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Colt Gill

Director of the Oregon Department of Education

October 12, 2022

BY EMAIL

REDACTED
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Superintendent George Mendoza
La Grande School District
1305 N Willow Street
La Grande, OR 97850

RE: Case #2019-MM-04

Dear REDACTED and Superintendent Mendoza,

This letter is the order on the April 24, 2019, and July 1, 2019, appeals filed by REDACTED (Parent A1) alleging that La Grande School District violated ORS 659.850 (prohibiting discrimination in an education program or service financed in whole or in part by moneys appropriated by the Legislative Assembly) OAR 581-021-0045 (prohibiting discrimination in certain educational agencies, programs, or services under the jurisdiction of the State Board of Education) and OAR 581-022-2420 (requiring school districts to use educational leadership standards to evaluate district administrators). To ensure compliance with these laws and 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**

Parent A1 alleges that La Grande School District discriminated against Student A on the basis of disability. Parent A1 also alleges that the district retaliated against them for filing complaints with the district. Finally, Parent A1 alleges that the district violated OAR 581-022-2420 by not using established educational leadership standards to evaluate district administrators.

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

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 discrimination, retaliation, or a violation of a Division 22 standard, the department will initiate an investigation to determine whether discrimination, retaliation, or the violation may have occurred.²

If the department determines that discrimination, retaliation, or 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 discrimination, retaliation, or 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 conciliation fails, 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 order as to whether a violation of a ORS 659.850, ORS 659.852, OAR 581-021-0045, or OAR 581-022-2420 may have occurred.

PROCEDURAL BACKGROUND

Parent A1 and her spouse (Parent A2) filed two appeals of multiple complaints against La Grande School District with the Oregon Department of Education. Parents A1 and A2 filed their appeals on April 24, 2019, and July 1, 2019.

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).

Simultaneously, the parents of another child attending school in the district (Parents B1 and B2) filed two appeals of multiple complaints against the district. Parents B1 and B2 filed their appeals on January 2, 2019, and February 26, 2019.

The department accepted all appeals on the basis that it received from the district evidence that the district was waiving its complaint process for all complaints. Because the district waived its complaint process, Parents A1 and A2 and Parents B1 and B2 received a final decision as required by OAR 581-002-0005(1)(a). Specifically, the parents had exhausted the district's complaint process as described in OAR 581-002-0005(1)(a)(A).

Because the appeals filed by Parents B1 and B2 and the appeal filed by Parents A1 and A2 on April 24, 2019, alleged the same or substantially the same facts, the department conducted a single investigation of those complaints.

Because the appeal filed by Parents A1 and A2 on July 1, 2019, alleged other facts, the department conducted a separate investigation of those complaints.

After conducting its investigations, the department consolidated both of the appeals filed by Parents A1 and A2 into a single proceeding, Case #2019-MM-04. This order pertains to *all* allegations made by Parents A1 and A2, both those in the appeal filed on April 24, 2019, and those in the appeal filed on July 1, 2019. This order does not pertain to the allegations made by Parents B1 and B2 in the appeals that they filed on January 2, 2019, and February 26, 2019.

FINDINGS OF FACT

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

1. Student A is the child of Parents A1 and A2.
2. At times relevant to this appeal, Student A attended public school in La Grande School District. During the 2017-2018 school year, Student A was in REDACTED [middle school]. During the 2018-2019 school year, Student A was a freshman in high school.
3. Student A is REDACTED [disability].
4. At times relevant to this appeal, two community sports groups (Group A and Group B) provided sports related activities for students attending school in the district. Group A was more closely affiliated with the district, and its volunteers included a coach (Coach 1) who volunteered for the district. A district teacher (Teacher 1) was

on the group's governing board. Other district staff, including two other teachers (Teacher 2 and Teacher 3), often communicated with Coach 1 about Group A.

5. During the spring of 2017, Student A participated in Group A and Parent A1 was a volunteer coach for the group. Other students participating in the group often ignored Student A, causing Student A to feel ostracized. Parent A1 informed Coach 1 and the group's governing board that other students were ignoring Student A. Coach 1 and the governing board did not intervene. Student A and Parent A1 subsequently quit Group A, and Student A joined Group B. After Student A quit Group A, Parent A1 asked the group's governing board to conduct an investigation of the other students' treatment of Student A.
6. During the fall of 2017, Student A was deliberately ignored on at least two occasions by multiple students who were members of Group A. Another student told Student A that they were being ostracized because the other students did not like Parent A1. In a departmental interview, Parent A1 characterized the other students' treatment of Student A as bullying. Parent A1 reported the incidents to the district. The district responded to Parent A1, conducted an investigation, and connected Student A with a district counselor. In a departmental interview, Parent A1 stated that the district did not inform her of the outcome of the investigation. In the winter of 2018, Parents A1 and A2 learned that the district staff member who had conducted the investigation spoke to one of the students who allegedly ignored Student A about the incident. The staff member also spoke to the student's family. Parents A1 and A2 subsequently filed a complaint with the district, alleging that the staff member's breach of confidentiality had resulted in Parent A1 being "trashed" by the student in the community. The district investigated the matter and determined that the district staff member had acted only in the interest of conducting a thorough investigation.
7. Over the course of the 2018-2019 school year, there was tension between Group A and Group B. Parents A1 and A2 and Parents B1 and B2 – whose child also participated in Group B – suspected that Group A's affiliation with the district resulted in district staff favoring students who were members of Group A, particularly with respect to student athletics. Members of Group B extended an invitation to meet with the members of Group A on multiple occasions, but a meeting never took place. Members of Group B asked the district to intervene. Because the two groups were community sports programs and not district sports programs, the district determined that the matter was not under their jurisdiction. However, because the tension between the two groups was having a negative effect on students, the district volunteered to facilitate a meeting between the two groups. As the tension between the two groups escalated, Parents A1 and A2 perceived statements made by Coach 1 and Teacher 1 to be passive aggressive statements about the members of Group B. The parents also

perceived that Teacher 1 had a misconception about the treatment of Student A by members of Group A. The parents believed that this misconception led to the mistreatment of Student A at school. Later, at the same time that they filed the complaint alleging that the district staff member breached confidentiality, Parents A1 and A2 filed a complaint with the district alleging that Teacher 1's involvement with Group A had resulted in the mistreatment of Student A. The district investigated the matter and determined that Teacher 1 had not acted in manner that resulted in the exclusion of Student A by other students.

8. Teacher 1 sent a text message to students participating in Group A, inviting them to attend open gym practices during the off-season. Coach 1 conducted these practices. At first, the practices were only open to high school students (Student A was in the REDACTED [middle school] at that time). Later, the practices were open to REDACTED [middle school] students. Student A never received a direct invite to attend the practices. Parents A1 and A2 contacted Teacher 2 and Coach 1 about Student A attending the practices on multiple occasions. Parents A1 and A2 eventually filed a complaint with the district, alleging that by not being invited to the practices, Student A was being harassed. The district investigated the matter and found that Coach 1 had not purposefully excluded Student A. The district also found that the exclusion did not constitute harassment.
9. During one of the open gym practices, Parent A2 observed Coach 1 giving instruction to student athletes. Because the practices were held during the off-season, and because Coach 1 was a volunteer coach for the district, the instruction was in violation of rules of the Oregon School Activities Association (OSAA). Parent A2 reported the violation to both the district and OSAA. The district conducted an internal investigation and informed staff of the pertinent OSAA rule prohibiting instruction during the off-season. The district also self-reported the violation to OSAA. OSAA received additional complaints about Coach 1's interaction with student athletes during the off-season. After investigating the matter, OSAA found that the district had violated OSAA rules on 19 different occasions and fined the district \$2,000. During OSAA's investigation of the district violating OSAA rules, Parent A2 and Teacher 1 met by chance at a store in the community. At that time, Parent A2 learned that Teacher 1 believed that Parent B2 had reported the district to OSAA, not Parent A2.
10. During district investigations of complaints filed by Parents A1 and A2, Teacher 1, Teacher 2, Teacher 3, and Coach 1, emailed each other about the parents, discussing their negative opinion of them and the complaints that they had filed. In one of these emails, Teacher 3 speculated that Parents A1 and A2 were jealous of Group A and its close affiliation with the district. Teacher 3 also sent the others information about an

ongoing district investigation in direct contravention of a district order to not share the information.

11. During district investigations of complaints filed by Parents A1 and A2, Teacher 2 excluded Parent A1 from certain social media sites affiliated with district sports. Parents A1 and A2 filed a complaint with the district about that exclusion. The district investigated the matter, disciplined the district staff members who had excluded them, and determined that social media pages affiliated with district sports ought to be accessible by the public.
12. On February 12, 2019, Parents A1 and A2 filed a formal complaint against Teacher 2 for discrimination on the basis of disability and retaliation. Parents A1 and A2 alleged that Teacher 2's conduct resulted in Student A being bullied by district students who were members of Group A. They also alleged that Teacher 2 held contempt for them and Student A because they had filed complaints against Teacher 1, Teacher 2, Teacher 3, and Coach 1 with the district and against the district with OSAA.
13. On February 13, 2019, Parents A1 and A2 filed a formal complaint against Coach 1 for discrimination on the basis of disability and retaliation. They alleged that Coach 1 held contempt for Student A for no longer participating in Group A, thwarted the parents' attempts to conciliate with Group A, and actively worked to exclude Student A from the open gym practices and other events open to students.
14. On February 13, 2019, Parents A1 and A2 filed a formal complaint against Teacher 3 for discrimination on the basis of disability and retaliation. Parents A1 and A2 alleged that Teacher 3's conduct resulted in Student A being bullied by district students who were members of Group A. They also alleged that Teacher 3 held contempt for them and Student A because they had filed complaints against Teacher 1, Teacher 2, Teacher 3, and Coach 1 with the district and against the district with OSAA. The complaint also stated that Teacher 3 was aware of Student A's disability and did not inform the district of information that the district needed to understand Student A's experiences with Group A and at school.
15. On February 14, 2019, Parents A1 and A2 filed a formal complaint against Teacher 1 for discrimination on the basis of disability and retaliation. Parents A1 and A2 alleged that Teacher 1's conduct resulted in Student A being bullied by district students who were members of Group A. They also alleged that Teacher 3 held contempt for them and Student A because they had filed complaints against Teacher 1, Teacher 2, Teacher 3, and Coach 1 with the district and against the district with OSAA.

16. After Parents A1 and A2 filed the February 12th, 13th, and 14th complaints, Teacher 1 filed a complaint against them with the district, alleging harassment. The district contacted the Oregon Department of Education about whether it should accept a complaint filed by a teacher against a parent. The department informed the district that under ORS 327.102, anyone residing in the school district or who is a student, or a parent or legal guardian of a student, attending school in the district “has the statutory right to file” a complaint. On basis of the department’s advice, the district accepted Teacher 1’s complaint. Parent A1 and A2 subsequently filed two more complaints with the district. In the first, they alleged that by filing a complaint, Teacher 1 was retaliating against them because they had filed the February 14th complaint against Teacher 1. In the second, they alleged that by accepting Teacher 1’s complaint, the district was retaliating against them because they had filed complaints against district staff.
17. The district conducted investigations of the February 12th, 13th, and 14th complaints and subsequent retaliation complaints. The district could not substantiate any of the allegations made in the complaints.

ANALYSIS

I. Whether the District Discriminated Against Student A on the Basis of Disability

Under Oregon’s anti-discrimination statute,

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.¹⁰

For purposes of this prohibition, “discrimination” is defined to mean “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, national origin, marital status, age or disability.”¹¹

In applying this prohibition to school districts, OAR 581-021-0045(3) specifically states that a school district may not:

¹⁰ ORS 659.850(2). OAR 581-021-0045(2) applies this prohibition specifically to the types of schools regulated by the Department: “No person in Oregon shall be subjected to discrimination in any public elementary or secondary school, educational program or service, or interschool activity where the program, service, school, or activity is financed in whole or part by monies appropriated by the Legislative Assembly.”

¹¹ ORS 659.850(1). OAR 581-021-0045(1)(a) uses an identical definition for “discrimination” for purposes of the Department’s regulatory authority over public elementary and secondary schools.

(a) Treat one person differently from another in determining whether such person satisfies any requirement of condition for the provision of such aid, benefit, or service;

(b) Provide different aid, benefits, or services; or provide aids, benefits, or services in a different manner;

(c) Deny any person such aid, benefit, or service;

(d) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

(e) Aid or perpetuate discrimination by joining or remaining a member of any agency or organization which discriminates in providing any aid, benefit, or service to students or employees; [or]

(f) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

The question on appeal is whether La Grande School District discriminated against Student A on the basis of disability by excluding Student A from certain district activities. In other words, whether the district – because of Student A’s disability – denied Student A an aid, benefit, or service in contravention of OAR 581-021-0045(3)(c).

Under both ORS 659.850 and OAR 581-021-0045, discrimination is defined to mean “any act that unreasonably differentiates treatment, intended or unintended . . . [that] *is based* on race, color, religion, sex, sexual orientation, national origin, marital status, age or disability. Certainly, Student was treated differently in this case. Student A was ostracized when she was participating in Group A. At school, Student A was ignored by other students who were in Group A. Student A was not directly invited to the off-season, open gym practices. Because of tensions between Student A’s parents and district staff who were affiliated with Group A, Student A felt excluded from district sport activities. However, there is no evidence that this different treatment derived from Student A’s disability. In fact, the evidence overwhelmingly indicates that this different treatment was the result of the friction between the two community sports groups and the persistent conflict between Parents A1 and A2 and district staff members.

The question before the department is whether the term “basis” in ORS 659.850 applies to the treatment of Student A in these circumstances. ORS 659.850 does not define the term “basis.” Thus, determining the meaning of “basis” requires discerning legislative intent. The Oregon Supreme Court prescribed the method for discerning legislative intent in *Portland General*

*Electric, Co. v. Bureau of Labor and Industries*¹² and *State v. Gaines*.¹³ 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.¹⁴

To discern the plain meaning of a term in statute, Oregon appellate courts consult *Webster's Third New International Dictionary*.¹⁵ That dictionary defines "basis" to mean "the principle component of anything" or "something that that supports or sustains anything immaterial." Thus, for an act to be discriminatory within the meaning of ORS 659.850, race, color, religion, sex, sexual orientation, national origin, marital status, age or disability must be "the principle component of the [discriminatory] act" or that which "supports or sustains the [discriminatory] act." In this case, the evidence indicates that Student A's disability was not a component of others' treatment toward them or the thing sustaining others' treatment of them. Rather, the evidence indicates that the friction between Group A and Group B and the resulting fallout between Parents A1 and A2 was the principle component of the different treatment of Student A.

In consideration of the evidence, the department cannot substantiate that the district discriminated against Student A on the basis of disability.

II. Whether La Grande School District Retaliated Against Parents A1 and A2

Under ORS 659.852, school districts and certain other education programs are prohibited from retaliating against a student who reports in good faith information that the student believes is a violation of state or federal law, rule, or regulation.

Correctly applying ORS 659.852 to the facts at issue in this appeal requires an understanding of the legal standard established by ORS 659.852. After reviewing the legislative history of ORS 659.852, the Oregon Department of Education finds that the legal standard established by the statute is the same as the legal standard under Oregon law for proving retaliation by an employer.

Legislative history suggests that ORS 659.852 should be interpreted in a manner that is consistent with ORS 659A.199 and other Oregon laws protecting whistleblowers. The genesis for ORS 659.852 was House Bill 3371 for the 2015 Legislative Assembly of the State of Oregon. At both public hearings held for the bill — the first before the House Committee on Higher Education, Innovation, and Workforce Development on April 6, 2015, and the second before the Senate Committee on Judiciary on May 26, 2015 — witnesses proffered testimony that the primary purpose of the bill was to extend the protections available to employees under ORS 659A.199 to students.

¹² 317 Or. 606 (1993).

¹³ 346 Or. 160 (2009).

¹⁴ *Portland General Electric*, 346 Or. at 610-611; *Gaines*, 317 Or. at 171-172.

¹⁵ *Comcast Corp. v. Dept. of Revenue*, 356 Or. 282 (2014).

Case law further establishes that the legislative history of ORS 659A.199 suggests that the primary purpose of the statute is to extend the protections available to public employee whistleblowers under Oregon law to other employee whistleblowers.¹⁶ Thus, to make a complaint under ORS 659.852, a person must establish the elements required for establishing a *prima facie* case of retaliation under ORS 659A.199 and other Oregon laws protecting whistleblowers.

In consideration of these laws, the department finds that a person must establish the following to prove retaliation under ORS 659.852: (1) the student was engaged in a protected activity; (2) the student suffered an adverse education decision; and (3) there was a causal link between the protected activity and the adverse education decision.¹⁷

In this case, Parents A1 and A2 allege that the La Grande School District retaliated against them in six complaints. First, in the February 12th, 13th, and 14th complaints, the parents allege that Teacher 1, Teacher 2, Teacher 3, and Coach 1 retaliated against Student A by actively working to exclude Student A from certain activities. The parents also allege that the teachers and Coach 1 retaliated against them by holding them in contempt and treating them accordingly.

Second, in two subsequent complaints, Parents A1 and A2 allege that (1) Teacher 1 retaliated against them by filing a complaint against the parents and (2) the district retaliated against them by accepting Teacher 1's complaint.

Parents A1 and A2 fail to substantiate that the district retaliated against them for a variety of reasons.

A. First Prong: Protected Activity

Under the first prong of the test, a student must engage in a protected activity. For purposes of ORS 659.852, the protected activity is making a report of a violation of a state or federal law, rule, or regulation. However, the plain language of ORS 659.852 necessarily limits its application to a "student" who makes a report of a violation.

The department necessarily must point out that ORS 659.852 does not require a student to report the violation to an education entity. In consideration of the legislative history of ORS 659.852, a student may report the violation to a parent or other person who subsequently reports the violation to the education entity.

As with ORS 659.850 and the term "basis," ORS 659.852 does not define the term "report." Thus determining the meaning of the "report" once again requires discerning legislative intent.

¹⁶ *Brunozzi v. Cable Communications, Inc.*, 851 F.3d 990, 999-1000 (9th Cir. 2017).

¹⁷ *Huitt v. Optum Health Services*, 216 F.Supp. 3d 1179, 1190 (D. Or. 2016) (explaining requirements for establishing a *prima facie* case of retaliation under ORS 659A.199 and 659A.230); *see also Ruggles v. Cal. Polytechnic State Univ.*, 797 F.2d 782, 785 (9th Cir. 1986) (explaining requirements for establishing a *prima facie* case of retaliation under Title VII of the Civil Rights Act).

Webster's Third New International Dictionary defines "report" to mean "to give an account of: NARRATE, RELATE, TELL." Further, given that ORS 659.852 is intended to be applied in the same manner as a law protecting whistleblowers from employers, it is important to understand that employment law has the purpose of protecting "a report of information to either an external or internal authority."¹⁸ Reporting information to an external authority is similar to a student who reports information to a parent, who *then* files a complaint with the education program on the student's behalf.

In this case, Parents A1 and A2 initiated all reports of violations, whether they were reports to the district or OSAA. Student A did tell Parent A1 that they were being ostracized by students participating in Group A. For purposes of ORS 659.852, that act constitutes "report." However, informing someone that you are being ignored does not constitute reporting a violation of law.

B. Second Prong: Adverse Education Decision

Under the second prong of the test, a student must suffer an adverse education decision. Under ORS 659.852,

an adverse education decision constitutes "suspension, expulsion, disenrollment, grade reduction, denial of academic or employment opportunities, exclusion from academic or extracurricular activities, denial of access to transcripts, threats, harassment or other adverse action that substantially disadvantages a student in academic, employment or extracurricular activities.

Student A was not suspended, expelled, or disenrolled from school. Student A's grades were not reduced. Student A was not denied an academic or employment opportunity, excluded from academic or extracurricular activities, or denied access to transcripts. Student A was not threatened or harassed. Instead, Student A was embroiled in a contentious disagreement between two community sports groups, Group A and Group B.

For Parents A1 and A2 to succeed on appeal, they would have to prove that the actions of Teacher 1, Teacher 2, Teacher 3, and Coach 1 substantially disadvantaged Student A in an academic or extracurricular activity. They fail to do so. At most, the evidence substantiates that Student A was not directly invited to participate in off-season, open gym practices. Not being directly invited to an activity is not the same as being excluded from an activity. And even if there was enough evidence to substantiate that Student A was being excluded from the activity, the activity was an off-season open gym practice sponsored by *the community* and was not affiliated with the district.

¹⁸ *Brunozzi*, 851 F.3d at 1000 (interpreting the meaning of "report" in ORS 659A.199 in a manner that is consistent with the type of activity that is protected by other Oregon laws pertaining to whistleblowing).

Most of the evidence presented by Parents A1 and A2 concerns not how Student A was disadvantaged, but how they were disadvantaged. This includes their complaint that Teacher 1 retaliated against them by filing a complaint with the district against them. Teacher 1 very well may have filed the complaint against Parents A1 and A2 as a form of punishment in response to them filing their complaints. But Teacher 1's complaint was filed against Parents A1 and A2, not Student A.

The protections of ORS 659.852 do not extend to the parents or legal guardians of students. The protections of ORS 659.852 are meant to protect students in their educational endeavors, not families in their community disagreements.

C. Third Prong: Causation

There also is insufficient evidence to prove that Teacher 1, Teacher 2, Teacher 3, and Coach 1's conduct toward Student A was caused by Parents A1 and A2 filing complaints. In fact, in their February 13th complaint against Coach 1, Parents A1 and A2 stated that Coach 1 held contempt for Student A for no longer participating in Group A, not because Student A had reported violations of law.

Furthermore, the evidence suggests that Teacher 1, Teacher 2, Teacher 3, and Coach 1 did not know, at least for a time, that Parent A2 had reported the district to OSAA. When Parent A2 and Teacher 1 met by chance at a store in the community, Teacher 1 discussed the OSSA investigation as if Parent B2 had reported the district, not Parent A2.

Overall, the evidence indicates that the majority of Teacher 1, Teacher 2, Teacher 3, and Coach 1's conduct derived from the tension that existed between Group A and Group B and the constant conflict with Parents A1 and A2. Part of that conflict included the filing of complaints. However, just because the conflict included the filing of complaints does not substantiate that the complaints were the reason for the teachers' and coach's conduct.

Finally, it is important to note that the evidence definitively substantiates that the district was not retaliating against Parents A1 and A2 by accepting the complaint filed against them by Teacher 1. The district accepted the complaint because the Oregon Department of Education informed the district that any person who lived in the district had a right to file a complaint with the district.

D. Conclusions

The bulk of evidence suggests that Teacher 1, Teacher 2, Teacher 3, and Coach 1 did not engage in retaliatory behavior as defined by ORS 659.852. The department understands why Parents A1 and A2 felt as though they were being retaliated against. The behavior of the teachers and Coach

1 was dismissive and at times unprofessional. However, discord between two parties does not substantiate retaliation as prohibited by ORS 659.852.

As a final note, it is important to point out that the allegation that Teacher 1 retaliated against Parents A1 and A2 by filing a complaint against them is outside the department's scope of authority. When Teacher 1 filed the complaint, Teacher 1 was not acting as a representative of the district. Teacher 1 was acting in their own self-interest. Thus, even if Teacher 1 was acting in a retaliatory manner, that retaliatory act would fall outside of the department's jurisdiction.

III. Whether La Grande School District violated OAR 581-022-2420

Under OAR 581-022-2420, "School Districts shall use the educational leadership-administrator standards to evaluate administrator effectiveness." Those standards include the following:

(1) Visionary Leadership: An educational leader integrates principles of cultural competency and equitable practice and promotes the success of every student by facilitating the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by stakeholders.

(2) Instructional Improvement: An educational leader integrates principles of cultural competency and equitable practice and promotes the success of every student by sustaining a positive school culture and instructional program conducive to student learning and staff professional growth.

(3) Effective Management: An educational leader integrates principles of cultural competency and equitable practice and promotes the success of every student by ensuring management of the organization, operation, and resources for a safe, efficient, and effective learning environment.

(4) Inclusive Practice: An educational leader integrates principles of cultural competency and equitable practice and promotes the success of every student by collaborating with faculty and community members, responding to diverse community interests and needs, and mobilizing community resources in order to demonstrate and promote ethical standards of democracy, equity, diversity, and excellence, and to promote communication among diverse groups.

(5) Ethical Leadership: An educational leader integrates principles of cultural competency and equitable practice and promotes the success of every student by acting with integrity, fairness, and in an ethical manner.

(6) Socio-Political Context: An educational leader integrates principles of cultural competency and equitable practice and promotes the success of every student by understanding, responding to, and influencing the larger political, social, economic, legal, and cultural context.

On appeal, Parents A1 and A2 argue that the conduct of district staff clearly indicates that the district failed to use these standards when evaluating district administrative leaders, particularly with respect to effective management, which requires ensuring “management of the organization, operation, and resources in a manner that provides a safe, efficient, and effective learning environment.”

It is first important to understand what OAR 581-022-2420 requires. OAR 581-022-2420 does not require school districts to perfectly apply educational leadership-administrator standards when evaluating district personnel. The rule requires districts to *use* the standards when evaluating district personnel. In *Webster’s Third New International Dictionary*, “use” means “the act or practice of using something” or “to employ.” In other words, OAR 581-022-2420 requires school districts to practice using, or to employ, the criteria of visionary leadership, instructional improvement, effective management, inclusive practice, ethical leadership, and socio-political context when evaluating administrative leaders. In other words, the standards function as guidelines for districts to use during an evaluative process.

Parents A1 and A2 first fail in their claim because all evidence of failure to use these standards is circumstantial. Parents A1 and A2 claim that the conduct of district staff clearly indicates that the district failed to use the standards when evaluating district personnel. They argue that district administrators’ failure to manage the school district in a manner that provides a safe, efficient, and effective learning environment substantiates their claim. Although the department agrees with Parents A1 and A2 that the behavior of certain district staff was unprofessional, the department cannot take that unprofessionalism as evidence that the district failed to adhere to OAR 581-022-2420 when evaluating district administrators. Such unprofessionalism is too circumstantial to presume that the district is out of compliance with the law.

Parents A1 and A2 also fail in their claim because they have a misunderstanding of the scope of OAR 581-022-2420. As mentioned above, the rule does not require the district to perfectly apply the standards or administrative leaders to actually possess the described qualities. The rule requires the standards to be used during the evaluation process. If the standards are used, the

department's inquiry is over. The department will not second-guess the application of the standards by the district.

CONCLUSIONS

In conclusion, the Oregon Department of Education finds that:

- La Grande School District and district personnel did not discriminate against Student A on the basis of Student A's disability;
- La Grande School District and district personnel did not retaliate against Student A for reporting a violation of state or federal law, rule or regulation; and
- La Grande School District did not fail to use educational leadership-administrator standards to evaluate administrator effectiveness.

Case #2021-MM-04 is closed.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Mayer', is centered below the 'Sincerely,' text.

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