



UNITED STATES DEPARTMENT OF EDUCATION
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ATLANTA, GA 30303-8927

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July 13, 2014

Mr. Chris Henson
Interim Director of Schools
Metropolitan Nashville Public Schools
2601 Bransford Avenue
Nashville, TN 37204

Re: Complaint #04-09-1123

Dear Mr. Henson:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its complaint resolution process regarding the above-referenced complaint filed against the Metropolitan Nashville Public School District (District), alleging discrimination on the basis of race. The Complainant alleged that the District's student assignment plan, effective for the 2009-2010 school year, discriminated against African American students on the basis of race. The Complainant stated that he is particularly concerned with the student assignment plans for the Hillsboro, Hillwood and Pearl-Cohn school clusters. The Complainant asserted that upon implementation of the plan white student enrollment in the Hillwood and Hillsboro cluster schools would increase while African American student enrollment in the Pearl-Cohn schools would increase, resulting in resegregation.

OCR investigated the complaint pursuant to Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. Sections 2000d *et seq.*, and its implementing regulation, 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color and national origin by recipients of Federal financial assistance. As a recipient of Federal financial assistance from the Department, the District is subject to the provisions of Title VI.

During the course of the investigation, OCR conducted an on-site visit, reviewed documents requested of and provided by the District, and interviewed the Complainant, the ten members of the Community Task Force who developed the student assignment plan, and seven of the District's administrative staff who conceived the project and facilitated the Task Force's work by providing technical assistance.

Prior to the conclusion of OCR's investigation, the District expressed an interest in voluntarily resolving this case and entered into an agreement that commits the District to specific actions to address the issues under review. This letter summarizes the applicable legal standards, the information gathered during the review, and the Resolution Agreement.

Legal Standards

The Title VI implementing regulation at 34 C.F.R. Section 100.3(a) and (b)(1) provides that no person in the United States 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 to which this part applies.

The regulation at 34 C.F.R. Section 100.3(b)(2) provides that a recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

One way in which schools violate Title VI is when they implement facially neutral policies or practices that, although not adopted with the intent to discriminate, nonetheless have an unjustified effect of discriminating against students on the basis of race. The resulting discriminatory effect is commonly referred to as “disparate impact.”

In determining whether a facially neutral student assignment plan has an unlawful disparate impact on the basis of race, OCR engages in the following three-part inquiry:

1. Has the assignment plan resulted in a statistically significant adverse impact on students of a particular race as compared with students of other races?
2. Is the student assignment plan necessary to meet an important educational goal?
3. Even in situations where a district can demonstrate that a student assignment plan is necessary to meet an important educational goal, are there comparably effective alternative options available that would meet the district’s stated educational goal with less of a burden or adverse impact, or is the district’s proffered justification a pretext for discrimination?

Summary of the Investigation

Information obtained by OCR during the investigation included information published on the District’s website, district policies, school board minutes, attendance area maps, public hearing comments, email correspondence relating to the Task Force, student racial population projections, school enrollment and capacity data, Task Force criteria for redrawing zoning lines, rezoning variations considered, and transcripts of deposition and hearing testimony provided in related federal litigation. During the seventeen witness interviews OCR conducted, OCR obtained information from both Task Force members and school officials about the origin and development of various parts of the 2009-2010 school assignment plan (2009 Plan); the different rezoning options that were considered; and their reasons for not rezoning students from overcapacity racially identifiable white schools into contiguous zones with higher concentrations of African American students.

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As of the 2014-2015 school year, the District had 157 schools, composed of 73 elementary schools, 33 middle schools, 25 high schools, 18 charter schools, and 8 specialty schools serving 85,805 students. During the 2014-2015 school year, the District's student enrollment was 31.3 percent white, 44.2 percent African American, 19.7 percent Hispanic, 4 percent Asian, and 0.8 percent other.

In 2008, when the School Board for Metropolitan Nashville voted to approve the disputed 2009 Plan, the District had 137 schools, serving 74,329 students, of whom 48 percent were African American, 34 percent were white, 14 percent were Hispanic, 2 percent were Asian, and less than 1 percent were Native American. There were 12 attendance areas called clusters, each defined by the attendance area of a single high school. Each cluster also included two or more middle schools and at least several elementary schools. Generally, students residing within the geographical area that comprised a specific cluster were zoned into a school within that cluster. However, students living in some residential areas were zoned into "noncontiguous" areas outside of the cluster in which they resided.

In 1998, a federal court found that the District, having already agreed to a settlement to reassign some students, had achieved "unitary" status of its formerly racially-dual system of schools. The student reassignment plan that led to the 1998 court decision provided that students in the "Metro Center area" within the Pearl-Cohn cluster would be assigned to the suburban Hillwood cluster, with transportation provided by the District. As of the date that the 2009 Plan was adopted, the student population residing in Pearl-Cohn was approximately 90 percent African American. The Hillwood cluster student enrollment, including students zoned in from Pearl-Cohn, was approximately 35 percent African American.

On December 11, 2007, the School Board voted to create a Community Task Force (Task Force), to make recommendations to the Board for a comprehensive student assignment plan for implementation in the 2009-2010 school year. Each Board member appointed a member and the District's Director of Schools, the Mayor, and the Board Chair each appointed a member. The Task Force consisted of 12 members, half of whom were white and half of whom were African American. The Task Force was directed to review building capacities to ensure efficient building utilization, recommend specific proposals for under-utilized facilities, and to reassign as few students as possible. At the time, elementary schools in several of the clusters were overcapacity, but the elementary schools in Hillwood were at only 89 percent capacity and those in Pearl-Cohn were at only 91 percent capacity. Still, the pupil assignment plan in the 1998 settlement continued to operate so that some students living in the Pearl-Cohn area continued to be zoned into the Hillwood cluster.

The Task Force began its work in January 2008, and subsequently held 13 meetings, presented its recommendations to the Board at a session in May 2008, presented its recommendations to various groups, conducted public hearings, met to consider board input, and unanimously approved the 2009 Plan. In developing the 2009 Plan, the Task Force considered a number of factors, including fiscal responsibility, building underutilization and overcrowding, benefits of neighborhood schools, increased parental involvement, enhanced opportunities for students to participate in extracurricular activities of the school, and diversity.

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On July 8, 2008, the Board approved the 2009 Plan for implementation in the 2009-2010 school year. The 2009 Plan rezoned noncontiguous areas. Students previously zoned into noncontiguous areas were rezoned to neighborhood schools in the cluster in which they resided, and students were given an option for a school in the cluster where they were previously zoned. Students living in the Pearl-Cohn cluster were rezoned out of Hillwood and into Pearl-Cohn, but had the option to choose to return to Hillwood schools (though not necessarily to the same school they had previously attended).

The District projected that the 2009 Plan, when implemented, would make significant reductions in the African American enrollments of some Hillwood cluster schools. At the elementary level, Charlotte Park would decrease from 41 percent to 25 percent African American students; Gower, from 24 percent to 15 percent; and Westmeade, from 48 percent to 32 percent. At the middle school level, Bellevue would decrease from 31 percent to 18 percent African American and Hill from 46 percent to 23 percent. At the high school level, Hillwood would decrease from 49 percent to 24 percent African American. Conversely, the District projected that the 2009 Plan would significantly increase African American enrollments in some Pearl-Cohn cluster schools. At the elementary level, Park Avenue would increase from 78 percent to 96 percent African American. At the high school level, Pearl-Cohn would increase from 88 percent to 93 percent African American. At other schools, while the percentage of African American students would not significantly change, the numerical enrollments of African Americans would increase. For example, Buena Vista Elementary's student body was already composed of 100 percent African American students, and would have its student enrollment increase from 324 to 387 students. Despite the anticipated decrease in African American enrollment at the Hillwood cluster schools, and increased racial isolation of students in the Pearl-Cohn cluster, the District moved forward with the plan.

The 2009 Plan noted that the Pearl-Cohn cluster, which it described as a “relatively densely populated” and “economically disadvantaged area,” presented unique challenges. The goals for Pearl-Cohn that were articulated in the 2009 Plan included increasing graduation rates and decreasing the lure of gang affiliation. The provision of additional resources to all Pearl-Cohn schools was specified as a prerequisite to implementation of the rezoning recommendation. The identified resources were: “incentive pay for teachers and staff; lower pupil-teacher ratio, higher ratio of social workers/psychologists/guidance counselors, etc.; technology/computers; and enhanced academic opportunities.”

In implementing the 2009 Plan, the District sent letters to parents of Pearl-Cohn students and others who had previously attended school outside of their residential areas to inform them of the option to continue to attend school outside of their residential area (though not necessarily the same school previously attended). The District sought to have the parents notify the District of the school selected. A student residing in area 4-E within the Pearl-Cohn zone, for example, had the option of attending Buena Vista Elementary School in area 4-F of Pearl-Cohn or Harpeth Valley Elementary School in the Hillwood Cluster. The zoned option school available to a Pearl-Cohn student who had previously been in a Hillwood school was not necessarily the same school the student had previously attended; it was, however, located within the Hillwood cluster.

After the choice period was completed and students enrolled for the 2009-2010 school year, there was a significant increase in racial isolation in some of the schools in the Pearl-Cohn and Hillwood clusters. For example, in the Pearl-Cohn cluster, Park Avenue Elementary increased from 90 percent to 96 percent African American. While there was not an increase in the percentage of African American students at Pearl-Cohn High, which was previously 91 percent African American, the overall number of African American students increased by 144. Conversely, in the Hillwood cluster, Charlotte Park Elementary decreased from 40 percent to 26 percent African American, Westmeade Elementary from 46 percent to 24 percent African American, Bellevue Middle from 31 percent to 22 percent African-American, Hill Middle from 49 percent to 33 percent African-American, and Hillwood High from 47 to 38 percent African-American. Moreover, the group of students whose reassignment resulted in enrollment in the Pearl-Cohn cluster -- which, according to the District's own 2009 Plan, presented "unique challenges" and would need "additional resources to succeed" -- was disproportionately African American. While African American students accounted for approximately 48% of the District's enrollment, they accounted for 88% of the increase in enrollment in the Pearl-Cohn cluster.

Federal Litigation Concerning Plan

On August 29, 2009, just as the 2009 Plan was being implemented, several parents and a nonprofit organization filed *Spurlock v. Metropolitan Government of Nashville*, a civil suit in the United States District Court for the Middle District of Tennessee. It alleged the 2009 Plan's implementation was causing the racial resegregation of schools in Metropolitan Nashville Public Schools.¹ The plaintiffs in the lawsuit also alleged that the plan violated their Fourteenth Amendment equal protection and due process rights.

On July 27, 2012, the Court issued its decision,² analyzing the plaintiffs' claims under the Equal Protection clause of the United States Constitution. The Court found that the 2009 Plan had "caused a segregative effect." In reaching its conclusion that causation had been established, the Court cited "flaws in the District's implementation of the zoned option choice -- including both misinformation and the absence of material information." At least some Pearl-Cohn parents alleged that they did not receive adequate notification of their option to select a school located outside of Pearl-Cohn, and some alleged that Pearl-Cohn schools lacked basic resources available in the Hillwood schools. While the court concluded that the 2009 Plan caused a segregative effect, the Court nonetheless found that the District "lack[ed] a discriminatory motive." The Court then reviewed the plan under the "rational basis test." The Court concluded that "the Plan survives rational basis review"³ because it accomplishes (at least in part) several of the School Board's legitimate objectives." The decision was appealed. On May 10, 2013, the Sixth Circuit Court of Appeals affirmed.⁴ Both the District Court and the Appeals Court found

¹ The OCR complainant was not a part of the initial suit. At some point he was added as a plaintiff but was subsequently removed.

² 2012 WL 3064251.

³ While the District Court applied the rational basis test, and that standard was also applied on appeal of the District Court findings, the legal standards applicable to OCR's examination of the plan under Title VI include the disparate impact standard set out above.

⁴ *Spurlock v. Fox*, 716 F.3d 383 (6th Cir. 2013).

there was no discriminatory intent on the part of school officials in developing and approving the plan, and that, in the absence of a constitutional infirmity, the court was without authority to remedy identified shortcomings, such as the increased racial segregation.

Subsequent to the District Court's decision, in July 2013, OCR requested from the District data concerning any changes that the District made to its admissions and assignment processes identified as flawed by the Court. After OCR reviewed the District's responsive information, the District and OCR resumed discussions of possible resolution of the Complaint.

Conclusion

Pursuant to Section 302 of OCR's Case Processing Manual, a complaint may be resolved when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. On June 18, 2015, the District entered into the attached Resolution Agreement, which, when fully implemented, will resolve the issue in the complaint. As detailed in the Agreement, the District has committed to, among other things, the following:

- Providing supplemental resources to schools in the Pearl-Cohn cluster pursuant to the 2009 Plan, and furnishing OCR with evidence of such;
- Expanding supplemental assistance to certain categories of students, and furnishing OCR with evidence of such;
- Enhancing communication with parents in areas of the District in which parents have a choice of school and, in particular, parents residing in Pearl-Cohn.

OCR will monitor the District's implementation of this Agreement to ensure that it is fully implemented and that the District is in compliance with the statute and regulations at issue in this complaint.

This concludes OCR's investigation of the complaint 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 case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OR'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 related correspondence and records, upon request. In the event OCR receives such a request, we 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.

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If you have any questions, please contact Roger Mills at (404) 974-9372, or me at (404) 974-9330.

Sincerely,

Melanie Velez
Regional Director

Attachment: Resolution Agreement