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The State of South Carolina

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September 8, 1994

Honorable Donald W. Beatty, Chairman
S.C. Legislative Black Caucus
Affirmative Action Committee
434C Blatt Building
Columbia, South Carolina 29211

Dear Representative Beatty:

You have asked this Office for an opinion as to whether under South Carolina Human Affairs Law or Division IV, Section 1 and 2 of the Education Improvement Act (EIA) local school districts are required to develop written affirmative action plans comparable to those required of state agencies. You have also asked whether a failure by the Department of Education to require affirmative action plans of local school districts comparable to those required for state agencies violates Division IV, Section 1 and 2 of the EIA.[1]

Section 1-13-110 requires each state agency (emphasis added) to develop and present affirmative action plans to the Human Affairs Commission. School districts are political subdivisions rather than State agencies. Thus school districts are not bound by the requirements of § 1-13-110. See § 59-1-160 and Patrick v. Maybank, 198 S.C. 262, 17 S.E.2d 530 (1941).

Division IV, Sections 1 and 2 of the EIA codified at § 59-1-510 and § 59-1-520 provide respectively:

> Effective with the 1984-85 school year, the Department of Education shall establish guidelines and regulations to ensure that school

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[1] Outside the scope of your request and not addressed are requirements, if any, of federal law and federal contract compliance.

Request Letter.

> districts recruit and hire staff in professional areas including, but not limited to, the employment of teachers, the employment of administrators, teachers' aides, and other personnel needed to implement the provisions of the South Carolina Education Improvement Act of 1984 on the basis of qualifications and merit. The Department shall further monitor the implementation of the South Carolina Education Improvement Act of 1984 to ensure that minority educators and minority school districts receive equal and fair treatment under each program and each section of the South Carolina Education Improvement Act of 1984.

§ 59-1-520 provides:

> Failure by any school district to develop affirmative action plans or otherwise adhere to the provisions of the South Carolina Education Improvement Act of 1984 is cause for intervention by the State Department of Education to take the corrective steps as may be necessary.

Section 1-13-110's requirement that affirmative action plans of state agencies be submitted to the State Human Affairs Commission predates the 1984 enactment of § 59-1-510 and § 59-1-520 which require school districts to develop affirmative action plans to be submitted to the State Department of Education. There does not appear to be any requirement that these be submitted to the South Carolina Human Affairs Commission.

Pursuant to § 59-1-510's mandate, Regulation 43-202.1 was promulgated effective February, 1986, establishing guidelines and regulations for recruitment and hiring staff and selection for training programs in the professional areas (referenced copy attached). A duly promulgated regulation has the force and effect of law. Faile v. South Carolina Employment Security Commission, 267 S.C. 536, 230 S.E.2d 219 (1976).

At a minimum to comply with Department of Education guidelines the school district's plan is to include:

1. Strategies to ensure the broadest feasible recruiting base.

2. Clear definition of how a person becomes an applicant for a district position, including a central point for filing a written application.

3. Written procedures to assure the screening of all applications.

4. Written procedures available to administrators and applicants which explain the screening, interviewing, and employment steps for all positions, including the persons directly involved in the final recommendation to employ.

5. Written procedures which clearly define the person or persons authorized to make an offer of employment on behalf of the district.

The State Department of Education has been designated, in § 59-1-520 to monitor, intervene and take corrective steps upon failure of a school district to develop affirmative action plans or adhere to EIA requirements. The Department of Education regulations provide for a one time submission of affirmative action plans due in 1985. These plans would now be approximately ten (10) years old. While there are no specific requirements set forth in the statute or regulation requiring submission of an annual plan, annual assurances that the plan is being complied with is provided for in the regulation. Typically affirmative action plans would reflect more current goals and status; the Department's efforts to monitor annual compliance may not be as effective without updated affirmative action plans. Division IV, Section 1 and 2 of the EIA envisions that the Department of Education would begin its process of ensuring school district compliance beginning with the 1984-85 school year when the EIA was enacted.

I see no requirement of Division IV, Sections 1 and 2 of the EIA that affirmative action plans be comparable to those required to be submitted by state agencies to the Human Affairs Commission. Of course, the General Assembly could amend the various relevant statutes to require that school district affirmative action plans be comparable to those required to be submitted by state agencies.

Sincerely,

Ruby Brice McClain

Ruby Brice McClain
Assistant Attorney General

RBM/djs

Attachment

REVIEWED & APPROVED BY:

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