UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

August 3, 2026

By email only to [redacted content]

Thomas Taylor, Ed.D.
Superintendent
Montgomery County Public Schools
Rockville, Maryland

Re: Montgomery County Public Schools–OCR Complaint Number 03-24-1435

Dear Dr. Taylor:

This letter is to advise you of the outcome of the U.S. Department of Education, Office for Civil Rights' (OCR) investigation of this complaint filed against Montgomery County Public Schools (District) on July 8, 2024, alleging discrimination on the basis of disability as well as retaliation. The Complainant alleged that the District discriminated against her daughter (the Student) by failing to timely document and implement the Student's Individual Educational Program (IEP) during the [redacted content] school year. The Complainant alleged that the District created a hostile environment by making false claims regarding the Student's behavior, misusing the attendance policy for the purpose of truancy, and failing to implement the Student's IEP. The Complainant also alleged that, after the Complainant advocated for the Student's rights, the District retaliated against the Complainant by reversing its position on agreed upon strategies and threatening security involvement.

OCR investigated this complaint pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. Section 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of federal financial assistance; and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. Sections 12131 *et seq*., and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a recipient of federal financial assistance from the Department and as a public entity, the District must comply with Section 504, Title II and their implementing regulations.

OCR investigated the following issues:

1. Whether the District failed to provide the Student with a free appropriate public education, in violation of Section 504 and Title II.

2. Whether the District failed to respond to a hostile environment of the Student based on disability, in violation of Section 504 and Title II.

3. Whether the District retaliated against the Complainant, in violation of Section 504 and Title II.

During the investigation, OCR reviewed documents from the District, including the Student's IEPs, meeting notes, and e-mails. OCR also interviewed the Student's general education teacher (Teacher), the Principal, and the Complainant. OCR attempts to reach the Student's special education case manager (Case Manager) were unsuccessful.

After carefully considering all the information obtained, OCR finds that there is insufficient evidence of a violation of Section 504 and Title II as it relates to the issue of a hostile environment and retaliation (Issues 2 and 3); however, OCR finds that the District failed to properly implement the Student's IEP (Issue 1). Because OCR has reached a mixed determination (i.e., finding insufficient evidence of a violation with regards to some allegations and determining a violation with regard to others), OCR will resolve the complaint pursuant to Section 303(c) of the CPM, which is appropriate for complaints with multiple allegations, where the allegations will be resolved in different ways. Following are the relevant legal standards and a summary of the evidence obtained during OCR's investigation.

Legal Standards

The Section 504 implementing regulation at 34 C.F.R. § 104.4(a) provides that no qualified individual with a disability shall be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance.

In addition, the Section 504 implementing regulation at 34 C.F.R. § 104.33 provide (a) that a recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate education to each qualified individual with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the disability; and (b) that provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of persons with disabilities as adequately as the needs of persons without disabilities are met and (ii) are based upon adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34, 104.35, and 104.36. The Title II implementing regulation at 28 C.F.R. § 35.130 (a) and (b) include similar provisions applicable to public entities.

Harassment of a student based on disability can create a hostile environment in a school's program or activity when the harassment is subjectively and objectively offensive and is so severe or pervasive that it denies or limits the student's ability to participate in or benefit from the school's services, activities, or privileges. In determining whether a hostile environment based on disability has been created, OCR examines the totality of the circumstances, including the type of harassment, the frequency and severity of the conduct, the nature of the student's disability, the age and relationship of the parties, the setting and context in which the harassment occurred, whether other incidents have occurred in the school, and other relevant factors. If the alleged harasser is an agent or employee of a recipient, acting within the scope of their official duties, then the individual will be considered to be acting in an agency capacity, and the recipient will be deemed to have constructive notice of the harassment.

The Section 504 implementing regulation at 34 C.F.R. § 104.61 adopts the anti-retaliation provisions of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d, et seq., and its implementing regulation at 34 C.F.R. § 100.7(e). The Title VI anti-retaliation regulation, as incorporated by Section 504, provides that no recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by a law enforced by OCR, or because an individual has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under Section 504. Title II is interpreted consistently with Section 504.

A recipient engages in unlawful retaliation when it takes an adverse action against an individual either in response to or for the purpose of interfering with the exercise of a protected activity. To find a prima facie case of retaliation, each of the following three elements must be established: (1) an individual engaged in protected activity; (2) an individual experienced an adverse action caused by the recipient; and (3) there is some evidence of a causal connection between the adverse action and the protected activity. If all elements of a prima facie case of retaliation are established, then OCR considers whether the recipient has presented a facially legitimate, non-retaliatory reason for taking the adverse action. If so, then OCR considers whether the reason for the adverse action is a pretext for retaliation.

Findings of Fact

During the [redacted content] school year, the Student was enrolled in [redacted content] at [redacted content] (the School). The Student has an IEP for [redacted content]. The Student's IEP in effect at the beginning of the [redacted content] school year included the following accommodations and services: [redacted content].

The Principal told OCR that, at the beginning of the [redacted content] school year, the Complainant expressed concerns about the Student's [redacted content] related to transitioning to school. The Principal stated that the Complainant requested that the Student be permitted to arrive 10-15 minutes late until she adjusted to the school environment. The Principal stated that the School's start time was 9:30 a.m. and for the first 3-4 weeks of school, the Student arrived at approximately 9:45 a.m., or she was absent.

The Complainant told OCR that, as a result of the Student's difficulty with transitioning from home to school, the School created a transition plan for the Student. On [redacted content], the Case Manager emailed the Complainant to state that she would meet the Complainant and the Student at the side gate of the School at 9:20 a.m. and follow them to the side door to transition the Student from the Complainant to the Case Manager.

The Principal stated that the transition plan was implemented, but shortly after the Thanksgiving break, the Student began to arrive at school as late as 10:30 a.m. The Principal said the Complainant walked the Student to her classroom and initially stayed with the Student for 15-20 minutes, but as the school year went on, the Complainant remained in the classroom with the Student throughout the school day.

On [redacted content], the Complainant e-mailed the School's psychologist to inform her that the Student had a severe case of school refusal and requested her assistance. In response, the

School's psychologist contacted the Student's Teacher and Case Manager who expressed concerns regarding the Complainant's non-compliance with the agreed upon transition plan and its effect on the Student's attendance. The Principal and School's psychologist recommended setting up a meeting to address the transition plan moving forward.

The Teacher and Principal told OCR that they had a meeting after the winter break to discuss a new transition plan for the Student. The Teacher stated that the Case Manager, School's psychologist and the Complainant attended the meeting. The Principal stated that they created a gradual release plan that was set to begin on [redacted content]; however, it was never implemented because the Complainant refused to participate.

On [redacted content], the Complainant e-mailed the Case Manager and Teacher stating:

> [r]egarding my morning walk-ins with [the Student], I understand and share the team's long-term objective of fostering [the Student's] independence. However, considering her needs and our experience, upon further reflection following our meeting, I believe it's beneficial to continue this routine for now and believe it's crucial that we approach this transition carefully and gradually at the right time. . .. Once we are confident that we've worked together to identify any other supports she might need, I would be more willing to work with the team on a gradual plan for reducing my morning involvement.

The Principal stated, in response to the Complainant's e-mail, she, the Case Manager, the Teacher, and a paraeducator created a new transition plan for the Student that they shared with the Complainant for feedback. On [redacted content], the Complainant e-mailed School staff including the Principal and Teacher to inform them that she had retained an educational advocate for the Student.

On [redacted content], the Complainant e-mailed the Teacher to state the Student would likely be in school for a few hours in the afternoon, but she would be out that morning. The Teacher shared the Complainant's e-mail with the Case Manager, Principal and School's psychologist and stated that the Student had routinely arrived to school later in the day and stayed for 2-3 hours to include lunch, recess and one instructed lesson then the Student would leave with the Complainant.

On [redacted content], the Teacher e-mailed the Complainant stating it was best for the Student to stay at school for the full day, but if the Student could not stay independently and would leave before recess and lunch, the front office would mark the Student absent for the full school day.

On [redacted content], the Principal sent the Complainant a letter to state the Student had been absent from school for [redacted content] days. The letter notes that support was available to the Student to assist with getting her to school regularly.

On [redacted content], the Student's IEP team met to review and revise the Student's IEP. The meeting notes reflect that the Complainant raised concerns regarding the Student's receipt of [redacted content]. The meeting notes also reflect that the Complainant requested data on the Student's [redacted content]. The Complainant requested an updated [redacted content]. The

meeting notes state that the Complainant requested a trusted adult to serve as a bridge between the Complainant and the Student at school drop offs.

The meeting notes reflect that the IEP team offered the Student transportation services to help the Student transition to school independently; however, the Complainant and the Student's father declined. The IEP team updated the Student's [redacted content]. The IEP meeting notes state that "the family mentioned [redacted content] per week in the classroom[,] the IEP Team wanted to be clear that the hours included services from the Special Ed teacher, General Ed teacher and Paraeducator." The meeting notes state the IEP team "refused to take action" on the Complainant's request for [redacted content] because "there were no critical staff requests at the beginning of the year" and "refused" the Complainant's request for lunch bunches because it was voluntary for staff.

On [redacted content], the Principal e-mailed the Complainant to set up a meeting to discuss the Student's transition plan for the following school year. The Principal stated that she was aware that the Student was experiencing some difficulty; however, it was having a major impact on the instructional day for students.

Emails exchanged between School staff, the Complainant, the Student's father and the educational advocate on [redacted content], reflect that the Complainant and educational advocate raised concerns regarding the School's failure to implement the Student's IEP during the school year to include [redacted content] and that the Principal was "too loud" when telling the Student that she needed to sit down in her seat multiple times at lunch on [redacted content]. The Principal responded to the Complainant's concern regarding [redacted content] by stating that "additional staff has been requested but due to it not [being] agreed upon last school year/over the summer, there is a process that could possibly not have coverage for her until the next school year."

The Complainant told OCR that, during her observation of the Student at school, neither the Case Manager nor a paraeducator provided the Student with [redacted content]; the Case Manager did not provide the Student with [redacted content]; the Student's teachers and/or other IEP team members did not [redacted content].

The Complainant stated that instead of [redacted content] on a weekly basis, the Student received approximately [redacted content] from her general education teacher; [redacted content] from her Case Manager and [redacted content] from a paraeducator for a total of [redacted content] a week. The Complainant stated that there was a three-week period between [redacted content] when the Case Manager was not present in the Student's classroom. Additionally, the Complainant stated that the Student did not have [redacted content] each on a consistent basis.

The Teacher told OCR that the Case Manager was mainly responsible for providing [redacted content]. The Teacher stated that the Case Manager provided [redacted content] to the Student a few times, but the Case Manager was not consistently present due to an overlap in her schedule and the need to service other students at the school. The Teacher stated that she did not observe a paraeducator providing [redacted content] to the Student during [redacted content]; however, on occasion, she would check in with the Student, if the Complainant told her the Student was not eating her lunch or to make sure the Student had what she needed.

The Teacher said she provided the Student with [redacted content], and the Case Manager or a paraeducator provided [redacted content] with the Student. The Teacher stated that the Case Manager's schedule was inconsistent, and the Case Manager did not visit her classroom every day. The Teacher said the Case Manager was out for 1-2 weeks between [redacted content], but a substitute teacher provided the Student with services during the Case Manager's absence. The Teacher stated, overall, she does not believe that the Student received [redacted content] on a weekly basis in her classroom during the [redacted content] school year.

The Teacher stated that the Student received [redacted content] with her classwork. She stated that she used a [redacted content] with the Student, and for [redacted content] such as school assemblies, she provided the Student with [redacted content]. The Teacher stated that she never observed the Principal or any other school staff yell or scream at the Student. The Teacher said that both she and the Case Manager used [redacted content] for the Student to follow steps and that they both used [redacted content] for scheduling and assignments. The Teacher stated that she used [redacted content] in the classroom but that she was not sure if the Case Manager did the same. The Teacher stated that the Student was provided [redacted content] and that she and the Case Manager helped the Student [redacted content] during the day by asking the Student to [redacted content]. The Teacher stated that she and other School staff modeled [redacted content] with the Student when she was upset. The Teacher said the Student was allowed [redacted content], and on occasion, the Case Manager or the Complainant would have the Student do [redacted content] to release energy. The Teacher stated that the Student was also permitted to [redacted content] and that the classroom had routine [redacted content]. The Teacher said the Student [redacted content].

The Principal told OCR that she completed walkthroughs once a week for 10-15 minutes each. She stated that, during her walkthroughs, she observed the Complainant sitting at the back of the classroom taking notes. The Principal said the Complainant believed that the Student was entitled to [redacted content], but that the School needed to clarify that accommodation based on the wording of the IEP; however, a paraeducator was available to the Student for [redacted content], as needed. The Principal stated that the Case Manager provided the Student with [redacted content] and that the Case Manager had a schedule to [redacted content] of class. The Principal stated that she observed the Teacher and Case Manager use [redacted content] with the Student. The Principal stated that, on one occasion, she redirected the Student during lunch because the Student was running on the stairs near the stage. The Principal stated that her "voice carried" when she spoke to the Student, but she did not yell or scream at her. The Principal stated that she observed the Student using [redacted content] and that the Teacher and the Case Manager helped the Student with [redacted] and allowed the Student to go to the [redacted content]. The Principal also stated that the Student displayed behaviors that were typical for the Student's age, and that the Student never received referrals or disciplinary actions during the [redacted content] school year.

On [redacted content], the Principal responded to the Complainant, the educational advocate, and the Student's father's emails from [redacted content]. The Principal's email stated that no one could dictate her voice levels while students were in her care and when she is ensuring over 600 plus students hears her directive for safety. The Principal stated that all students will be redirected when not following safety measures correctly. The Principal stated that she observed the Student running around the lunchroom and jumping on the stairs with 100 plus students

present and she observed the Student yelling and screaming at the Complainant and her father in the hallways causing disruption to the other students during testing. The Principal stated that the Student was expected to follow rules and would be redirected like any other student. The Principal informed the Complainant that as of [redacted content], the Complainant and the Student's father were not permitted to stay at the school all day with the Student. The Principal stated that the Complainant should meet the Teacher and the paraeducator in the main office and they will be responsible for escorting the Student to her classroom.

The Principal's email stated:

> I have shared this plan with the Executive Director and Security Team. If you are late, the time will be documented, and the[n] you must notify the office. Parents will still need to come to the main office to sign in your child. You will not be permitted to go through the side doors as those doors will be locked. This is the expectation of all parents as the schools take safety precautions. You communicated that you respectfully disagree with not being able to spend the entire day at school due to your child's IEP not being followed. Your comment is noted. But the practice of having a parent inside the building/classroom the entire day will not continue as of [redacted content]. You have shared that you will get an attorney to let you inside the classroom. This information is noted. No further discussion will be entertained.

The Principal told OCR that she sent the [redacted content], e-mail because the Complainant refused to participate in the transition plan for the Student, and she received complaints from other parents regarding the Complainant approaching other students and her presence in the classroom. The Principal stated that she mentioned sharing the plan with security because she wanted her staff and the Student's parents to know that the Student would get to class safely and it was her responsibility to ensure the safety of the other students on campus.

On [redacted content], the District sent the Complainant emails to inquire about the Student's absences, the possible impacts on the Student's education due to absenteeism and to share contact information for school staff identified to help improve the Student's attendance.

The District's attendance policy states that "[e]ach school will establish structured protocols to promote student attendance by regularly reviewing disaggregated attendance data, conducting parent/guardian outreach and providing incentives as appropriate, conducting root cause analyses of irregular attendance, and implementing targeted attendance interventions." Additionally, the policy states that "each classroom teacher is responsible for recording the attendance of the students in class." The policy notes that the most persistent cases of chronic absenteeism should be referred to the school well-being team for root cause analysis and intensive problem solving and structured attendance interventions should be documented and monitored according to established procedures. The policy states that an elementary school student with excessive absences and/or tardies, both lawful and unlawful, may be referred for appropriate intervention at the discretion of the principal.

On [redacted content], the Complainant applied for Interim Instructional Services (IIS) for the Student. On [redacted content], the District sent a letter to the Complainant noting that the

Student missed [redacted content] days of school. The letter notes that a student is deemed chronically absent if the student misses 18 days of school, regardless of the reason for the absence. The letter notes that unlawful absences are a violation of state's education code, but the letter does not specifically note truancy or related consequences.

The Principal told OCR that District schools are responsible for taking attendance, but the District's main office is responsible for monitoring each student's attendance for truancy purposes and generating "warning letters" that are distributed to a student's parents by the school's principal. The Principal stated that she disbursed the "warning letters" to the Complainant, but no actions were taken against the Complainant or Student. The Student's attendance records reflect that she was absent or tardy for [redacted content] days during the [redacted content] school year.

On [redacted content], the District approved the Student to receive IIS from [redacted content], to [redacted content]. The Complainant told OCR that the Student completed the [redacted content] school year in IIS and is currently enrolled in another school and program for students with [redacted content] within the District.

Analysis

The preponderance of the evidence supports that the District failed to consistently provide the Student with [redacted content] on a weekly basis as a required by the Student's IEP. The evidence shows that the Student received [redacted content] "as needed" or a "few times," at most. While the Principal stated that the IEP team needed clarification regarding the Student's need for [redacted content], OCR finds that the plain language of the IEP in effect while the Student was enrolled at the School requires that the District provide the Student with [redacted content] on a daily basis. Moreover, IEP meeting notes from [redacted content], and the Principal's e-mail to Complainant on [redacted content], suggests that the District was aware that the Student was entitled to that [redacted content]; however, due to a shortage of staffing and/or funding, the District was unable to provide the same.

Additionally, the IEP allows [redacted content] from a special education teacher, general education teacher, or instructional assistant. The Teacher provided [redacted content], while the Case Manager mainly handled [redacted content]. When the Case Manager was absent, substitutes stepped in; however, even when present, the Case Manager did not visit daily, resulting in the Student not receiving the required [redacted content] per week during the [redacted content] school year.

OCR finds that there is insufficient evidence to support a failure to implement the remaining accommodations in the Student's IEP. Both the Teacher and Principal reported observing the Student receiving the accommodations.

Moreover, the Complainant asserts that the District created a hostile environment for the Student by making false claim regarding the Student's behavior, misusing the District's attendance policy for the purpose of truancy and failing to implement the Student's IEP; however, the evidence does not support the same. The record demonstrates that the Principal reported to the Complainant the need to redirect the Student's behavior on two occasions in [redacted content];

however, the Student never received a referral and had no disciplinary record for the [redacted content] school year. Additionally, the evidence shows that the Student was chronically absent or tardy during the [redacted content] school year due to the Student's difficulty with transitioning from home to school independently. The evidence supports that the School followed the District's attendance policy and procedures when sending the Complainant letters to notify her of the Student's absences, and there is no evidence to suggest that the District harmed the Student as a result. While OCR finds that the District failed to properly implement parts of the Student's IEP, the District's actions, as discussed above, individually or in totality, are neither severe nor pervasive to warrant a finding of a hostile environment.

Lastly, as it relates to the Complainant's allegation of retaliation. OCR finds that there is insufficient evidence to support the same. The evidence shows that the Complainant engaged in a protected activity when she raised concerns regarding implementation of the Student's IEP on [redacted content]. OCR considers the change to the Student's transition plan on [redacted content] and notice of the same to the School's security team adverse actions. The evidence shows that there is a causal connection between the protected activity and the adverse actions, as the change in the Student's transition plan and the notice to the security team occurred 22 days after the Complainant raised concerns about the implementation of the IEP. However, the evidence supports that the District's actions were a result of complaints from other students' parents in the classroom and the Complainant's indication that she would not cooperate with a transition plan, at that time. OCR finds that the District's reasoning for taking the adverse action is legitimate and non-retaliatory.

Conclusion

For these reasons, OCR finds that there is insufficient evidence to find that the District harassed the Student based on disability or retaliated against the Complainant, in violation of Section 504 and Title II. However, OCR finds that the preponderance of the evidence supports that the District violated Section 504 and Title II by failing to provide the Student with [redacted content] as required by the Student's IEP during the [redacted content] school year.

To resolve the compliance issue identified above, the District signed the attached Resolution Agreement (Agreement) that requires the District to convene an IEP meeting to evaluate whether the Student requires compensatory and/or remedial services for [redacted content] school year and provide Section 504 training to all instructional staff, paraeducators and administrators at the School.

This concludes OCR's investigation of the complaint. This letter 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 upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The Complainant may have a right to file a lawsuit 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 any individual because that individual asserts a right or privilege under a law

enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

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

If you have any questions regarding this matter, please contact Paulaine Flerijean, General Attorney, at paulaine.flerijean@ed.gov.

Sincerely,

/s/

Wendy Gatlin
Compliance Team Leader