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Colt Gill

Director of the Oregon Department of Education

January 6, 2023

BY EMAIL

REDACTED

Superintendent Dr. Stephen Phillips
Newberg School District 29J
741 E 6th Street
Newberg, OR 97132

RE: Case#2021-MM-12

Dear REDACTED and Superintendent Stephen Phillips:

On December 7, 2021, the Oregon Department of Education accepted an appeal filed by REDACTED (Complainant), alleging that Newberg School Board adopted a discriminatory policy that resulted in the discriminatory harassment of students attending schools in the district. Complainant had filed a complaint with the board on October 1, 2021. That same day, Complainant received an email from the board verifying that it had received the complaint. Complainant did not receive any other response from the board.

The department accepted Complainant's appeal under ORS 659.850 and 659.855, under which "no person may be subject to discrimination," and OAR 581-002-0005(1)(a)(B), under which a complainant may file an appeal with the Oregon Department of Education if a school district has a complaint process with multiple steps and fails to render a written decision within 30 days of a complainant submitting their complaint at any step in that process.

After the department accepted Complainant's appeal, a lawsuit was filed in the Circuit Court of the State of Oregon for the County of Yamhill (REDACTED). In that lawsuit, the plaintiff argued that the policy that is the subject of this appeal violated Article I, section 8 of the Oregon Constitution (under which "[n]o law shall be passed restraining the free expression of opinion, or restricting the right to speak, write, or print freely on any subject whatever; but every person shall be responsible for the abuse of this right") and Article I, section 20 of the Oregon Constitution (under which "[n]o law shall be passed granting to any citizens or class of citizens privileges, or immunities, which, upon the same terms, shall not equally belong to all citizens").

On April 19, 2022, the district filed a Defendants’ Motion for Summary Judgement on the plaintiff’s claims.

On June 2, 2022, the plaintiff filed a Cross-Motion for Summary Judgement.

On September 23, 2022, the court issued an Order on Defendants’ Motion for Summary Judgment and Plaintiff’s Cross-Motion for Summary Judgement. In that order, the court granted “Plaintiff’s cross-motion for summary judgment on plaintiff’s claim under Article I, section 8 of the Oregon Constitution[.]” “The ‘Safe Environments to Learn’ portion of the Newberg School District’s Policy . . . is . . . facially unconstitutional[.]”

On December 22, 2022, the department received evidence from the district that it had entered into a settlement agreement for an action pending in the United States District Court for the District of Oregon Portland Division (REDACTED). As part of that settlement agreement, the district agreed that it would “not appeal the judgment entered on October 20, 2022[.]” for the lawsuit filed with the Circuit Court of the State of Oregon for the County of Yamhill (REDACTED).

After careful consideration, the department has determined that the matters alleged in the original complaint have been resolved. Because the district is enjoined from enforcing the policy that is the subject of this appeal, and because the district has agreed to not appeal the judgement enjoining the district, the department has determined that this case – Case #2022-MM-12 – is moot, and the department is dismissing the case.

Do not hesitate to contact me if you have any questions about the content of this notice.

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 Specialist
Office of the Director
Oregon Department of Education
Mark.Mayer@state.or.us