

November 28, 2006

Susan Castillo  
State Superintendent of Public Instruction  
Oregon Department of Education  
255 Capitol Street NE  
Salem, OR 97310-0203

Re: **Appeal of Complaint Regarding Portland Public School District's Failure to Provide Appropriate and Mandatory Rate and Level Instruction to Talented and Gifted (TAG) Identified Students at the ACCESS Program at the Sabin K-8 School and Failure to Meet Other Instructional Requirements of State Law**

Dear Ms. Castillo:

Pursuant to OAR 581-022-1940(2), by this letter the undersigned parents hereby appeal the failure of the Portland Public School District to formally respond to above-referenced complaint, and to remedy the violations described therein, that was lodged with the district on October 11, 2006. A copy of this complaint, entitled "Complaint Regarding Portland Public School District's Failure to Provide Appropriate and Mandatory Rate and Level Instruction to Talented and Gifted (TAG) Identified Students at the ACCESS Program at the Sabin K-8 School and Failure to Meet Other Instructional Requirements of State Law," is attached hereto and is incorporated by reference in its entirety for the purpose of this appeal.

The persons bringing this appeal and the districts in which they reside are as follows:

Nina Bell  
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Portland, OR 97212  
Portland Public School District

Doris J. Brook  
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Portland Public School District

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Portland Public School District

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Portland, OR 97219  
Portland Public School District

The name of the school district alleged to have violated standards is the Portland Public School District, 501 North Dixon Street, Portland, Oregon, 97227-1807.

The complaint, to which the Portland Public School District has not yet provided a formal written response, alleges the following violations of standards:

**1. ACCESS Does Not Meet Legal Requirements for Hours of Instruction**

Oregon law requires students to receive a minimum number of hours of instruction based on their grade level. OAR 581-022-1620. Grades 4-8 are required to have a minimum of 900 instructional hours. OAR 581-022-1620(1)(b). In contrast, the ACCESS Program provides a maximum of 815 hours of instruction to grades 4-8. (Please see page 5 and Attachment B of the attached complaint for more detailed information regarding this allegation.)

**2. ACCESS Does Not Meet Legal Requirements for Instructional Content in Health**

Oregon law establishes mandatory instruction requirements, including that school districts provide a planned instruction to the state common curriculum goals. OAR 581-022-1210. In addition, state law requires that in both the approval and the annual evaluation of alternative education programs, districts provide that “[a]ll students receive adequate instruction in state common curriculum goals and academic content standards to meet state benchmarks and performance standards.” OAR 581-022-1350. Oregon law requires instruction in the subject of Health. OAR 581-022-0413(2)(b)(A). Within the subject of Health, drug and alcohol prevention instruction must be an integral part of a district’s comprehensive health instruction. OAR 581-022-0413(1)(a); OAR 581-022-1210(3)(a)&(b). A school district is required to provide instruction in infectious diseases, including AIDS, HIV, and Hepatitis B and C “throughout its elementary, middle, and senior grade levels.” OAR 581-022-1440(1). Specifically, annual instruction is required for students in grades 6-12 on the above-named infectious diseases. *Id.*

The Oregon Department of Education (ODE) adopted Health Education standards in February 2005. [http://www.ode.state.or.us/teachlearn/real/newspaper/Newspaper\\_Section.aspx?subjectcd=he](http://www.ode.state.or.us/teachlearn/real/newspaper/Newspaper_Section.aspx?subjectcd=he) (viewed on September 26, 2006). In July 2000, Portland Public Schools adopted standards for Health instruction. <http://cms9.pps.k12.or.us/.docs/pg/4345> (viewed on September 26, 2006). Both the State and PPS standards for the instruction of Health include Grade 5 and Grade 8 benchmarks in a number of content strands.

In all years of its operation, the ACCESS program has failed to provide Health instruction – including but not limited to drug and alcohol prevention, infectious diseases, and sex education – and is therefore out of compliance with Oregon laws and regulations regarding the instruction of students in Health including infectious diseases. Moreover, the failure to provide instruction in Health in Grades 4-8 is *prima facie* evidence both that students in the ACCESS program have

not met the Grade 5 and Grade 8 benchmarks and that the ACCESS Program is not in compliance with PPS standards and benchmarks and therefore with Oregon law. (Please see pages 5-7 of the attached complaint for more detailed information regarding this allegation).

**3. ACCESS Does Not Meet Legal Requirements for Instructional Content in Physical Education**

Oregon law establishes mandatory instruction requirements, including that school districts provide a planned instruction to the state common curriculum goals. OAR 581-022-1210. State law requires that in both the approval and the annual evaluation of alternative education programs, districts provide that “[a]ll students receive adequate instruction in state common curriculum goals and academic content standards to meet state benchmarks and performance standards.” OAR 581-022-1350. Physical Education (PE) is required to be a part of each district’s planned K-12 instructional program. OAR 581-022-1210(1)(b)(B). In September 2001, Oregon adopted PE standards. [Http://www.ode.state.or.us/teachlearn/real/newspaper/Newspaper\\_Section.aspx?subjectcd=pe](http://www.ode.state.or.us/teachlearn/real/newspaper/Newspaper_Section.aspx?subjectcd=pe) (viewed September 25, 2006). The Oregon PE standards contain benchmarks for Grade 5 and Grade 8. *Id.* PPS has adopted a policy that “Physical Educators must teach all standards to all grade levels with different emphasis on each standard.” PPS, *Content Standards and Benchmarks for Physical Education: Learn It, Do It, Embrace It*, at iv (emphasis added). The Sabin Administration’s failure to provide instruction in PE to ACCESS students in Grades 4-8 in the school year 2005-06 and the provision of not more than 35 minutes per week in the current school year is *prima facie* evidence both that students in the ACCESS program have not met the Grade 5 and Grade 8 benchmarks for PE and that the ACCESS Program is not in compliance with PPS standards and benchmarks and therefore with Oregon law. (Please see page 7 of the attached complaint for more detailed information regarding this allegation).

**4. ACCESS Does Not Meet Legal Requirements for Rate and Level Instruction of TAG-Identified Students**

Oregon law requires that TAG-identified students be provided instruction that “addresse[s] their assessed levels of learning and accelerated rates of learning.” OAR 581-022-1330; ORS 343.409. The PPS School Board has adopted a policy to implement this requirement. Board Policy 6.10.015. ACCESS also implements the Board’s Educational Options Policy which finds that “[a] central component of the mission of Portland Public Schools is to ‘*support all students in achieving their very highest educational and personal potential.*’” Board Policy 1.10.022-P (emphasis in original).

The ACCESS Program currently serves 108 students in grades 1- 8. Students in grades 4-8 are

placed in four multi-grade classrooms. Due to the nearly static size of ACCESS over its four years, there are two pairs of Social Studies classes that are taught with the same curriculum at the same level, two pairs of English classes that are taught with the same curriculum at the same level, and two Science classes that are taught with the same curriculum at the same level. The result is that students in a range of three to four grades who have tested in the 99<sup>th</sup> percentile in achievement and/or aptitude in one or more areas are all receiving the same level and rate of instruction. It is not possible that the levels being taught in these classrooms are sufficient to meet the rate and level needs of all these students who, in addition to ranging over three or four grades, individually have significantly different levels and rates of learning, as well as a diverse range of learning needs, styles and challenges. (Please see pages 7-8 and 10-25 of the attached complaint for more detailed information regarding this allegation).

**5. The District Has Failed to Conduct a Mandatory Review of ACCESS**

The District has designated ACCESS as an “alternative education program.” *See, e.g.*, <http://159.191.14.143/docs/pg/10046> (viewed on September 30, 2006). Oregon law requires a District that is operating an alternative education program to evaluate the program at least annually and to provide the public with a copy of the written evaluation. ORS 336.655(1); OAR 581-022-1350(2). This annual evaluation must, among other things, assess compliance with the requirement that “[a]ll students receive adequate instruction in state common curriculum goals and academic content standards to meet state benchmarks and performance standards.” OAR 581-022-1350(2)(a). The PPS School Board has adopted a policy that mirrors this state requirement. Board Policy 6.10.002-P(V)(2). There is no evidence that in the three years PPS has operated ACCESS it has ever prepared an annual evaluation and report in accordance with these requirements or provided it to the public. Therefore, PPS is not in compliance with its own policies or state law. (Please see pages 8-9 of the attached complaint for more detailed information regarding this allegation).

**6. The District Has Not Complied with Alternative Education Notification Requirements**

Oregon law requires school districts that operate alternative education programs to comply with rules regarding notification to parents and students about the availability of the programs. ORS 336.645. These rules require districts to adopt policies and procedures for notification of students and their parents or guardians of the availability of existing alternative education programs. OAR 581-022-1350(5)(b). The PPS School Board has adopted a policy consistent with these state requirements. Board Policy 6.10.022-P(V)(1). PPS and the Sabin Administration have failed to make even the most rudimentary information about ACCESS readily available to the public. (Please see pages 9 and 21 and Attachment C of the attached

complaint for more detailed information regarding this allegation).

**7. The 2006-07 Sabin School Improvement Plan Omits ACCESS**

Sabin K-8 School is required to submit a School Improvement Plan (SIP) to the ODE. ODE, Office of Educational Improvement and Innovation, *Oregon Title I-A Handbook: No Child Left Behind Act of 2001, Public Law 107-110 January 8, 2002* (February 2005). A SIP team helps prepare the document; school-wide Title I programs, as exist at Sabin, are required to include parents on the team. *Id.* The entire school community is entitled to participate in the review and revision of a school's SIP. *Id.*, "District Title I Program Review of Schoolwide Program" at 14. Sabin School submitted its most recent SIP this summer. Sabin Elementary, *Getting Results! Academic Year: 2006-2007* (June 15, 2006). In this SIP, there is almost no reference to the ACCESS Program, despite the fact that ACCESS makes up approximately one quarter of the school's population. Specifically, there are no data for ACCESS students and there are no plans set out for the program's improvement. There was one parent on the SIP team (who is also employed at Sabin) but no ACCESS parents were involved. This SIP also appears to include false information. For example, in the SIP the Sabin Principal has certified that the school meets the minimum hours of instruction, that an annual meeting is held for parents to explain parents' rights to be involved, and that a copy of a "School-Parent Compact and parental involvement policies" have been distributed to parents. Sabin SIP at 8. ACCESS parents have not received this information, been invited to such a meeting, or allowed to participate in the review and revision of the Sabin SIP. (Please see pages 9-10 of the attached complaint for more detailed information regarding this allegation).

**8. The District Does Not Provide Other Avenues for ACCESS Students to Have Their Rate and Level Needs Met**

Finally, we note that students have attended and continue to attend ACCESS precisely because Portland Public Schools fails to provide TAG-identified students with instruction that "addresse[s] their assessed levels of learning and accelerated rates of learning" as required by Oregon law. OAR 581-022-1330; ORS 343.409. That the District provides no alternative method of meeting ACCESS students' rate and level requirements through other schools or programs is a violation of this Oregon standard. See *DeLacy v. Oregon Department of Education*, Multnomah County Circuit Court Case No. 0408-08092; Oregon Appellate Case No. A130238.

Susan Castillo, State Superintendent of Public Instruction  
November 27, 2006  
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We look forward to your earliest possible acceptance of this appeal.

Sincerely,

Nina Bell

cc (without attachments):

Jollee Patterson, Counsel PPS  
Carole Smith, Chief of Staff to Vicki Phillips, Superintendent PPS  
Harriet Adair, Director of Student Achievement, Grant Cluster  
Amy Welch, Director, TAG Office, PPS

Attachment: Complaint Regarding Portland Public School District's Failure to Provide  
Appropriate and Mandatory Rate and Level Instruction to Talented and Gifted  
(TAG) Identified Students at the ACCESS Program at the Sabin K-8 School and  
Failure to Meet Other Instructional Requirements of State Law, October 11, 2006.