



Oregon

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Dr. Charlene Williams
Director of the Department of Education

October 30, 2023

BY EMAIL

REDACTED

Samuel Bogdanove
Superintendent
Ashland School District
885 Siskiyou Boulevard
Ashland, OR 97520
Samuel.Bogdanove@ashland.k12.or.us

Re: Case#2023-22

Dear REDACTED and Superintendent Bogdanove:

REDACTED (Complainant) filed an appeal with the Oregon Department of Education alleging that Ashland School District violated ORS 659.850 and OAR 581-021-0045 by discriminating against their child (Student) on the basis of sex. Complainant specifically alleged that the district discriminates, based on sex, because the district considers gender when choosing students for the Wind Willow Community Learning Center, an alternative education program. The students are chosen for this alternative program by a lottery system administered by a district-affiliated program called TRAILS. Complainant alleged that this discriminatory practice unlawfully excluded Student from enrollment in the school.

Under OAR 581-002-0009(3)(a)(C), the department may issue notice that it is closing an appeal if the department determines that a district is not in violation of a law or rule described in OAR 581-002-0003. This letter constitutes notice that the department finds that Ashland School District is currently in compliance with ORS 659.850 and OAR 581-021-0045.

On August 29, 2023, the department issued notice that it was accepting Complainant's appeal on the basis that Complainant had exhausted the district's complaint process.¹

¹ OAR 581-002-0005(1)(a)(A).

On September 20, 2023, the department received a response from the district to Complainant's allegations. In that response, the district superintendent stipulated that TRAILS considered the number of male and female student applicants when filling openings for Wind Willow Community Learning Center. "This past Spring," wrote the superintendent, "I learned after-the-fact that gender was considered on filling openings." However, the superintendent also explained that they immediately directed TRAILS to stop this practice. "On learning this, I spoke directly with Willow Wind and emailed TRAILS staff to alter the practice moving forward." As evidence, the superintendent provided the department with the email to TRAILS staff. The superintendent also specified that "[t]here was a second lottery for incoming kindergarten and gender was not considered after [my] directive."

The law clearly forbids considering gender as admission criteria. Under regulations implementing the federal anti-discrimination law Title IX², "No person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient to which this subpart applies."³ Under the law,

In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this subpart applies shall not:

- (i) Give preference to one person over another on the basis of sex, by ranking applicants separately on such basis, or otherwise;
- (ii) Apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or
- (iii) Otherwise treat one individual differently from another on the basis of sex.⁴

However, the district remedied this illegal practice well before Complainant filed an appeal with the department. On May 17, 2023, the district superintendent wrote TRAILS staff and directed them to cease the practice. In that email, the superintendent wrote,

I learned that we have been using gender as a basis for allocating lottery slots at TRAILS. This is problematic from both a civil rights [and] non-discrimination policy and an equity lens perspective. Moving forward, we cannot use gender as a basis for selection or opportunity in the lottery. This will begin with tomorrow's kinder lottery.

² See Education Amendments of 1972, Public Law No. 92-318, Title IX, §§ 901-907 (codified at 20 U.S.C. §1681 *et seq.*).

³ 34 C.F.R. 106.21(a).

⁴ 34 C.F.R. 106.21(b).

In consideration of the facts, the allegation upon which the department accepted the appeal is moot.

Case #2023-22 is closed.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Mayer', is centered within a light gray rectangular box.

Mark Mayer, Complaint and Appeals Coordinator
Office of the Director
Oregon Department of Education