February 10, 2020

 **BY EMAIL AND US MAIL**

PARENT

ADDRESS LINE 1

ADDRESS LINE 2

Don Grotting, Superintendent

Central Administration Center

16550 SW Merlo Rd.

Beaverton, OR 97003

PARENT and Superintendent Grotting:

This letter is the order on the June 25, 2019, appeal filed by PARENT (Complainant) alleging that Beaverton School District discriminated against students attending the district because the processes used by the district to verify student addresses are ineffective and, therefore, create a discrepancy within the district. According to Complainant, the district’s ineffective processes allow affluent students to illegally transfer between schools within the district, resulting in less affluent students transferring between schools at a decreased rate. Complainant argues that because less affluent students often are racial minorities or students of color, the district’s processes are discriminatory in nature.

The objective of this order is to determine whether this appeal is properly before the Oregon Department of Education and if so, whether the district is in compliance with ORS 659.850 and OAR 581-021-0045.

If the appeal is not properly before the department, then the department will remand this case to the district.

If the appeal is properly before the department and the district is in compliance with both ORS 659.850 and OAR 581-021-0045, then the department will close the appeal pursuant to OAR 581-002-0009 and 581-002-0017.

If the appeal is properly before the department and the district is not in compliance with ORS 659.850 or OAR 581-021-0045, then Complainant and the district must attempt to reach an agreement through conciliation as required by OAR 581-002-0011.

# PROCEDURAL BACKGROUND

This is an appeal alleging discrimination by Beaverton School District. Complainant first contacted the district about the matter during the month of November, 2018. Complaint met with the district about the matter again on December 18, 2018, and January 22, 2019. Complainant and the district exchanged emails about the matter between February 27, 2019, and April 18, 2019. Importantly, these communications did not take the form of complaints. On April 30, 2019, Complainant wrote to the district about the matter again, asserting that the district was inconsistent in its approach to verifying student residency and that the verification process must be “applied in the same way for all children.”

On May 2, 2019, Complainant wrote the exact same message to the district’s school board.

The district responded to Complainant’s appeal on May 21, 2019. On that date, the district’s superintendent emailed Complainant. In that email, the superintendent wrote that there was a lack of evidence “that residency is being violated or that the policy is being unequally applied.” The superintendent then explained that Complainant may appeal his decision to the district school board. Complainant elected not to appeal the decision to the district school board and, instead, filed an appeal with the Oregon Department of Education.

The department accepted Complainant’s appeal on June 25, 2019. The department accepted the appeal under OAR 581-002-0005(1)(a)(B), under which the department will accept a complaint on appeal from “a complaint process with more than one step [if] the district fails to render a written decision within 30 days of the submission of the complaint at any step, unless the district and complainant have agreed in writing to a longer time period for that step.” The department was operating under the assumption that Complainant had submitted a complaint to the school board in accordance with the district’s complaint policy and that the school board had not responded within 30 days.

# FINDINGS OF FACT

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

1. Complainant is the mother of children who attend public school within Beaverton School District.
2. During the month of November, 2018, Complainant contacted the district and asked to meet with a district administrator. The district directed her to meet with the principal of the school attended by Complainant’s children.
3. On December 18, 2018, Complainant met with the principal. The principal told Complainant that her complaint concerned district-level issues and directed her to meet with a district administrator.
4. On January 22, 2019, Complainant met with a district level administrator. Complainant told the administrator that she had concerns about the processes that the district used to verify student addresses.
5. Between February 27, 2019, and April 18, 2019, Complainant and the district exchanged emails about the processes that the district used to verify student addresses.
6. On April 30, 2019, Complainant met with district administrators. At this meeting, Complainant provided the district with the names of students who allegedly used false addresses to enroll in a school. Complainant further alleged that not all schools within the district required students to submit proof of residency to transfer from one school to another.
7. On April 30, 2019, Complainant wrote to the district’s superintendent:

Due to failed communication at the school level . . . and district level to resolve residency verification, I am filing a formal complaint under Policy KL as the education process to verify residence is inconsistent and not followed. Please refer to Policy References JEC-Admissions and JECA—Admission of Resident Students. In addition[,] please refer to Oregon Department of Education document titled “Information on the Rights of All Children to Enroll in School.” In particular: [under] “Proof of Residency in the School District[,]” “[a] school district's requirements to establish residency must be applied in the same way for all children.”

The annual “Verification of Enrollment” at the BSD website, page 15, states types of documents that can be used for address verification are: “a current utilities or cable bill, mortgage or lease agreement, or driver's license.” This is inconsistently verified at BSD. Also[] of note at the Southridge High School website under “Enrollment Information” the section of “Verification of Address” it states “Sorry, but a driver’s license or other mail will not work.”

1. On May 2, 2019, Complainant wrote the exact same message to the district’s school board.
2. On May 9, 2019, the superintendent wrote to Complainant. The superintendent wrote that he understood the complaint to be “more [of a] general concern about residency verification in the district as opposed to a specific complaint that can be acted upon at the school level.” He also wrote, “[i]n order for me to take up an appeal of a complaint, there needs to have been a formal complaint to which you received an answer or resolution to at a lower level.”
3. On May 16, 2019, Complainant wrote to the superintendent, requesting that the superintendent accept Complainant’s April 30th complaint.
4. The superintendent accepted Complainant’s April 30th complaint and responded to it on May 21, 2019. The district wrote:

I have reviewed correspondence with [the district] regarding this issue. I understand that [district staff] indicated verbally to you that they did not see evidence that supported your claim. As such I am viewing your complaint as coming to me at step 3 in the process outlined in policy KL.

After reviewing your correspondence and doing a search of documentation, I do not see specific evidence that residency is being violated or that the policy is being unequally applied. However, I have asked that staff review all language on the BSD website and associated documents (Parent/Student Handbook, etc) to ensure alignment across the system. I was unable to locate the annual “Verification of Enrollment” (page 15) that you reference [in your complaint.] [I]f you have that at hand please forward so that we can be sure that all areas of communication are covered in this review. Additionally, I have asked that a memo be sent to all principals regarding the need to ensure that residency verification is followed consistently and applied equally.

The superintendent then explained that Complainant may appeal his decision to the district school board. Complainant elected not to appeal the decision to the district school board and, instead, filed an appeal with the Oregon Department of Education.

1. Before filing a complaint with the district, Complainant filed a complaint with the United States Department of Education’s Office of Civil Rights. In that complaint, Complainant argued, in part, that the district discriminated against limited English proficient (LEP) parents on the basis of national origin by failing to communicate the district’s policies related to transferring between schools within the district meaningfully in a language that the parents could understand. On January 31, 2019, the office issued an order. In the order, the office found that it had

investigated whether the district discriminated against limited English proficient (LEP) parents, on the basis of national origin, by failing to communicate meaningfully in a language they can understand regarding the district's notification of LEP parents of a high school boundary transition and administrative transfer process during the 2015-2016 and 2016-2017 school years.

[The office] determined that the evidence did not support a conclusion that the district failed to comply with Title VI with regard to the issue investigated.

On the basis of that finding, the office dismissed the complaint.

# APPEALS UNDER ORS 659.850 and OAR 581-021-0045

## I. Oregon’s Anti-Discrimination Law

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.[[1]](#footnote-1)

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.”[[2]](#footnote-2)

In applying this prohibition to school districts, OAR 581-021-0045(3) specifically states that a school district may not:

 (a) Treat one person differently from another in determining whether such person satisfies any requirement of condition for the provision of such aid, benefit, or service;

 (b) Provide different aid, benefits, or services; or provide aids, benefits, or services in a different manner;

 (c) Deny any person such aid, benefit, or service;

 (d) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

 (e) Aid or perpetuate discrimination by joining or remaining a member of any agency or organization which discriminates in providing any aid, benefit, or service to students or employees; [or]

 (f) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

The first issue addressed in this appeal is whether the appeal is properly before the Oregon Department of Education. The second issue addressed in this appeal – if the appeal is properly before the department – is whether the district is in compliance with ORS 659.850 and OAR 581-021-0045.

If the department determines that the appeal is not properly before the department, the department will remand this case to Beaverton School District.

If the department determines that the appeal is properly before the department, and that the district *has not discriminated* against students, the department will issue a final order and close the appeal.[[3]](#footnote-3)

If the department determines that the appeal is properly before the department, and that the district *has discriminated* against students, the department will issue a preliminary order.[[4]](#footnote-4) As part of that preliminary order, the department will order the complainant and the district to attempt to reach an agreement through conciliation.[[5]](#footnote-5) If the complainant and the district fail to reach an agreement, the department will issue a final order.[[6]](#footnote-6) If the department determines in the final order that the district has discriminated against students, the final order will include notice that the district must complete a corrective action plan.[[7]](#footnote-7) A school district must complete corrective action by the beginning of the school year next following the date of the final order.[[8]](#footnote-8) If a school district does not complete corrective action by the beginning of the school year, the department may order appropriate remedies, including an order withholding distributions otherwise required under the laws of this state to be made from the State School Fund.[[9]](#footnote-9)

## II. Arguments Presented

In this appeal, Complainant alleges that the district discriminated against students attending the district because the processes used by the district to verify student addresses are ineffective and, therefore, create a discrepancy within the district. According to Complainant, the district’s processes allow affluent students to illegally transfer between schools within the district, resulting in less affluent students transferring between schools at a decreased rate. Complainant argues that because less affluent students are often racial minorities or students of color, the district’s processes are discriminatory in nature.

The district never submitted a response to the appeal as required by rule.[[10]](#footnote-10) However, during the department’s investigation of the appeal, the district articulated two arguments. First, the district argued that Complainant’s appeal is not properly before the department. According to the district, Complainant did not properly raise the issue of discrimination in the formal complaint that she filed on April 30th, 2019, or at any other time during the district’s complaint process. Second, the district argued that even if Complainant’s appeal is properly before the department, Complainant did not submit any evidence that the processes used by the district to verify student addresses adversely affect racial minorities or students of color.

## III. Whether the Appeal is Properly Before the Department

The department agrees with the district that this appeal is not properly before the department. However, the department reaches that conclusion on different grounds than those argued by the district.

According to the district, Complainant did not properly raise the issue of discrimination in the formal complaint that she filed on April 30th, 2019, or at any other time during the district’s complaint process. The district is correct that Complainant did not specifically raise the issue of discrimination. In her April 30th message, Complainant wrote:

Due to failed communication at the school level . . . and district level to resolve residency verification, I am filing a formal complaint under Policy KL as the education process to verify residence is inconsistent and not followed. Please refer to Policy References JEC-Admissions and JECA—Admission of Resident Students. In addition[,] please refer to Oregon Department of Education document titled “Information on the Rights of All Children to Enroll in School.” In particular: [under] “Proof of Residency in the School District[,]” “[a] school district's requirements to establish residency must be applied in the same way for all children.”

The annual “Verification of Enrollment” at the BSD website, page 15, states types of documents that can be used for address verification are: “a current utilities or cable bill, mortgage or lease agreement, or driver's license.” This is inconsistently verified at BSD. Also[] of note at the Southridge High School website under “Enrollment Information” the section of “Verification of Address” it states “Sorry, but a driver’s license or other mail will not work.”

However, even though Complainant did not specifically use the term “discrimination” or provide a detailed explanation of her theory of the case, Complainant did cite state policy pertaining to discrimination. Specifically, she directed the district to look at the Oregon Department of Education’s “Information on the Rights of All Children to Enroll in School.”[[11]](#footnote-11) That document specifies, in pertinent part,

All Oregon students are entitled to equal access to a public elementary and secondary education regardless of their actual or perceived race, color, national origin, citizenship, immigrant status, or the status of their parents or guardians. School districts that either prohibit or discourage, or maintain policies that have the effect of prohibiting or discouraging children from enrolling in schools because they or their parents or guardians are not U.S. Citizens or are undocumented may be in violation of Oregon law. Below are some examples of acceptable practices while enrolling students in the school/district.

The district ought to have read Complainant’s March 30th message within the context of the rights described in that document. Granted, the Oregon Department of Education’s “Information on the Rights of All Children to Enroll in School” has the specific goal of providing guidance to districts about the rights of students whose parents or guardians are not U.S. Citizens or are undocumented. But Complainant’s March 30th message still contained sufficient information for the district to conclude that she was alleging, in part, discriminatory practices by the district.

That said, the department still finds that this appeal is not properly before it.

The department accepted Complainant’s appeal under OAR 581-002-0005(1)(a)(B), under which the department will accept a complaint on appeal from “a complaint process with more than one step [if] the district fails to render a written decision within 30 days of the submission of the complaint at any step, unless the district and complainant have agreed in writing to a longer time period for that step.” When the department accepted Complainant’s appeal, it was operating under the assumption that Complainant’s May 2nd message to the school board constituted a complaint filed with the school district in accordance with the district’s complaint policy and that the school board had not responded within the required period of time.

After investigating the matter, the department has determined that Complainant’s May 2nd message was not a complaint filed with the school district in accordance with the district’s complaint policy. Two days before Complainant wrote her May 2nd message, Complainant filed the complaint with the district’s superintendent. On May 9, 2019, the superintendent wrote to Complainant that he understood the complaint to be “more [of a] general concern about residency verification in the district as opposed to a specific complaint that can be acted upon at the school level.” He also wrote, “[i]n order for me to take up an appeal of a complaint, there needs to have been a formal complaint to which you received an answer or resolution to at a lower level.” In response, Complainant requested that the superintendent accept her April 30th complaint. The superintendent did so, and he issued the following written decision on May 21, 2019:

I have reviewed correspondence with [the district] regarding this issue. I understand that [district staff] indicated verbally to you that they did not see evidence that supported your claim. As such I am viewing your complaint as coming to me at step 3 in the process outlined in policy KL.

After reviewing your correspondence and doing a search of documentation, I do not see specific evidence that residency is being violated or that the policy is being unequally applied. However, I have asked that staff review all language on the BSD website and associated documents (Parent/Student Handbook, etc) to ensure alignment across the system. I was unable to locate the annual “Verification of Enrollment” (page 15) that you reference [in your complaint.] [I]f you have that at hand please forward so that we can be sure that all areas of communication are covered in this review. Additionally, I have asked that a memo be sent to all principals regarding the need to ensure that residency verification is followed consistently and applied equally.

The superintendent then explained that Complainant may appeal his decision to the district school board. Complainant elected not to appeal the decision to the district school board and, instead, filed an appeal with the Oregon Department of Education.

In consideration of those facts, the department acknowledges that it mistakenly accepted Complainant’s appeal under OAR 581-002-0005(1)(a)(B) because Complainant never submitted, in accordance with district policy, a complaint to the district school board. For purposes of the rule, it would have been impossible for the district to “fail[] to render a written decision within 30 days of the submission of [a] complaint” at the applicable step because Complainant did not submit a complaint to the school board in accordance with district policy.

Because the appeal is not properly before the department, the department must dismiss the appeal. Complainant may resubmit her complaint to the district at the appropriate step in the district’s process. The department cannot make a ruling on what the appropriate step is as that is a matter that falls under the authority of the district. For that reason, if complainant chooses to resubmit her complainant, the department encourages her to first contact the district and ask them where she must file.

## IV. Other Concerns

Even though the department is dismissing this appeal, it necessarily must point out that its investigation substantiates the district’s second argument. Under that argument, the district posits that Complainant did not submit any proof that the district’s student address verification processes adversely affect racial minorities or students of color.

First, it should be noted that proving that the processes adversely affect racial minorities or students of color requires data that may not exist. There would have to be data substantiating the overall number of student transfers made between schools within the district, the number of non-protected class students who transfer between schools, and the number of protected class students who transfer between schools. There also would have to be data substantiating the overall number *of requests* made by such students. Substantiating discrimination under these circumstances requires more than comparing the numbers of students who transfer between schools. It requires comparing *the rate* at which students transfer between schools.

Second, even absent that information, Complainant could have submitted proof that the district had allowed one or more non-protected class students to transfer between schools and disallowed one or more protected class students from transferring between schools even though all students made their request under the same or substantially the same circumstances. However, Complainant did not submit any such evidence.

Finally, the only evidence on file tends to substantiate the opposite of Complainant’s allegation. The evidence tends to substantiate that the processes are *not* discriminatory. Before filing a complaint with the district, Complainant filed a complaint with the United States Department of Education’s Office of Civil Rights. In that complaint, Complainant argued, in part, that the district discriminated against limited English proficient (LEP) parents on the basis of national origin by failing to communicate the district’s policies related to transferring between schools in a language that the parents could understand. On January 31, 2019, the office issued an order. In the order, the office found that it had

investigated whether the district discriminated against limited English proficient (LEP) parents, on the basis of national origin, by failing to communicate meaningfully in a language they can understand regarding the district's notification of LEP parents of a high school boundary transition and administrative transfer process during the 2015-2016 and 2016-2017 school years.

[The office] determined that the evidence did not support a conclusion that the district failed to comply with Title VI with regard to the issue investigated.

On the basis of that finding, the office dismissed the complaint.

Complainant’s assumptions are logical. However, for Complainant to succeed on appeal, she would need to proffer evidence of discrimination.

# CONCLUSION

In conclusion, the Oregon Department of Education finds that this appeal is not properly before it. The department dismisses the appeal, with instructions to the district that Complainant may resubmit her complaint to the district at the appropriate step in the district’s process.

If you have any questions, please contact me.

Sincerely,



Mark Mayer, Complaint and Appeals Coordinator

Office of the Director

Mark.Mayer@state.or.us

1. 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-1)
2. 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-2)
3. OAR 581-002-0009(3)(a)(B) and 581-002-0017(1)(a). [↑](#footnote-ref-3)
4. OAR 581-002-0009(3)(a)(A). [↑](#footnote-ref-4)
5. OAR 581-002-0011. [↑](#footnote-ref-5)
6. OAR 581-002-0017(1)(b). [↑](#footnote-ref-6)
7. OAR 581-002-0017(1)(e). [↑](#footnote-ref-7)
8. OAR 581-002-0019(1). [↑](#footnote-ref-8)
9. OAR 581-002-0019(2). [↑](#footnote-ref-9)
10. Under OAR 581-002-0009, “[w]ithin 30 days of the date on which the department gave notice under OAR 581-002-0007 that it is accepting an appeal, a district must submit to the department a written response and all correspondence, documents, and other information that the department requested in the notice.” In this case, the department sent notice on June 25, 2019. As of the date of this order, the district has not submitted to the department a written response. [↑](#footnote-ref-10)
11. *Available at* [https://www.oregon.gov/ode/students-and-family/equity/Documents/Information%20on%20the%20 Rights%20of%20All%20Children%20to%20Enroll%20in%20School%20final\_EN.pdf](https://www.oregon.gov/ode/students-and-family/equity/Documents/Information%20on%20the%20%20Rights%20of%20All%20Children%20to%20Enroll%20in%20School%20final_EN.pdf). [↑](#footnote-ref-11)