

July 9, 2015

James Harter
Superintendent
Charlotte Valley Central School District
15611 State Highway 23
Davenport, New York 13750

Re: Case No. 02-15-1146
Charlotte Valley Central School District

Dear Superintendent Harter:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) regarding the above-referenced complaint filed against the Charlotte Valley Central School District. The complainant alleged that the District discriminated against his son (the Student), on the basis of disability, by suspending him without determining whether his misconduct was a manifestation of his disability, on or about November 13, 2014; and then failing to provide him with special education and related aids and services pursuant to his Individualized Education Program (IEP), from November 13, 2014, through January 12, 2015.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities receiving financial assistance from the U.S. Department of Education (the Department). OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (the ADA), 42 U.S.C. § 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35. Under the ADA, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District is a recipient of financial assistance from the Department and is a public elementary and secondary education system. Therefore, OCR has jurisdictional authority to investigate this complaint under both Section 504 and the ADA.

In its investigation, OCR interviewed the complainant and District staff. OCR also reviewed documentation that the complainant and the District submitted. OCR made the following determinations.

The regulation implementing Section 504, at 34 C.F.R. § 104.33(a), provides that “a recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education (FAPE) to each qualified disabled person who is in the recipient’s jurisdiction, regardless of the nature or severity of the person’s disability.” Additionally, the regulation implementing Section 504, at 34 C.F.R. § 104.4(a), provides that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity that receives federal financial assistance.

Pursuant to OCR policy, a district may discipline a student with a disability in the same manner as it would discipline a non-disabled child, unless the disabled child’s IEP, Section 504 plan, or Behavior Intervention Plan (BIP) specifies differently or unless the discipline creates a significant change in the student’s placement. Pursuant to OCR policy, the exclusion of a disabled student for ten consecutive days, or a total of ten or more days cumulatively under circumstances constituting a pattern of exclusion, constitutes a significant change in placement. The regulation implementing Section 504, at 34 C.F.R. § 104.35(a), requires a recipient to conduct an evaluation of any student who, because of disability, needs or is believed to need special education or related aids or services before taking any action with respect to a subsequent significant change in placement. Accordingly, before implementing an exclusion that constitutes a significant change in placement, a recipient must first determine whether the student’s conduct was a manifestation of the student’s disability. If it is determined that the student’s misconduct was a manifestation of the student’s disability, a group of knowledgeable persons must evaluate whether the student’s current educational placement is appropriate, following the evaluation and placement requirements of §§ 104.35 and 104.36. If it is determined that the student’s misconduct was not a manifestation of the student’s disability, there is no obligation to conduct further evaluation, and the student may be suspended or excluded from school in the same manner as other students without disabilities.

The complainant alleged that the District discriminated against the Student, on the basis of disability, by suspending him without determining whether his misconduct was a manifestation of his disability, on or about November 13, 2014; and then failing to provide him with special education and related aids and services pursuant to his IEP, from November 13, 2014, through January 12, 2015. OCR determined that the Student had an IEP for school year 2014-2015, dated September 4, 2014, that placed him in the Charlotte Valley School (the school). The Student’s IEP did not exempt him from discipline. The Student also had a BIP for school year 2014-2015, which included steps for trying to de-escalate misconduct, but stated that the Student “is bound by the [District’s] Code of Conduct and any violation should be referred in the same manner used with other students.” Pursuant to the Student’s IEP dated September 4, 2014, the Student was to receive consultant teacher services twice per week for forty minutes per session, in English Language Arts and math. The Student was also to receive one individual counseling session and one group counseling session per week, for thirty minutes per session.¹

On November 13, 2014, the principal of the school suspended the Student for five days for XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX, and referred the Student for a Superintendent’s

¹ The Student was also to receive certain in-class supports; namely, additional time to complete assignments, checks for understanding, and a 1:1 teaching assistant six hours per day.

Hearing. On November 18, 2014, the District sent the Student's parents notice of a manifestation determination meeting and a Committee on Special Education (CSE) meeting, to be held on November 21, 2014. On November 19, 2014, the teacher XXXXXXXXXXXX
XXX.
XX. The Superintendent and the District's Special Education Director informed OCR that they sought legal advice regarding whether a manifestation determination meeting was necessary in light of XXXXX, and were advised that it was not. Accordingly, on November 20, 2014, the District notified the Student's parents that the manifestation determination meeting was "adjourned indefinitely," pending the outcome of "a criminal matter and XXXXXXXXXXXX." OCR determined that the Student was thereafter excluded from the District for more than 10 consecutive days, and the District never held a manifestation determination or otherwise followed the procedural requirements of the regulation implementing Section 504 prior to making this significant change in the Student's placement.

The Superintendent's letter to the Student's parents, dated November 20, 2014, further stated that because the Student could not come to the school as a result of XXXXX, the District had an obligation to provide education to him in an alternate setting. The District stated that it would therefore provide tutoring to the Student for two hours every school day XXXXXXXX, beginning on November 24, 2014.² Records the District provided showed that the Student attended tutoring XXXXX only on November 24 and 25, 2014. OCR determined that the Superintendent unilaterally made this decision to place the Student XXXXXXXXXX; the District did not convene a group of knowledgeable persons as required by the regulation implementing Section 504, at 34 C.F.R. §§ 104.35 and 104.36.

The Student's parents provided a letter to the District from the Student's psychiatrist, dated December 2, 2014, recommending that the Student be placed on home instruction. Additionally, on December 12, 2014, the Student's parents requested a CSE meeting. District schools were closed for winter recess, from Monday, December 22, 2014, until Monday, January 5, 2015. The District held CSE meetings for the Student on January 7 and January 28, 2015, at which time the CSE changed the Student's placement to home instruction, with counseling services to be provided once per week at home. The District informed OCR that the CSE did not determine whether the student's misconduct on November 13, 2014, was a manifestation of his disability prior to changing his placement to home instruction.

The District did not provide evidence to OCR that it provided educational services or related aids and services to the Student as required by the Student's IEP, following his suspension from school on November 13, 2014, until the CSE changed the Student's placement in January 2015. Accordingly, OCR determined that the District failed to provide the Student with special education and related aids and services pursuant to his IEP, from November 13, 2014, through January 2015.

Based on the foregoing, OCR determined that the District significantly changed the Student's placement by excluding him from school for more than 10 consecutive days beginning on

² The District also stated that it would continue to provide consultant teacher services and counseling to the Student, in accordance with his IEP.

November 13, 2014. Further, OCR determined that the District failed to follow the procedural requirements of Section 504, at 34 C.F.R. §§ 104.35 and 104.36, prior to making this significant change in the Student's placement, including failing to determine whether the Student's misconduct on November 13, 2014, was a manifestation of his disability. OCR further determined that the Superintendent unilaterally made a change in placement for the Student by changing his placement to off-site tutoring XXXXXXXXX, without following the procedural requirements of the regulation implementing Section 504, at 34 C.F.R. §§ 104.35 and 104.36. Additionally, OCR determined that the District failed to provide the Student with special education and related aids and services pursuant to his IEP, from November 13, 2014, through January 2015; accordingly, the District failed to provide the Student with a FAPE as required by the regulation implementing Section 504, at 34 C.F.R. § 104.33(a).

On July 9, 2015, the District agreed to implement the enclosed resolution agreement, which addresses the compliance concerns identified with respect to this complaint. OCR will monitor implementation of the resolution agreement. If the District fails to comply with the terms of the resolution agreement, OCR will resume its investigation.

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.

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. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information that if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have questions, please contact Gina Damasco, Compliance Team Attorney, at (646) 428-3924 or Gina.Damasco@ed.gov.

Sincerely,

_____/S/_____

Timothy C.J. Blanchard

Encl.

cc: Wendy DeWind