



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

June 9, 2017

JoAnna J. Barnes
President
Learning Disabilities Association of North Carolina
P.O. Box 3832
Chapel Hill, NC 27515

Re: OCR Complaint No. 11-16-1394
Dismissal Letter

Dear Ms. Barnes:

On June 1, 2016, the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received your complaint against the North Carolina State Board of Education (the State Board) and the North Carolina Department of Public Instruction (NCDPI) (together, the State). You filed the complaint on behalf of nonwhite (*e.g.*, African American and Latino) students in North Carolina. You allege that the State discriminated against nonwhite students on the basis of race when it approved amendments to the North Carolina special education regulations on February 4, 2016. Specifically, the complaint alleges that the adopted revisions permitting comparison to culturally and linguistically similar peers in the procedures for identifying students with specific learning disabilities will cause nonwhite students to be under-identified with respect to their eligibility for special education and related aids and services.

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 State receives Federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Title VI.

You allege that the changes to the procedures for identifying students with specific learning disabilities approved by the State will cause the under-identification of nonwhite students with respect to their eligibility for special education and related aids and services. More specifically, you object to the inclusion of the following language in the inadequate academic achievement requirement of the approved revisions: "Student performance must include comparison to state and/or national norms and district norms when available. This may include a comparison to other groups such as culturally and linguistically similar peers, classroom, school, and/or other comparison groups. . . ." You contend that including this option for comparison to culturally and linguistically similar peers in determining whether a student meets the inadequate academic achievement criteria will cause the achievement of nonwhite students to be compared to a lower

standard of achievement, leading to fewer nonwhite students meeting the criteria of inadequate achievement and resulting in the under-identification of those students with respect to their eligibility for special education and related aids and services.

OCR is dismissing your complaint under Section 108 of OCR's *Case Processing Manual* because it does not state a violation of Title VI. Taking all facts as true, the alleged discrimination, an unjustified effect of the revisions on nonwhite students, has not yet occurred. Per the policies governing services for children with disabilities addendum you provided, the policy changes adopted on February 4, 2016 become effective July 1, 2020 or upon the receipt of an Intent to Implement from a local education agency (LEA). The effective date of the revisions is more than three years from now, and you did not allege in your complaint or provide in later responses to OCR information supporting an inference that any LEA has filed implementation paperwork with the State.¹ Therefore, your allegation rests upon the occurrence of one of these two future events, which – if and when one occurs – may affect the way in which students are identified as having specific learning disabilities, potentially including the alleged unjustified effect on nonwhite students. Only when all districts implement the revisions in July 2020 or a district files an Intent to Implement sooner would OCR have the information necessary to investigate any revision effects, including: whether implementing LEAs opt to carry out the permitted (but not required) comparison to culturally and linguistically similar peers; what data LEAs utilize to conduct the comparison; and whether any such comparison causes fewer nonwhite students to be identified as students with specific learning disabilities, and therefore eligible for special education and related aids and services. Without evidence of implementation, your complaint fails to allege discrimination that has occurred or is occurring; rather, your complaint identifies potential future harm to nonwhite students contingent upon the implementation of the revised procedures in a particular manner.

For the reasons explained above, OCR is dismissing your complaint as of the date of this letter and will take no further action on the complaint.

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. You may have the right to file a private suit in federal court whether or not OCR finds a violation.

¹ When asked for any information suggesting the revisions had taken effect, you indicated that you have been unable to determine whether any LEA has submitted an Intent to Implement and cited the implementation of response-to-intervention programs in two LEAs and use of a similar like-peer comparison for the purpose of determining whether a student will receive instructional interventions. Neither event cited suggests the implementation of the revisions to the procedures for identifying students with specific learning disabilities. Moreover, on April 11, 2017, and on May 1, 2017, you/your colleagues asserted to OCR staff that you believed you had obtained information and documentation to support that LEAs had implemented the revisions to the procedures for identifying students with specific learning disabilities. On May 1, 2017, OCR requested that you submit to OCR within twenty (20) days specific information and documentation to support your assertions, including but not limited to the LEAs at issue and information regarding any students impacted; however, to date, you have failed to provide OCR with the requested information. Additionally, the State provided to OCR documentation reflecting that no LEA had filed an Intent to Implement.

We did not notify the State of your complaint. Nevertheless, please be advised that the State 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, or participates in an OCR proceeding. If this happens, you 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, you may contact me at 202-453-7132 or Letisha.Morgan@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Letisha Morgan', with a large, sweeping flourish extending to the left.

Letisha Morgan
Team Leader, Team II
District of Columbia Office
Office for Civil Rights