



# Oregon

Tina Kotek, Governor



OREGON  
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**Dr. Charlene Williams**  
Director of the Department of Education

January 24, 2023

**BY EMAIL**

REDACTED  
REDACTED  
REDACTED

Superintendent Mark Witty  
Grant School District  
401 N. Canyon City Blvd.  
Canyon City, OR 97820

RE: Case #2022-MM-07

Dear Superintendent Witty and REDACTED:

REDACTED (Complainant) filed an appeal with the Oregon Department of Education alleging that Grant School District violated ORS 659.850 and OAR 581-021-0045 by discriminating against a student (Student) on the basis of sex orientation and gender identity. Complainant specifically alleged that:

- 1) The district, through the actions of a teacher (Teacher), discriminated against Student, based on sexual orientation and gender identity, on January 21, 2022.
- 2) The district, through the actions of Teacher, discriminated against Student, based on sexual orientation and gender identity, by engaging in discriminatory and unprofessional interest in Student's gender identity and sexual orientation from the 2017-18 school year through January 21, 2022.
- 3) The district, through actions of Teacher, unlawfully retaliated against Complainant in response to Complainant's notice of intent to file the discrimination complaint.

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

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581-002-0003. This letter constitutes notice that the department finds that Grant School District is currently in compliance with ORS 659.850 and OAR 581-021-0045.

On May 23, 2022, the department issued notice that it was accepting Complainant's appeal. The department has jurisdiction to hear Complainant's appeal under OAR 581-002-0005(1)(a)(B), under which a complainant may file an appeal with the Oregon Department of Education if a school district has a complaint process with multiple steps and the district fails to issue a written decision within 30 days of a complainant filing a complaint at any step. On April 14, 2022, Complainant submitted a request to appeal a previous decision issued by the district's superintendent. The school board failed to issue a written response to Complainant's complaint by May 23, 2022, 39 days after Complainant filed a complaint with the school board.

### **Allegations that Teacher discriminated against Student**

The alleged discrimination in this case is based on Teacher's conduct toward Student (1) during the 2018-19 school year until January 21, 2022, and (2) on January 21, 2022.

Under ORS 659.850,

A person may not be subjected to discrimination in any public elementary, secondary or community college education program or service, school or interschool activity or in any higher education program or service, school or interschool activity where the program, service, school or activity is financed in whole or in part by moneys appropriated by the Legislative Assembly.

For purposes of this prohibition, "discrimination" is defined as "any act that unreasonably differentiates treatment, intended or unintended, or any act that is fair in form but discriminatory in operation, either of which is based on race, color, religion, sex, sexual orientation, gender identity, national origin, marital status, age or disability."

On January 24, 2022, Complainant filed a complaint with the school's principal alleging Teacher's behavior toward Student was inappropriate, and that their behavior put Student in danger because Student was at risk of suicide. The complaint stated that Teacher was "obsessed" with Student and "has oddly sought the child out since [Student] was" in Teacher's class. On February 11, 2022, the principal issued a written response to the complaint, in which the principal concluded that Complainant's allegations were unfounded.

On March 9, 2022, Complainant filed an appeal of the principal's decision with the district's superintendent alleging the following: (1) Teacher sexually harassed Student; (2) Teacher cyberbullied Student while on a district computer; (3) Teacher endangered the safety of Student by failing to follow the district's "Suicide Preventions and Reporting Suspected Child Abuse and Neglect" policy; (4) during the Student's fifth grade year, Teacher "inappropriately sought out student in a discriminatory manner due to unprofessional interest in student's gender identity

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and sexual orientation”; and (5) since the incidents that occurred on January 21, 2022, Teacher “retaliated, harassed, and cyberbullied” Complainant after receiving notice of Complainant’s intent to file a complaint about the January 21<sup>st</sup> incident. On April 7, 2022, the superintendent issued a written decision upholding the Principal’s decision.

On April 14, 2022, Complainant submitted a request to the district’s school board to appeal the superintendent’s April 7<sup>th</sup> decision. On May 28, 2022, the district’s school board issued a written decision upholding the superintendent’s decision finding that discrimination did not occur. The school board did find that Teacher did not follow the district’s “Suicide Preventions and Reporting Suspected Child Abuse and Neglect” policy. In a response to the department’s May 23<sup>rd</sup> notice of appeal, the district reported that it would “[r]evise the District’s Suicide Prevention Plan to ‘create a more usable document’ and ensure its distribution, and conduct additional training regarding the same.”

During the Oregon Department of Education’s investigation, the department interviewed Complainant, Student’s parent (Parent), and Teacher. Complainant reported that Teacher commented on Student’s appearance during the 2018-19 school year, when Student’s physical appearance started to change. Parent reported that those comments made Student feel uncomfortable. Teacher denied ever commenting on Student’s physical appearance.

Complainant and Parent both stated that after the 2018-19 school year, Teacher sought out Student. They stated that Teacher contacted Parent multiple times to ask about Student. Parent claimed that Teacher texted Student directly. However, Complainant and Parent did not produce any evidence that teacher texted Student.

Teacher stated that they contacted Parent once during this time period. Teacher also stated that they did not have any intentional contact with Student during this period. Occasionally, students from the district junior high school would use the elementary school gym after school. Some of these students would visit Teacher’s classroom, including Student. Teacher estimated that Student accompanied other students to their classroom on two occasions. Teacher stated that Student never came to their classroom alone. Teacher claimed that they sent an email to school administration stating that junior high school students should not visit elementary school classrooms after school. Teacher stated that after they sent that email, the classroom visits stopped.

With respect to January 21, 2022, Complainant and Teacher agreed upon the circumstances leading up to Teacher and Student meeting. Student was attending a basketball game with Complainant at the elementary school in the evening. During the basketball game, Student left to use the bathroom. Student entered Teacher’s classroom and engaged in conversation with Teacher. Student was in Teacher’s classroom for a prolonged period of time, causing Complainant to worry about Student’s well-being.

According to Complainant, Student told Complainant the following:

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- Teacher would not let Student leave the classroom.
- Teacher insisted on Student giving them Student's email password.
- Teacher attempted to interfere with Student's plan to move out of the district to live with family.
- Teacher asked Student to take off their hat to see Student's hair.

According to Parent, Student told Parent the following:

- Student felt like they could not leave Teacher's classroom.
- Student told Teacher that they needed to leave.
- Teacher prevented Student from leaving.
- Teacher attempted to convince Student to not move out of the district.

According to the district:

- "On January 21, 2022, [Student] told [Teacher] of their recent suicide attempt and relayed that they were on 'suicide watch.' In accordance with [their] QPR training, [Teacher] asked [Student] more questions to determine whether [Student] was in immediate danger of self-harm[.] Teacher determined that Student had no immediate plans to attempt suicide."
- "[Teacher] asked [Student] to log into [Student's] school email/calendar account on [Teacher's] computer. QPR training advises Gatekeepers to 'Persuade' those at risk [of] suicide to make a future appointment to give the person something to look forward to and give the person a feeling of accountability to someone else. Accordingly, [Teacher] showed [Student] how to contact [Teacher] via email, and [Teacher] set a future appointment on [Student's] calendar for the two of them to connect via video conference."
- "[W]hile [Student] was conversing with [Teacher] ... [Student] began to feel a sense of urgency to leave the classroom and make [their] whereabouts known to those who might be looking for [them]. [Student] attempted to end the conversation with [Teacher] but did not want to 'be disrespectful' to [Teacher] by leaving abruptly."
- "[Student] was reunited with [Complainant] in the parking lot of [the elementary school] at approximately 4:30 PM. [Student] relayed some details of their whereabouts for the prior two hours to [Complainant], including [their] conversation with [Teacher] and [Teacher's] actions related to [Student's] email/calendar account."

As part of the district's investigation, the district interviewed Student. Records taken during the interview indicate that Student stated the following:

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- When Student was visiting Teacher on January 21, 2022, Teacher “kept asking questions and talking.”
- When Student reported that they were planning on moving, Teacher stated, “What can I do to get you to stay?”
- Student willingly gave Teacher their email password and “didn’t think anything of it” until Complainant “said it wasn’t a normal interaction.”
- Student reported that Teacher “never made any discriminatory or sexually harassing comments to them” and Teacher “just wanted to see my hair.”
- Student reported, “I always thought [Teacher] and I were close because I was different from everyone else. I always wore beanies in class and [Teacher] let me, not everyone else.”

Complainant claimed that Teacher was interested in Student because of Student’s gender transition. However, when asked, Complainant could not identify any specific discriminatory conduct taken by Teacher toward Student.

In consideration of the facts, there is insufficient evidence to establish that Teacher treated Student differently than Teacher would have treated any other student under the same circumstances. There is insufficient evidence to establish that Teacher’s interactions with Student were influenced by Student’s sexual orientation or gender identity. With respect to January 21, 2022, the evidence suggests that Teacher’s interactions with Student were based on Teacher’s concern over Student’s well-being.

In short, there is insufficient evidence to establish that Teacher discriminated against Student on the basis of sex, sexual orientation, or gender identity.

### **Allegations that Teacher retaliated against Complainant**

The final issue on appeal is whether District, through Teacher, retaliated against Complainant for filing a complaint alleging discrimination.

In analyzing the matter on appeal, the Oregon Department of Education interprets ORS 659.850 in accordance with Title VI, federal regulations implementing Title VI, and guidance issued by the Office for Civil Rights.<sup>1</sup>

Regulations implementing Title VI provide that

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<sup>1</sup> In appeals alleging discrimination, the Oregon Department of Education may analyze a complaint alleging retaliation under both ORS 659.850, as a continuation of the discriminatory conduct that is the subject of the appeal, and ORS 659.852, as an act of retaliation in violation of state law.

[n]o recipient [to whom federal financial assistance is extended] or other person shall intimidate, threaten, coerce, or discriminate against any individual . . . because [the individual] has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing [conducted pursuant to regulations implementing Title VI].<sup>2</sup>

The regulations additionally disallow a specific circumstance that may lead to intimidation, threats, coercion, or discrimination:

The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of [regulations implementing Title VI], including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.<sup>3</sup>

To determine whether retaliation occurred, the Office for Civil Rights first determines whether a *prima facie* case for retaliation exists.<sup>4</sup>

To determine whether a *prima facie* case for retaliation exists, the office determines whether (1) the complainant engaged in a protected activity (an activity protected by Title VI or the regulations implementing Title VI);<sup>5</sup> (2) the alleged retaliator had notice of the protected activity;<sup>6</sup> (3) the alleged retaliator acted adversely against the individual;<sup>7</sup> and (4) there was a causal link between the protected activity and the adverse action.<sup>8</sup>

If a *prima facie* case for retaliation is established, the Office for Civil Rights asks the alleged retaliator whether there was a legitimate non-discriminatory, non-retaliatory reason for the

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<sup>2</sup> 34 C.F.R. §100.7(e). See also United States Department of Education Office for Civil Rights, *Dear Colleague Letter*, 1-2 (April 24, 2013), available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201304.pdf> (stating that “[a]lthough a significant portion of complaints filed with OCR in recent years have included retaliation claims, OCR has never before issued public guidance on this important issue,” that “once a student, parent, teacher, coach, or other individual complains formally or informally to a school about a potential civil rights violation or participates in an OCR investigation or proceeding, the recipient [of federal funds] is prohibited from retaliating . . . because of the individual’s complaint or participation,” and that “OCR will . . . vigorously enforce [the] prohibition against retaliation”).

<sup>3</sup> *Id.*

<sup>4</sup> United States Department of Education Office for Civil Rights, *Hillsborough County School District Investigation Letter Complaint Number 04-15-1023*, 3 (May 15, 2015). See also *Davis v. Halpern*, 768 F.Supp. 968, 985 (E.D.N.Y. 1991) (setting forth criteria for *prima facie* case for retaliation under Title VI).

<sup>5</sup> Office for Civil Rights, *Investigation Letter Complaint Number 04-15-1023* at 3.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

adverse action.<sup>9</sup> If so, the office determines whether the proffered reason is a pretext and the actual reason is discriminatory.<sup>10</sup> When making this determination, a showing of pretext is sufficient to support an inference of retaliation.<sup>11</sup>

Complainant alleges that Teacher retaliated against them by making false reports to law enforcement, the Department of Human Services (DHS), and others following the January 21<sup>st</sup> incident where Complainant confronted Teacher in a restaurant. The evidence does substantiate that Teacher contacted their principal following the incident, and that the principal encouraged Teacher to contact law enforcement, which Teacher did twice. Teacher first contacted law enforcement on January 21, 2022, immediately following the incident. During that conversation, law enforcement informed Teacher that they could file criminal charges against Complainant. Teacher next contacted law enforcement on January 22, 2022, to inform law enforcement that they wanted to file criminal charges. Teacher also contacted others about the incident on January 22, 2022.

The evidence also substantiates that Teacher contacted DHS following their January 21<sup>st</sup> encounter with Student. On January 22, 2022, Teacher called DHS to report that Student might not be in a safe environment because Complainant had allowed Student to leave [their] supervision in the gymnasium when Student was on suicide watch.

In this case, the analysis for establishing a prima facie case for retaliation fails under the first and fourth elements.

First, there is insufficient evidence that Complainant engaged in a protected activity because the alleged retaliatory conduct occurred *before* Complainant first filed a complaint alleging discrimination. On January 21, 2022, and January 22, 2022 – following the January 21<sup>st</sup> incident where Complainant confronted Teacher at a restaurant – Teacher contacted law enforcement. On January 22, 2022 – following Teacher’s January 21<sup>st</sup> conversation with Student – Teacher contacted DHS.

It was not until after these events that Complainant filed their complaints. On January 24, 2022, Complainant filed a complaint with the principal, a complaint in which Complainant did not allege discrimination. On March 9, 2022, Complainant filed a complaint with the superintendent. Complainant first alleged discrimination in this complaint. In short, the alleged retaliatory acts occurred before Complainant filed a complaint, and well before Complainant filed a complaint alleging discrimination.

Second, there is insufficient evidence that Teacher contacted law enforcement, DHS, and others *because* Complainant filed their complaints. The evidence indicates that Teacher contacted law enforcement and others *because* of the incident that occurred in the restaurant. The evidence

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<sup>9</sup> Office for Civil Rights, *Investigation Letter Complaint Number 04-15-1023* at 3. *See also Davis*, 768 F.Supp. at 985 (explaining the duty of an investigating agency to inquire about the reason for an adverse action).

<sup>10</sup> Office for Civil Rights, *Investigation Letter Complaint Number 04-15-1023* at 3.

<sup>11</sup> *Davis*, 768 F.Supp. at 985.

indicates that Teacher contacted DHS *because* Teacher was concerned about Student's well-being.

In consideration of the facts, there is insufficient evidence to substantiate that the district retaliated against Complainant.

**Conclusion**

In consideration of the facts, the Oregon Department of Education finds that there is insufficient evidence to substantiate that Grant School district violated ORS 659.850.

Case #2022-MM-07 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