



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

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REGION IV

ALABAMA  
FLORIDA  
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August 16, 2022

**Via E-Mail Only ([GreeneD@duvalschools.org](mailto:GreeneD@duvalschools.org))**

Dr. Diana Greene  
Superintendent  
Duval County Public Schools  
1701 Prudential Drive  
Jacksonville, Florida 32207

Re: OCR Complaint #04-22-1270

Dear Dr. Greene:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education, Office for Civil Rights (OCR) received on February 18, 2022, against Duval County Public Schools (District). The Complainant alleged that the District discriminated against his daughter (Student) on the basis of disability while she was a student at Twin Lakes Academy Middle School (School).

OCR enforces 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 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by certain public entities. As a recipient of Federal financial assistance from the Department of Education and as a public entity, the District is subject to Section 504 and Title II, and to OCR's jurisdiction.

OCR investigated whether the District denied the Student a free appropriate public education, or FAPE, in violation of Section 504 and its implementing regulation at 34 C.F.R. § 104.33; and Title II and its implementing regulation at 28 C.F.R. § 35.130.

To date, OCR has reviewed the Student's 2021-2022 Section 504 Plans, the Student's 2021-2022 report card, documents related to the implementation of the Student's Section 504 accommodations, and communications between the Complainant and the District. OCR also interviewed the Complainant and the Exceptional Education & Student Services, or ESE, Department Head.

Prior to the completion of OCR's investigation, the District requested to resolve the complaint under Section 302 of OCR's *Case Processing Manual* and has agreed to enter into a resolution agreement that will resolve the allegations. OCR's *Case Processing Manual* at Section 302 states that allegations under investigation may be resolved at any time when, prior to the completion of

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

the investigation, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified concerns that can be addressed through a resolution agreement. Following are the relevant legal standards and OCR's summary of the evidence obtained to date.

### **Legal Standards**

The Section 504 regulation at 34 C.F.R. §104.33 (a) states that a recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified person with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability.

The Section 504 regulation at 34 C.F.R. §104.33 (b) states 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.

### **Facts**

During the 2021-2022 school year, the Student was enrolled in the 8<sup>th</sup> grade at the School. The Student had a Section 504 Plan that included the following general accommodations:

- a. use positive cues and praise to promote student's on-task time;
- b. repeat/clarify and/or summarize directions;
- c. allow 50% extended time to finish classwork/homework;
- d. allow frequent breaks, when needed (school counseling office);
- e. prompt/monitor student completion of assignment agenda/planner; and
- f. allow student appropriate opportunities for movement.

The Student also had one testing accommodation that allowed 50% extended time to finish class, district and state tests.

The Complainant alleged that from August 10-September 2, 2021, the Student's Technology teacher failed to provide the Student with additional time for assignments and failed to assist the Student with writing down her assignments in her planner.

The Student's Technology teacher said in a written statement that the Student was assigned to her class from August 10 to September 7, 2021. She stated that the Student was provided additional time for completing work on August 27, 2021, and September 3, 2021. The Complainant sent several emails to the Technology teacher asking about points taken off assignments that were submitted late despite the Student's Section 504 accommodations, and the Technology teacher noted that she responded by phone to the Complainant.

The Complainant alleged that the Student's Pre-Algebra teacher gave the Student zeros and Fs, but when the Complainant asked the teacher whether the Student had been given extra time, the Pre-Algebra teacher stated that the Student was given time in class to make up missing

assignments. The Pre-Algebra teacher maintained checklists and notes that documented the accommodations provided to the Student from September 15 through December 13, 2021.

The Complainant alleged that during the fall 2021 semester, the Student's Health teacher took off points from an assignment because it was late. The Complainant stated that the Health teacher never assisted the Student with adding incomplete assignments to the Student's planner. The Student's Health teacher's notes from her fall 2021 entries in FOCUS, the School's data management system, listed the Student's required accommodations and included one note regarding the provision of extra time on an assignment.

The Complainant alleged that at the beginning of the 2021-2022 school year, the Student's Science teacher did not implement her Section 504 plan, but once the Complainant brought it to her attention at the beginning of October 2021, she started implementing the Section 504 plan and providing him with daily documentation. The Student's Science teacher's notes from her fall 2021 entries in FOCUS, did not include any information related to the provision of the Student's accommodations. The Science teacher's communication log documented contact with the Student's parent(s) and included information about the Student's classroom performance and makeup assignments but did not include information related to the Student's accommodations.

The Complainant alleged that during the fall 2021 semester, the Student's Research 3 teacher did not assist the Student with writing down assignments in her planner, and since it was not in the planner, the Student never completed three assignments and received three zeros. There was no documentation from the Student's Research 3 teacher regarding these assignments for the fall 2021 semester.

The Complainant alleged that during the fall 2021 semester, the Student's English teacher stated that he would not write in the Student's planner. The Complainant stated that the teacher gave the Student three zeros on assignments that were to be completed while the teacher was absent. When he questioned whether the Student had been provided her accommodations for the assignments, the School Principal stated that substitutes are not required to provide accommodations. The Complainant stated that the Student was never given additional time to turn in the assignments, and the zeros are still on her record. The Complainant did not identify the specific assignments that the Student received zeros on and there were no zeros that were factored into the Student's English grade for the fall 2021 semester.

The Student's Research 3 and Pre-Algebra teachers maintained checklists that documented the accommodations provided to the Student from April 11 through April 27, 2022.

On April 27, 2022, at the request of the Complainant, the Student's Section 504 Plan was updated. The Student's general accommodations were as follows:

- a. check student's comprehension of the concept after the learning sequence;
- b. allow appropriate opportunities for movement (hand fidget device, non-noise making);
- c. prompt student for frequent breaks after 35 minutes of instruction;
- d. provide student a copy of class notes and outlines;
- e. break multi-step projects/assignments into parts with due dates;

- f. student can use phone to take picture of the board and reference in class;
- g. allow 100% extended time to finish classwork/homework;
- h. require 25% fewer questions that measure required content/skills;
- i. give examples of math problems, or allow student to take pictures of examples on the board;
- j. preferential seating near the board, away from distractions;
- k. use positive cues and praise to promote student's on-task time (attention span of approx. 10 mins);
- l. communicate academic progress/status to parent;
- m. repeat/clarify and/or summarize directions;
- n. prompt/monitor completion of assignment agenda/planner; and
- o. provide written directions, and break down steps.

The Student's testing accommodations were as follows: allow 100% extended time to finish class, district and state tests; and administer classroom, district and state tests in a small group.

The ESE Department Head stated to OCR that the Section 504 counselor provided the Student's teachers with a list of her accommodations at the beginning of the school year, but she is not sure if they were also given a form to track the use of the accommodations. She stated that a lot of teachers used FOCUS to document the Student's use of accommodations, and some tracked it on paper, but the teachers were not tied a specific way. She stated that after the Student's April 2022 Section 504 meeting, she was asked to create a spreadsheet for the teachers to use to track the implementation of the Student's accommodations due to the Complainant's concerns and lack of consistency in documenting the accommodations. On April 28, 2022, the new checklist was shared with the Student's teachers.

The Student's English teacher maintained a checklist showing the accommodations provided to the Student from March 12 through May 9, 2022. The English teacher noted that he was not in class from April 13 through April 26, 2022, so the provision of accommodations was not documented. The Complainant and the English teacher exchanged several emails during the spring 2022 semester to discuss the implementation of the Student's accommodations and whether the teacher had a checklist to document the provision of accommodations.

The Student's Research 3 teacher maintained another checklist that showed the accommodations provided to the Student from April 29 through May 3, 2022. The Research 3 teacher's communication log noted the Student's off task behaviors and that the Student had three missing assignments during that period.

The Pre-Algebra teacher maintained another checklist and notes that showed the accommodations provided to the Student from April 28 through May 10, 2022. The Pre-Algebra's teacher's communication log included notes of conversations she had with the Student and the Complainant about the Student's performance in the classroom, and the implementation of the Student's accommodations.

Prior to the conclusion of the investigation, the District offered to voluntarily resolve this complaint through a 302 Resolution Agreement.

The Complainant withdrew the Student from the District at the end of school year and informed OCR that the Student will attend high school in another school district for the 2022-2023 school year.

### **Analysis**

The Student was identified as a student with a disability and had a Section 504 Plan during the 2021-2022 school year. Throughout the school year, the Complainant communicated concerns about the implementation of the Student's required accommodations. The District provided documentation to show when the Student's teachers implemented her accommodations; however, the documentation was incomplete for each class.

Prior to the conclusion of the investigation, the District offered to voluntarily resolve the complaint through a 302 Resolution Agreement. To resolve the compliance concern described above, the District will offer to convene a Section 504 meeting, if the Student re-enrolls, to discuss whether the Student needs compensatory and/or remedial services for the period of August 10, 2021 through May 27, 2022. The meeting will include the Student's parent(s) and the parent(s) will be provided with procedural safeguards. The District will also train relevant staff on the requirements of Section 504 including the implementation of and documenting the implementation of Section 504 Plans and Individualized Education Programs.

OCR will monitor the implementation of the 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.

### **Conclusion**

This concludes OCR's consideration of this complaint. 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 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, discriminate, or otherwise retaliate against any individual because the individual has filed a complaint or participated in the complaint resolution process. If this happens, the individual 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.

If you have any questions regarding this matter, please contact Kristen Williams, General Attorney, at (202) 987-1866 or me, at (404) 974-9356.

Sincerely,

/s/ Wendy Gatlin

Wendy Gatlin  
Compliance Team Leader

Enclosure