

December 9, 2015

Christopher Cerf, Superintendent
Newark Public Schools
2 Cedar Street
Newark, New Jersey 07102-3015

Re: Case Nos. 02-12-1295; 02-14-1149; 02-14-1343
Newark Public Schools

Dear Mr. Cerf:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) regarding the above-referenced complaints filed against the Newark Public Schools (NPS). In Case No. 02-12-1295, the complainants alleged that the NPS discriminated against African-American, Hispanic and disabled students by closing the following schools at the end of school year 2011-2012: Eighteenth Avenue School; Burnet Street School; Dayton Street School; Dr. Martin Luther King, Jr. School; the Ninth Grade Academy at Barringer High School; and the Ninth Grade Academy at West Side High School. In Case No. 02-14-1149, the complainant alleged that the NPS discriminated against African-American and Hispanic students by selecting Roseville Avenue Elementary School to close at the end of school year 2013-2014. In Case No. 02-14-1343, the complainants alleged that the NPS discriminated against African-American students by enacting the “One Newark” plan to close thirteen neighborhood public schools at the end of school year 2013-2014.

OCR is responsible for enforcing 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 U.S. Department of Education (the Department). OCR also is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs or activities receiving financial assistance from the Department. In addition, OCR is responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35. Under the ADA, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The NPS is a recipient of financial assistance from the Department, and is a public elementary and secondary education system. Therefore, OCR has jurisdictional authority to investigate the complaint in

Case No. 02-12-1295 under Title VI, Section 504 and the ADA, and the complaints in Case Nos. 02-14-1149 and 02-14-1343 under Title VI.

The applicable standards for determining compliance with Title VI 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 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 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 applicable standards for determining compliance with Section 504 are set forth in the regulation implementing Section 504, at 34 C.F.R. §§104.4(a),(b)(1) and (2), and 104.33(a) and (b). Section 104.4(a) provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance. The regulation implementing the ADA contains a similar provision regarding public entities, at 28 C.F.R. §35.130(a). Section 104.4(b)(1) of the regulation implementing Section 504 states that a recipient, in providing any aid, benefit or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability, deny a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service; afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; provide a qualified individual with a disability with an aid, benefit, or service that is not as effective as that provided to others; provide different or separate aid, benefits, or services to disabled students or any class of disabled students unless such action is necessary to provide qualified individuals with a disability with aid, benefits, or services that are as effective as those provided to others; or otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit or service. The regulation implementing the ADA contains a similar provision regarding public entities, at 28 C.F.R. §35.130(b)(1). The regulation implementing Section 504, at 34 C.F.R. § 104.33(a), states that a recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified disabled person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. The regulation implementing Section 504, at 34 C.F.R. § 104.33(b), states that the provision of an appropriate education is the provision of regular or special education and related aids and services that are (i) designed to meet individual educational needs of disabled persons as adequately as the needs of non-disabled persons are met, and (ii) based upon adherence to procedures that satisfy the requirements of §§ 104.34, 104.35 and 104.36.

In its investigation, OCR interviewed present and former NPS administrators. OCR also reviewed documentation that the NPS and the complainants submitted.

A. Case No. 02-12-1295

The complainant in Case No. 02-12-1295 alleged that the NPS discriminated against African-American, Hispanic, and disabled students by closing six (6) schools at the end of school year 2011-2012. OCR determined that there were 37,578 students enrolled at 75 in-district schools¹ in school year 2011-2012.² The racial composition of the student enrollment across the NPS for school year 2011-2012 was 52.7% (19,804) African-American, 38.2% (14,324) Hispanic, 7.7% (2,908) Caucasian and 1.4% (542) Other. OCR also determined that 16.1% (6,059) of the students enrolled across the NPS were students with disabilities. OCR compared the total enrollment, by race, national origin, and students with disabilities, in the six schools that were closed at the end of school year 2011-2012 with the enrollment, by race, national origin, and students with disabilities, in schools that were not closed:

**Schools Closed at the end of School Year 2011-2012
Enrollment by Race and National Origin**

| | 6 Closed Schools | All Other Schools | Total |
|-----------------------------|-------------------------|--------------------------|-------------------|
| African-American enrollment | 1,233 (73.5%) | 18,571 (51.7%) | 19,804 (52.7%) |
| Hispanic enrollment | 428 (25.5%) | 13,896 (38.7%) | 14,324 (38.1%) |
| White enrollment | 10 (0.6%) | 2,898 (8.1%) | 2,908 (7.7%) |
| Other enrollment | 6 (0.4%) | 536 (1.5%) | 542 (1.4%) |
| Total enrollment | 1,677 | 35,901 | 37,578 |

**Schools Closed at the end of School Year 2011-2012
Disabled Student Enrollment**

| | 6 Closed Schools | All Other Schools | Total |
|------------------------------|-------------------------|--------------------------|-------------------|
| Special Education enrollment | 462 (27.5%) | 5,597 (15.6%) | 6,059 (16.1%) |
| Regular Education enrollment | 1,215 (72.5%) | 30,304 (84.4%) | 31,519 (83.9%) |
| Total enrollment | 1,677 | 35,901 | 37,578 |

¹ Enrollment excludes pre-school (Newark Early Childhood Centers [NECC]) and disabled students placed out-of-district pursuant to Individualized Education Programs.

² All information with respect to Case No. 02-12-1295 is for school year 2011-2012, which was the year in which the complainant alleged that the district discriminated against African-American, Hispanic, and disabled students.

OCR conducted statistical analysis on these numbers utilizing a Chi Square Test of Significance, and determined that the number of African-American students and students with disabilities affected by the school closings in the district effective at the end of school year 2011-2012 was significantly disproportionate as compared to white and other students; however, the same result was not seen for Hispanic students.³

The stated reasons for closing schools:

The NPS's former Superintendent (hereinafter "the Superintendent") informed OCR that she was the primary decision-maker in determining to close the schools that form the subject of this complaint. She stated that during summer 2011, she reviewed student achievement data, as well as limited data relating to all school facilities' conditions, values and depreciation. She stated that the quality of the facilities was a major issue for the NPS; 85% of the buildings in the NPS were built before 1975, 50% were built before 1940, and many buildings were showing signs of deterioration. The Superintendent stated that the NPS contained increasing numbers of high-performing charter schools with better facilities; families were applying to the charter schools, further leading to the underutilization of the NPS's public schools. She stated that the deadline for submitting the budget for school year 2012-2013 was approaching, and the NPS needed to make an additional \$17 million in budget cuts. The Superintendent stated that during November and December 2011, she assembled a team with the District's Business Administrator, Assistant Superintendent, and consultants from Foundation for Newark's Future.⁴ The Superintendent stated that the internal team wanted to make sure that any school closings would not affect any one neighborhood. The team devised a list of 22 schools for potential closure.

The Superintendent cited a document, entitled "Great Expectations," published in 2009 by former NPS Superintendent Clifford Janey, which placed each NPS school in one of five tiers⁵ and called for all students to be enrolled in a Tier 1, 2, or 3 school within three years. The document did not designate any NPS schools as Tier 1. The Superintendent informed OCR that the 22 schools that were part of the group initially considered for closure at the end of school year 2011-2012 were all in Tier 4 or 5, and were characterized as (1) having less than 33% of the students reading at grade level; (2) having buildings that were old and showing visible signs of deterioration that would be costly to renovate; and/or (3) being underutilized in relation to their stated capacities. From this list of 22 schools, the 6 schools listed above were selected for closure. The NPS did not provide any additional information explaining how the 6 schools were selected out of the list of 22. As discussed below, 8 of the 22 schools were designated as "Renew Schools."

³ The Ninth Grade Academy at Barringer High School, one of the six schools that closed in school year 2011-2012, had a predominantly Hispanic enrollment, such that Hispanic students (and students with disabilities) were disproportionately impacted, with statistical significance, by its closing, while African-American students were not.

⁴ *Foundation for Newark's Future* is a foundation that administers the grant money donated to the NPS by Facebook founder Mark Zuckerberg in 2010.

⁵ The five tiers are as follows: an International Knowledge School (Tier 1) is comparable to the finest public schools in the world; a High-Performing School (Tier 2) is comparable to the finest public schools in the state; a Rapidly Improving School (Tier 3) is on its way to becoming a High-Performing School; a Consistently Struggling School (Tier 4) is one in which most students struggle to achieve proficiency, gains are inconsistent, and performance has not substantially increased; and a Chronically Failing School (Tier 5) is one in which most of the students do not achieve basic proficiency.

Renew Schools:

OCR determined that in addition to closing six schools, the NPS designated eight more schools as “Renew Schools,” all of which would begin operating as “Renew Schools” at the beginning of school year 2012-2013. The NPS’s former Chief Strategy and Innovation Officer (CSIO) informed OCR that the Renew Schools were created with a dual purpose: 1) to turn around previously failing schools; and 2) to serve students of the six closed schools.⁶ OCR determined that eight schools were overhauled as “Renew Schools” under the Superintendent’s direction for school year 2012-2013. The eight schools are as follows:

- Camden Street Elementary Renew School
- Chancellor Avenue Renew School
- Cleveland Renew School
- Newton Street Renew School
- Peshine Avenue Renew School
- Quitman Street Renew School
- Sussex Avenue Renew School
- Thirteenth Avenue Renew School

The Superintendent stated that “Five Winning Ingredients” for a successful school formed the basis for the eight “Renew Schools”: “A Great School Leader, Mission and Vision, Excellent Teachers, Safe Building and Flexible Resources, and Engaged Families and Students.” The Superintendent stated that the “Renew Schools” would have “focused attention to maintain the Five Ingredients during a multi-year process of transformation.”

The CSIO stated that the Renew Schools would employ different strategies to improve student learning, such as longer school days, and would receive enhanced investment in technology and facilities. The CSIO stated that the Renew Schools’ leadership was “handpicked” by the Superintendent. The Superintendent stated that she hired “superstar principals” for each of the Renew Schools, and allowed them to hire staff based on an “evidence-based hiring rubric.” The Superintendent stated that the only limitation to the principals’ autonomy in this regard was that they had to hire 50% of their teachers from within the District. The CSIO further asserted that the “student-to-faculty” ratio at the Renew Schools was 11:1, which was lower than other schools in the NPS.

The Superintendent also informed OCR that there was enough room in the Renew Schools to accommodate all students from the six closed schools at issue in this complaint. She stated that most of the students from the closed schools ended up in one of the Renew Schools, but the implementation of the “One Newark” plan beginning in school year 2014-2015 allowed students to select any school they wished to attend within the District through the District’s universal enrollment method. The CSIO stated that the NPS is currently implementing a new centralized high school application system that allows students to apply to any high school throughout the

⁶ OCR determined that the Ninth Grade Academies at Barringer High School and West Side High School were subsumed by their respective high schools at the end of school year 2011-2012; regardless of the closures, all of the students in these two schools transitioned to their respective high schools at the end of school year 2011-2012.

city, regardless of where they reside (see discussion below regarding the “One Newark” plan). The CSIO stated that a significant number of students chose to apply to non-neighborhood schools, which the NPS views as a positive sign of parents “exercising choice.”

OCR obtained data regarding the schools that closed at the end of school year 2011-2012, including the schools’ demographic information by both race and disability status; enrollment capacity; and, student absenteeism. OCR also obtained information that indicated to which Renew Schools the students from closed schools ultimately transferred. Additionally, OCR reviewed standardized test results and other “dashboard data” for both the closed schools as of school year 2011-2012, and the Renew Schools as of school year 2012-2013, in order to assess the academic impact of the closures on the students who attended the schools. OCR determined that the Renew Schools had been designated as “falling behind” by the NPS, and were among the lowest performing schools at the time of their conversion to Renew Schools, prior to the start of school year 2012-2013. OCR’s preliminary review of data indicated that the Renew Schools’ standardized test results and “dashboard data” for school year 2012-2013 did not appear to reflect any significant improvement from that of the closed schools for school year 2011-2012.⁷ Thus, OCR’s preliminary review of data indicated that the NPS’s closing of schools and transitioning of students did not appear to afford the affected students any measurable, improved educational outcomes.

B. Case Nos. 02-14-1149 and 02-14-1343

On December 18, 2013, the Superintendent announced a large-scale restructuring plan for the NPS schools that included seven school closures, the takeover of five existing schools by “proven” charter school management organizations, and the designation of nine more schools as “Renew Schools,” which would be implemented for school year 2014-2015. The NPS asserted that the plan, called “One Newark,” aimed to “ensure all students are in excellent schools . . . and are on the path to excel in college and 21st century careers.”

The complainants in Case Nos. 02-14-1149 and 02-14-1343 alleged that the District discriminated against (a) African-American and Hispanic students by selecting Roseville Avenue Elementary School to close at the end of school year 2013-2014 as part of the “One Newark” plan, and (b) African-American students by enacting the “One Newark” plan to close thirteen⁸ schools at the end of school year 2013-2014.

On November 9, 2015, the NPS voluntarily agreed to implement the enclosed resolution agreement to resolve the allegations in the three cases without further investigation. OCR will monitor the implementation of the resolution agreement.

This letter should not be interpreted to address the NPS’s compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth

⁷ Conclusions about specific students, particularly the transferred students, could not be drawn from the limited data received; the Renew Schools’ data for school year 2012-2013 was broken out only by grade level.

⁸ OCR determined that there were a total of twelve schools that would be closed pursuant to the One Newark plan at the end of school year 2013-2014 (not thirteen as alleged by the complainants), seven of which would be permanently closed and five that would be taken over by charter management organizations.

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 complainants may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the NPS may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainant(s) 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. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information, which, 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 Eric Bueide, Compliance Team Attorney, at (646) 428-3851 or eric.bueide@ed.gov; or Lauren Numeroff, Compliance Team Attorney, at (646) 428-3895 or lauren.numeroff@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.