

July 25, 2014

Harold A. Coles, Psy.D.
Superintendent
Southern Westchester BOCES
17 Berkley Drive
Rye Brook, New York 10573

Re: Case No. 02-14-1285
Southern Westchester Board of Cooperative Educational Services

Dear Dr. Coles:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) with respect to the above-referenced complaint filed against the Southern Westchester Board of Cooperative Educational Services (BOCES). The complainant alleged that the BOCES discriminates against students on various bases by failing to publish a non-discrimination notice that is in compliance with the laws and regulations OCR enforces.

OCR is responsible for enforcing: Title VI of the Civil Rights Act of 1964 (Title VI), as amended, 42 U.S.C. § 2000d et seq., and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in programs and activities receiving financial assistance from the U.S. Department of Education (the Department); 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 Department; the Age Discrimination Act of 1975 (the Age Discrimination Act), 42 U.S.C. § 6101 et seq., and its implementing regulation at 34 C.F.R. Part 110, which prohibit discrimination on the basis of age in programs and activities receiving financial assistance from the Department; 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; 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, with respect to complaints alleging discrimination on the basis of disability that are filed against certain public entities; and the Boy Scouts of America Equal Access Act (the Boy Scouts Act), 20 U.S.C. §

7905, and its implementing regulation at 34 C.F.R. Part 108, which address equal access to school facilities and certain other youth groups.

The BOCES 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 VI, Title IX, the Age Discrimination Act, Section 504, the ADA, and the Boy Scouts Act.

The regulations implementing Title VI, Title IX, Section 504, the Age Discrimination Act, and the Boy Scouts Act contain requirements for recipients to notify beneficiaries and others of its obligations under the respective regulation and/or that it does not discriminate. (*See* 34 C.F.R. §§ 100.6(d), 106.9, 104.8, 110.25, and 108.9, respectively.) The regulation implementing Title II of the ADA also contains a notice requirement that applies to all entities of state or local government, whether or not they receive federal financial assistance. (*See* 28 C.F.R. § 35.106.)

When OCR evaluated the instant complaint, it determined that the BOCES's website contained a notice of non-discrimination indicating that the BOCES does not discriminate on the basis of race, color, national origin, sex, disability or age in its programs and activities; however, the non-discrimination notice failed to state that the BOCES provides equal access to the Boy Scouts and other designated youth groups. The regulation implementing the Boy Scouts Act, at 34 C.F.R. § 108.9, requires that recipients notify beneficiaries and others that it provides equal access to the Boy Scouts and other designated youth groups.¹

Additionally, the regulation implementing Title IX, at 34 C.F.R. §§ 106.8(a) and 106.9(a), requires a recipient of financial assistance to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX and to notify all of its students and employees of the name, office address and telephone number of this employee; and to notify students, employees and others that inquiries concerning the application of the regulation may be referred to the Title IX coordinator or to OCR. Although the BOCES' non-discrimination notice stated that discrimination inquiries, including Title IX inquiries, could be referred to its coordinator, it did not mention OCR.

Further, the regulations implementing Section 504, at 34 C.F.R. § 104.8, and the Age Discrimination Act, at 34 C.F.R. § 110.25, require recipients to notify beneficiaries and others of the identity of the recipient's Section 504 and Age Discrimination Act coordinators;² and the regulation implementing the ADA, at 28 C.F.R. § 35.107(a), requires public entities that employ 50 or more persons to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the ADA and make available to all interested individuals the name, office address and telephone number of this employee. OCR determined that while the BOCES non-discrimination notice contained the title of the employee designated to coordinate the BOCES' compliance with the regulations OCR enforces, and the name and

¹ The regulation implementing the Boy Scouts Act, at 34 C.F.R. § 108.9, requires this by reference to the regulation implementing Title VI at 34 C.F.R. § 100.6(d).

² The regulation implementing the Age Discrimination Act, at 34 C.F.R. § 110.25(b), states that the notification must identify the responsible employee by name or title, address and telephone number.

telephone number of the coordinator were readily available on the BOCES' website, it did not provide an address for the coordinator.

On June 4, 2014, the BOCES voluntarily entered into the attached resolution agreement to resolve the complaint, in accordance with Section 302 of OCR's Case Processing Manual. OCR will monitor implementation of the resolution agreement. If the BOCES fails to comply with the terms of the resolution agreement, OCR will resume its investigation.

This letter should not be interpreted to address the BOCES' 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 BOCES 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 any questions regarding OCR's determination, please contact David Krieger, Compliance Team Attorney, at (646) 428-3893 or david.krieger@ed.gov; or Michael Goldberg, Senior Compliance Team Investigator, at (646) 428-3817 or michael.goldberg@ed.gov.

Sincerely,

Timothy C.J. Blanchard

Cc: William Kang, Esq. (wkang@kblaw.com)

Encl.