

APPENDIX 4

Wendella P. Fox, Director, Philadelphia Office, Office for Civil Rights,
U.S. Department of Education, Letter, June 5, 2002



U.S. DEPARTMENT OF EDUCATION
THE WANAMAKER BUILDING, SUITE 515
100 PENN SQUARE EAST
PHILADELPHIA, PENNSYLVANIA 19107

OFFICE FOR CIVIL RIGHTS

WENDELLA P. FOX
DIRECTOR
PHILADELPHIA OFFICE
EASTERN DIVISION

June 5, 2002

Mr. Marc Pentino, Civil Rights Analyst
US Commission on Civil Rights
Eastern Regional Office, Suite 500
624 Ninth Street, NW
Washington, D.C. 20425

Dear Mr. Pentino:

This is in response to your memorandum to me of May 6, 2002, which enclosed Chapter 3 of your draft of the West Virginia Advisory Committee report for our review. Thank you for this opportunity to comment on the draft.

I am particularly concerned about the statements quoting Mr. Reed Martin found on page 36 of the draft report. Mr. Martin's characterization of OCR's enforcement of Section 504 is simply not correct.

Mr. Martin states that OCR will close cases based on an oral, verbal representation by a school official that remedial action will be taken to correct deficiencies in compliance with the law. He further intimates that OCR places the burden of monitoring settlement agreements on complainants. This is not the case.

Where fact-finding indicates compliance concerns, OCR requires that the recipient either immediately correct the situation, or agree in writing to correct the concerns at a reasonable time in the future. Under no circumstances will OCR accept the verbal promises of a recipient to correct compliance problems in order to resolve a complaint.

Where compliance problems have been identified, resolution letters contain written agreements, signed by the school officials, that indicate what specific steps will be taken by the school to remedy the identified concerns. These agreements most often contain both deadlines for implementation and monitoring provisions for OCR to ensure that all of the terms of the resolution agreements have been fulfilled.

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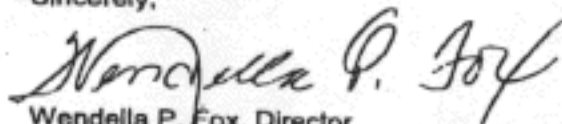
These resolution agreements are provided to the complainants, so that they will know what is expected of the schools and when. OCR is always grateful for any information that a complainant may have regarding a school's compliance with a resolution agreement, and takes into account any information provided by complainants in determining whether the terms of a resolution agreement have been met. However, OCR independently fully monitors every resolution agreement until its successful completion, and does not rely on complainants to ensure that the terms of resolution agreements have been met.

When OCR identifies compliance problems, and a recipient refuses to sign a resolution agreement, or fails to meet the terms of a signed resolution agreement, OCR has at its disposal additional means to secure an appropriate resolution, including administrative action to withhold Federal funds to the recipient. While Mr. Martin states that he believes that the Philadelphia OCR has not taken enforcement action against a recipient in any recent Section 504 case, in fact, the Philadelphia office has moved to enforcement in four Section 504 cases since 1994, including a case in West Virginia in 1997. All four of these enforcement actions resulted in voluntary compliance agreements.

In short, when compliance problems are identified, OCR requires written resolution agreements from recipients, and monitors those agreements to ensure that they are fully implemented. If recipients refuse to remedy identified problems, or fail to implement resolution agreements, OCR can and does initiate formal enforcement proceedings.

I want to assure you that OCR takes very seriously its responsibility to enforce Section 504, and thank you for this opportunity to respond to the concerns raised in your draft report.

Sincerely,



Wendella P. Fox, Director
Philadelphia Office
Office for Civil Rights