January 7, 2018

**BY EMAIL AND US MAIL**

PARENT

ADDRESS

ADDRESS

ADDRESS

Don Grotting, Superintendent

Central Administration Center

16550 SW Merlo Rd.

Beaverton, OR 97003

don\_grotting@beaverton.k12.or.us

Dear PARENT and Superintendent Grotting,

This letter is the investigatory determination on the appeal of a complaint filed with the Beaverton School District (District) regarding possible violations of ORS 659.850 (prohibiting discrimination in an education program or service financed in whole or in part by moneys appropriated by the Legislative Assembly) and OAR 581-021-0045 (prohibiting discrimination in certain educational agencies, programs, or services under the jurisdiction of the State Board of Education). To ensure compliance with these laws and rules, the Oregon Department of Education (Department) will review the local school district procedures and findings of fact to determine if proper procedures were followed and what action, if any, should be taken.[[1]](#footnote-1)

**I. APPELLATE PROCEDURES FOR COMPLAINTS ALLEGING DISCRIMINATION**

PARENT (Parent) alleges that the District discriminated against her son (Student) by disciplining him more harshly than female students who engaged in the same or substantially the same behavior.

The Department has jurisdiction to resolve this complaint under OAR 581-021-0049. When a person files with the Department an appeal of a complaint alleging discrimination, the Department will initiate an investigation to determine whether discrimination may have occurred.[[2]](#footnote-2) If the Department finds that discrimination may have occurred, the Director of the Oregon Department of Education (Director) will issue an investigatory determination and require the school district to attempt to reach an agreement with the person through conciliation.[[3]](#footnote-3) If the school district cannot reach an agreement with the person within 30 days, the Director will schedule a hearing for the purpose of determining whether the school

district is in compliance with ORS 659.850.[[4]](#footnote-4) If the Director determines that the school district is not in compliance with ORS 659.850, the Director will issue an order requiring compliance.[[5]](#footnote-5) If the school district fails to comply with the order within 30 days, the Director will issue an order imposing an appropriate remedy.[[6]](#footnote-6) Appropriate remedies include: (1) withholding all or part of one or more quarterly payments that otherwise would be paid to a school district under ORS 327.095, (2) assessing a daily fine against the school district, (3) forbidding the school district to participate in interschool activities, and (4) any other appropriate remedy.[[7]](#footnote-7)

On this appeal, the Department has completed its investigation to determine whether discrimination may have occurred. This letter constitutes the Department’s investigatory determination as to whether discrimination may have occurred.

**II. PROCEDURAL BACKGROUND**

On January 1, 2018, Parent filed a complaint with the elementary school attended by Student. When Parent first filed the complaint, it pertained to information that the District had placed in Student’s file. However, Parent filed the complaint in the context of events related to disciplining Student, appropriate safeguards for the use of technology in the classroom, and the way in which school staff communicated with parents. During its investigation, the District made findings related to each of those issues.

On February 16, 2018, Parent received a written order from the superintendent of the District. Parent appealed that order to the school board for the District. On May 16, 2018, Parent received a written order from the school board affirming the superintendent’s order.

Before receiving the school board’s order, Parent requested the Department to accept her complaint on appeal. On May 17, 2018, the Department denied Parent’s request on grounds that it lacked the jurisdiction to investigate the alleged incidents. In denying Parent’s request, the Department wrote:

With respect to the regulation of school districts, Oregon is what is commonly referred to as a “local control state,” meaning that school districts are subject to the regulation of locally elected school boards. The Department may not regulate a school district unless specifically provided for by state or federal law. Currently, the Department:

• Takes on appeal complaints alleging a violation of standards of the Oregon Administrative Rules, chapter 581, division 022 (Division 22 Standards). See OAR 581-002-0040 (1).

• Takes on appeal complaints alleging a violation of ORS 339.285 to 339.303 or OAR 581-021-0550 to 581-021-0570 (prohibiting restraint and seclusion). See OAR 581-002-0040 (1).

• Takes on appeal complaints alleging a violation of ORS 659.852 (prohibiting retaliation). See OAR 581-002-0040 (1).

• Takes on appeal complaints alleging discrimination. OAR 581-021-0049 (1).

• Hears complaints alleging a violation of the Individuals with Disabilities Education Act or regulations adopted pursuant to the act. OAR 581-015-2030 (1).

In this case, the alleged incidents primarily concern student behavior and discipline, appropriate safeguards for the use of technology in the classroom, and the way in which school staff communicated with parents. At this time, the Department lacks the statutory authority to accept any of these complaints on appeal.

Parent made her request with the Department again, this time specifying that she was requesting an appeal on the basis that the District disciplined Student more harshly than it disciplined female students who engaged in the same or substantially the same behavior. Parent also requested an appeal on the basis that the District violated ORS 192.630 because it did not meet in public when it met to hear her complaint and that the District violated OAR 581-021-0310 because the District did not provide her with an “opportunity for a hearing to challenge the content of [a] student’s education records.” Importantly, OAR 581-021-0310 codifies standards required by the Family Educational Rights and Privacy Act.

On September 11, 2018, the Department accepted Parent’s request with respect to the allegation that the District disciplined Student more harshly than it disciplined female students who engaged in the same or substantially the same behavior. The Department accepted this request on the basis that Parent had received a final decision from the District.[[8]](#footnote-8)

The Department denied Parent’s request with respect to the other two allegations on the basis that neither allegation concerned a Division 22 Standard, restraint and seclusion, retaliation, the Individuals with Disabilities Education Act, or discrimination. The Department provided Parent with the contact information for the relevant agencies that have the jurisdiction to enforce those areas of law. For purposes of alleging a violation of ORS 192.630, the Department provided Parent with directions on how to file a complaint with the Oregon Government and Ethics Commission. For purposes of alleging a violation of the Family Educational Rights and Privacy Act, the Department provided Parent with directions on how to file a complaint with the U.S. Department of Education.

**III. FINDINGS OF FACT**

After conducting its investigation, the Department makes the following findings of fact:

1. Parent first made a complaint with the District on March 9, 2016. The complaint pertained to the disciplinary methods used by Student’s teacher. The teacher disciplined Student by requiring him, during afternoon recess, to “sit out in the cold.” Parent continued to email the District about the event, as well as other incidents involving discipline, until May 13, 2016. The facts indicate that during this period, Parent did not formally file any of her complaints. The facts also indicate that during this period, the District did not inform Parent about how to file a formal complaint. The principal did develop a plan whereby Student would be “sent to the office” in the event that he needed to be disciplined.
2. During December 2017, Parent made a complaint with the District that students in her son’s class were looking up inappropriate images on iPads available for their use. Some of the images were “scary” in nature. Some of the images were sexual in nature. The facts indicate that the District did not inform Parent about how to file a formal complaint. The District did investigate and refine its internet filters to prevent future access to inappropriate images.
3. During December 2017, Student and some of his female classmates exposed themselves to each other.
4. During December 2017, Student thrusted his pelvis and pretended a pencil was his penis.
5. During December 2017, a note was found in the bathroom that contained a sexually suggestive statement. Student initially stated that he placed the note there at the suggestion of a female student. Student later denied putting the note there.
6. During December 2017, Student kissed a female student.
7. District initiated a level 1 screening of Student’s behavior pursuant to the District’s Sexual Incident Response Protocol (SIRP).
8. Pursuant to district policy, the District kept the results of the SIRP in Student’s file.
9. The District initiated a level 1 screening of all other students’ behavior pursuant to the District’s SIRP when the behavior was the same or substantially the same as the Student’s behavior, including the female classmates who exposed themselves. As with Student, the results of all SIRPS were kept in the students’ files.
10. Before filing an appeal with the Department, Parent never expressly raised the issue about whether the District was disciplining Student more harshly than female students who engaged in the same or substantially the same behavior. Parent did request to know the content of other students’ files to determine whether the female classmates who exposed themselves were evaluated pursuant to the District’s SIRP and whether the results of the SIRPs were kept in their files. The District declined to provide that information to Parent on grounds that those processes and files are confidential. The District explained to Parent that it was treating Student in the same manner that it treated all students. The District explained that it would not make public any information related to Student’s evaluation and that it would not allow anyone, other than Parent, authorized District staff, and other authorized personnel, to examine Student’s file.

**IV. ANALYSIS OF SPECIFIC ALLEGATIONS**

Under Oregon’s anti-discrimination statute,

A person may not be subjected to discrimination in any public elementary, secondary or community college education program or service, school or interschool activity or in any higher education program or service, school or interschool activity where the program, service, school or activity is financed in whole or in part by moneys appropriated by the Legislative Assembly.[[9]](#footnote-9)

For purposes of this prohibition, “discrimination” is defined to mean “any act that unreasonably differentiates treatment, intended or unintended, or any act that is fair in form but discriminatory in operation, either of which is based on race, color, religion, sex, sexual orientation, national origin, marital status, age or disability.”[[10]](#footnote-10)

In applying this prohibition to school districts, OAR 581-021-0045 (3)(d) specifically states that a school district may not “[s]ubject any person to separate or different rules of behavior, sanctions, or other treatment.”

The issue addressed on appeal is whether the District subjected Student to “separate or different rules of behavior, sanctions, or treatment” by disciplining Student more harshly than female students who engaged in the same or substantially the same behavior.

Parent argues that Student was subject to different rules of behavior, sanctions, or treatment on the basis that Student’s file includes the results of his SIRP and that female students who engaged in the same or substantially the same behavior did not.

District makes three arguments in response to Parent. First, that Parent did not file a complaint alleging discrimination and, therefore, the matter is not properly before the Department. Second, that screening a student’s behavior pursuant to the District’s SIRP is not a disciplinary act and, therefore, screening a male student’s behavior while not screening a female student’s behavior cannot constitute disciplining the male student more harshly than the female student. Finally, that all students who engaged in behavior that was the same or substantially the same as Student’s behavior, including the female classmates who exposed themselves, were screened pursuant to the District’s SIRP, and that the results of all SIRPS, as with the results of Student’s SIRP, were kept in the students’ files.

At the outset, the Department recognizes the bind created by Parent’s complaint. The District is bound by law to provide an educational environment that is free from discrimination. The District is also bound by law to keep students’ files confidential. If Parent does not believe that the District treated Student equitably, the District cannot produce the evidence necessary to substantiate that it did.

The Department also recognizes that the District did not inform Parent about how to file a formal complaint for incidents dating back to March 9, 2016. The District did respond to all of Parent’s concerns. Whether informing Parent about how to file a formal complaint would have built a trust between the District and Parent is speculative, at best. However, the Department recognizes—in the same manner that the Department recognizes that the District cannot produce the evidence necessary to prove that it treated Student equitably—that under the facts presented, Parent’s distrust of the District is not unmerited.

The Department rejects the District’s first argument. Even though Parent did not file her complaint as a discrimination complaint, and even though Parent never framed her complaint in terms of Student being disciplined more harshly than female students who engaged in the same or substantially the same behavior, Parent did request to know the content of other students’ files to determine whether female classmates were evaluated pursuant to the District’s SIRP and whether the results of the SIRPs were kept in their files. In Parent’s view, her request to know the content of those files should have alerted the District to the fact that she was concerned about Student being treated inequitably. In Parent’s view, the fact that Student is a male and the other involved students were females makes her argument fall squarely under ORS 659.850 and OAR 581-021-0310. The Department agrees with Parent. The District had actual notice of alleged facts that would constitute, if true, discrimination under Oregon law and rule.

The Department necessarily must acknowledge that it made the same mistake as the District. Despite having actual notice of alleged facts that would constitute, if true, discrimination under Oregon law and rule, the Department rejected Parent’s appeal. The Department made this mistake because Parent made numerous allegations involving the same series of events. The allegations concerned the disciplinary methods used by the District, appropriate safeguards for the use of technology in the classroom, and the way in which school staff communicated with Parent. As part of those allegations, Parent articulated that she had no proof that the District disciplined all students equitably. The Department should have recognized that Parent was alleging discrimination in the first instance.

The Department also rejects the District’s second argument. The Department agrees that screening a student’s behavior pursuant to the District’s SIRP is not a disciplinary act. However, the Department does not agree that the exact wording of Parent’s appeal should prevent her from advancing her argument on appeal. OAR 581-021-0045 (3)(d) states that a school district may not “[s]ubject any person to separate or different rules of behavior, sanctions, or other treatment.” On appeal, Parent claims that the District disciplined Student more harshly than female students who engaged in the same or substantially the same behavior. Parent mistakenly described the District’s SIRP as a disciplinary act. However, Parent alleged facts that, if true, would substantiate that Student was subject to “separate or different rules of behavior . . . or treatment.”

The Department accepts the District’s third argument. After conducting its investigation, the Department finds that the District did not subject Student to “separate or different rules of behavior . . . or treatment.” The District initiated a level 1 screening of all other students’ behavior pursuant to the District’s SIRP when the behavior was the same or substantially the same as the Student’s behavior. The District initiated a level 1 screening of the female classmates who exposed themselves. As with the results of Student’s SIRP, the results of all SIRPS are kept in students’ files. When Parent requested to know the content of other students’ files, the District declined to provide that information on grounds that those processes and files are confidential. The District applied this standard equitably as well. Student was subject to the same treatment as all other students. In the same manner that Parent was not allowed to know the content of other students’ files, no unauthorized person was allowed to know the content of Student’s file.

With respect to the issue of whether the District discriminated against Student by disciplining Student more harshly than female students who engaged in the same or substantially the same behavior—or by otherwise treating him differently—the Department finds that the District did not violate ORS 659.850 or OAR 581-021-0045 (3)(c).

**VI. CONCLUSION**

In conclusion, the Department finds that that the District did not violate ORS 659.850 or OAR 581-021-0045 (3)(c).

If you have any questions, do not hesitate to contact me.

Sincerely,



Mark Mayer

Complaint and Appeals Coordinator

Office of Government and Legal Affairs

Mark.Mayer@state.or.us

503-947-0464

1. OAR 581-021-0049 (1). [↑](#footnote-ref-1)
2. *Id*. [↑](#footnote-ref-2)
3. OAR 581-021-0049 (1)(b). [↑](#footnote-ref-3)
4. OAR 581-021-0049 (2). [↑](#footnote-ref-4)
5. OAR 581-021-0049 (3). [↑](#footnote-ref-5)
6. OAR 581-021-0049 (3). [↑](#footnote-ref-6)
7. OAR 581-021-0049 (3)(a) to (d). [↑](#footnote-ref-7)
8. *See* OAR 581-002-0040 (2)(a)(A), under which an appeal is “from a final decision by a school district” if “[t]he complainant has exhausted the school district’s complaint process except as otherwise allowed by statute.” [↑](#footnote-ref-8)
9. ORS 659.850 (2). OAR 581-021-0045 (2) applies this prohibition specifically to the types of schools regulated by the Department: “No person in Oregon shall be subjected to discrimination in any public elementary or secondary school, educational program or service, or interschool activity where the program, service, school, or activity is financed in whole or part by monies appropriated by the Legislative Assembly.” [↑](#footnote-ref-9)
10. ORS 659.850 (1). OAR 581-021-0045 (1)(a) uses an identical definition for “discrimination” for purposes of the Department’s regulatory authority over public elementary and secondary schools. [↑](#footnote-ref-10)