



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

August 8, 2019

XXXXXXXXXX  
XXXXXXXXXX  
XXXXXXXXXX

Gadsden City Schools  
1026 Chestnut Street  
Gadsden, AL 35901

Re: OCR Complaint # 04-19-1239

Dear XXXXXXXX:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has concluded its investigation of the above-referenced complaint, alleging discrimination on the basis of disability and retaliation by Gadsden City Schools (District). Specifically, the Complainant alleged that the District discriminated against XXXXX (Student) as follows:

1. The District failed to implement the Student's 504 Plan when the Student went XXXXX without any instruction for XXXXXX and XXXX. Once the Student started receiving instruction for these two courses, it was sporadic, and all the missed work was dumped on her at once and she was given one week to complete XXXXXX of work. The District also failed to allow her access to XXXXXX as provided for in her 504 Plan.
2. The XXXXX retaliated against the Complainant for requesting a 504 Plan for the Student by denying the Student access to XXXXXX.
3. The accessible entrance to the School is too narrow, and the threshold to the entrance is too high for a wheelchair.

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 by recipients of Federal financial assistance; and, Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities.

Based on the above, OCR investigated the following legal issues:

1. Whether the District denied the Student a free appropriate public education (FAPE), in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.33(a)-(b), and the Title II implementing regulation at 28 C.F.R. § 35.130(a).
2. Whether the District retaliated against the Student because of the Complainant's advocacy, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.61, and the Title II implementing regulation at 28 C.F.R. § 35.134.
3. Whether the District failed to provide an adequate accessible entrance to the School building, in noncompliance Section 504 and its implementing regulation at 34 C.F.R. §§104.21-104.23, and Title II implementing regulation at 28 C.F.R. §§35.149-35.151.

**Legal Standards**

The Section 504 implementing regulation at 34 C.F.R. § 104.33(a) and (b) states that a recipient that operates a public elementary or secondary education program or activity shall provide a FAPE to each qualified disabled person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. An appropriate education is defined as regular or special education and related aids and services that are designed to meet individual educational needs of individuals with a disability as adequately as the needs of nondisabled persons are met and are based upon adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34, 104.35, and 104.36. Implementation of an IEP in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting this standard.

Retaliation is prohibited under the Section 504 implementing regulation at 34 C.F.R. § 104.61, which incorporates by reference the procedural provisions of Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d et seq., and its implementing regulation at 34 C.F.R. § 100.7(e). The Title VI regulation 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 he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under Section 504. Title II also incorporates the same retaliation provision.

The regulations implementing Section 504 and Title II, at 34 C.F.R. § 104.21 and 28 C.F.R. § 35.149, respectively, state that no qualified individual with a disability shall be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination by a recipient because the recipient's facilities are inaccessible to or unusable by persons with disabilities. The Section 504 and Title II regulations contain different standards, based on when a facility was constructed or altered, for determining whether a recipient's programs, activities, and services are accessible to individuals with disabilities.

**Summary of Investigation**

OCR's investigation included a review and analysis of the documents submitted by the District. OCR also interviewed District officials and the Complainant multiple times. OCR evaluates evidence obtained during an investigation under a preponderance of the evidence standard to determine whether the greater weight of the evidence is sufficient to support a conclusion that the recipient (the District) failed to comply with a law or regulation enforced by OCR or whether the evidence is insufficient to support such a conclusion. Prior to the conclusion of the investigation, the District requested to complaint allegations with a voluntary resolution agreement (Agreement) pursuant to Section 302 of OCR's Case Processing Manual (CPM). The evidence thus far and the proposed resolution are set forth below.

**Evidence Thus Far*****A. Failure to Implement***

The Student's initial 504 Plan noted the following: The Student is unable to attend XXXXX (XXXXXXX) which were XXXXXX. This prevents her from being able to receive direct instruction simultaneously with her peers. Thus, the following academic accommodations were developed: (a) Teachers from the Student's XXXXXX and XXXXX classes will spend XXXXX with XXXXXXXX for at least XXXXXX per week to provide XXXXXXXXX; (b) XXXXXXXXXXXX; (c) XXXXXXXXXXXX; and (d) XXXXXXXXXXXX.

The Minutes noted that the 504 Committee compared the Student's recent report card and her grades for the previous year for the same period. Her grades in XXXXXX were the same, but her XXXXX grade slipped. School staff reported giving the Student XXXXXXXXXXXX of needed assignments, and they had not

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

[www.ed.gov](http://www.ed.gov)

been penalizing her if she turned her assignments in later than asked. School staff discussed the Student's latest progress report which documented XXXXXXXXXXXX. The Minutes further noted that School staff mentioned the School offers a standard XXXXXX class and a standard XXXXXXXXXXXX. The Complainant asked if it would impact the XXXXXX standing to attend the standard classes. A School administrator replied, no. It was discussed that it would be beneficial for the Student to be able to attend full-time direct instruction, and it may be less stressful on the Student.

On XXXXXX, 2018, the Complainant met with School staff to discuss changing the Student's schedule from XXXXXXXX. The Student began her new schedule, as agreed upon, on XXXXX, 2018. On XXXXX, 2018, the District updated Student's 504 Plan as follows: (a) XXXXXXXXXXX; (b) XXXXXXXX; and (c) XXXXXXXX. The 504 Plan also provided that the Student will be assessed using a created XXXXXXXXs which may not have been mastered during the time which she could not physically attend the XXXXXXXX. Any needed adjustments to grades can be assessed based on findings. The Student may then attend after XXXXXXXX on any missed standards. If there are any continuing academic concerns, the Student will be referred for XXXXXXXXXXXXXXXXXXXX.

On January 9, 2019, the Complainant informed School staff she still concerned about the Student's grades from the previous semester. According to School staff, they reminded the Complainant that since the Student passed the standards assessment, there would be no XXXXXXXXXXXX.

The Complainant also alleged that the District failed to allow the Student access to XXXXXXXX as provided for in her 504 Plan. The 504 Plan called for her to participate in XXXXXXXX, but the XXXXXX denied her the opportunity to participate, stating she was a liability. The XXXXXXXX in the initial 504 provided that the Student will be allowed to participate in XXXXXXXX and XXXXXXXX within the realm of her physical ability and her personal safety. The Committee Minutes noted that the Complainant was concerned that the Student was not allowed to continue her XXXXXXXX. A School administrator discussed that due to the Complainant's own concerns, such as XXXXXXXXXXXX. The Student was not on the XXX, and therefore the XXXX was not required during the Student's recovery as not to aggravate her injury or pose a higher risk of further injury. It was agreed that the Student can participate in her XXXXXXXX as she is physically able, and it is safe for her.

### ***B. Retaliation***

The Complainant alleged that the Principal retaliated against the Complainant for requesting a 504 Plan for the Student by denying the Student access to XXXXXX, despite the provision in her 504 Plan allowing for her to participate in XXXXXXXX. The Complainant also alleged that she paid the fees for the Student to XXXXXXXXXXXX.

As stated above, at the 504 Committee Meeting, School administration assured the Complainant that not allowing the Student to participate as the XXXXXXXX in any way, and it was strictly done for her own safety and the safety concerns raised by the Complainant herself. However, the record does not include any discussion about the fees paid by the Complainant for the Student to participate in XXXXXXXX.

### ***C. Accessibility***

The Complainant alleged that the accessible entrance to the School is too narrow, and the threshold to the entrance is too high for a wheelchair.

The initial 504 Plan provided that the "New Accessible Ramp" will be utilized for entry into the School. The Minutes from the initial 504 Meeting noted that the Complainant stated that the front ramp was not

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

[www.ed.gov](http://www.ed.gov)

suitable for her to use. It was noted that that ramp has been located there for 20+ years, and that there were two other ramps for accessibility in addition to the wooden ramp at the front entrance at the beginning of the school year. There has also been a new ramp constructed "New Accessible Ramp," that also has a buzzer so that anyone using the building can be buzzed in and the office will know when they have arrived. It was made known that there is a covered entrance with accessibility by the band room entrance. There is no mention in either the Student's 504 Plan or the Committee Minutes that the accessible entrance was not wide enough, or the threshold was too high.

The 2010 ADA Standards provide that doors, doorways, and gates that are part of an *accessible* route shall comply with § 404, except doors, doorways, and gates designed to be operated only by security personnel shall not be required to comply with Sections 404.2.7, 404.2.8, 404.2.9, 404.3.2 and 404.3.4 through 404.3.7. Manual doors and doorways and manual gates intended for user passage shall comply with 2010 ADA Standards § 404.2. At least one of the active leaves of doorways with two leaves shall comply with §§ 404.2.3 and 404.2.4. The 2010 ADA Standards § 404.2.3 states door openings shall provide a clear width of 32 inches (815 mm) minimum. Clear openings of doorways with swinging doors shall be measured between the face of the door and the stop, with the door open 90 degrees. Openings more than 24 inches (610 mm) deep shall provide a clear opening of 36 inches (915 mm) minimum. There shall be no projections into the required clear opening width lower than 34 inches (865 mm) above the finish floor or ground. Projections into the clear opening width between 34 inches (865 mm) and 80 inches (2030 mm) above the finish floor or ground shall not exceed 4 inches (100 mm). The following exceptions are allowed: (1) In *alterations*, a projection of 5/8 inch (16 mm) maximum into the required clear width shall be permitted for the latch side stop; and (2) Door closers and door stops shall be permitted to be 78 inches (1980 mm) minimum above the finish floor or ground.

Thresholds, if provided at doorways, shall be ½ inch (13 mm) high maximum. Raised thresholds and changes in level at doorways shall comply with §§ 302 and 303. See 2010 ADA Standards § 404.2.5. However, the following exception applies: Existing or *altered* thresholds ¾ inch (19 mm) high maximum that have a beveled edge on each side with a slope not steeper than 1:2 shall not be required to comply with § 404.2.5.

### **Resolution and Conclusion**

Prior to the completion of OCR's investigation, the District requested to voluntarily resolve this complaint. Pursuant to Section 302 of OCR's Case Processing Manual, a complaint may be resolved before the conclusion of an investigation when the recipient or public entity expresses an interest in resolving the complaint. The attached Resolution Agreement (Agreement) will require the District to take actions to remedy any compliance concerns regarding whether the Student needs compensatory education and/or other remedial services for the XXXXX; reimburse the Complainant for certain fees paid XXXXX; and assess and report to OCR whether the width of the doorway and the height of the thresholds for the accessible entrances comply with the 2010 ADA Standards.

On August 6, 2019, OCR received the enclosed signed Agreement that, when fully implemented, will resolve the allegation in the complaint. OCR will monitor the District's implementation of this Agreement to ensure that it is fully implemented. If the District fails to fully implement the Agreement, OCR will reopen the case and take appropriate action to ensure compliance with Section 504 and Title II. The Complainant may file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District may not harass, coerce, 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.

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

[www.ed.gov](http://www.ed.gov)

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 that, if released, could constitute an unwarranted invasion of privacy.

OCR is committed to prompt and effective service. If you have any questions, please contact Senior Attorney XXXXXXXX at XXXXXXXX, or by email at XXXXXXXXXX, or the undersigned at XXXXXXXX.

Sincerely,

XXXXXXXXXX  
XXXXXXXXXXXXXX

Enclosure