



3. David Carpenter is an adult resident citizen of Alabama and was at all material times an employee of OCSBOE and principal of Jeter Elementary School, where Mrs. Norris taught.

### **JURISDICTION AND VENUE**

4. Pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3) and (4), this court possesses original jurisdiction of the plaintiff's claims brought pursuant to § 504 of the Rehabilitation Act of 1973, the ADA, and § 1983.
5. Pursuant to 28 U.S.C. § 1391(b), venue in this district is appropriate because all of the defendants reside in this district and it is the district in which a substantial part of the acts, omissions, and events occurred that form the basis of this lawsuit.
6. The OCSBOE is located in Lee County, Alabama, which is located in the Eastern Division of the Middle District of the U.S. District Court.

### **FACTS**

7. Mrs. Norris was a special-education teacher employed by the OCSBOE who taught at Jeter Primary School.
8. Mrs. Norris agreed with the father of a Downs Syndrome student that the Downs Syndrome student should not be segregated from all of the other students, whether disabled and non-disabled.
9. Mrs. Norris permitted her discussion with the father to be videotaped and the father later filed an administrative law proceeding to require the school to comply with federal and state law relating to special-education rights of his son.

10. The father identified the video of the conversation with Mrs. Norris as an exhibit.
11. The Down Syndrome student's administrative law proceeding relating to his special education rights was decided as a judgment. In that judgment, which was not appealed by the OCSBOE, the administrative law judge found:

[T]here was no documentation or other supporting evidence that in the general education P.E. class Petitioner's behavior was disrupting the activities of not only the non-disabled students but also those of his disabled peers. The school system presented a photograph that showed the Petitioner interacting with other students on the playground during recess. The photo did not depict aggressive behavior even though recess is a much less structured environment than a physical education class.

12. As a result of Mrs. Norris' activities, defendants OCSBOE and Mr. Carpenter retaliated against her by taking certain action, which included but is not limited to the following:
  - a. she was reported to the Department of Human Resources on a false allegation that she had abused a different special-education student and was later cleared by the DHR officer/caseworker;
  - b. she was removed from her classroom;
  - c. her ongoing efforts to obtain her master's degree were specifically threatened;
  - d. and she was terminated.

13. The OCSBOE did not terminate Mrs. Norris on the advice of counsel.

**COUNT 1**

**VIOLATION OF § 504 ANTI-RETALIATION PROHIBITION**

**(VS. OCSBE)**

14. The plaintiff incorporates by reference all preceding fact statements.
15. The OCSBOE retaliated against Mrs. Norris in violation of § 504 of the Rehabilitation Act of 1973 for attempting to protect the rights of a disabled student.
16. Section 504(a) states: “No otherwise qualified individual with a disability in the United States shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance□” 29 U.S.C. § 794(a) (codifying § 504).
17. Section 504 incorporates the anti-retaliation provision of Title VI of the Civil Rights Act of 1964 by providing that: “The remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964 shall be available to any person aggrieved by any act or failure to act by any recipient of Federal assistance” 29 U.S.C. § 794a(2) (Emphasis added.).
18. The anti-retaliation provision of Title VI of the Civil Rights Act incorporated by § 504 states: “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 Section 601 of [the Civil Rights] Act or this part, or because

he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part.” 34 C.F.R. § 100.7(e) (emphasis added). This regulation applies to all rights secured by the Rehabilitation Act pursuant to 34 C.F.R. § 104.61.

19. The anti-retaliation provision in Title VI of the Civil Rights Act has been incorporated by the Rehabilitation Act so as to extend the Rehabilitation Act's protections to “ ‘any individual’ who has been intimidated, threatened, coerced, or discriminated against ‘for the purpose of interfering with[protected rights]’ under Title VI of the Civil Rights Act or the Rehabilitation Act.” *Weber v. Cranston Sch. Comm.*, 212 F.3d 41, 48 (1st Cir.2000) (quoting 34 C.F.R. § 100.7(e)) (citing § 104.61) (granting standing under § 504 of the Rehabilitation Act to a mother who claimed the school system had retaliated against her personally for attempting to enforce her disabled child's rights))).
20. **WHEREFORE**, plaintiff demands compensatory and punitive damages, attorney's fees, and costs, against the OCSBOE.

## COUNT 2

### VIOLATION OF ADA's ANTI-RETALIATION PROHIBITION

#### (VS. OCSBOE)

21. The plaintiff incorporates by reference all preceding fact statements.
22. Title II of the ADA provides: “Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs,

or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132.

23. The anti-retaliation provisions of Title II of the ADA state: “(a) No private or public entity shall discriminate against any individual because that individual has opposed any act or practice made unlawful by this part, or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the Act or this part. (b) No private or public entity shall coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by the Act or this part.” 28 C.F.R. § 35.134.
24. The defendants engaged in conduct that violated the ADA.
25. Mrs. Norris opposed this conduct.
26. The defendants retaliated against her in violation of the ADA.
27. Mrs. Norris was intimidated by her supervisor (or supervisors for) her role in advocating for a disabled student.
28. Mrs. Norris was retaliated against and subsequently lost her job because she advocated for disabled students who were receiving inadequate public services-educational services provided by a public school that are covered under Title II of

the ADA (“Title II: Public Services”). See 42 U.S.C. § 12131, et seq. Public services provided to disabled students are the focus of Title II of the ADA.

29. **WHEREFORE**, plaintiff demands compensatory and punitive damages, attorney’s fees, and costs, against the OCSBOE.

**COUNT 3**

**42 U.S.C. § 1983 - FIRST AMENDMENT RETALIATION**

**(AGAINST DAVID CARPENTER)**

30. The plaintiff incorporates by reference all preceding fact statements.
31. Plaintiff engaged in constitutionally protected speech or conduct to protect a special education student.
32. Defendant David Carpenter, while acting under color of law, threatened and then terminated Mrs. Norris in retaliation for plaintiff’s advocacy for the special education rights of a student, in violation of the First Amendment.
33. A person’s right to advocate for a special education student is protected by the Constitution.
34. Mrs. Norris spoke out as an advocate to protect the rights of a special education student.
35. David Carpenter, while acting under color of law, intimidated, retaliated against, threatened, and then terminated Mrs. Norris in retaliation for her advocacy for the special education rights of a student, in violation of the First Amendment.

36. Mrs. Norris' speaking out as an advocate to protect the rights of a special education student was a motivating factor in David Carpenter's decision to threaten to adversely affect Mrs. Norris' ability to obtain her master's degree and to later terminate her.
37. David Carpenter's decision to decision to threaten to adversely affect Mrs. Norris' ability to obtain her master's degree and to later terminate her would likely deter a similarly-situated, reasonable person from engaging in similar advocacy for a student's special-education rights.
38. David Carpenter acted under color of law.
39. **WHEREFORE**, plaintiff demands damages, attorney's fees and costs.

Respectfully submitted:

---

William T. Johnson, III  
ASB2310M69J  
KIRBY JOHNSON, P.C.  
1 Independence Plz Ste 520  
Birmingham, AL 35209-2654  
bjohnson@kirbyjohnsonlaw.com  
Phone: (205) 458-3553  
Fax: (205) 458-3589

Henry L. "Max" Cassady, Jr.  
ASB-0819-Y86H  
CASSADY & CASSADY, P.C.  
21 South Section Street  
Fairhope, AL 36532  
maxcassady@gmail.com  
Telephone: (251) 578-5252  
Fax: (888) 304-7262



**JURY DEMAND**

**Plaintiff demands a jury trial on all issues in this action.**

  
\_\_\_\_\_  
William T. Johnson, III

**REQUEST FOR SERVICE BY CERTIFIED MAIL**

Plaintiff requests service of the Summons and Complaint on Defendants by certified mail pursuant to Rule 4.1 of the *Federal Rules of Civil Procedure*.

  
\_\_\_\_\_  
William T. Johnson, III

**SERVE DEFENDANTS BY CERTIFIED MAIL AT:**

OPELIKA CITY SCHOOLS BOARD OF EDUCATION  
300 Simmons Street  
Opelika, AL 36801

MR. DAVID CARPENTER  
402 Guinevere Ct.  
Opelika, AL 36801