



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION XV

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MICHIGAN
OHIO

January 20, 2016

Jennifer J. Dawson, Esq.
Marshall & Melhorn, LLC
Four Seagate, Eighth Floor
Toledo, Ohio 43604

Re: Case No. 15-10-5002
Toledo Public Schools

Dear Ms. Dawson:

This 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), on September 28, 2010. This compliance review was undertaken to assess whether the Toledo Public Schools (the District or TPS) provides African American students with equal access to its resources, including strong teaching, leadership, and support, school facilities, technology and instructional materials, and educational programs.

OCR initiated this compliance review under Title VI of the Civil Rights Act of 1964 (Title VI), as amended, 42 U.S.C. §§ 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in programs and activities receiving financial assistance from the Department. As a recipient of financial assistance from the Department, the District is subject to Title VI and, therefore, OCR had jurisdiction to conduct this compliance review.

During the course of and prior the conclusion of OCR's investigation, the District expressed an interest in voluntarily resolving the case and entered into a Resolution Agreement (the Agreement), which commits the District to specific actions to address issues identified during OCR's review. This letter summarizes the applicable legal standards, the main areas of information gathered during the review, and how the review was resolved.

Applicable Legal Standards

The applicable standards for determining compliance are set forth in the regulation implementing Title VI, at 34 C.F.R. § 100.3(a), (b)(1) and (2). The Title VI regulation, at 34 C.F.R. § 100.3(a), provides that no person 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 operated by a recipient. The regulation implementing Title VI, at 34 C.F.R. § 100.3(b)(1), prohibits a recipient, on the ground of race, color, or national origin, from denying an individual a service or benefit of a program; providing different services or benefits; subjecting an individual to segregation in any matter related to the receipt of a service or benefit; restricting an individual in any way in receiving a service or benefit; treating an individual differently in determining whether the individual satisfies any admission or eligibility requirement for provision of a service or benefit; and, denying an individual an opportunity to participate in a program or affording an opportunity to do so which is different from that afforded to others. The regulation implementing Title VI, at 34 C.F.R. § 100.3(b)(2), prohibits a recipient from utilizing criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color, or national origin.

School districts that receive Federal funds must not intentionally discriminate on the basis of race, color, or national origin, and must not implement facially neutral policies that have the unjustified effect of discriminating against students on the basis of race, color, or national origin. In assessing the allocation of educational resources, including courses, academic programs, extracurricular activities, teaching and support staff, school leadership, school facilities, technology, and instructional materials, OCR will investigate and analyze the evidence found under both theories of discrimination—intentional discrimination and disparate impact—to ensure that students are not subjected to unlawful discrimination.

Under Title VI, intentional discrimination in allocating educational resources on the basis of race, color, or national origin is unlawful. Such discrimination can include acting on a racially discriminatory motive, providing educational resources only to members of select races, adopting facially neutral policies with an invidious intent to target students of certain races, or applying a facially neutral policy in a discriminatory manner. Evidence of discriminatory intent can be proven through direct evidence or circumstantial evidence. For example, such evidence may include the existence of racial disparities that could not otherwise be explained, a history of discriminatory conduct towards members of a certain race, or the inconsistent application of resource allocation policies to schools with different racial demographics.

School districts also violate Title VI if they adopt facially neutral policies that are not intended to discriminate based on race, color, or national origin, but do have an unjustified, adverse disparate impact on students based on race, color, or national origin.

Overview of the District

The District is the fourth largest school district in the state of Ohio. The District reported to OCR that its total student enrollment in its kindergarten through twelfth-grade (K-12) facilities for the 2011-2012 school year was 23,356, comprised of 10,137 (43.40%) African American students and 9,751 (41.75%) white students. Total student enrollment

for the 2012-2013 school year was 23,172 students, comprised of 9,918 (42.8%) African American students and 9,315 (40.2%) white students. Total student enrollment for the 2013-2014 school year was 22,336 students, comprised of 9,180 (41.1%) African American students and 8,957 (40.1%) white students.

In February 2011, the District’s Board of Education approved a large-scale “transformation plan” (the transformation plan) that closed six schools effective the beginning of the 2011-2012 school year and a seventh school beginning the 2012-2013 school year. Under the transformation plan, the District reorganized all of its schools into six geographically designated “learning communities,” each centered around and named for a comprehensive high school, with feeder K-8 schools (previously the lower grades were organized into separate middle schools and elementary schools). Following its implementation of the transformation plan for the 2011-2012 school year, the District operated a total of 49 schools, including 41 K-8 elementary schools (including three magnet/specialty schools) and eight high schools (including two magnet/specialty schools). The District stated that its transformation plan was designed to increase community partnerships, broaden educational opportunities for students, and establish neighborhood schools.

Summary of Review

Given the transformation plan, OCR focused its review time period immediately following the District’s implementation using the most recent available data relevant to the plan’s initiation. OCR analyzed the District’s 2011-2012 school year enrollment data disaggregated by race to determine if any schools were racially identifiable – i.e., if any of the schools had African American student enrollments 20% or more than the District’s overall African American student enrollment of 43.4%; and, similarly, whether any of the schools had white student enrollments 20% or more than the District’s overall white student enrollment of 41.75%.¹ Using that standard, OCR found that 26 (53%) of the District’s 49 K-12 schools were racially identifiable schools. Specifically, OCR found:

- 18 of the District’s 49 schools (37%) were racially identifiable as African American schools: fifteen of the District’s 41 K-8 schools (37%) and three of the District’s eight high schools (37%).
- 8 of the District’s 49 schools (16%) were racially identifiable as white schools: seven of the District’s 41 K-8 schools (17%) and one of the District’s eight high schools (12%) (Toledo Technology Academy – a magnet school). None of the District’s six traditional high schools were racially identifiable as white schools.

¹ At the stage negotiations began in this case and prior to concluding its investigation, OCR utilized District-wide racial percentages to calculate racial identifiability. Alternatively, racial identifiability may be calculated by using District-wide racial percentages at the K-8 and high school levels, respectively. Under this analysis, Woodward High School shifts from racially identifiable African American to not racially identifiable, Chase STEM Academy from not racially identifiable to racially identifiable African American, and Raymer Elementary from racially identifiable white to not racially identifiable.

OCR then selected 15 District schools for OCR’s primary focus in the review, which included ten of the District’s 41 K-8 schools (24%) and five of the District’s eight high schools (62%).² Selection criteria included but were not limited to whether schools were racially identifiable under the 20% standard and whether schools were the subject of previous OCR complaints. OCR also selected schools to ensure representation from various geographic locations within the District.

K-8 schools (10):

- Beverly Elementary (racially identifiable white)
- Chase STEM Academy (not racially identifiable, magnet school)
- Elmhurst Elementary (racially identifiable white)
- McKinley Elementary (racially identifiable African American)
- Old West End Academy (racially identifiable African American, magnet school)
- Ottawa River Elementary (racially identifiable white)
- Pickett Academy (racially identifiable African American)
- Raymer Elementary (racially identifiable white)
- Reynolds Elementary (racially identifiable African American)
- Sherman Elementary (racially identifiable African American)

High Schools (5):

- Rogers High School (racially identifiable African American)
- Scott High School (racially identifiable African American)
- Start High School (not racially identifiable)
- Toledo Technology Academy (racially identifiable white, magnet school)³
- Waite High School (not racially identifiable)

The selected schools enrolled a total of 8,432 students, which was 36% of the District’s total enrollment of 23,356, and included 38% of the District’s African American student enrollment and 36% of the District’s white student enrollment.

The 10 selected K-8 schools enrolled a total of 4,174 students, which represented 25% of the total District K-8 enrollment of 16,731 students. The 10 selected K-8 schools overall had a student population that was 40.82% African American, 46% white, and approximately 13% other races. District-wide, the K-8 schools had a student population that was 41% African American, 43% white, and 16% other races. Thus, OCR determined that the racial make-up of the 10 selected schools was sufficiently similar to the overall racial make-up of the District’s K-8 schools to make the selection appropriate for OCR’s review.

² OCR’s review did not encompass Jones Leadership Academy, a high school which opened in August 2014, and Westfield Achievement, the District’s alternative placement site for grades 7-12, is located in a separate building but students remain on the rosters of their sending high schools.

³ Toledo Technology Academy added grades 7 and 8 in the fall of 2014.

The five high schools selected enrolled 4,258 total students, which represented 64% of the total District high school enrollment of 6,615 students. The selected high schools overall had a student population that was 51% African American, 37% white, and 12% other races. District-wide, the high schools had a student population that was 50% African American, 38% white, and 12% other races. Thus, OCR again determined that the racial make-up of the five selected schools was sufficiently similar to the overall racial make-up of the high schools District-wide to make the selection appropriate for OCR's review.

In the 2012-2013 school year OCR conducted onsite visits at the 15 selected schools. At each school OCR interviewed the principal, librarian, counselor, staff person responsible for computer technology, and teachers. OCR also interviewed District administrators and interviewed staff persons from the Ohio School Facilities Commission (OSFC) who worked with the District in building new school buildings. Finally, OCR obtained data from the District and from the Ohio Department of Education (ODE) and encouraged community advocates, including those involved in the complaints to OCR prior to the review, to send any relevant information to OCR. OCR received data from the District for the 2011-2012 school year and certain additional data for the 2012-2013 school year and the beginning of the 2015-2016 school year. OCR's main areas of review are summarized below.⁴

- **Strong Teaching, Leadership, and Support**

The District reported to OCR that immediately after its transformation plan took effect at the beginning of the 2011-2012 school year, it had 1,217 full-time and part-time general education classroom teachers and 326 full-time and part-time special education teachers. The data showed that these 1,543 teachers had an average of 16.9 years of experience. Data provided by the District showed that the District also had 390 non-teacher employees with an average of 16.2 years of experience. The 390 non-teacher employees included 79 principals and assistant principals, with an average of 15.7 years of experience.

- **Stability of Teacher Workforce**

As part of the investigation, OCR assessed relative rates of teacher absenteeism for the 2010-2011 school year. This data did not indicate any significant differences in teacher absenteeism between racially identifiable white and African American schools. For the 10 selected K-8 schools, the range in average teacher absentee days was between 3.0 days (Beverly, racially identifiable white) and 15.5 days (Chase STEM, not racially identifiable). Most of the schools had average teacher absentee rates of between 9 and 12 days; the three schools that had more absences than the average were one racially

⁴ There are many other factors not discussed in this letter that could appropriately be analyzed under Title VI to ensure the equitable allocation of resources to students regardless of race, including but not limited to classroom space, supplies, athletic facilities, computers and other technology, and academic support programs.

identifiable white school (Elmhurst), one racially identifiable African American school (Reynolds), and one school that was not racially identifiable (Chase STEM). Of the five selected high schools, four had average absence rates of between 10 and 15 days; only a racially identifiable white school was an outlier, with an average rate of 21.7 days (Toledo Technology Academy). However, this school's average was significantly higher due to the extended absence of one teacher.

At the time negotiations began, OCR had not yet reviewed information related to the number and duration of teacher vacancies or teacher turnover; however, the District provided information indicating that its staff reductions resulted in a large pool of unemployed teachers as of the 2011-2012 school year from which it could readily fill any vacancies.

○ **Teacher Qualifications and Experience**

OCR reviewed 2011-2012 school year data from the District and ODE regarding teachers' level of education and licensure status. In Ohio teacher certification requires a bachelor's degree at a minimum⁵, and, according to District information, 100% of District teachers had at least a bachelor's degree. Overall, 55.4% of the District's teachers also have at least a master's degree.⁶ At the 10 selected K-8 schools, the percentage of teachers with a master's degree ranged from 44.4% to 74.1%. Although Reynolds, a racially identifiable African American school, was an outlier and had the highest level of master's degrees, the K-8 schools with the three lowest percentages of teachers with a master's degree were racially identifiable as African American (Sherman 44.4%, Pickett 50%, and Old West End Academy 50%). In contrast, three of the four schools with the highest percentages were racially identifiable as white (Ottawa River, 65.2%, Raymer 69.2%, and Elmhurst 73.9%).

At the selected high schools the only racially identifiable white school (the magnet school Toledo Technology Academy) had the lowest percentage of teachers with a master's degree, at 36.4%. For the four other selected high schools, the percentage of teachers with a master's degree was at least 50%, with the highest percentages found at the two high schools that are not racially identifiable, Start and Waite (56.8% and 58.7%, respectively). The two racially identifiable African American high schools, Rogers and Scott, had percentages of 50.8% and 52% respectively. District-wide, the overall percentage of high school teachers with at least a master's degree was 53.3%.

⁵ See OHIO REV. CODE ANN. § 3319.22.

⁶ OCR noted that 61.5% of Ohio teachers were reported in 2009-2010 to have at least a master's degree (see 2009-2010 statewide data available at http://education.ohio.gov/getattachment/Topics/Teaching/Educator-Equity/Highly-Qualified-Teacher-Longitudinal-Data/State_HQT_Charts_june2011.xls.aspx), which is higher than the District. Nationwide, as of 2011, 44% of teachers had at least a master's degree (2011 U.S. data available at <http://www.edweek.org/media/pot2011final-blog.pdf>) which is lower than the District.

OCR considered 2011-2012 data available from ODE regarding the percentage of core classes taught by teachers that were properly certified for the subject they were teaching. The percentage of core classes taught by properly certified teachers⁷ ranged from 77.4% (Woodward High School – a racially identifiable African American school which was not one of the selected schools) to 100% (seven District schools had 100%, including one of the selected schools, Old West End Academy, a racially identifiable African American K-8 school), with a District-wide average of 88.9%. For the selected K-8 schools, the range was 85.2% (Chase STEM, not racially identifiable) to 100% (Old West End, racially identifiable African American). There were no significant differences in the percentage of core classes taught by properly certified teachers between racially identifiable white and African American K-8 schools. Likewise, the high school range was consistent; the range was from 84.3% (Rogers, racially identifiable African American) to 90.2% (Toledo Technology Academy, racially identifiable white). The other racially identifiable African American high school in the group of selected schools, Scott, had the second-highest percentage of core classes being taught by properly certified teachers, with 88.5%.

OCR also reviewed ODE's 2011-2012 school year data regarding the percentage of core academic subjects⁸ in elementary and secondary classes not being taught by highly qualified teachers (HQTs),⁹ and found that the overall rate for the District was 15%. For the selected K-8 schools, the percentage of core classes not taught by HQTs ranged from zero at a racially identifiable African American school (Reynolds) to 37.1% at another racially identifiable African American school (Pickett); however, the second highest percentage, 26.8%, was at a racially identifiable white school (Raymer),¹⁰ and the other schools' percentages were not significantly different from one another. The percentages of core classes not taught by HQTs at the selected high schools were low, ranging from 3.5% (Waite, not racially identifiable) to 8% (Scott, racially identifiable African American).

OCR also reviewed 2011-2012 school year data regarding the level of experience, one of multiple factors which may impact teacher effectiveness and quality, of District teachers.

⁷ An ODE official informed OCR that only persons who hold a long- or short-term substitute teaching license, or who are not teaching in the subject matter area in which they are licensed, would not be properly certified. An example would be a teacher certified in math teaching an English class. The 2011-2012 ODE data indicated that no District school had any core classes taught by teachers with temporary, conditional, or long-term substitute certification/licensure; however, some teachers that had proper certification for one subject taught other subjects.

⁸ Core academic offerings at the District's K-8 schools for the 2011-2012 school year were English, math, science, and social studies.

⁹ HQT was a Federal No Child Left Behind Act definition that prescribed standards for educators in core academic content areas. To be deemed highly qualified, teachers had to: 1) have a bachelor's degree; 2) have full state certification or licensure; and 3) demonstrate that they knew each subject they taught. See <http://www2.ed.gov/nclb/methods/teachers/hqtflexibility.html>. On December 10, 2015, the Every Student Succeeds Act (ESSA) was signed into law. It reauthorizes the Elementary and Secondary Education Act and replaces the No Child Left Behind Act. Upon full implementation, the ESSA eliminates the "highly qualified" requirements. The ESSA continues to require that states and districts have plans in place to ensure that low-income students and students of color are not taught disproportionately by out-of-field teachers (or by inexperienced or ineffective teachers).

¹⁰ Based on 2013-2014 enrollment data, Raymer Elementary is the only school to shift racial identifiability category.

The data shows that the District has very few novice teachers (defined as three years or fewer with the District) throughout the District; only 41 of the 1,543 teachers, or 2.7%, were novice teachers. Of note, approximately 150 staff members were laid off as a result of the transformation plan, including support and custodial staff as well as teachers and administrators. The District stated that the teachers with the least experience were laid off first.

Four of the selected K-8 schools had zero novice teachers. Three of these schools were racially identifiable as African American (Old West End Academy, Reynolds and Sherman), and one was racially identifiable as white (Ottawa River). Five of the schools had one novice teacher each: three racially identifiable white schools (Beverly, Elmhurst, and Raymer); one racially identifiable African American school (Pickett); and one not racially identifiable school (Chase STEM Academy). One school, which was racially identifiable as African American, had two novice teachers (McKinley).

The selected K-8 schools' teaching staff ranged in average number of years of teaching experience from a low of 11.3 years at Chase STEM Academy (not racially identifiable) to a high of 20.3 years at Elmhurst Elementary (racially identifiable white). Three of the four schools that were racially identifiable as white (Beverly, Ottawa River and Elmhurst) had teaching staffs with more average years of experience than all of the schools that were racially identifiable as African American.

With respect to the selected high schools, one racially identifiable white school (Toledo Technology Academy – a magnet school) and one school that is not racially identifiable (Waite High School) had zero novice teachers; two racially identifiable African American schools (Rogers High School and Scott High School) had one novice teacher each; and one school that is not racially identifiable (Start High School) had two novice teachers.

OCR observed that there was less disparity with respect to the average number of years of experience at the selected high schools, where the staffs' years of experience ranged from a low of 15.1 average years of experience at Scott (racially identifiable African American) to a high of 17.4 average years of experience at Toledo Technology Academy (racially identifiable white). Of the remaining high schools, the staff at Rogers (racially identifiable African American) had an average of 16.5 years of experience, while the staffs at the two non-racially identifiable high schools, Waite and Start, both had an average 15.9 years of experience.

According to the District, it evaluates its teachers in accordance with Ohio law, and uses the standards-based statewide teacher evaluation framework adopted by ODE, the Ohio Teacher Evaluation System (OTES). This is a new system across Ohio implemented as of the 2013-2014 school year and requires yearly evaluations of all teachers. It is focused on teacher effectiveness, with 50% of the rating coming from student academic growth, and it includes consequences for poor performers.¹¹

¹¹ On November 20, 2015, new changes to OTES were adopted in Ohio and include, inter alia, giving Local Education Agencies (LEAs) the option to reduce the proportion of annual rating for teachers that is

Based on information obtained from the District in 2015, the District uses an Intern-Intervention Program (the "Toledo Plan"), which is a teacher performance tool based on peer coaching and evaluation. The Toledo Plan provides a formula for professional development of novice teachers and an evaluation system that, according to the District, detects and screens out those who show little aptitude for the classroom. All newly hired teachers are placed in the intern program and attend the "New Teachers Academy." New teachers designated as interns are assigned a consulting teacher who provides professional development and does a comprehensive evaluation of the teacher's performance. Based on the evaluation, the consulting teacher makes a recommendation regarding whether the novice teacher should continue to be employed with the District.

According to the District, under the Toledo Plan it provides experienced teachers who have severe performance problems with intensive peer assistance to bring their performance back in line with acceptable standards.

The District also uses its Teacher Review and Alternative Compensation System program (TRACS) program.¹² According to the District, the purpose of TRACS is to promote the participation of teachers in professional development, acknowledge the importance of retaining accomplished teachers, and support and reward veteran and exceptional teachers who achieve measurable student academic results. Under the TRACS program, teachers can earn a fifteen percent pay increase by working in a District high-need school or a hard-to-staff placement. To become a TRACS teacher, a teacher must be recognized as one of the best teachers in the District and have gone through an application process, a written test, and classroom observations. TRACS teachers undergo extensive, ongoing professional development and must show that their students are growing academically at or above expectations. Prior to OCR's compliance review, only three teachers were part of TRACS for the 2010-2011 school year. As of the 2011-2012 school year, there were approximately 30 teachers involved in this program and there were 11 eligible schools; five were selected by OCR for focus in the review - Sherman, Scott, Pickett, and Old West End Academy, all racially identifiable African American, and Chase STEM Academy, which is not racially identifiable.

- **School Leadership**

The District has fewer than 300 administrators, and approximately 98 were either new or in new positions during the 2011-2012 school year.¹³ District officials stated that during the 2011-2012 school year one in three administrators were either new to the District or new as administrators, because the District had lost a significant number of staff. According to the District, it is hard for it to attract and retain qualified principals due to higher salary ranges of \$20,000-\$30,000 more in surrounding areas.

attributable to student growth measures to 35%. To the extent Toledo adopts the alternative standard, OCR will consider both the 50% and 35% standards in its monitoring to evaluate satisfaction of Title VI.

¹² Implementation of TRACS began in the 2002-2003 school year.

¹³ At the time negotiations began, OCR had not completed its analysis of the experience levels of administrators based on whether schools were racially identifiable.

OCR obtained information regarding the District's professional development of administrators. The District indicated that, in order to address retention and experience levels, it developed a system to provide members of its existing staff with the necessary knowledge, skills and abilities to become administrators. Through its Urban Leadership Development Program, started in 1998, the District has partnered with the University of Toledo to teach and train participating District staff to prepare them for leadership roles, usually beginning as an assistant principal.

The District also has a mentoring program through the Toledo Association of Administrative Personnel ("TAAP"). The TAAP Peer Mentoring Program, which was first implemented around 1993, is designed to give support and guidance to new administrators. TAAP peer mentors are trained and paired with a new administrator ("mentee") and provide the mentee with guidance and support, and the opportunity to discuss professional issues. The TAAP mentor observes the mentee at least one day per month, arranges for the mentee to shadow peer mentors, attends monthly "Nuts and Bolts" sessions for training, and submits written and oral evaluations and recommendations to the TAAP Mentor Review Panel regarding the mentee.

According to the District, it also maintains a comprehensive evaluation program for administrators, the Ohio Principal Evaluation System (OPES), to assess the effectiveness of principals and assistant principals. The District also reports that the Recruitment/Retention Leadership Incentive Program in its 2013-2016 collective bargaining agreement with administrators gives the District some flexibility in recruiting and retaining administrators for high-need, under-performing schools. The District noted that, as of August 26, 2015, all of its principals have advanced degrees and all but three have at least seven years of experience.

- **Support Staff**

- **Librarians**

Based on information collected during OCR's 2012 site visits and the District's data provided for the 2011-2012 school year, the District had a total of 14 librarians. All District high schools except Toledo Technology Academy (racially identifiable white) had a full-time librarian. At the K-8 schools, there was one librarian assigned per five to six schools. Librarians are responsible for recruiting parent volunteers to run their assigned schools' libraries; although based on the witness interviews OCR conducted, at least two principals try to assist with recruiting volunteers.¹⁴ One District official stated that he had reached out to churches to recruit volunteers; however, none of the K-8 librarians who were asked knew about his efforts to help them recruit volunteers. As is discussed in more detail below, as a result of differences in the number of volunteers at each school, the schools differ in the number of days when their libraries are open, how often students get to visit the library, and thus the number of books students had the opportunity to check out in a month.

¹⁴ Additional information about the availability of volunteers for the libraries is provided later in this letter.

OCR’s review indicated that seven K-8 librarians ranged in experience, as a librarian, from one year to 33 years; however, none of the librarians had been employed by the District for less than nine years—most librarians had previously been classroom teachers. All the K-8 librarians from the selected schools held appropriate certification.¹⁵ As noted above, the K-8 librarians were each assigned to five to six schools. The information OCR obtained did not indicate differences in the qualifications or years of experience in librarians assigned to schools based on the racial make-up of the schools.

○ **Guidance Counselors**

As of August 2015, the District had only 50 guidance counselors overall.¹⁶ Using student enrollment numbers from ODE for the 2013-2014 school year, OCR found that the ratio of students to counselors ranged from a low of 172 students per counselor (at King, a racially identifiable African American K-8 school), to a high of 1006 students per counselor (at Larchmont, a racially identifiable white K-8 school). The high schools all had lower ratios of students to counselors, from 297 students per counselor at Scott (racially identifiable African American), to 465 students per counselor at Start (not racially identifiable). The schools with the three highest ratios of students to counselors were all racially identifiable white elementary schools.

○ **Psychologists**

The District had 24 psychologists as of data the District submitted in August 2015, although two of them were not assigned to a specific school, four were assigned to “early childhood,” and two were assigned district-wide. The remaining 16 psychologists were divided among six of the District’s high schools’ Student Assistance Centers, with ratios ranging from 212 students per psychologist at Woodward (racially identifiable African American) to 465 students per psychologist at Start (not racially identifiable). Scott and Rogers (both racially identifiable African American) had the second and third lowest ratios, at 297 and 387 students per psychologist, respectively.

○ **Speech Therapists**

The District had 37 speech-language pathologists as of August 2015, although two of the 37 were assigned District-wide and an additional five did not have assigned locations identified in the data the District provided. The ratio of students to speech therapist varied widely across all the Districts schools, from a low of 78 students per speech therapist (Crossgates Preschool, not racially identifiable), to a high of 2790 students per speech therapist (Start High School, not racially identifiable). The District’s high schools

¹⁵ OCR did not review which schools the more novice librarians were assigned to; all the librarians typically spent Friday afternoon together at a central office location, during which time the novice librarians were able to ask questions of their more experienced colleagues. In addition, purchases for collections are reviewed by the librarians’ supervisor before they are finalized.

¹⁶ None of the counselors interviewed by OCR during the 2012 onsite visits felt that the number of counselors provided was sufficient to meet the needs of the number of students in their buildings.

all had higher ratios than the elementary schools. The second-lowest ratio, of 109 students per speech therapist, was at TPS Preschool, also not racially identifiable.

- **School Facilities**

Operating a total of 49 schools, the District has built 41 new buildings since 2005. All of the new buildings were part of the Ohio School Facilities Commission (OSFC) Issue 2 program to build new schools throughout the state. OSFC officials interviewed by OCR stressed that it is an integral part of OSFC's mission to ensure that all school buildings in Ohio contain the same elements, in the same amount of space, regardless of whether the schools are in rural or urban areas or suburbs. Buildings are designed based on the number of students and type of students (K-12) for whom the school is initially built. OSFC uses standardized elements and sizes for each of its building projects; any requests for variances are reviewed by a group of OSFC staff. The overall cost of the OSFC Issue 2 project for the District was in excess of \$600 million; the state provided 77% of that amount and the District funded the remaining 23% through a bond. The District passed a second bond of \$37 million to fund the renovation of the schools that it decided not to build new.

- **Physical Environment/Types and Design of Facilities**

Out of the 41 District K-8 buildings, 37 have been built new since 2005. The four that are not new include: Edgewater (racially identifiable white); Glendale-Fielbach (not racially identifiable); Harvard (not racially identifiable); and Old West End (racially identifiable African American). With the exception of Old West End, the schools that were not newly built under the OSFC Issue 2 program were extensively renovated as part of the District's overall building project. From OCR's observations, nine of the 10 K-8 buildings OCR visited appeared in good or excellent condition. Old West End's condition seemed average.

OCR's observations at the 10 K-8 buildings OCR visited in 2012 revealed that each building had strengths and weaknesses, but overall they were comparable with respect to amenities. In general, all of the K-8 facilities OCR visited appeared clean, well lit, and painted appropriately. There also were no apparent heating and air conditioning problems. OCR notes that most of the District's elementary schools were built as either K-5 or K-6 buildings, prior to the District implementation of its transformation plan. Two of the K-8 schools visited, Beverly and Ottawa River, which are racially identifiable white schools, were built as K-8 schools.¹⁷ As a result of the K-5 construction, sixth-, seventh-, and eighth-grade students in most of the schools, whether racially identifiable white, racially identifiable African American, or not racially identifiable, are using

¹⁷ The District's master building schedule and the OSFC information indicated that Pickett, a racially identifiable African American school, was also built as a K-8 school; however, during its onsite OCR observed features consistent with a K-5 school, such as classrooms including cubbies for storage, instead of having student lockers in the hallways for students in grades 6-8.

facilities such as lockers and gyms designed for younger, smaller students.¹⁸ Regarding vandalism, OCR noted graffiti on playground equipment or signage at only two schools: Old West End Academy (racially identifiable African American) and Ottawa River (racially identifiable white). OCR did not specifically examine the availability of maintenance staff or accessibility to students with disabilities. As is further discussed below, there appeared to be safety issues in the areas surrounding the K-8 buildings, in particular with respect to Old West End (racially identifiable African American), but also with respect to Reynolds (racially identifiable African American) and Chase STEM Academy (not racially identifiable). In addition, OCR noted that McKinley (racially identifiable African American) was the only K-8 school that did not have a fixed or portable stage. However, after OCR pointed this out, the District provided McKinley with portable risers (to elevate the audience above a ground-level performing space) and access to a full, fixed stage at the Toledo Technology Academy, another District school which is across the street from McKinley. Three of the other K-8 selected schools also used portable equipment to provide stages: Chase STEM Academy (not racially identifiable), Ottawa River (racially identifiable white), and Reynolds (racially identifiable African American).

Out of eight high schools, four have been built new since 2006. The two traditional high schools that are not in new buildings are Scott (racially identifiable African American) and Waite (not racially identifiable); however, the District reported that in 2011 Scott was gutted and built new on the inside in response to neighborhood community preference. The other two high schools in existing buildings are magnet schools: Toledo Early College (not racially identifiable), which has always been housed at the University of Toledo, and Toledo Technology Academy (racially identifiable white), which has been housed since its inception in the previously-closed DeVilbiss High School building.

OCR notes that it previously received complaints that Scott, a racially identifiable African American school, was the last building to be renovated under the District's facilities project. While there had been wide disagreement in the District about the renovation of a historic school building, District officials stated they believed that the ultimate renovation of Scott, which was completed in 2011, ended with the community satisfied, as the building is new on the inside while the original structure is maintained on the outside.

- **Instructional Materials**

- **Libraries**

The data obtained regarding the 2011-2012 school year shows that at the 15 selected schools, the racially identifiable African American schools generally have more library volumes per student than the racially identifiable white schools. OCR's review of the

¹⁸ Of the selected schools, those built as K-5 rather than K-8 are Chase STEM Academy (not racially identifiable), McKinley (racially identifiable African American), Reynolds (racially identifiable African American), Sherman (racially identifiable African American), Elmhurst (racially identifiable white) and Raymer (racially identifiable white).

information found that at the five racially identifiable African American K-8 schools examined, the library volumes per student ranged from a low of 20 volumes per student at Reynolds to a high of 30 volumes per student at Old West End Academy. At the four racially identifiable white schools examined, the library volumes per student ranged from a low of 14 volumes per student at Beverly to 24 volumes per student at Elmhurst. Chase STEM Academy (not racially identifiable) had 21 library volumes per student. With respect to the high schools, OCR's review of the information found that Rogers and Scott (racially identifiable African American) had 15 and 12 library volumes per student, respectively. Start and Waite (not racially identifiable) each had 10 library volumes per student. Toledo Technology Academy (racially identifiable white) due to the nature of the magnet program does not have a library. OCR did not analyze other factors affecting the equitable provision of library materials to students, such as the quality or age of the materials.

All of the librarians interviewed reported that all District students, regardless of school, can access any book in the District through the intra-District library loan system. However, most other District witnesses interviewed were unaware that they had this capability. The District's entire library circulation is maintained in an electronic system, and students can look up and check out any book in the District through the District's electronic catalogue system. OCR's investigation at the ten selected K-8 schools revealed that students attending racially identifiable African American schools had more limited access to their schools' libraries and could check out fewer books than students attending racially identifiable white schools. Thus, even though they had more books at their libraries, the opportunities for African American students to go to their libraries and check out books were more limited. Students at three racially identifiable white schools (Beverly, Elmhurst and Ottawa River) were permitted to go to the library once a week. The students at one racially identifiable African American school (McKinley) also had access to the library once a week. The students at the remaining racially identifiable white K-8 school (Raymer) and at the other racially identifiable African American schools (Reynolds and Old West End Academy) had access to the library once every two weeks or once a month (Pickett and Sherman). K-8 students attending racially identifiable African American Sherman Elementary could check out two books per monthly visit. The students at the non-racially identifiable K-8 school (Chase STEM Academy) had access to four books per month.

In response to OCR's information request, District officials acknowledged their awareness of the disparity in the number of times students at the District's racially identifiable African American K-8 schools could access their schools' libraries as compared to other District K-8 schools. District witnesses explained that the disparity is created by the lack of availability of volunteers to work in schools perceived to be located in more at-risk neighborhoods, to assist the librarians with checking out books to the students and re-shelving the books. Each of the District's K-8 school librarians are assigned to five to six schools. Accordingly, each librarian generally spends half-days at their respective schools throughout the week, helping students check out books. District librarians explained that volunteers are used to help cover the library and check out books for students at times when they are not in the school; thus, District witnesses reported that

the schools with volunteers can provide more library access to their students than the schools without volunteers. Administrators reported they were unsuccessful in their efforts to recruit volunteers for the inner city K-8 schools. OCR did not have access to information confirming the District's efforts to recruit volunteers.

- **Textbooks**

OCR requested, and the District provided, information regarding its adoption of the same textbooks for its fourth-grade science and social studies, eighth-grade science and social studies, and high school biology and history classes for the 2012-2013 school year. District teachers interviewed at the middle school level reported use of the same math textbooks grades 6-8.

- **Educational Programs**

OCR assessed types, quantity, and quality of programs available to students across the District to determine whether students of all races have equal access to comparable programs.

- **K-8 Schools:**

- **Academic Programs**

The academic performance index¹⁹ of the K-8 schools that were the focus of OCR's review, for the 2011-2012 school year, revealed that schools that are racially identifiable African American did not perform as well academically. The District K-8 average score was 80.3 and the average score of the schools OCR examined was 80.4. Of the five lowest scoring schools in OCR's selection, four were racially identifiable African American (Reynolds (77), McKinley (76.5), Sherman (62.2) and Pickett (58.5)). Chase STEM Academy, not racially identifiable, was also in the bottom five schools (75). Of the five top performing schools, four of the five were racially identifiable white (Raymer (80.8), Ottawa River (91.1), Beverly (97.4) and Elmhurst (97.5)). Old West End, racially identifiable African American, was also in the top five (88).

The District reported that its core academic offerings at its elementary schools for the 2011-2012 school year were English, math, science, and social studies. Each of these core academic subjects is offered at each of the District's 41 elementary schools. In addition, the District offers art and music at each of its elementary schools. The District offers foreign language courses at two of its elementary schools: Old West End Academy

¹⁹ The performance index is a metric used by the Ohio Department of Education (ODE). It is designed to reflect the achievement of every student in a school district. School districts and school buildings earn points based on how well each student does on all tested subjects in grades three through eight on Ohio's Achievement Assessments and on the tenth grade Ohio Graduation Test. All assessments have five performance levels: advanced, accelerated, proficient, basic and limited. The percentage of students scoring at each performance level is calculated and then multiplied by the point value assigned to that performance level. The points earned for each performance level are totaled to determine each school's performance index score.

(racially identifiable African American) and Grove Patterson Academy (not racially identifiable); both schools offer Spanish and German.

- **High Schools:**

- **Academic Programs**

- **Core Courses**

The academic performance index of the high schools that were the focus of OCR's review, for the 2011-2012 school year, revealed that the selected racially identifiable African American schools did not perform as well academically. Specifically, of the selected high schools, Scott, racially identifiable African American, received the lowest score (70.8). Rogers, the other racially identifiable African American high school, received an 86.4. The only racially identifiable white high school, Toledo Technology Academy, received the highest score (106.6). The non-racially identifiable schools, Start and Waite, received scores of 94.1 and 85.2, respectively. The overall District high school average score was 90. The average score of the five OCR selected high schools was 88.6.

Each high school offers the same core courses of English, math, science, and social studies every year. According to information provided by the District for the 2011-2012 school year, this includes, at a minimum: English 1; English 2; English 3; English 4; Algebra I; Algebra A/B; Algebra 2; Geometry; Biology; Physical Science; World Studies; American Studies; American Government; and Health.

- **Non-Core Courses/Distance Learning**

District witnesses explained that, with respect to non-core offerings, it attempts to take into consideration the courses that students want when making final determinations regarding which courses to offer. However, if, for example, only two students at a high school sign up for a course, then the District will not offer the course that year at the particular high school. According to the District, during the 2011-2012 school year, it started using technology to offer greater curriculum choices to its students through distance learning (discussed more fully below), especially when a sufficient number of students do not sign up for a course at a specific school, but a sufficient number of students sign up for the course District-wide. At the time of OCR's site visits, in the District's high school distance learning program, the courses were taught live, in person, at Bowsher (not racially identifiable), Start (not racially identifiable), and Rogers (racially identifiable African American). The District offered the following distance learning courses live at the following high schools during the 2012-2013 school year:

- Bowsher: AP European History, World Literature, and AP Calculus
- Start: AP English, Statistics and Analysis Honors, Russian 1, and Russian 2
- Rogers: AP American Government.

The students at Scott (racially identifiable African American), Waite (not racially identifiable), and Woodward (racially identifiable African American) did not have the opportunity to take courses taught live at their schools and, therefore, could not engage in-person with the course instructors. Students participating remotely watched the class through a video system and when the classes were first started during the 2011-2012 school year, the District had paraprofessionals in the rooms to assist the students in the distance classrooms. After OCR notified the District of its concerns regarding this practice, the District placed teachers in these classrooms effective the 2014-2015 school year.²⁰ The District reports that it is also working toward students earning college credit and increasing the number of courses, and improving them, to provide high-level course choices for students.

- **Vocational Courses**

The District offers a wide range of vocational courses organized into career technology pathways such as accounting, culinary arts, cosmetology, medical technology, broadcast communications, auto technology, auto collision, and carpentry. While each course/career technology pathway is not offered at all of the District high schools, the District reported all District students have access to the courses because of the District's open enrollment plan. The District's website explains: "If the particular area of training is not offered in their home school, students can elect to transfer to the school offering the training, or spend part of their day in their home school and the other part at the location offering the career technology pathway they want to pursue." Students are generally responsible for their own transportation should they choose to enroll in a career technology pathway not offered at their home school, as the District does not provide transportation to District high school students (unless transportation is a service provided for in the Individualized Education Program (IEP) of a student with a disability). OCR did not obtain sufficient information to determine whether lack of transportation impacted students' ability to participate in the vocational education programs on the basis of race.

Conclusion

Although OCR did not conclude its investigation to reach final findings, the information gathered by OCR during its investigation suggests that the District, including through its implementation of the transformation plan it began after OCR initiated its review, has taken several positive steps related to the District's obligation to deliver resource equity to its students. Based on the data OCR reviewed and interviews conducted, the evidence indicates that the District offered substantially equal access to core classes taught by certified and highly qualified teachers at both K-8 and high schools and that the District has plans in place to support and further develop strong teachers in its schools equitably across the District. The evidence obtained suggests that the District's challenges to

²⁰ OCR staff and witnesses also noticed that the different bell schedules at the various high schools led to situations in which students at some schools missed either the first few or last few minutes of their distance learning courses. The District subsequently provided information to OCR showing that it had resolved this issue during the pendency of this review.

support and retain strong administrators are born across the District, without racially identifiable disparity, and that the District will continue its on-going efforts to address these challenges. OCR's investigation also indicated that the District is making efforts to provide the same textbooks to all its students in fourth-grade science and social studies, eighth-grade science and social studies, and high school biology and history classes. OCR's review suggested that the District's efforts over the past decade to renovate and build new school facilities has substantially aided in aspects of facilities equity. OCR did identify a number of potential Title VI compliance concerns regarding equitable access to resources for African American students, including experienced teachers, teachers with master's degrees, and library access for K-8 students, and live distance learning classes for high school students.

As stated above, prior to the conclusion of OCR's investigation, the District expressed an interest in entering into an agreement with OCR to voluntarily resolve the issues raised in the compliance review. The enclosed Agreement, which the District executed on January 4, 2016, addresses resource equity issues, both through providing for monitoring of programs in place to assure satisfaction of Title VI and through adding steps the District commits to take to address Title VI compliance concerns OCR's review raised.

Pursuant to the Agreement, the District will take the following actions: (1) provide notice to the school community of rights and responsibilities under Title VI, and the procedure by which students, parents and employees may report concerns; (2) continue implementing programs designed to ensure that equally effective and qualified teachers are equitably distributed throughout the District, and assess the effectiveness of each program and the District's equitable distribution of equally effective and qualified teachers; if the assessment reveals inequity, the District will develop and, upon OCR approval, implement a plan for addressing the inequity; (3) continue implementing programs designed to ensure that equally effective and qualified building leaders are equitably distributed throughout the District, and assess the effectiveness of each program and the District's equitable distribution of equally effective and qualified building leaders; if the assessment reveals inequity, the District will develop and, upon OCR approval, implement a plan for addressing the inequity; (4) annually develop master library staffing schedules for each of the District's K-8 schools, including professional and volunteer staffing schedules, that ensure that students at the District's K-8 schools can access their schools' libraries with the same frequency, and can check out the same number of books, as students at other District schools; (5) deliver "live" instruction of distance learning courses, including Advanced Placement and other higher-level courses, across its high schools in a racially equitable manner; ensuring Advance Placement and other higher-level college preparatory courses are taught from the District's racially identifiable African American high schools providing students the opportunity to engage in-person with course instructors; and (6) conduct outreach activities for students and parents designed to build awareness around, address concerns related to, and gain feedback regarding the District's distribution and allocation of resources.

If the District fails to comply with the terms of the Agreement, OCR will take appropriate

action to ensure the District's full compliance with Title VI and its implementing regulation. The Agreement is designed to address OCR's compliance concerns, when fully implemented. OCR will monitor the implementation of the Agreement.

This concludes OCR's investigation phase of this compliance review. 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 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.

It is unlawful to harass, coerce, intimidate or discriminate against any individual who has filed a complaint, assisted in a compliance review, or participated in actions to secure protected rights.

OCR would like to thank the District for its cooperation in resolving this compliance review. If you have any questions regarding this letter please contact Ms. Kimberly Kilby at (216) 522-2574 or Kimberly.Kilby@ed.gov.

If you have any questions during the monitoring of the District's implementation of the Agreement, please contact Mr. Vincent Cheverine at (216) 522-2676 or Vincent.Cheverine@ed.gov. OCR received the District's first monitoring report on January 4, 2016, and will respond under separate cover.

Sincerely,

/s/

Meena Morey Chandra
Regional Director
Cleveland Office

Enclosure