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Kate Brown, Governor



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Colt Gill

Director of the Oregon Department of Education

June 6, 2022

BY EMAIL

REDACTED
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Superintendent Bob Stewart
17789 Webster Road
Gladstone, OR 97027
bob@gladstone.k12.or.us

Case No. 2022-MM-18

Dear REDACTED and Superintendent Bob Stewart:

On December 20, 2022, the Oregon Department of Education accepted an appeal filed by REDACTED (Complainant) against Gladstone School District. Complainant's appeal specifically alleged that the district violated: (1) ORS 659.850 and OAR 581-021-0045, which prohibit discrimination in education programs; (2) ORS 339.285 to 339.303 and OAR 581-021-0550 to 581-021-0570, which prohibit unlawful restraint and seclusion; and (3) ORS 659.852, which prohibits retaliation against a student by an education program.

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 violation of a law or rule described in OAR 581-002-0003 did not occur. Furthermore, if a district undergoes corrective action for a violation before the department can issue a final order, the matter becomes moot and the department will dismiss the case. This letter constitutes notice that the department finds that the district is currently in compliance with ORS 659.850 and OAR 581-021-0045 and ORS 659.852. The department finds that the district did not violate those statutes and rule. This letter also constitutes notice that the district already has undergone corrective action related to any violation of ORS 339.285 to 339.303 and OAR 581-021-0550 to 581-021-0570, making the matter moot. The department makes these findings on the following grounds:

- Complainant argues that Gladstone School District discriminated and retaliated against her son (Student) because, following a report by Complainant that the district had

unlawfully restrained Student, the district disenrolled Student from school. Complainant claims that when the district disenrolled Student, he had been absent from school for more than 10 days. Under OAR 581-023-0006(4)(b), “A student must be withdrawn from the active roll [of a school district] on the day following the tenth consecutive full school day of absence[,] but may be retained on the inactive roll at the district’s option.” Complainant argues that the district kept Student enrolled in the district to continue collecting money that the state distributes to each school district on the basis of the number of students attending school in each district (see OAR 581-023-0006). Complainant argues that the district only disenrolled Student after she reported that the district unlawfully restrained Student. In other words, Complainant argues that the district willfully violated public education finance law until she filed a complaint against the district, at which point the district retaliated against Student by adhering to public education finance law and reporting to the Oregon Department of Education that Student had been disenrolled.

The problem with Complainant’s argument is that the district – on September 26, 2022, “on the day following the tenth consecutive full school day” of absences accrued by Student – disenrolled Student from the district and reported the disenrollment to the department. Furthermore, several emails provided to the department by both Complainant and the district demonstrate that the district, well after it had disenrolled Student, and therefore well after it no longer received funding from the state that otherwise would be distributed to the district on the basis that Student was attending school in the district, continued to discuss with Complainant Student returning to the district and how the district could accommodate him. Those emails substantiate that the district attempted to resolve any dispute it had with Complainant even after it had disenrolled student. In short, the facts substantiate that the district was not discriminating or retaliating against Student on the alleged grounds.

- Complainant also alleges that Gladstone School District violated ORS 339.285 to 339.303 and OAR 581-021-0550 to 581-021-0570. Complainant specifically alleges that district violated OAR 581-021-0556(2)(c) when district staff restrained Student and failed to notify Complainant of her right to attend a debriefing meeting. Complainant alleges the district failed to notify her on three occasions. After receiving notice of this appeal, the district stipulated to the fact that it failed to notify Complaint of her right to attend debriefing meetings following restraints of Student. The district informed the Oregon Department of Education that it would not participate in conciliation as described in OAR 581-002-0011 and that it immediately wanted to undergo corrective action. To that end, the department provided a training for the district on the requirements of ORS 339.285 to 339.303 and OAR 581-021-0550 to 581-021-0570 and best practices associated with those statutes and rules.

The training was conducted on March 21, 2023, at 9:30 am. Although the district only violated OAR 581-021-0556(2)(c), the training covered the full breadth of an educational entity's duties under applicable law, as well as how restraint and seclusion law intersects with anti-discrimination and special education law. Even when an educational entity acts in accordance with ORS 339.285 to 339.303 and OAR 581-021-0550 to 581-021-0570, it may be violating federal or state anti-discrimination or special education law if the restraint or seclusion results in the denial of a student's free appropriate public education. The training also included best practices associated with restraint and seclusion, such as intervention and de-escalation techniques. As explained at the beginning of the training:

Restraint and seclusion are noneducational, reactive strategies utilized to mitigate the risk of substantial physical harm or bodily injury when other less restrictive interventions have failed to control the situation. While allowable under the law, a school's inappropriate use of restraints or use of seclusion in response to student behaviors could deny a student FAPE or constitute disability discrimination. Additionally, there are many risks associated with the use of restraint and seclusion. Gaining a firm understanding of the law, reporting requirements and implementation of best practices for prevention, intervention and de-escalation can limit the use of these reactive practices.

With respect to OAR 581-021-0556(2)(c), the training provided comprehensive information about an educational entity's duties with respect to notifying parents about restraints and seclusions and their right to attend debriefing meetings. The training included information about:

- An educational entity's duty to verbally or electronically notify parents about the restraint or seclusion by the end of the school day on which the restraint or seclusion occurred.
- An educational entity's duty to document the restraint or seclusion in writing, within 24 hours of the restraint or seclusion.
- An educational entity's duty to hold a debriefing meeting within two school days of the restraint or seclusion.
- An educational entity's duty to notify a parent about the debriefing meeting and the parent's right to attend the meeting.
- An educational entity's duty to take written notes during the debriefing meeting and to provide a copy of the notes to any parent attending the meeting.

In consideration of this training, the department finds that the district underwent appropriate corrective action before the date on which the department concluded its

investigation of the other matters on appeal, effectively making the matter moot, and allowing the department to close this case.

For the foregoing reasons, the department finds that the district is currently in compliance with ORS 659.850 and OAR 581-021-0045, ORS 339.285 to 339.303 and OAR 581-021-0550 to 581-021-0570, and ORS 659.852.

Case Number 2022-MM-18 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 Specialist
Office of the Director
Oregon Department of Education
Mark.Mayer@state.or.us