



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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DALLAS, TX 75201-6810

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

October 27, 2017

Ref: 06161333

Dr. Jerry Guess, Superintendent of Schools
Pulaski County Special School District
925 East Dixon Road
Little Rock, AR 72206

Dear Dr. Guess:

This letter is to inform you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has completed its processing of the above-referenced complaint, received on March 7, 2016, filed against the Pulaski County Special School District (PCSSD), Little Rock, Arkansas. The complainant alleged the PCSSD discriminated against African American students on the basis of race when it hosted an assembly on gang violence on February 17, 2016, and invited only African American freshmen at Maumelle High School (MHS).

OCR is responsible for determining whether organizations that receive or benefit from Federal financial assistance from the Department, or an agency that has delegated investigative authority to this Department, are in compliance with Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100. Title VI prohibits discrimination on the basis of race, color or national origin. PCSSD is a recipient of Federal financial assistance from the Department and is a public elementary and secondary education system. Therefore, OCR has jurisdictional authority to process allegations of discrimination filed against the PCSSD under Title VI.

Based on the complainant's allegations, OCR investigated the following issue:

Whether the PCSSD discriminated against African American students on the basis of race during the 2015-16 school year by treating them differently than one or more similarly situated students of another race (i.e., hosting an assembly on gang violence for African American students only on February 17, 2016) in violation of Title VI at 34 C.F.R. § 100.3.

As a preliminary matter, a finding that a recipient has violated one of the laws that OCR enforces must be supported by a preponderance of the evidence (i.e., sufficient evidence to prove that it is more likely than not that unlawful discrimination occurred). When there is a significant conflict in the evidence and OCR is unable to resolve that conflict, for example, due to the lack of corroborating witness statements or additional evidence, OCR generally must conclude that there is insufficient evidence to establish a violation of the law.

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

In the course of this investigation, OCR obtained copies of the PCSSD's nondiscrimination policies and procedures. In addition, OCR reviewed copies of documentation relating to the February 17, 2016, assembly held at Maumelle High School. With respect to the issue investigated, OCR determined that the evidence supports a conclusion of noncompliance with Title VI. Provided below is an explanation of how the above determination was reached.

Legal Standard:

The Title VI implementing regulations at 34 C.F.R. § 100.3(b)(1) prohibit recipients from excluding an individual from participation in, denying an individual the benefits of, or otherwise subjecting an individual to discrimination with respect to the services, activities, or privileges provided by the recipient because of the individual's race. In considering allegations that a recipient has discriminated on the basis of race, OCR looks for evidence of discriminatory intent. Discriminatory intent can be established either through direct evidence (i.e., statements, documents, or actions that clearly evidence a discriminatory intent), or through indirect (also known as circumstantial) evidence (i.e., a set of facts from which one may infer a discriminatory intent). Absent direct evidence that a recipient discriminated on the basis of race, OCR applies a disparate treatment analysis under which OCR must determine whether the facts support a *prima facie* case of racial discrimination. A *prima facie* case exists if a preponderance of the evidence indicates that a recipient treated one person differently than one or more similarly situated persons of another race. If a *prima facie* case of different treatment is established, OCR must then determine whether the recipient had a legitimate, non-discriminatory reason for its action(s) that would rebut the *prima facie* case against it. If one or more legitimate, non-discriminatory reasons for the different treatment are identified, OCR must then determine whether the recipient's asserted reasons for its actions are pretext for racial discrimination. Ultimately, however, the weight of the evidence must support a finding that actual discrimination occurred.

Findings:

The PCSSD is one of three public school districts in Pulaski County, Arkansas; the others are the Little Rock School District (LRSD) and the North Little Rock School District (NLRSD). The PCSSD is the second largest district (by student population) in the state after the LRSD. At the end of the 2015-2016 school year, the PCSSD reported a student enrollment of 16,885 students, which included 7,856 (46.5%) black students. At the end of the second quarter of the 2016-2017 school year (December 16, 2016), the last data available indicated that the PCSSD had a student enrollment of 12,846 students, which included 5,737 (44.7%) black students.

The PCSSD includes 17 elementary schools, 4 middle Schools, 4 high schools, and a freshman campus. MHS, the campus at issue, is made up of 1,059 students, of which 470 (44.4%) are black.¹

The complainant alleged that on February 17, 2016, the MHS called 9th grade black students on the school's "PA system" to attend an assembly on gang violence. Immediately following the assembly, the American Civil Liberties Union of Arkansas (ACLU-Arkansas) sent a letter to the PCSSD inquiring about the assembly, stating that it had been reported to them that "all black 9th

¹ Based on the data available at the end of the second quarter (December 16, 2016).

grade students (and only black students) were called to an assembly and when they arrived, a police officer and a minister delivered a lecture about gangs, gangbanging, and drugs, even asking the girls present why they were attracted to gang members."

In response to the ACLU-Arkansas inquiry, the PCSSD released a public statement dated February 18, 2016, admitting that the assembly occurred on February 17, 2016. In the statement, the PCSSD characterized the topic as the pastor's "personal success story," in which he "encouraged students to make good choices." The PCSSD stated that "Black students were selected with the intent that the assembly would be an extension of the district's court-ordered desegregation efforts, which encourage programs and opportunities tailored to minority students." The PCSSD expressed its regret that the "inspirational program was not made available to all students and in the future will work to ensure that when outside speakers are brought into a school that all students are included."

Further, the PCSSD informed the ACLU-Arkansas in a February 19th letter accompanying the press release that an MHS staff member organized the assembly without the Principal's approval and was subsequently reprimanded. PCSSD also expanded on its explanation of the intent behind the assembly, stating that, "A specific aspect of this [the desegregation agreement] requires PCSSD to create special programs designed to reduce disparate impact between black and white students in application of discipline ... This unitary status goal, which is not only laudable but constitutionally mandatory on PCSSD, is what motivated those who erred in designing and executing this particular assembly."

Based on this information, OCR determined that the PCSSD treated the MHS black 9th grade students differently than similarly-situated non-minority students when it hosted an assembly to which only black students were invited on February 17, 2016. OCR next considered whether the PCSSD had a legitimate, nondiscriminatory reason for the different treatment.

The three school districts within the county (LRSD, NLRSD, and PCSSD) were the subject of a desegregation case in which a federal court determined the districts were unconstitutionally segregated and placed them under court supervision beginning in 1982. On November 4, 1999, PCSSD entered into a new desegregation plan, known as Plan 2000. In 2013, the other districts were declared unitary, and the State was dismissed pursuant to a settlement agreement. The PCSSD remains under court supervision pursuant to the Plan 2000 in five areas (discipline, facilities, student achievement, staffing, and monitoring).

Plan 2000 requires PCSSD to create special programs designed to reduce disparate impact between black and white students in the application of discipline. Specifically, one provision mandates that "[t]he Assistant Superintendent for Desegregation and the Assistant Superintendent for Pupil Personnel shall thereafter provide for and participate in specific efforts to work with teachers and other staff members and the personnel of schools, identified pursuant to the criteria set forth in paragraph 2, to promote achievement of the goal of eliminating racial disparities in school discipline. The Assistant Superintendent for Desegregation shall maintain records showing the specific steps undertaken."

It was to that provision of Plan 2000 that PCSSD referred in its February 19, 2016, letter to the ACLU – Arkansas as stated above. PCSSD, in its April 8, 2016, response to OCR, also pointed to that particular provision of Plan 2000 as the impetus for the assembly, stating again that, "Plan 2000 requires PCSSD to create special programs designed to reduce disparate impact between black and white students in application of discipline. This unitary status goal, which is not only laudable but constitutionally mandatory on PCSSD, is what motivated those who designed and executed the assembly at issue."

OCR determined that the proffered legitimate, nondiscriminatory reason for the assembly (compliance with Plan 2000) does not withstand scrutiny when examined within context. First, Plan 2000 contains no provision that directs such an assembly, provides no guidance for the topic(s) addressed in the assembly or any other method of providing the multicultural education required, nor directs or condones the inclusion of black students exclusively in the provision of events designed to address disparate rates of discipline. Further, PCSSD also stated to OCR that the District has held no other assemblies for a single race of students that "current leadership" can recall. As a result, OCR determined that there was sufficient evidence to make a determination that the PCSSD's proffered legitimate, nondiscriminatory reason for organizing the assembly was a pretext for racial discrimination. Therefore, based on the above information, OCR determined that the preponderance of the evidence supports a conclusion that the PCSSD failed to comply with Title VI regarding the issue investigated.

PCSSD executed the enclosed written resolution agreement (Agreement) on October 13, 2017, which addresses the aforementioned compliance concerns. OCR has determined that this Agreement, upon full implementation, will satisfactorily resolve the compliance concerns. The provisions of the Agreement are aligned with the complaint allegation and the information obtained during the investigation and are consistent with applicable regulations.

Under the terms of the enclosed voluntary Agreement, the PCSSD will:

- Issue a statement to the Little Rock community, including PCSSD parents, administrators, and staff, regarding the PCSSD's policy prohibiting discrimination based on race, color, or national origin;
- Create a focus group to identify strategies for ensuring that PCSSD students understand their rights under Title VI, including how to report possible violations of Title VI within the District and the District's obligation to promptly and equitably respond to Title VI complaints;
- Conduct one or more climate checks to assess the effectiveness of the actions taken by PCSSD under the Agreement and to inform its future actions to address the PCSSD climate;
- Provide District-wide training regarding PCSSD's Title VI policies and procedures.

OCR will monitor PCSSD's progress in the implementation of the agreement. If the PCSSD 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 PCSSD written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

This concludes OCR's investigation of the complaint and should not be interpreted to address the PCSSD's compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

Under OCR procedures we are obligated to advise the complainant and the institution against which a complaint has been filed that intimidation or retaliation against a complainant is prohibited by regulations enforced by this office. Specifically, the regulations enforced by OCR, directly or by reference, state that no recipient or other person shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted or participated in any manner in an investigation, proceedings or hearing held in connection with a complaint. If this happens, the individual may file another complaint alleging such treatment.

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. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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, it 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 appreciates the cooperation and assistance of the PCSSD in coordinating the complaint resolution activities. If you have any questions or concerns, please contact Ms. Cristina Doss, the assigned attorney, at (214) 661-9684 or crisrina.doss@ed.gov, or you may contact Ms. Lori Howard Bringas, Supervisory Attorney/Team Leader, at (214) 661-9638 or lori.bringas@ed.gov.

Sincerely, 
 Taylor D. August
Director
Dallas Office

Enclosure