Janurary 6, 2021

 **BY EMAIL**

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Kevin Bogatin, Superintendent

North Bend School District 13

1913 Meade Street

North Bend, OR 97459

Re: Cases #2019-MM-02 and #2019-MM-03

Dear REDACTED and Superintendent Bogatin,

This letter is the investigatory determination for an appeal of a complaint filed with North Bend School District 13 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), OAR 581-021-0045 (prohibiting discrimination in certain educational agencies, programs, or services under the jurisdiction of the State Board of Education), and OAR 581-021-0046 (prohibiting school districts from providing any course or carrying out any program or activity on a discriminatory basis). On appeal, REDACTED (Complainant), the legal guardian of a student attending school in the district (Student A), alleges that the district violated these state laws and rules on the basis that the district discriminated against Student A on the basis of sex. When an allegation of failure to adequately respond to acts of discrimination is made, the department reviews district procedures and findings of fact to determine whether the district may have violated ORS 659.850, OAR 581-021-0045, and OAR 581-021-0046.

**APPELLATE PROCEDURES FOR COMPLAINTS ALLEGING DISCRIMINATION**

Complainant alleges that North Bend School District 13 discriminated against Student A on the basis of sex.

The Oregon Department of Education has jurisdiction to resolve this complaint under OAR 581-021-0049.[[1]](#footnote-1) 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 department will issue a letter setting forth the department’s findings and conclusions and require the school district to attempt to reach an agreement with the complainant through conciliation.[[3]](#footnote-3) If the school district cannot reach an agreement with the complainant within 30 days, the department will schedule a hearing to determine whether the school district is in compliance with ORS 659.850.[[4]](#footnote-4) If the department determines that the school district is not in compliance with ORS 659.850, the department will issue an order requiring compliance.[[5]](#footnote-5) If the school district fails to comply with the order within 30 days, the department 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 findings and conclusions.

**PROCEDURAL BACKGROUND**

Complainant filed with the Oregon Department of Education an appeal of a complaint heard by North Bend School District 13.

Complainant first filed a complaint with the district on February 26, 2018. The district first acknowledged receiving the complaint on March 22, 2018. The district conducted an investigation. The district provided a written report of its investigation to Complainant on April 14, 2018. Complainant requested to appeal the April 14th written report to North Bend School District 13’s school board on April 16, 2018. The district provided Complainant with information pertaining to the school board’s appellate processes on May 3, 2018. The school board affirmed the April 14th written report on May 8, 2018. Complainant subsequently filed an appeal with the department. The department accepted Complainant’s appeal on June 1, 2018, on the basis that Complainant had exhausted the district’s complaint process.[[8]](#footnote-8)

**PRELIMINARY FINDINGS OF FACT**

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

1. At times relevant to this appeal, Student A attended high school in North Bend School District 13.
2. Student A was a member of both the North Bend High School Swim Team (NB Swim Team).
3. At times relevant to this appeal, there was a coach for the NB Swim Team (Coach). Coach coached the NB Swim Team during the 2017-2018 school year. Coach did not coach the NB Swim Team after the 2017-2018 school year.
4. Complainant was a board member of a local club swim team (LC Swim Team). The season for LC Swim Team was held before the season for NB Swim Team. Coach coached LC Swim Team until December, 2017. Student A was a member of LC Swim Team during 2017.
5. During 2017, a student (Student B) sent multiple text messages to a group chat consisting of LC Swim Team members and NB Swim Team members. Student B was Coach’s son and a member of both the LC Swim Team and the NB Swim Team. In the text messages, Student B bragged about being racist and a member of the Ku Klux Klan. Student B referred to President Barak Obama as a “light skinned nig trying to be black.”
6. An anonymous letter circulated about Coach possibly violating LC Swim Team’s code of conduct. In an email to the district, Coach attributed the letter to Complainant.
7. During the 2017-2018 school year, when the NB Swim Team held swim practice, Coach allowed Student B exclusive use of the pool after practice.
8. During the 2017-2018 school year, during the bus ride to a swim meet, Student B sent a text message to other members of the swim team, comparing the ability of a female member of the swim team to do the “breast” stroke with the size of her breasts. Coach stopped the bus and exited it with Student B. The district did not take any other action pertaining to the text message.
9. During the 2017-2018 school year, during a swim meet, Student B had members of the men’s NB Swim Team line up behind the swim blocks according to race and skin color, with the member with the lightest skin color at one end of the pool and the member with the darkest skin color at the other end of the pool.
10. On January 18, 2018, Complainant sent an email to the district administrator in charge of athletics (Administrator 1). Complainant reported that there was an event at the pool and asked to meet with Administrator 1. Administrator 1 responded that he was with a student and would contact Complainant later.
11. On January 29, 2018, Coach and Student A had a disagreement about Student A’s swim technique. Coach called Student A a liar and publicly asked Student A if she was “hormonal.” Coach ordered Student A to get out of the pool and made Student A sit outside of the pool in her bathing suit until she publicly apologized. Student A sat outside of the pool for approximately 45 minutes.
12. The district held a swim meet from February 9, 2018, to February 10, 2018.
13. On February 9, 2018, Student A arrived at the swim meet in the district’s uniform swimsuit. Before the swim meet began, an official informed Student A that the swimsuit was not appropriate because when it got wet, one could see Student A’s private areas through those parts of the swimsuit that were white. The official stated that Student A would be disqualified from the swim meet if she wore the swimsuit. Student A was embarrassed by the incident and concerned about how the swimsuit had exposed her. Student A immediately changed into a different swimsuit. When Coach saw Student A in a swimsuit other than the district’s uniform swimsuit, Coach publicly confronted Student A about the change, even after Student A explained to Coach the reason for changing swimsuits. Complainant also argued with Coach and Coach’s spouse about the change.
14. On February 9, 2018, during an event at the swim meet, Student A was counting laps for one of her teammates. To count laps, Student A used “sticks” on which were written numbers. For each lap, Student A held up a pair of sticks denoting the number of laps that her teammate had completed. Members of the men’s NB Swim Team told Student A that it was tradition to use the number “69” in lieu of the number “19” when counting laps. Student A did not understand that “69” connotes a sexual position. When an official noticed Student A holding up the number “69,” the official called out Student A’s behavior and stated that he could disqualify her. When the official explained to Student A the number’s association with a sexual position, the official noticed that Student A was embarrassed and distressed. The official shared Student A’s embarrassment and distress with Complainant. Officials informed Coach about what had occurred.
15. On February 9, 2018, Complainant emailed Administrator 1 to inform him that she had a complaint and that she would like to talk to him about it after the swim meet.
16. On February 12, 2018, Complainant emailed Administrator 1 a complaint about the swim meet. Complainant specifically complained about the incident where Student A used the number “69” when counting laps. Later that day, Administrator 1 emailed Complainant a reply. In that email, Administrator 1 described the practice of using the number “69” instead of the number “19” when counting laps as a tradition that the NB Swim Team had practiced for several years. Administrator 1 wrote:

So a couple thoughts. Obviously, it isn’t something that we want to have going on. Our coach, our athletes, and even the other coaches in the league know that if they have athletes that do that, they would be disqualified. I don’t think it will happen again[,] at least not with our current athletes unless they want to get [disqualified].

Fortunately in this situation nobody got [disqualified], but I would have a hard time taking it if the kids in the water got booted. They can’t control what the kids with the sticks are doing. As for the . . . athletes that were holding the sticks, I hope they learned to not do something just because “It’s Tradition.” I hope in the future that if [Student A] isn’t sure about what something means, she asks what it means before she does it. Peer pressure is tough I know.

Administrator 1 added that he had discussed the matter with Coach that morning. The district did not take any other action pertaining to the incident.

1. On February 14, 2018, Coach sent a letter home with members of the NB Swim Team. The letter concerned the upcoming state swim meet. The letter stated that any student not wearing the district’s uniform swimsuit would be disqualified from the swim meet. Excepting the confrontation that occurred on February 9, 2018, Coach had not discussed with Student A the translucency of the district’s uniform swimsuit before sending the letter. Coach also had not provided Student A with any alternative to wearing the district’s uniform swimsuit before sending the letter. Complainant contacted individuals officiating the swim meet about the possibility of Student A wearing a different swimsuit. At the swim meet, Student A wore a full body suit under the district’s uniform swimsuit.
2. On February 26, 2018, Complainant filed a complaint with the district. Among other things, Complainant alleged the following:
* Coach showed favoritism to Student B because after swim practice, Coach gave Student B exclusive use of the pool.
* Coach bullied and harassed Student A on January 29, 2018, when Coach called Student A a liar and publicly asked Student A if she was “hormonal.”
* Student A was subject to harassment on February 9, 2018, when members of the men’s high school swim team convinced her to use the number “69” in lieu of the number “19” when counting laps, leading to an official calling out Student A for her behavior and telling her that he would disqualify her.
* Student A was subject to harassment and disparate treatment on February 9, 2020, when Coach confronted Student A about changing her swimsuit, particularly because she continued confronting Student A after Student A explained the reason for changing swimsuits. Student A also was subject to disparate treatment during the state swim meet when she had to wear a full body suit under the district’s uniform swimsuit.

As part of the complaint, Complainant wrote that Student A would not participate in swimming the next year because of the hostile environment created by the NB Swim Team.

1. On March 6, 2018, at a district sports awards ceremony, a student of mixed race received the “Rebel Scum” award and a foreign exchange student from Spain received the “Best Mexican” award.
2. On March 9, 2018, Complainant and spouse met with a district administrator (Administrator 2) about the February 26th complaint.
3. On March 15, 2018, a parent of a student in the district (Parent 2) filed a complaint with the district. In the complaint, Parent 2 alleged that Coach allowed members of the NB Swim Team to engage in “verbal bullying, snide comments, and verbal sexual misconduct.” Parent 2 pointed out that such behavior was against school policy. Parent 2 alluded to Coach’s favoritism toward Student B, writing that she “was under the impression that this type of conduct would get a student kicked off the team,” and speculating that “I guess that only applies to students who are not related to the coach.” A district administrator (Administrator 3) responded to Parent 2’s complaint, writing that he “was looking into” the matter. Administrator 3 also asked Parent 2 if she had contacted Administrator 1 about the matter. Administrator 3 forwarded Parent 2’s letter to Administrator 2 and the district administrator in charge of human resources (Administrator 4).
4. On March 15, 2018, another parent of a student in the district (Parent 3) filed a complaint with the district alleging that certain members of the NB Swim Team engaged in bullying and sexual misconduct. Parent 3 alleged that Coach was aware of the behavior. Parent 3 stated that her child may not participate in swimming the next year because of the hostile environment. Administrator 3 forwarded Parent 3’s complaint to Administrator 4.
5. On March 15, 2018, Administrator 1 emailed Administrator 2, Administrator 3, and Administrator 4. Administrator 1 wrote that the district had received several complaints alleging bullying and harassment by Coach and certain members of the NB Swim Team. Administrator 1 stated that Student A was arguing with Coach and opined that pulling a student out of the pool is not “bullying” but “teaching an athlete.” He also opined that

an athlete being held accountable for not bringing the right suit to a meet even though all of the other athletes did, while they call it bullying, I call it “[d]oing what is expected on the job or you may get sent home.”

Administrator 1 then described other situations where a student was sent home for not bringing the district’s uniform swimsuit to a swim meet. With respect to Student A, Administrator 1 wrote,

How big of a deal would it have been if [Coach] had told her athlete that she couldn’t swim because she didn’t have the right suit? I’m guessing the world would have exploded with angry people, but I would have supported [Coach] 100% had she held that girl out, because in the end, our role for athletes and athletics in general are to teach kids about working together, working hard, being responsible[,] and putting others before yourself along with many other things.

Attached to Administrator 1’s email was a letter signed by three coaches from other schools commending Coach’s professionalism, writing that they had not seen her abuse members of the NB Swim Team. They wrote that they had seen her encouraging students, reinforcing students’ successes, and providing constructive criticism.

1. Administrator 1 conducted an investigation of Complainant’s February 26th complaint. Administrator 1 interviewed 8 students and 6 parents of students. Complainant was one of the parents interviewed. When interviewing the parents and and students, Administrator 1 did not ask any questions about the specific allegations that Complainant had raised. Administrator 1 asked the students the following questions:
2. Give me your general impression about the swim season.
3. Tell me about the most positive thing you witnessed with the swim team this year.
4. Tell me about the most negative thing you witnessed with the swim team this year.
5. Tell me about the team chemistry this year compared to other swim teams or other sports you’ve been involved with at [North Bend High School].
6. Do you feel that you or another swimmer(s) was ever singled out by another swimmer or coach? If so, tell me about the incident or situation.
7. How do you feel about the leadership of your team this year.
8. Do you feel like every athlete is treated with respect by their teammates and coaches and give me some examples of the reasons for your answer.
9. On a scale of 1-10 with 1 being low and 10 being high, rate[] your overall experience on the swim team this year and tell me why you feel that way.

Administrator 1 asked the parents the following questions:

1. Please give me your impression of your child’s experience on the swim team this season.
2. Do you have any concerns about how your child was treated by their coaches or teammates this year?
3. Did your child report anything to you about how their teammates were treated this year?
4. Is there anything else that I need to know about the swimming season?
5. On April 14, 2018, Administrator 1 issued a written report of his investigation. Administrator 1’s findings and conclusions are as follows:
* With respect to Coach showing favoritism to Student B by giving Student B exclusive use of the pool after swim practice, Administrator 1 wrote,

Our coaches deal with many athletes’ in different ways and some athletes are asked to do one thing in practice while another is given a different workout. The coach is the expert on who needs to do what in practice. If a coach chooses to give one athlete one workout and another student another workout, that is their decision and I trust that our coaches are doing it for the good of the student, be it safety, conditioning, or technique.

During my interviews, I had athletes tell me that [Coach] was tougher on her own children, especially [Student B], while other[s] said that she showed favoritism toward her children. Coaching your own child certainly puts parent (coach) and child (athlete) in a tough position, yet when our coaches sign on, this is a part of what they will have to deal with.

* With respect to Coach bullying and harassing Student A on January 29, 2018, when Coach called Student A a liar and publicly asked Student A if she was “hormonal,” Administrator 1 wrote,

Pulling a student out of practice is not uncommon while they sit for a while. I can tell you that I have sent athletes home from practice when they argued with me, so I believe that had [Coach] told [Student A] to go home she would have been justified in doing so. [H]owever, I believe your concerns are deeper than this. I know your real concern is that [Student A] was accused of “lying” in front of her teammates. I would agree that calling a student a “liar” is not the best option and there certainly could have been a couple of better choices in handling the wording in this situation.

* With respect to Student A being subject to harassment on February 9, 2018, when members of the men’s high school swim team tricked her into using the number “69” in lieu of the number “19” when counting laps, leading to an official calling out Student A for her behavior, Administrator 1 wrote,

As you and I discussed after this situation happened, if [Student A] does not know the meaning of something she is told to do, or why she is asked to do something, my suggestion would be for her to either ask what it means to determine if it is appropriate, or to not do it at all. Tradition or not, some things are not OK to continue. I am not sure how this issue involves [Coach] and why it is in your complaint, nonetheless it has been addressed.

* Administrator 1’s written report did not address the allegation that Student A was subject to harassment and disparate treatment on February 9, 2020, when Coach publicly confronted Student A about changing her swimsuit, nor did it address the allegation that Student A was subject to disparate treatment during the state swim meet when she had to wear a full body suit under the district’s uniform swimsuit.
* In summarizing his findings and conclusions, Administrator 1 wrote,

Although harassment and discrimination does not need to be evident by all parties for it to exist, the results of this investigation did not find substantial evidence [that Coach] harassed, discriminated, or created a hostile educational environment [as defined by District Policy GBNA [for] Hazing/Harassment/Intimidation/Bullying/Menacing/Cyberbullying — Staff]. The investigation did find that some student athletes on the team participated in actions which could be viewed as harassing or discriminating to other student athletes. These actions should be addressed by the [d]istrict to ensure that behavior does not continue.

1. On April 15, 2018, Complainant emailed Administrator 1, Administrator 2, and Administrator 4, objecting that the district did not address sex discrimination in its April 14th written report.
2. On April 16, 2018, Complainant emailed the district, requesting to appeal the district’s April 14th written report.
3. On May 8, 2018, the district school board affirmed the April 14th written report.
4. Complainant filed an appeal with the department. On June 1, 2018, the department accepted Complainant’s appeal.

**ANALYSIS**

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) 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.

Additionally, under OAR 581-021-0046, a school district may not “provide any course or otherwise carry out any of its educational programs or activities on a discriminatory basis or require or refuse participation therein by any of its students on such basis.”[[11]](#footnote-11)

This investigatory determination addresses whether North Bend School District 13, on the basis of sex, violated any of the standards set forth in ORS 659.850, OAR 581-021-0045(3), or OAR 581-021-0046 with respect to Student A.

For purposes of this investigatory determination, the allegations may be analyzed under one of two legal standards. Under the first legal standard, the department must determine whether Student A was subjected to sexual harassment. Under the second legal standard, the department must determine whether Student A was subjected to disparate treatment on the basis of sex, specifically with respect to Student B’s privileged use of the pool and Student A’s mandatory wearing of a full body suit at the state swim meet.

**A. Whether Student A was Subject to Sexual Harassment**

When analyzing the district’s duties with respect to complaints alleging discrimination, the Oregon Department of Education relies on the federal anti-discrimination law known as Title IX[[12]](#footnote-12) and the interpretation of Title IX by federal courts and the United States Department of Education’s Office for Civil Rights (Office for Civil Rights). Because Title IX has the same intent as ORS 659.850, OAR 581-021-0045(3), and OAR 581-021-0046, and because the text of ORS 659.850, OAR 581-021-0045(3), and OAR 581-021-0046 allow the statute and rules to be applied broadly, the interpretation of Title IX by federal courts and the Office for Civil Rights is an important tool for the department to use in adjudging the application of ORS 659.850, OAR 581-021-0045(3), and OAR 581-021-0046.

In interpreting Title IX, the Office of Civil Rights has provided guidance on several key issues related to the sexual harassment issues on appeal.

First, in application, Title IX requires educational institutions[[13]](#footnote-13) to (1) provide students with a learning environment that is free from sexual harassment and (2) remedy complaints alleging sexual harassment. As explained by the Office for Civil Rights:

Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment of a student can deny or limit, on the basis of sex, the student's ability to participate in or to receive benefits, services, or opportunities [that otherwise would be available to the student]. Sexual harassment of students is, therefore, a form of sex discrimination prohibited by Title IX[.][[14]](#footnote-14)

In other words: failure by an educational institution to provide students with a learning environment that is free from sexual harassment, and failure by an educational institution to remedy complaints alleging sexual harassment, constitutes, for purposes of ORS 659.850, discrimination.

Second, “a student may be sexually harassed by a school employee, another student, or a non-employee third party (e.g., a visiting speaker or visiting athletes).”[[15]](#footnote-15) For a student to be sexually harassed, the harassment must be “sufficiently serious that it denies or limits a student’s ability to participate in or benefit from” an educational institution’s program or activity.[[16]](#footnote-16) When determining whether conduct constitutes sexual harassment, the Office of Civil Rights considers “all relevant circumstances, i.e., the constellation of surrounding circumstances, expectations, and relationships.”[[17]](#footnote-17) In analyzing conduct, the Office of Civil Rights specifically uses the following factors:

* The degree to which the conduct affected one or more students’ ability to participate in or benefit from an educational institution’s program or activity;
* The type, frequency, and duration of the conduct;
* The identity of the alleged harasser or harassers and the relationship between the alleged harasser or harassers and the subject or subjects of the harassment; and
* Other incidents at the educational institution involving (1) sexual harassment, (2) discrimination that does not constitute sexual harassment, or (3) bullying that does not constitute discrimination.[[18]](#footnote-18)

Third, although there is no exact formula for what an educational institution must do to provide students with a learning environment that is free from sexual harassment, it is clear that an educational institution is responsible for discriminatory conduct under its control, particularly where the institution has the authority to take remedial action.[[19]](#footnote-19)

The law does establish a few guideposts for educational institutions to follow. For instance, to the extent possible, an educational institution must coordinate with a Title IX coordinator. Under the law, an educational entity must designate at least one employee to serve as a Title IX coordinator.[[20]](#footnote-20) The Title IX coordinator is responsible for investigating Title IX complaints and coordinating the educational entity’s efforts to comply with Title IX responsibilities.[[21]](#footnote-21) The Title IX coordinator has the duty to

comply with and carry out [an educational institutions] responsibilities [under Title IX law and regulations implementing Title IX law], including any investigation of any complaint communicated to [the educational entity] alleging noncompliance with [Title IX law or the regulations implementing Title IX law] or alleging any actions which would be prohibited by [Title IX law or the regulations implementing Title IX law.[[22]](#footnote-22)

Finally, an educational institution’s duty to respond to complaints alleging sexual harassment is an affirmative duty. As explained by the Office for Civil Rights:

A school has notice if a responsible employee knew, or in the exercise of reasonable care should have known, about the [sexual] harassment.

\* \* \* \* \*

A school can receive notice of [sexual] harassment in many different ways. A student may have filed a grievance with the Title IX coordinator or complained to a teacher or other responsible employee about fellow students [sexually] harassing him or her. A student, parent, or other individual may have contacted other appropriate personnel, such as a principal, campus security, bus driver, teacher, affirmative action officer, or staff in the office of student affairs. A teacher or other responsible employee of the school may have witnessed the [sexual] harassment. The school may receive notice about [sexual] harassment in an indirect manner, from sources such as a member of the school staff, a member of the educational or local community, or the media. The school also may have learned about the [sexual] harassment from flyers about the incident distributed at the school or posted around the school. For the purposes of compliance with the Title IX regulations, a school has a duty to respond to [sexual] harassment about which it reasonably should have known, i.e., if it would have learned of the [sexual] harassment if it had exercised reasonable care or made a reasonably diligent inquiry.[[23]](#footnote-23)

The Office for Civil Rights interprets Title IX as requiring an educational institution to take reasonable action to address, rather than neglect, discriminatory acts about which the institution should have known. In other words, for purposes of fulfilling its duty to respond to discriminatory acts under Title IX, an educational institution has a duty to recognize the acts as discriminatory or, in cases where it is unclear whether the acts are discriminatory, to make a reasonably diligent inquiry as to whether the acts are discriminatory.

In consideration of the above principals, a person is subject to unreasonable treatment on the basis of the person’s sex in violation of Oregon’s anti-discrimination statute if the person was subject to sexual harassment at an educational institution and the institution was the source of the sexual harassment or did not take remedial action to address the sexual harassment.[[24]](#footnote-24)

*1. Whether Student A was Sexually Harassed*

When applying the above principals to this appeal, the Oregon Department of Education first finds that Student A may have been sexually harassed and that the sexual harassment triggered the district’s duty to provide appropriate remedial action. To determine whether the conduct of Coach and other members of the NB Swim Team constitutes sexual harassment, the department follows the Office of Civil Rights’ lead and considers “all relevant circumstances, i.e., the constellation of surrounding circumstances, expectations, and relationships.”[[25]](#footnote-25)

*a. Whether Student A was able to participate in and benefit from the NB Swim Team*

The first factor to consider is whether there is sufficient evidence to find that the conduct of Coach and certain members of NB Swim Team affected the degree to which Student A and other students were able to participate in and benefit from the NB Swim Team.

First, the evidence suggests that there was a culture of sexual harassment on the NB Swim Team. During the 2017-2018 school year, Student B sent a text message to other members of the swim team, comparing the ability of a female member of the swim team to do the “breast” stroke with the size of her breasts. On January 29, 2018, Coach publicly asked Student A if she was “hormonal.” On February 9, 2018, members of the men’s NB Swim Team told Student A that it was tradition to use the number “69” in lieu of the number “19” when counting laps. Administrator 1’s investigation verified that the NB Swim Team had been practicing this tradition for several years.

The evidence also substantiates that at least one of these incidents nearly prevented Student A from participating in a swim meet. When members of the men’s NB Swim Team told Student A that it was tradition to use the number “69” in lieu of the number “19” when counting laps, an official called out Student A for her behavior and stated that he could disqualify her. The official did not disqualify Student A because he determined, on the basis of her embarrassment and distress, that she did not understand that the number “69” connotes a sexual position.

The evidence further suggests that other students were subject to sexual harassment. On March 15, 2018, Parent 2 alleged that Coach allowed members of the NB Swim Team to engage in “verbal bullying, snide comments, and verbal sexual misconduct.” Parent 2 pointed out that such behavior was against school policy. Parent 2 alluded to Coach’s favoritism toward Student B, writing that she “was under the impression that this type of conduct would get a student kicked off the team,” and speculating that “I guess that only applies to students who are not related to the coach.” On March 15, 2018, Parent 3 alleged that certain members of the NB Swim Team engaged in bullying and sexual misconduct. Parent 3 further alleged that Coach was aware of the behavior.

Finally, the evidence substantiates, as a result of ongoing sexual harassment, that students were deciding to not participate in the district’s swimming program. Student A decided to not swim for the NB Swim Team the following school year. As stated by Parent 3, another student was contemplating not swimming for the NB Swim Team the following school year.

In consideration of the evidence, there is sufficient evidence to find the conduct of Coach and certain members of NB Swim Team affected the degree to which Student A and other students were able to participate in and benefit from the NB Swim Team.

*b. Whether the conduct was sufficiently impactful, frequent, and extensive*

The second factor to consider is whether the conduct in question was sufficiently impactful, frequent, and extensive to trigger the district’s duty to provide appropriate remedial action.

The evidence suggests that Student A found the type of sexual harassment she was subject to embarrassing and distressing. Student A was distressed when Coach called her “hormonal” in front of her teammates. Student A was distressed when an official called her out for using the number “69” when counting laps. Student A was both embarrassed and distressed when she learned what the number “69” signifies.

Further, although there is not sufficient evidence to establish the frequency of sexual harassment, there is sufficient evidence to establish the sexual harassment occurred over an extensive period of time. Student A was subject to conduct constituting sexual harassment – at a minimum – for two months, throughout January, 2018, and February, 2018.

In consideration of the evidence, there is sufficient evidence to find the conduct in question was sufficiently impactful, frequent, and extensive to trigger the district’s duty to provide appropriate remedial relief.

*c.* *Whether the identity of the alleged harassers and relationship between the alleged harassers and Student A contributed to Student A’s inability to participate in and benefit from the NB Swim Team*

The third factor to consider is (1) whether the identity of Coach and the relationship between Coach and Student A contributed to the hostile environment, and (2) whether the identity of Student B and the relationship between Student B and Student A contributed to the hostile environment.

The evidence suggests that the identities of two of the alleged harassers (a school coach and a school coach’s son) and the person being harassed (a student athlete) and the relationship between the three contributed to the hostile environment.[[26]](#footnote-26) When Coach publicly called Student A “hormonal,” the remark was more impactful because of the disparity between Coach’s age and position of authority and Student A’s age and position of subservience.[[27]](#footnote-27) Furthermore, because Student B was Coach’s son, the relationship between Student B and Student A also contributed to the hostile environment. Whether Coach’s favoritism for Student B was real or merely perceived – importantly, if the favoritism was merely perceived, Coach contributed to that perception by giving Student B exclusive use of the pool after swim practice – that favoritism made Student A apprehensive about reporting Student B’s conduct.

In consideration of the evidence, there is sufficient evidence to find the identities of two of the alleged harassers, and the relationship between those alleged harassers and Student A, contributed to Student A’s inability to participate in and benefit from the NB Swim Team.

*d. Whether other incidents involving sexual harassment, discrimination that does not constitute sexual harassment, and bullying that does not constitute discrimination contributed to the hostile environment.*

The final factor to consider is whether the other incidents involving sexual harassment, discrimination that does not constitute sexual harassment, or bullying that does not constitute discrimination contributed to the hostile environment.

First, there is evidence of other incident of sexual harassment. Two other parents filed complaints similar to Complainant’s complaint. One parent alleged that Coach allowed members of the NB Swim Team to engage in “verbal bullying, snide comments, and verbal sexual misconduct.” The other parent alleged that certain members of the NB Swim Team engaged in bullying and sexual misconduct and that Coach was aware of the behavior

Second, there is evidence of disparate treatment on the basis of race that does not constitute sexual harassment. Student A was required to wear a full body suit under the district’s uniform swimsuit at the state swim meet, subjecting her to disparate treatment on the basis of sex.[[28]](#footnote-28)

Third, there is evidence of continuous bullying. Coach confronted Student A on several occasions. On January 29, 2018, Coach not only publicly asked Student A if she was “hormonal,” Coach publicly called Student A a liar. On February 9, 2018, Coach publicly confronted Student A about changing her swimsuit, even after Student A explained to Coach the reason for changing swimsuits. F

Finally, there are multiple incidents substantiating disparate treatment on the basis of race. Student B sent multiple text messages to members of LC Swim Team and NB Swim Team bragging about being racist and a member of the Ku Klux Klan. He also sent a text message to members of the swim teams referring to President Barak Obama as a “light skinned nig trying to be black.” During a swim meet, Student B made the members of the men’s NB Swim Team line up behind the swim blocks according to race and skin color, so that the member with the lightest skin color stood at one end of the pool and the member with the darkest skin color stood at the other end of the pool. At a district sports awards ceremony, a student of mixed race received the “Rebel Scum” award and a foreign exchange student from Spain received the “Best Mexican” award.

In consideration of the evidence, there is sufficient evidence to find that other incidents involving sexual harassment, discrimination that does not constitute sexual harassment, or bullying that does not constitute discrimination contributed to the hostile environment.

*e. Conclusion*

In consideration of the evidences, the department concludes that there is sufficient evidence to find Student A was subject to sexual discrimination by both Coach and other members of the NB Swim Team.

*2. Whether North Bend School District 13 Failed to Provide Student A with Appropriate Remedial Action*

The Oregon Department of Education also finds that North Bend School District 13 may have failed to provide Student A with appropriate remedial action. For purposes of this investigatory determination, the department examines the district’s failure both before the filing of the February 26th complaint and after the filing of the February 26th complaint.

*a. Before the filing of the February 26th complaint*

The evidence substantiates that the district failed to take affirmative action against what it reasonably should have known was sexual harassment before the filing of the February 26th complaint.

First, the evidence suggests that Coach failed to prevent or mitigate sexual harassment about which she reasonably should have known. For instance, when Student B sent a text message comparing the ability of a female member of the swim team to do the “breast” stroke with the size of her breasts, Coach stopped the bus and exited it with Student B, but did not take any other action. In fact, the evidence suggests that Coach facilitated a culture of sexual harassment. On January 29, 2018, Coach publicly asked Student A if she was “hormonal.” On February 9, 2018,, Coach publicly confronted Student A about changing her swimsuit even after learning about the circumstances under which Student A changed swimsuits.

Second, the evidence suggests that Administrator 1 also failed to prevent or mitigate sexual harassment about which he reasonably should have known. Complainant contacted Administrator 1 on three occasions before filing a formal complaint: on January 29, 2018, on February 9, 2018, and on February 12, 2018. When Complainant contacted Administrator 1 on February 12, Complainant specifically alleged facts that constitute sexual harassment. However, Administrator 1 did not affirmatively act to prevent or mitigate the sexual harassment. Administrator 1 acted only after Complainant filed an official complaint on February 28, 2018. In an email to other district administrators, Administrator 1 wrote that the complaint had no merit. Importantly, Administrator 1 did not mention certain aspects of the complaint. In the email, Administrator 1 did not mention the incident where Coach publicly asked Student A if she was “hormonal.” Instead, Administrator 1 only mentioned that Student A was arguing with Coach and opined that pulling a student out of the pool is not “bullying” but “teaching an athlete.”

b

*b. After the filing of the February 26th complaint*

The evidence also substantiates that the district failed to take provide appropriate remedial action after the filing of the February 26th complaint. When presented with evidence of sexual harassment, the district either (1) did not recognize it as evidence of sexual harassment, or (2) purposefully ignored that fact that it was evidence of sexual harassment.

First, when the district conducted its investigation, it did not ask students or parents any questions about the specific allegations that Complainant had raised. Rather, the district asked generic questions soliciting both positive and negative feedback about the NB Swim Team. For example, the district asked students both “[t]ell me about the most positive thing you witnessed with the swim team this year” and “[t]ell me about the most negative thing you witnessed with the swim team this year.” The district asked parents about their “impressions” of the NB Swim Team, whether they had any “concerns” about the team, and whether their children had reported to them incidents involving their teammates.

Furthermore, the district’s April 14th written report did not address sexual harassment as part of its analysis. With respect to Coach calling Student A a liar and publicly asking Student A if she was “hormonal,” the district 1 wrote,

Pulling a student out of practice is not uncommon while they sit for a while. I can tell you that I have sent athletes home from practice when they argued with me, so I believe that had [Coach] told [Student A] to go home she would have been justified in doing so. [H]owever, I believe your concerns are deeper than this. I know your real concern is that [Student A] was accused of “lying” in front of her teammates. I would agree that calling a student a “liar” is not the best option and there certainly could have been a couple of better choices in handling the wording in this situation.

The district only addressed Coach calling Student A a liar. The district did not address Coach calling Student A “hormonal.”

With respect to Student A being subject to harassment on February 9, 2018, when members of the men’s high school swim team tricked her into using the number “69” in lieu of the number “19” when counting laps, the district wrote,

As you and I discussed after this situation happened, if [Student A] does not know the meaning of something she is told to do, or why she is asked to do something, my suggestion would be for her to either ask what it means to determine if it is appropriate, or to not do it at all. Tradition or not, some things are not OK to continue. I am not sure how this issue involves [Coach] and why it is in your complaint, nonetheless it has been addressed.

Instead of addressing the sexual harassment at issue, the district squarely placed the blame on Student A. Further, the written report indicates the district’s inability to recognize the sexual harassment at issue: “I am not sure how this issue involves [Coach] and why it is in your complaint.”

The written report also was the product of the district processing the complaint under the district’s generic policy for complaints alleging nondiscriminatory harassment: Policy GBNA for Hazing/Harassment/Intimidation/ Bullying/Menacing/Cyberbullying.[[29]](#footnote-29) Certain allegations in the complaint certainly could have been processed under that policy. However, most allegations in the complaint should have been processed under the district’s policy for complaints alleging discrimination: Policy AC for Nondiscrimation.[[30]](#footnote-30)

Finally, the district failed to assign the complaint to the person responsible for handling sexual harassment complaints, the district’s Title IX coordinator. Under federal law, a school district must designate at least one employee to serve as a Title IX coordinator.[[31]](#footnote-31) The Title IX coordinator is responsible for investigating Title IX complaints and coordinating the school districts efforts to comply with Title IX responsibilities.[[32]](#footnote-32) In this case, the district assigned the investigation to Administrator 1, who is not the district’s Title IX coordinator, and whose expertise lies in athletics, not sex discrimination law. It is unclear from the record whether the district’s Title IX coordinator was even aware of the complaint or the circumstances incident to the complaint.

*c. Conclusion*

In consideration of the evidence, the department concludes that there is sufficient evidence to find the district did not provide Student A with appropriate remedial action.

**B. Disparate Treatment on the Basis of Sex**

When applying ORS 659.850, OAR 581-021-0045(3), and OAR 581-021-0046 to the facts on appeal, the Oregon Department of Education finds that North Bend School District 13 may have subjected Student A to disparate treatment on the basis of sex, specifically with respect to Student B’s exclusive use of the pool after swim practice and Student A’s mandatory wearing of a full body suit at the state swim meet.

The first issue is whether the district subjected Student A to disparate treatment on the basis of sex by giving Student B exclusive use of the pool after swim practice. During the 2017-2018 school year, when the NB Swim Team held swim practice, Coach gave Student B exclusive use of the pool after practice. Complainant made this part of her February 26th complaint.

In its April 14th written report, the district found that

Our coaches deal with many athletes’ in different ways and some athletes are asked to do one thing in practice while another is given a different workout. The coach is the expert on who needs to do what in practice. If a coach chooses to give one athlete one workout and another student another workout, that is their decision and I trust that our coaches are doing it for the good of the student, be it safety, conditioning, or technique.

During my interviews, I had athletes tell me that [Coach] was tougher on her own children, especially [Student B], while other[s] said that she showed favoritism toward her children. Coaching your own child certainly puts parent (coach) and child (athlete) in a tough position, yet when our coaches sign on, this is a part of what they will have to deal with.

As is evident in that response, the district investigated the issue as one concerning training and nepotism, not sex discrimination. Further, as discussed above, the district processed Complainant’s complaint under the district’s generic policy for complaints alleging nondiscriminatory harassment, not the district’s policy for complaints alleging discrimination.

There is insufficient evidence to find the district in violation of ORS 659.850, OAR 581-021-0045(3), or OAR 581-021-0046 on grounds that the district gave Student B exclusive use of the pool after swim practice. Not because Student B was not privileged. Obviously, Student B received preferential treatment as prohibited by ORS 659.850. Obviously Student B was afforded a different aid, benefit, or service than other students, or was provided an aid, benefit, or service in a different manner than other students, as prohibited by OAR 581-021-0045(3)(b). However, there is no evidence that the preferential treatment was provided on the basis of sex. Student B was the only student given exclusive access to the pool after swim practice. All other students, male and female alike, were not granted that privilege.

That said, there is sufficient evidence to find the district in violation of ORS 659.850 and OAR 581-021-0045(3) on other, tangentially related grounds. The district has a nondiscrimination policy.[[33]](#footnote-33) That policy provides a mechanism for students and parents to file complaints alleging discrimination. In this instance, Complainant filed a complaint alleging, in part, sex discrimination. As discussed above, the district did not process the complaint as alleging discrimination. Rather, the district processed the complaint as alleging nondiscriminatory harassment. Further, even though Complainant emailed the district on April 15, 2018, objecting that the district did not address sex discrimination in its April 14th written report, the district school board did not correct the mishandling of the complaint on appeal. On May 8, 2018, the district school board affirmed the report. Thus, on the basis of sex, the district subjected Student A to different treatment than other students when it processed the complaint.[[34]](#footnote-34) On the basis of sex, the district provided Student A with a different service than it provides other students, or with a service in a different manner than it provides the service to other students.[[35]](#footnote-35)

The second issue is whether the district subjected Student A to disparate treatment on the basis of sex when Student A wore a full body suit under the district’s uniform swimsuit at the state swim meet.

For this analysis, it is important to consider that the district had actual notice of the reason that Student A could not wear the district’s uniform swimsuit. When first informed that the district’s uniform swimsuit was not appropriate because when it got wet, one could see her private areas, and when further informed that by wearing the swimsuit she could be disqualified from swim meets, Student A was embarrassed and immediately changed into a different swimsuit. When Coach saw Student A in a swimsuit other than the district’s uniform swimsuit, Student A explained to Coach the reason for changing swimsuits.

Despite having actual notice of the sex discrimination at issue, the district sent a letter home with members of the NB Swim Team concerning the upcoming state swim meet. That letter stated that any student not wearing the district’s uniform swimsuit would be disqualified from the swim meet. Excepting the confrontation that occurred on February 9, 2018, Coach had not discussed with Student A the translucency of the district’s uniform swimsuit. Coach also had not provided Student A with any alternative to wearing the district’s uniform swimsuit.

Student A found herself in a catch-22. If she wore the district’s uniform swimsuit, she would be disqualified because one could see her private areas through those parts of the swimsuit that were white. If she did not wear the district’s uniform swimsuit, she would be disqualified because she was not adhering to district policy. In order to meet both standards, Student A wore a full body suit under the district’s uniform swimsuit. Thus, on the basis of her sex, Student A was treated differently than other swim meet participants.[[36]](#footnote-36) On the basis of sex, Student A was subject to different rules of behavior than other swim meet participants.[[37]](#footnote-37)

Further, there is sufficient evidence to find the district in violation of ORS 659.850 and OAR 581-021-0045(3) on grounds that the district did not process this part of the February 26th complaint. Following the filing of the complaint, in an email to Administrator 2, Administrator 3, and Administrator 4, Administrator 1 opined

How big of a deal would it have been if [Coach] had told her athlete that she couldn’t swim because she didn’t have the right suit? I’m guessing the world would have exploded with angry people, but I would have supported [Coach] 100% had she held that girl out, because in the end, our role for athletes and athletics in general are to teach kids about working together, working hard, being responsible[,] and putting others before yourself along with many other things.

Notably, Administrator 2 did not mention in the email the reason that Student A changed swimsuits: because one could see Student A’s private areas through those parts of the swimsuit that were white. Furthermore, in the district’s April 15th written report, the district did not address the allegation that Student A was subject to disparate treatment during the state swim meet because she had to wear a full body suit under the district’s uniform swimsuit. Analysis of this part of the complaint was absent from the report.

In consideration of the facts, the department concludes that there is sufficient evidence to find the district subjected Student A to disparate treatment on the basis of sex.

**PRELIMINARY CONCLUSION**

In conclusion, the Oregon Department of Education finds that North Bend School District 13 may have violated ORS 659.850 and OAR 581-021-0045(3) on the basis that:

* + There is sufficient evidence to find Student A was subject to sexual discrimination, by both Coach and other members of the NB Swim Team;
	+ There is sufficient evidence to find the district did not provide Student A with appropriate remedial action; and
	+ There is sufficient evidence to find the district subjected Student A to disparate treatment on the basis of sex, specifically with respect to the processing of complaints alleging sex discrimination and Student A’s mandatory wearing of a full body suit at the state swim meet

Accordingly, the department encourages the district to reach an agreement with Complainant through conciliation. If the district cannot reach an agreement with Complainant through conciliation within 30 days, the department will schedule a contested case hearing on the matter in accordance with OAR 581-021-0049, as in effect on March 21, 2019.

If Complainant or the district wishes to use the department as a resource during conciliation, Complainant or the district may contact the department.[[38]](#footnote-38)

If you have any questions, please contact me.

Sincerely,



Mark Mayer, Complaint and Appeals Coordinator

Office of the Department

Mark.Mayer@state.or.us

1. The State School Board repealed OAR 581-021-0049 on March 21, 2019. However, the rule still applies to appeals that the department accepted before March 21, 2019. Because the department accepted Complainant’s appeal on June 1, 2018, the rule applies to her appeal. [↑](#footnote-ref-1)
2. OAR 581-021-0049(1). [↑](#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. *Id*. [↑](#footnote-ref-6)
7. OAR 581-021-0049(3)(a) to (d). [↑](#footnote-ref-7)
8. *See* OAR 581-021-0049(1), as in effect on February 26, 2019 (providing that an appeal may be filed with the Oregon Department of Education when a school district fails to resolve a complaint within 90 days). [↑](#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)
11. OAR 581-021-0046(1). [↑](#footnote-ref-11)
12. *See* Education Amendments of 1972, Public Law No. 92-318, Title IX, §§ 901-907 (codified at 20 U.S.C. §1681 *et seq.*). [↑](#footnote-ref-12)
13. This order cites multiple federal laws, regulations, and judicial opinions, and documents published by the Office of Civil Rights interpreting those laws, regulations, and documents. Those sources of law and documents use different terms to describe schools and the other educational entities to which they apply. This order uses the term “educational institution” in lieu of those terms in order to communicate the content of the laws and documents in an easy to understand manner. [↑](#footnote-ref-13)
14. United States Department of Education Office for Civil Rights, *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*, 2 (2001), a*vailable at*: <https://www2.ed.gov/about/offices/list/ocr/docs/shguide.html#_ednref6>. *See* Franklin v. Gwinnett County Public School, 503 U.S. 60, 63 (1992) (finding kissing and sexual intercourse to be sexual harassment and subject to protections of Title IX). *See also* *Davis v. Monroe County Board of Education*, 526 U.S. 629, 653 (1999) (finding “numerous acts of objectively offensive touching” to be sexual harassment and subject to protections of Title IX). [↑](#footnote-ref-14)
15. Office for Civil Rights, *Revised Sexual Harassment Guidance* at 2. [↑](#footnote-ref-15)
16. *Id.* at 5. [↑](#footnote-ref-16)
17. *Id.* (internal quotation marks omitted). [↑](#footnote-ref-17)
18. *Id.*at 6. The Office of Civil Rights also uses other factors when determining whether conduct is sexual harassment. This order does not list those factors because they are not pertinent to this appeal. [↑](#footnote-ref-18)
19. *See* Davis, 526 U.S. at 644 (explaining that an educational institution “cannot be directly liable” where “it lacks authority to take remedial action”), [↑](#footnote-ref-19)
20. 34 C.F.R. § 106.8. [↑](#footnote-ref-20)
21. *Id*. [↑](#footnote-ref-21)
22. *Id.* [↑](#footnote-ref-22)
23. Office for Civil Rights, *Revised Sexual Harassment Guidance* at 13 (internal quotation marks omitted). [↑](#footnote-ref-23)
24. It is important to note that not correctly identifying the complaint has significant consequences. A school district’s response to a discrimination complaint may be appealed to the Oregon Department of Education. *See* OAR 581-002-0001 to 581-002-0023. A school district’s response to a bullying and harassment complaint may not. *See* ORS 339.345 and OAR 581-022-2310 (requiring school districts to adopt a policy prohibiting harassment, intimidation, bullying, and cyberbullying and, thereby, making the content of the policy subject to the jurisdiction of the Oregon Department of Education, but not any determination made under the policy). [↑](#footnote-ref-24)
25. Office for Civil Rights, *Revised Sexual Harassment Guidance* at 5(internal quotation marks omitted). [↑](#footnote-ref-25)
26. *See Davis,* 526 U.S. at 653 (holding that “[t]he relationship between the harasser and the victim necessarily affects the extent to which the misconduct can be said to breach Title IX’s guarantee of equal access to educational benefits and to have a systemic effect on a program or activity. Peer harassment, in particular, is less likely to satisfy these requirements than is teacher student harassment.”) [↑](#footnote-ref-26)
27. *See Patricia H. v. Berkeley Unified School District*, 830 F.Supp 1288, 1297 (N.D. Cal 1993) (stating that the “grave disparity in age and power” between teacher and student contributed to the creation of a hostile environment). [↑](#footnote-ref-27)
28. The Oregon Department of Education specifically analyzes disparate treatment later in this letter. [↑](#footnote-ref-28)
29. On the date of this order, this district policy may be accessed at: <https://drive.google.com/file/d/0B-DFUcqRpFcuSU13Y2NjYTdTekNpVXN2QzdEbDc1d2U5WVJR/view>. [↑](#footnote-ref-29)
30. On the date of this order, this district policy may be accessed at: <https://drive.google.com/file/d/0B-DFUcqRpFcucXdGX0dkeG82ZUE/view>. [↑](#footnote-ref-30)
31. 34 C.F.R. § 106.8. [↑](#footnote-ref-31)
32. *Id*. [↑](#footnote-ref-32)
33. *See* note 31. [↑](#footnote-ref-33)
34. *See* ORS 659.850 (prohibiting “any act that unreasonably differentiates treatment, intended or unintended,” on the basis of sex). It is important to note that not correctly identifying the complaint has significant consequences. A school district’s response to a discrimination complaint may be appealed to the Oregon Department of Education. *See* OAR 581-002-0001 to 581-002-0023. A school district’s response to a generic harassment complaint may not. *See* ORS 339.345 and OAR 581-022-2310 (requiring school districts to adopt a policy prohibiting harassment, intimidation, bullying, and cyberbullying and, thereby, making the content of the policy subject to the jurisdiction of the Oregon Department of Education, but not any determination made under the policy). [↑](#footnote-ref-34)
35. *See* OAR 581-021-0045(3)(b) (prohibiting the provision of “different aid, benefits, or services” and the provision of “aids, benefits, or services in a different manner” on the basis of sex). [↑](#footnote-ref-35)
36. *See* ORS 659.850 (prohibiting “any act that unreasonably differentiates treatment, intended or unintended,” on the basis of sex). [↑](#footnote-ref-36)
37. *See* OAR 581-021-0045(3)(d) (prohibiting the subjection of “any person to separate or different rules of behavior, sanctions, or other treatment” on the basis of sex). [↑](#footnote-ref-37)
38. The department’s Title IX expert is Katherine Hildebrandt. She may be reached at: Katherine.Hildebrandt@ode.state.or.us. [↑](#footnote-ref-38)