



Oregon

Tina Kotek, Governor



OREGON
DEPARTMENT OF
EDUCATION

Oregon achieves . . . together!

Dr. Charlene Williams
Director of the Department of Education

January 24, 2024

BY EMAIL

REDACTED
REDACTED
REDACTED

Superintendent Kevin Headings
Pendleton School District
107 NW 10th Street
Pendleton, OR 97801

Re: Case #2022-MM-02

REDACTED and Superintendent Kevin Headings:

This letter is the final order on the May 2, 2022, appeal filed by REDACTED (Complainant) alleging that Pendleton School District violated ORS 659.850 (prohibiting discrimination in public education programs) and OAR 581-021-0045 (prohibiting discrimination in K-12 public education programs).

To ensure compliance with these laws, the Oregon Department of Education will review school district procedures and make findings of fact to determine whether a violation occurred and what action, if any, should be taken.¹

APPELLATE PROCEDURES FOR COMPLAINTS ALLEGING DISCRIMINATION AND VIOLATIONS OF DIVISION 22 STANDARDS

Complainant argues that Pendleton School District violated ORS 659.850 and OAR 581-021-0045 by failing to mitigate or prevent the protected class bullying and harassment of their child (Student).

¹ The administrative rules governing the Oregon Department of Education's appeals process are OAR 581-002-0001 to 581-002-0023.

The Oregon Department of Education has jurisdiction to resolve this appeal under OAR 581-002-0003. 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.²

If the department determines that discrimination did not occur, the department must issue either notice of compliance, as described in OAR 581-002-0009(3)(a)(C)(i), or a final order, as described in OAR 581-002-0017.³ The Director of the Oregon Department of Education may for good cause extend the time by which the department must issue an order.⁴

If the department determines that discrimination occurred, the department must issue a final order as described in OAR 581-002-0017.⁵ The final order must include a reference to the district decision that is on appeal, the procedural history of the appeal, the department's findings of fact, the department's conclusions, and a short explanation of any corrective action to be taken.⁶

In this appeal, the department has completed its investigation. This letter constitutes the department's final order as to whether discrimination occurred.

PROCEDURAL BACKGROUND

Complainants reported that Student was being bullied and harassed by other students on September 23, 2021, October 22, 2021, December 13, 2021, January 24, 2022, February 4, 2022, and February 6, 2022.

On February 6, 2022, Complainants wrote an email to student's principal (Principal), Pendleton School District's superintendent (Superintendent), and the district school board, alleging that Student had been bullied and harassed by their peers. In that email, Complainants wrote, "I must also remind you that some bullying may overlap into federal civil rights violations as well." On February 14, 2022, Complainants filed an appeal with the Oregon Department of Education, alleging that Student had been bullied and harassed by peers and that the district had failed to respond appropriately.

On March 8, 2022, the department wrote an email to Complainants, specifying that "there is a jurisdictional issue with your case."

Although you filed complaints with the district that . . . clearly articulate that your child was subject to bullying and harassment . . . you never stated that the bullying and harassment was occurring on the basis of protected class.

² OAR 581-002-0009.

³ OAR 581-002-0009(3)(a)(C).

⁴ OAR 581-002-0009(3)(b).

⁵ OAR 581-002-0009(3)(a)(B).

⁶ OAR 581-002-0017(2).

The department does not have the authority to enforce the statutes that you cite [because those statutes] concern the general welfare of all students, whether they belong to a protected class or not.

If you have evidence that you included in one of your complaints that the actions of the students or staff were connected to [Student's] race, even if that is not your primary complaint, the department can take your appeal[.] Otherwise, in order for the department to take your appeal, you need to file a new complaint with the school district specifically stating that the bullying and the harassment is occurring, at least in part, because of your child's race.

On March 10, 2022, Complainant emailed Superintendent, stating that Student was being bullied and harassed because of their race. In that email, Complainant wrote,

I am writing this email to file for my daughter . . . harassment and bullying due to racial discrimination. We have had a couple of talks earlier in the year and we had talked about her race and the impact that may have with her bullying but to no avail. I would like to have you present when I go and talk to the principal at . . . [the] middle school along with my wife so we can hopefully come to a resolution with the bullying, discrimination (race), and retaliation that the school has not stopped! If you could please call me or email back that would be great!

Following that email, Complainant and Superintendent emailed each other about scheduling a meeting; however, a meeting did not take place.

On May 2, 2022, the department accepted the appeal. The department has jurisdiction to investigate the appeal under OAR 581-002-0005(1)(a)(B), under which the department will accept an appeal of a complaint filed with a school district if the district's complaint process has multiple steps, the complainant files a complaint at any step in that process, and the district fails to provide a written response to that complaint within 30 days.⁷

⁷ In the notice of acceptance, the Oregon Department of Education stated that it was accepting the complaint pursuant to OAR 581-002-0005(1)(a)(C), under which the department will accept an appeal of a complaint filed with a district if the district fails to resolve the complaint within 90 days of the complainant initially filing the complaint.

FINDINGS OF FACT

For purposes of this appeal, the Oregon Department of Education makes the following findings of fact:

1. At times pertinent to this appeal, Student attended a school in Pendleton School District.
2. Complainant's spouse (Spouse) is Latina. At times pertinent to this appeal, Spouse was a district employee.
3. During departmental interviews, Complainant stated that Student's REDACTED coach (Coach) verbally attacked Complainant and Spouse at their home during the summer of 2021. The verbal attack allegedly included racial slurs directed at Spouse. Student was home during this incident, but Complainant indicated that they did not know whether Student knew what had happened.
4. During departmental interviews, Complainant stated that they filed a police report against Coach, but decided to not press charges because they were worried doing so would make things more difficult for Student at school.
5. Complainant met with the district superintendent (Superintendent) after the summer 2021 incident and reported what had happened. During departmental interviews, Complainant stated that Superintendent told Complainant that they would share the information with the principal of Student's school (Principal). When asked, Complainant did not know whether Superintendent informed Principal of the incident or of the racial slurs made during the incident.
6. On August 30, 2021, Complainant emailed Principal, the assistant principal of Student's school (Assistant Principal), and two school counselors to notify them of the summer 2021 incident. In the email, Complainant stated that they pulled Student from the summer REDACTED team because of emotional abuse from coaches and teammates. Complainant stated that they were sharing this information because "[b]eing aware of these concerns could help combat the bullying that they have been enduring and we hope to eliminate stress."
7. On September 23, 2021, Spouse emailed Principal to report that during volleyball practice, Student's teammates were ignoring Student and not helping clean up after practice. Principal asked the volleyball coach about this report and concluded that "[t]here was no mistreatment or bullying identified in this incident."

8. On October 22, 2021, Complainant emailed Principal. In the email, Complainant stated that the ongoing bullying and harassment of Student had not been alleviated by Complainant and Spouse reporting the incidents or by Student meeting with the school counselor (Counselor).
9. Principal and Counselor met with Complainant after receiving the October 22nd email. Principal's notes from the meeting indicate the following:
 - a. Complainant spoke about the summer 2021 incident.
 - b. Complainant stated that Student had "been alienated from [Coach's child (Student B)] and the friend group [that Student] is close to."
 - c. "[Complainant] spoke of 'bullying by exclusion' because the friend group had not included [Student] in social activities," and Complainant spoke of "subtle bullying."
 - d. "[Student] had not mentioned this to [their] coach or any other adult."
 - e. Principal told Complainant that they and Counselor "would both be vigilant in trying to identify and 'see' the bullying."
 - f. "[Counselor] agreed to check-in with [Student] periodically to provide social/emotional support."
10. On December 19, 2021, Complainant emailed Superintendent, copying Principal, to report an incident that occurred on December 13, 2021, at school. Complainant reported that another student (Student C) allegedly pushed Student and told Student to "go and kill yourself." Complainant expressed concern as Complainant had already written numerous emails to Principal regarding bullying and harassment and had met with Principal and Counselor. The email stated that Complainant was meeting with Principal again on the following day. Complainant asserted that Student "comes home depressed everyday due to the extreme bullying."
11. Principal investigated the December 13th incident after receiving the December 19th email. Principal's investigatory notes indicate the following:
 - a. "[Student] did not tell an adult at school about this event . . . [Student] considers [Student C] and others nearby to be [Student's] friends[.]"

- b. “[Student] and other students were involved in horseplay. The horseplay was not considered to be malicious, planned[,] or falling within the definition of bullying[.]”
 - c. “[Student C] admitted to saying, ‘go kill yourself,’ a phrase that is inappropriate and unfortunately used in the context of students bantering with one another.” Principal noted that Student C’s parents had been notified of the incident and that Student C had apologized to Student.
12. On January 24, 2022, Complainant emailed Principal, stating that an incident had occurred that day. Complainant stated that another student (Student D) told Student to “go kill yourself.”
13. Assistant Principal investigated the January 24th incident after Principal received the January 24th email. Assistant Principal’s investigatory notes indicate the following:
- a. Student did not report the incident to any adult at school.
 - b. “[S]ome students were giving each other a hard time about their affinity towards colleges (Oregon State fans vs Oregon fans vs etc.)”
 - c. Student claimed that Student D said “‘go kill yourself’ after the two were bantering about their favor college.”
 - d. Student D claimed that they and Student were giving each other a hard time[,] but denied saying, “go kill yourself.”
 - e. “When questioned, other students present did not hear [Student D] say ‘go kill yourself’ to [Student].”
 - f. “When asked, [Student] mentioned that [Student] is friends with [Student D].”
14. On January 27, 2022, Complainant emailed Superintendent. Complainant wrote, “[Student] is devastated, hurt and bullied and mistreated everyday . . . [Student] does not feel confident going to anyone at [the school] because they have shown that going to them doesn’t stop the bullying and harassment because lack of consequences for their actions. [Student] is losing focus at school and not wanting to go due to what [Student] is enduring.”
15. On February 4, 2022, Complainant emailed Superintendent, asking if anything was being done about the ongoing bullying and harassment. Superintendent responded,

writing, “If [Student] feels that someone has acted inappropriately[, Student] needs to report it immediately to a school official so they can determine the facts and take appropriate action . . . To fix this as you put it, both [Student] and you need to work with the school.”

16. On February 6, 2022, Complainant and Spouse emailed Principal, Superintendent, and the district school board a letter. The letter included the following:

- a. “[Student] has been the victim of constant bullying from multiple students associated with [Student B] and the parents of [Student B] whose conduct has created an intimidating[,] threatening[,] and abusive educational environment.”
- b. Several incidents had “been reported to the school without mitigation.” This included the summer 2021 incident, the December 12th incident, the January 24th incident, and an incident that occurred on February 5, 2022.
- c. The February 5th incident involved a snapchat message sent to Student by another student (Student E) stating that other students were mad at Student because Student had COVID-19 and should not be attending school. Student did have COVID-19, and had stayed home for the required number of days, but when Student returned, Student was “treated differently,” and “[k]ids in class kicked [Student] out of the group and no one would sit at the same table without making [Student] feel bad.”
- d. “[Student] is made fun of by [Student B] and the friends of [Student B] slander [Student’s] name making other children not want to be friends with [Student].”
- e. “I request that [Student] immediately have all the protections under state and federal law to protect [Student] from physical or emotional harassment, discrimination, retaliation, or verbal abuse . . . [M]y child has a right to learn in a safe and harm-free educational environment . . . I must also remind you that some bullying may overlap into federal civil rights violations as well . . . [A]ll school personnel have a duty and responsibility to ensure my child is protected and must fully investigate all allegations [Student] report . . . [Student] has been informed [Student] is not to discuss any allegations of such abuse without [Student’s] parents or legal representation present during these discussions . . . I understand that the school board must investigate these instances and ensure that they stop . . . Once the investigation has concluded,

please provide me with a written copy of the investigation’s findings . . . Please contact me as well to confirm when the report will be completed.”

17. Principal took notes after Principal received the February 6th letter. Principal’s notes indicate the following:
 - a. On February 8, 2022, Principal called Complainant to schedule a meeting. Principal noted, “During my conversation, [Complainant] explained that the email was sent by [Spouse] and ‘it was sent during an emotional time.’” Principal told Complainant, “I have not observed or had any information indicating bullying against [Student].”
 - b. Principal called the parents of the students mentioned in the February 6th letter “to inform them that a complaint of bullying had been made against their children.”
 - c. On February 9, 2022, Complainant called Principal to report the name of a student who could corroborate their allegations. Principal interviewed this student, who stated they only saw volleyball teammates roll their eyes when Student missed a serve. They stated that they did not witness any other action taken toward Student. Principal called Complainant and shared with them this information.
18. On February 7, 2022, Principal sent Complainant and Spouse an email, suggesting that they schedule a meeting so Principal could “explain my finding(s) thus far and try to answer some of your questions you bring up in your email.” During departmental interviews, Principal reported that they did not receive a response to this email.
19. During departmental interviews, Complainant confirmed receiving a call from Principal, but Complainant did not schedule a meeting with Principal because Principal stated there were no findings of bullying or harassment.
20. On February 14, 2022, Complainant emailed Principal, asking for “a copy of the report/investigation that you performed.” Principal replied that same day, writing, “I have no written report to share with you. Every time you have contacted me this school year with accusations of bullying/harassment, I have responded to you promptly by calling on the phone or meeting with you in person . . . I have included [Assistant Principal], [Counselor,] and [the school’s resource officer] every time you have reached out to me.”

21. Also on February 14, 2022, Complainant filed an appeal with the Oregon Department of Education. In that appeal, Complainant wrote,

[Student] is being bullied at [their] middle school by not only the kids but some educators in the school. Before school started, I emailed [Principal] a letter about a few concerns that I had due to some bullying from [Student's] former friends on [their] sports team. And I was concerned that it would continue at school. And I was right, [Student] has been bullied by the same group of former friends and has been told twice to go kill [themselves]. And nothing happened to the [students] that said it. [Student] has been harassed outside of school via social media. When going to the school nothing has happened to protect my [child]. I[n] fact even after a boy that admitted to telling [Student] to go kill yourself, I get told by [Principal] that they are just accusations. [Student] was a straight A student and loves interacting with people, but since this bullying has started [their] grades are suffering, [they are] depressed, and doesn't want to go to school anymore, and [they don't] trust the school nor feel safe because of the ongoing bullying. I have talked with and emailed the superintendent numerous times and tried talking to the principal several times and to no result. I get told by the superintendent that I need to work with the school and then I get told by the school that after an investigation that they found no findings of bullying. I have the proof in the emails that were sent from the first day of school. That is the evidence of bullying. I have received no help from either the school board, superintendent [] or the principal of the school. I don't want my [child] to be retaliated against just for us speaking up[.]

22. On March 9, 2022, Principal emailed Complainant and Spouse, offering to schedule a meeting “to discuss our prior conversations along with the letter that you sent to the district office and school board.”

23. On March 10, 2022, Complainant emailed Superintendent, alleging Student was bullied and harassed “due to racial discrimination.” “We have had a couple of talks earlier in the year and we had talked about [Student's] race and the impact that may have on [Student's] bullying but to no avail. I would like to have you present when I go and talk to the principal . . . so we can hopefully come to a resolution with the bullying, discrimination (race), and retaliation that the school has not stopped[.]”

Oregon Department of Education

Complainant requested Superintendent attend a meeting with Complainant, Spouse, and Principal. Superintendent responded that same day, writing, "I will make every attempt to be part of the meeting" and asked Complainant if a meeting had been scheduled. Superintendent offered to call Complainant if Complainant provided their phone number. The record indicates that Complainant did not respond to Superintendent's email.

24. On April 11, 2022, Complainant emailed Superintendent, again asking Superintendent to be present at a meeting between Complainant and Principal. Superintendent agreed to attend such a meeting and provided dates on which they were available. The record indicates that Complainant and Superintendent did not communicate again.
25. On April 20, 2022, Complainant emailed Principal about an incident that Student and Student's sibling reported to Complainant. Another student (Student F) "was supposedly upset at [Student] from a previous incident that occurred in the counselor's office . . . [Student F] told [Student's sibling] that [Student F] wanted to beat [Student] up . . . this is a very serious comment."
26. Principal the district's director investigated the April 20th incident after Principal received the April 20th email. Their investigatory notes indicate the following:
 - a. Student F admitted that they were upset with Student, but they denied that they told Student's sibling that they wanted to beat Student up.
 - b. Student's sibling reported hearing that Student F was mad at Student but did not know if Student F was joking.
 - c. The district director shared these findings with Spouse by telephone.
27. Principal took notes about receiving multiple reports of bullying and harassment by Complainant during the 2021-2022 school year. Principal's notes indicate the following:
 - a. In every conversation with Complainant, Complainant mentioned the summer 2021 incident.
 - b. Student never reported being bullied or harassed to an adult at school. All reports of bullying and harassment came from Complainant.

- c. “[Counselor] checks-in with [Student] almost daily, both formally and informally[.] [Student] is scheduled as an aide to the counseling office as part of [their] schedule.”
 - d. “[Student] considers the identified group of students” who allegedly bullied and harassed Student “to be Student’s friends.” This group, including Student, has “been observed eating lunch together nearly every day and then playing/hanging-out[.]”
 - e. Principal asked Student’s basketball coach about Student’s group of friends. The coach reported that they had not observed any bullying or harassment. The coach told Principal that Student’s group of friends gets along really well.
28. On May 2, 2022, the Oregon Department of Education issued a Notice of Appeal to Complainant and the district. In that notice, the department wrote, “[Complainant has] filed an appeal with the Oregon Department of Education alleging that Pendleton School District discriminated against their child [Student] by failing in its duty to prevent or mitigate the racial harassment of Student.” On May 9, 2022, the district responded, writing, in pertinent part, “At no time has race been part of [Complainant’s] concerns, nor has it come up when the school administration looked into the matter.”
29. On August 20, 2023, the Oregon Department of Education’s complaints and appeals investigator interviewed Student, who reported the following about the alleged bullying and harassment that occurred during the 2021-22 school year:
- a. Student could not remember details about some of the bullying and harassment that occurred.
 - b. Student felt the district did not do anything to mitigate the bullying and harassment.
 - c. Student would tell their parents about bullying and harassment incidents, then Student’s parents would tell Principal, and then Principal would notify Counselor. Student stated that they were only comfortable talking about the incidents with their parents. Student worried that school staff would be “meaner” if Student reported the incidents to adults at school.
 - d. Student only met with Counselor when an incident occurred. Student did not otherwise meet with Counselor.

- e. During the 2021-2022 school year, Student continued to “like school” despite being bullied and harassed.
 - f. When asked, Student said the bullying and harassment incidents were not related to race.
30. On August 20, 2023, the Oregon Department of Education’s complaints and appeals investigator interviewed Complainant, who reported the following about the alleged bullying and harassment that occurred during the 2021-22 school year:
- a. Complainant could not say whether Student was bullied and harassed by Student’s group of friends because of race.
 - b. Complainant did not know whether Student B’s harassment of Student was based on race, but Complainant believed someone told Student B to “go after” Student.
 - c. Counselor told Student to talk to peers about the bullying and harassment, but Student was worried it would make things worse. According to Complainant, Counselor stated, “bullying happens at this age.”

ANALYSIS

The question on appeal is whether Pendleton School District violated ORS 659.850 and OAR 581-021-0045 by failing to mitigate or prevent the protected class bullying and harassment of Student.

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.⁸

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

⁸ 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.”

in operation, either of which is based on race, color, religion, sex, sexual orientation, national origin, marital status, age or disability.”⁹

The district argues that it did not violate Oregon’s nondiscrimination laws because “[a]t no time has race been part of [Complainant’s] concerns, nor has it come up when the school administration looked into the matter.”

The Oregon Department of Education disagrees with the district’s assertion that “[a]t no time has race been a part of [Complainant’s] concerns.” Complainant mentioned discrimination on two occasions. First, on February 6, 2022, when Complainant wrote to the district, “I request that [Student] immediately have all the protections under state and federal law to protect [Student] from physical or emotional harassment, discrimination, retaliation, or verbal abuse . . . [M]y child has a right to learn in a safe and harm-free educational environment . . . I must also remind you that some bullying may overlap into federal civil rights violations as well.” Complainant also mentioned discrimination on March 10, 2022, when Complainant wrote to the district, “We have had a couple of talks earlier in the year and we had talked about [Student’s] race and the impact that may have on [Student’s] bullying but to no avail. I would like to have you present when I go and talk to the principal . . . so we can hopefully come to a resolution with the bullying, discrimination (race), and retaliation that the school has not stopped[.]”

That said, the department agrees with the district that the evidence indicates that Student was not bullied or harassed because of their race. On September 23, 2021, Spouse reported that during volleyball practice, Student’s teammates were ignoring Student and not helping clean up at the end of practice. On October 22, 2021, Complainant reported that ongoing bullying and harassment of Student had not been alleviated by Complainant and Spouse reporting the incidents or by Student meeting with Counselor. On December 19, 2021, Complainant reported that Student C pushed Student and told Student to “go and kill yourself.” On January 24, 2022, Complainant reported that Student D told Student to “go kill yourself.” On February 6, 2022, Spouse reported that Student E sent a snapchat message to Student stating that other students were mad at Student because Student had COVID-19 and should not be attending school. Also on February 6th, Spouse reported that “[Student] is made fun of by [Student B] and the friends of [Student B] slander [Student’s] name making other children not want to be friends with [Student].” On April 20, 2022, Complainant reported that Student F “was supposedly upset at [Student] from a previous incident that occurred in the counselor’s office” and that “[Student F] told [Student’s sibling] that [Student F] wanted to beat [Student] up.” All of these incidents involve the alleged bullying and harassment of Student. However, none of the incidents involve the bullying and harassment of Student on the basis of race.

Departmental interviews confirm this finding. On August 20, 2023, the Oregon Department of Education’s complaints and appeals investigator interviewed Student, who stated that the bullying and harassment incidents were not related to race. Also on August 20th, the

⁹ 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.

department's complaints and appeals investigator interviewed Complainant, who stated that they could not say whether Student was bullied and harassed by Student's group of friends because of race or whether Student B's harassment of Student was based on race.

This is not to say that there were no incidents involving racial discrimination. During the summer of 2021, Coach allegedly verbally attacked Complainant and Spouse at their home, directing racial slurs toward Spouse. However, this alleged act of discrimination falls outside the department's scope of inquiry. When Complainant filed their appeal with the department, Complainant limited the appeal to whether the district had failed to mitigate the bullying and harassment of Student at school. And when the department issued the Notice of Appeal to Complainant and the district, the department specified that it would be investigating whether "Pendleton School District discriminated against . . . [Student] by failing in its duty to prevent or mitigate the racial harassment of Student."

CONCLUSION

In consideration of the evidence before the Oregon Department of Education, the department finds that there is insufficient evidence to establish that Pendleton School District violated ORS 659.850 and OAR 581-021-0045 by failing to mitigate or prevent the protected class bullying and harassment of Student.

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

Sincerely,

A handwritten signature in black ink, appearing to read "M. Mayer", is centered within a white rectangular box.

Mark Mayer, Complaint and Appeals Specialist
Office of the Director
Oregon Department of Education
Mark.Mayer@state.or.us