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Colt Gill

Director of the Oregon Department of Education

April 20, 2023

BY EMAIL

REDACTED
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Superintendent Guadalupe Guerrero
Portland Public Schools
501 N Dixon Street
Portland, OR 97227

Re: Case #2021-MM-06

Dear REDACTED and Superintendent Guadalupe Guerrero:

This letter is the final order on the June 28, 2021, appeal filed by REDACTED (Complainant) alleging that Portland Public Schools violated ORS 659.850 (prohibiting discrimination in an education program or service financed in whole or in part by moneys appropriated by the Legislative Assembly) and OAR 581-021-0045 (prohibiting discrimination in certain educational agencies, programs, or services under the jurisdiction of the State Board of Education). To ensure compliance with these laws and rules, the Oregon Department of Education made findings of fact to determine whether a violation occurred and what action, if any, should be taken.¹

APPELLATE PROCEDURES FOR COMPLAINTS ALLEGING DISCRIMINATION

Complainant alleges that Portland Public Schools discriminated against her children on the basis of race and disability. Complainant states that because of this discrimination, she withdrew her children from the district and enrolled them in private school.

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,

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

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 a final order as described in OAR 581-002-0017.³

If the department determines that discrimination may have occurred, the department must issue a preliminary order to the complainant and the school district.⁴ The preliminary order must include a reference to the district decision that is on appeal, the procedural history of the appeal, the department’s preliminary findings of fact, and the department’s preliminary conclusions.⁵

If the department issues a preliminary final order, the complainant and school district must attempt to reach an agreement on how to resolve the matter through conciliation.⁶ If conciliation fails, the department will issue a final order as described in OAR 581-002-0017.⁷ 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 required by the school district.⁸

The Director of the Oregon Department of Education may for good cause extend the time by which the department must issue an order.⁹

In this appeal, Complainant and Portland Public Schools have failed to resolve the matter through conciliation. This order constitutes the department’s final order as to whether a violation of ORS 659.850 or OAR 581-021-0045 may have occurred.

PROCEDURAL BACKGROUND

On April 17, 2021, Complainant wrote to Portland Public Schools that she was removing her children from the district and placing them in private school. Complainant further requested that any State School Fund moneys that would be allocated to the district for her children – if her children attended school in the district – be “applied towards [my children’s] private education.”¹⁰ Complainant wrote, “The emotional anxiety that my son has suffered over the last [two] years in [Portland Public Schools] due to the impact of racism is unbearable and impacts my children’s rights to a Free and Appropriate Education.”

² OAR 581-002-0009.

³ OAR 581-002-0009(3)(a)(B).

⁴ OAR 581-002-0009(3)(a)(A).

⁵ *Id.*

⁶ OAR 581-002-0011.

⁷ OAR 581-002-0011(8).

⁸ OAR 581-002-0017(2).

⁹ OAR 581-002-0009(3)(b).

¹⁰ It is important to note that both Portland Public Schools and the Oregon Department of Education lack the authority to reallocate State School Fund moneys to a person for the purpose of reimbursing private school tuition. This type of reallocation is prohibited by law.

Upon receiving Complainant's communication, the district referred her to its Enrollment and Transfer Center. The district further informed Complainant that State School Fund moneys cannot be used to reimburse private tuition.

On May 27, 2021, Complainant emailed the State Board of Education. Complainant again requested that any State School Fund moneys that would be allocated to the district for her children be "applied towards [my children's] private education."

On June 24, 2021, Complainant filed an appeal with the Oregon Department of Education. As proof that she first filed a complaint with the district, Complainant submitted to the department the May 27th email sent to the State Board of Education.

The department subsequently contacted Complainant by phone and inquired as to whether she had filed a complaint with the district alleging discrimination on the basis of race and disability. During that phone call, the department recommended that Complainant file a formal complaint with the district. Complainant stated that her prior communications constituted a complaint that the department should take on appeal.

On September 17, 2021, the department accepted Complainant's appeal on the basis that Complainant had filed a complaint with the district and received from the district a final decision. The department specifically accepted Complainant's complaint under OAR 581-002-0005(1)(a)(C), under which the department will accept a complaint on appeal if a school district fails to resolve the complaint in 90 days.

On January 3, 2023, the department issued a preliminary final order finding the district deficient. In that order, the department directed Complainant and the district to attempt to resolve the matter through conciliation. On April 5, 2023, the department received notice from the district that conciliation had failed.

This letter constitutes the department's final order as to whether a violation of ORS 659.850 or OAR 581-021-0045 may have occurred.

FINDINGS OF FACT

For purposes of making its final determination on case #2021-MM-06, the Oregon Department of Education adopts the findings of fact set forth in the preliminary final order issued for that case on January 3, 2023.¹¹

¹¹ For the convenience of the parties, the preliminary final order is attached to this correspondence.

ANALYSIS

For purposes of making its final determination on case #2021-MM-06, the Oregon Department of Education adopts the analysis set forth in the preliminary final order issued for that case on January 3, 2023.¹²

CONCLUSIONS

In consideration of the evidence, the Oregon Department of Education finds that Portland Public Schools is deficient on the following grounds:

- Portland Public Schools failed to offer appropriate remedial services to Complainant's son upon being informed that Complainant's son experienced trauma related to discriminatory acts committed on the basis of race.

Accordingly, the department orders Portland Public Schools to take the following corrective action:

- I. Portland Public Schools must devise and implement a training for, and disseminate associated guidance materials to, the district's Enrollment and Transfer Center staff. At a minimum, the training must include:
 - a. An overview of district obligations under Title VI of the Civil Rights Act of 1964.
 - b. An overview of the district's responsibility to provide an environment free of discrimination and protected class bullying and harassment under ORS 659.850 and OAR 581-021-0045.
 - c. The definition and application of "bias incident," as defined under ORS 339.347 and OAR 581-022-2312.
 - d. Information on recognizing student trauma related to discriminatory conduct.
 - e. Information on remedial services available for students who experience trauma because of discriminatory conduct, including, but not limited to:
 - i. Available district mental health services;
 - ii. Other available appropriate district services, including services related to creating and implementing 504 plans pursuant to section 504 of the Rehabilitation Act of 1973; and

¹² For the convenience of the parties, the preliminary final order is attached to this correspondence.

- iii. Publically available resources related to victim assistance.
 - f. Associated guidance materials, including materials for the Enrollment and Transfer Center staff to reference when responding to requests to transfer out of the district because of trauma related to discriminatory conduct.
- II. Not later than May 31, 2023, the district will consult with the department's Title VI civil rights specialist for the purpose of receiving input on trainers, training programs, and guidance materials.
 - III. Not later than August 31, 2023, the district must conduct the training and disseminate the associated guidance materials required by this order.
 - IV. Not later than September 15, 2023, the district must provide the department with confirmation that the district conducted the training required by this order. The district must send the department by mail or electronic mail (1) a copy of all training and associated materials, (2) the names, titles, and credentials of the trainers, (3) a copy of a sign-in sheet containing the date on which the training was conducted and the names and titles of all staff members who attended the training.

Upon request, the department will extend for good cause any of the timelines set forth in this order.

If Portland Public Schools wishes to use the department as a resource in fulfilling the terms of this final order, the school or the district may contact the department.¹³

If you have any questions, please contact me.

Sincerely,



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

¹³ The department's Title VI expert is Marinda Peters. Marinda may be reached at: Marinda.Peters@ode.oregon.gov.