



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION IV

61 FORSYTH ST., SOUTHWEST, SUITE 19T10  
ATLANTA, GA 30303-8927

REGION IV  
ALABAMA  
FLORIDA  
GEORGIA  
TENNESSEE

October 23, 2018

Mr. Malcom Thomas  
Superintendent  
Escambia County School District  
75 North Pace Boulevard  
Pensacola, Florida 32505

Re: Complaint # 04-18-1529

Dear Mr. Thomas:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education (Department), Office for Civil Rights (OCR) received on May 14, 2018, against the Escambia County School District (District) alleging discrimination based on disability, and retaliation. Specifically, the Complainant alleged that the District discriminated against her son, a student at West Florida High School (School), on the basis of disability (ADHD and dysgraphia) when teachers at the School failed to properly implement the Student's Section 504 Plan. The Complainant also alleged that the District retaliated against the Student after she advocated for the Student at a February 20, 2018, Section 504 meeting.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. Section 794, and its implementing regulation, 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. § 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities.

OCR initiated an investigation of the following legal issues:

1. Whether the District denied the Student a free appropriate public education (FAPE) by failing to implement his Section 504 Plan when teachers at the School refused to allow the Student extra time on tests and assignments during the spring 2018 semester, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.33, and the Title II implementing regulation at 28 C.F.R. § 35.130; and
2. Whether the District retaliated against the Student when teachers at the School began penalizing his grades, refusing him extra time on tests and assignments, and losing his assignments after a February 20, 2018 Section 504 meeting, in noncompliance with the

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Section 504 implementing regulation at 34 C.F.R. § 104.61 and the Title II implementing regulation at 28 C.F.R. § 34.134.

Prior to the conclusion of the investigation, the District requested to voluntarily resolve the complaint under Section 302 of OCR's *Case Processing Manual (CPM)*. Pursuant to the *CPM*, a complaint may be resolved at any time when, prior to the conclusion of OCR's investigation, the recipient expresses an interest in resolving the complaint and OCR determines that is appropriate to resolve the complaint with an agreement.

On October 23, 2018, the District signed the attached Resolution Agreement (Agreement), which once fully implemented, will resolve the complaint allegations in accordance with the requirements of Section 504 and Title II. The Agreement requires the District to: (1) review the grades the Student received on all classroom and homework assignments during the spring 2018 semester in World History, Marine Science and Spanish classes to determine if the Student was penalized for turning in any assignments late, in a manner that would be inconsistent with his Section 504 Plan (the Student's grades will be recalculated, if penalized); and (2) provide Section 504 and Title II training to all School staff, Section 504 Coordinator(s), administrators and other relevant staff who have a responsibility for implementing students' Section 504 Plans. The training will also include the prohibition of retaliation and harassment based on disability.

OCR will monitor the District's implementation of the Agreement to ensure that it is fully implemented and that the District is in compliance with the statutes and regulations at issue in this complaint.

This concludes OCR's investigation of the complaint and 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.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another complaint alleging such treatment.

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, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

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We appreciate the District's cooperation in the resolution of this complaint. If you have any questions, please contact, Kristen Williams, General Attorney, at (404) 974-9272, or me, at (404) 974-9356.

Sincerely,

A handwritten signature in blue ink that reads "Wendy Gatlin". The signature is written in a cursive style with a large, looped "G" at the end.

Wendy Gatlin  
Compliance Team Leader

Enclosure