



# Oregon

Kate Brown, Governor



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**Colt Gill**

Director of the Oregon Department of Education

August 3, 2022

**BY EMAIL**

REDACTED  
REDACTED  
REDACTED

Superintendent Shay James  
North Clackamas Schools  
12400 SE Freeman Way  
Milwaukie, OR 97222

Principal Brian Sien  
Clackamas Middle College  
12021 SE 82<sup>nd</sup> Ave  
Happy Valley, OR 97086

RE: Case #2021-MM-02

Dear REDACTED, Superintendent James, and Principal Sien:

This letter is the final order on the March 29, 2021, appeal filed by REDACTED (Parent) against Clackamas Middle College and North Clackamas Schools.

### **APPELLATE PROCEURES 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.<sup>1</sup> If the department determines that a violation of a law or rule described in OAR 581-002-0003 occurred, the department must issue a preliminary order to the complainant and the educational entity alleged to have committed the discriminatory act.<sup>2</sup> 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.<sup>3</sup> If the department determines that a violation of law or rule described in OAR 581-002-0003 did not occur, the department must issue a final order as described in OAR 581-002-0017.<sup>4</sup> The Director of the Oregon Department of Education may for good cause extend the time by which the department must issue an order.<sup>5</sup>

## **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.<sup>6</sup> 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 Schools 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

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<sup>1</sup> OAR 581-002-0009.

<sup>2</sup> OAR 581-002-0009(3)(a)(A).

<sup>3</sup> *Id.*

<sup>4</sup> OAR 581-002-0009(3)(a)(B).

<sup>5</sup> OAR 581-002-0009(3)(b).

<sup>6</sup> OAR 581-002-0001(2).

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 and issued a preliminary final order in which the department determined that a violation of a law or rule described in OAR 581-002-0003 occurred. Parent, Clackamas Middle College, and North Clackamas Schools subsequently failed to conciliate.

This letter constitutes the department's final order setting forth the department's findings of fact, conclusions of law, and any corrective action to be taken by Clackamas Middle College and the district.

### **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 REDACTED, and REDACTED. He is also tested as being TAG. This combo makes him not a typical REDACTED 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's buddy] 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 REDACTED 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 REDACTED. 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 REDACTED. 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 Schools, 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.<sup>7</sup>

On July 7, 2022, the department issued a preliminary final order finding that Clackamas Middle College may have been deficient on specified grounds.

On July 15, 2022, Parent contacted the department and informed it that they did not wish to participate in conciliation. The department subsequently informed Clackamas Middle College that Parent did not want to conciliate.

This order constitutes the final order for case #2021-MM-02.

## FINDINGS OF FACT

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<sup>7</sup> 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.

For purposes of making its final determination on case #2021-MM-02, the Oregon Department of Education adopts the findings of fact set forth in the preliminary final order issued for that case on July 7, 2022.<sup>8</sup>

### **ANALYSIS**

For purposes of making its final determination on case #2021-MM-02, the Oregon Department of Education adopts the analysis set forth in the preliminary final order issued for that case on July 7, 2022.<sup>9</sup>

### **CONCLUSIONS**

In consideration of the evidence, the Oregon Department of Education finds that Clackamas Middle College is deficient on the following grounds:

- 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(3)(c).

Accordingly, the department orders Clackamas Middle College to take the following corrective action:

- I. Development of Procedures and Notice
  - a. In consultation with North Clackamas Schools' Director of Special Education, Clackamas Middle College must develop written procedures outlining the school's responsibilities to provide a free appropriate public education (FAPE) to qualified individuals with disabilities under Section 504 of the Rehabilitation Act of 1973 and its implementing regulations and Title II of the Americans with Disabilities Act of 1973 and its implementing regulations.
  - b. As part of the written procedures developed under paragraph I.a of this order, Clackamas Middle College must develop a structured timeline by which the school will conduct re-evaluations prior to significant changes of placement. As part of the timeline, Clackamas Middle College must incorporate the following:
    - i. Section 504's requirement that a school district must conduct a re-evaluation of a student with a 504 plan prior to a significant change of placement;

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<sup>8</sup> For the convenience of the parties, the preliminary final order is attached to this correspondence.

<sup>9</sup> For the convenience of the parties, the preliminary final order is attached to this correspondence.

- ii. That the United States Department of Education’s Office for Civil Rights considers an exclusion from an educational program of more than 10 school days a “significant change of placement;” and
  - iii. That the United States Department of Education’s Office for Civil Rights considers transferring a student from one type of educational program to another type of educational program, one school or school district to another school or school district, and terminating or significantly reducing a related service of a student with a 504 plan a “significant change in placement.”
- c. By January 31, 2023, Clackamas Middle College must provide the department with a draft of the written procedures developed under paragraphs I.a and I.b of this order for the department’s review and approval. If the department orders Clackamas Middle College to make any corrections to its procedures, the school must make the corrections and resubmit the corrected document to the department not more than 14 calendar days after receiving the corrections. Once the department approves the procedures, the school must adopt the procedures not more than 14 calendar days after receiving the approval.

## II. Notice

- a. Not more than 14 calendar days after Clackamas Middle College adopts the written procedures under paragraph I.c of this order, the school must send by mail or electronic mail a copy of the procedures to any student with a Section 504 Plan who is attending the school and any parent or guardian of a student with a Section 504 Plan who is attending the school.
- b. Not more than 14 calendar days after sending a copy of the written procedures developed under paragraph II.a of this order, the school must provide the department with the names of, and contact information for, all of the individuals who received a copy of the procedures.
- c. Not more than 14 calendar days after Clackamas Middle College adopts the written procedures under paragraph I.c of this order, the school must post a copy of the procedures on a webpage on the school’s website. The school must include a link to the webpage on the homepage of school’s website and in the school’s handbook for the 2023-2024 school year.
- d. Not more than 14 calendar days after posting a copy of the written procedures to a webpage on Clackamas Middle College’s website under paragraph II.c of this



order, Clackamas Middle College must notify the department that it posted the procedures.

- e. By August 31, 2023, Clackamas Middle College must send the department by mail or electronic mail the page from the school’s handbook for the 2023-2024 school year where the school included a link to the webpage pursuant to paragraph II.c of this order.

### III. Training

- a. Clackamas Middle College must conduct a training on the written procedures developed under section I of this order for any school staff that may have responsibility for implementing the procedures or who otherwise have a responsibility related to the procedures. The training must include: (1) the school’s responsibilities for providing FAPE to qualified students with disabilities under Section 504 of the Rehabilitation Act of 1973 and its implementing regulations, and (2) the full range of services that can be provided under Section 504 of the Rehabilitation Act of 1973, including special education and related aids and services.
- b. Not later than February 28, 2023, Clackamas Middle College must provide a copy of all materials that it intends to use to conduct the training required by paragraph III.a of this order to the department for approval. If the department orders the school to make any corrections to the materials, the school must make the corrections and resubmit the corrected materials to the department not more than 14 calendar days after receiving the order.
- c. By April 30, 2023, Clackamas Middle College must provide the department with confirmation that the school conducted the training required by paragraph III.b of this order by sending the department, by mail or electronic mail, a copy of a sign-in sheet containing the date on which the training was conducted and the names and titles of all school staff members who attended the training.

Upon request, the department will extend for good cause any of the timelines set forth in this order.

If Clackamas Middle College or North Clackamas Schools wishes to use the department as a resource in fulfilling the terms of this final order, the school or the district may contact the department.<sup>10</sup>

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<sup>10</sup> The department’s 504 expert is Winston Cornwall. He may be reached at: [Winston.Cornwall@ode.state.or.us](mailto:Winston.Cornwall@ode.state.or.us).

If you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Mayer', written in a cursive style.

Mark Mayer  
Government and Legal Affairs  
Mark.Mayer@ode.oregon.gov