

August 18, 2017

Stephen Tomlinson
Superintendent
Broadalbin-Perth Central School District
20 Pine Street
Broadalbin, New York 12025

Re: Case No. 02-17-1031
Broadalbin-Perth Central School District

Dear Superintendent Tomlinson:

This letter serves as a follow-up to a letter, dated July 21, 2017, from the U.S. Department of Education, Office for Civil Rights (OCR), regarding the above-referenced complaint filed against the Broadalbin-Perth Central School District (the District). The complainant alleged that the District discriminated against her son (the Student), on the basis of his disability, by denying him admission as a non-resident student for school year 2016-2017, based on his disciplinary record, which referenced behavior that had been determined to be a manifestation of his disability.

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 also is 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 Section 504 and the ADA.

As stated in the letter dated July 21, 2017, OCR determined that the District permits non-resident students to apply for admission to the District pursuant to the Non-Resident Student Tuition Policy (the policy). Pursuant to the policy, the Superintendent is authorized to admit non-resident students subject to the following criteria: (1) the student's educational needs can be met by existing staff within the District's existing programs; (2) admission of a non-resident student shall not require the expenditure of additional local funds or the hiring of additional staff; (3)

admission of a non-resident student shall not result in a classroom exceeding student capacity; and, (4) the student is determined to be in good standing in his/her district of residence (defined as not being placed on academic probation or having been subject to any out-of-school suspensions (OSS) in the previous school year).

OCR determined that the District's policy, on its face, suggests that non-resident students with disabilities requiring any additional services or accommodations resulting in a cost to the District would be denied admission. The Superintendent acknowledged that if he determined that the admission of a non-resident student would result in the District's incurring any cost, he would deny that student admission pursuant to the policy. Based on the information OCR obtained during its investigation, OCR determined that if implemented as written, the policy could result in the exclusion of non-resident students with disabilities seeking admission to the District or seeking to maintain attendance in the District after being diagnosed with a disability. If so, the District would violate the regulations implementing Section 504, at 34 C.F.R. § 104.4(b)(1)(i) and (vii) and (4)(i), and the ADA, at 28 C.F.R. § 35.130(b)(1)(i) and (vii), (7) and (8).

The complainant alleged that the District discriminated against the Student, on the basis of his disability, on or about August 15, 2016, by denying him admission as a non-resident student for school year 2016-2017, based on his disciplinary record, which referenced behavior that had been determined to be a manifestation of his disability. In a letter dated August 15, 2016, the District denied the Student admission as a non-resident student on the basis that he did not meet the District's criteria for admission; namely, he was not a student in "good standing" because of his disciplinary history. OCR determined that the preponderance of the evidence corroborated the complainant's assertion that information about a manifestation determination was provided simultaneously with the Student's application for admission as a non-resident student in August 2016. Additionally, OCR determined that the preponderance of the evidence substantiates that as of on or about August 8, 2016, the District was in possession of a copy of the manifestation determination. The manifestation determination stated that the behavior for which the Student had been disciplined was a manifestation of this disability.

Based on the foregoing, OCR determined that the District determined not to admit the Student based on his disciplinary history, even though it was aware that a group of persons knowledgeable about the Student, namely the Committee on Special Education from the Student's home school district, had determined that the behavior at issue was a manifestation of the Student's disability. Therefore, OCR determined that the District violated the regulations implementing Section 504, at 34 C.F.R. § 104.4(b)(1)(i) and (vii) and (4)(i), and the ADA, at 28 C.F.R. § 35.130(b)(1)(i) and (vii), (7) and (8), by excluding the Student from admission based on manifestations of his disability.

On August 18, 2017, the District agreed to implement the enclosed resolution agreement to resolve the identified compliance issues. OCR will monitor the implementation of the resolution agreement.

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 individual may file a 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 any questions, please contact Joy Purcell, Compliance Team Attorney, at (646) 428-3766 or joy.purcell@ed.gov; Michele Ginter-Barbara, Compliance Team Investigator, at (646) 428-3816 or michele.ginter-barbara@ed.gov; or Félice Bowen, Compliance Team Leader, at (646) 428-3806 or felice.bowen@ed.gov.

Sincerely,

/s/

Timothy C. J. Blanchard

cc: XXXXXXXX XXXXXXXXXXXX, Esq.