

PACE

SAFETY • SERVICE • SAVINGS
A **TRUST** BUILT FOR **STUDENTS**



Property And Casualty Coverage for Education (PACE)

Mission Statement

*Working together to keep Oregon students
safe, reduce risks and conserve member
resources.*

Important PACE Contacts

- **Administration**

- dharvey@pace.osba.org
- pace@osba.org
- pacetraining@osba.org
- 800-578-6722

- **Claims**

- claims@sdao.com
- 800-305-1736

- **Pace Legal Services**

- pacelegal@osba.org
- 503-485-4800

- **Risk Management**

- riskmanagement@sdao.com
- 800-285-5461



PACE Update and Legal Hot Topics

Dave Harvey, PACE Administrator
Callen Sterling, Assistant Legal Counsel
Oregon School Boards Association

Questions



CHAT



pacelegal@osba.org

AGENDA

- Hiring in small schools
- ADA
- Employee non-renewal and termination
- Legislative Update

Hiring Issues in Small Schools

Veterans' Preference in Hiring

Veterans' Preference

- You must give preference to veterans' in the hiring process (promotion too)
- Be mindful that veterans' who do not receive a position may ask you for an explanation for why they did not receive the position and you will be obligated by law to provide the explanation.

Family Members Working Together



Nepotism

- Does Oregon Government Ethics law prevent two or more relatives from being employees of the same public body?
- No. Public officials who are relatives can be employed by the same public body employer at the same time, or serve on the same governing body of a public body at the same time.
- Public Official Guide

Nepotism

- Public officials cannot participate in any personnel action taken by the school that would impact the employment of a relative or member of the public official's household. A public official may not participate in the following [ORS 244.177(1)]:
 - Appointing, employing or promoting
 - Discharging, firing or demoting
 - Interviewing
 - Discussing or debating the appointment, employment, promotion, discharge, firing or demotion
- A public official may not directly supervise a person who is a relative or member of the public official's household [ORS 244.179], except when:
 - The public official is supervising an unpaid volunteer for the public body

Nepotism

- A public official may serve as a reference or provide a recommendation for a relative who has applied for a position of employment, promotion or is subject to any personnel action.

Employing Family Members

- 659A.309 Discrimination solely because of employment of another family member prohibited; exceptions. (1) Except as provided in subsection (2) of this section, it is an unlawful employment practice for an employer solely because another member of an individual's family works or has worked for that employer to:
 - (a) Refuse to hire or employ an individual;
 - (b) Bar or discharge from employment an individual; or
 - (c) Discriminate against an individual in compensation or in terms, conditions or privileges of employment.

Pre-Employment Drug Testing

Pre-Employment Drug Testing

- Required for certain positions, but it is not required for all positions.
- Must be done after a job offer has been made.

Pre-Employment Background Checks for Employees, Contractors and Volunteers

Volunteer Background Checks

- For licensed volunteers contact TSPC, and verify whether TSPC has an ongoing investigation or has a substantiated report that may constitute sexual conduct
- For non-licensed volunteers contact ODE
- For all volunteers, school board must adopt a policy that sets forth the required criminal background check
 - May use ODE or vendor
 - May do state-wide or nation-wide background check
- Effective July 1, 2020

Contractor Background Check Requirements

- For licensed contractors contact TSPC and verify whether TSPC has an ongoing investigation or has a substantiated report that may constitute sexual conduct
- For non-licensed contractors contact ODE
- For all contractors, school must do a criminal background check through ODE (OAR 581-021-0511(1)(a))

Employee Background Checks

- For licensed employees, contact TSPC and verify whether TSPC has an ongoing investigation or has a substantiated report that may constitute sexual conduct; TSPC conducts criminal background check as well.
- For non-licensed employees, contact ODE for criminal background check and to verify whether ODE has an ongoing investigation or has a substantiated report that may constitute sexual conduct
- Effective July 1, 2020
- May not hire anyone convicted of a crime listed in ORS 342.143
- Confirm license with TSPC as well

Employee Background Checks – cont.

- Require applicant to provide:
 - List of current and former employers who are education providers;
 - Written authorization that authorizes education providers to disclose information;
 - Written statement of whether applicant:
 - Has been subject of substantiated report of child abuse or sexual conduct;
 - Is the subject of ongoing investigation related to report of suspected child abuse or suspected sexual conduct;

Employee Background Checks – cont.

- Review applicant's employment history with education providers by contacting three (3) most recent education employers and requesting:
 - Dates of employment;
 - Whether there was an investigation and a substantiated report of abuse or sexual conduct and if so;
 - Dates of reports
 - Definitions of “abuse” and “sexual conduct”
 - Standards used to determine whether any reports were substantiated

The Americans with Disabilities Act

ADA – Employment Opportunity

Ensures an individual with a disability (or “regarded as” such) who is able to perform the essential functions of the job with or without reasonable accommodations are given the same employment opportunities as non-disabled individuals.

Qualifying individual:

- Individual must have, or have a record of, or be regarded as having a physical or mental impairment that substantially limits one or more major life activities, or they have a history or record of such an impairment, or they are perceived by others as having such an impairment

Reasonable Accommodation:

- “Any change in the workplace or in the way things are customarily done that provides an equal employment opportunity to an individual with a disability.”

Interactive Process

- Employer and employee must communicate with each other about the precise nature of the problem that is generating the request
- how a disability is prompting a need for an accommodation
- and alternative accommodations that may be effective in meeting an individual's needs

When is the duty triggered?

- Exhaustion of FMLA/OFLA leave
- Permanent injuries suffered on the job or elsewhere
- Prolonged or frequent absences
- Employee request

ADA Unpaid Leave Options

- Continuous unpaid leave (3 months? 6 months? One Year?)
- Adjusted work schedule to accommodate therapy treatments
- Intermittent unpaid leave

Employee Terminations and Non-Renewals

PACE Legal Services

- Contact PACE Legal Services before you terminate!
- If you call, your employment termination deductible is waived.
- Do not call the day you want to terminate, please.
- Termination of most school employees takes days, months or years to accomplish.

Due Process - Termination

- Always provide Due Process of Law
 - Notice
 - A meaningful chance to be heard
- Pre-termination letter

Due Process

- Contract
- CBA
- State or Federal Law, charters, ordinance, rules (laws)

Employment Termination Process

- Classified Employees--ORS 332.544 " A classified school employee who has been demoted or dismissed shall be entitled to a hearing before the school board if a written request is filed with the board within 15 days of the dismissal or demotion."
- Probationary Teacher—ORS 342.835(1) A probationary teacher may be discharged at any time during the probationary period for any cause deemed sufficient by the Board. ORS § 342.835(1). The district needs to provide written notice and the opportunity for a hearing.
- Contract Teacher—ORS 342.805 - 342.934
- *Always check your CBA

Contract Non-Renewal



Contract Non-Renewal Highlights

- Standard for non-renewal depends on the employee's status
- Notice of non-renewal must be provided by March 15th
- Do not call on March 14th, the non-renewal process starts long before the March 15th deadline.

Probationary Teachers & Administrators

- Probationary teachers and administrators may be non-renewed for any good faith sufficient reason.
- If probationary teachers and administrators are not non-renewed by March 15th of their third probationary year, they automatically become contract teachers and administrators.
- Do not call on March 14th, the non-renewal process starts long before the March 15th deadline.

Contract Teachers

- Employed pursuant to a 2-year contract.
- By March 15th of the **first year** of the contract teacher's employment, the Superintendent may:
 - Recommend the Board extend the contract teacher's employment for a new 2-year term; or
 - Recommend the Board non-renew the contract teacher's employment contract
- Standard for non-renewal – ORS 342.895
- Again, don't call on March 14th

Contract Administrators

- Contract administrators must be employed pursuant to a 3-year contract.
- Process to non-renew a contract administrator begins in the second year of the administrator's 3-year contract.
- Prior to March 15th of the second year of the administrator's contract, the Board must take one of the following actions:
 - Issue a new 3-year contract;
 - Provide a written notice that the contract will not be renewed or extended; or
 - Extend the existing contract for a period of not more than 1 year.
- Contract administrator's may be non-renewed for any caused deemed in good faith sufficient.

Legislative Update



Every Student Belongs

- School policy required as of January 1, 2021
- Objective of Every Student Belongs is to promote a school environment free from discrimination, harassment, and intimidation
- Applies to students, employees, and members of the school community
- Prohibits the use/display of the noose, neo-Nazi symbols, the battle flag of the Confederacy, and other “symbols of hate” – exception for use in teaching curriculum aligned with State standards
- Requires schools to respond to “bias incidents”
- Requires administrators to develop and implement instructional materials to make the Every Student Belongs policy and related practices including reporting procedures, educational processes, and possible consequences known to all school employees and students.

Sexual Conduct (SB 155)

SB 155

- Revised definitions of sexual conduct and student
- New sexual conduct reporting requirements
- New background check requirements
- New training requirements
- New investigation requirements

Sexual Conduct Definition

- Verbal or physical conduct or verbal, written or electronic communications by a school employee, a contractor, an agent or a volunteer that involve a student and that are:
 - (A) Sexual advances or requests for sexual favors directed toward the student; or
 - (B) Of a sexual nature that are directed toward the student or that have the effect of unreasonably interfering with the student's educational performance, or of creating an intimidating, hostile or offensive educational environment.

Old Definition:

Verbal or physical conduct by a school employee that:

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

Revised Definition:

Verbal or physical conduct or verbal, written or electronic communications by a school employee, a contractor, an agent or a volunteer that involve a student and are:

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

Student Definition

Any person:

(a) Who is:

(A) In any grade from prekindergarten through grade 12; or

(B) Twenty-one years of age or younger and receiving educational or related services from an education provider that is not a post-secondary institution of education; or

(b) Who was previously known as a student by the person engaging in sexual conduct and who left school or graduated from high school within 90 days prior to the sexual conduct.

Reporting Requirements

- School staff must report all incidents of suspected child abuse to DHS or law enforcement **and** designated licensed administrator (if school-related)
- School staff must report all incidents of potential sexual conduct to a designated licensed administrator

Designated Licensed Administrator

- School must designate a licensed administrator and an alternate licensed administrator to receive reports of suspected sexual conduct and child abuse
- The designated licensed administrator must report all suspected sexual conduct to TSPC or ODE “as soon as possible” (effective July 1, 2020)

Employee has reasonable cause to believe that **abuse** has occurred.

REPORT

REPORT

Designated licensed administrator.

PAID ADMIN LEAVE
(if reasonable cause to support report)

SECURE STUDENT'S SAFETY

INVESTIGATION
(if necessary)

DHS or law enforcement

INVESTIGATION

Employee has reasonable cause to believe that **sexual conduct** has occurred.



Designated licensed administrator.



TSPC if alleged perpetrator is licensed.



ODE if alleged perpetrator is not licensed.

PAID ADMIN LEAVE
(if reasonable cause to support report)

SECURE STUDENT'S SAFETY

INVESTIGATION
(if necessary)

INVESTIGATION

Investigation Requirements

- You may rely on the investigation conducted by ODE, TSPC, law enforcement, DHS, or you may conduct your own investigation.
- Once the investigation is complete, you have either 60 or 90 days to determine whether employment action will be taken against an employee.
- Timelines may be extended for “good cause.”

New Training Requirements

- In addition to previously required annual sexual conduct training, employees must be trained each school year on appropriate electronic communications with students
- Volunteers, agents and contractors must be provided with “information” on prevention and identification of abuse and sexual conduct, reporting obligations, and appropriate electronic communications with students
- Students must be provided with training that is designed to prevent abuse and sexual conduct

<http://pace.osba.org/MemberServices/Trainings.aspx>

Required Poster

IT'S MANDATORY REPORTING SEXUAL CONDUCT AND CHILD ABUSE

District employees are required to report sexual conduct by an employee, contractor, agent or volunteer toward any student when they have reasonable cause to believe that it has occurred. Sexual conduct is defined as “verbal or physical conduct or verbal, written or electronic communications by a school employee, contractor, an agent or a volunteer that involve a student and that are:

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

Sexual conduct may include a wide list of physical and non-physical behaviors and actions:

- Performing back rubs on students
- Touching students frequently
- Exchanging romantic gifts or communications

District employees are required to report suspected instances of child abuse when the employee has reasonable cause to believe that a child with whom the employee has come in contact has suffered child abuse or that a person with whom the employee has come in contact has committed child abuse. This report must be made to law enforcement or the Department of Human Services (DHS) and to the designated licensed administrator identified below. The duty to report to DHS or law enforcement is in addition to the requirement to report to the designated licensed administrator. Child abuse may include, but is not limited to:

- Assault
- Mental injury that impairs child’s function
- Rape
- Sexual abuse
- Sexual exploitation
- Negligent treatment or maltreatment

OSBA Model Sample Policy

Code: JHFF/GBNAA
Adopted:

Reporting Requirements for Suspected Sexual Conduct with Students *

Sexual conduct by district employees, contractors¹, agents², and volunteers³ is not tolerated. All district employees, contractors, agents, and volunteers are subject to this policy.

“Sexual conduct,” means verbal or physical conduct or verbal, written or electronic communications by a school employee, a contractor, an agent or a volunteer that involve a student and that are sexual advances or requests for sexual favors directed toward the student, or of a sexual nature that are directed toward the student or that have the effect of unreasonably interfering with a student’s educational performance, or of creating an intimidating, hostile or offensive educational environment. “Sexual conduct” does not include touching that is necessitated by the nature of the school employee’s job duties or by the services required to be provided by the contractor, agent or volunteer, and for which there is no sexual intent.

“Student” means any person who is in any grade from prekindergarten through grade 12 or 21 years of age or younger and receiving educational or related services from the district that is not a post-secondary institution of education, or who was previously known as a student by the person engaging in sexual conduct and who left school or graduated from high school within 90 days prior to the sexual conduct.

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

Sexual Harassment



Sexual Harassment Reporting

Under Oregon law, staff now required by law to report potential violations of the sexual harassment policy to a designated district official (effective July 1, 2020)

Sexual Harassment Notification of Rights

- School needs to provide potential victim of sexual harassment with a notification of rights.
- OSBA has sample forms for students, employees and third parties.

Title IX



What's new?

- Updated definition
- Scope of jurisdiction
- List of supportive measures
- Specific grievance process

Updated Definition

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- Conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct;
- Unwelcome conduct determined **by a reasonable person to be so severe, pervasive, and objectively offensive** that it effectively denies a person equal access to the education program or activity; or
- Sexual assault, domestic violence, dating violence, and stalking

Scope of Jurisdiction

- Must occur within the United States
- Must occur within the scope of an educational program or activity
- “. . . locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs”

Supportive Measures

- “. . . non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge . . . Designed to restore or preserve equal access to the recipient’s education program or activity without unreasonably burdening the other party.”
- Supportive measures may include:
 - Counseling
 - Leaves of absence
 - Mutual restrictions on contact between parties
 - Modification of work or class schedules

Grievance Process

- Formal Complaint
- Investigation
- Decision – Making
- Appeal
- Sanctions and Remedies

Title IX Implementation

- Adopt Title IX sexual harassment policy
- Engage in interim bargaining re: policy changes
- Identify key employees to implement Title IX
- Schedule training for key employees

Hazing, Harassment,
Intimidation, Menacing,
Bullying, Cyberbullying,
Teen Dating Violence,
Domestic Violence (JFCF)

Sexual
Conduct
(JHFF)

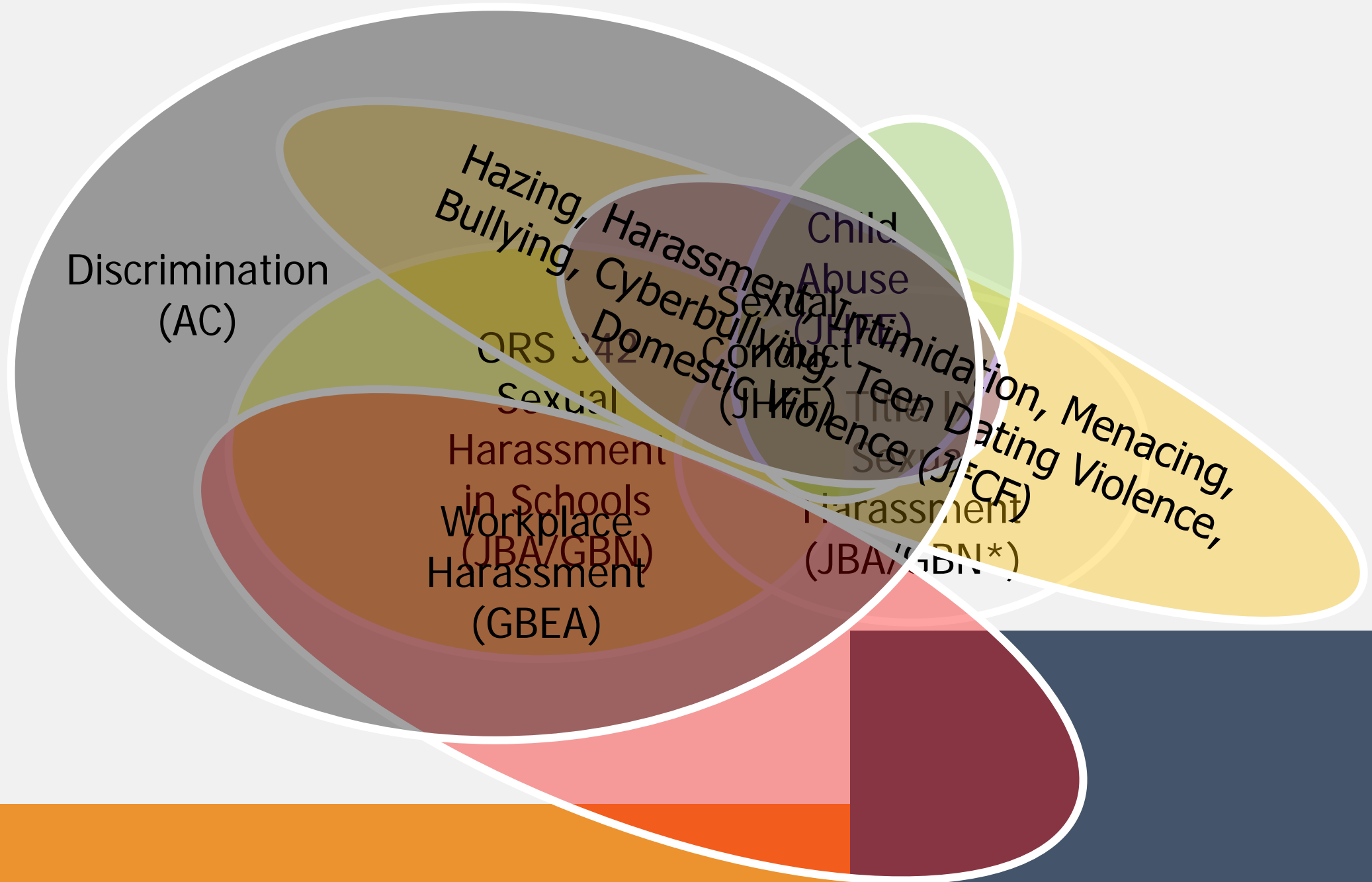
Child
Abuse
(JHFE)

ORS 342
Sexual
Harassment
in Schools
(JBA/GBN)

Title IX
Sexual
Harassment
(JBA/GBN*)

Workplace
Harassment
(GBEA)

Discrimination
(AC)



Discrimination
(AC)

Hazing, Bullying, Harassment, Cyberbullying, Domestic Violence

Child Abuse

Sexual Intimidation, Menacing, Dating Violence

Sexual Harassment (JBA/GBN)

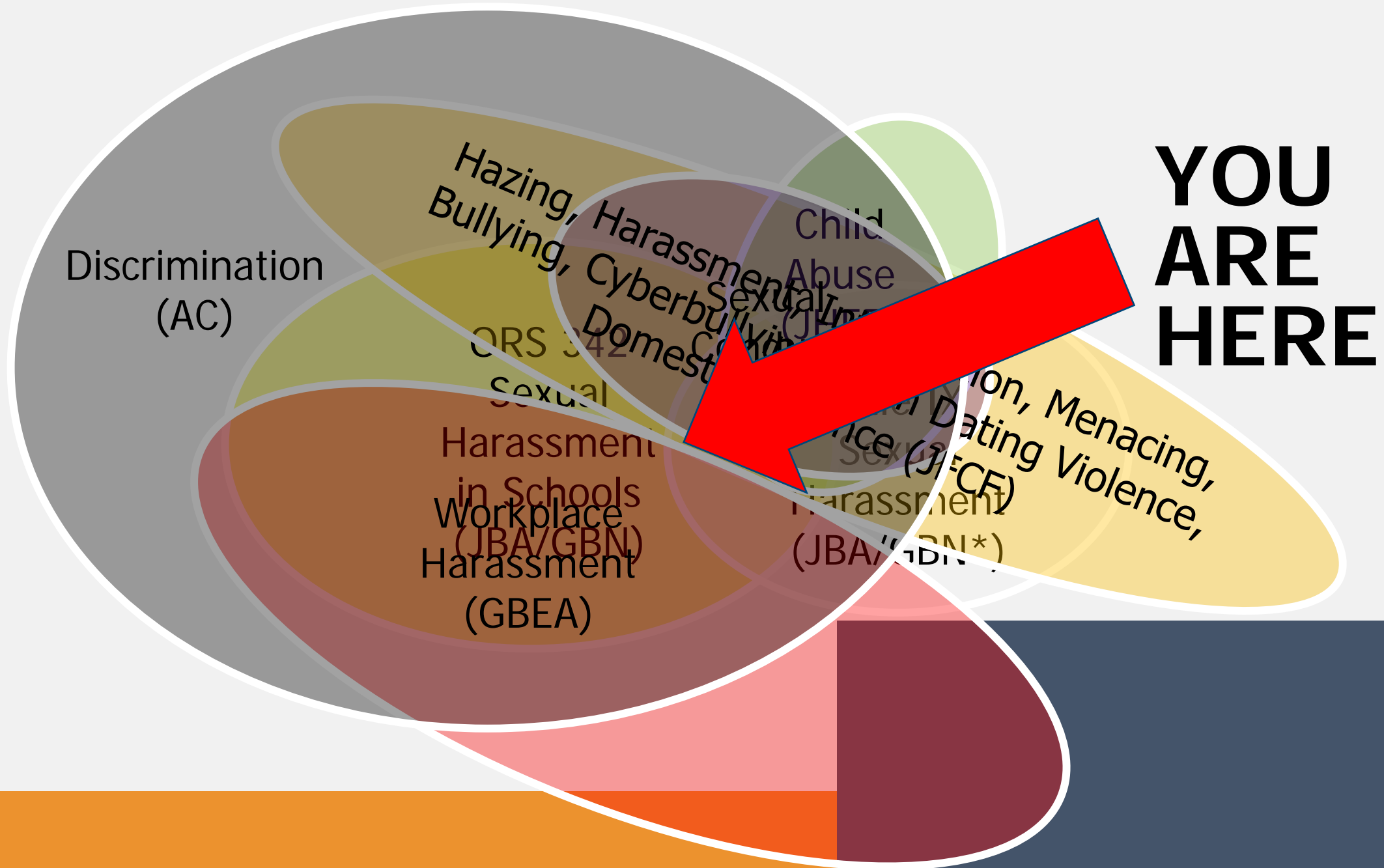
Harassment in Schools (JBA/GBN)
Workplace Harassment (GBEA)

Stalking, Intimidation, Menacing, Dating Violence

Sexual Harassment (JBA/GBN*)

Domestic Violence





Discrimination
(AC)

Hazing, Bullying,
Harassment, Cyberbullying,
Domestic Violence

Child Abuse
Sexual Abuse

Harassment
in Schools
Workplace
(JBA/GBN)
Harassment
(GBEA)

Stalking, Menacing,
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