



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, D.C.

XXXX

Dr. Gerrita Postlewait
Superintendent
Charleston County School District
75 Calhoun Street
Charleston, SC 29401

Re: OCR Complaint No. 11-08-1270
Resolution Letter

Dear Dr. Postlewait:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received on XXXX against Charleston County School District (the District). The complaint raised the following allegations:

Allegation 1: The District discriminated against students at XXXX (the School) on the basis of disability by failing to have in place appropriate procedures for ensuring the provision of a FAPE (e.g., evaluation and placement of students with disabilities).

Allegation 2: The District discriminated against students at the School on the basis of race (African-American) by providing students at the School with disparate resources from students at XXXX (School B), specifically:

- a.** Hiring and/or assigning fewer and less qualified teachers;
- b.** Providing a less adequate curriculum; and,
- c.** Providing less adequate guidance and counseling services.

Allegation 3: The District discriminated against students at the School on the basis of race (African-American) by treating them differently than Caucasian students at School B when:

- a.** It failed to provide a XXXX teacher from XXXX to XXXX; and,

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

- b.** It failed to provide XXXX grade XXXX teacher from XXXX to XXXX and instead provided a long-term substitute teacher with a high school diploma, although alternatives with college degrees were available.

Allegation 4: The District discriminated against XXXX students at the School on the basis of race (African-American) by treating them differently than Caucasian students at School B when it gave them credit for a XXXX class that they did not complete in XXXX.

OCR initiated an investigation of the complaint in the XXXX of XXXX by interviewing the Complainant, reviewing documentation submitted by the District, and visiting the District and conducting interviews with District personnel. OCR regrets the delay in reaching resolution of the complaint. A discussion of the applicable legal standards, relevant investigative information, and resolution of the complaint allegations follows.

Jurisdiction and Legal Standards

OCR opened an investigation of these allegations pursuant to its responsibility for enforcing certain Federal civil rights statutes and regulations, including Title VI of the Civil Rights Act of 1964 (Title VI), Section 504 of the Rehabilitation Act of 1973 (Section 504), and their implementing regulations, which prohibit discrimination on the basis of race, color or national origin and disability, respectively, in programs and activities that receive Federal financial assistance from the Department. OCR also has jurisdiction as a designated agency under Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation, which prohibit discrimination on the basis of disability by public education systems and institutions regardless of whether they receive Federal financial assistance from the Department. The District is a public education system that receives Federal financial assistance from the Department and is, therefore, subject to these laws.

Section 504 states that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination on the basis of disability in any program or activity that receives FFA. OCR interprets Title II standards similarly to Section 504. Therefore, Section 504 standards will be applied in our analysis of the complaint allegations.

The Section 504 regulation requires public school districts to provide a free appropriate public education (FAPE) to each qualified individual with a disability within its 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 are designed to meet the educational needs of individuals with disabilities as adequately as the needs of non-disabled persons are met. As an initial matter, under the regulation, school districts have an obligation to identify and locate every student in its district who is not receiving a public education and take appropriate steps to notify students with disabilities and their parents or guardians of the district's obligations under the regulations. Further, the Section 504 regulation requires that school districts evaluate any person who, because of disability, needs or is believed to need special education or related aids and services before taking any action with respect to the initial placement of the person in a regular or special education program, or with regard to any

subsequent, significant change in placement. In doing so, recipients are required to establish standards and procedures for the evaluation and placement of students with disabilities. In interpreting evaluation data and in making placement decisions, a recipient must draw upon information from a variety of sources; establish procedures to ensure that information obtained from all such sources is documented and carefully considered; and, ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data and the placement options.

The Title VI implementing regulation at 34 C.F.R. Section 100.3 (b)(1)(i) and (iv) provides that a recipient may not, directly or indirectly, on the ground of race or national origin deny an individual any services or benefit of its program; restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others; or deny an individual an opportunity to participate in its program through the provision of services or otherwise afford him an opportunity to do so which is different from that afforded others. The Title VI regulation, at 34 C.F.R. Section 100.3(b)(2), further provides that a recipient, in determining the types of services and other benefits or facilities which will be provided may not, directly or indirectly, utilize methods of administration that have the effect of subjecting individuals to discrimination because of their race or national origin, or have the effect of defeating or substantially impairing accomplishment of the program by individuals of a particular race or national origin.

Resolution of Allegations 1, 2(a) and 2(b)

During the course of OCR's investigation, the District expressed a willingness to resolve several of the allegations in the complaint, specifically allegations 1, 2(a) and 2(b). Pursuant to Section 302 of OCR's Case Processing Manual, OCR discussed resolution options with the District.

Prior to negotiating a resolution agreement with OCR, the District independently took a number of steps to address the issues raised by these allegations and concerns identified during the investigation, including: providing staff at the School with regular training addressing the School's obligations under Section 504; developing a number of programs designed to recruit talented teachers to the District's schools, with a focus on schools with the greatest need, through partnerships with local Colleges and Universities, by developing alternate paths to certification, through the development of programs designed to support new teachers, and by piloting a program that offers enhanced pay to teachers teaching in schools with low academic achievement or gaps in learning; and assigning the necessary staff to the School to ensure students at the School identified as gifted and talented are properly served by a qualified gifted and talented teacher.

On May 21, 2018, the District signed the enclosed agreement in which it committed to take all additional steps necessary to fully resolve allegations 1, 2(a) and 2(b) of the complaint, as stated above. The provisions of the agreement are aligned with the issues raised in the complaint with regard to these allegations, with information obtained during the course of OCR's investigation, and are consistent with the applicable regulations. OCR will monitor implementation of the agreement.

Resolution of Allegations 3(a) and 4

Allegation 3(a) alleges that the District treated students at the School differently based on race than it treated students at School B, specifically when it failed to provide a XXXX teacher to students enrolled in XXXX at the School from XXXX to XXXX. Allegation 4 alleges that the District discriminated against XXXX students at the School based on their race when it gave them credit for a XXXX class they did not complete in the XXXX of XXXX. OCR clarified during its investigation that allegations 3(a) and 4 relate to the same issue with the same XXXX class offered at the School during the XXXX school year.¹

According to the District, the XXXX teacher in place at the School for XXXX school year returned to XXXX in XXXX of XXXX. In order to try to find a new XXXX teacher, an advertisement was posted on the District website and the Human Resources Department posted other advertisements throughout the state. One person contacted the School and was interested in taking the job immediately but was not certified in the United States. Other people were interested in taking the job, but not until the start of the following school year.

In order to continue serving the students enrolled in XXXX, the School enlisted a XXXX Teacher at XXXX to teach the School's XXXX class during XXXX. This was done according to a practice in the District called the "Course Overload Process," through which a teacher can give up his or her planning period and teach an additional course for compensation. This XXXX teacher is fully credentialed.

The Principal informed the parents of the students enrolled in XXXX of the change, and XXXX students chose to continue with the course. The High School XXXX Teacher began teaching in XXXX of XXXX and continued through the rest of the year. Students missed approximately XXXX weeks of instruction. However, the students received longer instructional periods for the remaining weeks of the semester, so that they received full instruction, that is, instruction for the total number of classroom hours established for the course.

The District confirmed that XXXX students received credit for the XXXX class and that the determination as to whether students received credit was made by the High School XXXX teacher. Although XXXX students received credit, XXXX other students in the class did not.

OCR interviewed the High School XXXX teacher who corroborated the information provided by the District. According to the High School XXXX Teacher, he taught XXXX students and it was a very typical class with various lessons, conversation exercises, homework and exams. He assigned grades based on the students' participation, punctuality and attendance, homework, and exams. In accordance with their assigned grades, XXXX students passed and XXXX did not. The High School XXXX Teacher also informed OCR that, although the class was originally only 50 minutes per session, the scheduled length of the class changed to 90 minutes per session when

¹ During the XXXX school year, the School had 151 students, of which 98.7% were black and 1.3% were white. School B had 795 students attend the same year, with a racial composition of 18.1% black students and 77.4% white students. More recent data shows minimal change in the demographics of the two schools.

he began teaching the class. This change was made to make up for the instructional time that was lost while there was no instructor for the class. The change also coincided with a change in the XXXX school scheduling where the whole school converted to block scheduling. For this reason, students who took the 90-minute XXXX class did not miss instruction in any of their other classes due to the longer XXXX class.

OCR concludes based on this information that there is insufficient evidence that the District violated Title VI, as alleged in allegations 3(a) and 4. Although there was a XXXX week gap in instruction while the District tried to replace the XXXX teacher XXXX, the students enrolled in the XXXX class at the School ultimately received full instruction for the class. Similarly, the evidence does not support a finding that the XXXX students who received credit did not complete the course.

Resolution of Allegation 2(c)

With regard to allegation 2(c), that the District discriminated against students at the School by providing less adequate guidance and counseling services, OCR learned during the investigation that the State of South Carolina requires school districts to employ one guidance counselor for every 300 students. The District has adopted this formula. Based on the size of the student body alone, the School has one guidance counselor for its approximately 160 students; School B has three guidance counselors for its approximately 865 students, or one guidance counselor for every 288 students. Thus, the School has a lower student/guidance counselor ratio than School B. Based on interviews with the guidance counselors at both schools, OCR determined that they have similar responsibilities and provide comparable services to the students at their respective schools. While OCR initially had concerns about the qualifications of the guidance counselor at the School, the District more recently informed OCR that the School's current guidance counselor has a Master's degree in Guidance Counseling and more than five years of experience. Based on this most recent information, OCR is closing this allegation as resolved.

Resolution of Allegation 3(b)

OCR has determined that allegation 3(b), that the District discriminated against students at the School on the basis of race (African-American) by treating them differently than Caucasian students at School B when it failed to provide XXXX grade XXXX teacher from XXXX to XXXX and instead provided a long-term substitute teacher with a high school diploma, although alternatives with college degrees were available, similarly is resolved at this time.

During the investigation, the Principal of the School confirmed that, although there were two other full-time, credentialed XXXX teachers at the School during the XXXX SY, one XXXX teacher did leave in XXXX of XXXX and was not replaced with a full-time teacher during the school year. Although the Principal posted the position, no suitable candidates applied. According to the Principal, some certified teachers applied who did not have degrees in XXXX and other teachers applied who were only provisionally certified. Instead of hiring these candidates, the Principal decided to utilize a long-term substitute teacher. The long-term substitute was approved for this position by the District. The Principal confirmed that the long-term substitute did not have a college degree, which is acceptable under District policy.

According to the Principal, the long-term substitute had worked at the School XXXX and was chosen because she had a good rapport with the students. The long-term substitute used the District's Coherent Curriculum and, from the Principal's observations, appeared to be doing a good job. She had a teacher-coach and a literacy coach available to assist her, as well as a District reading assistant who was at the School a few days a week. The Principal did not receive any parent or student complaints about the long-term substitute teacher.²

The District provided OCR with the applications received for this position. A review of these documents indicated that there were many highly qualified applicants with appropriate degrees, years of relevant experience, and eligibility to be immediately certified to teach in South Carolina. This information raises concerns about the principal's decision to maintain an under-qualified substitute in the position, and the investigative team recommends that this issue be addressed in a Section 302 agreement. The District's current policy regarding long-term substitutes, also in place for the XXXX SY, requires that long-term substitutes possess the qualifications of regular teachers, "to as great extent as possible."

On XXXX, the District provided information regarding the number of times over the past XXXX school years that the School hired a substitute to serve at the School for more than 10 consecutive days and the substitute did not meet the long-term substitute criteria under the District's policy. For the XXXX and XXXX school years, the District was only able to provide data for substitutes who remain employed by the District. The information the District retrieved indicates that the School employed substitutes who were not certified on five separate occasions for periods ranging from 11 to 32 days. There were no long-term substitutes used to teach any XXXX classes at School B during the XXXX or XXXX SYs.

More recently, the District has expressed to OCR the overall teacher shortage in the region and correlating increasing difficulty in attracting and retaining qualified substitutes. To address this issue, the District entered a partnership over XXXX years ago with Kelly Educational Staffing (KES) to facilitate better coverage of our District's sub needs. KES is a nationally recognized educational staffing agency, whose expertise lies in their recruitment and training of qualified substitutes. KES provides local office support as well as a national call center for substitutes and District employees. The District also continues to utilize the course overload model, discussed above, where possible, when a school is dealing with a long-term substitute need.

Recent data the District provided demonstrates that the substitute shortage issue is not isolated to the School or based on race, as School B has experienced similar issues. Over the past XXXX school years, six short-term substitutes served for longer than 10 consecutive days at the School, and two of the six were certified. At School B for the past XXXX school years, five short-term substitutes served for longer than 10 consecutive days and two of the five were certified.

The District also confirmed that the School currently has certified and qualified teachers in all XXXX classes.

² The Students enrolled in that XXXX class have since graduated from the District.

Accordingly, OCR concludes that the District has taken and continues to take all available steps to resolve this issue.

Conclusion

This concludes OCR's investigation of the allegations in this complaint. OCR is closing these allegations as the date of this letter. As stated above, OCR will monitor implementation of the Resolution Agreement reached with regard to allegations 1, 2(a) and 2(b).

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 an individual because he or she filed a complaint or participated in the complaint resolution process. If this happens, the individual may file another complaint alleging such treatment. Also, under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect, to the extent provided by law, personal information that, if released, could constitute an unwarranted invasion of privacy.

We appreciate the District's patience and cooperation during the resolution of this complaint. If you have any questions, please feel free to contact Sara Clash-Drexler at (202) 453-5906 or Sara.Clash-Drexler@ed.gov.

Sincerely,

/s/

Alice B. Wender
Director
District of Columbia Office
Office for Civil Rights

cc: Natalie A. Ham, General Counsel for Charleston County School District