



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVE. S.W.,
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, D.C.

April 9, 2012

Complainant

Re: OCR Case No. 11-10-1040
Dismissal Letter

The purpose of this letter is to inform you of our disposition of the above-referenced complaint, which you filed with the District of Columbia Office of the Office for Civil Rights (OCR), U.S. Department of Education (Department), on November 24, 2009, against Pitt County Schools (the District). We would like to apologize for the delay in processing your complaint.

OCR is responsible for enforcing certain Federal civil rights statutes and regulations, including Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d, and the regulation that implements Title VI, 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in educational programs and activities receiving Federal financial assistance from the Department. Because the District receives Federal financial assistance from the Department and is therefore subject to Title VI, we have jurisdiction over it pursuant to this law. Because you are alleging discrimination on the basis of race, we have jurisdiction over the allegation pursuant to Title VI.

OCR has examined your allegations, the materials that you provided to OCR, and your statements given during a telephone call with OCR staff on December 11, 2009. OCR also has examined the District's website for basic student enrollment information. Based upon this assessment, OCR has determined that there are no indications that there has been a violation of Title VI. OCR therefore will not open your complaint for investigation.

In your complaint, you alleged that the District had a program, which it called MEASURE,¹ during the 2008-2009 academic year at its Conley High School (the School), and that this program was aimed, in part, at increasing “‘non-Caucasian’ participation in AP [Advanced Placement] classes.” The “Presentation” on the MEASURE program that the District apparently provided to you (a copy of which you provided to OCR) indicates that one goal of the program was to increase non-white enrollment in AP courses by 30% (13 or 14 students) from the 2007-2008 to the 2008-2009 school year. An allegation that a school district has a goal of increasing the participation of minority students in advanced academic programs such as AP classes does not in itself raise an issue of noncompliance with Title VI. This is particularly so where, as is undisputed here, minority student participation in AP classes had been substantially less than that of non-minority students. One of OCR’s regulations implementing Title VI, at 34 C.F.R. § 100.5(i), states:

Even though an applicant or recipient has never used discriminatory policies, the services and benefits of the program or activity it administers may not in fact be equally available to some racial or nationality groups. In such circumstances, an applicant or recipient may properly give special consideration to race, color, or national origin to make the benefits of its program more widely available to such groups, not then being adequately served. For example, where a university is not adequately serving members of a particular racial or nationality group, it may establish special recruitment policies to make its program better known and more readily available to such group, and take other steps to provide that group with more adequate service.

These issues are discussed further in guidance that the Department, together with the U.S. Department of Justice, issued in December 2011 titled “Guidance on the Voluntary Use of Race to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools” (the Guidance). See <http://www.ed.gov/ocr/docs/guidance-ese-201111.html>. Section IV of this Guidance states that, in order “to increase the diversity in the applicant pool of a competitive magnet school with a predominantly white student body,” a school can “as part of its general outreach and recruitment of potential applicants, place flyers or make announcements at schools with a predominantly non-white student population or encourage individual non-white students to apply.” Such actions are permissible, the Guidance explains, because they “simply enlarge the applicant pool and help to ensure that it is inclusive; they do not determine which students will ultimately be admitted to the program.”

¹ “MEASURE” is an acronym for Mission, Element, Analyze, Stakeholders Unite, and Educate.

As the District stated in an email to you (which you provided to OCR), the program was “intended to encourage more participation from minority students in AP courses, but does not in any way prevent Caucasian students from taking AP courses.”

According to the Presentation, and the information that the District conveyed to you in emails (copies of which you provided to OCR), the District tried to achieve this increase in non-white student participation in AP classes by hosting activities and events that were open to all students (“the information shared through this initiative was available to and provided for all students and parents, regardless of race; however, the desired outcome of the program was to increase the low enrollment of minority students in Advanced Placement courses”). In pursuit of this goal, the District said (in the Presentation and emails to you) that it hosted AP information nights at which students and parents were encouraged to enroll in AP classes. The District also said (in the Presentation and emails to you) that it had staff reach out to students during the registration process, encouraging students to take a rigorous course load. This type of outreach and encouragement raises no Title VI concerns.

You alleged in your complaint that “non-Caucasian AP enrollment increased by 45.2 %, but overall AP enrollment for all students increased by only 2 %.” Such statistics must be viewed in context, however. The data in your submissions indicate that, for the 2007-2008 academic year, total enrollment at the School was about 1400 students, with white students comprising 66% (approximately 924 students) of the student body and non-white students comprising 34% (approximately 476 students) of the student body. The data also indicate that, during that same year at the School, white students comprised about 73% (approximately 123 students) of AP students, while non-white students were only about 27% (approximately 45 students) of students enrolled in AP classes. Stated differently, approximately 13.3% of white students and only 9.4% of non-white students were enrolled in AP courses during the 2007-2008 year at the School.

The 2% overall increase in enrollment in AP courses and 45.2% increase in non-white enrollment in AP courses that you reference means that, after implementation of the program, approximately 8 additional white students and 20 additional non-white students enrolled in AP courses in the 2008-2009 academic year. Stated differently, approximately 14.1% of white students and 13.6% of all non-white students were then enrolled in AP courses at the School. In the end, the percentage enrollment of non-white students in AP courses in 2008-2009 was comparable, but still less than, the enrollment of white students in AP courses. This result, in and of itself and in combination with the other allegations, is not indicative of Title VI concerns.

Based on the above discussion, we are dismissing this complaint. You may have the right to file a private suit in federal court regardless of our determination.

Because your complaint was in the stage of being evaluated, we did not contact the District or provide District staff with notice of the complaint. Nevertheless, please be advised that 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 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.

Please note that this is a letter issued by OCR to address an individual OCR case, and contains fact-specific investigative findings and a case-specific disposition. 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.

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

If you have any questions or concerns regarding this letter, please contact me at (202) 453-5924 or Dale.Rhines@ed.gov.

Sincerely,

/s/

Dale Rhines
Acting Team Leader, Team IV
District of Columbia Office
Office for Civil Rights