

1 OFFICE OF THE SECRETARY OF STATE ELECTIONS DIVISION

2 STATE OF OREGON

3 In the Matter of :

4 Carole Smith  
5 Superintendent  
6 Portland Public Schools  
7 501 North Dixon Street  
8 Portland OR 97227

**NOTICE OF A FINAL DETERMINATION AND  
INTENT TO IMPOSE A CIVIL PENALTY;  
CONTESTED CASE NOTICE AND OPPORTUNITY TO  
BE HEARD, AND FINAL ORDER BY DEFAULT  
IMPOSING CIVIL PENALTY IF NO REQUEST FOR  
HEARING IS RECEIVED**

Elections Division Case No. 11-102-CS

9 **I. NATURE OF PROPOSED ACTION:**

10 The Secretary of State, Elections Division (Elections Division) has determined that Carole  
11 Smith has violated one or more of the elections laws of the state of Oregon. As a result of this  
12 determination, the Elections Division intends to impose civil penalties for violations of the  
13 elections law pursuant to ORS 260.995 and OAR 165-013-0020. This Notice is provided  
14 pursuant to Oregon Revised Statute (ORS) 183.415, ORS 183.745, ORS 260.995, Oregon  
15 Administrative Rule (OAR) 165-001-0015. This Notice contains an Order imposing a civil penalty  
16 for violations of the elections law pursuant to OAR 165-001-0025(3). This Order will become  
17 final, unless you request a hearing in writing within twenty days of the mailing date as shown  
18 on the attached Certificate of Service, pursuant to OAR 165-001-0015(2), and ORS 183.745(3).

19 **II. ISSUE:**

20 Pursuant to ORS 260.995(1), The Secretary of State, Elections Division has determined  
21 that Carole Smith, Executive Director Portland Public Schools, violated ORS 260.432 (2) and  
22 therefore intends to impose a civil penalty in the amount of \$75.00 (Appendix B, OAR 165-013-  
23 0020, Penalty Matrix).

**III. PARTICULAR RULES AND STATUTES INVOLVED:**

- 1 A. ORS 246.150 provides that the Secretary of State may adopt rules the secretary  
2 considers necessary to facilitate and assist in achieving and maintaining a  
3 maximum degree of correctness, impartiality and efficiency in administration of  
4 the election laws.
- 5 B. ORS 260.995 and ORS 183.745 provide for the general authority and procedure  
6 under which the Elections Division may impose a civil penalty for non-campaign  
7 finance violations.
- 8 C. OAR 165-013-0020(3) establishes a penalty matrix (Exhibit A2) for non-campaign  
9 finance violations of the election law and reads, in part:

10 “(a) Penalty Matrix. These mitigating circumstances may  
11 be considered in reducing, in whole or in part, the civil  
12 penalty. If the violation is a direct result of an error by an  
13 elections officer, the violation is waived and no penalty is  
14 assessed.

15 (b) For purposes of determining penalty amounts for  
16 violations of non-campaign finance civil penalty election  
17 law violations, Appendix B of this rule will apply.”

- 18 D. ORS 260.432(1) and (2) provide in part:

19 “(1) No person shall attempt to, or actually, coerce,  
20 command or require a public employee to influence or  
21 give money, service or other thing of value to promote or  
22 oppose any political committee or to promote or oppose  
23 the nomination or election of a candidate, the gathering of  
24 signatures on an initiative, referendum or recall petition,  
25 the adoption of a measure or the recall of a public office  
26 holder.”

“(2) No public employee shall solicit any money, influence,  
service or other thing of value or otherwise promote or  
oppose any political committee or promote or oppose the  
nomination or election of a candidate, the gathering of  
signatures on an initiative, referendum or recall petition,  
the adoption of a measure or the recall of a public office  
holder while on the job during working hours. However,  
this section does not restrict the right of a public employee  
to express personal political views.”

E. The *2008 Restrictions on Political Campaigning by Public Employees, ORS 260.432* manual is intended to provide a more detailed explanation of the statute and provides tools and references for local governments to use during an election campaign to ensure impartiality.

**IV. PROCEDURAL BACKGROUND:**

Public employees and officers may provide impartial information concerning ballot measures pending before the public. The Attorney General has concluded public bodies may use public funds and public work time to inform voters of facts pertinent to a measure, if the information does not lead voters to support or oppose the measure. The work time spent to produce such an impartial informational document would not violate election law. The term “impartial” means equitable, fair, unbiased and dispassionate. The reader must be allowed to make his or her own judgment of the matter in order to vote based on the facts presented.

Material purporting to be informational may be found to promote or oppose a measure, even if it does not do so expressly. Such material is considered advocacy when taken as a whole it clearly acts to persuade the reader to vote in a particular manner. The distinction between strictly factual, impartial information about ballot measures and improper advocacy must be made by reviewing the entire document or package and the context in which it is published.

Governing bodies are advised to have articles about ballot measures, or other material which addresses even peripheral issues pertaining to a measure, reviewed by their legal counsel and this office prior to publication. These reviews ensure the material contains only impartial language to avoid violation of election law. A list of factors included in the publication, *2008 Restrictions on Political Campaigning by Public Employees, ORS 260.432* is utilized to determine whether a document is impartial (Exhibit A1, Pg 45).

If a violation occurs as the result of a supervisor asking the public employee to perform the campaign activity but the work was clerical with no control over content, the penalty may be waived due to a mitigating circumstance.

Election law does not cover the expenditure of public funds other than public employee work time. The review of this complaint does not include an analysis of the amount of public funds used or the appropriateness of using publicly owned equipment and supplies to produce and distribute this material.

Portland Public Schools filed Ballot Measure 26-121 with Multnomah County Elections on January 6, 2011. (Exhibit A3) PPS filed Ballot Measure 26-122 with Multnomah County Elections on February 18, 2011. (Exhibit A3) On April 4 and 14, 2011 PPS requested the Secretary of State, Elections Division, to review documents for compliance with ORS 260.432. (Exhibit A4) The Elections Division notified PPS of the multiple changes required for the document to meet the impartial factors. (Exhibit A4) The Elections Division received a complaint from Eric Fruits on April 8, 2011 alleging PPS did not include interest costs in publications about Ballot Measures 26-121 and 26-122. (Exhibit A5) The Elections Division received further complaints of impartial PPS publications from Richard Ellmyer, Nathan Dahlin, Jeff Reynolds and William Schneider, DC. (Exhibit A5)

**V. NOTICE OF MATTERS ASSERTED AND CHARGED:**

1. Five complaints and supporting documents were filed with the Secretary of State, Elections Division, alleging that Portland Public School employees (public employees) violated ORS 260.432(2) by producing and presenting statements and documents intended to promote the adoption of a measure. (Exhibits A4)
2. April 8, 2011 the Elections Division notified Carole Smith, the Superintendent of Portland Public Schools, that a complaint had been received and that a review of that complaint would begin pursuant to ORS 260.345. (Exhibit B1)
3. On April 22, 2011 a response was received from PPS. The response included multiple documents published by PPS relating to Ballot Measures 26-121 and 26-122. The signature or name and title of Carole Smith, Superintendent, were published in documents dated Feb. 7, 2011, April 11, 2011 and in Volume 4, Issue 6: February 2011 of the *PPS Pulse*.(Exhibit C1)

4. An Elections Division investigator reviewed the documents submitted by PPS that were published after the measures were certified with the county elections office. The investigator's report found the submitted documents to have similar impartiality issues as the documents reviewed on April 4 and 14, 2011. The report also identified additional statements not meeting the impartiality factors. (Exhibit D1)

**VI. FINAL DETERMINATION AND PROPOSED CIVIL PENALTIES:**

After completing a thorough investigation, the Elections Division has determined that the activities performed by Carole Smith regarding the measures, did constitute advocacy in support of Ballot Measure 26-121 and 26-122.

Complaints related to anyone knowingly communicating false information about a measure must be filed with the appropriate circuit court. Only a candidate or political committee aggrieved by the violation would file such an action. The Elections Division's review was limited to whether the documents produced by Portland Public School employees supported or opposed the measure. Whether the statements were factual was not addressed.

Based on the matters asserted and charged, ***the Secretary of State, Elections Division shall impose a civil penalty for an elections law violation under ORS 260.432(2) in the amount of \$75.00, effective twenty (20) calendar days after the date of receipt of this notice***, which affirms that this Notice is mailed and shall be in effect unless you notify the Secretary of State, Elections Division ***in writing*** of your request for a hearing, pursuant to OAR165-001-0010, OAR165-001-0015, and OAR165-001-0025.

**NOTICE OF RIGHT TO HEARING; AUTHORITY AND JURISDICTION FOR HEARING:**

Pursuant to the Administrative Procedures Act (ORS Chapter 183) and OAR Chapter 165, you are entitled to a contested case hearing before the Office of Administrative Hearings. If you request a hearing it will be conducted in accordance with the contested case provisions of the Oregon Administrative Procedures Act ORS 183.415 through ORS 183.470, ORS 183.745(4), ORS 260.995(4-6), and OAR 165-001-0010 through 165-001-0080.

**NOTICE REGARDING REPRESENTATION AND HEARING PROCEDURES:**

1 If you request a hearing, a description of the hearing procedure will be provided to you  
2 in accordance with ORS 183.413, prior to the commencement of the hearing. At the hearing,  
3 you have the right to represent yourself or be represented by an attorney of your own  
4 choosing, and at your own expense. Furthermore, you may respond and present evidence and  
5 argument on all issues involved. If you request a hearing, you do not need to appear in person  
6 at a hearing held under ORS 260.232 or 260.995, but instead may submit written testimony and  
7 other evidence, sworn to before a notary public, to the Secretary of State for entry in the  
8 hearing record. Such documents must be received by the Secretary of State not later than three  
9 business days prior to the hearing as provided by 260.232(6).

10 **NOTICE OF PROPOSED ACTION:**

11 Based on the matters asserted and charged, *the Secretary of State, Elections Division*  
12 *shall impose a civil penalty for an elections law violation under ORS 260.432(2) in the amount*  
13 *of \$75.00, effective twenty (20) calendar days after the date listed on the accompanying*  
14 *Certificate of Service*, unless you notify the Secretary of State, Elections Division *in writing* of  
15 your request for a hearing.

16 **HOW TO REQUEST A HEARING; CONSEQUENCE OF FAILURE TO**

17 **REQUEST A HEARING:**

18 **IF YOU DESIRE A HEARING, YOU MUST NOTIFY THE ELECTIONS DIVISION IN WRITING,**  
19 **THAT YOU REQUEST A HEARING.** This request must be received by the Elections Division within  
20 20 days of the date of mailing this Notice to you. Upon timely receipt of your request, the  
21 Elections Division will notify you of the date, time and place of the hearing. To be effective,  
22 your notice must be sent to the following:

23 Carla Corbin, Compliance Specialist

24 Oregon Secretary of State, Elections Division

25 255 Capitol Street, Suite 501

26 Salem OR 97301

1 If you fail to request a hearing within the required twenty (20) days; or if you fail to  
2 appear at a scheduled hearing, this notice of intent to impose a civil penalty shall become a  
3 final order by default imposing a \$75.00 civil penalty against you for violating ORS 260.432(2).  
4 No further order will be served on you. Pursuant to OAR 165-001-0015(9), the records of the  
5 proceedings in this case to date, including the Department's files on the subject matter of this  
6 contested case, shall automatically become part of the permanent contested case record by  
7 default and shall meet the Department's burden of proof for proving a *prima facie case*.<sup>1</sup>

8 **IT IS SO ORDERED THIS** \_\_\_\_\_ day of \_\_\_\_\_, 2011.

9  
10 STATE OF OREGON

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13 Stephen N. Trout, Director  
14 Secretary of State, Elections Division  
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25 <sup>1</sup> *Prima facie* denotes the evidence *which, unless rebutted*, would be considered sufficient to prove a particular  
26 position or fact. In most legal proceedings, one party has a burden of proof, which requires them to present *prima facie* evidence for all the essential facts in the case.

**CERTIFICATE OF MAILING**

On August 25, 2011, I mailed the foregoing CONTESTED CASE NOTICE OF INTENT TO IMPOSE CIVIL PENALTY issued on this date. Case No. 11-102-CS.

By: First Class Mail  
Carole Smith  
Superintendent  
Portland Public Schools  
501 North Dixon Street  
Portland OR 97227

By: First Class Mail Certified  
Carole Smith  
Superintendent  
Portland Public Schools  
501 North Dixon Street  
Portland OR 97227

Certificate of Mailing By:  
Carla Corbin  
Compliance Specialist



1 OFFICE OF THE SECRETARY OF STATE ELECTIONS DIVISION

2 STATE OF OREGON

3 In the Matter of :

4 CJ Sylvester  
5 Chief Operating Officer  
6 Portland Public Schools  
7 501 North Dixon Street  
8 Portland OR 97227

**NOTICE OF A FINAL DETERMINATION AND  
INTENT TO IMPOSE A CIVIL PENALTY;  
CONTESTED CASE NOTICE AND OPPORTUNITY TO  
BE HEARD, AND FINAL ORDER BY DEFAULT  
IMPOSING CIVIL PENALTY IF NO REQUEST FOR  
HEARING IS RECEIVED**

Elections Division Case No. 11-102-CJS

9 **I. NATURE OF PROPOSED ACTION:**

10 The Secretary of State, Elections Division (Elections Division) has determined that CJ  
11 Sylvester has violated one or more of the elections laws of the state of Oregon. As a result of  
12 this determination, the Elections Division intends to impose civil penalties for violations of the  
13 elections law pursuant to ORS 260.995 and OAR 165-013-0020. This Notice is provided  
14 pursuant to Oregon Revised Statute (ORS) 183.415, ORS 183.745, ORS 260.995, Oregon  
15 Administrative Rule (OAR) 165-001-0015. This Notice contains an Order imposing a civil penalty  
16 for violations of the elections law pursuant to OAR 165-001-0025(3). This Order will become  
17 final, unless you request a hearing in writing within twenty days of the mailing date as shown  
18 on the attached Certificate of Service, pursuant to OAR 165-001-0015(2), and ORS 183.745(3).

19 **II. ISSUE:**

20 Pursuant to ORS 260.995(1), The Secretary of State, Elections Division has determined  
21 that CJ Sylvester, Chief Operating Officer for the Portland Public Schools, violated ORS 260.432  
22 (2) and therefore intends to impose a civil penalty in the amount of \$75.00 (Appendix B, OAR  
23 165-013-0020, Penalty Matrix).

1 **III. PARTICULAR RULES AND STATUTES INVOLVED:**

- 2 A. ORS 246.150 provides that the Secretary of State may adopt rules the secretary  
3 considers necessary to facilitate and assist in achieving and maintaining a  
4 maximum degree of correctness, impartiality and efficiency in administration of  
5 the election laws.
- 6 B. ORS 260.995 and ORS 183.745 provide for the general authority and procedure  
7 under which the Elections Division may impose a civil penalty for non-campaign  
8 finance violations.
- 9 C. OAR 165-013-0020(3) establishes a penalty matrix (Exhibit A2) for non-campaign  
10 finance violations of the election law and reads, in part:

11 “(a) Penalty Matrix. These mitigating circumstances may  
12 be considered in reducing, in whole or in part, the civil  
13 penalty. If the violation is a direct result of an error by an  
14 elections officer, the violation is waived and no penalty is  
15 assessed.

16 (b) For purposes of determining penalty amounts for  
17 violations of non-campaign finance civil penalty election  
18 law violations, Appendix B of this rule will apply.”

- 19 D. ORS 260.432(1) and (2) provide in part:

20 “(1) No person shall attempt to, or actually, coerce,  
21 command or require a public employee to influence or  
22 give money, service or other thing of value to promote or  
23 oppose any political committee or to promote or oppose  
24 the nomination or election of a candidate, the gathering of  
25 signatures on an initiative, referendum or recall petition,  
26 the adoption of a measure or the recall of a public office  
holder.”

“(2) No public employee shall solicit any money, influence,  
service or other thing of value or otherwise promote or  
oppose any political committee or promote or oppose the  
nomination or election of a candidate, the gathering of  
signatures on an initiative, referendum or recall petition,  
the adoption of a measure or the recall of a public office  
holder while on the job during working hours. However,

1 this section does not restrict the right of a public employee  
2 to express personal political views.”

- 3 E. The *2008 Restrictions on Political Campaigning by Public Employees, ORS*  
4 *260.432* manual is intended to provide a more detailed explanation of the  
5 statute and provides tools and references for local governments to use during an  
6 election campaign to ensure impartiality.

7 **IV. PROCEDURAL BACKGROUND:**

8 Public employees and officers may provide impartial information concerning ballot  
9 measures pending before the public. The Attorney General has concluded public bodies may  
10 use public funds and public work time to inform voters of facts pertinent to a measure, if the  
11 information does not lead voters to support or oppose the measure. The work time spent to  
12 produce such an impartial informational document would not violate election law. The term  
13 “impartial” means equitable, fair, unbiased and dispassionate. The reader must be allowed to  
14 make his or her own judgment of the matter in order to vote based on the facts presented.

15 Material purporting to be informational may be found to promote or oppose a measure,  
16 even if it does not do so expressly. Such material is considered advocacy when taken as a whole  
17 it clearly acts to persuade the reader to vote in a particular manner. The distinction between  
18 strictly factual, impartial information about ballot measures and improper advocacy must be  
19 made by reviewing the entire document or package and the context in which it is published.

20 Governing bodies are advised to have articles about ballot measures, or other material  
21 which addresses even peripheral issues pertaining to a measure, reviewed by their legal  
22 counsel and this office prior to publication. These reviews ensure the material contains only  
23 impartial language to avoid violation of election law. A list of factors included in the publication,  
24 *2008 Restrictions on Political Campaigning by Public Employees, ORS 260.432* is utilized to  
25 determine whether a document is impartial (Exhibit A1, Pg 45).  
26

1 If a violation occurs as the result of a supervisor asking the public employee to perform  
2 the campaign activity but the work was clerical with no control over content, the penalty may  
3 be waived due to a mitigating circumstance.

4 Election law does not cover the expenditure of public funds other than public employee  
5 work time. The review of this complaint does not include an analysis of the amount of public  
6 funds used or the appropriateness of using publicly owned equipment and supplies to produce  
7 and distribute this material.

8 Portland Public Schools filed Ballot Measure 26-121 with Multnomah County Elections  
9 on January 6, 2011. (Exhibit A3) PPS filed Ballot Measure 26-122 with Multnomah County  
10 Elections on February 18, 2011. (Exhibit A3) On April 4 and 14, 2011 PPS requested the  
11 Secretary of State, Elections Division, to review documents for compliance with ORS 260.432.  
12 (Exhibit A4) The Elections Division notified PPS of the multiple changes required for the  
13 document to meet the impartial factors. (Exhibit A4) The Elections Division received a complaint  
14 from Eric Fruits on April 8, 2011 alleging PPS did not include interest costs in publications about  
15 Ballot Measures 26-121 and 26-122. (Exhibit A5) The Elections Division received further  
16 complaints of impartial PPS publications from Richard Ellmyer, Nathan Dahlin, Jeff Reynolds and  
17 William Schneider, DC. (Exhibit A5)

18 **V. NOTICE OF MATTERS ASSERTED AND CHARGED:**

19 1. Five complaints and supporting documents were filed with the Secretary of  
20 State, Elections Division, alleging that Portland Public School employees (public  
21 employees) violated ORS 260.432(2) by producing and presenting statements and  
22 documents intended to promote the adoption of a measure. (Exhibits A4)

23 2. April 8, 2011 the Elections Division notified Carole Smith, the Superintendent of  
24 Portland Public Schools, that a complaint had been received and that a review of that  
25 complaint would begin pursuant to ORS 260.345. (Exhibit B1)

1           3.       On April 22, 2011 a response was received from PPS. The response included  
2 multiple documents published by PPS relating to Ballot Measures 26-121 and 26-122. CJ  
3 Sylvester, Chief Operating Officer, reviews some materials for factual information about  
4 bond program, lent her name and title to the document entitled "School construction  
5 budget is based on independent professional estimates; Costs are in line with regional  
6 school districts" and "School construction budget based on independent professional  
7 estimates." (Exhibit C1)

8           4.       Sylvester was contacted on March 10, 2011 regarding her activities in the  
9 production of the ballot measure documents. Sylvester stated she did edit some of the  
10 documents. (Exhibit E5)

11          5.       An Elections Division investigator reviewed the documents submitted by PPS  
12 that were published after the measures were certified with the county elections office.  
13 The investigator's report found the submitted documents to have similar impartiality  
14 issues as the documents reviewed on April 4 and 14, 2011. The report also identified  
15 additional statements not meeting the impartiality factors. (Exhibit D1)

16                           **VI. FINAL DETERMINATION AND PROPOSED CIVIL PENALTIES:**

17           After completing a thorough investigation, the Elections Division has determined that  
18 the activities performed by CJ Sylvester regarding the measures, did constitute advocacy in  
19 support of Ballot Measure 26-121 and 26-122. The editing Sylvester provided did not produce  
20 impartial, unbiased information about the measures.

21           Complaints related to anyone knowingly communicating false information about a  
22 measure must be filed with the appropriate circuit court. Only a candidate or political  
23 committee aggrieved by the violation would file such an action. The Elections Division's review  
24 was limited to whether the documents produced by Portland Public School employees  
25 supported or opposed the measure. Whether the statements were factual was not addressed.

1 Based on the matters asserted and charged, ***the Secretary of State, Elections Division***  
2 ***shall impose a civil penalty for an elections law violation under ORS 260.432(2) in the amount***  
3 ***of \$75.00, effective twenty (20) calendar days after the date of receipt of this notice***, which  
4 affirms that this Notice is mailed and shall be in effect unless you notify the Secretary of State,  
5 Elections Division ***in writing*** of your request for a hearing, pursuant to OAR165-001-0010,  
6 OAR165-001-0015, and OAR165-001-0025.

7 **NOTICE OF RIGHT TO HEARING; AUTHORITY AND JURISDICTION FOR HEARING:**

8 Pursuant to the Administrative Procedures Act (ORS Chapter 183) and OAR Chapter165,  
9 you are entitled to a contested case hearing before the Office of Administrative Hearings. If  
10 you request a hearing it will be conducted in accordance with the contested case provisions of  
11 the Oregon Administrative Procedures Act ORS 183.415 through ORS 183.470, ORS 183.745(4),  
12 ORS 260.995(4-6), and OAR 165-001-0010 through 165-001-0080.

13 **NOTICE REGARDING REPRESENTATION AND HEARING PROCEDURES:**

14 If you request a hearing, a description of the hearing procedure will be provided to you  
15 in accordance with ORS 183.413, prior to the commencement of the hearing. At the hearing,  
16 you have the right to represent yourself or be represented by an attorney of your own  
17 choosing, and at your own expense. Furthermore, you may respond and present evidence and  
18 argument on all issues involved. If you request a hearing, you do not need to appear in person  
19 at a hearing held under ORS 260.232 or 260.995, but instead may submit written testimony and  
20 other evidence, sworn to before a notary public, to the Secretary of State for entry in the  
21 hearing record. Such documents must be received by the Secretary of State not later than three  
22 business days prior to the hearing as provided by 260.232(6).

23 **NOTICE OF PROPOSED ACTION:**

24 Based on the matters asserted and charged, ***the Secretary of State, Elections Division***  
25 ***shall impose a civil penalty for an elections law violation under ORS 260.432(2) in the amount***  
26 ***of \$75.00, effective twenty (20) calendar days after the date listed on the accompanying***

1 **Certificate of Service**, unless you notify the Secretary of State, Elections Division *in writing* of  
2 your request for a hearing.

3 **HOW TO REQUEST A HEARING; CONSEQUENCE OF FAILURE TO**

4 **REQUEST A HEARING:**

5 **IF YOU DESIRE A HEARING, YOU MUST NOTIFY THE ELECTIONS DIVISION IN WRITING,**  
6 **THAT YOU REQUEST A HEARING.** This request must be received by the Elections Division within  
7 20 days of the date of mailing this Notice to you. Upon timely receipt of your request, the  
8 Elections Division will notify you of the date, time and place of the hearing. To be effective,  
9 your notice must be sent to the following:

10  
11 Carla Corbin, Compliance Specialist  
12 Oregon Secretary of State, Elections Division  
13 255 Capitol Street, Suite 501  
14 Salem OR 97301  
15 Facsimile (503) 373-7414

16  
17 If you fail to request a hearing within the required twenty (20) days; or if you fail to  
18 appear at a scheduled hearing, this notice of intent to impose a civil penalty shall become a  
19 final order by default imposing a \$75.00 civil penalty against you for violating ORS 260.432(2).  
20 No further order will be served on you. Pursuant to OAR 165-001-0015(9), the records of the  
21 proceedings in this case to date, including the Department's files on the subject matter of this  
22 contested case, shall automatically become part of the permanent contested case record by  
23 default and shall meet the Department's burden of proof for proving a *prima facie case*.<sup>1</sup>

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25 \_\_\_\_\_  
26 <sup>1</sup> *Prima facie* denotes the evidence *which, unless rebutted*, would be considered sufficient to prove a particular position or fact. In most legal proceedings, one party has a burden of proof, which requires them to present *prima facie* evidence for all the essential facts in the case.

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**IT IS SO ORDERED THIS** \_\_\_\_\_ day of \_\_\_\_\_, 2011.

STATE OF OREGON

\_\_\_\_\_  
Stephen N. Trout, Director  
Secretary of State, Elections Division



**CERTIFICATE OF MAILING**

On August 25, 2011, I mailed the foregoing CONTESTED CASE NOTICE OF INTENT TO IMPOSE CIVIL PENALTY issued on this date. Case No. 11-102-CJS.

By: First Class Mail  
CJ Sylvester  
Chief Operating Officer  
Portland Public Schools  
501 North Dixon Street  
Portland OR 97227

By: First Class Mail Certified  
CJ Sylvester  
Chief Operating Officer  
Portland Public Schools  
501 North Dixon Street  
Portland OR 97227

Certificate of Mailing By:  
Carla Corbin  
Compliance Specialist

1 OFFICE OF THE SECRETARY OF STATE ELECTIONS DIVISION

2 STATE OF OREGON

3 In the Matter of :

4 Jollee Patterson  
5 General Counsel  
6 Portland Public Schools  
501 North Dixon Street  
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HEARING IS RECEIVED**

Elections Division Case No. 11-102-JP

8  
9 **I. NATURE OF PROPOSED ACTION:**

10 The Secretary of State, Elections Division (Elections Division) has determined that Jollee  
11 Patterson has violated one or more of the elections laws of the state of Oregon. As a result of  
12 this determination, the Elections Division intends to impose civil penalties for violations of the  
13 elections law pursuant to ORS 260.995 and OAR 165-013-0020. This Notice is provided  
14 pursuant to Oregon Revised Statute (ORS) 183.415, ORS 183.745, ORS 260.995, Oregon  
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17 final, unless you request a hearing in writing within twenty days of the mailing date as shown  
18 on the attached Certificate of Service, pursuant to OAR 165-001-0015(2), and ORS 183.745(3).

19 **II. ISSUE:**

20 Pursuant to ORS 260.995(1), The Secretary of State, Elections Division has determined  
21 that Jollee Patterson, General Counsel for the Portland Public Schools, violated ORS 260.432 (2)  
22 and therefore intends to impose a civil penalty in the amount of \$75.00 (Appendix B, OAR 165-  
23 013-0020, Penalty Matrix).

1 **III. PARTICULAR RULES AND STATUTES INVOLVED:**

- 2 A. ORS 246.150 provides that the Secretary of State may adopt rules the secretary  
3 considers necessary to facilitate and assist in achieving and maintaining a  
4 maximum degree of correctness, impartiality and efficiency in administration of  
5 the election laws.
- 6 B. ORS 260.995 and ORS 183.745 provide for the general authority and procedure  
7 under which the Elections Division may impose a civil penalty for non-campaign  
8 finance violations.
- 9 C. OAR 165-013-0020(3) establishes a penalty matrix (Exhibit A2) for non-campaign  
10 finance violations of the election law and reads, in part:

11 “(a) Penalty Matrix. These mitigating circumstances may  
12 be considered in reducing, in whole or in part, the civil  
13 penalty. If the violation is a direct result of an error by an  
14 elections officer, the violation is waived and no penalty is  
15 assessed.

16 (b) For purposes of determining penalty amounts for  
17 violations of non-campaign finance civil penalty election  
18 law violations, Appendix B of this rule will apply.”

- 19 D. ORS 260.432(1) and (2) provide in part:

20 “(1) No person shall attempt to, or actually, coerce,  
21 command or require a public employee to influence or  
22 give money, service or other thing of value to promote or  
23 oppose any political committee or to promote or oppose  
24 the nomination or election of a candidate, the gathering of  
25 signatures on an initiative, referendum or recall petition,  
26 the adoption of a measure or the recall of a public office  
holder.”

“(2) No public employee shall solicit any money, influence,  
service or other thing of value or otherwise promote or  
oppose any political committee or promote or oppose the  
nomination or election of a candidate, the gathering of  
signatures on an initiative, referendum or recall petition,  
the adoption of a measure or the recall of a public office  
holder while on the job during working hours. However,

this section does not restrict the right of a public employee to express personal political views.”

- 1 E. The *2008 Restrictions on Political Campaigning by Public Employees, ORS*  
2 *260.432* manual is intended to provide a more detailed explanation of the  
3 statute and provides tools and references for local governments to use during an  
4 election campaign to ensure impartiality.

5 **IV. PROCEDURAL BACKGROUND:**

6 Public employees and officers may provide impartial information concerning ballot  
7 measures pending before the public. The Attorney General has concluded public bodies may  
8 use public funds and public work time to inform voters of facts pertinent to a measure, if the  
9 information does not lead voters to support or oppose the measure. The work time spent to  
10 produce such an impartial informational document would not violate election law. The term  
11 “impartial” means equitable, fair, unbiased and dispassionate. The reader must be allowed to  
12 make his or her own judgment of the matter in order to vote based on the facts presented.

13 Material purporting to be informational may be found to promote or oppose a measure,  
14 even if it does not do so expressly. Such material is considered advocacy when taken as a whole  
15 it clearly acts to persuade the reader to vote in a particular manner. The distinction between  
16 strictly factual, impartial information about ballot measures and improper advocacy must be  
17 made by reviewing the entire document or package and the context in which it is published.

18 Governing bodies are advised to have articles about ballot measures, or other material  
19 which addresses even peripheral issues pertaining to a measure, reviewed by their legal  
20 counsel and this office prior to publication. These reviews ensure the material contains only  
21 impartial language to avoid violation of election law. A list of factors included in the publication,  
22 *2008 Restrictions on Political Campaigning by Public Employees, ORS 260.432* is utilized to  
23 determine whether a document is impartial (Exhibit A1, Pg 45).

24 If a violation occurs as the result of a supervisor asking the public employee to perform  
25 the campaign activity but the work was clerical with no control over content, the penalty may  
26 be waived due to a mitigating circumstance.

1 Election law does not cover the expenditure of public funds other than public employee  
2 work time. The review of this complaint does not include an analysis of the amount of public  
3 funds used or the appropriateness of using publicly owned equipment and supplies to produce  
4 and distribute this material.

5 Portland Public Schools filed Ballot Measure 26-121 with Multnomah County Elections  
6 on January 6, 2011. (Exhibit A3) PPS filed Ballot Measure 26-122 with Multnomah County  
7 Elections on February 18, 2011. (Exhibit A3) On April 4 and 14, 2011 PPS requested the  
8 Secretary of State, Elections Division, to review documents for compliance with ORS 260.432.  
9 (Exhibit A4) The Elections Division notified PPS of the multiple changes required for the  
10 document to meet the impartial factors. (Exhibit A4) The Elections Division received a complaint  
11 from Eric Fruits on April 8, 2011 alleging PPS did not include interest costs in publications about  
12 Ballot Measures 26-121 and 26-122. (Exhibit A5) The Elections Division received further  
13 complaints of impartial PPS publications from Richard Ellmyer, Nathan Dahlin, Jeff Reynolds and  
14 William Schneider, DC. (Exhibit A5)

15 **V. NOTICE OF MATTERS ASSERTED AND CHARGED:**

- 16 1. Five complaints and supporting documents were filed with the Secretary of  
17 State, Elections Division, alleging that Portland Public Schools (public employees)  
18 violated ORS 260.432(2) by producing and presenting statements and documents  
19 intended to promote the adoption of a measure. (Exhibits A4)
- 20 2. April 8, 2011 the Elections Division notified Carole Smith, the Superintendent of  
21 Portland Public Schools, that a complaint had been received and that a review of that  
22 complaint would begin pursuant to ORS 260.345. (Exhibit B1).
- 23 3. On April 22, 2011 a response was received from PPS. The response included  
24 multiple documents published by PPS relating to Ballot Measures 26-121 and 26-122.  
25 Katie Essick, CIPA Family Communications Manager, edits copy and has oversight of  
26 monthly Pulse e-newsletter. (Exhibit C1)

1 4. Patterson was contacted on March 10, 2011 regarding her activities in the  
2 production of the ballot measure documents. Patterson stated she did review some of  
3 the documents. (Exhibit E4)

4 5. An Elections Division investigator reviewed the documents submitted by PPS  
5 that were published after the measures were certified with the county elections office.  
6 The investigator's report found the submitted documents to have similar impartiality  
7 issues as the documents reviewed on April 4 and 14, 2011. The report also identified  
8 additional statements not meeting the impartiality factors. (Exhibit D1)

9 **VI. FINAL DETERMINATION AND PROPOSED CIVIL PENALTIES:**

10 After completing a thorough investigation, the Elections Division has determined that  
11 the activities performed by Jollee Patterson regarding the measures, did constitute advocacy in  
12 support of Ballot Measures 26-121 and 26-122. The review Patterson provided did not produce  
13 impartial, unbiased information about the measures.

14 Complaints related to anyone knowingly communicating false information about a  
15 measure must be filed with the appropriate circuit court. Only a candidate or political  
16 committee aggrieved by the violation would file such an action. The Elections Division's review  
17 was limited to whether the documents produced by Portland Public School employees  
18 supported or opposed the measure. Whether the statements were factual was not addressed.

19 Based on the matters asserted and charged, ***the Secretary of State, Elections Division***  
20 ***shall impose a civil penalty for an elections law violation under ORS 260.432(2) in the amount***  
21 ***of \$75.00, effective twenty (20) calendar days after the date of receipt of this notice***, which  
22 affirms that this Notice is mailed and shall be in effect unless you notify the Secretary of State,  
23 Elections Division ***in writing*** of your request for a hearing, pursuant to OAR165-001-0010,  
24 OAR165-001-0015, and OAR165-001-0025.

1           **NOTICE OF RIGHT TO HEARING; AUTHORITY AND JURISDICTION FOR HEARING:**

2           Pursuant to the Administrative Procedures Act (ORS Chapter 183) and OAR Chapter 165,  
3 you are entitled to a contested case hearing before the Office of Administrative Hearings. If  
4 you request a hearing it will be conducted in accordance with the contested case provisions of  
5 the Oregon Administrative Procedures Act ORS 183.415 through ORS 183.470, ORS 183.745(4),  
6 ORS 260.995(4-6), and OAR 165-001-0010 through 165-001-0080.

7           **NOTICE REGARDING REPRESENTATION AND HEARING PROCEDURES:**

8           If you request a hearing, a description of the hearing procedure will be provided to you  
9 in accordance with ORS 183.413, prior to the commencement of the hearing. At the hearing,  
10 you have the right to represent yourself or be represented by an attorney of your own  
11 choosing, and at your own expense. Furthermore, you may respond and present evidence and  
12 argument on all issues involved. If you request a hearing, you do not need to appear in person  
13 at a hearing held under ORS 260.232 or 260.995, but instead may submit written testimony and  
14 other evidence, sworn to before a notary public, to the Secretary of State for entry in the  
15 hearing record. Such documents must be received by the Secretary of State not later than three  
16 business days prior to the hearing as provided by 260.232(6).

17           **NOTICE OF PROPOSED ACTION:**

18           Based on the matters asserted and charged, *the Secretary of State, Elections Division*  
19 *shall impose a civil penalty for an elections law violation under ORS 260.432(2) in the amount*  
20 *of \$75.00, effective twenty (20) calendar days after the date listed on the accompanying*  
21 *Certificate of Service*, unless you notify the Secretary of State, Elections Division *in writing* of  
22 your request for a hearing.

23           **HOW TO REQUEST A HEARING; CONSEQUENCE OF FAILURE TO**

24           **REQUEST A HEARING:**

25           **IF YOU DESIRE A HEARING, YOU MUST NOTIFY THE ELECTIONS DIVISION IN WRITING,**

26           **THAT YOU REQUEST A HEARING.** This request must be received by the Elections Division within

20 days of the date of mailing this Notice to you. Upon timely receipt of your request, the  
1 Elections Division will notify you of the date, time and place of the hearing. To be effective,  
2 your notice must be sent to the following:

3  
4 Carla Corbin, Compliance Specialist  
5 Oregon Secretary of State, Elections Division  
6 255 Capitol Street, Suite 501  
7 Salem OR 97301  
8 Facsimile (503) 373-7414

9  
10 If you fail to request a hearing within the required twenty (20) days; or if you fail to  
11 appear at a scheduled hearing, this notice of intent to impose a civil penalty shall become a  
12 final order by default imposing a \$75.00 civil penalty against you for violating ORS 260.432(2).  
13 No further order will be served on you. Pursuant to OAR 165-001-0015(9), the records of the  
14 proceedings in this case to date, including the Department's files on the subject matter of this  
15 contested case, shall automatically become part of the permanent contested case record by  
16 default and shall meet the Department's burden of proof for proving a *prima facie case*.<sup>1</sup>

17 **IT IS SO ORDERED THIS** \_\_\_\_\_ day of \_\_\_\_\_, 2011.

18 STATE OF OREGON

19  
20  
21 \_\_\_\_\_  
22 Stephen N. Trout, Director  
23 Secretary of State, Elections Division  
24

25 <sup>1</sup> *Prima facie* denotes the evidence *which, unless rebutted*, would be considered sufficient to prove a particular  
26 position or fact. In most legal proceedings, one party has a burden of proof, which requires them to present *prima facie* evidence for all the essential facts in the case.



**CERTIFICATE OF MAILING**

On August 25, 2011, I mailed the foregoing CONTESTED CASE NOTICE OF INTENT TO IMPOSE CIVIL PENALTY issued on this date. Case No. 11-102-JP.

By: First Class Mail  
Jollee Patterson  
General Counsel  
Portland Public Schools  
501 North Dixon Street  
Portland OR 97227

By: First Class Mail Certified  
Jollee Patterson  
General Counsel  
Portland Public Schools  
501 North Dixon Street  
Portland OR 97227

Certificate of Mailing By:  
Carla Corbin  
Compliance Specialist

1 OFFICE OF THE SECRETARY OF STATE ELECTIONS DIVISION

2 STATE OF OREGON

3 In the Matter of :

4 Sarah Schoening  
5 Director of the Office of School Modernization  
6 Portland Public Schools  
7 501 North Dixon Street  
8 Portland OR 97227

**NOTICE OF A FINAL DETERMINATION AND  
INTENT TO IMPOSE A CIVIL PENALTY;  
CONTESTED CASE NOTICE AND OPPORTUNITY TO  
BE HEARD, AND FINAL ORDER BY DEFAULT  
IMPOSING CIVIL PENALTY IF NO REQUEST FOR  
HEARING IS RECEIVED**

Elections Division Case No. 11-102-SS

9 **I. NATURE OF PROPOSED ACTION:**

10 The Secretary of State, Elections Division (Elections Division) has determined that Sarah  
11 Schoening has violated one or more of the elections laws of the state of Oregon. As a result of  
12 this determination, the Elections Division intends to impose civil penalties for violations of the  
13 elections law pursuant to ORS 260.995 and OAR 165-013-0020. This Notice is provided  
14 pursuant to Oregon Revised Statute (ORS) 183.415, ORS 183.745, ORS 260.995, Oregon  
15 Administrative Rule (OAR) 165-001-0015. This Notice contains an Order imposing a civil penalty  
16 for violations of the elections law pursuant to OAR 165-001-0025(3). This Order will become  
17 final, unless you request a hearing in writing within twenty days of the mailing date as shown  
18 on the attached Certificate of Service, pursuant to OAR 165-001-0015(2), and ORS 183.745(3).

19 **II. ISSUE:**

20 Pursuant to ORS 260.995(1), The Secretary of State, Elections Division has determined  
21 that Sarah Schoening, Executive Director Portland Public Schools, violated ORS 260.432 (2) and  
22 therefore intends to impose a civil penalty in the amount of \$75.00 (Appendix B, OAR 165-013-  
23 0020, Penalty Matrix).

1 **III. PARTICULAR RULES AND STATUTES INVOLVED:**

- 2 A. ORS 246.150 provides that the Secretary of State may adopt rules the secretary  
3 considers necessary to facilitate and assist in achieving and maintaining a  
4 maximum degree of correctness, impartiality and efficiency in administration of  
5 the election laws.
- 6 B. ORS 260.995 and ORS 183.745 provide for the general authority and procedure  
7 under which the Elections Division may impose a civil penalty for non-campaign  
8 finance violations.
- 9 C. OAR 165-013-0020(3) establishes a penalty matrix (Exhibit A2) for non-campaign  
10 finance violations of the election law and reads, in part:

11 “(a) Penalty Matrix. These mitigating circumstances may  
12 be considered in reducing, in whole or in part, the civil  
13 penalty. If the violation is a direct result of an error by an  
14 elections officer, the violation is waived and no penalty is  
15 assessed.”

16 (b) For purposes of determining penalty amounts for  
17 violations of non-campaign finance civil penalty election  
18 law violations, Appendix B of this rule will apply.”

- 19 D. ORS 260.432(1) and (2) provide in part:

20 “(1) No person shall attempt to, or actually, coerce,  
21 command or require a public employee to influence or  
22 give money, service or other thing of value to promote or  
23 oppose any political committee or to promote or oppose  
24 the nomination or election of a candidate, the gathering of  
25 signatures on an initiative, referendum or recall petition,  
26 the adoption of a measure or the recall of a public office  
holder.”

“(2) No public employee shall solicit any money, influence,  
service or other thing of value or otherwise promote or  
oppose any political committee or promote or oppose the  
nomination or election of a candidate, the gathering of  
signatures on an initiative, referendum or recall petition,  
the adoption of a measure or the recall of a public office  
holder while on the job during working hours. However,

this section does not restrict the right of a public employee to express personal political views.”

- 1 E. The *2008 Restrictions on Political Campaigning by Public Employees, ORS*  
2 *260.432* manual is intended to provide a more detailed explanation of the  
3 statute and provides tools and references for local governments to use during an  
4 election campaign to ensure impartiality.

5 **IV. PROCEDURAL BACKGROUND:**

6 Public employees and officers may provide impartial information concerning ballot  
7 measures pending before the public. The Attorney General has concluded public bodies may  
8 use public funds and public work time to inform voters of facts pertinent to a measure, if the  
9 information does not lead voters to support or oppose the measure. The work time spent to  
10 produce such an impartial informational document would not violate election law. The term  
11 “impartial” means equitable, fair, unbiased and dispassionate. The reader must be allowed to  
12 make his or her own judgment of the matter in order to vote based on the facts presented.

13 Material purporting to be informational may be found to promote or oppose a measure,  
14 even if it does not do so expressly. Such material is considered advocacy when taken as a whole  
15 it clearly acts to persuade the reader to vote in a particular manner. The distinction between  
16 strictly factual, impartial information about ballot measures and improper advocacy must be  
17 made by reviewing the entire document or package and the context in which it is published.

18 Governing bodies are advised to have articles about ballot measures, or other material  
19 which addresses even peripheral issues pertaining to a measure, reviewed by their legal  
20 counsel and this office prior to publication. These reviews ensure the material contains only  
21 impartial language to avoid violation of election law. A list of factors included in the publication,  
22 *2008 Restrictions on Political Campaigning by Public Employees, ORS 260.432* is utilized to  
23 determine whether a document is impartial (Exhibit A1, Pg 45).

24 If a violation occurs as the result of a supervisor asking the public employee to perform  
25 the campaign activity but the work was clerical with no control over content, the penalty may  
26 be waived due to a mitigating circumstance.

1 Election law does not cover the expenditure of public funds other than public employee  
2 work time. The review of this complaint does not include an analysis of the amount of public  
3 funds used or the appropriateness of using publicly owned equipment and supplies to produce  
4 and distribute this material.

5 Portland Public Schools filed Ballot Measure 26-121 with Multnomah County Elections  
6 on January 6, 2011. (Exhibit A3) PPS filed Ballot Measure 26-122 with Multnomah County  
7 Elections on February 18, 2011. (Exhibit A3) On April 4 and 14, 2011 PPS requested the  
8 Secretary of State, Elections Division, to review documents for compliance with ORS 260.432.  
9 (Exhibit A4) The Elections Division notified PPS of the multiple changes required for the  
10 document to meet the impartial factors. (Exhibit A4) The Elections Division received a complaint  
11 from Eric Fruits on April 8, 2011 alleging PPS did not include interest costs in publications about  
12 Ballot Measures 26-121 and 26-122. (Exhibit A5) The Elections Division received further  
13 complaints of impartial PPS publications from Richard Ellmyer, Nathan Dahlin, Jeff Reynolds and  
14 William Schneider, DC. (Exhibit A5)

15 **V. NOTICE OF MATTERS ASSERTED AND CHARGED:**

- 16 1. Five complaints and supporting documents were filed with the Secretary of  
17 State, Elections Division, alleging that Portland Public School employees (public  
18 employees) violated ORS 260.432(2) by producing and presenting statements and  
19 documents intended to promote the adoption of a measure. (Exhibits A4)
- 20 2. April 8, 2011 the Elections Division notified Carole Smith, the Superintendent of  
21 Portland Public Schools, that a complaint had been received and that a review of that  
22 complaint would begin pursuant to ORS 260.345. (Exhibit B1)
- 23 3. On April 22, 2011 a response was received from PPS. The response included  
24 multiple documents published by PPS relating to Ballot Measures 26-121 and 26-122.  
25 Sarah Schoening, Director of the Office of School Modernization, reviews some  
26 materials for factual information about the bond program. (Exhibit C1)

1 4. Schoening was contacted on March 10, 2011 regarding her activities in the  
2 production of the ballot measure documents. Patterson stated she did review some of  
3 the documents. (Exhibit E6)

4 5. An Elections Division investigator reviewed the documents submitted by PPS  
5 that were published after the measures were certified with the county elections office.  
6 The investigator's report found the submitted documents to have similar impartiality  
7 issues as the documents reviewed on April 4 and 14, 2011. The report also identified  
8 additional statements not meeting the impartiality factors. (Exhibit D1)

9 **VI. FINAL DETERMINATION AND PROPOSED CIVIL PENALTIES:**

10 After completing a thorough investigation, the Elections Division has determined that  
11 the activities performed by Sarah Schoening regarding the measures, did constitute advocacy in  
12 support of Ballot Measures 26-121 and 26-122. The review Schoening provided did not produce  
13 impartial, unbiased information about the measures.

14 Complaints related to anyone knowingly communicating false information about a  
15 measure must be filed with the appropriate circuit court. Only a candidate or political  
16 committee aggrieved by the violation would file such an action. The Elections Division's review  
17 was limited to whether the documents produced by Portland Public School employees  
18 supported or opposed the measure. Whether the statements were factual was not addressed.

19 Based on the matters asserted and charged, ***the Secretary of State, Elections Division***  
20 ***shall impose a civil penalty for an elections law violation under ORS 260.432(2) in the amount***  
21 ***of \$75.00, effective twenty (20) calendar days after the date of receipt of this notice***, which  
22 affirms that this Notice is mailed and shall be in effect unless you notify the Secretary of State,  
23 Elections Division ***in writing*** of your request for a hearing, pursuant to OAR165-001-0010,  
24 OAR165-001-0015, and OAR165-001-0025.

1           **NOTICE OF RIGHT TO HEARING; AUTHORITY AND JURISDICTION FOR HEARING:**

2           Pursuant to the Administrative Procedures Act (ORS Chapter 183) and OAR Chapter 165,  
3 you are entitled to a contested case hearing before the Office of Administrative Hearings. If  
4 you request a hearing it will be conducted in accordance with the contested case provisions of  
5 the Oregon Administrative Procedures Act ORS 183.415 through ORS 183.470, ORS 183.745(4),  
6 ORS 260.995(4-6), and OAR 165-001-0010 through 165-001-0080.

7           **NOTICE REGARDING REPRESENTATION AND HEARING PROCEDURES:**

8           If you request a hearing, a description of the hearing procedure will be provided to you  
9 in accordance with ORS 183.413, prior to the commencement of the hearing. At the hearing,  
10 you have the right to represent yourself or be represented by an attorney of your own  
11 choosing, and at your own expense. Furthermore, you may respond and present evidence and  
12 argument on all issues involved. If you request a hearing, you do not need to appear in person  
13 at a hearing held under ORS 260.232 or 260.995, but instead may submit written testimony and  
14 other evidence, sworn to before a notary public, to the Secretary of State for entry in the  
15 hearing record. Such documents must be received by the Secretary of State not later than three  
16 business days prior to the hearing as provided by 260.232(6).

17           **NOTICE OF PROPOSED ACTION:**

18           Based on the matters asserted and charged, *the Secretary of State, Elections Division*  
19 *shall impose a civil penalty for an elections law violation under ORS 260.432(2) in the amount*  
20 *of \$75.00, effective twenty (20) calendar days after the date listed on the accompanying*  
21 *Certificate of Service*, unless you notify the Secretary of State, Elections Division *in writing* of  
22 your request for a hearing.

23           **HOW TO REQUEST A HEARING; CONSEQUENCE OF FAILURE TO**

24           **REQUEST A HEARING:**

25           **IF YOU DESIRE A HEARING, YOU MUST NOTIFY THE ELECTIONS DIVISION IN WRITING,**

26 **THAT YOU REQUEST A HEARING.** This request must be received by the Elections Division within

20 days of the date of mailing this Notice to you. Upon timely receipt of your request, the  
1 Elections Division will notify you of the date, time and place of the hearing. To be effective,  
2 your notice must be sent to the following:

3  
4 Carla Corbin, Compliance Specialist  
5 Oregon Secretary of State, Elections Division  
6 255 Capitol Street, Suite 501  
7 Salem OR 97301  
8 Facsimile (503) 373-7414

9  
10 If you fail to request a hearing within the required twenty (20) days; or if you fail to  
11 appear at a scheduled hearing, this notice of intent to impose a civil penalty shall become a  
12 final order by default imposing a \$75.00 civil penalty against you for violating ORS 260.432(2).  
13 No further order will be served on you. Pursuant to OAR 165-001-0015(9), the records of the  
14 proceedings in this case to date, including the Department's files on the subject matter of this  
15 contested case, shall automatically become part of the permanent contested case record by  
16 default and shall meet the Department's burden of proof for proving a *prima facie case*.<sup>1</sup>

17 **IT IS SO ORDERED THIS** \_\_\_\_\_ day of \_\_\_\_\_, 2011.

18 STATE OF OREGON

19  
20  
21 \_\_\_\_\_  
22 Stephen N. Trout, Director  
23 Secretary of State, Elections Division  
24

25 <sup>1</sup> *Prima facie* denotes the evidence *which, unless rebutted*, would be considered sufficient to prove a particular  
26 position or fact. In most legal proceedings, one party has a burden of proof, which requires them to present *prima facie* evidence for all the essential facts in the case.



**CERTIFICATE OF MAILING**

On August 25, 2011, I mailed the foregoing CONTESTED CASE NOTICE OF INTENT TO IMPOSE CIVIL PENALTY issued on this date. Case No. 11-102-SS.

By: First Class Mail

Sarah Schoening  
Director of the Office of School Modernization  
Portland Public Schools  
501 North Dixon Street  
Portland OR 97227

By: First Class Mail Certified

Sarah Schoening, Director  
Office of School Modernization  
Portland Public Schools  
501 North Dixon Street  
Portland OR 97227

Certificate of Mailing By:

Carla Corbin  
Compliance Specialist

1 OFFICE OF THE SECRETARY OF STATE ELECTIONS DIVISION

2 STATE OF OREGON

3 In the Matter of :

4 Robb Cowie  
5 CIPA Executive Director  
6 Portland Public Schools  
501 North Dixon Street  
Portland OR 97227

**NOTICE OF A FINAL DETERMINATION AND  
INTENT TO IMPOSE A CIVIL PENALTY;  
CONTESTED CASE NOTICE AND OPPORTUNITY TO  
BE HEARD, AND FINAL ORDER BY DEFAULT  
IMPOSING CIVIL PENALTY IF NO REQUEST FOR  
HEARING IS RECEIVED**

Elections Division Case No. 11-102-RC

8  
9 **I. NATURE OF PROPOSED ACTION:**

10 The Secretary of State, Elections Division (Elections Division) has determined that Robb  
11 Cowie has violated one or more of the elections laws of the state of Oregon. As a result of this  
12 determination, the Elections Division intends to impose civil penalties for violations of the  
13 elections law pursuant to ORS 260.995 and OAR 165-013-0020. This Notice is provided  
14 pursuant to Oregon Revised Statute (ORS) 183.415, ORS 183.745, ORS 260.995, Oregon  
15 Administrative Rule (OAR) 165-001-0015. This Notice contains an Order imposing a civil penalty  
16 for violations of the elections law pursuant to OAR 165-001-0025(3). This Order will become  
17 final, unless you request a hearing in writing within twenty days of the mailing date as shown  
18 on the attached Certificate of Service, pursuant to OAR 165-001-0015(2), and ORS 183.745(3).

19 **II. ISSUE:**

20 Pursuant to ORS 260.995(1), The Secretary of State, Elections Division has determined  
21 that Robb Cowie, Executive Director Portland Public Schools, violated ORS 260.432 (2) and  
22 therefore intends to impose a civil penalty in the amount of \$75.00 (Appendix B, OAR 165-013-  
23 0020, Penalty Matrix).

1 **III. PARTICULAR RULES AND STATUTES INVOLVED:**

- 2 A. ORS 246.150 provides that the Secretary of State may adopt rules the secretary  
3 considers necessary to facilitate and assist in achieving and maintaining a  
4 maximum degree of correctness, impartiality and efficiency in administration of  
5 the election laws.
- 6 B. ORS 260.995 and ORS 183.745 provide for the general authority and procedure  
7 under which the Elections Division may impose a civil penalty for non-campaign  
8 finance violations.
- 9 C. OAR 165-013-0020(3) establishes a penalty matrix (Exhibit A2) for non-campaign  
10 finance violations of the election law and reads, in part:

11 “(a) Penalty Matrix. These mitigating circumstances may  
12 be considered in reducing, in whole or in part, the civil  
13 penalty. If the violation is a direct result of an error by an  
14 elections officer, the violation is waived and no penalty is  
15 assessed.

16 (b) For purposes of determining penalty amounts for  
17 violations of non-campaign finance civil penalty election  
18 law violations, Appendix B of this rule will apply.”

- 19 D. ORS 260.432(1) and (2) provide in part:

20 “(1) No person shall attempt to, or actually, coerce,  
21 command or require a public employee to influence or  
22 give money, service or other thing of value to promote or  
23 oppose any political committee or to promote or oppose  
24 the nomination or election of a candidate, the gathering of  
25 signatures on an initiative, referendum or recall petition,  
26 the adoption of a measure or the recall of a public office  
holder.”

“ (2) No public employee shall solicit any money, influence,  
service or other thing of value or otherwise promote or  
oppose any political committee or promote or oppose the  
nomination or election of a candidate, the gathering of  
signatures on an initiative, referendum or recall petition,  
the adoption of a measure or the recall of a public office  
holder while on the job during working hours. However,

1 this section does not restrict the right of a public employee  
2 to express personal political views.”

- 3 E. The *2008 Restrictions on Political Campaigning by Public Employees, ORS*  
4 *260.432* manual is intended to provide a more detailed explanation of the  
5 statute and provides tools and references for local governments to use during an  
6 election campaign to ensure impartiality.

7 **IV. PROCEDURAL BACKGROUND:**

8 Public employees and officers may provide impartial information concerning ballot  
9 measures pending before the public. The Attorney General has concluded public bodies may  
10 use public funds and public work time to inform voters of facts pertinent to a measure, if the  
11 information does not lead voters to support or oppose the measure. The work time spent to  
12 produce such an impartial informational document would not violate election law. The term  
13 “impartial” means equitable, fair, unbiased and dispassionate. The reader must be allowed to  
14 make his or her own judgment of the matter in order to vote based on the facts presented.

15 Material purporting to be informational may be found to promote or oppose a measure,  
16 even if it does not do so expressly. Such material is considered advocacy when taken as a whole  
17 it clearly acts to persuade the reader to vote in a particular manner. The distinction between  
18 strictly factual, impartial information about ballot measures and improper advocacy must be  
19 made by reviewing the entire document or package and the context in which it is published.

20 Governing bodies are advised to have articles about ballot measures, or other material  
21 which addresses even peripheral issues pertaining to a measure, reviewed by their legal  
22 counsel and this office prior to publication. These reviews ensure the material contains only  
23 impartial language to avoid violation of election law. A list of factors included in the publication,  
24 *2008 Restrictions on Political Campaigning by Public Employees, ORS 260.432* is utilized to  
25 determine whether a document is impartial (Exhibit A1, Pg 45).

1 If a violation occurs as the result of a supervisor asking the public employee to perform  
2 the campaign activity but the work was clerical with no control over content, the penalty may  
3 be waived due to a mitigating circumstance.

4 Election law does not cover the expenditure of public funds other than public employee  
5 work time. The review of this complaint does not include an analysis of the amount of public  
6 funds used or the appropriateness of using publicly owned equipment and supplies to produce  
7 and distribute this material.

8 Portland Public Schools filed Ballot Measure 26-121 with Multnomah County Elections  
9 on January 6, 2011. (Exhibit A3) PPS filed Ballot Measure 26-122 with Multnomah County  
10 Elections on February 18, 2011. (Exhibit A3) On April 4 and 14, 2011 PPS requested the  
11 Secretary of State, Elections Division, to review documents for compliance with ORS 260.432.  
12 (Exhibit A4) The Elections Division notified PPS of the multiple changes required for the  
13 document to meet the impartial factors. (Exhibit A4) The Elections Division received a complaint  
14 from Eric Fruits on April 8, 2011 alleging PPS did not include interest costs in publications about  
15 Ballot Measures 26-121 and 26-122. (Exhibit A5) The Elections Division received further  
16 complaints of impartial PPS publications from Richard Ellmyer, Nathan Dahlin, Jeff Reynolds and  
17 William Schneider, DC. (Exhibit A5)

18 **V. NOTICE OF MATTERS ASSERTED AND CHARGED:**

19 1. Five complaints and supporting documents were filed with the Secretary of  
20 State, Elections Division, alleging that Portland Public School employees (public  
21 employees) violated ORS 260.432(2) by producing and presenting statements and  
22 documents intended to promote the adoption of a measure (Exhibits A5).

23 2. April 8, 2011 the Elections Division notified Carole Smith, the Superintendent of  
24 Portland Public Schools, that a complaint had been received and that a review of that  
25 complaint would begin pursuant to ORS 260.345. (Exhibit B1)

1 3. On April 22, 2011 a response was received from Robb Cowie. The response  
2 included multiple documents published by PPS relating to Ballot Measures 26-121 and  
3 26-122. Cowie, listed as the CIPA Executive Director, had oversight of all district  
4 communications, with limited direct role in production of most materials (beyond  
5 overall guidance, some editing). He had the primary role in writing and producing the  
6 Annual Progress Report for 2010-11. (Exhibit C1)

7 4. An Elections Division investigator reviewed the documents submitted by Cowie  
8 that were published after the measures were certified with the county elections office.  
9 The investigator's report found the submitted documents to have similar impartiality  
10 issues as the documents reviewed on April 4 and 14, 2011. The report also identified  
11 additional statements not meeting the impartiality factors. (Exhibit D1)

#### 12 **VI. FINAL DETERMINATION AND PROPOSED CIVIL PENALTIES:**

13 After completing a thorough investigation, the Elections Division has determined that  
14 the activities performed by Robb Cowie regarding the measures, did constitute advocacy in  
15 support of Ballot Measures 26-121 and 26-122. The oversight and editing Cowie provided did  
16 not produce impartial, unbiased information about the measures. Additionally, the Annual  
17 Progress Report for 2010-11 Cowie wrote and produced did not provide impartial, unbiased  
18 information about the measures.

19 Complaints related to anyone knowingly communicating false information about a  
20 measure must be filed with the appropriate circuit court. Only a candidate or political  
21 committee aggrieved by the violation would file such an action. The Elections Division's review  
22 was limited to whether the documents produced by Portland Public School employees  
23 supported or opposed the measure. Whether the statements were factual was not addressed.

24 Based on the matters asserted and charged, ***the Secretary of State, Elections Division***  
25 ***shall impose a civil penalty for an elections law violation under ORS 260.432(2) in the amount***  
26 ***of \$75.00, effective twenty (20) calendar days after the date of receipt of this notice,*** which

1 affirms that this Notice is mailed and shall be in effect unless you notify the Secretary of State,  
2 Elections Division *in writing* of your request for a hearing, pursuant to OAR165-001-0010,  
3 OAR165-001-0015, and OAR165-001-0025.

4 **NOTICE OF RIGHT TO HEARING; AUTHORITY AND JURISDICTION FOR HEARING:**

5 Pursuant to the Administrative Procedures Act (ORS Chapter 183) and OAR Chapter165,  
6 you are entitled to a contested case hearing before the Office of Administrative Hearings. If  
7 you request a hearing it will be conducted in accordance with the contested case provisions of  
8 the Oregon Administrative Procedures Act ORS 183.415 through ORS 183.470, ORS 183.745(4),  
9 ORS 260.995(4-6), and OAR 165-001-0010 through 165-001-0080.

10 **NOTICE REGARDING REPRESENTATION AND HEARING PROCEDURES:**

11 If you request a hearing, a description of the hearing procedure will be provided to you  
12 in accordance with ORS 183.413, prior to the commencement of the hearing. At the hearing,  
13 you have the right to represent yourself or be represented by an attorney of your own  
14 choosing, and at your own expense. Furthermore, you may respond and present evidence and  
15 argument on all issues involved. If you request a hearing, you do not need to appear in person  
16 at a hearing held under ORS 260.232 or 260.995, but instead may submit written testimony and  
17 other evidence, sworn to before a notary public, to the Secretary of State for entry in the  
18 hearing record. Such documents must be received by the Secretary of State not later than three  
19 business days prior to the hearing as provided by 260.232(6).

20 **NOTICE OF PROPOSED ACTION:**

21 Based on the matters asserted and charged, *the Secretary of State, Elections Division*  
22 *shall impose a civil penalty for an elections law violation under ORS 260.432(2) in the amount*  
23 *of \$75.00, effective twenty (20) calendar days after the date listed on the accompanying*  
24 *Certificate of Service*, unless you notify the Secretary of State, Elections Division *in writing* of  
25 your request for a hearing.  
26

1                   **HOW TO REQUEST A HEARING; CONSEQUENCE OF FAILURE TO**

2                                   **REQUEST A HEARING:**

3                   **IF YOU DESIRE A HEARING, YOU MUST NOTIFY THE ELECTIONS DIVISION IN WRITING,**

4 **THAT YOU REQUEST A HEARING.** This request must be received by the Elections Division within  
5 20 days of the date of mailing this Notice to you. Upon timely receipt of your request, the  
6 Elections Division will notify you of the date, time and place of the hearing. To be effective,  
7 your notice must be sent to the following:

8   Carla Corbin, Compliance Specialist  
9   Oregon Secretary of State, Elections Division  
10    255 Capitol Street, Suite 501  
11    Salem OR 97301  
12    Facsimile (503) 373-7414

14                   If you fail to request a hearing within the required twenty (20) days; or if you fail to  
15 appear at a scheduled hearing, this notice of intent to impose a civil penalty shall become a  
16 final order by default imposing a \$75.00 civil penalty against you for violating ORS 260.432(2).  
17 No further order will be served on you. Pursuant to OAR 165-001-0015(9), the records of the  
18 proceedings in this case to date, including the Department’s files on the subject matter of this  
19 contested case, shall automatically become part of the permanent contested case record by  
20 default and shall meet the Department’s burden of proof for proving a *prima facie case*.<sup>1</sup>

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25                   <sup>1</sup> *Prima facie* denotes the evidence *which, unless rebutted,* would be considered sufficient to prove a particular  
26 position or fact. In most legal proceedings, one party has a burden of proof, which requires them to present *prima facie* evidence for all the essential facts in the case.



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**IT IS SO ORDERED THIS** \_\_\_\_\_ day of \_\_\_\_\_, 2011.

STATE OF OREGON

\_\_\_\_\_  
Stephen N. Trout, Director  
Secretary of State, Elections Division

**CERTIFICATE OF MAILING**

On August 25, 2011, I mailed the foregoing CONTESTED CASE NOTICE OF INTENT TO IMPOSE CIVIL PENALTY issued on this date. Case No. 11-102-RC.

By: First Class Mail

Robb Cowie  
CIPA Executive Director  
Portland Public Schools  
501 North Dixon Street  
Portland OR 97227

By: First Class Mail Certified

Robb Cowie  
CIPA Executive Director  
Portland Public Schools  
501 North Dixon Street  
Portland OR 97227

Certificate of Mailing By:

Carla Corbin  
Compliance Specialist

1 OFFICE OF THE SECRETARY OF STATE ELECTIONS DIVISION

2 STATE OF OREGON

3 In the Matter of :

4 Matt Shelby  
5 CIPA Public Information Officer  
6 Portland Public Schools  
501 North Dixon Street  
Portland OR 97227

**NOTICE OF A FINAL DETERMINATION AND  
INTENT TO IMPOSE A CIVIL PENALTY;  
CONTESTED CASE NOTICE AND OPPORTUNITY TO  
BE HEARD, AND FINAL ORDER BY DEFAULT  
IMPOSING CIVIL PENALTY IF NO REQUEST FOR  
HEARING IS RECEIVED**

Elections Division Case No. 11-102-MS

8  
9 **I. NATURE OF PROPOSED ACTION:**

10 The Secretary of State, Elections Division (Elections Division) has determined that Matt  
11 Shelby has violated one or more of the elections laws of the state of Oregon. As a result of this  
12 determination, the Elections Division intends to impose civil penalties for violations of the  
13 elections law pursuant to ORS 260.995 and OAR 165-013-0020. This Notice is provided  
14 pursuant to Oregon Revised Statute (ORS) 183.415, ORS 183.745, ORS 260.995, Oregon  
15 Administrative Rule (OAR) 165-001-0015. This Notice contains an Order imposing a civil penalty  
16 for violations of the elections law pursuant to OAR 165-001-0025(3). This Order will become  
17 final, unless you request a hearing in writing within twenty days of the mailing date as shown  
18 on the attached Certificate of Service, pursuant to OAR 165-001-0015(2), and ORS 183.745(3).

19 **II. ISSUE:**

20 Pursuant to ORS 260.995(1), The Secretary of State, Elections Division has determined  
21 that Matt Shelby, Public Information Officer for the Portland Public Schools, violated ORS  
22 260.432 (2) and therefore intends to impose a civil penalty in the amount of \$75.00 (Appendix  
23 B, OAR 165-013-0020, Penalty Matrix).

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**III. PARTICULAR RULES AND STATUTES INVOLVED:**

- A. ORS 246.150 provides that the Secretary of State may adopt rules the secretary considers necessary to facilitate and assist in achieving and maintaining a maximum degree of correctness, impartiality and efficiency in administration of the election laws.
- B. ORS 260.995 and ORS 183.745 provide for the general authority and procedure under which the Elections Division may impose a civil penalty for non-campaign finance violations.
- C. OAR 165-013-0020(3) establishes a penalty matrix (Exhibit A2) for non-campaign finance violations of the election law and reads, in part:

“(a) Penalty Matrix. These mitigating circumstances may be considered in reducing, in whole or in part, the civil penalty. If the violation is a direct result of an error by an elections officer, the violation is waived and no penalty is assessed.

(b) For purposes of determining penalty amounts for violations of non-campaign finance civil penalty election law violations, Appendix B of this rule will apply.”

- D. ORS 260.432(1) and (2) provide in part:

“(1) No person shall attempt to, or actually, coerce, command or require a public employee to influence or give money, service or other thing of value to promote or oppose any political committee or to promote or oppose the nomination or election of a candidate, the gathering of signatures on an initiative, referendum or recall petition, the adoption of a measure or the recall of a public office holder.”

“(2) No public employee shall solicit any money, influence, service or other thing of value or otherwise promote or oppose any political committee or promote or oppose the nomination or election of a candidate, the gathering of signatures on an initiative, referendum or recall petition, the adoption of a measure or the recall of a public office holder while on the job during working hours. However,

1 this section does not restrict the right of a public employee  
2 to express personal political views.”

- 3 E. The *2008 Restrictions on Political Campaigning by Public Employees, ORS*  
4 *260.432* manual is intended to provide a more detailed explanation of the  
5 statute and provides tools and references for local governments to use during an  
6 election campaign to ensure impartiality.

7 **IV. PROCEDURAL BACKGROUND:**

8 Public employees and officers may provide impartial information concerning ballot  
9 measures pending before the public. The Attorney General has concluded public bodies may  
10 use public funds and public work time to inform voters of facts pertinent to a measure, if the  
11 information does not lead voters to support or oppose the measure. The work time spent to  
12 produce such an impartial informational document would not violate election law. The term  
13 “impartial” means equitable, fair, unbiased and dispassionate. The reader must be allowed to  
14 make his or her own judgment of the matter in order to vote based on the facts presented.

15 Material purporting to be informational may be found to promote or oppose a measure,  
16 even if it does not do so expressly. Such material is considered advocacy when taken as a whole  
17 it clearly acts to persuade the reader to vote in a particular manner. The distinction between  
18 strictly factual, impartial information about ballot measures and improper advocacy must be  
19 made by reviewing the entire document or package and the context in which it is published.

20 Governing bodies are advised to have articles about ballot measures, or other material  
21 which addresses even peripheral issues pertaining to a measure, reviewed by their legal  
22 counsel and this office prior to publication. These reviews ensure the material contains only  
23 impartial language to avoid violation of election law. A list of factors included in the publication,  
24 *2008 Restrictions on Political Campaigning by Public Employees, ORS 260.432* is utilized to  
25 determine whether a document is impartial (Exhibit A1, Pg 45).

1 If a violation occurs as the result of a supervisor asking the public employee to perform  
2 the campaign activity but the work was clerical with no control over content, the penalty may  
3 be waived due to a mitigating circumstance.

4 Election law does not cover the expenditure of public funds other than public employee  
5 work time. The review of this complaint does not include an analysis of the amount of public  
6 funds used or the appropriateness of using publicly owned equipment and supplies to produce  
7 and distribute this material.

8 Portland Public Schools filed Ballot Measure 26-121 with Multnomah County Elections  
9 on January 6, 2011. (Exhibit A3) PPS filed Ballot Measure 26-122 with Multnomah County  
10 Elections on February 18, 2011. (Exhibit A3) On April 4 and 14, 2011 PPS requested the  
11 Secretary of State, Elections Division, to review documents for compliance with ORS 260.432.  
12 (Exhibit A4) The Elections Division notified PPS of the multiple changes required for the  
13 document to meet the impartial factors. (Exhibit A4) The Elections Division received a complaint  
14 from Eric Fruits on April 8, 2011 alleging PPS did not include interest costs in publications about  
15 Ballot Measures 26-121 and 26-122. (Exhibit A5) The Elections Division received further  
16 complaints of impartial PPS publications from Richard Ellmyer, Nathan Dahlin, Jeff Reynolds and  
17 William Schneider, DC. (Exhibit A5)

18 **V. NOTICE OF MATTERS ASSERTED AND CHARGED:**

19 1. Five complaints and supporting documents were filed with the Secretary of  
20 State, Elections Division, alleging that Portland Public Schools employees (public  
21 employees) violated ORS 260.432(2) by producing and presenting statements and  
22 documents intended to promote the adoption of a measure. (Exhibits A4)

23 2. April 8, 2011 the Elections Division notified Carole Smith, the Superintendent of  
24 Portland Public Schools, that a complaint had been received and that a review of that  
25 complaint would begin pursuant to ORS 260.345. (Exhibit B1)

1 3. On April 22, 2011 a response was received from PPS. The response included  
2 multiple documents published by PPS relating to Ballot Measures 26-121 and 26-122.  
3 Matt Shelby, CIPA Public Information Officer, drafts some materials. (Exhibit C1)

4 4. Shelby was contacted on March 10, 2011 regarding his activities in the  
5 production of the ballot measure documents. Shelby stated he did draft and editing  
6 some of the documents. (Exhibit E2)

7 5. An Elections Division investigator reviewed the documents submitted by PPS  
8 that were published after the measures were certified with the county elections office.  
9 The investigator's report found the submitted documents to have similar impartiality  
10 issues as the documents reviewed on April 4 and 14, 2011. The report also identified  
11 additional statements not meeting the impartiality factors. (Exhibit D1)

#### 12 **VI. FINAL DETERMINATION AND PROPOSED CIVIL PENALTIES:**

13 After completing a thorough investigation, the Elections Division has determined that  
14 the activities performed by Matt Shelby regarding the measures, did constitute advocacy in  
15 support of Ballot Measure 26-121 and 26-122. The drafting and editing Shelby provided did not  
16 produce impartial, unbiased information about the measures.

17 Complaints related to anyone knowingly communicating false information about a  
18 measure must be filed with the appropriate circuit court. Only a candidate or political  
19 committee aggrieved by the violation would file such an action. The Elections Division's review  
20 was limited to whether the documents produced by Portland Public School employees  
21 supported or opposed the measure. Whether the statements were factual was not addressed.

22 Based on the matters asserted and charged, ***the Secretary of State, Elections Division***  
23 ***shall impose a civil penalty for an elections law violation under ORS 260.432(2) in the amount***  
24 ***of \$75.00, effective twenty (20) calendar days after the date of receipt of this notice,*** which  
25 affirms that this Notice is mailed and shall be in effect unless you notify the Secretary of State,  
26

1 Elections Division *in writing* of your request for a hearing, pursuant to OAR165-001-0010,  
2 OAR165-001-0015, and OAR165-001-0025.

3 **NOTICE OF RIGHT TO HEARING; AUTHORITY AND JURISDICTION FOR HEARING:**

4 Pursuant to the Administrative Procedures Act (ORS Chapter 183) and OAR Chapter165,  
5 you are entitled to a contested case hearing before the Office of Administrative Hearings. If  
6 you request a hearing it will be conducted in accordance with the contested case provisions of  
7 the Oregon Administrative Procedures Act ORS 183.415 through ORS 183.470, ORS 183.745(4),  
8 ORS 260.995(4-6), and OAR 165-001-0010 through 165-001-0080.

9 **NOTICE REGARDING REPRESENTATION AND HEARING PROCEDURES:**

10 If you request a hearing, a description of the hearing procedure will be provided to you  
11 in accordance with ORS 183.413, prior to the commencement of the hearing. At the hearing,  
12 you have the right to represent yourself or be represented by an attorney of your own  
13 choosing, and at your own expense. Furthermore, you may respond and present evidence and  
14 argument on all issues involved. If you request a hearing, you do not need to appear in person  
15 at a hearing held under ORS 260.232 or 260.995, but instead may submit written testimony and  
16 other evidence, sworn to before a notary public, to the Secretary of State for entry in the  
17 hearing record. Such documents must be received by the Secretary of State not later than three  
18 business days prior to the hearing as provided by 260.232(6).

19 **NOTICE OF PROPOSED ACTION:**

20 Based on the matters asserted and charged, *the Secretary of State, Elections Division*  
21 *shall impose a civil penalty for an elections law violation under ORS 260.432(2) in the amount*  
22 *of \$75.00, effective twenty (20) calendar days after the date listed on the accompanying*  
23 *Certificate of Service*, unless you notify the Secretary of State, Elections Division *in writing* of  
24 your request for a hearing.

25 **HOW TO REQUEST A HEARING; CONSEQUENCE OF FAILURE TO**

26 **REQUEST A HEARING:**



**IF YOU DESIRE A HEARING, YOU MUST NOTIFY THE ELECTIONS DIVISION IN WRITING,**

1 **THAT YOU REQUEST A HEARING.** This request must be received by the Elections Division within  
2 20 days of the date of mailing this Notice to you. Upon timely receipt of your request, the  
3 Elections Division will notify you of the date, time and place of the hearing. To be effective,  
4 your notice must be sent to the following:

5  
6 Carla Corbin, Compliance Specialist  
7 Oregon Secretary of State, Elections Division  
8 255 Capitol Street, Suite 501  
9 Salem OR 97301  
10 Facsimile (503) 373-7414

11  
12 If you fail to request a hearing within the required twenty (20) days; or if you fail to  
13 appear at a scheduled hearing, this notice of intent to impose a civil penalty shall become a  
14 final order by default imposing a \$75.00 civil penalty against you for violating ORS 260.432(2).  
15 No further order will be served on you. Pursuant to OAR 165-001-0015(9), the records of the  
16 proceedings in this case to date, including the Department's files on the subject matter of this  
17 contested case, shall automatically become part of the permanent contested case record by  
18 default and shall meet the Department's burden of proof for proving a *prima facie case*.<sup>1</sup>

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25 <sup>1</sup> *Prima facie* denotes the evidence *which, unless rebutted,* would be considered sufficient to prove a particular  
26 position or fact. In most legal proceedings, one party has a burden of proof, which requires them to present *prima facie* evidence for all the essential facts in the case.

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**IT IS SO ORDERED THIS** \_\_\_\_\_ day of \_\_\_\_\_, 2011.

STATE OF OREGON

\_\_\_\_\_  
Stephen N. Trout, Director  
Secretary of State, Elections Division

**CERTIFICATE OF MAILING**

On August 25, 2011, I mailed the foregoing CONTESTED CASE NOTICE OF INTENT TO IMPOSE CIVIL PENALTY issued on this date. Case No. 11-102-MS.

By: First Class Mail

Matt Shelby  
CIPA Public Information Officer  
Portland Public Schools  
501 North Dixon Street  
Portland OR 97227

By: First Class Mail Certified

Matt Shelby  
CIPA Public Information Officer  
Portland Public Schools  
501 North Dixon Street  
Portland OR 97227

Certificate of Mailing By:

Carla Corbin  
Compliance Specialist

1 OFFICE OF THE SECRETARY OF STATE ELECTIONS DIVISION

2 STATE OF OREGON

3 In the Matter of :

4 Sarah Carlin Ames  
5 CIPA Public Affairs Director  
6 Portland Public Schools  
501 North Dixon Street  
Portland OR 97227

**NOTICE OF A FINAL DETERMINATION AND  
INTENT TO IMPOSE A CIVIL PENALTY;  
CONTESTED CASE NOTICE AND OPPORTUNITY TO  
BE HEARD, AND FINAL ORDER BY DEFAULT  
IMPOSING CIVIL PENALTY IF NO REQUEST FOR  
HEARING IS RECEIVED**

Elections Division Case No. 11-102-SCA

8  
9 **I. NATURE OF PROPOSED ACTION:**

10 The Secretary of State, Elections Division (Elections Division) has determined that Sarah  
11 Carlin Ames has violated one or more of the elections laws of the state of Oregon. As a result of  
12 this determination, the Elections Division intends to impose civil penalties for violations of the  
13 elections law pursuant to ORS 260.995 and OAR 165-013-0020. This Notice is provided  
14 pursuant to Oregon Revised Statute (ORS) 183.415, ORS 183.745, ORS 260.995, Oregon  
15 Administrative Rule (OAR) 165-001-0015. This Notice contains an Order imposing a civil penalty  
16 for violations of the elections law pursuant to OAR 165-001-0025(3). This Order will become  
17 final, unless you request a hearing in writing within twenty days of the mailing date as shown  
18 on the attached Certificate of Service, pursuant to OAR 165-001-0015(2), and ORS 183.745(3).

19 **II. ISSUE:**

20 Pursuant to ORS 260.995(1), The Secretary of State, Elections Division has determined  
21 that Sarah Carlin Ames, Public Affairs Director for the Portland Public Schools, violated ORS  
22 260.432 (2) and therefore intends to impose a civil penalty in the amount of \$75.00 (Appendix  
23 B, OAR 165-013-0020, Penalty Matrix).

1 **III. PARTICULAR RULES AND STATUTES INVOLVED:**

- 2 A. ORS 246.150 provides that the Secretary of State may adopt rules the secretary  
3 considers necessary to facilitate and assist in achieving and maintaining a  
4 maximum degree of correctness, impartiality and efficiency in administration of  
5 the election laws.
- 6 B. ORS 260.995 and ORS 183.745 provide for the general authority and procedure  
7 under which the Elections Division may impose a civil penalty for non-campaign  
8 finance violations.
- 9 C. OAR 165-013-0020(3) establishes a penalty matrix (Exhibit A2) for non-campaign  
10 finance violations of the election law and reads, in part:

11 “(a) Penalty Matrix. These mitigating circumstances may  
12 be considered in reducing, in whole or in part, the civil  
13 penalty. If the violation is a direct result of an error by an  
14 elections officer, the violation is waived and no penalty is  
15 assessed.

16 (b) For purposes of determining penalty amounts for  
17 violations of non-campaign finance civil penalty election  
18 law violations, Appendix B of this rule will apply.”

- 19 D. ORS 260.432(1) and (2) provide in part:

20 “(1) No person shall attempt to, or actually, coerce,  
21 command or require a public employee to influence or  
22 give money, service or other thing of value to promote or  
23 oppose any political committee or to promote or oppose  
24 the nomination or election of a candidate, the gathering of  
25 signatures on an initiative, referendum or recall petition,  
26 the adoption of a measure or the recall of a public office  
holder.”

“(2) No public employee shall solicit any money, influence,  
service or other thing of value or otherwise promote or  
oppose any political committee or promote or oppose the  
nomination or election of a candidate, the gathering of  
signatures on an initiative, referendum or recall petition,  
the adoption of a measure or the recall of a public office  
holder while on the job during working hours. However,

1 this section does not restrict the right of a public employee  
2 to express personal political views.”

- 3 E. The *2008 Restrictions on Political Campaigning by Public Employees, ORS*  
4 *260.432* manual is intended to provide a more detailed explanation of the  
5 statute and provides tools and references for local governments to use during an  
6 election campaign to ensure impartiality.

7 **IV. PROCEDURAL BACKGROUND:**

8 Public employees and officers may provide impartial information concerning ballot  
9 measures pending before the public. The Attorney General has concluded public bodies may  
10 use public funds and public work time to inform voters of facts pertinent to a measure, if the  
11 information does not lead voters to support or oppose the measure. The work time spent to  
12 produce such an impartial informational document would not violate election law. The term  
13 “impartial” means equitable, fair, unbiased and dispassionate. The reader must be allowed to  
14 make his or her own judgment of the matter in order to vote based on the facts presented.

15 Material purporting to be informational may be found to promote or oppose a measure,  
16 even if it does not do so expressly. Such material is considered advocacy when taken as a whole  
17 it clearly acts to persuade the reader to vote in a particular manner. The distinction between  
18 strictly factual, impartial information about ballot measures and improper advocacy must be  
19 made by reviewing the entire document or package and the context in which it is published.

20 Governing bodies are advised to have articles about ballot measures, or other material  
21 which addresses even peripheral issues pertaining to a measure, reviewed by their legal  
22 counsel and this office prior to publication. These reviews ensure the material contains only  
23 impartial language to avoid violation of election law. A list of factors included in the publication,  
24 *2008 Restrictions on Political Campaigning by Public Employees, ORS 260.432* is utilized to  
25 determine whether a document is impartial (Exhibit A1, Pg 45).  
26

1 If a violation occurs as the result of a supervisor asking the public employee to perform  
2 the campaign activity but the work was clerical with no control over content, the penalty may  
3 be waived due to a mitigating circumstance.

4 Election law does not cover the expenditure of public funds other than public employee  
5 work time. The review of this complaint does not include an analysis of the amount of public  
6 funds used or the appropriateness of using publicly owned equipment and supplies to produce  
7 and distribute this material.

8 Portland Public Schools filed Ballot Measure 26-121 with Multnomah County Elections  
9 on January 6, 2011. (Exhibit A3) PPS filed Ballot Measure 26-122 with Multnomah County  
10 Elections on February 18, 2011. (Exhibit A3) On April 4 and 14, 2011 PPS requested the  
11 Secretary of State, Elections Division, to review documents for compliance with ORS 260.432.  
12 (Exhibit A4) The Elections Division notified PPS of the multiple changes required for the  
13 document to meet the impartial factors. (Exhibit A4) The Elections Division received a complaint  
14 from Eric Fruits on April 8, 2011 alleging PPS did not include interest costs in publications about  
15 Ballot Measures 26-121 and 26-122. (Exhibit A5) The Elections Division received further  
16 complaints of impartial PPS publications from Richard Ellmyer, Nathan Dahlin, Jeff Reynolds and  
17 William Schneider, DC. (Exhibit A5)

18 **V. NOTICE OF MATTERS ASSERTED AND CHARGED:**

19 1. Five complaints and supporting documents were filed with the Secretary of  
20 State, Elections Division, alleging that Portland Public School employees (public  
21 employees) violated ORS 260.432(2) by producing and presenting statements and  
22 documents intended to promote the adoption of a measure. (Exhibits A5)

23 2. April 8, 2011 the Elections Division notified Carole Smith, the Superintendent of  
24 Portland Public Schools, that a complaint had been received and that a review of that  
25 complaint would begin pursuant to ORS 260.345. (Exhibit B1)

1 3. On April 22, 2011 a response was received from Robb Cowie. The response  
2 included multiple documents published by PPS relating to Ballot Measures 26-121 and  
3 26-122. Sarah Carlin Ames, CIPA Public Affairs Director was noted as a PPS employee  
4 involved with production of the documents. (Exhibit C1)

5 4. Ames was contacted on March 10, 2011 regarding her activities in the  
6 production of the ballot measure documents. Ames stated she is the point person for  
7 bond communications, engaged in drafting, editing and directing the production or  
8 posting of documents. (Exhibit E1)

9 5. An Elections Division investigator reviewed the documents submitted by PPS  
10 that were published after the measures were certified with the county elections office.  
11 The investigator's report found the submitted documents to have similar impartiality  
12 issues as the documents reviewed on April 4 and 14, 2011. The report also identified  
13 additional statements not meeting the impartiality factors. (Exhibit D1)

14 **VI. FINAL DETERMINATION AND PROPOSED CIVIL PENALTIES:**

15 Following its investigation the Elections Division has determined that the activities  
16 performed by Sarah Carlin Ames regarding the measures, did constitute advocacy in support of  
17 Ballot Measures 26-121 and 26-122. The drafting, editing and coordination Ames provided did  
18 not produce impartial, unbiased information about the measures.

19 Complaints related to anyone knowingly communicating false information about a  
20 measure must be filed with the appropriate circuit court. Only a candidate or political  
21 committee aggrieved by the violation would file such an action. The Elections Division's review  
22 was limited to whether the documents produced by Portland Public School employees  
23 supported or opposed the measure. Whether the statements were factual was not addressed.

24 Based on the matters asserted and charged, ***the Secretary of State, Elections Division***  
25 ***shall impose a civil penalty for an elections law violation under ORS 260.432(2) in the amount***  
26



1 **of \$75.00, effective twenty (20) calendar days after the date of receipt of this notice**, which  
2 affirms that this Notice is mailed and shall be in effect unless you notify the Secretary of State,  
3 Elections Division **in writing** of your request for a hearing, pursuant to OAR165-001-0010,  
4 OAR165-001-0015, and OAR165-001-0025.

5 **NOTICE OF RIGHT TO HEARING; AUTHORITY AND JURISDICTION FOR HEARING:**

6 Pursuant to the Administrative Procedures Act (ORS Chapter 183) and OAR Chapter165,  
7 you are entitled to a contested case hearing before the Office of Administrative Hearings. If  
8 you request a hearing it will be conducted in accordance with the contested case provisions of  
9 the Oregon Administrative Procedures Act ORS 183.415 through ORS 183.470, ORS 183.745(4),  
10 ORS 260.995(4-6), and OAR 165-001-0010 through 165-001-0080.

11 **NOTICE REGARDING REPRESENTATION AND HEARING PROCEDURES:**

12 If you request a hearing, a description of the hearing procedure will be provided to you  
13 in accordance with ORS 183.413, prior to the commencement of the hearing. At the hearing,  
14 you have the right to represent yourself or be represented by an attorney of your own  
15 choosing, and at your own expense. Furthermore, you may respond and present evidence and  
16 argument on all issues involved. If you request a hearing, you do not need to appear in person  
17 at a hearing held under ORS 260.232 or 260.995, but instead may submit written testimony and  
18 other evidence, sworn to before a notary public, to the Secretary of State for entry in the  
19 hearing record. Such documents must be received by the Secretary of State not later than three  
20 business days prior to the hearing as provided by 260.232(6).

21 **NOTICE OF PROPOSED ACTION:**

22 Based on the matters asserted and charged, ***the Secretary of State, Elections Division***  
23 ***shall impose a civil penalty for an elections law violation under ORS 260.432(2) in the amount***  
24 ***of \$75.00, effective twenty (20) calendar days after the date listed on the accompanying***  
25 ***Certificate of Service***, unless you notify the Secretary of State, Elections Division **in writing** of  
26 your request for a hearing.

1                                    **HOW TO REQUEST A HEARING; CONSEQUENCE OF FAILURE TO**

2                                    **REQUEST A HEARING:**

3                                    **IF YOU DESIRE A HEARING, YOU MUST NOTIFY THE ELECTIONS DIVISION IN WRITING,**  
4  **THAT YOU REQUEST A HEARING.** This request must be received by the Elections Division within  
5 20 days of the date of mailing this Notice to you. Upon timely receipt of your request, the  
6 Elections Division will notify you of the date, time and place of the hearing. To be effective,  
7 your notice must be sent to the following:

8                                    Carla Corbin, Compliance Specialist  
9                                    Oregon Secretary of State, Elections Division  
10                                   255 Capitol Street, Suite 501  
11                                   Salem OR 97301  
12                                   Facsimile (503) 373-7414  
13

14                                   If you fail to request a hearing within the required twenty (20) days; or if you fail to  
15 appear at a scheduled hearing, this notice of intent to impose a civil penalty shall become a  
16 final order by default imposing a \$75.00 civil penalty against you for violating ORS 260.432(2).  
17 No further order will be served on you. Pursuant to OAR 165-001-0015(9), the records of the  
18 proceedings in this case to date, including the Department’s files on the subject matter of this  
19 contested case, shall automatically become part of the permanent contested case record by  
20 default and shall meet the Department’s burden of proof for proving a *prima facie case*.<sup>1</sup>

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25 <sup>1</sup> *Prima facie* denotes the evidence *which, unless rebutted,* would be considered sufficient to prove a particular  
26 *prima facie* evidence for all the essential facts in the case.

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**IT IS SO ORDERED THIS** \_\_\_\_\_ day of \_\_\_\_\_, 2011.

STATE OF OREGON

\_\_\_\_\_  
Stephen N. Trout, Director  
Secretary of State, Elections Division

**CERTIFICATE OF MAILING**

On August 25, 2011, I mailed the foregoing CONTESTED CASE NOTICE OF INTENT TO IMPOSE CIVIL PENALTY issued on this date. Case No. 11-102-SCA.

By: First Class Mail

Sarah Carlin Ames  
CIPA Public Affairs Director  
Portland Public Schools  
501 North Dixon Street  
Portland OR 97227

By: First Class Mail Certified

Sarah Carlin Ames  
CIPA Public Affairs Director  
Portland Public Schools  
501 North Dixon Street  
Portland OR 97227

Certificate of Mailing By:

Carla Corbin  
Compliance Specialist

1 OFFICE OF THE SECRETARY OF STATE ELECTIONS DIVISION

2 STATE OF OREGON

3 In the Matter of :

4 Katie Essick  
5 CIPA Family Communications Manager  
6 Portland Public Schools  
501 North Dixon Street  
Portland OR 97227

**NOTICE OF A FINAL DETERMINATION AND  
INTENT TO IMPOSE A CIVIL PENALTY;  
CONTESTED CASE NOTICE AND OPPORTUNITY TO  
BE HEARD, AND FINAL ORDER BY DEFAULT  
IMPOSING CIVIL PENALTY IF NO REQUEST FOR  
HEARING IS RECEIVED**

Elections Division Case No. 11-102-KE

8  
9 **I. NATURE OF PROPOSED ACTION:**

10 The Secretary of State, Elections Division (Elections Division) has determined that Katie  
11 Essick has violated one or more of the elections laws of the state of Oregon. As a result of this  
12 determination, the Elections Division intends to impose civil penalties for violations of the  
13 elections law pursuant to ORS 260.995 and OAR 165-013-0020. This Notice is provided  
14 pursuant to Oregon Revised Statute (ORS) 183.415, ORS 183.745, ORS 260.995, Oregon  
15 Administrative Rule (OAR) 165-001-0015. This Notice contains an Order imposing a civil penalty  
16 for violations of the elections law pursuant to OAR 165-001-0025(3). This Order will become  
17 final, unless you request a hearing in writing within twenty days of the mailing date as shown  
18 on the attached Certificate of Service, pursuant to OAR 165-001-0015(2), and ORS 183.745(3).

19 **II. ISSUE:**

20 Pursuant to ORS 260.995(1), The Secretary of State, Elections Division has determined  
21 that Katie Essick, Family Communications Manager for the Portland Public Schools, violated ORS  
22 260.432 (2) and therefore intends to impose a civil penalty in the amount of \$75.00 (Appendix  
23 B, OAR 165-013-0020, Penalty Matrix).

1 **III. PARTICULAR RULES AND STATUTES INVOLVED:**

- 2 A. ORS 246.150 provides that the Secretary of State may adopt rules the secretary  
3 considers necessary to facilitate and assist in achieving and maintaining a  
4 maximum degree of correctness, impartiality and efficiency in administration of  
5 the election laws.
- 6 B. ORS 260.995 and ORS 183.745 provide for the general authority and procedure  
7 under which the Elections Division may impose a civil penalty for non-campaign  
8 finance violations.
- 9 C. OAR 165-013-0020(3) establishes a penalty matrix (Exhibit A2) for non-campaign  
10 finance violations of the election law and reads, in part:

11 “(a) Penalty Matrix. These mitigating circumstances may  
12 be considered in reducing, in whole or in part, the civil  
13 penalty. If the violation is a direct result of an error by an  
14 elections officer, the violation is waived and no penalty is  
15 assessed.

16 (b) For purposes of determining penalty amounts for  
17 violations of non-campaign finance civil penalty election  
18 law violations, Appendix B of this rule will apply.”

- 19 D. ORS 260.432(1) and (2) provide in part:

20 “(1) No person shall attempt to, or actually, coerce,  
21 command or require a public employee to influence or  
22 give money, service or other thing of value to promote or  
23 oppose any political committee or to promote or oppose  
24 the nomination or election of a candidate, the gathering of  
25 signatures on an initiative, referendum or recall petition,  
26 the adoption of a measure or the recall of a public office  
holder.”

“(2) No public employee shall solicit any money, influence,  
service or other thing of value or otherwise promote or  
oppose any political committee or promote or oppose the  
nomination or election of a candidate, the gathering of  
signatures on an initiative, referendum or recall petition,  
the adoption of a measure or the recall of a public office  
holder while on the job during working hours. However,

this section does not restrict the right of a public employee to express personal political views.”

- 1 E. The *2008 Restrictions on Political Campaigning by Public Employees, ORS*  
2 *260.432* manual is intended to provide a more detailed explanation of the  
3 statute and provides tools and references for local governments to use during an  
4 election campaign to ensure impartiality.

5 **IV. PROCEDURAL BACKGROUND:**

6 Public employees and officers may provide impartial information concerning ballot  
7 measures pending before the public. The Attorney General has concluded public bodies may  
8 use public funds and public work time to inform voters of facts pertinent to a measure, if the  
9 information does not lead voters to support or oppose the measure. The work time spent to  
10 produce such an impartial informational document would not violate election law. The term  
11 “impartial” means equitable, fair, unbiased and dispassionate. The reader must be allowed to  
12 make his or her own judgment of the matter in order to vote based on the facts presented.

13 Material purporting to be informational may be found to promote or oppose a measure,  
14 even if it does not do so expressly. Such material is considered advocacy when taken as a whole  
15 it clearly acts to persuade the reader to vote in a particular manner. The distinction between  
16 strictly factual, impartial information about ballot measures and improper advocacy must be  
17 made by reviewing the entire document or package and the context in which it is published.

18 Governing bodies are advised to have articles about ballot measures, or other material  
19 which addresses even peripheral issues pertaining to a measure, reviewed by their legal  
20 counsel and this office prior to publication. These reviews ensure the material contains only  
21 impartial language to avoid violation of election law. A list of factors included in the publication,  
22 *2008 Restrictions on Political Campaigning by Public Employees, ORS 260.432* is utilized to  
23 determine whether a document is impartial (Exhibit A1, Pg 45).

24 If a violation occurs as the result of a supervisor asking the public employee to perform  
25 the campaign activity but the work was clerical with no control over content, the penalty may  
26 be waived due to a mitigating circumstance.

1 Election law does not cover the expenditure of public funds other than public employee  
2 work time. The review of this complaint does not include an analysis of the amount of public  
3 funds used or the appropriateness of using publicly owned equipment and supplies to produce  
4 and distribute this material.

5 Portland Public Schools filed Ballot Measure 26-121 with Multnomah County Elections  
6 on January 6, 2011. (Exhibit A3) PPS filed Ballot Measure 26-122 with Multnomah County  
7 Elections on February 18, 2011. (Exhibit A3) On April 4 and 14, 2011 PPS requested the  
8 Secretary of State, Elections Division, to review documents for compliance with ORS 260.432.  
9 (Exhibit A4) The Elections Division notified PPS of the multiple changes required for the  
10 document to meet the impartial factors. (Exhibit A4) The Elections Division received a complaint  
11 from Eric Fruits on April 8, 2011 alleging PPS did not include interest costs in publications about  
12 Ballot Measures 26-121 and 26-122. (Exhibit A5) The Elections Division received further  
13 complaints of impartial PPS publications from Richard Ellmyer, Nathan Dahlin, Jeff Reynolds and  
14 William Schneider, DC. (Exhibit A5)

15 **V. NOTICE OF MATTERS ASSERTED AND CHARGED:**

- 16 1. Five complaints and supporting documents were filed with the Secretary of  
17 State, Elections Division, alleging that Portland Public Schools (public employees)  
18 violated ORS 260.432(2) by producing and presenting statements and documents  
19 intended to promote the adoption of a measure. (Exhibits A4)
- 20 2. April 8, 2011 the Elections Division notified Carole Smith, the Superintendent of  
21 Portland Public Schools, that a complaint had been received and that a review of that  
22 complaint would begin pursuant to ORS 260.345. (Exhibit B1).
- 23 3. On April 22, 2011 a response was received from PPS. The response included  
24 multiple documents published by PPS relating to Ballot Measures 26-121 and 26-122.  
25 Katie Essick, CIPA Family Communications Manager, edits copy and has oversight of  
26 monthly Pulse e-newsletter. (Exhibit C1)



1 4. Essick was contacted on March 10, 2011 regarding her activities in the  
2 production of the ballot measure documents. Shelby stated she did edit some of the  
3 documents. (Exhibit E3)

4 5. An Elections Division investigator reviewed the documents submitted by PPS  
5 that were published after the measures were certified with the county elections office.  
6 The investigator's report found the submitted documents to have similar impartiality  
7 issues as the documents reviewed on April 4 and 14, 2011. The report also identified  
8 additional statements not meeting the impartiality factors. (Exhibit D1)

9 **VI. FINAL DETERMINATION AND PROPOSED CIVIL PENALTIES:**

10 After completing a thorough investigation, the Elections Division has determined that  
11 the activities performed by Katie Essick regarding the measures, did constitute advocacy in  
12 support of Ballot Measure 26-121 and 26-122. The editing Shelby provided did not produce  
13 impartial, unbiased information about the measures.

14 Complaints related to anyone knowingly communicating false information about a  
15 measure must be filed with the appropriate circuit court. Only a candidate or political  
16 committee aggrieved by the violation would file such an action. The Elections Division's review  
17 was limited to whether the documents produced by Portland Public School employees  
18 supported or opposed the measure. Whether the statements were factual was not addressed.

19 Based on the matters asserted and charged, ***the Secretary of State, Elections Division***  
20 ***shall impose a civil penalty for an elections law violation under ORS 260.432(2) in the amount***  
21 ***of \$75.00, effective twenty (20) calendar days after the date of receipt of this notice***, which  
22 affirms that this Notice is mailed and shall be in effect unless you notify the Secretary of State,  
23 Elections Division ***in writing*** of your request for a hearing, pursuant to OAR165-001-0010,  
24 OAR165-001-0015, and OAR165-001-0025.

1           **NOTICE OF RIGHT TO HEARING; AUTHORITY AND JURISDICTION FOR HEARING:**

2           Pursuant to the Administrative Procedures Act (ORS Chapter 183) and OAR Chapter 165,  
3 you are entitled to a contested case hearing before the Office of Administrative Hearings. If  
4 you request a hearing it will be conducted in accordance with the contested case provisions of  
5 the Oregon Administrative Procedures Act ORS 183.415 through ORS 183.470, ORS 183.745(4),  
6 ORS 260.995(4-6), and OAR 165-001-0010 through 165-001-0080.

7           **NOTICE REGARDING REPRESENTATION AND HEARING PROCEDURES:**

8           If you request a hearing, a description of the hearing procedure will be provided to you  
9 in accordance with ORS 183.413, prior to the commencement of the hearing. At the hearing,  
10 you have the right to represent yourself or be represented by an attorney of your own  
11 choosing, and at your own expense. Furthermore, you may respond and present evidence and  
12 argument on all issues involved. If you request a hearing, you do not need to appear in person  
13 at a hearing held under ORS 260.232 or 260.995, but instead may submit written testimony and  
14 other evidence, sworn to before a notary public, to the Secretary of State for entry in the  
15 hearing record. Such documents must be received by the Secretary of State not later than three  
16 business days prior to the hearing as provided by 260.232(6).

17           **NOTICE OF PROPOSED ACTION:**

18           Based on the matters asserted and charged, *the Secretary of State, Elections Division*  
19 *shall impose a civil penalty for an elections law violation under ORS 260.432(2) in the amount*  
20 *of \$75.00, effective twenty (20) calendar days after the date listed on the accompanying*  
21 *Certificate of Service*, unless you notify the Secretary of State, Elections Division *in writing* of  
22 your request for a hearing.

23           **HOW TO REQUEST A HEARING; CONSEQUENCE OF FAILURE TO**

24           **REQUEST A HEARING:**

25           **IF YOU DESIRE A HEARING, YOU MUST NOTIFY THE ELECTIONS DIVISION IN WRITING,**

26           **THAT YOU REQUEST A HEARING.** This request must be received by the Elections Division within

20 days of the date of mailing this Notice to you. Upon timely receipt of your request, the  
1 Elections Division will notify you of the date, time and place of the hearing. To be effective,  
2 your notice must be sent to the following:

3  
4 Carla Corbin, Compliance Specialist  
5 Oregon Secretary of State, Elections Division  
6 255 Capitol Street, Suite 501  
7 Salem OR 97301  
8 Facsimile (503) 373-7414

9  
10 If you fail to request a hearing within the required twenty (20) days; or if you fail to  
11 appear at a scheduled hearing, this notice of intent to impose a civil penalty shall become a  
12 final order by default imposing a \$75.00 civil penalty against you for violating ORS 260.432(2).  
13 No further order will be served on you. Pursuant to OAR 165-001-0015(9), the records of the  
14 proceedings in this case to date, including the Department's files on the subject matter of this  
15 contested case, shall automatically become part of the permanent contested case record by  
16 default and shall meet the Department's burden of proof for proving a *prima facie case*.<sup>1</sup>

17 **IT IS SO ORDERED THIS** \_\_\_\_\_ day of \_\_\_\_\_, 2011.

18 STATE OF OREGON

19  
20  
21 \_\_\_\_\_  
22 Stephen N. Trout, Director  
23 Secretary of State, Elections Division  
24

25 <sup>1</sup> *Prima facie* denotes the evidence *which, unless rebutted*, would be considered sufficient to prove a particular  
26 position or fact. In most legal proceedings, one party has a burden of proof, which requires them to present *prima facie* evidence for all the essential facts in the case.

**CERTIFICATE OF MAILING**

On August 25, 2011, I mailed the foregoing CONTESTED CASE NOTICE OF INTENT TO IMPOSE CIVIL PENALTY issued on this date. Case No. 11-102-KE.

By: First Class Mail

Katie Essick  
CIPA Family Communications Manager  
Portland Public Schools  
501 North Dixon Street  
Portland OR 97227

By: First Class Mail Certified

Katie Essick  
CIPA Family Communications Manager  
Portland Public Schools  
501 North Dixon Street  
Portland OR 97227

Certificate of Mailing By:

Carla Corbin  
Compliance Specialist

KATE BROWN  
SECRETARY OF STATE



STEPHEN N. TROUT  
DIRECTOR

255 CAPITOL STREET NE, SUITE 501  
SALEM, OREGON 97310

ELECTIONS — (503) 986-1518

August 25, 2011

Brian Christopher  
3620 SW 8th Ct  
Camas, WA 98607

Elections Division Case Number 11-102-BC

Dear Mr. Christopher:

The Elections Division received a complaint from Eric Fruits, PhD. alleging documents you posted to the Portland Public Schools website pertaining to Measures 26-121 and 26-122 may have violated election law.

ORS 260.432 prohibits public employees from political campaigning while on the job during work hours. Employers may not require public employees to perform work duties related to advocating a candidate or measure.

OAR 165-013-0020(2)(g) allows a mitigating circumstance if the public employee was asked to perform clerical tasks relating to the prohibited campaign activity.

### **Discussion and Analysis**

As posting documents to a website is a task that does not require any decision making about its content, it is considered a clerical activity under the rule. In this instance a mitigating circumstance is present.

After a review of the information submitted the Elections Division has determined that you violated ORS 260.432 when you posted documents not meeting the required impartial factors to the PPS website. However due to the mitigating circumstance, no penalty will be issued.

The Elections Division determines this investigation is closed and does not intend to pursue this matter further.

Sincerely,

A handwritten signature in cursive script that reads "Carla Corbin".

Carla Corbin  
Compliance Specialist

c: Eric Fruits, PhD.

KATE BROWN  
SECRETARY OF STATE



STEPHEN N. TROUT  
DIRECTOR

255 CAPITOL STREET NE, SUITE 501  
SALEM, OREGON 97310

ELECTIONS — (503) 986-1518

August 25, 2011

Francisco Garcia  
Portland Public Schools  
501 North Dixon ST  
Portland, OR 97227

Elections Division Case Number 11-102-FG

Dear Mr. Garcia:

The Elections Division received a complaint from Eric Fruits, PhD. alleging documents you posted to the Portland Public Schools website pertaining to Measures 26-121 and 26-122 may have violated election law.

ORS 260.432 prohibits public employees from political campaigning while on the job during work hours. Employers may not require public employees to perform work duties related to advocating a candidate or measure.

OAR 165-013-0020(2)(g) allows a mitigating circumstance if the public employee was asked to perform clerical tasks relating to the prohibited campaign activity.

### **Discussion and Analysis**

As posting documents to a website is a task that does not require any decision making about its content, it is considered a clerical activity under the rule. In this instance a mitigating circumstance is present.

After a review of the information submitted the Elections Division has determined that you violated ORS 260.432 when you posted documents not meeting the required impartial factors to the PPS website. However due to the mitigating circumstance, no penalty will be issued.

The Elections Division determines this investigation is closed and does not intend to pursue this matter further.

Sincerely,

A handwritten signature in cursive script that reads "Carla Corbin".

Carla Corbin  
Compliance Specialist

c: Eric Fruits, PhD.

KATE BROWN  
SECRETARY OF STATE



STEPHEN N. TROUT  
DIRECTOR

255 CAPITOL STREET NE, SUITE 501  
SALEM, OREGON 97310

ELECTIONS — (503) 986-1518

August 25, 2011

Richard Martin  
Portland Public Schools  
501 North Dixon ST  
Portland, OR 97227

Elections Division Case Number 11-102-RM

Dear Mr. Martin:

The Elections Division received a complaint from Eric Fruits, PhD. alleging documents you designed and posted to the Portland Public Schools website pertaining to Measures 26-121 and 26-122 may have violated election law.

ORS 260.432 prohibits public employees from political campaigning while on the job during work hours. Employers may not require public employees to perform work duties related to advocating a candidate or measure.

OAR 165-013-0020(2)(g) allows a mitigating circumstance if the public employee was asked to perform clerical tasks relating to the prohibited campaign activity.

### **Discussion and Analysis**

As designing the graphics and posting documents to a website are tasks that do not require any decision making about its content, they are considered clerical activities under the rule. In this instance a mitigating circumstance is present.

After a review of the information submitted the Elections Division has determined that you violated ORS 260.432 when you posted documents not meeting the required impartial factors to the PPS website. However due to the mitigating circumstance, no penalty will be issued.

The Elections Division determines this investigation is closed and does not intend to pursue this matter further.

Sincerely,

A handwritten signature in cursive script that reads "Carla Corbin".

Carla Corbin  
Compliance Specialist

c: Eric Fruits, PhD.