



UNITED STATES DEPARTMENT OF EDUCATION

**OFFICE FOR CIVIL RIGHTS
ADMINISTRATIVE COMPLAINT**

February 15, 2024

United States Department of Education
Office for Civil Rights
Lyndon Baines Johnson Department of Education Building
400 Maryland Avenue, SW
Washington, DC 20202-1100
Via Email: OCR@ed.gov

To Whom It May Concern:

This is a federal civil rights complaint pursuant to the U.S. Department of Education's ("Department") Office for Civil Rights' ("OCR") discrimination complaint resolution procedures.

Parents Defending Education ("PDE") brings this complaint against Portland Public Schools in Portland, Oregon for discrimination on the basis of race in programs or activities that receive federal financial assistance in violation of Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d *et seq.*, Title IX of the Education Amendments of 1972 (Title IX), and the Equal Protection Clause of the 14th Amendment to the U.S. Constitution.

PDE makes this complaint as an interested third-party organization with members who are parents of school children throughout the country. PDE and its members oppose discrimination on the basis of race and political indoctrination in America's schools. Portland Public Schools has enacted several concerning policies that treat students and educators differently based on race and gender identity. Attached to this complaint is supporting evidence in the form of an article "Portland Teachers will take Gender identity, Race into Account before Disciplining" (Exhibit A) and the recent Portland Association of Teachers settlement agreement "Portland Association of Teachers and Portland Public Schools Strike Settlement Agreement,"¹ which highlights changes made to the District's collective bargaining agreement related to student discipline (Exhibit B).

For instance, Portland Public Schools is disciplining some students and not others, solely based on immutable characteristics. Under the District's new "Student Support and Discipline" policy, educators must "develop and implement a mutually acceptable support plan involving, as appropriate the principal, supervisor, professional educator, student and parent(s) and other resource staff" (Ex. A at 1). The new policy states the plan "*must take into consideration* the impact of issues related to the student's trauma, *race*, gender identity/presentation, sexual orientation, disability, social emotional learning, and restorative justice as appropriate for the student" (Ex. B at 1) (emphases added). This

¹ "Portland Association of Teachers and Portland Public Schools Tentative Settlement Agreement," Accessed Feb. 6, 2024, <https://www.pps.net/cms/lib/OR01913224/Centricity/Domain/56/Tentative%20Agreements%20Combined%2011.27.23%20PAT.pdf>



race- and gender identity-specific framework applies even to the most serious incidents, such as “Threat/Causing Fear of Harm” and “possession of a firearm” (*see* Ex. B at 2-3).

Furthermore, Section 18.6.2 of the agreement requires the District to make educator assignments based on race and gender identity. The District’s policy explicitly states educators should not be transferred if doing so “would decrease the building’s percentage of under-represented male or female or transgender/nonbinary/gender non-conforming professional educators to less than thirty percent” or “decrease the building’s percentage of minority teachers to less than the student minority percentage in the building or below the percentage of minority professional educators in the District” (Ex. B at 6).

As the Department of Education is no doubt aware, discrimination on the basis of race raises concerns that Portland Public Schools has received federal funds in violation of Title VI of the Civil Rights Act of 1964, which declares that “no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”

In addition, Section 1 of the 14th Amendment to the U.S. Constitution asserts: “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” On these grounds, the Supreme Court held in 1954 that treating students differently according to race is unconstitutional. *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).

Recently, the Supreme Court reaffirmed that “racial discrimination is invidious in all contexts.” *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 214 (2023) (cleaned up). “Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality.” *Id.* at 208. Simply put, “[e]liminating racial discrimination means eliminating *all* of it.” *Id.* at 206 (emphasis added).

A decision by the U.S. Court of Appeals for the Seventh Circuit is directly on point. In *People Who Care v. Rockford Board of Education*, the court held that school districts violate the Equal Protection Clause when they adopt policies that require teachers to consider students’ race when making disciplinary decisions. *See* 111 F.3d 528, 538 (7th Cir. 1997). Such policies “place race at war with justice.” *Id.* The court also held that race-based personnel policies violate the Equal Protection Clause, even when designed to “foster[] achievement by providing minority students with role models of their own race or ethnicity.” *Id.* at 535.

Accordingly, we ask that the Department promptly investigate the allegations in this complaint, act swiftly to remedy unlawful policies and practices, and order appropriate relief.

Thank you for your prompt assistance with this request for investigation and resolution. Please contact me for further information.



Sincerely,

A handwritten signature in black ink that reads "Caroline Moore". The signature is written in a cursive style with a large initial "C" and "M".

Caroline Moore
Vice President
Parents Defending Education

Enc. Exhibit A-B



EXHIBIT A



Streaming Now The decade's most triggering comedy

Watch Lady Ballers

DAILY WIRE

- NEWS -

Portland Teachers Will Take Gender Identity, Race Into Account Before Disciplining

Students will be sent to a "self-regulation space."

By Mairead Elordi · Dec 6, 2023 DailyWire.com



MARTIN BUREAU/AFP via Getty Images

Portland public school teachers will now take gender identity and race

Ex. A at 1

Portland public school teachers will now take gender identity and race into account before disciplining students, according to an agreement between the school district and its teachers union.

The requirement appears in a collective bargaining [agreement](#) between Portland Public Schools and its unionized teachers, which ended a nearly month-long strike late last month. The agreement with the Portland Association of Teachers was ratified on Tuesday.



When a student engages in "continuous disruptive behavior," school officials must develop a "support plan" for the student that "must take into consideration the impact of issues related to the student's trauma, race, gender identity/presentation, sexual orientation ... and restorative justice as appropriate for the student," the agreement [states](#), according to the Washington Free Beacon.

The new disciplinary policy also prohibits suspending a student who threatens or harms other people. Those students may now only be removed from their classroom and sent to a "self-regulation space" within

Previously Portland schools could suspend middle and high school for at least five days for extreme cases of students causing physical harm or threatening violence. Now through the union agreement, the district has expanded its rapid response teams, which are supposed to intervene early in these situations.



The agreement replaces the term "unacceptable" student behavior with "continuous disruptive" behavior, and refers to "support plans" rather than "behavior correction plans."

More than 40,000 Portland students returned to the classroom last week for the first time since Halloween when the teacher strike ended.

Due to the strike, students' winter break will be cut in half to make up for the class time they lost this month. Parents have complained this decision affects their holiday plans.



Here Are 29 of the Coolest Gifts for This 2023

Ad (0:18) - "Bustout: This Probiotic Eats Belly & Back Fat Cells" (Do This) WATCH NOW

Portland's teachers will get a pay raise of about 14% over three years thanks to their new contract with the district.

Student discipline has been a growing concern in Portland's public schools.

Portland teachers have said they are seeing "more students in crisis" with mental health issues, which can lead to fights.

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In response, the Portland school district has been working to beef up its "restorative justice" practices over the last two years.

"So that we're really shifting from this punitive way of how we respond, to either discipline, or how we respond to our students who do get suspended or expelled and need to reenter," Char Hutson, the program manager for restorative justice said in 2021.

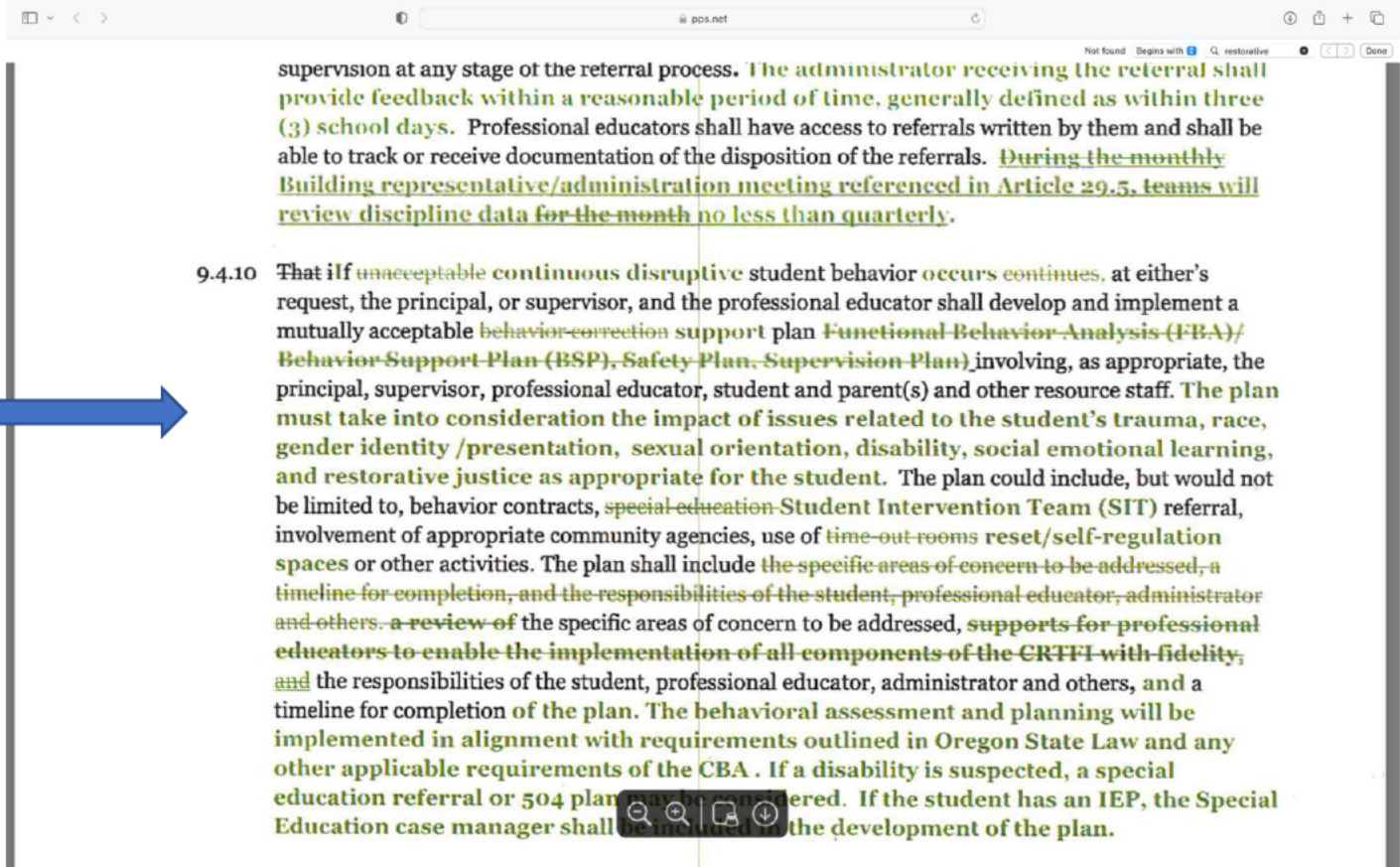
However, after the pandemic, the district saw a spike in requests for the district's restorative justice services, seeing up to 60 requests in the fall, 2021 semester compared to just 40 requests for the entire previous school year, Hutson said at the time.

Failing discipline policies were one of the concerns among conservative parents in other parts of the country who ran for school board after the pandemic.





EXHIBIT B



supervision at any stage of the referral process. **The administrator receiving the referral shall provide feedback within a reasonable period of time, generally defined as within three (3) school days.** Professional educators shall have access to referrals written by them and shall be able to track or receive documentation of the disposition of the referrals. **During the monthly Building representative/administration meeting referenced in Article 29.5, teams will review discipline data for the month no less than quarterly.**

9.4.10 **That if unacceptable continuous disruptive student behavior occurs continues,** at either's request, the principal, or supervisor, and the professional educator shall develop and implement a mutually acceptable ~~behavior-correction~~ support plan **Functional Behavior Analysis (FBA)/ Behavior Support Plan (BSP), Safety Plan, Supervision Plan** involving, as appropriate, the principal, supervisor, professional educator, student and parent(s) and other resource staff. **The plan must take into consideration the impact of issues related to the student's trauma, race, gender identity /presentation, sexual orientation, disability, social emotional learning, and restorative justice as appropriate for the student.** The plan could include, but would not be limited to, behavior contracts, ~~special education~~ Student Intervention Team (SIT) referral, involvement of appropriate community agencies, use of ~~time-out rooms~~ **reset/self-regulation spaces** or other activities. **The plan shall include the specific areas of concern to be addressed, a timeline for completion, and the responsibilities of the student, professional educator, administrator and others. a review of the specific areas of concern to be addressed, supports for professional educators to enable the implementation of all components of the CRTFI with fidelity, and the responsibilities of the student, professional educator, administrator and others, and a timeline for completion of the plan.** The behavioral assessment and planning will be implemented in alignment with requirements outlined in Oregon State Law and any other applicable requirements of the CBA . If a disability is suspected, a special education referral or 504 plan ~~shall be~~ **considered.** If the student has an IEP, the Special Education case manager shall ~~be~~ **the development of the plan.**

9.4.11 If the **support plan** does not result in a change in the disruptive behavior, the administrator in conference with the professional educator will **review the student support plan for the student**

~~and discuss the impact of issues related to the student's trauma, race, gender identity/presentation, equity, sexual orientation, disability, social-emotional learning, and restorative justice as appropriate for the student, and take additional steps as may be appropriate which are consistent with and guided by the Students' Rights and Responsibilities Handbook/Guide.~~

9.4.12 An allegation that a student has committed Threat/Causing Fear of Harm or Physical Attack/Harm upon a professional educator shall result in the **temporary** removal of the student from the responsibility of the professional educator pending administrative investigation of the incident, **consistent with state and federal law**. The administrator shall exercise appropriate progressive discipline as set forth above. ~~If the investigation shows Physical Attack/Harm did occur and the professional educator so recommends, the student shall not be returned to the affected professional educator's responsibility until a restorative reentry meeting and safety plan have been completed.~~

9.4.13 Any student found to have committed Threat/Causing Fear of Harm or Physical Attack/Harm upon a professional educator shall be immediately subject to appropriate discipline in accordance with the *Students' Rights and Responsibilities Handbook/Guide*. However, **the student shall be removed from class or school**. A relevant and actionable Tier III intervention will be ~~has been identified prior to their scheduled return, and a restorative reentry meeting and safety~~

9.4.13 Any student found to have committed Threat/Causing Fear of Harm or Physical Attack/Harm upon a professional educator shall be immediately subject to appropriate discipline in accordance with the *Students' Rights and Responsibilities Handbook/Guide*. However, the student shall be removed from class or school. A relevant and actionable Tier III intervention will be ~~has been identified prior to their scheduled return, and a restorative reentry meeting and safety plan have been completed.~~ Prior to student reentry to the classroom a safety plan will be developed with the impacted professional educators' input and a restorative reentry meeting will be held. The intervention shall be communicated in writing to the student's guardians and all professional educators who are responsible for the student prior to the student's return to school or class. Regardless of the student's age or grade, the District shall ensure that student-services makes regular contact with the student while the student is out of the school. ~~there shall be a minimum of five (5) days suspension for a Threat/Causing Fear of Harm and mandatory expulsion for the remainder of the year for Physical Attack/Harm. The Superintendent, or Deputy Superintendent may modify the disciplinary consequences on a case-by-case basis. A report of the modifications of disciplinary consequences shall be provided to the Superintendent at least twice a year.~~

~~For PK-5 students, the minimum five (5) day suspension for Threat/Causing Fear of Harm shall not apply; however, an intervention shall occur and the Threat/Causing Fear of Harm will be documented. If the Threat/Causing Fear of Harm rises to the standard in law, a suspension may be allowed.~~

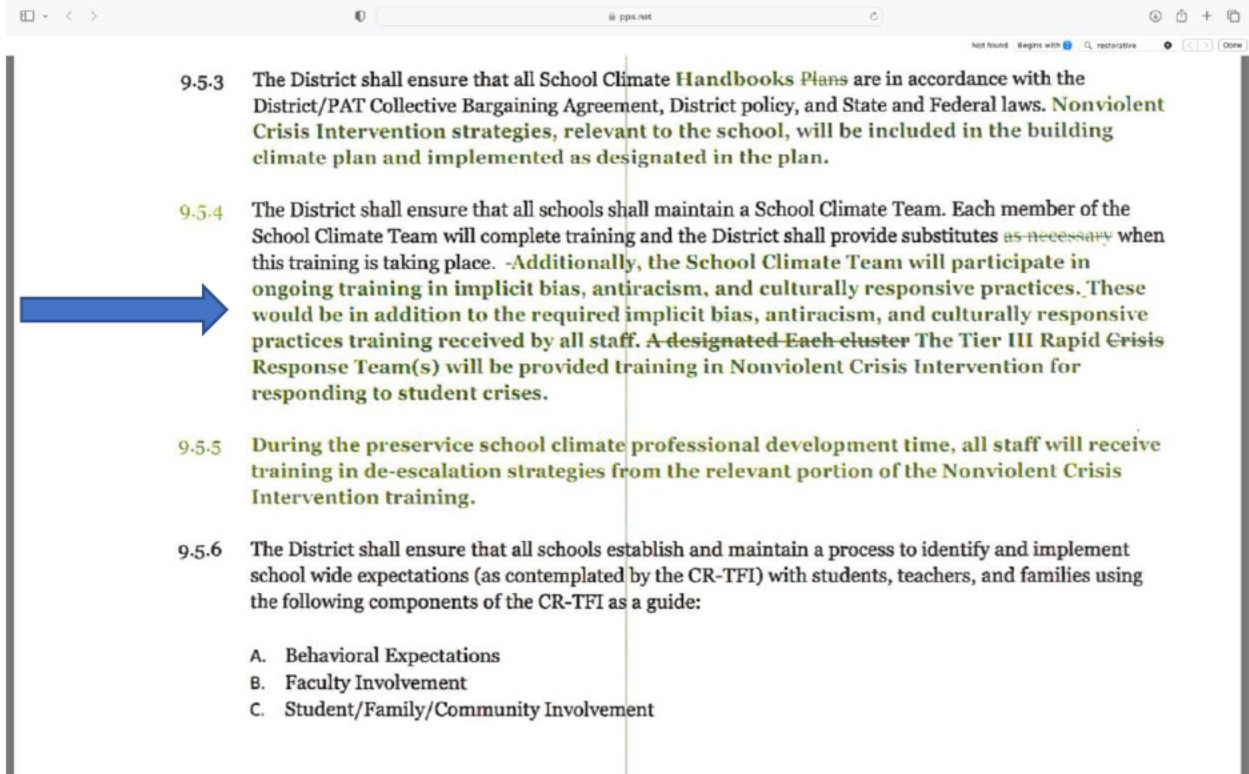
9.4.14 In accordance with Oregon law ~~and~~ the *Students' Rights and Responsibilities Handbook/Guide*, any student who has been involved in a violation of state or federal law regarding weapons at school shall be immediately suspended pending administrative investigation. If the investigation confirms that the student was in violation of state or federal law regarding weapons firearms at school, the student shall be reported to the appropriate law enforcement agency. The student shall be expelled from school for a period of not less than one calendar year for possession of a firearm in accordance with ORS 339.250(7). The Superintendent, ~~or~~ the Deputy Superintendent or Area/Senior Director may modify the disciplinary consequences on a case-by-case basis. ~~The~~

9.5 Climate Plan and Culturally Responsive Tiered Fidelity Inventory (CR-TFI)

9.5.1 The building discipline procedure (School Climate Plan) is under continuous review in a process as outlined in a District approved Inventory of Multi-Tiered System of Supports (e.g.: Tiered Fidelity Inventory (TFI)) as well as those domains included in the Fidelity of Implementation Tool (FIT) Assessment that pertain to strong and positive school culture and inclusive behavior/social emotional instruction. The principal and the Building Climate Team shall include the following minimum procedures in developing a written School Climate Plan to outline the building procedures for Tier 1, 2, and 3 supports and each building's behavioral matrix based off of the Student Rights and Responsibilities Handbook. Such procedures shall exist in each building or program. The process must be trauma-informed in accordance with District policies and regulations and State law.

9.5.2 Copies of the specific building discipline procedures/school climate handbook plan shall be clearly communicated to all staff during Professional Development (PD) before the start of each school year. Copies of the specific building procedures/school climate handbook plan shall be distributed to students and families by the end of the first week of school in the languages spoken in the building. Copies shall also be posted online on the school's website in all supported languages.

9.5.3 The District shall ensure that all School Climate Handbooks Plans are in accordance with the District/PAT Collective Bargaining Agreement, District policy, and State and Federal laws. Nonviolent Crisis Intervention strategies, relevant to the school, will be included in the building



9.5.3 The District shall ensure that all School Climate ~~Handbooks Plans~~ are in accordance with the District/PAT Collective Bargaining Agreement, District policy, and State and Federal laws. **Nonviolent Crisis Intervention strategies, relevant to the school, will be included in the building climate plan and implemented as designated in the plan.**

9.5.4 The District shall ensure that all schools shall maintain a School Climate Team. Each member of the School Climate Team will complete training and the District shall provide substitutes ~~as necessary~~ when this training is taking place. **-Additionally, the School Climate Team will participate in ongoing training in implicit bias, antiracism, and culturally responsive practices. These would be in addition to the required implicit bias, antiracism, and culturally responsive practices training received by all staff. A designated ~~Each cluster~~ The Tier III Rapid Crisis Response Team(s) will be provided training in Nonviolent Crisis Intervention for responding to student crises.**

9.5.5 During the preservice school climate professional development time, all staff will receive training in de-escalation strategies from the relevant portion of the Nonviolent Crisis Intervention training.

9.5.6 The District shall ensure that all schools establish and maintain a process to identify and implement school wide expectations (as contemplated by the CR-TFI) with students, teachers, and families using the following components of the CR-TFI as a guide:

- A. Behavioral Expectations
- B. Faculty Involvement
- C. Student/Family/Community Involvement

year or work day.

18.6.2 In the event that a tax base or levy failure, declining enrollment, program change, or change in funding results in reduction of staff in a building or program area, transfer of staff will be based on educational criteria as described below with respect to the program requirements as determined by the District. Volunteers will first be requested and considered from among the appropriately licensed professional educators. Such volunteers shall be selected for transfer if they are from within the grade level(s) or subject matter area(s) where the positions are to be eliminated provided the volunteer(s) are not on a ~~Program Plan of Assistance for Improvement~~. In the absence of volunteers, the professional educator having the least seniority in the District shall generally be transferred. Exceptions to seniority may be made by the responsible administrator based only upon any of the following educational criteria: with the understanding that reference to a professional educator in 18.6.2.1 – 18.6.2.6 refers to within a given job classification, such as Teacher, Social Worker, School Psychologist, Student Services Specialist, Child Development Specialist, and Audiologist:

- 18.6.2.1 The professional educator(s) being retained has/have unique licensure for a specific existing assignment being considered;
- 18.6.2.2 Gender Presentation/Gender Identity balance: Transfer of a professional educator would decrease the building's percentage of under-represented male or female or transgender/nonbinary/gender non-conforming professional educator to less than thirty percent (30%) (or primary/intermediate/upper grades percentage in an elementary building);
- 18.6.2.3 Racial balance: If transfer of a professional educator would decrease the building's percentage of minority teachers to less than the student minority percentage in the building or below the percentage of minority professional educators in the District;
- 18.6.2.4 That professional educator being retained has bilingual (or multilingual) ability relevant to the assignment (See Appendix I);
- 18.6.2.5 The professional educator(s) being retained has an extended responsibility assignment as defined in Appendix B which is an extension of a classroom subject taught (e.g., drama, forensics, music, yearbook, newspaper) or is a department chairperson, head teacher or unit leader;