

June 30, 2016

Craig G. Carr, Ed.D.  
Superintendent of Schools  
Central Islip Union Free School District  
50 Wheeler Road  
Central Islip, New York 11722

Re: Case No. 02-16-1122  
Central Islip Union Free School District

Dear Dr. Carr:

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 Central Islip Union Free School District (the District). The complainant alleged that the District discriminated against his son (the Student) on the basis of his disability, by inappropriately suspending the Student from the XXXXXX XXXXX XXXX School on two occasions for behavior related to his disability, in or around November and December 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 or 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 (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 reviewed information and documentation that the complainant and the District submitted.

During school year 2015-2016, the Student was a XXXXXX-grade student enrolled at the School. From the beginning of school year 2015-2016 through February 3, 2016, the District's Committee on Special Education (CSE) classified the Student as having a "XXXXXX or-XX XXXXXXXXX Impairment," in individualized education programs (IEPs) dated May 13, 2015,

October 4, 2015, and November 30, 2015.<sup>1</sup> None of these three IEPs included any provisions relating to the Student’s conduct/behavior or sanctions in the event of any disciplinary infractions. The CSE changed the Student’s classification from “XXXXXXX or XX XXXXXXXX Impairment” to “XXXXXX XXXXXXX Impairment,” in an IEP dated February 4, 2016, and developed a behavioral intervention plan (BIP) for the Student on that date.

The complainant alleged that the District discriminated against the Student on the basis of his disability, by inappropriately suspending the Student from the School on two occasions for behavior related to his disability, in or around November and December 2015. Specifically, the complainant stated that after the CSE modified the Student’s IEP in November 2015, the Student had difficulty adjusting to his new environment; and, as a result, the Student engaged in behavioral misconduct that led to one of the School’s Assistant Principals (AP 1) suspending him on two occasions in or around November and December 2015. In addition, the complainant asserted that the District failed to notify him regarding the two suspensions.

The regulations OCR enforces provide that an educational institution may discipline a student with a disability in the same manner as it would discipline a nondisabled student, unless the disabled student’s IEP, Section 504 plan, BIP, or other individualized education program developed by a group of knowledgeable persons specifies differently. In accordance with OCR policy, the expulsion or suspension of a student with a disability for more than 10 school days constitutes a “significant change in placement.” 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 is 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 Section 504, at 34 C.F.R. §§104.35 and 104.36. If it is determined that the student’s misconduct is not a manifestation of the student’s disability, there is no obligation to conduct an evaluation, and the student may be suspended or excluded from school in the same manner as other students without disabilities.

OCR’s review of the Student’s disciplinary record indicated that the District did not impose any suspensions on the Student in November 2015. Documentation the District provided to OCR indicated that it imposed two suspensions on the Student for disciplinary incidents that occurred on December 2 and 3, 2015. Specifically, according to a disciplinary referral form dated December 3, 2015, on December 2, 2015, the Student cut class, entered another classroom that was not his own and engaged in disruptive behavior.<sup>2</sup> As a disciplinary consequence, AP 1 imposed a one-day in-school suspension (ISS) on the Student, to be served on December 3, 2015. The disciplinary referral form included a notation indicating that AP 1 notified the Student’s father of the ISS on December 3, 2015. The District provided another disciplinary referral form, which stated that while the Student was serving the ISS on December 3, 2015 for the incident the previous day, the Student refused to complete his assigned work during the ISS; and was

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<sup>1</sup> The Student’s IEPs indicated that the Student was diagnosed as having XXXXXXXXXX XXXXXXX XXXXXXXXXXXXXXXXXXXX XXXXXXX (XXXX) but his classification did not reflect that diagnosis.

<sup>2</sup> According to the District’s Code of Conduct, these are each Category I infractions and can result in disciplinary consequences ranging from an administrative referral, detention, suspension (in school/out-of-school), superintendent’s hearing and/or police/court action.

insubordinate and highly argumentative with the teacher present in the ISS room. As a disciplinary consequence for the Student's conduct on December 3, 2015, AP 1 imposed a one-day out-of-school suspension (OSS) on the Student, to be served the following day on December 4, 2015. The disciplinary referral form included a notation indicating that AP 1 notified the Student's father of the OSS on December 3, 2015; and in a letter, dated December 3, 2015, the Principal provided to the complainant and his wife written notice of the one-day OSS.

OCR reviewed the Student's disciplinary record and determined that the Student had not received any suspensions prior to December 2 and 3, 2015; and, in the absence of any prior suspensions, the Student had not been suspended for more than 10 school days so as to constitute a "significant change in placement" warranting a determination of whether the Student's conduct was a manifestation of his disability prior to imposing discipline. Further, as discussed above, the Student's IEP, dated November 30, 2015, which was in effect at the time the suspensions were imposed, did not state that the Student was exempt from or should otherwise not be subject to discipline; and, the Student did not have a BIP to address targeted behaviors until February 4, 2016, after the suspensions occurred.

Based on the foregoing, OCR determined that the District proffered legitimate, nondiscriminatory reasons for disciplining the Student, on December 2, 2015 and December 3, 2015; namely, the Student engaged in conduct that violated the District's Code of Conduct. OCR further determined that these reasons are not a pretext for discrimination, as the Student's misconduct was documented in the contemporaneous disciplinary referrals; the discipline imposed was consistent with the District's Code of Conduct; and the Student's IEP in effect at the time did not include a provision exempting the Student from discipline. Therefore, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the District discriminated against the Student on the basis of his disability, by inappropriately suspending the Student from the School on two occasions for behavior related to his disability, in or around November and December 2015. Accordingly, OCR will take no further action regarding the complainant's allegation.

During its review of information and documentation the District submitted during OCR's investigation, OCR determined that in December 2015 and the beginning of January 2016, the Student repeatedly engaged in behavioral misconduct, particularly with respect to his XXX class. This misconduct included arriving late to his classes; cutting his classes to walk the halls of the School; becoming involved in altercations with other students; and, failing to complete classroom assignments.<sup>3</sup> In response, AP 1 removed the Student from his regular classroom environment for one period daily during his scheduled XXX class, and reassigned the Student to an Alternative Learning Environment (ALE) for that class period, from January 8, 2016 through the remainder of the School's second quarter/term, which ended on January 29, 2016. The District asserted that AP 1 notified the complainant that he had reassigned the Student to the ALE for one period daily during his scheduled XXX class; however, the District could not provide to OCR information or documentation indicating the date on which it provided the complainant with notice of the change to the Student's class schedule.

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<sup>3</sup> The behavior at issue occurred prior to the CSE's reclassification of the Student, and the development of the Student's BIP on February 4, 2016.

The District asserted that the ALE was designed by the School Principal and the District's Special Education Coordinator, and is a disciplinary alternative given to a student in lieu of a suspension. The ALE is staffed by a New York State certified special education teacher to honor students' IEPs; there is also a certified Teacher Assistant present. The District informed OCR that from January 8, 2016 through January 29, 2016, there was an average of XXXXXX students in the ALE, including the Student. OCR requested that the District provide additional information regarding the ALE, including but not limited to: any guidance, policies, or procedures regarding the District's use of an ALE; the type of instruction and coursework the Student received in the ALE, including whether work covered in the art class was completed<sup>4</sup>; and, how the ALE compared to the learning environment in the Student's regular XXX class. However, the District failed to provide the requested information to OCR.

The regulation implementing Section 504, at 34 C.F.R. § 104.35(a), requires a recipient to conduct a reevaluation of a student with a disability prior to making any significant change in the student's placement. Further, the regulation implementing Section 504, at 34 C.F.R. § 104.35(c)(3), provides that in making placement decisions for a student with a disability, a recipient shall ensure that the placement decision is made by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data, and the placement options.

The Student's IEP, dated November 15, 2016, does not specifically enumerate related aids and services to be provided to the Student in the XXX class, but indicates that some of the Student's related aids and services were to be provided to the Student across all educational settings. The District acknowledged that it did not convene the CSE or other group of knowledgeable persons prior to reassigning the Student to an ALE for one period daily, from January 8, 2016 through January 29, 2016.

OCR determined that the Student was removed from his XXX class and subsequently reassigned to an ALE for one class period per day during 15 school days from January 8, 2016 through January 29, 2016.<sup>5</sup> OCR further determined that this removal for 15 class periods was not an expulsion or suspension of a student with a disability for more than 10 school days, such that it constituted a "significant change in placement" warranting a determination whether the Student's conduct was a manifestation of his disability. However, OCR determined that given the small number of students and the presence of two teachers in the ALE, the ALE apparently constituted a more restrictive educational setting than the Student's XXX class; and the District did not provide any information to establish otherwise. Therefore, OCR determined that the AP 1's unilateral removal of the Student from his XXX class and reassignment to the ALE constituted a change in placement, and therefore triggered the District's obligation to convene the CSE or other group of persons knowledgeable about the Student prior to making such change, as required by Section 504, at 34 C.F.R. § 104.35.

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<sup>4</sup> The District stated that generally, if a student does not have a specific assignment to complete in the ALE, the student is guided to complete a "self-reflection" on how the situation could have been handled differently.

<sup>5</sup> The District's calendar for school year 2015-2016 indicated that schools were closed for the Martin Luther King, Jr. holiday on January 18, 2016.

On June 24, 2016 the District agreed to implement the enclosed resolution agreement to remedy OCR's compliance concern, by requiring training for relevant District personnel regarding the procedural requirements of Section 504, as these pertain to the evaluation and placement of students with disabilities.<sup>6</sup> OCR will monitor the implementation of the resolution agreement. If the District fails to comply with the terms of the resolution agreement, OCR will resume its investigation of this complaint.

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, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions regarding OCR's determination, please contact Félice Bowen, Compliance Team Leader, at (646) 428-3806 or [felice.bowen@ed.gov](mailto:felice.bowen@ed.gov); or Grace Kim, Compliance Team Attorney, at (646) 428-3977 or [grace.d.kim@ed.gov](mailto:grace.d.kim@ed.gov).

Sincerely,

| \_\_\_\_\_ /s/

Timothy C.J. Blanchard

Encl.

cc: Kevin Seaman, Esq.

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<sup>6</sup> OCR determined that no additional prospective individual relief is available to the Student at this time, as he was withdrawn from the District as of XXXX XX, 2016, and XX XXXXXX XXX XX XXXXX. The complainant advised OCR that the Student would not be returning to the District for the foreseeable future.