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Dr. Charlene Williams

Director of the Department of Education

October 25, 2023

BY EMAIL

REDACTED

Superintendent Guadalupe Guerrero
501 N. Dixon St
Portland OR, 97227
gguerrero@pps.net

RE: Case #2023-23

Dear REDACTED and Superintendent Guerrero:

REDACTED (Complainant) filed an appeal with the Oregon Department of Education alleging that Portland Public Schools (PPS) violated ORS 659.850 and OAR 581-021-0045 by discriminating against students on the basis of gender identity. Complainant specifically alleged that PPS, in attempting to create a process by which teachers and administrators would have immediate and accurate access to students' preferred names and gender pronouns, failed to provide such a process and, thereby, created a situation where teachers and administrators were more likely to not use those names and pronouns. The process at issue was an electronic registration and records information system called Synergy, which contained fields that were supposed to be populated by students' preferred names and gender pronouns. Because of a technological "bug," Synergy failed to successfully populate these fields. Complainant argues that such failure violated both PPS policy and constituted a discriminatory act.

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 PPS is currently in compliance with ORS 659.850 and OAR 581-021-0045.

On August 31, 2023, the department issued notice that it was accepting Complainant's appeal on the basis that 90 days had passed since Complainant filed their complaint with PPS. See OAR 581-002-0005(1)(a)(C).

Oregon Department of Education

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On September 29, 2023, the department received a response from PPS to Complainant's allegations. In its response, PPS made two arguments. First, that the department had unlawfully accepted the appeal under OAR 581-002-0005(1)(a)(C), under which the department will accept an appeal 90 days after a complainant files a complaint with a district *unless* the district and the complainant "have agreed in writing to a longer time period." PPS presented the department with evidence that Complainant had agreed in writing to hold the complainant in abeyance while PPS worked with its regional support partner, Edupoint, to fix Synergy's bug.

Second, that Synergy's bug did not violate PPS policy because the policy specifically accounted for "technological limitation[s]." In the district's own words:

The District adopted its Transgender, Nonbinary, and Gender Expansive Student AD directing all PPS students and staff to address students by the name and pronoun that corresponds to their gender identity. It outlines processes for registration and records information systems to meet the needs of transgender, nonbinary, and gender expansive students. The District worked with Edupoint to expand the capabilities of Synergy to allow students and families to use their preferred name without documentation and allow students and caregivers to update gender markers to reflect the asserted identity of the student. The work to make sure all aspects of Synergy reflect the asserted identity of the student has been ongoing and is why the AD also requires teachers to make an inquiry of their students as to their preferred pronouns and prohibits staff from using "this technological limitation as an excuse for misgendering students."

On October 13, 2023, the department scheduled an interview with Complainant for October 18, 2023.

On October 17, 2023, Complainant wrote the department that PPS was scheduled to fix Synergy's bug the following day. In light of this development, Complainant and the department agreed to suspend the interview until after October 18, 2023.

On October 23, 2023, the department received a communication from Complainant that Synergy's bug had been fixed.

This appeal presents two questions of law. First, does a written agreement to hold a complaint in abeyance until a future occurrence constitute, for purposes of OAR 581-002-0005(1)(a)(C), an agreement under which a district may investigate a complaint for "a longer period of time?" More specifically, is holding something in abeyance indefinitely a "period of time" for purposes of the rule?

Second, is Synergy discriminatory because it fails to successfully inform teachers and administrators of students' preferred names and gender pronouns, thereby creating a situation where teachers and administrators are likely to not use those names and pronouns? And if so, did PPS fail to institute procedures to effectively reduce that likelihood?

The department declines to answer either question at this time. As noted above, on October 23, 2023, the department received a communication from Complainant that Synergy's bug had been fixed. As of the date of this notice, the allegation upon which the department accepted the appeal is moot.

Case #2023-23 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