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Colt Gill

Director of the Oregon Department of Education

January 6, 2022

BY EMAIL

REDACTED
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Superintendent Guadalupe Guerrero
Portland Public Schools
501 N. Dixon Street
Portland, OR 97227

RE: Case #2019-MM-10

Dear REDACTED and Superintendent Guerrero:

This letter is the order on the April 21, 2019, appeal filed by REDACTED (Complainant) alleging that Portland Public Schools violated OAR 581-022-2325 (requiring school districts to identify intellectually talented and academically gifted students), 581-022-2330 (setting forth the rights of parents and legal guardians of TAG students) 581-022-2500 (setting forth requirements for district programs for talented and gifted students), and 581-022-2370 (setting forth the essential elements of school district complaint processes).

To ensure compliance with these rules, the Oregon Department of Education will review school district procedures and make findings of fact to determine whether a violation occurred and what action, if any, should be taken.¹

APPELLATE PROCEDURES FOR COMPLAINTS ALLEGING DISCRIMINATION, RETALIATION, AND VIOLATIONS OF DIVISION 22 STANDARDS

Complainant alleges that Portland Public Schools has failed to: (1) properly identify intellectually talented and academically gifted students as set forth in OAR 581-022-2325, (2) properly ensure the rights of the parents and legal guardians of TAG students as set forth in OAR 581-022-2330,

¹ The administrative rules governing the Oregon Department of Education's appeals process are OAR 581-002-0001 to 581-002-0023.

(3) properly implement a program for talented and gifted (TAG) students as required by OAR 581-022-2500, and (4) properly respond to complainants alleging those allegations in contravention of OAR 581-022-2370.

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 rule codified in Oregon Administrative Rules Chapter 582, Division 22 (Division 22 standard), the department will initiate an investigation to determine whether the violation may have occurred.²

If the department determines that the violation did not occur, the department must issue a final order as described in OAR 581-002-0017.³ The Director of the Oregon Department of Education may for good cause extend the time by which the department must issue an order.⁴

If the department determines that the violation may have occurred, the department must issue a preliminary final order to the complainant and the school district.⁵ The preliminary final 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

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 If the parties do not reach an agreement through conciliation, the department will issue a final order as described in OAR 581-002-0017.⁸ 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

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

² OAR 581-002-0009.

³ OAR 581-002-0009(3)(a)(B).

⁴ OAR 581-002-0009(3)(b).

⁵ OAR 581-002-0009(3)(a)(A).

⁶ *Id.*

⁷ OAR 581-002-0011.

⁸ OAR 581-002-0011(8).

⁹ OAR 581-002-0017(2).

PROCEDURAL BACKGROUND

A. *Initial Complaint Filed with Portland Public Schools*

On April 29, 2019, Complainant filed a complaint with Portland Public Schools alleging the following:

- The district failed to meet the basic academic needs of TAG students. Specifically, the district failed to properly provide the proper rate and level of instruction for TAG students at each grade level and of each demographic group.
- The district failed to evaluate its implementation of TAG services.
- The district failed to provide information to students and parents and legal guardians of students critical to understanding the rights of TAG students, opportunities available to TAG students, and the procedures that TAG students needed to follow to take advantage of those rights and opportunities. Specifically, the district failed to provide information pertaining to testing, student performance, relevant district and school meetings, procedures related to early entry into Kindergarten, procedures related to admission to the district’s ACCESS Academy Alternative Program¹⁰, and accelerative learning opportunities for high school students.
- The district had a dysfunctional complaint process that prevented parents from receiving a timely response to their concerns.
- The district failed to implement a system-wide approach to identifying students who have special education needs or who are English Language Learners (ELL students) for TAG programs.

On May 29, 2019, the district’s Senior Director for College and Career Readiness responded to Complainant’s complaint.

With respect to whether the district failed to meet the basic academic needs of TAG students, the director wrote that there were “inconsistent practices across the district” and that “[t]he district has plans to address access for students.” The director wrote:

[T]hrough the creation of the guaranteed and viable core curriculum (GVC), PPS is creating and compiling a comprehensive curriculum so that all students, no matter what school they attend, have consistent access to rich and rigorous learning experiences. In 2019-2020, teachers will plan lessons that reflect the initial

¹⁰ The district’s ACCESS Academy Alternative Program is an accelerated learning program for students who perform at a high-level.

implementation of the GVC scope and sequence in ELA K-12, math K-12, and science 6-12. ELA, math and science will have pilot units of study available for all teachers and principals to use and provide feedback. The units of study will include priority and supporting standards, unwrapped priority standards, big ideas and essential questions, tasks and assessments using different levels of rigor for students from Bloom’s Taxonomy, Webb’s DOK, and Costa’s Levels of questioning. Additionally, the units will include enrichment and extension ideas for serving the rate and level of TAG students and strategies for challenging gifted learners.

With respect to high school TAG students, the director found that “services vary by campus,” acknowledging that “enrollment in an IB, AP, or Honors class does not automatically show that a TAG student’s rate and level of learning are being addressed.” The director wrote, “The classroom teacher, in cooperation with the school’s TAG facilitator, administrative team, and district policy, should still be monitoring the student’s academic needs to assure that his or her rate and level of learning are being appropriately addressed in the classroom instruction.”

With respect to whether the district failed to evaluate its implementation of TAG services, the director acknowledged that “there are inconsistent practices across the district.” The director wrote that the district had “created a plan [the Portland Public School District Talented and Gifted Education Plan 2019-2022] to address implementation and evaluation in the future.” The director summarized the plan as follows:

The district uses data through the use of nationally normed instruments for identification of talented and gifted students. Information gathered through these assessment instruments allows the TAG department to analyze the effectiveness of our processes to identify historically underserved Portland Public School students.

* * * * *

School services will be assessed and modified in the building plan based on TAG student needs. The TAG department will provide a year-end survey to building leaders to assist in evaluating their TAG Building Plans. TAG instructional “look fors” will be provided to school leaders by the TAG department as a tool for classroom observations to support rate and level of TAG students.

With respect to whether the district failed to provide information critical to understanding the rights of and opportunities available to TAG students, the director wrote that “communication is currently adequate and could be improved.” The director pointed out that the information was available on the district website. The director also pointed out that information is provided by email to families with a TAG student, including the dates and agendas of meetings. At the beginning of each school year, each TAG facilitator provides parents with information about TAG programs at Fall Parent TAG night. TAG facilitators also provide information to parents on designated TAG bulletin boards, which contain TAG forms, information pertaining to upcoming tests and events, and the contact information of TAG facilitators.

With respect to whether the district had a dysfunctional complaint process that prevented parents from receiving a timely response to their concerns, the director wrote, “Portland Public Schools welcomes expressions of concerns as opportunities to learn, clarify our intentions, and engage in continuous improvement to benefit all students.” The director specified that “[t]he formal complaint process is one of a set of tools to resolve school-based problems and other issues. The instructions, action steps, and timelines are outlined in [the district’s complaint policy].” The director found that “parents receive responses to their complaints that are consistent with Division 22 requirements.”

Finally, with respect to whether the district failed to implement a system-wide approach to identifying for TAG programs students who have special education needs or who are ELL students, the director did not respond to Complainant’s allegation.

In summary, the director found that

there is not a system-wide approach to instructional practices for talented and gifted students in classrooms across Portland Public Schools. Targeted TAG instructional practices vary by campus and teacher. In 2019, PPS will again self-report being out of compliance in the Division 22 area of meeting rate and level of TAG students in the instructional setting.

The director concluded their response by referring to the Portland Public School District Talented and Gifted Education Plan 2019-2022, stating that the plan was “an attempt to address the variability in TAG services across PPS.” The director concluded their response by discussing a district five-year plan to implement individual TAG instructional plans.

B. Appeal to Portland Public Schools’ Superintendent

On June 3, 2019, Complainant appealed the response issued by the Senior Director for College and Career Readiness to Portland Public Schools’ Superintendent. Complainant wrote,

In responses to the complainants' statement that there is inadequate and inequitable communication of critical TAG-related information to families, PPS allows that "Communication of TAG updates, information, processes and procedures to families are accessible on the district site . . . Communication is currently adequate and could be improved."

There are "inconsistent practices across the district" regarding access to services and to appropriate classes at every level—elementary, middle and high. "The district has plans to address access for students" by creating the guaranteed and viable core curriculum (GVC) which it says "will offer differing levels of rigor" and "will include enrichment and extension ideas for serving the rate and level of TAG students, and strategies for challenging gifted learners." Pilot units of study are planned for the 2019-20 school year.

[The] finding regarding the complainants' assertion that it lacks appropriate high school TAG services "is that practices vary by campus" and that TAG "services vary by campus."

In response to the complainants' assertion that the district consistently fails to evaluate its TAG services, PPS says that currently "there are inconsistent practices across the district" and that it "has created a plan to address implementation and evaluation in the future."

Complainant asserted that the director's response "confirms that PPS has been out of compliance with the Oregon TAG mandate and will remain out of compliance for the next year and for years to come." Complainant further asserted that "the district has offered no specific steps to remediate the many problems listed in the complaint." Finally, Complainant requested to appeal the director's response to the district's superintendent.

On July 3, 2019, the district's Chief Academic Officer responded to Complainant's appeal. In that response, the officer wrote,

In practice, every campus in PPS should have a campus TAG plan that is unique to their school and their programs. These campus TAG plans will be posted on the district website and will be updated

annually with input from TAG facilitators, campus administration, and the district TAG department. Currently, the district provides individual TAG plans for students based on parent request.

The officer then quoted the goals of the Portland Public School District Talented and Gifted Education Plan 2019-2022: (1) to improve screening for TAG students; (2) to train TAG facilitators, teachers, and administrators in identifying TAG students and understanding TAG program concepts, such as assessed levels of learning and accelerated rates of learning; (3) to create differentiated lessons, activities, opportunities, and projects for viable core curriculum; (4) to use formative assessment to inform instruction; and (5) to create individual instructional plans for TAG students.

The officer's response did not specifically address certain aspects of Complainant's appeal, including whether the district failed to provide information critical to understanding TAG students' rights and opportunities and whether the district's TAG program failed to properly identify students who have special education needs or who are ELL students.

The officer concluded their response by writing, "Completing this investigation was a helpful and informative process and will be used as we continuously improve our practices for serving TAG students."

C. Appeal to Portland Public Schools' Board of Directors

On July 22, 2019, Complainant requested to appeal the response issued by the Chief Academic Officer to Portland Public School's Board of Education. In that appeal, Complainant wrote,

Portland Public Schools (PPS) has been out of compliance with Oregon TAG law for most of the last 20 years [which] represents a pervasive, long-term, district-wide pattern of non-compliance with state mandates. We raise these issues on behalf of all students who are or should be identified as talented and gifted (TAG) or whose rate and level of learning requires above-benchmark instruction.

In short, PPS does not, and has no substantive plan to, "accommodate [students'] assessed levels of learning and accelerated rates of learning."

The Step 1 findings close with the statement that "PPS will again self-report being out of compliance in the Division 22 area of meeting rate and level of TAG students in the instructional setting."

Regarding our statement that PPS lacks appropriate high school TAG services, the district agrees that “[E]nrollment in an IB, AP, or Honors class does not automatically show that a TAG student’s rate and level of learning are being addressed . . . [T]he finding regarding this complaint is that services vary by campus.”

* * * * *

Regarding our assertion that the district consistently fails to evaluate its TAG services, PPS says that “there are inconsistent practices across the district” and that it “has created a plan to address implementation and evaluation in the future.”

* * * * *

Regarding our frustration with PPS’ dysfunctional complaint process, PPS found that “parents receive responses to their complaints that are consistent with Division 22 requirements.”

* * * * *

We ask the PPS Board of Directors to review the related materials and to issue a final decision that provides immediate and substantive mitigation measures to meet the rate and level of learning of its students.

On July 23, 2019, the district’s Senior Board Manager for the district’s Board of Education emailed Complainant verification that the District Board Office had received their appeal. The following day, on July 24, 2019, an email from the manager to the members of the board described the nature of the appeal.

This appeal is scheduled to be voted on by the board at their August 13th meeting. Since this complaint about TAG programs and services[] lists several concerns, I think this may be a little tricky for the board to figure out exactly what they are deciding to uphold or overturn. Based on prior complaints where there is not a clear “verdict” on whether to uphold a decision, I recommend that prior to the August 13th meeting, that we have an idea of what it would mean to “provide immediate and substantive mitigation measures

to meet the rate and level of learning of students” and what it would take to implement immediately.

On August 5, 2019, the district’s Confidential Executive Assistant to the Executive Chief of Staff emailed Complainant that the district’s Board of Education had “tentatively scheduled” to hear Complainant’s appeal on August 13, 2019.

At the August 13, 2019, meeting, the board heard Complainant’s appeal. Three members of the public testified to corroborate Complainant’s allegations. The board voted to uphold the Superintendent’s response to Complainant. The board specified that this vote constituted the district’s final decision with respect to Complainant’s complaint.

D. Appeal to the Oregon Department of Education

On August 8, 2019, Complainant filed an appeal of the final decision issued by Portland Public Schools with the Oregon Department of Education. The department accepted the appeal on the basis that Complainant had alleged, at each step in the district’s complaint process, facts that if proven true would constitute a violation of either OAR 581-022-2325, 581-022-2330, 581-022-2370, or 581-022-2500.¹¹

E. District Response to Complainant’s Appeal with the Oregon Department of Education

Pursuant to OAR 581-002-0009, Portland Public Schools provided the Oregon Department of Education with a response to Complainant’s appeal. The district provided the response on September 20, 2019. In the district’s response, the district provided the following description of its TAG program:

TAG services in PPS elementary schools center primarily within each student's classroom. These classrooms are mixed-ability classrooms, where the teacher differentiates instruction according to classroom assessments.

* * * * *

Students are either randomly placed in classrooms or they are placed in classrooms for math and/or reading according to ability, determined by pre-assessment. In classrooms where students are randomly assigned, we expect to see instruction differentiated for each student's level and rate of learning [sic].

¹¹ See OAR 581-002-0005(1)(a) (specifying that the Oregon Department of Education will accept an appeal of a complaint alleging a violation of a Division 22 standard if the complainant receives from the school district a final answer) and 581-022-0005(1)(a)(A) (specifying that for purposes of OAR 581-002-0005, a complainant receives from a school district a final answer if the complainant exhausts the school district’s complaint process).

In [classrooms] of like-ability students, we expect to see instruction at a higher rate and level.

* * * * *

The enrollment in most PPS high school classes is by mixed ability, and instruction should be differentiated to meet the student's rate and level of learning.

* * * * *

High Schools also offer a variety of advanced courses. These include AP (Advanced Placement), IB (International Baccalaureate), Dual Credit (High School and College Credit using the college text and syllabus), and Honors level courses. Some high school students take online courses, independent study or correspondence courses; or co-enroll in high school and college at the same time to meet their academic and intellectual needs.

The district then addressed Complainant's specific allegations.

With respect to the requirement that school districts have a plan for establishing a TAG program, the district wrote, "[The district] does have a comprehensive plan that addresses all areas required by the regulation. [The district] submitted the plan to [the department] on January 15, 2019, and has not had any indication from [the department] that the plan is not sufficient."¹²

With respect to whether the district effectively communicated with students and parents and legal guardians of students about its TAG program and the program's ancillary services, the district wrote, "[The district] has a variety of communication methods and processes. We inform parents of identification of programs and services available; we have comprehensive information on the [district's] TAG Department website; and we provide parents an opportunity provide input through" surveys, events, and parent-teacher conferences.

With respect to whether the district effectively identified TAG students, the district wrote,

The TAG Department receives OSAS scores from the state in the fall and notifies parents by mail when their child has a score that

¹² See OAR 581-022-2500(1) ("Each school district shall have a written plan for programs and services beyond those normally provided by the regular school program in order to realize the contribution of talented and gifted children to self and society.") and 581-022-2500(2) ("The written plan for programs and services for talented and gifted children shall be submitted to the Oregon Department of Education on a date and in a format provided in guidance documents provided by the Oregon Department of Education.").

could qualify their student as TAG. The TAG Department universally tests all second graders for intellectual identification and informs parents of possible qualification. The TAG Department assesses any student that a parent has nominated in the spring of each year for academic and intellectual giftedness if not already identified in that area.¹³

With respect to the requirement that TAG students be taught at the proper rate and level of learning, the district wrote,

[The district] is diligently working in a systematic way to comply [with those requirements] by supporting schools to provide the classroom best practices appropriate for their students. As explained above, especially with recent training, our teachers use assessments to differentiate curriculum, provide individualized instruction, and, when appropriate, opportunities for independent study. [The district] utilizes single-subject and whole-grade acceleration as appropriate. These strategies are offered throughout grade levels, and high schools have AP, IB, Dual Credit courses, among other opportunities to meet assessed levels of learning and rates of instruction.

* * * * *

[The district] is implementing NWEA MAP exams [allowing the district to] train teachers in a comprehensive manner to use student rate and level reports to provide flexible grouping opportunities across the system.¹⁴

With respect to the professional development of staff necessary to comply with the law, the district wrote,

As explained above, especially with recent training, our teachers use assessments to differentiate curriculum, provide individualized instruction, and, when appropriate, opportunities for independent study.

* * * * *

¹³ See OAR 581-022-2325(2) (specifying both mandatory and optional criteria for identifying TAG students).

¹⁴ See OAR 581-022-2500(4) (“The instruction provided to identified students shall be designed to accommodate their assessed levels of learning and accelerated rates of learning.”).

[W]e are developing a system-wide approach to the incorporation of the dimensions of depth and complexity, which is a practice that currently varies by campus and teacher. PPS is creating a guaranteed and viable core curriculum across the district. This guaranteed and common core curriculum will include depth of knowledge . . . dimensions and extension opportunities in math and ELA units as developed.

Finally, with respect to whether the district properly processes the complaints of students and parents and legal guardians of students, the district wrote that it “has a complaint process consistent with the requirements of [the law].”¹⁵

The district also provided the following information in support of its response:

- A description of the structure, staffing, and duties of the district’s TAG department.
- A description of the duties of TAG facilitators at each school.
- A description of the role of the district’s TAG Parent Advisory Committee.
- A description of the process for identifying second grade students “using the CogAT 7 screener” to identify second grade students who meet “the screener threshold to take the full CogAT.”
- The total number of TAG assessments performed during the 2018-2019 school year.
- The total number to TAG students identified during the 2019-2020 school year.
- A description of processes used at a district special school program and at a district-sponsored charter school used to identify TAG students.
- The digitalized cumulative folder of a TAG student.
- Proof of having adopted the non-verbal Naglieri Nonverbal Ability Test “to identify intellectual abilities in students instead of the CogAT used in previous years” for purposes of providing a “culture-fair, nonverbal measure of reasoning and problem-solving abilities.”

The district summarized its response by asserting that it is “committed to follow through on the TAG Plan” and that it “continually strives to improve in all aspects of work with talented and gifted children and their families.”

¹⁵ See OAR 581-022-2270 (setting forth essential elements of school district complaint processes).

PRELIMINARY FINDINGS OF FACT

For purposes of this appeal, the Oregon Department of Education makes the following findings of fact:

I. General Findings of Fact

1. During times relevant to this appeal, Complainant was the parent of a child attending a public school that was a part of Portland Public Schools' school district.
2. For the purpose of investigating this appeal, the Oregon Department of Education reviewed copies of Portland Public Schools' TAG Policy and current Talented and Gifted Education Plan.
3. For the purpose of investigating this appeal, the department conducted classroom visits to ascertain whether students were being identified for TAG eligibility in accordance with OAR 581-022-2325 and whether TAG students were receiving TAG services in accordance with OAR 581-022-2500.
4. For the purpose of investigating this appeal, the Oregon Department of Education conducted surveys of district administrators, district teachers, and parents and legal guardians of students attending school in the district to ascertain whether students were being identified for TAG eligibility in accordance with OAR 581-022-2325 and whether TAG students were receiving appropriate TAG services in accordance with OAR 581-022-2500.
5. For the purpose of investigating this appeal, the department reviewed a copy of the district's Complaint Policy.

II. Findings of Fact Related to Portland Public Schools' TAG Policy

6. Portland Public Schools has a "Talented and Gifted Education Policy."¹⁶ The district's school board adopted the policy on March 10, 1983. The board amended the policy twice, once on October 26, 1995, and once on September 9, 2002.
7. In full, the district's "Talented and Gifted Policy" reads:

The district is committed to an educational program that recognizes the unique value, needs and talents of the individual student. Curriculum and instruction designed to meet the level and rate of learning of talented and gifted students is an integral part of this commitment. Talented

¹⁶ Portland Public School Board Policy: 6.10.015-P. Available at: <https://www.pps.net/Page/2896>.

and gifted students means those children who require special education programs or services, or both[,] beyond those normally provided by the regular school program in order to realize their contribution to self and society[,] and who demonstrate outstanding ability or potential in one of more of the following areas: . . . Intellectual ability [and] unusual academic ability in reading or mathematics.

[]The Board, therefore, directs district staff to provide classroom or school programs designed to promote educational opportunity for talented and gifted students commensurate with their ability.

[]The district has established an appeals process for parents to utilize if they are dissatisfied with identification processes or appropriateness of programs and services provided for their talented and gifted students.

III. Findings of Fact Related to Portland Public Schools' TAG Plan

8. Portland Public Schools has a Talented and Gifted Education Plan for the implementation of TAG services during the years 2019, 2020, 2021, and 2022.¹⁷
9. The district's Talented and Gifted Education Plan contains the district's Talented and Gifted Policy, a mission statement, and an explanation of the district's philosophy.¹⁸
10. The district's Talented and Gifted Education Plan contains descriptions of several programs and services that the district uses to meet TAG students' needs, including (1) the processes that the district uses to identify students for TAG eligibility, (2) the use of flexible student grouping in district classrooms, (3) the incorporation of depth of knowledge learning in district classrooms, (4) the use of optional instructional formats, advanced placement courses, and baccalaureate offerings, (5) the use of TAG facilitators and other mechanisms to increase teachers' knowledge of TAG students or students who may be TAG eligible, (6) the use of instructional plans for TAG students, (7) the placement of high performing students in the district's ACCESS Academy Alternative Program, (8) the use of optional enrichment activities, such as robotics clubs, chess clubs, and a variety of other offerings, (9) the professional development of district staff, and (9) methods of communicating with the parents and legal guardians of students attending school in the district.

¹⁷ Portland Public School District Talented and Gifted Education Plan 2019 – 2022. Available at: <https://www.pps.net/Page/2896>.

¹⁸ *Id.* at pages 1-2.

- a. With respect to the processes that the district uses to identify students for TAG eligibility, the plan specifies that

Currently Portland Public Schools uses the CogAT 7 for intelligential identification in grades K – 12, ITBS K – 2 for academic identification in Math and/or Reading and the SBAC spring scores for grades 3 – 12. All 2nd grade students are screened using the CogAT 7 Screener in the fall for possible TAG identification.

* * * * *

In attempt to increase identification and services provided to historically underserved students, PPS will be creating a systematic identification process which will be designed in the 2019 spring semester for implementation in the fall of 2019. Starting in the 2019-2020 school year, PPS will use the Naglieri 3 for intellectual identification and spring SBAC and NEWA MAP (nationally and locally normed test results) assessments for identification of talented and gifted in the areas of Math and Reading in Grades 1 – 12. Universal testing will be done in the fall for 2nd grade using the Naglieri 3 and MAP assessment.¹⁹

- b. With respect to the use of flexible student grouping in district classrooms, the district wrote, “Currently there is not a system-wide approach to flexible grouping across Portland Public Schools.” The district explained that this technique varies “by campus and teacher.” The district asserted that it “will begin training teachers to use student rate and level reports to provide flexible grouping opportunities across the system.”²⁰
- c. With respect to the incorporation of depth of knowledge learning in district classrooms, the district wrote, “Currently there is not a system-wide approach to the incorporation of the dimensions of depth and complexity across Portland Public Schools.” The district specified that this technique varies “by campus and teacher.” The district set forth a plan for incorporating such teaching “across the district.”²¹
- d. With respect to the use of TAG facilitators and other mechanisms to increase teachers’ knowledge of TAG students or students who may be TAG eligible, the

¹⁹ *Id.* at 2-3.

²⁰ *Id.* at 5.

²¹ *Id.*

district wrote, “Every campus in PPS has a designated TAG facilitator who is paid an extended responsibility stipend to manage TAG identification & nomination, parent communication and teacher TAG training on campus.” The district also described a variety of reports and databases that teachers can access to identify TAG students. The district explained that it would provide district teachers training on how to “read and use MAP results/RIT scores to inform instruction” and how to “access MAP student reports to identify each student’s rate and level in tested MAP areas.”²²

- e. With respect to the use of instructional plans for TAG students, the district wrote, “Currently in PPS, written TAG Instructional Personal Learning Plans are not required for the individual student unless requested by the parent.” The district explained that “Every campus in PPS has a campus TAG plan that is unique to their school and their programs.” The district also wrote that it has “the goal [is] to create individualized instructional plans.”²³
 - f. With respect to the placement of high performing students in the district’s ACCESS Academy Alternative Program, the district wrote that it “offers highly gifted student choice [of] school transfer through an alternative program, ACCESS Academy, which serves students in 1st – 8th grade.” The district noted that students must score at the 99th percentile on at least one academic assessment to be placed in the academy.²⁴
 - g. With respect to the professional development of district staff, the district listed the topics for which it would provide instruction during the 2018 – 2019, 2019 – 2020, 2020 – 2021, and 2021 – 2022 school years. For example, the district specified that it would provide “rate and level training” for each of those school years.²⁵
 - h. With respect to methods of communicating with the parents and legal guardians of students attending school in the district, the district listed several methods that it would employ at various stages in the TAG identification, nomination, and teaching process. For example, prior to testing for TAG placement, the district uses the following methods: “School TAG bulletin board, school newsletter, PPS TAG website, TAG Facilitators, Fall Back to School Night, TAG Power Point, 2nd Grade Universal Testing Letter to parents.”²⁶
11. The district’s Talented and Gifted Education Plan lists five “major goals” of the district with respect to its TAG program. Those goals are:

²² *Id.* at 7.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 8.

²⁶ *Id.* at 9.

1. **TAG identification improvement** – improve universal screening practices to automate identification and to increase identification of historically underserved students.

2. **Professional development of staff** – train TAG facilitators, teachers, and administrators in rate and level, depth of knowledge, classroom look fors, and using formative assessments to inform instruction.

3. **Curriculum development** – include in-depth DOK/TAG extensions and differentiated lessons, activities, opportunities, and projects into each GVC unit written in the new common core curriculum.

4. **Use formative assessment to inform instruction** – use MAP assessment results/RIT scores to provide personalized learning opportunities for each student.

5. **Create individual instructional plan** – work with campus committees that include teachers, TAG facilitators, and parents to create individual instructional plans to identify learning goals and identify classroom practices that would meet individual TAG students learning needs.²⁷

12. The district’s Talented and Gifted Education Plan specified the timeline that the district would adhere to in accomplishing its five “major” and other goals.²⁸

13. The district’s Talented and Gifted Education Plan described the manner in which the district would accomplish its five “major” and other goals.²⁹

14. The district’s Talented and Gifted Education Plan described the manner in which the district would evaluate its progress toward accomplishing its five “major” and other goals.³⁰

²⁷ *Id.* at page 10.

²⁸ *Id.* at pages 10-13.

²⁹ *Id.* at page 14.

³⁰ *Id.* at page 15.

IV. Findings of Fact Related to School Visits

A. Findings of Fact Related to School Visit Procedures

15. The Oregon Department of Education conducted both in-person classroom visits and virtual classroom visits of schools that are a part of Portland Public Schools. In-person classroom visits were conducted during the months of January, February, and March in the year 2020. Virtual classroom visits were conducted during the month of October in the year 2020.³¹
16. In total, the department observed classes in 43 district schools and programs.
 - a. The department observed classes in 16 district elementary schools, constituting 46% of the elementary schools located in the district.
 - b. The department observed classes in seven K-8 schools, constituting 44% of the K-8 schools located in the district.
 - c. The department observed classes in ten middle schools, constituting 71% of the middle schools located in the district.
 - d. The department observed classes in seven high schools, constituting 64% of the high schools located in the district.
 - e. The department observed classes at the two campuses for the district's ACCESS Academy Alternative Program.
 - f. The department observed classes in the district's Metropolitan Learning Center K-12 alternative education program.
17. In total, the department visited 132 classes for grades K-2, 104 classes for grades 3-5, 159 classes for grades 6-8, and 46 classes for grades 9-12.
18. The department followed the following procedures when conducting in-person classroom visits:
 - a. Each classroom visit was conducted by a team consisting of the department's TAG specialist, a district administrator, a district Teacher on Special Assignment (TOSA), and a school administrator.

³¹ The department conducted virtual visits for classes in grades 9-12 during October 2020, because those classes were held in virtual classrooms due to the COVID-19 pandemic.

- b. The department's TAG specialist used identical processes for collecting data in each class. The specialist observed for the same types of activities in each class. The specialist sought to ask teachers the same set of questions in each class.
 - c. Not all teachers were available to answer questions.
 - d. The visit would last from 20 to 45 minutes, depending on the class's activities and the availability of teachers to answer questions.
19. The department followed the following procedures when conducting virtual classroom visits:
- a. Each classroom visit was conducted by a team consisting of the department's TAG specialist, a district administrator, a district TOSA, and a school administrator.
 - b. The school or teacher provided a link for the visiting team to enter the class. Most links were provided through a Google application. Some links were provided through Zoom. Visiting team members muted their microphones before entering the class.
 - c. The department's TAG specialist used identical processes for collecting data in each class. The specialist observed for the same types of activities in each class.
 - d. The department's TAG specialist did not interact with teachers during class. Instead, the specialist communicated with the teachers through emails and surveys.

B. *Findings of Fact Related to Identifying TAG Students in Classes Observed*

20. Of the classes observed, the following percentages of teachers reported having at least one TAG student in their class: 39% of teachers teaching grades K-2, 77% of teachers teaching grades 3-5, 78% of teachers teaching grades 6-8, and 71% of teachers teaching grades 9-12.
21. Of the classes observed, the number of TAG students generally corresponded with grade level, with fewer TAG students attending lower-level grades and more TAG students attending higher-level grades.
22. For the purpose of investigating this appeal, the department's TAG specialist gathered information pertaining to who nominated students for TAG eligibility.

- a. Of classes observed in grades K-2, 26% of TAG students were nominated by the teacher, 35% by a parent or legal guardian, and 31% by the district. The department's TAG specialist could not identify who nominated the remainder of TAG students.
 - b. Of classes observed in grades 3-5, 31% of TAG students were nominated by the teacher, 12% by a parent or legal guardian, and 44% by the district. The department's TAG specialist could not identify who nominated the remainder of TAG students.
 - c. Of classes observed in grades 6-8, 12% of TAG students were nominated by the teacher, 3% by a parent or legal guardian, and 72% by the district. The department's TAG specialist could not identify who nominated the remainder of TAG students.
 - d. Of classes observed in grades 9-12, 29% of TAG students were nominated by the teacher, 14% by a parent or legal guardian, and 26% by the district. The department's TAG specialist could not identify who nominated the remainder of TAG students.
 - e. With respect to those TAG students for whom the department's TAG specialist could identify who nominated them, a parent or legal guardian did not nominate a student for the district's TAG program in 62% of classes in grades K-2, 73% of classes in grades 3-5, 82% of classes in grades 6-8, and 70% of classes in grades 9-12.
23. For the purpose of investigating this appeal, the department's TAG specialist asked teachers from classes in grades K-5 the following question: "Have any students in your class been nominated for TAG eligibility this year?"
- a. Of classes observed in grades K-2, 49% of teachers responded "yes" and 30% of teachers responded "no." 11% of teachers responded "maybe."
 - b. Of classes observed in grades 3-5, 37% of teachers responded "yes" and 45% of teachers responded "no." 5% of teachers responded "maybe."
24. For the purpose of investigating this appeal, the department's TAG specialist asked teachers from classes in grades 6-12 the following question: "Have you nominated, or will you nominate, students in your class for TAG eligibility this year?"

- a. Of classes observed in grades 6-8, 15% of teachers responded “yes” and 50% of teachers responded “no.” 19% of teachers responded “maybe.”
 - b. Of classes observed in grades 9-12, 15% of teachers responded “yes” and 39% of teachers responded “no.” 39% of teachers responded “maybe.”
25. At the time of this investigation, the tools most commonly used by teachers to identify students for TAG eligibility were: (1) for grades K-2, requests by parents and legal guardians, observations made by teachers, and 2nd grade screening; (2) for grades 3-8, observations made by teachers and Measure of Academic Progress (MAP) testing; and (3) for grades 9-12, observations made by teachers.³²
26. For the purpose of investigating this appeal, the department’s TAG specialist asked teachers who did not nominate a student for TAG eligibility why they did not nominate a student.
- a. For classes observed in grades K-2: (1) 11% of teachers answered that they had not received any test result from the district; (2) 50% of teachers answered that identification for TAG eligibility takes place in the 2nd grade; (3) 30% of teachers answered that they did not believe in identifying students for TAG eligibility at an early age; (4) 23% of teachers answered that they did not have enough information to nominate any students; (5) 9% of teachers answered that they did not understand the identification process; and (6) 1% of teachers specified that comprehensive distance learning affected their ability to identify students. Some teachers were not available to answer the question.
 - b. For classes observed in grades 3-5: (1) 43% of teachers answered that they had not received any test result from the district; (2) 9% of teachers answered that identification for TAG eligibility takes place in the 2nd grade; (3) 56% of teachers answered that they did not have enough information to nominate any students; and (4) 13% of teachers answered that they did not understand the identification process. Some teachers were not available to answer the question.
 - c. For classes observed in grades 6-8: (1) 44% of teachers answered that they had not received any test result from the district; (2) 7% of teachers answered that identification for TAG eligibility takes place in the 2nd grade; (3) 48% of teachers answered that they did not have enough information to nominate any students; (4) 36% of teachers answered that they did not understand the identification process; and (5) 2% of teachers specified that comprehensive distance learning

³² MAP is a nationally administered reading and math assessment taken by students in kindergarten through eighth grade. The assessment measures a student’s proficiency in those subjects, as well as their academic growth during the school year.

affected their ability to identify students. Some teachers were not available to answer the question.

- d. For classes observed in grades 9-12: (1) 8% of teachers answered that they had not received any test result from the district; (2) 40% of teachers answered that they did not have enough information to nominate any students; and (3) 30% of teachers specified that comprehensive distance learning affected their ability to identify students. Some teachers were not available to answer the question.
27. For the purpose of investigating this appeal, the department's TAG specialist documented teachers' comments in grades K-8 to identify themes occurring in the district with respect to identifying students for TAG eligibility.
- a. The district's TAG specialist documented comments indicating that 9% of teachers teaching grades K-2, 36% of teachers teaching grades 3-5, and 81% of teachers teaching grades 6-8 did not understand the identification process.
 - b. The district's TAG specialist documented comments indicating that 22% of teachers teaching grades K-2, 36% of teachers teaching grades 3-5, and 51% of teachers teaching grades 6-8 thought of TAG eligibility as nothing more than a "score."
 - c. The district's TAG specialist documented comments indicating that 36% of teachers teaching grades K-2 and 3% of teachers teaching grades 3-5 discouraged parents from nominating students for TAG eligibility or otherwise beginning the identification process.
 - d. The district's TAG specialist documented comments indicating that 32% of teachers teaching grades K-2 and 3% of teachers teaching grades 3-5 did not believe in identifying students for TAG eligibility in Kindergarten.
 - e. The district's TAG specialist documented comments indicating that 21% of teachers teaching grades K-2 and 3% of teachers teaching grades 3-5 did not believe in identifying students for TAG eligibility in the first grade.
 - f. The district's TAG specialist documented comments indicating that 21% of teachers teaching grades K-2 and 3% of teachers teaching grades 3-5 believe that student performance will "level out" by grade 3.

C. *Findings of Fact Related to Providing TAG Students with the Appropriate Rate and Level of Learning*

28. For the purpose of investigating this appeal, the department's TAG specialist documented the tools most often used by teachers to determine TAG students' rates and levels of learning.
- a. Of classes observed in grades K-5, 11% of teachers reported that they did not use assessed levels of learning and accelerated rates of learning when teaching TAG students. Of classes observed in grades 6-8, 37% of teachers reported that they did not use assessed levels of learning and accelerated rates of learning when teaching TAG students. Of classes observed in grades 9-12, 0% of teachers reported that they did not use assessed levels of learning and accelerated rates of learning when teaching TAG students.
 - b. Of classes observed in grades K-2, teachers reported using the following resources – from the most used to the least used – in determining TAG students' rates and levels of learning: curriculum specific assessments, progress reports from learning applications, district-wide assessments, daily classwork, learning evidence, and pre-assessment prior to teaching individual units.³³
 - c. Of classes observed in grades 3-5, teachers reported using the following resources – from the most used to the least used – in determining TAG students' rates and levels of learning: curriculum specific assessments, district-wide assessments, and statewide assessments.
 - d. Of classes observed in grades 6-8, teachers reported using the following resources – from the most used to the least used – in determining TAG students' rates and levels of learning: district-wide assessments, curriculum specific assessments, and statewide assessments.
 - e. Of classes observed in grades 9-12, teachers reported using the following resources – from the most used to the least used – in determining TAG students' rates and levels of learning: classroom summative assessments,³⁴ classroom formative assessments,³⁵ daily classwork, learning evidence, and exit tickets.³⁶

³³ Learning evidence is a type of assessment where teachers measure student learning by examining student work and performance directly.

³⁴ Summative assessments are assessments administered at the end of an instructional unit.

³⁵ Formative assessments are a wide variety of methods used to conduct in-process evaluations of student comprehension, learning needs, and academic progress.

³⁶ Exit tickets are a type of classroom formative assessment, typically used at the end of a lesson or class period, where the teacher will assign students to perform a short task, such as writing a short response to a question. The teacher will then use the performance as evidence of learning.

29. For the purpose of investigating this appeal, the department's TAG specialist documented the development of TAG plans for individual students.
- a. Of classes observed in grades K-8, 85% of teachers reported that they did not have a student with a written TAG plan in their classes. Of classes observed in grades 9-12, 61% of teachers reported that they did not have a student with a written TAG plan in their classes.
 - b. Of classes observed in grades K-8, 86% of teachers reported that the parents and legal guardians of TAG students did not request a written TAG plan. Of classes observed in grades 9-12, 72% of teachers reported that the parents and legal guardians of TAG students did not request a written TAG plan.
 - c. On average, teachers reported that they discussed students' TAG plans with the parents or legal guardians of TAG students most often at the beginning of the school year or during fall teacher-parent conferences. Some of these teachers reported that they discussed students' TAG plan with the parents or legal guardians throughout the school year, during subsequent on-going communication.
 - d. On average, teachers teaching grades K-5 reported that either the teacher or the parent of legal guardian of a TAG student initiated discussing the student's TAG plan.
 - e. On average, teachers teaching grades 6-8 reported that the teacher generally initiated the discussion.
 - f. On average, teachers teaching grades 9-12 reported that both the teacher and the parent or legal guardian initiated the discussion during a "conversation about the student."
30. For the purpose of investigating this appeal, the department's TAG specialist documented what students were doing in each class observed. The specialist noted whether the task constituted whole group instruction, completion of work with no differentiated learning for TAG students, or tiered work adequately accommodating assessed levels of learning and accelerated rates of learning.
- a. Of classes observed in grades K-2, the department's TAG specialist noted that whole group instruction occurred in 52% of classes, completion of work with no differentiated learning occurred in 57% of classes, and tiered work adequately

accommodating assessed levels of learning and accelerated rates of learning occurred in 17% of classes.

- b. Of classes observed in grades 3-5, the department's TAG specialist noted that whole group instruction occurred in 46% of classes, completion of work with no differentiated learning occurred in 57% of classes, and tiered work adequately accommodating assessed levels of learning and accelerated rates of learning occurred in 9% of classes.
 - c. Of classes observed in grades 6-8, the department's TAG specialist noted that whole group instruction occurred in 80% of classes, completion of work with no differentiated learning occurred in 80% of classes, and tiered work adequately accommodating assessed levels of learning and accelerated rates of learning occurred in 8% of classes.
 - d. Of classes observed in grades 9-12, the department's TAG specialist noted that whole group instruction occurred in 96% of classes, completion of work with no differentiated learning occurred in 85% of classes, and tiered work adequately accommodating assessed levels of learning and accelerated rates of learning occurred in 11% of classes.
 - e. On average, the department's TAG specialist noted that whole group instruction occurred in 68% of all classes, completion of work with no differentiated learning occurred in 70% of classes, and tiered work adequately accommodating assessed levels of learning and accelerated rates of learning occurred in 10% of classes.
31. For the purpose of investigating this appeal, the department's TAG specialist documented whether each observed class used assessed levels of learning and accelerated rates of learning when teaching TAG students (i.e., the class "met" the legal standard for rate and level instruction), did not use any assessed levels of learning or accelerated rates of learning (i.e., the class "did not meet" the legal standard for rate and level instruction), or used assessed levels of learning and accelerated levels of learning in a manner that needed to be modified to be apparent and appropriate³⁷ (i.e., the class "almost met" the legal standard for rate and level instruction).
- a. The department's TAG specialist observed for a variety of teaching techniques that may be used to provide rate and level instruction. Such teaching techniques include use of flexible seating patterns or student grouping, readiness grouping,³⁸ student agency with respect to choosing depth of coverage of material, self-paced

³⁷ For example, where TAG students were ready and able to proceed to more advanced lessons, but were first required to complete prerequisite work that they had already mastered.

³⁸ Readiness grouping is grouping students on the basis of grades or other performance data.

learning, choice of depth of coverage of material with corresponding expectations for executing school work, use of rubrics or success criteria to clearly communicate expectations for excellence, use of pre-assessments to determine instruction, use of “in lieu of” projects or assignments, curriculum compacting,³⁹ accelerated standards for executing school work, and use of the Socratic method.⁴⁰

- b. For classes observed in grades K-2, 18% of classes met the legal standard for rate and level instruction, 80% of classes did not meet the legal standard for rate and level instruction, and 2% of classes almost met the legal standard for rate and level instruction.
 - c. For classes observed in grades 3-5, 16% of classes met the legal standard for rate and level instruction, 79% of classes did not meet the legal standard for rate and level instruction, and 1% of classes almost met the legal standard for rate and level instruction. The department’s TAG specialist did not have the opportunity to observe implementation of rate and level instruction in the remainder of the classes.
 - d. For classes observed in grades 6-8, 9% of classes met the legal standard for rate and level instruction and 89% of classes did not meet the legal standard for rate and level instruction. The department’s TAG specialist did not have the opportunity to observe implementation of rate and level instruction in the remainder of the classes.
 - e. For classes observed in grades 9-12, 13% of classes met the legal standard for rate and level instruction, 85% of classes did not meet the legal standard for rate and level instruction, and 2% of classes almost met the legal standard for rate and level instruction.
32. For the purpose of investigating this appeal, the department’s TAG specialist documented how teachers organized seating in their classrooms.⁴¹ For classes observed in grades K-8:
- a. Teachers most often described (1) grouping students who performed at a high-level, including TAG students, with students who “struggled,” or (2) grouping

³⁹ Curriculum compacting is a technique for differentiating instruction where teachers make adjustments to curriculum for students who have already mastered the material to be learned by replacing content that the student knows with new content, providing enrichment options related to the course material, or providing other learning activities related to the course material.

⁴⁰ Socratic method is a technique where teachers engage in dialogue with students.

⁴¹ The department’s TAG specialist did not document how teachers organized seating in their classrooms for grades 9-12 because those classes were held in virtual classrooms.

students in heterogeneous groups of four and assigning at least one student who performed at a high-level, including TAG students, to be a part of the group.

- b. Teachers sometimes described (1) having students who performed at a high-level, including TAG students, assist other students, or (2) grouping students in accordance with behaviors exhibited by the students.
- c. Teachers infrequently described (1) using flexible seating patterns or student grouping, or (2) grouping students in accordance with their readiness.

V. Findings of Fact Related to Survey Results

A. Findings of Fact Related to Survey Procedures

- 33. The Oregon Department of Education conducted online surveys of district administrators and district teachers who were employed by Portland Public Schools and of parents and legal guardians of TAG students who attended school in the district.
- 34. Portland Public Schools' Communications Department emailed survey invitations to 150 district administrators and 3,650 district teachers.
- 35. The district provided the department with the email addresses of parents and legal guardians of TAG students who attended school in the district. The department emailed survey invitations to those parents. Using information provided by the district, the department also created its own database of the email addresses of parents and legal guardians of TAG students. The department also emailed survey invitations to those parents. During times relevant to this appeal, there were 7,495 TAG students attending school in the district.
- 36. Respondents completed their surveys and the department recorded the results of the surveys during the months of January, February, March, and April of the year 2020.

B. Respondent Representation

- 37. Of the district administrators who responded to the survey:
 - a. 91% of respondents reported that they administered schools serving grades K-8.
 - b. 33% of respondents reported that they had been employed by the district for one to five years, 31% for six to 15 years, and 36% for 16 or more years.

- c. 34% of respondents reported that they had been a principal or other administrator for one to five years, 55% for six to 15 years, and 11% for 16 or more years.
- d. 75% of respondents reported that they had been at their current school or office for one to five years and 25% for six to 15 years.

38. Of the district teachers who responded to the survey:

- a. 83% of respondents reported that they taught in schools serving grades K-8.
- b. 15% percent of respondents reported having five or fewer years of teaching experience, 62% reported having six to 20 years of experience, and 23% reported having 21 or more years of experience.
- c. 22% of respondents reported being employed by the district for 1 year or less, 52% reported being employed by the district for two to ten years, and 43% reported being employed by the district for eleven or more years.
- d. 14% of respondents reported being at their current position for 1 year or less, 64% reported being at their current position for two to ten years, and 22% reported being at their current position for eleven or more years.
- e. 88% of respondents reported that they were classroom teachers. The remainder were teachers who taught in another capacity or who performed other duties. Most respondents taught a self-contained elementary school class or a specific subject, such as English-language arts, world languages, mathematics, health education, science, or social science.

39. Of the parents and legal guardians who responded to the survey, 79% were the parents or guardians of students attending grades K-8.

C. Findings of Fact Related to Survey Responses Pertaining to Identifying TAG Students

40. Of the district administrators who responded to the survey:

- a. 77% of respondents reported that they had received training on using research-based best practices to identify TAG eligible students.
- b. 6% of respondents reported having no TAG-identified students in their school.

- c. An average of 73% of respondents reported having one to five TAG-identified students per class for each type of TAG student.⁴²
 - d. An average of 6% of respondents reported having six or more TAG-identified students per class for each type of TAG student.
 - e. 11% of respondents reported having no TAG-nominated students in their school.
 - f. An average of 78% of respondents reported having one to five TAG-nominated students per class for each type of TAG student.
 - g. An average of 11% of respondents reported having six or more TAG-nominated students per class for each type of TAG student.
41. 14 comments were submitted by district administrators. Of the comments, four respondents asked for guidance, training, professional development, or other support for identifying students for TAG eligibility.
42. Of the district teachers who responded to the survey:
- a. 38% of respondents reported that they had received training on identifying students for TAG eligibility.
 - b. 36% of respondents reported having no TAG-identified students in their class.
 - c. An average of 70% of respondents reported having one to five TAG-identified students in their class.
 - d. An average of 10% of respondents reported having six or more TAG-identified students in their class.
 - e. 36% of respondents reported having no TAG-nominated students in their class.
 - f. An average of 60% of respondents reported having one to five TAG-nominated students in their class.

⁴² See OAR 581-022-2325(2)(d) (“The following measures and criteria for identifying the intellectually gifted and the academically talented shall be used by [the school district]: (A) Intellectually gifted students shall score at or above the 97th percentile on a nationally standardized test of mental ability; and (B) Academically talented students shall score at or above the 97th percentile on a test of total reading or a test of total mathematics from a nationally standardized test battery, a nationally standardized test of reading or mathematics, or a test of total English Language Arts/Literacy or total mathematics on the Smarter Balanced Assessment.”) and OAR 581-022-2325(2)(e) (“Despite a student’s failure to qualify [for TAG through testing], [school] districts, by local policies and procedures, shall identify students who demonstrate the potential to perform at the 97th percentile.”).

- g. An average of 4% of respondents reported having six or more TAG-nominated students in their class.
43. 233 comments were submitted by district teachers. The department's TAG specialist read the comments and identified trends. Trends included:
- a. Concerns about the district's TAG identification process, such as over-identification, dependence on parental advocacy, the need for clarity in how the identification process works, and the need for better understanding how the process works.
 - b. Concerns that the TAG-identification process was the only district-wide program for TAG students.
 - c. Concerns about struggling students who otherwise exhibited gifted behaviors.
 - d. Concerns about a lack of equity in the district's TAG identification process, such as under-identification of students of color, even in schools that primarily serve that student population.
 - e. A lack of clarity about whether TAG policies apply to kindergarten students and staff.
44. Of the parents and legal guardians of TAG students who attended school in the district:
- a. 54% of respondents agreed or strongly agreed that their student was assessed for the TAG program in a variety of ways, such as by testing, quality of schoolwork, and parent feedback.
 - b. 25% of respondents disagreed or strongly disagreed that their student was assessed for the TAG program in a variety of ways.
 - c. 21% of respondents neither agreed nor disagreed that their student was assessed for the TAG program in a variety of ways.
 - d. 51% of respondents agreed or strongly agreed that they understood how their student was identified.

- e. 44% of respondents disagreed or strongly disagreed that they understood how their student was identified.
 - f. 15% of respondents neither agreed nor disagreed that they understood how their student was identified.
45. 683 comments were submitted by parents and legal guardians of TAG students who attended school in the district. The department's TAG specialist read the comments and identified trends. Trends included that the district's TAG identification process is inadequate and that the process does not lead to the provision of TAG services.
- C. *Findings of Fact Related to Survey Responses Pertaining to Providing TAG Students with the Appropriate Rate and Level of Learning*

46. Of the district administrators who responded to the survey:

- a. 86% of respondents reported that they had received training on TAG students' profiles and characteristics.
- b. 81% of respondents reported that they had provided training to their staff on TAG students' profiles and characteristics.
- c. 64% of respondents reported that they had received training in meeting the social and emotional needs of TAG students.
- d. 55% of respondents reported that they had provided training to their staff on the social and emotional needs of TAG students.
- e. 58% of respondents reported that their schools had special programs or services for TAG students.
- f. The majority of respondents reported having been trained on all listed strategies for providing TAG services. The strategies receiving the highest response rates included flexible seating patterns or student grouping, differentiated learning, and high-level questioning. The strategy that received the lowest response rate was student agency.
- g. The majority of respondents rated themselves as having intermediate- or high-level expertise in each strategy for providing TAG services. The strategies receiving the highest response rates included flexible seating patterns or student grouping, differentiated learning, high-level questioning, and formative assessment.

- h. 70% of respondents reported that their teachers review and adjust TAG instructional plans as needed.
 - i. 34% of respondents reported that their teachers review and adjust TAG instructional plans on an annual basis.
 - j. 65% of respondents reported that they personally review and monitor TAG instructional plans.
 - k. 35% of respondents reported that they do not personally review and monitor TAG instructional plans. Of these respondents, 54% reported that the TAG coordinator, the TAG facilitator, or other TAG specialist individually reviewed and monitored TAG instructional plans. Some of the respondents indicated that their school used other methods for reviewing and monitoring TAG instructional plans.
 - l. 61% of respondents reported that their school documents TAG instruction in their gradebooks. 34% reported that their school documents TAG instruction by other means, such as use of electronic files, forms that document TAG instructional planning, and lesson plans.
47. 14 comments were submitted by district administrators. Of the comments, four respondents asked for guidance, training, professional development, or other support for instructing TAG students.
48. Of the district teachers who responded to the survey:
- a. Respondents reported using the following sources of information most often in assessing TAG students' rates and levels of learning: schoolwork, student presentations, daily observations, formative assessments, and student input and self-assessment.
 - b. Respondents reported using the following sources of information least often in assessing TAG students' rates and levels of learning: statewide assessments, student portfolios, student demonstrations, parent and legal guardian input, and collaborative efforts with other teachers.
 - c. 70% or more of respondents reported that they were familiar with differentiated instruction, high-level questioning, flexible seating and grouping, individualized instruction, formative assessment, and use of extensions.

- d. 58% or fewer respondents reported that they were familiar with compacting curriculum, Socratic method, student agency, and Webb’s Depth of Knowledge.⁴³
- e. 92% of respondents reported having been trained in differentiated instruction.
- f. 75% of respondents reported having been trained in high-level questioning.
- g. 64% of respondents reported having been trained in formative assessment.
- h. 62% of respondents reported having been trained in flexible seating and grouping.
- i. 57% of respondents reported having been trained in individualized instruction.
- j. A minority of respondents reported having been trained on all other strategies that may be used to provide TAG students with an appropriate rate and level of learning.⁴⁴
- k. The majority of respondents rated themselves as having intermediate- or high-level expertise in each strategy for providing TAG services except for compacting curriculum, Socratic method, student agency, and Webb’s Depth of Knowledge. The strategies receiving the highest response rates included flexible seating patterns or student grouping, differentiated learning, high-level questioning, formative assessment, and individualized instruction.
- l. A majority of respondents reported using their grade book or a student file to document TAG instruction. Other respondents reported not keeping records of TAG instruction, not knowing that they were required to keep records, and keeping records electronically. One district teacher wrote, “As the . . . teacher and the TAG facilitator I’m not sure where anyone would want this information. I make note in my plans if a change/modification is needed for a student.” Another district teacher wrote, “If a kid is doing well on [an assignment], I give them a harder [assignment]. The fact that the kid can [do] it is my documentation.” Another district teacher wrote “It’s in my brain.”
- m. 75% of respondents reported that they do not write TAG instructional plans.
- n. 55% of respondents reported that they do not review past TAG instructional plans before writing a new TAG instructional plan.

⁴³ Webb’s Depth of Knowledge was created by Norman Webb from the Wisconsin Center for Education Research. Webb defines “depth of knowledge” as the degree or complexity of knowledge that the content curriculum standards and expectations require.

⁴⁴ Such as compacting curriculum, Socratic method, student agency, and Webb’s Depth of Knowledge.

- o. 86% of respondents reported that the parents and legal guardians of TAG students did not often request a written TAG instructional plan.
 - p. 51% of respondents reported that they did not make course recommendations for TAG students.
 - q. Respondents reported using the following techniques most often in meeting TAG students' needs, from the most used to the least used: (1) instruction in the classroom by the classroom teacher, (2) instruction in the classroom in small groups, where TAG students are grouped with other TAG students or students who otherwise perform at a high-level, (3) instruction in the classroom with individualized assistance from district staff, and (4) through accelerative learning opportunities.
 - r. Respondents reported using the following techniques least often in meeting TAG students' needs: (1) instruction in a resource room, where TAG students work in small groups or individually, (2) instruction in a classroom where all students are TAG students or students who otherwise perform at a high-level, (3) through a program where students are pulled from regular class to receive special instruction, and (4) instruction in honors, advance placement, community college, or university classes.⁴⁵
 - s. 82% of respondents reported conferencing with TAG students – in a meeting, by phone, or through email – regarding their learning as needed.
 - t. 17% of respondents reported conferencing with TAG students regarding their learning weekly.
 - u. 14% of respondents reported conferencing with TAG students regarding their learning at the beginning of the school year.
 - v. 12% of respondents reported conferencing with TAG students regarding their learning quarterly.
 - w. A small percentage of respondents reported conferencing with TAG students regarding their learning monthly, biannually, or at the end of the school year.
49. 233 comments were submitted by district teachers. The department's TAG specialist read the comments and identified trends. Trends included:

⁴⁵ Because 83% of respondents reported that they taught in schools serving grades K-8, the number of teachers reporting that TAG students received instruction in honors, advance placement, community college, or university classes may be artificially low.

- a. Concerns about the district's TAG services, including that many TAG students do not know that they are TAG students, that there is a lack of support and challenging learning opportunities for TAG students, that the district's identification process constitutes the whole of the district's TAG program, and that the district's ACCESS Academy Alternative Program constitutes the whole of the district's TAG program.
 - b. The need for training in meeting TAG students' needs, including training in differentiated learning and other TAG instructional strategies.
 - c. The need for materials, time, and other resources necessary to meet TAG students' needs.
 - d. The need for clarity regarding the role that TAG coordinators and facilitators play.
50. Of the parents and legal guardians of TAG students who attended school in the district:
- a. 29% of respondents agreed or strongly agreed that their student's academic and intellectual needs were being met.
 - b. 46% of respondents disagreed or strongly disagreed that their student's academic and intellectual needs were being met.
 - c. 25% of respondents neither agreed nor disagreed that their student's academic and intellectual needs were being met.
 - d. 27% of respondents agreed or strongly agreed that their student's academic and intellectual needs were being met daily through classroom instruction.
 - e. 45% of respondents disagreed or strongly disagreed that their student's academic and intellectual needs were being met daily through classroom instruction.
 - f. 28% of respondents neither agreed nor disagreed that their student's academic and intellectual needs were being met daily through classroom instruction.
 - g. When asked how students' academic needs are being met at school, of 12 options, 67% of respondents marked, "In the regular classroom by their classroom teacher," 29% of respondents marked, "Other," and fewer than 13% of respondents marked any other choice.

- h. 19% of respondents agreed or strongly agreed that they knew how their student's teacher provided for their student's rate and level of instruction.
 - i. 64% of respondents disagreed or strongly disagreed that they knew how their student's teacher provided for their student's rate and level of instruction.
 - j. 18% of respondents neither agreed nor disagreed that they knew how their student's teacher provided for their student's rate and level of instruction.
 - k. 11% of respondents agreed or strongly agreed that their student's classroom teacher or teachers consistently used their student's TAG instructional plan in meeting the student's rate and level of learning.
 - l. 59% of respondents disagreed or strongly disagreed that their student's classroom teacher or teachers consistently used their student's TAG instructional plan in meeting the student's rate and level of learning.
 - m. 30% respondents neither agreed nor disagreed that their student's classroom teacher or teachers consistently used their student's TAG instructional plan in meeting the student's rate and level of learning.
 - n. 22% of respondents agreed or strongly agreed that if they ask their student's classroom teacher or teachers about a concern related to the provision of TAG services, the teacher or teachers explain how the student's needs are being met.
 - o. 29% of respondents disagreed or strongly disagreed that if they ask their student's classroom teacher or teachers about a concern related to the provision of TAG services, the teacher or teachers explain how the student's needs are being met.
 - p. 49% of respondents neither agreed nor disagreed that if they ask their student's classroom teacher or teachers about a concern related to the provision of TAG services, the teacher or teachers explain how the student's needs are being met.
51. 363 comments specific to whether the district was meeting the academic needs of TAG students were submitted by parents and legal guardians of TAG students who attended school in the district. The department's TAG specialist read the comments and identified trends. Trends included:
- a. TAG students' academic needs are not being met.

- b. TAG students' academic needs are only being met at the district's ACCESS Academy Alternative Program.
 - c. Honors and advance placement classes, alone, do not provide for TAG students' academic needs.
 - d. When TAG students' academic needs are met, they are met in a variety of ways, such as by individualized instruction, programs where students are pulled from regular class to receive special instruction, schooling at home or online, parent-created curricula, and self-study.
52. 683 general comments were submitted by parents and legal guardians of TAG students who attended school in the district. The department's TAG specialist read the comments and identified trends. Trends included:
- a. TAG students are bored at school.
 - b. District TAG services and instruction are underdeveloped.
 - c. District TAG services and instruction are not executed or applied in a comprehensible or intelligible manner.
 - d. Dissatisfaction with TAG facilitators and coordinators. For example, "We were not informed by [the] TAG coordinator when the tests would be or what they would entail – for instance, we declined the verbal test because [our child] didn't read yet and no one told us it was not a reading test." Other examples include: "[Our child's] classroom teacher does not know what to do to challenge her per her teacher's own words. There is no help from the TAG coordinator or any other source for the teacher" and "When I have reached out to our school's TAG coordinator, I have either received no response or been dismissed."
 - e. Concerns about whether the district's TAG program is equitable. For example, "It feels like all TAG resources have been funneled to ACCESS Academy, and if you can't get your kid there, you get nothing." Other examples include: "There does not appear to be a standard infrastructure across elementary schools for TAG services/programs, which I view as an inequitable failure" and "I find it maddening that [the district] has provided hardly any support for TAG students. Whenever I raise the issue, I am told that the bar must be lowered for reasons of equity."
 - f. Concerns about lack of funding and other resources necessary to meet TAG students' needs.

- g. A minority of respondents submitted positive comments, including that TAG students are not bored at school, satisfaction with ACCESS Academy Alternative Program, and that the district's TAG program is beneficial to students or helpful to their child. For example, "Our child was very depressed before going to ACCESS. The system is broken – thank god for ACCESS." Other examples include: "The most significant benefit from my child being identified as TAG was that he stopped getting into quite as much trouble for being distracted in class" and "I am in a minority of families whose students are being served well. I can't thank the administration and staff [enough] for helping to support my son in single subject acceleration."

VI. Findings of Fact Related to Portland Public Schools' Complaint Policy and Process

53. Portland Public Schools has a "Complaint Policy."⁴⁶
54. A person may access the district's complaint policy by clicking a link on the Home Page of the district's website titled "Conflict Resolution." The corresponding page on the district's website contains detailed information about the district's complaint process. The page also includes links to the district's complaint policy and an online form that a person may use to file a complaint.
55. The district's complaint policy specifies that the district's Complaint Coordinator is responsible for processing complaints. The district's webpage dedicated to detailing information about the district's complaint process also provides the contact information for the coordinator in the form of links to the coordinator's email address.
56. The district's complaint process has multiple steps for the filing of complaints. The policy specifies the timeline by which the district will complete each step in the process.
57. Complainant filed their initial complaint on April 29, 2019. The district responded to that complaint on May 29, 2019.
58. On June 3, 2019, Complainant appealed the response issued by the district to the district superintendent. The district superintendent responded to that appeal on July 3, 2019.
59. On July 22, 2019, Complainant appealed the response issued by the district's superintendent to the district's school board. The school board responded to that appeal on August 13, 2019.

⁴⁶ Portland Public School Board Policy 4.50.023. Available at: <https://www.pps.net/cms/lib/OR01913224/Centricity/Domain/4814/4.50.032-P.pdf>

ANALYSIS

I. **Whether Portland Public Schools may have violated OAR 581-022-2325, which requires school districts to identify intellectually talented and academically gifted students**

For purposes of identifying students for TAG eligibility, the Oregon Legislative Assembly enacted ORS 343.407 and 343.411. Under ORS 343.407, “School districts shall identify students enrolled in public schools under rules adopted by the State Board of Education.” Under ORS 343.411,

(1) ORS 343.407 applies to the identification of and provision of special educational programs and services for children described in ORS 343.395 (4)(a) and (b) and rules adopted by the State Board of Education.

(2) School districts may identify and provide special educational programs and services for children who demonstrate creative abilities, leadership abilities or unusual abilities in the visual or performing arts as described in ORS 343.395 (4)(c), (d), and (e) and rules adopted by the board.

For purposes of both statutes, the Oregon legislature defined the term “talented and gifted children” in ORS 343.395(4). Under that statute, the term “talented and gifted children” means:

[T]hose children who require special educational programs or services, or both, beyond those normally provided by the regular school program in order to realize their contribution to self and society and who demonstrate outstanding ability or potential in one or more of the following areas:

(a) General intellectual ability as commonly measured by measures of intelligence and aptitude.

(b) Unusual academic ability in one or more academic areas.

(c) Creative ability in using original or nontraditional methods in thinking and producing.

(d) Leadership ability in motivating the performance of others either in educational or noneducational settings.⁴⁷

⁴⁷ ORS 343.395. Both ORS 343.407 and OAR 581-022-2325 use the term “talented and gifted students” instead of the term “talented and gifted children.” However, the context of in which the term “talented and gifted students” is used in OAR 581-022-2325 makes it clear that the State Board of Education considers the two terms synonymous.

The State Board of Education adopted OAR 581-022-2325 for the purpose of implementing ORS 343.407. That rule reads, in full:

(1) Each school district shall have local district policies and procedures for the identification of talented and gifted students as defined in ORS 343.395 who demonstrate outstanding ability or potential in one or more of the following areas:

(a) General intellectual ability as commonly measured by measures of intelligence and aptitude.

(b) Unusual academic ability in one or more academic areas.

(2) The policies and procedures must meet the following requirements:

(a) [School] districts shall use research based best practices to identify students from underrepresented populations including: ethnic minorities, students with disabilities, students who are culturally and/or linguistically diverse, or [students who are] economically disadvantaged.

(b) A team shall make the final decision on the identification of students using the information collected under paragraph (c) and (d) of this section. No single test, measure[,], or score shall be the sole criterion. A record of the team's decision, and the data used by the team to make the decision, shall become part of the education record for each student considered.

(c) Districts shall collect behavioral, learning[,], and performance information and include the information in all procedures for the identification of students.

(d) The following measures and criteria for identifying the intellectually gifted and academically talented shall be used by the team:

(A) Intellectually gifted students shall score at or above the 97th percentile on a nationally standardized test of mental ability; and

In both instances in which the "talented and gifted students" appears in OAR 581-022-2325, the board stated that the term should be defined as it appears in ORS 343.395.

(B) Academically talented students shall score at or above the 97th percentile on a test of total reading or a test of total mathematics from a nationally standardized test battery, a nationally standardized test of reading or mathematics, or a test of total English Language Arts/Literacy or total mathematics on the Smarter Balanced Assessment.

(e) Despite a student's failure to qualify under paragraphs (d)(A) and (B) of this subsection, districts, by local policies and procedures, shall identify students who demonstrate the potential to perform at the 97th percentile.

(3) School districts may identify additional students who are talented and gifted as defined in ORS 343.395, as determined by local district policies and procedures, if the students demonstrate outstanding ability or potential in one or more of the following areas:

(a) Creative ability in using original or nontraditional methods in thinking and producing.

(b) Leadership ability in motivating the performance of others either in educational or non-educational settings.

(c) Ability in the visual or performing arts, such as dance, music[,] or art.

In their April 29th complaint to Portland Public Schools, Complainant alleged that the district failed to implement a system-wide approach to identifying students who have special education needs or who are English Language Learners (ELL students) for TAG programs.

The district did not respond to that part of Complainant's complaint until it responded to Complainant's appeal to the Oregon Department of Education. In that response, the district wrote,

The TAG Department receives OSAS scores from the state in the fall and notifies parents by mail when their child has a score that could qualify their student as TAG. The TAG Department universally tests all second graders for intellectual identification and informs parents of possible qualification. The TAG Department assesses any student that a parent has nominated in the

spring of each year for academic and intellectual giftedness if not already identified in that area.

A. *Whether Portland Public Schools identified students for its TAG program that test in the 97th percentile*

OAR 581-022-2325(2) requires school districts to use certain measures and criteria to identify TAG students.

With respect to those measures and criteria, OAR 581-022-2325(2)(d) requires students who place in the 97th percentile of certain tests to be identified as TAG students. The provision specifically requires identifying students who “score at or above the 97th percentile on a nationally standardized test of mental ability” or who “score at or above the 97th percentile on a test of total reading or a test of total mathematics from a nationally standardized test battery, a nationally standardized test of reading or mathematics, or a test of total English Arts/Literacy or total mathematics on the Smarter Balanced Assessment.”

In this case, the evidence demonstrates that the district is in compliance with the applicable provisions.

In its Talented and Gifted Education Plan, the district explained that it currently “uses the CogAT 7 for intelligential identification in grades K – 12 [and the] ITBS K – 2 for academic identification in Math and/or Reading and the SBAC spring scores for grades 3 – 12” to identify TAG students. The district further explained that “[a]ll 2nd grade students are screened using the CogAT 7 Screener in the fall for possible TAG identification.”

With respect to OAR 581-022-2325(2)(d), the district is not deficient.

B. *Whether Portland Public Schools identified students for its TAG program that failed to test in the 97th percentile*

As stated above, OAR 581-022-2325(2) requires school districts to use certain measures and criteria to identify TAG students.

Unlike the criteria set forth in OAR 581-022-2325(2)(d), OAR 581-022-2325(2)(e) requires school districts to successfully identify students who do not test in the 97th percentile for TAG eligibility through local policies and procedures.

Portland Public Schools does have local policies and procedures that have as their aim the identification of students for TAG eligibility. In its Talented and Gifted Education Plan, the district explained that it uses TAG facilitators and other mechanisms to increase district teachers’ ability

to identify TAG students. The district wrote, “Every campus in PPS has a designated TAG facilitator who is paid an extended responsibility stipend to manage TAG identification & nomination, parent communication and teacher TAG training on campus.”⁴⁸ The district also described a variety of reports and databases that teachers can access to identify TAG students.⁴⁹ However, the district also indicated that each school had varying techniques for TAG identification and that it needed to improve in this area, explaining, for instance, that it would provide district teachers training on how to “access MAP student reports to identify each student’s rate and level in tested MAP areas.”⁵⁰

For the purpose of investigating this appeal, the department’s TAG specialist conducted classroom visits and conducted surveys of district administrators, district teachers, and the parents and legal guardians of students who attended school in the district to ascertain whether students were being identified for TAG eligibility as required by OAR 581-022-2325(2)(e).

1. Classroom Visits

When conducting classroom visits, the department’s TAG specialist documented the number of TAG students in each class and the sources of nomination for those TAG students. The TAG specialist also collected data on the capabilities of district teachers to identify students for TAG eligibility.

Of the classes observed, the following percentages of teachers reported having at least one TAG student in their class: 39% of teachers teaching grades K-2, 77% of teachers teaching grades 3-5, 78% of teachers teaching grades 6-8, and 71% of teachers teaching grades 9-12. Those numbers generally corresponded with grade level, with fewer TAG students in lower-level grade classes and more TAG students in higher-level grade classes.

With respect to the sources of nomination, of classes observed in grades K-2, 26% of TAG students were nominated by the teacher, 35% by a parent or legal guardian, and 31% by the district. In grades 3-5, 31% of TAG students were nominated by the teacher, 12% by a parent or legal guardian, and 44% by the district. In grades 6-8, 12% of TAG students were nominated by the teacher, 3% by a parent or legal guardian, and 72% by the district. And in grades 9-12, 29% of TAG students were nominated by the teacher, 14% by a parent or legal guardian, and 26% by the district. A parent or legal guardian did not nominate a student for the district’s TAG program in 62% of classes in grades K-2, 73% of classes in grades 3-5, 82% of classes in grades 6-8, and 70% of classes in grades 9-12. All together, the data demonstrates that more TAG students were nominated through district processes than by district teachers or parents and legal guardians.

For the purpose of ascertaining the capabilities of district teachers in identifying students for TAG eligibility, the department’s TAG specialist asked district teachers from classes in grades K-5 the

⁴⁸ Portland Public School District Talented and Gifted Education Plan 2019 – 2022 at 7.

⁴⁹ *Id.*

⁵⁰ *Id.*

following question: “Have any students in your class been nominated for TAG eligibility this year?” Of classes observed in grades K-2, 49% of teachers responded “yes” and 30% of teachers responded “no.” In grades 3-5, 37% of teachers responded “yes” and 45% of teachers responded “no.” The department’s TAG specialist asked teachers from classes in grades 6-12 a slightly different question: “Have you nominated, or will you nominate, students in your class for TAG eligibility this year?” Of classes observed in grades 6-8, 15% of teachers responded “yes” and 50% of teachers responded “no.” In grades 9-12, 15% of teachers responded “yes” and 39% of teachers responded “no.” Overall, the data demonstrates that the majority of district teachers did not, or would not, nominate students for TAG eligibility.

The department’s TAG specialist also collected data on the tools most commonly used by district teachers to identify students for TAG eligibility. For grades K-2, the most commonly used tools were requests by parents and legal guardians, observations made by teachers, and 2nd grade screening. For grades 3-8, the most commonly used tools were observations made by teachers and Measure of Academic Progress (MAP) testing. For grades 9-12, the most commonly used tools were observations made by teachers. Teachers who did identify students for TAG eligibility generally reported relying on self-identification of TAG students as much as they reported relying on district processes.

The department’s TAG specialist collected data on district teachers who reported that they did not, or would not, nominate students for TAG eligibility. For classes observed in grades K-2, 11% of teachers answered that they had not received any test result from the district. Fifty percent answered that identification for TAG eligibility takes place in the 2nd grade, Thirty percent answered that they did not believe in identifying students for TAG eligibility at an early age. Twenty three percent answered that they did not have enough information to nominate any students. Nine percent answered that they did not understand the identification process. Finally, one percent of teachers specified that comprehensive distance learning affected their ability to identify students. Overall, these answers clearly reflect – for those teachers who reported that they did not, or would not, nominate students for TAG eligibility – an overreliance on district processes and an unwillingness to identify. A few responses indicated not knowing how to identify students for TAG eligibility.

For classes observed in grades 3-5, 43% of teachers answered that they had not received any test result from the district. Nine percent answered that identification for TAG eligibility takes place in the 2nd grade. Fifty six percent answered that they did not have enough information to nominate any students. Finally, thirteen percent of teachers answered that they did not understand the identification process. Again, the answers reflected reliance on district processes. A larger percentage of responses than those of teachers teaching grades K-2 indicated a misunderstanding of or not having enough knowledge about the identification process.

For classes observed in grades 6-8, 44% of teachers answered that they had not received any test result from the district. Seven percent answered that identification for TAG eligibility takes place in the 2nd grade. Forty eight percent answered that they did not have enough information to nominate any students. Thirty six percent answered that they did not understand the identification process. Finally, two percent of teachers specified that comprehensive distance learning affected their ability to identify students. As with previous responses, these answers reflected reliance on district processes and not knowing how to identify students for TAG eligibility.

Finally, for classes observed in grades 9-12, 8% of teachers answered that they had not received any test result from the district, 40% answered that they did not have enough information to nominate any students, and 30% specified that comprehensive distance learning affected their ability to identify students. Unlike previous results, these answers reflected primarily an inability to identify students for TAG eligibility on the basis that teachers had insufficient information to do so.

Finally, the department's TAG specialist documented teachers' comments in grades K-8 to identify themes occurring in the district with respect to identifying students for TAG eligibility. Nine percent of teachers teaching grades K-2, 36% of teachers teaching grades 3-5, and 81% of teachers teaching grades 6-8 made comments indicating that they did not understand the identification process. Twenty two percent of teachers teaching grades K-2, 36% of teachers teaching grades 3-5, and 51% of teachers teaching grades 6-8 made comments indicating that they thought of TAG eligibility as nothing more than a "score." Thirty six percent of teachers teaching grades K-2 made comments indicating that they actively discouraged parents from nominating students for TAG eligibility or otherwise beginning the identification process. Thirty two percent of teachers teaching grades K-2 made comments indicating that they did not believe in identifying students for TAG eligibility in Kindergarten. Twenty one percent of teachers teaching grades K-2 made comments indicating that they did not believe in identifying students for TAG eligibility in the first grade. And 21% of teachers teaching grades K-2 made comments indicating that they believed that student performance will "level out" by grade 3.

As is evident from these comments, a significant percentage of district teachers did not understand how to identify students for TAG eligibility. Further, a significant percentage of district teachers believed that TAG eligibility was based solely on whether a student qualified for TAG services through the taking of tests. And of district teachers teaching grades K-2, a significant percentage of teachers believed that identification of students for TAG eligibility could not be done at a young age. A large percentage of district teachers teaching grades K-2 even indicated that they actively discouraged parents from nominating their children for TAG eligibility.

In short, a large percentage of district teachers demonstrated either a misunderstanding of the legal requirements for TAG identification or a lack of knowledge on how to identify students for TAG eligibility.

In summary, both reports made by observed district teachers and the personal observations of the district's TAG specialist provide evidence that the district was not consistently identifying students for TAG eligibility as required by OAR 581-022-2325(2)(e).

2. Survey Results: District Administrators

In filling out the survey, a majority of district administrators indicated that they had received training on using research-based best practices to identify students for TAG eligibility. Few respondents reported having no TAG-identified students in their school. On average, 73% of respondents reported having one to five TAG-identified students per class for each type of TAG student and 6% of respondents reported having six or more TAG-identified students per class for each type of TAG student.⁵¹

The numbers are similar for TAG-nominated students. A minority of respondents reported having no TAG-nominated students in their school. Seventy eight percent of respondents reported having one to five TAG-nominated students per class for each type of TAG student, and 11% of respondents reported having six or more TAG-nominated students per class for each type of TAG student.

14 comments were submitted by district administrators. Of the comments, four respondents asked for guidance, training, professional development, or other support for identifying students for TAG eligibility.

The data indicates that the majority of district administrators had multiple TAG-identified and TAG-nominated students in their schools. However, the data also indicates a disparity in the number of TAG students who were identified or nominated. Whereas the majority of schools had one to five students either identified or nominated per class for each type of TAG student, a small percentage of schools had six or more. This disparity indicates that the district may be placing a greater emphasis on separating students by course as opposed to incorporating into each class where TAG students are present differentiated instruction. As mentioned above, the placement of high performing students in the district's ACCESS Academy Alternative Program cannot replace

⁵¹ See OAR 581-022-2325(2)(d) ("The following measures and criteria for identifying the intellectually gifted and the academically talented shall be used by [the school district]: (A) Intellectually gifted students shall score at or above the 97th percentile on a nationally standardized test of mental ability; and (B) Academically talented students shall score at or above the 97th percentile on a test of total reading or a test of total mathematics from a nationally standardized test battery, a nationally standardized test of reading or mathematics, or a test of total English Language Arts/Literacy or total mathematics on the Smarter Balanced Assessment.") and OAR 581-022-2325(2)(e) ("Despite a student's failure to qualify [for TAG through testing], [school] districts, by local policies and procedures, shall identify students who demonstrate the potential to perform at the 97th percentile.").

in-class teaching techniques that provide for individual TAG students' rate and level instructional needs.

Along with the observations of the department's TAG specialist, this disparity supports a finding that the district primarily uses testing as opposed to observation in identifying students for TAG eligibility.

3. Survey Results: District Teachers

In filling out the survey, a minority of district teachers indicated that they had received training on identifying students for TAG eligibility. Thirty six percent of respondents reported having no TAG-identified students in their class, a higher percentage of responses than those made by district administrators on the same question. An average of 70% of respondents reported having one to five TAG-identified students in their class and an average of 10% of respondents reported having six or more TAG-identified students in their class.

Again, the numbers are similar for TAG-nominated students. Thirty six percent of respondents reported having no TAG-nominated students in their class. An average of 60% of respondents reported having one to five TAG-nominated students in their class. An average of 4% of respondents reported having six or more TAG-nominated students in their class.

233 comments were submitted by district teachers with their surveys. The majority of those comments indicated that district teachers perceived problems in how the district identifies students for TAG eligibility. Many district teachers articulated concerns about the district's TAG identification process, such as over-identification, dependence on parental advocacy, the need for clarity in how the identification process works, and the need for better understanding how the process works. Other district teachers articulated concerns that the TAG-identification process was the only district-wide program for TAG students. Others were concerned about struggling students who otherwise exhibited gifted behaviors. Others specified that there was a lack of clarity about whether TAG policies apply to kindergarten students and staff.

Unlike district administrators, the data shows that a significant percentage of district teachers did not have multiple TAG-identified and TAG-nominated students in their classrooms. As with district administrators, the data shows a disparity between the classrooms that had one to five students either identified or nominated for TAG eligibility and the classrooms that had six or more students identified or nominated for TAG eligibility. Comments submitted with district teacher surveys also indicate that a large number of teachers did not have the tools necessary, or did not understand how, to identify students.

4. Survey Results: Parents and Legal Guardians of Students Who Attended School in the District

In filling out the survey, a slight majority of the parents and legal guardians of TAG students who attended school in the district agreed or strongly agreed that their student was assessed for the TAG program in a variety of ways, such as by testing, quality of schoolwork, and parent feedback. A quarter of respondents disagreed or strongly disagreed that their student was assessed for the TAG program in a variety of ways.

The percentage of parents and legal guardians that agreed or strongly agreed that they understood how their student was identified was about the same as the percentage of parents and legal guardians that disagreed or strongly disagreed that they understood how their student was identified.

683 comments were submitted by parents and legal guardians. In those comments, the majority of parents and legal guardians stated that the district's TAG identification process is inadequate and that the process does not lead to the provision of TAG services.

Overall, the survey results indicate that a large percentage of the parents and legal guardians of students who attended school in the district did not understand the district's identification process and were unhappy with the process. Such results support the findings of the department's TAG specialist, whose observations of and interactions with district classrooms support a finding that the district was not consistently identifying students for TAG eligibility as required by OAR 581-022-2325(2)(e).

5. Other Evidence

In addition to the reports made by observed district teachers, the personal observations of the department's TAG specialist, and the survey results, communications made by Portland Public Schools substantiate the merit of Complainant's appeal.

On July 24, 2019, after the district's Senior Board Manager for the district's Board of Education received Complainant's complaint, they emailed the members of the board. In that email, the manager wrote,

This appeal is scheduled to be voted on by the board at their August 13th meeting. Since this complaint about TAG programs and services[] lists several concerns, I think this may be a little tricky for the board to figure out exactly what they are deciding to uphold or overturn. Based on prior complaints where there is not a clear "verdict" on whether to uphold a decision, I recommend that prior

to the August 13th meeting, that we have an idea of what it would mean to “provide immediate and substantive mitigation measures to meet the rate and level of learning of students” and what it would take to implement immediately.

Although the email does not specifically state that “mitigation measures” are necessary for the identification of TAG students, the email does confirm that the district knew that it faced several problems in providing for TAG students’ needs.

6. Conclusion

With respect to OAR 581-022-2325(2)(e), for the reasons stated above, the district may be deficient.

II. **Whether Portland Public Schools may have violated OAR 581-022-2500, which imposes certain requirements for the implementation of TAG programs.**

For purposes of providing TAG students with an appropriate education, the Oregon Legislative Assembly enacted ORS 342.409. Under that statute, “School districts shall provide educational programs and services to talented and gifted students enrolled in public school under rules adopted by the State Board of Education.”

The State Board of Education adopted OAR 581-022-2500 for the purpose of implementing ORS 343.409. That rule reads, in pertinent part:

(1) Each school district shall have a written plan for programs and services beyond those normally provided by the regular school program in order to realize the contribution of talented and gifted children to self and society.

(2) The written plan for programs and services for talented and gifted children shall be submitted to the Oregon Department of Education on a date and in a format provided in guidance documents provided by the Oregon Department of Education.

(3) The written plan shall include, but is not limited to:

(a) A statement of school district policy on the education of talented and gifted children;

(b) An assessment of current special programs and services provided by the district for talented and gifted children;

(c) A statement of the districts goals for providing comprehensive special programs and services and over what span of time the goals will be achieved;

(d) A description of the nature of the special programs and services which will be provided to accomplish the goals; and

(e) A plan for evaluating progress on the district plan[,] including each component program and service.

(4) The instruction provided to identified students shall be designed to accommodate their assessed levels and accelerated rates of learning.

In their July 22, 2019, appeal to Portland Public School’s Board of Education, Complainant wrote that Portland Public Schools “has been out of compliance with Oregon TAG law for most of the last 20 years” and that the district did not have a substantive plan to “accommodate [students’] assessed levels of learning and accelerated rates of learning.”

In its September 20, 2019, response to Complainant’s appeal to the Oregon Department of Education, the district wrote that it had had “a comprehensive plan that addresses all [the requirements of OAR 581-022-2500] and that it had submitted the plan to [the department] on January 15, 2019,” and had not “had any indication from [the department] that the plan is not sufficient.”

With respect to the requirement that TAG students be taught at the proper rate and level of learning, the district wrote,

[The district] is diligently working in a systematic way to comply [with those requirements] by supporting schools to provide the classroom best practices appropriate for their students. As explained above, especially with recent training, our teachers use assessments to differentiate curriculum, provide for independent study. [The district] . . . utilizes single-subject and whole-grade acceleration as appropriate. These strategies are offered throughout grade levels, and high schools have AP, IB, Dual Credit courses, among other opportunities to meet assessed levels of learning and rates of instruction.

* * * * *

[The district] is implementing NWEA MAP exams [allowing the district to] train teachers in a comprehensive manner to use student rate and level reports to provide flexible grouping opportunities across the system.

A. *Whether Portland Public Schools had a written plan for programs and services for TAG students.*

ORS 343.409 and OAR 581-022-2500(1) require school districts to have a written plan for the provision of programs and services “beyond those normally provided by the regular school program in order to realize the contribution of talented and gifted children to self and society.”

In this case, the evidence demonstrates that the district is in compliance with the applicable provisions.

The district has a Talented and Gifted Education Plan for the implementation of TAG Services during the years 2019, 2020, 2021, and 2022.⁵² That plan lists several programs and services offered for TAG students. Those programs and services are:

- The processes that the district uses to identify students for TAG eligibility;
- The use of flexible student grouping in district classrooms;
- The incorporation of depth of knowledge learning in district classrooms;
- The use of optional instructional formats, including advanced placement courses and baccalaureate offerings;
- The use of TAG facilitators and other mechanisms to increase teachers’ knowledge of TAG students or students who may be TAG eligible;
- The use of instructional plans for TAG students;
- The placement of high performing students in the district’s ACCESS Academy Alternative Program;
- The use of optional enrichment activities, such as robotics clubs and chess clubs;

⁵² Portland Public School District Talented and Gifted Education Plan 2019 – 2022. Available at: <https://www.pps.net/Page/2896>.

- The professional development of district staff; and
- Methods of communicating with the parents and legal guardians of students attending school in the district.

To determine whether these programs and services are sufficient for purposes of ORS 343.409 and OAR 581-022-2500(1) requires determining the meaning of the terms “programs” and “services” under both law and rule.

The Oregon Supreme Court prescribed the method for discerning legislative intent in *Portland General Electric, Co. v. Bureau of Labor and Industries*⁵³ and *State v. Gaines*.⁵⁴ Under this methodology, a person must analyze the text, context, and legislative history of a law and, if legislative intent remains unclear after analyzing the text, context, and legislative history of the law, employ general maxims of statutory construction to resolve the ambiguity.⁵⁵

To discern the plain meaning of a term in statute, Oregon appellate courts consult *Webster’s Third New International Dictionary*.⁵⁶ That dictionary defines “program” to mean “a schedule or system under which action may be taken toward a desired goal” and “service” to mean “an act done for the benefit or at the command of another.” Context and legislative history do not provide any alternate reading of the terms “programs” and “services.” Thus, for purposes of ORS 343.409 and OAR 581-022-2500, a school district must provide a system under which teachers assess and accommodate TAG students’ rates and levels of learning or an act through which teachers assess and accommodate TAG students’ rates and levels of learning.

In consideration of the meanings of these terms, the Oregon Department of Education finds that the district is not deficient under ORS 343.409 – insofar as that statute applies to the establishment of programs and services –and OAR 581-022-2500(1). The district had a written plan that, among other things, provided or would provide for the use of flexible student grouping in district classrooms, the incorporation of depth of knowledge learning in classrooms, the use of optional instructional formats, advanced placement courses, and baccalaureate offerings, the use of instructional plans, the placement of high performing students in the district’s ACCESS Academy Alternative Program, and the use of optional enrichment activities, such as robotics clubs and chess clubs.

Importantly, the department rejects any argument alleging that a school district is deficient under ORS 343.409 and OAR 581-022-2500(1) that relies on the school district providing a specific program or a specific service. It might be correct that providing a certain program or service for TAG students is more beneficial than providing different programs or services. However, the

⁵³ 317 Or. 606 (1993).

⁵⁴ 346 Or. 160 (2009).

⁵⁵ *Portland General Electric*, 346 Or. at 610-611; *Gaines*, 317 Or. at 171-172.

⁵⁶ See *Comcast Corp. v. Dept. of Revenue*, 356 Or. 282 (2014).

department does not have a legal basis for requiring school districts to provide one program or service over another. Neither ORS 343.409 nor OAR 581-022-2500(1) prescribes the types of programs or services that school districts must provide. So long as a program or service accommodates TAG students' rates and levels of learning, it is legally sufficient.⁵⁷

The department necessarily must point out that any specific program or service may or may not provide TAG students with appropriate rate and level instruction. Differentiated instruction is what is required to accommodate TAG students. Failure to provide differentiated instruction can occur in any optional instructional format or specific program – even programs specifically designed to accommodate high performing students, like the district's ACCESS Academy Alternative Program – just as easily as failure could occur in a regular class. To put it differently, in consideration of ORS 343.409 and OAR 581-022-2500(4), the goal of differentiated instruction is to provide instruction that meets each TAG students' needs. The goal is to provide a level of instruction that each TAG student finds challenging. The goal is to provide instruction that occupies each TAG student throughout the day. The goal is not to categorize TAG students according to class or curriculum. Those are merely processes through which a teacher can meet the standard required by OAR 581-022-2500. As processes, they are no more legitimate than using flexible seating patterns or grouping students according to readiness.

With respect to ORS 343.409 – insofar as that statute applies to the establishment of programs and services – and OAR 581-022-2500(1), the district is not deficient.

⁵⁷ In their appeal, Complainant references a series of letters issued by the Oregon Department of Education to Portland Public Schools regarding the type of corrective action that the school district should implement on the basis that the school district did not provide the differentiated instruction necessary to assess and accommodate TAG students' rates and levels of learning. For instance, in a letter issued by the department on February 28, 2008, in which the department directed Portland Public Schools to "include district-level content specialists . . . in the creation and implementation of curriculum appropriate for TAG students." On the one hand, that letter may be interpreted to require Portland Public Schools to develop separate curriculum for TAG students. On the other hand, curriculum that is "appropriate" for TAG students is not necessarily separate curriculum. Under Oregon law, only the second meaning can apply. Oregon law clearly suggests that the department's role within this state's education system is to adopt academic content standards for schools. ORS 329.045(1). For purposes of Oregon law, "academic content standards" are "expectations of student knowledge and skills adopted by the State Board of Education[.]" ORS 329.007 (1). Oregon law also clearly defines school districts' role within this state's education system. That role includes controlling course content, format, materials, and teaching methods. ORS 329.045(3)(b)(A). Read together, these provisions clearly direct the department to establish standards by which course content and individual programs may be adjudged, and they indicate that school districts generally have the authority to adopt specific course content, format, materials, or teaching methods. In the department's view, directing school districts to adopt a particular type of program or service for purposes of accommodating TAG students' assessed rates and levels of learning is the same as directing school districts to adopt specific course content, format, materials, or teaching methods.

B. *Whether Portland Public Schools written plan for programs and services for TAG students met Division 22 standards.*

Compliance with OAR 581-022-2500(2) and (3) requires a school district to submit to the Oregon Department of Education “a written plan for programs and services for talented and gifted children” that contains five elements:

- The plan must contain a statement about the school district’s policy on TAG students;
- The plan must assess current programs and services provided by the school district for TAG students;
- The plan must contain the school district’s goals for providing comprehensive programs and services to TAG students, along with a timeline by which the district will accomplish those goals;
- The plan must contain a description of how the school district will accomplish its goals; and
- The plan must describe how the school district will evaluate its progress toward accomplishing its goals.

In this case, the evidence demonstrates that Portland Public Schools had a plan that contained all five elements.

The district’s Talented and Gifted Education Plan contained the district’s Talented and Gifted Policy, a mission statement, and an explanation of the district’s philosophy toward providing services to TAG students.⁵⁸ In short, the plan contained “statement[s] of school district policy on the education of talented and gifted children.”

The district’s plan contained descriptions of, and assessed, several programs and services that the district used to meet TAG students’ needs. For example, the plan assessed the processes that the district used to identify students for TAG eligibility.⁵⁹ The plan also assessed the district’s use of certain techniques that may be used to teach TAG students, including flexible grouping in district classrooms and depth of knowledge learning.⁶⁰

Other programs and services assessed in the plan include the use of instructional plans for TAG students, the provision of a variety of optional instructional formats for TAG students – such as the opportunity for TAG students to take advanced placement and college courses and placement of TAG students in the district’s ACCESS Academy Alternative Program – and the

⁵⁸ Portland Public School District Talented and Gifted Education Plan 2019 – 2022 at pages 1-2.

⁵⁹ *Id.* at pages 2-3.

⁶⁰ *Id.* at 5.

provision of enrichment activities for TAG students, such as robotics clubs and chess clubs.⁶¹ The plan also assessed how the district supported individual teachers in both identifying students who may be TAG eligible and providing appropriate rate and level instruction to TAG students. Such support included the district's use of TAG facilitators and provision of professional development for district staff.⁶² Finally, the plan contained a description of the methods used by the district to communicate with the parents and legal guardians of TAG students attending school in the district.⁶³

In short, the district's plan included an assessment of current programs and services provided by the district for TAG students.

The district's plan also listed the district's five "major goals" with respect to the programs and services it provided TAG students.⁶⁴ These goals included improving TAG identification by district staff, providing increased professional development to district staff, developing district wide standards for incorporating into curricula certain techniques that teachers may use to teach TAG students, using district wide formative assessment to inform individual teacher instruction, and creating for TAG students individual instructional plans. The district's plan also specified the timeline by which the district would accomplish its five "major" and other goals.⁶⁵

As with the other requirements of OAR 581-022-2500(3), the district's plan clearly included "the districts goals for providing comprehensive special programs and services" to TAG students and the "span of time [during which] the goals will be achieved."

Finally, as required by the rule, the district's plan described the manner in which the district would accomplish its goals and in which it would evaluate its progress toward accomplishing its goals.⁶⁶

Importantly, when investigating whether a school district's written plan for TAG programs and services violates OAR 581-022-2500(2) and (3), the department is limited to examining whether the plan complies with the rule. The provision only requires a school district to have a written plan containing certain elements. If a school district wrote a plan that contains those elements, the department's investigation ends. The department, acting under the authority of the standard on appeal, does not review the quality of the programs and services offered by the school district or the school district's implementation of those programs or services. Those matters fall under the oversight of the school district's locally elected school board.

With respect to OAR 581-022-2500(2) and (3), the district is not deficient.

⁶¹ *Id.* at 7.

⁶² *Id.* at 7-8.

⁶³ *Id.* at 9.

⁶⁴ *Id.* at page 10.

⁶⁵ *Id.* at pages 10-13.

⁶⁶ *Id.* at pages 14-15.

C. *Whether Portland Public Schools instructed TAG students in a manner designed to accommodate TAG students assessed levels and accelerated rates of learning.*

Compliance with OAR 581-022-2500(4) requires a school district to instruct TAG students in a manner designed to accommodate their assessed levels and accelerated rates of learning.

The provision clearly requires actual instruction – as opposed to a written plan of instruction – to accommodate TAG students’ assessed levels of learning and accelerated rates of learning. This type of assessment can only be done on an individual basis in the classroom and it must take into account each TAG students’ particular education needs. Any instruction that does not take into account such assessment is, by its very nature, counterintuitive to providing appropriate rate and level instruction.

Using optional instructional formats, advanced placement courses, baccalaureate offerings, enrichment activities, and special education programs – like the district’s ACCESS Academy Alternative Program – does not in and of itself provide appropriate rate and level instruction. Using such education tools may be very helpful in providing for TAG students education needs. However, if a school district does not consistently provide for each TAG students’ particular needs, the district is deficient under OAR 581-022-2500(4).

For the purpose of investigating this appeal, the department’s TAG specialist conducted classroom visits and conducted surveys of district administrators, district teachers, and the parents and legal guardians of students attending school in the district to ascertain whether TAG students were receiving appropriate rate and level instruction as required by OAR 581-022-2500(4).

1. Classroom Visits

When conducting classroom visits, the department’s TAG specialist documented the tools most often used by district teachers to accommodate TAG students’ rates and levels of learning. With respect to those teachers that did use assessed levels of learning and accelerated rates of learning, teachers reported using a variety of techniques. Of classes observed in grades K-2, teachers reported using the following resources: curriculum specific assessments, progress reports from learning applications, district-wide assessments, daily classwork, learning evidence, and pre-assessment prior to teaching individual units. Of classes observed in grades 3-5, teachers reported using the following resources: curriculum specific assessments, district-wide assessments, and statewide assessments. Of classes observed in grades 6-8, teachers reported using the following resources: district-wide assessments, curriculum specific assessments, and statewide assessments. Finally, of classes observed in grades 9-12, teachers reported using the following resources: classroom summative assessments, classroom formative assessments, daily classwork, learning evidence, and exit tickets.

Importantly, of classes observed in grades K-5, 11% of teachers reported that they *did not use* any techniques to accommodate TAG students' assessed levels of learning and accelerated rates of learning. Likewise, of classes observed in grades 6-8, 37% of teachers reported that they *did not use* any techniques to accommodate TAG students.

The department's TAG specialist also documented the tools most often used by district teachers to assess TAG students' rates and levels of learning. Of classes observed in grades K-8, 86% of teachers reported that the parents and legal guardians of TAG students did not request a written TAG plan. Of classes observed in grades 9-12, 72% of teachers reported that they did not have students with written TAG plans. On average, teachers reported that they discussed students' TAG plans with the parents or legal guardians of TAG students most often at the beginning of the school year or during fall teacher-parent conferences. Some of these teachers reported that they discussed students' TAG plans with the parents or legal guardians throughout the school year, during subsequent on-going communication. Teachers teaching grades K-5 reported that either they or the parent or legal guardian of a TAG student initiated discussing the student's TAG plan. Teachers teaching grades 6-8 reported that they generally initiated the discussion.⁶⁷

In consideration of the tools used by district teachers to provide for and assess TAG students' rate and levels of learning, the evidence indicates that a significant percentage of teachers – albeit a minority of teachers – needed additional training.

The department's TAG specialist documented whether district teachers, no matter the teaching techniques that they employed, were actually providing TAG students with appropriate rate and level instruction during classes observed. For example, although not the exclusive means by which a teacher may provide appropriate rate and level instruction, the department's TAG specialist documented the development of TAG plans for individual students and how each teacher organized seating in their classroom. Of classes observed in grades K-8, 85% of teachers reported that they did not have a student with a written TAG plan in their classes. Of classes observed in grades 9-12, 61% of teachers reported that they did not have a student with a written TAG plan in their classes.

With respect to seating, for classes observed in grades K-8, teachers most often described grouping students who performed at a high-level, including TAG students, with students who "struggled." District teachers also often described grouping students in heterogeneous groups of four and assigning at least one student who performed at a high-level, including TAG students, to be a part of the group. Teachers described having students who performed at a high-level assist other students. Some teachers described grouping students in accordance with behavior. Teachers infrequently described using flexible seating patterns and student grouping or grouping students in accordance with their readiness. Although the former type of seating and grouping

⁶⁷ In collecting data related to Portland Public Schools' use of written TAG plans, the Oregon Department of Education does not mean to imply that use of written TAG plans is required for purposes of complying with the law. The department collected the data for purposes of determining the extent to which the district is meeting its own goals in providing for TAG students' instructional rate and level needs.

certainly serves an educational purpose – and although it can *partially* serve a TAG student’s instructional needs – its exclusive use negatively affects TAG students in receiving appropriate rate and level instruction.

The department’s TAG specialist also noted the manner in which district teachers taught and the type of work that they assigned. The specialist documented whether the teaching or work constituted whole group instruction, completion of work with no differentiated learning for TAG students, or tiered work adequately accommodating assessed levels of learning and accelerated rates of learning. Of classes observed in grades K-2, the department’s TAG specialist noted that whole group instruction occurred in 52% of classes, completion of work with no differentiated learning occurred in 57% of classes, and tiered work adequately accommodating assessed levels of learning and accelerated rates of learning occurred in 17% of classes.

Of classes observed in grades 3-5, the department’s TAG specialist noted that whole group instruction occurred in 46% of classes, completion of work with no differentiated learning occurred in 57% of classes, and tiered work adequately accommodating assessed levels of learning and accelerated rates of learning occurred in 9% of classes.

Of classes observed in grades 6-8, the department’s TAG specialist noted that whole group instruction occurred in 80% of classes, completion of work with no differentiated learning occurred in 80% of classes, and tiered work adequately accommodating assessed levels of learning and accelerated rates of learning occurred in 8% of classes.

Of classes observed in grades 9-12, the department’s TAG specialist noted that whole group instruction occurred in 96% of classes, completion of work with no differentiated learning occurred in 85% of classes, and tiered work adequately accommodating assessed levels of learning and accelerated rates of learning occurred in 11% of classes.

Taken together, the department’s TAG specialist documented that tiered work adequately accommodating assessed levels of learning and accelerated rates of learning occurred in only 11% of classes. In contrast, whole group instruction occurred in 69% of all classes and completion of work with no differentiated learning occurred in 70% of classes.

Finally, the department’s TAG specialist documented whether each observed class used assessed levels of learning and accelerated rates of learning when teaching TAG students (i.e., the class “met” the legal standard for rate and level instruction), did not use any assessed levels of learning and accelerated rates of learning (i.e., the class “did not meet” the legal standard for rate and level instruction), or used assessed levels of learning and accelerated levels of learning in a manner that needed to be modified to meet TAG students’ rate and level instructional needs (i.e., the class “almost met” the legal standard for rate and level instruction). In order to adjudge

each class, the department’s TAG specialist observed for a variety of teaching techniques that may be used to provide rate and level instruction.⁶⁸

For classes observed in grades K-2, 18% of classes met the legal standard for rate and level instruction, 80% of classes did not meet the legal standard for rate and level instruction, and 2% of classes almost met the legal standard for rate and level instruction. For classes observed in grades 3-5, 16% of classes met the legal standard for rate and level instruction, 79% of classes did not meet the legal standard for rate and level instruction, and 1% of classes almost met the legal standard for rate and level instruction. For classes observed in grades 6-8, 9% of classes met the legal standard for rate and level instruction and 89% of classes did not meet the legal standard for rate and level instruction. Finally, for classes observed in grades 9-12, 13% of classes met the legal standard for rate and level instruction, 85% of classes did not meet the legal standard for rate and level instruction, and 2% of classes almost met the legal standard for rate and level instruction.

In short, in the majority of classes observed, district teachers were not teaching TAG students in a manner that used assessed levels of learning and accelerated levels of learning.

In summary, both reports made by observed district teachers and the personal observations of the district’s TAG specialist provide substantial evidence that the district was not consistently providing assessed levels of learning and accelerated rates of learning for TAG students.

2. Survey Results: District Administrators

In filling out the survey, an overwhelming majority of district administrators indicated that they had the knowledge and expertise – and that their schools had instituted protocols – necessary to consistently provide assessed levels of learning and accelerated rates of learning for TAG students.

Of the district administrators who responded to the survey, 86% of respondents reported that they had received training on TAG students’ profiles and characteristics, 81% of respondents reported that they had provided training to their staff on TAG students’ profiles and characteristics, 64% reported that they had received training in meeting the social and emotional needs of TAG students, 55% reported that they had provided training to their staff on the social and emotional needs of TAG students, and 58% reported that their schools had special programs or services for TAG students.

⁶⁸ Observed techniques included the use of flexible seating patterns or student grouping, readiness grouping, student agency with respect to choosing depth of coverage of material, self-paced learning, choice of depth of coverage of material with corresponding expectations for executing school work, use of rubrics or success criteria to clearly communicate expectations for excellence, use of pre-assessments to determine instruction, use of “in lieu of” projects or assignments, curriculum compacting, accelerated standards for executing school work, and use of the Socratic method.

The majority of district administrators reported having been trained on all listed strategies for providing TAG services. The majority also rated themselves as having intermediate- or high-level expertise in each strategy that may be used to provide TAG services.

With respect to being able to assess TAG students' rates and levels of learning, the survey results indicate that district schools had a variety of approaches to executing and monitoring assessment. Seventy percent of respondents reported that their teachers review and adjust TAG instructional plans as needed. Thirty four percent reported that their teachers review and adjust TAG instructional plans on an annual basis.

Furthermore, 65% of respondents reported that they personally review and monitor TAG instructional plans. Of the remainder – who reported that they do not personally review and monitor TAG instructional plans – 54% reported that the school's TAG coordinator, the school's TAG facilitator, or other TAG specialist individually reviewed and monitored TAG instructional plans. Some reported that their school used other methods for reviewing and monitoring TAG instructional plans.

Finally, 61% of respondents reported that their school documents TAG instruction in gradebooks and 34% reported that their school documents TAG instruction by other means, including use of electronic files, forms that document TAG instructional planning, and lesson plans.

A few district administrators indicated that they needed additional knowledge and expertise – and that their schools needed to institute additional protocols – necessary to consistently provide appropriate rate and level instruction for TAG students. Through the survey, 14 comments were submitted to the department by district administrators. Four of those comments asked for guidance, training, professional development, or other support for instructing TAG students.

In summary, the survey results of district administrators indicate that district administrators were knowledgeable in how to provide assessed levels and learning and accelerated rates of learning to TAG students and that their schools individually provided some form of oversight over district teachers. That said, in consideration of reports made by observed district teachers and the personal observations of the district's TAG specialist, it is apparent that individual efforts to provide oversight were generally not effective.

3. Survey Results: District Teachers

In filling out the survey, a slight majority of district teachers indicated that they had the knowledge and expertise necessary to consistently provide assessed levels of learning and accelerated rates of learning for TAG students. Seventy percent or more of respondents reported that they were familiar with differentiated instruction, high-level questioning, flexible seating and grouping, individualized instruction, formative assessment, and use of extensions. A few survey

results indicated a need for additional knowledge. Fifty eight percent or fewer respondents reported that they were familiar with compacting curriculum, Socratic method, student agency, and Webb’s Depth of Knowledge.

With respect to training, 92% of respondents reported having been trained in differentiated instruction, 75% reported having been trained in high-level questioning, 64% reported having been trained in formative assessment, 62% reported having been trained in flexible seating and grouping, and 57% reported having been trained in individualized instruction. Some survey answers indicated a need for additional training. A minority of respondents reported that they had been trained on strategies other than those listed above.

The majority of respondents rated themselves as having intermediate- or high-level expertise in each strategy that may be used to provide TAG services, except for compacting curriculum, Socratic method, student agency, and Webb’s Depth of Knowledge.

With respect to being able to assess TAG students’ rates and levels of learning, the survey results indicate that district teachers’ capabilities varied. For example, 75% of respondents reported that they do not write TAG instructional plans. Fifty five percent reported that they do not review past TAG instructional plans before writing a new one. Fifty one percent reported that they do not make course recommendations for TAG students.

A majority of respondents reported using their grade book or a student file. A minority of respondents indicated a need for additional training on record keeping. Some respondents reported not keeping records of TAG instruction. Some respondents reported that they did not know that they should keep records. One district teacher wrote, “As the . . . teacher and the TAG facilitator I’m not sure where anyone would want this information. I make note in my plans if a change/modification is needed for a student.” Another district teacher wrote, “If a kid is doing well on [an assignment], I give them a harder [assignment]. The fact that the kid can [do] it is my documentation.” Another district teacher wrote, “It’s in my brain.”

As for receiving feedback from TAG students, an overwhelming majority of respondents reported conferencing with TAG students as needed and 17% reported conferencing with TAG students weekly.

233 comments were submitted by district teachers with their surveys. The majority of those comments indicated that teachers perceived problems in how the district met TAG students’ education needs. Many district teachers articulated concerns about the district’s TAG services. Comments included that many TAG students do not know that they are TAG students, that there is a lack of support and challenging learning opportunities for TAG students, that the district’s identification process constituted the whole of the district’s TAG program, and that the district’s ACCESS Academy Alternative Program constituted the whole of the district’s TAG program.

District teachers commented that they wanted additional training in meeting TAG students' needs, including training in differentiated learning and other TAG instructional strategies. Teachers stated that they needed additional materials, time, and other resources necessary to meet TAG students' education needs. Lastly, teachers specified that there was a need for clarity regarding the role that TAG facilitators and coordinators play.

In part, the survey results indicate that district teachers were knowledgeable about certain techniques that may be used to provide assessed levels or learning and accelerated rates of learning for TAG students. However, the results also indicate that district teachers may need additional training to consistently provide those services. Reports made by observed district teachers and the personal observations of the department's TAG specialist bolster this finding. All together, the reports, observations, and survey results indicated that district teachers may believe themselves to be more knowledgeable about providing appropriate rate and level instruction than they actually are. The reports, observations, and survey results indicate a need for district-wide training.

Importantly, the survey results also indicate that district teachers perceived problems with the district's TAG program that impaired their ability to provide TAG services. Teachers were concerned that the district's identification process constituted the whole of the district's TAG program or that the district's ACCESS Academy Alternative Program constituted the whole of the district's TAG program. Teachers also were concerned about a lack of training, materials, time, and other resources necessary to meet TAG students' education needs.

4. Survey Results: Parents and Legal Guardians of Students Who Attended School in the District

In filling out the survey, the parents and legal guardians of TAG students who attended school in Portland Public Schools indicated that they were generally unhappy with the district's provision of TAG services. Only 29% of respondents agreed or strongly agreed that their student's academic and intellectual needs were being met. Only 27% agreed or strongly agreed that their student's academic and intellectual needs were being met daily through classroom instruction. In contrast, 46% of respondents disagreed or strongly disagreed that their student's academic and intellectual needs were being met and 45% of respondents disagreed or strongly disagreed that their student's academic and intellectual needs were being met daily through classroom instruction.

Survey results did indicate that a majority of parents and legal guardians recognized the efforts of individual teachers. When asked how students' academic needs are being met at school, of 12 options, 67% of respondents marked, "In the regular classroom by their classroom teacher." Twenty nine percent marked, "Other." Fewer than 13% marked one of the other ten choices.

Survey results also indicated that parents and legal guardians were not knowledgeable about the district's TAG program or the individual TAG services provided to their children. Nineteen percent of respondents agreed or strongly agreed that they knew how their student's teacher provided for their student's rate and level of instruction. Eleven percent agreed or strongly agreed that their student's classroom teacher or teachers consistently used their student's TAG instructional plan. In contrast, 64% of respondents disagreed or strongly disagreed that they knew how their student's teacher provided for their student's rate and level of instruction and 59% of respondents disagreed or strongly disagreed that their student's classroom teacher or teachers consistently used their student's TAG instructional plan.

As to whether district teachers were capable of explaining assessed levels of learning and accelerated rates of learning, parents and legal guardians were equally split. Twenty two percent of respondents agreed or strongly agreed that if they asked their student's classroom teacher or teachers about a concern related to the provision of TAG services, the teacher or teachers could explain how the student's needs were being met. Twenty nine percent of respondents disagreed or strongly disagreed that the teacher or teachers could explain how the student's needs are being met.

The parents and legal guardians of students who attended school in the district submitted over a thousand comments with their survey results. 363 comments were specific to whether the district was meeting the academic needs of TAG students. Comments generally indicated that parents and legal guardians thought that their TAG students' academic needs were not being met. Other comments indicated a general dissatisfaction with the district's reliance on categorizing TAG students according to class or curriculum, such as placing TAG students in honors or advance placement courses or the district's ACCESS Academy Alternative Program. Comments indicated that when TAG students' academic needs were met, they were met in a variety of ways, such as by individualized instruction, programs where students are pulled from regular class to receive special instruction, schooling at home or online, parent-created curricula, and self-study.

683 of the comments were general in nature. The majority of these comments found the district's TAG program and services wanting. Comments included that TAG students were bored at school and that district TAG services and instruction were underdeveloped and not executed or applied in a comprehensible or intelligible manner.

Parents and legal guardians expressed dissatisfaction with TAG facilitators and coordinators. One commenter wrote, "We were not informed by [the] TAG coordinator when the tests would be or what they would entail – for instance, we declined the verbal test because [our child] didn't read yet and no one told us it was not a reading test." Another commenter wrote, "[Our child's] classroom teacher does not know what to do to challenge her per her teacher's own words. There

is no help from the TAG coordinator or any other source for the teacher.” A third commenter wrote, “When I have reached out to our school’s TAG coordinator, I have either received no response or been dismissed.”

Parents and legal guardians also expressed concern about whether the district’s TAG program is equitable. One commenter wrote, “It feels like all TAG resources have been funneled to ACCESS Academy, and if you can’t get your kid there, you get nothing.” Another commenter wrote, “There does not appear to be a standard infrastructure across elementary schools for TAG services/programs, which I view as an inequitable failure.” A third commenter wrote, “I find it maddening that [the district] has provided hardly any support for TAG students. Whenever I raise the issue, I am told that the bar must be lowered for reasons of equity.”

As with district teachers, parents and legal guardians expressed concerns about the lack of funding and other resources necessary for the district to meet TAG students’ education needs.

A minority of respondents submitted positive comments, including that TAG students are not bored at school, satisfaction with the district’s ACCESS Academy Alternative Program, and that the district’s TAG program is beneficial to students or helpful to their child. One commenter wrote, “Our child was very depressed before going to ACCESS. The system is broken – thank god for ACCESS.” Another commenter wrote, “The most significant benefit from my child being identified as TAG was that he stopped getting into quite as much trouble for being distracted in class.” A third commenter wrote, “I am in a minority of families whose students are being served well. I can’t thank the administration and staff [enough] for helping to support my son in single subject acceleration.”

Overall, the survey results substantiate that the parents and legal guardians of TAG students attending school in the district were unhappy with the district’s provision of TAG services and not knowledgeable about the district’s TAG program or the individual TAG services provided to their children. Taken together with reports made by observed district teachers and the personal observations of the department’s TAG specialist, these results indicate that the district was not consistently providing for each TAG students’ specific education needs.

5. Other Evidence

In addition to the reports made by observed district teachers, the personal observations of the department’s TAG specialist, and the survey results, communications made by Portland Public Schools substantiate the merit of Complainant’s appeal, as demonstrated by the July 24th email from the district’s Senior Board Manager to the district’s Board of Education. In that email, the manager wrote,

This appeal is scheduled to be voted on by the board at their August 13th meeting. Since this complaint about TAG programs and services[] lists several concerns, I think this may be a little tricky for the board to figure out exactly what they are deciding to uphold or overturn. Based on prior complaints where there is not a clear “verdict” on whether to uphold a decision, I recommend that prior to the August 13th meeting, that we have an idea of what it would mean to “provide immediate and substantive mitigation measures to meet the rate and level of learning of students” and what it would take to implement immediately.

Although the email does not specifically state that “mitigation measures” are necessary for the assessment of levels of learning and accelerated rates of learning, the email does confirm that the district knew that it faced several problems in providing for TAG students’ education needs.

6. Additional Comments

The Oregon Department of Education cannot direct Portland Public Schools to take any specific action with respect to providing appropriate rate and level instruction. However, in reviewing the district’s Talented and Gifted Education Plan, the department has identified obstacles that would make it difficult for the district to attain that goal.

One obstacle is a lack of district guidance for individual schools. With respect to the use of flexible student grouping in district classrooms, the district wrote, “Currently there is not a system-wide approach to flexible grouping across Portland Public Schools.”⁶⁹ The district explained that this technique varies “by campus and teacher.” With respect to the incorporation of depth of knowledge learning in district classrooms, the district wrote, “Currently there is not a system-wide approach to the incorporation of the dimensions of depth and complexity across Portland Public Schools.”⁷⁰ Again, the district specified that this technique varies “by campus and teacher.” The district also stated the need to address disparities in its TAG program. The district asserted that it “will begin training teachers to use student rate and level reports to provide flexible grouping opportunities across the system.”⁷¹ The district also set forth a plan for incorporating “the dimensions of depth and complexity . . . across the district.”⁷²

In its plan, the district indicated that the disparity between campuses and teachers in providing TAG services is connected to the mechanisms by which the district provides those services. For instance, with respect to the use of TAG facilitators and other mechanisms to increase teachers’ knowledge of TAG students or students who may be TAG eligible, the district wrote, “Every

⁶⁹ Portland Public School District Talented and Gifted Education Plan 2019 – 2022 at 5.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

campus in PPS has a designated TAG facilitator who is paid an extended responsibility stipend to manage TAG identification & nomination, parent communication and teacher TAG training on campus.”⁷³ The district also described a variety of reports and databases that teachers can access to identify TAG students.⁷⁴ As for the use of instructional plans for TAG students, the district wrote, “Currently in PPS, written TAG Instructional Personal Learning Plans are not required for the individual student unless requested by the parent.”⁷⁵ The district explained that “[e]very campus in PPS has a campus TAG plan that is unique to their school and their programs.”⁷⁶ In principal, all three of these mechanisms are sound approaches to providing TAG services. However, without proper district wide guidance, training, and standards for implementation, these mechanisms face substantial difficulties in succeeding. In its plan, the district itself acknowledged the need for district wide implementation for at least one of mechanisms: “The goal [is] to create individualized instructional plans.”⁷⁷

Another obstacle may be overreliance on categorizing TAG students according to class or curriculum. With respect to the placement of high performing students in the district’s ACCESS Academy Alternative Program, the district wrote that it “offers highly gifted student choice [of] school transfer through an alternative program, ACCESS Academy, which serves students in 1st – 8th grade.” The district noted that students must score at the 99th percentile on at least one academic assessment to be placed in the academy.⁷⁸ Such placement is not antithetical to the provision of appropriate rate and level instruction. However, categorizing TAG students according to class or curriculum can never replace in class instruction techniques – such as flexible seating and depth of knowledge learning – that the district indicated needed district wide implementation.

Finally, it is important to note that the district’s school board has not amended its “Talented and Gifted Policy” since the year 2002. Although the policy is not out of compliance with OAR 581-002-2500, it has not been amended by the district for nearly 20 years, indicating that the district’s governing body has not had occasion to revise its policy in consideration of changes made to OAR 581-022-2500 or evolved TAG best practices.

7. Conclusion

With respect to OAR 581-022-2500(4), for the reasons stated above, the district may be deficient.

⁷³ *Id.* at 7.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

III. Whether Portland Public Schools may have violated OAR 581-022-2330, which provides parents and legal guardians of TAG students with certain rights.

Pursuant to the authority granted the State Board of Education under ORS 343.395 to 343.413, the board adopted OAR 581-022-2330, providing parents and legal guardians of TAG students with certain rights. Under that rule,

In carrying out the requirements of OAR 581-022-2325 and OAR 581-022-2500, [a] school district shall:

- (1) Inform parents at the time of the identification of the child and the programs and services available.
- (2) Provide an opportunity for the parents to provide input to and discuss with the district programs and services to be received by their child.
- (3) The parents may, at any time, request the withdrawal of their child from programs and services provided under OAR 581-022-2330. The school district shall notify parents of identified students of this right.
- (4) Parents shall be informed of their rights to file a complaint under OAR 581-022-0001 to OAR 581-002-0023.

In their June 3, 2019, appeal to the district's superintendent, Complainant wrote that "there is inadequate and inequitable communication of critical TAG-related information to families" by Portland Public Schools.

In its September 20, 2019, response to Complainant's appeal to the Oregon Department of Education, the district wrote, "[The district] has a variety of communication methods and processes. We inform parents of identification of programs and services available; we have comprehensive information on the [district's] TAG Department website; and we provide parents an opportunity provide input through" surveys, events, and parent-teacher conferences.

In this case, the evidence indicates that Portland Public Schools may not have consistently informed parents and legal guardians that their child had been identified for TAG eligibility or of the TAG programs and services available. The evidence also indicates that the district may not have consistently provided an opportunity for parents and legal guardians to provide input to and discuss with the district available programs and services.

The district's Talented and Gifted Education Plan specified the mechanisms by which the district complied with OAR 581-022-2330. In the plan, the district listed several methods that it would employ at various stages in the TAG identification, nomination, and teaching process. For example, prior to testing for TAG placement, the district uses the following methods: "School TAG bulletin board, school newsletter, PPS TAG website, TAG Facilitators, Fall Back to School Night, TAG Power Point, 2nd Grade Universal Testing Letter to parents."⁷⁹

Other evidence indicates that these mechanisms were at least partially successful. For example, of classes observed by the department's TAG specialist, the average district teacher reported that they discussed students' TAG plans with the parents or legal guardians of TAG students at the beginning of the school year or during fall teacher-parent conferences. Some of these teachers reported that they discussed students' TAG plans with the parents or legal guardians throughout the school year, during subsequent on-going communication. Furthermore, the average district teacher teaching grades 6-8 reported that they generally initiated the discussion.

However, there is other evidence that the mechanisms used by the district to ensure the rights of parents and legal guardians as required by OAR 581-022-2330 were not successful.

Of the district teachers that reported discussing students' TAG plans with parents and legal guardians at the beginning of the school year, only some confirmed that the discussion was on-going. Additionally, the average district teacher teaching grades K-5 reported that the parent or legal guardian of a TAG student initiated discussing the student's TAG plan just as often as the teacher. Similarly, the average district teacher teaching grades 9-12 reported that both the teacher and the parent or legal guardian initiated the discussion during a "conversation about the student."

Of district teachers who responded to the survey, 86% of respondents reported that the parents and legal guardians of TAG students did not often request a written TAG instructional plan, indicating a lack of knowledge about the choice to have a plan.

District teachers who commented on the survey also indicated that parents and legal guardians lacked knowledge about their rights. Of the 233 comments submitted by district teachers, several stated that many TAG students do not even know that they are TAG students, a clear sign that the students' parents and legal guardians are not receiving adequate information about TAG programs and services.

Of the parents and legal guardians of TAG students who attend school in the district, only 19% of respondents to the survey agreed or strongly agreed that they knew how their student's teacher provided for their student's rate and level of instruction. In contrast, 64% of respondents disagreed or strongly disagreed that they knew how their student's teacher provided for their student's rate and level of instruction. Likewise, only 22% of respondents agreed or strongly

⁷⁹ *Id.* at 9.

agreed that if they asked their student’s classroom teacher or teachers about a concern related to the provision of TAG services the teacher or teachers could explain how the student’s needs are being met.

Comments submitted by parents and legal guardians further substantiate a lack of communication on the district’s behalf. One commenter wrote, “We were not informed by [the] TAG coordinator when the tests would be or what they would entail – for instance, we declined the verbal test because [our child] didn’t read yet and no one told us it was not a reading test.” Another commenter wrote, “[Our child’s] classroom teacher does not know what to do to challenge her per her teacher’s own words. There is no help from the TAG coordinator or any other source for the teacher.” A third commenter wrote, “When I have reached out to our school’s TAG coordinator, I have either received no response or been dismissed.”

With respect to OAR 581-022-2330, for the reasons stated above, the district may be deficient.

IV. Whether Portland Public Schools may have violated OAR 581-022-2370, which requires school districts to have a complaint process.

Under ORS 327.102, the State Board of Education must adopt “by rule requirements for the process that a school district must use when the district receives a complaint pertaining to whether a school in the district is a standard school.”⁸⁰ Pursuant to ORS 327.102, the board adopted OAR 581-022-2370. That rule reads, in pertinent part:

(1) Each school district must establish a process for the prompt resolution of a complaint by a person who resides in the district or by any parent or guardian of a student who attends school in the school district.

(2) A school district’s complaint process must:

(a) Be in writing available at the main administrative office and, if the school district has a website, in a form available on the home page of the school district’s website;

(b) Include the name of the person, position, or office within the school district with the responsibility for responding to the complaint; and

(c) Specify the time period during which the complaint will be addressed and a final decision issued. If the complaint procedure has multiple steps, the procedure must establish the time period

⁸⁰ ORS 327.102(1).

for each step as well as the overall time period for completing the complaint procedure.

In their original complaint, Complainant posits that “[t]he district had a dysfunctional complaint process that prevented parents from receiving a timely response to their concerns.”

Portland Public Schools responded to Complainant by writing, “[t]he formal complaint process is one of a set of tools to resolve school-based problems and other issues. The instructions, action steps, and timelines are outlined in [the district’s complaint policy].” The district found that “parents receive responses to their complaints that are consistent with Division 22 requirements.”

A. Whether Portland Public Schools complaint process was prompt.

Compliance with OAR 581-022-2370(1) requires a school district’s complaint process to be “prompt.”

In this case, the evidence demonstrates that the district promptly responded to each complaint filed by Complainant.

Complainant filed their initial complaint on April 29, 2019. The district responded to that complaint on May 29, 2019. On June 3, 2019, Complainant appealed that response to the district superintendent. The district superintendent responded to that appeal on July 3, 2019. On July 22, 2019, Complainant appealed the response issued by the district’s superintendent to the district’s school board. The school board responded to that appeal on August 13, 2019. Each time Complainant filed a complaint, the district responded within a month.

As a theoretical matter, given the right circumstances, a school district would be in violation of OAR 581-022-2370(1) if the school district established a complaint process and then systematically failed to provide complainants with a resolution. However, that is not the case in this instance.

With respect to OAR 581-022-2370(1), the district is not deficient.

B. Whether Portland Public Schools has a complaint policy that meets Division 22 Standards.

Compliance with OAR 581-022-2370(2) requires a district’s written complaint policy to contain three elements:

- The policy must be written and available at the school district’s main administrative office and, if the district has a website, in a form on the home page of the website;

- The policy must contain the contact information for the name of the person, position, or office responsible for responding to complaints; and
- The policy must specify how long, for each step in the complaint process, the school district has to respond to the complaint.

In this case, the evidence demonstrates that the district's policy contains all three elements.

A person may access the district's complaint policy by clicking a link on the home page of the district's website that reads "Conflict Resolution." The corresponding page on the district's website contains detailed information about the district's complaint processes. The page also includes links to the district's complaint policy and an online form that a person may use to file a complaint.

The district's complaint policy specifies that the position responsible for processing complaints is the district's Complaint Coordinator. The district's webpage dedicated to detailing information about the district's complaint process also provides the contact information for the coordinator in the form of links to the coordinator's email address.

Finally, the district's complaint policy – in describing the district's complaint process – specifies the timeline by which the district will complete each step in the process.

Importantly, when investigating whether a school district's complaint policy is in violation of OAR 581-022-2370(2), the Oregon Department of Education is limited to examining whether the policy complies with the rule. The provision only requires a school district to have a complaint policy containing certain elements. If a school district developed a complaint policy that contains those elements, the department's investigation ends. The department, acting under the authority of the standard on appeal, does not review the quality of the investigation conducted by the school district or the school district's responsiveness to and relationship with complainants. Those matters fall under the oversight of the school district's locally elected school board.

With respect to OAR 581-022-2370(2), the district is not deficient.

CONCLUSIONS

In conclusion, the Oregon Department of Education finds that Portland Public Schools:

- Is not deficient under ORS 343.409 – insofar as that statute applies to the establishment of programs and services – OAR 581-022-2325(2)(d), OAR 581-022-2370, and OAR 581-022-2500(1), (2), and (3).
- May be deficient under OAR 581-022-2325(2)(e), OAR 581-022-2330, and OAR 581-022-2500(4).

With respect to those provisions of law where the department finds the district is not deficient, this order constitutes the department's final disposition.

With respect to those provisions of law where the department finds that the district may be deficient, this order constitutes a preliminary final order requiring Complainant and the district to attempt to reach an agreement on how to resolve the matter through conciliation.⁸¹

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

If Complainant or the district wishes to use the department as a resource during conciliation, Complainant or the district may contact the department.⁸²

If you have any questions, please contact me.

Sincerely,



Mark Mayer, Complaint and Appeals Coordinator
Office of the Department
Mark.Mayer@state.or.us

⁸¹ OAR 581-002-0011.

⁸² The department's conciliator for this case is Patricia Stoneroad. She may be reached by email at patricia.stoneroad@ode.state.us or by phone at (503) 947-5915.