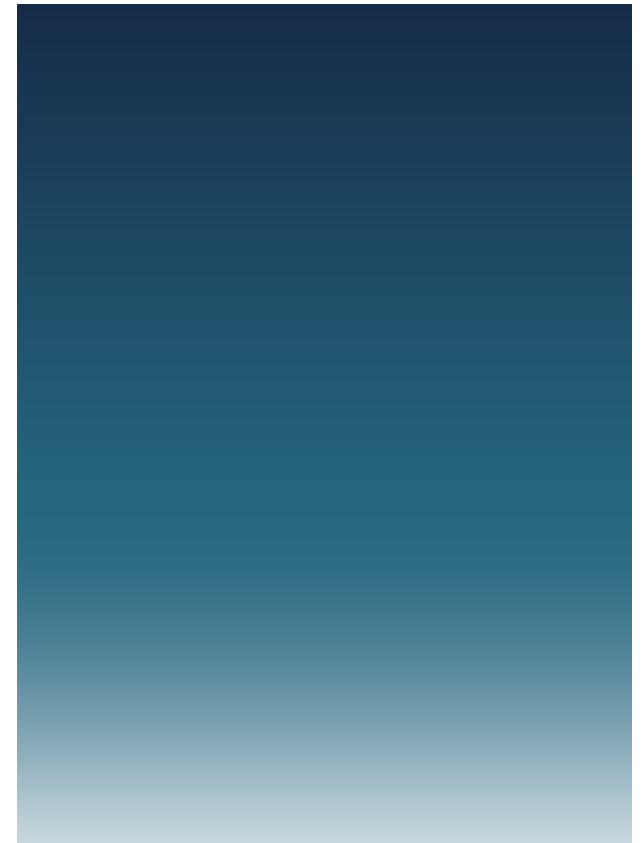
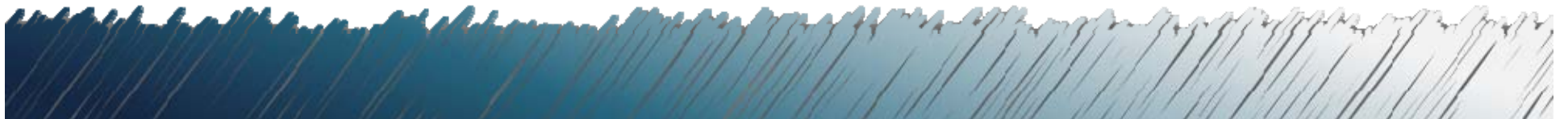


Sexual Conduct: HB 2062 Requirements



AGENDA

- Review of Oregon State law
- What is sexual conduct?
- Grooming
- Boundary Invasions
- Hiring requirements
- Policy requirements
- Training requirements



HB 2062 (2009)

- Aimed at expanding existing child abuse protections to prevent “sexual conduct” by school employees.
- Amended key portions of ORS 339.370, 339.372, 339.375 and 339.377.

Response to Sexual Misconduct

- **Obligation of all “education providers”**
 - School districts;
 - OR School for the Deaf;
 - Ed programs under Youth Corrections;
 - Public charter schools;
 - ESDs;
- State operated program providing educational services to K-12 students;
- Private schools.

ORS 339.370(9)

Sexual Conduct

“Sexual conduct” means any verbal or physical conduct by a school employee that:

- (A) Is sexual in nature;
- (B) Is directed toward a K-12 student;
- (C) Has the effect of unreasonably interfering with a student’s educational performance; and
- (D) Creates an intimidating, hostile or offensive educational environment.



Not Sexual Conduct

Sexual conduct does NOT include abuse
under ORS 419B.005.

Clear Reporting Obligations

- Where a school employee has reasonable cause to believe that a student has been subjected to sexual conduct or abuse by another employee, that school employee shall immediately report the information to supervisor or other person designated by school board.
- Note: In the case of abuse, the school employee must also report to law enforcement or the Department of Human Services or their designee.

Possible Indicators of Sexual Conduct

- No exact formula
- Not an exclusive list
- You may encounter “red flags” that certainly merit investigation and can support an obligation to report and take action

Possible Indicators of Sexual Conduct (continued)

- A student sitting on a staff member's lap
- Repeated touching of students when no educational purpose
- Staff performing back rubs on a student
- Hugging or kissing students

Possible Indicators of Sexual Conduct (continued)

- Commenting on students' bodies or appearance in a sexual manner
- Exchanging romantic gifts or communications with a student
- Showing or sharing pornographic materials

Possible Indicators of Sexual Conduct (continued)

- Videotaping or photographing a student in revealing or suggestive poses
- Sexualized communications with students unrelated to legitimate curriculum:
 - Sexual jokes, gestures, pictures, or innuendos or on personal matters (e.g. discussion of student's dating behavior)

Possible Indicators of Sexual Conduct (continued)

- Sharing sexual exploits or marital difficulties
- Intentionally invading student's privacy
- Engaging in conduct within a student's personal space without legitimate educational reason
- Going to the student's home without parent supervision or legitimate educational reason
- Using personal e-mail, texts, or social media to contact individual students or exchange messages

Sexual Conduct often happens slowly

- Sexual conduct *most often* has its origins in prior “boundary invasion” and “grooming” behaviors by an employee.

Boundary
Invasions

Sexual
Grooming

Sexual
Molestation

Prelude to “Sexual Conduct”

- Involves targeting a student, or students, and engaging in increasingly inappropriate boundary invasions/ grooming designed to foster intimacy.

Boundary
Invasions

Sexual
Grooming

Sexual
Molestation

Typical Grooming Process

- While we know the approach typically taken in a boundary invasion and grooming scenario, *there is no exact roadmap and each case may differ slightly.*
- Oftentimes individual staff members only each have *one piece* of the puzzle - when it is put together after an investigation it becomes clear there was a boundary invasion and grooming.

Typical Grooming Process - Step 1

- (Scenario 1) Picking a student:
 - Often are at-risk
 - Families under stress;
 - Not close to parents;
 - Low self-esteem;
 - Lack self-confidence;
 - Special needs;
 - Depressed or anxious; or
 - Previously victimized.

Grooming Process - Step 1

- (Scenario 2) Gain the trust of the family
FIRST:
 - Extra coaching
 - Extra tutoring
 - Outstanding community member
 - Family activities

Grooming Process - Step 2

- Building a strong personal connection with student.
 - More involved with student compared to peers
 - Teaching assistant
 - Often together at school when not required (passing period/lunch/after hours)
 - Hanging out outside of school
 - Invite to home/gifts/cards

Grooming Process - Step 2 (continued)

- Connection through peer-like behavior with student.
 - Flirting
 - Immature behaviors (gossip/texting)
 - Engaging in personal student activities
 - Attending personal student events
 - Social media
 - Online gaming



Grooming Process - Step 3

- Desensitizing the child to touch.
 - Blur the boundaries between appropriate and inappropriate touching.
 - Teasing or joking around involving touch
 - Hugs
 - Hot tub/pool activities
 - Brushing hair
 - Massages
 - Wrestling/tickling

Grooming Process - Step 4

- Isolating the student
 - Private coaching
 - Tutoring
 - Providing transportation –practice/clinics/ non school sponsored competitions
 - Employment (babysitting, housekeeping, yard maintenance)
 - Camping or overnights
 - Often involves gaining the trust of supervisors and other staff

Grooming Process - Step 5

- Making child feel special but also responsible.
 - Implying they will get in trouble if discovered.
 - Especially effective if alcohol, drugs, or pornography are involved.
 - Guilt over loss of employee's job if discovered.
 - Special sense of trust

Always a Boundary Invasion?

- Can be appropriate if educational or health related
 - Examples:
 - Assisting a kindergartner after a bathroom accident;
 - Appropriately touching students while coaching wrestling, football, or gymnastics;
 - Student teaching assistant stay after to help prepare a presentation for the next day but not isolated;
 - Taking entire volleyball team to a team dinner;
 - Sending group email to the entire class.

Indicators of Boundary Invasion

- Invasions by the adult into the child's personal space and personal life
 - Examples:
 - Undue interest in child (special friend or relationship);
 - Gifts or money to student for no valid educational purpose;
 - Engaging in peer like behavior with students;
 - Overly touchy with students;
 - Favoring certain students;
 - Certain privileges;

Indicators of Boundary Invasion (continued)

- Inviting to classroom during non-class times;
- Getting student out of class repeatedly to visit the teacher;
- Talking with student about problems normally discussed with adults (marital problems);
- Telling and having secrets with the student;
- Talking to student about his/her problems to a point where the teacher is the confidant when it's not the adult's job to do so;

Indicators of Boundary Invasion (continued)

- Giving rides in personal vehicle with or without prior permission;
- Being alone with student behind closed doors at school;
- Initiating or extending contact with student beyond the school day for personal purposes;

Indicators of Boundary Invasion (continued)

- Electronic communication to discuss personal/non-academic interests or topics with student;
- Walking into bathroom, locker room, etc. while student is in there;

Indicators of Boundary Invasion (continued)

- Allowing the child to get away with inappropriate behavior;
- Taking student on outings, away from protective adults;
- Asking about bra size or about previous sexual experience;
- Going to student's home for non-educational reasons;

Indicators of Boundary Invasion (continued)

- Inviting to teacher's home without proper chaperones;
- Telling sexual jokes;
- Sexual innuendo or banter;
- Sexual topics not related to curriculum;
- Showing pornography to the student;
- Hugging, kissing, other physical contact.

Address Boundary Invasion & Grooming

- If a staff member reports behavior that constitutes boundary invasion or grooming behaviors, follow-up.
 - Assess reporting obligations
 - Document objectively
 - Provide clear expectations and directives
 - Adjust supervision accordingly of both the employee and involved student(s)
- Staff who do not observe appropriate follow-up by administrators may not report conduct of concern in the future as they feel nothing is done.

Policy Requirement

- **Must have Board policy regarding:**
 - Reporting Requirements
 - Notification Requirements
- **This policy mirrors the prior requirement for a child abuse Board policy.**
- **See OSBA Sample Policy JHFF**

Posting Requirement (continued)

Just as with child abuse reporting...

- **Must post in each school building:**
 - Name and contact information of person designated to receive building reports of suspected child abuse or sexual conduct
 - Procedures the person will follow upon receipt of report

Training Requirement

Just as with child abuse training. . .

- **Must provide annual training**
 - To employees on prevention and identification of child abuse and sexual conduct and the reporting obligations.
 - This training shall be made available to parents.
- **Prevention training for students.**
- **Document BOTH!**



Hiring Requirements

Conduct background check
on final candidates for
all positions



Hiring Requirement – Step 1

Require applicant to provide:

1. List of current and former employers who are education providers
2. Written authorization that authorizes the applicant's current and former employers to disclose information

Hiring Requirement – Step 1 (continued)

Require applicant to provide:

3. Written statement of whether applicant:
 - Has been subject of substantiated report of child abuse or sexual conduct
 - Is the subject of ongoing investigation related to report of child abuse or sexual conduct



Hiring Requirement – Step 2

Review information provided by applicant by contacting 3 most recent education employers and requesting:

1. Dates of employment
2. Whether was subject of substantiated report of child abuse or sexual conduct
3. Dates of reports

Hiring Requirement - Step 2 (continued)

Information from most recent employers (continued):

4. Definitions of child abuse and sexual conduct used by education provider
5. Standards used to determine whether any reports were substantiated
6. Request any disciplinary records if former school employee was convicted of crime listed in ORS 342.143

NOTE: This is confidential information that can only be used to evaluate applicant's eligibility to be hired.

Former Employer requirements

- **If you are the former employer receiving, this request**
 - You must provide it within 20 days of receiving this request.
 - May disclose on standardized form (See sample)
 - Not required to provide any additional information other than what is required by law

Hiring Requirement – Step 3

If it is a licensed applicant go to <http://www.tspc.state.or.us/> to verify:

1. Applicant is licensed, registered or certified
2. Whether there is any information from TSPC related to the applicant's conduct that may constitute child abuse or sexual conduct

Hiring Requirement – Step 4

**Conduct a criminal background/
fingerprint check through ODE
pursuant to ORS 326.603**

Hiring

- If applicant does not provide the requested information to employer, the district cannot hire applicant.
- District can hire employee on conditional basis pending review of information received by employer.
- Make certain to follow-up.

Hiring (continued)

District may not deny an applicant employment solely because:

1. Prior employer fails or refuses to provide the requested information
2. Prior employer is out of state and is prevented by its laws from complying



Employee Notification

- **At time of hire must provide school employee:**
 - A description of conduct that may constitute child abuse or sexual conduct
 - Description of information that will be disclosed if report of child abuse or sexual conduct is substantiated

Report of Child Abuse

- Report to supervisor
- Report to DHS or Law Enforcement
- If reasonable cause, must place employee on paid admin. leave
- Remains on pd. admin. leave until DHS/law enforcement determine it is substantiated or not.

Report of Sexual Conduct

- Report to supervisor
- If reasonable cause, *may* place employee on paid admin. leave or in different position without student contact until investigation is concluded.

Investigation of Report of Sexual Conduct

- **STEP 1:**

- Follow any applicable collective bargaining agreement, contracts or policies regarding investigations.

- **STEP 2:**

- Interview complainant, witnesses, and the accused employee.

Investigation of Report of Sexual Conduct (continued)

- **STEP 3:**
 - Write up investigation findings.
- **STEP 4:**
 - Notify the person who initiated the report about actions taken.

Substantiated Report

Report of sexual conduct that:

- A district has reasonable cause to believe is founded based on available evidence after conducting an investigation AND
- Involves conduct that the district determines is sufficiently serious to be documented in employee's personnel file

IF Substantiated Report

- **STEP 1:**
 - Inform school employee of substantiated report.
- **STEP 2:**
 - Inform school employee of appeal process.
 - If union employee, follow grievance procedure to appeal findings.
 - If non-union employee, may appeal to neutral 3rd party paid for by district

IF Substantiated Report

- **STEP 3:**
 - If no appeal, or appeal is sustained, create record of substantiated report and place in personnel file.
- **STEP 4:**
 - Inform employee that this information may be disclosed to future employers.



Agreements with Employee

The District *cannot* enter into a collective bargaining agreement, contract or settlement agreement that:

1. Suppresses information related to:
 - Ongoing investigation into suspected child abuse or sexual conduct
 - Substantiated report of child abuse or sexual conduct

Agreements with Employee (continued)

The District *cannot* enter into a collective bargaining agreement, contract or settlement agreement that:

2. Affects the employer's duty to report or discipline employee
3. Requires employer to expunge information related to substantiated report.



We're here to help

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