



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS
CHICAGO OFFICE
500 WEST MADISON ST., SUITE 1475, CHICAGO, IL 60661

December 5, 2012

Mr. Nathaniel Jones
Superintendent
Metropolitan School District of Pike Township
Administrative Services Center
6901 Zionsville Rd.
Indianapolis, Indiana 46268

Re: OCR Case #05085002

Dear Mr. Jones:

On April 28, 2008, the U.S. Department of Education, Office for Civil Rights (OCR) initiated a compliance review of the Metropolitan School District of Pike Township (District) under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (Title VI). The review examined whether African American students are provided equal access to rigorous college preparatory courses, specifically the International Baccalaureate, Advanced Placement and honors courses at Pike High School, the District's only high school.

OCR is responsible for enforcing Title VI, and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination based upon race, color, or national origin by recipients of Federal financial assistance from the Department. As a recipient of Federal financial assistance from the Department, the District is subject to Title VI.

Prior to the conclusion of OCR's investigation, the District expressed an interest in voluntarily resolving this case and entered into a Settlement Agreement, which commits the District to specific actions to address the issue under review. This letter summarizes the applicable legal standards, the information gathered during the review and how the review was resolved.

The standards for determining compliance with Title VI are set forth in the regulation at 34 C.F.R. §100.3(a) and (b). The regulation, at 34 C.F.R. §100.3(a), states that no person shall, on the grounds 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 receiving Federal financial assistance. Section 100.3(b)(1)(i)-(vi), further states that a recipient may not, on the grounds of race, color or national origin, deny an individual any service or benefit of its programs; provide any services or benefits to an individual which are different or provided in a different manner; subject an individual to separate treatment; restrict an

individual in the enjoyment of any benefits of its programs; treat an individual differently in determining continued enrollment in its programs; or, deny an individual an opportunity to participate in a program through the provision of services which is different from that afforded others under the program. The regulation, at 34 C.F.R. §100.3(b)(2), also provides that a recipient may not utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination on the basis of race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

The administration of student enrollment in courses can result in unlawful discrimination based on race in two ways: first, if students are subject to different treatment based on their race, and second, if a policy is neutral on its face and administered neutrally but has a disproportionate and unjustified effect on students of a particular race.

Different Treatment

Title VI prohibits schools from intentionally treating students differently based on race. Enforcement of a rule or application in a discriminatory manner is prohibited intentional discrimination. When similarly-situated students of different races are treated differently, OCR assesses the recipient's explanation for the differences in treatment to determine if the reasons were legitimate and nondiscriminatory, or were a pretext for unlawful discrimination. Additionally, OCR examines whether the recipient treated a student in a manner that was inconsistent with its established policies and procedures or whether there is any other evidence of race discrimination.

Whether OCR finds a violation of Title VI will be based on the facts and circumstances surrounding the particular situation.

Disparate Impact

In addition to different treatment of students based on race, schools violate Federal law when they evenhandedly implement facially neutral policies or practices that were not adopted in order to discriminate but their implementation nonetheless has an unjustified effect of discriminating against students on the basis of race. The resulting discriminatory effect is commonly referred to as "disparate impact."

Facially neutral student enrollment policies that result in an adverse impact on students of a particular race will be evaluated against the disparate impact standard to ensure that they are not discriminatory. In examining the application of a facially neutral student enrollment policy, OCR will engage in the following three-part inquiry.

- (1) Does the course enrollment policy result in an adverse impact on students of a particular race as compared with students of other races?

(2) Is the enrollment policy necessary to meet an important educational goal?

(3) Even in situations where a school can demonstrate that a policy is necessary to meet an important educational goal, are there comparably effective alternative policies available that would meet the school's stated educational goal with less of a burden or adverse impact on the disproportionately affected racial group or is the school's proffered justification a pretext for discrimination?

Overview of the District

The District is a public school district serving students in grades K-12, including over 3,000 students at its only high school. During the 2011-12 school year, African American students made up 1,945, or 63.1%, of the District's high school students. According to data from the District, the Advanced Placement (AP) courses in the District collectively enrolled 1,215 students, and African American students comprised only 38.8% of the students enrolled in these courses. According to the District's web site, the District also has eight elementary schools and three middle schools. As reported on the Indiana Department of Education's website, in 2011-12 African American students made up 58.7% of the 10,918 students enrolled in the District.

Summary of Review

During the review, OCR obtained data from the District beginning in summer 2008 and concluding the 2011-2012 school year. As part of the review, OCR conducted interviews with District personnel and with high school students. OCR conducted the review based on data submitted for the 2008-2009 school year. The District's high school offered 23 AP courses in 2008-2009: Art History, Studio Art, Computer Science, Language 11, Language 12, Literature, Probability/Statistics, Calculus I, Calculus II, Biology, Environmental Science, Chemistry, Physics, World History, Psychology, US History, European History, Government, Economics, Spanish, German, French, and Latin Literature. African American students were disproportionately underrepresented to a statistically significant degree in 19 of the 23 AP courses offered, that is, in all AP courses except Computer Science, Language 12, German, and French.

In 2011-2012, the District's high school offered 23 AP courses, the same courses as in 2008-2009 except that it offered Human Geography and Music Theory and did not offer European History or German. African American students were disproportionately underrepresented to a statistically significant degree in 18 of the 23 AP courses, in all AP courses except Art History, Studio Art, Computer Science, French, and Music Theory.

The District's high school also offers an International Baccalaureate (IB) Program, described in the high school's academic planner as "a rigorous pre-university course of studies, leading

to examinations that meet the needs of highly motivated secondary school students in the 11th and 12th grades.” In order to complete this program, students must take IB courses and examinations in six different subject areas. In addition, the high school offers an “honors” level course in several subject areas in English, math, social studies, and science; these courses are weighted more heavily than non-honors courses in calculating a student’s grade point average.

The District reported that, in general, students are permitted to self-select for enrollment in AP courses, subject to meeting any prerequisites for the courses. The District explained that in choosing a self-selection model, it considered and rejected a mandatory completion of a prerequisite course for each AP course. The District rejected this option in favor of “self-selection” because it believed that students could have the potential for success in certain AP courses by means other than taking a prerequisite course. Notwithstanding the “self-selection” model, the District reported that it does recommend successful completion of prerequisite courses prior to enrolling in the majority of AP courses. In certain courses, students may bypass the prerequisites with the permission of the instructor and/or department chair. OCR observed that the racial disparities existed in AP courses across disciplines, whether or not there were prerequisites. OCR also noted that enrollment in honors courses in middle school could potentially have an effect on enrollment in AP courses in high school.

Students generally indicated they were aware of the AP courses available and that they were generally encouraged to enroll in such courses by teachers and/or counselors. Some students noted that they received encouragement or discouragement with regard to enrolling in particular AP courses. Several students stated that students who are enrolled in honors courses or AP courses are more likely to hear about other AP courses or to be encouraged to enroll in particular AP courses, and that students in “regular” courses may not receive the same amount of information or encouragement. Students also expressed that some counselors may be better than others with respect to encouraging students to challenge themselves.

For each AP course in which there was a statistically significant disparity in African American student enrollment rates, OCR identified students of different races with similar academic profiles, eligible to participate in the courses, but who did not enroll in those courses. In most cases, the students in AP courses were those who had participated in other rigorous courses, such as honors courses.

During OCR’s review, the District has offered a “high ability” program at several of its elementary and middle schools. According to the District’s web site, this program “seeks to provide our most academically talented students with developmentally appropriate, enriched and accelerated experiences to actively engage them in learning. The richly differentiated curriculum is well integrated and solidly based on tenets of critical thinking.” In addition, honors courses are offered in middle school in the core academic areas: math, language arts

(reading and writing), and science. Foreign language courses are also offered during middle school. Information regarding these programs is readily available on the District's website.¹

The District indicated during OCR's review that it provides information about AP courses to students and their parents in a variety of settings. The District provides information to students and parents in a series of meetings held during the students' eighth grade year, including a Curriculum Night for parents, a tour of the high school for students, two presentations by counselors to students, and a question and answer session for parents of eighth grade students.

In addition, during OCR's review, information concerning AP courses has been made available through the high school's Academic Planner. The Academic Planner contains descriptions of each course and provides information regarding certain benefits of enrolling in AP courses, such as weighted grades, preparing for college, saving college costs for students and potential scholarships. The Academic Planner is distributed to eighth grade students and their parents, as well as current students and parents at the high school.

Following OCR's initiation of the review, the District has continued its efforts to increase participation by students in AP courses. The College Board, which oversees AP testing, named the District's high school to its AP Honor Roll in 2011; among the criteria for this selection were an increase in participation in AP courses and a steady or increasing percentage of exams taken by minority students.

Agreement

Pursuant to the enclosed Agreement, the District committed to take specific actions to ensure that it is providing an equal opportunity for African American students to enroll in its rigorous college preparatory courses. The District will create a new College Preparatory Course committee to review and assess access to and enrollment in the high school's rigorous college preparatory course and, by February 1, 2013, will make recommendations for increasing student participation in these courses. The committee will include teachers, parents, students, and administrators. The Agreement requires the District to consider and take prompt action with respect to the committee recommendations so that any changes are in place for student registration for the 2013-2014 school year.

Under the Agreement, the District will also take additional steps beyond its current outreach efforts to ensure that it effectively and widely disseminates to students and parents detailed information regarding its rigorous college preparatory course offerings so that students and parents are well-informed and knowledgeable about these opportunities. This will include,

¹ <http://www.pike.k12.in.us/academics/Pages/Gifted-and-Talented.aspx>
<http://www.pike.k12.in.us/academics/Pages/Middle-School-6-8.aspx>

by December 17, 2012, and on an ongoing basis, developing and providing a program for parents and middle and high school students focused on the District's rigorous college preparatory courses, prominently displaying on the District's and middle and high schools' websites information about rigorous college preparatory courses and tips on how to best prepare to succeed in the program, prominently displaying on the District's and high school's websites a link to the College Board's listing of AP exams, publishing updated information on websites and in student handbooks regarding course sequencing, including required prerequisites for advanced course offerings, disseminating information to the community regarding the District's rigorous college preparatory courses, and including information about rigorous college preparatory courses in annual mass mailings to parents or guardians of students enrolled in the District.

Under the Agreement, the District will also take steps in the area of: individual course selection planning, including notifying parents in writing by January 15, 2013, and again seven days before registration for high school courses for ensuing years, of the benefits of taking rigorous college preparatory courses and, by December 17, 2012, evaluating its academic counseling services at the middle school and high school level and making appropriate changes, by no later than the registration for the 2013-2014 school year.

Because some courses at feeder schools can affect enrollment in AP and other advanced courses at the high school, under the Agreement, the District will, by February 1, 2013, review and if applicable, revise the enrollment criteria for the elementary and middle school "high ability" program and middle school honors, foreign language, and algebra courses to ensure that they are educationally justifiable and predictive of students' ability to succeed in the program or courses. The District will also ensure that, if it uses teacher recommendation as one criterion for enrollment in the program and/or courses, it provides educationally justified standards and guidance for teachers in identifying students whom they believe would be successful in the program and/or courses. The District will further ensure that there is a means by which a parent can petition to have his or her child included in the program and/or courses.

Further, under the Agreement, by December 17, 2012, the District will ensure that each of its middle schools and its high school have a peer support program, in order to encourage students to consider taking the more academically challenging courses at the middle schools and at the high school, including IB, AP and honors courses, and to address any student perceptions or misperceptions regarding the prerequisites and demands of these courses.

Finally, by December 17, 2012, the District will develop a monitoring program, which it will implement in the 2012-2013 and 2013-2014 school years, to assess the effectiveness of its efforts to increase participation in rigorous college preparatory courses. The monitoring program will include consultation with the College Preparatory Course committee, consultation with parents and students through such means as surveys or meetings, review of the District's enrollment data for rigorous college preparatory courses during the most recent

school year, and evaluation and analysis of the information collected, including any proposed recommendations for improvement.

Based on the commitments the District has made in the Agreement outlined above, OCR has determined that it is appropriate to close the investigative phase of this compliance review. The District has agreed to provide data and other information, demonstrating implementation of the Agreement, in a timely manner in accordance with the reporting requirements of the Agreement. OCR may conduct additional visits and may request additional information as necessary to determine whether the District has fulfilled the terms of the Agreement and is in compliance with Title VI with regard to the issues in the review. OCR will not close the monitoring of this Agreement until it has determined that the District has complied with the terms of the Agreement and is in compliance with Title VI.

This letter sets forth OCR's determination in an individual OCR case. It 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.

OCR greatly appreciates the ongoing cooperation received from the District during the investigation and resolution of this case. We particularly appreciate the cooperation of Mr. Harold R. Bickham, District counsel. If you have any questions, please contact Karen Tamburro, Supervisory Attorney, at 312-730-1607 or by e-mail at Karen.Tamburro@ed.gov.

Sincerely,

/s/

Algis Tamosiunas
Acting Director

Enclosure

cc: Mr. Harold R. Bickham