



Oregon Department of Education

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March 13, 2014

Caroline Fenn, Representative
Portland Parent Coalition

Dr. Carole Smith
Portland Public Schools

This Order is provided to the Portland Public School District ("the District") and the Parent Coalition in response to the appeal filed by John Richardson, Monique McClean, Mike Rosen, Darcy Mundorff, Laura Smoyer, Amy Kohnstamm, Tracy Barton, Mary Welch, Brian Rupp, Linda Venti, Valeurie Friedman, and Caroline Fenn, on behalf of the Parents Coalition ("Appellants"), alleging violations of Division 22 standards by the District. The objective of this Order is to determine whether the District is in compliance with the applicable Oregon Administrative Rules ("OAR")¹ and, where appropriate, proscribe necessary corrective action.

There were a number of documents and resources used in the preparation of this Order, and the cooperation of both representatives of the District and the Appellant are greatly appreciated. Further, the student-centered focus of both parties leads to the assumption that they plan to continue to collaborate in order to reach a meaningful and long-term solution that not only complies with policies and legal requirements but is also implemented with the students' best interest in the forefront.

BACKGROUND

In the 2011-12 school year, in an attempt to lessen the financial impact caused by a projected budget shortfall, the District implemented an 8-period block style "A/B" schedule at each of the District's nine comprehensive high schools.

Following the move to an 8-period schedule, parents across the district, including Appellants, began voicing concerns about reduced instructional hours. More specifically, parents raised concerns about the District's decision to limit the number of classes students could take to fewer than 8 and the widespread use of study halls. The District took several steps to address the Appellants' concerns, but did not fully resolve all of the issues.

¹ Oregon Administrative Rules (OARs) are available at http://arcweb.sos.state.or.us/pages/rules/oars_500/oar_581/581_tofc.html.

On October 30, 2013, pursuant to OAR 581-022-1940, Appellants filed an appeal with the Oregon Department of Education (“the Department”) alleging violations of Division 22 standards by the District. The Department accepted the appeal after reviewing the appeal and related documentation and determining that the Appellants alleged facts which, if true, would be a violation of the following rules:

- OAR 581-022-1620 (failure to provide a minimum of 990 hours of instructional time per year in grades 9-12);
- OAR 581-022-1131 (failure to offer students 130 hours of instructional time per credit); and
- OAR 581-022-1941 (failure to establish a process for complaint resolution).

As required by OAR 581-022-1940, the District provided a response to the appeal on December 25, 2013. Appellants provided a response to the District’s submission on January 10, 2014. The Department then appointed a state investigator. The Department has reviewed all of the information provided by Appellants, the District, and the state investigator.

SUMMARY OF THE COMPLAINT

There are two primary, closely-related components centered on instructional time forming the basis for the complaint:

1. Students in grades 9-12 have not had access to the minimum state-mandated 990 instructional hours required since the 2011 implementation of the 8-period day, due to the District’s continued understaffing of high schools.
2. The 8-period schedule implemented in fall 2011 without any change to the length of the school day or year has resulted in fewer class hours per subject, meaning students no longer have access to the state-mandated minimum 130 class hours per credit.

Both issues relate to the configuration of the high school class schedule and the number of hours available for instructional learning time which leads to success in academic and post-secondary pursuits.

The Appellants have asked the Department to provide “formal direction and supervision” over the District to ensure the school schedule meets the state-mandated minimum of 130 class hours per course, as well as the minimum 990 instructional hours for grades 9 – 12. Instructional time compliance is addressed in section I of this Order.

Finally, based on the problems identified in the initial review of the PPS complaint procedure, the Department interpreted the appeal to include a possible failure of the District to provide an accessible complaint process in compliance with OAR 581-022-1941. The issue of an accessible and comprehensive complaint policy is addressed in section II of this Order.

LEGAL STANDARD

Districts must comply with the regulations set forth in OAR Chapter 581, Division 22 (“Division 22 standards”). ORS 327.107; OAR 581-022-0102(46). Districts are required to report their compliance with Division 22 standards to the community and submit assurances of their compliance to the Department.² OAR 581-022-1610.

If a district is found to be out of compliance, the district must submit a plan, acceptable to the Deputy Superintendent of Public Instruction, for becoming compliant. ORS 327.103(3). The plan must be submitted to the Deputy Superintendent of Public Instruction within 90 days of the determination of deficiency. ORS 327.103(3). Upon approval of the plan, the district is categorized as a “conditionally standard district.” OAR 581-022-0102(15). The district then has until the beginning of the following school year to demonstrate compliance. ORS 327.103(2). If the district fails to show compliance, the Deputy Superintendent of Public Instruction may withhold state school funds. ORS 327.103(2).

If the district fails to submit a plan for achieving compliance, the district is categorized as “a nonstandard district” and the Deputy Superintendent of Public Instruction must withhold state school funds. ORS 327.103(4); OAR 581-022-0102(35).

Districts may apply for a waiver from the Division 22 standards. OAR 581-022-1920. If the State Board of Education determines the district will continue to meet the intent of the standards, the waiver may be granted.

ANALYSIS

I. Instructional Hours

In 2011, the District attempted to resolve a projected budget shortfall by moving to an 8-period block style “A/B” schedule. The 8 period block schedule was first implemented in the 2011-12 school year. Prior to that, the District had a 7-period schedule and teachers taught 5 of those 7 periods.

Under a 7-period schedule, with teachers teaching 5 of 7 periods, 71.4% of a district’s teachers are teaching at any given time. Under an 8-period schedule, with those same teachers now teaching 6 of 8 periods, 75% of a district’s high school teachers are teaching at any given time. Moving from a 7-period to an 8-period schedule reduces class size by increasing the percentage of teachers who are teaching at any given time.

A risk inherent in the 8-period schedule is compliance with minimum hours required to earn credit. Adding an additional class to the schedule (from 7 to 8) and moving to an “A/B” block style schedule makes it difficult to ensure 130 hours per credit.

² For the 2013-14 school year, districts must submit to the Department a Division 22 Assurance Form showing compliance with all regulations set forth in Division 22 by April 15, 2014. The Division 22 Assurance Form and information relating to the form can be found at: <http://www.ode.state.or.us/search/page/?id=733>. Also see *Executive Numbered Memo 003-2013-14-Division 22 Assurances*: <http://www.ode.state.or.us/news/announcements/announcement.aspx?ID=9569>

Appellants allege the District falls short of both the instructional hours per course and the instructional hours per year required for high schools.

a. 990 Hours Per Year – OAR 581-022-1620

OAR 581-022-1620 requires districts to adopt and implement a District calendar and school schedule which provide its students in grades 9-12 with a minimum of 990 instructional hours per year. In counting instructional hours, districts and the Department count hours of classroom time as well as “instructionally related activities.”

The term “instructionally related activities” is defined in Division 22 Standards as field trips, outdoor school, work-study periods, or other activities required of students as part of the student’s academic program. OAR 581-022-0102(30). School assemblies, student orientations, testing, parent-teacher conferences, and other instructionally related activities involving students directly may be included in the required instructional hours. OAR 581-022-1620(4). Study periods or advisory periods may be included where student’s attendance is required and instructional assistance is provided. OAR 581-022-0102(30). When approved by the local school board, the 990 instructional hours may be reduced by up to 30 hours for staff development activities and 14 hours for emergency school closures due to adverse weather or facility failure. OAR 581-022-1620(5). The instructional time requirement for twelfth-grade students may be further reduced by up to 30 hours when approved by the local school board. OAR 581-022-1620(8).

The Department’s analysis of bell schedules and school calendars for the District’s nine comprehensive high schools shows a variety of configurations with each meeting the letter of the law by providing at least 990 hours per year of instructional time given an 8-period schedule. Accordingly, I make no finding against the District under OAR 581-022-1620.

I do, however, have grave concerns regarding the Districts compliance with the spirit of the law. The overwhelming majority of the District’s high school students are taking fewer than 8 classes, which puts those students’ access to learning opportunities well below 990 hours per year, and the District appears to have encouraged this trend.

Data provided by the District show the majority of students registered for fewer than 8 classes for the 2013-14 school year. A report containing data from October 1, 2013, shows the following percentage of students by grade level taking a full course load of 8 classes during the 2013-14 school year:

Grade 9	48%
Grade 10	37%
Grade 11	20%
Grade 12	11%
Overall Average	30%

The data set forth above do not include any study hall or teaching assistant assignments. When study hall or teaching assistant assignments are included, the data provided by the District shows the

number students enrolled in 8 periods rises for underclassman but remains very low for upperclassmen:

Grade 9	93%
Grade 10	55%
Grade 11	34%
Grade 12	18%
Overall Average	51%

At the high school level, some students will opt for a lighter course load on their own and this, unfortunately, is not uncommon across Oregon. In this case, however, evidence indicates the District purposefully steered students toward taking fewer than 8 classes.

In 2013, the District capped the number of courses students could take. The Superintendent’s initial 2013-14 budget proposal limited freshman and sophomores to 7 classes and juniors and seniors to 6 classes. The cap did not apply to special education or academic priority students. It was under this cap that the 2013-14 forecasting took place.

In May, 2013, the Superintendent and School Board adjusted the budget and removed the class limit for all students. The District acknowledged in its response, “[b]ecause the decision to lift the cap on the number of courses a student could take was not made until May, most students had already forecasted for classes.” And while principals were resourceful in creating last-minute opportunities, according to the Appellant, the necessary systems adjustments and requisite culture shift to ensure full student access did not occur consistently.

After removing the cap, the District required students wanting 8 classes to go through the process of re-forecasting. Other barriers were also in place. At one school, in order to forecast for an eighth class, students and parents were required to sign the following form:

I want to take a full schedule of eight classes. I am aware of the extra workload I am taking on and the need to stay motivated and organized. I am aware of the three week time limit deadline for adding and dropping classes without penalty at the start of the semester.

Student Signature: _____ Date: _____

I am aware and fully support my student taking eight credited classes. I understand that taking a full schedule is challenging and requires excellent time management and motivation. I understand that there is an expectation of homework in each class and that it is my student’s responsibility to stay current on all assignments.

Parent Signature: _____ Date: _____

At other schools, the messaging was more subtle. The following is just one example excerpted from a formal communication from the high school principal to students and parents regarding the ability to add an eighth class:

We know that most students will probably not elect to take eight classes at [high school] due to the overall rigor, weight of homework and stress at [high school]. We do believe that most colleges want to see that students have challenged themselves and are in a full day of school. Six classes should really be the minimum load. Having said that, many of our Full IB students will take five IB classes plus a new CAS period, language specific study hall, leadership class or will serve as a Teacher Assistant (TA) and that is just fine.

Because the District has provided students the opportunity to take 8 classes, and 8 classes provides 990 hours of instruction, the District satisfies the requirement of OAR 581-022-1620. However, the District is not meeting the spirit of the rule when it encourages students to take fewer than 8 classes. Efforts to stop students from taking a full course load where that effort is not based on an assessment of the needs of an individual student should cease.

b. 130 Hours Per Credit – OAR 581-022-1131

OAR 581-022-1133 requires districts to offer students the option of earning each credit required for the diploma or modified diploma by successfully completing classroom or equivalent work in a course of at least 130 clock hours.

The District admits that its courses do not meet the 130 clock hours requirement of OAR 581-022-1131. The District claims that it does not need to meet the 130 clock hours requirement because it has satisfied the exception in OAR 581-022-1131(4), which provides:

(4) A school district or charter school may grant credit to a student if the student demonstrates defined levels of proficiency or mastery of recognized standards (e.g., state academic content standards and essential skills, industry-based or other national or international standards) by any one or more of the following options:

(a) Successfully completes classroom or equivalent work designed to measure proficiency or mastery of identified standards (knowledge and skills) in class or out of class, where hours of instruction may vary;

I have determined that the District's interpretation and application of section (4) are incorrect for the following reasons.

First, the option of granting credit based on the successful completion of classroom or equivalent work in section OAR 581-022-1131(4)(a) does not absolve the District of its responsibility to provide the option of obtaining credit through a course of at least 130 clock hours. OAR 581-022-1131(2) states that the school "shall offer" students the option of earning credit by successfully completing

classroom or equivalent work in a course of at least 130 clock hours, and OAR 581-022-1131(3) states that options in OAR 581-022-1131(4) may be offered "in addition to" the option of earning credit through a course of 130 clock hours:

OAR 581-022-1131

* * * *

(2) Each school district or public charter school **shall offer** students the option for earning each credit required for the diploma or a modified diploma by successfully completing classroom or equivalent work (e.g., supervised independent study, career-related learning experiences, project based learning) in a course of at least 130 clock hours in accordance with OAR 581-022-0102. The classroom or equivalent work must meet Common Curriculum Goals and academic content standards required by OAR 581-022-1210.

(3) **In addition to the option of earning credit required by section (2) of this rule**, a school district or charter school may offer one or more of the options described in section (4) of this rule for earning credits. The school district or charter school must identify by district or school policy which options are available to students for earning credits.

* * * *

Even if the District chooses to offer credit pursuant to OAR 581-022-1131(4), the District must still offer courses of 130 clock hours as required by section OAR 581-022-1131(2).

Second, close examination of each course syllabi, the stated objectives, and the measure of proficiency would be a prerequisite for approval of any offering of credit based on OAR 581-022-1131(4). The District failed to provide any evidence that it has a policy in place for such examination or has in fact undertaken such examination. In this case, the exception offered by OAR 581-022-1131(4) is being used by the District in a "blanket" manner as rationale for not meeting the mandated minimum for instructional hours. This application of OAR 581-022-1131(4) does not meet the explicit requirements or the intent of the rule and is therefore disallowed as a general practice to shorten the number of seat hours necessary to obtain credits.

The District does not meet the minimum standards for instructional time per credit as required by OAR 581-022-1131. This Order does not invalidate credits previously granted by the District or credits to be granted by the District for the 2013-14 school year. For the 2014-15 school year and going forward, credits awarded by the District must meet the requirements of OAR 581-022-1131 or they will be invalid.

II. Complaint Process – OAR 581-022-1941

OAR 581-022-1941 requires districts to “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.” The rule lays out specific elements that must be included in the complaint process. The process must result in a final decision by the district.

A complainant may appeal to the Deputy Superintendent of Public Instruction only after the district process has been exhausted and the district has issued a final decision. OAR 581-022-1940(1).

In filing their appeal, Appellants stated that they attempted to comply with the complaint procedure set forth on the District’s website. In the Department’s initial investigation, the Department reviewed the complaint process cited by Appellants to determine whether Appellants had complied with and exhausted the District’s process before appealing to the state. The Department determined that the complaint process set forth on the District’s website was impossible for Appellants to satisfy and could not result in a final decision. Specifically, the complaint process instructed complainants to use the district complaint process webpage or submit the complaint in writing to the District’s ombudsman. Neither was a viable option, however, because the link to the complaint process webpage was inactive and the District had previously eliminated the ombudsman position.

Because there was no way for the Appellants to comply with the complaint process and obtain a final decision, the Department requested additional information from Appellants regarding their efforts to resolve their complaint at the district level. The Department determined that the Appellants had made sufficient efforts at the district level and should not be barred from filing this appeal. The Department also determined that the appeal should be construed to include a possible failure of the District to provide an accessible complaint process in compliance with OAR 581-022-1941.

In its response, the District explained that the complaint process web page cited by Appellants is no longer active and has now been removed. The Department has confirmed the complaint process is no longer available online.

The District also provided a copy of its written complaint process. That complaint process is made available online as part of the School Board’s policies and in hard copy through the Guide to Policy, Rules and Procedures on Student Responsibilities, Rights and Discipline handbook, which is distributed annually to families.

After reviewing both the online and handbook versions of the District’s complaint procedure, I have determined that while the District does have a formal complaint process, the complaint process does not contain the elements required by OAR 581-022-1941 (5) for complaints involving issues that may be appealed to the State. Specifically, the rule requires:

- (5) Where the complaint involves an issue that may be appealed to the State under OAR 581-022-1940, the complaint procedure must include the following:
 - (a) A point at which the decision is final;

- (b) A provision for the complainant [sic] receive written notice that the district's decision may be appealed to the State Superintendent of Public Instruction under OAR 581-022-1940; and
- (c) A written decision that clearly establishes the legal basis for the decision, findings of fact, and conclusions of law.

OAR 581-022-1940(5).

Additionally, the District's complaint process is difficult to follow based on its complexity and may present a barrier to access by possible complainants. The District stated in its response that it is in the process of examining the complaint policy in order to make the process more accessible. Additionally, the Superintendent will propose staff support for parents around concerns and complaints as part of her amended budget in 2014.

FINDINGS

1. The District does not meet the minimum standards for instructional time per credit as required by OAR 582-022-1131. The District is therefore deemed "deficient" under ORS 327.103(1).
2. The District does not meet the minimum standards for a complaint process as required by OAR 581-022-1941. The District is therefore deemed "deficient" under ORS 327.103(1).

NECESSARY CORRECTIVE ACTION

The District must submit a Division 22 Assurance Form for the 2013-14 school year by April 15, 2014. The District must report that it is out of compliance with OARs 582-022-1131 and 581-022-1941.

The District must submit to the Department a Corrective Action Plan that has been approved by the District's school board. The Corrective Action Plan must specifically outline the District's plan to comply with the minimum instructional hours per credit as required by OAR 581-022-1131 and revise the complaint process to comply with OAR 581-022-1941. The Department will contact the District and offer technical assistance. The Corrective Action Plan must be submitted to the Department for approval no later than June 11, 2014.

The District must also submit to a follow up audit process to ensure appropriate implementation of the Corrective Action Plan. The audit process must be developed and agreed upon by the focus group consisting of representatives from the District and the Appellant as outlined in the January 15, 2014, memo from the District to the Appellant.³ The audit process must be submitted to the Department for approval no later than August 15, 2014.

³ See Appendix A.

It is further suggested that the District revise its complaint process to create an abbreviated, user-friendly, and transparent system under which the public can meaningfully express their concerns and resolve them at the most appropriate level of authority.

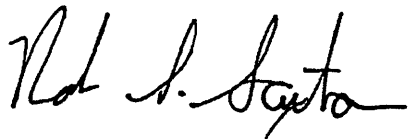
CONCLUSION

A Corrective Action Plan, approved by the District's school board, is due to the Department by June 11, 2014. Upon approval of the plan, the District will be categorized as a "conditionally standard district."

Upon successful implementation of the approved Corrective Action Plan, the District will be re-established as a "standard district." In the event the plan is not fully implemented by the beginning of the 2014-15 school year, I may withhold State School Funds.

If the District fails to submit a Corrective Action Plan as required by this Order, then the District will be categorized as a "nonstandard district" and by law I must withhold state school funds.

Respectfully,

A handwritten signature in black ink, appearing to read "Rob S. Saxton". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Rob S. Saxton
Deputy Superintendent of Public Instruction

Cc: John Richardson, Monique McClean, Mike Rosen, Darcy Mundorff, Laura Smoyer, Amy Kohnstamm, Tracy Barton, Mary Welch, Brian Rupp, Linda Venti, Valeurie Friedman