November 22, 2019

**BY EMAIL AND US MAIL**

PARENT

ADDRESS
ADDRESS

Superintendent Curtiss Scholl

Sisters School District

525 East Cascade Ave.

Sisters, OR 97759

Case Reference Number: 2018-010-KM

Dear PARENT and Superintendent Scholl:

This letter is the investigatory determination on the appeal of a complaint filed with Sisters School District regarding possible violations of 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 581-021-0046 (prohibiting school districts from providing any course or carrying out any program or activity on a discriminatory basis).[[1]](#footnote-1) To ensure compliance with these laws and rules, the Oregon Department of Education will review school district procedures and findings of fact to determine if proper procedures were followed, if accurate findings of fact were made, and what action, if any, should be taken.[[2]](#footnote-2)

## I. APPELLATE PROCEDURES FOR COMPLAINTS ALLEGING DISCRIMINATION

PARENT (Parent) alleges that the Sisters School District discriminated against her daughter (Student) and similarly situated students by (1) not conducting timely, fair, and impartial investigations of discrimination, and (2) failing to remedy a discriminatory environment when complaints were made alleging discrimination on the basis of race, color, and sex.

The Oregon Department of Education has jurisdiction to resolve this complaint under OAR 581-021-0049.[[3]](#footnote-3) When a person files with the department an appeal of a complaint alleging discrimination, the department will initiate an investigation to determine whether discrimination may have occurred.[[4]](#footnote-4) If the department finds that discrimination may have occurred, the department will issue a letter setting forth the department’s findings and conclusions and require the school district to attempt to reach an agreement with the complainant through conciliation.[[5]](#footnote-5) If the school district cannot reach an agreement with the complainant within 30 days, the department will schedule a hearing to determine whether the school district is in compliance with ORS 659.850.[[6]](#footnote-6) If the department determines that the school district is not in compliance with ORS 659.850, the department will issue an order requiring compliance.[[7]](#footnote-7) If the school district fails to comply with the order within 30 days, the department will issue an order imposing an appropriate remedy.[[8]](#footnote-8) Appropriate remedies include: (1) withholding all or part of one or more quarterly payments that otherwise would be paid to a school district under ORS 327.095, (2) assessing a daily fine against the school district, (3) forbidding the school district to participate in interschool activities, and (4) any other appropriate remedy.[[9]](#footnote-9)

On this appeal, the department has completed its investigation to determine whether discrimination occurred. This letter constitutes the department’s investigatory findings and conclusions.

## II. PROCEDURAL BACKGROUND

Parent raised the issues on appeal with Sisters School District on or about April 17, 2018, on July 3, 2018, on August 27, 2018, on August 29, 2018, on August 30, 2018, on September 6, 2018, on October 2, 2018, on November 13, 2018, on November 14, 2018, and on November 25, 2018.

The district did not investigate or adjudicate any of Parent’s complaints as acts involving discrimination or sexual harassment.

The Oregon Department of Education accepted Parent’s appeal on November 28, 2018, pursuant to OAR 581-021-0049(1), under which the department must take an appeal of a complaint if a district fails to remedy the complaint within 90 days of the complaint being filed.

## III. FINDINGS OF FACT

After conducting its investigation, the Oregon Department of Education makes the following findings of fact:

1. During the 2017-2018 school year, Student and her classmate (Classmate) were fifth graders attending school in Sisters School District.
2. Student and Classmate were friends during the fall of the 2017-2018 school year. They were friends both at school and outside of school.
3. Student is African American. Classmate is Caucasian.
4. During the 2017-2018 school year, the school attended by Student and Classmate lost its principal. A district teacher became the acting principal.
5. During the 2017-2018 school year, the district documented that “[Student] actually acted as [Classmate’s] main support” and that “[Student] protected [Classmate] from other students.” When Classmate was “emotionally dysregulated on the [school] bus at times after school,” a district counselor would ask Student to assist Classmate while riding the bus.
6. During the fall of the 2017-2018 school year, Classmate exhibited insubordination and fought and harassed other students while riding the school bus. On November 17, 2017, the district suspended Classmate from riding the bus. In February, 2018, Classmate again exhibited insubordination and fought and harassed other students while riding the bus. The district again suspended Classmate from riding the bus.
7. By January, 2018, district staff observed that Student and Classmate were no longer friends.
8. By March, 2018, Classmate experienced the loss of a family member. During interviews conducted by the department, the district stated that this loss “exacerbated emotional challenges that [Classmate] may have been experiencing[, and may have] increased his sensitivity to peer conflict.”
9. On March 14, 2018, Classmate returned to riding the school bus after being suspended from riding it for five school days. The parent of Classmate asked the district to assign him a seat that would keep him separated from Student. The district documented that during the morning commute to school, Classmate was “agitated” by his new seat assignment and reacted by “yelling.” The district documented that:

[Classmate] called the [bus] driver inappropriate names and refused to sit down. After a few moments, [Classmate] did. Further into the ride, at bus stops, [Classmate] would exit [his] seat and stand in [the] aisle continuing [his] inappropriate behavior.

The district further documented that:

In the afternoon of Wednesday, March 14, 2018, the [bus] driver shared what had happened during the AM run that morning. The [bus] driver and [district administrative staff] agreed to move [Classmate’s] assigned seat back to the previous location. [They] also agreed to move [Student’s] assigned seat, this would separate them. [They] agreed returning [Classmate] to the previous location would help support him, with consistency, while on the bus.

1. On March 14, 2018, the district documented that during the afternoon commute from school, Classmate misbehaved so badly that the counselor decided that it was necessary to board the school bus to deescalate the situation.
2. Student alleges that on another occasion, during either the commute to or from school, Classmate forcibly pushed passed Student while exiting the school bus. Student asked Classmate to stop. In response, Classmate told Student “I don’t have to.”
3. On March 15, 2018, a district special education teacher sent the acting principal and counselor an email observing that “[Classmate] is really struggling across all settings.” In her email, the special education teacher made the following request: “Please also be on the alert for possible bullying from other students. [Classmate] has reported to his parents that he feels that he is being picked-on/bullied by his peers. Though we are not sure of this, we just want to be really proactive in our approach.”
4. On March 19, 2018, the special education teacher observed Classmate refusing to follow instructions and disrupting class. The special education teacher sought to have a functional behavior assessment (FBA) performed on Classmate.
5. On April 10, 2018, the district documented Classmate being insubordinate, vandalizing district property, and being physically aggressive toward other students. District staff observed Classmate ripping “apart his binder, a magazine, and [his] name tag.” District staff observed Classmate giving a “glaring look to peers.” The district documented that Classmate refused to take directions from district staff, and that he argued with them defiantly.
6. On or about April 12, 2018, Classmate drew a picture depicting Student hanging from a tree with a noose around her neck. In the background, the picture depicted Student’s home burning with Student’s family inside. The picture also depicted Student’s father drowning in a boat. Student saw the drawing. Other students saw the drawing. Classmate was sent to the principal’s office as punishment.
7. The district confirmed that it had knowledge of the picture drawn on April 12th. During an interview with the department, the counselor recalled that when “[Classmate] was asked to provide the picture, he essentially ate it” and that “[Student] believed it was a portrayal of her family.”
8. On April 16, 2018, the special education teacher wrote an email to the district’s Director of Special Programs that she had assigned a paraprofessional to Classmate to provide him with one to one support.
9. On or about April 17, 2018, Classmate commented to another student that he wished Student was dead.
10. On April 17, 2018, the acting principal wrote an email to several teachers, including the special education teacher and the counselor, in which he stated that Parent had called him to discuss her “concerns of threatening comments [Classmate] is making toward [Student].” The acting principal also wrote that “[t]omorrow after the staff meeting can we meet for a few minutes to develop a plan.”
11. On April 18, 2018, the special education teacher wrote an email to the Director of Special Programs, the acting principal, and others, in which she stated:

Starting today we are changing our support schedule for [Classmate]. Due to urgent parent concerns (“my child does not feel safe at school”) which have arisen as a result of [Classmate’s] behavior (verbal threats, making the motion of slashing throats, distributing notes with violent images, physical aggression, destruction of property), we have reassigned staffing to [Classmate to provide him with one to one support]. To be proactive, we will escort [Classmate] from class to class and to lunch/recess in order to reduce the risk of further negative interactions.

1. During April, 2018, and May, 2018, the counselor documented that incidents involving Student and Classmate continued to escalate. The counselor documented that Student reported “[Classmate] was ‘bullying’ her and when [Classmate] was confronted with these accusations, he replied that he was actually the victim.”
2. On or about May 30, 2018, Classmate became agitated during recess while playing on the playground. Student and other students approached Classmate. Classmate yelled at Student, “Shut up, bitch!” several times. Classmate punched Student in the arm and chest.
3. On May 30, 2018, Classmate passed Student and whispered, “bitch.”
4. On May 31, 2018, the district drafted an interim emergency plan for Classmate, assigning a paraprofessional to Classmate to provide him with one to one support for the entire school day.
5. On May 31, 2018, the special education teacher wrote an email to the Director of Special Programs, in which she stated:

I really think we need a little extra staffing support to get us through the rest of the year. Between the three of us, we are doing our best but we are not able to serve the other students in their classrooms. We’ve already divided up the day in order to support [Classmate] (which we have been doing for several weeks/months) but this latest incident still occurred—even with increased supervision.

The special education teacher also stated that the district had not met Classmate’s needs. “I feel the district is remiss because we haven’t done the FBA yet.”

1. On June 4, 2018, the Director of Special Programs wrote an email to the acting principal, the special education teacher, the counselor, and others, in which he stated that the district needed to conduct a threat assessment on Classmate to ensure the safety of the school. He also wrote that Classmate would need to stay home until the assessment was completed.
2. On June 5, 2018, the acting principal wrote an email to the Director of Special Programs, the special education teacher, the counselor, and others, in which she stated that she had explained to Classmate’s parents the need to conduct a threat assessment on Classmate to ensure the safety of the school. “I explained our concerns and the increased violent threats and actions and explained the process of an initial safe schools screener.”
3. On June 8, 2018, the district conducted a threat assessment on Classmate. As part of the assessment, the counselor interviewed Classmate. During the interview, Classmate expressed anger toward Student for telling Classmate’s secrets to other students. Classmate also acknowledged that on or about April 12, 2018, he had drawn a picture depicting Student hanging from a tree with a noose around her neck, Student’s home burning down, and Student’s father drowning. Classmate stated that he had drawn the picture because he was angry at Student.
4. The counselor later summarized his evaluation of Classmate for the Director of Special Programs. The counselor wrote that Classmate was “defensive and unaccountable for his actions.” The counselor wrote that Classmate “frequently stated that he was a victim in the incidents where he became physical, hitting or pushing another student.” The counselor wrote that Classmate could not identify why he was being interviewed or why others may be concerned about him.” The counselor wrote that Classmate, when asked about the picture that he had drawn on April 12th, stated that he had drawn the picture because “he was mad so he drew a picture instead of becoming physical with [Student].” The counselor also wrote that Classmate claimed that the picture “was ‘stick figures’ and not a specific student or her family.” The counselor concluded his summary by recommending that the district assign a paraprofessional to Classmate the following school year to provide him with one to one support.
5. On June 11, 2018, as part of the threat assessment conducted on Classmate, the acting principal interviewed Classmate’s parents. After the interview, the acting principal determined that the parents “don’t feel that [Classmate] is a danger, but state he is quick to escalate to anger and does not have any other coping mechanisms at this point.” The parents stated that Classmate “could not process why [Student] would be his friend at home but not at school.” The parents stated that Classmate “has a very hard time with multi-step directions and becomes easily frustrated and they have started breaking down tasks for him to minimize his frustration.”
6. On June 13, 2018, Classmate told Student to “get out of here” while Student was talking to a friend.
7. On June 13, 2018, on the school bus, Classmate stood on his seat and yelled at Student that she was a “hoe,” a “fat hoe,” and a “sack of shit.” Classmate yelled at Student that “she has no friends.” Classmate told another student that he “enjoyed raping [Student].”
8. On June 14, 2018, the district met with Parent to review the June 13th incident. During that meeting, the district documented the following:

[Parent] stated that [Classmate] had made threats against [Student]. [Student] was informed of this by another student on the bus. We gathered information from [Parent] and assured her that we would keep [Student] safe and away from [Classmate] while we investigated. The school resources officer joined the meeting and took information to investigate and interview involved students. [Parent] stated that she did not feel that we were doing enough to keep [Student] safe and separated from [Classmate]. We assured [Parent] that all instances had been investigated and we had been diligent in keeping [Student] separated from the [Classmate].

The district encouraged Parent to contact the Director of Special Programs if she had additional concerns.

1. On July 3, 2018, Parent met with the Superintendent of Sisters School District to discuss what had transpired between Student and Classmate during the 2017-2018 school year.

## IV. ANALYSIS OF SPECIFIC ALLEGATIONS

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]](#footnote-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]](#footnote-11)

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

 (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.

Additionally, under OAR 581-021-0046, a school district may not “provide any course or otherwise carry out any of its educational programs or activities on a discriminatory basis or require or refuse participation therein by any of its students on such basis.”[[12]](#footnote-12)

The issue addressed in this appeal is whether Sisters School District violated ORS 659.850 and OAR 581-021-0045 or 581-021-0046 because (1) the district did not conduct timely, fair, and impartial investigations of discrimination, and (2) the district failed to remedy a discriminatory environment when complaints were made alleging discrimination on the basis of race, color, and sex.

### A. Whether Sisters School District conducted timely, fair, and impartial discrimination investigations

Before mid-April, 2018, Classmate was insubordinate, fought and harassed other students, and vandalized district property. Some of this behavior was directed toward Student. However, there is insufficient evidence to substantiate that Classmate’s actions – before mid-April – were discriminatory in nature.

In mid-April, Classmate’s actions became overtly discriminatory toward Student.

#### 1. Discriminatory acts on the basis of race or color

On or about April 12, 2018, Classmate drew a picture depicting Student hanging from a tree with a noose around her neck. In the background, the picture depicted Student’s home burning with Student’s family inside. The picture also depicted Student’s father drowning in a boat. Then, on or about April 17, 2018, Classmate commented to another student that he wished Student was dead. Classmate also subjected Student to repeated bullying.

Throughout the months of April and May, a district counselor documented that incidents involving Student and Classmate continued to escalate. The counselor documented that Student reported “[Classmate] was ‘bullying’ her and when [Classmate] was confronted with these accusations, he replied that he was actually the victim.”

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 . . . where the program, service, school or activity is financed in whole or in part by moneys appropriated by the Legislative Assembly.[[13]](#footnote-13)

For purposes of this prohibition, “discrimination” is defined to mean “any act that unreasonably differentiates treatment, intended or unintended, . . . which is based on race, color, religion, sex, sexual orientation, national origin, marital status, age or disability.”[[14]](#footnote-14)

In this instance, Classmate subjected Student to discriminatory behavior in a public elementary school. Classmate drew a picture depicting Student hanging from a tree with a noose around her neck, Student’s home burning down, and Student’s father drowning. By drawing the picture, Classmate clearly threatened Student on the basis race and color. Parent argues that Classmate’s subsequent actions, where he commented to another student that he wished Student was dead and subjected Student to repeated bullying, also were based on her race and color.

The evidence indicates that Classmate may not have fully understood his actions. The counselor documented that when Classmate “was confronted with these accusations, he replied that he was actually the victim.” Later, when the district conducted a threat assessment of Classmate, the counselor documented that Classmate stated that he had drawn the picture because “he was mad so he drew a picture instead of becoming physical with [Student].” The counselor also wrote that Classmate claimed that the picture “was ‘stick figures’ and not a specific student or her family.” However, ORS 659.850 does not protect persons only from acts of discrimination that are committed intentionally or knowingly. It protects persons from both “intended or unintended” acts of discrimination.[[15]](#footnote-15) Thus, in this case, there is sufficient evidence to make a finding that a discriminatory act occurred.

The evidence also suggests that the district had notice of the discriminatory act. Both Student and Parent made a complaint to the district about the discriminatory act. During an interview with the department, the counselor recalled that “[Student] believed [the picture] was a portrayal of her family.” On or about April 17, 2018, Parent called the acting principal to discuss “her “concerns of threatening comments [Classmate] is making toward [Student].”

In summary, Classmate subjected Student to discrimination on the basis of race and color, and the district had received notice of the discrimination.

#### 2. Discriminatory acts on the basis of sex

Classmate also committed overtly discriminatory acts against Student on the basis of sex. On or about May 30, 2018, when on the playground, Classmate yelled at Student, “Shut up, bitch!” several times and punched her in the arm and chest. On May 30, 2018, Classmate passed Student and whispered, “bitch.” On June 13, 2018, on the school bus, Classmate stood on his seat and yelled at Student that she was a “hoe,” a “fat hoe,” and a “sack of shit.” Classmate yelled at Student that “she has no friends.” Classmate told another student that he “enjoyed raping [Student].”

The district received notice of some of these events on June 14, 2018, when the district met with Parent. However, there is no evidence that the district received notice of all of these acts. However, where an appeal alleges discrimination on the basis of failure to conduct a timely, fair, and impartial investigation of an incident involving sexual harassment, a school district has the duty to conduct the investigation if it knew or should have known about the incident.

When the department interprets and applies ORS 659.850 and OAR 581-021-0045 and 581-021-0046, the department relies on the federal anti-discrimination law known as Title IX[[16]](#footnote-16) and the interpretation of that law by federal courts and the United States Department of Education’s Office for Civil Rights (Office for Civil Rights). In interpreting Title IX, the Office of Civil Rights has provided guidance on a key issue related to accepting appeals. Under Title IX, an educational entity’s duty to respond to complaints alleging sexual harassment is an affirmative duty. As explained by the Office for Civil Rights:

A school has notice if a responsible employee knew, or in the exercise of reasonable care should have known, about the [sexual] harassment.

\* \* \* \* \*

A school can receive notice of [sexual] harassment in many different ways. A student may have filed a grievance with the Title IX coordinator or complained to a teacher or other responsible employee about fellow students [sexually] harassing him or her. A student, parent, or other individual may have contacted other appropriate personnel, such as a principal, campus security, bus driver, teacher, affirmative action officer, or staff in the office of student affairs. A teacher or other responsible employee of the school may have witnessed the [sexual] harassment. The school may receive notice about [sexual] harassment in an indirect manner, from sources such as a member of the school staff, a member of the educational or local community, or the media. The school also may have learned about the [sexual] harassment from flyers about the incident distributed at the school or posted around the school. For the purposes of compliance with the Title IX regulations, a school has a duty to respond to [sexual] harassment about which it reasonably should have known, i.e., if it would have learned of the [sexual] harassment if it had exercised reasonable care or made a reasonably diligent inquiry.[[17]](#footnote-17)

In other words, the Office for Civil Rights interprets Title IX as requiring a school to take reasonable action to address, rather than neglect, discriminatory acts about which the school should have known. For purposes of fulfilling its duty to respond to discriminatory acts under Title IX, a school has a duty to recognize the acts as discriminatory or, in cases where it is unclear whether the acts are discriminatory, to make a reasonably diligent inquiry as to whether the acts are discriminatory.

In consideration of the Office for Civil Rights interpretation of Title IX, a school district subjects a person to unreasonable treatment on the basis of the person’s sex in violation of Oregon’s anti-discrimination statute, and denies a person an aid, benefit, or service in violation of ORS 659.850 and OAR 581-021-0045, if the person was subject to sexual harassment and the school district did not recognize the act as discriminatory or make a reasonable inquiry as to whether the act was discriminatory.

In summary, Classmate subjected Student to sexual harassment, and the district knew, or under the circumstances should have known, about the sexual harassment.

#### 3. The district’s response

The district has several polices that apply to this case. The district has a policy against discrimination.[[18]](#footnote-18) The district has a discrimination complaint procedure.[[19]](#footnote-19) The district has a policy prohibiting sexual harassment.[[20]](#footnote-20) And the district has a sexual harassment complaint procedure.[[21]](#footnote-21)

In this case, the district had the duty to process the discriminatory acts committed against Student under its policies pertaining to discrimination and sexual harassment. The district did not do so. Instead, the district investigated the discriminatory acts as symptoms of Classmate’s behavioral issues. For example, by April 16, 2018, the district had assigned a paraprofessional to Classmate to provide him with one to one support. On or about April 17, 2018, the acting principal, the special education teacher, the counselor, and other members of district staff met to develop a “plan” for Classmate. On April 18, 2018, the district again assigned a paraprofessional to Classmate to provide him with one to one support. On May 31, 2018, the district drafted an interim emergency plan for Classmate. As part of that plan, the district again assigned a paraprofessional to Classmate to provide him with one to one support for the entire school day.

By investigating the discriminatory acts as symptoms of Classmate’s behavioral issues, the district affected Students’ rights as protected by ORS 659.850 and OAR 581-021-0045 in two ways: first, Student was denied a service in violation of OAR 581-021-0045(3)(c) because her complaints alleging discrimination and pertaining to sexual harassment were not investigated in accordance with district policy.[[22]](#footnote-22) Under district policy, upon receiving notice that Classmate had subjected Student to discriminatory behavior on the basis of race and color, the district had the duty to investigate the matter in accordance with its discrimination complaint procedure. Likewise, under district policy, upon knowing, or under circumstances where the district reasonably should have known, that Classmate had subjected Student to sexual harassment, the district had the duty to investigate the matter in accordance with its sexual harassment complaint procedure.

Second, Student was denied a service in violation of OAR 581-021-0045(3)(c) because the district – not having followed the proper complaint procedures – did not gather the evidence necessary to know whether Classmate’s discriminatory acts were isolated acts or whether his overall conduct was discriminatory. Following the incident where Classmate drew the picture, Classmate committed several other threatening acts toward Student. Classmate commented to another student that he wished Student was dead. Classmate also subjected Student to repeated bullying. These incidents also could have been motivated by Student’s race or color. However, because the district did not investigate Classmate’s actions as discriminatory acts, there is no record, and therefore no evidence, about the discriminatory nature of Classmate’s overall conduct.

In conclusion, the evidence suggests that the district may have violated ORS 659.850 and OAR 581-021-0045(3)(c) by not conducting timely, fair, and impartial discrimination investigations.

### B. Whether Sisters School District failed to remedy a discriminatory environment when complaints were made alleging discrimination on the basis of race, color, and sex

When a school district fails to remedy a discriminatory environment when complaints are made alleging discrimination of a student on the basis of race, color, or sex, the school district violates ORS 659.850 by allowing the student to be subject to unreasonable differentiation, OAR 581-021-0045(3)(b) by providing different services to the student, and OAR 581-021-0045(3)(f) by limiting the enjoyment of the rights, privileges, advantages, and opportunities of the student.

In this case, there is sufficient evidence of a discriminatory environment. On or about April 12, 2018, Classmate drew a picture depicting Student hanging from a tree with a noose around her neck. In the background, the picture depicted Student’s home burning with Student’s family inside. The picture also depicted Student’s father drowning in a boat. Then, on or about April 17, 2018, Classmate commented to another student that he wished Student was dead. Classmate also subjected Student to repeated bullying. This bullying culminated on June 13, 2018, on the school bus, when Classmate stood on his seat and yelled at Student that she was a “hoe,” a “fat hoe,” and a “sack of shit” and that “she has no friends” and then told another student that he “enjoyed raping [Student].”

The district took measures to provide the necessary support to Classmate. By April 16, 2018, the district had assigned a paraprofessional to Classmate to provide him with one to one support. On or about April 17, 2018, the acting principal, the special education teacher, the counselor, and other members of district staff met to develop a “plan” for Classmate. On April 18, 2018, the district again assigned a paraprofessional to Classmate to provide him with one to one support. On May 31, 2018, the district drafted an interim emergency plan for Classmate. As part of that plan, the district again assigned a paraprofessional to Classmate to provide him with one to one support for the entire school day. However, none of these measures were designed to remedy the discriminatory environment that Student was experiencing. Rather, these measure were designed to provide Classmate with the support necessary to address his behavioral issues.

Arguably, the district took measures to remedy the discriminatory environment that Student was experiencing on June 8, 2018, when the district conducted a threat assessment of Classmate. However, even when the district conducted the threat assessment, it achieved questionable results – at least insofar as was necessary to remedy the discriminatory environment – because the district did not conduct the threat assessment in response to any investigation pertaining to Classmate’s discriminatory behavior. It conducted the threat assessment in response to the district’s inability to remedy Classmate’s behavioral issues.

Further, even if the district’s handling of the situation was appropriate, the district acknowledges that its efforts did not have the desired effect. On May 31, 2018, the special education teacher wrote an email to the Director of Special Programs, in which she acknowledged the following:

I really think we need a little extra staffing support to get us through the rest of the year. Between the three of us, we are doing our best but we are not able to serve the other students in their classrooms. We’ve already divided up the day in order to support [Classmate] (which we have been doing for several weeks/months) but this latest incident still occurred—even with increased supervision.

The special education teacher also stated that the district had not met Classmate’s needs, stating that the district needed to conduct an FBA, which she had first requested on March 19, 2018.

In short, the district did not attempt to remedy the discriminatory environment that Student was experiencing for two months. Instead, the district attempted to handle the matter by addressing Classmate’s behavioral issues. When the district did take action to remedy the environment that Student was experiencing, it did so not with the aim of correcting any discriminatory conduct, but, rather, with the aim of addressing Classmate’s behavioral issues. Finally, the district acknowledges that the actions that it took did not have the desired effect. For all of these reasons, the evidence suggests that the district may have violated ORS 659.850 and OAR 581-021-0045(3)(b) and (f) by not remedying a discriminatory environment when complaints were made alleging discrimination of a student on the basis of race, color, or sex.

## VI. CONCLUSION

In conclusion, the Oregon Department of Education finds that Sisters School District may have violated Oregon’s anti-discrimination statue and OAR 581-021-0045 (3)(b), (c), and (f) because the district (1) did not conduct timely, fair, and impartial discrimination investigations, and (2) failed to remedy a discriminatory environment when complaints were made alleging discrimination.

Accordingly, the department encourages the district to reach an agreement with Parent through conciliation. If the district cannot reach an agreement with Parent through conciliation within 30 days, the Deputy Superintendent will schedule a hearing for the purpose of determining whether the district is in compliance with ORS 659.850.

If Parent or the district wishes to use the department as a resource during conciliation, Parent or the district may contact the department. [[23]](#footnote-23)

If the Deputy Superintendent schedules a hearing for the purpose of determining whether the district is in compliance with ORS 659.850, the scope of the hearing will be limited to whether the district violated Oregon’s anti-discrimination statue and OAR 581-021-0045(3)(b), (c), and (f) because the district (1) did not conduct timely, fair, and impartial discrimination investigations, and (2) failed to remedy a discriminatory environment when complaints were made alleging discrimination.

Sincerely,

Mark Mayer

Complaint and Appeals Coordinator

Office of Government and Legal Affairs

Mark.Mayer@state.or.us

1. Case Reference No. 2018-010-KM. [↑](#footnote-ref-1)
2. OAR 581-021-0049(1). The State School Board repealed OAR 581-021-0049 on March 21, 2019. However, the rule still applies to appeals that the department accepted before March 21, 2019. Because the department accepted Complainant’s appeal on November 28, 2018, the rule applies to her appeal. [↑](#footnote-ref-2)
3. *Id.* [↑](#footnote-ref-3)
4. OAR 581-021-0049(1). [↑](#footnote-ref-4)
5. OAR 581-021-0049(1)(b). [↑](#footnote-ref-5)
6. OAR 581-021-0049(2). [↑](#footnote-ref-6)
7. OAR 581-021-0049(3). [↑](#footnote-ref-7)
8. *Id*. [↑](#footnote-ref-8)
9. OAR 581-021-0049(3)(a) to (d). [↑](#footnote-ref-9)
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.” [↑](#footnote-ref-10)
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. [↑](#footnote-ref-11)
12. OAR 581-021-0046(1). [↑](#footnote-ref-12)
13. ORS 659.850(2). [↑](#footnote-ref-13)
14. ORS 659.850(1). [↑](#footnote-ref-14)
15. *Id.* [↑](#footnote-ref-15)
16. *See* Education Amendments of 1972, Public Law No. 92-318, Title IX, §§ 901-907 (codified at 20 U.S.C. §1681 *et seq.*). [↑](#footnote-ref-16)
17. United States Department of Education Office for Civil Rights, *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*, 13 (2001), a*vailable at*: [https://www2.ed.gov/ about/offices/list/ocr/docs/shguide.html#\_ednref6](https://www2.ed.gov/%20about/offices/list/ocr/docs/shguide.html#_ednref6). [↑](#footnote-ref-17)
18. Sisters School District 6: Nondiscrimination, AC, Adopted 03/27/2006, Revised 11/13/2015. [↑](#footnote-ref-18)
19. Sisters School District 6: Discrimination Complaint Procedure, AC-AR, Adopted 11/13/2007, Revised 06/25/2015. [↑](#footnote-ref-19)
20. Sisters School District 6: Sexual Harassment, JBA/GBN, Adopted 04/08/2008, Readopted 04/08/2008. [↑](#footnote-ref-20)
21. Sexual Harassment Complaint Procedure, JBA/GBN-AR, Adopted 04/08/2008. [↑](#footnote-ref-21)
22. Under OAR 581-021-0045(3)(c) a school district may not “[d]eny any person [an] aid, benefit, or service” in a discriminatory manner. [↑](#footnote-ref-22)
23. The department’s Title VI expert is Winston Cornwall. He may be reached at: Winston.Cornwall@ode.state.or.us. [↑](#footnote-ref-23)