



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, DC

November 8, 2019

Rev. Derek P. Koolman
1547 Modoc Avenue
Norfolk, Virginia 23505

RE: OCR Complaint No. 11-17-1312
Resolution Letter

Dear Rev. Koolman:

This letter is to advise you of the outcome of the complaint that you filed with the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) on March 23, 2017 against Norfolk Public Schools (the District). You alleged that the District discriminated against English Learner (EL) students on the basis of national origin by denying them the opportunity to participate in the Norview High School's (the School) high school soccer program.¹

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, OCR has jurisdiction over it pursuant to Title VI.

During the investigation, OCR reviewed documents and information provided by the Complainant and the District. Before OCR completed its investigation, the District expressed a willingness to resolve the complaint on September 9, 2019. OCR determined that it is appropriate to resolve the complaint pursuant to Section 302 of the *Case Processing Manual* because the investigation has identified issues that can be addressed through a resolution agreement. The following is a summary of the evidence obtained by OCR during the investigation to date.

Facts Gathered During Investigation

On March 23, 2017, OCR received a complaint alleging that the District had denied students who were enrolled in its EL program at the School equal opportunity to participate in the soccer program. Particularly, the complaint alleged that beginning in the 2014-2015 year, the District centralized its EL program at the School, so that any student participating in the EL program attended the School, whether or not the student resided in the School's geographic zone.

¹ Hereinafter, you will be referred to as the "Complainant."

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

Because the EL program participants were considered “out of district” students, the District did not permit them to participate on the School’s soccer team. Instead, if those students wanted to play soccer, the District required them to play for the team of the District school in their geographic zone of residence (their “home” school) instead of at the School.

The complaint further alleged that the School’s soccer team for each of the 2015, 2016, and 2017 seasons included a number of “out of district” students who were not enrolled in the EL program, but instead were enrolled in an “academic/specialty” program at the School—namely, the Leadership Center for Science & Engineering (LCSE). Those students, according to the complaint, had applied for and received waivers from the District each year to permit them to play soccer at the School instead of their home school. By contrast, on February 27, 2017, the School Principal submitted a waiver request to the District’s Executive Director of Secondary Schools & Programs (Executive Director) on behalf of 5 students enrolled in the EL program to permit the students to play soccer at the School for the 2017 season. The Complainant stated, and OCR confirmed, that the Executive Director denied the waiver the same day.²

Documentation that OCR received from the District confirms its practice, beginning in the 2014-2015 school year, that the “ESL student athlete’s grades would be ‘housed’ at their home zoned school. . . with grades reported to their home zoned school the student athlete’s eligibility and participation would be at the home zoned school as well.” The District communicated that practice directly to parents and students enrolling in the EL program; for example, a document titled “ESL Program at [the School] Frequently Asked Questions,” states that the EL students’ home school will be their “school of record,” where they can participate in athletics. The District also confirmed to OCR the Complainant’s assertion that the District granted waivers to “out of district,” to 10 different non-EL students enrolled in the LCSE program, enabling them to play on the School’s soccer team for the 2015, 2016, and/or 2017 seasons. No EL student appears to have applied for a waiver in 2015, 2016, or prior to the February 27, 2017 request described above.

On March 26, 2017, the Superintendent and the Senior Coordinator of Athletics convened and determined that the District would grant waivers to the EL students in order to permit them to play soccer at the School for the remainder of the 2017 season. Subsequently, eight EL students applied for and received waivers to play soccer at the School effective March 27, 2017. Additionally, the District informed OCR that, beginning with the 2018 soccer season, the District changed its policy so that the students enrolled in the EL program at the School are no longer considered “out of district” students requiring a waiver to participate in athletics at the School. Now, when any student enrolls in the School’s EL program, the School is deemed his/her “home” school; thus, no waiver is required, and otherwise eligible EL students are able play soccer at the School like any other student.

² The Complainant noted that because the denial occurred after tryouts were completed at many of the students’ home schools, they were also unable to participate in those soccer programs.

Analysis and Resolution

The Title VI regulation, at 34 C.F.R. § 100.3(a), provides that no person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under a school district's programs or activities on the basis of race, color, or national origin. Based on the information above, OCR has concerns that the District's policy from 2014-2017 may have effectively denied students enrolled in its EL program the ability to participate equally in the soccer program at the School. Although the District granted the EL students' waivers shortly after this complaint was filed in March 2017, and has since asserted that it has altered its policy such that EL students may play soccer at the School without having to apply for a waiver—the District has not yet provided OCR with sufficient documentation of its current policy and its communication of the policy to parents and students enrolled or interested in the EL program.

On October 23, 2019, the District signed the enclosed Resolution Agreement which, when fully implemented, will address the allegation investigated. The provisions of the Agreement are aligned with the allegation and the information obtained during OCR's investigation, and are consistent with applicable law and regulation. Particularly, the Agreement requires the District to provide the aforementioned documentation. Please review the enclosed Agreement for further details. OCR will monitor the District's implementation of the Agreement until the District has fulfilled the terms of the Agreement.

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.

If you have any questions, please contact Kathryn Love, the OCR attorney assigned to this complaint, at 202-453-6948 or Kathryn.love@ed.gov.

Sincerely,

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

Enclosure

cc: Derek Mungo, Esq. (by email)