

# OSBA Model Sample Policy

Code: GBEDA-AR  
Adopted:

## Drug and Alcohol Testing and Record Query - Transportation Personnel \*

(This administrative regulation is required if the district operates their own transportation services, or if any district staff are required to have a commercial driver's license (CDL).)

The following procedures shall govern the district's drug use and alcohol misuse prevention program:

### 1. Program Coordinator

The [superintendent] will be designated as the district's drug use and alcohol misuse prevention program coordinator. The [superintendent] will coordinate the district's responsibilities and compliance efforts with the applicable provisions of the Omnibus Transportation Employee Testing Act of 1991 (OTETA). The [superintendent] will:

a. Ensure that all covered employees receive written materials explaining the district's drug use and alcohol misuse prevention program requirements including:

- (1) The district policy and administrative regulations;
- (2) A contact person knowledgeable about the materials, policy, administrative regulations and the OTETA;
- (3) Categories of employees covered;
- (4) Information about the safety-sensitive functions and what period of the workday the employee is required to be in compliance. Safety-sensitive functions shall include such responsibilities as all on-duty time waiting to be dispatched, driving time, assisting or supervising loading or unloading, repairing, obtaining assistance or remaining in attendance upon a disabled vehicle. All time spent providing drug and alcohol samples, including travel time to and from the collection or testing site as needed to comply with random, reasonable suspicion, post-accident, return-to-duty or follow-up testing, will also be considered as on-duty time;
- (5) Specific information concerning prohibited conduct;
- (6) Circumstances under which employees will be tested;
- (7) Procedures used in the testing process;
- (8) The requirement that covered employees submit to drug and alcohol testing, administered in accordance with 49 C.F.R. Part 382;
- (9) Explanation of what constitutes a refusal to submit to a drug and/or alcohol test;
- (10) Consequences of violations (e.g., discipline up to and including dismissal as may be required by the district and removal from safety-sensitive functions as required by the OTETA) and notification of resources available to the driver in evaluating and resolving problems associated with the misuse of alcohol and the use of drugs including the names, addresses and telephone numbers of substance abuse professionals (SAP) and counseling and treatment programs. Such information will include the consequences for covered employees found to have a breath alcohol concentration rate of 0.02 or greater, but less than 0.04, and for those employees found to have a breath alcohol content level greater than 0.04. Minimally, no driver tested and found to have a breath alcohol concentration rate of 0.02 or greater but less than 0.04 shall be permitted to perform or continue to perform safety-sensitive functions until the start of the driver's next regularly scheduled duty period, but not less than 24 hours following administration of the test;
- (11) Information on the effects of drug use and alcohol misuse on an individual's health, work and personal life; signs and symptoms of an alcohol or drug problem (driver's or coworker's); and available methods of intervening when such problems are suspected,

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including confrontation, referral to an employee assistance program as available and/or referral to the administration, and

(12) Requirement of the district to collect, maintain and report the following information to the Federal Motor Carrier Safety Administration (FMCSA) Drug and Alcohol Clearinghouse:

- (a) A verified positive, adulterated, or substituted drug test result;
- (b) An alcohol confirmation test with a concentration of 0.04 or higher;
- (c) A refusal to submit to any test required by subpart C of 49 C.F.R. Part 382;
- (d) An employer's report of actual knowledge (as defined at 49 C.F.R. § 382.107) of a violation of regulations, including:
  - (i) On-duty alcohol use;
  - (ii) Pre-duty alcohol use;
  - (iii) Alcohol use following an accident;
  - (iv) Controlled substance use;
- (e) A SAP's report of the successful completion of the return-to-duty process;
- (f) A negative return-to-duty test; and
- (g) An employer's report of completion of follow-up testing.

- b. Ensure that employees sign statements certifying that they have received the materials;
- c. Ensure that administrators or their designee, designated to determine reasonable suspicion, receive at least 60 minutes of drug abuse training and an additional 60 minutes of alcohol misuse training. Training will include the physical, behavioral, speech and performance indicators of probable drug use and alcohol misuse;
- d. Ensure district compliance with applicable provisions of the OTETA's requirements regarding the district's management information system, retention and confidentiality of records;
- e. Ensure selection of a site with appropriately trained personnel for the collection of specimens for drug testing;
- f. Ensure selection of a site with a certified breath alcohol technician and evidential breath testing devices for alcohol testing;
- g. Ensure selection of a laboratory certified by the ~~Department of Health and Human Services (DHHS)~~ Oregon Health Authority, Public Health Division (OHA) to conduct drug specimen analysis;
- h. Ensure selection of a qualified medical or osteopathic doctor to serve as a medical review officer (MRO) to verify laboratory drug test results;
- i. Ensure selection of qualified personnel to provide education and training to employees and supervisors in accordance with employee assistance program requirements as specified in the OTETA;
- j. Ensure the district's drug use and alcohol misuse prevention program is maintained in at least outline form, on file and available for inspection at the district office. The district shall maintain the following:
  - (1) Information on the effects and consequences of drug and alcohol use on personal health, safety and the work environment;
  - (2) Information on the manifestations and behavioral changes that may indicate drug and alcohol use or abuse;
  - (3) Documentation that drug training for all supervisory personnel has consisted of at least 60 minutes;
  - (4) Documentation that alcohol training for all supervisory personnel has consisted of at least 60 minutes;

~~https://www.oregon.gov/oha/~~

(5) Documentation of training given to employees.

- k. Ensure the establishment of clearly defined communication procedures to include the method (e.g., mail, facsimile) and frequency (e.g., monthly, daily, weekly) as well as the authorized individuals to impart and receive information to meet the documentation and confidentiality requirements of the OTETA;
- l. Ensure employee organizations receive written notice of the availability of all pertinent drug use and alcohol misuse prevention program information;
- m. [Ensure compliance with stand-down prohibitions as set forth by the OTETA. "Stand-down" means the practice of temporarily removing an employee from the performance of safety-sensitive functions, based on a report from a laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test or a substituted test, before the MRO has completed verification of the test results. The district will not stand-down employees, except as provided by the Federal Motor Carrier Safety Administration (FMCSA) below:
  - (1) The district may seek a waiver of the prohibition against standing down an employee,
  - (2) Requests which include all required information will be submitted to FMCSA for approval.]

2. Pre-employment and Annual Queries from, and Required Reporting to FMCSA

The district is required to conduct a pre-employment query with FMCSA on drivers who are subject to controlled substance and alcohol testing regulation, and is required to report information obtained through its controlled substance and alcohol testing program to FMCSA. All offers of employment for positions identified by the district, as required by the OTETA, will be contingent upon the results of a pre-employment query.

a. The district will obtain written or electronic consent from a driver subject to controlled substances and alcohol testing to conduct a pre-employment query with FMCSA. The consent will include consent to obtain the following information:

- (1) If the driver has a verified positive, adulterated, or substituted controlled substances test result;
- (2) If the driver has an alcohol confirmation test with a concentration of 0.04 or higher;
- (3) If the driver has refused to submit to a test (in violation of 49 C.F.R. § 382.211); or
- (4) If the driver has a report submitted by another employer on actual knowledge (as defined at 49 C.F.R. § 382.107) of a violation of regulations that included:
  - (a) On duty alcohol use;
  - (b) Pre-duty alcohol use;
  - (c) Alcohol use following an accident; or
  - (d) Controlled substance use.

The district will conduct annual queries<sup>3</sup> with the FMCSA on employees subject to such queries as required by law.

[ This is optional language. Keep if the district desires to implement a stand-down policy pursuant to law. ]

<sup>3</sup> Written consent from the driver is required. This may be a limited query when allowed. If the limited query indicates that the FMCSA contains information on the driver, the district will conduct a full query within 24 hours and must not allow driver to perform safety-sensitive functions.

5. The district will report<sup>4</sup> to FMCSA the following personal information about a driver that is collected and maintained in connection with the district's testing program:

- (1) An alcohol confirmation test with an alcohol concentration of 0.04 or greater;
- (2) A refusal to submit to an alcohol test pursuant to conditions found in 49 C.F.R. § 40.261 or a refusal to drug-test determination made in accordance with 49 C.F.R. § 40.191(a)(1)-(4), (a)(8)-(11) or (d)(4), but in the case of a refusal to test under (a)(11) the district may report only those admissions made to the specimen collector;
- (3) A SAP's report of the successful completion of the return-to-duty process;
- (4) A negative return-to-duty test; and
- (5) An employer's report of completion of follow-up testing.

The report will include, as applicable:

- (1) Reason for the test;
- (2) Driver's name, date of birth, and CDE number and State of issuance;
- (3) Employer name, address, and USDOT number;
- (4) Date of the test;
- (5) Date the result was reported; and
- (6) Test result. The test result must be one of the following:
  - (a) Negative (only required for return-to-duty tests administered in accordance with law);
  - (b) Positive; or
  - (c) Refusal to take a test.
- (7) An employer's report of a driver's refusal to submit<sup>5</sup> to alcohol or drug testing must include the following information:
  - (a) Documentation, including, but not limited to, electronic mail or other contemporaneous record of the time and date the driver was notified to appear at a testing site, and the time, date and testing site location at which the employee was directed to appear, or an affidavit providing evidence of such notification;
  - (b) Documentation, including, but not limited to, electronic mail or other correspondence, or an affidavit, indicating the date the employee was terminated or resigned (if applicable); and
  - (c) Documentation, including a certificate of service or other evidence, showing that the employer provided the employee with all documentation reported herein.
- (8) An employer's report of a violation of one of the following will occur by the close of the third business day following the date on which the employer obtains actual knowledge (as defined at 49 C.F.R. § 382.107):
  - (a) On-duty alcohol use;
  - (b) Pre-duty alcohol use;
  - (c) Alcohol use following an accident;
  - (d) Controlled substance use.

This report will include the following information:

<sup>4</sup>The district will complete such reporting to FMCSA by close of the third business day following receipt of the information.

<sup>5</sup>49 C.F.R. § 40.261(a)(1) or 40.191(a)(1)

- (a) Driver's name, date of birth, CDL number and State of issuance;
- (b) Employer name, address, and USDOT number, if applicable;
- (c) Date the employer obtained actual knowledge of the violation;
- (d) Witnesses to the violation, if any, including contact information;
- (e) Description of the violation;
- (f) Evidence supporting each fact alleged in the description of the violation required under paragraph above in this section, which may include, but is not limited to, affidavits, photographs, video or audio recordings, employee statements (other than admissions pursuant to §382.121), correspondence, or other documentation; and
- (g) A certificate of service or other evidence showing that the employer provided the employee with all information reported under paragraph above in this section.

If the district's program coordinator is the subject of the testing, the district will ensure compliance with applicable consent, testing, and reporting requirements pursuant to law.

### 3. Pre-employment Testing

The district shall conduct pre-employment testing as follows:

- a. All offers of employment for positions as identified by Board policy and as required by the OTETA will be contingent upon drug [and alcohol] test results;
- b. Individuals offered employment with the district and employees transferring to positions subject to the OTETA contingent on drug [and alcohol] testing, must provide written consent for the release of any prior employer positive drug and failed alcohol testing results, refusals to be tested, other violations of testing regulations and, with respect to any employee who violated drug and alcohol regulations, documentation of the employee's successful completion of return-to-duty requirements (including SAP evaluations and follow-up tests) within the preceding two years;
- c. The district shall obtain and review such drug and alcohol information from previous employers of the past two years [no later than 14 calendar days after] [before] the driver is used for the first time. The district will provide the driver's written permission of the driver, for release of information, to the previous employers;
- d. The district will maintain a written, confidential record of information obtained from another employer or the good faith efforts to obtain such information, and will maintain the same for three years from the date the driver's service began;
- e. Requests received by the district for Release of such information may be by telephone, letters or any other method to another employer must include written consent from the driver. Records will be released immediately in any written form (e.g., fax, email, letter) that ensures confidentiality. The district will maintain a written, confidential record of each past employer contacted record and summary of information released, the date, and to whom the information was released;
- f. The district will not use, must ask a driver with a, and will not use such driver, if they have a positive drug test or a failed alcohol test while employed with a previous employer or who refused to test while under employment with a previous employer in the past two years unless the driver is in compliance with the SAP's treatment program and the OTETA's return-to-duty test requirements;
- g. Prior to being directed by the district to a collection site for drug [and alcohol] testing, the applicant will be notified that the urine sample collected shall be tested for the presence of drugs [and the breath or saliva sample shall be tested for the presence of alcohol];

<sup>9</sup> Pertains to requests received by the district from other employer.

- h. Failure to report to the collection site for testing within the time frame specified by the district shall constitute a refusal to report for testing and result in immediate withdrawal of the employment or transfer offer;
- i. Pre-employment drug [and alcohol] testing will be paid for by the [district] [employee].
- j. Tests must indicate negative drug test results [and a breath alcohol content level below a 0.02]. Individuals who fail to meet such drug [and alcohol] requirements [will] [may] not be hired or transferred voluntarily or involuntarily to covered positions;
- k. Such testing will also be required of covered employees each time an employee returns to work after a layoff period if the employee was removed from the random testing pool. As long as the employee remains in the random testing pool, additional testing or subsequent pre-employment drug [and alcohol] testing will not be necessary following a layoff;
- l. The district will notify individuals offered employment with the district contingent on drug testing of the results of such testing upon request within 60 days of being notified of the disposition of the employment application;
- m. Refusal to submit to drug [and alcohol] testing and/or to provide signed permission for the release of past testing information as required by the district shall result in immediate termination from employment or transfer consideration;
- n. [The individual may request a screening of the split specimen at his/her own expense. All such requests must be received in writing by the district no later than 72 hours following notification to the applicant of the positive test results.]

4. Post-accident Testing

The district shall conduct post-accident testing as follows:

- a. It is the responsibility of the employee to report for post-accident drug and alcohol testing as soon as practicable following a motor vehicle accident which occurs while the employee is performing district safety-sensitive functions in which there is a fatality or the employee receives a citation for a moving traffic violation in connection with an injury or tow-away accident:
  - (1) The employee will report to the designated collection site for post-accident drug and alcohol testing as soon as practicable following the occurrence of the accident;
  - (2) If alcohol testing has not been administered within two hours, the district will ~~will~~ ~~shall~~ prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered;
  - (3) If alcohol testing is not administered within eight hours, the district will ~~will~~ ~~shall~~ cease attempts to administer an alcohol test and will prepare, ~~will~~ ~~shall~~ and maintain on file a record specifying why the test was not administered;
  - (4) If drug testing has not been administered within 32 hours following the accident, the district will cease attempts to administer such tests and will document why the test was not administered;
  - (5) The employee will contact the ~~[district drug use and alcohol misuse prevention program coordinator]~~ [district official] or designee as soon as practicable following the accident giving as much detailed information about the accident as possible (e.g., fatalities, injuries, tow-a-ways, traffic citation issued, etc.).
- b. The district will provide employees with necessary post-accident testing information, procedures and instructions as a part of its employee training program. Additionally, written instructions to follow in the event of an accident will be provided in district vehicles as appropriate. Instructions will include locations of drug specimen collection and alcohol testing sites and telephone number of the district drug use and alcohol misuse prevention program coordinator or other district officials to contact;
- c. The employee shall remain readily available for testing or may be deemed by the district to have refused to submit to testing. Such refusal is treated as if the district received an alcohol

test result of 0.04 or greater or received a positive drug test. Nothing in this requirement shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit an employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care;

- d. Results of a breath or blood test for the use of alcohol or a urine test for the use of drugs conducted by on-site federal, state and/or local law enforcement officials having independent authority for the test shall be considered to meet necessary requirements provided results of the test are obtained by the district and the tests conform to all applicable federal, state and/or local requirements;
- e. An employee who is involved in an accident involving a fatality, injury and/or tow-away as described by the OTETA is prohibited from using alcohol for eight hours after the accident or until the employee undergoes a post-accident alcohol test, whichever occurs first.

#### 5. Random Testing

The district shall conduct random drug and alcohol testing annually as follows:

- a. Not less than 25 percent of the average number of driver positions shall be tested for drugs and not less than 10 percent shall be tested for alcohol in accordance with current minimum random testing requirements of the OTETA. Any unfilled, covered positions will be included as part of the total number of positions counted by the district for testing rate purposes.

- (1) The district will [meet] [~~\*exceed~~] minimum testing rates.
- (2) [~~\*In exceeding minimum testing rates, the district requires that [ ] percent of covered employees shall be randomly tested annually for drugs and [ ] percent shall be randomly tested annually for alcohol.~~]

- b. The testing rate may be adjusted by FMCSA based on industrywide data;
- c. The testing process shall, in fact, be random. Unless advised otherwise by their consortium, all employees will remain in the pool of drivers for each subsequent period, including vacations, holiday periods and summer recesses, whether or not they have been chosen for testing in the past;
- d. The selection of employees for random testing shall be made by a scientifically valid method. The process selected by the district will ensure that all employees shall have an equal chance of being tested each time selections are made. The district will use the following system:

[<sup>7</sup>][Computerized system<sup>8</sup>]:

A random number generating program will be loaded into a computer along with the employees' social security number, payroll identification number or other comparable identification number for the drivers.]

**OR**

[Manual system:

- (1) [~~Individual, identically sized slips of paper or cards with the names or identification numbers of the covered drivers will be used;~~
- (2) [~~Cards will be placed into a container from which the required number will be drawn;~~

[<sup>7</sup> The district should select either "computerized system" or "manual system" language reflected in brackets.]

[<sup>8</sup> The computerized system, when it can be utilized by the district, is the preferred selection method, under FMCSA guidance.]

- ~~(3) The individual selected by the district to do the drawing will be unbiased;~~
- ~~(4) All names in the pool will be checked prior to the drawing to assure any necessary additions or deletions are made.]~~

- e. All such testing shall be unannounced and dates selected spread reasonably throughout the calendar year to avoid predictability and the perception that testing is "done for the year[.]" [Districts with six or less covered employees may annually select a single calendar date for random drug and alcohol testing<sup>9</sup>. The date selected will be kept confidential to ensure that testing is unannounced as required by law [;.]]
- f. Following notification of testing, selected employees shall proceed to the district-selected collection site immediately or as soon as practicable;  
~~Each employee selected for testing shall be tested during the selection period.~~
- h. Employees shall only be tested for alcohol just before the driver is scheduled to perform his/her safety-sensitive functions, during or just after performing such functions;
- i. Employees off work due to leave of absence, vacation and layoff will be informed that they remain subject to random testing. Employees drawn for such testing will be notified and tested as soon as practicable upon return to duty but no later than the next selection cycle (e.g., monthly, quarterly, etc.).

#### 6. Reasonable Suspicion Testing

The district shall conduct reasonable suspicion drug and alcohol testing as follows:

- a. The district will test covered employees when there is reasonable suspicion to believe that the employee has engaged in drug use or alcohol misuse;
- b. Reasonable suspicion will be based on specific contemporaneous, articulable observations made by a trained supervisor as designated by the district, concerning appearance, behavior, speech or body odors indicative of employee use of drugs or the misuse of alcohol. Observations of drug use may include indications of chronic and withdrawal effects of drugs and noticeable degradation of job performance that may be associated with the use of drugs;
- c. Hearsay or secondhand information is not sufficient to require an employee to submit to testing;
- d. Alcohol testing may be authorized only if observations resulting in reasonable suspicion are made during, just preceding or just after the period of the workday that the employee is required to be in compliance with this policy, administrative regulations and applicable OTETA provisions;
- e. A written record shall be made of the observations leading to a reasonable suspicion drug test and signed by the administrator or his/her designee authorized to make such observations within 24 hours of the observed behavior or before the results of the drug test are released, whichever is earlier;
- f. The district will ensure that the employee under reasonable suspicion is transported to the designated collection or testing site.

#### 7. Referrals, Evaluation and Treatment

The district shall provide information related to referrals, evaluation and treatment as follows:

- a. The district shall advise covered employees, who violate the drug and alcohol prohibitions, of referral services available for evaluating and resolving problems associated with the use of drugs and the misuse of alcohol. Such information will include the names, addresses and telephone numbers of SAPs and counseling and treatment programs;
- b. An employee who engages in such prohibited conduct shall be evaluated by a SAP;

<sup>9</sup> The next "calendar year date" for random testing starts from the day after the random testing date.



- c. The SAP will determine what assistance if any the employee needs in resolving problems associated with drug use and alcohol misuse;
- d. This requirement applies only to current employees and not to job applicants who refuse testing or who test positive for drugs;
- e. This requirement shall not be interpreted to require the district to provide or pay for any rehabilitation costs or to hold a job open for an employee with or without salary;
- f. SAPs, as referred to in these administrative regulations, means:
  - (1) Licensed physicians with knowledge of and clinical experience in the diagnosis and treatment of alcohol-related disorders;
  - (2) Licensed or certified psychologists, social workers or employee assistance professionals with like knowledge; and
  - (3) Alcohol and drug abuse counselors certified by the National Association of Alcoholism and Drug Abuse Counselors, Association for Addiction Professionals (NAADAC). This does not include state-certified counselors.

8. Return-to-Duty Testing

Employees, if they continue employment and before they return to duty, shall comply with the following:

- a. When an employee has previously tested greater than or equal to 0.04 for alcohol, the employee must retest (return-to-duty test) with an alcohol concentration of less than 0.02;
- b. When an employee has previously tested positive for drug use, the employee must retest (return-to-duty test) with a verified negative test result.

9. Follow-up Testing

Employees, if they continue employment, shall comply with the following:

- a. Follow-up testing will be conducted whenever a SAP determines that an employee is in need of resolving problems associated with drug use and/or alcohol misuse;
- b. Follow-up alcohol testing will be conducted only when the employee is performing safety-sensitive functions, just before or just after the driver has performed safety-sensitive functions;
- c. Follow-up drug and alcohol testing will be unannounced<sup>10</sup>;
- d. The number and frequency of such tests shall be determined by the SAP. Minimally, there shall be:
  - (1) At least 6 unannounced tests in the first 12 months following the driver's return to duty;
  - (2) Testing shall not exceed 60 months from the date of the employee's return to duty. The SAP, however, may terminate the follow-up testing at any time after the first six tests if he/she/the SAP determines the testing is no longer needed.

10. Drug and Alcohol Testing Procedures

The district, in cooperation with contracted collection and testing facilities, shall maintain drug and alcohol testing procedures as follows:

- a. Drugs
  - (1) The applicant or employee reports to the district-designated collection site and provides positive identification (e.g., photo ID);

<sup>10</sup> A follow-up test shall not also serve as a random test, and vice versa.

- (2) A urine sample for drug testing is provided. A "split specimen" (two urine specimen bottles) is prepared from the urine sample;
- (3) Following completion of a chain-of-custody form, both specimen bottles are forwarded to the ~~DHHS~~ ~~OTETA~~ certified laboratory for analysis. The split specimen is stored at the laboratory for later testing as may be necessary. Initial testing is performed only on one specimen bottle;
- (4) Testing results are reported to the district-selected MRO by mail or electronic transmission. Results may not be given over the phone;
- (5) The MRO will verify both negative and positive testing results;
- (6) The MRO will report the verified negative testing results to the district;
- (7) The MRO will report verified positive testing results to the applicant or employee, discuss the type of illegal substance found and determine whether there is any valid medical reason for the positive testing results;
- (8) A verified valid medical reason for a positive test result will be reported as a negative test result to the district;
- (9) If no legitimate medical reason exists for positive drug testing, the MRO will report a confirmed positive test result and identity of the substance(s) to the district;
- (10) The employee or applicant may request within 72 hours of a positive test notice that the split specimen (second bottle) be screened. Such screening costs will be paid for by the ~~employee~~ ~~district~~;
- (11) Unlike the original specimen analyzed for specific levels of controlled substances, the split specimen is analyzed only for the presence of drugs;
- (12) The MRO will report results of the second screening to the employee and the district;
- (13) The MRO will meet all the OTETA requirements including review of chain-of-custody control form, administrative processing of negative test results, verification of positive testing results, ~~report to the FMCSA~~, and maintenance of confidentiality requirements as may be applicable;
- (14) Detailed drug testing procedures may be obtained by contacting the district's drug use and alcohol misuse prevention coordinator or designee.

b. Alcohol

- (1) The employee reports to the district-designated testing site and provides positive identification;
- (2) Under the alcohol testing rule, an alcohol test result will be considered failing even if over-the-counter or legally prescribed medication is involved;
- (3) All alcohol screening tests will be conducted by: <sup>[1]</sup> ~~a qualified breath alcohol technician using evidential breath testing devices;~~ OR ~~a qualified screening test technician using an alcohol screening device other than an evidential breath testing device;~~
- (4) Testing may be conducted at an ~~DHHS~~ ~~OTETA~~ certified laboratory or other location including mobile facilities equipped for such testing as may meet the requirements of the OTETA;
- (5) District supervisors should generally not be used as a breath alcohol or screening test technician for covered employees. Under certain circumstances, a properly trained district supervisor may conduct such testing in the absence of another technician;
- (6) The employee submits to breath or saliva testing;
- (7) If the result of the testing indicates an alcohol concentration rate of 0.02 or greater, a confirmation breath test is administered after at least 15 minutes, but no longer than 30 minutes, after the initial testing. All confirmation tests will be conducted using evidential breath testing devices;

[<sup>1</sup> The district should select one of the bracketed language options.]

- (8) The technician will report any invalid tests, confirmed failing and passing results to the district;
- (9) Employee refusal to sign forms as required (i.e., Step 2 on the Alcohol Testing Form) shall be considered as refusal to be tested;
- (10) The breath alcohol or screening test technician will meet all OTETA requirements including such testing procedures, Alcohol Testing Form and confidentiality requirements as may be required;
- (11) Detailed alcohol testing procedures may be obtained by contacting the district's drug use and alcohol misuse prevention program coordinator or designee.

11. Positive Test Result

When the MRO determines a positive test result is valid, the MRO will report the finding to the Oregon Department of Transportation (ODOT) and the Oregon Department of Education. The person who is the subject of the test results will be notified by ODOT that the person has a right to a hearing to determine whether the test results reported will be placed in the employee's employment driving record.

12. Record Keeping/Record Reporting

The district shall maintain records of its drug use and alcohol misuse prevention program as follows:

a. Records related to the collection process:

- (1) ~~Collection logbook, if used.~~
- (2) Documents relating to the random selection process;
- (3) Documents generated in connection with decisions to administer reasonable suspicion drug or alcohol testing;
- (4) Documents generated in connection with decisions on post-accident testing;
- (5) Documents verifying the existence of an explanation of the inability of an employee to provide adequate breath or to provide a urine specimen for testing;
- (6) An annual calendar year report summarizing results of the district's drug use and alcohol misuse prevention program will be prepared and maintained when requested by FMCSA as part of an inspection, investigation, special study or for statistical purposes;  
~~[If alcohol testing is provided directly by the district, include the following additional record-keeping requirements.]~~
- ~~(7) Collection logbook, if used.~~
- ~~(8) Calibration documentation for evidential breath testing devices.~~
- ~~(9) Documentation of breath alcohol or screening test technician training while the individual performs the functions which require the training.~~

b. Records related to each query

- (1) Documents related to consent of any query
- (2) Documents related to information received for a pre-employment or annual query
- (3) Documents related to meeting reporting requirements

c. Records related to pre-employment verification with a driver's previous employer,

d. Records related to a driver's test results, including:

- (1) The district's copy of the alcohol testing form, including the test results;
- (2) The district's copy of the controlled substance test custody and control form;

[~~If alcohol testing is provided directly by the district, include the additional record-keeping requirements.]~~

- (3) Documents sent by the MRO to the district;
- (4) Documents related to the refusal of any employee to submit to drug and/or alcohol testing;
- (5) Documents presented by a driver to dispute the results of a drug and/or alcohol test administered in connection with the requirements of the OTETA.

e. Records related to evaluations as follows:

- (1) Records pertaining to a determination by a SAP concerning his/her evaluation of a covered employee who tested positive for drugs, or failed an alcohol test or refused to test for assistance;
- (2) Records concerning a driver's compliance with recommendations of the SAP.

f. Records related to education and training as follows:

- (1) Materials on drug use awareness and alcohol misuse including a copy of the district's policy and administrative regulations on drug use and alcohol misuse and related information;
- (2) Driver's signed receipt of education materials;
- (3) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for drug and/or alcohol testing based on reasonable suspicion;
- (4) Certification that any training conducted in compliance with the OTETA meets all pertinent requirements for such training.

g. Records related to alcohol and drug testing as follows:

- (1) Agreements with collection site facilities, laboratories, MROs and consortia (includes breath alcohol technicians, screening test technicians and third party providers), as applicable;
- (2) Names and positions of officials and their role in the district's drug and alcohol testing program(s);
- (3) Semiannual laboratory statistical summaries of urinalysis as required by the OTETA and as reported by the laboratory. The district will document laboratory failures to provide statistical summaries and any district follow-up efforts to obtain such reports.

h. Records will be retained by the district as follows:

- (1) Five Years:
  - (a) Records of employee alcohol-testing results with results indicating an alcohol concentration of 0.02 or greater;
  - (b) Records of verified positive drug testing results;
  - (c) Documentation of refusals to take required drug and/or alcohol tests;
  - (d) Drug testing custody and control forms;
  - (e)(d) Employee evaluation and referrals;
  - (e)(f) A copy of each annual calendar year report summary[.];
  - (h)(g) Equipment calibration documentation as applicable when required (See 44-12. a. (6), (7) and (8)).

- (2) Three Years

- (a) Records related to each query and all information received in response to each query. Documentation of a consent will be retained for three years from the date of the last query.
- (b) Pre-employment records obtained, or good faith efforts to obtain, from a previous employer about a driver.

(3) Two Years:

Records related to the drug and alcohol collection process (except calibration of evidential breath testing devices).

(4) One Year:

Records of negative and cancelled drug-testing results and alcohol test results with a concentration of less than 0.02.

(5) Indefinite Period:

Records related to the education and training of breath alcohol technicians, screening test technicians, supervisors and drivers shall be maintained by the district while the individual performs the functions which require training and for two years after ceasing to perform those functions.

i. Records will be maintained in a secure location with controlled access to ensure confidentiality requirements are met as follows:

- (1) Drug use and alcohol misuse prevention program records will be maintained at the district office. Records relating to individual employee drug and/or alcohol testing, evaluation and treatment will be maintained separately from the employee's personnel file;
- (2) Employees are entitled upon written request to obtain copies;
- (3) The district may disclose information in connection with employee benefit proceedings, Department of Transportation agency action against an employee or National Transportation Safety Board safety investigations;
- (4) The district shall disclose such information<sup>13</sup> to subsequent employers upon written request from the employee (in accordance with 49 C.F.R. § 382.413(a)(1)); [ ]
- (5) [The district will provide access to any drug and alcohol collection and/or testing facility records maintained by the district as described by the OTEIA (i.e., those federal agencies, state and local officials who have regulatory authority over the district's covered employees) ]

<sup>13</sup> Information that must be disclosed to subsequent employers upon receipt of proper authorization form/release signed by the employer's ex-driver: (a) Failed alcohol tests (breath alcohol content of 0.04 or greater); (b) Verified positive drug test; (c) Refusals to test.

## OSBA Model Sample Policy

Code: GBNAA/JHFF  
Adopted:

### Reporting Requirements for Suspected Sexual Conduct with Students \*

Sexual conduct by district employees, contractors<sup>1</sup>, agents<sup>2</sup>, and volunteers<sup>3</sup> is not tolerated. All district employees, contractors, agents, and volunteers are subject to this policy.

“Sexual conduct,” means verbal or physical conduct or verbal, written or electronic communications by a school employee, a contractor, an agent or a volunteer that involve a student and that are sexual advances or requests for sexual favors directed toward the student, or of a sexual nature that are directed toward the student or that have the effect of unreasonably interfering with a student’s educational performance, or of creating an intimidating, hostile or offensive educational environment. “Sexual conduct” does not include touching that is necessitated by the nature of the school 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.

“Student” means any person who is in any grade from prekindergarten through grade 12 or 21 years of age or younger and receiving educational or related services from the district that is not a post-secondary institution of education, or 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.

Any district employee [<sup>4</sup>], contractor, agent or volunteer] who has reasonable cause to believe that a student has been subjected to sexual conduct by another district employee, contractor, agent or volunteer, or that another district employee, contractor, agent or volunteer has engaged in sexual conduct with a student shall immediately report such suspected sexual conduct to the [<sup>5</sup>]designated licensed administrator or the alternate designated licensed administrator for their school building. If the superintendent is the alleged perpetrator the report shall be submitted to the [licensed administrator position title] who shall report the suspected sexual conduct to the Board chair.

Commented [SO1]: High School Principal

<sup>1</sup> “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.

<sup>2</sup> “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.

<sup>3</sup> “Volunteer” means a person acting as a volunteer for the district in a manner that requires the person to have direct, unsupervised contact with students.

[<sup>4</sup> The following language in brackets, i.e., [, contractor, agent or volunteer], is optional language for the district to consider including. If the language is kept, the district must make these groups aware of the policy and its administrative regulation and their responsibilities under both. This may also be included in contracts with agents and contractors and include reference to this policy.]

[<sup>5</sup> Senate Bill 155 (2019) requires the district to designate a licensed administrator to receive reports of suspected sexual conduct, and designate an alternate licensed administrator for each school building.]

[If an employee fails to report suspected sexual conduct or fails to maintain confidentiality of records, the employee will be disciplined up to and including dismissal ]

When the designated licensed administrator receives a report of suspected sexual conduct by a district employee, contractor, agent or volunteer, the administrator will follow procedures established by the district and set forth in the district’s administrative regulation JHFF/GBNAA-AR - Suspected Sexual Conduct Report Procedures and Form. All such reports will be reported to the Oregon Department of Education (ODE) or Teacher Standards and Practices Commission (TSPC) as appropriate, for investigation. The agency receiving a report will complete an investigation regardless of any changes in the relationship or duties of the person who is the alleged perpetrator.

When there is reasonable cause to support the report, a district employee suspected of sexual conduct shall be placed on paid administrative leave pending an investigation and the district will take necessary actions to ensure the student’s safety.

When there is reasonable cause to support the report, a district contractor, agent or volunteer suspected of sexual conduct shall be removed from providing services to the district and the district will take necessary actions to ensure the student’s safety.

The district will post in each school building the names and contact information of the employees<sup>[6]</sup> designated for the school building to receive reports of suspected sexual conduct and the procedures the designee will follow upon receipt of the report.

The district will notify, as allowed by state and federal law, the person who was subjected to the suspected sexual conduct about any actions taken by the district as a result of the report.

A district employee, contractor or agent will not assist another district employee, contractor or agent in obtaining a new job if the individual knows, or has reasonable cause to believe the district employee, contractor or agent engaged in sexual conduct. Nothing in this policy prevents the district from disclosing information required by law or providing the routine transmission of administrative and personnel files pursuant to law.

The initiation of a report in good faith about suspected sexual conduct may not adversely affect any terms or conditions of employment or the work environment of the person who initiated the report or who may have been subject to sexual conduct. If a student initiates a report of suspected sexual conduct by a district employee, contractor, agent or volunteer in good faith, the student will not be disciplined by the district or any district employee, contractor, agent or volunteer.

The district will provide to employees at the time of hire, or to a contractor, agent or volunteer at the time of beginning service for the district, the following:

1. A description of conduct that may constitute sexual conduct;

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[<sup>6</sup> Senate Bill 155 (2019) requires the district to designate a licensed administrator and an alternate licensed administrator for each school building.]

2. A description of the investigatory process and possible consequences if a report of suspected sexual conduct is substantiated; and
3. A description of the prohibitions imposed on district employees, contractors and agents when they attempt to obtain a new job, pursuant to ORS 339.378(2).

All district employees are subject to Board policy GCAB - Personal Electronic Devices and Social Media - Staff regarding appropriate electronic communications with students.

Any electronic communications with students by a contractor, agent or volunteer for the district will be appropriate and only when directed by district administration. When communicating with students electronically regarding school-related matters, contractors, agents or volunteers shall use district e-mail using mailing lists and/or other internet messaging to a group of students rather than individual students or as directed by district administration. Texting or electronically communicating with a student through contact information gained as a contractor, agent or volunteer for the district is ~~[[strongly] [discouraged] [prohibited]].~~

The superintendent shall develop administrative regulations to implement this policy and to comply with state law.

END OF POLICY

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**Legal Reference(s):**

ORS 332.107  
ORS 339.370 - 339.400

ORS 419B.005 - 419B.045

Senate Bill 155 (2019)

Every Student Succeeds Act, 20 U.S.C. § 7926 (2018).



## OSBA Model Sample Policy

Code: GBNAA/JHFF-AR

Revised/Reviewed:

Commented [SO1]: Same as JHFF/GBNAA-AR

### Suspected Sexual Conduct Report Procedures and Form \*

When the designee receives a report of suspected sexual conduct that may have been committed by a person licensed<sup>1</sup> through Teacher Standards and Practices Commission (TSPC), the designee shall notify TSPC as soon as possible. When the designee receives a report of suspected sexual conduct that may have been committed by a person who is not licensed through TSPC, the designee shall notify the Oregon Department of Education (ODE) as soon as possible.

The district posts in each school building the names and contact information of the employees<sup>[2]</sup> in each school building designated to receive reports of suspected sexual conduct and the procedures the designee will follow upon receipt of the report.

If the superintendent is the alleged perpetrator the report shall be submitted to the [licensed administrator position title] who shall refer the report to the Board chair.

When the designee receives a report of suspected sexual conduct by a district employee, and there is reasonable cause to support the report, the district shall place the district employee on paid administrative leave<sup>3</sup> and take necessary actions to ensure the student's safety. The employee shall remain on leave until TSPC or ODE determines that the report is substantiated and the district takes appropriate employment action against the employee, or cannot be substantiated or is not a report of sexual conduct and the district determines either: 1) an employment policy was violated and the district will take appropriate employment action against the employee; or 2) an employment policy has not be violated and an employment action against the employee is not required. The district will investigate all reports of suspected sexual conduct by persons who are licensed by the TSPC, unless otherwise requested by TSPC, and all reports of suspected sexual conduct by persons who are not licensed by TSPC, unless otherwise requested by ODE.

When the designee receives a report of suspected sexual conduct by a contractor<sup>[4]</sup>, an agent or a volunteer, the district [may] [shall] prohibit the contractor, agent or volunteer from providing services to the district. If the district determines there is reasonable cause to support a report of suspected sexual conduct, the district shall prohibit the contractor, agent or volunteer from providing services. [The district may reinstate the contractor, agent or volunteer, and such reinstatement may not occur until such time as a report of suspected sexual conduct has been investigated and a determination has been made by TSPC or ODE that the report is unsubstantiated.]

<sup>1</sup> "License" includes a license, registration or certificate issued by the Teacher Standards and Practices Commission.

<sup>2</sup> Senate Bill 155 (2019) requires the district to designate a licensed administrator and an alternate licensed administrator for each school building.]

<sup>3</sup> The district employee cannot be required to use any accrued leave during the imposed paid administrative leave.

<sup>4</sup> The district is encouraged to duplicate this language in the contract. If the contract is with a company and the person assigned to do the work is the alleged perpetrator, the district shall notify the company and request another company employee be assigned to complete the work.]

Upon request from ODE or TSPC the district will provide requested documents or materials to the extent allowed by state and federal law.

The name, address and other identifying information about the employee who made the report are confidential and are not accessible for public inspection.

[An “investigation” means a detailed inquiry into the factual allegations of a report of suspected sexual conduct that is based on interviews with the person who initiated the report, the person who may have been subjected to sexual conduct, witnesses and the person who is the subject of the report, and results in a finding that the report is a substantiated report, cannot be substantiated, or is not a report of sexual conduct. If the subject of the report is a district employee represented by a contract or a collective bargaining agreement, the investigation must meet any negotiated standards of such employment contract or agreement.]

Nothing prevents the district from conducting its own investigation, unless another agency requests to lead the investigation or requests the district to suspend the investigation, or taking an employment action based on information available to the district before an investigation conducted by another agency is completed. The district will cooperate with agencies assigned to conduct such investigations.

[A “substantiated report” means a report of sexual conduct that TSPC or ODE determines is founded.]

If, following the investigation, the district decides to take an employment action, the district will inform the district employee of the employment action to be taken and provide information about the appropriate appeal process. [The employee may appeal the employment action taken through the appeal process provided by the applicable collective bargaining agreement.] [The employee may appeal the employment action taken through an appeal process administered by a neutral third party.]

If the district is notified that the employee decided not to appeal the employment action or if the determination of an appeal sustained the employment action, the district shall create a record of the findings of the substantiated report and the employment action taken by the district will be placed in the records on the school employee maintained by the district. Such records created are confidential and not public records as defined in Oregon Revised Statute (ORS) 192.311, however the district may use the record as a basis for providing information required to be disclosed about a district employee under ORS 339.378(1). The district will notify the employee that information about substantiated reports may be disclosed to a potential employer.

### **Training**

The district shall provide training each school year to district employees on the following:

1. Prevention and identification of sexual conduct;
2. Obligations of district employees under ORS 339.388 and 419B.005 - 419B.050 and under adopted board policies to report suspected sexual conduct; and
3. Appropriate electronic communications with students.

The district shall make available each school year the training described above to contractors, agents, volunteers and to parents and legal guardians of students attending district-operated schools, and will be made available separately from the training provided to district employees.

The district shall provide to contractors, agents and volunteers each school year information on the following:

1. Prevention and identification of sexual conduct;
2. Obligations of district employees under adopted board policies to report suspected sexual conduct; and
3. Appropriate electronic communications with students.

The district shall make available each school year training that is designed to prevent sexual conduct to students attending district-operated schools.

**[Name of School District]**  
**SUSPECTED SEXUAL CONDUCT REPORT FORM**

Name of person making report: \_\_\_\_\_

Position of person making report: \_\_\_\_\_

Name of person suspected of sexual conduct: \_\_\_\_\_

Date and place of incident or incidents: \_\_\_\_\_

\_\_\_\_\_

Description of suspected sexual conduct: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Name of witnesses (if any): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Evidence of suspected sexual conduct, e.g., letters, photos, etc. (attach evidence if possible): \_\_\_\_\_

\_\_\_\_\_

Any other information: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

I agree that all of the information on this form is accurate and true to the best of my knowledge.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

[Name of School District]

**WITNESS DISCLOSURE FORM**

Name of witness: \_\_\_\_\_

Position of witness: \_\_\_\_\_

Date of testimony/interview: \_\_\_\_\_

Description of instance witnessed: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Any other information: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

I agree that all the information on this form is accurate and true to the best of my knowledge.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

# OSBA Model Sample Policy

Code: GCA  
Adopted:

## License Requirements

The Board, in adhering to Oregon Revised Statutes (ORS), shall require all applicants selected for employment for positions that require licensing, to hold a valid Oregon license issued by the Teacher Standards and Practices Commission (TSPC) as a condition of employment. The district must be able to verify the current license of applicants offered employment before the Board will consider approving their employment.

[If an applicant's teaching license application with the TSPC is pending, the applicant may teach [with Board approval] for 90 calendar days after the date of submission of the application, if the applicant has:

1. Submitted an application in the manner and form required by the TSPC, including payment of all required fees;
2. Completed a background clearance conducted by the TSPC that includes having:
  - a. Furnished fingerprints, if required;
  - b. Provided satisfactory responses to character questions in the form and manner required by the TSPC; and
  - c. Completed a criminal records check pursuant to state law and a background check through the interstate clearinghouse for revoked or suspended licenses, and is eligible for a teaching license.
3. Not been employed by the district under this 90 calendar day provision during the previous 12 months with a pending application for the same license.

The district will complete a review of the applicant's employment history and verify through TSPC if there is an ongoing investigation or a substantiated report that may constitute sexual conduct as required by law prior to beginning employment.

The district will verify through TSPC the employee is properly licensed on the 91st calendar day after the application was submitted to the TSPC, if the employee's license application is pending and the employee is teaching in the district.]

[This 90- calendar day teaching option will only be applied to those positions of high need, specialty areas or emergency assignments as determined by the district.]

The verification of licensure includes all license endorsements. It shall be each licensed staff member's responsibility to keep all endorsements current [and to submit them to the [superintendent's] office.

END OF POLICY

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**Legal Reference(s):**

ORS 339.374  
ORS 342.120 - 342.203

OAR 584-050-0035  
OAR 584-200-0020

Senate Bill 155 (2019)  
Senate Bill 216 (2019)

# OSBA Model Sample Policy

Code: GCAB  
Adopted:

## Personal Electronic Devices and Social Media - Staff\*\*

Staff possession or use of personal electronic devices on district property, in district facilities during the work day and while the staff is on duty in attendance at district-sponsored activities may be permitted subject to the limitations set forth in this policy and consistent with any additional school rules as may be established by the superintendent ~~or designee~~. At no time, whether on duty or off duty, will a personal electronic device be used in a manner that interferes with staff duty and responsibility for the supervision of students.

[A “personal electronic device” is a device not issued by the district and is capable of electronically communicating, sending, receiving, storing, recording, reproducing, and/or displaying information and data.]

Personal electronic devices shall be silenced during instructional [or class] time, while on duty or at any other time where such use of the device would cause a disruption of school activities or interfere with a work assignment. Devices, which have the capability to take photographs or record video or audio, shall not be used for such purposes while on district property or while a staff member is on duty at district-sponsored activities, unless as expressly authorized by the principal or designee for a use directly related to and consistent with the employee’s assigned duties. Computers, tablets, iPads or similar devices brought to school will be restricted to academic activities during on duty time.

The district will not be liable for loss or damage to personal electronic devices brought to district property and district-sponsored activities.

Staff members, while on duty and off duty, will utilize social media websites, public websites and blogs, judiciously by not posting confidential information about students, staff or district business.<sup>1</sup> Staff may not post images of district facilities, staff, students, volunteers or parents without written authorization from persons with authority to grant such a release. Staff members, while on duty and off duty, will treat fellow employees, students and the public with respect while posting on social media websites, etc., in order to prevent substantial disruption in school.

Communication with students using personal electronic devices will be appropriate and professional. Communication with students using personal electronic devices regarding nonschool-related matters is prohibited during work hours and strongly discouraged at all other times. If communicating with students electronically regarding school-related matters, staff [should] [will] ~~shall~~ use district e-mail using mailing lists ~~and/or other internet messaging~~ to a group of students rather than individual students. Texting ~~a~~ students during work hours is [discouraged] ~~prohibited~~. Texting ~~a~~ students while off duty is strongly discouraged.

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<sup>1</sup> Nothing in this policy is intended in any form to limit the right of employees to engage in protected labor activities via the use of social media.



Exceptions to the prohibitions set forth in this policy may be made for health, safety or emergency reasons with superintendent or designee approval.

Staff are subject to disciplinary action up to and including dismissal for using a personal electronic device in any manner that is illegal or violates the terms of this policy. Staff actions on social media websites, public websites and blogs, while on or off duty, which disrupt the school environment, are subject to disciplinary action up to and including dismissal. [A “disruption”<sup>2</sup> for purposes of this policy includes, but is not limited to, one or more parent threatens to remove their children from a particular class or particular school, actual withdrawal of a student or students from a particular class or particular school and/or a threatened or actual negative impact on the learning environment.]

The taking, disseminating, transferring or sharing of obscene, pornographic or otherwise illegal images or photographs, whether by electronic data transfer or otherwise (commonly called texting, sexting, emailing, etc.) may constitute a crime under state and/or federal law. Any person taking, disseminating, transferring or sharing obscene, pornographic or otherwise illegal images or photographs, will be reported to law enforcement and/or other appropriate state or federal agencies.

[Licensed staff are subject at all times to the Standards for Competent and Ethical Performance of Oregon Educators. (See Board policy GCAA)]

The superintendent shall ensure that this policy is available to all employees.

END OF POLICY

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**Legal Reference(s):**

ORS 163.432  
ORS 163.433  
ORS 163.684  
ORS 163.686  
ORS 163.687  
ORS 163.688  
ORS 163.689

ORS 163.693  
ORS 163.700  
ORS 167.057  
ORS 326.011  
ORS 326.051  
ORS 332.072  
ORS 332.107

ORS 336.840  
ORS 339.372

[OAR 584-020-0000 – 020-0035]

Senate Bill 155 (2019)

18 U.S.C. § 1466A (2018)  
18 U.S.C. § 1470 (2018)  
20 U.S.C. § 7131 (2018)  
20 U.S.C. § 7906 (2018)

Copyrights, Title 17, as amended, United States Code (2018); 19 C.F.R. Part 133 (2014-19).

Melzer v. Bd. Of Educ., City of New York, 336 F.3d 185 (2d Cir. 2003).

Ross v. Springfield Sch. Dist., No. FDA 80-1, aff'd, 56 Or. App. 197, rev'd and remanded, 294 Or. 357 (1982), order on remand (1983), aff'd, 71 Or. App. 111 (1984), rev'd and remanded, 300 Or. 507 (1986), order on second remand (1987), revised order on second remand (1988).

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<sup>2</sup> Ibid. p. 1

# OSBA Model Sample Policy

Code: JGE  
Adopted:

## Expulsion\*\*

A principal, after reviewing available information, may recommend to the superintendent that a student be expelled. Expulsion of a student shall not extend beyond one calendar year.

A student may be expelled for any of the following circumstances:

1. When a student's conduct poses a threat to the health or safety of students or employees;
2. When other strategies to change the student's behavior have been ineffective, except that expulsion may not be used to address truancy; or
3. When required by law.

The use of expulsion for discipline of a student in fifth grade or lower is limited to:

1. Nonaccidental conduct causing serious physical harm to a student or employee;
2. When a school administrator determines, based on the administrator's observations or upon a report from an employee, the student's conduct poses a threat to the health or safety of students or employees; or
3. When the expulsion is required by law.

The age of the student and the past pattern of behavior will be considered prior to imposing the expulsion.

No student may be expelled without a hearing unless the student's parents, or the student if 18 years of age, waive the right to a hearing, either in writing or by failure to appear at a scheduled hearing. By waiving the right to a hearing, the student and parent agree to abide by the findings of a hearing officer.

When an expulsion hearing is not waived, the following procedure is required:

1. Notice will be given to the student and the parent by personal service<sup>1</sup> or by certified mail<sup>2</sup> at least [five] days prior to the scheduled hearing. Notice shall include:
  - a. The specific charge or charges;
  - b. The conduct constituting the alleged violation, including the nature of the evidence of the violation and reason for expulsion;
  - c. A recommendation for expulsion;

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<sup>1</sup> The person serving the notice shall file a return of service. (OAR 581-021-0070)

<sup>2</sup> When "certified mail is given to a parent of a suspended student, the notice shall be placed in the mail at least five days before the date of the hearing." (OAR 581-021-0070)

- d. The student's right to a hearing;
  - e. When and where the hearing will take place; and
  - f. The right to representation.
2. The Board may expel, or may delegate the authority to decide on an expulsion to the superintendent or superintendent's designee, who may also act as the hearings officer. The district may contract with an individual who is not employed by the district to serve as the hearings officer. The hearings officer designated by the Board will conduct the hearing and will not be associated with the initial actions of the building administrators;
  3. Expulsion hearings will be conducted in private and will not be open to the general public unless the student or the student's parents request an open session;
  4. In case the parent or student has difficulty understanding the English language or has other serious communication disabilities, the district will provide a translator;
  5. The student shall be permitted to have representation present at the hearing to advise and to present arguments. The representation may be an attorney and/or parent. The district's attorney may be present;
  6. The student shall be afforded the right to present his/herself/their version of the events underlying the expulsion recommendation and to introduce evidence by testimony, writings or other exhibits;
  7. The student shall be permitted to be present and to hear the evidence presented by the district;
  8. The hearings officer or the student may record the hearing;
  9. Strict rules of evidence shall not apply to the proceedings. However, this shall not limit the hearings officer's control of the hearing;
  10. If the Board is conducting the expulsion hearing, the Board may designate the Board chair or a third party as the hearings officer. The hearings officer will determine the facts of each case on the evidence presented at the hearing. Evidence may include the relevant past history and student education records. The hearings officer will provide to the Board, findings as to the facts, the recommended decision and whether or not the student has committed the alleged conduct. This will include the hearings officer's recommended decision on disciplinary action, if any, including the duration of any expulsion. This material will be available in identical form to the Board, the student if age 18 or over and the students' parents at the same time. Following the review by the Board of the hearings officer's recommendation, the Board will make the final decision regarding the expulsion;
  11. If the Board has delegated authority to the superintendent [or designee] to act as the hearings officer, the superintendent may designate him or herself/herself, or a third party, as the hearings officer. The hearings officer's decision is final. However, a decision of the hearings officer may be appealed by the parent or the student if age 18 or over to the Board for review. If the decision of the hearings officer is appealed to the Board for review, the findings as to the facts and the hearings officer's decision will be submitted to the Board, and will be available in identical form to the Board, the student and the student's parents at the same time. At its next regular or special meeting the Board will review the hearings officer's decision and will affirm, modify or reverse the decision;

12. A Board review of the hearings officer's decision will be conducted in executive session unless the student or the student's parent requests a public hearing. If an executive session is held by the Board or a private hearing held by the hearings officer, the following will not be made public:

- a. The name of the minor student;
- b. The issues involved, including a student's confidential ~~medical record~~ and that student's educational program;
- c. The discussion;
- d. The vote of Board members, which may be taken in executive session when considering an expulsion.

Prior to expulsion, the district must propose alternative programs of instruction or instruction combined with counseling to a student subject to expulsion for reasons other than a weapons policy violation. The district must document to the parent of the student that proposals of alternative education programs have been made.

END OF POLICY

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**Legal Reference(s):**

ORS 192.660  
ORS 332.061  
ORS 336.615 - 336.665

ORS 339.115  
ORS 339.240  
ORS 339.250

OAR 581-021-0050 - 021-0075

House Bill 2514 (2019)

## OSBA Model Sample

Code: JGAB  
Adopted:

### Use of Restraint or Seclusion\*\*

The Board is dedicated to the development and application of best practices within the district's public educational/behavioral programs. The Board establishes this policy and its administrative regulation to define the circumstances that must exist and the requirements that must be met prior to, during, and after the use of restraint or seclusion as an intervention with district students.

The use of the following types of restraint on a student in the district is prohibited:

1. Chemical restraint.
2. Mechanical restraint.
3. Prone restraint.
4. Supine restraint.
5. Any restraint that involves the intentional and nonincidental use of a solid object<sup>1</sup>, including a wall or the floor, to impede a student's movement, unless the restraint is necessary to prevent an imminent life-threatening injury or to gain control of a weapon.
6. Any restraint that places, or creates a risk of placing, pressure on a student's mouth, neck or throat.
7. Any restraint that places, or creates a risk of placing, pressure on a student's mouth, unless the restraint is necessary for the purpose of extracting a body part from a bite.
8. Any restraint that impedes, or creates a risk of impeding, breathing.
9. Any restraint that involves the intentional placement of the hands, feet, elbow, knee or any object on a student's neck, throat, genitals or other intimate parts.
10. Any restraint that causes pressure to be placed, or creates a risk of causing pressure to be placed, on the stomach or back by a knee, foot or elbow bone.
11. Any action designed for the primary purpose of inflicting pain.

Restraint or seclusion may not be used for discipline, punishment, retaliation or convenience of staff, contractors or volunteers of the district.

<sup>1</sup>The use of a solid object, including furniture, a wall, or the floor, by district staff performing a restraint is not prohibited if the object is used for the staff's own stability or support while performing the restraint and not as a mechanism to apply pressure directly to the student's body.

Restraint may be imposed on a student in the district only under the following circumstances:

1. The student's behavior imposes a reasonable risk of imminent and substantial physical or bodily injury to the student or others; and
2. Less restrictive interventions would not be effective.

Seclusion may be used on a student in the district only under the following circumstances:

1. The student's behavior imposes a reasonable risk of imminent and serious bodily injury to the student or others; and
2. Less restrictive interventions would not be effective.

If restraint or seclusion is used on a student, by trained staff or other staff available in the case of an emergency when trained staff are not immediately available due to the unforeseeable nature of the emergency, e.g., teacher, administrator[, or volunteer], it will be used only for as long as the student's behavior poses a reasonable risk of imminent and substantial physical or bodily injury to the student or others and less restrictive interventions would not be effective. Students will be continuously monitored by staff for the duration of the restraint or seclusion.

#### Definitions

1. "Restraint" means the restriction of a student's actions or movements by holding the student or using pressure or other means.

"Restraint" does not include:

- a. Holding a student's hand or arm to escort the student safely and without the use of force from one area to another;
- b. Assisting a student to complete a task if the student does not resist the physical contact; or
- c. Providing reasonable intervention with the minimal exertion of force necessary if the intervention does not include a restraint prohibited under Oregon Revised Statute (ORS) 339.288 and the intervention is necessary to:
  - (1) Break up a physical fight;
  - (2) Interrupt a student's impulsive behavior that threatens the student's immediate safety, including running in front of a vehicle or climbing on unsafe structures or objects; or
  - (3) Effectively protect oneself or another from an assault, injury or sexual contact with the minimum physical contact necessary for protection.

2. "Seclusion" means the involuntary confinement of a student alone in a room from which the student is physically prevented from leaving. Seclusion includes, but is not limited to, the involuntary confinement of a student alone in a room with a closed door, whether the door is locked or unlocked.

"Seclusion" does not include the removal of a student for a short period of time to provide the student with an opportunity to regain self-control if the student is in a setting from which the student is not physically prevented from leaving, or a student being left alone in a room with a closed door for a brief period of time if the student is left alone for a purpose that is unrelated to the student's behavior.

3. "Serious bodily injury" means any significant impairment of the physical condition of a person, as determined by qualified medical personnel, whether self-inflicted or inflicted by someone else.

4. "Substantial physical or bodily injury" means any impairment of the physical condition of a person that requires some form of medical treatment.

5. "Mechanical restraint" means a device used to restrict the movement of a student or the movement or normal function of a portion of the body of a student.

"Mechanical restraint" does not include:

- a. A protective or stabilizing device ordered by a licensed physician; or
- b. A vehicle safety restraint when used as intended during the transport of a student in a moving vehicle.

6. "Chemical restraint" means a drug or medication that is used on a student to control behavior or restrict freedom of movement that is not prescribed by a licensed physician or other qualified health professional acting under the professional's scope of practice for standard treatment of the student's medical or psychiatric condition; and administered as prescribed by a licensed physician or other qualified health professional acting under the professional's scope of practice.

7. "Prone restraint" means a restraint in which a student is held face down on the floor.

8. "Supine restraint" means a restraint in which a student is held face up on the floor.

Any student being restrained or secluded within the district whether in an emergency or as a part of a plan shall be constantly monitored by staff for the duration of the intervention. Any room used for seclusion of a student must meet the standards as outlined in Oregon Administrative Rule (OAR) 581-021-0568.

The district shall utilize the [ 2 ] training program of restraint or seclusion for use in the district. As required by state regulation, the selected program shall be one approved by the Oregon Department of Education (ODE) and include, but not limited to, positive behavior support, conflict prevention, de-escalation and crisis response techniques. Any program selected by the district must be in compliance with state and federal law with respect to the use of restraint and seclusion.

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An annual review of the use of restraint and seclusion during the preceding school year shall be completed and submitted to ODE to ensure compliance with district policies and procedures.

The results of the review and annual report shall be documented and shall include at a minimum:

1. The total number of incidents involving restraint;
2. The total number of incidents involving seclusion;
3. The total number of seclusions in a locked room;
4. The total number of students placed in restraint;
5. The total number of students placed in seclusion;
6. The total number of incidents that resulted in injuries or death to students or staff as a result of the use of restraint or seclusion;

[<sup>2</sup> The district must identify the program utilized for training.]

7. The total number of students placed in restraint or seclusion more than 10 times in a school year and an explanation of what steps have been taken by the district to decrease the use of restraint and seclusion for each student;
8. The total number of restraint or seclusion incidents carried out by untrained individuals;
9. The demographic characteristics<sup>3</sup> of all students upon whom restraint or seclusion was imposed;
10. The total number of rooms available for use by the district for seclusion of a student and a description of the dimensions and design of the rooms.

This annual report shall be made available to the public at the district's main office and on the district's website, and to the Board.

At least once each school year the parents and guardians of students of the district shall be notified about how to access the report.

The district shall investigate all complaints regarding the use of restraint and/or seclusion practices according to the procedures outlined in Board policy KL - Public Complaints and KL-AR - Public Complaint Procedure. The complaint procedure is available at the district's administrative office and is available on the home page of the district's website.

The complainant, who is [a student,] a parent or guardian of a student attending school in the district or a person who resides in the district, whether an organization or an individual, may appeal a district's final decision to the Deputy Superintendent of Public Instruction Oregon Department of Education pursuant to OAR 581-022-2370 581-002-0001 - 581-002-0023 [ This appeal process is identified in administrative regulation KL-AR(2) - Appeal to the Deputy Superintendent of Public Instruction. ]

The superintendent shall develop administrative regulations to carry out the requirements set forth in this policy and to meet any additional requirements established by law related to the use, reporting, and written documentation of the use of restraint or seclusion by district staff.

END OF POLICY

**Legal Reference(s):**

<u>ORS 161.205</u>	<u>ORS 339.303</u>	<u>OAR 581-021-0566</u>
<u>ORS 339.250</u>		<u>OAR 581-021-0568</u>
<u>ORS 339.285</u>	<u>OAR 581-021-0061</u>	<u>OAR 581-021-0569</u>
<u>ORS 339.288</u>	<u>OAR 581-021-0550</u>	<u>OAR 581-021-0570</u>
<u>ORS 339.291</u>	<u>OAR 581-021-0553</u>	<u>OAR 581-022-2367</u>
<u>ORS 339.294</u>	<u>OAR 581-021-0556</u>	<u>OAR 581-022-2370</u>
<u>ORS 339.297</u>	<u>OAR 581-021-0559</u>	
<u>ORS 339.300</u>	<u>OAR 581-021-0563</u>	

<sup>3</sup> Including race, ethnicity, gender, disability status, migrant status, English proficiency and status as economically disadvantaged, unless the demographic information would reveal personally identifiable information about an individual student.