Oregon
John A. Kitzhaber, MD, Governor

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Kate Pattison, Program Analyst
Office of the Deputy Superintendent
Oregon Department of Education
225 Capitol St NE
Salem, OR 97310

Dear Ms. Pattison:

This is in response to your correspondence dated December 23, 2014 regarding the application of Oregon Government Ethics law to priority charter school admission for dependents of public charter school employees.

STATED FACTS: In Oregon, a public charter school is a comprehensive public school operated by parents, teachers, and community members, under the governance of a nonprofit charter school board and the sponsoring local school district board (or on appeal, the State Board of Education). Each charter school is accountable to its sponsoring district or agency. The sponsor is responsible for oversight of the charter school as a public school.

Most charter school employees are employed by the nonprofit charter school board of directors, but some charter schools employ staff through a contract with the sponsoring district and those employees are technically employees of the local school district.

Public charter schools may only limit enrollment by age or grade. If a charter school receives more applications than spots available, the charter school must select students through an equitable lottery process. Charter schools that have been operating for at least one year are allowed to give priority admission to certain students based on other factors such as their own, or their sibling's, prior enrollment in the school. Students who reside in the district where the charter school is located, in a district that sponsors the charter school, or in a district that has a cooperative agreement with the charter school, have priority admission over nonresident students. [ORS 338.125(3)]

Public charter school boards may not charge tuition for any students who are residents of Oregon for attendance at the regular school program. In contrast, traditional district school boards may assess tuition to nonresident students.

The State Board of Education may waive any charter school provision in ORS Chapter 338 upon application of a public charter school if the waiver meets certain criteria. The State Board of Education has historically approved waivers allowing charter schools to also provide priority admission for a small percentage of students if their parent or legal guardian is an employee of the charter school. [ORS 338.025(2)]

QUESTION: Depending on how it is administered, does the acceptance by a charter school employee of priority admission for their relative or household member student (student), when priority admission would not otherwise be available but for their status as a public charter school employee, place the employee at risk of violating ORS 244.040?

ANSWER: Yes. As public officials, public charter school employees are subject to the limits and restrictions in ORS Chapter 244. ORS 244.040(1) prohibits public officials from using or attempting to use their official position to obtain a financial benefit or avoid a financial detriment for themselves or their relatives or household members, if the financial benefit would not otherwise be available but for the holding of their official position.

An official compensation package means the wages and other benefits provided to the public official. These wages and benefits must be specifically approved by the public body in a formal manner, such as through a union contract, an employment contract, or other adopted personnel policies that apply generally to employees or other public officials. [ORS 244.040(2)(a) and OAR 199-005-0035]

If priority charter school admission for the employee's student were administered as part of a charter school employee's official compensation package, the employee would not be prohibited from accepting it. Similarly, if an employee's student received priority admission on the same basis as any other student, due to one of the factors outlined above such as a sibling's prior enrollment or through a lottery process, the employee would not be prohibited by ORS 244.040(1) from accepting it.

If the public body that the charter school employee serves does not administer the priority admission as part of an official compensation package, and priority admission is only available to the student because their parent or guardian is a charter school employee, the acceptance of priority enrollment would place the charter school employee at risk of violating ORS 244.040(1) because priority admission may result in a financial benefit or the avoidance of a financial detriment. In such circumstances, each charter school employee would have to assess their own unique circumstances to determine whether their student's priority admission to the public charter school where they are employed would have a financial impact on them or their student. Possible financial impacts may include the avoidance of nonresident tuition, daycare costs, or transportation costs.

Thank you for your inquiry. The staff of the Commission is always available to answer questions and assist individual public officials concerning the application of Oregon Government Ethics law to their particular circumstances. If you have any further questions, please feel free to contact me directly.

Sincerely,

Ronald A. Bersin
Executive Director

RAB/dg

*****DISCLAIMER*****
This staff advice is provided under the authority given in ORS 244.284(1). This opinion offers guidance on how Oregon Government Ethics law may apply to the specific facts described in your request. This opinion is based on my understanding and analysis of the specific circumstances you described and should not be applied to circumstances that differ from those discussed in this request.