

September 20, 2013

Dr. Stephen F. Murley  
Superintendent  
Iowa City Community School District  
1725 North Dodge St.  
Iowa City, Iowa 52245

Re: OCR Case #05-10-5004

Dear Dr. Murley:

This is to advise you of the resolution of the above-referenced compliance review that was initiated by the U.S. Department of Education, Office for Civil Rights (OCR), on August 2, 2010. The compliance review assessed whether the Iowa City Community School District (District) discriminated against African American students, on the bases of race and/or disability, in the pre-referral/referral and evaluation of these students for special education and in their placement in special education.

OCR initiated this review under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (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. OCR is also responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (Section 504), and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs or activities operated by recipients of Federal financial assistance, and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132 (Title II), and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to Title VI, Section 504, Title II and their regulations. Where, as in this case, Title II does not offer greater protection than Section 504, OCR applies Section 504 standards.

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 issue under review. This letter summarizes the applicable legal standards, the information gathered during the review and how the review was resolved.

## **Legal Standards**

### **Title VI**

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 pre-referral, referral, evaluation, and placement of students in special education 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.

Intentional discrimination in the pre-referral, referral, evaluation, and placement of students in special education can take many forms, however, and can be proven even without the existence of a similarly-situated student. Additionally, a school's adoption of a facially-neutral policy with an invidious intent to target certain races is prohibited intentional 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 pre-referral, referral, evaluation, and placement 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 policy, OCR will consider whether the policy results in an adverse impact on students of a particular race as compared with students of other races; whether the applicable policy is necessary to meet an important educational goal; and even in situations where the policy is necessary to meet an important educational goal, whether there are comparably effective alternative policies available that would meet the stated educational goal with less of a burden or adverse impact on the disproportionately affected racial group or the proffered justification is a pretext for discrimination.

### Section 504

The Section 504 regulation, at 34 C.F.R. § 104.33, states that a recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified disabled person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. The provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of disabled students as adequately as the needs of nondisabled students are met and (ii) are based upon adherence to procedures that satisfy the requirements of §§ 104.34, 104.35, and 104.36.

### **Overview of the District**

The District is a public school district serving students from pre-school through high school and has 19 elementary schools, 3 junior high schools, 2 high schools, and 1 alternative high school. The 2009-2010 school year data obtained by OCR during the review showed that African American students were 1877 of the 11,644 students, or 16.1%, enrolled. Data the District subsequently provided showed that, in the 2012-2013 school year, African American students were 2222 of the 12,774 students, or 17.4%, enrolled in the District.

### **Summary of Review**

During on-site visits to the District, OCR met with District officials, interviewed District administrators, principals and school-based staff members, and reviewed special education records. OCR also obtained follow-up information in conversations with District administrators.

### **Information Obtained by OCR**

As noted above, in 2009-2010, African American students were 16.1% of the students enrolled in the District; African American students were 408 of the 1319 students, or 30.9%, in special education in 2009-2010. In addition, the 2009-2010 data showed that African American students were 1469 of the 10,325 students, or 14.2%, in regular education and were 42 of the 120 students, or 35%, who were referred for an initial special education evaluation. The data further showed that African American students were 35 of the 94 students, or 37.2%, who were found eligible for special education in 2009-2010. Data the District subsequently provided showed that, in the 2012-2013 school year, African American students were 17.4% of the students enrolled in the District and were 407 of the 1385 students, or 29.4%, in special education in 2012-2013.

### **Pre-Referral/Referral Process**

The District began in 2010-2011 to screen all students in grades K-6 in reading. School personnel indicated that the screening results were being used to group students and to identify individual, grade-level, and school-level needs. The District's Assistant Superintendent told OCR at the time that the District has not used the screening results to make significant changes to its instructional program but expected to do so in the future. District officials also advised OCR that it planned to expand the screening to include math in future years. In August 2013, the District's current Special Education Director stated that the District continues to screen students in reading, but has not yet rolled out screening into additional areas.

The District indicated to OCR that it had several teams available at schools to assist teachers in developing ideas on interventions to provide struggling students. These teams included Professional Learning Community (PLC) Teams, grade-level teams that met regularly to discuss students in a specific grade at their school. In addition, several schools had Instructional Decision Making (IDM) Teams. The make-up of these teams varied, but they typically included the principal, the referring teacher, and other staff with knowledge of the particular area in which the student is struggling. The District's Special Education Director at the time told OCR the IDM process is similar to the "response to interventions" (RTI) model and was designed to provide a framework to assess how students respond to interventions. Finally, the District had a Student Support Team (SST) in place at each school designed to provide assistance for students with social or emotional difficulties. A document provided by the District about SSTs stated, "The primary function of the team is to develop and manage a plan for each identified student

to ensure every student is connected to and benefits from appropriate school-based or community-based services.” In August 2013, the current Special Education Director said the District is using the RTI model for pre-referral interventions and is attempting to make it more systematic across the District, but that some schools are further along than others in this process.

OCR’s investigation revealed that staff at all schools can develop an individual supplemental plan and/or an intensive plan to assist a student struggling in any academic area. OCR found that the process for developing plans for students varied across the District. According to the former Special Education Director, the use of forms and the tracking of supplemental plan records vary by school. One principal noted that even at her school, different teachers use different forms to track the plans put in place for students. Supplemental plans were typically developed by teachers and/or PLCs, but few schools have a formal means of tracking the success of these plans. One principal noted that when students move from one school to another within the District, documentation of interventions developed through supplemental plans is not placed in students’ files. Intensive plans were for students experiencing more significant problems or for whom the supplemental plan had been unsuccessful. The District has a database in which information about intensive plans can be recorded.

In August 2013, the current Special Education Director said the District had adjusted its terminology to reflect that of the state, referring to universal instruction for all students, targeted instruction for students in need of additional assistance, and intensive instruction for students who need more than universal or targeted instruction. She said they try to use a systematic approach to interventions, typically starting with targeted instruction when universal instruction is not successful and then intensive instruction when targeted instruction was not successful. She said, however, that the process was not always linear and that some students might be in need of more intensive instruction at an earlier point in the process. She said that the District does not want to consider eligibility for special education until it has exhausted all resources and provided interventions for students.

The investigation revealed that the District does not have any specific timeframe in place for conducting interventions, and some individuals interviewed by OCR indicated that there was often confusion among team members about how long they should attempt various interventions. Some staff indicated that interventions could be in place for a six-week period. However, OCR’s review of student files indicated that students could be placed on a supplemental and/or intensive plan for a year or more prior to a determination being made on referral for evaluation. The Assistant Superintendent stated at the time that the District was working on making the pre-referral process more uniform, including developing a standardized form for tracking interventions used. In August 2013, the current Special Education Director said the District developed systematic forms to use across the District to document interventions. She said that this change in documentation, along with communication among staff members assigned to different schools, would allow for continuation of interventions when a student moves from one school to another in the District.

Some school personnel indicated that they had discussed the team processes at in-service sessions at their school, but none indicated that training had been provided on a large scale throughout the District. One special education teacher noted that staff members may know a team exists, but do not know much more. One principal stated that the District had provided guidance on working with SSTs and also provided the “overall picture” of the IDM process, but that each school had been running its process on its own without specific instructions from the District. Two principals also noted that it would be helpful to get training on various intervention strategies that may be helpful for struggling students. In August 2013, the current Special Education Director said the District planned to provide training on RTI in 2013-2014, starting with principals and instructional coaches.

Regardless of the team process in place, at all schools, students for whom interventions have been unsuccessful can be referred for a special education evaluation. Staff at all schools indicated that this is a team decision.

#### Evaluation/Eligibility/Placement

If the District suspects that a student has a disability, it seeks consent from the student’s parent or guardian to conduct an evaluation to determine whether the student qualifies for special education and to determine the services necessary to resolve the presenting problem and then conduct an evaluation in accordance with the Iowa Rules of Special Education at 281-41.111(3). The special education procedures manual<sup>1</sup> for the Area Education agency that oversees the District’s special education evaluation process indicates that each such evaluation addresses one or more of seven “performance domains”: academic, behavior, physical, health, hearing/vision, adaptive behavior, and communication. For each domain being evaluated, the team gathers data to determine whether the student is in need of special education or related services.

The District, like other school districts in Iowa, does not identify students as having particular disabilities, but simply identifies them as eligible for special education. In order to determine whether a student is in need of special education or related services, the District assesses, consistent with state rules, the student’s performance over time, performance compared with grade level expectations or developmental norms, and educational needs. State rules specify that a student may not be found eligible for special education if the team determines that the educational difficulty is the result of one or more “exclusionary factors,” including lack of appropriate instruction in reading, lack of appropriate instruction in math, and limited English proficiency. The team is also required to consider if the “determinant factors” for the student’s performance are related to socio-economic status, cultural or ethnic differences, or school attendance or mobility.

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<sup>1</sup><http://www.aea10.k12.ia.us/div/learn/specialeducation/docs/SPED%20Procedures%20Manual%20July%201%202013%20Final.pdf>

OCR reviewed the files of all students who were initially evaluated for special education. OCR identified several African American students, particularly very young elementary students, who were identified as eligible for special education due to behavior issues and were placed in special education for a large percentage of the school day, and noted that some white students of similar ages identified as eligible for special education for behavior were placed in special education for a smaller percentage of the school day. OCR also identified several students who were found eligible for special education even though the presence of one or more potential exclusionary factors was noted in the file. Further, OCR found several students identified as eligible for special education despite scores that did not appear to be significantly discrepant from their peers.

### **Settlement Agreement**

Pursuant to the enclosed Settlement Agreement, the District committed to take specific actions. According to the Agreement, the District will hire an expert with expertise in addressing the overrepresentation of minority students in special education to review the District's procedures and make recommendations as to what measures the District should take to ensure that it is making appropriate determinations and to address the overrepresentation of minorities in special education and the root causes of this overrepresentation. The District will also develop and implement a plan to expand its universal screening process, will ensure that every school in the District has implemented a systematic, team-based means of providing intervention strategies for students experiencing academic or behavior difficulties, and will review and revise its materials regarding intervention strategies distributed to District personnel, parents/guardians, students, and other stakeholders.

In addition, the District will provide training to all teaching staff designed to increase awareness of the overrepresentation of African American students in special education and explain the purpose and significance of placement in special education, training to all members of each school's building level team on the intervention process and on intervention strategies for students, and training to all teachers about the purpose, procedures, process, and documentation of the building team. Further, the District will also review special education records to assess whether eligibility and placement decisions were appropriate, then will take appropriate action in response. Finally, the District will maintain data and use the data and other information gathered during the implementation of the Agreement to annually evaluate the effectiveness of its screening, intervention, evaluation, and placement processes and will also analyze data related to the provision of team-prescribed interventions and data related to teacher referrals of elementary school students to the building-level team, to determine whether students of all races and national origins were treated equitably.

Based on the commitments the District has made in the Settlement Agreement described 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 request additional information as necessary to determine whether the District has fulfilled the terms of the Settlement Agreement and is in compliance with Title VI, Section 504 and Title II 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, Section 504 and Title II.

This letter sets forth OCR's determination in an individual OCR compliance review. 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.

It is unlawful to harass or intimidate an individual who has filed a complaint, assisted in a compliance review, or participated in actions to secure protected rights.

Additionally, 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, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

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. Ross Wilburn, the District's Director of Equity. If you have any questions, please contact Jeffrey Turnbull, Team Leader, at 312-730-1611 or by e-mail at [Jeffrey.Turnbull@ed.gov](mailto:Jeffrey.Turnbull@ed.gov).

Sincerely,

Adele Rapport  
Acting Director

Enclosure