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 **Colt Gill**

Director of the Oregon Department of Education

July 7, 2022

 **BY EMAIL**

REDACTED

REDACTED

REDACTED

Superintendent Shay James

North Clackamas Schools

12400 SE Freeman Way

Milwaukie, OR 97222

Principal Brian Sein

Clackamas Middle College

12021 SE 82nd Ave

Happy Valley, OR 97086

RE: Case #2020-MM-02

Dear REDACTED, Superintendent James, and Principal Sein:

This letter is the order on the March 29, 2021, appeal filed by REDACTED (Parent) alleging that Clackamas Middle College – a public charter school located within North Clackamas School District – violated ORS 659.850 (prohibiting discrimination in an education program or service financed in whole or in part by moneys appropriated by the Legislative Assembly) and OAR 581-021-0045 (prohibiting discrimination in certain educational agencies, programs, or services under the jurisdiction of the State Board of Education). To ensure compliance with these laws and rules, the Oregon Department of Education reviews school procedures and make findings of fact to determine whether a violation occurred and what action, if any, should be taken.[[1]](#footnote-1)

**Appellate Procedures for Complaints Alleging Discrimination**

On appeal, Parent alleges that Clackamas Middle College discriminated against their child (Student) on the basis of disability. Parent specifically alleges that Clackamas Middle College failed to reevaluate Student’s 504 plan when Student informed the school on November 19, 2020, that the plan was no longer accommodating them and requested a reevaluation. Parent further alleges that the school failed to provide Student with a written response to their request until March, 2021.

**A. Appellate Procedures Alleging Discrimination**

The Oregon Department of Education has jurisdiction to resolve this appeal under OAR 581-002-0003. When a person files with the department an appeal of a complaint alleging discrimination, the department will initiate an investigation to determine whether discrimination may have occurred.[[2]](#footnote-2) If the department determines that a violation of a law or rule described in OAR 581-002-003 occurred, the department must issue a preliminary order to the complainant and the educational entity alleged to have committed the discriminatory act.[[3]](#footnote-3) The preliminary order must include a reference to the decision of the educational entity that is on appeal, the procedural history of the appeal, the department’s preliminary findings of fact, and the department’s preliminary conclusions.[[4]](#footnote-4) If the department determines that a violation of law or rule described in OAR 581-002-003 did not occur, the department must issue a final order as described in OAR 581-002-0017.[[5]](#footnote-5) The Director of the Oregon Department of Education may for good cause extend the time by which the department must issue an order.[[6]](#footnote-6)

**B. Complaints Involving Public Charter Schools**

Because the school involved in this case is a public charter school, it is important to clarify how the law provides the department with jurisdiction over this matter. Procedurally, the department has jurisdiction over school districts, not public charter schools.[[7]](#footnote-7) Under the law, a school district must have an opportunity to hear a complaint originating in a public charter school with which it holds a charter. The law also provides that a complainant has the right to file an appeal with the department within 90 days of filing the originating complaint.

It should be noted that a school district may require a public charter school to fulfill any duty that the district is otherwise required by law to meet, including the duty to process complaints originating in the public charter school and the duty to adhere to state anti-discrimination law. In this case, the charter between Clackamas Middle College and North Clackamas School District requires the school to fulfill those duties. That said, because entering a charter would be contingent on fulfilling those duties, districts necessarily must be involved in the processing of complaints originating in public charter schools. Violation of the terms of the charter, and failure to correct deficiencies resulting from those violations, may trigger a school district’s duty to provide oversight services.

It should also be noted that the department will issue the final order to the district, not the public charter school. This does not mean that the district will be required to undergo any corrective action if the department determines that there is a deficiency. The department will direct any corrective action to the appropriate party. If the district is responsible for the deficiency, the department will direct the district to undergo corrective action. If the public charter school is responsible for the deficiency, the department will direct the public charter school to undergo corrective action.

If state school funds are withheld from North Clackamas Schools for purposes related to this appeal, the department will include in the order withholding those funds instructions on how the funds ought to be withheld, including, if appropriate, that only the portion of funds that would otherwise be transmitted to Clackamas Middle College should be withheld.

**C. Status of Appeal**

In this appeal, the department has completed its investigation to determine whether discrimination may have occurred. This letter constitutes the department’s order as to whether discrimination may have occurred.

**PROCEDURAL BACKGROUND**

During times relevant to this appeal, Student was on a 504 plan. On June 17, 2020, Parent wrote an email to Clackamas Middle College notifying the school of Student’s changing needs. In that email, Parent wrote:

Attached is my son’s 504 plan. He is diagnosed with ADHD, and sensory disorder. He is also tested as being TAG. This combo makes him not a typical ADHD sufferer.  For instance he is very organized and has good behavior as far as doing the right thing and completing and turning in assignments. However he does get into trouble at times for being extra bouncy (energetic) and talkative in class. If he is bored with a subject (usually because it’s too easy) he struggles significantly with staying focused.

His sensory issues in a school setting mostly revolve around noise. If you have loud unexpected fire alarm practice drills or extended periods of time in a noisy chaotic (non-scheduled) environment, those things could overwhelm him and he would need a modification.

He also has a writing disability which is why he will need extra time for handwritten assignments and also necessitates assistance with note taking.

Last but not least one of his modifications is partnering with a positive peer. We have found this to be a significant help with keeping him more calm and on track during class time.

[Student] has a buddy . . . who is also coming into CMC as a freshman. They are similarly skilled academically. [Student] is more on the shy and very calm/chill side. Since we don’t know anyone else at this time I was wondering if we could start the year out with the two of them in as many classes together as possible and notify the teacher to put them together when possible for group activities? Not only do I think this would be helpful with [Student] transitioning to a new school and also transitioning from being mostly homeschooled ([Student] went to HVMS for electives only) but I think it would also help [Student’s buddy] to have someone outgoing like [Student] since [they tend] to be very shy and reserved and apprehensive to join in group conversations.

I’m fine with whatever you deem appropriate and a good fit but since you, nor any of the teachers have had the opportunity to meet with [Student] to be able and get to know [them] before pairing [them] up with someone, I thought I would suggest this.

Please reach out if you have further questions.

On November 19, 2020, Student wrote an email to Clackamas Middle College requesting the school to reevaluate their 504 plan. In that email, Student wrote:

I need to update my 504 plan. I have a recent change in diagnosis (see attached letter from my doctor).

Additionally, I have not really taken part in my 504 plans until now. [Parent] did not want me to use it as a crutch so I never knew about my accommodations until 8th grade when I was . . . [at] part of a meeting. [Parent] has only recently informed me of them since I will now need to be my own advocate for high school and college.

I feel my accommodations need to be updated and I believe is supposed to be reviewed and revised each year if needed. Since I had most of my classes as homeschool the past 3 years I feel these accommodations are outdated from when I was in elementary school (even though [Parent] met with the counselor at Happy Valley Middle School each year to 'update' them.

After assessing and discussing my needs with my parents, here is what we feel I need moving forward for accommodations:

**1) When in a classroom environment, allow moving seats or groups if needed.** *If I have too much chaos I cannot function well and may get overwhelmed to where I can no longer function in a capacity needed to learn.*

**2) Assistance with note-taking. Allow peer-assisted note taking and copy of the teacher's power points as negotiated with each teacher.** *I was tested in elementary school by an IEP person. She found I have a disability with processing what is in my head into written form. In the past, I have also had the accommodation of a scribe for my written work for essays. I still occasionally use a scribe for long emails like this. There is a disconnect at times when I try to write things out. This is especially noticeable when I have a lot to write or when I'm trying to take notes while the teacher is talking and somewhat less of an issue when I have lots of time and no distractions for short pieces. Despite these disabilities, I tend to test very high in Language Arts so the team decided not to give any remedial help for this and felt it would self-correct the older I get.  I am currently trying to do more writing myself but feel this is still an appropriate accommodation as I still occasionally get overwhelmed with some writing and find I can't listen and take notes at the same time the teacher is talking.*

**3) Allowance for assignments to be redone.** *I have an impulsive reaction to finishing assignments with a high urge to get them done and turned in as soon as possible. I sometimes do this before I should and need a second chance to correct small details I end up missing or getting wrong. I have appreciated teachers accepting my redos, as I care about getting it right but sometimes can't control turning things in too fast. I feel this accommodation shows a truer sense of my understanding vs. getting docked for my impulsiveness.*

**4) Allow a word processor with Grammarly to be used for all handwritten assignments if needed/desired.**This circles back to my disability of expressing my knowledge through the written word. Also, I have had significant issues with spelling. The IEP person thought it was because I started reading so young and so fast that I never read the smaller words. I tend to be able to spell big words but not basic, normally easy words, for my grade level. There is no diagnosis for this. They have just suggested and allowed the use of word processing and Grammarly for my writing and allow technology to fill in this gap I have).

**5)  Allow more time for written assignments and essay questions as negotiated with each teacher.** I rarely need this accommodation anymore. I just occasionally have moments where I feel overwhelmed by the writing and cannot meet the deadline as I can't get the words from my brain onto paper in a normal amount of time.

I'm hoping to update my 504 plan and get it to my teachers before next term. Please let me know if there is anything further you need for me.

Student did not receive a response to their request until March, 2021.

Parent subsequently filed an appeal with the Oregon Department of Education. The department sent notice that it was accepting the appeal to the Parent, North Clackamas School District, and Clackamas Middle College on March 29, 2021. The department accepted the appeal under OAR 581-002-0005(1)(a)(C). Under that rule, the department will accept an appeal if a district fails to resolve a complaint within 90 days of the initial filing of the complaint.[[8]](#footnote-8)

**PRELIMINARY FINDINGS OF FACT**

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

1. On February 21, 2020, Student applied to attend Clackamas Middle College, a public charter school located within North Clackamas School District. Student was previously homeschooled.
2. On April 21, 2020, Student was accepted to Clackamas Middle College for the 2020-2021 school year.
3. On June 15, 2020, Parent sent an email to a school staff person (Staff Person 1) asking, in part, “[D]o you know if [Student’s] 504 plan gets automatically transferred over or do I need to get a copy of that to send over?”
4. On June 16, 2020, Staff Person 1 sent an email to Parent requesting that Parent send a copy of Student’s 504 plan to a school administrator (Administrator 2).
5. On June 17, 2020, Parent sent an email to Administrator 2 about Student’s 504 plan. Parent wrote, in relevant part, “Attached is [Student’s] 504 plan. [They are] diagnosed with ADHD, and sensory disorder . . . [They also have] a writing disability[.]” Parent made several suggestions for modifying the 504 plan. Parent welcomed feedback from Administrator 2 about how the plan could best accommodate Student. Attached to the email was a copy of Student’s 504 plan, dated February 19, 2020.
6. Student’s 504 plan included five accommodations for Student. Those accommodations were: (1) to sit near or partner with a positive peer; (2) to discuss behavioral issues with teachers in private; (3) to cue Student to stay on task through use of a signal, to be individually determined by each of Student’s teachers; (4) to receive assistance with note taking, including receiving assistance from a peer with note taking and having access to teacher power point presentations; and (5) to receive additional time for completing written assignments and essay questions.
7. Student began attending Clackamas Middle College at the beginning of the 2020-2021 school year.
8. On September 28, 2020, Student’s physician diagnosed Student with “high functioning autism.”
9. On October 13, 2020, Clackamas Middle College held a staff meeting. As part of that meeting, Student’s 504 plan was reviewed for teachers.
10. On November 19, 2020, Student wrote an email to Clackamas Middle College requesting the school to reevaluate their 504 plan. Student wrote, in part:

I need to update my 504 plan. I have a recent change in diagnosis (see attached letter from my doctor).

Additionally, I have not really taken part in my 504 plans until now. [Parent] did not want me to use it as a crutch so I never knew about my accommodations until 8th grade when I was . . . [at] part of a meeting. [Parent] has only recently informed me of them since I will now need to be my own advocate for high school and college.

I feel my accommodations need to be updated and I believe is supposed to be reviewed and revised each year if needed. Since I had most of my classes as homeschool the past 3 years I feel these accommodations are outdated from when I was in elementary school[.]

Attached to the email was a letter from Student’s medical provider diagnosing Student with “high functioning autism.”

Student also proposed modifying the 504 plan in specific ways. Student requested being allowed to change seats during class, explaining, “If I have too much chaos I cannot function[.]”

Student also requested help with note taking and performing other writing tasks. Student explained,

I was tested in elementary school by an IEP person. She found I have a disability with processing what is in my head into written form. In the past, I have also had the accommodation of a scribe for my written work for essays. I still occasionally use a scribe for long emails like this. There is a disconnect at times when I try to write things out. This is especially noticeable when I have a lot to write or when I'm trying to take notes while the teacher is talking and somewhat less of an issue when I have lots of time and no distractions[.]

Student requested being able to redo assignments. “I have an impulsive reaction to finishing assignments with a high urge to get them done and turned in as soon as possible. I sometimes do this before I should and need a second chance to correct small details I end up missing or getting wrong.”

Student asked to use a word processor for hand written assignments, explaining that “[t]his circles back to my disability of expressing my knowledge through the written word. Also, I have had significant issues with spelling. The IEP person thought it was because I started reading so young and so fast that I never read the smaller words.”

Student finally requested being granted extra time to complete writing assignments and essay questions. “I . . . occasionally have moments where I feel overwhelmed by the writing and cannot meet the deadline as I can't get the words from my brain onto paper in a normal amount of time.”

1. On December 3, 2020, Administrator 2 wrote an email in response to Student’s November 19th email. Administrator 2 wrote, “I would like to take some time next week to review and go over your 504 and your accommodations. Could you please let me know what time and day work best for you as I would like to get this on the calendar soon.” Administrator 2 did not copy Parent on the email.
2. During the department’s investigation, Clackamas Middle College explained that a 504 meeting was not scheduled because Student and Parent did not respond to Administrator 2’s December 3rd email.
3. On January 12, 2021, Clackamas Middle College held a staff meeting. As part of that meeting, Student’s 504 plan was reviewed for teachers. The accommodations Student requested in the November 19th email were not discussed at the meeting.
4. On March 1, 2021, Student was nominated for a program that would allow Student to take community college classes (the Program) while attending Clackamas Middle College. On March 5, 2021, Student received notice that they were not selected for the Program.
5. After Student was not selected for the Program, Parent contacted Clackamas Middle College to address whether Student’s 504 plan was properly implemented. Parent reported that Student’s teachers seemed to be unaware of the plan’s accommodations. In response, Administrator 2 informed Parent that Student’s 504 plan was available to teachers through a shared electronic document containing information on each of the school’s students with a 504 plan.
6. On March 16, 2021, Administrator 2 notified Student and Parent that Clackamas Middle College intended to conduct a 504 meeting for Student to reevaluate Student’s 504 plan and discuss whether Student was still eligible for a 504 plan.
7. On March 18, 2021, Clackamas Middle College revised and implemented Student’s 504 plan. Among other accommodations, the revised plan included several of the components requested by Student in the November 19th email.
8. On March 19, 2021, Administrator 2 sent an email to Parent and Student, reporting that Clackamas Middle College’s 504 team

reviewed all of [Parent’s and Student’s] suggestions in an effort to ensure [the school] is supporting [Student’s] goal of becoming a successful college student. The team included [North Clackamas School District’s Director of Special Support Services (Administrator 3)], to gather feedback to design 504 accommodations that we hope will help [Student] become an independent learner as they pursue [their] high school diploma and college success.

1. On March 19, 2021, Parent sent an email to Administrator 2, inquiring whether Administrator 3 approved accommodations that required Student to “ask for an accommodation every time it is needed and or requires him to advocate for opportunities.” Parent asserted,

It’s the responsibility of the institution to provide accommodations to the student. It is not the responsibility of the student . . . to advocate for themselves and request accommodations. We all agree [Student] needs to be trained in advocating for [themselves] and given opportunities to practice this skill[.] This cannot be expected of him when he has not yet been properly trained nor should it be written into the plan.

1. On April 1, 2021, Administrator 2 sent an email to Student and Parent regarding the decision to not admit Student into the Program. Administrator 2 wrote, in pertinent part, “There are a number of factors that go into the decision-making process and from my communication with [Student’s] instructors it sounds as though information was shared with you throughout the term regarding [Student’s] current progress in [their] courses.”
2. On April 1, 2021, Parent responded to Administrator 2’s email. Parent wrote about the feedback that they had received from Student’s teachers, noting that it was positive. Parent stated that this feedback indicated that Student was performing at a level that would allow Student to attend the Program. Parent also discussed Student’s placement and testing data, which indicated readiness for college course work. Parent contrasted that data with the deficiencies resulting from Student’s disabilities. Parent questioned whether Student’s accommodations under the 504 plan was a factor in deciding whether to admit Student into the Program.
3. On April 6, 2021, Administrator 2, a second school administrator (Administrator 1), and Administrator 3 met with Student, Student’s parents, and a medical professional from Student’s medical provider. During the meeting, they adjusted the language of Student’s 504 plan. The team discussed the rationale behind the various accommodations, modified the language to ensure accommodation, and discussed how to implement the accommodations that were most helpful to Student.
4. On April 7, 2021, Clackamas Middle College provided Student with a revised 504 plan that incorporated the decisions that were made at the April 6th meeting.

**ANALYSIS**

**A. Oregon’s Anti-Discrimination Statute**

Under Oregon’s anti-discrimination statute,

A person may not be subjected to discrimination in any public elementary, secondary or community college education program or service, school or interschool activity or in any higher education program or service, school or interschool activity where the program, service, school or activity is financed in whole or in part by moneys appropriated by the Legislative Assembly.[[9]](#footnote-9)

For purposes of this prohibition, “discrimination” is defined to mean “any act that unreasonably differentiates treatment, intended or unintended, or any act that is fair in form but discriminatory in operation, either of which is based on race, color, religion, sex, sexual orientation, national origin, marital status, age or disability.”[[10]](#footnote-10)

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

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

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

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

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

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

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

The question on appeal is whether Clackamas Middle College – under the circumstances at hand – violated either ORS 659.850 or OAR 581-021-0045(c) by denying Student an aid, benefit, or service by failing to timely reevaluate Student’s 504 plan.

**B. Applicability of Federal Law**

With respect to analyzing an educational entity’s duties with complaints alleging discrimination on the basis of disability, the Oregon Department of Education relies on the application of Section 504 of the federal Rehabilitation Act of 1973 (Section 504) and federal regulations implementing Section 504. Because Section 504 has the same intent as ORS 659.850 and OAR 581-021-0045, and because the text of ORS 659.850 and OAR 581-021-0045 allow the state statute and rules to be applied broadly, the interpretation of Section of 504 and its implementing regulations by federal courts and the United States Department of Education’s Office for Civil Rights (Office for Civil Rights) is an important tool for the Oregon Department of Education to use in adjudging the application of ORS 659.850 and OAR 581-021-0045.

Under Oregon’s anti-discrimination statue, “discrimination” is defined to mean “any act that unreasonably differentiates treatment, intended or unintended, or any act that is fair in form but discriminatory in operation, either of which is based on race, color, religion, sex, sexual orientation, national origin, marital status, age or disability.”[[11]](#footnote-11)

Section 504 is a federal law that prohibits disability discrimination by recipients of federal financial assistance.[[12]](#footnote-12) All educational entities that receive federal financial assistance from the United States Department of Education must comply with the statute and regulations implementing the statute. Generally, the statute requires such recipients to provide students who are disabled within the meaning of the statute with a free and appropriate education.[[13]](#footnote-13) Students covered by the statute are entitled to receive regular or special education services designed to meet their individual educational needs.[[14]](#footnote-14) An educational entity must provide those services in a manner that meets the needs of students who are disabled as adequately as the entity meets the needs of students who are not disabled.[[15]](#footnote-15)

Under state law, an educational entity cannot act in a manner that is “fair in form but discriminatory in operation.”[[16]](#footnote-16) By not providing regular or special education services designed to meet students’ individual educational needs, and thereby failing to meet the needs of a students who are disabled as adequately as the needs of students who are not disabled, an educational entity provides educational services in a manner that is “fair in form but discriminatory in operation.”

Generally, developing and implementing a 504 plan is the means by which an educational entity ensures that a student is receiving a free and appropriate education. To develop and implement a 504 plan, an educational entity must evaluate students suspected of having a disability.[[17]](#footnote-17) An educational entity must evaluate any student who has a physical or mental impairment that limits one or more life activities, or who is regarded as having such an impairment.[[18]](#footnote-18) In evaluating students for disability, educational entities must use a variety of data, including achievement tests, teacher recommendations, manifestations of impairment, and adaptive behavior.[[19]](#footnote-19)

Once a student has a 504 plan, an educational entity must periodically reevaluate the student using the same procedures and criteria required for initial evaluation.[[20]](#footnote-20) As with developing a 504 plan, educational entities must reevaluate a student when “educational or related services needs, including improved academic achievement and functional performance, warrant a reevaluation.”[[21]](#footnote-21) Under guidance provided by the Office for Civil Rights:

*Periodic evaluation is required*. This may be conducted in accordance with the [federal Individuals with Disabilities Education Act], which require re-evaluation at three-year intervals (unless the parent and public agency agree that re-evaluation is unnecessary) or more frequently *if conditions warrant*, or if the child’s parent or teacher requests a re-evaluation, but not more than once a year (unless the parent and agency agree otherwise).[[22]](#footnote-22)

The Office for Civil Rights also explains that Section 504 requires a school district to conduct a re-evaluation prior to a student’s significant change of placement:

Section 504 also requires a school district to conduct a re-evaluation prior to a significant change of placement. [The Office for Civil Rights] considers an exclusion from the educational program of more than 10 school days a significant change of placement. [The Office for Civil Rights would also consider transferring a student from one type of program to another or terminating or significantly reducing a related service a significant change in placement.[[23]](#footnote-23)

Unlike IEP processes, federal law and regulations setting forth 504 processes do not require educational entities to include parents or guardians in the 504 decision making process.[[24]](#footnote-24) Any person can refer a student for 504 evaluation; however, the Office for Civil Rights has ruled that “the school district must also have reason to believe that the [student] is in need of services under section 504 due to a disability.”[[25]](#footnote-25) In consideration of best practices, the department believes that educational entities should respond to parents’ and guardians’ concerns about, and seek parental input concerning, a student’s potential disability.

To implement a 504 Plan, an educational entity must provide the student with the aids, services, accommodations and modifications identified in the 504 Plan. An educational entity’s “failure to implement the aids, services, accommodations, or modifications identified in the 504 Plan of a student with a disability may deny the student a [free and appropriate education] and, thus, violate Section 504.”[[26]](#footnote-26)

**C. Whether Clackamas Middle College Failed to Provide Student with a Free and Appropriate Education**

The question on appeal is whether Clackamas Middle College violated either ORS 659.850 or OAR 581-021-0045(c) by not reevaluating Student’s 504 plan after Student’s November 19th request for reevaluation, and by only reevaluating Student’s 504 plan in March, 2021, after Student received notice that they were not selected for the Program.

Before proceeding with the analysis, it is important to understand the scope of this order. The most contentious element of this entire case is Student not being selected for the Program. The facts indicate that this decision was the most significant incident in the eventual reevaluation of Student’s 504 plan. After Student was not selected for the Program, Parent contacted Clackamas Middle College to report that Student’s teachers seemed to be unaware of the 504 plan’s accommodations and address whether the plan had been properly implemented. However, despite the importance of the school’s decision to not select Student for the Program, the department is not in a position to reevaluate that decision. This order concerns whether the school failed to timely reevaluate Student’s 504 plan.

The department also feels obliged to address Parent’s March 19th response to receiving the 504 plan drafted by Clackamas Middle College on March 18, 2021. In that response, Parent posited that “[i]t’s the responsibility of the institution to provide accommodations to the student. It is not the responsibility of the student . . . to advocate for themselves and request accommodations.” In principal, the department agrees with Parent. If any aspect of Student’s 504 plan placed the onus on Student to inform teachers about a present need for accommodation, then the 504 plan would fail to provide Student with services designed to meet Student’s individual educational needs and, thereby, fail to meet Student’s needs as adequately as the needs of students who are not disabled. However, this order does not make a finding with any deficiency on those grounds because that type of deficiency was not a part of the initial appeal. This order addresses only whether Clackamas Middle College failed to reevaluate Student’s 504 plan as required by the law.

In consideration of Section 504, the department finds that Clackamas Middle College did not meet the threshold required to have met its legal obligation of periodically reevaluating Student’s 504 plan.

In this case, Student had a 504 plan in place when they first enrolled in Clackamas Middle College in the fall of 2020. The school did not use the resources at its disposal to develop its own 504 plan for Student. Instead, the school reviewed the existing 504 plan with teachers on two occasions – October 13, 2020, and January 12, 2021 – and made Student’s 504 plan available to teachers through a shared electronic document.

Clackamas Middle College first failed to fulfill its legal obligation because prior to enrolling in the school, Student had a significant change in placement and the school did not reevaluate Student’s 504 plan. Student was homeschooled prior to enrolling in Clackamas Middle College. When Student enrolled in the school, they effectively transferred “from one type of program to another.”[[27]](#footnote-27) Under those circumstances, Clackamas Middle College had the duty reevaluate Student’s 504 plan.

Clackamas Middle College also failed to fulfill its legal obligation because there was indicia that reevaluation of Student’s 504 plan was merited and the school did not reevaluate the plan. Both Parent and Student notified the school that Student’s existing 504 plan was not adequately meeting Student’s needs. On June 17, 2020, Parent sent an email to Administrator 2 about Student’s 504 plan. Parent wrote, “Attached is [Student’s] 504 plan. [They are] diagnosed with ADHD, and sensory disorder . . . [They also have] a writing disability[.]” Parent made several suggestions for modifying the 504 plan. Parent welcomed feedback from Administrator 2 about how the plan could best accommodate Student.

Later, on November 19, 2020, Student wrote an email to Clackamas Middle College requesting that the school reevaluate the 504 plan. The email included statements like “I need to update my 504 plan” and “I feel accommodations need to be updated and I believe are supposed to be reviewed and revised each year if needed.” Student also informed the school that they had “a recent change in diagnosis” and attached to the email a letter from their medical provider diagnosing them with “high functioning autism.” Student then outlined for the district the specific ways in which their disability affected their ability to fully participate at school. Student made several suggestions about how the school could accommodate their condition. Notably, many of Student’s suggestions were eventually incorporated into the 504 plan developed for Student on March 18, 2021.

On December 3, 2020, Administrator 2 attempted to schedule a 504 meeting with Student. Administrator 2 wrote to Student, “I would like to take some time next week to review and go over your 504 and your accommodations. Could you please let me know what time and day work best for you as I would like to get this on the calendar soon.” That 504 meeting was not held. During the department’s investigation, Clackamas Middle College explained that the meeting was not held because Student and Parent did not respond to Administrator 2’s December 3rd email. However, the law does not require an affirmative act by student or parent to trigger an educational entity’s duty to reevaluate a 504 plan. An educational entity must periodically reevaluate a student when “educational or related services needs, including improved academic achievement and functional performance, warrant a reevaluation.”[[28]](#footnote-28) In revaluating students, educational entities must use a variety of data, including achievement tests, teacher recommendations, manifestations of impairment, and adaptive behavior.[[29]](#footnote-29) In this case, the department finds that Clackamas Middle College had sufficient data to determine that Student’s existing 504 plan was no longer meeting Student’s “educational or related services needs.”

For the reasons described above, the department finds that Clackamas Middle College violated either ORS 659.850 or OAR 581-021-0045(c) by failing to timely reevaluate Student’s 504 plan.

**CONCLUSION**

In conclusion, the Oregon Department of Education finds that Clackamas Middle College denied Student an aid, benefit, or service by failing to timely reevaluate Student’s 504 plan and, thereby, violated ORS 659.850 and OAR 581-021-0045(c).

Accordingly, the department encourages Clackamas Middle College to reach an agreement with Parent through conciliation. If the school cannot reach an agreement with Parent through conciliation within 30 days, or at a time otherwise agreed to by the parties, the department will issue a final order.

Because Clackamas Middle College has a charter agreement with North Clackamas Schools, the district may participate in the conciliation process. Because the terms of the charter require the school to adhere to anti-discrimination law, the department encourages the district to do so.

If Parent, the school, or the district wishes to use the department as a resource during conciliation, Parents, the school, or the district may contact the department.[[30]](#footnote-30)

If you have any questions, please contact me.

 Sincerely,



Mayer, Complaint and Appeals Specialist

 Office of the Director

Oregon Department of Education

Mark.Mayer@state.or.us

1. The administrative rules governing the Oregon Department of Education’s appeals process are OAR 581-002-0001 to 581-002-0023. [↑](#footnote-ref-1)
2. OAR 581-002-0009. [↑](#footnote-ref-2)
3. OAR 581-002-0009(3)(a)(A). [↑](#footnote-ref-3)
4. *Id*. [↑](#footnote-ref-4)
5. OAR 581-002-0009(3)(a)(B). [↑](#footnote-ref-5)
6. OAR 581-002-0009(3)(b). [↑](#footnote-ref-6)
7. OAR 581-002-0001(2). [↑](#footnote-ref-7)
8. The department considers Student’s request for reevaluation a “complaint” in this instance because within the context of the email, Student made it clear that Clackamas Middle College’s current accommodations for him were not serving their specific needs. [↑](#footnote-ref-8)
9. ORS 659.850(2). OAR 581-021-0045(2) applies this prohibition specifically to the types of schools regulated by the Department: “No person in Oregon shall be subjected to discrimination in any public elementary or secondary school, educational program or service, or interschool activity where the program, service, school, or activity is financed in whole or part by monies appropriated by the Legislative Assembly.” [↑](#footnote-ref-9)
10. ORS 659.850(1). OAR 581-021-0045(1)(a) uses an identical definition for “discrimination” for purposes of the Department’s regulatory authority over public elementary and secondary schools. [↑](#footnote-ref-10)
11. ORS 659.850(1). OAR 581-021-0045(1)(a) uses an identical definition for “discrimination” for purposes of the department’s regulatory authority over public elementary and secondary schools [↑](#footnote-ref-11)
12. 29 U.S.C. 794; 34 C.F.R. part 104. [↑](#footnote-ref-12)
13. 29 U.S.C. 794; 34 C.F.R. part 104. [↑](#footnote-ref-13)
14. 34 C.F.R. 104.33. [↑](#footnote-ref-14)
15. 34 C.F.R. 104.33. [↑](#footnote-ref-15)
16. ORS 659.850. [↑](#footnote-ref-16)
17. 34 C.F.R. 104.35(a). [↑](#footnote-ref-17)
18. 42 U.S.C. 12102. [↑](#footnote-ref-18)
19. 34 C.F.R. 104.35(b). [↑](#footnote-ref-19)
20. 34 C.F.R. 104.35(d). [↑](#footnote-ref-20)
21. *Id.* [↑](#footnote-ref-21)
22. United States Department of Education’s Office for Civil Rights, *Protecting Students with Disabilities: Frequently Asked Questions About Section 504 and the Education of Children with Disabilities*, Question 28 (January 10, 2020). Emphasis added. [↑](#footnote-ref-22)
23. *Id.* at Question 29. [↑](#footnote-ref-23)
24. *See* C.F.R. 300.301(a) and (b) (setting forth requirement to evaluate and reevaluate students for disability under federal IEP law. [↑](#footnote-ref-24)
25. United States’ Department of Education’s Office for civil Rights, *OCR Memorandum*, April 29, 1993. [↑](#footnote-ref-25)
26. United States Department of Education Office for Civil Rights, *Hillsborough County School District Investigation Letter Complaint Number 04-15-1023*, 4 (May 15, 2015). [↑](#footnote-ref-26)
27. United States Department of Education’s Office for Civil Rights, *Protecting Students with Disabilities: Frequently Asked Questions About Section 504 and the Education of Children with Disabilities* at Question 29. [↑](#footnote-ref-27)
28. 34 C.F.R. 104.35(b). [↑](#footnote-ref-28)
29. *Id.* [↑](#footnote-ref-29)
30. The department’s mediation expert is Patricia Stoneroad. She may be reached at: Patricia.Stoneroad@ode.oregon.gov. [↑](#footnote-ref-30)