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Kate Brown, Governor



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Colt Gill

Director of the Oregon Department of Education

October 22, 2022

BY EMAIL



Interim Superintendent Kathleen Stauff
Myrtle Point School District
717 4th Street
Myrtle Point, OR 97458
kathleenstauff@mspd.k12.or.us

RE: Case #2022-MM-11

Dear [REDACTED] and Interim Superintendent Kathleen Stauff:

This letter is the order on the July 13, 2022, appeal filed by [REDACTED] (Complainant) alleging that Myrtle Point School District violated OAR 581-022-2370 (requiring school districts to establish a process for the prompt resolution of complaints).

To ensure compliance with these rules, 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 VIOLATIONS OF DIVISION 22 STANDARDS**

Complainant alleges that Myrtle Point School District failed to properly process a complaint previously filed against the district by another complainant (Complainant B).

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 a violation of a rule codified in Oregon Administrative Rules Chapter 582, Division 22 (Division 22 standard), the department will initiate an investigation to determine whether the violation may have occurred.²

If the department determines that the violation did not occur, the department must issue 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 the violation may have occurred, the department must issue a preliminary final order to the complainant and the school district.⁵ The preliminary final 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.⁶

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.⁷ If the parties do not reach an agreement through conciliation, the department will issue a final order as described in OAR 581-002-0017.⁸ 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.⁹

In this appeal, the department has completed its investigation. This letter constitutes the department's preliminary order as to whether a violation of a Division 22 standard may have occurred.

PROCEDURAL BACKGROUND

On May 13, 2022, Complainant filed a complaint with Myrtle Point School District's Board of Directors. The board took action on the complaint on June 15, 2022. That same day, the board sent a letter to Complainant, stating that the board previously had investigated the allegations and concluded that "there was no violation of the law[.]" Complainant subsequently filed an appeal with the Oregon Department of Education on July 13, 2022. The department accepted the complaint under OAR 581-002-0005(1)(a)(A), under which the department must accept a complaint on appeal if a complainant has exhausted a school district's complaint process.

² OAR 581-002-0009.

³ OAR 581-002-0009(3)(a)(B).

⁴ OAR 581-002-0009(3)(b).

⁵ OAR 581-002-0009(3)(a)(A).

⁶ *Id.*

⁷ OAR 581-002-0011.

⁸ OAR 581-002-0011(8).

⁹ OAR 581-002-0017(2).

PRELIMINARY 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, Myrtle Point School District had a process through which “[a] parent or guardian of a student attending a school in the district, a person who resides in the district, a staff member, or a student who wishes to express a concern” could file a complaint.
2. The district’s complaint process was in writing.
3. The district’s complaint process could be obtained at the district’s main administrative office.
4. The district’s complaint process could be obtained by clicking on a link labeled “Public Complaint Process” located at the bottom of the home page on the district’s website.
5. The district’s complaint process has three steps.
6. Under step one of the district’s complaint process, if an individual who has a complaint is unable to resolve that complaint with the applicable district staff member,

The individual may file a written, signed complaint with the administrator/supervisor within five working days of the employee’s response. The administrator/supervisor shall evaluate the complaint and render a decision within five working days after receiving the complaint. (A form is available, but is not required.)

7. Under step two of the district’s complaint process, if an individual who has a complaint is unable to resolve that complaint at step one,

Within 10 working days of the written response from the administrator/supervisor, the complainant may file a written, signed complaint with the superintendent or designee clearly stating the nature of the complaint and a suggested remedy.

The superintendent or designee shall investigate the complaint, confer with the complainant and the parties involved, prepare a report of their findings and conclusion, and provide the report in writing or in an electronic form to the complainant within 10 working days after receiving the written complaint.

8. Under step three of the district's complaint process, if an individual who has a complaint is unable to resolve that complaint at step two, the individual

may appeal the decision to the [Myrtle Point] Board [of Directors] within five working days of receiving the superintendent's decision. The Board will review the findings and conclusion of the superintendent in a public meeting to determine what action is appropriate. The Board may use executive session if the subject matter qualifies under Oregon law. Appropriate action may include, but is not limited to, holding a hearing, requesting additional information, and adopting the superintendent's decision as the district's final decision. All parties involved, including the school administration, may be asked to attend such hearing for the purposes of making further explanations and clarifying the issues.

If the Board chooses not to hear the complaint, the superintendent's decision in Step Two is final.

The Board may hold the hearing in executive session if the subject matter qualifies under Oregon law.

The complainant shall be informed in writing or in electronic form of the Board's decision within 20 days from the hearing of the appeal by the Board. The Board's decision will address each allegation in the complaint and contain reasons for the district's decision. The Board's decision will be final.

9. On March 17, 2022, Complainant B filed a complaint against the district with the chairperson of the Myrtle Point Board of Directors. In that complaint, Complainant B made several allegations against the district, including that the district had violated state laws pertaining to restraint and seclusion.

10. On April 11, 2022, 25 days after Complainant B filed their complaint, the chairperson of the Myrtle Point Board of Directors presented the complaint to the board. One of the board members moved to have the chairperson investigate the complaint and present their findings to the board at a subsequent board meeting.
11. On May 9, 2022, 53 days after Complainant B filed their complaint, the chairperson of the Myrtle Point Board of Directors presented a letter to the board. That letter stated that the board “took the action of looking into the allegations brought forth” and that the board “concluded that there was no violation of the law[.]” The board voted to affirm the chairperson’s findings and sent the letter to Complainant B.
12. On June 11, 2022, Complainant B wrote a letter to the Oregon Department of Education, appealing the district’s May 9th response to their complaint. In that letter, Complainant B made the same allegations against the district superintendent as they had made in their March 17th complaint, including those related to state laws pertaining to restraint and seclusion. Complainant B also alleged that the Myrtle Point Board of Directors did not promptly address their complaint as required by OAR 581-022-2370 because the board took 53 days, as opposed to 30 days, to address the complaint. Complainant B also alleged that the board violated certain state laws pertaining to public meetings. Finally, Complainant B alleged that the board – by moving to have the chairperson investigate the complaint at the April 11th board meeting – “abdicated [its] responsibility to actually hear and discuss the complaint[,]” thereby “violating [my] right to be heard[.]”
13. After June 11, 2022, Complaint B and the district agreed to use local processes – with the assistance of the Oregon Department of Education – to correct any district deficiency related to restraint and seclusion. Complainant B communicated to the department that they wanted to drop their June 11th appeal.
14. On May 13, 2022, Complainant filed a complaint with the Myrtle Point Board of Directors, alleging that the district had violated OAR 581-022-2370 on the same grounds alleged by Complainant B in their June 11th appeal.
15. On June 15, 2022, the Myrtle Point Board of Directors sent a letter to Complainant, stating that the board previously had investigated the allegations and concluded that “there was no violation of the law[.]”
16. During July of 2022, Complainant filed an appeal with the Oregon Department of Education.

Oregon Department of Education

17. On July 13, 2022, the department issued notice to Complainant and the district that it was accepting the appeal. In the notice, the department wrote, “For purposes of this appeal, the department is accepting Complainant’s appeal limited to just the alleged violation of OAR 581-022-2370 requiring school districts to establish a process for the prompt resolution of complaints.” That same day, Complainant wrote the department, stating that “[e]stablishing a policy that meets all of the legal requirements is the first part of the complaint. But equally important is that the administration and board members FOLLOW their policies!” Complaint further wrote, “[T]he district failed to follow their own policies with regard to legally required responses and performing legal meetings to discuss and decide the issues.”

PRELIMINARY ANALYSIS

At the direction of the Oregon Legislature, the State Board of Education has established educational standards that every school district must implement.¹⁰ Those standards, known as Division 22 Standards, are set forth in OAR Chapter 581, Division 22. This appeal specifically applies to the Division 22 Standards set forth in OAR 581-022-2370.

Under OAR 581-022-2370,

(1) Each school district must establish a process for the prompt resolution of a complaint by a person who resides in the district or by any parent or guardian of a student who attends school in the school district.

(2) A school district’s complaint procedure must:

(a) Be in writing available at the main administrative office and, if the school district has a website, in a form available on the home page of the district’s website;

(b) Include the name of the person, position, or office within the school district with the responsibility for responding to the complaint; and

(c) Specify the time period during which the complaint will be addressed and a final decision issued. If the complaint procedure has multiple steps, the procedure must establish the time period for each step as well as the overall time period for completing the complaint procedure.

¹⁰ ORS 326.051.

In short, OAR 581-022-2370 requires each school district to promptly resolve complaints and to have a complaint process that (1) is in writing, (2) is available in writing at the district's main office and on the homepage of the district's website, (3) includes the contact information of the person, position, or office responsible for responding to the complaint, and (4) specifies the time period during which the complaint will be resolved.

In consideration of those requirements, the Oregon Department of Education finds that Myrtle Point School District, for purposes of this case, is deficient on a single ground.

With respect to whether the district promptly resolved Complainant B's complaint, Complainant argues that by taking 53 days to answer Complainant B's complaint rather than 30 days, the district violated OAR 581-022-2370. The department disagrees. Under the right circumstances – such as a school district establishing a complaint process and then systematically failing to provide a complainant with access to the adjudicator of that process – a school district would fail to provide a complainant with a prompt resolution. However, in this case, the chairperson of the Myrtle Point Board of Directors presented Complainant B's complaint to the board 25 days after Complainant B filed their complaint. After another 28 days had passed, the chairperson of the Myrtle Point Board of Directors presented a letter to the board stating that the board “took the action of looking into the allegations brought forth” and that the board “concluded that there was no violation of the law[.]” In consideration of these timelines, the department finds that the district promptly resolved Complainant B's complaint.

Complainant argues that they did not receive a written decision within 30 days. However, OAR 581-022-2370 does not require school districts to respond to complaints in 30 days. The department understands Complainant's argument to be: (1) that under OAR 581-002-0005(1)(a)(B), the department will accept an appeal of a complaint if, at any step in a school district's complaint process, the school district fails to provide the complainant with a written decision within 30 days; and (2) that this provision creates a 30 day limit for any step in a complaint process established under OAR 581-022-2370. The department disagrees. Complainant has conflated two rules. OAR 581-022-2370 requires school districts to have a process by which complaints are resolved promptly. OAR 581-002-0005 specifies the circumstances under which the department will accept an appeal. Although the subject matter of the two rules overlap, the circumstances under which the department will accept an appeal under the latter rule does not trigger any sort of requirement under the former rule.

The district also has a complaint process that is in writing. That process is available at the district's main office and on the home page of the district's website, where a person can access the process by clicking on a link labeled “Public Complaint Process” located at the bottom of the page. With respect to these standards, the department finds that there is no deficiency.

The district's complaint process has three steps. For each step, the process specifies the position of the person who should be contacted and the time period during which the complaint will be resolved. At step one, a complainant may contact the principal, who has five working days to render a decision. At step two, a complainant may contact the superintendent, who has ten working days to render a decision. Both provisions provide definitive timelines for responding to complaints. With respect to these two steps, the department finds that there is no deficiency.

At step three, a complainant may contact the Myrtle Point Board of Directors, which may simply affirm the superintendent's decision or hold a hearing. If the board holds a hearing, the board must issue a final decision within 20 days of the hearing. Unlike the other two steps, step three does not provide a definitive timeline for responding to complaints. Although the policy specifies that the board must issue a final decision within 20 days of holding a hearing, the policy does not state how quickly the board must hold a hearing upon receiving a complaint. Under the policy,

The board will review the findings and conclusion of the superintendent in a public meeting to determine what action is appropriate. The board may use executive session if the subject matter qualifies under Oregon law. Appropriate action may include, but is not limited to, holding a hearing, requesting additional information, and adopting the superintendent's decision as the district's final decision.

For the policy to meet the requirements of OAR 581-022-2370, it would have to include definitive timelines during which the board would meet publicly and, if applicable, hold a hearing. For example, the policy could specify that the board would meet publicly within 30 days of a complaint being filed with the board and that the board would hold a hearing within 60 days of a complaint being filed with the board. The policy also could state that the board would meet publicly at the next scheduled meeting of the board and that the board would hold a hearing within 30 days of that meeting. Under either example, the policy would specify a time period during which a complaint would be resolved.¹¹

In consideration of the evidence, the department finds that the district is deficient because step three of its complaint procedure does not provide definitive timelines by which the district will (1) meet publicly and (2) if applicable, hold a hearing.

On appeal, Complainant also argues that "[e]stablishing a policy that meets all of the legal requirements is the first part of the complaint. But equally important is that the administration and board members FOLLOW their policies!" Complaint further argues that "the district failed to follow their own policies with regard to legally required responses and performing legal meetings to discuss and decide the issues." Complainant's allegations may be true. However, the department cannot investigate the district's adherence to the policies it adopted pursuant to

¹¹ The Oregon Department of Education uses these time periods solely for illustrative purposes. Myrtle Point School District may decrease or increase them at its discretion.

OAR 581-022-2370 because the power to do so falls outside the department's jurisdiction. With respect to OAR 581-022-2370, if a school district promptly resolves complaints and has a policy that meets the requirements of the rule, the department's investigation ends. The department, acting under the authority of the rule, does not review a school district's implantation of or adherence to the policy. Those matters fall under the oversight of the locally elected school board.

In conclusion, the department finds that the district is deficient on one ground: that the district's complaint policy does not provide a definitive time period for completing step 3 of its complaint process.

PRELIMINARY CONCLUSION

In conclusion, the Oregon Department of Education finds that Myrtle Point School District is deficient on a single ground: that step three of the district's complaint process does not provide definitive timelines by which the district will (1) meet publicly and (2) if applicable, hold a hearing.

Accordingly, the department encourages the district to reach an agreement with Complainant through conciliation. If the district cannot reach an agreement with Complainant through conciliation within 30 days, or at a time otherwise agreed to by the parties, the department will issue a final order on the matter.

If Complainant or the district wishes to use the department as a resource during conciliation, Complainant or the district may contact the department.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in grey ink, appearing to read 'M. Mayer', is positioned above the typed name.

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