November 22, 2019

**BY EMAIL AND US MAIL**

COMPLAINANT

ADDRESS

ADDRESS

Curtiss Scholl, Superintendent

Sisters School District

525 E. Cascades Ave

Sisters, OR 97759

Dear COMPLAINANT and Superintendent Scholl,

This letter is the order on the September 3, 2019, appeal filed by COMPLAINANT (Complainant) alleging a violation of ORS 659.852 by Sisters School District. The objective of this order is to determine whether the district is in compliance with ORS 659.852. If the district is not in compliance with ORS 659.852, then Complainant and the district must attempt to reach an agreement through conciliation as required by OAR 581-002-0011. If the district is in compliance with ORS 659.852, then this case is closed pursuant to OAR 581-002-0009 and 581-002-0017.

## PROCEDURAL BACKGROUND

On October 19, 2018, Sisters School District issued a no trespass order against Complainant, prohibiting him from coming onto district property. The district also established a communication protocol for Complainant to use when communicating with district staff.

On April 10, 2019, Complainant filed a complaint with the district, alleging that the no trespass order was issued in response to Complainant filing a previous complaint against the district. Pursuant to district policy, Complainant filed his complaint directly with the district school board. The school board provided Complainant with a final answer on April 19, 2019. In its answer, the school board upheld the no trespass order.

The Oregon Department of Education accepted Complainant’s appeal pursuant to OAR 581-002-0005(1)(a)(A), under which the department may accept an appeal if a complainant has “exhausted the district’s complaint process.”

## FINDINGS OF FACT

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

1. On October 12, 2018, Complainant wrote an email to the district about the district counselor. Complainant wrote,

[K]eep that piece of shit away from my daughter [Student]. We can go to court if you want? The [d]istrict is in contempt.

I’m also disgusted to learn from [Student] that [the counselor] is also promoting the homosexual agenda. His definition of social bullying is about homosexuality. Really, you haven’t even done the heterosexual sex education program yet. I understand that the Aryan Progressive lunacy still dominates the [d]istrict’s culture but you need to knock it off.

A better way to teach about social bullying would be to make a light [*sic*]of the tax payer funded bullying campaign by the female Senators against our newest Supreme Court Justice.

Why does the [d]istrict continue with homosexual topics but my 11 year old daughter knows nothing about the Supreme Court? More importantly, why is [Student] still having contact with [the counselor]?

1. On October 13, 2018, after receiving an email from the district in which the district stated that it was going to withhold replying to Complainant’s October 12th email until it had an opportunity to discuss the matter with district staff, Complainant wrote another email to the district. Complainant wrote,

This really should be a discussion between me and my neighbor, [the district superintendent]. Typical education blob. Telling a student’s teacher to not communicate with their parent.

This is not may [*sic*]first rodeo or conflict with this over rated progressive school district. Why don’t you ask [the counselor] how he coached [Student’s] maternal family on how to file a bogus child abuse complaint with the Kids Center [against me?] Ask [the counselor] why he did that? Do you know his personal connection to [Student’s] maternal family? If [the counselor] believed I was a child abuser, why did he fail to fulfill the legal mandatory reporting obligation? Did you know there is sworn oath testimony about [the counselor’s] involvement with the bogus abuse allegations?

[I]f you haven’t figured it out yet, your [*sic*]going to learn just how incestuous Sisters is.

Don’t worry, the superintendent and the school board will have my official complaint this week. My only question for the superintendent is, are you going to waste more resources and send [the district’s resource officer] to bully me again, or are you just going have him try and intimidate me as I walk into the next school board meeting?

1. On October 16, 2018, Complainant wrote the following email to the district: “Too young to learn about death but old enough to to [*sic*]know all about queers and transgenders . . . . change your culture change your fortunes.”
2. On October 17, 2018, Complainant wrote three emails to the district. In the first email, Complainant wrote,

The [d]istrict is covering up [Student’s] assault. That probably has more to do with [the district’s resource officer] than you, but your silence is enabling his corrupt ways.

[Student’s] enrollment and the money you are trying to get for her definitely needs a public review. You have failed to provide any documents and if the money is coming from Feds or State.

I see a further dwindling of enrollment in your future and hopefully a short fall around $200,000. Make a cultural shift and you wouldn’t have an enrollment program.

I’m pretty sure I suggested a culture shift, to increase enrollment and improve the [d]istrict’s success. This is your only way forward. The [d]istrict’s refusal to abandon the Aryan Progressive Santuary City Ethic has and will continue to prevent success.

1. In the second October 17th email, Complainant wrote,

Have you established an alternative, so that, [Student] has no contact with the shitbag [school counselor] or has that ineffective program been canceled?

Willfully violating my parental authority would not surprise me. However, I’m still hopeful that you have more integrity than than [*sic*]your superiors. Their failure to meet me or respond to earlier emails suggest they want a war. I’m happy to oblige and further expose your incestuous corrupt school district.

1. In the third October 17th email, Complainant wrote,

Keep [the counselor] away from my daughter . . . . givent the fact that [Student] was compelled to meet with this scumbag on Thursday 10/11/18 . . . . I suggest you fire him . . . . or posit a financial arrangement that will keep us out of court and save the [d]istrict from public humiliation.

1. On October 18, 2018, Complainant left a message on the district voicemail. In his message, Complainant stated that it was not wise for the superintendent to not call him back.

If [the superintendent] wants to handle internally I suggest he call back and schedule an appointment because there’s some serious legal issues. Or I’ll just walk out my front door and walk down the street a couple of minutes and knock on his front door . . . . This is your guys’ last chance. There is a situation this afternoon at school and needs to be resolved, internally would be best but hey.

1. On October 19, 2018, Sisters School District issued a no trespass order against Complainant, prohibiting him from coming onto district property. The district also established a communication protocol for Complainant to use when communicating with district staff. In the no trespass order, the district explained why it was issuing the order:

Although we highly value parent partnerships for the betterment of all students, through your recent actions you have demonstrated that you do not share our views that this relationship needs to be one of mutual respect. We have provided you with many warnings, but you continue to engage in harassing, intimidating, threatening and vulgar communications with [d]istrict staff, causing staff members to be legitimately concerned for their safety and the safety of our students, which is also disruptive to the school environment. This is unacceptable behavior and will no longer be tolerated.

## APPEALS UNDER ORS 659.852

Education programs provided by school districts 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.[[1]](#footnote-1)

If the Oregon Department of Education determines on appeal that an education program has not retaliated against a student, the department will issue a final order to the complainant and the program and close the appeal.[[2]](#footnote-2)

If the Oregon Department of Education determines on appeal that an education program has retaliated against a student, the department will issue a preliminary order to the complainant and the program.[[3]](#footnote-3) As part of that preliminary order, the department will order the complainant and the program to attempt to reach an agreement through conciliation.[[4]](#footnote-4) If the complainant and program fail to reach an agreement, the department will issue a final order.[[5]](#footnote-5) If the department determines in the final order that the program has retaliated against the student, the final order will include notice that the program must complete a corrective action plan.[[6]](#footnote-6) A program must complete corrective action by the beginning of the school year next following the date of the final order.[[7]](#footnote-7) If a program does not complete corrective action by the beginning of the next school year, the department may order appropriate remedies, including an order withholding distributions otherwise required under the laws of this state to be made from the State School Fund.[[8]](#footnote-8)

### I. Arguments Presented

In this appeal, Complainant alleges that Sisters School District retaliated against him when it issued the no trespass order. Complainant argues that the district retaliated against him because he previously had filed several complaints against the district.

The district responds by providing the department with documents related to its interactions with Complainant, including the no trespass order. The district argues that it did not issue the no trespass order because Complainant previously had filed several complaints against the district. The district argues that it issued the no trespass order because Complainant engaged “in harassing, intimidating, threatening and vulgar communications with [d]istrict staff,” thereby causing “staff members to be legitimately concerned for their safety and the safety of [the district’s] students” and disrupting “the school environment.”

### II. Legal Standard

Correctly applying ORS 659.852 to these facts requires an understanding of the legal standard established by ORS 659.852. After reviewing the legislative history of ORS 659.852, the department 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. The legislative history of ORS 659A.199 suggests that the primary purpose of that statute is to extend the protections available to public employee whistleblowers under Oregon law to other employee whistleblowers.[[9]](#footnote-9) 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, 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.[[10]](#footnote-10)

### III. Legal Analysis

Complainant claims that he engaged in a protected activity as described in ORS 659.852. Complainant claims that he previously had filed complaints against the district.

Complaint argues that Student suffered an adverse education decision. Complainant argues that by issuing the no trespass order against Complainant, the district significantly disadvantaged Student.

At the time of the writing of this order, the department has not verified the former claim or made a determination about the latter argument. The department does not need to do so because it can make a finding about whether the district retaliated against Complainant on the basis of whether there is sufficient evidence to support a causal link between the claimed protected activity and the purported adverse education decision. In other words, even if Complainant engaged in a protected activity, and even if Student suffered an adverse education decision, there is no causal link between the two.

After examining the pertinent evidence, including emails written by Complainant to the district on October 12, 2018, October 13, 2018, October 16, 2018, and October 17, 2018, and a voice message left by Complainant for the district on October 18, 2018, the department finds that the district issued the no trespass order because Complainant engaged “in harassing, intimidating, threatening and vulgar communications with [d]istrict staff,” thereby “causing staff members to be legitimately concerned for their safety and the safety of [the district’s] students” and disrupting “the school environment.”

The department finds that there is insufficient evidence to support a causal link between the claimed protected activity and the purported adverse education decision.

## CONCLUSION

In conclusion, the Oregon Department of Education finds that the Sisters School District did not commit a retaliatory act under ORS 659.852.

If you have any questions, please contact me.

Sincerely,

Mark Mayer, Complaint and Appeals Coordinator

Office of the Director

Mark.Mayer@state.or.us

1. ORS 659.852. [↑](#footnote-ref-1)
2. OAR 581-002-0009(3)(a)(B) and 581-002-0017(1)(a). [↑](#footnote-ref-2)
3. OAR 581-002-0009(3)(a)(A). [↑](#footnote-ref-3)
4. OAR 581-002-0011. [↑](#footnote-ref-4)
5. OAR 581-002-0017(1)(b). [↑](#footnote-ref-5)
6. OAR 581-002-0017(1)(e). [↑](#footnote-ref-6)
7. OAR 581-002-0019(1). [↑](#footnote-ref-7)
8. OAR 581-002-0019(2). [↑](#footnote-ref-8)
9. *Brunozzi v. Cable Communications, Inc.*, 851 F.3d 990, 999-1000 (9th Cir. 2017). [↑](#footnote-ref-9)
10. *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). [↑](#footnote-ref-10)