



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

March 18, 2026

By email only to [redacted content]

Lewis D. Ferebee  
Chancellor  
District of Columbia Public Schools

Re: OCR Docket No. 11-25-5901

Dear Mr. Ferebee:

This letter is to notify you of the outcome of the above-referenced directed investigation of the District of Columbia Public Schools (the District) initiated on March 5, 2025, by the U.S. Department of Education, Office for Civil Rights (OCR). OCR opened this investigation to determine whether the District is failing to evaluate or reevaluate, in an individualized manner, students who need or are believed to need appropriate special education or related services, and whether this failure results in parent/guardians having to rely on due process complaints to receive appropriate special education or related services to which their children are entitled). OCR also investigated whether the District's current transportation system results in a denial of a free and appropriate education for students with disabilities.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability under any program or activity receiving Federal financial assistance. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. The Division is a public entity that receives funds from the Department and is therefore subject to Section 504, Title II, and their implementing regulations. Accordingly, OCR had jurisdiction to investigate and resolve this directed investigation under Section 504 and Title II.

## **I. SUMMARY OF OCR'S INVESTIGATION AND FINDINGS**

OCR focused its review on the 2023-2024 and 2024-2025 school years (the review period). OCR reviewed information gathered from a variety of sources, including information submitted by the District, interviews of District staff, as well as publicly available information, including due process complaints.

After carefully considering all of the information obtained during the investigation, OCR found that the District violated Section 504 and Title II. Following is a discussion of OCR's factual findings and legal conclusions.

OCR found that the District's approach to special education services denies students with disabilities a free and appropriate public education (FAPE) as follows:

- The District fails to appropriately evaluate students with disabilities. The District provides interventions outside of the evaluation process through the Multi-Tiered System of Support (MTSS) or the Mental Health Team, in a way that delays or denies the evaluation of students suspected of having a disability. Students experiencing behavior or mental health issues, for example, are being referred to a Mental Health Team prior to the evaluation of the student for services.
- The District fails to complete evaluations in a reasonably prompt manner. The District's guidelines allow for the evaluation process to take up to four months from the date of a referral to development and implementation of an individualized plan for special education or related aids and services. Due process determinations OCR reviewed reflect that in some cases, the process takes even longer than four months.
- The District fails to make evaluation and placement decisions for students with disabilities by a group of knowledgeable people. For example, District guidebooks for related service providers state that determinations about whether additional information is needed to determine eligibility and related service placement decisions are made outside of a team setting.
- The District fails to make individualized placements for students with disabilities. For example, District guidebooks indicated that Behavior Support Services (BSS) could not be added to an IEP plan if the student was only found eligible under the Speech Language Eligibility classification. Further, the guidebooks also suggest that BSS may be removed from a student's plan if the school social worker does not have the capacity to serve the student, rather than based on the student's individualized needs. Also, in certain instances, a student's refusal to participate in a related service was sufficient to deny the initiation or continuation of that service, even if the service is otherwise needed to provide the student with a FAPE.

OCR also found that the District has no process in place to ensure that students with disabilities requiring transportation services to and from school are not denied FAPE because of transportation issues. The District staff responsible for overseeing the District's role in securing transportation for students with disabilities has no knowledge or training regarding serving students with disabilities or the requirements of Section 504 and Title II. The District's process for securing transportation services is haphazard and disorganized resulting in students not receiving transportation services required by their individualized plans in a timely manner. OCR also found that despite the District being on notice of bus delays, cancellations, and safety incidents, some of which resulted in missed instructional time or safety concerns, the District has no process in place to track these transportation issues. As a result, this information is not consistently relayed to individual students' Section 504 or IEP teams, and 504 or IEP teams are not convening to consider whether the students are entitled to, for example, compensatory services because of missed instructional time caused by transportation issues.

## II. LEGAL STANDARDS

The regulation implementing Section 504 at 34 C.F.R. §104.4(a) and §104.4(b) prohibits districts, on the basis of disability, from excluding students from participation in, denying students the benefits of, or otherwise subjecting students to discrimination under any program or activity which receives federal financial assistance. Additionally, districts may not provide a qualified person with a disability with an aid, benefit, or service that is not equal to that afforded to others. The regulation implementing Title II at 28 C.F.R. §35.130(a) requires that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

The Section 504 regulation, at 34 C.F.R. § 104.33(a), requires school districts to provide a free appropriate public education (FAPE) to each qualified student with a disability who is in the school district's jurisdiction. An appropriate education is regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and that are developed in compliance with Section 504's procedural requirements. Implementation of an Individualized Education Program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA) or a Section 504 Plan developed in accordance with Section 504's procedural requirements are both means of meeting this standard. As a general rule, because Title II provides no less protection than Section 504, violations of Section 504 also constitute violations of Title II. 28 C.F.R. § 35.103.

The Section 504 regulation, at 34 C.F.R. § 104.35(a), requires a school district to evaluate any student who needs or is believed to need special education or related services due to a disability. A district must conduct an evaluation before initially placing the student in regular or special education and before any subsequent significant change in placement. The regulation implementing Section 504 does not impose a specific timeframe for completing an evaluation and determining placement. However, an unreasonable delay may result in discrimination against a student with a disability because it may have the effect of denying the student meaningful access to educational opportunities provided to students without disabilities. Timeframes imposed by the IDEA and state timelines, which OCR does not enforce, are nevertheless helpful guidance in determining what is reasonable. The IDEA regulation requires that school districts complete evaluations within 60 days of receiving parental consent for the evaluation or within a timeline established by the state (34 C.F.R. § 300.301(c)(1)). District of Columbia law requires that an evaluation or assessment be completed within 60 days of receiving parental consent (D.C. Code § 38-2561.02(a)).

In interpreting evaluation data and making placement decisions, the Section 504 regulation, at 34 C.F.R. § 104.35(c), requires that a school district draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; establish procedures to ensure that information obtained from all such sources is documented and carefully considered; ensure that the placement decision is made by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data, and the placement options; and ensure that each student with a

disability is educated with peers without disabilities to the maximum extent appropriate to the needs of the student with a disability.

The Section 504 regulation, at 34 C.F.R. § 104.36, requires that school districts establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of students with disabilities, a system of procedural safeguards that includes notice, an opportunity for parents to examine relevant records, an impartial hearing with an opportunity for participation by parents and representation by counsel, and a review procedure. Section 504 requires districts to provide notice to parents explaining any evaluation and placement decisions affecting their children and explaining the parents' right to review educational records and appeal any decision regarding evaluation and placement through an impartial hearing.

### **III. FINDINGS OF FACT**

#### **A. The District's Special Education Offices**

At the District, oversight of special education is split between two divisions housed in separate offices that are overseen by the Deputy Chancellor of Social Emotional Academic Development. The Division of Specialized Instruction (Specialized Instruction), located under the Office of Teaching and Learning, is responsible for implementing and monitoring programs for students with disabilities, including ensuring District compliance with IDEA and DC special education regulations; issuing guidance about least restrictive environment requirements; overseeing programs relating to placement; and supervising related service providers.

Within a different office, the District's Office of Social Improvements and Supports, the Division of Students Supports (Student Supports), also presides over special education. The Student Supports houses two teams who support students with disabilities: the Section 504 team and the Mental Health Team. The Section 504 team oversees 504 processes across all District schools and is charged with submission of transportation requests for students with Section 504 plans. The Mental Health Team supervises school social workers and school psychologists, who play a role in identifying students in need of special education evaluations and evaluating students for special education eligibility. The District's school psychologists participate in Multi-Tiered System of Support (MTSS) intervention monitoring, develop IEPs for students, and are core members of 504 teams. The District's social workers serve as members of school-based mental health teams and MTSS teams, conduct Functional Behavioral Assessments (FBAs), design and implement Behavior Intervention Plans (BIPs), and provide Behavior Support Services (BSS) to students.

Also within the Office of Social Improvements and Supports, but in a separate division, is the MTSS Director, who is charged with overseeing implementation of MTSS across District schools. At the time of OCR's interviews with District staff, the MTSS Director position was vacant.

Outside of the offices described above, overseen by the Deputy Chancellor of Social Emotional Academic Development, a different office, reporting to the Deputy Chancellor of Finance and Operations, is also involved with students with disabilities. Within the Office of Finances and Operations, the Operations division houses DCPS' Transportation Team, composed of a transportation coordinator and manager. The Transportation Team helps District staff navigate submission of transportation requests for students with disabilities to the Office of the State

Superintendent of Education (OSSE) via OSSE's transportation database, oversees submission of transportation request forms for students with IEPs, and facilitates contact with OSSE concerning transportation issues.

## **B. Special Education**

### *i. Referral for Evaluation*

According to the District's special education eligibility process guide (SPED Process Guide), the District completes an initial eligibility process as soon as it learns that a person familiar with the student suspects the presence of a disability or whenever subsequent referrals are made for a student that has previously been determined ineligible. However, when discussing the process for determining eligibility, the SPED Process Guide refers to MTSS in a way that suggests it is a necessary precursor to the eligibility process. The implementation of MTSS interventions prior to evaluation is discussed as an essential step to avoid overidentification of students for special education and ensure that students are served in the least restrictive environment. In addition, interventions previously provided to students through MTSS are among the information that an IEP team would review when considering a student's eligibility for special education services.

DCPS has also developed numerous other documents, including guidebooks, training materials, worksheets, forms, and memos, that expand on the information contained in the SPED Process Guide. The Director of Student Supports told OCR that these guidebooks contain all of the information these providers need to do their jobs well. Collectively, these guidebooks convey that MTSS interventions must be implemented prior to a referral.

The MTSS Manual for school psychologists (MTSS Manual) describes MTSS as a practice of providing "high quality instruction and interventions matched to student needs." It distinguishes MTSS from special education and states that MTSS is used "to assist in determining if eligibility for special education should be considered." It notes that "MTSS is meant to target students who are at risk through academic and/or behavioral obstacles," and that MTSS interventions are intended to "help to ensure that students are appropriately identified for Special Education."

The MTSS Manual outlines three tiers of MTSS interventions: Tier 1 (universal schooling for all students); Tier II (targeted interventions for small groups of students); and Tier III (intensive interventions for individual students that is not special education). Each stage requires observation and progress monitoring, and data collection and analysis, designed to measure students' progress and evaluate their academic, behavioral, and mental health functioning against "expected" goals/outcomes. The MTSS Manual instructs staff to implement an intervention for a minimum of six weeks, and then, if progress is not made, to implement an alternative intervention. The MTSS Manual suggests that some students receiving MTSS interventions may have previously been or may simultaneously be identified as students with disabilities. The discussion of Tier 2 notes that a 504 plan may be written and implemented. The discussion of Tier 3 notes that interventions may be delivered as part of an IEP if a student's lack of response to interventions implemented, along with other assessments, demonstrate that the student has a disability that is impacting educational progress. However, the manual also makes clear that a special education referral is only appropriate after interventions have been implemented and a student fails to make expected progress, noting that "[i]f the student fails to respond to several well-implemented interventions, consider a referral

to Special Education if: (a) [a] series of research-based interventions have been attempted; (b) [t]here is documentation that the interventions were carried out as designed (treatment/intervention integrity); (c) [p]rogress-monitoring data shows that the student failed to meet the goal set for his or her improvement (that is, the student shows a ‘discrepancy in rate of learning’ relative to grade-peers).”

Other DCPS guidebooks similarly discuss MTSS interventions prior to referral. A Speech and Language Program Guidebook from the 2024-2025 school year (SLP Guidebook) directed at SLP Pathologists states at the outset that interventions “may be implemented before referral” but then goes on to discuss pre-referral interventions as mandatory. It describes pre-referral interventions as a “vital part of the student referral process,” and states that students should be referred for special education only if two important decision criteria are met: (1) reasonable classroom interventions of sufficient duration have been carefully attempted without success; and (2) the cause of the problem is suspected to be a disability that cannot be resolved without special education services. The SLP Guidebook also states that one of the goals of MTSS is to minimize over-identification for special education and result in fewer students needing “a formal IEP” with modifications and accommodations. The SLP Guidebook notes that “[e]xceptions to the process include those students for whom MTSS would delay obviously needed special education services, and indicates that, in these cases, the MTSS process may occur concurrently with the special education referral/assessment process. However, it is unclear how this determination is made or who makes it.

DCPS guidebooks directed to occupational therapists (OT), physical therapists (PT), and audiologists contain similar discussions of pre-referral interventions and the MTSS process. The School Mental Health: School Psychology Program Guidance (an Overview of Policy, Practice, and Procedures) from the 2023-2024 and 2024-2025 school years suggest that a referral is only made after a student has not responded favorably to interventions and that a referral form from the MTSS team must include data collected on the student’s response to interventions. A guidebook for OT and PT from the 2024-2025 school year provides that a referral for special education is only made “[o]nce strategies implemented through the MTSS process have proved unsuccessful.”

Finally, the School Mental Health Social Work Guidebook, last updated in the 2022-2023 school year also discusses MTSS as a necessary first step for students with academic and behavioral challenges. This guidebook outlines a “screening plan” using standardized social and emotional screening instruments, the data from which MTSS interventions should be developed. This guidebook at times discusses the “screening plan” with no mention at all of a special education referral (“Students identified as at risk should be given the identified behavioral screener and if necessary advanced to Tier II.”), and in other instances, referral is discussed as an option only after the use of MTSS interventions (“The assumption is that screening data will allow the MTSS team to develop more targeted interventions before elevating to a referral for special education.”).

Other District training materials also discuss whether MTSS is a necessary step prior to referral. A SLP Guidebook Training from the 2024-2025 school year states that the eligibility process is initiated when MTSS interventions have proven unsuccessful or the District receives a referral for special education services. In contrast, a PowerPoint presentation for new District social workers outlines the process from general education to special education and notes that, if a parent or staff member observes a student struggling, the first step is to convene an MTSS team to put in place

interventions; referral for an eligibility evaluation occurs only after a poor response to interventions. An OT and PT Guidebook Training from the 2024-2025 school year indicates in bold face type that the eligibility process should not be delayed if a disability is suspected. Yet, the same slide discusses attempting “reasonable classroom accommodations of sufficient duration” without success as a necessary pre-referral step. School Psychologist Training developed in October 2023 discusses the process where a new disability is suspected for a student already identified and asks, first, whether the student has been referred to or is receiving MTSS interventions in the new area of concern.

Several DCPS forms and flowcharts also indicate that MTSS interventions are mandatory prior to referral. The School Psychologist’s Tier Advancement Checklist for Eligibility Consideration reflects referral happening only after completion of Tier 3 interventions. Special education referral forms developed by the Office of Teaching and Learning ask whether a research-based intervention has been used for at least six weeks and requires staff to enter data about the specific interventions used. Another form related to determining eligibility based on a specific learning disability indicates that the District must have tried at least one intervention at Tier 1 and at least one intervention at Tier 2 for at least six weeks per tier to proceed with eligibility. Some of the forms specifically state that MTSS interventions and special education evaluations can occur concurrently; however, others do not, suggesting that implementation of interventions is a necessary first step.

The Special Education Coordinator for the District stated in an interview with OCR that the MTSS process proceeds “alongside” the eligibility process and that “a referral to special education should not be delayed because of MTSS.” However, in addition to the guidance on this topic described above, OCR also reviewed due process case determinations that reflect a District practice of sometimes referring students to MTSS even where there is reason to believe the student has a qualifying disability. In one case, the District was aware of the student’s significant mental health issues, including her admission to an outpatient mental health hospital program, beginning in the fall of 2021. When the parent requested an evaluation in January 2022, the District sent the parent a draft eligibility report noting a significant impact on the student’s ability to access her education but then sent the parent a draft 504 plan and did not complete the special education evaluation. At the start of the 2022-2023 school year, the parent reiterated her request for an evaluation to consider alternative placement options, given the student’s ongoing struggles to attend and participate in school, and the District responded that it would need to develop an MTSS plan to support the student’s academic and behavioral needs. The District told the parent that MTSS could not be bypassed but could occur concurrently with the eligibility process. The parent withdrew the student shortly thereafter and enrolled her in a private therapeutic program. The hearing officer determined that the District denied the student a FAPE by failing to timely evaluate her. In another due process case, the hearing officer found the District failed to timely evaluate a student who was three grade levels behind in reading and math. The District began providing MTSS interventions but did not respond to the parent’s request for an evaluation.

ii. Determining Eligibility and Placement

The SPED Process Guide states that the first step upon receipt of a referral is to schedule a meeting to analyze the data available regarding the student’s current performance (Analyzing Existing Data or AED meeting). The AED team is composed of the same individuals who are required to be part

of the IEP team, including at least one classroom teacher, individuals knowledgeable about assessments conducted, the parent/guardian/student, and a representative of the Local Education Agency (LEA). Related service providers that correspond with the potential areas of concern identified in the referral also should be included. The AED team is required to review existing data, including hearing and vision screenings; medical history; attendance records; previous report cards and progress reports; observations; input from the parent/guardian or adult student, and results of class, school, and state-level assessments.

The SPED Process Guide explains that the purpose of the AED meeting is twofold; first, to decide if there is enough information to determine whether the student is eligible for special education and related services or if additional information is needed; second, to obtain the parent's informed consent to evaluate the student (if warranted). The SPED Process Guide lists three "guiding questions" for the AED team as follows:

- Does the IEP team have enough information to determine if the child has or continues to have a disability and the educational needs of the child?
- Does the IEP team have enough information to determine the present levels of academic achievement and related developmental needs of the child?
- Does the IEP team have enough information to determine whether the child needs special education and related services?

The Office of the State Superintendent of Education (OSSE) Special Education Handbook from the 2024-2025 school year states that the analysis of existing data "must be completed in a reasonable time after receiving the referral to enable the LEA to begin reasonable efforts to obtain parental consent within 10 business days of receiving referral." However, the District's SPED Handbook states that the "efforts to convene the [AED] meeting should begin as soon as possible but must start no later than ten (10) business days from the referral date." Then, if the AED team determines that there is sufficient information to move forward with an eligibility determination, the team should at that time obtain parental consent and proceed to make the eligibility determination, which means that consent may not be obtained until 30 days after the referral.

OCR identified some due process cases that show that DCPS did not promptly proceed from AED to an eligibility determination. For example, in one due process case, the hearing officer determined that the AED process resulted in an unlawful delay in evaluating the student. Specifically, the hearing officer found that the District denied the student a FAPE when, instead of responding to the parent's request for an evaluation, DCPS held an AED meeting, which caused an unlawful delay in evaluating the student to determine eligibility. In another case, the hearing officer determined that the District denied the student a FAPE because it never moved beyond the AED process. In that case, although the District held an AED meeting and created a 504 plan and safety plan, it was well over a year before the District determined the student eligible for special education services, despite being aware of the student's poor academic performance and class failures, serious psychiatric hospitalizations (including for suicidal ideation), and multiple absences and school refusal. In another case, the hearing officer found that the District failed to timely evaluate the student because the AED meeting was delayed and the District did not proceed to request consent from the parent to evaluate so that it could begin the evaluation process in a timely manner. In that case, the District originally scheduled the AED meeting more than 30 days after the parent requested an evaluation. When the parent had a conflict with the original date, the

District rescheduled the AED for approximately two months after the parent referral request. The hearing officer held that the District should have proceeded to obtain consent to evaluate without waiting for the AED meeting.

According to the District's guidebooks and trainings as well as the testimony of the SPED Coordinator, the AED meeting may result in an eligibility determination or a decision that additional assessments are needed to determine eligibility. A School Psychologist training developed in October 2023 provides that no additional assessments are warranted if the team can conclude from the data at hand that the student does or does not meet the criteria for eligibility. This same training also states that psychological assessments are completed only when the suspected disability is in the areas of Autism, Developmental Delay [adaptive, cognitive, social-emotional], Emotional Disability, Intellectual Disability Other Health Impaired (ADHD only), Specific Learning Disability, and Traumatic Brain Injury. The School Psychologist Guidebook for the 2023-2024 school year states that "if the area of concern is speech (e.g., articulation, stuttering, voice, apraxia, and dysarthria), then no psychological evaluation is warranted." Similar language is found in the Speech and Language Guidebook for the 2024-2025 school year.

Within 60 days of consent, the team (including the parent/guardian) must convene for an Eligibility Determination Meeting, where the team determines whether the student is eligible for special education and related services. At this meeting, the team is responsible for determining whether the student qualifies for special education and related services; identifying the appropriate disability category, and identifying the areas of concern, if any. Eligibility decisions are to be documented in a Final Eligibility Determination report. If a student is determined eligible, the District must obtain consent for initial provision of services and provide the parent/guardian notice of a meeting to develop the initial IEP. IEP teams are required to develop and implement an IEP within 30 days of the initial eligibility determination.

While the SPED Process Guide does not provide any guidance regarding determining placement and development of the IEP, some of the DCPS guidebooks directed at related service providers include information to inform development of the IEP. For example, the OT and PT Guidebook Training for the 2024-2025 school year discusses steps once the parent/guardian provides consent to initiate services, including developing goals and objectives and determining frequency and location of services based on what is needed for the student to make progress on the IEP goals. The SLP Guidebook Training for the 2024-2025 is less specific but nonetheless focuses on how to conduct a speech and language evaluation and write the evaluation report.

Due process determinations that OCR reviewed include cases where the hearing officer determined that the District denied a student FAPE because of a failure to comprehensively evaluate the student during the initial eligibility process. Specifically, some due process cases concerned psychological evaluations for students with speech and language needs. In one case, the hearing officer found that the District's initial evaluation of a student was not sufficiently comprehensive, resulting in an IEP that failed to adequately address all of the student's disability related needs. During the initial evaluation, the District administered a screener that is designed to assess milestones in five developmental areas: adaptive, social-emotional, communication, motor, and cognitive. However, the District only assessed the student in one of the five areas despite information indicating that she was delayed in all five areas, resulting in an inadequate IEP. In another due process case, the hearing officer determined that the District denied the Student a

FAPE when it failed to conduct a psychological evaluation. In that case, the hearing officer found that the District could not create a genuinely individualized program for the Student or consider the petitioner's request for alternative placements because the Student lacked a psychological evaluation. The hearing officer also noted that DCPS inappropriately based the IEP on the Student's eligibility classification rather than conducting an evaluation.

*iii. Reevaluation*

According to the SPED Process Guide, during the reevaluation process, current data is analyzed to determine whether the student continues to have a disability and to evaluate whether the educational needs of the student have changed. A reevaluation must occur at least every three years (Triennial Reevaluation), but any member of the IEP team may initiate a reevaluation before the expiration of the three-year timeline if there is new information that may affect the student's current services.

Though not discussed in the SPED Process Guide, the guidebooks for related service providers include discussion of removal of services from a student's IEP. The SLP Guidebook Training states that a comprehensive assessment must be completed to dismiss a student from speech and language services. However, it also lists criteria for determining whether to discontinue speech and language services, with one of the criteria being that the student has "a documented history of refusal of services." This suggests that satisfaction of a single criterion is a sufficient basis to remove the services from a student's IEP. Similar inconsistencies can be found in the SLP Guidebooks for the 2023-2024 and 2024-2025 school years and the OT and PT Guidebooks for the 2023-2024 and 2024-2025 school years. A similar section in the OT and PT Guidebook Training for the 2024-2025 school year does not include student refusal of services among the criteria.

Due process cases OCR reviewed reflect instances where the District terminated related services based on a student's failure to engage in the services. For example, in one case the hearing officer found that the District denied the student a FAPE when it reduced her speech and language services by fifty percent based, at least in part, because the student was not likely to go to speech. The District conducted a speech evaluation for the student in advance of an IEP meeting. In the evaluation, the District evaluator acknowledged that the student exhibited "difficulty with pragmatic skills" and would use gestures or grunts when too nervous to speak, consistent with the student's disability of autism spectrum disorder, selective mutism and social anxiety. However, the evaluator continued to underscore "that the Student did not have a willingness and a motivation to participate in all therapy activities." The hearing officer found that the reduction in the student's speech minutes was derived from the speech evaluation where the evaluator appeared "to base her reasoning, at least in part, on the notion, that because the Student was not likely to go to speech, the Student did not need speech," denying the student a FAPE.

**C. Section 504 Policies and Procedures**

In addition to the Section 504 Coordinator for the District, each school has a Section 504 coordinator, who serves as the main point of contact for students, parents, and school staff regarding related aids and services under Section 504. The school-based Section 504 coordinator coordinates all stages of the school's Section 504 process, coordinates with related service

providers and the District-level Section 504 Coordinator and staff, and works with the school administration to facilitate resolutions to complaints regarding accommodations or services under Section 504.

The District has a policy implementing Section 504 and the Americans with Disabilities Act (Section 504 Policy). The District further has a Section 504 Guidance document, the purpose of which is to ensure that school-based Section 504 coordinators are able to fulfill their role and maintain compliance with the Section 504 Policy.

*i. Referral for Evaluation*

The Section 504 Policy provides that school staff who are knowledgeable about a student who has been diagnosed with, or is suspected of having, a physical or mental impairment that may substantially limit a major life activity, must refer the student to the school-based Section 504 coordinator for evaluation. Parents/guardians and any other person who is knowledgeable about the student may also refer the student for evaluation. Referrals may be submitted in writing or orally and the school-based Section 504 coordinator must document all referrals in writing at the time of the referral.

*ii. Determining Eligibility and Placement*

The Section 504 Policy requires the District to individually evaluate any student who, because of a disability, needs or is believed to need accommodations and services, before placing a student or subsequently significantly changing the student's placement. Upon receiving a referral, the school-based Section 504 coordinator will get written consent for the evaluation from the student's parent/guardian and will collect evaluation documentation which draws upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior.

The District's 504 Implementation Guide (504 Guide) states that if the 504 team suspects that a student may require a related service, the 504 team and the school-based 504 coordinator meet to discuss the existing data and determine whether additional information is needed to determine eligibility. The 504 Guide states that the determination of whether additional data is needed to determine eligibility for the related service is made by the related service provider and 504 team, relying "heavily on the expertise of the related service provider." However, the Speech and Language Guidebook states that the school-based 504 coordinator and the related service provider meet alone to ascertain whether additional information is needed to determine eligibility for the related service. The Audiology and OT and PT Guidebooks also state the school-based 504 coordinator and the related service provider meet to discuss Section 504 students who may require related services. Again, the language in these guidebooks does not indicate this discussion occurs as part of a 504 team meeting. Like the SLP Guidebook, the Audiology Guidebook also notes that the related service provider solely determines whether an assessment is needed for the student. While the OT and PT Guidebooks state the decision of whether to order an assessment for a student is made by the school-based 504 coordinator and the related service provider, it also does not indicate that the Section 504 team, including the parent, is involved in this decision.

The 504 Guide also discusses the inappropriateness of certain related aids and services in the general education setting (hereinafter referred to as accommodations) in a way that implies that the District is not making individualized decisions regarding the appropriateness of accommodations for students with disabilities. The 504 Guide states that dedicated aides and dedicated nurses are one of the most restrictive services available under Section 504 and that, in most cases, students with Section 504 plans do not require dedicated aides or dedicated nurses. In this context, the 504 Guide further states that the inappropriate use and excessive proximity of paraprofessionals have been linked to “dependence, interference with peer relationships, insular relationships, stigma, and behavior problems,” and that if the 504 team believes that a student needs support given by someone other than the school nurse or other school staff, they should contact the District office for guidance. In addition, the 504 Guide states that a Section 504 team should provide a student with accommodations to the DCPS Attendance Policy only as a last resort and such a decision must be made “relying heavily on the medical orders and guidance from the [District] Attendance Team.”

In addition, the 504 Guide cautions school-based Section 504 coordinators about “overaccommodating” students and outlines considerations that are not generally relevant to determining what accommodations are appropriate for an individual student. For example, the 504 Guide explains that providing more accommodations than necessary “can provide students with an unfair advantage over their peers and can also hinder the development of critical compensatory and self-advocacy skills.” The 504 Guide further states that “a 504 plan with an excessive number of accommodations is also difficult for schools to implement with fidelity and creates an undue burden on school staff.”

With regard to related service placement decisions, the 504 Guide states that placement decisions are made by the related service provider, (i.e. occupational therapist, physical therapist, speech therapist, etc.), implying that these decisions are not made by the Section 504 team. Specifically, the Guide states that if the related service provider determines the student is eligible to receive the related service, then the provider will provide the school-based Section 504 coordinator with the goals, duration, and frequency of the related service. Similar language appears across other guidebooks. The Audiology and OT and PT Guidebooks state the school-based 504 coordinator and the related service provider meet to discuss Section 504 students who may require related services. Again, the language in these guidebooks does not indicate this discussion occurs as part of a 504 team meeting. In contrast, the Speech and Language Program Guidebook states that if a student is found eligible for related services, the Speech-Language Pathologist assists the 504 team with developing 504 plan accommodations.

#### **D. Students with Behavioral Concerns**

The District addresses student behavioral issues differently than academic or medical issues. Neither the Section 504 policy nor the 504 Guide include information about the process for developing a Behavior Intervention Plan (BIP) for a student who has a current Section 504 plan. The SPED Process Guide also does not include information about developing a BIP for a student with an IEP. Various other District guidelines, guidebooks, and witnesses interviewed indicate that when a general education student presents with both behavior issues and a potential disability that are not responding to MTSS Tier 1 interventions, the Student will be referred to the school MTSS

team and/or the school mental health team first, rather than for evaluation for special education and related aids and services.

According to the Director of Student Supports who oversees the school mental health teams and school 504 teams, it is common for a member of the school mental health team to also be a member of the MTSS team, especially when the referral to MTSS involves behavior issues. When asked to which team a school would typically refer a student with behavior issues, she responded that it depends on the school, as there is no districtwide practice on this. She stated that regardless of whether the student is referred to the mental health team or the MTSS team, school social workers are largely responsible for the behavioral, social-emotional, and mental health concerns that may arise in the MTSS process. She shared that school social workers might conduct behavioral observations or develop an initial Functional Behavioral Assessment (FBA-I) by gathering data from staff that work most closely with the student to try to understand where and with whom the concerning behaviors are happening. The school social worker would then share the FBA-I with the relevant team, which would develop an initial Behavior Intervention Plan (BIP-I). If the BIP is implemented and is successful in improving the targeted behavior, school staff will continue implementing the BIP. If the BIP is not successful, then the MTSS or mental health team would meet again to gather additional data and implement new interventions.

The SPED Coordinator stated that for students with behavior issues or mental health needs, the mental health team will exhaust all the tiered interventions or community resources before referring to special education. She explained that a BIP could be part of MTSS Tier I or Tier II. She further stated that school social workers partner with the Department of Mental Health and hospitals throughout the city and that a student with behavior and/or mental health issues might be referred to one of these outside entities before being referred for an evaluation by the District for special education services.

The District has guidelines for conducting functional behavior assessments and developing behavior intervention plans (FBA Guidelines). The FBA Guidelines distinguish between an FBA I and FBA II. According to the FBA Guidelines, the FBA-I is a “structured interview” to determine why a student engages in specific problematic behaviors that have not been effectively addressed at MTSS Tier I. The FBA Guidelines encourage teachers to exhaust all efforts to address the student’s behavior prior to beginning the FBA-I process, including by participating in mental health consultation with a District mental health professional. The FBA Guidelines do not indicate that the District should conduct an evaluation for special education or related aids and services if it suspects a disability as part of a mental health assessment.

The FBA Guidelines state that an FBA-II is a formal assessment tool reserved only for students referred for eligibility for special education services and students with disabilities currently receiving services under IDEA. FBA-II is used to address “complex problems that are more likely to be demonstrated at [MTSS] Tiers II and III.” According to the FBA Guidelines, once an FBA-II has been completed, the multidisciplinary team should develop a BIP-II. This process refers to “the multidisciplinary team,” but it is unclear whether an FBA II and BIP II for a student who is currently receiving services under IDEA is completed by the IEP team, the MTSS team, or some other team.

The FBA Guidelines contain flow charts describing the process for conducting FBAs and developing BIPs for three subsets of students: (1) students with difficult behaviors with no current IEP or 504 plan, (2) students with a disability with behavior concerns, and (3) students eligible under the Emotional Disability eligibility category and students with a history of suspensions. These flowcharts also appear in the District's Social Work Guidebook, with significant discrepancies.

The flow chart for students with "a difficult behavior with no current IEP or 504 plan" in the Social Work Guidebook, shows that the first step in the process for such a student is to either refer the student to the MTSS team to complete an FBA/BIP to be implemented for the "tier 2 response period," or refer the student to the school social worker for a "mental health consult." However, the same flowchart in the FBA Guidelines states that the student is referred to the social worker, not for a "mental health consult" but for a "mental health evaluation." The flowchart does not identify steps that follow after a student has been referred to the school social worker.

Further, the flow chart in the FBA Guidelines and the Social Work Guidebook provide different outcomes for students with difficult behavior with no current IEP or 504 plan that are referred to the MTSS team. The FBA Guidelines indicates that once a student is referred to the MTSS team and an FBA-I/BIP-I is implemented for the Tier II response period, the MTSS team meets to review the outcome. If the FBA-I/BIP-I was implemented with fidelity and the student's behavior did not improve, and there are also academic concerns, interventions are reassessed before proceeding with a special education referral. In contrast, the Social Work Guidebook states that such students will be directly referred to the special education team. If the FBA-I was implemented with fidelity, and concerns are limited to behavior, the FBA Guidelines state students should be referred to the Section 504 team and have an FBA-I and BIP-I completed. However, the Social Work Guidebook indicates such students should be referred to the Section 504 team and have an FBA-II completed, not an FBA-I. Both the FBA Guidelines and the Social Work Guidebook flow charts note that, if the MTSS team determines that the FBA-I/BIP-I was not implemented with fidelity, the school should again implement the BIP with fidelity, and the student is not referred for evaluation under either Section 504 or the IDEA.

For students with disabilities with a behavior concern already identified as being eligible for special education, an FBA-I is completed first. Per the flowchart in the Social Work Guidebook and the FBA Guidelines, an FBA-I must be completed with fidelity. Once the FBA-I is implemented with fidelity, and there is no improvement in the student's behavior, the IEP team meets to modify and repeat the FBA-I. In this flowchart, there is no mention of students moving on to an FBA-II.

The flowchart for students with disabilities with a history of suspension and for students eligible under the Emotional Disability category notes that these subsets of students bypass an FBA-I, proceeding directly to an FBA-II and a BIP-II. Once the FBA-II and BIP are developed by a multidisciplinary team, the District monitors the student's plan and revises the BIP at least annually.

Further, although not referenced in any of the flowcharts, text in the FBA Guidelines identify examples of when an FBA-II should be conducted. These examples include mention of other eligibility categories, although these eligibility categories are not referenced in any of the

flowcharts. Per the FBA Guidelines, if the “student has a disability classification of Autism and is exhibiting severe behaviors,” an FBA-II must be conducted. The FBA Guidelines further indicate an FBA-II is required “when an exclusion of even one school day occurs for a student with the disability classification of Intellectual Disability.”

OCR’s review of multiple determinations in due process complaints found FAPE violations when the District failed to evaluate the student and conduct an FBA and develop a BIP, given the students’ behavior issues. One due process determination found that the District failed to evaluate a student in all areas of suspected disability when it did not properly assess a student who was not attending school due to anxiety, through an FBA and BIP. Another determination found that the District denied a student a FAPE, in part, due to a failure to develop an FBA/BIP as part of a triennial reevaluation, given the student’s disciplinary record, need for constant redirection, and demonstrated sensory deficit.

The Social Worker Handbook addresses the related service of behavior support service (BSS), which it states is “a continuum of services that encompasses a variety of delivery models and intervention strategies under the auspices of special education.” However, the Social Worker Handbook includes language that indicates that determinations on eligibility are not always conducted in an individualized manner. The handbook states that BSS cannot be added to an IEP plan if students are only eligible under the Speech Language eligibility classification. Additionally, Appendix 7 to the School Social Worker Handbook outlines the criteria that must be met in order for a student to be eligible for BSS, including that a student must self-report as willing to participate in counseling services. Appendix 8 to the School Social Worker Handbook adds that one criterion for exiting from BSS is “a consistent, willful, refusal by the student to engage in counseling.” As such, the handbook indicates that the decision regarding whether a student qualifies for BSS hinges in part on whether the student is willing to participate as opposed to whether the service is required to meet the student’s individual educational needs.

The Social Work Handbook also indicates that when school social workers do not have the capacity to serve some students who require BSS per an IEP, “alternative strategies” not contained in the student’s IEP would be provided to address the student’s needs. By the first day of school, the LEA representative at each school is required to notify related service providers of all students at the school who require related services per an IEP. During the first two weeks of school, related service providers must identify any students they do not have the capacity to serve and immediately notify their social work program manager to provide the school social worker with alternative strategies to address the student’s needs to ensure compliance. Notably, the Handbook does not require related service providers to be notified about students at the school who require related services per a Section 504 plan.

OCR’s review of due process determinations also found that the District denied students a FAPE by failing to provide BSS to a student with active behavior issues. One determination found that the IEP team terminated a student’s BSS despite indication that the student still continued to struggle with focus, attention, and completing assignments. Another determination indicated that the District did not include BSS in a student’s 2023/2024 IEPs to enable the student to make appropriate progress, although the student engaged in various elopements, noncompliant behavior, touching things, not keeping hands to self, touching peers and difficulty being cooperative with

social interactions. A third determination found that the District denied a student FAPE, when it failed to implement the BSS services required by the student's IEP.

### **E. Students with Mental Health Concerns**

Each school in the District has a mental health team, comprising, at minimum, the school social worker, school psychologist, school counselor, and school nurse.

The School Social Work Guidebook describes a "Consent for Social Emotional Services Form," the purpose of which is to give parents and families a method of "communicating with the school mental health team about their child's social emotional needs upon enrollment," provide "consent for and support to occur," and authorize District social workers or psychologists to begin working with a student. Neither the form nor the Guidebook contains information about whether or how the school mental health team will review the forms to determine whether a referral for evaluation under Section 504 or the IDEA is warranted.

The School Social Work Guidebook includes a section on the procedures for evaluating students for special education. The "Mental Health Screening Plan," is a joint school social work and school psychology initiative which "allows schools to identify students who are at risk for academic and/or behavioral challenges using early warning indicators (EWI) and standardized social emotional screening instruments" so that MTSS teams can develop targeted interventions to meet students' educational and behavioral needs before referring the students for evaluation for special education.

Neither the School Psychology Program Guidance nor the School Mental Health Social Work Provider Guidebook mention the involvement of a Section 504 team or IEP team in developing or updating an "individual student crisis plan" for a student who has had a mental health crisis or screening students with behavior issues to determine whether there is reason to believe the student has a mental impairment.

The 504 Guide states that a student with a documented mental health diagnosis or whom school staff believe has a mental health impairment based on teacher observations or other student data should be referred for evaluation under Section 504. Unlike in other publications, the 504 Guide does not mention that the school-based mental health team would make the referral. Examples of such student data include a decline in academic performance, disruptive behavior, or frequent absences. The 504 Guide states that these issues can be due to "a number of factors, so the 504 coordinator should work with the school mental health team to help identify when these issues may be related to a mental health impairment."

The District Section 504 Coordinator's description of this referral process indicates that the determination of whether to refer a student for evaluation is made entirely by the mental health team. He stated that the school mental health teams meet regularly to discuss student concerns and determine whether they have a reasonable suspicion that the student has a diagnosed or undiagnosed mental health condition. If so, the team would refer the student for Section 504 evaluation. If the school mental health team believes the student also needs specialized instruction, the team would refer the student for evaluation under the IDEA. In contrast to the Section 504 Coordinator's testimony, the Director of Student Supports, who oversees the school mental health

teams, told OCR that the school mental health team does not refer students for Section 504 or IDEA evaluation, but rather “raises a concern” about a student to either the Section 504 team or IEP team.

OCR’s review of due process determinations also found that the District denied students a FAPE by failing to evaluate them under the IDEA, despite behavior and/or mental health concerns that that were potentially caused by a disability. In one case, although the District implemented general education interventions to address the student’s aggressive behavior, such as a Section 504 Plan and an FBA and BIP through MTSS, the attempts were unsuccessful. Of note, a school social worker had told the student’s parents that the student needed a neuropsychological evaluation to determine why the student engaged in such dangerous, antisocial behavior, but the student was not evaluated. In another case, the District was found to have denied a student a FAPE when the District failed to evaluate the student until Spring despite knowing as early as the beginning of the school year of clear signs of the student’s possible disability, including mental health hospitalizations and referrals to outpatient behavioral health facilities for concerns about self-harm. Another due process determination found that the District denied a student a FAPE when a March 2022 IEP added almost no new direct services to the student’s program, despite the fact that the student had been suffering a severe mental health crisis since the end of the 2020-2021 school year, including a new diagnosis of depression and an attempted suicide. Another due process determination found that the District denied a student a FAPE by failing to comprehensively evaluate the student, who was exhibiting suicidal and other dangerous behaviors, during the second semester of SY 2023-2024.

#### **F. Responsibility for Transportation for Students with Disabilities**

The Office of the State Superintendent of Education (OSSE), the state education agency, works in partnership with the District to provide transportation services to students. OSSE and the District have distinct responsibilities concerning transportation services for students with disabilities.

OSSE provides transportation services for eligible students with disabilities across all local education agencies (LEA) in Washington, D.C., including the District and other public charter schools. OSSE provides these students with its own buses or contracted vehicles, and for parents who opt to self-transport their eligible student, it provides monthly stipends. OSSE is responsible for creating bus routes, tracking bus arrivals and departures, contracting with private vehicle vendors to transport students, hiring transportation staff such as bus drivers, nurses, and one-to-one aides, and procuring specialized equipment. Further, OSSE develops transportation policies establishing state-level transportation eligibility for students and grounds for discontinuation of transportation services. OSSE also fields parent questions and complaints about transportation via its Parent Resource Center.

The District is responsible for determining whether students with disabilities are eligible for transportation services, informing OSSE of students who require transportation services through timely submission of Transportation Request Forms (TRFs), and reporting to OSSE any changes with respect to a student’s transportation services. The District also communicates transportation concerns to OSSE, such as delays initiating transportation services, disruptions in transportation services, buses not showing up to pick up students, and buses arriving late to school. Critically, the District is responsible for ensuring that students with disabilities receive a FAPE, regardless of

whether there are problems with transportation that may impact the implementation of IEPs or Section 504 plans.

To execute its transportation duties, the District delegates responsibilities for transportation for students with disabilities among three entities – its LEA Representative Designees, the Division of Student Supports (specifically, its Section 504 central office), and the Office of Operations and Finance (specifically, a Transportation Manager and a Transportation Coordinator, from the District’s Transportation Team (Transportation Team)). Specifically:

- For students with IEPs, the District delegates responsibilities to its LEA Representative Designees at each of its schools. The LEA Representative Designee role is generally assigned to the school principal but can be delegated to another school employee. These individuals are responsible for submitting TRFs for all eligible students with IEPs to OSSE.
- Within the Division of Student Supports, the Section 504 central office team is responsible for submission of TRFs for all eligible students with Section 504 plans to OSSE. The Section 504 central office is composed of two people – the Section 504 Coordinator and a Section 504 Analyst. The submission of TRFs is primarily done by the Section 504 Coordinator, with occasional support from the Section 504 Analyst.
- Within the Office of Operations and Finance, the District’s Transportation Team trains LEA Representative Designees and the Section 504 central office team on how to submit TRFs via OSSE’s transportation database. Additionally, the District’s Transportation Team responds to OSSE inquiries about transportation requests submitted by the District. The District’s Transportation Team also supports LEA Representative Designees by answering questions about eligibility, reminding LEA Representative Designees about OSSE-identified deadlines for submitting TRFs, following up with LEA Representative Designees about outstanding TRFs, and submitting TRFs for students when LEA Representative Designees are not able to access OSSE’s transportation database.

The Transportation Team has a central role in ensuring that the LEA Representative Designee and the Section 504 central office understand and implement the process correctly. However, emails OCR reviewed indicate that the District’s Transportation Team sometimes failed to communicate important information from OSSE to the LEA Representative Designees. In one email, OSSE informed a school staff member that OSSE had informed the District’s Transportation Team that an IEP amendment was needed to ensure accurate transportation services for a student. OSSE told the school staff member that the Transportation Team informed OSSE that the District “would be working on an amendment for the IEP.” Two weeks after the Transportation Team responded to OSSE, the school reached out to OSSE directly and was informed of OSSE’s prior communications with the Transportation Team. The school staff member responded to OSSE, writing “that is not something anyone has discussed with me or direct [sic] me to do... I can share that the school team has not taken any such steps to make IEP amendments at this time.”

Moreover, OCR found evidence that the Transportation Team engages directly in questions pertaining to eligibility for special education even though OCR did not find evidence to indicate that the Transportation Team receives training in special education. The District’s Transportation Manager and Transportation Coordinator reported to OCR that they did not have any special education training. In one email, an LEA Representative Designee emailed the Transportation Team inquiring about transportation options for a student who was no longer eligible for an IEP.

The Transportation Coordinator informed the LEA Representative Designee that the student would “no longer qualify for OSSE transportation due to the change in related service” and asserted “only students with IEPs can be eligible for transportation and receive bus services.” The Transportation Team did not mention possible eligibility for transportation services under a 504 plan until the school followed up again.

### **G. The District’s Policies, Procedures, and Written Guidance Pertaining to Transportation for Students with Disabilities**

The District acknowledges its responsibility for determining students eligible for transportation services, but OCR has not found any policies, procedures, or written guidance on its involvement after eligibility. The District informed OCR that its involvement in transportation after eligibility is “limited to providing family addresses and referring reports of transportation issues to OSSE.” The District did not produce any policies pertaining to transportation, including any policy or guidance on how schools should respond to bus delays or bus incidents.

OCR reviewed several documents provided by the District related to eligibility and the initiation of transportation services, including the District’s processes for submitting TRFs to OSSE. However, the District did not provide a comprehensive written policy outlining processes for both students with IEPs and Section 504 plans. Most of the guidance provided by the District was authored by the Section 504 central office and with respect to submission of TRFs for students with Section 504 plans only. Materials authored by the Section 504 team included eligibility worksheets, an internal TRF form used by school teams to collect transportation information from schools for individual students, and PowerPoint presentations with slides instructing school-based section 504 teams to submit transportation eligibility information to the Section 504 Coordinator.

Written guidance pertaining to eligibility for and initiation of transportation services for students with IEPs was more limited. District guidance included an FAQ Document directed at LEA Representative Designees with a checklist of information needed to confirm transportation services, including the parent/guardian’s contact information, emergency contact information, and morning and afternoon drop-off locations. OCR reviewed emails that show that the District’s Transportation Team relied on email communications rather than policies or procedures to inform LEA Representative Designees of processes for submitting TRFs to OSSE.

### **H. Eligibility and Initiation of Transportation Services**

Determinations about transportation eligibility are made at the school level by the student’s Section 504 team or IEP team. Prior to submitting a TRF for a student, the District must determine eligibility for transportation services, identify any specialized equipment or accommodations required for a student to use the transportation, and document the parent’s preferred transportation method. Parent/guardians of students who are found eligible for transportation services may choose from one of three transportation options provided by OSSE: (1) self-transport and receive a monthly \$400 stipend, (2) opt in to OSSE school bus or specialized vehicle, or (3) decline transportation services entirely.

Once the IEP team or the Section 504 team determines a student is eligible for transportation services, the District submits a TRF to OSSE. The TRF registers that the student requires

transportation services and is accepting services, the student's pick-up and drop-off address (including the option to select the student's address listed in the District's Student Information System), and any specialized equipment or assistance required for transport. To make changes to a student's transportation services, including adding specialized equipment or changing pick-up or drop-off addresses, the District submits a new TRF for the student.

Submission of TRFs occurs through OSSE's transportation database, Integrated Data System (OSSE's transportation database). OSSE's transportation database receives data from three separate District databases—PowerSchool Special Programs, Frontline, and Aspen (the District's Student Information System). These databases are used by the District to store IEP information, Section 504 information, and enrollment information, respectively. OSSE uses the information entered by the District in these three databases to confirm continued transportation eligibility for students. For example, if an IEP has not been finalized or is expired, or if the Section 504 plan has not been uploaded, OSSE flags the student as not being eligible for transportation.

The District had two processes for submitting TRFs for students with Section 504 plans and IEPs during the 2023-2024 and 2024-2025 school years. In June 2025, these processes were modified for the 2025-26 school year. The processes are discussed in more detail below.

*i. Submission of TRFs for Students with Section 504 Plans by the Section 504 Coordinator*

For students who have a Section 504 plan, transportation requests forms are funneled through the District-level Section 504 Coordinator. Once the student's Section 504 team determines that a student is eligible for transportation services, a member of the school-based Section 504 team informs the Section 504 Coordinator of the student's transportation needs by filling out a Section 504 Transportation Request Form, an internal request form created by the District's Section 504 team to capture information needed for submission of TRFs to OSSE, including pick-up and drop-off location and any accommodations needed for transport. The Section 504 Coordinator then uses the information in the internal form to submit the TRF in OSSE's transportation database.

Before the Section 504 Coordinator can submit a TRF for a student with a Section 504 plan to OSSE, the Section 504 Coordinator must wait for two data feeds to be completed, syncing the student's Section 504 information and enrollment data to the OSSE transportation database, which can take four days or more. Unlike the database used to store IEP information for students, the District's Section 504 database does not automatically feed into OSSE's transportation database. Once the two data syncs are completed, the Section 504 Coordinator enters the TRF for the student.

OCR reviewed several emails that reference unsubmitted TRFs for Section 504 students. In one email, the Section 504 Coordinator directed the Section 504 Analyst to "resubmit" a TRF for a student. The Section 504 Analyst responded and noted no previous TRF had been submitted for the student. In another correspondence, a parent emailed the school's assistant principal requesting that the school submit a TRF for her child, who was eligible for transportation services via a Section 504 plan. The parent noted she had applied for the monthly stipend transportation program, but her application was not able to be processed by OSSE because a TRF had not been submitted for the student. Other emails show school staff emailing the Section 504 Coordinator to report missing TRFs for Section 504 students.

Additionally, OCR reviewed emails that showed that OSSE contacts the Section 504 Coordinator to inform the Section 504 Coordinator of TRF errors and request resubmission of TRFs for students. Errors identified by OSSE and requiring correction include errors concerning the student's pick-up or drop-off address, and documentation of specialized equipment. In one communication, OSSE emailed the Section 504 Manager alerting the Section 504 Manager that because the student used a walker, a transport chair also needed to be identified on the TRF. In another email, OSSE contacted the Section 504 Analyst to correct a transportation request that incorrectly identified the student as needing a ramp/lift when the student did not need a ramp. Several emails concern drop-off addresses for students at recreational centers or non-residential addresses. In such cases, OSSE directed the Section 504 Coordinator to update the students' drop-off addresses to resume transportation services.

*ii. Submission of TRFs for Students with IEPs by the LEA Representative Designee*

For students with IEPs, TRFs are submitted by the schools' LEA Representative Designees, with occasional support from the Transportation Team if the LEA Representative Designee is unable to access OSSE's transportation database. Unlike the submission process for students with Section 504 plans, the submission of TRFs for students with IEPs is not channeled through a single District employee. Rather, LEA Representative Designees across all the District's schools submit TRFs directly to OSSE. The LEA Representative Designee role is assigned to the school principal but can be delegated to another school employee. The District's SPED Coordinator stated that it is the student's case manager who inputs TRFs directly into OSSE's transportation database.

Several emails indicate that TRFs were omitted for IEP students. In one email, OSSE informed the District's Transportation Team that a student did not have a TRF on file for the current school year and alerted the District to submit a new TRF so that the student could continue using transportation services. Another email OCR reviewed identifies situations where the District did not check off transportation services in a student's IEP, preventing the information from being accurately fed into OSSE's transportation system to route the student. The LEA Representative Designee admitted the school had "messed up" and "did not put transportation on his IEP," although the student "usually rides the bus."

OCR's review also shows the District sometimes learns of TRF errors after transportation issues had been raised by parents and schools with OSSE. In one email, an assistant principal reached out to the Transportation Team after the student's bus was not picking up the child in the morning. The Transportation Team contacted OSSE, who informed the Transportation Team that the student's TRF only included afternoon transportation services. In another communication, OSSE emailed the District's Transportation Team asking the District to correct a morning pick-up address for a student after a parent submitted a complaint alleging the bus had not attempted to pick up a student. OSSE determined that the student's pick-up address was listed as a District campus and asked the District to update the student's TRF to ensure accurate morning pick-up.

*iii. Changes to the submission of Transportation Requests, effective 2025-2026 SY*

At the start of the 2025-26 school year, OSSE launched a Parent Portal that altered the District's processes for submitting transportation requests to OSSE by including parent/guardians of special

education students in the submission process. Under the current process, the Section 504 Coordinator or the LEA Representative Designees finalize Section 504 plans or IEPs, respectively, for students, which document transportation eligibility. The student's IEP information syncs into OSSE's transportation database, alerting OSSE to send the parent/guardians a link to the Parent Portal. For Section 504 students, eligibility information is not directly synced into OSSE's transportation database, requiring the District to input eligibility information to OSSE's transportation database from the District's 504 database. Once completed, OSSE can generate an email for the parent/guardian to access the Parent Portal.

For parents/guardians of eligible students, once logged into OSSE's Parent Portal, parents select from one of three transportation options: no transportation needed, parent stipend program, OSSE-DOT transportation. Parents/guardians can also confirm or update addresses. After a selection is made, the Section 504 Coordinator or the LEA Representative Designee receives an email notifying them of the selected transportation method. The LEA Representative Designee or the Section 504 Coordinator then logs into OSSE's transportation database to verify the information entered by the parent and add information about any specialized equipment or transportation assistance required for the student. Once a student is routed, parents/guardians can log into the Parent Portal to make changes to the student's pick-up address and drop address or cancel transportation requests.

The Section 504 Coordinator confirmed the data delays between the District's Section 504 database and OSSE's transportation database continue with the new submission process. The Section 504 Coordinator stated that after a student is found eligible, "several days later—the information will populate in the parent portal." In one email, a school staff member informed the Section 504 Coordinator that a parent had contacted the school to report that she was unable to access the Parent Portal. In another email, the Section 504 Analyst responded to a parent who did not have access to the Parent Portal, informing the parent that access to the parent portal would be established within "24 to 48 hours" after the District submits transportation eligibility information to OSSE.

## **I. Bus Delays, Cancellations and Safety Incidents**

OSSE's website lists all bus routes operated by OSSE and the status of each bus route, identifying buses that are late or down. OSSE defines a "late route" as a bus route that is experiencing late school-pick up or late drop-off of up to 90 minutes and a "down route" as a route which OSSE is attempting to assign to another driver due to staffing shortages, resulting in a service delay for those students. If OSSE is unable to service the route, OSSE notes the status as "no service." OSSE's website does not provide information about when a bus will arrive at a particular stop, although OSSE equips buses with GPS devices and monitors the timing of bus routes using a GPS system.

### *i. Evidence of delays, cancellations, and related issues*

OCR reviewed due process determinations that cited transportation delays and unreliability, including students being dropped off at the incorrect school after a change of placement where a student's school changed, and delay in initiating transportation services following eligibility.

During interviews, District staff report being notified of bus delays daily via automated emails sent by OSSE to an undefined group of District staff. The Transportation Manager stated the emails go out to “everyone involved with the route.” The Transportation Manager further added that the daily notifications have up to 30 bus routes listed and at times include information about the length of delay. The Transportation Coordinator was not able to identify other individuals in the District who received the bus delay notification emails from OSSE. The Transportation Coordinator indicated that the emails are sent daily and include the bus route numbers that are delayed, with OSSE sometimes generating multiple delay notifications in one day. The Section 504 Coordinator noted receiving the list of delayed bus routes in “rapid fire emails of buses being delayed due to the morning commute.” The Section 504 Coordinator further stated that the emails from OSSE do not contain school or student information. Emails show school staff and parents emailing the District’s Transportation Team and the Section 504 Coordinator to report bus delays. In one email, a school principal emailed the Transportation Manager a list of students whose buses consistently arrived late to school, including one student who was dropped off at 10:55am for school. The Transportation Manager forwarded the information to OSSE and wrote that she would “defer to OSSE on next steps.” In another email, a school staff member reports a bus arriving at 10:57am at a student’s home to pick up a student for school. Further, in another email, school staff report delayed arrival of buses to school, describing the arrivals as “extremely late,” including one example of a bus dropping off students between 10 and 11am, despite school starting 8:45am.

Email communications also reveal the District received emails from OSSE acknowledging bus delays impacting District students. In one email, OSSE wrote to the District’s leadership, noting “this morning, we faced significant challenges due to higher than usual levels of absenteeism within our transportation team, which unfortunately led to delays and disruptions that directly impacted DCPS.”

OCR reviewed several emails from parents and school staff to the Section 504 Coordinator reporting buses not showing up to pick up students for school. The Section 504 Coordinator responded to these reports by directing parents and schools to the OSSE Parent Resource Center. In one email, a school reports to the Section 504 Coordinator that a bus was not picking up a student, forcing the family to pay an Uber to transport the student to school. In another email, a District social worker emails the Section 504 Coordinator alerting him that a student’s bus did not arrive in the morning. Other times, school level staff emailed the Section 504 Coordinator to confirm a student’s transportation request was properly submitted after incidents of a student’s bus not picking up the student for school.

ii. *The District’s Access to Information About Students on Buses, Including Scheduled and Recorded Arrival and Departure times*

District staff reported varying access to bus route information for students. According to the Transportation Team Manager, OSSE’s transportation database maintains trip tickets for students where a student’s bus route, pick-up, drop-off locations and scheduled arrival and departure times are recorded. The Transportation Team Manager noted that District and school-level staff with access to OSSE’s transportation database have access to the trip ticket information, with tiered data privileges. At the District level, the District’s Transportation Team have access to trip ticket information for all students in the District. At the school-level, LEA Representative Designees, are

able to access trip ticket information, for their respective students. The Transportation Manager did not know whether school-based section 504 coordinators had access to trip ticket information.

The Section 504 Coordinator asserted that no one on the 504 central office team had a list of which students were on which bus and was not aware of the District having such a list. However, emails indicate that the Section 504 Coordinator had access to bus information for specific students. In an email responding to a school-based section 504 coordinator's inquiry about the status of a student's transportation request, the Section 504 Coordinator provided screenshots of the transportation database and identified the bus route for the student, writing "it looks like the student is on route 720, with the following pick-up and/drop-off times." In another email, the Section 504 Coordinator responded to a school staff member's request for a student's bus information and provided the student's ridership profile, which included the student's vehicle and route number.

Interviews with District staff demonstrated inconsistent practices across the District with respect to documentation of bus arrivals and departures to and from school. The Special Education Director stated she was not aware of how each school documented bus arrivals and departures, or who at each school was charged with recording such information. The Special Education Director identified the Transportation Coordinator and Transportation Manager as the individuals responsible for overseeing transportation processes. The Transportation Team Manager noted that there was no requirement that schools record bus arrival and departure times, but some schools did record this information. The Section 504 Coordinator asserted he did not have access to data around bus timelines, or when students were arriving to school, which made it "impossible" to determine patterns of buses that were consistently delayed.

In an email, the Transportation Coordinator asked OSSE whether a student's bus had stopped by to pick up the student for school. The Transportation Coordinator informed OSSE that the student arrived late to school after the student's parent was forced to drop off the student and noted a complaint had been flagged for the District's Chancellor's Office. OSSE responded to the District's email inquiry writing, "Per GPS the bus attempted to pickup at 7:37." The District did not provide additional emails suggesting the District took additional action beyond confirming the receipt of the information from OSSE.

OCR has not found evidence to indicate that the District consistently provided IEP or Section 504 teams at the school level information outlining delays or cancellations in transportation after receiving notification of bus delays and cancellations from OSSE.

*iii. The District's Actions Following Bus Delays*

Across interviews, the District did not identify actions required of IEP or Section 504 teams after being informed of bus delays. The Special Education Director affirmed that the District did not provide training to staff about the IEP team's role in relation to bus delays. The Transportation Coordinator reported not doing anything with the delay notification emails sent by OSSE and being unaware of how schools were informed if buses would arrive late to school. The Transportation Team Manager noted that the Transportation Team would only follow up with OSSE about a delayed bus arrival if the school reached out to the Transportation Team. The Transportation Team Manager asserted there are no protocols or actions that followed once the District received notice of a bus delay. The Transportation Team Manager noted that some schools would call OSSE's

Parent Resource Center directly to find out where the bus was and how long until the students would be dropped off. Other times, if a bus had been consistently delayed, schools would email the Transportation Team Manager to alert OSSE.

Further, emails showed that the Transportation Team instructed LEA Representative Designees to contact OSSE's Parent Resource Center directly "for all route issues and complaints about late/early bus pick-up/drop off" and only contact the Transportation Team "if warranted." The Transportation Team did not elaborate on what situations would warrant the Transportation Team's involvement.

Communications between the Transportation Team and the District's Chief of Operations ("Operations Chief") responsible for overseeing the Transportation Team, also indicated a lack of process for responding to bus delay information. In one email, the Operations Chief forwarded to the Transportation Manager a notification of a bus delay sent by OSSE. The Operations Chief asked the Transportation Manager whether the District was tracking buses, whether the District knew which schools were impacted by the bus delay, and if the bus delay information should be escalated to the District's leadership cabinet. The Transportation Manager responded only to the question concerning impacted schools, writing "100 of these emails go out a day. No we don't know what school it impacts." The Operations Chief replied, confirming she too received emails from OSSE about bus delays and agreeing that "plenty" of notifications about bus delays went out "in the mornings and afternoons." The Operations Chief further indicated the bus delay notification she had forwarded to the Transportation Manager was distinct from other bus delay notifications in that only one bus route was listed, and the notification arrived at "nearly 5pm." The Chief Operations Officer then concluded: "Since we didn't hear more this time, I am assuming the students got home soon after this was sent."

Emails demonstrated that parents emailed the District and included information about how bus no-shows and delays were impacting their child's attendance. In those instances, OCR found no evidence indicating that the District offered to address the students' missed instructional time or correct the student's absences or tardies unless directly asked by the parent to do so. For example, in one email, a parent informed a school's Section 504 coordinator about tardies appearing on the student's report card stemming from transportation delays. The District Section 504 Coordinator responded to the parent's email and indicated he had reached out to OSSE, who was "working to resolve the issue about bus timeliness across the district." The Section 504 Coordinator further advised the parent to continue to notify OSSE "whenever there are issues with the bus showing up on time to document these concerns." Neither the Section 504 Coordinator nor the school based 504 coordinator addressed the parent's concern with the student's recorded tardies, including whether the student was entitled to any compensatory services for missed instruction. In another email communication, a parent informed the school that her daughter had not been present in school due to transportation issues. The parent noted concern about her daughter's missed instructional time and upcoming school assignments and tests. The school forwarded the email to the Transportation Team who contacted OSSE's Parent Resource Center. Again, OCR did not find evidence of the District assessing whether the missed instructional time constituted a denial of FAPE.

iv. Transportation Safety Incidents

OCR found that the District does not have any guidance articulating steps schools should take upon learning of safety incidents on buses. In particular, OCR did not find evidence indicating that the District regularly and consistently gathers information about safety incidents on buses and shares it with a student's Section 504/IEP team.

The District explicitly acknowledged that it did not collect information about safety incidents. The District stated they did not "process formal or informal complaints or reports of harm or violence on OSSE buses or other OSSE transportation" and pointed to OSSE as the appropriate recipient to collect such information. Additionally, the Transportation Team Manager reported that after learning about a safety incident on a bus, she informs OSSE of the incident to explore solutions, including developing a safety plan for the student or assigning the student to a new bus route. She did not indicate that this information is conveyed to the student's Section 504/IEP team. The Section 504 Coordinator acknowledged receiving emails from OSSE relating to safety incidents but expressed limitations in being able to take action because the District "did not have access to which students are on which bus." In an email the Transportation Coordinator indicated to her supervisor that she did not usually "escalate or loop any DSI folks" for any transportation related matters, suggesting that the District's Division of Specialized Instruction (DSI) with special education oversight did not regularly receive information about transportation safety incidents.

The emails OCR reviewed did not indicate that the District communicated safety incidents to the student's Section 504 or IEP team. In one email, a school staff member noted that a student had been subjected to offensive language from the bus driver during transportation and the student no longer felt comfortable on the bus with this driver. The District's Transportation Team contacted OSSE to place the student on a different bus, but there is no information that this was conveyed to the Section 504/IEP team. In another example, the Transportation Coordinator received an email from DCPS' grievance office, informing the Transportation Coordinator of a safety incident involving a student who was bitten by another student multiple times and physically assaulted on the bus by a peer. The Transportation Coordinator emailed OSSE, who routed the students on two separate buses, but there is no indication that the Section 504/IEP team was made aware of this. In a third example, the District's Transportation Team received an email from a school staff member, reporting that a group of students, ages 3 to 5, were being transported in a private limousine, which was not equipped with age-appropriate seating and restraints. The District's Transportation Team forwarded the email to OSSE to address. Two weeks later, the same school employee wrote again to OSSE and copied the District. In the update email, the school employee shared an incident had occurred on the bus where a student could not be self-contained and attacked another student. The school staff member asked for assistance in addressing the safety issue on the bus. OCR did not find evidence to indicate that the Section 504/IEP teams were made aware of this.

#### IV. ANALYSIS

After carefully considering all the information obtained in the investigation, OCR concludes that the District is not in compliance with statutory and regulatory obligations under Section 504 and Title II, as discussed below.

OCR found that the District's approach to special education services may be resulting in: (a) a failure to appropriately evaluate students with disabilities; (b) a failure to complete evaluations in a reasonably prompt manner; (c) a failure to consistently provide individualized placements; and (d) a failure of a group of knowledgeable people to consistently make evaluation and placement decisions for students with disabilities.

OCR found that the District often makes evaluations contingent on the use of MTSS, which results in students not being referred for an evaluation or, at best, a delay in such an evaluation. The District's written policies and procedures taken together indicate that MTSS is a necessary first step even when the District learns of a concern that a student is struggling either academically or behaviorally as a result of a suspected disability. While there is language suggesting that MTSS can proceed simultaneously with the eligibility process, there also is language in various guidance documents indicating that the eligibility process cannot begin until MTSS has proven unsuccessful, which is likely to result in an unreasonable delay in evaluating students with suspected disabilities. For example, the MTSS Manual includes language indicating that special education is contingent on MTSS, noting that "[i]f the student fails to respond to several well-implemented interventions, consider a referral to Special Education..." (emphasis added). While the District certainly has flexibility in how to utilize MTSS to support struggling learners, the District has an obligation to ensure that evaluations of children suspected of having a disability are not delayed or denied because of implementation of such supports.

Similarly, for students with behavioral issues also suspected of having a disability, several District guidelines and guidebooks state, and the Director of Student Supports confirmed, that when a general education student presents with both behavior issues and a possible disability that is not responding to MTSS Tier 1 interventions, the student will be referred to the school MTSS team and/or the school mental health team first, rather than for evaluation for special education and related aids and services. In these instances, OCR has a particular concern with a referral to the mental health team, where there seems to be no established process to ensure that students are concurrently or subsequently referred for evaluation where appropriate.

Moreover, multiple forms the District uses in the referral and eligibility process require staff to indicate that interventions have been implemented at Tiers I and II for six weeks per tier prior to an evaluation. This means that the eligibility process sometimes may not begin until three months after a concern is raised, which could result in an unreasonable delay that can deny a student a FAPE. The use of mandatory timelines within an MTSS system cannot result in the delay or denial of evaluations of students suspected of having disabilities. The due process cases OCR reviewed raise a further concern that the District may initiate MTSS after a concern is raised and never make a determination of whether the student should be evaluated for eligibility, even when a disability and a need for special education or related aids and services is otherwise suspected. In the cases OCR reviewed, this was sometimes true even when a parent requested that the student be evaluated and provided documentation of a medical diagnosis. Additionally, discrepancies among guidebooks related to FBAs likely contribute to students not being referred for evaluation to determine eligibility for special education or related aids and services.

OCR also found that the timeline that the District has established for completion of the AED meeting and obtaining parental consent may result in an unreasonable delay in the completion of the eligibility process. The District's guidelines provide that the AED must be completed within

30 days of a referral. If the AED results in a determination that additional assessments are needed to make an eligibility determination, parental consent is obtained upon completion of the AED meeting, and the District then has an additional 60 days to reconvene to determine eligibility. If a student is determined to be eligible, the District then must obtain a second consent from the parent or guardian, this time for initial provision of services, and provide the parent/guardian notice of a meeting to develop the initial IEP. The team then has an additional 30 days after the date of eligibility to develop an initial IEP, extending this process up to 120 days from the referral date, and 90 days from the date of the initial parental consent. This is well beyond the 60-day requirement from receiving parental consent laid out in both the IDEA and DC law. OCR reviewed multiple due process determinations where the hearing officer found that the District failed to timely evaluate the student because it waited until completion of the AED to obtain consent. In one case, for example, the hearing officer found a FAPE violation because the District never moved beyond the AED meeting.

OCR also found that decisions on eligibility and placement are sometimes made by individuals who do not constitute a group of people knowledgeable about the student, the meaning of the evaluation data, and the placement options as required by OCR's Section 504 regulations. For example, for students who may need related services like speech, occupational, or physical therapy, OCR found that the Speech and Language Guidebook states that the school-based Section 504 coordinator and the related service provider meet alone to determine whether additional information is needed to determine eligibility for the related service, without a Section 504 team meeting. The Audiology and OT and PT Guidebooks include similar language. In fact, with regard to related service placement decisions, the 504 Guide states explicitly that placement decisions are made by the related service provider (that is, speech pathologists, physical therapists, occupational therapists, etc.), implying these decisions are not made by a Section 504 team. Additionally, with regard to mental health, OCR found that the mental health team conducted many of the decisions normally made by Section 504 teams and IEP teams, such as referring students to community-based services, developing a crisis plan, doing mental health screenings to help with targeted interventions, and arranging for social and emotional support by District social workers or psychologists, without referring students for evaluation. While the Section 504 Coordinator told OCR that the mental health team determines whether to refer a student for evaluation, the administrator who oversees mental health teams told OCR that the school mental health team does not refer students suspected of having a disability for evaluation but rather may raise a concern about a student to either the 504 team or the special education team. This highlights the absence of an established process to ensure that students suspected of having a disability with mental health concerns are referred for evaluation as appropriate. The flow chart found in multiple District publications in which a referral to the school social worker for a mental health consult or evaluation is a dead end further illustrates this point.

OCR reviewed several due process determinations for cases filed during the review period in which the hearing officer found that the District denied students a FAPE when a group of knowledgeable people failed to evaluate or reevaluate the student for special education or behavioral support services, despite student behavior, mental health, and/or other concerns that were potentially caused by a disability. These include cases regarding students displaying aggressive behavior, students who had experienced mental health hospitalizations and referrals to out-patient facilities for concerns of self-harm, and students hospitalized for suicide attempts.

The DCPS guidance includes language that discourages IEP or Section 504 teams from conducting an individualized evaluation. For example, the School Social Work Guidebook and FBA Guidelines allow determinations to be made for an FBA-II based on disability category rather than individual need. As another example, the Social Worker Handbook states that BSS cannot be added to an IEP plan if students are only eligible under the Speech Language eligibility classification. The guidebooks also suggest that BSS may be removed from a plan if the school social worker does not have the capacity to serve the student. OCR reviewed multiple due process decisions where the hearing office found that the District made placement decisions not based on the student's disability-related needs. OCR also reviewed due process cases where the hearing officer found that related services were removed from a student's plan without conducting an assessment of individual need.

The District's Section 504 Guide also includes language discouraging individualized determinations in the provision of accommodations for students with disabilities. For example, the Section 504 Guide discusses the inappropriateness of certain accommodations except under limited circumstances, including extended time, dedicated aids and nurses, and modifications to the attendance policy. It states that a Section 504 team should provide a student with accommodations to the DCPS Attendance Policy only as a last resort and such a decision must be made "relying heavily on the medical orders and guidance from the [District] Attendance Team. It also cautions school-based Section 504 coordinators about "overaccommodating" students and outlines considerations that are not generally relevant to determining what accommodations are appropriate for an individual student. For example, the 504 Guide explains that providing more accommodations than necessary "can provide students with an unfair advantage over their peers" and hinder individual development. The 504 Guide further cautions that an excessive number of accommodations is difficult for schools to implement with fidelity and creates an undue burden on school staff.

OCR found that in certain instances, a student's refusal to participate in a related service was sufficient to deny the initiation or continuation of that service, even if the service is otherwise needed to provide the student with a FAPE and the District has yet to discuss the reason for that refusal or whether there are alternatives that can provide a FAPE. For example, with respect to speech language services, the SPL Guidebook Training lists criteria for determining whether to discontinue speech and language services, with one of the criteria being that the student has "a documented history of refusal of services." The document implies that refusal alone is grounds for rescinding the related service, without an individualized assessment of what is best to provide a FAPE. Similarly, Appendix 7 to the School Social Worker Handbook states that in order to be eligible for BSS services, a student must first self-report as a willing participant. Relatedly, a student will be exited from BSS services if he/she exhibits "a consistent, willful, refusal by the student to engage in counseling."

OCR found that each of the issues identified above, when taken as a whole, may contribute to an environment where parents/guardians need to rely on due process complaints to ensure that their child receives a FAPE. A December 2024 Report of the District of Columbia Advisory Committee to the U.S. Commission on Civil Rights that was one of the impetuses for this directed investigation stated that "data shows that the District of Columbia has historically received significantly more complaints per 10,000 students in the special education area... than any other state or territory in the United States," and that as a result, the District's "dispute resolution system

places the burden of accessing special education services on students and their families” rather than the District itself.

OCR also found that the District’s transportation process for students with disabilities, as implemented, is resulting in delays in initiating transportation services for students and interruptions in transportation services for students, preventing students’ timely and reliable access to services to which they are entitled for a FAPE. OCR found that the District’s Transportation Team, who oversees submission of TRFs to OSSE, does not have training on special education yet nonetheless sometimes engages in questions of special education eligibility. Emails also show that at times, OSSE contacts the Transportation Team to flag errors and identify corrections that need to be made to ensure transportation service for the student, but this information was not always relayed to the LEA Representative Designee. Problems with submission of TRFs and errors in TRFs also extend to students with Section 504 plans.

OCR also found delays in the process. For example, interviews with the Section 504 Coordinator identified problems with the syncing of the District’s Section 504 database with OSSE’s transportation database, which result in students with Section 504 plans waiting longer to access transportation services. OCR also found evidence that TRFs for students with IEPs are at times not submitted to OSSE or are submitted with errors, resulting in delays. Moreover, OCR found examples of errors with TRF submission resulting in students being dropped off/picked up at the wrong address, students not being picked up at all, and students not having access to specialized equipment needed for transport.

OCR found that despite notice to the District of multiple examples of bus delays, cancellations, and safety incidents, which resulted in students missing instructional time or raising safety concerns, the District does not consistently relay this information to a Section 504 or IEP team so that it can draw upon this information as part of any Section 504 or IEP meeting. Moreover, the evidence indicates that the District does not consistently convene IEP or Section 504 meetings to determine whether students are denied FAPE because of these delays or safety concerns and if so, whether they are entitled to compensatory services. The evidence OCR reviewed fails to indicate that the District regularly tracks or monitors delays or safety concerns, and even when it does so, there is no evidence that Section 504 teams, or IEP teams have access to this information. OCR also did not find any policies, procedures, or written guidance on how to track or otherwise ensure a FAPE for students who fail to consistently receive transportation services. As a result, OCR determined that the District lacks a process to ensure that students with disabilities who have issues with transportation are receiving a FAPE and, as necessary, compensatory services or other interventions.

## **V. CONCLUSION**

This concludes OCR’s investigation. This letter of noncompliance should not be interpreted to address the District’s compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR’s determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied on, cited, or construed as such. OCR’s formal policy statements are approved by a duly authorized OCR official and made available to the public. Individuals who file complaints with OCR may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law or regulation enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law or regulation enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

This letter is accompanied by a proposed resolution agreement that specifies actions that will remedy the District's noncompliance with Section 504 and Title II, and to prevent any similar instances where future violative conduct may recur. If OCR determines an agreement will not be reached, the Department may initiate enforcement action, including referral to the U.S. Department of Justice or other means authorized by law, including the initiation of an action to suspend, terminate, or refusal to grant or continue federal financial assistance.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal Privacy.

If you have any questions, please contact me at [Sarah.Morgan@ed.gov](mailto:Sarah.Morgan@ed.gov).

Sincerely,

/s/

Sarah Morgan  
Program Manager

Enclosure