April 19, 2019

**BY EMAIL AND US MAIL**

PARENT

ADDRESS

ADDRESS

Superintendent Charan Cline

Yamhill-Carlton School District

120 N. Larch Place

Yamhill, OR 97148

Dear PARENT and Superintendent Cline,

This letter constitutes the investigatory findings and conclusions of the March 13, 2019, appeal filed by PARENT (Parent) alleging that Yamhill-Carlton School District violated state laws and rules that prohibit discriminating against a student on the basis of disability.

## I. APPELLATE PROCEDURES FOR COMPLAINTS ALLEGING DISCRIMINATION

Parent alleges that Yamhill-Carlton School District discriminated against Student on grounds that the district violated 15 separate provisions of the “Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools.”

The Oregon Department of Education has jurisdiction to resolve this complaint under OAR 581-021-0049. 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.[[1]](#footnote-1) If the department finds that discrimination may have occurred, the Director of the Oregon Department of Education will issue a letter setting forth the department’s findings and conclusions and require the school district to attempt to reach an agreement with the complainant through conciliation.[[2]](#footnote-2) If the school district cannot reach an agreement with the complainant within 30 days, the director will schedule a hearing to determine whether the school district is in compliance with ORS 659.850.[[3]](#footnote-3) If the director determines that the school district is not in compliance with ORS 659.850, the director will issue an order requiring compliance.[[4]](#footnote-4) If the school district fails to comply with the order within 30 days, the director will issue an order imposing an appropriate remedy.[[5]](#footnote-5) Appropriate remedies include: (1) withholding all or part of one or more quarterly payments that otherwise would be paid to a school district under ORS 327.095, (2) assessing a daily fine against the school district, (3) forbidding the school district to participate in interschool activities, and (4) any other appropriate remedy.[[6]](#footnote-6)

On this appeal, the department has completed its investigation to determine whether discrimination may have occurred. This letter constitutes the department’s investigatory findings and conclusions.

## II. PROCEDURAL BACKGROUND

On December 15, 2018, Parent sent an email to the Yamhill-Carlton School District alleging that the district discriminated against his son (Student) on the basis of disability. Parent made 15 separate allegations. For each allegation, he referenced the “Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools.” In the email, Parent referenced specific requirements in the guide and argued that the district, with respect to Student, was not in compliance with those requirements.

At the time that Parent wrote the December 15th email, the district was providing regular and special educational services to Student pursuant to a mediation agreement entered into under OAR 581-015-2335.

On March 13, 2019, Parent filed an appeal with Department of Education alleging the district violated the laws and rules of this state pertaining to discrimination. Parent used, as the basis of his complaint, the December 15th email, in which Parent alleged 15 separate violations, all based on specific requirements set forth in the “Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools.”

On March 19, 2019, the department accepted Parent’s appeal. The department determined that Parent had met the procedural requirements set forth in OAR 581-021-0049 on grounds that 90 days had passed since Parent initially filed his complaint with the district on December 15, 2019.

## III. FINDINGS OF FACT

1. Student attends school in Yamhill-Carlton School District.
2. Student is disabled and has an Individualized Education Plan (IEP).
3. Student does not have a written plan for the receipt of services pursuant to the protections of Section 504 of the Rehabilitation Act of 1973 (504 plan).
4. The district provided documents to the Oregon Department of Education demonstrating the following:
	1. In 2016, Parent requested a due process hearing, naming the district as a party, pursuant to OAR 581-015-2340 to 581-015-2385.
	2. Parent and the district reached an agreement for purposes of implementing Student’s IEP through mediation on January 10, 2017.
	3. In 2017, Parent again requested a due process hearing, naming the district as a party, pursuant to OAR 581-015-2340 to 581-015-2385.
	4. Parent and the district reached an agreement for purposes of implementing Student’s IEP through mediation on January 30, 2018.
5. On December 15, 2018, Parent sent an email to the district alleging that the district discriminated against Student on the basis of disability. Parent made 15 separate allegations. For each allegation, he referenced the “Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools.” In the email, Parent referenced specific requirements in the guide and argued that the district, with respect to Student, was not in compliance with those requirements.
6. On February 22, 2019, the district sent Parent a letter stating that the proper procedure for Parent to use in filing his complaint was the district’s IEP complaint process.

## IV. ANALYSIS OF SPECIFIC ALLEGATIONS

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.[[7]](#footnote-7)

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.”[[8]](#footnote-8)

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

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

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

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

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

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

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

Additionally, under OAR 581-021-0046, a school district may not “provide any course or otherwise carry out any of its educational programs or activities on a discriminatory basis or require or refuse participation therein by any of its students on such basis.”[[9]](#footnote-9)

The issue addressed in this appeal is whether the district violated ORS 659.850 and OAR 581-021-0045 or 581-021-0046 on the basis that it was not in compliance with certain requirements pertaining to students with a disability as described in the “Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools.”

### A. Arguments Presented

Parent argues that Yamhill-Carlton School District discriminated against Student because the district was not in compliance with certain requirements pertaining to students with a disability as described in the “Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools.”

The district responded to Parent’s complaint by making four arguments.

The district first argues that Student does not have a 504 Plan. Student has an IEP. To put it differently, the district is arguing that an appeal cannot be filed with the department under ORS 659.850 and OAR 581-021-0045 or 581-021-0046 if the Student has an IEP. Instead, a complaint must be filed with the department under OAR 581-015-2030.

Second, the district argues that Student currently receives regular and special education services from the district pursuant to an agreement reached on January 30, 2018. In other words, the January 30th agreement should control what education services are provided to Student, not Section 504 of the Rehabilitation Act of 1973 (Section 504).

Third, the district argues that Student has achieved success in both academic and extracurricular activities under his IEP and the Januarty 30th agreement. The district notes the following:

* Student successfully passed all classes with the exception of one class.
* Student successfully passed the 8th grade English Language Acquisition Smarter Balanced Assessment Consortium test.
* Student almost passed the 8th grade Math Smarter Balanced Assessment Consortium test, and he demonstrated the competency necessary to pass the test.
* Student successfully participates in extracurricular activities such as soccer and wrestling.

Finally, the district argues that it provides Student with adequate support services, including counseling.

### B. Applicability of ORS 659.850 and OAR 581-021-0045 and 581-021-0046 to the Circumstances of this Case

In this case, the Oregon Department of Education is faced with the following question: may Parent file an appeal with the department under ORS 659.850 and OAR 581-021-0045 or 581-021-0046 on grounds that Yamhill-Carlton School District is not in compliance with Section 504?

The legislative history of ORS 659.850 indicates that the Oregon Legislative Assembly adopted the statute in consideration of federal anti-discrimination law. Thus, federal case law interpreting Section 504 and the regulations promulgated under the statute, as well guidance issued by the United States Department of Education’s Office of Civil Rights pertaining to the statute, are useful tools for the department to rely on in interpreting ORS 659.850 and OAR 581-021-0045 and 581-021-0046.

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.”[[10]](#footnote-10)

Section 504 is a federal law that prohibits disability discrimination by recipients of federal financial assistance.[[11]](#footnote-11) All school districts that receive federal financial assistance from the United States Department of Education must comply with the statute. A student who is disabled within the meaning of the statute is entitled to receive regular or special education services designed to meet his or her individual educational needs.[[12]](#footnote-12) A school district must provide those services in a manner that meets the needs of the student as adequately as the school district meets the needs of students who are not disabled.[[13]](#footnote-13)

Under state law, a school district cannot act in a manner that is “fair in form but discriminatory in operation.”[[14]](#footnote-14) By not providing regular or special education services designed to meet a student’s individual educational needs, and thereby failing to meet the needs of a student with a disability as adequately as it meets the needs of students who are not disabled, a school district provides educational services in a manner that is “fair in form but discriminatory in operation.”

That said, in this case, Student has an IEP. Under federal law, a district is not required to implement both an IEP and a 504 plan. Rather, a school district may meet the requirements established under Section 504 by implementing an IEP. Specifically, “[i]mplentation of an [IEP] developed in accordance with the Education of the Handicapped Act” is one means of meeting the mandate described in Section 504 that a school district provide “regular or special education . . . services . . . designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons.”[[15]](#footnote-15)

It is not legally impossible for a student to have both an IEP and a 504 plan. However, a school district is not obligated to implement a 504 plan for a student if the school district has implemented an IEP for that student. In its discretion, the school district *may implement* a 504 plan; but the school district *is not required* to implement one.

As mentioned above, in this case, Student has an IEP. On two occasions, Parent requested a due process hearing, naming the district as a party, pursuant to rules setting forth the requirements for due process hearings.[[16]](#footnote-16) On two occasions, Parent and the district reached an agreement through mediation for purposes of implementing Student’s IEP. When Parent filed his complaint, the district responded by directing the Parent to refile his complaint in accordance with the district’s IEP complaint process.

As a preliminary matter, the department finds that the district fulfilled its obligations under Section 504 by implementing an IEP.

The department also finds that because Parent had an IEP, the proper complaint for Parent to file with the department is a complaint alleging a violation of the Individuals with Disabilities Education Act.

Finally, it is important to understand that the department will not refuse in all instances to hear a complaint alleging discrimination under ORS 659.850 on grounds that a school district failed to correctly implement a 504 plan when the student to whom the 504 plan applies also has an IEP. If a school district chooses to not use an IEP to satisfy its requirements under Section 504 and implements both an IEP and a 504 plan, the department will hear a complaint alleging that the 504 plan was not implemented correctly.

For the reason explained above, the department finds that ORS 659.850 and OAR 581-021-0045 and 581-021-0046 do not apply to this case.

### C. The Parties’ Arguments

Because the department finds that ORS 659.850 and OAR 581-021-0045 and 581-021-0046 do not apply to this case, the department is not going to determine whether Yamhill-Carlton School District discriminated against Student because the district was not in compliance with certain requirements pertaining to students with a disability as described in the “Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools” or address the validity of the district’s response.

## V. CONCLUSIONS

In conclusion, the Oregon Department of Education finds that ORS 659.850 and OAR 581-021-0045 and 581-021-0046 do not apply to this case.

Parent may file a complaint with the department alleging a violation of the Individuals with Disabilities Education Act. For Parent to file such a complaint, he must contact the Oregon Department of Education’s Office of Student Services. Contact information for the Office of Student Services can be found on the following webpage: <https://www.oregon.gov/ode/about-us/Pages/Contact-Us.aspx>.

If you have any questions, please contact me.

Sincerely,

Mark Mayer, Complaint and Appeals Coordinator

Office of the Director

Mark.Mayer@state.or.us

503-947-0464

1. *Id*. [↑](#footnote-ref-1)
2. OAR 581-021-0049(1)(b). [↑](#footnote-ref-2)
3. OAR 581-021-0049(2). [↑](#footnote-ref-3)
4. OAR 581-021-0049(3). [↑](#footnote-ref-4)
5. *Id*. [↑](#footnote-ref-5)
6. OAR 581-021-0049(3)(a) to (d). [↑](#footnote-ref-6)
7. 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-7)
8. 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-8)
9. OAR 581-021-0046(1). [↑](#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. 29 U.S.C. 794; 34 C.F.R. part 104. [↑](#footnote-ref-11)
12. 34 C.F.R. 104.33. [↑](#footnote-ref-12)
13. 34 C.F.R. 104.33. [↑](#footnote-ref-13)
14. ORS 659.850. [↑](#footnote-ref-14)
15. 34 C.F.R. 104.33(b)(1) and (2). [↑](#footnote-ref-15)
16. OAR 581-015-2340 to 581-015-2340. [↑](#footnote-ref-16)