

April 18, 2013

Dr. Christopher P. Clouet
Superintendent of Schools
White Plains Public School District
5 Homeside Lane
White Plains, New York 10605

Re: Case No. 02-11-5001
White Plains Public School District

Dear Superintendent Clouet:

This is to advise you of the resolution of the above-referenced compliance review that was initiated by the U.S. Department of Education (Department), Office for Civil Rights (OCR) on February 14, 2011. The compliance review assessed whether the White Plains Public School District (the District) discriminated against Black, Hispanic, and English Language Learner (ELL) students by establishing and implementing policies and procedures that resulted in their exclusion from college and career ready programs and courses, such as the District's Honors and Advanced Placement (AP) courses.

OCR initiated this compliance review under Title VI of the Civil Rights Act of 1964 (Title VI), as amended, 42 U.S.C. § 2000d *et seq.*, 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. The District is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to conduct this review under Title VI.

Prior to the conclusion of OCR's investigation, the District expressed an interest in voluntarily resolving this case and entered into a resolution agreement, 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.

The applicable standards for determining compliance are set forth in the regulation implementing Title VI, at 34 C.F.R. §100.3(a), (b) (1) and (2). Section 100.3(a) provides that no person shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program operated by a recipient. Section 100.3(b)(1) prohibits a recipient, on the ground of race, color, or national origin, from denying an individual a service or benefit of a program; providing different services or benefits; subjecting an individual to segregation in any matter related to the receipt of a

service or benefit; restricting an individual in any way in receiving a service or benefit; treating an individual differently in determining whether s/he satisfies any admission or eligibility requirement for provision of a service or benefit; and, denying an individual an opportunity to participate in a program or affording her/him an opportunity to do so which is different from that afforded to others. Section 100.3(b)(2) prohibits a recipient from utilizing criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color, or national origin.

The administration of student enrollment in courses can result in unlawful discrimination based on race in two ways: first, if students are subject to different treatment based on their race, and second, if a policy is neutral on its face and administered neutrally but has a disproportionate and unjustified effect on students of a particular race.

Overview of the District

The District is located in White Plains, New York, and is composed of five elementary schools (Kindergarten through Grade 5), two middle schools (Grades 6 through 8) and two high schools (Grades 9 through 12).

During each of the past two school years (2010-2011 and 2011-2012), the District had an enrollment of over 7000 students, with over 1960 at the high schools. For these two school years, Black students made up 17% (1195 students) and 16% (1111 students) of the total student enrollment, and Hispanic students made up approximately half of the total student enrollment (3530 students, 49%; 3605 students; 51%). During school year 2010-2011, approximately 945 students, or 13% of the District's population, were ELL students. During school year 2011-2012, approximately 1059 students, or 15% of the District's population, were ELL students. Of those ELL students, at least 88% had a primary home language of Spanish.

Summary of Review

During the investigation, OCR collected information from the District for the 2010-2011 and 2011-2012 school years. OCR reviewed information that the District provided regarding its high school honors and AP programs. OCR also reviewed District information concerning its Gifted and Talented Education (GATE) program at the elementary and middle school levels and its advanced courses at the middle school level. OCR noted that enrollment in these programs and courses could potentially have an effect on later enrollment in high school Honors and AP courses.

OCR analyzed student enrollment data for the District and for each school in the District, and compared it to enrollment data for each specific GATE, advanced, honors, and AP program. In addition, OCR interviewed District personnel, including the Assistant Superintendent for Curriculum and Instruction (the Assistant Superintendent). OCR also initiated a file review of a sample of approximately 350 students.

High School Honors and Advanced Placement (AP) Courses

OCR determined that for school year 2011-2012, the District offered 18 Honors and 18 AP courses in Grades 9 through 12 at White Plains High School. Students attending White Plains Community High School at Rochambeau could also enroll in these courses at White Plains High School. The offered courses included: English (Honors 1, 2 and AP 3, 4); Global History (Honors); World History (AP); U.S. History (AP); Comparative Government and Politics (AP); Psychology (AP); Economics (Honors); Geometry (Honors); Algebra 2/Trigonometry (Honors); Pre-Calculus (Honors); Calculus (AP-AB and AP-BC); Statistics (AP); Living Environment (Honors); Earth Science (Honors); Chemistry (Honors and AP); Physics (Honors and AP-C); Biology (AP); Environmental Science (AP); Spanish (Honors and AP); Spanish – Native Language (Honors 4 and AP); French (Honors and AP); German (Honors 4, 5); Italian (Honors and AP); and Latin (Honors and AP).

According to data from the District, the Honors and AP courses in the District collectively enrolled 395 students in 2011-2012. The data revealed that Black, Hispanic and ELL students were under-represented to a statistically significant degree in Honors and AP courses.

2011-2012 School Year				
	Student Enrollment Grades 9 – 12		Student Enrollment Honors and AP Courses	
	#	%	#	%
Total	1963		395	
Black	346	18%	37	9%
Hispanic	923	47%	122	31%
ELL	179	9%	10	3%

The District asserted that it does not have a tracking program or system for determining which students may apply for or participate in Honors and AP courses, and there is no single “point of entry” for such courses; so students may apply for such courses at any grade level at which they are offered. In addition, the District stated that it does not have any screening programs designed to identify/refer or test/evaluate students for Honors or AP courses or their prerequisites for any students, including those from underrepresented racial or national origin groups or ELL students. The District stated that guidance counselors and teachers generally are asked to encourage students to apply for Honors and AP courses, and to specifically speak to any student who has “demonstrated the potential to be successful” and to support that student in the application process.

OCR determined that the District informs parents of students entering Grades 9 through 12 of Honors and AP courses by sending them a letter (in both English and Spanish) informing them of the Honors and AP application period and of scheduled information sessions regarding the Honors and AP Program. In addition, the schools’ course catalogs list each Honors and AP course; and the District publishes an Honors Booklet, which describes what Honors and AP courses entail, their prerequisites, any required assessments, and the application and appeal processes. OCR determined that the Honors Booklet is available on the District’s website, at all guidance offices, and at the Parent Information Center.

The District stated that students must apply for Honors and AP courses, and that the application must be signed by the parent/guardian to ensure that the parent supports the student's application. If a parent does not sign the application, and a teacher believes that a student would be successful in Honors and AP courses, the District will contact the parent to encourage them to sign the application.

The District indicated that each applicant was scored as follows: 80% on current grades and/or grades for prerequisite courses to determine student's current achievement; 10% on State test and/or placement test scores¹; and, 10% on teacher recommendations to provide qualitative evidence regarding student motivation and potential for success.

The District stated that each subject-area coordinator receives a spreadsheet listing all of the students who have applied for Honors and AP courses. The subject-area coordinators obtain students' grades from the student information system "Infinite Campus", and also obtain recommendations from counselors and teachers who have been asked to rate the students with regard to their likelihood for success in such courses. The information is recorded on a spreadsheet; and these spreadsheets are forwarded to the subject-area coordinators who consider all of the information when making placement decisions. The District stated that the coordinators make their decisions as individuals, not as a committee.

The District stated that once the District informs parents and students whether they have been accepted into an Honors and/or AP course, every student who was not accepted into the course(s) of their choice is provided with a written copy of the procedure to appeal the decision. Information about the appeal process is also included in the Honors Booklet. Students may obtain an appeal form from the department secretaries, and then return the appeal form with any supporting documentation to the appropriate Department Coordinator by the deadline, which is approximately two weeks from the date of the initial decision. The District stated that appeals are heard by a committee that considers further information in support of admission and makes a final decision. Students are notified of appeals decisions within approximately one month of their appeal submission.

Middle School Advanced Courses

OCR determined that the District had 8 advanced courses available at Eastview and Highlands Middle Schools. OCR determined that for school year 2011-2012, the District offered advanced courses in English-Language Arts (ELA) and Math for Grades 6 and 7; and ELA, Algebra, Spanish, French, and Italian for Grade 8. In 2011-2012, 1519 students were enrolled in the District's advanced courses at the middle school level. Data provided by the District indicated that Black, Hispanic and ELL students were under-represented to a statistically significant degree in these advanced courses.

¹ New York State (NYS) Intermediate, or Regents Exam scores, or locally administered placement exams (administered by academic coordinators or designated subject-area teachers) are used to determine the student's achievement in relation to other students, and to fairly evaluate students new to the District.

2011-2012 School Year				
	Student Enrollment Grades 6-8		Student Enrollment Advanced Courses	
	#	%	#	%
Total	3702		1519	
Black	267	18%	96	14%
Hispanic	745	49%	229	33%
ELL	162	11%	5	1%

OCR determined that although the course offerings slightly differed between the two middle schools, generally the criteria for participation in middle school advanced courses included: grades received in previous classes in the same or related subjects; standardized test scores; and teacher recommendations based on assessment of students' aptitude, effort, and participation.

Elementary and Middle School GATE Programs

OCR determined that at Grades 3 through 6, the District implements an enrichment program entitled the Small Group Enrichment Program (SGEP). OCR determined that the District's phase-in of SGEP (replacing the prior WINGS program) began in school year 2008-2009 with Grade 3; and by school year 2011-2012, SGEP became fully operational for Grades 3 through 6. Data provided by the District indicated that Black, Hispanic and ELL students were under-represented to a statistically significant degree in SGEP.²

2011-2012 School Year				
	Student Enrollment Grades 3-5		Student Enrollment SGEP	
	#	%	#	%
Total	1567		397	
Black	248	16%	32	8%
Hispanic	815	52%	102	26%
ELL (active) ³	190	12%	0	0
	Student Enrollment Grades 6		Student Enrollment SGEP	
	#	%	#	%
Total	511			
Black	94	18%	14	10%
Hispanic	249	49%	44	31%
ELL (active)	63	12%	0	0

² OCR determined that the change from WINGS to SGEP for Grade 6 resulted in an increase in the participation of Black students and double the participation rate of Hispanic students during school year 2011-2012.

³ "Active" ELL students include only those students who were actively participating in the ELL program for the school year specified, and does not include former ELL students.

For Grades 3 through 5, SGEP is a pull-out program focused on two disciplinary strands; Math Enrichment and Visual Reasoning Enrichment. For Grade 6, Visual Reasoning continues as its own enrichment strand, while Math becomes a middle school advanced course. Although the District maintained that SGEP is not a GATE program, OCR considered the program as such because the District stated that it identified and selected students to receive enriched educational instruction not provided to others, based upon their demonstrated strength (or giftedness) in a specific disciplinary area.

OCR determined that at the end of Grade 2, the District considers all students (including ELL students) for participation in SGEP. There is no application process; all students are tested using the Cognitive Abilities Test (CogAT)⁴, and the District identifies students to participate in SGEP based upon their CogAT score and other defined criteria that vary for each grade. The Assistant Superintendent stated that all schools use the same identification and selection process. OCR determined that the SGEP identification rubrics differ slightly based upon grade level, and are subject to revision each school year.

Attempts to Improve Enrollment of Under-Represented Groups

The District informed OCR that in recent years, in the District's performance on New York State assessments, it noted a large discrepancy between Black, Hispanic, and ELL students, and the remainder of the student population. The District subsequently took steps to improve these students' performance on assessments, including introducing new programs such as the Emerging Scholars Program (ESP)⁵ for incoming Grade 9 students and the Advancement Via Individual Determination Program (AVID)⁶ for students in Grade 6 through high school. The District expects that the AVID program will eventually replace ESP. Thus far, the District's results are promising with respect to AVID possibly having a positive impact on its underrepresentation of Black and Hispanic students in advanced courses, since the overwhelming majority of students who participated in the AVID program have enrolled in at least one advanced course for both school years that the program has been in effect.⁷ OCR also noted,

⁴ According to the test publisher's website, the CogAT measures students' learned reasoning abilities in the three areas most linked to academic success in school: Verbal, Quantitative and Nonverbal. According to the website, CogAT is well-suited to help educators make important student placement decisions, such as selecting students for Gifted and Talented programs; and that CogAT's measurement of three different content domains ensures that educators receive a balanced view of the child.

⁵ The goal of ESP is to open Honors and AP courses to all "students of promise"; therefore, the District looks to its personnel to recommend promising students who have potential to succeed in such courses, but may require some additional support. The District stated that one of the primary goals of the ESP is to increase the number of students of color and ELL students that participate in the most rigorous high school level courses.

⁶ Based upon documentation submitted by the District, AVID is an internationally-recognized program whose mission is to close the achievement gap by preparing all students for college readiness and success in a global society by increasing access to advanced, honors and AP courses in the earlier grades. AVID literature states that the typical AVID student profile is a student with academic potential possessing: mid-level grades; proficient or "on the bubble" test scores; college potential with support; desire and determination; may be the first in their family to attend college; may have special circumstances that can present obstacles to achievement; may be traditionally underrepresented in four-year colleges; and may qualify for free or reduced lunch.

⁷ OCR determined that during school year 2010-2011, of 24 Grade 6 students in the AVID program at Eastview, 17 enrolled in at least one Honors or AP course for the following school year. During school year 2011-2012, in which AVID expanded, OCR determined that 50 students from Grades 6 and 7 were enrolled in AVID; and of those, 31 enrolled in at least one Honors or AP course for the subsequent school year.

however, that there were no active ELL students in either school year 2010-2011 or 2011-2012, who enrolled in AVID.

Agreement

The District advised OCR that it will continue its ongoing efforts to provide all students with equal access to and an equal opportunity to participate in the District's GATE programs (specifically, SGEP), middle school advanced courses; and high school honors and AP courses. Prior to the conclusion of OCR's investigation, the District also 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 8, 2013, the District agreed to implement the enclosed resolution 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 enroll in its enrichment (GATE) programs, advanced/honors courses and/or AP courses. The agreement provides that the District will conduct a review and self-assessment of these programs and courses to identify any potential barriers, such as eligibility and selection criteria, to increased student participation in those programs and courses. The agreement also provides that the District will survey students, parents, and staff as part of its review and self-assessment, regarding their perceptions and understanding of the process for recruitment, selection, and participation in the programs and courses. In addition, the agreement provides that the District will retain a consultant(s) with expertise in addressing the underrepresentation of Black, Hispanic, and ELL students in enrichment programs, advanced/honors and AP courses to study and make specific recommendations, if appropriate, for improving the District's efforts to provide all students with equal access to and an equal opportunity to participate in its programs.

Based on its self-assessment, recommendations from the expert consultant, and survey feedback, the District will consider and make changes to facilitate its efforts to provide all students with equal access and an equal opportunity to participate in the identified courses and programs. Possible changes will include revising or expanding criteria to determine eligibility and selection for enrollment, expanded outreach about the available courses and programs to students, parents/guardians and community organizations, and improvements to the academic counseling services at the middle and high school levels to ensure that all students are informed of all available and relevant program and course options. As appropriate, the District will also make changes to the current training for relevant District and school site administrators and personnel regarding the programs and courses to ensure that the training includes information on how to identify and encourage students to participate in the courses and programs. Finally, the agreement requires the District to conduct an annual data analysis related to the identification/selection of students for the programs and courses at issue, to determine whether Black, Hispanic and ELL students were identified and selected at significantly lower rates when compared to their representation in the population of the respective school.

OCR will monitor the implementation of the resolution agreement. If the District fails to comply with the terms of the resolution agreement, OCR will resume its investigation of this compliance review.

This concludes OCR's investigation of this compliance review and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

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.

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

If you have any questions regarding OCR's determination, please contact Letisha Morgan, Compliance Team Investigator, at (646) 428-3827 or letisha.morgan@ed.gov; Jackie Moran, Compliance Team Attorney, at (646) 428-3788 or jackie.moran@ed.gov; or Felice Bowen, Compliance Team Leader, at (646) 428-3806 or felice.bowen@ed.gov.

Very truly yours,

Timothy C. J. Blanchard
Regional Director

cc: Ralph C. DeMarco, Esq. (w/encl.)
Stephanie L. Burns, Esq. (w/encl.)