July 1, 2021

 **BY EMAIL**

REDACTED

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Superintendent Sue Rieke-Smith

Tigard-Tualatin School District 23

Larry Hibbard Administration Center

Tigard, Oregon 97223

Dear REDACTED and Superintendent Rieke-Smith:

This letter is the order on the April 19, 2021, appeal filed by REDACTED (Parent) alleging that Tigard-Tualatin School District 23 violated a Division 22 standard, codified at OAR 581-022-0103. To ensure compliance with Division 22 standards, the Oregon Department of Education reviews school district procedures and makes findings of fact to determine whether a violation occurred and what action, if any, should be taken.[[1]](#footnote-1)

**Appellate Procedures for Complaints Alleging Violation of a Division 22 Standard**

On appeal, Parent alleges that Tigard-Tualatin School District 23 improperly denied her daughter (Student) a diploma after completing all required credits for graduation during the 2019-2020 school year.

The Oregon Department of Education has jurisdiction to resolve this appeal under OAR 581-002-0003. When a person files with the department an appeal of a complaint alleging a violation of a Division 22 standard, the department will initiate an investigation to determine whether a violation of the standard may have occurred.[[2]](#footnote-2)

If the department determines that a violation of a Division 22 standard did not occur, the department must issue a final order as described in OAR 581-002-0017.[[3]](#footnote-3) The Director of the Oregon Department of Education may for good cause extend the time by which the department must issue an order.[[4]](#footnote-4)

If the department determines that a violation may have occurred, the department must issue a preliminary order to the complainant and the school district.[[5]](#footnote-5) The preliminary order must include a reference to the district decision that is on appeal, the procedural history of the appeal, the department’s preliminary findings of fact, and the department’s preliminary conclusions.[[6]](#footnote-6)

If the department issues a preliminary final order, the complainant and school district must attempt to reach an agreement on how to resolve the matter through conciliation.[[7]](#footnote-7) If conciliation fails, the department will issue a final order as described in OAR 581-002-0017.[[8]](#footnote-8) The final order must include a reference to the district decision that is on appeal, the procedural history of the appeal, the department’s findings of fact, the department’s conclusions, and a short explanation of any corrective action required by the school district.[[9]](#footnote-9)

In this appeal, the department has completed its investigation. This letter constitutes the department’s order as to whether a violation of a Division 22 standard may have occurred.

**PROCEDURAL BACKGROUND**

During the 2019-2020 school year, Parent alleged that Tigard Tualatin School District 23J improperly denied Student a diploma after completing all required credits for graduation.

On December 18, 2021, Tigard Tualatin School District 23J issued a written decision to Parent that it had not improperly denied Student a diploma. The district wrote, “A transcript review was completed for [Student] following receipt of the information that Kolbe Academy received Cognia accredidation on June 18, 2020, along with your request for [Student] to receive a Tigard-Tualatin School District . . . diploma.” The district also wrote that a “transcript review was completed, and based on that review, [Student] does not meet [the district’s] graduation requirements[.]” The district finally directed Parent to file an appeal with the Oregon Department of Education if she wanted to further pursue her cause of action: “If you so choose, the next step would be to appeal to the [department] as established under . . . OAR 581-002-0001 [to] 581-002-0023.”

The department accepted Parent’s appeal on April 19, 2021. The department accepted the appeal under OAR 581-002-0005(1)(a)(A), under which the department will accept a complaint on appeal if “[t]he complainant has exhausted the district’s complaint process.”

**PRELIMINARY FINDINGS OF FACT**

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

1. Student was scheduled to graduate in 2020.
2. From 2017 through 2019, Student attended a school providing online instruction, Kolbe Academy.
3. Kolbe Academy offers online courses, self-paced courses, and homeschool courses.
4. Kolbe Academy’s online courses and self-paced courses are accredited by Cognia, a third party accreditation program.
5. Kolbe Academy’s homeschool courses are not accredited by Cognia.
6. The district recognizes courses accredited by Cognia.
7. Student took the following online courses at Kolbe Academy: Latin 1, Latin 2, Intensive Composition, and Advanced Composition. For purposes of determining course work completed by Student, the district counted all of these courses toward credits needed for Student to graduate.
8. Student took several homeschool courses at Kolbe Academy. For purposes of determining course work completed by Student, the district did not count these courses toward credits needed for Student to graduate.
9. Upon evaluating Student’s Kolbe Academy transcript, the district determined that Student needed the following credits to graduate: two and a half credits of Science, two credits of Language Arts, one credit of Global Studies, one credit of Math, one credit of History, and a half credit of Health Education. Altogether, the district determined that Student needed eight credits to graduate.
10. Because the district did not count homeschool courses taken by Student at Kolbe Academy, Student did not meet the credit requirements necessary to graduate during the 2019-2020 school year.

**ANALYSIS**

Under ORS 327.006(7), a “standard school” is a school “meeting the standards set by the rules of the State Board of Education. Under ORS 327.103,

All school districts are presumed to maintain a standard school district until the school district has been found to be deficient by the [Oregon Department of Education], pursuant to standards and rules of the State Board of Education.

If any deficiencies are not corrected before the beginning of the school year next following the date of the finding of deficiency and if an extension has not been granted under subsection (3) of this section, the [department] may withhold portions of State School Fund moneys otherwise allocated to the school district for operating expenses until such deficiencies are corrected unless the withholding would create an undue hardship, as determined pursuant to rules of the State Board of Education.

Taken together, those two statues empower the State Board of Education to determine what type of education standards are mandatory, investigate complaints that school districts are deficient with respect to those mandatory standards, and require school districts to correct any deficiencies discovered during an investigation. When the board determines that a type of education standard is mandatory, the board codifies that standard in Oregon Administrative Rules chapter 581, division 022. These standards are called Division 22 standards.

For purposes of this appeal, the applicable law and rule are Executive Order 20-20 and OAR 581-022-0103.

Governor Brown issued Executive Order 20-20 on April 23, 2020, in response to the COVID-19 pandemic. Under the order,

Every public school must ensure the accessibility of learning to every student, as well as the delivery of services that promote student health, safety, and well-being. Action is required to ensure the continuity of high quality education, in a fair and equitable manner, while protecting public health and safety.

\* \* \* \* \*

The Oregon State Board of Education, in collaboration with the ODE, shall engage in any temporary rulemaking necessary to facilitate the directives in this Executive Order, and the ability of public schools to respond to the ongoing emergency. Rulemaking shall include, but not be limited to, amendment of the instructional time requirements of OAR 581-022-1620.

Pursuant to Execute Order 20-20, the State School Board adopted OAR 581-022-0103, modifying state standards required to graduate for purposes of the 2019-2020 school year. That rule provides, in pertinent part,

Each school district board and public charter school with jurisdiction over high school programs must award diplomas, modified diplomas, extended diplomas, or alternative certificates to students who were first enrolled in ninth grade in the 2016-2017 school year or earlier or were first enrolled in ninth grade in the 2017-2018 school year and had an early graduation plan approved before March 17, 2020, and fulfill the state requirements as described in this rule.

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To receive a regular diploma, students must earn a minimum of 24 credits to include at least:

(i) English Language Arts – 4 (must include the equivalent of one unit in Written Composition);

(ii) Mathematics – 3 (must include one unit at the Algebra I level and two units that are at a level higher than Algebra I);

(iii) Science – 3

(iv) Social Studies – 3 (including history, civics, geography and economics (including personal fiance);

(v) Health Education – 1;

(vi) Physical Education – 1;

(vii) Career and Technical Education, The Arts[,] or World Langauges – 3 (units must be earned in any one or a combination).

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A school district or public charter school must accept any credits earned by students qualified for the additional district credit requirements waiver in another school district or public charter school and must apply them toward the 24 Units of Credit Requirements for the diploma.[[10]](#footnote-10)

The rule also provides that

[a] school district or public charter school must grant required and elective credit towards the diploma or modified diploma provided the student earns the credit by meeting the requirements of one or more of the options described in this rule.

A school district or charter school may grant credit to a student if the student demonstrates defined levels of proficiency or mastery of recognized standards[.][[11]](#footnote-11)

Parent argues that under these provisions, the district must accept homeschool course credits, such as those earned by Student at Kolby Academy.

The district argues that OAR 581-022-0103 requires school districts to accept course credits taken at other “school districts and public charter schools,” and that school districts have the discretion to accept all other course credits, provided they accept those credits in accordance with certain guidelines.[[12]](#footnote-12)

The department agrees with the district. Under the plain meaning of OAR 581-022-0103, school districts are only required to accept course credits from other school districts or public charter schools. The district is not required to accept course credits earned through homeschooling. The rule plainly grants school districts the discretion to accept such credits, provided the courses meet certain guidelines established by the department.

The homeschool course credits earned by Student were not taken at a “school district” or “public charter school,” thus the district is not not required to accept them.

**CONCLUSION**

In conclusion, the Oregon Department of Education finds that Tigard-Tualatin School District 23J is not deficient by denying Student a diploma.

If you have any questions, please contact me.

Sincerely,



Mark Mayer, Complaint and Appeals Specialist

Office of the Director

Oregon Department of Education

Mark.Mayer@state.or.us

1. The administrative rules governing the Oregon Department of Education’s appeals process are OAR 581-002-0001 to 581-002-0023. [↑](#footnote-ref-1)
2. OAR 581-002-0009. [↑](#footnote-ref-2)
3. OAR 581-002-0009(3)(a)(B). [↑](#footnote-ref-3)
4. OAR 581-002-0009(3)(b). [↑](#footnote-ref-4)
5. OAR 581-002-0009(3)(a)(A). [↑](#footnote-ref-5)
6. *Id*. [↑](#footnote-ref-6)
7. OAR 581-002-0011. [↑](#footnote-ref-7)
8. OAR 581-002-0011(8). [↑](#footnote-ref-8)
9. OAR 581-002-0017(2). [↑](#footnote-ref-9)
10. OAR 581-022-0103(2)(a)(A) and (B). [↑](#footnote-ref-10)
11. OAR 581-022-0103 (3)(a) and (b). [↑](#footnote-ref-11)
12. *See* OAR 581-022-0103(b)(A), (B), (C), (D), and (E). [↑](#footnote-ref-12)