

September 10, 2013

Dr. James E. McCoy
Superintendent
Lee County School District
2410 Society Hill Road
Opelika, AL 36804

RE: OCR Compliance Review # 04-08-5001

Dear Dr. McCoy:

This letter is to advise you of the resolution of the above-referenced compliance review that was initiated by the U.S. Department of Education (Department), Office for Civil Rights (OCR), Atlanta Office. OCR had authority to initiate this compliance review under Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d, and its implementing regulation, 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color or national origin by recipients of Federal financial assistance (FFA) from the Department. As a recipient of FFA the District is subject to Title VI and its implementing regulations.

The compliance review was conducted to determine whether the District is providing African-American students with equal access to higher level and Advanced Placement (AP) courses in the District's high schools in compliance with the Title VI implementing regulation at 34 C.F.R. §§ 100.3(a), and (b)(1)(i)-(v).

This letter summarizes the applicable legal standards and the information gathered during the review, and describes how the case was resolved. As explained below, prior to the conclusion of OCR's investigation, the District offered to enter into an agreement to resolve the review.

Applicable Legal Standards:

The Title VI implementing regulation at 34 C.F.R. § 100.3(a) provides that no person in the United States 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. The Title VI implementing regulation, at 34 C.F.R. § 100.3(b)(1), provides that a recipient under any program to which Title VI applies may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin: (i) deny an individual any service, financial aid, or other benefit provided under the program; (ii) 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; (iii) subject an individual to segregation or separate treatment in any matter related to his or her receipt of any service, financial aid, or other benefit under the program; or (iv) 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.

Different treatment by a recipient violates Title VI if one of the District's agents or employees, acting within the scope of his or her official duties, treats a student or group of students differently on the basis of race, color, or national origin in the context of an educational program or activity without a legitimate, non-discriminatory reason and such different treatment interferes with or limits the ability of the student to participate in or benefit from the services, activities, or privileges provided by the District.

Different treatment cases involve proof of intentional discrimination, *i.e.*, acts or omissions based on race. Intent can be shown by either direct evidence, such as statements by District officials acknowledging that race was a factor in educational decisions, or circumstantial evidence demonstrating that the decision-makers acted, at least in part, for racial reasons. A different treatment violation does not require proof of bad faith or racial motive by District officials. Discriminatory intent can, in some situations, be inferred from the unexplained different treatment. Intent can also be inferred through consideration of a variety of factors, including whether the burdens of the decision are greater, or the benefits of a decision are smaller, for students of a particular race.

Although the Title VI regulation does not require that a school district offer AP or other higher level courses, if a district does elect to do so, this regulation requires that such courses be made available to all students on a non-discriminatory basis, without regard to a student's race, color, or national origin.

Background

The District is located in Opelika, Alabama, in rural Lee County. For the 2012-2013 school year, the District's enrollment was approximately 9,793 students in grades K-12 with a race/national origin breakdown as follows: 71.8% (7027) white; 22.5% (2,208) African-American; and approximately 5.7% (558) of another race/national origin (Other).¹ The system's racial/national origin demographics have been fairly constant over the four most recent school years.

The District's students are served by four middle schools (seventh and eighth grades): Sanford, Smiths Station, Beulah and Loachapoka. There are four high schools in the District: Beauregard High School (ninth through twelfth grades), Smiths Station Freshman Center and Smiths Station High School (ninth grade and tenth through twelfth grades, respectively), Beulah High School (ninth through twelfth grades) and Loachapoka High School (ninth through twelfth grades). Sanford is the feeder school for Beauregard High School, and Smiths Station Jr. (formerly Wacoochee Jr.) is the feeder for Smiths Station High School, while Beulah High School and Loachapoka High School each comprise grades seven through twelve.

¹ Source: Alabama Department of Education, "Enrollment by System and Sex/Race" (School Year 2012-13). This number is an estimate because the source contains incomplete data for Loachapoka High School's African-American student enrollment numbers for that school year, namely, the number of African-American male students in the 9th grade.

The District's 2012-2013 high school enrollment total for grades nine through twelve was 3,080 students. The high school enrollment totals by race/national origin were as follows: 72.2% (2,224) white; 24.1% (741) African-American; and approximately 3.7% (115) of another race/national origin (other). The enrollment at Beauregard, Smiths Station and Beulah High Schools is predominantly white (approximately 73%, 75% and 87%, respectively). Loachapoka High School's enrollment is slightly over 90% African American; it is the smallest of the four high schools (approximately 205 students in 2010-2011).

Summary of Investigation to Date

OCR reviewed documents and data provided by the District and information available on District websites. OCR interviewed District administrators, including the Superintendent², Assistant Superintendent, Director of Instruction, and Director of Operations, as well as principals, guidance counselors, teachers and students at District high schools and administrators and teachers at District middle schools. OCR's investigation focused on African American students' access to advanced courses, especially in math, in the District's middle schools and on the availability of advanced, honors, and AP courses at the high school level.

Higher Level Learning Opportunities in Feeder Schools

Students must receive adequate preparation and access in earlier grades in order to succeed in AP and other higher level courses in high school. Taking advanced courses at least by the time students are in middle school is essential in preparing them to take rigorous coursework in high school and to providing them with the skills necessary for success in college and career.

Data showed that enrollment in middle school advanced math courses – and, in particular, in 8th grade Algebra -- sets students on the course path for completion of the District's highest level course offerings in math and science, including AP courses.

OCR noted that African American students were underrepresented in 8th grade Algebra district-wide. In 2010-2011, African-American students at Sanford represented only 13.1% of 8th grade Algebra students, while African American students represented 24.4% of the total number of students enrolled in all 8th grade math courses. By contrast, white students at Sanford composed 84.8% of the students enrolled in 8th grade Algebra in 2010-2011, while white students represented 71.6% of the students enrolled in all 8th grade math courses. In 2010-2011, African-American students at Smiths Station composed only 15.4% of 8th grade Algebra students, while they represented 22.3% of the total enrollment for all 8th grade math courses. By contrast, white students at Smiths Station represented 84.6% of the students enrolled in 8th grade Algebra, while they represented 74.8% of the students enrolled in all 8th grade math courses. In 2010-2011, the data showed that at Loachapoka, with an African American enrollment of slightly over 90%, only 11 (19%) African American students were enrolled in Algebra, which they took along with another course (ACH Math 8) that is designed to help students pass the math portion of the graduation test. The remaining 44 8th grade math students at Loachapoka (41 of whom were African American) were enrolled in a lower level non-algebra math course, as well as ACH Math 8. Both Sanford and Smiths Station offered 7th grade advanced math courses; Loachapoka did

² The District has a new Superintendent as of July 2013.

not offer a 7th grade advanced math course, which may contribute to the very low enrollment in 8th grade algebra.

Such disproportionately low enrollment rates of African American students in 8th grade Algebra, particularly at predominantly African American Loachapoka, are a serious concern, as they reflect that as of the point that students enter high school, there are already differences by race in higher level math participation rates, which correspond to differing rates of participation in higher level courses at the high school level.

AP Courses and Higher Level Learning Opportunities in High Schools

The data demonstrated that, district-wide, African American high school students were underrepresented in AP and higher level courses. During the 2009-2010 school year African-American students composed 24.6% of total high school enrollment, but only 16.3% of enrollment in the District's AP courses and 19.3% of enrollment in the District's higher level courses. During the 2010-2011 school year, African-American students composed 25% of the total high school enrollment, but only 15.4% of enrollment in the District's AP courses and 19.9% of enrollment in the District's higher level courses. African-American students were underrepresented district-wide in all higher level mathematics courses, and the underrepresentation was particularly pronounced in calculus and statistics courses. During the 2009-2010 school year African-American students composed only 9.4% of enrollment in calculus or statistics; African American student enrollment in calculus or statistics increased to 12% in 2010-2011.

District decisions regarding curriculum and course offerings, including AP courses, are made at the individual high school level. In 2011-12, only Loachapoka had specific criteria for admission to AP courses or other higher level courses. Eligibility for advanced classes at Loachapoka is based upon test scores, class performance and teacher recommendations. The Principal³ advised that while he made the final decision concerning placement, a different placement would be allowed if a parent insisted. At Smiths Station students are encouraged to take challenging courses and the decision about enrollment in advanced courses is the parent's, although the school may make recommendations; witnesses did not identify factors considered in making recommendations. At Beauregard staff review results on the Alabama graduation test, and may recommend classes; however, there are no criteria for enrollment in specific courses. Beulah students meet with the school counselor for an individual review and recommendation concerning course selections; however, students may elect to take advanced courses without receiving a recommendation to do so.

For the 2009-2010 school year, Beauregard had eligibility requirements for AP courses but would permit enrollment of a student who failed to meet the requirements. The criteria included course pre-requisites, a minimum average in the pre-requisite course, an excellent attendance record, and for AP English, a minimum standardized test score. Smith's Station also required certain course prerequisites; teacher recommendations were preferred but not always required. Loachapoka's previous criteria for enrolling in AP courses through ACCESS included a grade of

³ Loachapoka currently has a different principal.

an “A” or a “B” in the previous grade level subject, a teacher recommendation and parental consent.

There were fewer higher level and AP courses offered at Loachapoka than at the predominantly white District high schools. The District has offered live AP courses at Beauregard and Smiths Station High Schools since the 1980s; live AP courses have never been offered at Loachapoka. AP courses only became available at Loachapoka in 2008, and they were taught on-line through the state of Alabama program known as ACCESS. Minimal instructional support was made available for these on-line AP courses. Students had to self-navigate through the courses based on pre-established readings, and their interactions with the on-line teacher were limited to receiving written comments via e-mail on their assignments. In 2009-2010, only two on-line AP courses were offered at Loachapoka: AP U.S. History and AP Biology. Each course enrolled only one student. OCR also noted that for the on-line AP Biology course offered at Loachapoka in 2009-2010, labs could not be conducted because there was no equipment available. No on-line AP courses were offered at Loachapoka during the 2010-2011 school year. Furthermore, unlike the three predominantly white high schools, Loachapoka did not offer a dual enrollment option with local colleges. Also, unlike Beulah, Loachapoka did not offer distance learning that would allow students to take courses through videoconferencing between Loachapoka and another high school.

The former Loachapoka Principal advised OCR that the high school offered so few higher level and AP course options because emphasis has been placed on remediation. However, this rationale is belied by the fact that significant numbers (nearly 40%) of Loachapoka students were enrolled in the few higher level courses that were offered: Honors English courses in each grade, Algebra II/Trigonometry, Algebra III/Statistics, Advanced Biology, Honor Physical Science, Physics, Pre-Calculus, and Advanced Chemistry. The high level of enrollment in these courses indicates that there would be significant interest in taking these and other courses at the AP level if they were made available.

The predominantly white high schools offered a larger overall number of higher level and AP courses; either regular or AP Calculus, higher level courses in the social sciences, an advanced foreign language, and, at Smiths Station and Beauregard⁴, a wider range of AP courses. As noted above, these high schools also offered a dual-enrollment option with nearby community colleges, and one of these high schools, Beulah, offered distance learning courses.

Although there is a significant disparity district-wide between the overall enrollment rates of African American students in higher level and AP courses and those of white students, OCR noted that African American students who attended predominantly white Smiths Station, where the District’s widest range of higher level and AP courses was offered, enrolled in a number of those courses at significant rates. For example, in 2009-2010 at Smiths Station, where African American students represented 20.3% of the total student enrollment and over 50% of the total African American high school enrollment district-wide, African American students constituted

⁴ Although Beauregard offered higher level courses (Pre-Calculus, Calculus, Algebra II/Trigonometry, Algebra III/Statistics, Advanced Chemistry, Physics, Honors Geometry, Honors Biology, Honors Anatomy/Physiology, Honors Physical Science, and a full complement of Honors English, it offered only two AP courses (English and Calculus) in 2009-2010 and three AP courses (Chemistry, Calculus, and English) in 2010-2011.

over 20% of the students enrolled in all levels of College Prep English, 24% of the students enrolled in AP English, 14% of the students enrolled in AP Literature, and 15% of the students enrolled in AP Microeconomics. Furthermore, enrollment rates of African American students in higher level and AP courses at Smiths Station generally improved in 2010-2011. African American students again represented over 20% of the student enrolled in College Prep English, 19% of the students enrolled in Algebra II/Trigonometry, 23% of the students enrolled in Pre-Calculus, 18% of the students enrolled in Physics, 20.7% of the students enrolled in Pre-AP Geometry, 19.7% of the students enrolled in Pre-AP Biology, 23% of the students enrolled in AP Chemistry and 25.8% of the students enrolled in AP Literature. This very positive trend of increasing enrollment of African American students in higher level and AP course at Smiths Station underscores the critical importance of both appropriate preparation in earlier grades and the availability of those higher level and AP courses in high school.

Prior to the conclusion of OCR's investigation the District requested to resolve the compliance review. Subsequent discussions with District officials resulted in the District signing the enclosed Resolution Agreement which, when fully implemented, will resolve the issues covered by the review. We look forward to receiving the District's first monitoring report which is due by September 30, 2013.

This letter sets forth the summary of OCR's investigation of this compliance review. 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.

Under the Freedom of Information Act, it may be necessary to release this letter 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 privacy.

Pursuant to OCR procedure, we have reminded the District that no recipient may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces, or because one has made a complaint, or participated in any manner in connection with a complaint.

OCR wishes to thank you, and your staff for the cooperation extended to OCR during the course of its investigation. If you or your staff has any questions regarding this matter, please do not hesitate to contact me at (404) 974-9406, or Lisa Murfree, Senior Investigator at (404) 974-9390.

Sincerely,

Cynthia G. Pierre, Ph.D.
Regional Director

Enclosure