

INSTRUCTIONS:
File the **original and three copies** of the complaint and all attachments and the **\$300** filing fee with the Board at:

528 Cottage St NE,
Suite 400
Salem, Oregon
97301-3807
Phone 503-378-3807

**STATE OF OREGON
EMPLOYMENT RELATIONS BOARD**

For Board Use Only

Case No. UP-27-16

**UNFAIR LABOR PRACTICE
COMPLAINT
Public Employment**

RECEIVED

Date Filed 8-19-16

AUG 19 2016

EMPLOYMENT
RELATIONS BOARD

<p>COMPLAINANT Name, address, phone number, and e-mail address</p> <p>Oregon School Employees Association c/o Margaret Kirschnick Tedesco Law Group 12780 SE Stark Street Portland, OR 97233 866-697-6015 x705 margaret@miketlaw.com</p>	<p>COMPLAINANT'S REPRESENTATIVE Name, address, phone number, and e-mail address, if applicable</p> <p>Margaret Kirschnick Tedesco Law Group 12780 SE Stark Street Portland, OR 97233 866-697-6015 x705 margaret@miketlaw.com</p>
<p>RESPONDENT Name, address, phone number, and e-mail address</p> <p>South Coast Education Service District 1350 Teakwood Coos Bay, OR 97420 (541) 269-1611</p>	<p>RESPONDENT'S REPRESENTATIVE Name, address, phone number, and e-mail address, if applicable</p> <p>Tenneal Weatherell, Superintendent South Coast ESD 1350 Teakwood Coos Bay, OR 97420</p>

Complainant alleges that Respondent has committed an unfair labor practice under ORS 243.672(1)(e) of the Public Employee Collective Bargaining Act. The following is a clear and concise statement of the facts involved in each alleged violation, followed by a specific reference to the section and subsection of the law allegedly violated.

1.

Complainant Oregon School Employees Association (“OSEA” or “the Association”) is a labor organization as defined in ORS 243.650(13). OSEA is the exclusive representative of classified school employees employed by Respondent.

2.

Respondent South Coast Education Service District (“the District”) is a public employer as defined in ORS 243.650(20).

3.

OSEA and the District are signatories to a collective bargaining agreement that expires on June 30, 2017.

4.

The District employs bargaining unit members as Instructional Assistants (IAs) in Sunset Middle School’s Adaptive Life Skills classroom. The Adaptive Life Skills classroom serves students with significant disabilities.

5.

During the 2015-2016 school year a student (“S”) began injuring bargaining unit members, other students, and teachers in the Adaptive Life Skills classroom.

6.

On February 23, 2016, S injured IA Tracie Fisher’s leg. Ms. Fisher left work and required medical attention. The incident was reported to the District.

7.

On March 30, 2016, S injured IA Sherri Lester, who required medical attention. The incident was reported to the District.

8.

On April 11, 2016, the District received notice of a complaint filed with OSHA regarding a “combative student” and the District’s failure to take corrective action. In its response to OSHA on April 22, 2016, the District stated that it would require staff to wear “bite-pro” sweatshirts, chest protectors, and shin guards, in addition to giving staff additional training. OSEA was not provided with a copy of the District’s April 22 response to the OSHA complaint and learned about its contents for the first time in July 2016. A copy of OSHA’s April 11, 2016 letter to the District is attached hereto as Exhibit 1.

9.

On April 26, 2016, Kathleen Stauff, the District’s administrator in charge of the Adaptive Life Skills classroom, emailed OSEA Field Representative Tyler Whitmire and told him that she had purchased protective equipment for staff to wear in the Adaptive Life Skills classroom. She also indicated that the District had created a Staff Response Plan for how bargaining unit members should respond to S’s “aggressive behavior.” Ms. Stauff asked Mr. Whitmire to attend a meeting two days later, on April 28, 2016, when she planned to meet with bargaining unit members, distribute the new equipment, and go over her “expectations for wearing it.” Ms. Stauff explained that she wanted Mr. Whitmire present so that bargaining unit members would understand that if they are not wearing the equipment or following the plan, the District would issue progressive discipline. Mr. Whitmire responded that he was not available at the proposed time, and told Ms. Stauff, “before we implement changes to the working requirements I will need to make sure that this does not constitute a mandatory subject of bargaining.” A copy of the correspondence between Ms. Stauff and Mr. Whitmire is attached hereto as Exhibit 2.

10.

On April 31, 2016, S injured teacher Kevin Gowrylow, IA Sherri Lester, and IA Joanna Johnson by hitting and head-butting them. One of the IAs sought medical attention. The incident was reported to the District.

11.

On May 6, 2016, without Mr. Whitmire's knowledge, the District distributed bite-proof sweatshirts, torso protectors, and shin guards (known as Personal Protection Equipment, or "PPE") to bargaining unit members in the Adaptive Life Skills classroom. In addition, the District trained staff on a new Staff Response Plan for dealing with S's violent behavior. The Staff Response Plan addressed the following behaviors: pinching, scratching, hitting, kicking, choking, hair pulling, pushing, head-butting and punching. The District required staff to sign an acknowledgement form stating, "I understand that failure to wear the PPEs and follow the Staff Response Plan may result in disciplinary action." The District further required staff to sign an Equipment Loan Agreement that contained a provision waiving the district's liability for any "injury, loss of life, and/or damage to property resulting directly or indirectly from the use of [the district's] equipment." A copy of the Staff Response Plan and acknowledgement form are attached hereto as Exhibit 3. Copies of the Equipment Loan Agreements are attached hereto as Exhibit 4.

12.

On May 25, 2016, S broke a window in the classroom. IA Johnson took S outside to avoid the broken glass. While outside, S attacked Ms. Johnson and hit, punched, pinched, kicked, head-butted, pushed, scratched, and choked her until Ms. Johnson's face turned purple. Ms. Johnson reported the incident to the District.

13.

On May 27, 2016, on behalf of OSEA, Mr. Whitmire demanded to bargain over safety issues in the Adaptive Life Skills classroom that have a direct and substantial effect on the on-the-job safety of employees, pursuant to ORS 243.657(7)(g). Specifically, Mr. Whitmire demanded to bargain over the unsafe workplace created by S and the District's responses to the unsafe workplace. Mr. Whitmire also requested information related to the employees S had injured during the past academic year. Specifically, Mr. Whitmire requested incident reports from the incidents that resulted in injuries to members and contact information for the employees involved. A copy of Mr. Whitmire's demand to bargain and information request is attached hereto as Exhibit 5.

14.

On May 30, 2016, S returned to school. Staff observed S urinating on the floor. When staff attempted to stop S, S jumped on another student and choked her. On June 6, 2016, S attacked the same student. The incident was reported to the District.

15.

On June 9, 2016, Mr. Whitmire repeated his demand to bargain and request for information. He described the safety-related topics that OSEA wanted to address in bargaining as "including, but not limited to: practices and procedures to ensure the safety of our members on the job, such as proper training for members on physical restraints, protocols for reporting and follow-up action; * * * establishing [a] process for addressing student behavior to prevent it from happening, including notification to parents, discipline, removal from classroom, individualized training/protocols/procedures for handling this student and methods/practices for prevention;

emergency measures, including safety buttons/notifications from classroom; follow-up investigation and complaint procedures for bringing this issue to the school board.” Mr. Whitmire also requested incident reports and contact information for the employee injured on May 25, 2016 and three witnesses. In addition, Whitmire repeated his May 27, 2016 request for information. A copy of Mr. Whitmire’s email is attached hereto as Exhibit 6.

16.

On June 9, 2016, OSHA informed the District of another complaint regarding violence in the Adaptive Life Skills classroom. A copy of OSHA’s June 9, 2016 letter to the district is attached hereto as Exhibit 7.

17.

On June 15, 2016, the District, through Superintendent Wetherell, refused to bargain with OSEA over safety issues in the Adaptive Life Skills classroom and refused to provide OSEA with the information that OSEA had requested related to on-the-job injuries suffered by bargaining unit members in the classroom. The District’s refusal to bargain and provide information is attached hereto as Exhibit 8.

18.

On July 11, 2016, Mr. Whitmire responded to the District’s June 15, 2016 refusal to bargain and produce information. In that response, Mr. Whitmire explained that the District was obligated to bargain over the safety issues in the Adaptive Life Skills classroom because, under ORS 243.650(7)(g), OSEA has the right to bargain over issues that substantially and directly impact on-the-job safety. Mr. Whitmire cited several changes to the status quo that required impact bargaining: the District’s failure to take appropriate action to protect employees from a dangerously violent student, the District’s decision not to remove the student to a more

appropriate setting, not to implement a behavioral support plan that complies with District policy, and not to conduct a behavioral intervention that complies with District policy. Further, Mr. Whitmire pointed to the District's admission that it changed the status quo when it began requiring bargaining unit members to wear protective gear and introduced the Staff Response Plan. Mr. Whitmire also explained that the District was required to provide the requested information because the duty to bargain in good faith "includes the duty to provide information, if the information requested is 'of probable or potential relevance to a grievance or other contractual matter' or is 'reasonably necessary to allow meaningful bargaining.'" Mr. Whitmire explained that the information requested by OSEA is necessary for meaningful bargaining. While OSEA continued to demand the information under the PECBA, Whitmire also requested information pursuant to Oregon Public Records law. A copy of Mr. Whitmire's letter is attached hereto as Exhibit 9.

19.

The District, through Superintendent Wetherell, responded to Mr. Whitmire's July 11, 2016 letter on July 21, 2016. The District again refused to bargain. The District produced some, but not all, of the information requested by Mr. Whitmire, but only agreed to produce the information pursuant to Oregon's Public Records Law – not the PECBA. A copy of the District's July 11, 2016 refusal to bargain is attached hereto as Exhibit 10.

Count 1

(1)(e) The District refused to bargain with OSEA over safety issues that have a direct and substantial effect on the on-the-job safety of employees.

20.

Paragraphs 1- 19 are re-alleged as if fully set forth herein.

21.

OSEA has the right to bargain over safety issues that have a direct and substantial effect on the on-the-job safety of employees. ORS 243.650(7)(g).

22.

In its June 15 and July 21, 2016 letters, the District, through Superintendent Wetherell, refused to bargain with OSEA over safety issues that have a direct and substantial effect on the on-the-job safety of employees. S's pattern of severe classroom violence, including pinching, scratching, hitting, kicking, choking, hair pulling, pushing, head-butting and punching, and the District's failure to take preventative measures to prevent injuries to employees, including but not limited to removing S from the classroom, all have a direct and substantial effect on the on-the-job safety of employees. The District violated ORS 243.672(1)(e) when it refused to bargain over safety issues in the Adaptive Life Skills classroom.

Count 2

1(e) The District unilaterally implemented changes that have a direct and substantial effect on the on-the-job safety of employees and that impact employee discipline and job security without bargaining.

23.

Paragraphs 1- 19 are re-alleged as if fully set forth herein.

24.

The District is obligated to bargain with OSEA before implementing changes in working conditions that have a direct and substantial effect on the on-the-job safety of employees. ORS 243.650(7)(g); *See, e.g., District Council of Trade Unions v. City of Portland*, Case No. UP-023-14, 26 PECBR 525, 538 (2015) (City's decision to install GPS devices into vehicles driven by Water Bureau employees had "an impact on employee safety that [was] sufficiently direct and

substantial to require impact bargaining”). The District is also obligated to bargain with OSEA before implementing changes in working conditions that impact employee discipline and job security. ORS 243.650(7)(a); *Portland Fire Fighters Ass’n, Local 43 v. City of Portland*, 16 PECBR 245, 250-52 (1995).

25.

On May 6, 2016, the District met with bargaining unit members to distribute safety equipment and introduce changes to safety protocols for dealing with S’s violent behavior. Bargaining unit members were required to sign a form acknowledging that they would be subject to discipline, up to and including termination, for failure to wear safety equipment or comply with the new protocols. The District’s introduction of safety equipment and changes to response protocols have a direct and substantial impact on employee safety. The District’s requirement that employees utilize the equipment and response protocols, subject to discipline up to and including termination, impacts employee discipline and job security. The District unilaterally implemented these changes without bargaining with OSEA, in violation of ORS 243.672(1)(e).

Count 3

(1)(e) The District refused to provide information to OSEA.

26.

Paragraphs 1-19 are re-alleged as if fully set forth herein.

27.

The District must provide OSEA with information if the information sought is reasonably necessary to allow meaningful bargaining. *Washington County School Dist. No. 48 v. Beaverton Education Ass’n*, 5 PECBR 4398, 4405 (1981).

28.

On May 27, June 9, and July 11, 2016, OSEA requested information that was necessary for to allow for meaningful bargaining. Mr. Whitmire requested incident reports and contact information for employees injured by S. The District has a duty to provide this information because it is under a duty to bargain both issues that have a direct and substantial impact on job safety and issues pertaining to employee discipline and job security. This information was reasonably necessary for OSEA to assess the extent and nature of the safety risk posed by S, evaluate the current protocols in place, and develop bargaining proposals to protect members.

29.

On June 15 and July 21, 2016, the District refused to provide the requested information under the PECBA. The District eventually agreed to provide some, but not all of the information requested, but only pursuant to Oregon's Public Records Law, not the PECBA. By refusing to provide information pursuant to the PECBA, the District violated ORS 243.672(1)(e).

30.

The District maintains e-mail addresses for all Association members and routinely uses its e-mail system to communicate with members about job-related matters.

WHEREFORE, the Association requests an order:

- A. Finding that the District violated ORS 243.672(1)(e).
- B. Requiring the District to cease and desist from making unilateral changes that concern or impact mandatory bargaining subjects, return to the status quo, and bargain in good faith with OSEA over any changes that concern or impact mandatory bargaining subjects.
- C. Making whole any employees who have suffered an economic or noneconomic loss as a result of the District's unlawful conduct;
- D. Requiring the District to post notices for a reasonable period of time and in noticeable places in the District stating that the District has been found in violation of the PECBA and requiring the District to cease and desist from such conduct in the future. This requirement for posting should include e-mail notification to all Association members through the District's e-mail system;
- E. Reimbursing the Association's filing fee under OAR 115-035-0075(3);
- F. Awarding the Association its reasonable representation costs and attorney fees under ORS 243.676(2)(d) and OAR 115-035-0055; and
- G. Awarding any other relief deemed just and equitable by the Board.

I certify that the statements in this complaint are true to the best of my knowledge and information.

By: Margaret Kirschnick
Margaret Kirschnick, Tedesco Law Group
Attorney for Complainant 8/18/16
Title Date



Oregon

Kate Brown, Governor

Department of Consumer and Business Services
Oregon Occupational Safety & Health Division (OR-OSHA)

April 11, 2016

COPY

Coos Bay SD #9
PO Box 509
Coos Bay, OR 97420

RE: Complaint No: 209423943

On April 07, 2016, the Oregon Occupational Safety and Health Division (OR-OSHA) received notice of safety and/or health hazard(s) at 245 S Cammann Street, Coos Bay, Oregon. The specific nature of the alleged hazard(s) is as follows:

Teachers at the Sunset Middle School/E. S. D. have been injured by a combative student. The student continues to harm others and no corrective action has been taken to correct the behavior. Management staff is aware of the condition. The E. S. D. building is located in a portable building outside of the main school, adjacent to the track field.

It has not been determined whether the alleged hazard(s) exist at your worksite. No inspection is planned at this time. However, we request that you investigate the alleged hazards and make corrections or modifications. Please respond in writing the results of your investigation, no later than ten (10) working days from receipt of this letter, indicating actions taken, corrections made or that no hazard existed. Please provide supporting documentation, such as applicable measurements, monitoring results, photographs, etc., which you believe would be helpful. We encourage employee participation in investigating and responding to the alleged hazards. It is OR-OSHA's goal to assure hazards are promptly identified and eliminated. If we do not receive a response, an inspection will likely be conducted.

Oregon law also requires that your workers compensation insurance carrier provide consultative services. We encourage you to utilize these services for hazard correction. By copy of this letter, we are advising them of your possible need for their services.

The complainant has been furnished a copy of this letter and will be provided a copy of your response. ORS 654.062(4) of the OSEA provides protection for employees against discrimination because of their involvement in protected safety and health activity.

Ex. 1 1/2

Page 2
Coos County School District #9
Sunset Middle School
Complaint No. 209423943

If you have any questions concerning this matter, please contact me at 541-776-6030. Your personal support and interest in the safety and health of your employees is appreciated.



Chuck McFarland
Enforcement Manager
OR-OSHA Medford Field Office
1840 Barnett Road, Suite D
Medford, OR 97504
541-776-6030
chuck.d.mcfarland@oregon.gov

cc: Central Files
Field Office Files
SAIF Corporation
Sunset Middle School

>>> Tyler Whitmire <tyler@osea.org> 4/26/2016 8:00 PM >>>

Thank you for being proactive with this issue. Unfortunately I will not be able to make a meeting on Thursday at three. I will be on the road between Salem and Coos Bay. What is the location of your school? Knowing that will help me identify some available times.

I know this is a pain but before we implement changes to the working requirements I will need to make sure that this does not constitute a mandatory subject of bargaining. I know this was triggered by an OSHA complaint and I want to help you become compliant. But I don't want to assume that this was the job they signed up for.

So that we can resolve this as quick as possible Please send me:

1. the job descriptions for the employees.
2. a record showing that the required trainings have been completed for working with these students and for using this equipment.
3. A list of all the employees with their contact information.

I look forward to meeting you,

Tyler P Whitmire
OSEA Field Rep
[541-404-7191](tel:541-404-7191)
Tyler@osea.org

Mobile Response- please excuse grammar.

On Tue, Apr 26, 2016 at 6:42 PM -0700, "Kathleen Stauff" <KathleenS@scesd.k12.or.us> wrote:

Hi Tyler,

My name is Kathleen and I am an administrator at South Coast ESD and responsible for the Adaptive Life Skills Program. As I understand it, our superintendent, Tenneal Wetherell, reached out to you in respects to our life skills classroom at Sunset getting another OSHA complaint. I have purchased all the additional protective equipment for staff and have written a staff response plan for helping them with how to respond to the student when exhibiting aggressive behavior. I would like to meet with the staff on Thursday afternoon to give them the protective equipment, go over my expectations for wearing it, and review the staff response plan. I would like to have you present so that they have representation there to help them to understand that if they are not wearing the equipment or following the plan, we will start the progressive discipline process with them.

Would you happen to be available Thursday at 3 to meet with myself and the staff? I apologize for the short notice, but we have received all the equipment and want to get it in the classroom asap to keep from any further potential hazards that could surface.

Thanks for you consideration,
Kathleen

2/2

Staff Response Plan for

Background Information

is a student with an Autism Spectrum Disorder. is identified as a student who leaves designated areas without permission, and has a safety plan in place to address this. She looks for opportunities to run and could run from staff/activity/tasks at any given point. She can exhibit self-injurious behavior, but also will aggress towards staff and students when she becomes upset, frustrated, or when her anxiety is high. When this happens, she can exhibit the following behaviors:

- Pinching
- Scratching
- Hitting
- Kicking
- Choking
- Hair pulling
- Pushing
- Head-butting
- Punching

needs consistency in the staff's response in order to help minimize the above behaviors and to create an environment where she, staff, and other students can be successful in teaching and learning. the past six months, has been working consistently with a specific staff member 1:1. During this time, the data shows that when she is working with this particular staff member, there has been a decrease in the behavior.

Given this, a Staff Response Plan has been created to help staff in consistently interacting with in order to increase staff safety in the classroom. It is the expectation of the program's director that staff interact with in the same manner as outlined in the following plan.

Communication/Establishing Hands to Self

is primarily non-verbal however, receptively understands what is said to her. The parent would like her to use sign language paired with verbal words or approximations. needs to be taught how to use her "words" to get what she wants rather than using one of the above behaviors. Staff must all interact with her the same and use the following common phrases/strategies and pair with sign language.

- Obtain eye contact when talking to . You need to make sure that you have her attention before starting to talk to her.
- You need to be close to when talking to her, but once you have said what needs to be said, move away and put space between you and her.
- Use a voice that is flat, but firm. seeks a heightened response from staff. You need to not have any kind of reaction to her behavior, rather keep calm and tell her the expectations.
- Establish that cannot touch you. This means any and all touch (soft, nice, hard, mean). Tell "You cannot touch me." If she does make contact with you, tell her, "you cannot touch me." You must be consistent and repeat every time she touches you.
- If she comes up to you in the classroom, you need to look at her and tell her, "you cannot touch me."
- It is important to model for : how to use her words. If working with her at table or when she is sitting in a chair, encourage her to ask for help. Once she does, tell , "hands in lap" and only approach her once she has done so.
- If she moves her hands before you are done helping her, stop, back away and prompted her to ask for help. Once she does, repeat telling her "hands in lap" and only approach her once she has done so.
- If : comes up to you in the classroom and wants help with something, model for her how to use her words. Tell her, "I want..." Once she tells you what she wants, tell her "wait" while you get what it is she needs.

- If _____ comes up to you in the classroom and wants something that she cannot have, model for her how to use her words. Tell her, "hands down." Remain consistent with this prompt and maintain a calm, flat voice when responding.

Communication/Swing Set up

_____ enjoys the swing in the classroom and will often go to it. She will often go to it on her own and grab the swing and throw it on the mat. When she does this, staff needs to respond in the same way and use the following phrases/steps.

- Staff needs to model for _____ how to use her words. Staff need to look at her and say, "Put it back and ask for swing."
- Once _____ puts the swing back, prompted her to say, "I want swing please." After she makes the request, tell her to "sit and wait." Make sure she has sat down a safe distance away before getting the swing and setting it up.
- If she gets up while staff member is setting up the swing, put the swing away and have her ask again, "I want swing please."
- After she makes the request, tell her to "sit and wait." Make sure she has sat down a safe distance away before getting the swing and setting it up.

Physical Proximity/Body Placement

_____ has a safety plan that outlines what staff need to do in order to respond to _____ escaping behavior. She has decreased in the area of running, however, will still leave designated areas. When she does this, it is often that she is seeking and adult, and sometimes another student, to exhibit one of the behaviors listed earlier in this plan. _____ has a staff member who is assigned to her that has eyes on and is within arms-reach of her.

At the same time, _____ needs some space from staff to help with minimizing the unwanted behavior. Staff should be VERY aware of where she is in the room as well as where they are when working with her. ALWAYS be thinking about how to place your body where it is most safe.

- When walking with _____ staff need to keep distance between them and her. Make sure that you are scanning the environment for possible doorways, exits, etc that she could dart for.
- Walk diagonally behind her. Place yourself on the side of her where there is a potential open doorway she could escape to.
- When getting close to the open doorway, step towards the doorway to become a barrier to her being able to possibly go through.
- When working with _____ at a table activity (work stations, computer lab, etc), stand back behind her where she cannot reach you. If she needs help, encourage her to ask for help. Once she does, tell _____, "hands in lap" and only approach her once she has done so.
- If you are not the assigned staff member working with _____ and she comes up to you in an attempt to touch you, use approved OIS deflections.
- Remind her that she cannot touch you. Tell her, "_____, you cannot touch me." You must be consistent and repeat every time she touches you.

Expectations for use of PPEs

In the past couple of months, staff have been injured while in the classroom resulting in 801s. On April 14, 2016, South Coast ESD received an OSHA complaint that stated:

Teachers at Sunset Middle School/ESD have been injured by a combative student. The student continues to harm others and no corrective action has been taken to correct the behavior. Management staff are aware of the condition. The ESD building is located in a portable building the main school, adjacent to the track field.

Coos Bay School District and South Coast ESD conducted an investigation in order to respond to the OSHA complaint. Upon completion of the investigation, the program purchased additional PPEs for staff to wear in order to add some protection from the behavior exhibited by the student. The following are the expectations of the program's director that staff follow.

- Staff will wear shin guards each day in order to protect themselves from the kicking that could occur from the student. These should be worn under your clothing.
- Staff will wear a protective vest each day in order to add a layer of protection to their torso area. This is to be worn under your clothing.
- Staff will wear the protective sweatshirt over their clothing and vest to add an additional layer of protection to the torso area as well as to their arms.
- These items are to be worn by all staff in the classroom location every day.
- These items are to be worn at all times during student contact hours in order to be in compliance with the programs response to the OSHA complaint filed.
- Incident reports will be written and submitted on all behavior incidents.
- If staff are injured, they are to report it to the department secretary immediately and complete an incident report to be turned into the ALS office.
- Staff will continue to keep daily data on the list of behavior exhibited by the student. They should report daily to the department secretary the total number of contacts made for data tracking.
- Regular monitoring of the student's behavior and staff safety will be provided.

Staff Acknowledgement

I have been provided training on the Staff Response Plan and understand my responsibilities for following it.

I understand that wearing the PPEs provided by the department is my responsibility to keep myself safe while in the classroom.

I understand that failure to wear the PPEs and follow the Staff Response Plan may result in disciplinary action.

If at any time I have questions about the Staff Response Plan, I will ask the teacher or the program director for clarification and direction.

By signing below, I am agreeing to the above statements.

Staff Member's Name

Signature

Date

Kevin Gowrylow

[Signature]

5/6

Stephanie Bradbury

Stephanie Bradbury

5/6/16

Joanna Johnson

Joanna Johnson

5/6/16

MARIK Libby

Marik Libby

5/6/16

Connie Waits

Connie Waits

5/6/16



South Coast ESD

1350 Teakwood Avenue
Coos Bay, OR 97420
Phone: 541-266-3981
Fax: 541-269-4548
WWW5Cesd.k12.or.us

Equipment Loan Agreement

This Agreement is between the Parent, School District, or Staff who borrows equipment listed below and South Coast ESD property. (see back for agreement terms / guidelines)

The Borrower shall indemnify and hold harmless SCESD, its agents, and employees from and against all claims, suits, actions, damages, or causes arising from personal injury, loss of life, and/or damage to property resulting directly or indirectly from the use of SCESD equipment.

Alicia Vique
Borrower: Parent School District Staff Driver's License No.

Street Address City State Zip

Phone Cell Work

Alicia Vique
Borrower: Signature Printed Name Date

Alicia Vique
SCESD Representative Signature Printed Name Date

EQUIPMENT

Item:

1st Aid Kit
Item Description Manufacturer Model Serial No.

SCESD Tag No. Department Tag No.

1/1/15 *Good* *1/1/15* *Good*
Date Out Condition Date In Condition

Replacement Value: _____

Reason for use:
PPE equipment for Budget Classroom

EX.4 1/67



South Coast ESD

1350 Teakwood Avenue
Coos Bay, OR 97420
Phone: 541-269-3981
Fax: 541-269-4548
www5cesd.k12.or.us

Equipment Loan Agreement

This Agreement is between the Parent, School District, or Staff who borrows equipment listed below and South Coast BSD property. (see back for agreement terms / guidelines)

The Borrower shall indemnify and hold harmless SCESD, its agents, and employees from and against all claims, suits, actions, damages, or causes arising from personal injury, loss of life, and/or damage to property resulting directly or indirectly from the use of SCESD equipment.

Kevin Gowrylow
Borrower: Parent School District Staff Driver's License No.

Street Address City State Zip

Phone Cell Work

[Signature] Kevin Gowrylow 5/6/16
Borrower: Signature Printed Name Date

Kathleen Stueff
SCESD Representative Signature Printed Name Date

EQUIPMENT

Item:

Bite Pro Sweatshirt Large
Item Description Manufacturer Model Serial No.

Vest Shin guards
SCESD Tag No. Department Tag No.

5.6.16 new
Date Out Condition Date In Condition

Replacement Value: _____

Reason for use:

PPE for Bunkit Classroom
Equipment

2/16



South Coast ESD

1350 Teakwood Avenue
Coos Bay, OR 97420
Phone: 541-266-3981
Fax: 541-269-4548
WWW5Cesd.k 12.or.us

Equipment Loan Agreement

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The Borrower shall indemnify and hold harmless SCESD, its agents, and employees from and against all claims, suits, actions, damages, or causes arising from personal injury, loss of life, and/or damage to property resulting directly or indirectly from the use of SCESD equipment.

Joanna Raymer
Borrower: Parent School District Staff Driver's License No.

Street Address City State Zip

Phone Cell Work

Joanna Raymer
Borrower: Signature Printed Name Date

Kathleen Stutz
SCESD Representative Signature Printed Name Date

EQUIPMENT

Item:

Bite Pro Sweetshirt Small
Item Description Manufacturer Model Serial No.

Vest skin guards
SCESD Tag No. Department Tag No.

5.6.16 new
Date Out Condition Date In Condition

Replacement Value: _____

Reason for use:

PPE Equipment for Burdett Classroom



South Coast ESD

1350 Teakwood Avenue
Coos Bay, OR 97420
Phone: 541-266-3981
Fax: 641-269-4548
WWW5Cesd.k 12.or.us

Equipment Loan Agreement

This Agreement is between the Parent, School District, or Staff who borrows equipment listed below and South Coast ESD property. (see back for agreement terms / guidelines)

The Borrower shall indemnify and hold harmless SCBSD, its agents, and employees from and against all claims, suits, actions, damages, or causes arising from personal injury, loss of life, and/or damage to property resulting directly or indirectly from the use of SCBSD equipment.

Borrower: Parent School District Staff Driver's License No.

Street Address City State Zip

Phone Cell Work

Mark Libby Printed Name Date 5.6.16

Kathleen Stutz SCBSD Representative Signature Printed Name Date 5.6.16

EQUIPMENT

Item:

Bite Pro - Sweatshirt X-large Item Description Manufacturer Model Serial No.

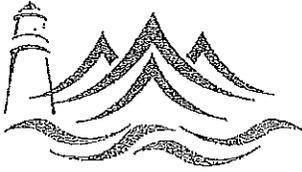
Vest skin guards ~~lg~~ - extra lg SCBSD Tag No. Department Tag No.

5.6.16 new Date Out Condition Date In Condition

Replacement Value: _____

Reason for use: PPE equipment for Bursar Classroom

4/17



South Coast ESD

1350 Teakwood Avenue
Coos Bay, OR 97420
Phone: 541-266-3981
Fax: 541-269-4548
WWW5Cesd.k 12.or.us

Equipment Loan Agreement

This Agreement is between the Parent, School District, or Staff who borrows equipment listed below and South Coast ESD property. (see back for agreement terms / guidelines)

The Borrower shall indemnify and hold harmless SCESD, its agents, and employees from and against all claims, suits, actions, damages, or causes arising from personal injury, loss of life, and/or damage to property resulting directly or indirectly from the use of SCESD equipment.

Borrower: Parent School District Staff ~~Small~~ Driver's License No.

Street Address _____ City _____ State _____ Zip _____

Phone _____ Cell _____ Work _____

Stephanie Bradbury _____ *5.6.16* _____
Borrower: Signature Printed Name Date

Kathleen Stutz _____ *5.6.16* _____
SCESD Representative Signature Printed Name Date

EQUIPMENT

Item:

Bite Pro Sweatshirt _____ ~~Medium~~ *Small* _____
Item Description Manufacturer Model Serial No.

Vest _____ *shin guards* _____ *medium* _____
SCESD Tag No. Department Tag No.

5.6.16 _____ *new* _____ _____
Date Out Condition Date In Condition

Replacement Value: _____

Reason for use: *PPE equipment for Sunset Classroom*

5/16/16



South Coast ESD

1350 Teakwood Avenue
Coos Bay, OR 97420
Phone: 541-266-3981
Fax: 541-269-4548
www.scesd.k12.or.us

Equipment Loan Agreement

This Agreement is between the Parent, School District, or Staff who borrows equipment listed below and South Coast ESD property. (see back for agreement terms / guidelines)

The Borrower shall indemnify and hold harmless SCESED, its agents, and employees from and against all claims, suits, actions, damages, or causes arising from personal injury, loss of life, and/or damage to property resulting directly or indirectly from the use of SCESED equipment.

Ainger Oaks
Borrower: Parent School District Staff Driver's License No.

Street Address City State Zip

Phone Cell Work

Borrower Signature Printed Name Date
Barbara Buckley Barbara Buckley 6/1/17
SCESED Representative Signature Printed Name Date

EQUIPMENT

Item:

Blue Polo sweatshirt dx
Item Description Manufacturer Model Serial No.

Vest Shinguard XL
SCESED Tag No. Department Tag No.

6/1/17 Now
Date Out Condition Date In Condition

Replacement Value: _____

Reason for use:

PPE equipment for sunset classroom

EX-4 7/1/17

Trevor R. Caldwell

From: Tyler Whitmire <tyler@osea.org>
Sent: Friday, May 27, 2016 3:25 PM
To: Tenneal Wetherell
Cc: Ron Nance; Sarah K. Drescher; Danielle Espinoza; Susan Miller; Ed Edwards
Subject: Demand to bargain unsafe work environment. ORS 654.010 - SCESD

Tenneal -

Thank you for looking into this. I have consulted with OSEA's legal counsel and it is my understanding that OSEA has the right to bargain over safety issues that have a direct and substantial effect on the on-the-job safety of employees under the PECBA, ORS 243.650(7)(g). Because this issue has a direct and substantial effect on the on-the-job safety of OSEA's members, I am requesting bargaining over this issue. Please send me your availability to commence bargaining. We must work together to find a process and solution to protect OSEA's members. The fact that this particular student has now injured 3 of our members is unacceptable. Not only are OSEA members getting injured by the same student, but the District's failure to take reasonable measures to protect its employees from a known danger at work is negligent under Oregon tort law and creates a serious liability for the District, particularly if this group of injured employees decide to take legal action.

In order to engage in meaningful bargaining, I need the information that I have requested. In addition to what I already requested include contact information for the other employees that have been injured by this student in the past academic year.

As the exclusive representative for these employees, I am entitled to this information under the PECBA. (Please let me know if you need the legal authority for that right). I look forward to receiving that information next week.

Should the District's attorney need to consult with OSEA's legal counsel, we are represented by Sarah Drescher from Tedesco Law Group.

-Tyler

Trevor R. Caldwell

From: Tyler Whitmire <tyler@osea.org>
Sent: Thursday, June 9, 2016 8:09 AM
To: Tenneal Wetherell
Cc: Sarah K. Drescher; Ed Edwards; Susan Miller; Danielle Espinoza; Ron Nance; Kathleen Stauff
Subject: RE: Demand to bargain unsafe work environment. ORS 654.010 - SCESD

Tenneal,

I received another anonymous phone call Tuesday from a very upset member at the Sunset school.

The member reported that the same student assaulted another child in the room on Monday 6/6/2016 which resulted in visible injuries. I visited the school yesterday and spoke with many of the folks in the room during their breaks. According to them, they were told that the student would not be returning to school after the May 26th incident. However, the student showed up at school the following Monday and has been in the room ever since. From what I can discover the only response that the District has made to the knowledge of this dangerous working environment is to buy some paintball gear. I notified OSHA to let them know of this recent incident and they should be contacting you shortly.

1. What is the District plan and timeline for complying with ORS 654.010?
2. When will we receive the information we requested?
3. When will be provided the opportunity to bargain over safety?

Bargaining over this issue includes, but is not limited to: practices and procedures to ensure the safety of our members on the job, such as proper training for members on physical restraints, protocols for reporting and follow-up action; an establishing process for addressing student behavior to prevent it from happening, including notification to parents, discipline, removal from classroom, individualized training/protocols/procedures for handling this student and methods/practices for prevention; emergency measures, including safety buttons/notifications from classroom; follow-up investigation and complaint procedures for bringing this issue to the school board.

In addition to the information I requested on 5/27 I need the incident reports for this week by next Wednesday June 15th.

In summary, I need:

1. The incident reports and contact information for each of the individuals that witnessed the incident on May 26th with the students name redacted
 - a. Injured employee
 - b. Janitor
 - c. 2 cooks

2. Incident reports and contact information for the other employees that have been injured by this student in the past academic year with the students name redacted.

I am currently available June 27th through the 29th but that changes daily based on the needs of other districts.

We look forward to resolving this.

Tyler P. Whitmire, ExMPA
OSEA Field Representative

Cell: 541-404-7191

Office: 541-485-1832 x 204

Fax: 541-485-6465



Oregon

Kate Brown, Governor

Department of Consumer and Business Services
Oregon Occupational Safety & Health Division (OR-OSHA)

June 9, 2016

South Coast Education Service District
1350 Teakwood Ave
Coos Bay, OR 97420

RE: Complaint No. 209424258

On June 8, 2016, the Oregon Occupational Safety and Health Division (OR-OSHA) received notice of safety and/or health hazard(s) at 245 S Cammann Street, Coos Bay, Oregon. The specific nature of the alleged hazard(s) is as follows:

After the first incident on May 26, 2016, the student was not going to be allowed back into the classroom. However, on June 6, 2016, the student attacked another student in the classroom. Teachers and staff are concerned for their safety which could escalate to an attack on (them). Their concerns have not been addressed to to prevent this from occurring.

It has not been determined whether the alleged hazard(s) exist at your worksite. No inspection is planned at this time. However, we request that you investigate the alleged hazards and make corrections or modifications. Please respond in writing the results of your investigation, no later than ten (10) working days from receipt of this letter, indicating actions taken, with corrections made or that no hazard existed. Please provide supporting documentation, such as applicable measurements, monitoring results, photographs, etc., which you believe would be helpful. We encourage employee participation in investigating and responding to the alleged hazards. It is OR-OSHA's goal to assure hazards are promptly identified and eliminated. **If we do not receive a response, an inspection will likely be conducted.**

Oregon law also requires that your workers compensation insurance carrier provide consultative services. We encourage you to utilize these services for hazard correction. By copy of this letter, we are advising them of your possible need for their services.

The complainant has been furnished a copy of this letter and will be provided a copy of your response. ORS 654.062(4) of the OSEA Act provides protection for employees against discrimination because of their involvement in protected safety and health activity.

Ex. 7 1/2

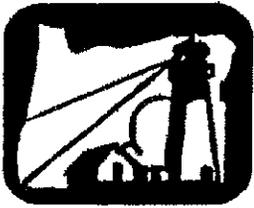
Page 2
South Coast Education Service District
Complaint No. 209424258

If you have any questions concerning this matter, please contact me at 541-776-6030. Your personal support and interest in the safety and health of your employees is appreciated.



Chuck McFarland
Enforcement Manager
OR-OSHA Medford Field Office
1840 Barnett Road, Suite D
Medford, OR 97504
541-776-6030
chuck.d.mcfarland@oregon.gov

cc: Central Files
Field Office Files
Complainant
SAIF Corporation



SOUTH COAST EDUCATION SERVICE DISTRICT

"Serving school districts in Coos, Curry, and Western Douglas counties."

Administrative Offices
1350 Teakwood, Coos Bay, OR 97420
(541) 269-1611 TDD: (541) 269-1611
Fax: (541) 269-4531

Branch Office
29805 Mary Street, P.O. Box 786
Gold Beach, OR 97444
(541) 247-6681 Fax: (541) 247-2603

June 15, 2016

Mr. Whitmire,

On May 27, 2016, I received an email from you, in your role as OSEA Field Representative, on behalf of OSEA Chapter 119. The e-mail was a demand to bargain and included the following language:

"I have consulted with OSEA's legal counsel and it is my understanding that OSEA has the right to bargain over safety issues that have a direct and substantial effect on the on-the-job safety of employees under the PECBA, ORS 243.650(7)(g). Because this issue has a direct and substantial effect on the on-the-job safety of OSEA's members, I am requesting bargaining over this issue."

In an email dated May 31, 2016, I shared with you that I would get dates from the SCESD team. I also requested more specific information regarding what OSEA Chapter 119 intended to bargain. You responded, "We need to create safety articles for the CBA that will provide guidelines for how to ensure safety in the workplace."

On June 9, 2016, you sent another email further detailing the specifics of the demand to bargain and it included the following language:

"Bargaining over this issue includes, but is not limited to: practices and procedures to ensure the safety of our members on the job, such as proper training for members on physical restraints, protocols for reporting and follow-up action; an establishing process for addressing student behavior to prevent it from happening, including notification to parents, discipline, removal from classroom, individualized training/protocols/procedures for handling this student and methods/practices for prevention; emergency measures, including safety buttons/notifications from classroom; follow-up investigation and complaint procedures for bringing this issue to the school board."

Upon reviewing OSEA Chapter 119's demand to bargain with district counsel at Garret Hemann Robertson, as well as the Oregon School Boards Association, the District has concluded that the issues addressed are already covered by the CBA currently in place.

District Rationale

Under the expedited bargaining process outlined in ORS 243.698, during the term of a collective bargaining agreement the district "must notify the exclusive representative in writing of anticipated changes that impose a duty to bargain." The District did not notify the Association, because there have not been proposed changes to any mandatory bargaining subjects. There has not been a change to working conditions that was not contemplated during negotiation for the CBA currently in place. The student that has been the cause of the complaints that prompted this demand is a special education

Ex. 8 1/9

student who requires a significant amount of individual attention. Caring for students that require a significant amount of individual attention was contemplated during the negotiation for the collective bargaining agreement.

You initially requested to bargain safety issues and when asked to be more specific you requested to bargain eleven safety related sub-issues. Article 4 of the CBA gives the district the right to: "determine the services, supplies and equipment necessary to continue its operations and to determine the methods, schedules and standards of operation, the means, methods and processes of carrying on the work including automation thereof changes therein, the institution of new and/or improved methods or changes therein." The language in Article 4 gives the district the right to implement safety measures as needed. Articles 4 of the CBA are attached to this letter. By purchasing safety equipment, the District has not altered working conditions in a manner not contemplated by the contract.

District Action

South Coast ESD wants to assure OSEA that staff and student safety is of utmost importance to us. Your email on June 9, 2016 states, "From what I can discover the only response that the District has made to the knowledge of this dangerous working environment is to buy some paintball gear." I find this statement to be trivializing as we discussed the protective physical equipment both on the phone and in email. On May 2, 2016 you sent me an email stating, "I have reached out to everyone in the classroom and heard back from a few folks. I have advised them of their obligations to follow instruction related to safety. I have also informed them of the District's requirement to provide a safe working environment. Furthermore, the Chapter 119 President, Ron Nance, was at the meeting when we provided the equipment and other training. Neither you nor Ron referenced our collaborative solution as "paintball gear" and to do so now leaves me questioning how you will spin further collaborations. In addition to the protective physical equipment, the ESD has implemented additional safety procedures, provided staff training and set an IEP meeting to discuss behavior concerns with the Student's family to assist in keeping staff safe.

The safety procedures, precautions and protective physical equipment that the ESD had originally put into place includes, but is not limited to:

- Oregon Intervention System Training
- District Policy JGAB Use of Restraint and Seclusion
- District Policy JGC Student Behavior Management
- Developed a Student Safety Plan in 2014 that is revised as needed
- Trained all staff on the Student Safety Plan developed in 2014
- Use of incident reports, debriefing meetings and student staffing/IEP meetings to address behaviors/incidents of concern
- 1:1 Staff member cross trained with school administrator on student behavior response/instructional needs
- Assigned 1:1 staff member a bite-pro sweatshirt as a PPE for student pinching behavior

On April 14th 2016, SCESD received an OSHA complaint regarding the Sunset classroom. After an investigation the following additional safety measures were put into place:

- Required all staff to wear bite-pro sweatshirts, chest torso protectors, and shin guards.
- Developed a staff response plan and trained all staff on how to adjust their response/interactions based on exhibited student behavior
- Retrained staff on the student safety plan implemented in 2014.

- Made adjustments to the current 801 review process to include a comparison of reports, engaged conversations regarding additional interventions with administrator and team
- Retrained necessary staff on swinging protocol

On May 25, 2016, the student's 1:1 staff member got injured by the student. The SCESD responded by:

- Collected and reviewed Incident Reports and Injury Information
- Conducted a full staff debriefing meeting on the incident
- Reviewed safety protocol
- Scheduled an IEP meeting to address student behaviors
- The parent elected to remove the student from school until a meeting could be held, but the parent ultimately chose to return the student to school as is her right under the law

Your demand to bargain was a request to "create" additional articles to add to the already bargained for agreement. The District is under no obligation to create additional contract articles unless there has been a change in working conditions not previously contemplated. Our understanding is that there has not been a change in working conditions not previously contemplated by the contract. If you believe that there has been a change in working conditions please provide a written response detailing the conditions that have been altered and we will reconsider our position. Thank you for taking the time to review this, we appreciate your continued commitment to dialogue.

Respectfully,



Tenneal Wetherell
Superintendent
South Coast ESD
5412663983

ARTICLE 4: MANAGEMENT RIGHTS

- 4.1 The Board consists of citizens who are elected by and directly responsible to the community for the total education program. The Board acts by and through its administrative and supervisory staff. The parties, therefore, jointly recognize that the Board has the responsibility for formulation and implementation of policies and rules governing the educational program and services of the District. No delegation of such responsibility is intended to be implied by any provisions of the Agreement.
- 4.2 Recognizing the relationship noted in 4.1 of this Article, the parties agree that the District retains all the customary, usual and exclusive rights, decision-making, prerogatives, functions and authority conferred upon and invested in it by the Constitution of the state of Oregon except as limited by the terms of this Agreement. Such powers, rights, authority, duties and responsibilities shall include, but are not limited to:
1. The executive management and administrative control of the school system and its properties and facilities.
 2. The hiring of all employees and the right to determine their qualifications and the conditions of their continued employment or their discipline, dismissal, demotion, promotion or transfer.
 3. The unqualified right of assignment and direction of work of all of its personnel, determines the number of shifts and hours of work and starting times and scheduling of all the foregoing, and the right to establish, modify or change any work or business hours or days.
 4. The unqualified right to establish the school calendar.
 5. Determine the services, supplies and equipment necessary to continue its operations and to determine the methods, schedules and standards of operation, the means, methods, and processes of carrying on the work including automation thereof or changes therein, the institution of new and/or improved methods or changes therein.
 6. Adopt reasonable rules and regulations.
 7. Determine the qualifications of employees.
 8. Determine the location or relocation of its facilities, including the establishment or relocations of new schools, building, departments, divisions or subdivisions thereof and the relocation or closing of offices, departments, divisions or subdivisions, building or other facilities.
 9. Determine the placement of operations, production, services, maintenance or distribution of work, and the source of materials and supplies.
 10. Determine the financial policies, including all accounting procedures, and all matters pertaining to public relations.
 11. Determine the size of the management organization, its functions, authority, amount of supervision and table of organization.

12. Determine the policy affecting the selection, testing or training of employees providing such selection shall be based upon lawful criteria.
 13. The exercise of the foregoing powers, rights, authority, duties, and responsibilities by the District shall be limited only by the specific written terms of this Agreement and then only to the extent that such terms are in conformance with the Constitution and the laws of the state of Oregon.
- 4.3 Without limiting the generality of the foregoing, it is expressly recognized that the Board's operational and managerial responsibility is delegated to the Superintendent, and the Superintendent in turn shall delegate responsibilities to department heads and/or other supervisory employees so that the District can function effectively through a chain-of-command design.
- 4.4 The parties to this Agreement recognize the authority of the Board to contract out bargaining unit work. Should the Board make such a decision, it recognizes its notification requirements pursuant to ORS 243.698.

**South Coast Education
Service District**

Code: JGAB
Adopted: 12/12/12
Readopted: 4/8/14

Use of Restraint and Seclusion

The Board is dedicated to the development and application of best practices within the ESD's public educational/behavioral programs. It is the intent of the Board to establish a policy that defines the circumstances that must exist and the requirements that must be met prior to, during and after the use of physical restraint and/or seclusion as an intervention with ESD students.

Definitions

1. "Physical restraint" means the restriction of a student's movement by one or more persons holding the student or applying physical pressure upon the student. "Physical restraint" does not include touching or holding a student without the use of force for the purpose of directing the student or assisting the student in completing a task or activity. The definition of "physical restraint" does not include the use of mechanical, chemical or prone restraint of a student as these methods are prohibited by Oregon law.
2. "Seclusion" means the involuntary confinement of a student alone in a room from which the student is physically prevented from leaving.

Seclusion does not include the removal of a student for a short period of time to provide the student with an opportunity to regain self-control, in a setting from which the student is not physically prevented from leaving.

3. "Serious bodily injury" means any significant impairment of the physical condition of a person, as determined by qualified medical personnel, whether self-inflicted or inflicted by someone else.
4. "Mechanical restraint" means a device used to restrict the movement of a student or the movement or normal function of a portion of the body of a student.

Mechanical restraint does not include:

- a. A protective or stabilizing device ordered by a licensed physician; or
 - b. A vehicle safety restraint when used as intended during the transport of a student in a moving vehicle.
5. "Chemical restraint" means a drug or medication that is used on a student to control behavior or restrict freedom of movement that has not been prescribed by a licensed health professional or other qualified health care professional acting under the professionals scope of practice.
 6. "Prone restraint" means a restraint in which a student is held face down on the floor.

The use of physical restraint and/or seclusion is only permitted as a part of a behavioral support plan when other less restrictive interventions would not be effective and the student's behavior poses a threat of imminent, serious physical harm to the student or others.

Except in the case of an emergency, only staff current in the required training in accordance with the ESD's-designated physical restraint and seclusion training program will implement physical restraint or seclusion with a student. In an emergency, physical restraint and/or seclusion may also be used by a school administrator, teacher or other school employee as necessary when the student's behavior imposes a reasonable threat of imminent, serious bodily injury to the student or to others. The use of physical restraint or seclusion under these circumstances is only allowed so long as the student's behavior poses a threat of imminent, serious physical harm to themselves, or to others. Any student being restrained or secluded within the scope of the ESD program whether in an emergency or as a part of a plan shall be constantly monitored by staff for the duration of the intervention. Any room used for seclusion of a student must allow staff full view of the student in all areas of the room and be free of potentially hazardous conditions such as unprotected light fixtures and electrical outlets.

The ESD shall utilize the Oregon Intervention System (OIS) training program of physical restraints and seclusion for use by ESD staff. As required by state regulation, the selected program shall include: behavioral support, prevention, de-escalation and crisis response techniques. Any program selected by the ESD must be in compliance with state and federal law with respect to the use of physical restraint and/or seclusion.

An annual review of the use of physical restraint and seclusion during the preceding school year shall be completed and submitted to the Superintendent of Public Instruction to ensure compliance with ESD policies and procedures. The results of the annual review shall be documented and shall include at a minimum:

7. The total number of incidents of physical restraint;
8. The total number of incidents of seclusion;
9. The total number of seclusions in a locked room;
10. The total number of students placed in physical restraint;
11. The total number of students placed in seclusion;
12. The total number of incidents that resulted in injuries or death to students or personnel as a result of the use of physical restraint or seclusion;
13. The total number of students placed in physical restraint and/or seclusion more than 10 times in a school year;
14. The total number of physical restraint and seclusion incidents carried out by untrained individuals;
15. The demographic characteristics of all students upon whom physical restraint and/or seclusion was imposed;

16. The total number of rooms available for use by the ESD for seclusion of a student and a description of the dimensions and design of the rooms.

This report shall be made available to the Board and to the public at the ESD's main office and on the ESD's website.

At least once each school year the public shall be notified as to how to access the report.

The ESD shall investigate all complaints regarding the use of physical restraint and/or seclusion practices according to the procedures outlined in Board policy KL and KL-AR - Public Complaints.

The superintendent shall develop administrative regulations to carry out the requirements set forth in this policy and to meet any additional requirements established by law related to the use, reporting and written documentation of the use of physical restraint or seclusion by ESD personnel.

END OF POLICY

Legal Reference(s):

ORS 161.205
ORS 339.250

OAR 581-021-0061
OAR 581-021-0550

OAR 581-021-0553
OAR 581-021-0556
OAR 581-021-0559
OAR 581-021-0563
OAR 581-021-0566

OAR 581-021-0568
OAR 581-021-0569
OAR 581-021-0570

**South Coast Education
Service District**

Code: **JGC**
Adopted: 5/09/06
Readopted: 7/10/07
Orig. Code(s): JGDB

Student Behavior Management

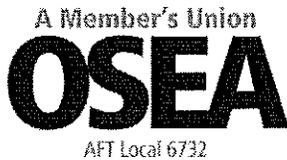
The Board is committed to providing an education for all enrolled students which encourages learning academic and social skills in the least restrictive environment. The Board expects all staff to use behavior management techniques that emphasize positive reinforcement, active teaching of appropriate behavior and social skills and student responsibility. Special circumstances may require behavioral interventions that are specialized to the needs of individuals. These strategies may differ from those typical and usual procedures seen in classrooms. Strategies for student behavior management will be developed in accordance with best practices in the field of special education, will be individualized to the needs of the student(s) and will be in accordance with State and Federal requirements.

END OF POLICY

Legal Reference(s):

ORS 334.125(7)

9/9



Oregon School Employees Association

www.osea.org

Eugene Office: 1146 W 7th, Eugene, OR 97402-4616

P: 800/982-9220, 541/485-1832 F: 541/485-6465

Re: OSEA Demand to Bargain Changes Impacting On-the-Job Safety and Request for Information

Superintendent Wetherell:

We have received the Districts response dated June 15, 2016 in which the District both refuses to bargain with OSEA over changes impacting on-the-job safety issues and refuses to provide OSEA with information requested pursuant to the Public Employees Collective Bargaining Act (PECBA).

Under the PECBA, OSEA has the right to bargain over issues that substantially and directly impact on-the-job safety. ORS 243.650(7)(g); *SEIU Local 503, OPEU v. State of Oregon, Oregon State Hospital*, Case No. UP-32-01, 20 PECBR 189 (2003) (employer required to bargain with union over decision to change method for restraining violent patients because of direct and substantial effect on employee safety).

The District does not dispute that the issues raised by OSEA are mandatory for bargaining. Instead, the District argues that there has not been a "change" in the status quo that triggers a bargaining obligation. On the contrary, there have been several significant changes in the status quo that require impact bargaining, including:

- The introduction of a dangerously violent student in the workplace who is causing injuries to employees is a change in the status quo.
- The District's failure to take appropriate action to protect employees from the dangerously violent student is a change in the status quo, as it deviates from past practice and District policies. Specifically, the District's decision not to remove the dangerously violent student to a more appropriate setting, not to implement a behavioral support plan that complies with District policy, and not to conduct a behavioral intervention that complies with District policy are all changes to the status quo.
- By the District's own admission it has made changes to the status quo in the last 6 months by implementing the changes discussed in your letter under the heading "District Action." The District's implemented changes include requiring staff to wear bite-proof sweatshirts, chest torso protectors, and shin guards; staff training; and the creation of a staff response plan. These are changes to the status quo, and while OSEA appreciates that the District is willing to take action to protect employees, these are changes that must be bargained with OSEA. *See, e.g., District Council of Trade Unions v. City of Portland*, Case No. UP-023-14, 26 PECBR 525, 538 (2015) (City's decision to install GPS devices into vehicles driven by Water Bureau employees had "an impact on employee safety that [was] sufficiently direct and substantial to require impact bargaining" because

safety of employees was a “core justification” for the decision to purchase and install the GPS devices. *Id.*).

The impacts of these changes have a direct and substantial impact on the on-the-job safety of employees and the District must bargain with OSEA over the impacts.

The District’s reliance on Article 4 is misplaced. Article 4 does not give the District the right to unilaterally implement changes in safety issues. First, the clause does not specifically mention “safety” at all. Second, the ERB has previously ruled that an employer generally cannot rely on a broad management rights clause to avoid bargaining over specific mandatory subjects. *Ass’n of Oregon Corr. Employees v. State of Oregon, Dep’t of Corr.*, Case No. UP-33-03, 23 PECBR 222, 237 (2009). Article 4 is simply a broad management rights clause and it does not give the District the right to make changes impacting safety issues without bargaining.

Furthermore, the District’s refusal to provide OSEA with requested information is a separate violation of the PECBA. The union requested “[t]he incident reports and contact information for each of the individuals that witnessed the incident on May 26th with the student’s name redacted” and the “[i]ncident reports and contact information for the other employees that have been injured by this student in the past academic year with the student’s name redacted.”

The duty to bargain in good faith “includes the duty to provide information, if the information requested is ‘of probable or potential relevance to a grievance or other contractual matter’ or is ‘reasonably necessary to allow meaningful bargaining.’” *Union-Baker ESD Assn v. Union-Baker Education Service District*, Case No. UP-2-05, 21 PECBR 286, 293 (2006).

The information requested by OSEA is necessary for meaningful bargaining, as OSEA must properly assess the incidents and remedial measures in order to propose and bargain over the safety issues described in OSEA’s demand to bargain. The District’s refusal to provide this information constitutes an unfair labor practice.

In addition, the requested documents are discoverable under Oregon’s Public Records Law, ORS ORS 192.420(1), which provides that “[e]very person has a right to inspect any public record of a public body in this state,” unless that record is expressly exempted from disclosure. The statutory scheme favors the disclosure of public records. *Guard Pub. Co. v. Lane Cty. Sch. Dist. No. 4J*, 310 Or 32, 37, 791 P2d 854 (1990).

If the District continues to assert that it is not obligated to provide the records under the PECBA, then it still must provide the documents pursuant to Oregon’s Public Records Law. Please consider this letter a public records request for the information described above. Note that OSEA is not seeking information about the physical or mental health of the student or employee. Because the requested records relate to the safety of students and school employees, disclosure of the requested information is in the interest of the public.



I am hopeful that the parties can work together to explore remedial measures that will keep District employees safe at work, without having to resort to litigation. Whether the District wants to call it “bargaining” or simply label it a “discussion,” I suggest that the parties meet and engage in a problem-solving conversation where potential solutions from OSEA’s members could be thoroughly examined, reviewed and discussed.

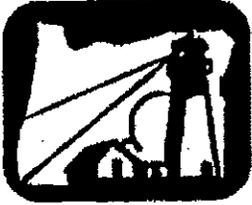
For example, the parties could draft safety language, a new job description for exceptionally violent students, a more assertive student removal process related to staff injuries, a stipend for the additional training necessary for violent students and or form a safety committee comprised of OSEA members, teachers, and management who review incidents and make recommendations to the District. Such suggestions should not be so quickly discarded because of a dispute between the parties over what is ripe for bargaining, particularly not at the expense of the safety of District employees.

Please let me know if the District is willing to provide the information OSEA has requested and if the District is willing to engage in a dialogue with OSEA regarding these on-the-job safety concerns.

Sincerely,

Tyler P. Whitmire, ExMPA
OSEA Field Representative





SOUTH COAST EDUCATION SERVICE DISTRICT

"Serving school districts in Coos, Curry, and Western Douglas counties."

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July 21, 2016

Mr. Whitmire,

On June 15, 2016, I sent a response to your demand to bargain letter dated May 27, 2016 and further clarified on May 31, 2016 and June 9, 2016.

Initially, your demand to bargain was a request to "create" additional articles to add to the already bargained for agreement. In our June 15, 2016 letter I shared that the District's position is that we are under no obligation to create additional contract articles unless there has been a change in working conditions not previously contemplated. Our understanding was that there had not been a change in working conditions not previously contemplated by the contract. In our June 15 letter we requested that you detail the altered conditions so that we may reconsider our position. After reviewing your response sent on July 11, 2016, we have not been compelled to change our position. As a result, again, we believe we are under no obligation to create additional contract articles.

PUBLIC RECORDS

In your letter you stated, "your refusal to provide OSEA with requested information is a separate violation of the PECBA." The District did not intentionally fail to comply with your records request. Rather, since the records request was made as part of your demand to bargain the requested information was not supplied.

Your most recent letter specifically requested records under the Public Records Law rather than the PECBA. You requested:

- The incident reports and contact information for each of the individuals that witnessed the incident on May 26th with the student's name redacted.
- Incident reports and contact information for the other employees that have been injured by this student in the past academic year with the student's name redacted.

The redacted incident reports are attached along with a witness list for the May 26th incident. SCESD contact information for the involved classified instructional staff is also attached. Some of the witness information that you requested involves employees of the Coos Bay school district. I do not have and cannot provide that information. Again, your unit's contact information is attached.

DEMAND TO BARGAIN

You have requested to "work together to explore remedial measures that will keep District employees safe at work, without having to resort to litigation." SCESD has a long history of sitting down at union problem solving meetings to deal with concerns. On May 2, 2016, I requested such a meeting. You responded with a demand to bargain letter and threatened litigation. In the spirit of maintaining a truly collaborative relationship with the Union, I am willing to schedule a meeting with you.

Ex. 10 1/2

The district maintains that this is not a mandatory subject of bargaining. The meeting will not be a bargaining session. It will be an opportunity for the Union to clarify their position and for the District to gather information. I want to make clear that we are under no obligation to take action based on our discussion. If substantive conversations regarding contract language occur, the District will request an additional meeting with legal representation present.

I have the following dates and times open for a meeting with you, August 5, 2016, 8am-10am, and August 8, 2016, from 3pm-5pm. If you are unable to meet at these times please propose a couple dates that might work for you. I look forward to hearing from you.

Best,



Tenneal Wetherell
Superintendent
South Coast ESD
541-266-3983