

Board Equity and Inclusion Committee meeting

Thursday, April 1, 2021 1:00 PM

Due to COVID-19 Board meetings will take place via Zoom

1. Call to Order

- A. Board goals tied to the Equity and Inclusion Committee
 - 1. Raise visibility of MESD to advocate for adequate funding and program resources with a racial equity lens
 - 2. Ensure inclusion through implementing our equity lens to achieve equitable student outcomes
 - 3. Advocate for inclusive educational curriculum to address racist history throughout the region and the state
- B. Strategic Plan goals tied to the Equity and Inclusion Committee
 - 1. Improve outcomes for students
 - 2. Become an acknowledged leader and convener for improving educational outcomes
 - 3. Increase district, student and community participation and satisfaction with our services
 - 4. Attract, develop, and retain high-quality staff

2. Review minutes from the March 4 meeting

3. Juvenile Justice

- A. Deena Corso's presentation to the Board

4. Review Board policies with the equity lens

- A. Continued examine of the proposed amendment for sexual harassment policy with the Board and agency equity lens.
- B. Implementation steps for newly adopted policy on increasing diversity, equity and inclusion in procurement, contracting and funding
 - 1. Scholarship program
 - a. Review and finalize Application packet
 - b. Go Fund Me campaign updates
 - c. Other funding sources
- C. Continuing our work on Policy GCDA/GDDA-Criminal Records Checks and Fingerprinting (ORS 342.143)
 - 1. Updates from Stacy Michaelson

5. Equity at Donald E. Long

A. Updates from Stacy Michaelson

B. How do we become a convener in helping component districts with assimilating justice involved youth when they return to their home school?

6. **History project**

A. Debrief Sean Cruz's presentation on Native American curriculum and decide on next steps

Board Equity and Inclusion Committee

Thursday, February 4, 2021

2019-2021 Agency Goals

#1 – Improve outcomes for students

#2 – Become an acknowledged leader and convener of improving educational outcomes

#3 – Increase district and community participation and satisfaction with our services

#4 – Attract, develop and retain high-quality staff

The meeting was called to order at 1:00 p.m. on Thursday, February 4, 2021 by Committee Chair Ying.

• CALL TO ORDER

Present: Helen Ying, Chair
Mary Botkin, Board member
Denyse Peterson, Board member

Absent: None

Administration: Sascha Perrins, Assistant Superintendent
Liwaru, Director of Equity
Stacy Michaelson, Government Affairs Administrator
Heather Severns, Board Secretary

Guests: Sean Cruz
Marcia Perez
Jess Rohrbacher

- 1. Review notes from the January meeting-** The committee reviewed the minutes from the January 7th meeting and accepted them.
- 2. History Project-**Board member Denyse Peterson introduced Sean Cruz, the Executive Director of the Jim Pepper Native Arts Council which he founded in 2014. The mission of the council is to improve access to culturally relevant music education for Native American students in Jim Peppers name, and reflecting the educational legacy of his mother Floy Pepper.

Sean spoke with the committee about the Speak/Sing Native program and his work developing a curriculum for Native American Music. This course of study was offered as a pilot at Chemawa in Salem. Students learn about music, history and geography.

Sean would like to learn more about that we are doing at MESD and build a relationship and share what they are doing.

- 3. Juvenile Justice 101-**Marcia Perez gave updated the Board on what she has been doing since the last Equity and Inclusion Committee meeting. She brought the Regional Leadership team together and had Mary Geelan from Juvenile Justice do a two part series that was a basic overview of what is going on in juvenile justice in Multnomah County specifically. The first session was what the process is from start to finish starting with contact with police all the way to commitment to youth corrections. The second session the focus was more on what role schools play. Marcia asked the committee if they would be interested in bringing Mary Geelan in to do a presentation for the Board.

Committee Chair Helen Ying asked Marcia about how juvenile justice and schools can help integrate students back into their districts.

4. Review Board Policies with Equity Lens

- a. Implementation steps for newly adopted policy increasing diversity, equity, and inclusion in procurement, contracting and funding.
 1. Scholarship program.
 - a. Finalize Application Packet-
 - i. Members of the committee decided to be flexible with the application date depending on the semester the students apply to begin college.
 - ii. Multiple application deadlines throughout the year
 - iii. Remove the requirement that students will need to enroll the following term after they are awarded the scholarship.
 - iv. Add an expiration date
 - v. Sascha and Heather will meet and revise the application
 - b. Set up Go Fund Me campaign-Sascha will speak with Comms regarding the donor page.
 - c. Other funds funding sources
 - b. Continuing our work on Policy GCDA/GDDA-Criminal Records and Fingerprinting. (ORS 342.143)
 - i. HB 2942, the Forever Crimes Bill, is up for a public hearing on the 11th of February. Stacy will be meeting with a group of stakeholders on the 9th to talk about potential amendments needed in the bill. Most of our partners have said they will not take a position on the bill.

Stacy Michaelson asked for Board members to share on this. She offered to draft some testimony. Helen Ying is interested in attending; she will contact Stacy Michaelson with her ideas on testimony. Mary Botkin will send the Board Secretary her written testimony to share with Stacy. Stacy will also send Sean Woodard a calendar invitation for this event so he can provide testimony.

5. Equity at Donald E. Long

- a. Government Affairs Administrator Stacy Michaelson updated the committee, she will let the group know when she hears that we have the funding for JDEP.

- b. How do we become a convener in helping component Districts with assimilating justice involved youth when they return to their home school? Marcia is helping us with this.

6. Other opportunities

- a. There is a hearing on February 10th at 3:00 p.m. for SB 227. This is the Ethnic Studies Bill. There needs to be funding to support professional development.

Adjourn

There being no further discussion, the meeting was adjourned at 2:27 p.m. The next meeting of this committee will be at 1:00 p.m. on March 4, 2021.

Respectfully submitted,

Heather Severns
Executive Assistant/Board Secretary

**RESOLUTION 21-007 First Reading of Amended Board Policies GBN/JBA &
JBA/GBN-Sexual Harassment**

Background: The updates issued for policy and administrative regulations for sexual harassment result from release of revised Federal regulations for Title IX protections, and the release of updates to Oregon Administrative Rules revised to reflect new Oregon statute adopted in the 2019 Legislative session amending Oregon’s sexual harassment definition and its policy and procedures requirements. Members will need to consider the urgency of adoption of these new recommended revisions to update procedures for complaints and investigations of sexual harassment reports or complaints for the coming school year. In compliance with these new recommended policy and administrative regulations, members need to consider which definition of sexual harassment a reported incident or complaint may align with and follow recommended procedure, and whether the reported incident or complaint may need to be investigated and processed under both State and Federal law established procedures.

WHEREAS, the Multnomah Education Service District Board of Directors reviewed and discussed the recommended amendments to Board Policies GBN/JBA and JBA/GBN– Sexual Harassment.

NOW THEREFORE BE IT RESOLVED, that Board Policies GBN/JBA and JBA/GBN– Sexual Harassment are approved for first reading as written or as further modified.

BE IT FURTHER RESOLVED, that if no further discussion is required, Board Policies GBN/JBA and JBA/GBN– Sexual Harassment are approved as proposed and do not require a second reading.

Multnomah Education Service District

Code: **GBN/JBA**
Adopted: 2/16/21

Orig. Code(s): 3112

Sexual Harassment

The MESD is committed to eliminating sexual harassment. Sexual harassment will not be tolerated in the MESD. 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 MESD processes complaints 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 MESD, the MESD 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 342 and Title IX, both complaint procedures should be processed simultaneously (*see* GBN/JBA-AR(1) - Sexual Harassment Complaint Procedure and GBN/JBA-AR(2) - Federal Law (Title IX) Sexual Harassment Complaint Procedure). The MESD may also need to use other complaint procedures when the alleged conduct could meet the definitions for other complaint procedures^{1}.

OREGON DEFINITION AND PROCEDURES

Oregon Definition

Sexual harassment of students, staff members or third parties² 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 MESD staff member's ability to perform their job; or
 - c. Creates an intimidating, offensive or hostile environment.

^{1} Common complaint procedures that may also be involved include: Nondiscrimination (AC), Workplace Harassment (GBEA), [Hazing,]Harassment, Intimidation, Bullying, [Menacing,]Cyberbullying, Teen Dating Violence and Domestic Violence – Student (JFCF), and Reporting Requirements for Suspected Sexual Conduct with Students (GBNAA/JHFF)

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

3. Assault when sexual contact occurs without the student’s, staff member’s 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. {³}

Sexual harassment does not include conduct that is necessary because of a job duty of a school or MESD 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 action, offensive because of that other person’s sexual orientation or gender identity.

Examples of sexual harassment may include, but not be limited to, {⁴} 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

The Superintendent shall designate one or more MESD staff as “Sexual Harassment/Title IX Coordinator”, and shall provide the name and contact information of the designated staff in Administrative regulations GBN/JBA-AR(1) and GBN/JBA-AR(2)

Persons wishing to report sexual harassment or discrimination based on sex should contact the “Sexual Harassment/Title IX Coordinator(s)” using the contact information and procedures found in those administrative regulations.

Response

Any staff member who becomes aware of behavior that may violate this policy shall immediately report to an MESD official. The MESD 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 MESD official.

{³ The statutory definition (ORS 342.704) for sexual harassment includes separate definitions with slightly different language for students, staff members and third parties. The language used in this policy comes from OAR 581-021-0038(1)(b). If the ESD would like to include the full statutory definition, it can do so.}

{⁴ OAR 581-021-0038 requires that the policy include a “examples of harassing behaviors covered by policy”. The bracketed list in this policy reflects OSBA’s recommendations. The ESD has 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 school ESD’s legal counsel.}

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

Investigation

All reports and complaints about behavior that may violate this policy shall be investigated. The MESD 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 MESD 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.⁵

The MESD 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 MESD electronic systems;
5. Trainings and education for staff and students; and
6. Increased notifications regarding MESD procedures and resources.

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

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

⁵ We strongly recommend that the board receive input from ESD administration prior to adopting a standard here. Of note, Title IX's definition of sexual harassment includes "unwelcome conduct determined *by a reasonable person* to be..." 34 CFR 106.30(a), emphasis added. It is important to consider the different definitions under Oregon law and Title IX when determining which standards will apply for the Oregon process.}

2. If the third party works for an entity that contracts with the MESD, communicating with the third party's employer;
3. If the third party is a student of another district, MESD or school, communicate information related to the incident to the other district, MESD or school;
4. Limiting attendance at MESD events; and
5. Providing for additional supervision, including law enforcement if necessary, at MESD 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 MESD 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 MESD'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 person⁶ who may have been affected by this policy files a complaint or otherwise reports behavior that may violate the policy, the MESD 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 include⁷:

⁶ Student, staff member, or third party, or if applicable, the student or third party's parent. If the person is a minor, the ESD should consider when to contact the person's parent.

⁷ Remember confidentiality laws when providing any information.

1. Name and contact information for all person designated by the MESD 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 MESD that the student, student's parents, staff member, person or person's parent who filed the complaint may pursue, including the person designated for the school or ESD for receiving complaints and any timelines.
4. Notice that civil and criminal remedies that are not provided by the school or MESD may be available to the person through the legal system and that those remedies may be subject to statutes of limitation;
5. Information about services available to the student or staff member through the school or MESD, 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 MESD;
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 MESD'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 MESD office and on the website of the school or MESD.

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 MESD conditioning the provision of an aid, benefit, or service of the MESD 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 MESD's education program or activity⁸;
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. An MESD'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 MESD 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* GBN/JBA-AR(2) - Title IX Sexual Harassment Grievance Procedures.

⁸ "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))

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 Sexual Harassment/Title IX Coordinator receiving the person's verbal or written report. The report can be made at any time.

The Superintendent shall designate a staff member as the Sexual Harassment/Title IX Coordinator. The Sexual Harassment/Title IX Coordinator will coordinate the MESD's efforts to comply with its responsibilities related to this AR. The MESD prominently will display the contact information for the Sexual Harassment/Title IX Coordinator on the MESD website and in each handbook. {⁹}

Response

The MESD 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.¹⁰ The MESD shall treat complainants and respondents equitably by providing supportive measures¹¹ to the complainant and by following a grievance procedure¹² prior to imposing any disciplinary sanctions or other actions that are not supportive measures against a respondent. The Sexual Harassment/Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

The Sexual Harassment/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.¹³

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.¹⁴ The MESD 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.

{⁹ Note the difference in requirements for Title IX and Oregon law. It makes sense to align these requirements}

¹⁰ (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.

¹¹ (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 ESD's educational environment, or deter sexual harassment.¹¹ The ESD 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))

¹² This grievance procedure must meet the requirements of Title 34 C.F.R. § 106.45 (included in accompanying administrative regulation, *see* GBN/JBA-AR(2) - Federal Law (Title IX) Sexual Harassment Complaint Procedure).

¹³ The Sexual Harassment/Title IX Coordinator may also discuss that the Sexual Harassment/Title IX Coordinator has the ability to file a formal complaint.

¹⁴ The ESD 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))

Notice

The MESD 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 MESD of the following:

1. The name or title, office address, electronic mail address, and telephone number of the Sexual Harassment/Title IX Coordinator (s);
2. That the MESD 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
3. The grievance procedure and process, how to file a formal complaint of sex discrimination or sexual harassment, and how the MESD will respond.

Inquiries about the application to Title IX and its requirements may be referred to the Sexual Harassment/Title IX Coordinator or the Assistant Secretary¹⁵, or both.

No Retaliation

Neither the MESD or any person may retaliate¹⁶ 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 MESD 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 and contact information for the Sexual Harassment/Title IX Coordinator shall be prominently published in the MESD student handbook and on the MESD website. This policy shall also be made available at each school office and at the MESD office. The MESD 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 student, parent of a student, school or MESD staff member, or third party upon request.

END OF POLICY

Legal Reference(s):

¹⁵ Of the United States Department of Education

¹⁶ Retaliation includes, but is not limited to, intimidation, threats, coercion, and discrimination.

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

Multnomah Education Service District

Code: **JBA/GBN**
Adopted: 2/16/21

Orig. Code(s): 3112

Sexual Harassment

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6. Assault when sexual contact occurs without the student's, staff member's 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. {¹⁹}

Sexual harassment does not include conduct that is necessary because of a job duty of a school or MESD 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 action, offensive because of that other person's sexual orientation or gender identity.

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9. 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 MESD official.

{¹⁹ The statutory definition (ORS 342.704) for sexual harassment includes separate definitions with slightly different language for students, staff members and third parties. The language used in this policy comes from OAR 581-021-0038(1)(b). If the ESD would like to include the full statutory definition, it can do so.}

{²⁰ OAR 581-021-0038 requires that the policy include a "examples of harassing behaviors covered by policy". The bracketed list in this policy reflects OSBA's recommendations. The ESD has 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 school ESD's legal counsel.}

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

Investigation

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

4. Interviews with those involved;
5. Interviews with witnesses;
6. Review of video surveillance;
7. Review of written communications, including electronic communications;
8. Review of any physical evidence; and
9. Use of third-party investigator.

The MESD 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.²¹

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

10. Discipline of staff and students engaging in sexual harassment;
11. Removal of third parties engaged in sexual harassment;
12. Additional supervision in activities;
13. Additional controls for MESD electronic systems;
14. Trainings and education for staff and students; and
15. Increased notifications regarding MESD procedures and resources.

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

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

²¹ We strongly recommend that the board receive input from ESD administration prior to adopting a standard here. Of note, Title IX's definition of sexual harassment includes "unwelcome conduct determined *by a reasonable person* to be..." 34 CFR 106.30(a), emphasis added. It is important to consider the different definitions under Oregon law and Title IX when determining which standards will apply for the Oregon process.}

17. If the third party works for an entity that contracts with the MESD, communicating with the third party's employer;
18. If the third party is a student of another district, MESD or school, communicate information related to the incident to the other district, MESD or school;
19. Limiting attendance at MESD events; and
20. Providing for additional supervision, including law enforcement if necessary, at MESD 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:

21. Educational assignments or educational environment of a student or other person initiating the complaint, reporting the behavior, or participating in the investigation; or
22. Any terms or conditions of employment or of work or educational environment of a school or MESD 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 MESD'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 person²² who may have been affected by this policy files a complaint or otherwise reports behavior that may violate the policy, the MESD shall provide written notification to the following:

23. Each reporting person;
24. If appropriate, any impacted person who is not a reporting person;
25. Each reported person; and
26. Where applicable, a parent or legal guardian of a reporting person, impacted person, or reported person.

The written notification must include²³:

²² Student, staff member, or third party, or if applicable, the student or third party's parent. If the person is a minor, the ESD should consider when to contact the person's parent.

²³ Remember confidentiality laws when providing any information.

27. Name and contact information for all person designated by the MESD to receive complaints;
28. The rights of the person that the notification is going to;
29. Information about the internal complaint processes available through the school or MESD that the student, student's parents, staff member, person or person's parent who filed the complaint may pursue, including the person designated for the school or ESD for receiving complaints and any timelines.
30. Notice that civil and criminal remedies that are not provided by the school or MESD may be available to the person through the legal system and that those remedies may be subject to statutes of limitation;
31. Information about services available to the student or staff member through the school or MESD, including any counseling services, nursing services or peer advising;
32. 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 MESD;
33. Information about, and contact information for, services and resources that are available to the person, including but not limited to:
 - c. For the reporting person, state and community-based resources for persons who have experienced sexual harassment; or
 - d. For the reported persons, information about and contact information for state and community-based mental health services;
34. 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 MESD'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
35. 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:

36. Be written in plain language that is easy to understand;
37. Use print that is of a color, size and font that allows the notification to be easily read; and
38. Be made available to students, students' parents, staff members and member of the public at each office, at the MESD office and on the website of the school or MESD.

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:

39. An employee of the MESD conditioning the provision of an aid, benefit, or service of the MESD on an individual's participation in unwelcome sexual conduct;
40. 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 MESD's education program or activity²⁴;
41. "Sexual assault": an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation;
42. "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;
43. "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
44. "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. An MESD'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 MESD 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* GBN/JBA-AR(2) - Title IX Sexual Harassment Grievance Procedures.

²⁴ "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))

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 Sexual Harassment/Title IX Coordinator receiving the person's verbal or written report. The report can be made at any time.

The Superintendent shall designate a staff member as the Sexual Harassment/Title IX Coordinator. The Sexual Harassment/Title IX Coordinator will coordinate the MESD's efforts to comply with its responsibilities related to this AR. The MESD prominently will display the contact information for the Sexual Harassment/Title IX Coordinator on the MESD website and in each handbook. {²⁵}

Response

The MESD 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.²⁶ The MESD shall treat complainants and respondents equitably by providing supportive measures²⁷ to the complainant and by following a grievance procedure²⁸ prior to imposing any disciplinary sanctions or other actions that are not supportive measures against a respondent. The Sexual Harassment/Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

The Sexual Harassment/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.²⁹

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.³⁰ The MESD 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.

{²⁵ Note the difference in requirements for Title IX and Oregon law. It makes sense to align these requirements }

²⁶ (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.

²⁷ (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 ESD's educational environment, or deter sexual harassment.²⁷ The ESD 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))

²⁸ This grievance procedure must meet the requirements of Title 34 C.F.R. § 106.45 (included in accompanying administrative regulation, *see* GBN/JBA-AR(2) - Federal Law (Title IX) Sexual Harassment Complaint Procedure).

²⁹ The Sexual Harassment/Title IX Coordinator may also discuss that the Sexual Harassment/Title IX Coordinator has the ability to file a formal complaint.

³⁰ The ESD 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))

Notice

The MESD 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 MESD of the following:

45. The name or title, office address, electronic mail address, and telephone number of the Sexual Harassment/Title IX Coordinator (s);
46. That the MESD 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
47. The grievance procedure and process, how to file a formal complaint of sex discrimination or sexual harassment, and how the MESD will respond.

Inquiries about the application to Title IX and its requirements may be referred to the Sexual Harassment/Title IX Coordinator or the Assistant Secretary³¹, or both.

No Retaliation

Neither the MESD or any person may retaliate³² 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 MESD 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 and contact information for the Sexual Harassment/Title IX Coordinator shall be prominently published in the MESD student handbook and on the MESD website. This policy shall also be made available at each school office and at the MESD office. The MESD 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 student, parent of a student, school or MESD staff member, or third party upon request.

END OF POLICY

Legal Reference(s):

³¹ Of the United States Department of Education

³² Retaliation includes, but is not limited to, intimidation, threats, coercion, and discrimination.

[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).

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