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Colt Gill

Acting Deputy Superintendent of Public Instruction

March 6, 2018

BY EMAIL AND US MAIL

Superintendent Bill Yester
North Bend School District
1913 Meade Street
North Bend, Oregon 97459

This letter is the investigatory determination on the appeal of a complaint filed with North Bend School District (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 581-029-0049 (requiring school districts to adopt written procedures for the prompt resolution of complaints of discrimination).¹

I. APPELLATE PROCEDURES FOR COMPLAINTS ALLEGING DISCRIMINATION

Student 2 alleges that the District committed certain violations related to discrimination on the basis of sex and sexual orientation.² Specifically, Student 2 alleges that the District: (1) treated students differently on the basis of sex and sexual orientation when imposing discipline (2) did not respond to complaints alleging sexual harassment when those complaints were made by Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) students, and (3) did not take appropriate action to remedy a hostile environment after complaints made by LGBTQ students had been filed alleging sexual harassment.

The Department has jurisdiction to resolve this complaint under OAR 581-021-0049. When a complainant files with the Department an appeal of a complaint alleging discrimination, the Department will initiate an investigation to determine whether discrimination may have occurred.³ If the Department finds that discrimination may have occurred, the Deputy Superintendent of Public Instruction (Deputy Superintendent) will issue an investigatory determination and require the school district that is the subject of the appeal to attempt to reach an agreement with the complainant through conciliation.⁴ If the school

¹ Case Reference No. 2017-002-KM.

² Most of Student 2's allegations are specific to sexual orientation. However, a few allegations are specific to transgendered students, which implicates discrimination on the basis of sex, and all allegations concerning the discriminatory disposition of the school concern all lesbian, gay, bisexual, transgender, and queer students attending the school. For those reasons, in this investigatory determination, the Department is examining whether the District discriminated on the basis of both sex and sexual orientation.

³ OAR 581-021-0049 (1).

⁴ OAR 581-021-0049 (1)(b).

district cannot reach an agreement with the complainant through conciliation within 30 days, the Deputy Superintendent will schedule a hearing for the purpose of determining whether the school district is in compliance with ORS 659.850.⁵ If the Deputy Superintendent determines that the school district is not in compliance with ORS 659.850, the Deputy Superintendent will issue an order requiring compliance.⁶ If the school district fails to comply with the order within 30 days, the Deputy Superintendent will issue an order imposing an appropriate remedy.⁷ 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.⁸

On this appeal, the Department has completed its investigation to determine whether discrimination may have occurred. This letter constitutes the Department's investigatory determination as to whether discrimination may have occurred.

II. PROCEDURAL BACKGROUND

On November 3, 2016, Student 2 reported a variety of concerns to the District involving discrimination on the basis of sex and sexual orientation. The report included allegations of discriminatory conduct directed toward both the appellant in this case (Student 2) and Student 1.

At the end of the 2016/2017 school year, Student 2, having heard nothing from the District with respect to the allegations reported, sent a letter to the Oregon Department of Education (Department) to appeal the District's investigation. The letter reiterated the allegations reported by Student 2 on November 3, 2016, and contained additional allegations related to discrimination on the basis of sex and sexual orientation.

On July 14, 2017, the Department notified the District of the appeal. On August 23, 2017, the District timely responded to the Department. The District's response included documents requested in the July 14 notice, copies of relevant district policies, and responses to the specific allegations made. The Department reviewed the District's response.

On November 2, 2017, the Department interviewed Student 2 and collected additional documents, materials, and communications related to the appeal.

In conducting its investigation, the Department interviewed other students and individuals who are familiar with the allegations made by Student 2, including a counselor employed by the county mental health department who performs services for the school (Counselor), Counselor's supervisor, Student 1, and Student 3.

⁵ OAR 581-021-0049 (2).

⁶ OAR 581-021-0049 (3).

⁷ OAR 581-021-0049 (3).

⁸ OAR 581-021-0049 (3)(a) to (d).

The Department also interviewed several members of District staff, including the administrator for the District (District Administrator), the administrator for the school (Supervising Administrator), the building administrator for the school (Building Administrator), the human resources officer for the school (Human Resources Officer), and a classroom teacher who purportedly made comments in class equating same sex marriage to a person marrying the person's dog (Classroom Teacher).

III. FINDINGS OF FACT

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

1. Student 2 graduated with the Class of 2017. Student 2 is a female student who identifies as being Lesbian, Gay, Bisexual, Transgender, Queer (LGBTQ).
2. Student 1 is a 12th grade student in the District. Student 1 is a female student who identifies as being LGBTQ.
3. During certain times relevant to the issues on appeal, Student 1 and Student 2 were dating.
4. In November, 2016, Student 2 gave a presentation about LGBTQ awareness to certain members of District staff. Following the presentation, Student 2 discussed with those staff members the need for wider recognition of, and greater consideration for, LGBTQ students in the District. As a part of that discussion, Student 2 provided examples of discriminatory conduct that directly affected Student 2.
5. The District determined that the issues raised by Student 2 should be appropriately documented and investigated. The District scheduled a meeting with Student 2 to collect additional information regarding Student 2's concerns.
6. On November 3, 2016, the District Administrator and Human Resources Officer interviewed Student 2. Not knowing the full extent of Student 2's concerns, the District wanted to ensure that more than one staff member was present and that at least one staff member was the same gender as Student 2.
7. During the November 3 interview, Student 2 reported a variety of concerns to the District Administrator and Human Resources Officer involving discrimination on the basis of sex and sexual orientation. Student 2 alleged the following:

- a. During an incident in the school parking lot, the child of the Building Administrator (Student 4) drove very close to Student 1 and Student 2—who were holding hands—and yelled the slur “faggot.”
 - b. During a subsequent incident in a class where same-sex marriage was the topic of discussion, the Classroom Teacher said, “If same sex marriage is okay, what about marrying your dog? It’s about the same thing,” or words to that effect.
8. During the time relevant to the issues on appeal, Student 1 and Student 2 were hesitant to report their concerns to the Building Administrator for reasons related to the Building Administrator’s religious beliefs. Student 1 and Student 2 felt that if they did report their concerns to the Building Administrator, the Building Administrator would do nothing to address the concerns.
9. Following the incident in the class where same-sex marriage was the topic of discussion, Student 2 reported to the Building Administrator the remarks made by the Classroom Teacher. Shortly afterward, the Classroom Teacher apologized to Student 2.
10. After conducting the November 3 interview, the District Administrator and Human Resources Officer met with other members of District staff, including the Building Administrator. At the meeting, District staff determined that the Building Administrator would discuss the allegations against Student 4 with Student 4 as the student’s parent. District staff also determined that the District Administrator and Human Resources Officer would discuss the allegations against the Classroom Teacher with the Classroom Teacher.
11. Following the meeting between District staff, the Building Administrator discussed the allegations against Student 4 with Student 4 and the District Administrator and Human Resources Officer discussed the allegations against the Classroom Teacher with the Classroom Teacher.
12. At the end of the 2016/2017 school year, Student 2, having heard nothing from the District with respect to the allegations reported, sent a letter to the Department to appeal the District’s investigation. The letter reiterated the events reported to the District on November 3, 2016. The letter also included the following allegations:
 - a. The Building Administrator required Student 3 to read a passage from the Bible as a form of discipline. The Building Administrator used this form of discipline against Student 3 at least twice. On one occasion, the School Resource Officer was present. According to Student 3, if Student 3 did not read the entire Biblical passage, the Building Administrator would not allow Student 3 to return to class.

- b. Another student committed an act of cyberbullying against Student 2. The student sent Student 2 an online message stating, "If you don't fix your weirdly shaped eyebrows fucking kill yourself. That's disgusting."
 - c. Other students often made homophobic comments toward, and homophobic slurs about, Student 1 and Student 2 when they walked together.
 - d. A transgendered student was often called names and harassed. Other students threw food at the student while on school property, tripped the student on stairs located on school property, and accused the student for vandalizing school property. The District did not address the mistreatment of the student.
 - e. During an incident in class where a student made a disparaging remark about wedding cakes prepared for homosexual couples, the entire class, including the teacher, laughed at the comment. Student 2 reported this incident to the Counselor. The following day, the teacher announced to the class that the student's comment should not have offended anyone because the comment did not offend the teacher.
 - f. At Senior Prom, two male students wore dresses and an exaggerated amount of makeup in what Student 2 believed to be a parody of crossdressing or transgendered persons. The Building Administrator, who was present, did nothing in response.
 - g. A school teacher witnessed two couples kissing on school property. One couple was a heterosexual couple. The other couple was a homosexual couple. The teacher did not address the behavior of the heterosexual couple. The teacher only addressed the behavior of the homosexual couple, calling their behavior "disgusting" and asking them to not show their affection for one another in public.
 - h. The teacher who taught health class was uncomfortable discussing LGBTQ health issues. When asked questions about LGBTQ sexual health issues, the teacher would avoid answering the questions and appear uncomfortable.
13. On July 14, 2017, the Department notified the District of the appeal.
14. In a letter dated August 23, 2017, the District responded to Student 1's appeal.
15. In the August 23 letter, the district provided the following responses to Student 1's allegations:
- a. Regarding the incident in the school parking lot, where Student 4 drove very close to Student 1 and Student 2 and yelled the slur "faggot," the

- District made a report of the incident and claims that Student 2 did not want to pursue the complaint.
- b. Regarding the incident in the class where same-sex marriage was the topic of discussion, the Building Administrator spoke to the Classroom Teacher and asked the Classroom Teacher to apologize to Student 2.
 - c. Regarding the incident involving cyberbullying, the Building Administrator intervened and reviewed the District's harassment policy with the student who had sent the message and Student 2. Student 2 signed the harassment policy to acknowledge Student 2's understanding of the policy.
 - d. The incident in the class where a student made a disparaging remark about wedding cakes prepared for homosexual couples was not reported to the District.
 - e. Regarding the incident at Senior Prom where two male students wore dresses and an exaggerated amount of makeup, different members of District staff reported to the District different details of the incident. Some of the details described in Student 2's appeal were not witnessed by District staff.
 - f. The incident involving two couples kissing on school property, one homosexual and one heterosexual, was not reported to the District.
 - g. The health class situation was not reported to the District.
 - h. Regarding other alleged acts of harassment occurring on school grounds, the District claims that these incidents were not reported to the District, asserts that it takes claims of harassment seriously, and states that if these incidents had been reported, the District would have responded appropriately.
 - i. The District denies the remainder of Student 2's allegations, including the allegation that the Building Administrator required Student 3 to read passages from the Bible as a form of discipline.
16. In the August 23 letter, the district also explained that Student 2 had approached the District about giving a presentation regarding LGBTQ awareness. The District requested that Student 2 first give the presentation to select members of District staff. Approximately five members of District staff were present. Following the presentation, the District discussed with Student 2 the relevant training that District staff had received on matters related to LGBTQ awareness. The Building Administrator offered to host Student 2's proposed presentation in the near future.
17. Following receipt of the District's response to Student 1's appeal, during an interview conducted for purposes of this investigatory determination, the Building Administrator

acknowledged to the Department that the Building Administrator required students to read the Bible as a form of discipline. The Building Administrator's supervisor, during a subsequent interview conducted for purposes of this investigation, acknowledged being aware of this form of discipline. The supervisor believed the Building Administrator did not use the Bible to promote religion, but, rather, to assist students in understanding the effects of certain behaviors.

18. The county mental health department provided counseling services to the District. Following receipt of Student 2's appeal, the Department also received communications from members of the county mental health department's staff, who stated that LGBTQ students in the District reported concerns similar to those of Student 1 and Student 2.
19. Following receipt of Student 2's appeal, Counselor contacted the Department in writing. The Counselor wrote that Student 2's concerns were representative of the type of concerns that the Counselor and other county mental health department staff had observed other students having. The Counselor also wrote about the appeal, noting that "previous attempts to report and enact change being discarded, and a general lack of awareness within the local culture of how personal beliefs have interfered with identifying discrimination."
20. After receiving the July 14 notice, the District Administrator called Counselor's supervisor. During this conversation, the District Administrator asked the Counselor's supervisor about this appeal.
21. On September 15, 2017, the Supervising Administrator, Building Administrator, and other members of District staff met with the county mental health organization about the Counselor and raised concerns about the manner in which the Counselor provided services in the school. Among the concerns raised were the Counselor's role in the investigation of this appeal.
22. After the September 15 meeting, the District relocated Counselor to a different building. The District also asked Counselor to provide the District with information related to the reasons that students sought counsel.
23. During the investigation of this appeal, the Supervising Administrator told the Department that the Supervising Administrator had a preference for "loyalty" from the Counselor and that such loyalty should have resulted in the Counselor informing the District of Student 1's and Student 2's concerns before, or in addition to, contacting the Department.

IV. ANALYSIS OF SPECIFIC ALLEGATIONS

A. District allegedly treating students differently on the basis of sex and sexual orientation, including when imposing discipline

Under Oregon law,

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.⁹

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.”¹⁰

In applying this prohibition to school districts, OAR 581-021-045 (3) specifically states that a school district may not:

(b) Provide different aid, benefits, or services; or provide aids, benefits, or services in a different manner;

* * *

(d) Subject any person to separate or different rules of behavior, sanctions, or other treatment; [or]

* * *

(f) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

Student 2 alleges that the District treated students differently on the basis of sex and sexual orientation, including when imposing discipline. Student 2 alleges that LGBTQ students in the District were hesitant to

⁹ 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.”

¹⁰ 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.

report discrimination for reasons related to the religious beliefs of certain members of District staff. Student 2 also alleges that if LGBTQ students did report discrimination, District staff would do nothing to address those complaints because of their religious beliefs. To support these allegations, Student 2 points to the Building Administrator's use of the Bible in disciplining students as an indication that the Building Supervisor disapproved of LGBTQ students. In Student 2's view, the perception that District staff disapproved of LGBTQ students frustrated the reporting processes intended to protect students from the type of sexual harassment that LGBTQ students often face.

Before further analyzing the issue on appeal, the Department acknowledges that the allegations raised by Student 2 invoke not only federal and state anti-discrimination laws, but the First Amendment to the United States Constitution. The First Amendment prohibits the government from making any law "respecting an establishment of religion." This provision is often called the Establishment Clause. The United States Supreme Court has interpreted the Establishment Clause as erecting "a wall of separation between church and State."¹¹

Even if the stated intent of a religious activity is the "promotion of moral values," if the activity is conducted "in school buildings and under the supervision and with participation of teachers employed by those schools," the activity must be scrutinized under the Establishment Clause because students are "required by law to attend school."¹² Even though a public employee does not surrender the employee's right to free speech by reason of the employee's employment, when a public employee makes "statements pursuant to [the employee's] . . . official duties," the employee is no longer speaking as a private citizen.¹³ The United States Supreme Court has held that school employees may not direct prayer because of the coercive pressure it places on religious minorities to conform.¹⁴ This is especially true when a school places a student in the "dilemma of participating or protesting" a religious activity.¹⁵ Simply put, the Establishment Clause "guarantees that the government may not coerce . . . religion or its exercise."¹⁶

During the Department's investigation, Student 2 specifically mentioned the allegation that the Building Administrator required Student 3 to read a passage from the Bible as a form of discipline. Even though the District denies this allegation in the August 23 letter, the Building Administrator acknowledged requiring students to read the Bible as a form of discipline during a subsequent interview and the Building Administrator's supervisor confirmed that the Building Administrator used this form of discipline.

The Department finds that Student 3 was under a requirement to attend school, was assigned to read passages from the Bible as a form of discipline, and was supervised by District staff and, on at least one

¹¹ *Everson v. Board of Education*, 330 U.S. 1, 16 (1947). The Establishment Clause is applied to the states through the Equal Protection Clause of the 14th Amendment to the United States Constitution. See *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940).

¹² *School District of Abington Township v. Schempp*, 374 U.S. 203, 223 (1963).

¹³ *Garcetti v. Ceballos*, 547 U.S. 410, 410 (2006).

¹⁴ *Engel v. Vitale*, 370 U.S. 421, 431 (1962).

¹⁵ *Lee v. Weisman*, 505 U.S. 577, 578 (1992).

¹⁶ *Id.* at 587.

occasion, the School Resource Officer while being disciplined. Student 3 had little choice but to comply with the Building Administrator's established form of punishment.

The Department also finds that (1) Student 1 and Student 3 believe that the Building Administrator used the Bible when disciplining Student 3 in part because of Student 3's sexual identity, and (2) the Building Administrator's use of the Bible resulted in Student 1's hesitation to report incidents involving discrimination on the basis of sex and sexual orientation to the Building Administrator and contributed to Student 1's perception that the District would fail to properly investigate and remedy complaints alleging discrimination on the basis of sex and sexual orientation.

With respect to the District treating students differently on the basis of sex and sexual orientation, there is substantial evidence to support the allegation that the District subjected LGBTQ students to separate or different rules of behavior, sanctions, or other treatment in violation of OAR 581-021-0045 (3)(d). There is also substantial evidence to support the allegation that the use of Bible to discipline students had a chilling effect on LGBTQ students' use of the District's complaint process, effectively resulting in the provision of services in a different manner in violation of OAR 581-021-0045 (3)(b) and the denial of right, privilege, advantage, or opportunity in violation of OAR 581-021-0045 (3)(f).

For the reasons listed above, the Department finds that discrimination on the basis of sex and sexual orientation may have occurred.

B. District's alleged failure to respond to complaints alleging sexual harassment when those complaints were made by LGBTQ students

Under OAR 581-021-0045 (3)(c), a school district may not discriminate against a person by denying an aid, benefit, or service.

Student 2 alleges that the District did not respond to complaints alleging sexual harassment when those complaints were made by LGBTQ students. During the November 3 interview, Student 2 specifically reported that while Student 1 and Student 2 were holding hands in the school parking lot, Student 4 drove very close to them and yelled the slur "faggot." Student two also reported that during a class discussion, Classroom Teacher equated same sex marriage to marrying a person's dog. After Student 2 reported these incidents, Student 1 and Student 2 heard nothing from the District with respect to them.

The District maintains a student harassment policy.¹⁷ Under that policy, the District will conduct a "prompt investigation of a report of an act or hazing, harassment, intimidation or bullying, menacing, and acts of cyberbullying." Following the investigation, the "complainant shall be notified of the findings of the investigation and, as appropriate, that remedial action has been taken."

¹⁷ North Bend School District's policy regarding harassment, *Hazing/Harassment/Intimidation/Menacing/Bullying/Cyberbullying/Teen Dating Violence/Domestic Violence—Student** JFCF*, is available at <http://www.nbend.k12.or.us/non-discrimination.htm> (last visited 1/23/2017).

During interviews conducted by the Department for purposes of this appeal, the District Administrator and Human Resources Officer explained to the Department that Student 2 did not want to pursue the complaint concerning Student 4. According to the District Administrator and Human Resources Officer, Student 2 was concerned that the District would do nothing in response to the complaint. Student 2 was also concerned that Student 4 would be disciplined and excluded from participating in athletics, which Student 2 believed would cause other students to retaliate against Student 2.

The District did not investigate Student 2's report. Rather the District Administrator and Human Resources Officer directed the Building Administrator, Student 4's father, to discuss the matter with Student 4 as the student's parent.

The District also did not notify Student 2 of any findings related to either incident or of any remedial action. The Classroom Teacher did apologize to Student 2, but only after Student 2 reported the incident to a different authority figure. With respect to the complaint against Student 4, the District Administrator asserts that Student 2 could have asked the District how it had resolved the matter at any time.

The facts further suggest that the District has a history of not responding to complaints related to discrimination on the basis of sex and sexual orientation. During the investigation of this appeal, Student 1 and Student 2 told the Department that they were hesitant to report incidents involving discrimination to the Building Administrator because of the Building Administrator's religious beliefs. Student 1 and Student 2 also told the Department that they believed that if they had reported such incidents, the Building Administrator would have done nothing to address them. Furthermore, members of the county mental health department's staff contacted the Department and stated that LGBTQ students in the District reported concerns similar to those of Student 1 and Student 2. One member of county mental health department staff, the Counselor, wrote to the Department that Student 2's concerns were representative of many other students' concerns. The Counselor also wrote about the appeal, noting that "previous attempts to report and enact change being discarded, and a general lack of awareness within the local culture of how personal beliefs have interfered with identifying discrimination."

With respect to Student 2 not wanting to pursue the complaint, the District Administrator and Human Resources Officer admit that during the November 3 interview, Student 2 expressed concerns that the District would do nothing in response to the complaint or, in the alternative, that other students would retaliate against Student 2 for making the complaint.

With respect to the District not responding to complaints alleging sexual harassment when those complaints were made by LGBTQ students, there is substantial evidence to support the allegation that the District denied, whether intentionally or unintentionally, those students prompt investigations of complaints alleging sexual harassment in violation of OAR 581-021-0045 (3)(c).

For the reasons listed above, the Department finds that discrimination on the basis of sex and sexual orientation may have occurred.

C. District's alleged failure to take appropriate action to remedy a hostile environment after complaints had been made by LGBTQ students alleging that students and District staff had sexually harassed other students

Under OAR 581-021-0045 (3)(b) and (f), a school district may not discriminate against a person by providing "different aid, benefits, or services," by providing "aid, benefits, and services in a different manner," or by otherwise limiting a person's "enjoyment of any right, privilege, advantage, or opportunity."

Student 2 alleges that the District failed to take appropriate action to remedy a hostile environment after complaints had been made by LGBTQ students alleging sexual harassment. As a preliminary matter it is important to note that the District only had the opportunity to address two of the allegations made by Student 2 on appeal: (1) the incident in the school parking lot where Student 4 drove very close to Student 1 and Student 2 and yelled the slur "faggot," and (2) the incident in the class where same-sex marriage was the topic of discussion. The other allegations made by Student 2 on appeal were not reported to the District.

The Department acknowledges that the environment in which Student 2 received an education appears to be one that was hostile toward Student 2 and other LGBTQ students. Student 2 was the subject of cyberbullying. Student 2 was compelled to listen to disparaging remarks about homosexuals in a class setting and to witness behavior mocking transgendered people at a school function. Other students harassed Student 1 and Student 2 for having a relationship. Other students allegedly subjected a transgendered student to physical abuse. Teachers allegedly responded differently to displays of public affection by heterosexual and homosexual couples. Teachers were reportedly reluctant to address LGBTQ issues in the classroom. However, the facts indicate that the District did not have an opportunity to respond to these allegations.

As for the allegations that the District had the opportunity to address, the District did take action. After Student 2 reported the alleged incidents, members of District staff met to discuss the incidents. After that meeting, the Building Administrator discussed the incident in the school parking lot with Student 4 as the student's parent. The District Administrator, Human Resources Officer, and Building Supervisor all discussed the incident in the class with the Classroom Teacher. Ultimately, the Classroom Teacher apologized to Student 2. Whether the District's actions were an appropriate response for remedying Student 2's complaint is not the subject of this appeal. The subject of this appeal is whether the District discriminated against Student 2.

With respect to the District failing to take appropriate action to remedy a hostile environment after complaints had been made alleging sexual harassment, is insufficient evidence to establish that the District violated OAR 581-021-0045 (3)(b) or (f).

V. ADDITIONAL CONCERNS

Before concluding this investigatory determination, the Department notes that the conduct of certain members of District staff during the investigation damage the credibility of the District with respect to this appeal. The Department finds it disconcerting that the District Administrator called the Counselor's supervisor and asked about the Counselor's role in this investigation. During an interview with the Department, the Counselor's supervisor objected to this call on grounds that it raised the issue of retaliation. The Department also finds it disconcerting that members of District staff met with the county mental health organization and again raised concerns about the Counselor's role in this investigation. During an interview with the Department, the Supervising Administrator admitted to having a preference for "loyalty" from the Counselor and asserted a belief that the Counselor should have informed the District of Student 1's and Student 2's concerns before, or in addition to, contacting the Department. In light of these communications, relocating the Counselor to a new building and asking the Counselor for information related to the reasons that students sought counsel have the appearance of being retaliatory in nature.

Even though the District's treatment of the Counselor is not the subject of this appeal, the Department will consider it, where appropriate, when weighing the relative veracity of claims made about the occurrence of discrimination on the basis of sex and sexual orientation in the District.

VI. CONCLUSION

In conclusion, the Department finds that discrimination on the basis of sex and sexual orientation may have occurred in the District for the following reasons:

- Substantial evidence supports the allegation that the District subjected LGBTQ students to separate or different rules of behavior, sanctions, or other treatment in violation of OAR 581-021-0045 (3)(d).
- Substantial evidence supports the allegation that the District administered its complaint processes for LGBTQ students in a different manner than it administered them for other students in violation of OAR 581-021-0045 (3)(b).
- Substantial evidence supports the allegation that the District denied LGBTQ students prompt investigations of complaints alleging sexual harassment in violation of OAR 581-021-0045 (3)(c).

- Substantial evidence supports the allegation that the District denied LGBTQ students the enjoyment of the right to use the District's complaint processes for LGBTQ students in violation of OAR 810021-0045 (3)(f).

Accordingly, the Department encourages the District to reach an agreement with Student 2 through conciliation. If the District cannot reach an agreement with Student 2 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.

Sincerely,



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