



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

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February 1, 2017

Ms. Laine Larson
Superintendent of Schools
Brainerd School District 181
Washington Educational Services Building
804 Oak Street
Brainerd, MN 56401

Re: OCR Docket No. 05-16-1381
Brainerd School District 181

Dear Ms. Larson:

This is to notify you of the disposition of the referenced complaint, which the U.S. Department of Education (Department), Office for Civil Rights (OCR), received on June 21, 2016, against Brainerd School District 181 (District). The complaint alleges discrimination on the basis of race (Native American). The complaint alleges the District engaged in the following conduct:

1. Subjected a kindergarten student (Student A) to different treatment on the basis of race (Native American) during its selection of students for the District's Gifted and Talented Program (AGATE Academy) when in the spring of the 2015-16 school year, the District required Student A to take an additional abilities test (the Wechsler Preschool and Primary Scale of Intelligence) during the AGATE Academy portfolio review process, while not requiring non-Native American students to take the Wechsler Preschool and Primary Scale of Intelligence during the same process.
2. Subjected Student A and other Native American students who applied to the AGATE Academy during the 2015-16 school year to discrimination based on race when it failed to properly implement the HOPE Scale, an analysis tool designed to identify underrepresented gifted and talented students and offset cultural bias in standardized academic testing. As a result, Student A and other Native American students were not selected for the AGATE Academy.

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, which prohibit discrimination based on 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. Accordingly, OCR has jurisdiction over this complaint.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Legal Standards

The Title VI implementing regulation at 34 C.F.R. § 100.3(a) provides that no person in the United States 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 this part applies. At 34 C.F.R. § 100.3(b)(v), the regulation further provides that a recipient of Federal financial assistance from the Department may not, directly or through contractual or other arrangements, on ground of race, color, or national origin treat an individual differently from others in determining whether he or she satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program.

In analyzing an allegation of different treatment based on race under Title VI, OCR ascertains whether there were any apparent differences in the treatment of similarly situated individuals on the basis of race or whether an individual was excluded from a program or activity because of race. If this is found to be the case, then OCR assesses the District's explanation for any differences in the treatment to determine if the reasons are legitimate or are merely a pretext for unlawful discrimination. In determining pretext, OCR examines whether the District treated the student in a manner that was consistent with its established policies and procedures and whether there was any other evidence of discrimination on the basis of race.

Facts

According to the District, the AGATE Academy is a full-time gifted program that serves and supports each child intellectually, socially, and emotionally in a challenging environment. Students enrolled in AGATE Academy engage daily in a compacted and differentiated curriculum and experience learning at a faster pace. The AGATE Academy serves students in grades 1 through 4.

According to the Complainant, during the 2015-16 school year, Student A was a 6-year old kindergarten student. In February 2016, the District screened Student A and other kindergarten students for acceptance to the District's AGATE Academy. Student A was not selected. For selecting minority, female, and socioeconomically disadvantaged Agate Academy applicants, the District uses an additional assessment mechanism called the HOPE Scale. The Complainant contends that the District's teachers did not properly administer the HOPE Scale to Student A and other minority students. The Complainant also contends that the District does not provide teachers with proper training or instructions on how to administer the HOPE Scale.

The AGATE Academy Selection Process

In February of each school year, the District screens all kindergarten students for participation in the AGATE Academy. According to the District, as the first part of the selection process, it administers students a 30-minute test called the CogAT Screening Form (Screening Form). The Screening Form is a shortened form of the CogAT Full Battery test (Full Battery).

The Full Battery is a 90-minute multiple choice test used to measure cognitive development. Educational professionals use the Full Battery to identify gifted children for admissions into gifted and talented programs across the United States. The Full Battery consists of three major testing areas, Verbal, Quantitative, and Nonverbal. Each major testing area has three subtests.

The Screening Form however, consists of one subtest from each of the three major testing areas. The test publisher designed the Screening Form for educators in need of a fast but reliable and valid data point when determining eligibility for a gifted and talented program. The District requires students to score in the 90th percentile or higher on the Screening Form in order to continue in the AGATE selection process.

Students who fail to score in the 90th percentile or higher on the Screening Form may take an additional test, the Woodcock-Johnson Test of Cognitive Intelligence (Woodcock-Johnson), as an appeal. The Woodcock-Johnson includes a Standard Battery and an Extended Battery, both in multiple choice formats. The Standard Battery consists of 10 testing items and the Extended Battery contains an additional 10. A student must score in the 95th percentile or higher on the Woodcock Johnson in order to continue in the AGATE Academy selection process.¹

However, the District also allows a teacher of a student to recommend a student who does not score in the 90th percentile or higher on the Screening Form, or in the 95th percentile or higher on the Woodcock-Johnson to continue in the AGATE Academy selection process based on classroom performance. The District receives 4-5 such recommendations each year.

The District requires students who pass the initial screening process (via test score or teacher recommendation) to take the CogAT Full Battery. A student must score in the 90th percentile or higher on the Full Battery to move on to the next step, the AGATE portfolio review process (portfolio review).

The District's Gifted and Talented Team (GT Team) conducts portfolio reviews. The GT Team consists of the District's Gifted and Talented Program Coordinator, the District's Gifted and Talented Resource Teacher, a students' classroom teacher, and another District teacher from the student's grade. According to information provided by the District, a

¹ Student A did not take the Woodcock-Johnson test.

student's portfolio consists of the student's; (1) Full Battery Score, (2) Report Cards, (3) Scale for Rating the Behavioral Characteristics of Superior Students /Renzulli - Hartmann Scale (RHS),² (4) Parental Checklist, and (5) HOPE Scale.

The HOPE Scale is designed to measure two very broad categories: Social and Academic components of giftedness and talent. It is meant to serve as a tool with which to focus a classroom teacher's nomination and perceptions of his/her students onto behaviors that are often observable by a classroom teacher. When combined with other measures of aptitude and achievement, the HOPE Scale can help to locate gifted and talented students from traditionally underrepresented populations.

The HOPE Scale is designed to rate students as compared to other children similar in age, background, experience, culture, and/or environment, as students may demonstrate certain behaviors differently based on their own prior experiences. A HOPE Scale evaluator (usually a teacher or a group of teachers) relies on the following elements to assess a student's fitness for the gifted and talented programs:

Academic Scale	Social Scale
Performs or <i>shows potential</i> for performing at remarkably high levels	Is sensitive to larger or deeper issues of human concern
Is eager to explore new concepts	Is self-aware
Exhibits intellectual intensity	Shows compassion for others
Uses alternative processes	Is a leader within his/her group of peers
Thinks "outside the box"	Effectively interacts with adults or older students
Has intense interests	

The evaluator adds up total scores for each subscale (Academic and Social) separately.

According to information provided by the District, the GT team awards points for five elements: Full Battery score (6-10 points)³, grades (0-4 points), RHS (0-3 points), parental checklist (0-1 points) and Hope Scale (0-2 points). The GT team only considers students with a minimum of 14 points for admission to the AGATE Academy.

Student A

In February of 2016, the District screened all kindergarten students, including Student A, for possible AGATE Academy enrollment. According to information provided by the Complainant and the District, Student A scored in the 87th percentile on the Screening Form. However, based on teacher recommendation, the District allowed Student A to take the Full

² The RHS is designed to obtain teacher estimates of a student's characteristics in the classroom for 13 characteristic areas. The possible point totals range from 7 to 42.

³ 90%-92% (6 points) 93%-95% (8 points) 96% + (10 points)

Battery despite not scoring in the 90th percentile on the Screening Form. Student A took the Full Battery and scored in the 87th percentile. Because Student A did not score in the 90th percentile on the Full Battery, the District did not forward Student A's for portfolio review.

The Complainant asserted to OCR that the teacher recommended Student A for portfolio review based on classroom performance regardless of the Full Battery score and that the District website indicated that a teacher could recommend a student for portfolio review regardless of Screening Form and/or Full Battery scores. However, District emails indicated that Student A's teacher recommended the student for the Full Battery, and not a portfolio review.

The District allowed Student A to appeal the Full Battery score. However, Student A did not take the Woodcock-Johnson test usually administered to students. Instead the District administered the Wechsler Preschool and Primary Scale of Intelligence (WPPSI). The District provided no reason as to why it administered the WPPSI to Student A or whether any other students were given this test, or a choice of a particular test as opposed to the Woodcock-Johnson test designated in the AGATE Academy admission procedures. Student A achieved a 92 of a possible 130 on the WPPSI. The District determined that this score did not indicate above-average or superior IQ, and did not increase Student A's portfolio score on the basis of the WPPSI result. However, there is no minimum score for the WPPSI delineated in the procedures in order for a student to proceed to portfolio review, or a point allocation for a WPPSI score.

Student A's portfolio yielded 7 points; Full Battery Score (0 points), Report Card (Literacy) (2 points), Report Card (Math) (1 point), RHS (2 points), Parent Checklist (1 point), and Hope Nomination Scale (1 point). The District did not award Student A any points for the WPPSI score. According to the District, the GT Team considered students scoring a minimum of 14 points for the AGATE Academy.

Regardless of the scoring, the Complainant asserts that the Hope Scale should be used as an alternative pathway instead of as part a selection system. The information, however, is insufficient at this time to determine whether the District policy and/or practice uses the Hope Scale as an alternative pathway to AGATE academy admission, or whether it is one element of the overall score.

The District asserts that it properly administers the HOPE scale. The District also asserts that to the extent that Student A was treated differently in being made to take the WPPSI, it was to Student A's advantage because of the student's low Full Battery score.

Resolution

Prior to the conclusion of OCR's investigation, the District asked to resolve these allegations in accordance with OCR's Case Processing Manual. Subsequent discussions with the District result in the District signing the enclosed Resolution Agreement on January 19,

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2017. The full implementation of the Resolution Agreement will resolve the issues in the complaint allegations. The provisions of the Resolution Agreement are aligned with the complaint allegations and the information obtained during OCR's investigation.

OCR will monitor the District's implementation of the Agreement. We look forward to receiving the initial report confirming the District's implementation of relevant portions of the Agreement as required by the Agreement.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. Such retaliation may be the basis of another complaint with OCR.

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.

If you have any questions, please contact Mike Figueras, Attorney, at (312) 730-1560 or by email at miguel.figueras@ed.gov.

Sincerely,

Ann Cook-Graver
Supervisory Attorney

Enclosure