



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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WASHINGTON, DC 20202-1475

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

June 11, 2012

Dr. Tim Markley  
Superintendent  
New Hanover County Schools  
6410 Carolina Beach Rd  
Wilmington, North Carolina 28412

Re: OCR Complaint No. 11-11-1185  
Letter of Findings

Dear Dr. Markley:

This letter is to notify you of the disposition of the complaint that was filed with the District of Columbia Office for Civil Rights (OCR), within the U.S. Department of Education (the Department), on March 24, 2011. In the complaint, the Complainant alleged that New Hanover County Schools (the District) discriminates against students on the basis of race by considering students' zip codes, parental education levels, and family income as factors in a weighted lottery for admission to a year-round kindergarten at Codington Elementary (the School).

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 its implementing regulation, at 34 C.F.R. Part 100, which prohibit discrimination on the bases of race, color, or national origin in activities or programs that receive federal financial assistance. The District receives federal financial assistance from the Department and therefore, is subject to the provisions of Title VI.

#### Factual Findings and Analysis

The District operates two year-round elementary schools, Codington and Eaton. In 2010-2011, the District was overall 64 percent white, 23 percent black, and 8 percent Hispanic. Codington was 87 percent white, 4 percent black, and 4 percent Hispanic. Eaton was 86 percent white, 6 percent black, and 3 percent Hispanic. Prior to 2008, admission to the schools was decided through an unweighted lottery system. Beginning in March 2008, the District implemented a weighted lottery system, in which additional weights are assigned to applicants if they live in zip code 28401, if parental education level is high school/GED or less, or if family income is \$30,000 or less.

The decision to implement the weighted lottery system was made by the student assignment committee, a sub-committee of the Board of Education, consisting of three individuals: the current Chairman of the Board of Education, the Vice Chairman of the Board of Education, and the then-

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

Superintendent. OCR interviewed two members of that committee – the Board Chair and the Board Vice Chair. Each explained that the decision was driven by a desire to increase socioeconomic diversity at the year-round elementary schools. According to the District, parents orally expressed a view that the year-round schools were “almost private in nature” because of the lack of socioeconomic diversity.

The student assignment committee then determined what factors would be used as weights in the lottery. Zip code 28401 was selected because over 50% of students in most schools in that zip code are eligible for free or reduced price lunch (FRL). The District had found that the student test scores at schools with larger populations of FRL-eligible students were lower than student test scores at the year-round schools; including the zip code as a weighting factor was seen as a way to give the students from poorer families at the lower performing schools a greater opportunity to attend one of the year-round schools. Other zip codes in the District have pockets with a high percentage of FRL-eligible students, but do not have the same widespread pattern of high poverty students as in zip code 28401.<sup>1</sup> The Board Chair told OCR that around the time they were considering the weighted lottery system, the local government created a Blue Ribbon Commission modeled after the Harlem Children’s Zone, with the aim of combating poverty and increasing opportunities for children in the downtown area (zip code 28401); he indicated that the committee was aware of the Blue Ribbon Commission and it coincided with the committee’s objectives.

Applicants each get one “card” for the lottery. As noted above, there are three weighting factors – zip code, family income level, and parental education level. Each applicant receives one additional card for each of those factors the applicant satisfies. Therefore, an applicant who satisfies none of the factors has one card, and an applicant who satisfies all three of the factors has four cards. Applicants apply separately to each year-round school they are interested in attending. Each school runs a separate lottery.

OCR acknowledges that the District’s interests in socioeconomic diversity were substantial and legitimate. OCR recognizes the judgment of educators and the ample research findings in the educational literature that socioeconomic diversity is educationally beneficial in elementary, secondary and postsecondary education programs. Further, OCR’s investigation revealed no evidence of intent to discriminate based on race or any difference in treatment of students based on race. Although the application for the year-round schools includes a question regarding the student’s race, no weights are assigned in the lottery based on an applicant’s race.<sup>2</sup> The Board Chair and Vice Chair stated that the committee did not discuss using race as a factor in the lottery or meant to achieve any racial purpose by implementing the weighted lottery.

The Board Chair did acknowledge that he expected that increasing socioeconomic diversity in the year-round schools might also have the effect of increasing minority representation in these schools. Indeed, although the District’s goal was socioeconomic diversity, the district could have legally pursued racial and ethnic diversity in its year round schools by using the same race-neutral factors that it used for the purposes of increasing socioeconomic diversity. A district’s use of race-neutral criteria—such as zip codes, parental education or income—for the purpose of achieving the compelling

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<sup>1</sup> OCR reviewed census data for the zip codes in the District. Those data bear out that a significantly greater proportion of families in 28401 are below the poverty level than in other District zip codes.

<sup>2</sup> The application does not state that providing information about race is voluntary or include a disclaimer that it will not be used to discriminate. OCR cautions the District that it must include language on lottery applications or any other form asking about an applicant’s race that providing the information is voluntary and will be used in a non-discriminatory manner.

interests in racial diversity or avoiding racial isolation is not subject to strict scrutiny review. Districts may, “with candor,” “consider the impact a given approach might have on students of different races.” *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701, 789 (2007) (Kennedy, J., concurring in the judgment).

This concludes OCR’s investigation of the complaint, and we are closing it effective the date of this letter. This determination letter addresses only the allegations discussed herein and should not be construed to cover any other issues regarding the District’s compliance with Title VI.

We have notified the Complainant that the District may not harass, coerce, intimidate, or discriminate against the Complainant because the Complainant filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another 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 OCR receives such a request, we will seek to protect, to the extent provided by law, personal information that, if released, could constitute an unwarranted invasion of privacy.

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

We appreciate the courtesy extended to OCR staff during the handling of this complaint. If you have any questions regarding the matters stated above please contact Sara Clash-Drexler, at (202) 453-5906 or [Sara.Clash-Drexler@ed.gov](mailto:Sara.Clash-Drexler@ed.gov) or Martha Russo, at (214) 661-9622 or [Martha.Russo@ed.gov](mailto:Martha.Russo@ed.gov).

Sincerely,

/s/

Olabisi L. Okubadejo  
Team Leader  
District of Columbia Office