June 15, 2021

 **BY EMAIL**

REDACTED

REDACTED

REDACTED

Superintendent Larry Didway

Oregon City School District

1417 12th St.

Oregon City, OR 97045

RE: Case #2020-SG-08

Dear REDACTED and Superintendent Didway:

This letter is the order on the June 2, 2020, appeal filed by REDACTED (Complainant) alleging that Oregon City School District violated a Division 22 standard, codified at OAR 581-022-2215. 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, Complainant alleges that Oregon City School District violated OAR 581-022-2215 when a coach who was not trained as required by the rule failed to properly respond to concussions suffered by student athletes under their supervision.

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

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

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

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

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

**PROCEDURAL BACKGROUND**

On September 20, 2019, parents of students attending school in Oregon City School District met with a district administrator (Administrator 1) to discuss their concerns about a district coach (Coach). The parents were primarily concerned with whether Coach was coaching their child in a manner that caused emotional distress.

On October 8, 2019, the parents who had met with Administrator 1 on September 20 emailed the district, wanting information on whether the district had addressed their concerns. That same day, the district responded, writing that it would set up another meeting with the parents.

Subsequent to October 8, 2019, other parents met with Administrator 1 or filed complaints with the district, alleging that Coach was coaching their children in a manner that caused their children emotional distress. One of these complaints took the form of an email sent on October 10,2019, to Administrator 1. The email stated that their child had been “emotionally hurt” by Coach.

On October 24, 2019, Complainant filed a complaint with the district. On the complaint form, Complainant did not specify the nature of their complaint. Instead, Complainant wrote on the district complaint form that Administrator 1 “had the details” and attached a copy of the email sent to Administrator 1 on October 10, which contained the allegation that a student had been “emotionally hurt” by Coach.

On November 4, 2019, Complainant received a letter from Administrator 1. That letter, in part, addressed whether Coach had failed to comply with injury protocols. Administrator 1 wrote, “There is no evidence that proper reporting procedures have been violated and actually there have been very few injuries with [Coach’s team].”

On November 8, 2019, Complaint filed an appeal with the district to Administrator 1’s written determination.

On December 16, 2019, Oregon City School Board held a meeting to consider the complaints filed against Coach, including the complaint and appeal filed by Complainant. Parents, students, and Coach all made statements to the school board.

On December 17, 2019, the board voted to uphold the findings of Administrator 1.

On May 22, 2020, Complainant wrote a letter to the Oregon Department of Education, requesting an investigation of Coach. In part, Complainant requested an investigation of “unreported/mishandling injuries, child endangerment.” Complainant alleged that certain students were injured during practice or competition and that Coach either did not report, underreported, or mishandled the injuries.

The department accepted Complainant’s appeal on June 22, 2020. Noting that Complainant had received a final decision from the district on December 17, 2019, the department accepted the appeal under OAR 581-002-0005(1)(a)(A), under which the department will accept a complaint on appeal if “[t]he complainant has exhausted the district’s complaint process.”

**FINDINGS OF FACT**

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

1. During the 2015-2016 school year, a student on Coach’s team (Student 1) suffered a broken leg during practice. Coach was not present during the practice and did not witness the accident.
2. On November 3, 2015, another student on Coach’s team (Student 2) fell during practice and was injured. Student 2 suffered fractures to their spine. Student 2’s parents came to practice and took Student 2 to the hospital. Student 2 did not suffer a head injury during the fall.
3. On November 11, 2015, the Oregon City School District obtained a letter from Student 2’s physician, stating that Student 2 could return to practice on November 18, 2015.
4. During December of 2017, another student on Coach’s team (Student 3) fell during practice. Student 3’s parents came to practice and took Student 3 to the hospital. A medical professional evaluated Student 3 for a concussion and determined that they had suffered one. Student 3 subsequently provided medical documentation to the district that they had suffered a concussion.
5. After the date on which Student 3 fell, Student 3’s physician informed Student 3 that they could return to practice after January 16, 2018.
6. On January 17, 2018, Coach and the district athletic trainer exchanged emails about Student 3’s eligibility to return to practice and competition. The athletic trainer communicated to Coach that Student 3 could return if they no longer displayed signs of a concussion.
7. Coach and Student 3’s parents exchanged multiple communications about Student 3’s eligibility to return to practice.
8. On November 16, 2017, another student on Coach’s team (Student 4) fell during practice, landing face first. That same day, another district coach and a school board member exchanged text messages about the fall. The board member confirmed that Student 4 was not seriously injured during the fall.
9. On November 15, 2018, another student attending school in the district (Student 5) fell during practice and suffered an injury. That same day, Coach documented in an email sent to an Oregon City School Board member and other district personnel that Student 5 appeared to be unharmed by the fall. Coach documented that despite the fall, Student 5 immediately returned to practice, telling Coach that they were uninjured. Coach documented that Student 5 did not suffer any impact to their head during the fall.
10. On July 9, 2020, the district provided the department with copies of certificates demonstrating that Coach had completed training pertaining to the district’s concussion protocols in 2015, 2016, 2017, and 2019. The district did not provide a certificate for the year 2018. However, the district attested to the fact that Coach had completed the training for that year. The district also provided evidence that that training pertaining to the district’s concussion protocols is part of an annual coach’s meeting.
11. On April 2, 2021, the department’s appeals investigator interviewed Coach. During the interview:
	1. Coach confirmed that they had participated in the district’s annual training pertaining to concussion protocols. Coach also reported having attended annual state conferences for their sport, which included sessions on concussion best practices. Coach provided a detailed overview of these protocols and best practices.
	2. Coach stated that with respect to the incident occurring on November 3, 2015, Student 2 did not exhibit symptoms of concussion.
	3. Coach stated that with respect to the incident occurring during December of 2017, Student 3 exhibited symptoms of concussion.
	4. Coach stated that with respect to the incident occurring on November 16, 2017, Student 4 did not exhibit symptoms of concussion.
12. The department’s appeals investigator collected information about Student 5’s fall, including a communication between Student 5 and their parents. In that communication, Student 5 stated that they did not suffer a concussion and that Coach examined them after the fall for signs of concussion.

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

For purposes of this appeal, the applicable rule is OAR 581-022-2215.

Under that rule,

Each school district shall:

(a) Develop a list of coaches.

(b) Identify which community (may include state or national) resources the district will use to provide trainings [related to concussions].

(c) Develop training timelines for coaches of all school athletic teams.

(d) Ensure coaches receive training once every twelve months.

(e) Develop a tracking system to document that all coaches meet the training requirements of this rule.

(f) Ensure no coach allows a member of a school athletic team to participate in any athletic event or training on the same calendar day that the member:

(A) Exhibits signs, symptoms[,] or behaviors consistent with a concussion following an observed or suspected blow to the head or body; or

(B) Has been diagnosed with a concussion.[[10]](#footnote-10)

The rule also provides that a member of a school athletic team member may not return to participate in an athletic event or training until “[t]he student no longer exhibits signs, symptoms[,] or behaviors consistent with a concussion” and “[t]he student receives a medical release form from a health care professional.”[[11]](#footnote-11)

Parent argues that under these provisions, the district is deficient because Coach was not trained as required by the rule, and because Coach failed to properly respond to concussions suffered by student athletes under their supervision.

**A. Procedural Matters**

As an initial matter, the Oregon Department of Education necessarily must address the department’s rule of limitations and how that rule applies to this appeal.

Under OAR 581-002-0005, for the department to accept an appeal, the appeal must be based on a complaint filed with the district on a date that is no later than “two years after the date on which the alleged violation or unlawful incident occurred or on which the complainant discovered the alleged violation or unlawful incident.”[[12]](#footnote-12) This rule seemingly disqualifies certain incidents from being part of this appeal. Complainant filed their complaint on October 24, 2019. Under the rule, all matters on appeal must have occurred not before October 24, 2017. The incidents where Student 1 and Student 2 fell during practice both occurred during the 2015-2016 school year, more than two years before Complainant filed.

However, the rule also provides that “if the alleged violation or unlawful incident is of a continuing nature, the date on which the alleged violation or unlawful incident occurred is the most recent date on which the alleged violation or unlawful incident occurred.”[[13]](#footnote-13) All of the incidents in this case are of a “continuing nature”: Coach’s alleged failure to be properly trained in concussion protocol and to properly respond to concussions suffered by student athletes. The department finds that under this provision, all incidents on appeal are properly before the department.

**B. Coach’s Training**

Complainant argues, in part, that Coach was not trained as required by OAR 581-022-2215.

Under the rule, each school district must:

(b) Identify which community (may include state or national) resources the district will use to provide trainings [related to concussions].

(c) Develop training timelines for coaches of all school athletic teams.

(d) Ensure coaches receive training once every twelve months.

(e) Develop a tracking system to document that all coaches meet the training requirements of this rule.[[14]](#footnote-14)

The district provided sufficient evidece that Coach met these requirements.

On July 9, 2020, the district provided the department with copies of certificates demonstrating that Coach had completed trainings pertaining to the district’s concussion protocols in 2015, 2016, 2017, and 2019.

The district did not provide a certificate for the year 2018. However, the district attested to the fact that Coach completed the training for that year. In consideration of the evidence, the department finds that it is more likely than not that Coach received the required training in 2018. First, the district provided evidence that trainings pertaining to the district’s concussion protocols is part of an annual coach’s meeting. Second, Coach provided the department with a detailed overview of the district’s concussion protocols. Third, there is no evidence to the contrary, that Coach *did not* receive the requisite training.

The department finds that there is insufficient evidence that Coach did not receive training as required by OAR 581-022-2215.

**C. Coach’s Response to Concussions Suffered by Student Athletes**

Complainant argues, in part, that Coach failed to properly respond to concussions suffered by student athletes under their supervision.

Under the rule, a coach may not allow:

[A] member of a school athletic team to participate in any athletic event or training on the same calendar day that the member:

(A) Exhibits signs, symptoms[,] or behaviors consistent with a concussion following an observed or suspected blow to the head or body; or

(B) Has been diagnosed with a concussion.[[15]](#footnote-15)

In this case, there is no evidence that Student 1, Student 2, Student 4, or Student 5 suffered a concussion when they fell during practice.

Student 1 suffered a broken leg, but not a head injury. Furthermore, Coach was not present when Student 1 fell.

Student 2 suffered fractures to their spine, but not a head injury. Student 2 did not return to practice that same calendar day. Student 2 only returned to practice after November 18, 2015, the date on which Student 2’s physician specified that they could return.

Student 4 fell during practice, landing face first. But the only evidence on the record of any resulting injury is that Student 4, as observed by a school board member, was not seriously injured. There is no evidence on the record of concussion.

Student 5 also fell during practice, but Coach documented in an email that Student 5 appeared to be unharmed by the fall. Coach documented that despite the fall, Student 5 immediately returned to practice, telling Coach that they were uninjured. Coach also documented that Student 5 did not suffer any impact to their head during the fall. Coach’s observations were later confirmed by Student 5, who stated that they did not suffer a concussion and that Coach examined them after the fall for signs of concussion.

The only evidence on the record of a concussion is the concussion suffered by Student 3. However, it would have been impossible for Coach to have violated the applicable provision because Student 3 did not return to practice that same calendar day.

**D. Student 3’s Return to Practice**

Under OAR 581-022-2215, a district also may not allow a school athletic team member who has suffered a concussion to participate in an athletic event or training until “[t]he student no longer exhibits signs, symptoms[,] or behaviors consistent with a concussion” and “[t]he student receives a medical release form from a health care professional.”[[16]](#footnote-16)

In this case, there is only student who suffered a concussion, Student 3. However, the evidence clearly substantiates that the district did not violate this provision. After the date on which Student 3 fell, Student 3’s physician informed Student 3 that they could return to practice after January 16, 2018. On January 17, 2018, Coach and the district athletic trainer exchanged emails about Student 3’s eligibility to return to practice and competition. The athletic training communicated to Coach that Student 3 could return if they no longer displayed signs of a concussion.

As substantiated by the evidence, Student 3 returned to practice in compliance with the rule.

**CONCLUSION**

In conclusion, the Oregon Department of Education finds that Oregon City School District is not deficient under OAR 581-022-2215.

The department acknowledges that the parents of Students 1, 2, 3, 4, and 5 were reasonable in inquiring about Coach’s ability to respond appropriately to student athlete injuries. Multiple falls, a broken leg, and a fractured spine would cause any parent to question the safety of a school sponsored athletic program. However, no matter the reasonableness of parents’ inquiries, there is insufficient evidence that the district violated the applicable rule.

This is the department’s final order for Case #2020-SG-08. The department is closing the appeal.

If you have any questions, please contact me.

Sincerely,



Mark Mayer, Complaint and Appeals Specialist

Office of the Director

Oregon Department of Education

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1. The administrative rules governing the Oregon Department of Education’s appeals process are OAR 581-002-0001 to 581-002-0023. [↑](#footnote-ref-1)
2. OAR 581-002-0009. [↑](#footnote-ref-2)
3. OAR 581-002-0009(3)(a)(B). [↑](#footnote-ref-3)
4. OAR 581-002-0009(3)(b). [↑](#footnote-ref-4)
5. OAR 581-002-0009(3)(a)(A). [↑](#footnote-ref-5)
6. *Id*. [↑](#footnote-ref-6)
7. OAR 581-002-0011. [↑](#footnote-ref-7)
8. OAR 581-002-0011(8). [↑](#footnote-ref-8)
9. OAR 581-002-0017(2). [↑](#footnote-ref-9)
10. OAR 581-022-2215(2). [↑](#footnote-ref-10)
11. OAR 581-022-2215(2)(g). [↑](#footnote-ref-11)
12. OAR 581-002-0005(3)(a)(A). [↑](#footnote-ref-12)
13. OAR 581-002-0005(3)(b). [↑](#footnote-ref-13)
14. OAR 581-022-2215(2). [↑](#footnote-ref-14)
15. OAR 581-022-2215(2)(f). [↑](#footnote-ref-15)
16. OAR 581-022-2215(2)(g). [↑](#footnote-ref-16)