

July 1, 2014

Dr. William Keresztes
Interim Superintendent
Buffalo Public Schools
712 City Hall
Buffalo, New York 14202

Re: Case No. 02-14-1077
Buffalo Public Schools

Dear Dr. Keresztes:

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 complaint filed against the Buffalo Public Schools (the District). The complainant alleged that the District discriminated on the basis of race and national origin by using admissions criteria that disproportionately excluded non-white students from enrollment in the District's "criteria-based" schools.

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). The District is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate this complaint under Title VI.

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 (b)(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.

In its investigation, OCR reviewed information that the District and the complainant submitted. During the course of the investigation, the District expressed interest in resolving the case without further investigation, pursuant to Section 302 of OCR's Case Processing Manual.

The complainant alleged that the District discriminated on the basis of race and national origin by using admissions criteria that disproportionately excluded non-white students from enrollment in the District's "criteria-based" schools.¹ OCR determined that parents of students entering the District self-identify the race of their child on the District's "Student Racial and Ethnic Identification" form, using the following categories: white, black, Hispanic, Asian, multiracial, and American Indian or Alaska Native. OCR determined that during school year 2013-2014, 34,574 students were enrolled in the District; of these, 7,437 (21.5%) are white, 17,279 (49.9%) are black, 6,017 (17.4%) are Hispanic, 2,479 (7.2%) are Asian, 988 (2.9%) are multiracial, and 374 (1.1%) are American Indian or Alaska Native.

OCR determined that the District submitted a Corrective Action Plan to the New York State Education Department (NYSED) in response to an investigation into District students' ability to transfer into schools in "good standing." Among numerous other provisions, the Corrective Action Plan, submitted on September 27, 2013, and approved by NYSED on November 6, 2013, requires principals of criteria-based schools to individually convene School-Based Management Teams to review/reassess current established entrance criteria for their unique school programs for the purpose of increasing access for under-represented student populations.² Accordingly, the Corrective Action Plan could result in changes to the District's admissions criteria for the eight "criteria-based" schools.

OCR determined that during school year 2013-2014, the District operated 58 schools, including eight "criteria-based" schools: (1) Frederick Law Olmstead Elementary School #64, Gifted and Talented Program; (2) Frederick Law Olmstead Middle and High School #156, Gifted and Talented Program; (3) Buffalo Academy of Visual & Performing Arts #192; (4) City Honors at Fosdick-Masten Park #195; (5) Leonardo da Vinci High School #212; (6) Emerson School of Hospitality #302; (7) Hutchinson Central Technical High School #304; and (8) Middle Early College High School #415. OCR determined that students must apply and be accepted to "criteria-based" schools, based on the school's specific admissions criteria.

¹ The complainant stated that the District's criteria-based high schools are the only high schools in the District that are certified to be in good standing by the New York State Education Department. Data that the District provided indicated that all six of the high schools in "good standing" are criteria-based schools.

² The Corrective Action Plan does not define "under-represented student populations." Additionally, OCR determined that the NYSED investigation did not entail assessing whether the admissions criteria for the District's criteria-based schools disproportionately excluded non-white students from enrollment, as alleged here.

“Criteria-Based” Schools

1. *Frederick Law Olmstead Elementary School #64 Gifted and Talented Program (Olmstead Elementary)*

OCR determined that Olmstead Elementary has a gifted and talented program for students in kindergarten through fourth grade that is open to applicants District-wide. Olmstead Elementary is certified as a school in “good standing” by NYSED. For school year 2013-2014, admissions to Olmstead Elementary’s gifted and talented program for kindergarten and first grade students was based on a parent inventory,³ a readiness assessment for math and reading,⁴ and, an IQ assessment. Admissions for second, third and fourth grade students is based on the parent inventory and a reasoning ability test.⁵ OCR determined that District staff convert the assessment scores and parent inventories to stanine scores; a review committee then examines the scores, which do not include the student’s name or other identifying information, and determines which students qualify for admission.⁶ If the number of eligible applicants exceeds the number of available seats, a randomized computer lottery is conducted.

OCR determined that 564 students applied to Olmstead Elementary’s gifted and talented program for school year 2013-2014. The admissions rates were as follows:

Race/ National Origin	Applicants	Admission offers
White	262 (46.5%)	51 (60.7%)
Black	226 (40.1%)	23 (27.4%)
Hispanic	1 (0.2%)	0 (0%)
Asian	19 (3.4%)	2 (2.4%)
Multiracial	42 (7.4%)	8 (9.5%)
Unspecified	11 (1.9%)	0 (0%)
American Indian or Alaska Native	3 (0.5%)	0 (0%)
TOTAL	564	84

³ The inventory asks parents to assess their child’s academic, creative and task commitment skills and provide information regarding special talents, skills and behaviors.

⁴ The tests assess readiness in basic skills, including alphabet and number recognition, complex thinking skills, including storytelling, sequencing, patterning and age appropriate math concepts.

⁵ OCR determined that admissions criteria for Olmstead Elementary, in addition to several other “criteria-based” schools, is listed somewhat differently on the 2014-2015 applications for the District’s elementary, middle and high schools; these applications are still available on the District’s website on the main school choice admissions process webpage, although the application deadlines have passed. The District informed OCR that the admissions criteria for “criteria-based” schools available on-line is somewhat outdated, and that it is in the process of updating the information available on-line.

⁶ Applicants must score at least 65 out of 116 points on the reading assessment and 65 out of 117 points on the math assessment. There are no cut-off scores for the other criteria, although students who score in the 7th, 8th, and 9th stanine for the IQ assessment are considered “qualified.”

Using the Fisher’s Exact Test, OCR determined that the difference between the acceptance rates for non-white⁷ and white students was statistically significant. The difference between the acceptance rates for black and white students was statistically significant. The difference between the acceptance rates for Hispanic and white students, Asian and white students, multiracial and white students, and American Indian or Alaska Native and white students was not statistically significant.

2. *Frederick Law Olmstead Middle and High School #156 Gifted and Talented Program (Olmstead High)*

OCR determined that Olmstead High has a gifted and talented program for students in fifth through twelfth grade. Olmstead High is certified as a school in “good standing” by NYSED. Students currently attending Olmstead Elementary’s gifted and talented program are automatically admitted to Olmstead High’s gifted and talented program. Other students throughout the District may apply for admission. Admission to Olmstead High’s gifted and talented program for school year 2013-2014 was based on the following six criteria: (1) Cognitive Ability assessment; (2) parent inventory; (3) teacher checklist;⁸ (4) Williams Scale assessment; (5) New York State (NYS) English Language Arts (ELA) assessment; and (6) NYS mathematics assessment. OCR determined that District staff converts the assessment scores, parent inventories and teacher checklists to stanine scores; a review committee then examines the scores, which do not include the student’s name or other identifying information, and determines which students qualify for admission.⁹

OCR determined that 600 students applied to Olmstead High’s gifted and talented program for school year 2013-2014.¹⁰ The admissions rates were as follows:

Race/ National Origin	Applicants	Admission offers
White	209 (34.8%)	88 (38.4%)
Black	237 (39.5%)	89 (38.9%)
Hispanic	27 (4.5%)	8 (3.5%)
Asian	38 (6.3%)	18 (7.9%)
Multiracial	22 (3.7%)	9 (3.9%)
Unspecified	63 (10.5%)	16 (7.0%)
American Indian or Alaska Native	4 (0.7%)	1 (0.4%)
TOTAL	600	229

⁷ For purposes of the analysis here and below, the applicant and admission offer numbers of non-white students consists of the aggregate numbers for black, Hispanic, Asian, multiracial, and American Indian or Alaska Native applicant and admission offer numbers.

⁸ Both the parent inventory and teacher checklist assess the applicant’s academic, creative and task commitment skills.

⁹ There are no cut-off scores, but the committee generally considers applicants with stanine scores for each criteria in the range of 7, 8, and 9 as qualified; however, applicants with stanine scores of 5 and 6 for some criteria may be considered, if their stanines for other criteria are high.

¹⁰ The District did not indicate whether these numbers included students currently attending Olmstead Elementary’s gifted and talented program.

Using the Fisher’s Exact Test, OCR determined that the difference between the acceptance rates for non-white and white students, black and white students, Hispanic and white students, Asian and white students, multiracial and white students, and American Indian or Alaska Native and white students was not statistically significant.

Because there was no statistically significant disparity for school year 2013-2014, OCR also analyzed the admissions rates for school year 2012-2013. OCR determined that 257 students applied to Olmstead High’s gifted and talented program for school year 2012-2013.¹¹ The admissions rates were as follows:

Race/ National Origin	Applicants	Admission offers
White	81 (31.5%)	43 (39.9%)
Black	110 (42.8%)	36 (33.3%)
Hispanic	18 (7.0%)	10 (9.3%)
Asian	14 (5.4%)	8 (7.4%)
Multiracial	9 (3.5%)	5 (4.6%)
Unspecified	22 (8.6%)	5 (4.6%)
American Indian or Alaska Native	3 (1.2%)	1 (0.9%)
TOTAL	257	108

Based on the Fisher’s Exact Test, OCR determined that the difference between the acceptance rates for non-white and white students was not statistically significant; however, the difference between the acceptance rates for black and white students was statistically significant. The difference between the acceptance rates for Hispanic and white students, Asian and white students, multiracial and white students, and American Indian or Alaska Native and white students was not statistically significant.

3. *Buffalo Academy of Visual & Performing Arts #192 (Buffalo Academy)*

OCR determined that Buffalo Academy provides educational preparation for fifth through twelfth grade students for careers or future study in music, dance, theatre, visual arts and media. Buffalo Academy is not certified as a school in “good standing” by NYSED. Admission to Buffalo Academy for school year 2013-2014 was based on an audition, satisfaction of established criteria for the relevant art major area,¹² academic standing and two letters of recommendation (one from an ELA or math teacher, addressing academic ability, and the other from an individual familiar with the student’s artistic skills and personal characteristics). OCR determined that the District convenes a committee to select qualified candidates based on the strength of the audition (60%), academic standing (30%), and recommendations (5% each).

¹¹ The District did not indicate whether these numbers included students currently attending Olmstead Elementary’s gifted and talented program.

¹² Students must express an interest in one of the following major areas: dance, media communications, music, technical theatre and maintenance, theatre arts, or visual arts.

OCR determined that 338 students applied to Buffalo Academy for school year 2013-2014. The admissions rates were as follows:

Race/ National Origin	Applicants	Admission offers
White	86 (25.4%)	52 (37.2%)
Black	193 (57.1%)	70 (50.0%)
Hispanic	29 (8.6%)	13 (9.3%)
Asian	5 (1.5%)	1 (0.7%)
Multiracial	4 (1.2%)	2 (1.4%)
Unspecified	19 (5.6%)	2 (1.4%)
American Indian or Alaska Native	2 (0.6%)	0 (0%)
TOTAL	338	140

Using the Fisher’s Exact Test, OCR determined that the difference between the acceptance rates for non-white and white students and for black and white students was statistically significant. The difference between the acceptance rates for Hispanic and white students, Asian and white students, multiracial and white students, and American Indian or Alaska Native and white students was not statistically significant.

4. *City Honors at Fosdick-Masten Park #195 (City Honors)*

OCR determined that City Honors is a magnet program with a focus on acceleration, enrichment and the International Baccalaureate (IB) Program, for fifth through twelfth grade students.¹³ City Honors is certified as a school in “good standing” by NYSED. Admission to City Honors for school year 2013-2014 was based on the following six criteria:¹⁴ (1) Cognitive Abilities assessment; (2) teacher recommendation; (3) NYS ELA assessment; (4) NYS mathematics assessment; (5) grades in ELA, mathematics, science, and social studies from the previous school year and first quarter grades of current year; and (6) attendance. OCR determined that students who meet set thresholds for all six criteria are deemed qualified and are offered admission first, followed by students who meet the thresholds for five criteria, and so on.¹⁵ Additionally, rising eighth grade students who attended City Honors are guaranteed a seat at City Honors for the ninth grade. OCR determined that the District also created a verification committee to ensure that data is accurately entered into the admissions database, and to verify that admission is offered based on the established protocol.

¹³ The school offers both the IB Diploma Program (Grades 11 and 12) and the IB Middle Years Program (Grades 5-10).

¹⁴ An essay requirement was eliminated in fall 2013.

¹⁵ The admissions protocol includes a tie breaker system, to be used if there are more students who satisfy a number of criteria than seats available.

OCR determined that 518 students applied to City Honors for school year 2013-2014. The admissions rates were as follows:

Race/National Origin	Applicants	Admission offers
White	268 (51.7%)	102 (64.2%)
Black	128 (24.7%)	23 (14.4%)
Hispanic	42 (8.1%)	11 (6.9%)
Asian	35 (6.8%)	10 (6.3%)
Multiracial	15 (2.9%)	9 (5.7%)
Unspecified	25 (4.8%)	4 (2.5%)
American Indian or Alaska Native	5 (1.0%)	0 (0%)
TOTAL	518	159

Using the Fisher’s Exact Test, OCR determined that the difference between the acceptance rates for non-white and white students and for black and white students was statistically significant. The difference between the acceptance rates for Hispanic and white students, Asian and white students, multiracial and white students, and American Indian or Alaska Native and white students was not statistically significant.

5. *Leonardo da Vinci High School #212 (Da Vinci)*

OCR determined that da Vinci is a preparatory high school situated on the campus of D’Youville College, for students in ninth through twelfth grades. The school’s partnership with D’Youville College allows students to enroll in college courses beginning in their sophomore year; as a result, many da Vinci students graduate with 6-12 college credits. Da Vinci is certified as a school in “good standing” by NYSED. Admission to da Vinci for school year 2013-2014 was based on the following six criteria: (1) grades in ELA, mathematics, science, and social studies from the previous school year and first quarter grades of current year; (2) teacher recommendation addressing academics; (3) teacher recommendation addressing character; (4) NYS ELA assessment; (5) NYS mathematics assessment; and (6) attendance. Da Vinci also gives priority to siblings and legacies. OCR determined that 195 students applied to da Vinci for school year 2013-2014. The admissions rates were as follows:

Race/ National Origin	Applicants	Admission offers
White	34 (17.4%)	12 (25.0%)
Black	55 (28.2%)	12 (25.0%)
Hispanic	11 (5.6%)	3 (6.2%)
Asian	6 (3.1%)	2 (4.2%)
Multiracial	4 (2.1%)	2 (4.2%)
Unspecified	84 (43.1%)	17 (35.4%)
American Indian or Alaska Native	1 (0.5%)	0 (0%)
TOTAL	195	48

Using the Fisher’s Exact Test, OCR determined that the difference between the acceptance rates for non-white and white students, black and white students, Hispanic and white students, Asian and white students, multiracial and white students, and American Indian or Alaska Native and white students was not statistically significant.

Because there was no statistically significant disparity for school year 2013-2014, OCR also analyzed the admissions rates for school year 2012-2013. OCR determined that 297 students applied to da Vinci for school year 2012-2013. The admissions rates were as follows:

Race/ National Origin	Applicants	Admission offers
White	47 (15.8%)	30 (25.4%)
Black	133 (44.8%)	46 (39.0%)
Hispanic	52 (17.5%)	16 (13.6%)
Asian	9 (3.0%)	3 (2.6%)
Multiracial	1 (0.3%)	1 (0.8%)
Unspecified	53 (17.9%)	22 (18.6%)
American Indian or Alaska Native	2 (0.7%)	0 (0%)
TOTAL	297	118

Using the Fisher’s Exact Test, OCR determined that the difference between the acceptance rates for non-white and white students and for black and white students was statistically significant. The difference between the acceptance rates for Hispanic and white students, Asian and white students, multiracial and white students, and American Indian or Alaska Native and white students was not statistically significant.

6. *Emerson School of Hospitality #302 (Emerson)*

OCR determined that Emerson provides a learning environment that blends academics, culinary arts, and food industry career training for ninth through twelfth grade students. Emerson is certified as a school in “good standing” by NYSED. Admission to Emerson for school year 2013-2014 was based on four equally weighted criteria: (1) NYS ELA assessment; (2) NYS mathematics assessment; (3) attendance; and (4) seventh grade grades.

OCR determined that 576 students applied to Emerson for school year 2013-2014. The admissions rates were as follows:

Race/ National Origin	Applicants	Admission offers
White	96 (16.7%)	34 (23.0%)
Black	242 (42.0%)	63 (42.6%)
Hispanic	33 (5.7%)	4 (2.7%)
Asian	6 (1.0%)	0 (0%)
Multiracial	9 (1.6%)	3 (2.0%)
Unspecified	188 (32.6%)	44 (29.7%)

Race/ National Origin	Applicants	Admission offers
American Indian or Alaska Native	2 (0.4%)	0 (0%)
TOTAL	576	148

Using the Fisher's Exact Test, OCR determined that the difference between the acceptance rates for non-white and white students and for Hispanic and white students was statistically significant. The difference between the acceptance rates for black and white students, Asian and white students, multiracial and white students, and American Indian or Alaska Native and white students was not statistically significant.

7. *Hutchinson Central Technical High School #304 (Hutchinson)*

OCR determined that Hutchinson is a school for ninth through twelfth grade students, intended to prepare students for entry into engineering colleges and/or entry level positions in technical fields. Hutchinson is certified as a school in "good standing" by NYSED. Admission to Hutchinson for school year 2013-2014 was based on the following three criteria: (1) Differential Aptitude Tests¹⁶ (37.5%); (2) teacher evaluation (31.25%); and (3) grades in ELA, mathematics, science, and social studies from the previous school year and first quarter grades of current year (31.25%).

OCR determined that 919 students applied to Hutchinson for school year 2013-2014. The admissions rates were are follows:

Race/ National Origin	Applicants	Admission offers
White	227 (24.7%)	97 (30.2%)
Black	446 (48.5%)	137 (42.7%)
Hispanic	145 (15.8%)	51 (15.9%)
Asian	57 (6.2%)	26 (8.1%)
Multiracial	8 (0.9%)	1 (0.3%)
Unspecified	25 (2.7%)	6 (1.9%)
American Indian or Alaska Native	11 (1.2%)	3 (0.9%)
TOTAL	919	321

Using the Fisher's Exact Test, OCR determined that the difference between the acceptance rates for non-white and white students and for black and white students was statistically significant. The difference between the acceptance rates for Hispanic and white students, Asian and white students, multiracial and white students, and American Indian or Alaska Native and white students was not statistically significant.

¹⁶ The Differential Aptitude Tests are entrance examinations to assess verbal reasoning, numerical reasoning, and abstract reasoning.

8. *Middle Early College High School #415 (MECHS)*

OCR determined that MECHS is a five-year high school program (beginning in ninth grade), in which students are dual-enrolled in high school and Erie Community College. Successful students in the program graduate with a high school diploma and an Associate’s Degree. MECHS is not certified as a school in “good standing” by NYSED. Admission to MECHS for school year 2013-2014 was based on the following three criteria: (1) two letters of recommendation from an administrator, school counselor or teacher; (2) discipline and attendance record; and (3) an interview process, which includes a short essay, completion of math and reading comprehension sheets, and a student questionnaire. Two MECHS teachers review each applicant’s admissions folder using a “rater’s sheet,” to determine whether a student should be interviewed.¹⁷ If selected for the interview process, three rounds of interviews are conducted by MECHS staff, and in some instances staff from Erie Community College, who use rubrics to score the interviews. An admissions team then evaluates the results.

OCR determined that 514 students applied to MECHS for school year 2013-2014. The admissions rates were as follows:

Race/ National Origin	Applicants	Admission offers
White	72 (14.0%)	19 (18.2%)
Black	382 (74.3%)	76 (73.1%)
Hispanic	29 (5.6%)	6 (5.8%)
Asian	4 (0.8%)	0 (0%)
Multiracial	5 (1.0%)	0 (0%)
Unspecified	21 (4.1%)	3 (2.9%)
American Indian or Alaska Native	1 (0.2%)	0 (0%)
TOTAL	514	104

Using the Fisher’s Exact Test, OCR determined that the difference between the acceptance rates for non-white and white students, black and white students, Hispanic and white students, Asian and white students, multiracial and white students, and American Indian or Alaska Native and white students was not statistically significant.

Because there was no statistically significant disparity for school year 2013-2014, OCR also analyzed the admissions rates for school year 2012-2013. OCR determined that 479 students applied to MECHS for school year 2012-13. The admissions rates were as follows:

Race/ National Origin	Applicants	Admission offers
White	48 (10.0%)	11 (10.6%)
Black	359 (75.0%)	73 (70.2%)
Hispanic	50 (10.4%)	13 (12.5%)

¹⁷ If there is one “yes” and one “no” for an applicant, a third teacher will review and cast the deciding vote.

Race/ National Origin	Applicants	Admission offers
Asian	8 (1.7%)	3 (2.9%)
Multiracial	2 (0.4%)	0 (0%)
Unspecified	7 (1.5%)	4 (3.8%)
American Indian or Alaska Native	5 (1.0%)	0 (0%)
TOTAL	479	104

Using the Fisher’s Exact Test, OCR determined that the difference between the acceptance rates for non-white and white students, black and white students, Hispanic and white students, Asian and white students, multiracial and white students, and American Indian or Alaska Native and white students was not statistically significant.

On June 26, 2014, the District voluntarily agreed to implement the enclosed resolution agreement to resolve the complaint allegation. OCR will monitor implementation of the resolution agreement. If the District fails to comply with the terms of the resolution agreement, OCR will resume its investigation.

This letter 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 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 file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District 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 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 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 David Krieger, Compliance Team Attorney, at (646) 428-3893 or david.krieger@ed.gov; or Gina Damasco, Compliance Team Attorney at (646) 428-3924 or gina.damasco@ed.gov.

Very truly yours,

Timothy C.J. Blanchard

Cc: Rashondra Martin, Esq.
Encl.