



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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November 27, 2012

Dr. Christopher McGinley
Superintendent
Lower Merion School District
Administration Building
301 East Montgomery Avenue
Ardmore, PA 19003-3338

IN RESPONSE, PLEASE REFER TO: 03091082

Dear Dr. McGinley:

This is in further reference to the complaints that were filed with the Office for Civil Rights (OCR), U.S. Department of Education (the Department), against the Lower Merion School District (the District), alleging discrimination on the bases of race and disability. Specifically, the Complainants alleged that on January 12, 2009, the District adopted a redistricting plan (the Plan), effective in the 2009-2010 school year, that discriminates against African American students (Allegation 1) and students with disabilities (Allegation 2). The Complainants asserted that the Plan divides a neighborhood that is predominately African-American and that contains the highest number of students with Individualized Education Plans (IEPs), in half in order to create two attendance zones, one of which has the right to choose to attend either of the two high schools in the District, and the other one in which the students are bused to the high school further from their homes.

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin by recipients of Federal financial assistance from the Department. OCR is also responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance from the Department. Additionally, OCR has jurisdiction as a designated agency under Title II of the Americans with Disabilities Act of 1990 (ADA), and its implementing regulation at 28 C.F.R. Part 35, over complaints alleging discrimination on the basis of disability that are filed against public entities, such as elementary and secondary education systems. The District is a recipient of Federal financial assistance

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and is therefore subject to Title VI, Section 504 and the ADA and their implementing regulations.

OCR has determined that Allegation 1, which alleges discrimination on the basis of race, was decided on the merits by the Federal courts. On June 24, 2010, the U.S. District Court for the Eastern District of Pennsylvania issued a decision in *Student Doe 1 v. Lower Merion School District*, 689 F. Supp. 2d. 742 (E.D. Pa. 2010), in which the District Court judge ruled that the District did not discriminate against the students affected by this redistricting plan on the basis of race in violation of the Equal Protection Clause of the 14th Amendment to the Constitution. Subsequently, the plaintiffs appealed the District Court's decision to the United States Court of Appeals for the Third Circuit Court, which affirmed the District Court's order. *See Doe ex rel. Doe v. Lower Merion School District*, 665 F.3d 524 (3^d. Cir. 2011). On June 18, 2012 the United States Supreme Court denied certiorari in this case.

The Third Circuit Court of Appeals' decision that school districts may consider neighborhood racial demographics in drawing a student assignment plan that promotes diversity is consistent with the Guidance issued by OCR and the Department of Justice in December 2011.¹ As the Third Circuit stated:

The Supreme Court and this Court have yet to set forth any standard requiring the application of strict scrutiny when decisionmakers have discussed race, but the school assignment plan neither classifies on the basis of race nor has a discriminatory purpose. We hold that the plan here passes constitutional muster because it does not select students based on racial classifications, it does not use race to assign benefits or burdens in the school assignment process, it does not apply the plan in a discriminatory manner, and it does not have a racially discriminatory purpose. Strict scrutiny does not apply.²

Under OCR procedures, if allegation(s) filed in a complaint are foreclosed by previous decisions of the Federal courts, we will not proceed with our complaint resolution process and the allegations(s) will be administratively closed. As a result of the court's decision, OCR has determined that it will not proceed with its complaint resolution process regarding Allegation 1 and, we are administratively closing this allegation, effective as of the date of this letter. OCR will proceed with complaint processing procedures with respect to Allegation 2, pertaining to disability discrimination, which was not presented before or decided by the Federal courts.

¹ Guidance on the Voluntary Use of Race to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools,

<http://www2.ed.gov/about/offices/list/ocr/docs/guidance-ese-201111.html>

² *Doe ex rel. Doe v. Lower Merion School District*, 665 F.3d 524, 529-30 (3^d. Cir. 2011).

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect, to the extent provided by law, personal information that, if released, could constitute an unwarranted invasion of privacy.

Federal regulations prohibit recipients of Federal financial assistance from taking actions which intimidate, threaten, coerce, or discriminate against individuals who exercise their rights under the statutes which OCR enforces, or because they have filed a complaint with OCR or taken part in the complaint resolution process. If you feel that such actions have occurred, you may notify this office.

If you have any questions or concerns regarding OCR's case determination, please contact me at (215) 656-8522.

Sincerely,

/s/

Vicki Piel
Team Leader
Philadelphia Office

cc: Kenneth A. Roos, Esq.