

DRAFT DATED 2/16/22 (MM)

581-002-0001 (Amended)

Definitions

For purposes of OAR 581-002-0001 to OAR 581-002-0023:

(1) “Complaint” includes any written report of wrong doing or written grievance that a complainant emails, mails, or otherwise communicates to a district or district staff member, or any verbal report of discrimination, that is not filed in accordance with a district’s complaint process unless the district, within 10 days of receiving the report or grievance, directs the complainant, in writing in the complainant’s preferred language, to file the report or grievance in accordance with the district’s complaint process.

~~(1)~~ **(2) “Department” means the Oregon Department of Education.**

~~(2)~~ **(3) “District” means:**

(A) A school district, an education service district, a public charter school, a Youth Corrections Education Program provider under contract with the department, a Juvenile Detention Education Program provider under contract with the department, or a program that receives moneys pursuant to ORS 343.243; and

(B) Any educational agency, program, or service under the jurisdiction of an entity described in subparagraph (A) of this paragraph.

~~(3)~~ **(4) “Public Charter School” means an elementary or secondary charter school offering a comprehensive instructional program operating under a written agreement entered into between a sponsor and an applicant pursuant to ORS chapter 338.**

~~(4)~~ **(5) “Sponsor” means:**

(A) The board of the common school district or the union high school district in which the public charter school is located that has developed a written charter to create a public charter school.

(B) The State Board of Education pursuant to ORS 338.075.

Statutory/Other Authority: ORS 326.051, ORS 339.303 & ORS 659.850 to 659.855

Statutes/Other Implemented: ORS 339.285 & ORS 659.850 to 659.855.

History:

ODE __-____, amend filed __/__/2023, effective __/__/2023

[ODE 11-2019, adopt filed 03/25/2019, effective 03/25/2019](#)

581-002-0009 (Amended)
Investigation

(1)(a) Within 30 days of the date on which the department gave notice under OAR 581-002-0007 that it is accepting an appeal, a district must submit to the department a written response and all correspondence, documents, and other information that the department requested in the notice. The written response must include:

(A) A statement of facts;

(B) A description of any district action taken in response to the complaint; or if district action was not taken in response to the complaint, an explanation of the reason or reasons that district action was not taken;

(C) Any stipulation reached concerning settlement of the complaint; and

(D) A list of complaints filed with another agency by the complainant concerning the subject of the appeal, to the extent that the district is aware of such complaints.

(b) Upon request, the Director of the Oregon Department of Education may for good cause extend the time by which a district must make a submission under paragraph (a) of this subsection.

(2) After receiving the written response under subsection (1) of this rule, the department will conduct an investigation to determine whether the district violated a law or rule described in OAR 581-002-0003.

(3)(a) Within 90 days of the date on which the department receives the district's written response under subsection (1) of this rule:

(A) If the department determines that a violation of a law or rule described in ~~OAR 581-002-0003~~ **OAR 581-002-0003(1), (2), (3), (4) or (5)** occurred, the department must issue a preliminary order to the complainant and the district. The preliminary order must include:

(i) A reference to the district decision that is on appeal;

(ii) The procedural history of the appeal;

(iii) The department's preliminary findings of fact; and

(iv) The department's preliminary conclusions.

~~(B) If the department determines that a violation of a law or rule described in OAR 581-002-0003 did not occur, the department must issue a final order as described in OAR 581-002-0017.~~

(B) If the department determines that a violation of a rule described in OAR 581-002-0003(6) occurred, the department must issue a final order in accordance with OAR 581-002-0017.

(C) If the department determines that a violation of a law or rule described in OAR 581-002-0003 did not occur, the department may:

(i) Issue notice that the department is closing the case; or

(ii) Issue a final order in accordance with OAR 581-002-0017.

(b) The Director of the Oregon Department of Education may for good cause extend the time by which the department must issue a preliminary order under paragraph (a) of this subsection.

Statutory/Other Authority: ORS 326.051, ORS 339.303 & ORS 659.850 to 659.855

Statutes/Other Implemented: ORS 339.303 & ORS 339.285 to 339.303

History:

[ODE 11-2019, adopt filed 03/25/2019, effective 03/25/2019](#)

581-002-0023 (Amended)

~~Settlement~~ Conciliation and Remediation Occurring Before Issuance of Order (Amended)

(1) On any day preceding the date on which the department issues notice under OAR 581-002-0007, a potential complainant or a district may request technical assistance from the department with respect to an alleged violation of a law or rule described in OAR 581-002-0003.

(2)(a) On any day following the date on which the department issues notice under OAR 581-002-0007 and preceding the date on which a preliminary final order is issued pursuant to OAR 581-002-0009(3)(a)(A) or on which a final order is issued pursuant to OAR 581-002-0009(3)(a)(B), a complainant who files an appeal under OAR 581-002-0001 to 581-002-0023, and the district against whom the appeal is filed, may jointly request:

~~(a) (A) To toll the proceedings described in OAR 581-002-0001 to 581-002-0023 for purposes of reaching a settlement agreement~~ **an agreement through conciliation;** or

~~(b) (B) For the district to immediately take corrective action~~ **as proposed by the district and approved by the department** with respect to any allegation made by the complainant.

(b) Notwithstanding paragraph (a) of this subsection, the department may still require a district to provide the department with a response as described in OAR 581-002-0009.

(3) Upon request, the department will provide technical assistance to support the complainant and district in reaching ~~a settlement agreement~~ **an agreement through conciliation** or understanding the type of corrective action that may be taken.

(4) Any time during the tolling of proceedings described in OAR 581-002-0001 to 581-002-0023 for purposes of reaching ~~a settlement agreement~~ **an agreement through conciliation**, the complainant or district may communicate to the department that they no longer wish to negotiate ~~a settlement~~. Upon verifying that the complainant or district no longer wishes to negotiate ~~a settlement~~, proceedings described in OAR 581-002-0001 to 581-002-0023 begin at the point during the proceedings where the tolling began.

(5) Any ~~settlement~~ agreement entered into by the parties must be in writing and shall contain the following:

(a) A statement identifying the parties to the agreement;

(b) A statement that the parties entering into the agreement intend that the agreement will resolve the matters at issue in the appeal;

(c) A statement or list specifying the particular terms to which the parties have agreed;

(d) A statement that the parties have read and agreed to the terms contained in the agreement;

(e) The signature of each party to the agreement; and

~~(d)~~ **(f) A statement that the parties further agree that:**

(A) Upon execution of the agreement, the department will enter an order staying the proceedings until:

(i) The department confirms in writing that the parties have fulfilled the obligations contained in the agreement; or

(ii) The department has determined that a party has failed to fulfill the terms of the agreement.

(B) The department will continue to have jurisdiction over the matter ~~while the parties are in settlement~~ **pending confirmation under subparagraph (A) of this paragraph;**

(C) Any party having an obligation under the agreement shall notify the department in writing within 14 days of completing the obligation;

(D) The department may investigate either party's compliance with the agreement to determine whether the parties have met their obligations within the time specified in the agreement;

(E) If the department finds, by substantial evidence, that a party having an obligation under the agreement has failed to fulfill that obligation within the time required and no good cause exists for that failure, the department may: **resume the proceedings at the time that the department entered the order staying the proceedings; and**

~~(i) Issue a final order that adopts the findings and conclusions contained in the preliminary order if a preliminary order has been issued; or~~

~~(ii) Resume the proceedings at the point during the proceedings where the tolling began if the preliminary order had not been issued when tolling began; and~~

(F) Upon completion of all obligations of the agreement as confirmed by the department, the department shall issue an order closing the appeal;

~~(e) A statement that the parties have read and agreed to the terms contained in the agreement; and~~

~~(f) The signature of each party to the agreement.~~

(6)(a) Upon execution of the ~~settlement~~ agreement, the department shall enter an order staying the proceedings until:

(A) The parties have fulfilled their obligations under the agreement, as confirmed by the department under paragraph (c) of this subsection; or

(B) The department has determined that a party has failed to fulfill the terms of the agreement, as described in subsection (7) of this rule.

(b) Any party having an obligation under the agreement shall notify the department in writing within 14 days of completing the obligation.

(c) Upon receipt of notice that a party has completed its obligation under the agreement, the department shall:

(A) Verify that the obligation required by the terms of the agreement has been completed by the party who provided the notice; and

(B) Issue written confirmation of the completion of the obligation to the parties.

(d) At any time, the department may investigate either party's compliance with the agreement to determine whether the parties have met their obligations within the time specified in the agreement.

(e) After the department has confirmed that all obligations required under the agreement have been completed, the department shall issue an order closing the appeal.

(7) If the department finds, by substantial evidence, that a party having an obligation under the agreement has failed to fulfill that obligation within the time required and no good cause exists for that failure, the department may: **resume the proceedings at the time that the department entered the order staying the proceedings.**

~~(a) Issue a final order as described in OAR 581-002-0017 that adopts the findings and conclusions contained in the preliminary order if a preliminary order has been issued; or~~

~~(b) Resume the proceedings at the point where the tolling began in the preliminary order had not been issued when tolling began.~~

(8) As part of any corrective action taken pursuant to subsection (2)(b) of this rule, the complainant and district must waive their right to seek judicial review of the corrective action under ORS 183.484.

Statutory/Other Authority: ORS 326.051, ORS 339.303 & ORS 659.850 to 659.855

Statutes/Other Implemented: ORS 339.303,

History:

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