



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

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November 26, 2012

Dr. Kathryn Birkett
Superintendent
Indian Prairie School District #204
Crouse Education Center
780 Shoreline Drive
Aurora, Illinois 60504

RE: OCR Docket #05-10-1173

Dear Dr. Birkett:

This is to advise you of the disposition of one allegation in the above-referenced complaint that was filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR) against the Indian Prairie School District #204 (District) alleging race and national origin discrimination.

The complainant alleged that the District discriminated on the basis of race and national origin by operating a race-themed high school mentoring program, known as UPward, at Neuqua Valley High School (Neuqua Valley). The complainant also alleged that the District required African American and Latino students at Scullen Middle School (Scullen) to attend an assembly sponsored by the high school mentoring and support program. This letter addresses only these aspects of the complaint, and does not address the three other allegations that were also included in the above-referenced complaint. The three other allegations in the complaint will be addressed in future correspondence from OCR.

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d, and its implementing regulation at 34 C.F.R. Part 100. Title VI prohibits discrimination on the basis of race, color, or national origin and prohibits retaliation by recipients of Federal financial assistance. As a recipient of Federal financial assistance from the Department, the District is subject to Title VI.

OCR has completed its investigation of the allegation relating to the UPward program. During its investigation, OCR reviewed information provided by the complainant and the District. OCR also interviewed the complainant and staff from Neuqua Valley and Scullen. Based on the information OCR obtained during its investigation, OCR has determined that there is insufficient evidence to support a conclusion of noncompliance with Title VI regarding this allegation. OCR is therefore closing this allegation effective the date of this letter. The basis for this determination is explained below.

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

Investigation

This letter will address separately both aspects of the allegation related to the UPward program.

1. Whether the Program is Per Se Discriminatory

According to the District, the UPward program was created in response to a district-wide initiative on equity issues that took place between 2005 and 2008. During this time period, the District worked with a consultant and formed Building Equity Leadership Teams (BELT) at each school to explore how race and class impact student access to academic rigor and achievement. The District created BELT because it was concerned that its usual efforts to recruit students to take academically rigorous classes in high school had not been successful in recruiting minority students.¹ During the 2008-2009 school year, the Neuqua Valley BELT members held numerous discussions with African American and Latino students and parents to discuss how to encourage greater participation of African American and Latino students in the high school's academically rigorous classes. The District sought specific feedback from the students on what the District could do to encourage their participation in and successful completion of honors and advanced placement (AP) courses. Students identified as barriers to their participation the lack of active and personal recruitment by staff, isolation in classes when they do enroll, and the need for ongoing support from the District during the year to assure them that the District sees them as viable candidates for these types of courses.

As a direct result of the comments and suggestions from BELT, parents and students, Neuqua Valley responded by establishing the UPward program in 2009-2010. The District asserts that UPward is a mechanism for encouraging all students to take more rigorous courses and, more specifically, to increase access to and knowledge in students from underrepresented races of honors and AP classes.

OCR determined that participation in UPward has always been voluntary and that no student was assigned to UPward or required to participate in any component of the program. The UPward program consisted of direct outreach to African American and Latino students, positive peer support, and dialogue with parents. Guidance counselors encouraged African American and Latino students to participate in the program, if the students' grades suggested that the students would be successful in more rigorous courses. UPward students met during the school day once per academic quarter with BELT to discuss their experiences, successes and challenges as the school year progressed.

¹ In the 2009-10 school year, 1,095 students were enrolled in one or more AP courses at Neuqua Valley High School, according to the 2009 Civil Rights Data Collection. Of these 1,095 students, 40 or 3.7% were African American and 44 or 4.1% were Latino.

The District provided OCR with the roster of students who have participated in UPward since its inception. Approximately 200 students have participated in UPward and enrolled in one or two advanced level classes. While most of these students were African American or Latino, or mixed race, three were not. These three students (one Asian student, one Caucasian student, and one Native American student) were not individually encouraged to enroll in UPward but had heard about the program through word-of-mouth and asked if they could participate. The administrators granted the students' request and they became full participants in the program during the 2009-2010 school year.

The District also began recruiting broadly, encouraging students of all races to participate in UPward. In January 2011, guidance counselors spoke individually with all students who had enrollment appointments and encouraged all of these students, regardless of race or national origin, to take advanced coursework and enroll in the UPward program. In November and December of each academic year, Neuqua Valley holds optional meetings for all students who might wish to participate in UPward. Parents are also encouraged to attend the Honors/AP Night in January to learn about the advanced coursework options available to their children. Further, in response to the OCR complaint, the District now broadly publicizes UPward meetings and events, getting the word out through guidance counselors, occasional student organization meetings, weekly bulletins to staff, routine emails to teachers, student flyers, and daily announcements. Promotional materials for UPward also now include a statement that UPward is open to all students without regard to race and national origin.

Beginning in the 2010-2011 school year, the District also expanded efforts to encourage all students who showed potential to be successful to take more rigorous courses. Teachers and guidance counselors were asked to advise all students who were doing well academically to take more challenging courses. The District provided department chairs and teachers with directions on how to recruit students to those courses. In addition, in January 2011, classroom teachers advised all students on course selections for the next academic year. During those discussions, teachers explained what courses they would recommend students take the following year, including honors and AP courses.

2. Program's Assembly for Middle School Students

As an extension of the 2009-2010 UPward program, some of the UPward students who were seniors in high school requested an opportunity to share their experiences with eighth grade middle school students. The students said they wanted to serve as role models and provide an opportunity for students to hear from African American and Latino high school students who had successfully completed rigorous and challenging courses while in high school.

Administrators at Scullen middle school invited all of the middle school's African American and Latino eighth grade students to an assembly in which the high school seniors enrolled in UPward would speak. A letter addressed to the parents and guardians of the invited students

stated that the purpose of the program was to “offer a uniquely positive experience for all 8th grade African American and Latino students.” Included with each letter was a pass the student could use to be released from class to attend the UPward presentation. Most teachers gave the letters to their African American and Latino students in class, in front of their peers.

A few parents who were Latino or African American contacted the middle school’s principal and said they were disturbed about the content of the letter and how the letters had been distributed in class, singling out students on the basis of their race. Some parents said they thought the letters were demeaning and also said they objected to students missing class time to attend the assembly. The Scullen guidance counselor and the Scullen principal said they provided the parents with additional information about the UPward program and told them the outreach activity was not mandatory. The District also arranged a meeting with parents to further discuss their concerns, and the assembly between the high school students in UPward and the middle school students followed thereafter.

Legal Standard

OCR enforces Title VI, as implemented by regulations at 34 C.F.R. Part 100, which prohibits institutions that receive federal financial assistance from discriminating on the basis of race, color, or national origin.

It is not a violation of Title VI, in and of itself, for a school district to operate a race-themed mentoring and support program. OCR and the U.S. Department of Justice (DOJ) discussed this issue in joint guidance issued in December 2011 (K-12 Guidance). “In addition to enrolling a diverse student body or reducing racial isolation, school districts will want to preserve those gains. Therefore, districts may employ mentoring, tutoring, retention, and support programs to maintain diversity or reduce racial isolation.”²

Likewise, in another joint guidance document on the use of race issued at the same time, OCR and DOJ stated: “An institution could sponsor retention or support programs open to all students that offer content that the institution believes might be of particular interest to a group targeted for retention. Such programs could, for example, hold motivational lectures (e.g., highlighting the accomplishments of Latino business leaders or the artistic achievements of Pacific Islanders), and could include small group follow-up workshops with mentors.”³

As noted in the K-12 Guidance, Justice Kennedy in his concurring opinion in *Parents Involved in Community Schools v. Seattle School District No. 1* also discussed school districts operating “special programs:”

² “Guidance on the Voluntary Use of Race to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools,” available at: <http://www.ed.gov/ocr/docs/guidance-ese-201111.pdf>. (K-12 Guidance)

³ “Guidance on the Voluntary Use of Race to Achieve Diversity in Postsecondary Education,” available at: <http://www.ed.gov/ocr/docs/guidance-pse-201111.pdf>. (Postsecondary Guidance)

School boards may pursue the goal of bringing together students of diverse backgrounds and races through other means, including strategic site selection of new schools; drawing attendance zones with general recognition of the demographics of neighborhoods; allocating resources for special programs; recruiting students and faculty in a targeted fashion; and tracking enrollments, performance, and other statistics by race. These mechanisms are race conscious but do not lead to different treatment based on a classification that tells each student he or she is to be defined by race, so it is unlikely any of them would demand strict scrutiny to be found permissible.⁴

A race-themed mentoring and support program would fall within this category of approaches if it did not admit or exclude students on the basis of their race. Such a program would be unlikely to be subject to strict scrutiny review and thus is unlikely to violate Title VI.

Race-exclusive recruiting differs fundamentally from race-targeted recruiting. With race-targeted recruiting, a school may intentionally target students or particular races, such as those underrepresented in a particular program, while also conducting broader recruitment efforts without regard to race. Race-targeted recruiting seeks to ensure that students from particular groups are aware of opportunities, but it does not exclude others from being recruited.

Here, the evidence indicates that the District initially recruited only students of certain races (African American and Latino) to participate in its UPward program. Students of other races who had heard about the program through word of mouth and asked to participate were allowed to do so. The District later expanded its recruitment for the program and began recruiting broadly, reaching out to all students with information about the program. The District does some race-targeted recruiting as part of this larger recruiting effort. The District no longer reaches out to middle school students at all concerning the UPward program.

Based on the above, OCR has determined that there is insufficient evidence to support a conclusion of noncompliance with Title VI regarding the current operation of the UPward program. OCR is closing the allegation relating to the UPward program as of the date of this letter. OCR will continue to be in contact with you regarding the remaining allegations in the complaint.

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.

⁴ 551 U.S. 701 (2007). "Strict scrutiny" is a legal term referring to a two-step process. First, as OCR and DOJ explained in their joint guidance on the use of race, there must be a compelling interest. OCR and DOJ has so far recognized only two interests as compelling at the elementary and secondary level: student body diversity and the avoidance of racial isolation. Second, the use of race must be narrowly tailored to meet one of these interests. Narrow tailoring assesses whether an educational institution has considered workable race-neutral alternatives; whether its plan provides for flexible and individualized review of students; whether it has minimized undue burdens on other students; and whether its plan is limited in time and subject to periodic review.

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OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The Complainant may file a private suit in federal court whether or not OCR finds a violation.

Thank you for your cooperation with our investigation. If you have any questions or concerns, please contact me by telephone at 312-730-1592 or by email at Catherine.Martin@ed.gov.

Sincerely,

/s/

Dawn R. Matthias
Team Leader

cc: Dawn Hinkle, Esq.