



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200
SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

November 6, 2015

Dr. Steven Martinez
Superintendent
Twin Rivers Unified School District
5115 Dudley Boulevard
McClellan, California 95652

(In reply, please refer to case no. 09-15-1168.)

Dear Superintendent Martinez:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Twin Rivers Unified School District (District). The complaint alleged discrimination on the basis of race/national origin. Specifically, the complaint alleged the following:

1. The District fails to provide adequate maintenance of heating/cooling systems at Grant Union High School (High School) and Martin Luther King, Jr. Technology Academy (Middle School), and as a result, students have been subjected to different treatment on the basis of race/national origin¹;
2. The District fails to provide limited English proficient parents (LEP parents) with important information about the free and reduced lunch program in their primary or home language, when such information is provided to English speaking parents; and,
3. The District fails to provide LEP parents with interpreter services at District Board of Trustee (Board) meetings.

OCR investigated the complaint under the authority of Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulations. Title VI prohibits discrimination on the basis of race, color, and national origin in programs and activities operated by recipients of Federal financial assistance. The District receives funds from the Department, is a public education entity, and is subject to the requirements of Title VI and its implementing regulations.

¹ Initially, OCR described this allegation to include that students were subjected to an adverse and disparate impact based on race/national origin. After additional review of the complaint, this allegation was amended to more accurately reflect what was alleged in the 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.

To investigate this case, OCR spoke with the complainant and reviewed documentation provided by the District. OCR also reviewed enrollment and demographic data about the District reflected in the California Department of Education's DataQuest database.

With regard to Issues 1 and 2, OCR found that there was insufficient evidence to support a conclusion of noncompliance. With regard to Issue 3, OCR proceeded as follows.

Under Section 302 of OCR's Complaint Processing Manual, a complaint issue may be resolved at any time when, before the conclusion of an investigation, a District expresses an interest in resolving the issue. Prior to the completion of OCR's investigation, the District informed OCR that it would voluntarily take steps to address the concerns raised in Issue 3. The District entered into an agreement to resolve the complaint on November 3, 2015. Accordingly, OCR did not complete its investigation of Issue 3 or reach conclusions regarding the District's compliance with Title VI with regard to that issue.

The applicable legal standards, the facts gathered during the investigation, and the reasons for our determinations are summarized below.

LEGAL STANDARDS

The regulation implementing Title VI at 34 C.F.R. § 100.3(a) and (b)(1)(i)-(iv) provides that no person 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 Title VI applies. A recipient under any program may not, directly or through contractual or other arrangements, on the ground of race, color or national origin, deny an individual any service, financial aid, or other benefit provided under the program; provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program; subject an individual to segregation or separate treatment in any matter related to his/her receipt of any service, financial aid, or other benefit under the program; or restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program.

To determine whether a recipient has subjected students to different treatment, OCR looks at whether there is evidence that the students were treated differently than students of a different race, under similar circumstances, and whether the treatment has resulted in the denial or limitation of education services, benefits, or opportunities.

If there is such evidence, OCR examines whether the District provided a nondiscriminatory reason for its actions and whether there is evidence that the stated reason is a pretext for discrimination. For OCR to find a violation, the preponderance of the evidence must establish that the District's actions were based on the student's race/national origin.

For OCR to make a determination that students at a particular school receive inferior resources based on race/national origin, OCR needs to make a determination that the School is racially identifiable. Racial identifiability is the relationship between the racial composition of the school and the racial composition of the district as a whole. OCR determines that a school is racially identifiable where there is a twenty percent (20%) or greater disproportion between the enrollment of a particular race at the school and the enrollment of that particular race in the district.

On May 25, 1970, pursuant to its authority under Title VI, the Department of Education issued a memorandum entitled "Identification of Discrimination and Denial of Services on the Basis of National Origin," 35 Fed. Reg. 11,595. The memorandum clarified OCR policy under Title VI on issues concerning the responsibility of school agencies to provide equal educational opportunity to limited English proficient national origin minority students. It states that school districts must take affirmative steps to address the language needs of limited English proficient students (English learners).

The May 25th memorandum states that school districts must adequately notify national origin minority group parents of information that is called to the attention of other parents, and that such notice may have to be provided in a language other than English in order to be adequate. OCR analyzes this issue consistent with the U.S. Department of Justice (DOJ) "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons" (67 Fed.Reg. 41,455, June 18, 2002). Under the DOJ Guidance, the extent of a recipient's obligation to provide language assistance to limited English proficient (LEP) individuals is determined by balancing four factors: 1) the number or proportion of LEP individuals likely to encounter the program; 2) the frequency with which LEP individuals come in contact with the program; 3) the nature and importance of the services provided by the program; and 4) the resources available to the recipient.

Issue One: Whether the District has failed to provide adequate maintenance of heating/cooling systems (HVAC) at Grant Union High School (High School) and Martin Luther King, Jr. Technology Academy (Middle School), and as a result, students have been subjected to an adverse and different treatment on the basis of race/national origin.

Our investigation showed the following:

- The complaint alleges that at the HVAC systems at the High School and Middle School were not working and the students went without heating in the winter and air conditioning in the spring time. The complaint alleges that the High School and Middle School have a high percentage of African American and Latino/Hispanics students and this is the reason for the poor maintenance of the HVAC systems.

- In the 2014-15 school year, according to the California Department of Education (CDE), the District's enrollment of Hispanics/Latino students was 40.1%, African American was 14.5%, whites was 29.0%.²
- The enrollment of Hispanics/Latinos and African Americans at the High School was 46.7% and 22.1% respectively; white was 5.8%.³ Similarly, at the Middle School, the enrollment of Hispanic/Latino is 41.5% and African American enrollment was 23.7%; white was 7.6%.⁴
- The District provided information that it conducts maintenance of all its sites on a routine and emergency basis. With the heating and cooling at the High School and Middle School, the District stated it conducted emergency repairs to both sites in 2013-14 and 2014-15.
- The District provided Sacramento County Office of Education (SCOE) facilities report for the 2014-15 for the Middle School. The report showed that the overall facility was rated at 100.00% with no deficiencies. The District also provided a report from an independent company's inspection report conducted in March 2015 that showed an overall rating of 94.89% with a rating of 100.00% for the HVAC systems.
- For the High School, the District reported that in 2014-15, SCOE facilities report provided the High School with an overall score of 60.52% and 0% rating for the HVAC, due to the extensive renovation that was happening at the High School, including the installation of a new HVAC system. A report from an independent company's inspection that was conducted in March 2015 showed an overall rating of 96.01% and a rating of 100.00% for the HVAC system.

Analysis

The complaint alleged that because the students enrolled at the High School and Middle School are predominantly African American and Latino/Hispanic students, the HVAC systems have not been adequately maintained. For OCR to make a determination that students at a particular school receive inferior resources based on race/national origin,

² <http://dq.cde.ca.gov/dataquest/Enrollment/EthnicEnr.aspx?cChoice=DistEnrEth&cYear=2014-15&cSelect=3476505-Twin%20Rivers%20Unified&TheCounty=&cLevel=District&cTopic=Enrollment&myTimeFrame=S&cType=ALL&cGender=B>

³ <http://dq.cde.ca.gov/dataquest/Enrollment/EthnicEnr.aspx?cType=ALL&cGender=B&cYear=2014-15&Level=School&cSelect=Grant+Union+High%2D%2DTwin+Rivers+Uni%2D%2D3476505%2D3433794&cChoice=SchEnrEth>

⁴ <http://dq.cde.ca.gov/dataquest/Enrollment/EthnicEnr.aspx?cType=ALL&cGender=B&cYear=2014-15&Level=School&cSelect=Martin+Luther+King+J%2D%2DTwin+Rivers+Uni%2D%2D3476505%2D6102784&cChoice=SchEnrEth>

OCR needs to make a determination that the school is racially identifiable. A school is racially identifiable where there is a twenty percent (20%) or greater disproportion between the enrollment of a particular race at the school and the enrollment of that particular race in the district.

In the 2014-15 school year, the enrollment of Hispanics/Latinos and African Americans at the High School was 46.7% and 22.1% respectively. While the enrollment of Hispanic/Latino and African American students are higher than their District enrollment (Hispanics/Latino 40.1%, African American 14.5%), the High School was not racially identifiable as either Hispanic/Latino or African American because there is a 6.6% disproportion for Hispanic/Latino and a 7.6% disproportion for African Americans compared to their enrollment in the District.

Similarly, at the Middle School, the enrollment of Hispanic/Latino was 41.5% and African American student enrollment was 23.7%. Again, while Hispanic/Latino and African American student enrollment was higher at the Middle School than their enrollment in District (Hispanics/Latino 40.1%, African American 14.5%), the Middle School was not racially identifiable as either Hispanic/Latino or African American because there was a 1.4% disproportion for Hispanic/Latino student and a 9.2% disproportion for African American student enrollment compared to their overall District enrollment.

Because the schools identified by the complaint (including the other schools in the District) are not racially identifiable as a Hispanic/Latino or African American schools, there is insufficient evidence that the quality of the HVAC system at the High School and Middle School are due to the race/national origin of the students at the schools. Thus, there is insufficient evidence of different treatment of these schools based on race/national origin.

Issue Two: Whether the District fails to provide limited English proficient parents (LEP parents) with important information about the free and reduced lunch program in their primary or home language, when such information is provided to English speaking parents.

Our investigations showed the following:

- The complaint alleged that the District does not provide LEP parents information regarding the free and reduced lunch program in their primary language. The complaint also alleged that because of the lack of information, LEP parents do not enroll their students in the program.
- According to the CDE, the District has an English Learner (EL) population of 9,014 students (29%).⁵ There are 5,442 (60.3%) are Spanish speaking; 1,462

⁵ <http://dq.cde.ca.gov/dataquest/SpringData/StudentsByLanguage.aspx?Level=District&TheYear=2014-15&SubGroup=All&ShortYear=1415&GenderGroup=B&CDSCode=3476505000000&RecordType=EL>

(16.2%) are Russian speaking, and 735 (8%) are Hmong speaking students.⁶

- The District provided documentary evidence to show that it provides information about the free and reduced lunch program in four languages: English, Spanish, Hmong, and Russian. The documentation showed that the District has a standardize letter about the free and reduced lunch and breakfast program, including information on eligibility requirements in English, Hmong, Spanish and Russian. A frequently asked question (FAQ) information sheet and the application are also in the four languages for students and families.

Analysis

The complaint alleged that LEP parents are not given information about the District's free and reduced lunch program. Districts have an obligation to provide LEP parents with information about the programs and opportunities that are available to all parents. Here, the District provided translated materials about the free and reduced lunch program in the District. The information was available in the four home languages most common in the District: English, Spanish, Hmong and Russian. Therefore, based on the information provided, there is insufficient evidence that the District does not provide LEP parents about the free and reduced lunch program and the District is in compliance with regards to providing information in a language other than English.

Issue Three: Whether the District fails to provide LEP parents with interpreter services at District Board meetings.

Our initial investigation showed the following:

- The complaint alleges that interpreters are not provided at the Board meetings. It also alleges that the District Board meeting agendas are not translated in order for LEP parents to understand what will be discussed.
- The District provided information to show that interpretation for Hmong and Spanish have been provided at Board meetings. The District provided information showing that on its website for Board meetings, it has a statement in English that says “[i]nterpreter services are available in Spanish and Hmong at Board meetings upon request.”
- The District provided its procedures for requesting interpreter and translation services. The procedures are in English only. The form for requesting interpreter and translation services are in English only. The website that links to the procedure and the form is only in English.

⁶ *Id.*

- The District provided information to show that interpretation services were provided for Hmong and Spanish speakers at the Board meetings in January 20, 2015 through March 10, 2015.
- The District provided a list of the names of the District and contracted staff members who provide interpretation and translation.
- The District provides a parent/student handbook for all its students and families. The handbook is in Hmong, Spanish, and English. A section in the handbook discusses Board meetings and provides a telephone number for a parent to request an interpreter for a School board meeting.

CONCLUSION

As noted above, under OCR's procedures, a complaint may be resolved at any time when, before the conclusion of an investigation, a District expresses an interest in resolving the complaint. Prior to the completion of OCR's investigation, the District entered into a resolution agreement (Agreement) to resolve the allegations in the complaint. The Agreement is attached.

Because the District voluntarily resolved this complaint, OCR did not complete its investigation or reach conclusions as to whether the District failed to comply with Title VI with respect to Issue 3. OCR will monitor the District's implementation of the Agreement.

This concludes OCR's investigation of the complaint and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. OCR is closing this complaint as of the date of this letter. The complainant is being concurrently notified.

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

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. If this happens, the Complainant may file another complaint alleging such treatment.

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 would like to thank you and District's legal counsel, Ms. XXXXX XXXXXXXXXXXXXXXX, for your cooperation in resolving this complaint. If you have any questions about this letter, please contact Kana Yang at (415) 486-5382.

Sincerely,

/s/

Anamaria Loya
Team Leader

Enclosure

cc: Ms. XXXXX XXXXXXXXXXXXXXXX, Esq. (e-mail only)