

**BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION**

**FOR THE STATE OF OREGON**

In the Matter of the Standards Appeal                     )  
against Portland Public Schools                            )             FINAL ORDER  
Case No. 581-022-1940-97

***Introduction***

On June 7, 2004, the State Superintendent of Public Instruction issued an order in response to a complaint originally filed in 1997 alleging that Portland Public Schools (the "district" or "PPS") had failed to comply with statutes and administrative rules governing the provision of educational services to students who are academically talented or intellectually gifted ("TAG"). The Superintendent's order concluded that the district had complied with those legal standards. The complainants sought judicial review of the Superintendent's order in the Multnomah County Circuit Court. On October 7, 2005, the circuit court issued a General Judgment that set aside the Superintendent's order and remanded the case to the Superintendent with instructions to issue a new order. The Superintendent filed notice of appeal with the Oregon Court of Appeals, and the Court issued a temporary stay of the judgment pending appeal. On June 4, 2007, the Court of Appeals issued an order lifting the temporary stay as to parts of the judgment, including the requirement that the Superintendent conduct an independent investigation and issue a new order concerning the District's TAG program.

In April and May of 2007, the Oregon Department of Education (the "Department" or "ODE") conducted an independent investigation and compliance review to determine whether the district's program currently is in compliance with TAG statutes and administrative rules. Based on the information gathered in that investigation and review, the Superintendent issued a draft order on November 16, 2007 and invited comments and exceptions. The Department received comments from both PPS and the complainants. Having reviewed the comments and conducted further review, the Superintendent now issues the findings, conclusions and final order set forth below.

**Comments and Exceptions to the Draft Order**

In response to comment from the district and the complainants, the Department made changes in the final order as discussed below.

The district objected that the draft order contained findings and comment that did not directly relate to the requirements of statutes and rules. The Department has removed a "Recommendations" section from the final order that contained non-binding suggestions for changes in the district's TAG program. Instead the Department will be issuing its recommendations to the district with a separate letter. The Department also deleted or modified some findings of fact that are not directly related to the district's legal obligations.

The Department modified its findings and conclusions concerning the district's identification policies to make it clear that most of the district's identification policies and procedures meet standards, except for certain policies applicable to students who are English language learners.

The district provided the Department with copies of additional materials that it sends to parents as evidence that the district is in compliance with policies concerning the rights of parents of TAG students. The Department considered these materials which it had not reviewed at the time of the investigation. The final order acknowledges that these new materials bring the district into partial compliance with its obligations to inform parents of their rights concerning TAG. In other respects, the district is not fully meeting the requirements of the rules, and additional corrective action is required.

The district commented that the Department's surveys were not based on a truly representative sample of parents and students. The district also objected that some of the department's conclusions are based on teacher, student and parent responses that are non-evaluative and non-quantifiable. The Department's conclusions are based on information from a range of sources and not on a single factor or measure. The Department conducted surveys, reviewed district records, interviewed teachers, students and parents, observed classes and lesson plans and reviewed the district's own findings concerning the TAG instructional program at Sabin Elementary School. In developing its methodology for the investigation, the Department consulted with and received input from the district and from the complainants. Based on the totality of this information, the Department concludes that its findings are based on reliable evidence that is derived from a representative cross-section of the district.

The complainants submitted data that seemed to show TAG students at certain middle schools were making larger gains than TAG students in other middle schools. The complainants asserted that these disparities were due to a lack of specialized TAG programs at certain schools. TAG statutes and administrative rules do not prescribe a specific method of providing differentiated instruction. Districts are required to meet minimum standards but are not required to use specific programs of instruction that may or may not constitute best practices for providing TAG instruction.

The complainants also urged the Department to impose more stringent requirements in the corrective action plan. Although the district has not yet submitted its plan, the final order contains adequate directives to ensure that the district will develop a plan to bring itself into compliance with TAG statutes and rules.

### **Investigation Methodology**

The Department's investigation and compliance review focused on the following issues:

1. Whether the district is identifying TAG students at all grade levels in both academic and intellectual areas in compliance with OAR 581-022-1310.

2. Whether the district is making efforts to identify students from ethnic minorities, students with disabilities, and students who are culturally different or economically disadvantaged in compliance with OAR 581-022-1310(1).
3. Whether the District is complying with OAR 581-022-1320 by: (a) at the time of identification, informing parents of the programs and services available; (b) providing an opportunity for parents to provide input to and discuss with the district the programs and services received by their children; (c) notifying parents of their right to request the withdrawal of their children from TAG services; and (d) informing parents of their right to file a complaint under OAR 581-022-1940.
4. Whether the district is assessing each TAG student's advanced level of learning and accelerated rate of learning and providing instruction that addresses the rate and level identified in the assessments in compliance with OAR 581-022-1330.

In carrying out its investigation, the Department reviewed data and records submitted by the district, conducted surveys, held meetings with district staff and parents, observed classes and conducted interviews with parents, students, teachers and administrators. Andrea Morgan, Education Specialist and ODE TAG Specialist, led the review with the assistance of Education Specialist Roberta Hutton. Colleen Mileham, Director, Office of Educational Improvement and Innovation, and Russ Sweet, Education Specialist, also assisted with the data collection at a series of parent meetings held in the district.

#### Surveyed Schools and Selection Process

In developing its investigation process, the Department invited suggestions from the district, the complainants and other interested parties. Department staff developed a list of representative schools for on-site visits, classroom observations, and teacher surveys. A high school and middle school was selected from each of the 9 "clusters."<sup>1</sup> The list also included schools with high percentages and low percentages of TAG-identified students and a number of schools with special TAG programs. In addition, the Department selected schools whose student bodies—considered together—reflected the range of socio-economic and ethnic diversity evident in the district's student population. The final list identified 33 schools for surveys, visits and data collection. There are 97 schools in the district.

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<sup>1</sup> The District has divided its schools into geographic clusters. Each cluster contains a high school, at least one middle school and elementary schools.

Data Collected:

- Review of all PPS TAG data submitted to ODE in the Spring Membership data collection for the 2005-06 and the 2006-07 school years
- 87 school administrator surveys
- 110 Written parent surveys
- 112 On-line parent surveys
- 481 Written teacher surveys
- 231 Written student surveys (elementary and middle school students who attended the parent meetings, and high school students)
- 10 Parent-discussion meetings at the following schools:
  - April 16, Beaumont Middle School (Grant Cluster)
  - April 18, Cleveland High School (Cleveland Cluster)
  - April 25, Wilson High School (Wilson Cluster)
  - May 2, Lincoln High School (Lincoln Cluster)
  - May 3, George Middle School (Roosevelt Cluster)
  - May 9, Marshall High School (Marshall Cluster)
  - May 10, Tubman Middle School (Jefferson Cluster)
  - May 15, Gregory Heights Middle School (Madison Cluster)
  - May 16, Mt. Tabor Middle School (Franklin Cluster)
  - May 17, Blanchard Center
- 33 School and classroom visits at the following schools:
  - April 16 da Vinci and Beaumont Middle Schools
  - April 17, Duniway Elementary and Buckman Elementary
  - April 18, Cleveland High School and Hosford Middle School
  - April 23, Rieke
  - April 25, Wilson High School
  - April 30, Sabin Elementary School, ACCESS, and Irvington, (Cleveland teachers)
  - May 1, Chapman Elementary and West/East Sylvan MS
  - May 2, Metropolitan Learning Center (K-12) and Lincoln High School
  - May 3, Rosa Parks Elementary, Sitton Elementary, and George Middle School
  - May 7: Alameda and Lent and Clark Elementary Schools
  - May 8, King Elementary and Ockley Green Elementary
  - May 9, Marshall complex schools and Lincoln High School (staff survey),
  - May 10, Beach Elementary and Tubman Middle School
  - May 14, Richmond
  - May 15, Rigler Elementary and Gregory Heights Middle School
  - May 16, Glencoe Elementary and Mt. Tabor Middle School
- District leadership meeting, May 22
- District TAG staff meeting, May 22
- Records and data developed from a recent Department review of the ACCESS program at Sabin Elementary School.

During school visits, ODE staff observed classroom instruction and reviewed student TAG files and teacher lesson plans. Interviews were conducted with 107 teachers and administrators and 125 students.

ODE staff has analyzed the data generated by the investigation and review and published a "TAG Compliance Review Survey Analysis Results." A copy of this document is enclosed with this Order as Appendix A.

ODE staff also prepared a table and statistical analysis titled "TAG Data/Poverty and Ethnicity." A copy of this document is enclosed with this Order as Appendix B.

## FINDINGS OF FACT

### Overview of Portland Public Schools' TAG Program

1. Portland Public School publishes a TAG Guide that describes the program's operation, policies and procedures and contains information about the school calendar, bulletin boards, parent communications and staff obligations.

2. The TAG Guide identifies 10 functions of the TAG Program:

- State compliance;
- Administrator and teacher support of the gifted mandate;
- Student and parent support of the gifted mandate;
- Nomination and identification of gifted students;
- Early entry into kindergarten; early entry into first grade;
- Grade acceleration;
- Credit by examination and world language testing;
- High school credit pre-ninth grade;
- Advanced Placement testing and support; and
- Support to the ACCESS alternative program.

3. According to the PPS TAG Guide, the district's TAG support staff is organized by clusters and schools.<sup>2</sup> Amy Welch serves as the Administrator of the PPS TAG Program. She also provides high school support and coordinates the early entry into Kindergarten and first grade activities. The TAG program also has four "Teachers on Special Assignment" (TOSAs). TAG staff members and responsibilities are identified below:

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<sup>2</sup> The findings in this order reflect information received in the spring of 2007. The organizational makeup of the TAG staff is changing for the 2007-08 school year.

| <b>TAG Staff</b> | <b>Grade level</b>                 | <b>Responsibilities</b>  |
|------------------|------------------------------------|--|
| Amy Welch        | PPS District Program Administrator | District program over-sight<br>High School Support<br>Early entry into Kindergarten<br>Early Entry into First Grade<br>Grade Acceleration<br>High Schools: Benson HS, Lincoln HS, MLC (9-12), Wilson   |
| Roxanne Coleman  | Elementary School TOSA             | Testing coordinator<br>Elementary literacy<br>TAG Advisory Council<br>Cleveland Cluster<br>Franklin Cluster<br>Marshall Cluster<br>Wilson Cluster  |
| Christine Reeder | Elementary School TOSA             | Student testing<br>Spelldown Competition<br>Grant Cluster<br>Cleveland Cluster<br>Lincoln Cluster<br>Madison Cluster<br>Marshall Cluster<br>Roosevelt Cluster<br>Wilson Cluster  |
| Pam Sesar        | Elementary and Middle School TOSA  | PPS TAG web page<br>National Spelling Bee<br>MS Language Arts<br>MS Science/Math<br>Jefferson Cluster  |
| Kara Mortimer    | High School TOSA                   | Academic All-Stars<br>Advanced Placement<br>HS Community Service<br>HS English/Social Studies<br>HS Math/Science<br>OMSI Days<br>Secondary Principals' Meetings<br>Sabin & ACCESS<br>High Schools: Cleveland, Franklin, Grant, Jefferson, Madison, Marshall, Roosevelt |

4. The TOSAs work with the building TAG coordinators/principals and teachers. TOSAs assist in budget planning, identification procedures, alternative program options, parent meetings, staff development, and instructional planning for individual students. TOSAs also conduct the TAG identification testing for the district schools. The elementary level TOSAs dedicate most of their time to identification activities.

5. A cadre of eight retired teachers also conducts some of the identification testing in order to free the TAG program staff to work with teachers and students within schools.

6. Each school building has an identified TAG Coordinator. The TAG Coordinator may be the building administrator or a teacher who has the following assigned duties and activities as listed in the TAG Guide:

- Act as a liaison to the District TAG Office;
- Oversee the identification process;
- Notify parents, teachers, and students about upcoming activities for highly able students (national academic testing, scholarships, camps, etc.);
- Arrange staff development and parent meetings; and
- Act as an on-site resource for gifted education in the school.
- Specific activities include:
  - Collect teacher-initialed class lists to verify that teachers know who their TAG students are in each class;
  - Remind teachers to review the student identification and program information;
  - Organize a TAG leadership team that consists of at least 3 people, including the principal and TAG Coordinator for identification and program decisions;
  - Create, display, and maintain the building TAG bulletin board;
  - Schedule a TAG parent meeting (may be on “Back to School Night”);
  - Review program expectations with staff;
  - Place announcements in school newsletter about TAG nominations;
  - Establish a day for identification testing at the school;
  - Collect work samples from classroom teachers for any nominated students;
  - Notify parents of testing and obtain any required permissions;
  - Maintain files for current and newly-identified TAG students;
  - Oversee building TAG budget; and
  - Order school’s TAG materials.

7. The PPS TAG Guide states: “[M]ost middle and high schools will choose to not have a coordinator as there are limited funds available to each school. In which case, a member of the TAG Office [a TOSA or Ms. Welch] will work with your principal to ensure compliance.” (p. 187)

8. TAG services include differentiated instruction in the regular classroom, ability grouping for specific instruction, pull-out programs, grade acceleration, advanced courses or coursework, and enrichment activities and field trips (both during the school day and after school and on weekends). The type and content of these services vary from building to building. Although school cluster administrators provide oversight for

individual building programs, individual school building principals and staff have substantial decision-making authority over how services are specifically delivered to their students.

9. Parents and students are very aware of the “best” programs. Three of the 16 Portland schools serving grades 9-12 have the majority of the TAG students enrolled. Students unable to transfer to these schools or use the lottery system for admission have less access to specialized TAG programs.

### **Identification of TAG Students**

10. Building TAG coordinators and the TOSAs conduct the district’s identification process. The 2006-07 schedule dates and deadlines are the following:

- Parent nominations submitted to schools by November 30, 2006.
- TAG Coordinators submit parent and teacher nominations to the district TAG office by December 7, 2006.
- TAG testing is conducted according to a schedule from cluster to cluster from December 4 to April 30, 2007.
- The district scores the tests and sends the results to the schools within one week of the date of testing.
- Schools have 3 weeks after receiving test results from the district central office to review the test scores and other relevant information and make their recommendations to the TAG Office about whether a student is eligible or ineligible for TAG services.
- The district notifies families approximately two days after receiving recommendations from the schools.
- The process from testing to notification of eligibility takes one month in most cases.
- Instructional plans for each student are developed within 30 days of determining that a student is eligible.
- The district determines eligibility for students in most of the clusters before the Spring Break.
- For those students who are identified after Spring Break, the instructional plans are written in the fall of the next school year.

11. The TAG Guide lists the following assessments for use in TAG identification:

#### Intellectual Ability:

##### Cognitive Abilities Test (CogAT)

- RAVEN’s Standard Progressive Matrices, grades K-12
- Naglieri Nonverbal Ability Test (NNAT), age 6 years 3 months-16.5 years.



## Academic Achievement

- Iowa Test of Basic Skills (ITBS), grades K-12
- Woodcock-Johnson III (WJ), grades K-12
- Oregon State Assessment (paper/pencil) or TESA (Now named the Oregon Assessment of Knowledge and Skills or "OAKS")

No single score can be used for identification; however scores may be used as indicators of academic achievement.

In addition to the assessments listed in the TAG Guide, the district has informed the Department that it also considers the California Achievement Test, the Stanford-Binet, and the Wechsler Preschool and Primary Scale of Intelligence (WPPSI) for purposes of identification.

The instruments listed in the TAG Guide are appropriate nationally standardized tests. The District does not rely on a single test, measure or score to determine TAG eligibility.

A Leadership Team at each school determines eligibility. To qualify, a student must score at the 97<sup>th</sup> percentile or above on a nationally standardized test and must meet one other criterion on the Frasier Talent Assessment Profile which is an instrument that lists factors to assess a child's learning ability. In considering these criteria, the team reviews nomination forms by the teacher and parent, school history, social/emotional variables and work samples of the student in mathematics, reading or cognitive ability.

12. The district has policies and procedures in place for identifying students who demonstrate the potential to perform at the 97<sup>th</sup> percentile. Under these policies, a student will be considered as having potential to perform at the 97<sup>th</sup> percentile if he or she scores at the 96<sup>th</sup> percentile on a national standardized test and meets one of the criteria on the Frasier Talent Assessment Profile.

13. The district has a policy that applies to English language learners (ELL). The policy encourages classroom and ELL teachers to look actively for students who demonstrate TAG characteristics. Building TAG coordinators are directed to look through an ELL student's cumulative file for additional social/emotional factors to consider in the identification process. The policy states that "[s]pecial consideration is given to the unique needs of the ELL student." However, despite the "special consideration", ELL students must score at the 96<sup>th</sup> percentile on a standardized test before they can be considered as having the potential for TAG eligibility.

14. The District does not administer any non-English versions of tests to identify students who are academically gifted but not proficient in English.

15. There is a Spanish-language version of the Woodcock-Johnson test. This version is an appropriate instrument for use in identifying students who are academically gifted but not proficient in English.

16. There are Spanish-language and Russian-language versions of the OAKS assessment. These versions of the OAKS are appropriate instruments for use in identifying students who are academically gifted but not proficient in English.

17. The Appenda 3 is a Spanish-language test that is an appropriate instrument for identifying K-12 students who are academically gifted but not proficient in English.

18. There are no standardized tests available in the native language of some ELL students in the district.

19. There are marked disparities along racial, ethnic and socio-economic lines of those students who are identified as TAG eligible. See Table 1 below.

Table 1 PPS District Demographics Compared to PPS TAG Demographics

|                                  | White | Hispanic | Native American | Asian/Pacific Islander | Black | Economically Disadvantaged |
|----------------------------------|-------|----------|-----------------|------------------------|-------|----------------------------|
| PPS District Population          | 55.3% | 14.1%    | 2.0%            | 10.5%                  | 16.0% | 44.9%                      |
| PPS TAG Population               | 75.0% | 4.6%     | 1.3%            | 11.0%                  | 6.8%  | 21.0%                      |
| TAG Population within each group | 21.3% | 5.6%     | 10%             | 16%                    | 6.6%  | 7.2%                       |

20. In general, schools with higher rates of poverty or high minority populations show a lower rate of students who have been identified as TAG-eligible. There is a slightly lower, but not statistically significant, rate of referrals from schools with high minority and/or high poverty populations as compared to other schools in the District. See Table 2 below.

Table 2

| Percentage and totals of Poverty, Ethnicity, TAG Identification, and TAG Referrals |                          |             |                |               |               |                 |                        |                   |                 |       |                              |
|--|--------------------------|-------------|----------------|---------------|---------------|-----------------|------------------------|-------------------|-----------------|-------|------------------------------|
| Cluster  | Total Student Population | Percent TAG | TAG Identified | Referral Rate | TAG Referrals | Percent Poverty | Total Students Poverty | Percent Ethnicity | Total Ethnicity | Total | Percent Available for TAG ID |
| Cleveland  | 4020                     | 21%         | 846            | 5%            | 168           | 26%             | 1046                   | 22%               | 866             | 79%   |                              |
| Franklin   | 2667                     | 12%         | 329            | 3%            | 74            | 34%             | 920                    | 34%               | 895             | 88%   |                              |
| Grant  | 4662                     | 18%         | 823            | 5%            | 174           | 30%             | 1376                   | 37%               | 1733            | 82%   |                              |
| Jefferson  | 2436                     | 7%          | 172            | 6%            | 143           | 81%             | 1961                   | 78%               | 1891            | 93%   |                              |
| Lincoln  | 4941                     | 23%         | 1116           | 6%            | 215           | 11%             | 566                    | 20%               | 969             | 77%   |                              |
| Madison  | 1738                     | 7%          | 120            | 7%            | 116           | 77%             | 1335                   | 67%               | 1156            | 93%   |                              |
| Marshall   | 2045                     | 5%          | 99             | 6%            | 116           | 78%             | 1598                   | 58%               | 1181            | 95%   |                              |
| Roosevelt  | 1591                     | 5%          | 72             | 4%            | 55            | 87%             | 1383                   | 74%               | 1183            | 95%   |                              |
| Wilson   | 4585                     | 19%         | 869            | 4%            | 181           | 21%             | 956                    | 21%               | 975             | 81%   |                              |
| <b>Totals</b>  | <b>28685</b>             |             | <b>4446</b>    |               | <b>1242</b>   |                 | <b>11141</b>           |                   | <b>10849</b>    |       |                              |

A more detailed analysis is contained in the "TAG Identification Data/Poverty and Ethnicity" that is enclosed with this order as Appendix A.

### **Rights of Parents of TAG Students**

21. The district distributes a Parent Handbook to parents of identified TAG students on an annual basis. The 2006-07 Parent Handbook contains a description of the Oregon TAG Education Act (ORS 343.391 to 343.413), defines key terms and concepts related to TAG, identifies TAG staff persons assigned to each school, and describes parents' rights, web resources and a school-year calendar of events. The "Parents' Rights" section of the 2006-07 Handbook states:

- Parents must be given the opportunity to provide input to and discuss the programs and services to be received by their child.
- Parents must be informed of the procedure for a complaint or appeal.
- Parents may request access to records used in the identification process along with an explanation by a knowledgeable district employee.
- Parents may, at any time, request the withdrawal of their child from talented and gifted programs and services.

22. The district also distributes to parents a pamphlet titled: "Appeals and Complaints." This publication informs parents of their right to file a complaint if they believe the district has violated a TAG-related standard under Oregon Administrative Rules and to appeal the district's decision to the State Superintendent if dissatisfied with the district's response. The pamphlet also describes the district's appeal procedure if a parent disputes the decision of the school's TAG Leadership Team that a student is not TAG eligible.