UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION IV

61 FORSYTH ST., SOUTHWEST, SUITE 19T10
ATLANTA, GA 30303-8927

REGION IV
ALABAMA
FLORIDA
GEORGIA
TENNESSEE

January 10, 2018

Via U.S. & Electronic Mail
XXXXXXXX
XXXXXXXX
Lowndes County Schools
1592 Norman Drive
Valdosta, GA 31601

Re: OCR Complaint # 04-16-1545 & 04-16-1237

Dear XXXXXXXX:

We have resolved the above-referenced complaints filed against Lowndes County Schools (District), alleging discrimination on the basis of race (black). Specifically, in OCR Complaint #04-16-1237, the Complainant alleged that the process for selecting cheerleaders for the Junior Varsity (JV) squad was discriminatory and resulted in the selection of all white students to the JV squad. The Complainant also alleged that white students were informed of the option to participate in the tryouts for both the Varsity and JV squads and allowed to participate in both tryouts, in violation of the School's written policy; however, the Student was not informed of this option or allowed to participate in both tryouts. The Complainant further alleged the District retaliated against the Student by giving her an unwrapped "prank gift" for an award at a banquet while the white cheerleaders received gifts that were in boxes and wrapped; by denying her the opportunity to lead a cheer during the entire season, which lasted from August 2015 to February 2016; by providing the white cheerleaders at the School to assist the middle school cheer squad, but not providing the Student with notice of the same opportunity; by not including her parents' sponsorship ad in the football ad book. Finally, the Complainant alleged that the District steered the black students toward the Varsity squad during basketball season instead of the football season.

In OCR Complaint #04-16-1545, the Complainant alleged that the Student (Student) was not selected to the Varsity Football Cheer Squad for the 2016-2017 school year because of her race and in retaliation for the Complainant filing a previous OCR complaint. You also stated that for the 2016-2017 school year, the District continued its discriminatory practice of not selecting black students for the Varsity Football Cheer Squad by: (a) pre-screening and grouping students by requiring students to declare a category prior to tryouts; (b) not disclosing the scores or ranking of students by the judges to conceal the discriminatory selection of students; (c) allowing the cheer coaches to serve as judges instead of using all independent and disinterested judges; and (d) limiting the size of the squad to 16 students.

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and its implementing regulation, 34 C.F.R. Part 100. Title VI prohibits discrimination on the basis of race, color or national origin by recipients of Federal financial assistance. The District receives Federal financial assistance from the Department and is a public entity. Therefore, OCR has jurisdiction over these complaints.

Based on the allegations in OCR Complaint #04-16-1237, OCR opened the following legal issues:

1. Whether the District subjected the Student to different treatment, on the basis of race, (a) by not selecting her for the School's junior varsity cheerleading squad in April 2015 and (b) by not allowing her to participate in the tryouts for both the junior varsity and varsity squads like her white counterparts, in noncompliance with the Title VI implementing regulation at 34 C.F.R. § 100.3(a) and (b).

2. Whether the District retaliated against the Student in response to the Complainant filing an internal grievance, which led to the former Principal placing the Student on the junior varsity squad, and? when the cheer coach (a) gave the Student a "prank gift;" (b) refused to allow her to lead any cheers; (c) attempted to exclude her from cheerleading activities at the middle school; and (d) failed to include her parents' sponsorship ad in the School's football ad book, in noncompliance with the Title VI implementing regulation at 34 C.F.R. § 100.7(e).

3. Whether the District discriminates against black students in the selection of students to the varsity squad for the football season during the 2015-2016 school year, in noncompliance with the Title VI implementing regulation at 34 C.F.R. § 100.3(a) and (b)(1)(iii), (v).

Based on the allegations in OCR complaint #04-16-1545, OCR opened the following legal issues:

1. Whether the District subjected the Student to different treatment, on the basis of race, by not selecting her for the School's varsity football cheerleading squad in April 2016, in noncompliance with the Title VI implementing regulation at 34 C.F.R. § 100.3(a) and (b).

2. Whether the District retaliated against the Student by failing to select her for the 2016-2017 Varsity Football cheerleading squad in response to the Complainant filing a previous OCR complaint, in noncompliance with the Title VI implementing regulation at 34 C.F.R. § 100.7(e).

3. Whether the District discriminated against black students in the selection of students to the varsity football cheerleading squad for the 2016-2017 school year, in noncompliance with the Title VI implementing regulation at 34 C.F.R. § 100.3(a) and (b)(1)(iii), (v).

OCR's investigation included an analysis of the documents and information provided by both parties and interviews with the Complainant and District employees. OCR reviews evidence

under the preponderance of the evidence standard. Under a preponderance of the evidence standard, OCR evaluates evidence obtained during an investigation to determine whether the greater weight of the evidence is sufficient to support a conclusion that the recipient failed to comply with a law or regulation enforced by OCR or whether the evidence is insufficient to support such a conclusion.

In OCR Complaint #04-16-1237, before OCR concluded its investigation, the District requested to voluntarily resolve Allegations 1 & 3 of this complaint pursuant to OCR's *Case Processing Manual* (CPM) at Section 302. Regarding Allegations 1(b) and 2, after carefully considering all of the information obtained during the investigation, OCR did not find sufficient evidence to support the Complainant's allegations. OCR's findings and conclusions with respect to Allegations 1(b) and 2 are set forth below.

In OCR Complaint# 04-16-1545, before OCR concluded its investigation, the District offered to voluntarily resolve this complaint pursuant to CPM Section 302. Pursuant to Section 302, a complaint may be resolved when, before the conclusion of an investigation, "the recipient expresses an interest in resolving the allegations and issues and OCR determines that it is appropriate to resolve them with an agreement during the course of an investigation."

Set forth below is a summary of OCR's investigation of the issues in OCR Complaint #04-16-1237 and #04-16-1545 resolved pursuant to CPM Section 302.

Legal Standards

A. Different Treatment

The Title VI implementing regulation at 34 C.F.R. § 100.3(a) provides that no person shall, on the basis 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 the individual 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 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.

A conclusion that different treatment occurred may be based on a finding of intentional discrimination on the basis of an individual's race, color, or national origin. Absent direct proof of discriminatory motive, a prima facie case of different treatment is established when a district treats students of one race differently from similarly situated students of a different race. Once a prima facie case of different treatment is established, the school district may articulate a legitimate, nondiscriminatory justification for the different treatment. A recipient's rebuttal/nondiscriminatory justification can be overcome with a showing of pretext.

B. Retaliation

The Title VI implementing regulation at 34 C.F.R. § 100.7(e), provides that no recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by a law enforced by OCR, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under Title VI.

To establish a prima facie case of retaliation, OCR uses a three step analysis: (1) whether the Complainant experienced an adverse action caused by the recipient; (2) the recipient knew that the Complainant engaged in protected activity or believed she might engage in a protected activity in the future; and, (3) whether there is a causal connection between the adverse action and the protected activity. If all these elements are present, this establishes an initial, or prima facie, case of retaliation. OCR then determines whether the Recipient has a legitimate, non-retaliatory reason for its action. Finally, OCR examines whether the Recipient's reason for its action is a pretext, or excuse, for unlawful retaliation.

I. OCR Complaint# 04-16-1237

Allegation/Issue 1(a): Whether the District subjected the Student to different treatment, on the basis of race, by not selecting her for the School's junior varsity cheerleading squad in April 2015.

Summary of the Investigation

The evidence thus far showed that in April 2015, the Student tried out for the JV cheer squad, which traditionally has 16 members, and was ranked number 13 based upon scores awarded by the judges. She was not selected[1] while twelve white students, including a white student with the same score as the Student, were selected.

The evidence also showed that the judges awarded each student a score in 4 categories and based upon the combined scores students were ranked from highest to lowest. One District witness stated that the judges "went strictly by numbers" in selecting the students for the JV squad. Even though the Student ranked 13, the 2014-2015 JV squad only included a 12 member squad, not the usual 16 member squad, so the Student did not make the squad.

Prior to the conclusion of the investigation of Issue #1(a) to determine if different treatment in non-compliance of Title VI occurred, the District requested to address this complaint allegation with a voluntary resolution agreement pursuant to CPM Section 302.

Allegation/Issue 1(b): Whether the District subjected the Student to different treatment, on the basis of race, by not allowing her to participate in the tryouts for both the JV and varsity squads like her white counterparts.

[1] Subsequently, after the Complainant complained about the non-selection of the Student, the District added the Student and three white students to the squad.

Factual Findings

In April 2015, the Student tried out for only the JV squad, and according to the Complainant the Student believed that she had to choose to try out for either the JV squad or the Varsity squad.

The preponderance of the evidence establishes that rising 9th graders could try out for JV, but not varsity football or basketball. The evidence also shows that rising 10th graders could try out for both varsity and JV, if they did not make varsity and rising 11th and 12th graders could only try out for varsity. All grades could try out for the competition squad. The Student, as a rising freshman, was not eligible to try out for any of the varsity squads.

The evidence also shows that each tryout was held on a separate day to allow students to try out for more than one squad. However, a student could qualify for only one squad. Students were informed which squads they could try out for via information posted on the cheerleading website, in the packet that parents received prior to tryouts, during the clinics held prior to the tryouts, and in materials given to the cheer coaches at the middle schools to distribute to their students. Finally, paperwork given to the participants after the varsity tryouts specifically instructed rising sophomores who did not make the varsity squad to come back the next day to try out for JV. In April 2015 some rising sophomores tried out for JV after they did not make varsity.

Analysis and Conclusion

OCR examined whether the Student was treated less favorably than one or more similarly situated white students with respect to the alleged adverse action. The Student was a rising freshman, and all freshmen were ineligible for the varsity squads. The students who tried out for both varsity and JV squads were sophomores and no freshman of any race was permitted to try out for a varsity squad. Thus, the District treated the Student the same as all similarly situated students or rising freshmen.

Based on the foregoing, OCR finds that the District did not subject the Student to different treatment on the basis of her race by not allowing her to try out for the varsity squads in non-compliance with Title VI as alleged.

Allegation/Issue 2: Whether the District retaliated against the Student after the Complainant filed an internal grievance when the Cheer Coach (a) gave the Student a prank gift, (b) refused to allow her to lead any cheers, (c) attempted to exclude her from cheerleading activities at LCMS, and (d) failed to include her parents' sponsorship ad in the School's football program.

To establish a prima facie case of retaliation, OCR uses a three step analysis: (1) whether the Complainant experienced an adverse action caused by the recipient; (2) the recipient knew that the Complainant engaged in protected activity or believed she might engage in a protected activity in the future; and, (3) whether there is a causal connection between the adverse action and the protected activity.

Adverse Action

OCR first determined whether the District took adverse action against the Student and/or the Complainant. To determine whether an action is adverse, OCR must determine whether the District's action significantly disadvantaged the Student's ability or Complainant's ability to gain the benefits of the District's program.

a) Prank Gift

The evidence showed that a total of six awards were distributed by the JV Coach at the 2016 cheer banquet. The JV cheerleaders voted on three of the awards, and the JV Coach decided who received the other three awards. The Student won the "Most Likely to End Up a Dallas Cowboy Cheerleader" award; this was one of the awards voted on by the cheerleaders. As a result of the award, the Student received a basket with a foam football, sour patch watermelon candy, and a cross that said "hope." The second student (Student #1) who won one of the awards received a cup that contained sour patch watermelon candy, a cross, an animal toy, and a block of wood that said "seize the day." The third student (Student #2) who won one of the awards received a wooden cross, watermelon sour patch kids' candy, and a plush bear; her gift was not wrapped, and the items were in a cup with tissue paper. Student #2 stated that it was considered an honor to receive one of the awards.

The preponderance of the evidence showed that none of the gifts were intended to be "prank" gifts. The gift items that the Student received, including the gift associated with the peer award, were comparable to those awarded to other cheerleaders. Thus, there is insufficient evidence to show that the District subjected the Student to an adverse action in regards to the peer award or the gifts received. Accordingly, OCR will take no further action regarding this allegation, and has closed this allegation as of the date of this letter.

b) Lead Cheers

The evidence showed that all of the JV cheerleaders, including the Student, were given an opportunity to lead a cheer during the season. Specifically, each cheerleader on the squad advised OCR that all cheerleaders were given an opportunity to lead a cheer. The JV coach also stated that the Student was given an opportunity to lead a cheer. OCR also reviewed a picture of the Student using a megaphone during a game, which indicates she led a cheer. OCR also interviewed a parent, who attended each game, who stated that each cheerleader, including the Student, led a cheer. Thus, there is insufficient evidence to show that the District subjected the Student to an adverse action in regards to leading a cheer. Accordingly, OCR will take no further action regarding this allegation, and has closed this allegation as of the date of this letter.

c) Excluded from Assisting LCMS Cheer Squad

The evidence showed that the Student was excluded from going to Lowndes County Middle School (LCMS) to assist the LCMS cheer squad with their routine for an upcoming competition. Therefore, OCR will proceed to the next step of the analysis for this action.

d) Excluded Parents' Ad from Banner and Souvenir Booklet

The evidence revealed that the Complainant's ad was left off the sponsors' banner and out of the football program. Therefore, OCR will proceed to the next step of the analysis for this action.

Knowledge of Protected Activity

An individual has engaged in a protected activity, and thus is protected from retaliation if: (1) the individual has opposed any act or policy that is unlawful under one of the laws that OCR enforces; or (2) the individual has made a complaint, testified, assisted, or participated in any manner in an investigation, or proceeding or hearing conducted under the laws that OCR enforces.

The evidence established that the Complainant engaged in protected activity when she filed an internal complaint after the Student was not selected for the JV squad and subsequent to submission of that complaint, the Student and three other students were added to the squad. Accordingly, OCR has determined that the evidence is sufficient to support a conclusion that the District had knowledge that the Complainant engaged in protected activity. Therefore, we will proceed to the next step of the analysis regarding the exclusion of the Student from the LCMS Cheer Squad and the exclusion of the Complainant's from the Souvenir Booklet Ad. .

Causal Connection between the Protected Activity and the Adverse Action

To determine causal connection between the protected activity and the adverse action, OCR considers: (a) closeness in time between knowledge of the protected activity and the adverse action (generally, as time period between protected activity and adverse action increases, likelihood of causal connection decreases); (b) change in treatment of the complainant after the District had knowledge of the protected activity; (c) treatment of the complainant compared to other similarly situated persons; or deviation from established policies and procedures.

In April 2015, the Complainant filed an internal grievance regarding the Student's non-selection to the JV squad. The two alleged adverse actions occurred in the fall of 2015, or within six months of the alleged protected activity. Thus, there is a sufficient closeness in time between knowledge of the protected activity and the adverse actions.

Legitimate, Nondiscriminatory Reason for the Recipient's Action

Once OCR has established a prima facie case of retaliation, the recipient must articulate a legitimate, non-retaliatory reason for its action. OCR then determines whether the recipient's proffered reasons are a pretext for retaliation.

c) Excluded from Assisting LCMS Cheer Squad

According to the District, the Student was not selected to assist the LCMS cheer squad because the LCMS Coach specifically requested that the JV Coach bring her upperclassmen (10th

graders) and the former LCMS students to critique the LCMS cheer squad. The Student was one of four JV cheerleaders who did not fall into either category because she did not attend LCMS and she was a 9th grader at the School. All four students, similarly situated to the Student, were excluded from participation in this activity. Accordingly, OCR finds that the District proffered legitimate, non-retaliatory reasons for why the Student was not one of the JV cheerleaders selected to go to LCMS.

OCR next analyzes whether the District's proffered reasons were a pretext for retaliation. Pretext can be shown by deviation from policies and practices or evidence which tends to weaken the inference that the asserted reason is the true reason for the action.

The evidence does not support a conclusion that the District's proffered reason for the selection of students to assist at LCMS was a pretext for retaliation. The evidence showed that the LCMS Coach had made the same request for the past three years, and she specifically requested only upperclassmen and the former LCMS students. Also, the Student was one of four JV cheerleaders who did not fall into either category and all of those students were excluded from the activity. Accordingly, OCR finds that there is insufficient evidence to conclude that the District was in violation of Title VI as alleged.

d) Excluded Parents' Ad from Banner and Souvenir Booklet

As to the Complainant's ad, the JV Coach asserted that a mistake occurred when she was copying and pasting information between spreadsheets. The District proffered that it corrected the banner to include the Complainant, but was unable to correct the football program because it had already been printed by an outside vendor, and would cost a substantial amount of money to reprint. The JV Coach stated that she spoke with the Complainant and her husband, who only complained about the banner, and apologized, to them, and they were very understanding and said mistakes happen. The evidence showed that The School offered a refund, but none was requested by the Complainant. The Complainant does not dispute this; however, she believes the District should have honored her request to place her ad as an insert.

OCR finds that the District's proffered reasons were not a pretext for retaliation. The evidence showed that once the School was made aware of the omission, it attempted to rectify the problem by re-printing the sponsors' banner. The evidence further showed that the football program had been printed by an outside vendor at a considerable expense, and it was cost prohibitive to re-print it to include the Complainant's ad.

Based on the above, OCR finds that the there is insufficient evidence to conclude that the District retaliated against the Complainant and Student as alleged in non-compliance with Title VI.

Allegation/Issue 3: Whether the District discriminates against black students in the selection of students to the varsity football squad.

Summary of the Investigation

The evidence obtained thus far shows that the Varsity Football Squad had 16 members during the 2015-2016 school years and for the past four years there have been only one or two black members of the team. For each of the past three years, five black students tried out for the Varsity Football Squad; one black student was selected for 2016-2017 and two were selected during the 2015-2016 and 2014-2015 school years. Across the three years for which OCR reviewed data, from 2014-2015 through 2016-2017, 33% of the varsity football tryout opportunities for black students resulted in selection for the Varsity Football Squad, while 52% of the varsity football tryout opportunities for non-black students resulted in selection for the Varsity Football Squad

Prior to the conclusion of OCR's investigation to determine if the District discriminates against black students in the selection of students to the varsity football squad in noncompliance with Title VI, the District requested to address this complaint allegation with a voluntary resolution agreement pursuant to CPM Section 302.

II. OCR Complaint #04-16-1545

Allegation/Issue 1: Whether the District subjected the Student to different treatment, on the basis of race, by not selecting her for the School's junior varsity cheerleading squad in April 2015.

Summary of the Investigation

The evidence thus far shows that in April 2016, the Student was one of 32 students who tried out for the varsity football cheerleading squad. Based upon the scores awarded by the judges, the Student and two other black students made the Top 22. The Student was ranked ninth and the other two black students were ranked seventh and tenth. Based on the Student's stunt position, she was ranked number 6 out of 8. A total of 8 students were selected for the base position. Despite her rankings, the evidence shows that the Student was not selected for the 2016-2017 Varsity Football Squad.

The evidence obtained thus far shows that some of the judges involved in the cheerleading selection process believed the selections were a result of combined scores in four categories, but the Varsity Football Cheer Coach indicated that selection for the Varsity Squad is not determined solely by the cumulative score of the Judges. She stated that reputation and attitude are also factors. She further stated that the Student had "an attitude" during the cheer clinic and tryouts.

Prior to the completion of the investigation to determine whether the failure to select the Student to the 2016-2017 Varsity Squad was in non-compliance to Title VI, the District requested to voluntary resolve the complaint pursuant to CPM Section 302.

Allegation/Issue 2: Whether the District retaliated against the Student by failing to select her for the 2016-2017 Varsity Football Cheerleading Squad in response to the Complainant filing a previous OCR complaint.

Summary of the Investigation

The evidence to date shows that the Student was not selected to the 2016-2017 Varsity Football Squad in April, 2016. The evidence also shows that the Complainant engaged in a protected activity when she filed OCR Complaint # 04-16-1237 on February 17, 2016, and the District received notification of the complaint on March 16, 2016. The evidence also shows that the alleged adverse action (non-selection) occurred within six months of the alleged protected activity (filing OCR complaint).

Prior to determining whether the failure to select the Student for the Varsity Student was in non-compliance with Title VI, The District requested to resolve the complaint pursuant CPM Section 302. The proposed resolution is set out below in the Proposed Resolution section below.

Conclusion

To resolve Allegations 1(a) and 2 in OCR Complaint# 04-16-1237 and Allegations 1 and 2 in OCR Complaint # 04-16-1545, the District agreed to take the following actions: 1) including a non-discrimination statement regarding cheerleading selection in all of its cheerleading materials; 2) continuing to include neutral judges who are not employed by the District for tryouts; 3) maintaining the increased size of the Junior Varsity and Varsity Football cheerleading squads unless factors such budgetary constraints exists; 4) for the 2018-2019 tryouts, maintaining legible records, to be provided to OCR, which record the selection process to ensure non-discriminatory practices during the selection process; 5) providing cheerleading camps to all JV and Varsity to the extent possible; 6) encouraging all parents/guardians of the Varsity squads to discuss strategies to encourage participation of students of all races; and 7) providing training to the District staff involved in the cheerleading process regarding Title VI prohibition against discrimination

The provisions of the Agreement are aligned with the complaint allegations and the information obtained during the investigation and is consistent with applicable regulations. OCR will monitor the implementation of the agreement until the recipient is in compliance with the statutes and regulations at issue in the case.

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, we 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.

Intimidation or retaliation against complainants by recipients of Federal financial assistance is prohibited. No recipient may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces, or because one has made a complaint, or participated in any manner in an investigation in connection with a complaint.

If you have any questions, please contact XXXXXXXX, Senior attorney, at XXXXXXXX, or email at XXXXXXXX, or the undersigned at XXXXXXXX.

Sincerely,

XXXXXXXXXXXXXXXX
Supervisor General Attorney