



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

500 WEST MADISON ST., SUITE 1475  
CHICAGO, IL 60661-4544

REGION V  
ILLINOIS  
INDIANA  
IOWA  
MINNESOTA  
NORTH DAKOTA  
WISCONSIN

November 8, 2013

Dr. Tim Culver  
District Administrator  
Sun Prairie Area School District  
501 South Bird Street  
Sun Prairie, Wisconsin 53590

Re: OCR Case #05-11-5003

Dear Dr. Culver:

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 May 18, 2011. The compliance review assessed whether the Sun Prairie Area 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 seven elementary schools, two middle schools, one upper middle school, one high school, and one alternative learning school. The 2010-2011 school year data obtained by OCR during the review showed that African American students were 682 of the 6,468 students, or 10.5%, enrolled. Data OCR subsequently obtained showed that, in the 2012-2013 school year, African American students were 738 of the 7,372 students, or 10.0%, enrolled in the District.

### **Summary of Review**

During on-site visits to the District, OCR met with District officials, interviewed District administrators, principals, special education and regular education staff, and reviewed special education and pre-referral records.

### **Information Obtained by OCR**

As noted above, in 2010-2011, African American students were 10.5% of the students enrolled in the District; African American students were 162 of the 536 students, or 30.2%, in special education in 2010-2011. In addition, African American students were 23 of the 47 students, or 48.9%, identified as having a Cognitive Disability (CD), 31 of the 79 students, or 39.2%, identified as having an Emotional Behavioral Disability (EBD), 61 of the 157 students, or 38.9%, identified as having a Learning Disability (LD), and 33 of the 137 students, or 24.1%, identified as having an Other Health Impairment (OHI).

In regular education, the data also showed that African American students were 520 of the 5932 students, or 8.8%. African American students were 22 of the 65 students, or 33.8%, who were referred by District personnel for an initial special education evaluation; the majority of these referrals occurred at the elementary school level. The data further showed that African American students were 22 of the 66 students, or 33.3%, initially evaluated for special education and were 12 of the 35 (34.3%) initially evaluated students who were found eligible for special education.

Data the District subsequently provided showed that, in the 2012-2013 school year, African American students were 10.0% of the students enrolled in the District and were 141 of the 583 students, or 24.2%, in special education in 2012-2013. In addition, African American students were 13 of the 43 students, or 30.2%, identified as CD, 24 of the 79 students, or 30.4%, identified as EBD, 58 of the 159 students, or 36.5%, identified as LD, and 35 of the 168 students, or 20.8%, identified as OHI.

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

In interviews with OCR, District personnel described the pre-referral/referral process. District personnel indicated that they conducted a screening of all students at the beginning of the school year to identify students struggling in particular areas and/or to group students for instruction, but the screening process was not standardized and the methodologies used differed across the District. In its investigation, OCR identified the following methods of screening students used by teachers: examining the previous year's records, administering curriculum-based measures or teacher-created screening devices, assessing reading using a running record, and administering standardized achievement tests. In August 2013, the District's special education director informed OCR that the District has no standard means of screening students in the District, but that the District's updated technology system allows

teachers to pull up all their students' past assessment results and see, on a color-coded screen, which students have shown significant areas of need on the assessments.

The District indicated to OCR that it has in place at each school a Children At Risk Educationally (CARE) Team. The make-up of the CARE Teams is similar across the District, in that a special education professional serves as the CARE Team coordinator and the team includes a building administrator and special education professional. Principals said parents are typically invited to the meetings at which their children are discussed. At several schools, the team also includes regular education professionals. District personnel advised OCR that there has not been training specifically geared to CARE Team members, but said the CARE Team coordinators meet monthly and convey information from those meetings to their teams. In August 2013, the special education director confirmed that the CARE Team process is still in place across the District, but said the District has grade-level progress review meetings to identify students in need of interventions prior to referring a student to the CARE Team.

Testimony from staff indicated that the CARE Team process is similar throughout the District; teachers identify students struggling in academics or behavior even after the teacher has attempted interventions in the class and then refer the students to the CARE Team, which attempts to identify additional interventions and develops a goal plan for students struggling for any reason. After a period of time, in which the interventions are attempted, the length of which may vary based on the identified needs of the student, the CARE Team is expected to reconvene to determine what has been successful, but OCR's review of records indicated that follow-up is often not documented. One principal said the CARE Team process used to be "looser," but is now more consistent across the District.

The District has not provided District-wide training to teaching staff about the CARE Team. Staff indicated that information about the CARE Team process is shared at building level sessions, including staff meetings. One principal said teachers in the past may have brought students to the CARE Team as an "avenue to special education," but the District is trying to educate teachers to change this mindset. In August 2013, the special education director said she believes the grade-level progress review process will result in a decrease in the number of students referred to the CARE Team.

The District's special education director indicated in the 2011-2012 school year that the District previously maintained CARE Team records on paper, but has since begun to use computers to track the CARE Team process and outcomes; she informed OCR in August 2013 that all interventions are now tracked in the District's "Infinite Campus" computer system. Testimony from staff indicated that they believe the CARE Team process is generally effective. Some staff identified concerns with the process, including that it moves too slowly, that the size of the CARE Team can be intimidating to a parent invited to attend the meeting to discuss his or her child, and that they do not see results from the process with younger students, whose academic or behavior issues may relate to immaturity. One teacher said CARE Team members need to gain a better understanding of the challenges teachers face in

classrooms, and another teacher said the CARE Team process should include the members observing a student in class.

OCR reviewed available records for students referred to the CARE Team in 2010-2011. Of the 234 students' records reviewed by OCR, 147 records of students of different races did not reflect any data related to a follow-up to determine whether interventions were effective. The records for 12 students, four of whom are identified as African American, did not indicate that the CARE Team suggested any interventions; the records indicate that of these 12 students, one African American and one non-African American student were referred on for special education evaluations. In addition, the records of one African American student referred for a special education evaluation indicated that "every intervention possible" was tried, but the records listed few interventions. Finally, the records of one African American student who was engaging in severe negative behaviors, including sexual language and physical actions toward others, showed very few interventions attempted.

The District identified a large number of interventions available to students experiencing academic and/or behavioral issues, and provided OCR data showing the number of students who received these interventions in the 2010-2011 school year. The most frequently used interventions included Early Reading Empowerment, a program in which classroom teachers serve as tutors for students to provide interventions to identified students, and Read 180, a reading intervention program specifically designed for students two or more years below grade level. In addition, District schools have separate Reading Resource teachers, who provide assistance to students in need of additional help. Other frequent interventions included Title I, a federally funded program to provide extra assistance to students in reading and math, and tutoring by trained community members. District staff indicated Check-In, Check-Out was among the most widely used programs for assisting students with behavioral issues; students receiving this intervention check-in with a District staff member at the beginning of the day and then check-out with the same staff member at the end of the day with a report of the student's behavior during the day and, as appropriate, a discussion of that behavior.

OCR also reviewed the files of all elementary students who were referred for a special education evaluation in the 2010-2011 school year to ascertain what interventions were attempted prior to a referral. African American students were 37% of these students. OCR identified six interventions attempted with 10 or more of these students: Reading Resource, preferential seating, small group instruction, Title I math, Check-in, Check-out, and an aide or individual assistant.

Teachers at several schools indicated that there are not enough interventions available to help struggling students. A teacher at one school said more time is needed for math interventions, while a teacher at another school said the school needs another reading resource teacher, and a teacher at a third school said the number of students who receive reading interventions can be limited by the lack of sufficient staff available to provide interventions. Teachers at

several schools also said their schools lack sufficient intervention resources to address behavior issues; one teacher specifically suggested hiring another social worker.

Students for whom interventions have been unsuccessful can be referred for a special education evaluation. Principals at all schools indicated that this is a team decision, typically made by the CARE Team members and the parent, based on their assessment of the effectiveness of the interventions and the needs of the student.

#### Evaluation/Eligibility/Placement

The District's special education manual indicates that, consistent with state law, a qualified team reviews evaluation data on a child, identifies additional data needed, and administers any assessments needed, then determines whether the student is a student with a disability.

As indicated above, African American students were disproportionately represented in the District in the special education categories of CD, EBD, LD, and OHI. In order to qualify as CD, a student must meet certain criteria with respect to scores on an individually administered intelligence test, deficits in adaptive behavior, and scores on standardized or nationally-normed measures in written language, reading, and mathematics. In order to qualify as EBD, a student must demonstrate severe, chronic, and frequent behavior that is not the result of situational anxiety, stress, or conflict, must exhibit the behavior in school and in at least one other setting, and must display at least one of eight identified characteristics outlined in the manual. In order to qualify as LD, a student's achievement must be severely delayed, a significant discrepancy between the student's academic achievement and intellectual ability must exist, and the student must have an information processing deficit linked to the achievement delays and the significant discrepancy. In order to qualify as OHI, a student must have limited strength, vitality, or alertness due to chronic or acute health problems; the student's health problems must adversely affect the student's educational performance. In August 2013, the special education director informed OCR that the eligibility criteria have not changed since OCR began its review, but that in December 2013, the "significant discrepancy" criteria for LD will be eliminated.

OCR reviewed the files of all students who were initially evaluated for special education in 2010-2011 and also reviewed files of all students identified as CD and a sample of students identified as EBD, LD, or OHI. OCR identified five students, four of whom are white and one is whom is multi-racial (Asian and white), determined not eligible for special education despite documentation suggesting that the students met the criteria for special education. OCR also identified several students found eligible despite an absence of documentation establishing that the students met the applicable criteria; among these students were 11 students labeled as LD, 8 of whom are African American, 3 students labeled as CD, 1 of whom is African American, 2 students labeled as EBD, 1 of whom is African American, and 1 student labeled as OHI, who is not African American. In addition, 3 students, none of whom are African American, were found eligible in one disability category despite documentation suggesting that they met the criteria for eligibility for a different category.

### **Agreement**

During the course of OCR's investigation, the District expressed interest in resolving possible compliance concerns without further investigation. On October 28, 2013, the District agreed to implement the enclosed Agreement to resolve the compliance review. The Agreement requires the District to take steps to ensure that it is providing an equal opportunity for African American students to receive assistance in the regular education setting prior to consideration for placement in special education, and that students of all races are treated equitably in the special education evaluation process.

Pursuant to the enclosed 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 for a universal screening process to identify students in need of extra assistance as early as possible, will ensure that every school in the District has implemented 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. Additionally, the District will develop written policies and procedures, which include the extent to which informal classroom interventions should be attempted prior to referral to the building-level teams, circumstances for referring students to the teams, and oversight to ensure consistency in each school.

In addition, the District will provide professional development to all teaching staff designed to increase awareness of the overrepresentation of African American students in special education and emphasize the purpose and significance of placement in special education, training to all staff on the use of the screening process, professional development to all members of each school's building-level team on the intervention process and on intervention strategies for students, and professional development to all teachers about the purpose, procedures, process, and documentation of the building-level team. Further, the District will also review special education records of all students to assess whether the most recent eligibility decisions were appropriate, then will take appropriate action in response, including promptly providing all necessary compensatory and/or remedial services to address any deficits results from the improper placement of the student. 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 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 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. If the District fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the Agreement, OCR shall give the District written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

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 Ms. Jennifer Apodaca, the District's Executive Director of Student Services. 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,

/s/

Adele Rapport  
Acting Director

Enclosure