



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION III  
DELAWARE  
KENTUCKY  
MARYLAND  
PENNSYLVANIA  
WEST VIRGINIA

March 31, 2022

**IN RESPONSE, PLEASE REFER TO OCR NO. 03211105**

Dr. Monifa B. McKnight  
Interim Superintendent  
Montgomery County Public Schools  
850 Hungerford Drive  
Rockville, Maryland 20850  
By Email Only: [Monifa\\_B\\_Mcknight@mcpsmd.org](mailto:Monifa_B_Mcknight@mcpsmd.org)

Dear Dr. McKnight:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) against Montgomery County Public Schools, which we will refer to as the District. The Complainant alleged the District discriminated against her child, whom we will refer to as the Student, on the basis of disability. Specifically, the Complainant alleged:

1. During the XXXXX school, the District denied the Student a free, appropriate public education (FAPE) in developing and revising the Student's educational program/placement by failing to:
  - a. Evaluate the Student for special education services;
  - b. Draw information from a variety of sources;
  - c. Ensure that information obtained from all sources is documented and carefully considered;
  - d. Ensure that placement decisions are made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options;
  - e. Provide the Complainant with notice of procedural safeguards that includes notice, an opportunity to examine relevant records, an impartial hearing with opportunity for your participation and representation by counsel, and a review procedure; and
  - f. Provide the Complainant with access to relevant records, including Canvas Grade Book records and reports.
  
2. The District failed to implement the Student's 504 plan during the XXXXX school year when it did not provide:  
XX – Subparagraphs redacted – XX

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

3. The District denied the Student equal access to a free SAT by failing to provide the College Board with information necessary for the Student to receive accommodations and failing to provide the Student a free test at a later date.
4. The District failed to make an individualized determination about the Student’s return to school in the XXXXXXXXXX that took into account his disability-related needs.

OCR enforces Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibits discrimination on the basis of disability by recipients of Federal financial assistance, and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35, which prohibits discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department, the District is subject to these laws.

**Resolution of Allegations**

OCR is dismissing Allegation 1(a)-(f) of this complaint. Under Section 108(i)(2) of OCR’s Case Processing Manual (CPM), OCR will dismiss complaint allegations when the same or similar allegations based on the same operative facts are resolved by another civil rights agency, and OCR determines that the allegations were investigated and there was a comparable resolution process pursuant to legal standards that are acceptable to OCR. Because the Complainant filed the same or similar allegations listed in Allegation 1(a)-(f) with the Maryland State Department of Education, and OCR determined there was a comparable resolution process pursuant to legal standards that are acceptable to OCR, we are dismissing Allegation 1(a)-(f) under Section 108(i)(2) of the CPM.

Before OCR completed its investigation of Allegations 2 and 3, the District expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement.

After carefully considering all of the information obtained during the investigation, OCR found insufficient evidence to support the Complainant’s Allegation 4.

**Background**

During the XX XXXXXX.

The District first provided the Student a Section 504 plan in XXXXXXXXXX when he was diagnosed with XXXXXXXXXX. That plan was then revised in XXXXXXXXXX. When schooling became remote because of Covid in the XXXXXXXXXX, the District developed a Distance Learning Plan for the Student. The Distance Learning Plan was revised in XXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX, the Student’s 504 plan was amended. The Section 504

Plan also noted that the Distance Learning Plan was modified to include all the accommodations except two: monitoring tests results and a flash pass to the health room.

**Allegation 2: Failure to implement Section 504 Plan**

Facts

The Complainant alleges that the District failed to implement the following parts of the Student’s Distance Learning Plans in the following ways:

XX – Paragraphs Redacted – XX

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a free appropriate public education (FAPE) to students with disabilities. 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. OCR interprets the Title II regulation, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to require school districts to provide FAPE to the same extent required under the Section 504 regulation.

In investigating a denial of a FAPE under Section 504, OCR first looks at the services to be provided as written in a student’s plan or as otherwise agreed to by the student’s team. If OCR finds that a district has not implemented a student’s plan in whole or in part, it will examine the extent and nature of the missed services, the reason for the missed services, and any efforts by the district to compensate for the missed services in order to determine whether this failure resulted in a denial of a FAPE.

Analysis

OCR has preliminary concerns that not all of the Student’s teachers were implementing all of the Student’s accommodations during remote learning. However, before OCR could complete its investigation and review additional documentation of these accommodations, the District requested a voluntary resolution agreement and OCR deemed it appropriate. The Resolution Agreement will ensure that the District convenes a team meeting to consider whether the District failed to implement the Student’s 504 plans during the XXXXXXXX school year and ensure the District provides compensatory services as appropriate.

**Allegation 3: Denial of Equal Access to Free SAT**

Facts

In XXXXXXX, the School provided a free SAT for all XXXX, including the Student. According to the Counselor, the parents initially contacted the College Board directly about

accommodations for the SAT, the Student was denied accommodations, and his parents involved the Counselor on the appeal. The Counselor stated that she sent additional documentation, but the College Board was slow to process it, so the Student did not have accommodations approved by the date of the free exam. The Counselor then provided the Complainant a code which she believed would allow him to take the test for free on another date.

The Complainant alleges the code did not work, because it was intended for low-income students and they did not qualify. She also alleges that the delay in accommodations was partly because of delays by the District in evaluating the Student for disabilities beyond a XXXXXX.

The District did convene meetings in the XXXXXXXXX to assess whether to conduct additional evaluations and whether the Student qualified for an IEP. Ultimately, the team concluded the Student did qualify for an IEP based on an external evaluation; the Complainant did not consent to additional assessments beyond that external evaluation. The Complainant's Allegation 1(a) concerned this evaluation process and was investigated by the Maryland State Department of Education.

### Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.37, requires school districts to afford students with disabilities an equal opportunity to participate in nonacademic and extracurricular services and activities. Furthermore, school districts must ensure that students with disabilities participate in nonacademic and extracurricular services and activities with students without disabilities to the maximum extent appropriate to the needs of each student with a disability. OCR interprets the Title II regulation to provide the same protections as Section 504.

### Analysis

OCR has preliminary concerns that the Student may have been denied equal access to the free SAT because of delays by the District. However, OCR has not reached a determination by, for example, examining all the communication to and from the College Board. Because the District requested a voluntary resolution and OCR deemed it appropriate, the Resolution Agreement will ensure that the District provides the Complainant the opportunity to be reimbursed for the \$81.50 she spent on the SAT.

### **Allegation 4: Individualized Determination Regarding Return to In-Person Learning**

#### Facts

The Complainant also alleged that the District failed to make an individualized determination with regard to the Student's return to in-person schooling at the end of the XXXXXX school year. The Complainant believed that a return to in-person learning would be best for the Student and completed a form in XXXXXXXXXX requesting to have the Student return for in-person learning. The Principal and the Complainant also exchanged emails about that process. The Complainant stated that it was ultimately the Student's decision: he chose not to attend in-person and instead chose to remain virtual for the remainder of the year. The Complainant believes that

the Section 504 team should have made the decision as to whether the Student returned to in-person learning.

According to the Assistant Principal at the School, each student made the decision regarding whether they returned to in-person learning or not. The Assistant Principal stated for students with disabilities, the topic was usually discussed at all team meetings, and the team might make a recommendation about the student's needs, but that the decision was left to the student/family.

The Complainant prepared a parental input letter prior to the XXXXXXXXXX meeting that outlined the family's concerns with the Student remaining in remote learning. She asserts the topic was not discussed at that meeting or any subsequent meeting. Other witnesses, however, remembered differently. The Resource Teacher of Special Education at the School remembered discussing it in a meeting and thinking in-person learning would be a good idea. The Assistant Principal was also fairly confident that the matter was discussed at a team meeting. Finally, a general education teacher also remembered a discussion about returning in person.

OCR also reviewed documentation from the XXXXXXXXXXXXXXXXXXXX team meetings. The documentation from the XXXXXXXXXX meeting references the Complainant's written parental input, and lists it as among the materials considered, but does not state whether or not the Student's returning to in person learning was discussed in any detail. The documentation from the XXXXXXXXXX team meeting states that the Student's parents said he would not be returning to school, but again, does not state whether or not the Student's returning to in person learning was discussed in any detail.

### Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a free appropriate public education (FAPE) to students with disabilities. 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. OCR interprets the Title II regulation, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to require school districts to provide a FAPE to the same extent required under the Section 504 regulation.

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. The school district must determine whether the student has an impairment which substantially limits his or her ability to learn or another major life activity and, if so, make an individualized determination of the child's educational needs for regular or special education or related aids or services.

### Analysis

The evidence indicates that the decision of whether to return for in-person instruction or to continue in virtual instruction was left up to the Student and his family, and there is some

evidence that the topic was discussed to some extent at the Student’s Section 504 Team meetings. OCR did not find sufficient evidence to conclude that leaving this determination to the Student and his family was a violation of Section 504.

### **Conclusion**

Pursuant to Section 302 of OCR’s *Case Processing Manual*, the District signed the enclosed Resolution Agreement on March 31, 2022 which, when fully implemented, will resolve Allegations 2 and 3. The provisions of the Agreement are aligned with these allegations and issues raised by the Complainant and the information discussed above that was obtained during OCR’s investigation, and are consistent with applicable law and regulation. OCR will monitor the District’s implementation of the Agreement until the District is in compliance with the statutes and regulations at issue in the case.

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 the right to file a private suit in federal court whether or not OCR finds a violation.

The complainant has a right to appeal OCR’s determination of Allegation 4 within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR’s determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

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

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

We appreciate the District’s cooperation in the resolution of this complaint. If you have any questions, please contact Marcia Jones, Equal Opportunity Specialist at 215-656-8555 or by email at [Marcia.Jones@ed.gov](mailto:Marcia.Jones@ed.gov).

Sincerely,

/s/

Christina M. Haviland  
Supervisory Attorney

Enclosure

cc: Danielle L. Miller, [Danielle\\_L\\_Miller@mcpsmd.org](mailto:Danielle_L_Miller@mcpsmd.org)