Knappa School District No. 4 • Knappa, Oregon 97103

Board of Directors' Work Session

The Knappa School District will Inspire all learners to Achieve academically and Thrive as independent and Productive citizens.

Wednesday, April 6, 2022

6:30 p.m.

5:45 p.m. Executive Session ORS 192.660 the governing body of a public body may hold an executive session; (d) To conduct deliberations with persons designated by the governing body to carry on labor negotiations.

1. **Call to Order -6:30 p.m**.
   - 1.1 Flag Salute

2. **New Business**
   - 2.1 Design Build Process- (discussion only)
   - 2.2 OSBA Policy Update- (first read and review, see attached list)

3. **Adjournment**

Next Meetings • Wednesday, April 20, 2022 Regular School Board Meeting 6:30 p.m., Wednesday May 4, 2022 Budget Committee Meeting, Knappa High School Library.

Knappa School District Findings Statement

Approval of Alternate Construction Contracting Procedures

Design Build Contractor

Knappa School District has a clear vision for educational outcomes that incorporate facilities and culture within the district. In recognition that the physical environment is crucial to achieving this vision, we commissioned a Facility Assessment (FCA), a Seismic Assessment, and a Long-Range Facility Plan (LRFP) through the Oregon Technical Assistance Program (TAP) grant. The assessment focused on the entire district campus to determine building and infrastructure needs and provide guidance on investments and activities from 2018 to 2028. Currently, the district's buildings need repairs due to deferred maintenance. This includes roofs, HVAC systems and controls, and building envelope issues. The buildings do not meet current ADA, seismic, nor safety standards. Additionally, the middle school facility is not adequate for student needs, including being co-housed in elementary classrooms and portable classrooms that are 40+ years old (beyond their useful life). The district also lacks adequate gym facilities to house current physical education programs, athletics as well as to serve community use demands.

In 2021, the district began operating a pre-school, but due to lack of space elected to lease a church facility within the community.

Procurement

Design-Bid-Build procurement is the "standard" process for procuring construction work, and while it has the advantage of obtaining a validated lowest bid price in the market, at the same time it has also been proven that this method does not provide the greatest efficient or effective contracting method given the goals for our Bond program. The advantage of the Design-Build (DB) process is that it allows simultaneous design and construction. This will also allow the District to procure long lead items much earlier, which will help assure that the project will be completed as required. Design-Build is a nationally recognized procurement model that is used in approximately 40% of construction projects.

Considering the identified scope, phasing, project requirements, and desired performance outcomes KSD Staff have reviewed other alternative procurement options authorized by the State of Oregon, including DB and Construction Manager General Contractor (CMGC). After consideration, we have selected Design-Build as the best fit procurement model for our project, subject to compliance with Oregon Statutes 279C.335 and 137-49-0620 and approval by the School Board acting as the Local Contract Review Board.

Holding a public meeting to review our Findings Statement and soliciting public comment is the first step in moving forward with the selection of a Design-Builder for this project.

Solicitation for a contractor would involve a single Request for Proposal (RFP) to select the Design-Build firm that best meets the District's needs with respect to this project. The RFP selection criteria will include proposers' experience, capabilities, safety record, ability to engage with the client and stakeholders, approach and other pertinent factors as determined during the RFP development process.

This process will allow the District to review competitive evaluations while ensuring that we are contracting with a capable contractor.

Description of the Projects

The overall bond cost is $20 million. This includes $14 million in bond proceeds, $2 million in bond rebates, and $4 million in state match resources (OSCIM grant). An additional $2 million may become available if Knappa's seismic grant application is approved by Business Oregon, bringing the possible total to $22 million. This will be supplemented with approximately $700,000 in ESSER funds which will be used under the same contracting umbrella.

Each of the projects will require integration of design and construction, but some more than others. For example, the gym, middle school classrooms, preschool, and elementary interior remodel will need a significant blend of these services. Others are simpler and will necessitate less design work; these include the entry remodels, communication system updates, roofing, HVAC, and building envelope.

It is imperative that as many of these priorities as possible get completed under the current bond and construction program to avoid the need for future District expenditures. To accomplish this, cost reduction on other project work and flexibility to phase in more priority project scope as funds become available (i.e. savings in other areas) are key. Maximizing any available grants, SB1149 dollars, and ETO incentives as well as possible infrastructure grants will be vital to further stretch capital provided by the bond. We want to ensure that we maximize the acquisition of these "free" dollars and minimize our long-term operating costs. We can do this by designing and implementing efficient systems and equipment with the lowest life-cycle costs, and by requiring a guarantee of desired system performance outcomes.

Draft Findings of Fact Related to Design-Build Alternate Contracting Procedures

KSD Staff finds that this exemption is likely to result in substantial benefit to the District.

This Findings Statement summarizes the benefits of Design-Build in relation to key project criteria described in the "Description of the Project" section above.

1. **Speed of delivery**
    a. Once schematic design is complete, equipment ordering, demolition and other time-consuming activities can be accomplished in parallel to final design completion.
    b. Portions of the project can begin, once approved, without the entire design of the project completed, providing flexibility to get time-sensitive construction completed while thoughtfully finishing design on other longer-term project phases.
    c. Granting this exemption has the potential to increase value engineering opportunities. In contrast to the Design-Bid-Build (low bid) process, contractors will include a scope narrative in their proposals, which typically include alternative process strategies or cost savings opportunities. These alternative process improvement and cost saving strategies will be included in the contract award decision. In addition, Value engineering decisions are made during the design process with construction-grade cost estimates. Revisiting

decisions and value engineering after-the-fact when bid costs exceed budgets in a Design-Bid-Build process is eliminated.

d. Also, by integrating the design firm with the contractor the District is able to consider alternative means and methods earlier in the process.

2. Reduced Cost

a. Inherent in the Design-Build process is the ability to review design alternatives and options with real-time construction-grade cost estimates to ensure that critical cost-effective decisions are made timely and accurately. Design can be focused on the lowest "Total Cost of Ownership" as opposed to lowest first cost which can drive significant savings over the life of the systems and buildings. In Design-Bid-Build, decisions on options are made based on rule of thumb estimates – final price validation is not achieved until total project bids are received well after design is complete.

b. Design efforts in a Design-Build process are focused on constructability to provide more buildable alternatives and solutions, and to best meet permit requirements and available funds, thus reducing the cost of construction. Quality is ensured and the risk of costly change orders is greatly reduced.

c. Efficient design and an energy savings focus can leverage "free money" such as grants, ETO utility incentives, and SB1149 dollars that can stretch bond dollars to further tackle a higher amount of our long-range facility plan needs. Additionally, in Design-Bid-Build, the acquisition of grants, ETO utility incentives, and SB1149 dollars are the responsibility of the owner. In Design-Build those become the responsibility of the Design-Builder and are maximized.

d. Owner's rep costs can be lower due to the reduced requirement to manage multiple teams and the potential adversarial relationship between the design team and contractors which exist within Design-Bid-Build and CMGC structures.

e. The Design-Bid-Build process achieves "lowest bid cost" through a competitive bidding process in the market. Studies have shown, including those by the University of Pennsylvania Construction Management Department, that lowest bid cost does not equate to lowest total cost due to the factors described in "a" and "b" above. Design-Build savings from this study of hundreds of projects demonstrated and average 6% cost savings of Design-Build versus Design-Bid-Build.

3. Flexibility

a. This project will be phased over multiple years. The selected Design-Builder must be flexible to manage work around school activities and schedules throughout the year.

b. We desire to complete as many of the priorities identified in the long-range facility plan as possible, subject to available funds from cost reduction of other key components of the project and secured grants and efficiency incentives. We desire the ability to systematically add these long-range plan priorities as budgeted funds become available.

c. Staff finds that because of the continuity of team members throughout the process and the improved timeline, there will be a public benefit by receiving potentially reduced construction costs.

d. With the multitude of construction market factors that exist today in Oregon (e.g. COVID-19, completion of other projects, environmental issues that limit construction materials, shortage of qualified craftsman, inflation, etc.), staff finds that granting this exemption allows the School District to be more responsive to market conditions by structuring the project delivery method that typically offers the project owner the most opportunity to provide input and consultation prior to the project starting.

4. Risk

a. In Design-Build procurement there is a Single Point of Accountability, which is ultimately responsible for delivery of guaranteed outcomes and a guaranteed maximum price. In Design-Bid-Build, the low-bid contractor must fight to increase profit margins by challenging the design documents, often placing the owner in the middle of the adversarial position of the design team and the contractor. In Design-Build, the architect works for the Design-Builder and there is no finger-pointing since the Design-Builder has ultimate responsibility for the entire project.
b. In Design-Bid-Build, the acquisition of grants, ETO utility incentives, and SB1149 dollars are the responsibility of the owner. In Design-Build those become the responsibility of the Design-Builder and are maximized.
c. In Design-Build with a guaranteed maximum price, no change orders are brought forth (except for unforeseen conditions) unless initiated by the District.
d. Procurement will be through a publicly advertised process assuring a competitive environment
e. Ability to bid to a shortlist of quality local and other subcontractors to ensure project quality is high and timelines are adhered to.

Next Steps

The School Board, acting as the Local Contract Review Board, must approve particular findings supporting the use of this construction contracting procedure, pursuant to ORS 279C.335. Following the public comment meeting, we will present our Findings Statement, along with public comments, to the School Board. Subject to approval, it is recommended that the School Board adopt the findings of fact, exempt the Knappa Bond program from the competitive bidding requirement of 279C.335(1), and approve the use of the proposed Design-Build contracting method at its regularly scheduled School Board Meeting on April 20, 2022. Board approval to award the contract will be requested after the RFP process is completed and a vendor has been selected.

BE IT RESOLVED that the Knappa School Board of Directors (i) adopts and approves the findings of this document, (ii) grants a specific exemption from competitive bidding requirements of ORS 279C.335(1), and approves and directs the use of the Design-Build contracting method, for the Knappa School District Bond Program, and (iii) requires that the procurement be in accordance with the Attorney General Model Rules applicable to Design-Build.

Adamtey, S., & Onsarigo, L. (2019, June). Effective tools for projects delivered by progressive design-build method. In *CSCE annual conference* (pp. 1-10).

Molenaar, K., & Franz, B. (2018). Revisiting project delivery performance. *Charles Pankow Foundation and Construction Industry Institute*.

OREGON SCHOOL BOARDS ASSOCIATION
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Policy Update

January 2022 Vol. 65 No. 2 sch

Join OSBA Policy Services staff on Thursday, February 17, 2022, at 11 a.m. for the *Policy Update* Webinar.

Watch for news coming soon.

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Policy Update is a subscription publication of the Oregon School Boards Association

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If you have questions regarding this publication or OSBA, please call our offices: 503-588-2800 or 800-578-6722

EVERY STUDENT BELONGS

Summary

In September 2020, the Oregon State Board of Education passed OAR 581-022-2312, called All Students Belong. As a result, OSBA released new policy ACB and an accompanying AR in October 2020. In February 2021, the Oregon State Board of Education made some adjustments, including changing the title to Every Student Belongs. Later in 2021, the Oregon Legislature passed House Bill 2697 which addresses similar issues, but uses different language. Finally in October 2021, the Oregon State Board of Education amended the language in the rule to more closely match the statutory language.

In November 2021, OSBA released an updated version of ACB and ACB-AR. Because these versions were previously released, they are not included in this update. Questions regarding the updated versions should be directed to the policy department at OSBA.

Collective Bargaining Impact

None

Local District Responsibility

The board should review, revise and readopt with the recommended changes if changes have not been made since October 2021.

Policy(ies) and ARs Impacted by these Revisions

ACB – Every Student Belongs, Required

ACB-AR – Bias Incident Complaint Procedure, Required

LOSS COVERAGE

Summary

Policy DH, previously titled *Bonded Employees and Officers*, has been updated to *Loss Coverage* and language revised to reflect current terms and practices.

Policy EEAB – School Bus Scheduling and Routing has been recoded to EEA-AR and is now an administrative regulation to policy EEA - Student Transportation Services. Additionally, language referencing staff personal use of school buses for transportation has been removed to avoid potential tax implications or ethics violations.

Collective Bargaining Impact

None

Local District Responsibility

If policy DH is included in the board's manual, consider updating and readopting. If the board's manual has policy EEAB, recommendations are to recode as an administrative regulation (AR), EEA-AR, and revise as recommended. It will be necessary to take action to rescind policy EEAB and resubmit the revision to the board as EEA-AR as an information item for their review if the desire is to add this AR.

Policy(ies) and ARs Impacted by these Revisions

DH – Loss Coverage, Highly Recommended

EEA-AR – School Bus Scheduling and Routing, Optional

VETERANS' PREFERENCE

Summary

Senate Bill 184 (2021) modified ORS 408.230 to replace use of the term 'preference points' with *percentage points* for application of a veterans' preference during the screening (if applicable), interviewing and appointing process for a public employer. The bill also added criteria in ORS 408.235 for additional circumstances for which an employer may treat an individual as a veteran or a disabled veteran.

Collective Bargaining Impact

None

Local District Responsibility

Review the Board's policy manual and if GBA-AR is present, consider updating language in the AR.

Policy(ies) and ARs Impacted by these Revisions

GBA-AR – Veterans' Preference, Highly Recommended

PERSONNEL RECORDS

Summary

After review of model sample policies GBL and GBLA, it was decided to combine the two policies. The resulting changes are proposed in this issue which includes the deletion of GBLA in lieu of changes made to model sample policy GBL – Personnel Records.

Collective Bargaining Impact

None

Local District Responsibility

Review and determine if the two referenced policies are listed in the board's policy manual; make the suggested changes to policy GBL – Personnel Records and rescind policy GBLA if it is present in the manual.

Policy(ies) and ARs Impacted by these Revisions

GBL – Personnel Records, Required

GBLA – Disclosure of Information, (previously highly recommended) DELETE

OREGON FAMILY MEDICAL LEAVE

Summary

House Bill 2474 passed by the 2021 Legislature modifies the Oregon Family Leave Act (OFLA) by establishing eligibility for protected leave under OFLA for all employees of a covered employer during a public health emergency, unless they had been employed fewer than 30 days or worked less than 25 hours per week on average in the 30 days leading up to the leave. The bill also establishes eligibility for employees if they separate, are eligible, and are reemployed within 180 days, or because of a temporary cessation of scheduled hours. The bill allows for restoration of time worked after separation and reemployment under certain circumstances and allows employers to request verification of child care need.

OSBA has changed the title of the AR for entities with 25-49 employees to "Oregon Family Leave *".

OSBA has changed the title of the AR for entities with 50 or more employees to "Family Leave *".

Collective Bargaining Impact

Review collective bargaining agreement so it is compatible with new OFLA requirements.

Local District Responsibility

If the district has between 25-49 employees review highly recommended administrative regulation GCBDA/GDBDA-AR(1) – Oregon Family Leave * and update as necessary.

If the district has 50 or more employees review highly recommended administrative regulation GCBDA/GDBDA-AR(1) – Family Leave * and update as necessary.

Policy(ies) and ARs Impacted by these Revisions

GCBDA/GDBDA-AR(1) – Oregon Family Leave *, Highly Recommended

GCBDA/GDBDA-AR(1) – Family Leave *, Highly Recommended

SPECIAL EDUCATION

Summary

House Bill 3183, passed in the 2021 legislative session, requires districts to provide information at the individualized education program (IEP) meeting about relevant services and placements offered by the district, the ESD, regional programs and the Oregon School for the Deaf.

House Bill 2105, passed in the 2021 legislative session, requires districts to provide information and resources to students of transition age regarding supported decision-making as a less restrictive alternative to guardianship, and with information and resources regarding strategies to remain engaged in the student's secondary education and post-school outcomes.

In October 2021 the State Board of Education amended Oregon Administrative Rule 581-015-2200 – Content of IEP to include requiring information about supported employment services when the district is holding an IEP meeting when the student is 16 years of age, or as early as 14 years of age if transition services is part of the IEP discussion.

Collective Bargaining Impact

None

Local District Responsibility

Review and adopted the changes to required administrative regulation IGBAF-AR and IGBAG-AR.

Policy(ies) and ARs Impacted by these Revisions

IGBAF-AR – Special Education - Individualized Education Program, Required

IGBAG-AR – Special Education – Procedural Safeguards, Required

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TALENTED AND GIFTED PROGRAM

Summary

Senate Bill 486 passed by the 2021 Legislature amends ORS 343.397 by adding a requirement that each talented and gifted student and student's parents have the opportunity to discuss with the district the programs and services available to the student and to provide input on the programs and services to be made available. It also adds a requirement for the plan to include the name and contact information for the district's coordinator of special education services and programs for talented and gifted students.

Collective Bargaining Impact

None

Local District Responsibility

The Board should review the recommended changes to required policy IGBB – Talented and Gifted Program and adopt the changes.

Policy(ies) and ARs Impacted by these Revisions

IGBB – Talented and Gifted Program, Required

ABOUT *POLICY UPDATE*

Policy Update is a subscription newsletter providing a brief discussion of current policy issues of concern to Oregon school districts, education service districts, community colleges, and public charter schools.

Sample model policies reflecting these issues and changes in state and federal law, if applicable, are part of this newsletter. These samples are offered as a starting point for drafting local policy and may be modified to meet particular local needs. They do not replace district legal counsel advice.

To make the best use of *Policy Update*, we suggest you discuss the various issues it presents and use the sample model policies to determine which policies your district should develop or revise, get ideas for what a policy should contain, and as a starting point for editing, modifying and discussing your district's policy position.

If you have questions about *Policy Update*, sample policies or policy in general, call OSBA Policy Services, 800-578-6722 or 503-588-2800.

TRY OUR ONLINE POLICY DEMO

OSBA's online policy service has a demo site for districts interested in a public online policy manual. This service saves time, resources and reams of paper. With one centrally located policy manual updated electronically, you have instant access to current district policies.

Go to policy.osba.org and select "Policy Online Demo." The online manual includes a subscription to *Policy Update* and policy manual maintenance service to help keep policies current.

OSBA offers several options. Contact Policy Services to determine the best option for you, 800-578-6722 or 503-588-2800.

Knappa School District

Code: **ACB**
Adopted:

All Students Belong

All students are entitled to a high quality educational experience, free from discrimination or harassment based on perceived race, color, religion, gender identity, sexual orientation, disability or national origin.

All employees are entitled to work in an environment that is free from discrimination or harassment based on perceived race, color, religion, gender identity, sexual orientation, disability or national origin.

All visitors are entitled to participate in an environment that is free from discrimination or harassment based on perceived race, color, religion, gender identity, sexual orientation, disability or national origin.

"Bias incident" means a person's hostile expression of animus toward another person, relating to the other person's perceived race, color, religion, gender identity, sexual orientation, disability or national origin, of which criminal investigation or prosecution is impossible or inappropriate. Bias incidents may include derogatory language or behavior directed at or about any of the preceding demographic groups.

"Symbol of hate" means a symbol, image, or object that expresses animus on the basis of race, color, religion, gender identity, sexual orientation, disability or national origin including, the noose, swastika, or confederate flag[1],{[2]} and whose display:

1. Is reasonably likely to cause a substantial disruption of or material interference with school activities; or

2. Is reasonably likely to interfere with the rights of students by denying them full access to the services, activities, and opportunities offered by a school.

The district prohibits the use or display of any symbols of hate{[3]} on [district] [school]{[4]} grounds or in any district- or school-sponsored program, service, school or activity that is funded in whole or in part by monies appropriated by the Oregon Legislative Assembly, except where used in teaching curriculum that is aligned to the Oregon State Standards.

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[1] While commonly referred to as the "confederate flag," the official name of the prohibited flag is the Battle Flag of the Armies of Northern Virginia.

[2] {We strongly advise that a district not add to these symbols of hate without first consulting with legal counsel.}

[3] {Prior to adopting the symbols of hate prohibition, or adding other symbols to the list, we recommend that the district document why the district feels that the presence of these symbols will cause a "material and substantial interference with schoolwork or discipline" or collide "with the rights of other students to be secure and be let alone." These reasons may include previous incidents, current conditions in the schools and other factors.}

[4] {Oregon Administrative Rule uses "school."}

In responding to the use of any symbols of hate, the district will use non-disciplinary remedial action whenever appropriate.

The district prohibits retaliation against an individual because that person has filed a charge, testified, assisted or participated in an investigation, proceeding or hearing; and further prohibits anyone from coercing, intimidating, threatening or interfering with an individual for exercising any rights guaranteed under state and federal law.

Nothing in this policy is intended to interfere with the lawful use of district facilities pursuant to a lease or license.

The district will use administrative regulation ACB-AR - Bias Incident Complaint Procedure to process reports or complaints of bias incidents.

END OF POLICY

Legal Reference(s):

ORS 659.850
ORS 659.852
OAR 581-002-0005
OAR 581-022-2312
OAR 581-022-2370

Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503 (1969).
Dariano v. Morgan Hill Unified Sch. Dist., 767 F.3d 764 (9th Cir. 2014).
State v. Robertson, 293 Or. 402 (1982).

OSBA Model Sample Policy

Code: DH
Adopted:

~~Bonded Employees and Officers~~Loss Coverage

~~All district employees responsible for funds, fees, cash collections or inventory control will be bonded to protect the district against loss in an amount determined by the Board and upon recommendation of the district's agent of record. In compliance with Oregon statutes and administrative rules, the superintendent[, custodian of funds and other individuals as deemed necessary by the Board] will have individual fidelity bond coverage or equivalent crime coverage. The district will pay the cost of such coverage.~~

The Board and designated district employees are responsible to safeguard the district against loss regarding funds, fees, cash collections and inventory. The Board shall designate the district employees responsible as custodians of such items. The district shall purchase bond coverage or equivalent crime coverage in an amount determined by the Board[, in consultation with the district's agent of record]. The district will pay the cost of such coverage.

END OF POLICY

Legal Reference(s):

ORS 328.441 ORS 332.525 OAR 581-022-2405

OSBA Model Sample Policy

Code: GBA-AR
Revised/Reviewed:

Veterans' Preference

Oregon's Veterans' Preference Law requires the district to grant a preference to qualified and eligible veterans and disabled veterans at each stage in the hiring and promotion process. To be **qualified** for veterans' preference, a veteran or disabled veteran must meet the minimum and any other special qualifications required for the position sought. To be **eligible** for veterans' preference[1] a veteran or disabled veteran must provide certification they are a veteran or disabled veteran as defined by Oregon law[2].

The district is not obligated to hire or promote a qualified and eligible veteran or disabled veteran. The district is obligated to interview all minimally qualified veterans or disabled veterans and to hire or promote a qualified or eligible veteran or disabled veteran if ~~he or she~~the individual is equal to or better than the top candidate after the veterans' preference has been applied.

A veteran may submit a written request to the district for an explanation of the reasons why they were not selected for the position.[3] The district shall provide the reasons for not selecting the candidate when requested.

Recruitment Procedures

All job postings or announcements will include a concise list of minimum and any special qualifications required for the position. Job postings will include a statement that the district's policy is to provide veterans and disabled veterans with preference as required by law and the job posting will require applicants to provide certification[4] of eligibility for preference, in addition to other requested materials.

Selection Procedures[5]

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[1] See Oregon Revised Statute (ORS) 408.235.

[2] See Oregon Revised Statute (ORS) 408.225~~:~~ and OAR 839-006-0440 for definitions of veteran and disabled veteran.

~~[3] Oregon Revised Statute (ORS) 408.230(5)~~

[4] See Verification of Veteran's Preference (OAR 839-006-0465). An ~~veteran~~ applicant claiming veteran's or disabled veteran's preference will submit~~: (a)~~ a copy of their Certificate of Release or Discharge from Active Duty (DD Form 214 or 215)~~; or (b) proof of receiving a nonservice connected pension from the U.S. Department of Veterans Affairs~~ or a certification that the veteran is expected to be discharged or released from active duty under honorable conditions not later than 120 days after the submission of the certification. A disabled veteran ~~will~~ may also submit a copy of their letter from the U.S. Department of Veterans Affairs ~~verifying disabled veteran status~~, unless the information is included in the DD Form 214/215 or a certification that the veteran is expected to be medically separated from active duty under honorable conditions not later than 120 days after the submission of the certification.

[5] ~~OSBA recommends use of a scored system.~~ If the district chooses not to use a scored system the law requires that the district give special consideration in the district's hiring decision to veterans and disabled veterans and the district will need to be able to demonstrate the method used for providing special consideration. ORS 408.230(2)(c).

Step 1: Before the review of any applications the [human resource director] will establish an evaluation scoring guide based on the minimum and any special qualifications listed in the job posting.

Step 2: The [human resource director] will review the application materials using the ~~above~~ evaluation scoring guide to determine which applicants meet the minimum and any special qualifications listed in the job posting. In assessing the applicant materials of a veteran or disabled veteran the [human resource director] shall evaluate whether the skill experience obtained in the military are transferable to the posted position. ~~In this step the district **does not** apply a veterans' preference.~~ Any applicants that do not meet the minimum and any special qualifications shall be removed from the applicant pool.

Step 3: Based on Step 2, the [human resource director] determines who will be interviewed. All qualified and eligible veterans or disabled veterans shall be given an opportunity to interview.

Step 4: Interview questions and scoring sheets will be developed and each scoring sheet must be completed after each interview by the interviewers.

Step 5: Following completion of the interviews, the [human resource director] shall complete the selection matrix and score the applicants based on the scoring sheets completed during interviews. Veterans' preference ~~points must~~ shall be applied by adding 5 percentage points to an eligible veteran and 10 percentage points to an eligible disabled veteran.[6]

Step 6: The [human resource director] makes the offer to the applicant with the highest final score. The district is not obligated to hire or promote a qualified and eligible veteran or disabled veteran. The district is obligated to hire or promote a qualified or eligible veteran or disabled veteran if they are equal or better than the top candidate after the veterans' preference has been applied.

A veteran may submit a written request to the district for an explanation of the reasons why they were not selected for the position. The district shall provide the reasons for not selecting the candidate when requested.

Filing a Complaint

A veteran or disabled veteran is encouraged to contact the [human resource office] if they have any concerns or questions concerning the application of or the process used for veterans' preference.

A veteran or disabled veteran claiming to be aggrieved by a violation of Board policy GBA - Equal Employment Opportunity or this administrative regulation, may file a written complaint with the Civil Rights Division of the Bureau of Labor and Industries (BOLI) in accordance with Oregon Revised Statute (ORS) 659A.820.

[6] ~~The points are based on a 100 point scoring matrix. If a 100 point scoring matrix is not used, the district must use a multiplier equivalent to 5 percent for a veteran and 10 percent for a disabled veteran, or the equivalent.~~

OSBA Model Sample Policy

Code: GBLA
Adopted:

Disclosure of Information

Authorized district officials may disclose information about a former employee's job performance to a prospective employer. District officials are immune from civil liability for such disclosures under the following conditions:

1. The disclosure of information regarding the former employee's job performance is upon request of the prospective employer or the former employee. This disclosure is presumed to be in good faith. Presumption of good faith is rebutted by showing the information disclosed was:

   a. Knowingly false;
   b. Deliberately misleading;
   c. Rendered with malicious purpose; or
   d. Violated civil right of the former employee protected under Oregon Revised Statute (ORS) 659 or ORS 659A.

2. Records created pursuant to ORS 339.388(8)(c) are confidential and are not public records as defined in ORS 192.311. The district may use the record as a basis for providing the information required to be disclosed about an employee under ORS 339.378(1);

3. The disclosure is a result of a request from law enforcement, Oregon Department of Human Services, Teacher Standards and Practices Commission, or the Oregon Department of Education in conducting an investigation related to suspected abuse or suspected sexual conduct to the extent allowable by state and federal law, including laws protecting a person from self-incrimination;

4. No later than 20 days after receiving a request under ORS 339.374(1)(b), the district, if it has or has had an employment relationship with the applicant shall disclose the information requested.

END OF POLICY

Legal Reference(s):

ORS 30.178
ORS 339.370 - 339.374
ORS 339.378
ORS 339.388
ORS Chapter 659
ORS Chapter 659A

OR. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL.

OSBA Model Sample Policy

Code: GCBDA/GDBDA-AR(1)
Revised/Reviewed:

Oregon Family ~~Medical~~ Leave ~~(OFLA)~~ *

(For employers that offer OFLA or employers with 25 to 49 employees)

Coverage

The Oregon Family Leave Act (OFLA) and the Oregon Military Family Leave Act (OMFLA) covers districts that employ 25 or more part-time or full-time employees in Oregon based on employment during each working day during any of the 20 or more workweeks in the calendar year in which the leave is to be taken or in the calendar year immediately preceding the year in which the leave is to be taken.

Eligibility

An eligible employee is an employee employed in the state of Oregon on the date OFLA leave begins. OFLA applies to employees who work an average of 25 hours or more per week during the 180 calendar days or more immediately prior to the first day of the start of the requested leave.[1] For parental leave purposes, an employee becomes eligible upon completing at least 180 calendar days immediately preceding the date on which the parental leave begins. There is no minimum average number of hours worked per week when determining employee eligibility for parental leave.

An employee of a covered employer is eligible to take leave for purposes of OFLA during a period of time covered by a public health emergency except:

1. An employee who worked for the covered employer for fewer than 30 days immediately before the date on which the family leave would commence; or

2. An employee who worked for the covered employer for an average of fewer than 25 hours per week in the 30 days immediately before the date on which the family leave would commence.

An employee of a covered employer is eligible to take leave for purposes of OFLA if the employee:

1. Separates from employment with the covered employer:

    a. Is eligible to take leave OFLA at the time the employee separates; and
    b. Is reemployed by the covered employer within 180 days of separation from employment; or

2. Is eligible to take OFLA leave:

    a. At the beginning of a temporary cessation of scheduled hours of 180 days or less; and
    b. Returns to work at the end of the temporary cessation of scheduled hours of 180 days or less.

Any OFLA leave taken by the employee within any one-year period continues to count against the length of time of OFLA leave the employee is entitled. The amount of time that an employee is deemed to have worked for a covered employer prior to a break in service due to a separation from employment or a temporary cessation of scheduled hours shall be restored to the employee when the employee is

[1] The requirements of OFLA do not apply to an employer offering eligible employees a nondiscriminatory cafeteria plan, as defined by section 125 of the Internal Revenue Code of 1986, which provides as one of its options, employee leave at least as generous as leave required by OFLA.

reemployed by the employer within 180 days of separation from employment or when the employee returns to work at the end of the temporary cessation of scheduled hours of 180 days or less.

An employee who has previously qualified for and has taken some portion of OFLA leave, may request additional OFLA leave within the same leave year. In such instances, the employee must requalify as an eligible employee for each additional leave requested unless one of the following exceptions apply:

1. A female employee who has taken 12 weeks of pregnancy disability leave need not requalify leave in the same leave year for any other purpose;

2. An employee who has taken 12 weeks of parental leave need not requalify to take an additional 12 weeks in the same leave year for sick child leave; and

3. An employee granted leave for a serious health condition for the employee or a family member need not requalify if additional leave is taken in this leave year for the same reason, unless the reason is no longer qualifying.

OMFLA applies to employees who work an average of at least 20 hours per week. There is no minimum number of days worked when determining employee eligibility for OMFLA.

In determining if an employee has been employed for the preceding 180 calendar days, when applicable, the employer must consider days (e.g. paid or unpaid) an employee is maintained on payroll for any part of a workweek. Full-time public school teachers who have been maintained on payroll by a district for 180 consecutive calendar days are thereafter deemed to have been employed for an average of at least 25 hours per week during the 180 days immediately preceding the start date of the OFLA leave. This provision is eligible for rebuttal if for example the employee was on a nonpaid sabbatical.

In determining average workweek, the employer must count the actual hours worked using the Fair Labor Standards Act (FLSA) guidelines.

Qualifying Reasons

Eligible employees may access OFLA for the following reasons:

1. Serious health condition of the employee or the employee's covered family member:

    a. Inpatient care;
    b. Continuing treatment;
    c. Chronic conditions;
    d. Permanent, long-term or terminal conditions;
    e. Multiple treatments;
    f. Pregnancy and prenatal care.

2. Parental leave (separate from eligible leave as a result of the child's serious health condition):

    a. Bonding with and the care for the employee's newborn (within 12 months following birth);
    b. Bonding with and the care for a newly adopted or newly placed foster child under the age of 18 (within 12 months of placement);
    c. Care for a newly adopted or newly placed foster child over 18 years of age who is incapable of self-care because of a physical or mental impairment (within 12 months of placement);
    d. Time to effectuate the legal process required for placement of a foster child or the adoption of a child.

3. Sick Child Leave: leave for non-serious health conditions of the employee's child. Sick child leave includes absence to care for an employee's child whose school or child care provider has been

closed[2] in conjunction with a statewide public health emergency declared by a public health official.[3]

4. Bereavement Leave: leave related to the death of a covered family member.[4]

5. Eligible employees may access OMFLA for the purpose of spending time with a spouse or same-gender domestic partner who is in the military and has been notified of an impending call or order to active duty or who has been deployed during a period of military conflict.

6. The eligibility of an employee who takes multiple leaves for different qualified reasons during the same district designated leave period may be reconfirmed at the start of each qualified leave requested.

Definitions

1. Family member:

   For the purposes of OFLA, "family member" means:

   a. Spouse[5];
   b. Same-gender domestic partner;
   c. Parent;
   d. Parent-in-law;
   e. Parent of employee's same-gender domestic partner;
   f. Child;
   g. Child of employee's same-gender domestic partner;
   h. Grandchild;
   i. Grandparent;
   j. Persons who are "in loco parentis".

2. Child:

   a. For the purposes of OFLA, "child" means a biological, adopted, foster child or stepchild of the employee, the child of the employee's same-gender domestic partner, or a child with whom the employee is or was in a relationship of "in loco parentis".
   b. For the purposes of parental and sick child leave under OFLA, the child must be under the age of 18 or an adult dependent child substantially limited by a physical or mental impairment.

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[2] "Closure" for the purpose of sick child leave during a statewide public health emergency declared by a public health official means a closure that is ongoing, intermittent, or recurring and restricts physical access to the child's school or child care provider. OAR 839-009-0210(4).

[3] The district may request verification of the need for sick child leave due to a closure during a statewide emergency. Verification may include:
1. The name of the child being cared for;
2. The name of the school or child care provider that has closed or become unavailable; and
3. A statement from the employee that no other family member of the child is willing and able to care for the child.
With the care of a child older than 14, a statement that special circumstances exist requiring the employee to provide care to the child during daylight hours.

[4] Bereavement leave under OFLA must be completed within 60 days of when the employee received notice of the death.

[5] "Spouse" means individuals in a marriage, including "common law" marriage, same-sex marriage or same sex individuals with a Certificate of Registered Domestic Partnership.

3. In loco parentis:

   For the purposes of OFLA, "in loco parentis" means person in the place of the parent having financial or day-to-day responsibility for the care of a child. A legal or biological relationship is not required.

4. Public health emergency:

   For OFLA a public health emergency means;

   a. A public health emergency declared under ORS 433.441.
   b. An emergency declared under ORS 401.165 if related to a public health emergency as defined in ORS 433.442.

Leave Period

For the purposes of calculating an employee's leave period, the district will use [the calendar year] [any fixed 12-month "leave year"] [the 12-month period measured forward from the date the employee's leave begins] [a "rolling" 12-month period measured backward from the date the employee uses any family and medical leave]. The same method for calculating the 12-month period for OFLA leave entitlement shall be used for all employees. However, in all instances, the leave period for the purposes of OMFLA shall be dependent on the start of any such regardless of the district's designated 12-month leave period described above.

Leave Duration

For the purposes of OFLA, an eligible employee is generally entitled to a total of 12 weeks of qualified leave during the district's designated leave period. However, ~~a woman~~ an eligible employee is entitled to an additional full 12 weeks of parental leave during the district's designated leave period following the birth of a child, regardless of how much OFLA qualified leave ~~she~~ the employee has taken prior to the birth of such child during the district's designated leave period. Likewise, an employee who uses the full 12 weeks of parental leave during the district designated leave period, will be entitled to an additional 12 weeks of sick child leave under OFLA during the district's designated leave period for the purpose of caring for a child(ren) with a non-serious health condition requiring home care.[6] OFLA does not combine the leave entitlement for spouses working for the district. However, under OFLA, family members who work for the district may be restricted from taking concurrent OFLA qualified leave.[7]
For the purposes of OMFLA, an eligible employee is entitled to 14 days of leave per call or order to active duty or notification of a leave from deployment. When an employee also meets the eligibility requirements of OFLA, the duration of the OMFLA leave counts toward that employee's leave entitlement during the district's designated leave period.

Except as otherwise noted above, qualified leave under OFLA for an eligible employee will run concurrently during the district's designated leave period.

For the purpose of tracking the number of leave hours an eligible employee is entitled and/or has used during each week of the employee's leave, leave entitlement is calculated by multiplying the number of

[6] Sick child leave under OFLA need not be provided if another family member, including a noncustodial biological parent, is willing and able to care for the child.

[7] Exceptions to the ability to require family members from taking OFLA qualified leave at different times are when 1) employee is caring for the other employee who has a serious medical condition; 2) one employee is caring for a child with a serious medical condition when the other employee is suffering a serious medical condition; 3) each family member is suffering a serious medical condition; 4) each family members want to take bereavement leave under OFLA; and 5) the employer allows the family members to take concurrent leave.

hours the eligible employee normally works per week by 12[8]. If an employee's schedule varies from week to week, a weekly average of the hours worked over the 12 weeks worked prior to the beginning of the leave period shall be used for calculating the employee's normal workweek[19]. If an employee takes intermittent or reduced work schedule leave, only the actual number of hours of leave taken may be counted toward the 12 weeks of leave to which the employee is entitled.

Intermittent Leave

With the exception of parental leave, which must be taken in one continuous block of time, an eligible employee is permitted under OFLA to take intermittent leave for any qualifying reason.

Intermittent leave is taken in multiple blocks of time (hours, days, weeks, etc.) rather than in one continuous block of time and/or requires a modified or reduced work schedule. For OFLA this includes but is not limited to sick child leave taken requiring an altered or reduced work schedule because the intermittent or recurring closure of a child's school or child care provider due to a statewide public health emergency declared by a public health official.

When an employee is eligible for OFLA leave the employer:

1. May allow an exempt employee, as defined by state and federal law, with accrued paid time off to take OFLA leave in blocks of less than a full day, but;

2. May not reduce the salary of an employee who is taking intermittent leave when they do not have accrued paid leave available. To do so would result in the loss of exemption under state law.

An employee's OFLA intermittent leave time is determined by calculating the difference between the employee's normal work schedule and the number of hours the employee actually works during the leave period. The result of such calculation is credited against the eligible employee's leave entitlement.

Holidays or days in which the district is not in operation are not counted against the eligible employee's intermittent leave period unless the employee was scheduled and expected to work on any such day.

Alternate Work Assignment

The district may transfer an employee recovering from a serious health condition to an alternate position which accommodates the serious health condition provided:

1. The employee accepts the position voluntarily and without coercion;

2. The transfer is temporary, lasts no longer than necessary and has equivalent pay and benefits;

3. The transfer is compliant with any applicable collective bargaining agreement;

4. The transfer is compliant with state and federal law, including but not limited to the protections provided for in OFLA; and

5. The transfer is not used to discourage the employee from taking OFLA leave for a serious health condition or to create a hardship for the employee.

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[8] For example, an employee normally employed to work 30 hours per week is entitled to 12 times 30 hours, or a total of 360 hours of leave.

[9] For example, an employee working an average of 25 hours per week is entitled to 12 times 25 hours, or a total of 300 hours of leave.

The district may transfer an eligible employee who is on a foreseeable intermittent OFLA leave to another position with the same or different duties to accommodate the leave, provided:

1. The employee accepts the transfer position voluntarily and without coercion;

2. The transfer is temporary, lasts no longer than necessary and has equivalent pay and benefits;

3. The transfer is compliant with any applicable collective bargaining agreement;

4. The transfer is compliant with state law, including but not limited to the protections provided for in OFLA;

5. The transfer to an alternate position is used only when there is no other reasonable option available that would allow the employee to use intermittent leave or reduced work schedule; and

6. The transfer is not used to discourage the employee from taking intermittent or reduced work schedule leave, or to create a hardship for the employee.

If an eligible employee is transferred to an alternative position, and as a result the employee works fewer hours than the employee was working in the original position, the employee's OFLA leave time is determined by calculating the difference between the employee's normal work schedule and the number of hours the employee actually works during the leave period. The result of such calculation is credited against the eligible employee's leave entitlement.

When an employee is transferred to alternate position as described above but such transfer does not result in a reduced schedule, time worked in any such alternate position shall not be considered for the purpose of OFLA leave. An employee working in an alternate position retains the right to return to the employee's original position unless all OFLA leave taken in that leave year plus the period of time worked in the alternate position exceeds 12 weeks.

Special Rules for School Employees

For the purposes of OFLA, "school employee" means employees employed principally as instructors in public kindergartens, elementary schools, secondary schools or education service districts.

OFLA leave that is taken for a period that ends with the school year and begins with the next semester is considered consecutive rather than intermittent. In any such situation, the eligible school employee will receive any benefits during the break period that employees would normally receive if they had been working at the end of the school year.

1. Foreseeable Intermittent Leave Exceeding 20 Percent of Working Days

   When the qualified leave is foreseeable, will encompass more than 20 percent of the eligible school employee's regular work schedule during the leave period, and the purpose of such leave is to care for a family members with a serious medical condition, for a servicemember with a serious medical condition or because of the employee's own serious medical condition, the district may require the eligible school employee to:

   a. Take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or
   b. Temporarily transfer the eligible school employee to an alternate position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave than the employee's original position.

2. Limitation on Leave near the End of the School Year

When an eligible school employee requests leave near the end of the school year, the district may require the following:

a. When the qualified leave begins more than five weeks before the end of the school year:

(1) For the purposes of OFLA leave, if the reason for the leave is because of the eligible school employee's own serious health condition, the eligible school employee may be required to remain in leave until the end of the school year provided:

(a) The leave will last at least three weeks; and
(b) The employee's return to work would occur within three weeks of the end of the school year.

b. For the purposes of OFLA leave, when the qualified leave begins within five weeks of the end of the school year and the purpose of such leave is parental leave, for the serious health condition of a family member or for the serious health condition of a servicemember, the eligible school employee may be required to remain on leave until the end of the school year provided:

(1) The leave will last more than two weeks; and
(2) The employee would return to work during the two week period before the end of the school year.

c. For the purposes of OFLA leave, when the qualified leave begins within three weeks of the end of the school year and the purpose of such leave is parental leave, for the serious health condition of a family member or for the serious health condition of a servicemember, the eligible school employee may be required to remain on leave until the end of the school year provided the length of the leave will last more than five working days.

If the district requires an eligible school employee to remain on leave until the end of the school year as described above, additional leave required by the employer until the end of the school year shall not count against the eligible school employee's leave entitlement.

Paid/Unpaid Leave

OFLA does not require the district to pay an eligible employee who is on a qualified leave. Subject to any related provisions in any applicable collective bargaining agreement, {[10]}[an employee may elect to use any available accrued paid leave including personal and sick leave, or available accrued vacation leave during the leave period.] [the district requires the eligible employee to use any available accrued sick leave, vacation or personal leave days (or other available paid time established by Board policy(ies) and/or collective bargaining agreement) in the order specified by the district and before taking OFLA leave without pay during the leave period.] [the district requires the eligible employee to use any available accrued paid leave, including personal and sick leave or available accrued vacation leave before taking OFLA leave without pay during the leave period. The employee may select the order in which the available paid leave is used.]

The district will notify the eligible employee that the requested leave has been designated as OFLA leave and, if required by the district, that available accrued paid leave shall be used during the OFLA leave period. In the event the district is aware of an OFLA qualifying exigency, the district shall notify the eligible employee of its intent to designate the leave as such regardless of whether a request has been made by the eligible employee. Such notification will be given to the eligible employee prior to the

[10] {{The district must choose one of the following from the three available bracketed options to complete this paragraph, and delete the other two.}}

commencement of the leave or within two working days of the employee's notice of an unanticipated or emergency leave, whichever is sooner.

When the district does not have sufficient information to make a determination of whether the leave qualifies as OFLA leave, the district will provide the required notice promptly when the information is available but no later than two working days after the district has received the information. Oral notices will be confirmed in writing no later than the following payday. If the payday is less than one week after the oral notice is given, written notice will be provided no later than the subsequent payday.

Eligible employees who request OMFLA leave shall not be required to use any available accrued paid time off during the OMFLA leave period.

Benefits and Insurance

When an eligible employee returns to work following a OFLA qualified leave, the employee must be reinstated to the same position the employee held when the leave commenced, or to an equivalent position with equivalent benefits, pay and other terms and conditions of employment.

During an OFLA qualified leave an eligible employee does not accrue seniority or other benefits that would have accrued while the employee was working, unless the terms of a collective bargaining agreement, other agreement or other employer's policy provide otherwise.[11] The eligible employee is also subject to layoff to the same extent similarly situated employees not taking OFLA leave are subject unless the terms of an applicable collective bargaining agreement, other agreement or the district's policies provides otherwise.

For the purposes of OFLA, the school district will continue to pay the employer portion of the eligible employee's group health insurance contribution (if applicable) during the qualified leave period. The eligible employee is required to the employee portion of any such group health insurance contribution as a condition of continued coverage.

For the purposes of OMFLA, the eligible employee is entitled to a continuation of benefits.

Fitness-for-Duty Certification

Prior to the reinstatement of an employee following a leave which was the result of the employee's own serious health condition, the district may require the employee to obtain and present a Fitness-for-Duty Certification. The certification will specifically address the employee's ability to perform the essential functions of the employee's job as they relate to the health condition that was the reason for the leave. If the district is going to require a fitness-for-duty certification upon return to work, the district must notify the employee of such requirement when the leave is designated as an OFLA leave. Failure to provide the fitness-for-duty certification may result in a delay or denial of reinstatement.

For the purposes of OFLA qualified leave, any out of pocket costs associated with obtaining the fitness-for-duty certification shall be borne by the district.

If the leave is qualified under OFLA, any out-of-pocket costs associated with obtaining the fitness-for-duty certification shall be borne by the district.

Application

An eligible employee requesting OFLA leave shall provide at least 30 days' notice prior to the leave date if the leave is foreseeable. The notice shall be written and include the anticipated start, duration and reasons for the requested leave. When appropriate, the eligible employee must make a reasonable effort to

[11] See also ORS 342.934(4)(d) in reduction force situations.

schedule treatment, including intermittent leave and reduced leave, so as not to unduly disrupt the operation of the district.

The district may request additional information to determine that the requested leave qualifies as OFLA leave. The district may designate the employee as provisionally on OFLA leave until sufficient information is received to properly make a determination. An eligible employee able to give advance notice of the need to take OFLA leave must follow the employer's known, reasonable and customary procedures for requesting any kind of leave.

For the purposes of OFLA, an eligible employee is required to provide oral or written notice within 24 hours of commencement of the leave in unanticipated or emergency leave situations. The employee may designate a family member or friend to notify the district during that period of time. Failure of an employee to provide the required notice for leave covered by OFLA may result in the district deducting up to three weeks from the employee's unused OFLA leave in that one-year leave period. The employee may be subject to disciplinary action for not following the district's notice procedures.

In all cases, proper documentation must be submitted no later than three working days following the employee's return to work.

Medical Certification

The district [may] [shall] require an eligible employee to provide medical documentation, when appropriate, to support the stated reason for the leave, other than to care for a child who requires home care due to the closure of the child's school or child care provider as a result of a public health emergency. The district will provide written notification to employees of this requirement within three working days of employee's request for leave. If the employee does not provide 30 days' notice, the employee is required to submit such medical certification no later than 15 calendar days after receipt of the district's notification that medical certification is required.

Second and Third Opinions

For the purposes of OFLA and except for leave related to sick child leave under OFLA, the district may require the employee to obtain a second opinion from a health care provider designated by the district. If the first and second verifications conflict, the employer may require the two health care providers to jointly designate a third health care provider for the purpose of providing a verification. This third verification shall be final and binding.

Notification

Any notice required by state laws explaining employee rights and responsibilities will be posted in all staff rooms and the district office. Additional information may be obtained by contacting the [superintendent] [personnel director].

Record Keeping/Posted Notice

The district will maintain all records as required by state laws including dates leave is taken by employees, identified separately from other leave; hours/days of leave; copies of general and specific notices to employees, including Board policy(ies) and regulations; premium payments of employee health benefits while on leave and records of any disputes with employees regarding granting of leave.

Medical documentation will be maintained separately from personnel files as confidential medical records.

The district will post notice of ~~Oregon Family Leave Act~~ OFLA[12] requirements.

[12] Poster available at https://www.oregon.gov/boli/employers/pages/required-worksite-postings.aspx.

Code: GCBDA/GDBDA-AR(1)
Revised/Reviewed:

Federal Family and Medical Leave/State Family Medical Leave *

Coverage

The federal Family and Medical Leave Act (FMLA) applies to districts with 50 or more employees within 75 miles of the employee's work site, based on employment during each working day during any of the 20 or more workweeks in the calendar year in which the leave is to be taken, or in the calendar year preceding the year in which the leave is to be taken. The 50 employee test does not apply to educational institutions for determining employee eligibility.

The Oregon Family Leave Act (OFLA) and the Oregon Military Family Leave Act (OMFLA) applies to districts that employ 25 or more part-time or full-time employees in Oregon, based on employment during each working day during any of the 20 or more workweeks in the calendar year in which the leave is to be taken, or in the calendar year immediately preceding the year in which the leave is to be taken.

Employee Eligibility

FMLA applies to employees who have worked for the district for at least 12 months (not necessarily consecutive) and worked for at least 1,250 hours during the 12-month period immediately preceding the start of the leave.

An employee who has previously qualified for and has taken some portion of FMLA leave may request additional FMLA leave within the same leave year. In such instances, the employee need not requalify as an eligible employee, if the additional leave applied for is in the same leave year and for the same condition.

OFLA applies to employees who work an average of 25 hours or more per week during the 180 calendar days or more immediately prior to the first day of the start of the requested leave.[1] For parental leave purposes, an employee becomes eligible upon completing at least 180 days immediately preceding the date on which the parental leave begins. There is no minimum average number of hours worked per week when determining employee eligibility for parental leave.

An employee who has previously qualified for and has taken some portion of OFLA leave, may request additional OFLA leave within the same leave year. In such instances, the employee must requalify as an eligible employee for each additional leave requested unless one of the following exceptions apply:

[1] The requirements of OFLA do not apply to any employer offering eligible employees a nondiscriminatory cafeteria plan, as defined by section 125 of the Internal Revenue Code of 1986, which provides as one of its options employee leave at least as generous as the leave required by OFLA.

1. A female employee who has taken 12 weeks of pregnancy disability leave need not requalify leave in the same leave year for any other purpose;

2. An employee who has taken 12 weeks of parental leave need not requalify to take an additional 12 weeks in the same leave year for sick child leave; and

3. An employee granted leave for a serious health condition for the employee or a family member need not requalify if additional leave is taken in this leave year for the same reason.

OMFLA applies to employees who work an average of at least 20 hours per week. There is no minimum number of days worked when determining employee eligibility for OMFLA.

In determining if an employee has been employed for the preceding 180 calendar days, when applicable, the employer must consider days, e.g., paid or unpaid, an employee is maintained on payroll for any part of a work week. Full-time public school teachers who have been maintained on payroll by a district for 180 consecutive calendar days are thereafter deemed to have been employed for an average of at least 25 hours per week during the 180 days immediately preceding the start date of the OFLA leave. This provision is eligible for rebuttal if for example, the employee was on a nonpaid sabbatical.

In determining average workweek, the employer must count the actual hours worked using the Fair Labor Standards Act (FLSA) guidelines.

Qualifying Reason

Eligible employees may access FMLA leave for the following reasons:

1. Serious health condition of the employee or the employee's covered family member:

    a. Inpatient care;
    b. Continuing treatment;
    c. Chronic conditions;
    d. Permanent, long-term or terminal conditions;
    e. Multiple treatments;
    f. Pregnancy and prenatal care.

2. Parental leave[2] (separate from eligible leave as a result of a child's serious health condition):

    a. Bonding with and the care for the employee's newborn (within 12 months following birth);
    b. Bonding with and the care for a newly adopted or newly placed foster child under the age of 18 (within 12 months of placement);
    c. Care for a newly adopted or newly placed foster child over 18 years of age who is incapable of self-care because of a physical or mental impairment (within 12 months of placement);
    d. Time to effectuate the legal process required for placement of a foster child or the adoption of a child.

[2] Parental leave must be taken in one continuous block of time within 12 months of the triggering event.

3. Military Caregiver Leave: leave for the care for spouse, son, daughter or next-of-kin who is a covered servicemember/veteran with a serious injury or illness;

4. Qualifying Exigency Leave: leave arising out of the foreign deployment of the employee's spouse, son, daughter or parent.

Eligible employees may access OFLA for the following reasons:

1. Serious health condition of the employee or the employee's covered family member:

    a. Inpatient care;
    b. Continuing treatment;
    c. Chronic conditions;
    d. Permanent, long-term or terminal conditions;
    e. Multiple treatments;
    f. Pregnancy and prenatal care.

2. Parental leave (separate from eligible leave as a result of the child's serious health condition):

    a. Bonding with and the care for the employee's newborn (within 12 months following birth);
    b. Bonding with and the care for a newly adopted or newly placed foster child under the age of 18 (within 12 months of placement);
    c. Care for a newly adopted or newly placed foster child over 18 years of age who is incapable of self-care because of a physical or mental impairment (within 12 months of placement);
    d. Time to effectuate the legal process required for placement of a foster child or the adoption of a child.

3. Sick Child Leave: leave for non-serious health conditions of the employee's child. For OFLA, sick child leave includes absence to care for an employee's child whose school or child care provider has been closed[3] in conjunction with a statewide public health emergency declared by a public health official.[4]

4. Bereavement Leave: leave related to the death of a covered family member.[5]

[3] "Closure" for the purpose of sick child leave during a statewide public health emergency declared by a public health official means a closure that is ongoing, intermittent, or recurring and restricts physical access to the child's school or child care provider. OAR 839-009-0210(4).

[4] The district may request verification of the need for sick child leave due to a closure during a statewide emergency. Verification may include:
1. The name of the child being cared for;
2. The name of the school or child care provider that has closed or become unavailable; and
3. A statement from the employee that no other family member of the child is willing and able to care for the child.
With the care of a child older than 14, a statement that special circumstances exist requiring the employee to provide care to the child during daylight hours.

[5] Bereavement leave under OFLA must be completed within 60 days of when the employee received notice of the death.

5. Eligible employees may access OMFLA for the purpose of spending time with a spouse or same-gender domestic partner who is in the military and has been notified of an impending call or order to active duty, or who has been deployed during a period of military conflict.

6. The eligibility of an employee who takes multiple leaves for different qualified reasons during the same district designated leave period may be reconfirmed at the start of each qualified leave requested.

Definitions

1. Family member:

   a. For the purposes of FMLA, "family member" means:

      (1) Spouse[6];
      (2) Parent;
      (3) Child; or
      (4) Persons who are "in loco parentis".

   b. For the purposes of OFLA, "family member" means:

      (1) Spouse;
      (2) Registered, same-gender domestic partner;
      (3) Parent;
      (4) Parent-in-law;
      (5) Parent of employee's registered, same-gender domestic partner;
      (6) Child;
      (7) Child of employee's registered, same-gender domestic partner;
      (8) Grandchild;
      (9) Grandparent; or
      (10) Persons who are "in loco parentis".

2. Child:

   a. For the purposes of FMLA, "child" means a biological, adopted or foster child, a stepchild, a legal ward or a child of a person standing "in loco parentis", who is either under the age of 18, or who is 18 years of age or older and who is incapable of self-care because of a physical or mental impairment.
   b. For the purposes of Military Caregiver Leave and Qualifying Exigency Leave under FMLA, "child" means the employee's son or daughter on covered active duty regardless of that child's age.
   c. For the purposes of OFLA, "child" means a biological, adopted, foster child or stepchild of the employee, the child of the employee's same-gender domestic partner, or a child with whom the employee is or was in a relationship of "in loco parentis".

[6] "Spouse" means individuals in a marriage, including "common law" marriage and same-sex marriage. For OFLA, spouse also includes same-sex individuals with a Certificate of Registered Domestic Partnership.

d. For the purposes of parental and sick child leave under OFLA, the child must be under the age of 18 or an adult dependent child substantially limited by a physical or mental impairment.

3. In loco parentis:

a. For the purposes of FMLA, "in loco parentis" means persons with day-to-day responsibility to care for and financially support a child, or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.
b. For the purposes of OFLA, "in loco parentis" means person in the place of the parent having financial or day-to-day responsibility for the care of a child. A legal or biological relationship is not required.

4. Next of kin:

For the purposes of FMLA and Military Caregiver Leave under FMLA, "next of kin" means the nearest blood relative other than the servicemember's spouse, parent, son or daughter in the following order of priority (unless otherwise designated in writing by the servicemember):

a. Blood relatives who have been granted legal custody of the servicemember by court decree or statutory provisions;
b. Brothers or sisters;
c. Grandparents;
d. Aunts and uncles; and
e. First cousins.

5. Covered servicemembers:

For the purposes of Military Caregiver Leave under FMLA, "covered servicemember" means a current member of the Armed Forces, including a member of the National Guard or Reserves, who is receiving medical treatment, recuperation or therapy, or is in outpatient status, or is on the temporary disability retire list for a serious injury or illness.

6. Covered veteran:

For the purposes of Military Caregiver Leave under FMLA, "covered veteran" means a veteran who is undergoing medical treatment, recuperation or therapy for a serious injury or illness provided ~~he or she was~~they were:

a. A member of the Armed Forces (including a member of the National Guard or Reserves);
b. Discharged or released under conditions other than dishonorable; and
c. Discharged within the five-year period before the eligible employee first takes FMLA, Military Caregiver Leave.

Leave Period

For the purposes of calculating an employee's leave period, the district will use [the calendar year] [any fixed 12-month "leave year"] [the 12-month period measured forward from the date the employee's leave begins] [a "rolling" 12-month period measured backward from the date the employee uses any family and

medical leave]. The same method for calculating the 12-month period for FMLA and OFLA leave entitlement shall be used for all employees. However, in all instances, the leave period for the purposes of OMFLA and Military Caregiver Leave under FMLA shall be dependent on the start of any such leave regardless of the district's designated 12-month leave period described above.

Leave Duration

For the purposes of FMLA, an eligible employee is generally entitled to a total of 12 weeks of qualified leave during the district's designated leave period[7]. Spouses who work for the district may be limited to a combined 12 weeks of FMLA leave during the district's designated leave period when the purpose of the leave is for the birth of a child or to care for a child after birth, placement of an adopted or foster child or the care for an adopted or foster child after placement, or to care for the employee's parent's serious medical condition. Except in specific and unique instances, all qualified leave under FMLA counts toward an employee's leave entitlement within the district's designated leave period.

For the purposes of OFLA, an eligible employee is generally entitled to a total of 12 weeks of qualified leave during the district's designated leave period. However, a woman is entitled to an additional, full 12 weeks of parental leave during the district's designated leave period following the birth of a child regardless of how much OFLA qualified leave she has taken prior to the birth of such child during the district's designated leave period. Likewise, an employee who uses the full 12 weeks of parental leave during the district designated leave period, will be entitled to an additional 12 weeks of sick child leave under OFLA during the district's designated leave period for the purpose of caring for a child(ren) with a non-serious health condition requiring home care.[8] Unlike FMLA, OFLA does not combine the leave entitlement for spouses working for the district. However, under OFLA, family members who work for the district may be restricted from taking concurrent OFLA qualified leave.[9]

For the purposes of OMFLA, an eligible employee is entitled to 14 days of leave per call or order to active duty or notification of a leave from deployment. When an employee also meets the eligibility requirements of OFLA, the duration of the OMFLA leave counts toward that employee's leave entitlement during the district's designated leave period.

Except as otherwise noted above, qualified leave under FMLA and OFLA for an eligible employee will run concurrently during the district's designated leave period.

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[7] An eligible employee taking Military Caregiver Leave under FMLA is entitled to up to 26 weeks of leave in the 12-month period beginning with the first day of such leave and regardless of any FMLA leave taken previously during the district's leave period. However, once the 12-month period begins for the purposes of Military Caregiver Leave under FMLA, any subsequent FMLA qualified leave, regardless of reason for such leave, will count toward the employee's 26-week entitlement under Military Caregiver Leave under FMLA.

[8] Sick child leave under OFLA need not be provided if another family member, including a noncustodial biological parent, is willing and able to care for the child.

[9] Exceptions to the ability to require family members from taking OFLA qualified leave at different times are when 1) employee is caring for the other employee who has a serious medical condition; 2) one employee is caring for a child with a serious medical condition when the other employee is suffering a serious medical condition; 3) each family member is suffering a serious medical condition; 4) each family member wants to take Bereavement Leave under OFLA; and 5) the employer allows the family members to take concurrent leave.

For the purpose of tracking the number of leave hours an eligible employee is entitled and/or has used during each week of the employee's leave, leave entitlement is calculated by multiplying the number of hours the eligible employee normally works per week by 12[10]. If an employee's schedule varies from week-to-week, a weekly average of the hours worked over the 12 weeks worked prior to the beginning of the leave period shall be used for calculating the employee's normal workweek[11]. If an employee takes intermittent or reduced work schedule leave, only the actual number of hours of leave taken may be counted toward the 12 weeks of leave to which the employee is entitled.

Intermittent Leave

With the exception of parental leave which must be taken in one continuous block of time, an eligible employee is permitted under FMLA and OFLA to take intermittent leave for any qualifying reason.

Intermittent leave is taken in multiple blocks of time (i.e., hours, days, weeks, etc.) rather than in one continuous block of time and/or requires a modified or reduced work schedule. For OFLA this includes but not limited to sick child leave taken requiring an altered or reduced work schedule because the intermittent or recurring closure of a child's school or child care provider due to a statewide public health emergency declared by a public health official.

When an employee is eligible for OFLA leave, but not FMLA leave, the employer:

1. May allow an exempt employee, as defined by state and federal law, with accrued paid time off to take OFLA leave in blocks of less than a full day; but

2. May not reduce the salary of an employee who is taking intermittent leave when they do not have accrued paid leave available. To do so would result in the loss of exemption under state law.

An employee's FMLA and/or OFLA intermittent leave time is determined by calculating the difference between the employee's normal work schedule and the number of hours the employee actually works during the leave period. The result of such calculation is credited against the eligible employee's leave entitlement.

Holidays or days in which the district is not in operation, are not counted against the eligible employee's intermittent OFLA leave period unless the employee was scheduled and expected to work on any such day.

Alternate Work Assignment

The district may transfer an employee recovering from a serious health condition to an alternate position which accommodates the serious health condition provided:

[10] For example, an employee normally employed to work 30 hours per week is entitled to 12 times 30 hours, or a total of 360 hours of leave.

[11] For example, an employee working an average of 25 hours per week is entitled to 12 times 25 hours, or a total of 300 hours of leave.

1. The employee accepts the position voluntarily and without coercion;

2. The transfer is temporary, lasts no longer than necessary and has equivalent pay and benefits;

3. The transfer is compliant with any applicable collective bargaining agreement;

4. The transfer is compliant with state and federal law, including but not limited to the protections provided for in FMLA and/or OFLA; and

5. The transfer is not used to discourage the employee from taking FMLA and/or OFLA leave for a serious health condition or to create a hardship for the employee.

The district may transfer an eligible employee who is on a foreseeable intermittent FMLA and/or OFLA leave to another position with the same or different duties to accommodate the leave, provided:

1. The employee accepts the transfer position voluntarily and without coercion;

2. The transfer is temporary, lasts no longer than necessary and has equivalent pay and benefits;

3. The transfer is compliant with any applicable collective bargaining agreements;

4. The transfer is compliant with state and federal law, including but not limited to the protections provided for in FMLA and/or OFLA;

5. The transfer to an alternate position is used only when there is no other reasonable option available that would allow the employee to use intermittent leave or reduced work schedule; and

6. The transfer is not used to discourage the employee from taking intermittent or reduced work schedule leave, or to create a hardship for the employee.

If an eligible employee is transferred to an alternative position, and as a result the employee works fewer hours than the employee was working in the original position, the employee's FMLA and/or OFLA leave time is determined by calculating the difference between the employee's normal work schedule and the number of hours the employee actually works during the leave period. The result of such calculation is credited against the eligible employee's leave entitlement.

When an employee is transferred to alternate position as described above but such transfer does not result in a reduced schedule, time worked in any such alternate position shall not be considered for the purpose of FMLA and/or OFLA leave. An employee working in an alternate position retains the right to return to the employee's original position unless all FMLA and/or OFLA leave taken in that leave year plus the period of time worked in the alternate position exceeds 12 weeks.

Special Rules for School Employees

For the purposes of FMLA, "school employee" means those whose principal function is to teach and instruct students in a class, a small group or an individual settlement. Athletic coaches, driving instructors and special education assistants, such as interpreters for the hearing impaired, are included in this definition. This definition does not apply to teacher assistants or aides, counselors, psychologist, curriculum specialists, cafeteria workers, maintenance workers or bus drivers.

For the purposes of OFLA, "school employee" means employees employed principally as instructors in public kindergartens, elementary schools, secondary schools or education service districts.

FMLA and/or OFLA leave that is taken for a period that ends with the school year and begins with the next semester is considered consecutive rather than intermittent. In any such situation, the eligible school employee will receive any benefits during the break period that employees would normally receive if they had been working at the end of the school year.

1. Foreseeable Intermittent Leave Exceeding 20 Percent of Working Days

   When the qualified leave is foreseeable, will encompass more than 20 percent of the eligible school employee's regular work schedule during the leave period, and the purpose of such leave is to care for a family member with a serious medical condition, for a servicemember with a serious medical condition or because of the employee's own serious medical condition, the district may require the eligible school employee to:

   a. Take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or
   b. Temporarily transfer the eligible school employee to an alternate position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave than the employee's original position.

2. Limitation on Leave Near the End of the School Year

   When an eligible school employee requests leave near the end of the school year, the district may require the following:

   a. When the qualified leave begins more than five weeks before the end of the school year:

      (1) For the purposes of FMLA leave, the eligible school employee may be required to continue taking leave until the end of the school year provided:

         (a) The leave will last at least three weeks; and
         (b) The employee would return to work during the three-week period before the end of the term.

      (2) For the purposes of OFLA leave, if the reason for the leave is because of the eligible school employee's own serious health condition, the eligible school employee may be required to remain in leave until the end of the school year, provided:

         (a) The leave will last at least three weeks; and
         (b) The employee's return to work would occur within three weeks of the end of the school year.

   b. For the purposes of FMLA and/or OFLA leave, when the qualified leave begins within five weeks of the end of the school year and the purpose of such leave is parental leave, for the serious health condition of a family member or for the serious health condition of a servicemember, the eligible school employee may be required to remain on leave until the end of the school year provided:

(1) The leave will last more than two weeks; and
(2) The employee would return to work during the two-week period before the end of the school year.

c. For the purposes of FMLA and/or OFLA leave, when the qualified leave begins within three weeks of the end of the school year and the purpose of such leave is parental leave, for the serious health condition of a family member or for the serious health condition of a servicemember, the eligible school employee may be required to remain on leave until the end of the school year provided the length of the leave will last more than five working days.

If the district requires an eligible school employee to remain on leave until the end of the school year as described above, additional leave required by the employer until the end of the school year shall not count against the eligible school employee's leave entitlement.

Paid/Unpaid Leave

FMLA and OFLA do not require the district to pay an eligible employee who is on a qualified leave. Subject to any related provisions in any applicable collective bargaining agreement, [12][an employee may elect to use any available accrued paid leave including personal and sick leave, or available accrued vacation leave during the leave period.] [the district requires the eligible employee to use any available accrued sick leave, vacation or personal leave days (or other available paid time established by Board policy(ies) and/or collective bargaining agreement) in the order specified by the district and before taking FMLA and/or OFLA leave without pay during the leave period.] [the district requires the eligible employee to use any available accrued paid leave, including personal and sick leave or available accrued vacation leave before taking FMLA and/or OFLA leave without pay during the leave period. The employee may select the order in which the available paid leave is used.]

The district will notify the eligible employee that the requested leave has been designated as FMLA and/or OFLA leave and, if required by the district, that available accrued paid leave shall be used during the leave period. In the event the district is aware of an OFLA or FMLA qualifying exigency, the district shall notify the eligible employee of its intent to designate the leave as such regardless of whether a request has been made by the eligible employee. Such notification will be given to the eligible employee prior to the commencement of the leave or within two working days of the employee's notice of an unanticipated or emergency leave, whichever is sooner.

When the district does not have sufficient information to make a determination of whether the leave qualifies as FMLA or OFLA leave, the district will provide the required notice promptly when the information is available but no later than two working days after the district has received the information. Oral notices will be confirmed in writing no later than the following payday. If the payday is less than one week after the oral notice is given, written notice will be provided no later than the subsequent payday.

Eligible employees who request OMFLA leave shall not be required to use any available accrued paid time off during the OMFLA leave period.

[12] [The district must choose one of the following from the three available bracketed options to complete this paragraph, and delete the other two.]

Benefits and Insurance

When an eligible employee returns to work following a FMLA or OFLA qualified leave, the employee must be reinstated to the same position the employee held when the leave commenced, or to an equivalent position with equivalent benefits, pay and other terms and conditions of employment.

During an OFLA qualified leave an eligible employee does not accrue seniority or other benefits that would have accrued while the employee was working. The eligible employee is also subject to layoff to the same extent similarly situated employees not taking OFLA leave are subject unless the terms of an applicable collective bargaining agreement, other agreement or the district's policies provide otherwise.

For the purposes of FMLA and OFLA, the district will continue to pay the employer portion of the eligible employee's group health insurance contribution (if applicable) during the qualified leave period. The eligible employee is required to pay the employee portion of any such group health insurance contribution as a condition of continued coverage.

For the purposes of FMLA qualified leave, the district's obligation to maintain the employee's group health insurance coverage will cease if the employee's contribution is remitted more than 30 calendar days late. The district will provide written notice that the premium payment is more than 30 calendar days late. Such notice will be provided within 15 calendar days before coverage is to cease.

For the purposes of OMFLA, the eligible employee is entitled to a continuation of benefits.

Fitness-for-Duty Certification

Prior to the reinstatement of an employee following a leave which was the result of the employee's own serious health condition, the district may require the employee to obtain and present a Fitness-for-Duty Certification. The certification will specifically address the employee's ability to perform the essential functions of the employee's job as they relate to the health condition that was the reason for the leave. If the district is going to require a fitness-for-duty certification upon return to work, the district must notify the employee of such requirement when the leave is designated as FMLA and/or OFLA leave. Failure to provide the certification may result in a delay or denial of reinstatement.

For the purposes of FMLA qualified leave, any costs associated with obtaining the fitness-for-duty certification shall be borne by the employee.

For the purposes of OFLA qualified leave, any out-of-pocket costs associated with obtaining the fitness-for-duty certification shall be borne by the district.

If the leave is qualified under both FMLA and OFLA, any out-of-pocket costs associated with obtaining the fitness-for-duty certification shall be borne by the district.

Application

Under federal and state law, an eligible employee requesting FMLA and/or OFLA leave shall provide at least 30 days' notice prior to the leave date if the leave is foreseeable. The notice shall be written and include the anticipated start date, duration and reasons for the requested leave. When appropriate, the

eligible employee must make a reasonable effort to schedule treatment, including intermittent leave and reduced leave, so as not to unduly disrupt the operation of the district.

The district may request additional information to determine that the requested leave qualifies as FMLA and/or OFLA leave. The district may designate the employee as provisionally on FMLA and/or OFLA leave until sufficient information is received to properly make a determination. An eligible employee able to give advance notice of the need to take FMLA and/or OFLA leave must follow the employer's known, reasonable and customary procedures for requesting any kind of leave.

For the purposes of FMLA, if advance notice is not possible, an employee eligible for FMLA leave must provide notice as soon as practicable. "As soon as practicable," for the purpose of FMLA leave, means the employee must comply with the employer's normal call-in procedures except in limited and under unique circumstances. Failure of an employee to provide the required notice for FMLA leave may result in the district delaying the employee's leave up to 30 days after the notice is ultimately given.

For the purposes of OFLA, an eligible employee is required to provide oral or written notice within 24 hours of commencement of the leave in unanticipated or emergency leave situations. The employee may designate a family member or friend to notify the district during that period of time. Failure of an employee to provide the required notice for leave covered by OFLA may result in the district deducting up to three weeks from the employee's unused OFLA leave in that one-year leave period. The employee may be subject to disciplinary action for not following the district's notice procedures.

When an employee fails to give advance notice for both the FMLA and OFLA above, the district must choose the remedy that is most advantageous to the employee.

In all cases, proper documentation must be submitted no later than three working days following the employee's return to work.

Medical Certification

The district [may] [shall] require an eligible employee to provide medical documentation, when appropriate, to support the stated reason for such leave. The district will provide written notification to an employee of this requirement within five working days of the employee's request for leave. If the employee provides less than 30 days' notice, the employee is required to submit such medical certification no later than 15 calendar days after receipt of the district's notification that medical certification is required.

The district may request re-certification of a condition when the minimum duration of a certification expires if continued leave is requested. If the certification does not indicate a duration or indicates that it is ongoing, the district may request re-certification at least every six months in connection with an absence.

Under federal law, a second medical opinion may be required whenever the district has reason to doubt the validity of the initial medical opinion. The health care provider may be selected by the district. The provider shall not be employed by the district on a regular basis. Should the first and second medical certifications differ, a third opinion may be required. The district and the employee will mutually agree on the selection of the health care provider for a third medical certification. The third opinion will be final. Second and third opinions and the actual travel expenses for an employee to obtain such opinions will be paid for by the district.

Second and Third Opinions

1. For the purposes of FMLA, the district may designate a second health care provider, but that person cannot be utilized by the district on a regular basis except in rural areas where health care is extremely limited. If the opinions of the employee's and the district's designated health care provider(s) differ, the district may require a third opinion at the district's expense. The third health care provider must be designated or approved jointly by the employee and the district. This third opinion shall be final and binding.

2. For the purposes of OFLA, and except for leave related to sick child leave under OFLA, the district may require the employee to obtain a second opinion from a health care provider designated by the district. If the first and second verifications conflict, the employer may require the two health care providers to jointly designate a third health care provider for the purpose of providing a verification. This third verification shall be final and binding.

Notification

Any notice required by federal and state laws explaining employee rights and responsibilities will be posted in all staff rooms and the district office. Additional information may be obtained by contacting the [superintendent] [personnel director].

Record Keeping/Posted Notice

The district will maintain all records as required by federal and state laws including dates leave is taken by employees, identified separately from other leave; hours/days of leave; copies of general and specific notices to employees, including Board policy(ies) and regulations; premium payments of employee health benefits while on leave and records of any disputes with employees regarding granting of leave.

Medical documentation will be maintained separately from personnel files as confidential medical records.

The district will post notice of FMLA and OFLA leave requirements.

Federal vs. State Law

Both federal and state law contain provisions regarding leave for family illness. Federal regulations state an employer must comply with both laws; that the federal law does not supersede any provision of state law that provides greater family leave rights than those established pursuant to federal law; and that OFLA and FMLA leave entitlements run concurrently. State law requires that FMLA and OFLA leave entitlements run concurrently when possible.

For example, due to differences in regulations, an eligible employee who takes OFLA leave after 180 days of employment, but before ~~he/she is~~they are eligible for FMLA leave, is still eligible to take a full 12 workweeks of FMLA leave after meeting FMLA's eligibility requirements. Thereafter, any eligible leave period will run concurrently, when appropriate.

EMPLOYEE RIGHTS AND RESPONSIBILITIES UNDER THE FAMILY AND MEDICAL LEAVE ACT

Basic Leave Entitlement
FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:
- For incapacity due to pregnancy, prenatal medical care or child birth;
- To care for the employee's child after birth, or placement for adoption or foster care;
- To care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- For a serious health condition that makes the employee unable to perform the employee's job.

Military Family Leave Entitlements
Eligible employees with a spouse, son, daughter, or parent on covered active duty or call to covered active duty status may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.
FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is: (1) a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness*; or (2) a veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran, and who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness*.
***The FMLA definition of "serious injury or illness" for current servicemembers and veterans are distinct from the FMLA definition of "serious health condition".**

Benefits and Protections
During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.
Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

Eligibility Requirements
Employees are eligible if they have worked for a covered employer for at least 12 months, have 1,250 hours of service over the previous 12 months, and if at least 50 employees are employed by the employer within 75 miles.

Definition of Serious Health Condition
A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.
Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than three consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

Use of Leave
An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

Substitution of Paid Leave for Unpaid Leave
Employees may choose or employers may require use of accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employer's normal paid leave policies.

Employee Responsibilities
Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days' notice is not possible, the employee must provide notice as soon as practicable and generally must comply with an employer's normal call-in procedures.
Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

Employer Responsibilities
Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.
Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

Unlawful Acts by Employers
FMLA makes it unlawful for any employer to:
- Interfere with, restrain, or deny the exercise of any right provided under FMLA; and
- Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

Enforcement
An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.
FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

FMLA section 109 (29 U.S.C. § 2619) requires FMLA covered employers to post the text of this notice. Regulations 29 C.F.R. § 825.300(a) may require additional disclosures.

For additional information:
1-866-4US-WAGE (1-866-487-9243) TTY: 1-877-889-5627
WWW.WAGEHOUR.DOL.GOV
U.S. Department of Labor | Wage and Hour Division

OSBA Model Sample Policy

Code: IGBAF-AR
Adopted:

Special Education - Individualized Education Program (IEP)**

1. General IEP Information

   a. The district ensures that an IEP is in effect for each eligible student:

      (1) Before special education and related services are provided to a student;
      (2) At the beginning of each school year for each student with a disability for whom the district is responsible; and
      (3) Before the district implements all the special education and related services, including program modifications, supports and/or supplementary aids and services, as identified on the IEP.

   b. The district uses:

      (1) The Oregon standard IEP; or
      (2) An IEP form that has been approved by the Oregon Department of Education.

   c. The district develops and implements all provisions of the IEP as soon as possible following the IEP meeting.
   d. The IEP will be accessible to each of the student's regular education teacher(s), the student's special education teacher(s) and the student's related services provider(s) and other service provider(s).
   e. The district takes steps to ensure that parent(s) are present at each IEP meeting or have the opportunity to participate through other means.
   f. The district ensures that each teacher and service provider is informed of:

      (1) Their specific responsibilities for implementing the IEP specific accommodations, modifications and/or supports that must be provided for, or on behalf of the student; and
      (2) Their responsibility to fully implement the IEP including any amendments the district and parents agreed to make between annual reviews.

      The district takes whatever action is necessary to ensure that parents understand the proceedings of the IEP team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

   g. The district provides a copy of the IEP to the parents at no cost.

2. IEP Meetings

   a. The district conducts IEP meetings within 30 calendar days of the determination that the student is eligible for special education and related services.

b. The district convenes IEP meetings for each eligible student periodically, but not less than once per year.
c. At IEP meetings, the team reviews and revises the IEP to address any lack of expected progress toward annual goals and in the general curriculum, new evaluation data or new information from the parent(s), the student's anticipated needs, or the need to address other matters.
d. Between annual IEP meetings, the district and the parent(s) may amend or modify the student's current IEP without convening an IEP team meeting using the procedures in the Agreement to Amend or Modify IEP subsection.
e. When the parent(s) requests a meeting, the district will either schedule a meeting within a reasonable time or provide timely written prior notice of the district's refusal to hold a meeting.
f. If an agency other than the district fails to provide agreed upon transition services contained in the IEP, the district convenes an IEP meeting to plan alternative strategies to meet the transition objectives and, if necessary, to revise the IEP.

3. IEP Team Members

a. The district's IEP team members include the following:

(1) The student's parent(s);
(2) The student, if the purpose of the IEP meeting is to consider the student's postsecondary goals and transition services (beginning for IEPs in effect at age 16), or for younger students, when appropriate;
(3) At least one of the student's special education teachers or, if appropriate, at least one of the student's special education providers;
(4) At least one of the student's regular education teachers if the student is or may be participating in the regular education environment. If the student has more than one regular education teacher, the district will determine which teacher or teachers will participate;
(5) A representative of the district (who may also be another member of the team) who is qualified to provide or supervise the provision of special education and is knowledgeable about district resources. The representative of the district will have the authority to commit district resources and be able to ensure that all services identified in the IEP can be delivered;
(6) An individual, who may also be another member of the team, who can interpret the instructional implications of the evaluation results; and
(7) At the discretion of the parent or district, other persons who have knowledge or special expertise regarding the student.

b. Student participation:

(1) Whenever appropriate, the student with a disability is a member of the team.
(2) If the purpose of the IEP meeting includes consideration of postsecondary goals and transition services for the student, the district includes the student in the IEP team meeting.
(3) If the purpose of the IEP meeting includes consideration of postsecondary goals and transition services for the student, and the student does not attend the meeting, the

district will take other steps to consider the student's preferences and interests in developing the IEP.

c. Participation by other agencies:

(1) With parent or adult student written consent, and where appropriate, the district invites a representative of any other agency that is likely to be responsible for providing or paying for transition services if the purpose of the IEP meeting includes the consideration of transition services (beginning at age 16, or younger if appropriate); and
(2) If the district refers or places a student in an education service district, state-operated program, private school or other educational program, IEP team membership includes a representative from the appropriate agencies. Participation may consist of attending the meeting, conference call or participating through other means.

4. Agreement for Nonattendance and Excusal

a. The district and the parent may consent to excuse an IEP team member from attending an IEP meeting, in whole or in part, when the meeting involves a discussion or modification of team member's area of curriculum or service. The district designates specific individuals to authorize excusal of IEP team members.
b. If excusing an IEP team member whose area is to be discussed at an IEP meeting, the district ensures:

(1) The parent and the district consent in writing to the excusal;
(2) The team member submits written input to the parents and other members of the IEP team before the meeting; and
(3) The parent is informed of all information related to the excusal in the parent's native language or other mode of communication according to consent requirements.

5. IEP Content

a. In developing the IEP, the district considers the student's strengths, the parent's concerns, the results of the initial or most recent evaluation, and the academic, developmental and functional needs of the student.
b. The district ensures that IEPs for each eligible student includes:

(1) A statement of the student's present levels of academic achievement and functional performance that:

(a) Includes a description of how the disability affects the progress and involvement in the general education curriculum;
(b) Describes the results of any evaluations conducted, including functional and developmental information;
(c) Is written in language that is understood by all IEP team members, including parents;
(d) Is clearly linked to each annual goal statement;
(e) Includes a description of benchmarks or short-term objectives for children with disabilities who take alternative assessments aligned to alternate achievement standards.

(2) A statement of measurable annual goals, including academic and functional goals, or for students whose performance is measured by alternate assessments aligned to alternate achievement standard, statements of measurable goals and short-term objectives. The goals and, if appropriate, objectives:

(a) Meet the student's needs that are present because of the disability, or because of behavior that interferes with the student's ability to learn, or impedes the learning of other students;
(b) Enable the student to be involved in and progress in the general curriculum, as appropriate; and
(c) Clearly describe the anticipated outcomes, including intermediate steps, if appropriate, that serve as a measure of progress toward the goal.

(3) A statement of the special education services, related services, supplementary aids and services that the district provides to the student:

(a) The district bases special education and related services, modifications and supports on peer-reviewed research to the extent practicable to assist students in advancing toward goals, progressing in the general curriculum and participating with other students (including those without disabilities), in academic, nonacademic and extracurricular activities.
(b) Each statement of special education services, related or supplementary services, aids, modifications or supports includes a description of the inclusive dates, amount or frequency, location and who is responsible for implementation.

(4) A statement of the extent, if any, to which the student will not participate with nondisabled students in regular academic, nonacademic and extracurricular activities.
(5) A statement of any individual modifications and accommodations in the administration of state or districtwide assessments of student achievement.

(a) A student will not be exempt from participation in state or districtwide assessment because of a disability unless the parent requests an exemption;
(b) If the IEP team determines that the student will take the alternate assessment instead of the regular statewide or a districtwide assessment, a statement of why the student cannot participate in the regular assessment and why the alternate assessment is appropriate for the student.

(6) A statement describing how the district will measure student's progress toward completion of the annual goals and when periodic reports on the student's progress toward the annual goals will be provided.

6. Agreement to Amend or Modify IEP

Between annual IEP meetings, the district and the parent may agree to make changes in the student's current IEP without holding an IEP meeting. These changes require a signed, written agreement between the district and the parent.

a. The district and the parent record any amendments, revisions or modifications on the student's current IEP. If additional IEP pages are required these pages must be attached to the existing IEP.
b. The district files a complete copy of the IEP with the student's education records and informs the student's IEP team and any teachers or service providers of the changes.
c. The district provides the parent prior written notice of any changes in the IEP and upon request, provides the parent with a revised copy of the IEP with the changes incorporated.

7. IEP Team Considerations and Special Factors

a. In developing, reviewing and revising the IEP, the IEP team considers:

(1) The strengths of the student and concerns of the parent for enhancing the education of the student;
(2) The results of the initial or most recent evaluation of the student;
(3) As appropriate, the results of the student's performance on any general state or districtwide assessments;
(4) The academic, developmental and functional needs of the child.

b. In developing, reviewing and revising the student's IEP, the IEP team considers the following special factors:

(1) The communication needs of the student; and
(2) The need for assistive technology services and/or devices.

c. As appropriate, the IEP team also considers the following special factors:

(1) For a student whose behavior impedes ~~his or her~~ their learning or that of others, strategies, positive behavioral intervention and supports to address that behavior;
(2) For a student with limited English proficiency, the language needs of the student as those needs relate to the IEP;
(3) For a student who is blind or visually impaired, instruction in Braille and the use of Braille unless the IEP team determines (after an evaluation of reading and writing skills, needs and media, including evaluation of future needs for instruction in Braille or the use of Braille, appropriate reading and writing), that instruction in Braille or the use of Braille is not appropriate;
(4) For a student who is deaf or hard of hearing, the student's language and communication needs, including opportunities for direct communication with peers and professional personnel in the student's language and communication mode, academic level and full range of needs, including opportunities for direct instruction in the student's language and communication mode; ~~and~~
(5) If a student is deaf, deafblind, or hard of hearing, the district will provide information about relevant services and placements offered by the school district, the education service district, regional programs, and the Oregon School for the Deaf; and
(6) A statement of any device or service needed for the student to receive a free appropriate public education (FAPE).

d. In addition to the above IEP contents, the IEP for each eligible student of transition age includes:

(1) Beginning not later than the first IEP in effect when the student turns 16, or as early as 14 or younger, if determined appropriate by the IEP team (including parent(s)), and updated annually thereafter, the IEP must include:

(a) Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training education, employment, and where appropriate, independent living skills; and

(b) The transition services (including courses of study) needed to assist the student in reaching those goals.

(i) Regarding employment planning, the parent shall be provided information about and opportunities to experience employment services provided by Oregon Vocational Rehabilitation or the Oregon Office of Developmental Disability Services. These services must be provided in a competitive integrated employment setting, as defined by Oregon Administrative Rule 441-345-0020. Information about these services shall also be provided to the parent by the district at each annual review for IEPs to be in effect when the child turns 16, or as early as 14 or younger, if determined appropriate by the IEP team (including parent(s)).

(2) At least one year before a student reaches the age of majority (student reaches the age of 18, or has married or been emancipated, whichever occurs first), a statement that the district has informed the student that all procedural rights will transfer at the age of majority; and

(3) If identified transition service providers, other than the district, fail to provide any of the services identified on the IEP, the district will initiate an IEP meeting as soon as possible to address alternative strategies and revise the IEP if necessary.

e. To promote self-determination and independence, the district shall provide the student and the student's parents with information and training resources regarding supported decision-making as a less restrictive alternative to guardianship, and with information and resources regarding strategies to remain engaged in the student's secondary education and post-school outcomes. The district shall provide this information at each IEP meeting that includes discussion of post-secondary education goals and transition services.

8. Incarcerated Youth

a. For students with disabilities who are convicted as adults, incarcerated in adult correctional facilities and otherwise entitled to FAPE, the following IEP requirements do not apply:

(1) Participation of students with disabilities in state and districtwide assessment; and

(2) Transition planning and transition services, for students whose eligibility will end because of their age before they will be eligible to be released from an adult correctional facility based on consideration of their sentence and eligibility for early release.

b. The IEP team may modify the student's IEP, if the state has demonstrated a bona fide security or other compelling interest that cannot be otherwise accommodated.

9. Extended School Year Services

a. The district makes extended school year (ESY) services available to all students for whom the IEP team has determined that such services are necessary to provide FAPE.
b. ESY services are:

(1) Provided to a student with a disability in addition to the services provided during the typical school year;
(2) Identified in the student's IEP; and
(3) Provided at no cost to the parent.

c. The district does not limit consideration of ESY services to particular categories of disability or unilaterally limit the type, amount or duration of service.
d. The district provides ESY services to maintain the student's skills or behavior, but not to teach new skills or behaviors.
e. The district's criteria for determining the need for extended school year services include:

(1) Regression (a significant loss of skills or behaviors) and recoupment time based on documented evidence; or
(2) If no documented evidence, on predictions according to the professional judgment of the team.

f. "Regression" means significant loss of skills or behaviors in any area specified on the IEP as a result of an interruption in education services.
g. "Recoupment" means the recovery of skills or behaviors specified on the IEP to a level demonstrated before the interruption of education services.

10. Assistive Technology

a. The district ensures that assistive technology devices or assistive technology services, or both, are made available if they are identified as part of the student's IEP. These services and/or devices may be part of the student's special education, related services or supplementary aids and services.
b. On a case-by-case basis, the district permits the use of district-purchased assistive technology devices in the student's home or in other settings if the student's IEP team determines that the student needs access to those devices to receive a free appropriate public education. In these situations, district policy will govern liability and transfer of the device when the student ceases to attend the district.

11. Transfer Students

a. In state:

If a student with a disability (who had an IEP that was in effect in a previous district in Oregon) transfers into the district and enrolls in a district school within the same school year, the district (in consultation with the student's parents) provides a free appropriate public education to the student (including services comparable to those described in the student's IEP from the previous district), until the district either:

(1) Adopts the student's IEP from the previous district; or

(2) Develops, adopts and implements a new IEP for the student in accordance with all of the IEP provisions.

b. Out of state:

If a student transfers into the district with a current IEP from a district in another state, the district, in consultation with the student's parents, will provide a free appropriate public education to the student, including services comparable to those described in the student's IEP from the previous district, until the district:

(1) Conducts an initial evaluation (if determined necessary by the district to determine Oregon eligibility) with parent consent and determines whether the student meets eligibility criteria described in Oregon Administrative Rules.
(2) If the student is eligible under Oregon criteria, the district develops, adopts and implements a new IEP for the student using the Oregon Standard IEP or an approved alternate IEP.
(3) If the student does not meet Oregon eligibility criteria, the district provides prior written notice to the parents explaining that the student does not meet Oregon eligibility criteria and specifying the date when special education services will be terminated.

Knappa School District 4

Code: **IGBAG-AR**
Adopted: 5/20/13
Revised/Readopted: 11/20/17; 8/20/18

Special Education - Procedural Safeguards**

1. Procedural Safeguards

   a. The district provides procedural safeguards to:

      (1) Parents, guardians (unless the guardian is a state agency) or persons in parental relationship to the student;
      (2) Surrogate parents; and
      (3) Students who have reached the age of 18, the age of majority or are considered emancipated under Oregon law and to whom rights have transferred by statute, identified as adult students (called "eligible students").

   b. The district gives parents a copy of the *Procedural Safeguards Notice*, published by the Oregon Department of Education (ODE):

      (1) At least once a year;
      (2) At the first referral or parental request for evaluation to determine eligibility for special education services;
      (3) When the parent (or adult student) requests a copy; and
      (4) To the parent and the student one year before the student's 18th birthday or upon learning that the student is emancipated.

   c. The *Procedural Safeguards Notice* is:

      (1) Provided written in the native language or other communication of the parents (unless it is clearly not feasible to do so) and in language clearly understandable to the public.
      (2) If the native language or other mode of communication of the parent is not a written language, the district takes steps to ensure that:

         (a) The notice is translated orally or by other means to the parent in his/her native language or other mode of communication;
         (b) The parent understands the content of the notice; and
         (c) There is written evidence that the district has met these requirements.

2. Content of *Procedural Safeguards Notice*

   The procedural safeguards notice includes all of the content provided in the *Procedural Safeguards Notice* published by ODE.

3. Parent or Adult Student Meeting Participation

a. The district provides parents or adult students an opportunity to participate in meetings with respect to the identification, evaluation, individualized education program (IEP) and educational placement of the student, and the provision of a free appropriate public education (FAPE) to the student.
b. The district provides parents or adult students written notice of any meeting sufficiently in advance to ensure an opportunity to attend. The written notice:

(1) States the purpose, time and place of the meeting and who is invited to attend;
(2) Advises that parents or adult students may invite other individuals who they believe have knowledge or special expertise regarding the student;
(3) Advises the parents or adult student that the team may proceed with the meeting even if they are not in attendance;
(4) Advises the parent or adult students who to contact before the meeting to provide information if they are unable to attend; and
(5) Indicates if one of the meeting's purposes is to consider transition services or transition service needs. If so:

(a) Indicates that the student will be invited; and
(b) Identifies any agencies invited to send a representative.

c. The district takes steps to ensure that one or both of the parents of a student with a disability are present at each IEP or placement meeting or are afforded the opportunity to participate, including:

(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
(2) Scheduling the meeting at a mutually agreed on time and place.

d. If neither parent can participate, the district will use other methods to ensure participation, including, but not limited to, individual or conference phone calls or home visits.
e. The district may conduct an evaluation planning or eligibility meeting without the parent or adult student if the district provided meeting notice to the parent or adult student sufficiently in advance to ensure an opportunity to attend.
f. The district may conduct an IEP or placement meeting without the parent or adult student if the district is unable to convince the parents or adult students that they should participate. Attempts to convince the parent to participate will be considered sufficient if the district:

(1) Communicates directly with the parent or adult student and arranges a mutually agreeable time and place and sends written notice to confirm the arrangement; or
(2) Proposes a time and place in the written notice stating that a different time and place might be requested and confirms that the notice was received.

g. If the district proceeds with an IEP meeting without a parent or adult student, the district must have a record of its attempts to arrange a mutually agreed upon time and place such as:

(1) Detailed records of telephone calls made or attempted and the results of those calls;
(2) Copies of correspondence sent to the parents and any responses received; and

(3) Detailed records of visits made to the parents' home or place of employment and the results of those visits.

h. The district takes whatever action is necessary to ensure that the parent or adult student understands the proceedings at a meeting, including arranging for an interpreter for parents or adult students who are deaf or whose native language is other than English.

i. After the transfer of rights to an adult student at the age of majority, the district provides written notice of meetings to the adult student and parent, if the parent can be reasonably located. After the transfer of rights to an adult student at the age of majority, a parent receiving notice of an IEP meeting is not entitled to attend the meeting unless invited by the adult student or the district.

j. An IEP meeting does not include:

(1) Informal or unscheduled conversations involving district personnel;
(2) Conversations on issues such as teaching methodology, lesson plans or coordination of service provision if those issues are not addressed in the student's IEP; or
(3) Preparatory activities that district or public personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

4. Surrogate Parents

a. The district protects the rights of a student with a disability, or suspected of having a disability, by appointing a surrogate parent when:

(1) The parent cannot be identified or located after reasonable efforts;
(2) The student is a ward of the state or an unaccompanied homeless youth and there is reasonable cause to believe that the student has a disability, and there is no foster parent or other person available who can act as the parent of the student; or
(3) The parent or adult student requests the appointment of a surrogate parent.

b. The district secures nominations of persons to serve as surrogates. The district appoints surrogates within 30 days of a determination that the student needs a surrogate, unless a surrogate has already been appointed by juvenile court.

c. The district will only appoint a surrogate who:

(1) Is not an employee of the district or ODE;
(2) Is not an employee of any other agency involved in the education or care of the student;
(3) Is free of any personal or professional interest that would interfere with representing the student's special education interests; and
(4) Has the necessary knowledge and skills that ensure adequate representation of the student in special education decisions. The district will provide training, as necessary, to ensure that surrogate parents have the requisite knowledge.

d. The district provides all special education rights and procedural safeguards to appointed surrogate parents.

e. A surrogate will not be considered an employee of the district solely on the basis that the surrogate is compensated from public funds.

f. The duties of the surrogate parent are to:

(1) Protect the special education rights of the student;
(2) Be acquainted with the student's disability and the student's special education needs;
(3) Represent the student in all matters relating to the identification, evaluation, IEP and educational placement of the student; and
(4) Represent the student in all matters relating to the provision of FAPE to the student.

g. A parent may give written consent for a surrogate to be appointed.

(1) When a parent requests that a surrogate be appointed, the parent shall retain all parental rights to receive notice and all of the information provided to the surrogate. When the district appoints a surrogate at parent request, the district will continue to provide to the parent a copy of all notices and other information provided to the surrogate.
(2) The surrogate, alone, shall be responsible for all matters relating to the special education of the student. The district will treat the surrogate as the parent unless and until the parent revokes consent for the surrogate's appointment.
(3) If a parent gives written consent for a surrogate to be appointed, the parent may revoke consent at any time by providing a written request to revoke the surrogate's appointment.

h. An adult student to whom rights have transferred at age of majority may give written consent for a surrogate to be appointed. When an adult student requests that a surrogate be appointed, the student shall retain all rights to receive notice and all of the information provided to the surrogate. The surrogate, alone, shall be responsible for all matters relating to the special education of the student. The district will treat the surrogate as the adult student unless and until the adult student revokes consent for the surrogate's appointment. If an adult student gives written consent for a surrogate to be appointed, the adult student may revoke consent at any time by providing a written request to revoke the surrogate's appointment.

i. The district may change or terminate the appointment of a surrogate when:

(1) The person appointed as surrogate is no longer willing to serve;
(2) Rights transfer to the adult student or the student graduates with a regular diploma;
(3) The student is no longer eligible for special education services;
(4) The legal guardianship of the student is transferred to a person who is able to carry out the role of the parent;
(5) A foster parent or other person is identified who can carry out the role of parent;
(6) The parent, who previously could not be identified or located, is now identified or located;
(7) The appointed surrogate is no longer eligible;
(8) The student moves to another district; or
(9) The student is no longer a ward of the state or unaccompanied homeless youth.

j. The district will not appoint a surrogate solely because the parent or student to whom rights have transferred is uncooperative or unresponsive to the special education needs of the student.

5. Transfer of Rights at Age of Majority

   a. When a student with a disability reaches the age of majority, marries or is emancipated, rights previously accorded to the student's parents under the special education laws, transfer to the student. A student for whom rights have transferred is considered an "adult student" under Oregon Administrative Rule (OAR) 581-015-2000(1).
   b. The district provides notice to the student and the parent that rights (accorded by statute) will transfer at the age of majority. This notice is provided at an IEP meeting and documented on the IEP:

      (1) At least one year before the student's 18th birthday;
      (2) More than one year before the student's 18th birthday, if the student's IEP team determines that earlier notice will aid transition; or
      (3) Upon actual knowledge that within a year the student will likely marry or become emancipated before age 18.

   c. The district provides written notice to the student and to the parent at the time of the transfer.
   d. These requirements apply to all students, including students who are incarcerated in a state or local adult or juvenile correctional facility or jail.
   e. After transfer of rights to the student, the district provides any written prior notices and written notices of meetings required by the special education laws to the adult student and to the parent if the parent can be reasonably located.
   f. After rights have transferred to the student, receipt of notice of an IEP meeting does not entitle the parent to attend the meeting unless invited by the student or the district.

6. Prior Written Notice

   a. The district provides prior written notice to the parent of a student, or student, within a reasonable period of time, before the district:

      (1) Proposes to initiate or change, the identification, evaluation or educational placement of the student, or the provision of a FAPE to the child; or
      (2) Refuses to initiate or change the identification, evaluation or educational placement of the student, or the provision of a FAPE to the child.

   b. The content of the prior written notice will include:

      (1) A description of the action proposed or refused by the district;
      (2) An explanation of why the district proposed or refused to take the action;
      (3) A description of each evaluation procedure, test, assessment, record or report used as a basis for the proposal or refusal;
      (4) A statement that the parents of a student with a disability have procedural safeguards and, if this notice is not an initial referral for evaluation, how a copy of the *Procedural Safeguards Notice* may be obtained;
      (5) Sources for parents to contact to obtain assistance in understanding their procedural safeguards;
      (6) A description of other options the IEP team considered and the reasons why those options were rejected; and
      (7) A description of other factors that are relevant to the agency's proposal or refusal.
   c. The prior written notice is:

(1) Written in language understandable to the general public; and
(2) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so;
(3) If the native language or other mode of communication of the parent is not a written language, the district shall take steps to ensure that:

(a) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;
(b) The parent understands the content of the notice; and
(c) There is written evidence that the requirements of this rule have been met.

7. Consent[1] – Initial Evaluation

a. The district provides notice and obtains informed written consent from the parent or adult student before conducting an initial evaluation to determine whether a student has a disability (as defined by Oregon law) and needs special education. Consent for initial evaluation is not consent for the district to provide special education and related services.
b. The district makes reasonable efforts to obtain informed consent from a parent for an initial evaluation to determine a child's eligibility for special education services. If a parent does not provide consent for an initial evaluation or does not respond to a request for consent for an initial evaluation, the district may, but is not required to, pursue the initial evaluation of the child through mediation or due process hearing procedures. The district does not violate its child find obligations if it declines to pursue the evaluation using these procedures.

8. Consent – Initial Provision of Special Education Services

a. The district provides notice and obtains informed written consent from the parent or adult student before the initial provision of special education and related services to the student.
b. The district makes reasonable efforts to obtain informed consent, but if a parent or adult student does not respond or refuses consent for initial provision of special education and related services, the district does not convene an IEP meeting, develop an IEP or seek to provide special education and related services through mediation or due process hearing procedures. The district will not be considered to be in violation of the requirement to make FAPE available to the student under these circumstances. The district stands ready to serve the student if the parent or adult student later consents.

9. Consent – Re-evaluation

a. The district obtains informed parent consent before conducting any re-evaluation of a child with a disability, except:

(1) The district does not need written consent for a re-evaluation if the parent does not respond after reasonable efforts to obtain informed consent. However, the district does not conduct individual intelligence tests or tests of personality without consent.

[1]"Consent" means that the parent or adult student: a) has been fully informed, in his/her native language or other mode of communication, of all information relevant to the activity for which consent is sought; and b) understands and agrees in writing to the carrying out of the activity for which his/her consent is sought. Consent is voluntary on the part of the parent and meeting the requirements of consent provision for OAR 581-015-2090, IDEA and Family Education Rights and Privacy Act (FERPA).

(2) If a parent refuses to consent to the re-evaluation, the district may, but is not required to, pursue the re-evaluation by using mediation or due process hearing procedures.

b. A parent or adult student may revoke consent at any time before the completion of the activity for which they have given consent. If a parent or adult student revokes consent, that revocation is not retroactive.

10. Consent – Other Requirements

a. The district documents its reasonable efforts to obtain parent consent, such as phone calls, letters and meeting notes.
b. If a parent of a student who is home schooled or enrolled by the parents in a private school does not provide consent for the initial evaluation or the re-evaluation, or if the parent does not respond to a request for consent, the district:

(1) Does not use mediation or due process hearing procedures to seek consent; and
(2) Does not consider the child as eligible for special education services.

c. If a parent or adult student refuses consent for one service or activity, the district does not use this refusal to deny the parent or child any other service, benefit or activity, except as specified by these rules and procedures.
d. If, at any time subsequent to the initial provision of special and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the district:

(1) May not continue to provide special education and related services to the child, but must provide prior written notice before ceasing the provision of special education and related services;
(2) May not use mediation or due process procedures to obtain an agreement or ruling that the services may be provided to the child;
(3) The district will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and
(4) The district is not required to convene an IEP team meeting or develop an IEP for the child for further provision of special education or related services.

11. Exceptions to Consent

a. The district does not need written parent or adult student consent before:

(1) Reviewing existing data as part of an evaluation or re-evaluation;
(2) Administering a test or other evaluation administered to all students without consent unless, before administration of that test or evaluation, consent is required of parents of all students;
(3) Conducting evaluations, tests, procedures or instruments that are identified on the student's individualized education program (IEP) as a measure for determining progress; or
(4) Conducting a screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation.

b. The district does not need written parent consent to conduct an initial special education evaluation of a student who is a ward of the state and not living with the parent if:

(1) Despite reasonable efforts to do so, the district has not been able to find the parent;
(2) The parent's rights have been terminated in accordance with state law; or
(3) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

c. The district does not need written parental consent if an administrative law judge (ALJ) determines that the evaluation or re-evaluation is necessary to ensure that the student is provided with a free appropriate public education.

12. Independent Educational Evaluations (IEE)

a. A parent of a student with a disability has a right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the district.
b. If a parent requests an independent educational evaluation at public expense, the district provides information to parents about where an independent educational evaluation may be obtained, and the district criteria applicable for independent educational evaluations.
c. If a parent requests an independent educational evaluation at public expense, the district, without unnecessary delay, either:

(1) Initiates a due process hearing to show that its evaluation is appropriate; or
(2) Ensures that an independent educational evaluation is provided at public expense unless the district demonstrates in a hearing that the evaluation obtained by the parent did not meet district criteria.

d. The district criteria for independent educational evaluations are the same as for district evaluations including, but not limited to, location, examiner qualifications and cost.

(1) Criteria established by the district do not preclude the parent's access to an independent educational evaluation.
(2) The district provides the parents the opportunity to demonstrate the unique circumstances justifying an IEE that does not meet the district's criteria.
(3) A parent may be limited to one independent educational evaluation at public expense each time the district conducts an evaluation with which the parent disagrees.

e. If a parent requests an independent educational evaluation, the district may ask why the parent disagrees with the public evaluation. The parent may, but is not required to provide an explanation. The district may not:

(1) Unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation;
(2) Except for the criteria listed above in c., impose conditions or timelines related to obtaining an IEE at public expense.

f. The district considers an independent educational evaluation submitted by the parent, in any decision made with respect to the provision of a free appropriate public education to the student, if the submitted independent evaluation meets district criteria.

13. Dispute Resolution – Mediation

a. The district or parent may request mediation from ODE for any special education matter, including before the filing of a complaint or due process hearing request.
b. The district acknowledges that:

(1) Mediation must be voluntary on the part of the parties, must be conducted by a qualified and impartial mediator who is trained in effective mediation techniques and may not be used to deny or delay a parent's right to a due process hearing or filing a complaint.
(2) Each mediation session must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.
(3) An agreement reached by the parties to the dispute in the mediation process must be set forth in a legally binding written mediation agreement that:

(a) States the terms of the agreement;
(b) States that all discussions that occurred during the mediation process remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and
(c) Is signed by the parent and a representative of the district who has the authority to bind the district to the mediation agreement.

(4) Mediation communication is not confidential if it relates to child or elder abuse and is made to a person who is required to report abuse, or threats of physical harm, or professional conduct affecting licensure.
(5) The mediation agreement is enforceable in any state court of competent jurisdiction or in a district court of the United States.

14. Dispute Resolution – Complaint Investigation

a. Any organization or person may file a signed, written complaint with the State Superintendent of Public Instruction alleging that a district or education service district (ESD) is violating or has violated the Individuals with Disabilities Education Act (IDEA) or associated regulations within one year before the date of the complaint. Upon receiving a parent complaint, the ODE forwards the complaint to the district or ESD along with a request for a district response to the allegations in the complaint.
b. Upon receiving a request for response from ODE, the district responds to the allegations and furnishes any requested information or documents within 10 business days.
c. The district sends a copy of the response to the complainant. If ODE decides to conduct an on-site investigation, district personnel participate in interviews and provide additional documents as needed.
d. The district and the complainant may attempt to resolve a disagreement that led to a complaint through mediation. If they decide against mediation, or if mediation fails to produce an agreement, ODE will pursue the complaint investigation.
e. If ODE substantiates some or all of the allegations in a complaint, it will order corrective action. The district satisfies its corrective action obligations in a timely manner.
f. If the district disagrees with the findings and conclusions in a complaint final order, it may seek reconsideration by ODE or judicial review in county circuit court.

15. Due Process Hearing Requests

a. The district acknowledges that parents may request a due process hearing if they disagree with a district proposal or refusal relating to the identification, evaluation, educational placement or

provision of a free appropriate education to a student who may have a disability and be eligible for special education.

b. The district may request a due process hearing regarding the identification, evaluation, educational placement or provision of a free appropriate education to a student who may have a disability and be eligible for special education.
c. When requesting a due process hearing, the district or the attorney representing the district provides notice to the parent and to ODE.
d. The party, including the district, that did not file the hearing request must, within 10 days of receiving the request for a hearing, send to the other party a response that specifically addresses the issues raised in the hearing request.
e. If the parent had not yet received prior written notice of the district's proposal or refusal, the district, within 10 days of receiving the hearing request for a due process hearing, sends to the parent a response that includes:

    (1) An explanation of why the district proposed or refused to take the action raised in the hearing request;
    (2) A description of other options that the district considered and the reasons why those options were rejected;
    (3) A description of each evaluation procedure, assessment, record or report the district used as the basis for the proposed or refused action; and
    (4) A description of the factors relevant to the district's proposal or refusal.

16. Resolution Session

    a. Within 15 days of receiving a due process hearing request, the district will hold a resolution session with the parents and the relevant members of the IEP team who have specific knowledge of the facts identified in the due process hearing request.
    b. This meeting will include a representative of the district who has decision-making authority for the district.

        (1) The district will not include an attorney unless the parent brings an attorney.
        (2) The district will provide the parent with an opportunity for the parent to discuss the hearing request and related facts so that the district has an opportunity to resolve the dispute.
        (3) The district and parent may agree in writing to waive the resolution meeting. If so, the 45-day hearing timeline will begin the next business day, unless the district and parent agree to try mediation in lieu of the resolution session.

17. Time Limitations and Exception

    a. A parent must request a due process hearing within two years after the date of the district act or omission that gives rise to the parent's hearing request.
    b. This timeline does not apply to a parent if the district withheld relevant information from the parent or incorrectly informed the parent that it had resolved the problem that led the parent's hearing request.

18. Hearing Costs

    a. The district reimburses ODE for costs related to conducting the hearing, including pre-hearing conferences, scheduling arrangement and other related matters.

b. The district provides the parent with a written or, at the option of the parent, an electronic verbatim recording of the hearing, within a reasonable time of the close of the hearing
c. The district does not use IDEA funds to pay attorney's fees or other hearing costs.

19. Discipline and Placement in Interim Alternative Setting

See Board policy JGDA/JGEA - Discipline of Students with Disabilities.

OSBA Model Sample Policy

Code: IGBB
Adopted:

Talented and Gifted Program

The district is committed to an educational program that recognizes, identifies and serves the unique needs of talented and gifted students. Talented and gifted students are those who have been identified as academically talented and/or intellectually gifted.

The Board directs the superintendent to develop a written identification process for identifying academically talented and intellectually gifted students in grades K through 12.

A written plan shall be developed that identifies programs or services needed to address the assessed levels of learning and accelerated rates of learning of identified students and provides an opportunity for the student's parents to discuss with the district the programs and services available to the student and to provide input on the programs and services to be made available to the student.

The plan will be provided at the school or the district office when requested and on the district's website. The website shall also provide the name and contact information of the district's coordinator of special education and programs for talented and gifted.

[The district may also identify and provide programs for students who demonstrate creative abilities, leadership abilities or unusual abilities in visual or performing arts.]

END OF POLICY

Legal Reference(s):

ORS 343.391-343.401 ORS 343.407-343.413

OAR 581-022-2325 OAR 581-022-2330 OAR 581-022-2500

SB 486(2021

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Local Wellness -6/19/2017 **EFA**

EFA-AR

We had a recent administrative review of the lunch program by ODE and found we needed to review the Local Wellness policy with the board, public, staff and students. At this time there are no changes to the policy.