investigation; the report was found to be unsubstantiated; or the investigation into the report remains ongoing after four years.

The complainant shall be notified of the findings of the investigation and, if appropriate, that remedial action has been taken.

### **Retaliation Prohibited**

The initiation of a complaint in good faith about behavior that might violate this policy, or participation in an investigation of such a complaint, shall not adversely affect the educational assignments or educational environment of a reporting student, a student who is alleged to have been subjected to behavior that violates this policy, or a student who participates in an investigation. The initiation of a complaint in good faith about behavior that might violate this policy, or participation in an investigation of such a complaint, shall not adversely affect any terms or conditions of employment or work environment of a reporting employee, an employee who is alleged to have been subjected to behavior that violates this policy, or an employee who participates in an investigation. There shall be no retaliation by the district against any person who, in good faith, reports, files a complaint, or otherwise participates in an investigation or inquiry involving an alleged violation of this policy.

## **Distribution & Training**

The Superintendent shall be responsible for ensuring that this policy is implemented, and that notice of this policy is provided at least annually to students, staff, and third parties through staff training, student handbook(s), recruitment materials, employment applications, and the district's website. Employees will receive periodic training regarding this policy and the district's procedures for processing a complaint alleging a violation of this policy. The Superintendent shall ensure that students in grades 7-12 receive age-appropriate education regarding teen dating violence. All district schools serving grade 6-12 students and all district administrative building(s) shall post this policy on its school bulletin board(s) on a sign measuring no less than 8.5 by 11 inches in size. Each school will post the title and contact information of the person responsible for receiving reports of a violation of this policy. The district will provide a copy of this policy and the complaint procedures to employees at the time of hire and to all contractors, volunteers, and agents of the district at the time of beginning of their service for the district.

Reviewed: 12/12/16, 6/4/18, 10/16/19

Approved: 6/8/18, 10/28/19

\* This Administrative Policy is intended to consolidate the following administrative policies:

- AC-AP: Non-Discrimination
- JBAA / GBNA-AP: Sexual Harassment
- JBA / GBN-AP: Harassment / Intimidation / Bullying / Cyberbullying
- JHFF-AP: Reporting Requirements Regarding Sexual Conduct with Students