



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

XXXX

Dr. Eddie Ingram
Superintendent
Berkeley County School District
229 East Main Street
Moncks Corner, South Carolina 29461

Re: OCR Complaint No. 11-09-1246
Letter of Findings

Dear Dr. Ingram:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaint we received on XXXX, against the Berkeley County School District (the District). The complaint alleges that the District discriminates against African American students on the basis of race by providing XXXX and XXXX, both predominantly African American XXXX schools in the District, with inferior resources with regard to academic programs, staff qualifications, and facilities (physical plant), as compared to the resources it provides in these categories to predominantly white XXXX schools in the District, particularly XXXX. Specifically, the complaint alleges that the District is providing inferior resources to the majority African American XXXX with regard to: 1) elective programs; 2) Advanced Placement (AP) courses; and 3) facilities. The complaint also alleges that XXXX often uses long-term substitute teachers instead of hiring permanent teachers.

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in any program or activity receiving Federal financial assistance from the Department. Because the District receives Federal financial assistance from the Department, we have jurisdiction over it pursuant to Title VI.

In resolving this complaint, OCR reviewed documents provided by the Complainant and the District; interviewed the Complainant and District staff and administrators; and conducted a site visit and attended a community meeting in XXXX. After carefully considering all of the information, OCR found insufficient evidence to support the allegations of different treatment with respect to opportunities to enroll in elective courses and with respect to resources allocated to facilities. OCR further found insufficient evidence that XXXX used long-term substitute teachers instead of hiring permanent teachers. However, before OCR completed its investigation of the allegation regarding academic programs, the District expressed a willingness to resolve the

allegation regarding the opportunity to enroll in AP courses by taking the steps set out in the enclosed Resolution Agreement.

The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement. Also discussed below are OCR’s findings and conclusions with regard to the allegations about electives, facilities, and the use of long term substitute teachers.

Background

When the complaint was initially filed with OCR, the Complainant stated that the District was “starving” XXXX, a small community school serving grades XXXX, of resources so that the District could close it. At the time, XXXX was the only XXXX school in the District and, as such, was subject to the school choice provisions of No Child Left Behind.¹ According to the Complainant, students were leaving XXXX and going to XXXX other schools within the District, XXXX and XXXX, because those schools have better programs and facilities.

At the time the complaint was filed, there were XXXX schools in the District, and the XXXX identified by the Complainant as “black” XXXX, XXXX and XXXX, were the only racially identifiable schools in the District.² The XXXX schools identified by the Complainant as “white” schools, XXXX and XXXX, had student populations that are relatively close to the racial representation of students in the District and thus, while predominantly white, were not considered racially identifiable.^{3 4}

Legal Standards

OCR applies the following analysis to determine whether a school district intentionally discriminated in the allocation of resources:

- 1) Did the school district treat a student, or group of students, differently with respect to providing access to educational resources as compared to another similarly situated student, or group of students, of a different race, color, or national origin (a prima facie case of discrimination)?

¹ At the time of the complaint, XXXX was not making Adequate Yearly Progress.

² According to the Civil Rights Data Collection (CRDC) for XXXX, the population of students enrolled in the District was 28,918, of whom 34% were black and 56% were white. XXXX had a population of 278 students in grades XXXX, of whom 81% were black and 17% were white. XXXX had a population of 830 students, of whom 59% were black and 39% were white. Using a +/- 20 percentage point standard, XXXX and XXXX are racially identifiable (but none of the other XXXX schools in the District was). XXXX and XXXX are located in the XXXX part of the District.

³ According to the Civil Rights Data Collection (CRDC) for XXXX, XXXX had a population of 1,429 students, of whom 40% are black and 56% are white. XXXX has a population of 1,121 students, of whom 30% are black and 62% are white. XXXX and XXXX, located in the XXXX part of the District, were the XXXX predominantly white schools that were closest geographically to XXXX and XXXX. There were no XXXX schools in the District that had a higher proportion of white students and, again, there were no racially identifiable white schools in the District.

⁴ Based on the latest Civil Rights Data Collection information available, XXXX and XXXX schools remain identifiably African American schools, and XXXX and XXXX schools remain the XXXX predominantly white schools that are closest geographically to XXXX and XXXX.

- 2) Can the school district articulate a legitimate, nondiscriminatory, educational reason for the different treatment? If not, OCR could find that the district has intentionally discriminated on the basis of race. If yes, then:
- 3) Is the allegedly nondiscriminatory reason a pretext for discrimination? If so, OCR would find the district has intentionally discriminated on the basis of race.

In applying this analysis to allegations that resources are not allocated in a comparable manner, OCR examines evidence regarding the quality, quantity, and availability of the educational resources that are allegedly allocated in a discriminatory manner to determine whether there are disparities among schools serving similarly situated students or among similarly situated students within the same school. Students would typically be considered similar if they are in the same grade and have generally comparable educational or academic needs. A prima facie case of intentional discrimination is demonstrated when the school district treats schools that are otherwise similar, but that have demonstrably different student populations with regard to race, color, or national origin, differently in terms of resource allocation, or when the school district gives similarly situated groups of students of different races within schools demonstrably different access to critical resources.

If OCR finds that a prima facie case of discrimination exists, a school district is given an opportunity to explain the different treatment, and if the school district provides an explanation, OCR would then assess whether the explanation is a pretext for unlawful discrimination — in other words, not the true reason for the different treatment but rather a mere cover for racial discrimination. Evidence that an explanation is pretextual may include, but is not limited to, that the explanation does not conform to overall district or State policies regarding the provision of resources or that witnesses or documents credibly offer evidence that contradicts the explanation offered. For example, the actual purpose or explanation for the different treatment could be a stereotype about a particular race not opting for or valuing advanced coursework. If OCR finds that the reason for the different treatment is pretextual, then the recipient would be found in violation of Title VI.

Analysis

Allegation 1: The District is providing inferior resources to the predominantly African American XXXX schools with regard to: 1) elective programs, 2) AP courses, and 3) facilities, as compared to the resources it provides to the predominantly white XXXX schools.

Opportunities to Enroll in Elective Courses

In an effort to improve career and workforce development through early career planning for its students, the South Carolina State Department of Education instituted a program called “Personal Pathways to Success,” which organizes professions and careers into 16 broad categories called “clusters.” Each cluster has its own coursework designed to help students better understand their chosen field of interest. Within each cluster are more specific majors. For example, the finance cluster comprises two majors: accounting and business finance. A major is a concentration of coursework in a more specialized area which consists of the completion of at least four required

units of study as well as complementary electives that relate to that area. Majors help students focus their course selection on a specific area. Each XXXX school in the District offers one or more of these majors. XXXX grade students, along with their parents, meet individually with counselors to identify their interests and choose a cluster. By the end of the XXXX grade, students choose a major, focusing their academic and elective choices in a specific direction. Students can change a major if they find that the one they selected is no longer their area of interest. Completion of a major, although highly encouraged, is not a requirement to earn a high school diploma. According to the District, each year majors are added and eliminated at each XXXX school so that the schools can meet the interests expressed by their incoming XXXX grade students.

Based on the initial data response provided by the District and from on-site interviews, OCR had initial concerns about the number and type of majors offered at each of the schools, including the fact that majors had been reduced from the prior year at the predominantly African American schools, thus giving African American students fewer choices. In addition, OCR was concerned that Project Lead the Way (PLTW), an elective pre-engineering major, had been offered in the predominantly white schools but not at the predominantly African American schools.

OCR has monitored the changes in majors offered at the XXXX schools since XXXX, and has seen substantial increases, particularly at the predominantly African American schools. XXXX and XXXX offer more majors now than when this complaint was opened. During the XXXX school year, XXXX school offered nine majors; XXXX School offered 14 majors; XXXX school offered 15 majors; and XXXX School offered 18 majors. In the XXXX school year XXXX School offers 18 majors; XXXX School offers 26 majors; XXXX School offers 31 majors; and XXXX School offers 27 majors.

Thus, one of the XXXX predominantly African American schools (XXXX) and the XXXX predominantly white schools now offer close to the same number of majors. XXXX School now has 18 majors, twice as many as it had during the XXXX school year. This represents approximately 2/3 the number of majors of the other schools, even though XXXX is less XXXX the size of XXXX and XXXX School in terms of overall population. Given XXXX size, OCR is therefore satisfied that its elective offerings represent an equitable distribution of resources. Additionally, PLTW, the pre-engineering major, is now offered at XXXX of the XXXX schools, and several other majors are offered at all XXXX of the schools.⁵

Based on the above, OCR finds insufficient evidence that the District is currently treating the majority African American XXXX schools less favorably than the majority white XXXX schools with regard to opportunities to enroll in elective programs. Thus, OCR finds there is no prima facie case of intentional discrimination.

Opportunities to Enroll in AP Courses

⁵ There are four majors in the Science Technology Engineering Mathematics (STEM) cluster of study: PLTW, Clean Energy, Math, and Science. PLTW is now offered at XXXX, XXXX and XXXX Schools, but not at XXXX. Clean Energy is not offered at any of the XXXX schools. However, both the Math and the Science major is offered at all XXXX of the XXXX schools.

When the complaint was filed during the XXXX school year, XXXX and XXXX both offered two AP courses on-site, and XXXX offered six AP courses on-site. XXXX School, XXXX, offered two AP courses on-site.

OCR reviewed the XXXX CRDC data regarding student enrollment in AP courses at the XXXX schools. African American students at XXXX School enrolled in one or more AP courses at only a slightly higher rate than African American Students at XXXX and XXXX Schools, despite the fact that XXXX School is 75% African American while XXXX and XXXX are 38% and 25% African American, respectively. African American students at XXXX enrolled in one or more AP courses at a rate approximately half of that at the other XXXX schools, despite the fact that XXXX is 51% African American. At XXXX School a total of 159 students enrolled in one or more AP courses; only 28 of them were African American. At XXXX School, a total of 164 students enrolled in one or more AP courses; only 40 of them were African American. At XXXX School a total of 41 students enrolled in one or more AP courses; only 13 of them were African American.

Thus, the data indicates that there are differences in the rates that African American and white students enrolled in Advanced Placement classes at the XXXX schools examined in this case. Also pronounced is the difference in overall AP enrollment rates between the XXXX racially identifiable African American XXXX schools (8.9% XXXX, 6.0% XXXX) and the comparator majority white XXXX schools (10.7 % XXXX, 15.0% XXXX).

Similarly, OCR found that the rates of overall enrollment in Algebra I between the XXXX schools that feed into the predominantly African American XXXX schools (XXXX 4.4%, XXXX 3.0%, XXXX 7.5%) are lower than the Algebra I enrollment rates for the XXXX schools that feed into the predominantly white XXXX schools (XXXX 11.1 %, XXXX 8.7%).⁶

The disparities between the schools is also evident in the number and type of AP courses offered on-site and online at each school during the XXXX school year, based on the most recent CRDC data available. XXXX offered two AP courses on-site, XXXX offered four AP courses on-site, XXXX offered 18 AP/IB courses on-site, and XXXX offered 16 AP courses on-site. There are significantly more AP courses offered at XXXX and XXXX than at XXXX and XXXX. The numbers for XXXX include courses from the school's International Baccalaureate (IB) program, IB Math Studies, and 20th Century World History, as equivalent to AP Calculus BC and AP World History.⁷

At the time the complaint was filed, the IB program was only open to students who were designated to attend XXXX School, although this has changed. Currently, rising XXXX grade students who are designated to attend a XXXX school other than XXXX may also now apply to

⁶ XXXX School, XXXX School and part of XXXX School feed into XXXX School. XXXX feeds directly into XXXX School, which serves grades XXXX and XXXX. XXXX School and XXXX School feed into XXXX School; however, XXXX School is the sole feeder school into XXXX School.

⁷ XXXX School became an International Baccalaureate (IB) Diploma School in XXXX. The IB Diploma Program is a challenging two-year curriculum, designed for students who are completing their last two years of XXXX school. Similar to AP courses, the IB Program leads to a qualification that is widely recognized by the world's leading universities. The IB Program is not offered at any other XXXX school in the District.

the XXXX, the pre-IB program.⁸ Applicants are required to submit grades, test scores, teacher, parent, and guidance recommendation forms. Students who are considered strong candidates for the Scholars Academy are required to participate in a student/parent interview with the coordinator of the program. Thus, only those students in the District who have been admitted to the XXXX and the IB program at XXXX School have the opportunity to take pre-IB and IB courses.

During our investigation, there was an indication by a few staff at the primarily African American XXXX schools that one of the reasons those schools do not offer more AP courses is a belief that students are not interested in or do not have the skills to be successful in AP courses. OCR also learned during interviews with staff that in several of the XXXX schools, AP courses are added only if there is enough student interest to offer it and if there is a teacher certified to teach it. However, OCR also learned from the then Principal of XXXX School that prior to the XXXX school year, XXXX did not have enough students who were interested in enrolling in AP science to justify offering an onsite course. However, the Principal told OCR that she wanted to offer an AP science class at the school and, in her words, decided to take the approach that “if you build it they will come.” Thus, despite low student interest, she staffed and offered an onsite AP Chemistry course and eventually more students became interested and the AP science courses became regular course offerings. As of the XXXX school year, XXXX offered AP Biology, AP Chemistry, and IB Chemistry onsite. XXXX also offered AP Biology onsite, while neither XXXX nor XXXX offered any AP science courses onsite.

OCR further learned that students at District XXXX schools can take a number of AP courses online through the “SC Virtual School” and a program called Apex, if their school does not offer the course. However, District personnel indicated in interviews that they believe onsite courses are more desirable. For example, the District’s XXXX told OCR that she sees the SC Virtual School as a way to meet a particular student’s needs, but that if a school had 20 students with the same need, the District would add the onsite course. She continued: “we want the students in the classroom.”

OCR also learned that the District permits students to take AP courses at other schools for courses that are not available to them onsite or online, and stated that it provides transportation to such students. However, OCR learned in interviews with District staff and administrators that this arrangement is contingent on the student’s class schedule coinciding with the time at which the course is offered at the other XXXX school. The Principal at XXXX School mentioned the remote location of the school as compared to other schools in the District as a potential barrier to taking an AP class at another school. Interviews with staff and guidance counselors also showed that there was some disagreement as to whether transportation would be provided by the District in this situation or whether the student would be responsible for their own transportation.

Before OCR finished the investigation, the District indicated its interest in resolving this allegation. Thus, the District signed the attached Voluntary Resolution Agreement (the Agreement). Through this Agreement, the District commits to adopt and implement fair and equitable policies and practices to ensure African American students at XXXX Schools have

⁸ The XXXX is a school-within-a-school at XXXX, which is a two-year curriculum for XXXX to prepare for entry into the IB Program.

equal access to AP, IB, and dual credit courses, and other higher level learning opportunities, and African American students at the XXXX schools have equal access to advanced, honors, and accelerated courses to prepare them for high level learning opportunities in XXXX school.

Resources Provided with Regard to Facilities

OCR found that, as compared to the other XXXX schools, either with or without portable classrooms, XXXX School has the highest square footage per student of all the XXXX schools. OCR further found that, as compared to the other XXXX schools, either with or without portables, XXXX School has the lowest square footage per student. In terms of total amount of land, XXXX has XXXX acres, the largest amount of land of the XXXX schools. XXXX School and XXXX School have XXXX acres and XXXX acres, respectively. Thus, one of the predominantly African American schools and one of the predominantly white schools have almost the same or, in the case of XXXX, more acreage, even though XXXX has many more students than XXXX.

In addition, OCR reviewed the results of a XXXX District Online Survey, which was completed by parents, XXXX grade students, and teachers at each of the XXXX schools in XXXX, around the time that the complaint was filed. At the time of the survey, XXXX was XXXX. The percentage of XXXX parents and students responding positively about the learning environment and building maintenance was the highest of all XXXX schools, which is to be expected at a XXXX facility. However, a slightly higher percentage of teachers at XXXX, a much older facility, than at XXXX reported satisfaction with the learning environment at the school and a slightly lower percentage of teachers at XXXX than at XXXX reported that the school building is well maintained and repaired when needed. A slightly higher percentage of XXXX grade students at XXXX and XXXX were satisfied with their learning environment than XXXX graders at XXXX.

A significantly larger percentage of XXXX grade students at XXXX and XXXX responded that broken things at their school get fixed. 89.6% of XXXX parents responding said that they were satisfied with the learning environment at their child's school, while only 80.6% of XXXX parents responding said that they were satisfied with the learning environment at their child's school. XXXX and XXXX parents responded in very close percentages that the school has high expectations for student learnings – 83.1% of XXXX parents responding and 82.8% of XXXX parents responding.

The community satisfaction at XXXX Schools remains evident from the results of the XXXX survey. The percentage of XXXX parents and XXXX students responding positively to the social and physical environment, and the percentage of XXXX students responding positively to the school's cleanliness and responsiveness to repairs was the highest of all XXXX schools. In addition, a slightly higher percentage of parents at XXXX expressed satisfaction with home-school relations than at XXXX and a slightly higher percentage of students at XXXX expressed satisfaction with the learning environment than at XXXX. Most notably, the percentage of teachers at XXXX expressing satisfaction in all areas surveyed was the highest of all XXXX schools. XXXX School came in a close second with teachers in satisfaction with home-school

relations, the availability of classroom supplies and materials, including computers for instructional use.

In addition to reviewing the results of previous and current parent, student, and teacher surveys, OCR reviewed a XXXX inventory of equipment assigned to each school. XXXX School had the highest amount of equipment per student of all the schools with respect to desktop computers, Chromebooks, Netbooks, and printers. XXXX and XXXX were tied in having the highest number of laptop computers per student. XXXX had the highest number of Airliners (portable smart boards) per student of all the schools.⁹

Based on the above information, OCR finds insufficient evidence that the District is treating majority African American XXXX schools less favorably than majority white XXXX schools with regard to allocation of resources for facilities. Thus, OCR finds there is no prima facie case of discrimination based on race.

Allegation 2: XXXX School often uses long-term substitute teachers instead of hiring permanent teachers

In response to OCR’s original request for information, the District reported that XXXX School and XXXX School each had one teacher vacancy. At that time, neither XXXX nor XXXX had any teacher vacancies. More recently, the District reported to OCR that during the XXXX school year, XXXX School had one teaching position open, which arose after a XXXX teacher resigned XXXX. That teacher was scheduled to teach three classes in the second semester. Because of the difficulty in hiring a full-time teacher XXXX, XXXX chose to offer one of the classes as an online class taught by a South Carolina Virtual School teacher, and the other two classes were taught by two experienced teachers who had previously been employed by the District. The District filled the vacant position with a full-time teacher beginning in XXXX.

The District explained that XXXX had two teacher vacancies during the XXXX school years. The first arose when a XXXX teacher resigned XXXX. Because it was difficult to fill the vacancy in the XXXX, XXXX placed students who had been assigned to the departing teacher’s class in classes taught by certified XXXX teachers who were already employed at the school. The District hired a new permanent XXXX teacher at the beginning of the XXXX school year to fill the vacancy. The second vacancy during the XXXX school year arose when a XXXX teacher resigned XXXX. The District was almost immediately able to hire another teacher in XXXX to replace the teacher who resigned, and the students scheduled to be in the departing teacher’s classes were taught by the newly hired teacher or other XXXX teachers already employed at the school.

The District asserts that XXXX has had no teacher vacancies after the XXXX school year.

OCR reviewed copies of Certified/Professional Employment Updates (Updates) which list vacancies at each school on particular dates. In addition to being able to corroborate the District’s account of the most recent vacancies and hiring at XXXX, OCR was able to see that during the same time

⁹ In XXXX, OCR visited each of the XXXX schools to compare resources such as computer and science labs, classroom technology, and athletics and other extracurricular facilities. At that visit, OCR confirmed that the resources at XXXX and XXXX were substantially similar, and in many instances better, than the resources provided at XXXX and XXXX.

period as the vacancies at XXXX occurred, the other XXXX schools had teacher vacancies as well. OCR was able to determine that XXXX and XXXX schools began the XXXX school year with a XXXX teacher vacancy. The vacancy at XXXX was filled by the end of the same school year. However, the vacancy at XXXX remained unfilled as of XXXX. XXXX, like XXXX, had no teacher vacancies after XXXX. As such, OCR find insufficient evidence to support the allegation that XXXX uses long-term substitute teachers in lieu of hiring permanent staff to fill teacher vacancies or that the District treats XXXX School less favorably than the other XXXX schools with regard to filling teacher vacancies.

Conclusion

Pursuant to Section 302 of OCR's Case Processing Manual, the District signed the enclosed Resolution Agreement on May 29, 2018 which, when fully implemented, will resolve the allegations regarding access to AP courses raised in this complaint. The provisions of the Agreement are aligned with the allegations and issues raised by the Complainant and the information discussed above that was obtained during OCR's investigation, and are consistent with applicable law and regulation. OCR will monitor the District's implementation of the Agreement until the District is in compliance with the statutes and regulations at issue in the case. Failure to implement the Agreement could result in OCR reopening the complaint.

This concludes OCR's investigation of the complaint. This letter 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. 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 must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

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 personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact Samantha Shofar, the OCR attorney assigned to this complaint, at 202-453-5929 or samantha.shofar@ed.gov.

Sincerely,

/s/

David Hensel
Team Leader, Team III
Office for Civil Rights
District of Columbia Office

Enclosure

cc: Brandon Gaskins, Esquire