June 5, 2018

Mark F. Potter, Ph.D.
Superintendent of Schools
Liverpool Central School District
195 Blackberry Road
Liverpool, New York 13090

Re: Case No. 02-18-1091
Liverpool Central School District

Dear Superintendent Potter:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), with respect to the above-referenced complaint filed against the Liverpool Central School District (the District). The complainant alleged that the District discriminated against her daughter (the Student), on the bases of her sex and disability, by failing to provide the Student with appropriate accommodations due to her pregnancy during school year 2017-2018.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. § 1681 et seq., and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in programs and activities receiving financial assistance from the U.S. Department of Education (the Department). OCR also 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 Department. Additionally, OCR 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 Title IX, Section 504 and the ADA.

The regulation implementing Title IX, at 34 C.F.R. § 106.40(b)(1), states, **"**A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

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 a disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance. 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. The regulation implementing Section 504, at 34 C.F.R. § 104.33(b)(1)(i) and 34 C.F.R. §104.33(b)(2), defines an appropriate education as the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of persons with disabilities as adequately as the needs of non-disabled persons are met. The regulation implementing the ADA, at 28 C.F.R. § 35.130(a), states that no qualified individual with a disability shall, on the basis of 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 public entity.

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

The complainant alleged that the District discriminated against the Student, on the bases of her sex and disability, by failing to provide the Student with appropriate accommodations due to her pregnancy during school year 2017-2018. Specifically, the complainant alleged that the District failed to provide the Student with homebound instruction and excuse the Student's pregnancy-related absences.

During school year 2016-2017, the Student was in the eleventh grade at Liverpool High School (the School). She was expelled from the School in January 2017.

The complainant stated that she went to the School on September 5, 2017, to re-enroll the Student in the School and discuss accommodations for the Student because she was pregnant. The complainant stated that she spoke to someone at the School's main office who told her that they were unable to help her. The complainant stated that she then visited the superintendent's secretary's office on September 6, 2017. The complainant advised OCR that on this visit, she was told that in order for the Student to be enrolled in homebound instruction, she would have to complete an application; provide a medical excuse from the Student's doctor; and, speak with the Student's guidance counselor.

The District advised OCR that its records indicate that the complainant did not go to the District to enroll the Student in the School until September 28, 2017, which was after the beginning of the school year.[1] The District informed OCR that a guidance counselor met with the complainant and the Student on October 2, 2017, regarding the Student's enrollment options given her pregnancy. The guidance counselor denied that during the meeting either the complainant or the Student requested home instruction. The guidance counselor stated that he spoke with the complainant and the Student about their options, including placing the Student in the District's Alternative Learning Center (ALC), where students who need an alternative schedule take classes after regular school

[1] OCR determined that school year 2017-2018 began on September 7, 2017, in the District.

hours at the School; homebound instruction; or, a modified class schedule. The guidance counselor stated that he recommended that the District place the Student in ALC; and, claimed that the complainant and the Student agreed to this program. He informed OCR that he provided the complainant with an application form for the ALC Program (the application), which included medical documentation that the Student's doctor needed to complete. OCR determined that the application form that the District provided to the complainant included options for the ALC Program, as well as homebound instruction, and a modified class schedule.

OCR determined that the complainant provided the completed application form to the District on October 18, 2017. On the application, both the ALC Program and homebound instruction were selected as preferences. In addition, the selection for homebound instruction was circled, and a handwritten note was added stating, "only," next to this selection. The District stated that because it was unclear which markings the complainant had made and which markings the Student's doctor had made on the form, and in accordance with the School nurse's practice for processing such applications, the school nurse called the Student's doctor's office on October 19, 2017.

The District advised OCR that the School nurse was not able to reach anyone at the Student's doctor's office until October 27, 2017. The District advised OCR that on that date, the School nurse spoke with a nurse at the Student's doctor's office (nurse A) and explained the ALC Program. The District advised OCR that nurse A stated that she would speak with the Student's doctor and get back to the School nurse.

The District advised OCR that on November 6, 2017, the School nurse again called the Student's doctor's office and spoke with nurse A. According to the District, nurse A advised the School nurse that the Student's doctor agreed that the ALC Program was the appropriate placement for the Student. The District advised OCR that the School nurse asked nurse A to inform the Student that this was her placement since the Student had an appointment at the office that day.

The complainant informed OCR that neither the Student's doctor's office nor the District notified her or the Student that the District was recommending placing the Student in the ALC Program. The guidance counselor advised OCR that he tried to call the complainant on November 6, 2017, to inform her about the ALC Program placement, but the complainant did not answer and he could not leave her a voicemail message. The guidance counselor acknowledged that he did not make any further attempts to contact the complainant by telephone. The District acknowledged that no one from the District ever attempted to contact the complainant or the Student again to inform them of the ALC Program placement, nor did anyone at the District send a letter or an email to the complainant or the Student to inform them of the Student's ALC Program placement. The District asserted that it did not do so because the School nurse believed that nurse A had notified the Student that the District had placed her in the ALC Program.

The complainant advised OCR that the Student gave birth on XXXXXXX XX, XXXX. The School's principal sent a notice to the complainant on November 27, 2017, informing her that the Student had been absent from school for 20 consecutive days and that the District would drop the Student from its enrollment records unless the complainant scheduled a meeting with the executive principal. The District informed OCR that this is a standard form letter issued to students that have reached a certain number of consecutive absences.

The complainant sent an email to the superintendent, copied to the School's principal and executive principal, on December 4, 2017, complaining about the notice letter and stating that the District should have provided home instruction to the Student. She also requested that the District remove any unexcused absences from the Student's record. The District acknowledged that no one responded to the complainant's email, or took any steps to provide instruction to the Student.

On June 4, 2018, the District entered into the enclosed agreement with OCR to resolve this allegation without further investigation. 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 about OCR's determination, please contact Ernest King, Compliance Team Attorney, at (646) 428-3777 or ernest.king@ed.gov; or Coleen Chin, Senior Attorney, at (646) 428-3809, or coleen.chin@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: XXXXX XXXXX XXXX