

**Report Following an Investigation on Complaint and Grievance**  
**Subject: Allegations of Harassment and Discrimination by Brett Bigham**

Date of Report: October 20, 2014

Prepared for: Brian Hungerford, Legal Counsel for MESD

Report Prepared by: Jim Buck

**Background:**

During 2013 Brett Bigham, at the behest of Peggy Looney, an educational assistant in his classroom was nominated as teacher of the year. With the support of Superintendent Jorgensen and letters of support from multiple individuals, Mr. Bigham was selected as Teacher of the Year for the State of Oregon in 2014. Beginning last fall and continuing through the calendar year 2014 he would be expected to attend numerous events locally and out of state due to this honor and recognition. His speaking engagements and authorship of articles would raise questions about the type of oversight or review that should be in place as a representative of MESD. Certain protocols were established but they were not very specific. Brett took umbrage at constraints he believed were being imposed on his ability to communicate as freely as he desired. He also believed that FLS supervisors were engaging in actions that created a hostile work environment. Brett continued to document incidents and to blog to his fellow teachers of the year across the nation of his concerns.

In April 2014 Brett Bigham believed that he was so stressed from incidents he considered harassment from his supervisor and FLS staff that he planned to resign. Barbara Jorgensen was not in her office that day (April 11) and he met with Jim Rose who refused to accept his resignation and planned a meeting with Ms. Jorgensen. Jim Rose had a conflict for a meeting that was scheduled the following work day (April 14). There appears to be no full understanding by any party in this matter, but the meeting with Ms. Jorgensen to address these concerns never occurred. Since it was then May, Mr. Bigham said he simply let the matter drop as activities intensified and the end of the school year was drawing near.

Mr. Bigham's concerns were not resolved but grew over the summer. An informal grievance was filed by the union on August 18 alleging that the district had created a hostile work environment and discriminated against him due to his sexual orientation. The union also believed that mandated changes to his "classroom setup" and required implementation of a new curriculum violated provisions in the collective bargaining agreement.

Following submission of the informal grievance, Mr. Bigham met with Heyke Nickerson, in an effort to understand and resolve the outstanding issues, but agreement was not achieved and a formal grievance was filed by the union on September 15, 2014.

Initially, I met with Ms. Jorgensen and then with Mr. Alan Moore, Mr. Bigham's Uniserv Consultant to understand their perspectives on this matter. While Mrs. Jorgensen was disposed to mediation on this matter, Mr. Moore was now asserting that the outright denial of the grievance by Ms. Nickerson due to a timeline violation indicated that MESD could not address matters successfully through a more informal approach. A formal investigation was then commissioned.

**Allegations:**

1. The MESD has created a hostile work environment that have violated Article 10.A due to supervisory discrimination against Mr. Bigham due to his sexual orientation. MESD has violated Article 9A through attempts to coerce Mr. Bigham from revealing his sexual orientation.
2. MESD has violated Article 7.G, 7H, and 9B by unilaterally mandating substantial changes to Mr. Bigham's classroom and curriculum without input or discussion with Mr. Bigham.

**2012-2014 Contract language:**

The grievance cites these provisions in the collective bargaining agreement:

**Article 7:**

G. Change in Job Description/Hours

The duties and position responsibilities of a member shall not be substantially altered or increased without consultation between the member and the member's supervisor prior to such changes being implemented. Any change in a member's number of hours of employment or written job description shall be discussed with the member prior to implementation of such change.

H. Change in Program/Service

Supervisors will provide notice to members of any proposed substantial change in a program or service and will allow for member input before implementation of the change.

**Article 9B:**

It is the right of classroom teachers:

To participate in the development of curriculum and the selection of teaching materials.

**Article 10:**

A. The Association and the District affirm their adherence to the principles of free choice and agree that they shall not discriminate against any member covered by this Agreement because of age, race, religion, sex, national origin, disability or sexual orientation. All references to members in this Agreement designate both sexes.

**Investigation Process:**

Information regarding the allegations was obtained principally by interviewing MESD staff members who either had knowledge or were involved in the allegations. I reviewed email communications, pertinent board policies, and blog notes provided by Mr. Bigham and/or his representative, Alan Moore. As needed follow-up with telephone calls or emails to certain individuals were conducted to clarify or confirm particular points. I listened to Mr. Bigham's speech to OEA members which was available online and viewed a written article he had provided or authorized for publication in StreetRoots using his title of Teacher of the Year.

No audio recording of the interviews was employed; 74 pages of written notes, however, were taken in the course of these interviews. Interviewees were able to provide any written documentation during the interview. They were also told they could contact me later if they felt there was a need to append any other document or comment further. Mr. Bigham was asked in the initial interview if there were specific witnesses he wanted me to interview.

Mr. Moore initially gave me more than 200 pages of documents that he had previously shared with the district. Many of these pages were copies of Mr. Bigham's blog with other teachers of the year from across the country and as his recurring commentary to them helped him pinpoint when certain events occurred. Ms. Jorgensen voluntarily provided all email communication that she had within the past two years with Mr. Bigham.

At the start of each interview, the individual was told that the MESD board had given its assurance that he/she would not be subject to any recrimination or reprisal by the MESD or its agents for his/her cooperation in the investigation and his/her honest responses to questions posed.

### **Interviewees:**

The following individuals were interviewed in person during the course of this investigation:

- Brett Bigham, Transition Teacher (interviewed both at the beginning and end of the investigative process for a total of 5.5 hours)
- Barbara Jorgensen, Superintendent
- Jim Rose, Chief Operating Officer
- Mark Skolnick, Public Information Officer
- Curtis Westover, Education Assistant
- Peggy Looney, Education Assistant
- Jeanne Zuniga, Special Education Coordinator
- Kelly Raf, FLS Supervisor
- Cara Olson-Sawyer, FLS Supervisor
- Kathryn Skimas, Chief Program Officer
- Paul Sigel, Education Assistant
- Sherry DeChand, Education Assistant
- Carol Sweeney, Teacher on Special Assignment (TOSA)
- Wendy Mendez, Secretary
- Hyke Nickerson, Director of Human Resources

All interviewees responded cooperatively and respectfully to the questions posed. Many were helpful in providing additional clarifications via email or phone following the interviews. Any issue of credibility raised by any interviewee will be identified and expounded upon in the report.

### **Findings and Discussion:**

Mr. Bigham believed that the hostile work environment had a number of contributing factors. I will address each area separately. Mr. Bigham submitted approximately 10 categories, but I have consolidated certain concerns under more broad headings. It is my belief those addressed in this report include all for which Mr. Bigham provided documentation. The allegations in this case primarily involve interactions between individuals where the variable of interpretation of communication between parties figures prominently. It is important therefore to explain the context in these situations or communications. Therefore, given the nature of the allegations, the section on "findings" has been combined with "discussion" for that reason.

#### **A. Restrictions Placed on Communications**

Mr. Bigham presented these incidents of supervisors placing constraints on his communication while teacher of the year.

1. Mr. Bigham said that he requested Ms. Zuniga listen to one of his speeches and provide a critique as he respected her opinion. She acceded and drove separately to a gathering in The

Dalles sponsored by Columbia ESD in late January 2014. There were substantial differences in how the parties recalled not only their conversation but other details about this event. Mr. Bigham felt perturbed that Ms. Zuniga left the presentation early to return to Portland. Ms. Zuniga said she recalls walking out with Mr. Bigham and talking in the parking lot afterwards where they agreed to chat on the phone while commuting. Mr. Bigham took written notes of the conversation at the same time because he did not have the technology to drive and talk simultaneously. This would seem on the surface to give him more accurate recall of events and credibility in this matter. His notes only cover, however, at best a minute or two of the conversation, one that he said lasted at least thirty minutes. The few notes, therefore, do not reveal the context of those remarks in what was clearly a more amplified discussion. Mr. Bigham shared that Ms. Zuniga complimented him on his dress and demeanor while speaking, but also said not to tell audiences he was gay. Ms. Zuniga denies telling him to refrain from saying he is gay. She said in the discussion of knowing how to read your audience, Mr. Bigham brought up the topic of perhaps being shot for saying he was gay in eastern Oregon and she, having lived in that area for 15 years, tried to reassure him and break the stereotype he had expressed. Mr. Bigham's notes show he asked, "You think someone will kill me?" His notes show Ms. Zuniga saying, "I think someone is going to shoot you in the head," and made reference to NRA stickers on cars. Ms. Zuniga said any remarks that were critical dealt with better reading his audience as she had seen someone walk out early and others shows signs of discomfort. Another MESD administrator did receive a negative comment from one administrator in that region about the presentation, however, Brett received a very positive letter from the CESD superintendent praising his speech and remarks. Ms. Zuniga recalls sharing that Mr. Bigham needed to know how to address the time allotment he was given as she felt he was rambling in part and needed a stronger focus. This aligns with Mr. Bigham sharing the speech was only 17 minutes and the question/answer period took up the majority or 43 minutes of the allotted hour. Mr. Bigham talked about his background customarily in his presentation and included his sexual orientation in that context.

A salient finding is when I interviewed Mr. Bigham as part of this investigation he had attended more than 180 events in conjunction with his teacher of the year designation and continued to cite his sexual orientation at virtually every event without a single chastisement or admonition from any supervisor or administrator at MESD. If there had been any perceived directive to cease referring to his sexual orientation Mr. Bigham ignored it completely—and without consequence. Apart from this single comment Mr. Bigham reported in January 2014, no MESD administrator or supervisor ever raised or objected to him expressing any remark about his sexual orientation. Multiple MESD administrators complimented Mr. Bigham on his standard presentation which included references to his sexual orientation.

2. On March 16, 2014 an op-ed authored by Mr. Bigham was printed in The Oregonian. It received some critical comments by readers. MESD supervisors believed certain points in Mr. Bigham's opinion piece were either inaccurate or prone to being easily misconstrued. A meeting was held and a summary of the meeting was sent to Mr. Bigham by Kathryn Skimas on April 8. It specified that for the future: "Anything in writing, goes past Mark S. first." The second part of the memo dealt with how to deal with conversations around assessment and what the critical components should be in his remarks. Mr. Skolnick believed the review charge was excessively broad, infringed on Mr. Bigham's free speech rights and essentially not warranted. Mr. Skolnick had already met with Mr. Bigham and had coached him on his

standard presentation and provided an opportunity to present to some “communication pros” at Edgefield to gain feedback. Mr. Skolnick did not believe further or more extensive review was necessary. This created a degree of confusion or uncertainty that would continue for months. Mr. Bigham interpreted this new requirement for review to be part of a “gag order” by supervisors. On April 9 Mr. Bigham wrote on the teacher of the year blog site: “Help! I forgot to ask you guys. . .in a. (sic) Meeting with my district yesterday I was told I am not allowed to write anything, even a Facebook post, without it being approved by my district first. Is anyone else having that issue?” In sharp contrast to this and on the same morning, April 9, he wrote to Ms. Skimas the following: “Thank you very much (sic) Kathryn. It is actually very comforting to have that sort of round table to have a plan as my move (sic) forward. I know there will be many times I have to think on my feet but having the chance to gather information beforehand makes me feel more comfortable in my role.” A further question on this email also makes clear that Mr. Bigham was uncertain about whether it applied to anything else such as “Facebook, letters, thank you notes—all written as Teacher of the Year.” While he expressed certitude about this understanding in his blog comment, namely, everything required a review, his own email in the district that same morning professed a lingering question on the matter. While Mr. Bigham chose to interpret this review requirement to include his thank you notes or anything written, the context of the discussion was on writing (articles) that required technical or professional background such as topics dealing with Common Core or testing. Meeting notes from a supervisor and the meeting summary attest to this context in the discussion. Mr. Bigham’s extension of it to include individual comments to individuals or simple “thank you” acknowledgements or pithy blog notes is another example of Mr Bigham magnifying an issue and including elements that were never part of the original discussion. Mr. Bigham reported that after the April 8 meeting with Ms. Skimas, Mr. Skolnick told him that part of the restrictions were no longer in effect. Mr. Bigham said he requested clarification in writing but never received it. Mr. Bigham continued to express very critical comments in his blog with other 2014 teachers of the year about this “gag order.” He continued to give presentations and write (as attested to by a posted article he authored that StreetRoots placed on its website as part of a series on marriage equality). During this entire period from April 8, 2014 to when the grievance was filed, no criticism or correction was ever given to him by anyone at MESD on any speech or publication he gave as teacher of the year whether under MESD auspices or on his own personal time. MESD took steps to assist Mr. Bigham in this role and the framework they provided to guide his work may have contained some ambiguity, but it was not enforced with any rigidity as the history of MESD administrative non-action clearly shows.

3. Mr. Bigham reported that sometime around late October 2013 Ms. Zuniga said he should not refer to himself as teacher of the year. Ms. Zuniga denies telling him that but said they had a conversation after another FLS supervisor believed Mr. Bigham had offered to train or consult with her teachers in such a manner as to be condescending. Mr. Bigham wrote an apology as directed by Ms. Zuniga. Mr. Bigham was so annoyed after this conversation, however, he added “Teacher of the Year” to his signature line on all his email correspondence. The context for this exchange appears to be Mr. Bigham’s colleagues were affronted by his arrogance or pomposity and Ms. Zuniga was attempting to mediate matters and cautioned him about flaunting the title before his colleagues. It does not appear Mr. Bigham saw Ms. Zuniga’s comment as a formal directive as he continued to make reference to his title, Teacher of

the Year, and received no criticism or negative response from doing so by his supervisor(s) or other MESD administrators.

4. On August 1, 2014 Mr. Bigham voluntarily came to work during his non-contract time to work on a grant from the Farmers' Insurance. As he was assembling necessary components for the grant, he needed to have certain items placed on MESD letterhead. Mr. Bigham reports he was told by a secretary he could not use district letterhead without gaining approval. Mr. Bigham perceived this as another way of being singled out for differential treatment at MESD. Ms. Skimas and Ms. Mendez who were involved in this matter that day react quizzically to such assertions as they only recall attempts to assist Mr. Bigham with his grant objectives. Ms. Mendez, a secretary, provided Mr. Bigham with access to a computer to assist with his work on August 1. She recalls that there was no printed stationery or letterhead available with the current, new board members names, only an electronic template which complicated Mr. Bigham's request for the letterhead. Ms. Skimas reports about a ninety second interaction trying to assist as well, but never any hint of a restriction on use of letterhead coming from her office. When asked by Ms. Mendez about this, she said she knew that Mr. Bigham mentally formed some objection to what she had told him, but she said it was typical for him to interpret communications as it suited him and he frequently made comments about being censored in some way. Mr. Bigham emailed Ms. Skimas asking for clarification on use of letterhead but never received a reply. Ms. Skimas to this day has no idea to what Mr. Bigham was referring.
5. Mr. Bigham alleges that the MESD administration (Barbara Jorgensen and Jim Rose) endorsed his grant project application with Farmers' Insurance on August 1, 2014. Later that month he could not obtain permission to interview with a team this company might be sending to MESD. Mr. Bigham maintains that he could not have remarks cleared by Mr. Skolnick as he didn't know what they would be asking. Mr. Bigham reported that he verbally asked Kelly Raf, his new supervisor, repeatedly for permission to meet the interview team. Believing he could not satisfy MESD requirements, he withdrew the grant application. Ms. Raf had never received anything in writing from Mr. Bigham about this project so she never gave an approval. This is an instance where the MESD had clearly from its top administrators given approval for the application and whatever else was concomitant with its requirements. While Ms. Raf was new and only attempting to follow established protocols, applying such rigidity a month after the application process had already commenced reflects a lack of coordination by MESD administration. While Mr. Bigham encountered a barrier that should have been ameliorated, there is no reasonable justification in equating that with discrimination based on his sexual orientation. MESD administration, at the highest echelon, previously had expanded his credit card limit to facilitate his travel, given him speaking engagements at all of its graduations, and supported all of the events he scheduled during work time for 2013-14. Mr. Bigham is singling out a specific example during which he also manifested some obstinacy to cry, "Foul."
6. Mr. Bigham said that in September 2014 Kelly Raf, his new supervisor, communicated that anything sent to parents in writing needed her prior approval. He interpreted this as further constricting his prerogatives in communicating with his parents. On September 3 he said he wanted to send a written note home to a parent regarding a student who had an injury and did not eat. He sought a supervisor to sign the note assuming it needed authorization. He had difficulty gaining authorization for the note as Ms. Raf was not in. What is in question is whether this supervisory approval was required in the first place. Ms. Raf's August 21

communication was in response to Mr. Bigham's request for clarification on the use of district letterhead and it was in that context that Ms. Raf wrote: "•Response—any letters going home need to go through me first as a courtesy so I know what is being communicated with families and so I can support should parents call with concerns about anything sent home. Anything you want to print on letterhead should go to me and I will determine what requires letterhead." An objective person would have observed that this message refers specifically to "letters" (plural) sent to "families" (plural) as if it were a classroom-wide communication; there is no reference to handwritten or individual notes, a thank you card, or anything of that nature. Mr. Bigham wrote on the teacher of the year blog site: "So . . .today's email: I can send no notes home to parents until they have been ok'd (sic) by my new supervisor. (I send notes home every day with my fragile kids.)" He ends with: " Have any of you ever had such a rule?" Mr. Bigham chose this interpretation and then dramatized it in the September 3 note he wanted to send home with one student. Ms. Nickerson later clarified with Mr. Bigham on September 4 that this requirement by Ms. Raf did not apply to notes on individual students. That clarification should not have been necessary, but it represents another example of Mr. Bigham exploiting an ambiguity rather than resolving it.

### **Part A Conclusion:**

While Mr. Bigham may feel genuinely that he has been subject to a "gag order," the evidence shows nothing resembling the hyperbole implicit in this label. He had a "review" order for speeches and articles written under his name as an employee of MESD and teacher of the year, but that review had narrow parameters and was designed to assist not constrain him. There was never any attempt by supervisors or administration to curtail his questions and answer sessions following his presentations because they could not receive Mr. Skolnick's prior review. While Mr. Skolnick did not involve himself in reviewing Mr. Bigham's products after the initial training period, there were few if any restrictions imposed on Mr. Bigham. Mr. Bigham's multiple characterizations about the "gag order" on the teacher of the year blog were inflammatory, inaccurate and without foundation. Mr. Bigham repeatedly portrayed himself as a victim on the blog when the only constraints by his supervisors were intended to save him from embarrassment or professional criticism for statements that may not be accurate, as occurred in the op-ed article he wrote. Mr. Bigham expressed a legitimate concern for the conflicting requirement to have all presentation or written articles, etc. reviewed by Mr. Skolnick, yet Mr. Skolnick's withdrawal from that responsibility left him feeling caught. Administration should have better coordinated this requirement or altered it in writing given the angst it generated. The administration's culpability is mitigated by the fact that upper level administration did not understand until recently the gravity with which Mr. Bigham held these perceptions. He had a conversation with Mr. Rose on April 11, but most of those concerns, as confirmed by Mr. Bigham's notes on the exchange, dealt with FLS supervisory actions not with this communication review requirement. Also, Mr. Bigham carried on with at least 180 events and there was little to no controversy regarding them which reinforced administrative perceptions of no problem in this arena. The fact that Barbara Jorgensen asked him to speak at all the MESD graduations seems wholly inconsistent with a "gag order" that Mr. Bigham was touting with external groups. In a presentation to OEA members he said occurred last spring Mr. Bigham departed from his approved remarks and told an audience of educators he could be fired for delivering a non-approved presentation. He played up his adversarial role in this purported insubordinate action. Such conduct may serve to gain a

reaction from his audience or serve his own ego needs, but it misrepresents the communication and understanding prevailing at the time.

In September 2014 Mr. Bigham yelled at Ms. Raf to leave his room when he entered and found her talking to EAs she supervised. He said he could not talk to her about anything due to the grievance and she shouldn't be in the room. She asked him to calm down and he refused. There was no reasonable basis for his actions which were insubordinate, but it also points to the rash interpretation he can give certain communication that exceeds bounds of rationality.

Mr. Bigham stated in my interview that MESD administration received a letter from the federal department of education regarding the constraints being placed on his speech. When asked about this communication, Ms. Jorgensen said the MESD had not received any such communication from Mr. Duncan's office or one of his subordinates.

Mr. Bigham's displays a propensity to exaggerate certain elements in a communication. That unfortunate attribute diminishes his credibility as his assertions often are supported only by his skewed perspective or interpretation of communications rather than actual statements. This was borne out repeatedly in the investigation.

### **B. Actions that were Perceived as Personal Slights or Insults:**

Mr. Bigham presented these incidents of supervisors as examples of behaviors he found offensive and contributed to a hostile environment in the workplace:

1. Mr. Bigham believed that at the October 2013 MESD board meeting when he was recognized for his teacher of the year award, three FLS administrators/supervisors did not acknowledge his mother or partner. He said the director at the time, Kris Beck, never congratulated him or introduced herself to his mother or partner. His mother has contributed financially to the success of the Prom program and having this slight occur to her only intensified Mr. Bigham's feelings. The FLS department did not plan a more formal acknowledgment of his award at one of its meetings which also perturbed Mr. Bigham.

It should be noted that neither Ms. Beck nor Ms. Zuniga endorsed or wrote letters supporting Mr. Bigham's nomination as teacher of the year. FLS supervisors were pleased with the attention the award brought to MESD and all their staff. They lauded Mr. Bigham's creativity and networking ability but questioned whether his instructional skills deserved this level of recognition. There was the perception among a number of FLS colleagues and supervisors that Mr. Bigham was engaging in self-glorification that caused a pushback by others.

One of the FLS supervisors was being recognized at that same October board meeting for two different reasons. Her focus may have been elsewhere at the time. Furthermore, Mr. Bigham by his own admission "yelled" at this supervisor and strenuously objected to her advice just weeks before the board meeting, actions that forced a change in her assignment. He fully expects, however, she should act magnanimously when the spotlight is on him.

MESD posted on its website three pages of pictures of Mr. Bigham at the board meeting that evening and all present joined in the congratulatory applause. There is nothing in the behavior of supervisors that evening that can be directly associated with Mr. Bigham's sexual orientation. There is no knowledge that any FLS supervisor harbors a bias against gay individuals. In fact, no supervisor has been alleged to have made a single slur or inappropriate reference regarding a person's sexual orientation nor has any received any complaint about discrimination in the past.

2. Mr. Bigham said in March 2014 he was asked to come to a meeting upstairs in the MESD FLS office area. He stated he answered a question that was posed and was asked as he left to

throw a paper wrapper away for one of the supervisors. After returning downstairs he received a call from one supervisor asking that he bring up three coffees even though the Galley, operated by students, was closed on this non-student day. Mr. Bigham interpreted this exchange as an intent to belittle him as teacher of the year. There is a stark difference of opinion regarding this allegation by the parties involved. None of the three FLS supervisors (technically one is a TOSA and non-supervisory) recalls any of Mr. Bigham's assertions. Mr. Bigham reported that one of his EAs volunteered to take up the coffees to avoid him the embarrassment of catering to the supervisors. This EA has only a very vague recollection of the incident and did not corroborate Mr. Bigham's version of their discussion in his room after he returned from the brief meeting. Mr. Bigham wrote on his blog about this almost immediately afterwards. The details, however, he reported do not correspond with how the FLS supervisors prefer their coffees raising further questions about the validity of the incident. There is no purported history of such requests by any FLS supervisor either before or after this alleged incident.

### **Part B Conclusion:**

The evidence in these two incidents does not substantiate a claim of discrimination or harassment creating a hostile environment. Given the honor Mr. Bigham received, his immediate supervisors should have been gracious enough to introduce themselves to Mr. Bigham's partner and mother at the board meeting. That would seem appropriate, but there were tensions in relationships that cannot be ignored that may have influenced their behaviors, something that Mr. Bigham fails to appreciate. Mr. Bigham conveys the sense that his moment of recognition should trump all other considerations. These perceived slights do not represent any persistent pattern of insulting or degrading behavior. Mr. Bigham has articulated his passion for free, unrestricted speech and this same standard should apply to how others choose to express their congratulations or compliments. As will be shown in other areas, Mr. Bigham's recall or interpretation of events is suspect and that must be factored into any conclusion. I do not find that these incidents pass muster in support of Mr. Bigham's contention of discrimination.

### **C. Supervisory Actions Hurting His Students**

1. Mr. Bigham raised multiple concerns about a student who entered his classroom in September 2013. While this student made progress previously at Arata Creek he had a significant behavioral episode on September 13 during which he left the classroom and in the course of staff interventions, kicked, hit, whipped with an electrical cord, and bit Mr. Bigham. The student also made threatening statements about other students, a behavior he had engaged in previously. His history showed that all verbal threats remained just that—he never acted upon any of the threats. Mr. Bigham disagreed with how this matter should be handled in terms of communications to parents, writing of a BIR report and the planned changes in his EA staffing. The student never returned after this date to the Transition Program. Mr. Bigham in his own notes stated he “yelled” at his supervisor, Cara Olson-Sawyer, on the phone about this student's placement and his rejection of the supervisor's intent to transfer Educational Assistant Matt B who would assist such students. The transfer was rescinded by administration. This student had threatened to jump from a second story balcony on a field trip to a mall Mr. Bigham chose to undertake the first day of school. There were indications this student's behavior could be unpredictable and volatile, that was not unknown to Mr. Bigham. The FLS program is designed to accommodate students who pose severe challeng-

es. There is no evidence that this placement occurred to intentionally disrupt or endanger Mr. Bigham or anyone in his classroom. MESD has only two transition classrooms which limit placement options for students. Following this incident, Matt B's transfer was rescinded and Brett also received Jeanne Zuniga again as his supervisor, a decision he favored. While judgments about appropriate actions differ among professionals, there is no evidence that Mr. Bigham's judgments in this matter were superior to other FLS supervisors or that any action by FLS supervisors should be viewed as discriminatory towards Mr. Bigham. The rescinding of the transfer and acceding to a change in supervisors were actions that Mr. Bigham supported. Furthermore, the administration had cause to discipline Mr. Bigham for his lack of professional demeanor in addressing his supervisor in the telephone conversation following this incident and chose not to take any action.

2. Mr. Bigham believed a student was in potential danger due to a threat made by a close friend. No dates were given for this incident. He said a supervisor would not allow him to call and warn the other student's parents. Mr. Bigham tried to convince the parents of one student not to let the other student visit. The two students spent time with each other that weekend and nothing happened. There are too few notes and details provided by Mr. Bigham to support any conclusion about what the appropriate action should have been. In this case there is no evidence that a professional disagreement constitutes a bias against Mr. Bigham as a member of a protected class or that this contributed to an unsafe classroom.
3. Mr. Bigham stated in writing that in March 2014 "Cara Olsen (sic)-Sawyer took my medically fragile student to a conference I was attending." Mr. Bigham observed that this supervisor and a relative who accompanied the student (Emma) ignored the medical protocols in place at the time. Mr. Bigham reported he had another teacher of the year engagement and could not remain to ensure the protocols were followed. Ms. Olson-Sawyer, an FLS supervisor, helped coordinate information with Emma's guardian regarding a conference on inclusion held over the weekend. Ms. Olson-Sawyer did not transport Cara to or from the event, but only met her there. Ms. Olson-Sawyer was not responsible for her care during this event. This was a non-MESD sponsored event that the student's guardian decided to let her attend with a relative. Mr. Bigham did not raise at the event or afterwards any concerns he had with Ms. Olson-Sawyer. There is no evidence in this incident to indicate Ms. Olson-Sawyer should be faulted for voluntarily attending on personal time a non-MESD sponsored event in which a pupil of Mr. Bigham's was in attendance. No discernible nexus is found between this incident and Mr. Bigham's claim of it contributing to a hostile work environment or unsafe environment for his students while under MESD's care.
4. Mr. Bigham contends that pulling EAs from his room to send elsewhere for the day contributes to either an unsafe classroom environment or one that "hurts my students." When students are absent and needs present themselves in other FLS classrooms, administration has the responsibility and obligation to make decisions about the proper deployment of their personnel. There was no evidence provided that Mr. Bigham's EAs were unfairly targeted for moves to other FLS classrooms. Mr. Bigham has had more male EAs than other FLS classrooms and at times those resources were called upon to provide support in situations that required physical strength or ability by EAs to contend with students who could act out in a more aggressive fashion. While the absence of EAs could affect the transportation of students to job sites, since two were used if private transportation was involved, there was no data provided to indicate this impact was frequent or that it affected student's skill development and/or performance. MESD must exercise appropriate discretion to ensure liability is-

sues are minimized throughout its operation. No evidence was provided pointing to any excessive exercise of this discretionary authority when shifting personnel as needs required.

5. Mr. Bigham shared that a district attorney had submitted a subpoena for his classroom notes dealing with one of his students. He later learned that Ms. Nickerson had pulled certain pages of his notes. Mr. Bigham said he felt he couldn't object to how this was handled due to a comment from Ms. Zuniga. Ms. Nickerson said she and another staff person provided what specifically was requested by the district attorney. Mr. Bigham acknowledged that the child's guardian felt the case was strong without any additional classroom notes. MESD received no further requests for anything additional from the district attorney. The discretion or judgment in this matter regarding what to include in the subpoena request had no bearing on Mr. Bigham's image or role. He failed to show how any action by a supervisor in this matter was a form of harassment or discrimination.
6. Mr. Bigham stated that Ms. Zuniga made requests for students to come and clean her office which he believed meant dusting among other tasks. He said he objected to this due to Ms. Zuniga receiving "liquor" mailed to her office and that he did not want any of his students around such substances due to some of their histories with fetal alcohol syndrome. He also felt his reputation as teacher of the year would be jeopardized and the image of the MESD tarnished if it were publicized any student was working around liquor. Ms. Zuniga denies ever requesting that students clean her office area. Ms. Zuniga had received packages that were wine of the month club at work since they required a signature, a practice which has been discontinued since the subject was raised by Mr. Bigham. Ms. Zuniga said an FLS student escorted by an EA typically would pick up paper for shredding and empty waste paper baskets for individuals in that area. There was never an expectation for their service to extend beyond that. The student who did enter her office to pick up trash was always escorted by an EA and would have remained literally for seconds. The only other presence of FLS students upstairs was to deliver coffee or other foods sold in the galley.

While one can question the judgment of the supervisor in terms of this delivery option, the risk to students as described by Mr. Bigham simply isn't plausible. All of his students are assisted at all times by an EA. They are under constant supervision. The box containing the wine (not liquor as Mr. Bigham stated—liquor refers to distilled spirits) had no writing on it and it was not easily identifiable as containing alcohol. Ms. Zuniga no longer receives such packages at the workplace.

In the initial interview Mr. Bigham raised a concern about his students having more instructional hours than other FLS classrooms but I was given to understand it is no longer an issue.

### **Part C Conclusion:**

Mr. Bigham's examples of supervisory actions that hurt his students and affect his classroom environment fail to meet any legitimate standard of what would constitute discrimination. Mr. Bigham's accusations have little to no merit or foundation and as a result appear almost vindictive in spirit.

### **D. Supervisory Decisions or Actions:**

Mr. Bigham contends these actions contributed to a hostile work environment or were discriminatory:

1. Mr. Bigham contends that Ms. Sweeney did not provide requested support in the new Synergy program in the fall of 2013. He claims training that occurred was later than he had desired and after he was supposed to begin triennial evaluations. Ms. Sweeney said Mr. Bigham was resistant to the changes being proposed and did not request training early, but waited until later in the fall. She reports teachers were supposed to begin triennial evaluations 120 days before they are due and Mr. Bigham was beginning his very late. There are email exchanges which shed more light on Mr. Bigham's contentions: On November 19, 2013 Mr. Bigham wrote: "I'm hoping the new system will be easy to follow but I may need a little help if it doesn't go well. I have two IEPs wednesday (sic) and then I will be starting on the TRIs—so I should know by Friday if I am having difficulties. If it doesn't go well maybe we can find a few minutes next week for training?" Ms. Sweeney replied within 90 minutes to check her Google calendar and schedule a time. She indicated the next week might be booked but to look after that. Again on Nov. 21 Ms. Sweeney wrote to Mr. Bigham: "Thanks for talking with me and sharing how you are feeling. I will do what I can to support your classroom. . . I would really encourage you to use my Google calendar so you can request Synergy time with me. Try to plan as far ahead as you can so you can be on top of the work." Ms. Sweeney closed with other words of support. On Nov. 25, 2013, Mr. Bigham emails Ms. Sweeney: "Actually THANK YOU SO MUCH for the quick Synergy lesson you gave me. I was making the same error across all my IEPs and I was able to fix them all before I finalized. phew!! (sic) The twenty minutes we spent probably saved me hours later on."

The verbiage in the email exchanges do not support Mr. Bigham's contentions in the slightest. Rather, it reveals a very supportive and cordial FLS staff person willing to lend a hand even if Mr. Bigham had procrastinated.

2. Mr. Bigham alleges that Carol Sweeney was supposed to attend an IEP meeting on April 16, 2014, but never showed and instead was upstairs on the computer working on the student's IEP which then disappeared from the system. Mr. Bigham became convinced that Ms. Sweeney was purposely causing his IEPs to vanish from the computer system and he requested that she no longer have access to his files. When Synergy was implemented a number of FLS staff complained about files that were not transferring properly or had components that disappeared. There were glitches that eventually were resolved. Ms. Sweeney has no recollection of having this IEP open at the time Mr. Bigham was holding the IEP meeting. Furthermore, her calendar does not show that this meeting was on her schedule. The Google calendar list of participants Mr. Bigham provided shows the invited list not the confirmed list of attendees since checkmarks are not next to the names. Mr. Bigham had no compelling evidence that Ms. Sweeney had agreed she'd attend or was actually upstairs during this meeting. He had heard from someone else that multiple people including Ms. Sweeney were on that electronic file at the same time. The evidence is not conclusive in supporting any of his contentions.

There appears to be no valid reason why Mr. Bigham should believe that Ms. Sweeney would purposely cause IEP files to disappear to the extent he wanted her to be excluded from any access to his files. An objective review of the communications between Mr. Bigham and Ms. Sweeney demonstrate his credibility in this matter is highly questionable.

3. Mr. Bigham alleges Ms. Sweeney during the last week in August came and "dismantled" his classroom, taking down bulletin boards, rearranging the student work areas and packing his desk. When Mr. Bigham returned, the district put a hold on moving his desk; he was told no

further action would occur for two weeks. Administration indicated that it adopted over the summer a classroom model that stressed active teacher engagement in instruction with students. In this model teacher desks and computers were moved to another location so teachers could better focus their instructional time and energy when with students. All FLS classrooms were transformed in August to conform to this new model. While Mr. Bigham is charging discrimination, his classroom was transformed in exactly the same manner as other FLS classrooms. Ms. Sweeney volunteered to help Mr. Bigham's EAs since he was away from the building for multiple days that week. While the classroom underwent major changes, Ms. Sweeney only helped box items that were atop and under Mr. Bigham's desk, mostly sundry papers. While Mr. Bigham in the grievance alleges supervisory personnel "discarded personal items" he shared no specifics about such items that were missing. No items inside his desk or out of public view were touched by Ms. Sweeney. It should be noted that Ms. Sweeney is a teacher on special assignment and a member of the same bargaining unit as Mr. Bigham. Therefore, she is not "supervisory personnel," but admittedly was serving as an adjunct of supervisors and with their support. An inventory collected by Ms. Raf and Mr. Bigham on Monday, October 13 reveals a highly disorganized assortment of pages and other materials that had been atop his desk. The lesson plan file that Mr. Bigham contended was packed away which hampered him daily was not included in these items. Ideally, Mr. Bigham should have been informed of this changed classroom model earlier and a date chosen when he could be present for the adjustments, however, the impact was no less than other FLS teachers confronted. Ms. Raf interceded immediately to address his concerns and respond to questions he had.

4. Mr. Bigham believes that implementing Unique as a new curriculum is inappropriate for his students who should be beyond academics and focused on life skills and job placement. MESD has been exploring a new curriculum for some time and asked teachers last school year to examine different curricula and give their opinions to administration. While Mr. Bigham contends Unique is a "K-12 curriculum," it does have a transition component. He received training on this curriculum in June and its implementation was no surprise. While there are philosophical differences between Mr. Bigham and FLS supervisors regarding not only curriculum and assessment practices, teachers typically have no authority on the ultimate selection of curriculum or formal assessments in a district. The fact he had to implement what other FLS teacher are using and finding constructive as well as meeting other expectations with regard to data collection and assessment cannot be considered discriminatory or heavy handed by administration.
5. Mr. Bigham believes he has not received appropriate compensation for the time he has worked. This is a very complicated and convoluted matter as changes occurred in his calendar that were mutually acceptable at the time. Mr. Bigham characterized his calendar as having "comp" days in June 2014 during which he did not report for work. They were not technically "comp days" but the result of an altered work calendar due to days he reported early in August 2013 to help move his classroom to Ainsworth. Mr. Bigham reported initially he had not been paid for a training day on June 16, but the investigation revealed he did receive additional compensation for that date in his June payroll. He believed that was one of his "comp" days but the district has no record of that time being adjusted in the changes made to his work year. Mr. Bigham's Google calendar and the district's record of days worked do not correspond. He also reported 8 comp days accumulated last year, but the district requires supervisory approval for all comp time and besides the four days in June that

were actually a work year adjustment, there is no record of such “comp” approval. An error was found, however, on the follow-through by both parties as Mr. Bigham was involved in a training on June 25, 2014. Neither he nor his supervisor had submitted this to payroll and thus he has not been compensated for it. Payment for this day should resolve any outstanding discrepancies unless Mr. Bigham has further documentation to review in this matter.

6. Mr. Bigham asserted that he was told by Ms. Raf that his only options for personal leave in the 2014-15 school year was to take that leave in increments of either a half or full day. He felt being restricted to these blocks of time was differential treatment. He would have been correct if that is what the communication entailed. What Ms. Raf communicated to him was exactly what the collective bargaining agreement specifies. If his absence requires a sub, he would need to use personal leave in those increments. If he did not require a sub because the time needed was only an hour, for example, at the conclusion of the workday, then it could be applied for in smaller increments. Mr. Bigham, in a pattern all too familiar, chose to interpret her communication as differential treatment when it was not her communication but his propensity to try and find something that could augment his sense of victimization.
7. Mr. Bigham contends that the changing restrictions on the events he can attend this school year (2014-15) represent a pattern of harassment and discrimination. He asserts that at the beginning of this investigation, the only three events he was denied within the appropriate notification timelines dealt with gay populations which seemed discriminatory. The district gave Mr. Bigham a set number of days or events (18) he could attend this year during the workday. It was stipulated that events he would attend requiring his release from instructional duties would need to have “value” to the MESD and required 14 day prior notice. Both Ms. Nickerson and Ms. Raf shared that he could submit events even within the 14 day notice period and they would be considered. The criteria in terms of what had “value” to MESD was not hard and fast and Mr. Bigham was able in his request to share arguments that might be sufficiently persuasive even though on the surface the event had questionable connection to his role of teacher of the year or questionable value to MESD. Ms. Raf deemed the three denied events were more personal in nature and not connected with his instructional or professional role or the specific interests of MESD. Mr. Bigham did not appeal or provide further justification for attending. This rejection does not appear to be discriminatory simply because all three groups were associated with gay, lesbian or transgendered people.
8. Mr. Bigham believed that a proposed placement of a practicum student from Portland State University’s Child and Family Studies Program last spring was going to result in a change in the EA allocation for his classroom. Since this practicum student placement never materialized and no adjustment occurred in EA time, I considered this issue moot. There seemed to be little if any connection between this potential practicum experience and what could be construed as a factor contributing to a hostile work environment or discriminatory behavior.
9. Mr. Bigham shared that Ms. Zuniga’s 12 or 13 year old stepdaughter, Haley, was left in his classroom for a portion of the day last April or May. He felt if he was being criticized for his classroom “not being run well” that this intrusion made little sense. Ms. Zuniga said her stepdaughter likes Mr. Bigham and liked interacting with a female student in the classroom and she was entertaining volunteering there. Ms. Zuniga had asked Mr. Bigham if a visit would be all right and he agreed. While the visit lasted longer than Mr. Bigham was told, it seemed a highly isolated event. Mr. Bigham presented no evidence that Haley posed a challenge to the classroom functioning or interfered with his work or that of any student or staff

member. While Mr. Bigham can raise the question of a legitimate purpose to this visit, the connection to this being a form of harassment or discrimination is difficult to fathom.

#### **Part D Conclusion**

Mr. Bigham should have received notification regarding the classroom model adjustment as he may have altered his outside commitments had he known. The changes constituted a major rearrangement of his classroom and it is reasonable for a teacher to be involved to fully understand the expectations and rationale for such moves. Mr. Bigham deserves an apology for how this was handled. On the other hand, Mr. Bigham's accusations about what occurred represent more hyperbole than fact. Mr. Bigham refers to the dismantling of bulletin boards. The bulletin boards in this room were not the ornate, highly decorative displays one associates with elementary classrooms where extensive teacher investment has occurred. Papers, notices, or other items were simply unpinned from partitions in the transition classroom. Furthermore, Mr. Bigham's contention about personal items being discarded was not substantiated. It was clear after seeing the inventory of items packed that Mr. Bigham's desktop needed a thorough cleaning as it was a pile of items that had not been filed or even properly organized. While Mr. Bigham should have been responsible for handling this, he exaggerates Ms. Sweeney's role in what transpired. Since all other classrooms received the same transformation it would not be considered discriminatory that Mr. Bigham's room was also included. A missed day of pay for June 25 I determine to be the error of both parties. The other elements of alleged harassing and discriminatory behavior in this section are not substantiated by the facts and should be dismissed.

#### **E. Other Supervisory Actions**

1. Mr. Bigham believes that Ms. Zuniga in 2013-14 failed to provide the same level of support to his classroom, missing considerably more weekly and monthly meetings than in prior years. He attributes this to his teacher of the year award. Ms. Zuniga in the fall of 2013 was required to cover the responsibilities of Ms. Beck who was out on sick leave. She also had a set of litigious parents to address which required more of her attention. She did sign three of the thirteen IEPs indicating she was at those meetings, a number higher than Mr. Bigham supplied in his notes in this matter. It should be noted district records show Mr. Bigham was away from his classroom for more than 40 workdays last school year which should factor into this issue.

It is peculiar that on September 23, 2013 Mr. Bigham wrote in an email: "I'm sorry (sic) Jeanne, you're the last person I want to bump heads with. You're my favorite boss of all time and I love your style and your attitude about student and staff." He also nominated Ms. Zuniga for an award last year by the Oregon Association of Vocational Special Needs Personnel (OAVSNP) and she was awarded that distinction at an event on February 21, 2014 in which Mr. Bigham was the keynote speaker. It is difficult to reconcile his current criticisms with this relatively recent nomination. It is a germane question to ask whether Mr. Bigham is genuine in his criticisms or merely being duplicitous in the nomination?

2. Mr. Bigham believes that the late notification and transfer of two staff members this past August is a form of retribution and harassment on him. Two male staff members were transferred from Mr. Bigham's classroom effective at the beginning of the current work year. One EA, Matt B., had been slated for transfer the prior year, but that was rescinded after Mr. Bigham protested following a major student behavioral episode that was addressed earlier in

this report. Mr. Bigham's staff has remained relatively stable over recent years. This year his classroom dropped from 13 students to 8, only one of whom was new. Despite this reduction he has maintained essentially the same level of staffing. While two staff were transferred, it appears some reduction would have been in order strictly due to the decline in students in his classroom. The facts do not support that this change was vindictive or a form of harassment. Others in the program might even consider his staffing level preferential.

3. Mr. Bigham reported that FLS supervisors said last spring he might be transferred this coming school year. While Mr. Bigham said he heard this from Jeanne, communication with other individuals indicate he heard this initially from one of his EAs through a conversation with Carol Sweeney. He may have clarified it with Ms. Zuniga but it began as a proverbial workplace "grapevine" type of communication. MESD has lost numerous FLS students over the past three years causing significant reductions in FLS staffing, something Mr. Bigham acknowledged in my interview. Therefore, this conversation has occurred among supervisors customarily every spring as they plan various contingencies given potential adjustments in student enrollment. For Mr. Bigham to characterize this as harassment or a reprisal is absurd. There was no language he shared in his report from supervisors that would indicate anything more than this being a topic of conversation. Mr. Bigham believed that Mr. Rose might have stopped this from occurring, but Mr. Rose does not even recall it as a major element in the April 11 conversation and took no action in this matter. The fact that Mr. Bigham was not transferred should render this issue moot.

4. In November 2013 Mr. Bigham sought to clarify his participation in a group working on Common Core Standards notebook at MESD. He believed that a notebook he worked on did not include his name among the contributors or on the copyright page. He felt this could be problematic as he included that experience in his application as teacher of the year. He didn't want to be found having falsified any of this experience. Mr. Bigham also wondered why he was not selected to present this notebook at OSBA or at the COSA conference earlier as a member of the committee working on it. He had been chosen to present that year at Lane ESD, however. Mr. Bigham was not perceived by supervisors to have a sophisticated and articulate knowledge of Common Core. Mr. Bigham has acknowledged his concerns about assessment practices for disabled students that also conflicted with FLS supervisors' positions on the subject. Ms. Beck asked FLS supervisors in the fall of 2013 to expedite work on the notebook and prepare it for copyrighting. While not disbanding the former committee, FLS supervisors responded to Ms. Beck's charge and rewrote most if not all of what is now in the Notebook. While Mr. Bigham refers to being omitted as a contributor on a work he believed was copyrighted, no copyright has occurred and the Notebook is still viewed as a "work in progress." Ms. Zuniga at one point simply wanted to placate Mr. Bigham and alleviate the issue he raised and asked the team to give him some element of inclusion in the project. In retrospect MESD supervisors should have given some formal notice to members of the committee (which extended beyond Mr. Bigham) that their work had been completed or that the committee was being reconstituted. That did not occur leaving Mr. Bigham to question his level of engagement. There is nothing learned about this incident, however, that could be associated with discrimination or harassment of Mr. Bigham.

### **Part E Conclusions:**

There is no nexus between any of the allegations in this section and Mr. Bigham's sexual orientation or any logical basis to believe any of the actions constitutes harassment or discrimina-

tion. Some of the issues may relate more to Mr. Bigham's stated desire that his classroom "be perfect" so it reflects positively on his teacher of the year status.

**Summary Discussion:**

What should have been a year of celebratory joy for everyone stemming from the Teacher of the Year award has devolved into a situation fraught instead with acrimony. While Mr. Bigham feels legitimately aggrieved, there is no basis to conclude that his supervisors have acted either individually or in concert to harass or discriminate against him. There have been certain changing and conflicting expectations and ambiguity in directions, but these should not have resulted in the highly personalized reactions described by Mr. Bigham. Supervisors are not perfect and errors in judgment occur. That does not mean such errors are necessarily intentional, targeted attacks or discriminatory. One would expect that a Teacher of the Year would be able to deal effectively with a variety of challenges in the workplace. In this instance Mr. Bigham's reactions to issues have only compounded the problem. His handling of this matter in terms of publicizing it to the media has been regretful and unprofessional due to the inaccuracy of his reports. MESD supervisors and administrators recognized too late the intensity of Mr. Bigham's feelings in this matter. A thorough airing of concerns last spring likely would have made them more alert to issues that needed to be addressed and to have greater clarity around certain protocols. It is unfortunate that this did not occur. In the meantime, Mr. Bigham's sense of victimization has intensified and the MESD administration likely also feels a sense of betrayal in how they have been portrayed by him in the media. The issue goes beyond that, however. It also pertains to Mr. Bigham's penchant for misinterpretation of communications and magnifying issues beyond what is rational or constructive. Mr. Bigham should claim responsibility for dealing with this predisposition as it will continue to affect his job performance and relationships.

**Decision:**

After a diligent investigation and examination of all evidence submitted or discovered in this investigation, I conclude that Mr. Bigham's allegations of harassment and discrimination based upon his sexual orientation have no foundation.

The implementation of the Unique curriculum in Mr. Bigham's classroom occurred after a period of study of alternative options during the last school year and with input from staff who would be affected, as required by the contract. While it was a minor issue relative to all the others raised by Mr. Bigham, the union during this investigation did not provide any evidence to support its contentions that the district violated Article 9.B in the labor contract.

Please feel free to contact me if I can elaborate upon or clarify any aspect of this report.

Jim Buck  
Hearings Officer/Complaint Investigator  
503-830-2344