January 21, 2021

 **BY EMAIL**

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Dr. Susan Rieke-Smith, Superintendent

Tigard – Tualatin School District 23J

6960 SW Sandburg Street

Tigard, OR 97223

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

Dear REDACTED and Superintendent Rieke-Smith,

This letter is the investigatory determination for two appeals of complaints filed with Tigard – Tualatin School District 23J 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).[[1]](#footnote-1) On appeal, REDACTED (Parent) alleges that the district violated these state laws and rules because the district discriminated against her daughter (Student A) on the basis of race. When an allegation of discrimination by a school district, or an allegation of failure by a school district to adequately respond to acts of discrimination, is made, the department reviews district procedures and findings of fact to determine if the district violated ORS 659.850 and OAR 581-021-0045(3) and 581-021-0046.

**APPELLATE PROCEDURES FOR COMPLAINTS ALLEGING DISCRIMINATION**

Parent alleges that Tigard – Tualatin School District 23J discriminated against Student A on the basis of race.

The Oregon Department of Education has jurisdiction to resolve this complaint under OAR 581-021-0049.[[2]](#footnote-2) 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.[[3]](#footnote-3) 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.[[4]](#footnote-4) 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.[[5]](#footnote-5) If the department determines that the school district is not in compliance with ORS 659.850, the department will issue an order requiring compliance.[[6]](#footnote-6) If the school district fails to comply with the order within 30 days, the department will issue an order imposing an appropriate remedy.[[7]](#footnote-7) 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.[[8]](#footnote-8)

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**

Parent filed three appeals of complaints heard by Tigard – Tualatin School District 23J with the Oregon Department of Education.

The first complaint concerns incidents occurring during the 2017-2018 school year. Parent alleges that during the school year, her daughter was discriminated against by two district coaches and other district staff. Parent alleges that Student A received disparate treatment from these individuals because of Student A’s race. Parent further alleges that the district did not implement remedies that it agreed to implement following Parent’s complaint. The department accepted this appeal on February 6, 2019, on the basis that the district responded to Parent’s allegation on numerous occasions throughout the 2017-2018 school year, and that it had been 90 days since the district’s first response.[[9]](#footnote-9)

The second complaint concerns an incident that occurred on October 11, 2018. Parent alleges that “[i]n 2018, my daughter was assaulted by” a coach from another school. Parent alleges, “[m]y daughter was discriminated against by that coach and by the principal” of the other school. Parent further alleges that district staff discriminated against her daughter by not protecting her from the assault or immediately investigating it. Parent alleges that she did not receive an adequate investigation from the district following the assault because the district did not address her concerns during the investigation. The department accepted this appeal on February 6, 2019, on the basis that the district first responded to the incident on October 15, 2018, and it had been 90 days since the district’s first response.[[10]](#footnote-10)

The third complaint concerns an incident that occurred during the week of November 18, 2018. Parent alleges that “[i]n 2018, my daughter was discriminated against by [a district teacher] based on her race.” The department accepted this appeal on February 26, 2019, on the basis that the district first responded to the incident on November 26, 2018, and it had been 90 days since the district’s first response.[[11]](#footnote-11)

Because Parent’s appeals involve similar allegations and applications of law, the department has consolidated them. This letter is the investigatory determination for both appeals.

**FINDINGS OF FACT**

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

**A. General Findings**

1. At times relevant to this appeal, Student A attended high school in Tigard – Tualatin School District 23J. Student A participated in district athletics.

1. Student A is mixed-race. Student A is African American and Asian American. Student A identifies as African American.

**B. Findings Related to the Selection of the 2017-2018 Volleyball Team**

1. During the summer of 2017, Student A attended two camps for volleyball, one sponsored by a district coach (Coach 1) and one sponsored by a coach from a different district.
2. Student A was not selected for the school’s varsity volleyball team for the 2017-2018 school year.
3. Parent filed an appeal with the department during January of 2019. Parent did not include as part of her appeal matters pertaining to Student A not being selected for the school’s 2017-2018 school year’s varsity volleyball team.
4. During its investigation of other matters on appeal, the department interviewed district coaches about Student A not being selected for the school’s varsity volleyball team. The department specifically interviewed district coaches about how they select students for the varsity volleyball team and why they did not select Student A for the team. The district selects students by having them perform certain drills. Four different coaches observe and separately evaluate how students perform during these drills. Students also are evaluated on the basis of overall attitude and work ethic. Finally, before tryouts, students are required to register for school. During tryouts for the 2017-2018 school year, Student A was younger than all other students trying out. District coaches noted that this age discrepancy negatively impacted Student A’s performance, attitude, and work ethic. Further, Student A was not registered for school at the time of the tryouts. When coaches learned that Student A was not registered, they instructed her to leave tryouts to register. Student A was allowed to return after she had registered, but the disruption likely affected her performance.

**C. Findings Related to Out of State Track Meet and Related Absences**

1. Student A was a member of the school’s track team during the 2017-2018 school year.
2. On March 7, 2018, Parent informed the district that Student A would miss school for a week because of illness.
3. On March 13, 2018, Parent emailed a district school administrator (Administrator), asking why Student A’s teammates believed that Student A was missing track practice for reasons other than illness. Parent also asked why district coaches were not more supportive of Student A. Parent stated that a district coach (Coach 3) would greet Student A’s teammates and ignore Student A. Parent had concerns about Coach 3’s motives in ignoring Student A. Parent had concerns about the guidance that the district provided its coaches on how to interact with student athletes.
4. Parent emailed Administrator before March 13, 2018, in an attempt to schedule a meeting.
5. On March 13, 2018, Administrator emailed Parent, explaining that scheduling conflicts had prevented him from meeting with Parent and apologizing. Parent responded to Administrator, expressing concerns about the district’s motives.
6. On March 20, 2018, Parent emailed a district teacher (Teacher 1) and a district counselor (Counselor 1) that Student A was absent from school because of illness. Parent further informed them that Student A would be absent from school beginning March 21 because of a family matter.
7. On March 29, 2018, Parent emailed several district staff members, including Administrator, that Student A would be absent from school before spring break because of illness and a family matter. Parent asked to meet with district staff after spring break. One district teacher (Teacher 2) responded by providing Parent with the resources that Student A would need to complete her schoolwork. Another district teacher (Teacher 3) responded by offering assistance in rescheduling course work and exams. A third district teacher (Teacher 4) responded with supportive comments and well-wishes for Student A.
8. On March 29, 2018, Parent emailed the district, requesting a meeting with a district office administrator and a district staff member. In the email, Parent stated that Student A’s teammates asked Student A if she would be participating in an out of state track meet, and if she was participating in the track meet, whether she would be traveling with them to the track meet. Parent asked why Coach 3 and another district coach (Coach 2) did not arrange for Student A to attend the track meet. Parent noted that they had arranged for other students to attend the track meet. Parent alleged that Coach 3 and Coach 2 knew that Student A had wanted to participate in the track meet for months. Parent alleged that Coach 3 and Coach 2 purposefully excluded Student A. Parent asked whether Student A was receiving disparate treatment on the basis of race.
9. On April 2, 2018, Administrator responded to Parent’s March 29th email, stating that he would investigate the allegations made by Parent in the email.
10. On April 2, 2018, Parent emailed Administrator, stating that Student A had to ask other students in the district (Student B and Student C) about whether she was participating in specific events at the out of state track meet. Parent asked whether students or district coaches were deciding which students would participate in the events. Parent also asked why Coach 3 and Coach 2 had made hotel reservations for other parents and students but had not made hotel reservations for her or Student A. Parent and Student A were the only parent and student traveling separately from the team. They also were the only parent and student staying in a different hotel than the team. Parent asked why district teachers had not informed Coach 3 and Coach 2 of Student A’s absences. Parent asked whether the coaches were motivated to treat Student A this way because of racial animus.
11. On April 3, 2018, Parent emailed Administrator, asking why the district did not timely notify Student A of the out of state track meet. Parent was concerned that Student A received information about the out of state track meet from Student B instead of Coach 2. Parent also asked why Student A was receiving information about the track meet from Student B that conflicted with information that Student A received from the district.
12. On April 3, 2018, Administrator responded to Parent’s email as follows:

I contacted [Coach 2] last night and learned that the committee hosting the meet had not fully processed meet entries until late Sunday and as of the end of the day on Monday, the actual times and waves of events were not solidified. This is a huge meet that is not put on by our school. We have no control over it. If [Student A’s] event[s] are on Friday, then she will compete on Friday. Teams generally stay for the full meet to support each other.

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Even though track is an individual sort in many aspects, our coaches want our teams to stay through the entire meets. That is a pretty standard expectation for all track teams I have worked with. [Coach 2] state[s] that there were still flights on Jet Blue to travel with the team, but in our meeting you made it clear that you only fly on [one] airline and it is not Jet Blue. I would certainly hope that if [Student A] attends future meets, that she books flights with the team and follows the same process as our other athletes. I understand there was confusion in her being registered for this meet in part because she did not attend many pre-season workouts and was sick for the start of the season and missed some communication there. The other drop was when she thought she told [Coach 3], but there was not verification with [Coach 2]. All other athletes directly worked with [Coach 2], so I’m sorry [Student A] did not know that or missed that detail.

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As to who runs in the relay races: times and consistency in practice determine that. Athlete opinion does not. I’m sorry [Student A] believes [Student B] controls her events, because she does not. [Student B] is a leader on the team and is asked to lead because she has demonstrated great work ethic for three straight years, but assigning race events is the coach’s job. My understanding is that athletes with [the] fastest time, consistent attendance, and controlled and consistent handoffs are selected for relays. I’m sorry you believe there are some sort of motives at play here, as I have worked with these coaches and absolutely believe they want the best for [Student A].

1. On April 3, 2018, Counselor 1 emailed Parent, stating that she would support Student A when she returned to school after spring break.
2. On April 5, 2018, before the out of state track meet, Parent emailed Administrator, Counselor 1, Teacher 2, and other district staff. Parent wrote the following:

I was told by [Administrator] that I needed to inform you for the Tigard track meet [Student A] is competing in in Los Angeles. Her coaches have not contacted her or me to inform us of dinner or team activities. Please send your positive thoughts, prayers and support to her as none of her teammates are ever including her in the team’s plans. I have no idea why she is being treated this way by her coaches, but your support and any kind words would really be appreciated. There are no updates to any school websites or team websites to what fun things the team is doing or will be doing so I’m so glad I was able to be here with her. To this day I’ve repeatedly asked why she’s being excluded to no avail. The good news is that she has great support from her family. I don’t know what events she’s in but please send your prayers and support.

Teacher 2 responded with words of encouragement.

1. Parent and Student A did not travel with the district track team to the out of state track meet. Parent and Student A traveled separately from the team. During separate interviews with the department, Parent and Student A both stated that communicating with Coach 2 and the other district coaches during the track meet was difficult. Student A stated that she often did not know when athletic events and team dinners and other social events were scheduled. Parent and Student A stated that they missed several team dinners and other social events because of the lack of communication. Student A stated that other students did not respond to her text messages. Student A speculated that the other students were not responding to her as part of a coordinated effort to ostracize her.
2. On April 11, 2018, Parent emailed Administrator, Counselor 1, and Teacher 1. Parent wrote the following:

Below are the students attending the Oregon Relays, [Student A’s] name is purposefully missing from the “invitational.” How has [Student C], a sophomore, and [another student (Student D)], a FRESHMAN, qualified for this meet? Do you honestly think we don’t know [Student A’s] results from last year didn’t qualify her? [Teacher 1], I’ve included you in these emails . . . someone else needs to know what [Administrator] is allowing. There’s a pattern here. A disturbing pattern here. Since the old one allowed girls to be raped by a teach[er], I see how easy it is here to let staff do whatever they want to them. The emotional distress that [Coach 2] and [Coach 3] have caused has been overwhelming. The stunts they performed in California[] affected her performance on the field. Their action since last year have been deplorable, unprofessional and unethical. Since we all know [Student B] couldn’t beat [Student A] in anything you all had to figure a way to get into [Student A’s] head. Attack her emotionally and she can’t think straight. If she can’t think straight, she won’t outperform our prize pony. Having knowledge of it and doing nothing this entire time is the equivalent of watching a rape occur and saying nothing. You’re worse than [Coach 2], [Coach 3], and that pathetic [Staff Person].

Later that day, Parent again emailed Administrator, Counselor 1, and Teacher 1. Parent wrote the following:

Just visited Oregon Relays site[.] None of the female students [Coach 2] has listed technically qualify according to the times shown. However, they request coaches (sic) ‘honesty’ when submitting entries. They can submit up to 35. So other than being lying[,] cheating[] snakes, tell me how [Student A] didn’t qualify this weekend!!!!!?????

1. On April 17, 2018, Parent emailed Administrator, inquiring about fees imposed by the district for participating in athletics. Parent wrote the following:

I paid $200 in fees. What are these “fees” [for which Coach 2] has Student A’s name listed!? In our recorded meeting he said anything outside the $200 is extra. Now there are spring fees? What kind of debauchery is this????

Administrator replied that same day, stating that he currently was out of the office and that he would research the issue and respond to Parent later. Later that day, Parent responded as follows:

What are these fees??? Also, before we came here [Student A] was jumping over 17’. . . Since she’s been here with your coaches this has declined. They’re terrible at coaching long jump. Now [Coach 2’s] not putting her in long jump events. I don’t care how much any of you people gossip. And I know you’re all gossiping. It’s all you do. If you don’t do right by my daughter, continue to show me. I’ll continue to document. Your office isn’t the authority.

1. On April 23, 2018, Administrator responded to Parent’s April 17th emails. Administrator wrote the following:

The fees you have inquired about are the standard $225 all athletes pay that are in a sport. I believe that fee was waived for [Student A] last year as she transferred in halfway through the season. The fundraiser dollars the team asks for each year including the raffle tickets, is separate and goes toward athletic gear the athletes get to keep. I believe you have already paid the gear potion. If you have indeed paid the athletic participation fee as well, but do you see credit on [Student A’s] account, please let me know and we can look into that for you. Our bookkeeper has those records. As far as distance goes in jump, that is a question for the jump coach. I know that consistent repetitions are needed to improve, and I have seen [Student A’s] speed increase through athletic.net and assume if she works hard with the jump coach and follows advice and skill work, she will continue to improve.

Later that day, Parent responded as follows:

I don’t need to follow athlete.net I’m there and see all the athletes as well as the jump coach’s daughter. I bought those ridiculous “fund raiser” tickets, which weren’t necessary. I’ll pay the athletic participation. Which is what should have been requested. Or!!! Make the pay to play and athletic gear fee!!! Make sure [Coach 2] puts her back in long jump. I’m very serious. She should be progressing under your coaches. It’s been a very interesting season so far. Can’t wait to hear more excuses and lies from the adults. You’ve all got to be so proud.

1. On April 18, 2018, the district prepared a list of issues for it to investigate with respect to Parent’s allegations. The list read as follows:

What did [Coach 3] say or do last year to [Student A] that caused the issue? What was done about it at the time? What [is being] done currently to understand this issue and what part it plays in the current events?

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What communications were sent to athletes/parents regarding the trip and making arrangements? How were students supposed to indicate they were going? Was there an effort to include [Student A] once the omission was discovered? Was there any effort to include student/family when in California? Did coaches help student register for meets?

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Were students invited [to participate in the track meet’s relays] or did coaches send in names? What was the criteria for qualifying for the event? How was criteria communicated? Were the criteria equally applied to all students?

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Does the coach refer athletes to [Student B] to find out if they can run in the relay? Can athletes have a private trainer for track? How and when is this communicated? Why did the coach send the names of all athletes who did not pay play to pay to the entire team? Are there written guidelines for team expectations for such things as reporting absences, etc? Why was (Student A) removed from (Coach 2’s) fitness class?

1. On April 22, 2018, Administrator responded to Parent’s recent emails as follows:

I don’t know the final reasons for each specific slot for the 35 entries we are limited to, but I do understand the format for the meet. 9th graders have their own categories and will compete only against other freshman which is why they are included. The 9th grade athletes we entered there are likely to score and get out team points for the meet. The general entries outside of that were a combination of the marks our athletes have made and how our coaches predict they will score next week. We had to use current marks and compare those to other athletes in the state. [Parent], the athletes marks that were entered were the most competitive to score in the meet. Multiple athletes have marks that could *qualify*, but the coaches did not enter those as they would not make a top ten and were well outside of point scoring consideration. In addition, [Student A] has been battling achilles issues. You, I, and the coaches all know [Student A] has great potential and could hit some great times and marks this year if she stays healthy and maximizes each practice. If you have not communicated with [Coach 2] about the rationale for the entries, I implore you to do so. You know my door is always open to productive meetings and conversations, and I reach[ed] out last week to invite[] you to meet with us. If you would like to schedule a meeting with [Student A] and [Coach 2], I would be happy to facilitate. If you would prefer to not meet, please direct specific questions to [Coach 2] as he has first hand accounts of practice and meet information. I need to let you know the attacks in your emails are on every level inappropriate.

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I will not tolerate name calling and personal attacks on me or staff members. You have every right to be frustrated as a parent and I know [Student A] is disappointed that she is not in the Oregon Relays. There are productive ways to communicate so we can have supportive partnerships, but name calling is not and will not be accepted for students, parents, or staff. Ever.

1. On April 27, 2018, Parent emailed Administrator. Parent wrote the following:

Yesterday my daughter asked [Coach 2] what time is the 4x1 Jesuit. He told her, “I don’t know.” But when another student asked about the time for her event, he provided it on the spot. Why isn’t a bus taking the students to this track meet? Why isn’t there a posted, scheduled time for the students to arrive? Where’s the schedule informing students what time each event is scheduled to start? Why aren’t ALL the students on the same schedule to arrive? I thought this was a ‘team’? I thought the ‘team arrive[s] together and leaves together’? Why isn’t there more information for parents who want to watch the events?

Administrator replied that same day, stating that he would research the issue and respond to Parent later.

1. On April 27, 2018, a district office administrator emailed Parent. The administrator asked Parent if they could meet to discuss Parent’s concerns.
2. On April 28, 2018, Parent emailed Administrator. Parent wrote, “Interesting that every student who participated in the Jesuit meet has an optic taken and uploaded to Facebook[] except my daughter. Go to the Tigard Track page on Facebook. See for yourself.”
3. On April 30, 2018, Parent emailed Administrator. Parent wrote, “You’ve allowed [Coach 2] to remove [Student A] from long jump and all events except relays. I’m documenting this for future reference.”
4. On May 10, 2018, Parent emailed Administrator. Parent wrote the following:

Please review the attached optic. It’s the program from yesterday’s meet at George Fox University. Look closely at the times listed beside each student! [Student A] ran a 27.62 at the Tigard/Canby/Tualatin meet. She ran a 27.48 at the Pasadena Invitational. I have proof of these times from the schools. I was at both events. You should be ashamed of yourself. WHY DID YOU ALLOW [COACH 2] TO TAKE AWAY THE OPPORTUNITY FOR HER TO RUN AT GEORGE FOX UNIVERSITY??? YOU ALLOWED IT AT HAYWARD AND HERE AGAIN!!! Yes, I’m writing in all caps.!!!! Yes I’m very angry!!!!!!!!!!!!!!! What you’ve allowed him to do is illegal. I will need time to consult with family and associates before I move forward with any more meetings. You’ve’ allowed him to take away opportunities from her. There’s no excuse.

1. On June 4, 2018, Parent emailed a teacher at the district (Teacher 5) to ask about Student A’s grade. On June 5, 2018, Teacher 5 responded to Parent’s June 4th email, providing Parent with Student A’s current grade and writing, “We have a few more assessments going in the grade book.” Teacher 5 also wrote the following:

Her attendance has definitely [affected] her grade even though they are excused. Excused absences are still to be made up within two weeks of the absences. Her attendance the last few weeks has definitely been better.

Later that day, Parent responded as follows: “What’s she missing? It’s completely unheard of to fail P.E. The work she completed was not accepted because it wasn’t within the 2 week time period? Seriously? You’re the only person adhering to this.” Teacher 5 responded,

She is missing the participation points from the days she has missed. Looking back at her attendance she has missed this class 9 times. 4 excused, 4 unexcused, and 1 for track (which doesn’t count against her). She also is to complete her daily workout log. [S]he has not been completing them consistently. The two week period is to try and prevent students from waiting until the last minute to do make ups. [Student A] has not talked with me about making up her excused absences. She isn’t failing. She can talk to me about making up some of those day’s absences before the end of the year but be aware time is limited. Hope this clears any questions up.

On June 9, 2018, Parent emailed Administrator about her recent email exchange with Teacher 5. Parent wrote the following:

This is P.E. This grade is fraudulent. [Student A] has excused absences which [Teacher 5] refused to allow her to complete. This is not due to requesting this completion after some rule about returning and not getting it completed within 2 weeks as [Techer 9] has suggested to me. He did not allow her to complete [the work] after returning from her excused absences. Then attempted to blame [it on] unexcused absences. This is ridiculous. And I know why this is being allowed: RACISM! It runs rampant around this school from the students to many of the educators. Now run tell that! Since the consensus seemed to be that ‘her mother complains all the time’!!!!!!!!!!! She has not earned a ‘D’ in this excuse for a class. Someone had better rectify this before the school year is over.

Parent also wrote that she had concerns about another district teacher. On June 11, 2018, Teacher 5 emailed an update to Parent, informing her that Student A’s grade had improved because Student A had completed several assignments that previously had been graded as incomplete. On June 12, 2018, Parent emailed Teacher 5. Parent wrote, “This is P.E. There’s no way on Earth I’ll ever believe that she earned anything less than an A. Have a wonderful summer.” Later that day, Teacher 5 responded as follows:

I’m sorry you feel that way. But when she missed classes and never made up those points, and did not fill out her workout logs on a regular basis, this is what the points turned out to be. I’ll compare it to a math class. If a student is gone they have to make up the work to earn those points. If the student is in math class and doesn’t do the daily lesson they do not earn the points.

1. On June 5, 2018, Parent emailed Administrator and a district teacher (Teacher 6). Parent wrote the following:

There is a boy in your class today showing [Student A] racist optic, openly calling her a nigger. What the heck is going on? Why is this allowed? Was he suspended? I know doggoned well this isn’t freedom of speech. This is a hate crime. Is my daughter’s safety in jeopardy!? Someone needs to call me immediately and explain this. I’m out of town and unable to come up to the school to talk about this. Where are his parents!? Should we send the police to his house and check for weapons!? Is he some kind of school shooter waiting to happen!? I need answers right now.

Within minutes, Teacher 6 responded, writing “I wrote up my report of the incident and sent it to both counselors and admin[istration] moments before you sent your email. They are actively working on the problem now.” On June 6, 2018, Parent again emailed Teacher 6. Parent wrote the following:

I’m deeply [ed]that this boy will be allowed back onto campus at any point after committing a hate crime. I’ve since learned his racism is encouraged by his racist parents. I do believe he’s capable of extreme violence, deadly violence. I’ve since learned that he watches violent and disgusting video[] games as well as content from his cell phone. Violent racist content that he continuously showed my daughter even though she continued to tell him to stop. Which, to me, also sounds like a rapist. I don’t want not one apology if something happens to my daughter. Don’t even try. Keep that boy away from her. Keep his racist friends away from her. I don’t believe he’s crazy or mentally ill. He’s a terrorist. He can shove his apologies up his nose. He can burn in hell for all I care. He’s a disgusting racist. This should not be tolerated. Period.

On June 6, 2018, Administrator emailed Parent. Administrator wrote the following:

Thank you for your communication, [Parent]. As I shared in my voice message yesterday with you, and in person with [Student A], I was saddened and disappoint[ed] in the other student’s actions. There is and can be no excuse for his decisions. I apologize that this event occurred and can assure you this has been thoughtfully dealt with. I can also assure you that we are taking this seriously and I have already contacted [Student A’s] teacher to ensure [Student A] is safe and supported at school and in her classes.

On June 12, 2018, Parent emailed Administrator. Parent wrote the following:

I know why you’ve allowed that racist, terrorist back into the school and the classroom. His racist white parents would complain and that takes precedence over anything. It doesn’t matter that this boy is a terrorist. Just like when you suspended [b]lack boys for fighting and didn’t suspend white boys for fighting. The [b]lack parents just don’t matter in this equation. I’m not surprised seeing as how you’ve allowed the track coach to discriminate against her all season. Taking opportunities away from her. Allowing that boy back into her classroom, asking [Student A] if she wants him to apologize, just abhorrent.

1. On January 25, 2019, the district issued a written report of its April 18th investigation. The district made the following conclusions:
	* With respect to what Coach 3 said and did to Student A the previous year, during a workout, the district found that Coach 3 drew a comparison between Student B and three other students, including Student A. Student B was working out. The other three students were using their phones instead of working out. Administrator obtained a statement from Coach 3 about the incident. Administrator scheduled a meeting between himself, Parent, and Coach 3 to discuss the incident. Parent had a conflict and did not attend the scheduled meeting. Administrator subsequently scheduled two more meetings. Parent could not attend either meeting. Administrator reached out to Parent to coordinate their schedules. Parent did not respond to Administrator’s efforts.
	* With respect to the sufficiency of communications sent to athletes and parents about the out of state track meet and efforts to include Student A, the district found that in the fall of 2017, Coach 2 sent informational fliers to all student athletes capable of qualifying for the track meet. Coach 2 also held an informational meeting during November of 2017. Approximately 40 students were invited to the meeting. Approximately half of the students invited to the meeting signed-up to participate in the track meet. Coach 2 did not follow-up with students who did not sign-up. In an interview with the department, Coach 2 stated that he made the decision to not pressure students to participate because the track meet was expensive. Student A received a flyer and attended the meeting. Student A did not sign-up at the meeting. In an interview with the department, Student A stated that she told Coach 3 that she wanted to participate. Coach 3 did not communicate Student A’s decision to Coach 2. Student A did not attend any subsequent meetings about the track meet. Before the district learned that Student A wanted to participate, the flight and hotel booked by the district became fully booked. Within a few days of the track meet, Parent and Student A met with Administrator and Coach 2 and communicated Student A’s desire to participate. Parent told Administrator and Coach 2 that she had arranged for her and Student A’s flight and hotel room. Parent also told them that she wanted Student A to participate in team events. After the meeting, the district successfully registered Student A for the track meet. During the track meet, district staff contacted Parent and Student A about team events. Parent and Student A decided not to attend those events.
	* With respect to other issues identified by the district, the district found: (1) district coaches did not defer to student athletes when making decisions about which students would participate in the out of state track meet’s events; and (2) the district had been consistent in following its policy requiring teachers to give an excused absence to students who miss school for an athletic event, and requiring students who miss school for an athletic event to collect and complete all makeup work.
2. With respect to matters related to the out of state track meet and related absences, Parent filed an appeal with the department during January of 2019. The department accepted her appeal on February 6, 2019.
3. During its investigation, the department verified the underlying evidence that the district relied upon in its January 25th written report by conducting interviews and reviewing emails and other documents.

**D. Findings Related to Volleyball Game and Music Class**

1. Student A was selected for the school’s volleyball team for the 2018-2019 school year.
2. On September 20, 2018, Parent emailed Administrator, writing, “Where can students find information on applying for scholarships? Where is this information being kept?” Later that day, Administrator responded, “Scholarship information can be found by visiting the college and career center at Tigard High School. [Counselor 2 (a district counselor)] is another resource to connect with as he can also help identify potential scholarship opportunities.” Later that day, Parent responded, “I’m not a fan of [Counselor 2]. However, in the best interest of my daughter, I’ll schedule something soon. He is not to meet with her without my permission.”
3. On September 21, 2018, Parent emailed Administrator, asking him how to register Student A with the NCAA. Administrator responded, telling her that registering students with the NCAA is a family responsibility and referring her to Counselor 2 for additional information.
4. On October 11, 2018, Student A competed in a volleyball game against a school located outside the district (School B). After the game, the volleyball players from the two teams shook hands. Student A and the coach of the other school (Coach B) briefly spoke.
5. On October 15, 2018, Parent met with Administrator and the administrator of School B (Administrator B). After the meeting, Parent emailed Administrator and Administrator B. Parent wrote the following:

It was a pleasure meeting you today. I wanted to follow-up on our conversation today. My question still remains why did your volleyball coach grab my daughter after the game? I’ve spoken with family and friends in the school leagues. Normally a coach from another team would never inappropriately touch a student. Again, this does not ever need to happen again. I’m concerned for your students, and students from other teams, that she may have been grabbed like this. But[] why? Was it racially motivated? Did someone from another team, or our team, tell her to do it? [T]he manner in which she did it is also questionable. Subtly, as to not be seen. Grabbing my child, squeezing her arm and throwing it away as if she’s inhuman. Telling my daughter, ‘say good job’! I’ve just gotten off the phone with another coach. He explained that this is grounds for suspension. You don’t put your hand on another team’s students. Did someone put her up to this? Was it premediated? Was it motivated by hostility because my daughter played really well? So many questions. The end result is this: your coach is never, ever permitted to touch my kid again. I don’t know what prompted her actions, but this had better not impact any opportunities for scholarships.

1. On October 19, 2018, Parent emailed a district teacher, Coach 1, and Administrator. Parent alleged that Coach B had treated Student A differently on the basis of race.
2. Student A was enrolled in a music class, taught by a district teacher (Teacher 7). On November 21, 2018, Parent discussed with Teacher 7 incidents occurring in the class. Parent alleged that Teacher 7 (1) held Student A to a different standard than other students; (b) publicly yelled at Student A outside of the classroom and grabbed Student A’s arm; and (c) laughed at another student’s racist joke. Parent alleged that Teacher 7 discriminated against Student A on the basis of race.
3. On November 21, 2018, Teacher 7 emailed a district school administrator. Teacher 7 wrote the following:

After talking to [Parent] today, I am finding that [Student A] is taking this to a high level, and your assistance is most likely going to be needed. I am hoping I am assuming that you trust the fact that I did not operate with racism in my classroom (or anywhere) and that you would convey this and assure this to my students and their parents.

Teacher 7 provided a detailed description of what had occurred that day, including approximate times for each event.

1. On November 26, 2018, Parent and Administrator spoke on the phone about the events that occurred on November 21. Later that day, Administrator emailed Parent, thanking her for taking the time to speak with him and stating a desire to speak with Student A about the events. Parent responded that she and Student A wanted the Oregon Department of Education to be present at the meeting and that she would be recording the meeting. Administrator, Parent, Student A, and the department did not meet about the events that occurred on November 21.
2. On January 25, 2019, the district issued a written report of its investigation pertaining to the incidents that occurred at the volleyball game and in the music class. The district made the following conclusions:
* With respect to the incident occurring at the October 11, 2018, volleyball game, the district determined that Coach B shook Student A’s hand. The district determined that Coach B held onto Student A’s hand longer than other student’s hands. Coach B held onto Student A’s hand for approximately two seconds. The district also determined that Coach B heard Student A making negative comments toward the players of the other team and interjected, “No, it was a good match.” The district based its findings on interviews that it conducted with witnesses and video footage of the game. The district determined that there was insufficient evidence to substantiate that Coach B had discriminated against Student A on the basis of race.
* With respect to the music class, the district determined that Teacher 7 did not hold Student A to a different standard than other students. The district found that Teacher 7 evaluates students on the basis of grade level, musical ability, and frequency of preparedness. The district found that Teacher 7 used this criteria to evaluate all students. The district determined that the relationship between Teacher 7 and Student A devolved over the course of the semester, but the district could not substantiate that Student A was treated differently than other students or that Teacher 7 discriminated against Student A on the basis of race.
* The district also determined that Teacher 7 did not publicly yell at Student A or grab Student A’s arm. The district made this determination after interviewing 22 other students, including all of the students in the music class. The district also determined that Teacher 7 “touched” Student A’s arm. The district made this determination on the basis that Student A said the teacher “touched” her arm, a statement that directly contradicts Parent’s allegation.
* The district finally found that there was insufficient evidence to substantiate that Teacher 7 laughed at a racist joke. The district made this finding after interviewing all of the other students in the music class.
1. Parent filed an appeal with the department during January of 2019. The department accepted part of her appeal on February 6, 2019, and part of her appeal on February 26, 2019. Because Parent’s appeals involve similar allegations and applications of law, the department consolidated them.
2. During its investigation, the department verified the underlying evidence that the district relied upon in its January 25th written report by conducting interviews and reviewing emails and other documents. For purposes of verifying that Teacher 7 did not hold Student A to a different standard than other students, the department also investigated forms used by Teacher 7 to track student progress and behavior. The forms substantiate that Student A frequently was not prepared for class. Student A often came to class late and without sheet music. Teacher 7 frequently had to redirect Student A’s behavior. Student A often used her cell phone during class.

**E. Findings Related to Miscalculated Grade**

1. At Student A’s school, the district made grades available to view online throughout the semester. The district updated grades posted online throughout the semester.
2. On January 24, 2019, Parent emailed a district teacher (Teacher 8), asking about a change that had been made to Student A’s grade. The change occurred overnight. Teacher 8 responded that there was a problem with the computer used to calculate the grades and that the problem had been corrected. Parent subsequently emailed both Teacher 8 and Administrator. Parent stated that parents and students had not received notice of the computer problem and that the problem should be fixed.
3. On January 25, 2019, Parent emailed Administrator and the department that Teacher 8 had “tampered” with Student A’s grade. Parent wrote that Student A’s grade in Teacher 8’s class had changed dramatically within a 24 hour period. Parent stated that Teacher 8 blamed the change on a computer problem. Parent stated that she had researched the matter. Parent further stated that she was skeptical of Teacher 8’s explanation. Later that day, Administrator responded. In pertinent part, Administrator wrote:

[I]t has been verified through our data specialist, that [Teacher 8’s] gradebook was set up to calculate quarter 1 and quarter 2 separately. Even through the quarter 1 was only a progress report, those grades should have continued on into quarter 2 as a comprehensive grade. When [Teacher 8] realized the gradebook was not calculating both, he communicated with his classes. All students in each of those classes were slightly impacted [ — some positively and some negatively in terms of percentage — ] and [Teacher 8] let students know the grade may have shifted up or down based on how well students did in a quarter.

Parent responded to Administrator’s email by alleging that the district was motivated by racial animus.

1. On January 28, 2019, Parent emailed Teacher 8. Parent requested to review copies of exams that Student A had taken. Parent also requested further information about the computer problem.
2. On January 28, 2019, Parent emailed a member of the school board. Parent requested to meet the school board member to discuss the ramifications of the computer problem, including lost scholarship opportunities. Parent also alleged grade tampering and assault by a district coach. Parent wrote, “When [Student A] went to her counselor to talk about how she was feeling, [the counselor] told her to ‘suck it up.’” The school board member responded by explaining Parent’s right to an appeal. The school board member also explained that the district would not reopen its investigation of matters addressed in the January 25th, 2019, written report.
3. Parent filed an appeal with the department during January of 2019. Parent did not include as part of her appeal matters pertaining to Student A’s changed grade.
4. During its investigation, the department interviewed Teacher 8 about the changed grade. During the interview, the department determined that Teacher 8 did not set up the computer gradebook correctly. Student A’s grade had changed because of Teacher 8’s error, not a computer problem. Teacher 8’s error affected all students in the teacher’s class.

**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.[[12]](#footnote-12)

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.”[[13]](#footnote-13)

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.”[[14]](#footnote-14)

This investigatory determination addresses whether Tigard – Tualatin School District 23J, on the basis of race, violated any of the standards set forth in ORS 659.850, OAR 581-021-0045(3), or OAR 581-021-0046 with respect to (1) matters related to the 2018 out of state track meet, (2) other matters related to 2017-2018 school year, (3) the October 11, 2018, volleyball game, or (4) the 2018 music class.

Additionally, even though the matters are not properly before the department on appeal, this investigatory determination also addresses whether the district, on the basis of race, violated any of those standards with respect to (1) Student A not being selected for the school’s 2017-2018 school year’s varsity volleyball team or (2) Student A’s miscalculated grade. The department includes this information solely for the purpose of providing the district with information about its conduct. Any deficiency identified by the department with respect to these matters cannot trigger – for purposes of this appeal – the protections of ORS 659.850, OAR 581-021-0045(3), and OAR 581-021-0046. To trigger those protections, Parent would have to file a new appeal with the department.

In summary, this investigatory determination concerns matters related to six different issues occurring during the 2017-2018 and 2018-2019 school years. Student A not being selected for the school’s 2017-2018 school year’s varsity volleyball team, matters related to the 2018 out of state track meet, other matters related to the 2017-2018 school year, the October 11, 2018, volleyball game, the 2018 music class, and the miscalculated grade.

Before examining those issues separately, it is worth noting that there is an absence of racial animus toward Student A on the record. As presented, the facts substantiate that the district did not, on any occasion, purposefully discriminate against Student A on the basis of race. However, for purposes of ORS 659.850, OAR 581-021-0045(3), and OAR 581-021-0046, the absence of racial animus is not dispositive. Under that statute and those rules, discrimination is “any act that unreasonably differentiates treatment, intended or *unintended*.”[[15]](#footnote-15)

**A. Not Being Selected for the School’s 2017-2018 School Year’s Varsity Volleyball Team**

Parent argues that Student A was not selected for the school’s 2017-2018 school year’s varsity volleyball team because the district was discriminating against Student A on the basis of race. Parent did not provide the department with evidence that supports this allegation.

The district provided the department with evidence that Student A was evaluated in accordance with district processes and treated the same as all other students. The district selects students for the varsity volleyball team by having them perform certain drills. Four different coaches observe and separately evaluate how students perform during these drills. Students also are evaluated on the basis of overall attitude and work ethic. Before tryouts, students are required to register for school.

During tryouts for the 2017-2018 school year, Student A was younger than all other students trying out. The facts indicate that this age discrepancy negatively impacted Student A’s performance, attitude, and work ethic. Further, the facts substantiate that Student A was not registered for school at the time of tryouts. When coaches learned that Student A was not registered, they instructed her to leave tryouts to register. Student A was allowed to return after she had registered, but the disruption likely affected her performance.

In consideration of the facts, there is insufficient evidence to find that the district discriminated against Student A on the basis of race by not selecting her for the school’s 2017-2018 school year’s varsity volleyball team. However, even if there was sufficient evidence to make this finding, the matter was not properly brought before the department on appeal.[[16]](#footnote-16)

**B. Matters Related to the 2018 Out of State Track Meet**

Parent argues that the district discriminated against Student A on the basis of race in its handling of the 2018 out of state track meet. Parent specifically alleges that the district did not provide Student A with the information necessary for Student A to fully participate in the track meet. Parent argues that this failure to provide information negatively impacted Student A in a variety of ways. Parent argues that Student A had no knowledge of what athletic events she was scheduled to participate in. Parent argues that Student A was not able to travel with the team or stay in the same hotel as other students. Parent argues that Student A was not able to fully participate in team dinners or other social events. Parent argues that she had to separately arrange for Student A’s transportation to the event and hotel room, a greater responsibility and cost than that borne by any other parent.

Obviously Student A was subject to different benefits than other students with respect to the track meet. However, Student A was not subject to different benefits because of her race. Rather, she was subject to different benefits because she did not follow the district’s processes for participating in the event.

In the fall of 2017, Coach 2 sent informational fliers to all student athletes capable of qualifying for the track meet. Coach 2 also held an informational meeting during November of 2017. Approximately 40 students were invited to the meeting. Approximately half of the students invited to the meeting signed-up to participate in the track meet. Student A received a flyer and attended the meeting. Student A did not sign-up at the meeting. In an interview with the department, Student A stated that she told Coach 3 that she wanted to participate. Coach 3 did not communicate Student A’s decision to Coach 2. Student A did not attend any subsequent meetings about the track meet.

Coach 2 did not follow-up with students who did not sign-up. In an interview with the department, Coach 2 stated that he made the decision to not pressure students to participate because the track meet was expensive. Before the district learned that Student A wanted to participate, the flight and hotel booked by the district became fully booked. Within a few days of the track meet, Parent and Student A met with Administrator and Coach 2 and communicated Student A’s desire to participate. After the meeting, the district successfully registered Student A for the track meet.

The facts also demonstrate that during the track meet, district staff contacted Parent and Student A about team events. Parent and Student A did not attend those events. As part of its investigation, the district determined that Parent and Student A decided to not attend those events. For purposes of this appeal, the department does not reach the same conclusion as the district. There are a variety of reasons why Parent and Student A may not have attended those events, including that they did not receive communications about the events. That said, there is insufficient evidence to find that the district discriminated against Student A on the basis of race on these grounds. The facts substantiate that the district attempted to include Parent and Student A, no matter how inadequate its efforts.

The department also takes into consideration the fact that Student A was absent from school for several weeks immediately preceding the track meet because of a family matter and illness. Student A’s absence from school likely contributed to the lack of communication between district coaches and Student A about the track meet.

The department does not make a finding as to whether the district provided Student A with an appropriate level of service with respect to the track meet. Coach 2 arguably could have followed up with students who attended the initial meeting and did not sign-up to participate. Subsequent meetings could have been better publicized. Coach 3 could have told Coach 2 that Student A wanted to participate. However, even given these deficiencies, there is insufficient evidence to substantiate that the district discriminated against Student A on the basis of race. Instead, the evidence indicates that Student A did not communicate her attempt to participate in accordance with district processes and that subsequent miscommunications contributed to her late inclusion.

**C. Other Matters Related to the 2017-2018 School Year**

Parent argues that the district discriminated against Student A on the basis of race throughout the 2017-2018 school year on a variety of other grounds. Some of Parent’s arguments are as follows: (1) the district charged Student A fees that it did not charge other students; (2) Coach 3 treated Student A differently than other students, and once disparaged her in class; (3) district teachers did not take into account that Student A’s absences were excused when calculating her grades. In making these arguments, Parent did not present the department with any evidence that supports her allegations.

With respect to fees, the evidence indicates that Student A was charged the same fees as all other students. As explained by Administrator in an email written to Parent on April 23, 2018:

The fees you have inquired about are the standard $225 all athletes pay that are in a sport. I believe that fee was waived for [Student A] last year as she transferred in halfway through the season. The fundraiser dollars the team asks for each year including the raffle tickets, is separate and goes toward athletic gear the athletes get to keep. I believe you have already paid the gear potion. If you have indeed paid the athletic participation fee as well, but do you see credit on [Student A’s] account, please let me know and we can look into that for you.

With respect to Coach 3’s treatment of Student A, the facts indicate that during a workout, Coach 3 drew a comparison between Student B and three other students, including Student A. Student B was working out. The other three students were using their phones instead of working out.

The facts also indicate that the district investigated the matter and attempted on several occasions to discuss the matter with Parent. Administrator obtained a statement from Coach 3 about the incident. Administrator then scheduled a meeting between himself, Parent, and Coach 3 to discuss the incident. Parent had a conflict and did not attend the scheduled meeting. Administrator subsequently scheduled two more meetings, but Parent could not attend those meetings either. Administrator reached out to Parent to coordinate their schedules, but Parent did not respond to Administrator’s efforts.

Finally, with respect to district teachers not taking into account that Student A’s absences were excused when calculating her grades, the facts indicate that district teachers evaluated Student A in accordance with generally applicable processes. For example, on June 4, 2018, Parent emailed Teacher 5 to ask about Student A’s grade. On June 5, 2018, Teacher 5 responded to Parent’s June 4th email, providing Parent with Student A’s current grade and writing, “We have a few more assessments going in the grade book.” Teacher 5 also wrote the following:

Her attendance has definitely [affected] her grade even though they are excused. Excused absences are still to be made up within two weeks of the absences. Her attendance the last few weeks has definitely been better.

In a subsequent email, Teacher 5 further explained:

[Student A] is missing the participation points from the days she has missed. Looking back at her attendance she has missed this class 9 times. 4 excused, 4 unexcused, and 1 for track (which doesn’t count against her). She also is to complete her daily workout log. [S]he has not been completing them consistently. The two week period is to try and prevent students from waiting until the last minute to do make ups. [Student A] has not talked with me about making up her excused absences. She isn’t failing. She can talk to me about making up some of those day’s absences before the end of the year but be aware time is limited. Hope this clears any questions up.

On June 11, 2018, Teacher 5 emailed an update to Parent, informing her that Student A’s grade had improved because Student A had completed several assignments that previously had been graded as incomplete. Parent replied, “This is P.E. There’s no way on Earth I’ll ever believe that she earned anything less than an A. Have a wonderful summer.” Teacher 5 responded, “I’m sorry you feel that way. But when she missed classes and never made up those points, and did not fill out her workout logs on a regular basis, this is what the points turned out to be.”

In short, there is insufficient evidence to find that the district discriminated against Student A on the basis of race with respect to any of the allegations made about the 2017-2018 school year.

**D. The October 11, 2018, Volleyball Game**

Parent argues that the district did not respond appropriately to an incident that occurred at the October 11, 2018, volleyball game between Tigard Tualatin School and School B. Parent specifically argues that the coach of School B’s volleyball team “grabbed” Student A’s arm following the volley game and ordered her to commend the other team’s performance. In Parent’s own words:

My question still remains why did your volleyball coach grab my daughter after the game? I’ve spoken with family and friends in the school leagues. Normally a coach from another team would never inappropriately touch a student. Again, this does not ever need to happen again. I’m concerned for your students, and students from other teams, that she may have been grabbed like this. But[] why? Was it racially motivated? Did someone from another team, or our team, tell her to do it? [T]he manner in which she did it is also questionable. Subtly, as to not be seen. Grabbing my child, squeezing her arm and throwing it away as if she’s inhuman. Telling my daughter, ‘say good job’! I’ve just gotten off the phone with another coach. He explained that this is grounds for suspension. You don’t put your hand on another team’s students. Did someone put her up to this? Was it premediated? Was it motivated by hostility because my daughter played really well? So many questions. The end result is this: your coach is never, ever permitted to touch my kid again. I don’t know what prompted her actions, but this had better not impact any opportunities for scholarships.

Following Parent’s allegations, the district conducted an investigation of the matter. In conducting its investigation, the district interviewed witnesses and watched video footage of the volleyball game. On the basis of that evidence – evidence corroborated by the department’s own investigation – the district determined that when Coach B shook Student A’s hand, the coach held onto Student A’s hand longer than other student’s hands. Coach B held onto Student A’s hand for approximately two seconds. The district also determined that Coach B heard Student A making negative comments toward the players of the other team and interjected, “No, it was a good match.”

The department dismisses Parent’s allegations with respect to the volleyball game for three reasons.

First, Parent provides insufficient evidence to substantiate that Coach B discriminated against Student A on the basis of race. The only evidence on the record is that Coach B held onto Student A’s hand for two seconds, longer than other students’ hands, and either ordered Student A to “say good job” to the other team (according to Parent’s account) or interjected when Student A disparaged members of the other team, saying “No, it was a good match” (according to the district’s account).

Second, Parent admitted that Coach B may have had motives, other than racial animus, for her actions following the volleyball game. In Parent’s October 15th email to Administrator B, Parent wrote, “Did someone put her up to this? Was it premediated? Was it motivated by hostility because my daughter played really well?” In short, Parent admitted that Coach B’s behavior may have been motivated by Student A’s excellent performance rather than racial animus.

Third, with respect to the district, Parent’s claim on appeal is that the district did not respond appropriately to the events occurring on October 11, 2018. Parent’s allegation of racial animus, itself, derive from the actions of Coach B, who is employed by a school located outside the district. With respect to how the district responded to Parent’s allegations, the evidence demonstrates that the district fully investigated the matter, conducted interviews of witnesses to the incident, examined video footage, and issued a written report of its findings.

There is insufficient evidence to find that the district discriminated against Student A on the basis of race with respect to the allegations made about the October 11, 2018, volleyball game.

**E. The 2018 Music Class**

Parent alleges that Teacher 7 discriminated against Student A by (1) holding Student A to a different standard than other students; (b) publicly yelling at Student A outside of the classroom and grabbing Student A’s arm; and (c) laughing at another student’s racist joke.

With respect to Teacher 7 holding Student A to a different standard than other students, the evidence substantiates that the relationship between Teacher 7 and Student A devolved over the semester. However there is insufficient evidence that Student A was treated differently than other students on the basis of race. Rather, the evidence indicates that Teacher 7 evaluated students on the basis of grade level, musical ability, and frequency of preparedness. Teacher 7 used this criteria to evaluate all students.

Furthermore, the department also investigated forms used by Teacher 7 to track student progress and behavior. The forms substantiate that Student A frequently was not prepared for class. Student A often came to class late and without sheet music. Teacher 7 frequently had to redirect Student A’s behavior. Student A often used her cell phone during class. In short, the evidence substantiates that Student A received a lower grade on the basis of frequency of preparedness, not race.

With respect to Teacher 7 publicly yelling at Student A and grabbing Student A’s arm, the evidence substantiates that Teacher 7 “touched” Student A’s arm, a determination made by the district on the basis of interviewing 22 students, including Student A, and independently corroborated by the department.

Finally, with respect to Teacher 7 laughing at a racist joke, the evidence substantiates that Teacher 7 did no such thing, a determination made by the district on the basis of interviewing all of the other students in class. This determination also was independently corroborated by the department.

There is insufficient evidence to find that the district discriminated against Student A on the basis of race with respect to the allegations made about the 2018 music class.[[17]](#footnote-17)

**F. The Miscalculated Grade**

Parent finally argues that the district discriminated against Student A by miscalculating Student A’s grade. Parent specifically alleges that Teacher 8 “tampered” with Student A’s grade, as evidenced by Student A’s grade changing dramatically within a 24 hour period. Parent also specifically alleges that a district coach tampered with Student A’s grade and that when Student A went to her counselor to talk about how she was feeling, the counselor told her to ‘suck it up.’”

There is insufficient evidence to substantiate the allegations. With respect to the allegation that Teacher 8 tampered with Student A’s grade, the evidence substantiates that Teacher 8 misinformed Parent that the grade change occurred because of computer error. In actuality, the grade change occurred because of Teacher 8’s error. However, the evidence indicates that Teacher 8’s error was not based on race. The evidence substantiates that Teacher 8’s error affected all students’ grades in the teacher’s classes. Some grades were affected positively and some were affected negatively. However, all grade changes occurred because of the same error.

With respect to the district coach tampering with Student A’s grade, Parent proffers no evidence of such tampering. With respect to Student A’s counselor telling her to “suck it up,” there is no evidence that the counselor actually made this statement.

In short, there is insufficient evidence to find that the district discriminated against Student A on the basis of race with respect to the allegations made about Student A’s miscalculated grade.[[18]](#footnote-18) However, even if there was sufficient evidence to make this finding, the matter was not properly brought before the department on appeal.[[19]](#footnote-19)

**CONCLUSION**

In conclusion, the Oregon Department of Education finds that Tigard – Tualatin School District 23J, on the basis of race, did not violate any of the standards set forth in ORS 659.850, OAR 581-021-0045(3), or OAR 581-021-0046 with respect to (1) matters related to the 2018 out of state track meet, (2) other matters related to 2017-2018 school year, (3) the October 11, 2018, volleyball game, or (4) the 2018 music class. Furthermore, the department finds that the district, on the basis of race, did not violated any of the standards set forth in ORS 659.850, OAR 581-021-0045(3), or OAR 581-021-0046 with respect to (1) not being selected for the school’s 2017-2018 school year’s varsity volleyball team, and (2) the miscalculated grade.

If you have any questions, please contact me.

Sincerely,

SIGNATURE REMOVED

Mark Mayer, Complaint and Appeals Coordinator

Office of the Department

Mark.Mayer@state.or.us

1. In this proceeding, Parent filed two appeals with the Oregon Department of Education against Tigard – Tualatin School District 23J. The first appeal was accepted on February 6, 2019. The second appeal was accepted on February 26, 2019. Because Parent’s appeals involved similar allegations and application of law, the department has consolidated them. This letter is the investigatory determination for both appeals. [↑](#footnote-ref-1)
2. 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 Parent’s appeals on February 6, 2019, and February 26, 2019, the rule applies to her appeals. [↑](#footnote-ref-2)
3. OAR 581-021-0049(1). [↑](#footnote-ref-3)
4. OAR 581-021-0049(1)(b). [↑](#footnote-ref-4)
5. OAR 581-021-0049(2). [↑](#footnote-ref-5)
6. OAR 581-021-0049(3). [↑](#footnote-ref-6)
7. *Id*. [↑](#footnote-ref-7)
8. OAR 581-021-0049(3)(a) to (d). [↑](#footnote-ref-8)
9. *See* OAR 581-021-0049(1), as in effect on February 6, 2019 (under this provision, the department must take an appeal of a complaint if a district fails to remedy the complaint within 90 days of the complaint being filed). It should be noted that the department did not have evidence on the district’s June 18th, 2018, report at the time that it accepted the appeal. the issuance of that report does not affect the grounds upon which the department accepted Parent’s appeal: failure to resolve a complaint within 90 days. *See* OAR 581-021-0049(1), as in effect on February 6, 2019. [↑](#footnote-ref-9)
10. *See supra*, note 9. It should be noted that the department did not have evidence on the district’s January 25th, 2019, final written report at the time that it accepted the appeal. However, the issuance of that report does not affect the grounds upon which the department accepted Parent’s appeal: failure to resolve a complaint within 90 days. *See* OAR 581-021-0049(1), as in effect on February 6, 2019. [↑](#footnote-ref-10)
11. *See* OAR 581-021-0049(1), as in effect on February 26, 2019. It should be noted that the department did not have evidence on the district’s January 25th, 2019, final written report at the time that it accepted the appeal. However, the issuance of that report does not affect the grounds upon which the department accepted Parent’s appeal: failure to resolve a complaint within 90 days. *See* OAR 581-021-0049(1), as in effect on February 6, 2019. [↑](#footnote-ref-11)
12. 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-12)
13. 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-13)
14. OAR 581-021-0046(1). [↑](#footnote-ref-14)
15. ORS 659.850(1). Emphasis added. [↑](#footnote-ref-15)
16. To raise the matter on appeal, Parent would have to file a new appeal with the department, specifically raising this issue, giving the district an opportunity to respond to the allegation. [↑](#footnote-ref-16)
17. Even though the department finds that there is insufficient evidence to establish discrimination on the basis of events occurring in Student A’s 2018 music class, Teacher 7’s conduct may raise the issue of microaggression, particularly with respect to the teacher’s devolving relationship with Student A and the incident where she touched Student A’s arm. Microagression is

everyday verbal, nonverbal, and environmental slights, snubs, or insults, whether intentional or unintentional, which communicate hostile, derogatory, or negative messages to target persons based solely upon their marginalized group membership. In many cases, these hidden messages may invalidate the group identity or experiential reality of target persons, demean them on a personal or group level, communicate they are lesser human beings, suggest they do not belong with the majority group, threaten and intimidate, or relegate them to inferior status and treatment. (Derald Wing Sue, Ph.D., *Microagression: More Than Just Race*, [https://www.uua.org/files/pdf/m/microaggressions\_ by\_derald\_wing\_sue\_ph.d.\_.pdf](https://www.uua.org/files/pdf/m/microaggressions_%20by_derald_wing_sue_ph.d._.pdf) (last visited January 5, 2021)).

In this case, Teacher 7’s conduct may constitute hostile or negative messaging to Student A, suggesting that Student A did not belong to the majority group. However, the evidence is too scant to substantiate the existence of microagression in this instance. Nevertheless, the department encourages the district to evaluate whether microagression may have occurred and adopt policies or require training accordingly. [↑](#footnote-ref-17)
18. As with Student A’s 2018 music class, the conduct of Student A’s counselor may raise the issue of microaggression. There is insufficient evidence to establish that the counselor told Student A to “suck it up.” However, if Student A’s counselor made such a statement, the department would have to determine whether that statement constituted microagression. [↑](#footnote-ref-18)
19. To raise the matter on appeal, Parent would have to file a new appeal with the department, specifically raising this issue, giving the district an opportunity to respond to the allegation. [↑](#footnote-ref-19)