



Oregon

Kate Brown, Governor



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Colt Gill

Deputy Superintendent of Public Instruction

September 9, 2019

BY EMAIL AND US MAIL

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████████████████████

Superintendent Christy Perry
Salem-Keizer Public Schools
2450 Lancaster Drive NE
Salem, OR 97305

Dear ██████████ and Superintendent Perry,

This letter is the order on the May 9, 2019, appeal filed by ██████████ (Complainant) alleging that Salem-Keizer Public Schools violated the laws and rules of this state prohibiting school districts from discriminating against persons belonging to a protected class because it held meetings at a community center named Broadway Commons. The objective of this order is to determine whether the district is in compliance with ORS 659.850 and OAR 581-021-0045. If the district is in compliance with both ORS 659.850 and OAR 581-022-0045, then this case is closed pursuant to OAR 581-002-0009 and 581-002-0017. If the district is not in compliance with either ORS 659.850 or OAR 581-021-0045, then Complainant and the district must attempt to reach an agreement through conciliation as required by OAR 581-002-0011.

PROCEDURAL BACKGROUND

This is an appeal alleging discrimination by Salem-Keizer Public Schools. On December 6, 2018, Complainant sent an email to the district's Director of Equity and Inclusion. In that email, Complainant wrote:

I'm wondering if there is [a] district policy . . . regarding the use of non-district facilities by district staff. Salem Alliance Church, which operates Broadway Commons, openly discriminates [against people who are LGBTQ] by refusing to marry same gender couples. Does this make it a violation of district policy for district staff to use their facilities? If not, I think that policy should be revised to indicate that district staff are prohibited from using facilities operated by organizations that discriminate [against people who are LGBTQ].

On December 11, 2018, the director responded to Complainant's question. In her response, the director told Complainant that the district would consider his question and that she would update him when it reached a decision.

On December 12, 2018, Complainant responded to the director, stating:

Freedom of religion is an absolutely sacred concept, but when any organization discriminates I think we need to speak out against that. Churches are legally allowed to discriminate, but I do not feel that this lessens our obligation to stand up for those being discriminated against.

I think if we view this situation through the equity lens, we are obligated to view discrimination against the LGBT community exactly the same as we view racial/ethnic discrimination.

After investigating Broadway Commons, the district decided to continue using the community center's facilities.

On February 25, 2019, Complainant sent a letter to the district's school board. In that letter, Complainant wrote:

Through its policy of refusing to hire applicants that are openly gay, the Broadway Commons has created an environment wherein many members of the LGBT[Q] community, including district employees, do not feel welcome. As a result, it is not appropriate for district employees to organize meetings at the Broadway Commons which district employees are expected or mandated to attend.

Complainant also wrote an email accompanying the letter. In his email, Complainant stated that he had "deep concerns about district employees being required to attend meetings in venues that discriminate." He asked whether the district had any "procedures in place that would enable [him] to appeal [the district's] decision." Complainant specifically stated that he wanted to "make sure" that he had "exhausted all avenues of appeal within the district."

On March 22, 2019, Complainant filed an appeal with the Oregon Department of Education. At that time, the department denied his appeal. In the notice of denial, the department explained that it was denying Complainant's appeal because the appeal was not ripe. Under OAR 581-002-0005(1)(a)(A), the department may accept an appeal if a complainant exhausts a district's complaint process. In this case, Complainant did not exhaust the Salem-Keizer Public School's complaint process. However, even if a complainant does not exhaust a district's complaint process, under OAR 581-002-0005(1)(a)(B) and (C)

the department may accept an appeal if the district does not address the complaint within prescribed amounts of time. Under OAR 581-002-0005(1)(a)(B), the department may accept an appeal if a district “fails to render a written decision within 30 days of the submission of [a] complaint at any step” in a district’s process. Under OAR 581-002-0005(1)(a)(C), the department may accept an appeal if a district “fails to resolve [a] complaint within 90 days of the initial filing of the complaint.” In consideration of these two provisions, the department had to determine upon receiving Complainant’s March 22nd filing the date on which he filed a complaint with the district. If on December 6th or December 12th, then the department would have to accept Complainant’s appeal. If on February 25th, then the department would have to deny Complainant’s appeal on grounds that the appeal was not ripe.

In the department’s view, Complainant’s December 6th and December 12th emails are not complaints. In those emails, Complainant was encouraging the district to review its policies and practices. Complaint “wondered” about the existence of a pertinent district policy. Complainant advocated for the district to use the same standards that it used to ensure non-discrimination of race and ethnicity to ensure non-discrimination of sexual orientation and gender. In consideration of the language used in those emails, Complainant did not clearly communicate an intent to file a complaint.

In contrast, the February 25th letter and email do constitute a complaint. In those communications, Complainant wrote that “it is not appropriate for district employees to organize meetings at Broadway Commons” and asked whether the district had any “procedures in place that would enable [him] to appeal [the district’s] decision.” Complainant also wrote that he wanted to “make sure” that he had “exhausted all avenues of appeal within the district.” In consideration of that language, Complainant clearly communicated an intent to file a complaint.

In the notice of denial, the department also explained the date on which it could accept Complainant’s appeal. Complainant refiled his appeal with the department on May 4, 2019. The department accepted the appeal on the basis that 30 days had passed since Complainant wrote the February 25th letter and email.¹

FINDINGS OF FACT

After conducting its investigation, the Oregon Department of Education makes the following findings of fact:

1. Complainant is an employee of Salem-Keizer Public Schools.
2. Complainant resides within the district.
3. Broadway Commons is a community center located in Salem. Broadway Commons is owned and operated by Salem Alliance Church. On its website, the church describes Broadway Commons as follows:

¹ See OAR 581-002-0005(1)(a)(B).

Even in our earliest design conversations, we wanted this to be a place where our community felt welcome. Since the property under Broadway Commons had some zoning restrictions, the building also needed a commerce component. And, of course, our church would use the building too.

So, we embraced the notion that Broadway Commons could be a place for people of every sort; a place of intersection. Or in the words of John Stumbo, “a place where church, commerce, and community come together for the common good.”

4. On its premises, Broadway Commons has a coffee shop, a restaurant, offices, and several meeting rooms that may be used by the community.
5. The district held meetings at Broadway Commons. The District paid Broadway Commons to rent the space for those meetings.
6. On December 6, 2018, Complainant sent an email to the district’s Director of Equity and Inclusion. In that email, Complainant wrote:

I’m wondering if there is [a] district policy . . . regarding the use of non-district facilities by district staff. Salem Alliance Church, which operates Broadway Commons, openly discriminates [against people who are LGBTQ] by refusing to marry same gender couples. Does this make it a violation of district policy for district staff to use their facilities? If not, I think that policy should be revised to indicate that district staff are prohibited from using facilities operated by organizations that discriminate [against people who are LGBTQ].

7. On December 11, 2018, the director responded to Complainant’s December 6th question. In her response, the director told Complainant that the district would consider his email and that she would update him when it reached a decision.
8. On December 12, 2018, Complainant responded to the director, stating:

Freedom of religion is an absolutely sacred concept, but when any organization discriminates I think we need to speak out against that. Churches are legally allowed to discriminate, but I

do not feel that this lessens our obligation to stand up for those being discriminated against.

I think if we view this situation through the equity lens, we are obligated to view discrimination against the LGBT community exactly the same as we view racial/ethnic discrimination.

9. After investigating Broadway Commons, the district decided to continue using its facilities.
10. On February 14, 2019, Salem Alliance Church wrote an email to Complainant. In that email, the church acknowledged that it could not expect the theological beliefs of Broadway Commons staff to be aligned with the theological beliefs of the church. The church also wrote:

Even though Broadway Commons is owned and operated by Salem Alliance, we have not chosen to use it as a religious platform. We have not discriminated on the grounds of sexual orientation during our hiring process at Broadway Commons, nor have we ever taken action against a Broadway Commons employee based on those grounds.

While it is true that Salem Alliance holds to the biblical standard that sexual relations are reserved for marriage between one man and one woman, and we regularly call our church family to live out that biblical standard in their lives, it is also true that we actively seek to be people who respect and warmly welcome everyone on our campus, even those with whom we may not agree with for whatever reason. In fact, LGBT[Q] individuals/groups are regular clients at Broadway Commons and, to our knowledge, have never felt shamed or discriminated by our staff there.

11. On February 25, 2019, Complainant wrote a letter to the district's school board. In that letter, Complainant wrote:

Through its policy of refusing to hire applicants that are openly gay, the Broadway Commons has created an environment wherein many members of the LGBT[Q] community, including district employees, do not feel welcome. As a result, it is not

appropriate for district employees to organize meetings at the Broadway Commons which district employees are expected or mandated to attend.

According to the Christian Missionary Alliance (the denomination Salem Alliance Church belongs to) "Homosexual conduct is declared to be detestable."

12. Complainant wrote an email accompanying the February 25th letter. In his email, Complainant stated that he had "deep concerns about district employees being required to attend meetings in venues that discriminate." He asked whether the district had any "procedures in place that would enable [him] to appeal [the district's] decision." Complainant specifically stated that he wanted to "make sure" that he had "exhausted all avenues of appeal within the district."
13. After accepting Complainant's appeal, the department emailed Salem Alliance a series of questions. The church's response to the department's questions is almost identical to the February 14th email that the church sent Complainant. However, the church did include the following additional statement:

Broadway Commons is a separate building from our main church building and, even though church ministries function in the building, Broadway Commons was intentionally designed to be a very public building that is open and welcoming to everyone. We have intentionally chosen not to use the building as a religious platform. As an example of that commitment, we have not put any religious symbolism in the building with the exception of . . . a prayer center located on the fourth floor.

APPEALS UNDER ORS 659.85 and OAR 581-021-0045

I. Oregon's Anti-Discrimination Law

Under Oregon's anti-discrimination statute,

A person may not be subjected to discrimination in any public elementary, secondary or community college education program or service, school or interschool activity or in any higher education program or service, school or interschool activity where the program, service,

school or activity is financed in whole or in part by moneys appropriated by the Legislative Assembly.²

For purposes of this prohibition, “discrimination” is defined to mean “any act that unreasonably differentiates treatment, intended or unintended, or any act that is fair in form but discriminatory in operation, either of which is based on race, color, religion, sex, sexual orientation, national origin, marital status, age or disability.”³

In applying this prohibition to school districts, OAR 581-021-0045(3) specifically states that a school district may not:

(a) Treat one person differently from another in determining whether such person satisfies any requirement of condition for the provision of such aid, benefit, or service;

(b) Provide different aid, benefits, or services; or provide aids, benefits, or services in a different manner;

(c) Deny any person such aid, benefit, or service;

(d) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

(e) Aid or perpetuate discrimination by joining or remaining a member of any agency or organization which discriminates in providing any aid, benefit, or service to students or employees; [or]

(f) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

The issue addressed in this appeal is whether Salem-Keizer Public Schools violated ORS 659.850 or OAR 581-021-0045 because it held meetings at Broadway Commons. More specifically, whether Broadway Commons discriminates against LGBTQ individuals and groups and, if so, whether the district violated ORS 659.850 or OAR 581-021-0045 because Broadway Commons does so.

² ORS 659.850(2). OAR 581-021-0045(2) applies this prohibition specifically to the types of schools regulated by the Department: “No person in Oregon shall be subjected to discrimination in any public elementary or secondary school, educational program or service, or interschool activity where the program, service, school, or activity is financed in whole or part by monies appropriated by the Legislative Assembly.”

³ ORS 659.850(1). OAR 581-021-0045(1)(a) uses an identical definition for “discrimination” for purposes of the Department’s regulatory authority over public elementary and secondary schools.

If the Oregon Department of Education determines on appeal that the district has not discriminated against LGBTQ individuals and groups, the department will issue a final order to the complainant and the district and close the appeal.⁴

If the department determines on appeal that the district has discriminated against LGBTQ individuals and groups, the department will issue a preliminary order to the complainant and the district.⁵ As part of that preliminary order, the department will order the complainant and the district to attempt to reach an agreement through conciliation.⁶ If the complainant and the district fail to reach an agreement, the department will issue a final order.⁷ If the department determines in the final order that the district has discriminated against LGBTQ individuals and groups, the final order will include notice that the district must complete a corrective action plan.⁸ A school district must complete corrective action by the beginning of the school year next following the date of the final order.⁹ If a school district does not complete corrective action by the beginning of the school year, the department may order appropriate remedies, including an order withholding distributions otherwise required under the laws of this state to be made from the State School Fund.¹⁰

II. Arguments Presented

In this appeal, Complainant alleges that Salem-Keizer Public Schools violated ORS 659.850 or OAR 581-021-0045 because it held meetings at Broadway Commons. In part, this appeal requires the Oregon Department of Education to determine whether Broadway Commons discriminates against LGBTQ individuals and groups in accordance with Complainant's allegation. In part, this appeal requires the department, if it determines that Broadway Commons discriminates against LGBTQ individuals and groups, to determine whether the district also discriminates against LGBTQ individuals and groups by holding meetings there.

Complainant supports his allegation by making two specific claims. First, he claims that Broadway Commons discriminates against LGBTQ individuals and groups when it hires staff. In the February 25th letter, Complainant wrote, "Through its policy of refusing to hire applicants that are openly gay, the Broadway Commons has created an environment wherein many members of the LGBT[Q] community, including district employees, do not feel welcome."

⁴ OAR 581-002-0009(3)(a)(B) and 581-002-0017(1)(a).

⁵ OAR 581-002-0009(3)(a)(A).

⁶ OAR 581-002-0011.

⁷ OAR 581-002-0017(1)(b).

⁸ OAR 581-002-0017(1)(e).

⁹ OAR 581-002-0019(1).

¹⁰ OAR 581-002-0019(2).

Second, Complainant alleges that Broadway Commons is associated with a church that openly condemns LGBTQ individuals and groups. In the February 25th letter, Complainant wrote, “According to the Christian Missionary Alliance (the denomination Salem Alliance Church belongs to) ‘Homosexual conduct is declared to be detestable.’”

In response, the district raises four counter arguments. The district first argues that Complainant’s appeal is deficient because he did not file a formal complaint with the district. The district argues that

[t]he first time [Complainant] made any mention of some process was when he mentioned an appeal process in his February 25, 2019[,] email. The [d]istrict does not believe that [Complainant] has filed a complaint with the [d]istrict as required in OAR 581-002-0040(1).¹¹ Because of this, we believe [the department] lacks jurisdiction to process an appeal of the [d]istrict’s decision.

The district next argues that Complainant is not a complainant for purposes of ORS 659.850 and OAR 581-021-0045. Complainant is an employee of the district. Complainant is not “complaining about discrimination against himself.” Thus, in the district’s view, Complainant did not have a right to file the complaint.

Third, the district questions the veracity of Complainant’s claim that Broadway Commons discriminates against LGBTQ individuals and groups when it hires staff.

Finally, the district argues that Complainant does not allege discrimination as described in ORS 659.850, but, instead, only mentions that certain “unnamed persons who identify as LGBT[Q] ‘do not feel comfortable being told to attend meetings’” held at Broadway Commons.

III. The Complaint

Salem-Keizer Public Schools argues that Complainant’s appeal is deficient because he did not file with the district a formal complaint. The Oregon Department of Education rejects the district’s argument.

The Oregon legislature has imparted on the department broad authority to adopt a process necessary to enforce Oregon’s anti-discrimination statute. Under ORS 659.850 (3), “The State Board of Education . . . shall establish rules necessary to ensure compliance with [the statute].” Under ORS 659.855 (1), “Any public elementary or secondary school or program determined by the [Director of the Department of Education] to be in noncompliance with provisions of [the statute] . . . shall be subject to appropriate sanctions, which may include withholding of all or part of state funding.”

Under that authority, the State Board of Education has adopted OAR 581-002-0005, under which,

¹¹ The district cites to the incorrect rule. OAR 581-002-0040 was repealed on March 21, 2019, and adopted new rules governing the appeals processes. See 581-002-0001 to 581-002-0023.

A complainant may appeal a final decision of a complaint described in OAR 581-002-0003 if the appeal meets the following criteria:

(1)(a) . . . the appeal must be from a final decision by a district. A decision is a final decision by a district if:

(A) The complainant has exhausted the districts complaint process except as otherwise allowed by statute;

(B) In a complaint process with more than one step, the district fails to render a written decision within 30 days of the submission of the complaint at any step, unless the district and complainant have agreed in writing to a longer time period for that step; or

(C) The district fails to resolve the complaint within 90 days of the initial filing of the complaint, regardless of the number of steps in the district complaint process, unless the district and complainant have agreed in writing to a longer time period.

Notably, OAR 581-002-0005 does not require a complainant to file a formal complaint with a district. Rather, OAR 581-002-0005 requires a complainant to have received a final decision from a district. Under OAR 581-002-0005 (1)(a)(B), a decision is a final decision if “[i]n a complaint process with more than one step, the district fails to render a written decision within 30 days of the submission of the complaint at any step.” Under that provision, the department may accept Complainant’s appeal.

In his February 25th letter and email, Complainant used language clearly communicating his intent to file a complaint. In the letter, Complainant wrote that “it is not appropriate for district employees to organize meetings at the Broadway Commons which district employees are expected or mandated to attend.” In the email, Complainant stated that he had “deep concerns about district employees being required to attend meetings in venues that discriminate.” Complainant also asked whether the district had any “procedures in place that would enable [him] to appeal [the district’s] decision.” Complainant specifically stated that he wanted to “make sure” that he had “exhausted all avenues of appeal within the district.”

Upon receiving the February 25th letter and email, the district could have directed Complainant to file a complaint using the district’s complaint process. If the district had done so, the department would have used the date on which Complainant filed a complaint using that process to determine whether Complainant had received a final decision under OAR 581-002-0005 (1)(a)(B). Under those circumstances, the district would have been rejecting the February 25th letter and email on procedural grounds and providing the information necessary for Complainant to formally file the complaint. However, the district

did not do so. The district did not answer the February 25th letter and email. In effect, the district impliedly waived its complaint process.

For those reasons, the department rejects the district's first argument.

IV. The Complainant

Salem-Keizer Public Schools argues that the Complainant is not a complainant for purposes of ORS 659.850 and OAR 581-021-0045. Complainant is an employee of the district. Complainant is not "complaining about discrimination against himself." Thus, in the district's view, Complainant did not have a right to file the complaint. The Oregon Department of Education rejects the district's argument.

As mentioned above, the Oregon legislature has imparted on the department broad authority to adopt a process necessary to enforce Oregon's anti-discrimination statute. Under that authority, the State Board of Education has adopted OAR 581-002-0001 to 581-002-0023. Those rules simply do not prohibit individuals from filing appeals that do not specifically allege that the individual filing the appeal is a victim. The rules restrict the types of appeals that an individual may file,¹² establish how soon an individual may file an appeal,¹³ establish when after an alleged violation occurs the department will no longer accept an appeal,¹⁴ and specify the type of information that a complainant must submit with an appeal.¹⁵ The rules do not require an individual to allege that he or she is the victim of the alleged violation.

For those reasons, the department rejects the district's second argument.

V. The Evidence

Salem-Keizer Public Schools questions the veracity of Complainant's claim that Broadway Commons discriminates against LGBTQ individuals and groups when it hires staff. The Oregon Department of Education agrees with the district. In his February 25th letter and email, Complainant claimed that Broadway Commons had a "policy of refusing to hire applicants that are openly gay." However, Complainant did not provide the district – or the department – with any evidence in support of that claim.

It is also important to note that Broadway Commons flatly denies the claim that it discriminates against LGBTQ individuals and groups when it hires staff. On February 14, 2019, Salem Alliance Church wrote an email to Complainant. In that email, the church wrote:

Even though Broadway Commons is owned and operated by Salem Alliance, we have not chosen to use it as a religious platform. We have not discriminated on the grounds of sexual

¹² See OAR 581-002-0003 (specifying the scope of OAR 581-002-0001 to 581-002-0023).

¹³ See OAR 581-002-0005(1) (requiring a complainant to have received a final decision from a district).

¹⁴ See OAR 581-002-0005(2) and (3) (specifying when the right to file an appeal lapses).

¹⁵ See OAR 581-002-0005(4).

orientation during our hiring process at Broadway Commons, nor have we ever taken action against a Broadway Commons employee based on those grounds.

The church also acknowledged that it could not expect the theological beliefs of Broadway Commons staff to be aligned with the theological beliefs of the church. The church wrote:

While it is true that Salem Alliance holds to the biblical standard that sexual relations are reserved for marriage between one man and one woman, and we regularly call our church family to live out that biblical standard in their lives, it is also true that we actively seek to be people who respect and warmly welcome everyone on our campus, even those with whom we may not agree with for whatever reason. In fact, LGBT[Q] individuals/groups are regular clients at Broadway Commons and, to our knowledge, have never felt shamed or discriminated by our staff there.

Given the lack of evidence of discriminatory hiring practices, and given that Broadway Commons flatly denies Complainant's assumption that it has discriminatory hiring practices because it is owned and operated by a church, the department finds that there is insufficient evidence to support the claim that Broadway Commons discriminates against LGBTQ individuals and groups when it hires staff.¹⁶

VI. The Allegation

Salem-Keizer Public Schools argues Complainant does not allege discrimination as described in ORS 659.850, but, instead, only mentions that certain "unnamed persons who identify as LGBT[Q] 'do not feel comfortable being told to attend meetings'" held at Broadway Commons.

Complainant clearly alleges that Broadway Commons discriminates against LGBTQ individuals and groups when it hires staff and because it is associated with a church that openly condemns LGBTQ individuals and groups. However, to find that the district discriminated against LGBTQ individuals and groups as described in ORS 659.850, the department would have to find that the district committed a discriminatory act because it used the facilities of an entity that committed a discriminatory act.

¹⁶ It should be noted that the department regulates school districts and other education programs, not places of business. Even if the department found that Broadway Commons discriminates against LGBTQ individuals and groups when it hires staff, the department also would have to find that the district discriminates against LGBTQ individuals and groups by holding meetings at Broadway Commons. For reasons explained in this order, the department would not make that finding. This does not mean that LGBTQ individuals against whom Broadway Commons has discriminated when hiring staff do not have a legal mechanism for seeking relief. Such individuals may file a claim of unlawful employment discrimination with the Bureau of Labor and Industries.

Whether a district violates ORS 659.850 or OAR 581-021-0045 because it uses a facility owned and operated by an entity that commits a discriminatory act presents the department with a question of statutory interpretation. Under Oregon’s anti-discrimination statute,

A person may not be subjected to discrimination in any public elementary, secondary or community college education program or service, school or interschool activity or in any higher education program or service, school or interschool activity where the program, service, school or activity is financed in whole or in part by moneys appropriated by the Legislative Assembly.¹⁷

The question is whether holding a meeting at a facility owned and operated by an entity that commits a discriminatory act constitutes a “program, service, school[,] or activity.”

The Oregon Supreme Court prescribed the method for discerning legislative intent in *Portland General Electric, Co. v. Bureau of Labor and Industries*¹⁸ and *State v. Gaines*.¹⁹ 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.²⁰

In this case, the department does not need to discern the legislative intent of the language at issue because the Oregon Supreme Court already has had occasion to do so. In *Powell v. Bunn*, the court was confronted with the question about whether the actions of a community organization gave rise to a judiciable claim under ORS 659.850.²¹ In answering that question, the court wrote that

ORS 659.850(2) covers discrimination “in any public elementary, secondary or community college education program or service, school or interschool activity * * *.” We think that it is clear that, as pertinent here, that means that there can be no discrimination in any public elementary or secondary or community college education program, in any public elementary or secondary or community college education service, and in any public elementary or secondary or community college school or interschool activity. Thus, under ORS 659.850, even community groups may not discriminate against any person in any of those programs, services, or activities. However, it is equally important to point out that

¹⁷ ORS 659.850(2). OAR 581-021-0045(2) applies this prohibition specifically to the types of schools regulated by the Department: “No person in Oregon shall be subjected to discrimination in any public elementary or secondary school, educational program or service, or interschool activity where the program, service, school, or activity is financed in whole or part by monies appropriated by the Legislative Assembly.”

¹⁸ 317 Or. 606 (1993).

¹⁹ 346 Or. 160 (2009).

²⁰ *Portland General Electric*, 346 Or. at 610-611; *Gaines*, 317 Or. at 171-172.

²¹ 314 Or. 306 (2006).

ORS 659.850 does not prohibit discrimination by community groups in their activities that are not public school programs, services, or activities.²²

The court then turned toward what constitutes an “activity” for purposes of ORS 659.850:

Classroom time and the school’s lunch period clearly are, at the least, school “activities.” * * * Likewise, printing and disseminating [a] school newsletter is a school activity. Therefore, if including information * * * in the school newsletter amounts to discrimination, then such discrimination took place “in [a] public elementary * * * school * * * activity * * *.” By the same token, however, the fact that [a] school district permits a community group to provide flyers to be handed out in the classroom or to make a presentation during lunch period or to include information in a school newsletter does not transform all the activities of that community group, including those that take place off-site or out-side school hours, into a “public elementary secondary * * * school * * * activity.”²³

The court concluded that when a community organization commits a discriminatory act, the threshold question in determining whether a district also discriminates is whether the district permits the community organization to commit the discriminatory act. If the district permits the discriminatory act, then the district also may be violating the law. If the district does not permit the discriminatory act, then the district is not violating the law.

In this case, Salem-Keizer Public Schools did not permit Broadway Commons to commit either of the alleged acts. The district has no power over Broadway Commons hiring processes. The district also has no power over Salem Alliance Church’s beliefs concerning LGBTQ individuals and groups. In fact, given that the district is merely meeting at Broadway Commons, it would be difficult to find that the district “permits” any of the community center’s actions. If the room used by the district contained religious messages or iconography, the district presumably would have the power – and thus the obligation under ORS 659.850 – to remove or cover those messages and iconography during its meetings. By not doing so, the district would be “permitting” Broadway Commons to proselytize. However, in this instance, Broadway Commons is a “public building” that does not contain “any religious symbolism.” There is no discriminatory act occurring at Broadway Commons over which the district has any power.

For the reasons explained above, the department agrees with the district that Complainant does not allege discrimination for purposes of ORS 659.850.

²² *Id.* at 314-315.

²³ *Id.* at 315.

CONCLUSION

The Oregon Department of Education finds that Salem-Keizer Public Schools did not violate ORS 659.850 or OAR 581-021-0045 because: (1) there is insufficient evidence of discriminatory hiring practices by Broadway Commons, and (2) even if there was sufficient evidence of discriminatory hiring practices by Broadway Commons, Complainant did not allege an act that constitutes discrimination as described in ORS 659.850.

If you have any questions or concerns, feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Mayer', written in a cursive style.

Mark Mayer
Complaint and Appeals Coordinator
Office of Government and Legal Affairs
Mark.Mayer@state.or.us