January 25, 2021

 **BY EMAIL**

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Sominar Villegas, Head of School

Insight School of Oregon-Painted Hills

603 NW 3rd Street

Prineville, OR 97754

Carrie Quinn, Academic Administrator/Principal

Insight School of Oregon-Painted Hills

603 NW 3rd Street

Prineville, OR 97754

Superintendent Vince Swagerty

Mitchell School District

PO Box 247

Mitchell, OR 97750

Dear REDACTED, Head of School Sominar Villegas, Academic Administrator Carrie Quinn, and Superintendent Vince Swagerty:

This letter is the order on the November 2, 2020, appeal filed by Candace Bollinger (Parent) alleging that Insight School of Oregon-Painted Hills violated a Division 22 standard adopted by the Oregon Department of Education. 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 Insight School of Oregon-Painted Hills 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 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 may have occurred, the department must issue a preliminary order to the complainant, the district, and in proceedings involving a public charter school, the school.[[3]](#footnote-3) 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.[[4]](#footnote-4) 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.[[5]](#footnote-5) The Director of the Oregon Department of Education may for good cause extend the time by which the department must issue an order.[[6]](#footnote-6)

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**

This is an appeal alleging discrimination by Insight School of Oregon-Painted Hills.

Parent emailed the school several times over the course of the 2019-2020 school year about Student’s progress toward graduating. The emails reflect that Parent believed Student had met the school’s graduation requirements before the beginning of the school’s spring term. The school also emailed Parent several times over the course of the 2019-2020 school year. In each instance, the school informed Parent that Student had not yet fulfilled requirements related to an essential skills course. At the conclusion of the 2019-2020 school year, the school did not award Student a diploma.

The first record of a complaint made by Parent that the department has on file is dated July 2, 2020. On that date, a representative of the for-profit education company K12, writing to school staff, reported having received a phone call from Parent. That email reported that Parent had filed a complaint alleging that Student had completed her course work, that the school had “kicked [Student] out of school,” and that she left several messages with the school lodging her complaint.

The school responded to the email that same day, writing that it had not received a phone call from Parent, but acknowledging that the school was “aware of the complaints the family has made” against the school.

The Oregon Department of Education accepted Parent’s appeal on November 2, 2020. The department accepted the appeal under OAR 581-002-0005(1)(a)(C), under which the department will accept a complaint on appeal if “[t]he district fails to resolve the complaint within 90 days of the initial filing of the complaint.”

Because the school involved in this case is a public charter school, it is important to clarify how the law provides the department with jurisdiction over this matter. Procedurally, the department has jurisdiction over school districts, not public charter schools.[[7]](#footnote-7) Under the law, a school district must have an opportunity to hear a complaint originating in a public charter school with which it holds a charter. The law also provides that a complainant has the right to file an appeal with the department within 90 days of filing the originating complaint.

In this case, Mitchell School District did not hear the complainant’s complaint. However, because the 90-day period has passed, the complainant has the right to file an appeal with the department.[[8]](#footnote-8) *See* OAR 581-002-0001(5).

It should be noted that a school district may delegate any duty to a public charter school that the district is otherwise required by law to meet, including the duty to process complaints originating in the public charter school and the duty to adhere to Division 22 standards. In this case, the charter between Mitchell School District and Insight School of Oregon-Painted Hills delegates to the school those duties.

It should also be noted that the department will issue the final order to the district, not the public charter school. This does not mean that the district will be required to undergo any corrective action if the department determines that there is a deficiency. The department will direct any corrective action to the appropriate party. If the district is responsible for the deficiency, the department will direct the district to undergo corrective action. If the public charter school is responsible for the deficiency, the department will direct the public charter school to undergo corrective action.

If state school funds are withheld from Mitchell School District for purposes related to this appeal, the department will include in the order withholding those funds instructions on how the funds ought to be withheld, including, if appropriate, that only the portion of funds that would otherwise be transmitted to Insight School of Oregon-Painted Hills should be withheld.

**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. By the end of Insight School of Oregon-Painted Hills’ winter term, Student had fulfilled all graduation credits except one essential skills course.
2. After winter term, Student moved to California and stopped attending class.
3. The school attempted to contact Student multiple times throughout the 2019-2020 school year about: (1) the need for her to complete the remaining essential skills course, and (2) the accrual of absences. For purposes of this appeal, the school provided the department with evidence that it had attempted to contact Student about the essential skills course on 13 occasions.
4. On February 25, 2020, the school sent Student the following email:

You are receiving this email because you are in one or more Essential Skills classrooms this semester. I know you are in the process of working on preparing to test, but I wanted to let you know that we have set a semester deadline to test.

**For students that were potential winter graduates (meaning you finished all graduation requirements except for Essential Skills), we have set a deadline of March 13th to complete at least 1-2 work samples.** We are hoping to have all of the winter graduates finished with Essential Skills testing by spring break.

Please let me know if you have any questions about this.

1. The school disenrolled Student on February 27, 2020, because Student had accrued 10 days of consecutive absences.
2. The school emailed Student on March 5, 2020, to communicate its concern that she only had to complete one essential skills course to graduate.
3. In response to the COVID-19 pandemic, Governor Brown issued Executive Order 20-20 on April 23, 2020.
4. Pursuant to Executive Order 20-20, the Oregon State Board of Education adopted OAR 581-022-0103.
5. Instead of Student completing the essential skills course, Parent filed a complaint, arguing that that school should award Student a diploma.
6. The school stipulated to the facts listed above on January 5, 2021.

**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 State Board of Education 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,

(2)(a) Each school district board and public charter school with jurisdiction over high school programs must award diplomas . . . 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 described in this rule.

\* \* \* \* \*

(b)(A) 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 Sciences – 3 (including history, civics, geography and economics (including personal finance));

(v) Health Education – 3;

(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).

The facts in this case are simple. Student only needed to fulfill the requirements of one essential skills course to graduate. Parent believed, incorrectly, that Student had met all of the requirements necessary to graduate. Student quit attending class. Insight School of Oregon-Painted Hills subsequently disenrolled Student because she had accrued 10 consecutive absences. The school disenrolled Student before the issuance of Executive Order 20-20 or the adoption of OAR 581-022-0103.

In consideration of those facts, the questions on appeal are narrow in scope. First, must a school graduate a student pursuant to OAR 581-022-0103 if the student does not fulfill an essential skills course? Second, if a student does not fulfill an essential skills course, does the waiver of that requirement apply to students disenrolled before the issuance of Executive Order 20-20 and the adoption of OAR 581-022-0103?

OAR 581-022-0103 establishes diploma requirements for students who first enrolled in ninth grade during the 2016-17 school year or earlier or first enrolled in ninth grade during the 2017-18 school year and had an early graduation plan approved before March 17, 2020. Under the rule, diploma requirements are reduced to a minimum of 24 credits, with students needing to earn at least 4 credits in English Language Arts, 3 credits in Mathematics, 3 credits in Science, 3 credits in Social Studies, 1 credit in Health Education, 1 credit in Physical Education, and 3 credits in Career and Technical Education, the Arts, or World Languages. In adopting the rule, the State Board of Education effectively waived essential skills requirements for students graduating during the 2019-2020 school year.

In this case, the school disenrolled Student under the “ten-day drop rule,” set forth in OAR 581-023-0006. The purpose of that rule is to ensure that State School Funds are appropriately allocated to schools on the basis of active student enrollment. Under the circumstances, the school properly disenrolled Student. However, simply because Student was disenrolled before the issuance of Executive Order 20-20 and the adoption of OAR 581-022-0103 does not mean that she did not meet the requirements necessary to graduate during the 2019-2020 school year. Student, having met all graduation requirements for the school year, should have been awarded a diploma.

In consideration of the facts and applicable law, the department finds that Insight School of Oregon-Painted Hills should have awarded Student a diploma.

**CONCLUSION**

In conclusion, the Oregon Department of Education finds that Insight School of Oregon-Painted Hills should have awarded Student a diploma.

Accordingly, the department encourages Mitchell School District to reach an agreement with Parent through conciliation. If the district cannot reach an agreement with Parent through conciliation within 30 days, or a time otherwise agreed to by the parties, the department will issue of final order on the matter.

Because of the narrowness of the issue on appeal, the department also finds that it would be helpful to communicate to the parties what it would direct the district to do if it issued a final order: work collaboratively with Insight School of Oregon-Painted Hills to award a diploma to Student. Awarding a diploma is the only action that the school would need to take to bring the district back into compliance with Division 22 standards.

If Parent or the district wishes to use the department as a resource during conciliation, Parent or the district may contact the department.[[9]](#footnote-9)

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)(A). [↑](#footnote-ref-3)
4. *Id*. [↑](#footnote-ref-4)
5. OAR 581-002-0009(3)(a)(B). [↑](#footnote-ref-5)
6. OAR 581-002-0009(3)(b). [↑](#footnote-ref-6)
7. OAR 581-002-0001(2). [↑](#footnote-ref-7)
8. OAR 581-002-0001(5). [↑](#footnote-ref-8)
9. The department’s Division 22 expert is Emily Nazarov. She may be reached at: emily.nazarov@ode.state.or.us. [↑](#footnote-ref-9)