October 18, 2018

**BY EMAIL AND US MAIL**

PARENT

ADDRESS

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Superintendent Kelly Raymond

Ashland School District

885 Siskiyou Blvd.

Ashland, OR 97520

Kelly.Raymond@ashland.k12.or.us

Dear PARENT and Superintendent Raymond,

This letter is the final order on the April 2, 2018, appeal filed by PARENT (Parent) alleging that Ashland School District (District) violated the following administrative rules:

* OAR 581-022-2500 (4), under which instruction provided to talented and gifted students (hereinafter “TAG students”) must be designed to accommodate TAG students’ assessed levels of learning and accelerated rates of learning; and

The objective of this order is to determine whether the District is in compliance with the administrative rules and, if necessary, specify corrective action to be completed by the District.

## I. Division 22 Standards and Appeals

At the direction of the Legislative Assembly of the State of Oregon, the State Board of Education has established educational standards that every school district must implement.[[1]](#footnote-1) Those standards, known as Division 22 Standards, are set forth in OAR Chapter 581, Division 22.

School districts must comply with Division 22 Standards. If a parent or guardian of a student or a person who resides in the school district believes the district is not in compliance with a Division 22 Standard, the person may file a complaint with the school district. Following a final decision by the school district, the person may appeal the Division 22 complaint to the Department using the process set forth in OAR 581-002-0040.

If the Department conducts an investigation and determines that a school district is out of compliance with a Division 22 Standard, the school district must submit to the Department a plan for becoming compliant with the standard.[[2]](#footnote-2) The Director of the Oregon Department of Education must approve the plan.

A noncompliant school district is required to be back in compliance before the beginning of the following school year.[[3]](#footnote-3) If the director determines that a deficiency cannot be corrected before the beginning of the next school year, the director may allow an extension of time to demonstrate compliance, not to exceed 12 months.[[4]](#footnote-4) If the district fails to show compliance within the required time, the director may withhold state school funds.[[5]](#footnote-5)

## II. Procedural Background

During the 2016-2017 school year, Parent filed an appeal with the Department alleging that the District violated OAR 581-021-2500 (4)[[6]](#footnote-6) because the District was not providing instruction to TAG students that accommodated each TAG student’s level of learning and accelerated rate of learning (hereinafter referred to as “rate and level of learning”).

On March 17, 2017, the Department issued a final order in which it found that the District was not meeting the minimum standards set forth in OAR 581-021-2500 (4). In the order, the Department directed the District to submit a corrective action plan to the Department no later than June 15, 2017. The order specified that the corrective action plan must include the following: (1) a plan for providing professional development to teachers on how to assess and accommodate each TAG student’s rate and level of learning; (2) a plan for ensuring that teachers have access to information about which students are TAG students; and (3) a plan for implementing consistent opportunities for the parent of a child identified as a TAG student to review the child’s TAG plan, discuss with teachers the plan, and provide input on the plan.

The District timely submitted the corrective action plan.

On November 1, 2017, Parent filed a complaint with the District alleging that his daughter was “not receiving an education at her rate and level [of learning] in English, Global Studies, or Science as required by [OAR 581-022-2500 (4)].”

On November 11, 2017, the principal of the high school attended by Parent’s daughters responded to Parent’s complaint. The principal found that every high school teacher used differentiated instruction to accommodate each TAG student’s rate and level of learning.

On November 30, 2017, Parent filed an appeal with the District. On appeal, Parent argued, in pertinent part, that teachers within the District (1) relied on assessing a TAG student’s rate and level of learning rather than a TAG student’s request for accommodation, and (2) failed to require teachers to develop curricula suitable for TAG students’ rates and levels of learning.[[7]](#footnote-7)

On December 29, 2017, the District responded to Parent’s appeal. With respect to Parent’s first argument, the District found that teachers correctly based differentiated instruction on an assessment of a TAG student’s rate and level of learning as opposed to a TAG student’s request for accommodation. With respect to Parent’s second argument, the District found that teachers within the District provided TAG students with specific activities and opportunities suitable for each TAG student’s rate and level of learning.

On January 2, 2018, Parent filed an appeal with Ashland School Board, arguing that the District had systematically failed to provide TAG students with the differentiated instruction necessary to assess and accommodate each TAG student’s rate and level of learning.[[8]](#footnote-8)

On January 23, 2018, the board responded to Parent’s appeal. The board found that there was a systematic approach to providing TAG students with the differentiated instruction necessary to assess and accommodate each TAG student’s rate and level of learning.

On February 15, 2018, Parent filed an appeal with the Department. The Department accepted the appeal under OAR 581-002-0040 (1), under which “[a] complainant may appeal a final decision by a school district to the Deputy Superintendent (i.e., the Director of the Department) . . . if the complainant alleges . . . [a] violation of standards of the Oregon Administrative Rules, chapter 581, division 022[.]” Under OAR 581-002-0040 (2)(a)(A), a decision is a “final decision by a school district” if “[t]he complainant has exhausted the school district’s complaint process[.]”

On March 17, 2018, the Department sent notice that it had accepted Parent’s appeal to both Parent and the District. In the notice, the Department specified that it was accepting the appeal for purposes of determining whether the District violated:

* OAR 581-022-2500 (4), under which instruction provided to TAG students must be designed to accommodate TAG students’ assessed levels of learning and accelerated rates of learning; and
* OAR 581-022-2500 (1), (2), and (3), which requires a school district to submit to the Oregon Department of Education (Department) a written plan by which the school district will provide instruction to TAG students, and which requires the plan to contain certain elements.

In the notice, the Department also directed the District to respond in writing to the allegations.

On May 4, 2018, the District provided the Department with the response.

On May 11, 2018, the Department interviewed Parent. During the interview, Parent redefined the scope of his appeal. He specified that he wanted to withdraw the part of his appeal alleging that the District violated OAR 581-022-2500 (1), (2), and (3). He also withdrew his appeal insofar as it applied to elementary school. Accordingly, the Department dismissed those parts of Parent’s appeal and proceeded to investigate whether the District had violated OAR 582-022-2500 (4) at the District’s middle school and high school.

Shortly after the Department interviewed Parent, the Department developed a plan to investigate the appeal. The Department’s plan was threefold. First, the Department would survey middle school and high school teachers within the District to assess their knowledge of the requirements of OAR 581-022-2500 (4). Second, the Department would request and review all materials prepared by middle school and high school teachers pertaining to assessing and accommodating TAG students’ rates and levels of learning. Third, the Department would conduct an on-site investigation to further assess middle school and the high school teachers’ knowledge of the requirements of OAR 581-022-2500 (4) and their efficacy in implementing any program or service used to assess and accommodate TAG students’ rates and levels of learning.

During the month of May, 2017, the Department contacted the District and established a timeline for the District to follow in providing the Department with materials prepared by middle school and high school teachers pertaining to assessing and accommodating TAG students’ rates and levels of learning.

During the month of August, 2017, the Department conducted the survey.

Also during the month of August, the Department received the requested materials. In accordance with District policy, each middle school and high school teacher developed a plan for assessing and accommodating TAG students’ rates and levels of learning. The District calls these plans “FLEX plans”. Each teacher had to incorporate their FLEX plan into their teacher’s syllabus. The District provided the Department with a copy of each teacher’s syllabus.

Before September 18, 2018, the Department reviewed each teacher’s FLEX plan.

On September 18, 2018, the Department conducted an on-site investigation of the District’s middle school and high school. The Department observed 8 classes at the middle school and 10 classes at the high school. The Department observed a large sample of classes where the teacher who taught the class demonstrated on the survey or in their FLEX plan a misunderstanding of the requirements of OAR 581-022-2500 (4). The Department observed a small sample of classes where the teacher who taught the class demonstrated competency with respect to the requirements of OAR 581-022-2500 (4).

## III. Legal Standard and Arguments Presented

Under ORS 343.409, “[s]chool districts shall provide educational programs or services to talented and gifted students enrolled in public schools under rules adopted by the State Board of Education.” OAR 581-022-2500 implements ORS 343.409. Under OAR 581-022-2500 (4), the instruction provided to TAG students “[must] be designed to accommodate [the TAG students’] assessed levels of learning and accelerated rate[s] of learning.”

The question at issue in this appeal is whether the District is in violation of OAR 581-022-2500 (4).

Parent argues that the District is in violation of OAR 581-022-2500 (4) for three reasons. First, Parent argues that the District “makes the choice to primarily use heterogeneous classrooms.” In Parent’s view, “[t]here is no consistent instructional differentiation in heterogeneous classrooms” because heterogeneous classrooms do not allow for the differentiated instruction necessary to assess and accommodate TAG students’ rates and levels of learning. Second, Parent argues that teachers within the District only provide the differentiated instruction necessary to accommodate TAG students’ rates and levels of learning upon assessing each TAG student or upon a TAG student or a TAG student’s parent requesting an accommodation. In Parent’s view, the District should provide such differentiated instruction as a “matter of course.” Third, Parent argues that a number of teachers within the District assess TAG students’ rates and levels of learning solely on the basis of grades. In Parent’s view, assessment of a TAG student’s rate and level of learning should not be solely based on grades.

The District did not directly respond to Parent’s arguments. In its May 4thresponse, the District highlighted for the Department the steps that it had taken to accommodate TAG students’ rates and levels of learning. For purposes of this appeal, the most important step that the District took is that adopted a policy that requires teachers at the middle school and high school to develop a plan for assessing TAG students’ rates and levels of learning, modifying curriculum for TAG students, and providing parents with an opportunity to provide input. The District calls these plans “FLEX plans.”

This order addresses each of Parent’s arguments in turn. However, the Department did not limit its investigation to Parent’s arguments. When filing his appeal, Parent alleged that the District systematically failed to provide TAG students with the differentiated instruction necessary to assess and accommodate TAG students’ rates and levels of learning. The Department had the duty to conduct a full investigation of Parent’s allegation.

Before discussing the Department’s findings and conclusions, this order necessarily must addresses Parent’s arguments.

### A. First Argument: The District failed to accommodate TAG students’ rates and levels of learning because the District makes the choice to primarily use heterogeneous classrooms

Parent stipulates that teachers within the District received significant training on the differentiated instruction necessary to assess and accommodate TAG students’ rates and levels of learning. However, Parent contends that this training is “limited to ‘in the moment’ teaching techniques[,] such as asking higher level questions [and] offering class or homework extensions.” In Parent’s view, the District should place TAG students in “homogenous honors or advanced level class[es]” that are specifically designed for TAG students. In the alternative, the District should require teachers to develop separate curriculum for TAG students that is designed to provide them with an “honors” or “advanced” rate and level of learning.

Under the District’s policy, teachers are required to develop a FLEX plan. The FLEX plan must address how the teacher will assess TAG students’ rates and levels of learning, how the teacher will modify curriculum to accommodate TAG students, and how the teacher will provide parents of TAG students with an opportunity to provide input. In modifying curriculum, teachers must provide TAG students with advanced level work or an increase in pace of instruction. For purposes of accommodating TAG students’ levels of learning, teachers must ensure that each TAG student is learning information that the student has not yet learned or developing skills that the student has not yet mastered. For purposes of accommodating TAG students’ rates of learning, teachers must ensure that each TAG student, after being placed at the appropriate level of learning, is learning at a rate that stimulates and challenges the student throughout the school day.

In the final order that the Department issued on March 17, 2017, for Parent’s previous appeal, the Department interpreted OAR 581-022-2500 (4) as follows:

It is the Department’s interpretation of its rule that each individual TAG student will be met with a plan of instruction at her or his rate and level of learning whenever appropriate to that particular student’s TAG identification. In order for this to happen, teachers must first know whether a student is TAG identified. Teachers must then differentiate instruction and continually assess to determine whether rate and level is being met for each TAG identified student.

The question presented on this appeal is whether the differentiated instruction necessary to assess and accommodate TAG students’ rates and levels of learning only can be achieved by placing TAG students in “homogenous honors or advanced level class[es]” or developing separate curriculum for TAG students that is designed to provide them with an “honors” or “advanced” rate and level or learning.

Under ORS 343.409 and OAR 581-022-2500, school districts must provide “programs or services” to TAG students. Thus, the question turns on the meaning of the term “programs” and on the meaning of the term “services” under both law and rule.

The Oregon Supreme Court prescribed the method for discerning legislative intent in *Portland General Electric, Co. v. Bureau of Labor and Industries[[9]](#footnote-9)* and *State v. Gaines*.[[10]](#footnote-10) Under this methodology, a person must analyze the text, context, and legislative history of a law and, if legislative intent remains unclear after analyzing the text, context, and legislative history of the law, employ general maxims of statutory construction to resolve the ambiguity.[[11]](#footnote-11)

To discern the plain meaning of a term in statute, Oregon appellate courts consult *Webster’s Third New International Dictionary*.[[12]](#footnote-12) That dictionary defines “program” to mean “a schedule or system under which action may be taken toward a desired goal” and “service” to mean “an act done for the benefit or at the command of another.” Context and legislative history do not provide any alternate reading of the terms “programs” and “services.” Thus, for purposes of ORS 343.409 and OAR 581-022-2500, a school district must provide a system under which teachers assess and accommodate TAG students’ rates and levels of learning or an act through which teachers assess and accommodate TAG students’ rates and levels of learning.

In consideration of the meanings of these terms, the Department finds that the District is not deficient on grounds that it makes the choice to primarily use heterogeneous classrooms. The District clearly has a policy requiring teachers to provide a service to TAG students. Under the policy, teachers must develop a FLEX plan that addresses how the teacher will assess TAG students’ rates and levels of learning, modify curriculum to accommodate TAG students, and provide parents of TAG students with an opportunity to provide input. The policy requires teachers to perform several “acts” through which teachers assess and accommodate TAG students.

The Department rejects Parent’s argument that the District should place TAG students in “homogenous honors or advanced level class[es].” Parent is essentially arguing that the District should provide a program for TAG students instead of a service. Parent might be right that providing a program for TAG students is more beneficial than providing a service. However, the Department does not have a legal basis for requiring school districts to provide a program instead of a service. ORS 343.409 and OAR 581-022-2500 clearly state that a school district may provide one or the other.

The Department also rejects Parent’s argument that in lieu of placing TAG students in “homogenous honors or advanced level class[es],” the District should require teachers to develop separate curriculum for TAG students that is designed to provide them with an “honors” or “advanced” rate and level of learning. Both ORS 343.409 and OAR 581-022-2500 require school districts to provide “programs or services.” Neither the statute nor the rule prescribes the types of programs or services that school districts must provide. So long as a program or service accommodates TAG students’ rates and levels of learning, it is legally sufficient.[[13]](#footnote-13)

Before turning to Parent’s next argument, the Department necessarily must point out that homogenizing classrooms and developing separate curriculum for TAG students would not necessarily accommodate, by virtue of separating TAG students from their peers—either physically or instructionally—their rates and levels of learning. Differentiated instruction is what is required to accommodate TAG students. Failure to provide differentiated instruction can occur in an “honors” or “advanced” course just as easily as it can occur in any other course. Even though using a curriculum designed to provide TAG students with an “honors” or “advanced” rate and level or learning may assist a teacher in accommodating a TAG student’s rate and level of learning, it does not guarantee accommodating a TAG student. To put it differently, in consideration of ORS 343.409 and OAR 581-022-2500 (4), the goal of differentiated instruction is to provide instruction that meets each TAG students’ needs. The goal is to provide a level of instruction that each TAG student finds challenging. The goal is to provide instruction that occupies each TAG student throughout the day. The goal is not to categorize TAG students according to class or curriculum. Those are merely processes through which a teacher can meet the standard required by OAR 581-022-2500 (4). As processes, they are no more legitimate than the process adopted by the District, which requires each teacher to develop a FLEX plan that addresses, among other things, how the teacher will modify curriculum to ensure that each TAG student will learn new information, develop new skills, and learn at a rate that stimulates and challenges the student throughout the school day.

### B. Second Argument: The District failed to accommodate TAG students’ rates and levels of learning because the District only provides the differentiated instruction necessary for such accommodation upon assessing each TAG student or upon request

Parent argues that teachers within the District only provide the differentiated instruction necessary to accommodate TAG students’ rates and levels of learning upon assessing each TAG student or upon a TAG student or a TAG student’s parent requesting the accommodation. In Parent’s view, the District should provide the differentiated instruction as a “matter of course.”

Under OAR 581-022-2500 (4), instruction provided to TAG students “[must] be designed to accommodate [the TAG students’] assessed levels of learning and accelerated rate[s] of learning.” The rule clearly uses the term “assessed” to qualify “levels of learning and accelerated rate[s] of learning.” For purposes of determining how a teacher should accommodate TAG students, the Department rejects any argument that is not based on the term “assessed.” The Department rejects any argument that posits that a teacher should accommodate TAG students on the basis of a process that, by its very nature, is counterintuitive to a teacher conducting assessments of TAG students. The Department rejects Parent’s argument that the District should provide the differentiated instruction necessary to accommodate TAG students’ rates and levels of learning as a “matter of course.”

Parent’s second argument seems to be an addendum to his first argument. In Parent’s view, if the District places TAG students in “homogenous honors or advanced level class[es],” then the District would be providing differentiated treatment as a “matter of course.” This argument is based on the fallacy that advanced placement constitutes differentiated instruction. As previously explained, failure to provide differentiated instruction can occur in an “honors” or “advanced” course just as easily as it can occur in any other course.

### C. Third Argument: The District failed to accommodate TAG students’ rates and levels of learning because the District assesses TAG students’ rates and levels of learning solely on the basis of grades

Parent argues that teachers within the District assess TAG students’ rates and levels of learning solely on the basis of grades. As proof, Parent relates a story where he and one of his daughters requested a teacher to modify for his daughter a curriculum and the teacher refused. The teacher told Parent that his daughter had not demonstrated that she had mastered the subject matter of the class. As proof, the teacher provided Parent with an assignment that daughter had completed. According to Parent, the assignment had a single point subtracted from its total.

The Department agrees with Parent in principle: assessment cannot be based solely on grades. However, during its investigation, the Department could not verify that teachers within the District made assessments in this manner.

## IV. Department’s Findings of Fact

The Department used a three-pronged approach to investigate Parent’s appeal. First, the Department conducted a survey of middle school and high school teachers within the District to assess their knowledge of the requirements of OAR 581-022-2500 (4). Second, the Department reviewed all FLEX plans developed by the middle school and high school teachers. Finally, the Department conducted an on-site investigation to further assess the middle school and high school teachers’ knowledge of the requirements of OAR 581-022-2500 (4) and their efficacy in implementing any program or service used to accommodate TAG students’ rates and levels of learning.

In reviewing the results of the survey and the FLEX plans, the Department identified teachers who demonstrated a misunderstanding of the requirements of OAR 581-022-2500 (4) and teachers who demonstrated competency with respect to the requirements of OAR 581-022-2500 (4).

The survey asked teachers “How do you determine [the] rate and learning of your TAG students?” Only four teachers answered the question incorrectly.

The survey asked teachers “How often do you determine the rate and level of your TAG students?” 49 teachers answered the question in a manner that reflects best practices, 20 teachers answered the question in a manner that does not reflect best practices, but that is legally sufficient, and three answered the question incorrectly.

The survey asked teachers “How does the curriculum/instruction of TAG students reflect the rate/level information [that] you have collected?” Only seven teachers answered the question incorrectly.

When asked whether all of their students currently had a FLEX plan, 92.6% of teachers responded in the affirmative. When asked whether they had a process for parents to provide input on their children’s educational progress, all but six teachers responded in the affirmative.

When reviewing FLEX plans, the Department identified several teachers whose plans did not properly incorporate the differentiated instruction necessary to assess and accommodate TAG students’ rates and levels of learning. The most prevalent mistake in the FLEX plans is that certain plans indicate that the teacher who prepared the plan will not provide differentiated instruction unless a student or parent requested an accommodation. As previously explained, OAR 581-022-2500 (4) clearly uses the term “assessed” to qualify “levels of learning and accelerated rate[s] of learning.” Thus, in determining how to best accommodate a TAG student’s rate and level of learning, a teacher necessarily *must* assess the student.

In evaluating the FLEX plans, the Department’s Talented and Gifted Education Specialist specifically found that:

Many of the FLEX plans in the syllabi . . . put the responsibility on the student to seek out challenge or differentiation. The teacher should be adjusting instruction to provide challenge without the student having so seek [it] out. The data/evidence a teacher uses should not be a separate test just given to TAG [students] to see if they should have differentiated instruction, but, rather, the existing pre-assessments and formative assessments utilized in the classroom.

After reviewing the results of the survey and the FLEX plans, the Department conducted an on-site investigation of the District’s middle school and high school. The Department observed 8 classes at the middle school and 10 classes at the high school. The Department observed a large sample of classes where the teacher who taught the class demonstrated on the survey or in their FLEX plan a misunderstanding of the requirements of OAR 581-022-2500 (4). The Department observed a small sample of classes where the teacher who taught the class demonstrated competency with respect to the requirements of OAR 581-022-2500 (4).

When observing classes at the middle school, the Department observed that all teachers except one provided the differentiated instruction necessary to assess and accommodate TAG students’ rates and levels of learning. Even when observing those teachers that the Department previously identified as not understanding the requirements of OAR 581-022-2500 (4), the Department observed them incorporating the concepts correctly in class. For example, in a science class, one such teacher used a lab assignment to teach a scientific principal that allowed students to work at varying levels of complexity and at an independent rate. In a social studies class, the teacher required students to analyze a passage of text in a manner that allowed analysis of varying depth and complexity. In a math class, the teacher administered a pre-assessment that would determine students’ rates and levels for the following day. In this class, the Department observed two distinct levels of learning and individualized rate of learning.

In contrast, when observing classes at the high school, the Department observed that teachers identified as not understanding the requirements of OAR 581-022-2500 (4) did not incorporate the concepts correctly in class and that teachers identified as understanding the requirements incorporated the concepts correctly in class. With respect to the former, the Department observed: (1) a class where students, upon finishing an assignment, waited while the teacher checked other students’ work, (2) a class where a teacher indicated that his student’s did not need differentiated instruction because the class was an advanced placement class, and (3) a class where a teacher lectured and students followed along. With respect to the latter, the Department observed: (1) a class where students participated in a Socratic Seminar, (2) two classes where students were engaged in debate, and (4) a class where students organized as groups to develop a particular perspective on a topic and then reorganized into different groups to share their developed perspectives.

## V. Department’s Conclusions

The Department first finds that the District’s policy to require teachers to develop a FLEX plan is a proper exercise of the District’s power under OAR 581-022-2500 (4).[[14]](#footnote-14)

The Department also finds that middle school and high school teachers within the District have demonstrated, for the most part, competency with respect to the requirements of OAR 581-022-2500 (4).[[15]](#footnote-15)

The Department finds, upon observing classes at the middle school, that all middle school teachers except one provided the differentiated instruction necessary to assess and accommodate TAG students’ rates and levels of learning. The Department finds that the middle school, as a whole, has sufficiently a continued effort to implement the District’s policy. The Department finds that the middle school is not deficient under OAR 581-022-2500 (4).

The Department finally finds, upon observing classes at the high school, that all high school teachers that demonstrated competency with respect to assessing and accommodating TAG students’ rates and levels of learning on the survey and through their FLEX plans have sufficiently met the standards established by OAR 581-022-2500 (4). However, the Department also finds that those high school teachers that did not demonstrate competency with respect to assessing and accommodating TAG student’s rates and levels of learning on the survey and through their FLEX plans have not sufficiently met the standards established by OAR 581-022-2500 (4). Whereas observations at the middle school demonstrated continued improvement even after the Department surveyed the teachers and reviewed the FLEX plans, observations at the high school reinforced the results of the survey and the Department’s initial conclusions after reviewing the FLEX plans.

Accordingly, the Department finds that the District is deficient on the narrow grounds that certain high school teachers identified by the Department have not sufficiently met the standards established by OAR 581-022-2500 (4).

## VI. Corrective Action

The Department finds that the District is deficient on the narrow grounds that certain high school teachers identified by the Department have not sufficiently met the standards established by OAR 581-022-2500 (4).

The District must submit to the Department a plan for becoming compliant with OAR 581-022-2500 (4) on or before June 15, 2019. The plan may be narrowly tailored to address the deficiency that certain high school teachers identified by the Department have not sufficiently met the standards established by OAR 581-022-2500 (4). The plan must be approved by the Director of the Department of Education.

For purposes of developing the plan, the District must contact the Department’s Talented and Gifted Education Specialist at the Office of Teaching, Learning, and Assessment to:

* Receive the list of high school teachers identified by the Department as needing additional support;
* Develop a plan for providing the support to high school teachers identified by the Department that ensures continued implementation of the District’s current policy.

The District must be back in compliance before the beginning of the 2019-2020 school year. If the Director of the Oregon Department of Education determines that the District is not compliant by the beginning of the 2019-2020 school year, the director may allow an extension of time to demonstrate compliance, not to exceed 12 months. If the District fails to show compliance within the required time, the director may withhold state school funds.

Sincerely,

Mark Mayer

Complaint and Appeals Coordinator

Office of Government and Legal Affairs

mark.mayer@state.or.us

503-947-0464

1. ORS 326.051. [↑](#footnote-ref-1)
2. ORS 327.103 (3). [↑](#footnote-ref-2)
3. ORS 327.103 (2). [↑](#footnote-ref-3)
4. ORS 327.103(3)(a). [↑](#footnote-ref-4)
5. ORS 327.103 (2). [↑](#footnote-ref-5)
6. At the time that Parent filed the appeal, this provision was codified at OAR 581-022-1330 (4). [↑](#footnote-ref-6)
7. At this step in the District’s local complaint process, Parent made several other arguments pertaining to the District’s failure to accommodate TAG students’ rates and levels of learning. This order does not address these arguments because Parent did not make them on appeal. [↑](#footnote-ref-7)
8. At this step in the District’s local complaint process, Parent made several other arguments pertaining to the District’s failure to accommodate TAG students’ rates and levels of learning. This order does not address these arguments because Parent did not make them on appeal. [↑](#footnote-ref-8)
9. 317 Or. 606 (1993). [↑](#footnote-ref-9)
10. 346 Or. 160 (2009). [↑](#footnote-ref-10)
11. *Portland General Electric*, 346 Or. at 610-611; *Gaines*, 317 Or. at 171-172. [↑](#footnote-ref-11)
12. *See Comcast Corp. v. Dept. of Revenue*, 356 Or. 282 (2014). [↑](#footnote-ref-12)
13. To support his argument, Parent cites a series of letters issued by the Department to Portland Public Schools regarding the type of corrective action that the school district should implement on the basis that the school district did not provide the differentiated instruction necessary to assess and accommodate TAG students’ rates and levels of learning. In particular, Parent draws attention to a letter issued by the Department on February 28, 2008, in which the Department directed Portland Public Schools to “include district-level content specialists . . . in the creation and implementation of curriculum appropriate for TAG students.” Parent argues that this letter requires Portland Public Schools to develop separate curriculum for TAG students designed to provide them with an “honors” or “advanced” rate and level or learning. The Department disagrees. Curriculum that is “appropriate” for TAG students is not necessarily separate curriculum designed to provide them with an “honors” or “advanced” rate and level or learning. However, if Parent’s interpretation of the February 28 letter is correct, then the Department would have to acknowledges that it wrote the letter in error. Oregon law clearly defines the Department’s role within this state’s education system. That role is to adopt academic content standards for schools. ORS 329.045 (1)(b)(A). For purposes of Oregon law, “academic content standards” are “expectations of student knowledge and skills adopted by the State Board of Education[.]” ORS 329.007 (1). Oregon law also clearly defines school districts’ role within this state’s education system. That role includes controlling course content, format, materials, and teaching methods. ORS 329.045 (1)(b)(A). Read together, these provisions clearly direct the Department to establish standards by which course content and individual programs may be adjudged, and they clearly prohibit the Department from directing school districts to adopt specific course content, format, materials, or teaching methods. In the Department’s view, directing school districts to adopt a particular type of program or service for purposes of accommodating TAG students’ rates and levels of learning is the same as directing school districts to adopt specific course content, format, materials, or teaching methods. [↑](#footnote-ref-13)
14. *See* this order’s analysis of OAR 581-022-2500 (4), *supra* § III (A). [↑](#footnote-ref-14)
15. Notably, the percentage of middle school and high school teachers within the District that understand the requirements of OAR 581-022-2500 is significantly higher than it was during the 2016-2017 school year when Parent previously filed an appeal with the Department. [↑](#footnote-ref-15)