



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

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

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May 4, 2023

Dr. Jonathan Patterson
Superintendent
Fayette County Public Schools
205 LaFayette Avenue
Fayetteville, GA 30214

VIA EMAIL ONLY TO: XXXXXXXX (Counsel) XXXXXXXXXXXXX

Re: OCR Complaint # 04-21-1106

Dear Dr. Patterson:

This letter advises you of the outcome of the U.S. Department of Education, Office for Civil Rights (OCR), investigation that OCR opened after receiving a complaint on January 27, 2021, against Fayette County Public Schools. The Complainant alleged discrimination on the basis of national origin.

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), 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 from the Department of Education. As a recipient of Federal financial assistance from the Department of Education, the school system is subject to these laws and OCR's jurisdiction.

OCR opened the complaint to investigate an individual allegation regarding whether the school system discriminated against a student during the 2020-2021 school year by failing to identify and place the student in the school system's program for English Learner (EL) students in noncompliance with Title VI and its implementing regulation at 34 C.F.R. § 100.3.

OCR reviewed documents produced during the investigation, including the school system's English to Speakers of Other Languages Handbook and a monitoring form used by school system staff. OCR also interviewed the school system's XXXXXX XX XXXXXXXX XXXXXXXXXXXXXXXX, XXXXXXXXXXXXXXXXXXXX, and XXXXXXXXXXXXXXXXXXXXXXXX.

Prior to OCR completing its investigation, the school system expressed an interest in resolving the complaint pursuant to Section 302 of OCR's *Case Processing Manual*. Section 302 states that allegations under investigation may be resolved at any time when, prior to the completion of the investigation, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified concerns that can

be addressed through a resolution agreement. As discussed more fully below, the school system signed a Resolution Agreement (Agreement) to resolve the concerns that OCR identified.

OCR recently determined that it no longer has consent to proceed as to the individual on whose behalf the complaint was filed.¹ However, based upon evidence obtained during the investigation OCR has identified systemic concerns that can be addressed through a resolution agreement.

Following are the relevant legal standards and OCR's summary of the investigation.

Legal Standards

The Title VI regulation, at 34 C.F.R. § 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 to which Title VI applies. The regulation at 34 C.F.R. § 100.3(b)(1)(i)-(iv) provides that a recipient under any program to which the regulation applies may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin: deny an individual any service, financial aid, or other benefit provided in a different manner, from that provided to others under the program; subject an individual to segregation or separate treatment in any matter related to his receipt of any services, financial aid, or other benefit under the program; or restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program.

On May 25, 1970, pursuant to its authority under Title VI, the Department issued a memorandum entitled "Identification of Discrimination and Denial of Services on the Basis of National Origin," 35 Fed. Reg. 11,595.² The memorandum clarifies OCR policy under Title VI on issues concerning the responsibility of school districts to provide equal educational opportunity to EL students. It states that school districts must take affirmative steps to address the language needs of EL students.

Under OCR's interpretation of Title VI, school districts should monitor the academic progress of former EL students to ensure that: the students have not been prematurely exited; any academic deficits they incurred as a result of participation in the EL program have been remedied; and they are meaningfully participating in the standard instructional program comparable to their never-EL peers. OCR further interprets Title VI to require that when a school district's monitoring of an exited EL student indicates that a persistent language barrier may be the cause of academic difficulty because general education and remediation services have proven inadequate, the school district should re-test the student with a valid and reliable, grade-appropriate English language proficiency test to determine if there is a persistent language barrier and must offer additional language assistance services where needed to meet its civil rights obligations.

¹ The school system signed the Agreement before OCR learned that consent was withdrawn. Given the absence of consent, OCR will not require the school system to comply with, and OCR therefore will not be monitoring compliance with, Item 1 of the Agreement regarding remedies for the individual student.

² The U.S. Supreme Court affirmed the Memorandum of May 25, 1970, in Lau v. Nichols, 414 U.S. 563 (1970).

Facts

In 2021-2022, the school system enrolled a total of 19,544 students, and 6% of the students, or approximately 1,173 EL students, were enrolled in the school system's English for Speakers of Other Languages (ESOL) program.³

School system witnesses told OCR that when students exit from an EL program the school system monitors their progress for two years. According to the XXXXXXXX, the classroom teacher is responsible for monitoring students and completing a monitoring form. On the form, the teacher can indicate either that a consultation is needed to discuss areas of difficulty identified or that the student is performing at or above grade level and no consultation is needed. The school system also reportedly reviews exited students' report cards and any standardized testing or Georgia Milestones assessments as part of its monitoring.⁴ According to the school system witnesses, the review focuses primarily on whether a student's scores are going down.

The school system's ESOL handbook refers to monitoring for students in EL-1 and EL-2 status, terms that the handbook does not define.⁵ The handbook states that monitoring forms should be completed after the first and third nine-week periods of each school year. The handbook states further that if monitoring shows that a student is falling behind in classwork or in English language development, the student should first receive support services; if those services are not successful, the student can be re-entered into ESOL classes during the two-year monitoring period.

As of June 24, 2021, the school system could not provide any monitoring forms for the individual student at the center of OCR's investigation. The XXXXXXXX told OCR that the school system was not able to access the monitoring forms because they are retained by students' teachers and, at that time, the individual student's teacher was not available due to summer break.

Analysis

Based upon the evidence obtained thus far, OCR is concerned that the school system has not established a system for maintaining and reviewing records, including teacher monitoring forms, and providing oversight for the purpose of ensuring that the school system is meeting its obligations with respect to EL students.

As noted above, the school system expressed an interest in resolving the complaint with a resolution agreement pursuant to Section 302 of the *Case Processing Manual*. Based on the

³ See [Oracle BI Interactive Dashboards - K-12 Public Schools Report Card - Indicators & Demographics \(ga.gov\)](https://data.gadoe.org/Oracle-BI-Interactive-Dashboards-K-12-Public-Schools-Report-Card-Indicators-Demographics) (last accessed by OCR April 14, 2023).

⁴ The Georgia Milestones Assessment System is designed to provide information about how well students are mastering the state-adopted content standards in the core content areas of English language arts, mathematics, science, and social studies.

⁵ According to information on the website of the Georgia Department of Education, "EL-1" and "EL-2" are codes used to designate student's first and second years, respectively, after exiting an EL program. See [https://www.gadoe.org/Curriculum-Instruction-and-Assessment/Curriculum-and-Instruction/Documents/ESOL/GaDOE%20Guidance/2018-2019%20ESOL%20Resource%20Guide%20\(7.31.18\).pdf#search=EL%2D1](https://www.gadoe.org/Curriculum-Instruction-and-Assessment/Curriculum-and-Instruction/Documents/ESOL/GaDOE%20Guidance/2018-2019%20ESOL%20Resource%20Guide%20(7.31.18).pdf#search=EL%2D1) at 23 (last accessed September 19, 2022).

investigation to date, OCR notes concerns that warrant entering into a resolution agreement. The attached Agreement will, when fully implemented, resolve the issues identified above. The Agreement requires the school system to revise its policies regarding monitoring of students after they exit an EL program, including by developing a tracking and recordkeeping process; provide OCR a list of all students exited from the ESOL program since May 31, 2022; and, upon request, provide OCR student files and a summary of all monitoring determinations regarding specific students. The Agreement also requires the school system to conduct training for ESOL staff and for faculty involved in monitoring students who have exited from an EL program. OCR will monitor the school system's implementation of the Agreement until the school system is in compliance with the terms of the Agreement and the statute and regulations at issue in this case.

Conclusion

This concludes OCR's investigation of the complaint and should not be interpreted to address the school system'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. A complainant may have a right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the school system may not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If 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.

If you have any questions, please contact the assigned investigating attorney, Eulen Jang at 202-987-1888 or me at 202-987-1396.

Sincerely,

/s/ Michael Bennett
Michael Bennett
Supervisory General Attorney