



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.

January 22, 2014

Dr. Cindy Elsberry
Superintendent of Schools
Horry County Schools
335 Four mile Road
Conway, South Carolina 29528

RE: OCR Complaint No. 11-12-1176
Resolution Letter

Dear Dr. Elsberry:

This letter is to notify you of the disposition of the above-referenced complaint that was filed on April 18, 2012, with the District of Columbia office of the U.S. Department of Education, Office for Civil Rights (OCR) against Horry County Schools (the District). The complaint alleges that the District retaliated against the Complainant during the 2011-2012 school year because of his advocacy on behalf of students with disabilities, specifically, telling the District that the instructional programs selected by the District were not meeting his students' disability-related needs and seeking to implement other instructional methodologies that he believed were appropriate to meet their individual educational needs.

OCR enforces certain Federal civil rights statutes and regulations, including Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, at 34 C.F.R. Part 104, which prohibit discrimination based on disability in programs and activities that receive Federal financial assistance from the Department. OCR also has jurisdiction as a designated agency under Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public education programs, regardless of whether they receive Federal financial assistance. Section 504 and Title II also prohibit school systems from retaliating against individuals who have made a complaint, testified, assisted, or participated in an investigation, proceeding or hearing under the laws enforced by OCR, or who complained about discrimination or otherwise asserted rights under these laws. Because the District is a public school system and receives Federal financial assistance from the Department, we have jurisdiction over it pursuant to Section 504 and Title II. Because the Complainant has alleged retaliation under Section 504 and Title II, we have jurisdiction over the allegation.

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

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OCR had concerns with the District's decision to place the Complainant on a plan to resolve performance concerns because the Complainant had corrected these concerns several months earlier. Pursuant to Section 302 of OCR's *Case Processing Manual*, OCR discussed resolution options with the District. The District expressed an interest in resolving the complaint prior to the completion of OCR's investigation. On January 21, 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 concludes OCR's investigation of this complaint. OCR is closing this complaint investigation effective the date of 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.

We have notified the Complainant that the District may not harass, coerce, intimidate, or discriminate against an individual because the individual 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 other related correspondence and records upon request. In the event we receive such a request, we will seek to protect, to the extent provided by law, information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

OCR appreciates the cooperation of the District in the resolution of this complaint. If you have any questions or concerns regarding this letter, please contact the OCR staff assigned to investigate this complaint, Ms. Amy Williams at (202) 453-5933 or via e-mail Amy.Williams2@ed.gov, or Ms. Kendra Riley at (202) 453-5905 or via e-mail at Kendra.Riley@ed.gov.

Sincerely,

/s/

Dale Rhines
Acting Team Leader, Team III
District of Columbia Office
Office for Civil Rights

Enclosure

cc: Kathryn Long Mahoney, Esq.