



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, D.C.

July 1, 2014

Dr. Cindy Elsberry
Superintendent, Horry County Schools
335 Four Mile Road
P.O. Box 260005
Conway, South Carolina 29528

Re: OCR Complaint Number 11-14-1094
Resolution Letter

Dear Dr. Elsberry:

This is to notify you of the outcome of the complaint received by the District of Columbia Enforcement Office of the Office for Civil Rights (OCR), within the U.S. Department of Education (the Department), on January 23, 2014, against Horry County Schools (the District). The Complainant alleged that the District discriminates against students with disabilities by using a standard form letter to assign students to an alternative school for disciplinary reasons, by failing to conduct a manifestation determination prior to changing students' school assignments, and by failing to consider whether or how the new school will provide a free, appropriate public education (FAPE) for students.

OCR enforces 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 in programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. Because the District receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

The Section 504 regulations, at 34 C.F.R. §104.35(a), require school districts to evaluate any student who, because of disability, needs or is believed to need special education or related aids and services before initially placing the student and before any subsequent significant change in placement. Section 104.36 requires school districts to provide procedural safeguards for parents and guardians of disabled students with respect to any action regarding the identification, evaluation or placement of the student.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

During the course of OCR's investigation, the District expressed an interest in resolving the complaint prior to the completion of OCR's investigation. Pursuant to Section 302 of OCR's Case Processing Manual, OCR discussed resolution options with the District. On June 26, 2014, the District signed a voluntary resolution agreement (copy enclosed), which, when fully implemented, will resolve the complaint. The provisions of the agreement are aligned with the allegation raised in the complaint and information obtained during the course of OCR's investigation and are consistent with the applicable regulations. OCR has notified the Complainant of the voluntary resolution agreement and we will monitor implementation of the agreement.

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 retaliate against an individual who asserts a right or privilege under a law enforced by OCR or who files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR. 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 personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the District's cooperation in the resolution of this complaint, in particular, Kenneth Generette and Traci Hogan. If you have any questions regarding this letter or the complaint, please contact either of the attorneys assigned to this complaint: Jane Ehrenfeld at (202) 260-0790 or Jane.Ehrenfeld@ed.gov, or Kimberly Conway at (202) 260-0991 or Kimberly.Conway@ed.gov.

Sincerely,

/s/

Rachel Glickman
Team Leader, Team IV
Office for Civil Rights
District of Columbia Office

Enclosure

cc: Kenneth Generette