

April 9, 2014

Dr. Debra Livingston
Superintendent of Manchester School District
School Administrative Unit #37
195 McGregor Street, Suite 201
Manchester, NH 03102

Re: Case No. 01-11-5003
Manchester School District, School Administrative Unit #37

Dear Dr. Livingston:

This is to advise you of the resolution of the above-referenced compliance review initiated by the U.S. Department of Education (Department), Office for Civil Rights (OCR) against the Manchester School District, School Administrative Unit #37 (District). The compliance review assessed whether the District discriminated against black and Hispanic students by establishing policies and procedures that result in excluding them from college and career ready programs and courses, including the District's Advanced Placement (AP) courses, honors and other higher level learning opportunities.

OCR initiated this compliance review under Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000d *et seq* (Title VI) and its implementing regulation, at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color or national origin in programs and activities receiving financial assistance from the Department. As a recipient of financial assistance from the Department, the District is subject to Title VI.

Prior to the conclusion of OCR's investigation, the District expressed an interest in voluntarily resolving this review and entered into a resolution agreement, a copy of which is enclosed, which commits the District to specific actions to address the issue under review. This letter summarizes the applicable legal standards, the information gathered during the review and how the review was resolved.

Legal Standards

The Title VI regulations, at 34 C.F.R §100.3(a) and (b), state that: "A recipient ... may not ... on the ground of race, color or national origin: (ii) Provide any service ... in a different manner, from that provided to others under the program; [or] (vi) Deny any individual an opportunity to participate in the program ... or otherwise or afford him an opportunity to do so which is different from that afforded others under the program." The Title VI regulations, at 34 C.F.R. 100.3(b)(2) also prohibit the use of "criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin."

The administration of student enrollment in courses can result in unlawful discrimination based on race and/or national origin if students are subjected to different treatment based on their race or national origin, or if a policy or practice that is neutral on its face and administered neutrally but results in a disproportionate and unjustified impact on students of a particular race or national origin.

Overview of the District

The District is the largest school district in New Hampshire. The District is composed of fourteen elementary schools (Kindergarten through Grade 5), four middle schools (Grades 6 through 8) and three comprehensive high schools (Grades 9 through 12), Central, Memorial and West High Schools, as well as, Manchester School of Technology (MST). This school provides vocational and career oriented programs for students from the three high schools, and students from surrounding communities. It began offering a four-year curriculum in the 2012-13 school year, beginning with a freshman class that is admitted by lottery.

According to data from the New Hampshire Department of Education website, during the 2010-2011 and 2011-2012 school years, the District enrolled 15,732 and 15,536 students, respectively, with 5,620 and 5,543 total high school students. For the 2011-12 school year, 1,257 students in the District (8.1%) were black, and 2,146 of those students (13.8%) were Hispanic. Based on information provided by the District, approximately 1,700 of the District's students (11%) were Limited English Proficient (LEP). Because the District has been a refugee resettlement area for years, LEP students in the District speak over 70 different languages.

Summary of Review

During the investigation, OCR requested information from the District for the 2010-2011 and 2011-2012 school years. OCR reviewed documentation from the District regarding the policies and procedures relating to enrollment in its courses and programs. OCR also conducted onsite meetings and interviews with administrators, guidance counselors, principals, Building Level Instructional Leaders, classroom teachers, parents and students at the District's three comprehensive high schools, three middle schools, and five of the District's elementary schools, as well as the MST. Additionally, OCR analyzed student enrollment data for the District and for each high school in the District, and compared it to enrollment data OCR was able to obtain for several District programs, including AP course enrollment.

Elementary and Middle School

OCR learned that the District does not offer any higher level learning opportunities before 10th grade, and does not have any gifted and talented program. The elementary schools do not designate any prerequisite courses or course tracks for courses at the middle school level and similarly the middle schools do not designate any prerequisite courses or course tracks for higher level learning opportunities at the high school level. However, students may need to take certain courses in elementary and middle school, including foreign language, algebra and/or

foundational courses, in order to be prepared for the sequence of courses leading to enrollment in AP high school courses.

High School

OCR's review focused on the Central, Memorial and West High Schools. Students entering the District's three comprehensive high schools are assigned to one of four class levels by guidance counselors, based largely on placement exam results. Schools may consider grades or teacher recommendations from the student's previous school in assigning levels. The levels, as described in the high school Program of Studies, are:

- *Level 1: Fundamental* – “These courses, which meet graduation requirements, are designed to help students acquire fundamental skills necessary for success after high school.”
- *Level 2: College Preparatory* – “These courses are designed for the majority of students and will allow a great deal of flexibility in career planning and college preparation. They will provide continued exposure and reinforcement of those skills and knowledge necessary for understanding and success now and in the future.”
- *Level 3: Accelerated College Preparatory* – “These courses are designed for college-bound students who have demonstrated previous academic success. Pace, depth of knowledge, and pursuit of critical skills characterize courses at this level.”
- *Level 4: Honors and Advanced Placement* – “This rigorous course of study is designed for those academically talented, college bound students whose skills have progressed beyond the mastery level. These courses emphasize higher ordered thinking skills, independent and self-directed research, and stress problem-solving in multidisciplinary contexts.”

According to the District's guidance counselors, most students and parents accept the initial placement provided by the high school for the student in 9th grade. However, in the first six to eight weeks of a student's freshman year, a student's level may be adjusted if his or her New England Common Assessment Program (NECAP) scores are high and teachers, parents, and guidance counselors agree on the change in placement. A change may be considered at the recommendation of a teacher, at the student's own request, or at the request of a parent, provided that the student meets the necessary prerequisites. A parent can request that his or her child be moved to a higher level and override a teacher's advice to the contrary. To do this, the parent must complete and sign a selection sheet that can be obtained from the guidance office.

Students who are interested in enrolling in level 4 classes – including honors and AP classes – in the 10th grade or higher are instructed in the Program of Studies that they must meet certain prerequisites (typically these include both teacher recommendation and successful completion of one or more prerequisite classes at the high school) and apply for enrollment by selecting the course on the course enrollment form. Parents may submit an override to enroll a student in a course or course level for which the student does not have the prerequisites.

There are, however, consequences for students who perform poorly after override. If the student performs poorly in an AP course and has to move back down to a lower level, he or she will receive an automatic withdrawal failure for the class – a mark that counts as a zero toward student rank and GPA. As a result of this penalty, according to guidance counselors, most students choose to stay in their assigned levels. Dropping a class is highly discouraged and opportunities to do so are, according to the high school Program of Studies, “strictly limited.” Parental approval is required in most circumstances.

OCR learned that the District offers its students in grades 10 through 12 two other types of higher level learning opportunities:

- New Hampshire Running Start Program (Running Start): higher education initiative designed to give junior and senior high school students an opportunity to receive credit from the New Hampshire Community Colleges, while also completing the requirements for high school graduation. Students must register for Running Start and pay \$150 to receive credit, and will be considered dual enrolled, receiving a grade and credit from both the New Hampshire Community Colleges and from the high school. Courses taught through the Running Start program are college courses taught at the high school by credentialed high school faculty as part of the daily class schedule.

- Southern New Hampshire University Dual Credit Program (SNHU Dual Credit): similar to Running Start program with credit from SNHU; the fee is \$100 and sophomores may also participate.

Students may enroll in Running Start and SNHU Dual Credit classes in the same way they enroll in any other course. The majority of Running Start and SNHU Dual Credit courses are offered only as higher course levels, and some classes require prerequisites such as successful completion of a previous course, or teacher recommendation. Again, parental override is an option to place a student in one of these courses without the prerequisites. Once students are enrolled in a class that offers SNHU Dual Credit or Running Start, teachers work with students interested in obtaining the college credit to coordinate fees and applications for the credit. The District informed OCR that guidance counselors and teachers ensure that the fee is paid for those who cannot afford it. However, the District does not publicize this option.

AP Course Offerings and Participation

Based on data that was provided to OCR, the enrollment of black students was disproportionate to their enrollment in AP courses at two of the three high schools, and the enrollment of Hispanic students in AP courses was disproportionate to their enrollment at all three high schools, during the 2010-2011 school year. Only 17 black students and 9 Hispanic students enrolled in the AP courses that year, compared to the total of 434 District students enrolled in AP courses and compared to the enrollment of 381 (4.5%) black students and 596 (1.5%) Hispanic students enrolled in the three high schools. In contrast, 369 of the 4229 (8.7%) white students were enrolled in AP courses.

Central High School: For the 2010-2011 school year, Central had a total enrollment of 2,232 students. Of these students, 1,629 were white, 188 were black, and 236 were Hispanic. Central had the largest English Language Learner (ELL) population of the three High Schools in Manchester, with 237 ELL students (this is 11% of its student body compared to 65 students, or 3%, at Memorial and 95 students, or 7%, at West). In 2010-2011, Central offered AP classes in 8 subjects for a total of 231 seats filled in AP classes. As demonstrated in the following chart, Black and Hispanic students were underrepresented in these classes compared to their enrollment at Central. Of the 231 seats for AP courses, 202 students were white, 10 were black and none were Hispanic.

Central High School				
2010-2011 School Year				
	Student Enrollment Grades 9 – 12		Student Enrollment AP Courses	
	#	%	#	%
Total	2,232		231	
Black	188	8%	10	4%
Hispanic	236	11%	0	0%
White	1,629	73%	202	87%

Memorial High School: For the 2010-2011 school year, Memorial had a total enrollment of 2,030 students; 1,587 students were white, 100 were black, and 205 were Hispanic. In 2010-2011, Memorial offered AP classes in 10 subjects for a total of 158 seats filled in AP classes. As demonstrated in the following chart, black and Hispanic students were underrepresented in these classes compared to their enrollment at Memorial. Of the 158 seats for AP courses, 130 students were white, 2 were black and 9 were Hispanic.

Memorial High School				
2010-2011 School Year				
	Student Enrollment Grades 9 – 12		Student Enrollment AP Courses	
	#	%	#	%
Total	2,030		158	
Black	100	5%	2	1%
Hispanic	205	10%	9	6%
White	1,587	78%	130	82%

West High School: For the 2010-2011 school year, West had a total enrollment of 1,358 students; 1,013 students were white, 93 were black, and 155 were Hispanic. In 2010-2011, West offered AP classes in 6 subjects for a total of 45 seats filled in AP classes. Of the 45 seats for AP courses, 37 students were white, 5 were black and none were Hispanic. As demonstrated in the following chart, the representation of black students in AP courses for the 2010-2011 school year was not disproportionate compared to their enrollment. However, Hispanic students were underrepresented in these classes compared to their enrollment at West.

West High School				
2010-2011 School Year				
	Student Enrollment Grades 9 – 12		Student Enrollment AP Courses	
	#	%	#	%
Total	1,358		45	
Black	93	7%	5	11%
Hispanic	155	11%	0	0%
White	1,013	75%	37	82%

Outreach and Recruitment Efforts for Higher Level Learning Opportunities

Across all three high schools, the District made only limited outreach and recruitment efforts to students and their parents about the higher level learning opportunities available in the District. The District notified students and parents about AP and honors opportunities in the school's Program of Studies, available in paper form and online. The notice of Running Start and SNHU Dual Credit programs is noted at the back of the Program of Studies, but it is unclear which courses are associated with these programs. The students and parents OCR interviewed had not learned of AP opportunities (or Running Start or SNHU Dual Credit) from the Program of Studies. Additionally, AP courses are generally listed in the Program of Studies as having a teacher recommendation as a prerequisite. No information on higher level learning opportunities is currently included in the Parent Resource Guide, including in the section titled "Preparing Your Child for a Career/College." OCR learned through interviews that it is much more likely that students learn of higher level learning opportunities through contact with a teacher or guidance counselor, but this generally appears limited to students who are already excelling in other higher level classes.

Guidance offices at all three high schools told OCR that they conduct comprehensive outreach to students and parents by visiting middle schools and freshmen high school classes each year to talk about course selection, by conducting annual one-on-one course selection check-ins with juniors and seniors, and by holding large outreach events such as freshmen night, junior college night, and topical evening events for parents. Nevertheless, both parents and students told OCR that they have limited one-on-one contact with guidance counselors outside of students' meetings for schedule changes, and the parents we interviewed did not report learning about AP or other higher level learning opportunities from guidance counselors. The accessibility of guidance counselors appears to be more challenging at Central and West, where guidance counselors must handle all schedule changes themselves (as opposed to at Memorial, where these changes are handled by other staff). Guidance counselors across the District report coping with their heavy load by minimizing their outreach to those tasks necessary to the overall role of a counselor and, wherever possible, conducting outreach in groups rather than on a one-on-one basis.

Attempts to Improve Enrollment in Higher Level Learning Opportunities

The District informed OCR that it has made attempts to increase the availability of higher level learning opportunities, such as through its use of the Virtual Learning Academy Charter School that makes some AP courses available for students online, and its Universal Program of Studies

initiative that is designed to make AP courses that are taught at some high schools open for remote participation by students in other high schools.

Agreement

Prior to the conclusion of OCR's investigation, the District advised OCR that it wanted to enter into an agreement with OCR to voluntarily resolve the issues raised in the compliance review. Therefore, on April 2, 2014, the District agreed to implement the enclosed resolution agreement (Agreement) to resolve the issues raised by the compliance review.

Pursuant to the Agreement, the District committed to take specific actions to ensure that it is providing an equal opportunity and equal access for all students, including black, Hispanic and ELL students, to participate in its higher level learning opportunities, including its AP and honors courses as well as its dual enrollment opportunities. These include opportunities offered at the three comprehensive high schools, Central, Memorial and West High Schools, as well as at Manchester School of Technology. The Agreement provides that the District will conduct a review and assessment of its higher level learning opportunities, including by conducting surveys of students, parents and District staff, to identify the root cause(s) of the disparity in enrollment and participation of underrepresented groups in higher level learning opportunities and any potential barriers to increased student participation in those opportunities. The District will then develop and implement strategies designed to increase student participation in its higher level learning opportunities and to ensure that all students are provided an equal opportunity to participate in the District's higher level learning opportunities.

In assessing potential barriers and developing strategies to address these barriers, the District will specifically examine and consider increasing the number of higher-level learning opportunities currently offered by the District, and address ways to increase student readiness for higher level learning opportunities, such as by strengthening the academic rigor in elementary and middle schools. The District will also examine the impact on participation in its higher level learning opportunities of assigning high school students to one of four designated "levels" at the three comprehensive high schools and specifically consider whether eliminating or altering the current criteria, method of implementation or assignment system generally would increase access to higher level learning opportunities. In addition, the District will examine the impact on participation in higher level learning opportunities of the GPA and class rank penalties associated with withdrawing from higher level courses and specifically consider eliminating those penalties. The District will improve and expand its communication and outreach about the availability and benefits of these opportunities to students and parents, including by using peer student recruitment and by providing information to LEP parents in a language they understand. The Agreement requires the District to remove any other barriers that the District identifies to increased participation in higher level learning opportunities, such as any selection criteria or policies and procedures for enrollment that the District identifies as barriers to participation in higher level learning opportunities. The District will also increase support for students enrolled in higher learning opportunities, such as through counseling, peer support groups and tutoring opportunities. Finally, the District will provide staff training targeted at the identification and selection of students for higher level learning opportunities and the District's efforts to increase participation in these opportunities.

The Agreement requires the District to provide a written report for OCR review and approval of all of the strategies it has considered and the reasons for its rejection and/or modification of any strategies. The Agreement requires the District to implement the strategies by the 2014-15 school year.

Finally, the Agreement requires the District to conduct an annual data analysis including surveys of students, parents and District staff, related to the identification/selection of students for the programs and courses at issue, to determine whether the District's strategies are proving successful in ensuring that black, Hispanic and ELL students are provided an equal opportunity to participate in the higher level learning courses. If the District identifies that strategies need to be altered, to ensure an equal opportunity to participate in higher level learning opportunities for all students, the District will make those changes and continue assessing the efficacy of its strategies towards this goal.

The District has agreed to provide data and other information, demonstrating implementation of the Agreement, in a timely manner in accordance with the reporting requirements of the Agreement. OCR may conduct additional visits and request additional information as necessary to determine whether the District has fulfilled the terms of the Agreement and is in compliance with Title VI with regard to the issues in the review. OCR will not close the monitoring of this Agreement until it has determined that the District has complied with the terms of the Agreement and is in compliance with Title VI.

This letter sets forth OCR's determination in an individual OCR compliance review. 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.

It is unlawful to harass, coerce, intimidate or discriminate against any individual who has filed a complaint, assisted in a compliance review, or participated in actions to secure protected rights.

OCR sincerely appreciates the cooperation of you and your staff during this investigation, and OCR looks forward to continued cooperation during the implementation and monitoring of the Agreement. If you have any questions regarding OCR's determination, please contact Kate Upatham, Civil Rights Attorney, at (617) 289-0051 or Kate.Upatham@ed.gov; or Compliance Review Team Leader Anthony Cruthird by telephone at (617) 289-0037 or by e-mail at Anthony.Cruthird@ed.gov. You may also contact me directly at (617) 289-0011.

Sincerely,

/s/

Thomas J. Hibino
Regional Director

Enclosure