



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

July 3, 2012

Dr. James Q. Hammond
Superintendent
Ontario-Montclair School District
950 West D Street
Ontario, California 91762
(In reply, please refer to case no. 09-09-1241.)

Dear Dr. Hammond:

I am writing to inform you of the status of the above-referenced complaint filed with the San Francisco Office of the Office for Civil Rights (OCR), United States Department of Education, against the Ontario-Montclair School District (District). The complaint alleged that students were required, on the basis of their African American race, to participate in an African-American-themed mentoring and support program at a District elementary school (School). The complaint alleged discrimination on the basis of race.

OCR investigated the complaint under the authority of Title VI of the Civil Rights Act of 1964. Title VI and its implementing regulation prohibit discrimination on the basis of race in education programs and activities operated by recipients of Federal financial assistance. The District receives funds from the Department and is subject to Title VI and the regulation.

We regret the substantial delay in resolving this complaint. After investigation, however, OCR is administratively closing this complaint as moot because the District discontinued the challenged program in 2009 and recently informed OCR that it does not intend to resume the program, or to begin a similar program at any of the District's other schools.

Investigation

OCR thoroughly investigated the complaint, including analyzing data provided by the District in response to two separate requests by OCR for information, and interviewing District and School staff with knowledge about the mentoring program. Based on the evidence, OCR finds the following to have occurred.

The School launched an African-American-themed mentoring and support program in the 2007-2008 school year. This was a response to significant gaps in the academic performance of African American students as a group on the state assessment test compared to the performance of their peers of other races and ethnicities as groups. In the program's second year of operation, the test scores of the School's African American students, as a group, began improving significantly. In addition, teachers reported that their African American students were participating more in class and were handling conflicts with peers more effectively.

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

In the program's first year of operation, only African American students in grades 4-6 at the School were invited to participate in the program. In the fall of 2008, the program was expanded to invite all of the School's African American students in grades K-6. Non-African American students were included in the program only upon a specific request from them or their parents, after the parents had learned of the program through word of mouth. Through this process, a Latina student and a white student participated in the program.

The School ended the program in 2009, after the complainant raised concerns with School officials and then OCR. The District withdrew the complainant's children from the program in response to her objection to it. The District informed OCR that it does not intend to resume the program, or to begin a similar program at any of the District's other schools.

Legal Standard

OCR enforces Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, as implemented by regulations at 34 C.F.R. Part 100, which bars institutions that receive federal financial assistance from discriminating on the basis of race, color, or national origin.

It is not a violation of federal law, in and of itself, for a 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. "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."¹

Likewise, in another joint guidance 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."²

As noted in the 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":

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

¹ "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>.

² "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>.

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.³

A race-themed mentoring and support program would fall within the category of approaches discussed by Justice Kennedy if it did not admit or exclude students on the basis of their race.

The facts of this case do not squarely fall within the guidance because the mentoring and support program at issue was set up in a manner that had the effect of excluding students on the basis of their race by inviting only African American students to participate (notwithstanding that students of other races who asked to participate were allowed to join). Such race-exclusive recruiting differs fundamentally from race-targeted recruiting, in which a district may intentionally target students of particular races, such as those underrepresented at a particular school or program, for recruitment. Race-targeted recruiting seeks to ensure that students from particular groups are aware of opportunities, but it does not exclude others from being recruited. Race-targeted recruiting that is part of a wider effort to recruit students in general, without regard to race, is unlikely to be subject to strict scrutiny review to be permissible under Title VI.

OCR need not decide whether the District's program at the School complied with Title VI in this case because OCR has determined that the proper resolution of this complaint is an administrative closure on the basis of mootness. According to OCR's case processing procedures, OCR may administratively close a complaint if there are no current allegations appropriate for further investigation and resolution. Administrative closure of this complaint is appropriate because the challenged program ended three years ago and the District has no plans to reinstitute it.

OCR notes here that the District, if it desired, could resume or start a similar African American-themed mentoring and support program, if it did so without admitting or rejecting students on the basis of their race and with broad-based recruiting that let students of all races know of the opportunity to participate. Race-targeted recruiting could be a part of this process. A race-themed mentoring and support program constructed in this manner would be unlikely to be subject to strict scrutiny review to be permissible under Title VI.

If you have any questions about our decision concerning this complaint, please contact Suzanne Taylor, the OCR attorney assigned to this case, at 415-486-5561 or suzanne.taylor@ed.gov.

No person is permitted to intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces. If

³ 551 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.

any individual is harassed or intimidated because of filing a complaint or participating in any aspect of OCR case resolution, the individual may file a complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If we receive such a request, we will seek to protect, to the extent provided by law, information that, if released, could constitute an unwarranted invasion of personal privacy.

Thank you for your cooperation in resolving this case.

Sincerely,

/s/

David Rolandelli
Team Leader