



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS
ADMINISTRATIVE COMPLAINT

January 24, 2024

United States Department of Education
Office for Civil Rights
Lyndon Baines Johnson Department of Education Building
400 Maryland Avenue, SW
Washington, DC 20202-1100
Via Email: OCR@ed.gov

To Whom It May Concern:

This is a federal civil rights complaint pursuant to the U.S. Department of Education's (Department) Office for Civil Rights' (OCR) discrimination complaint resolution procedures.

Parents Defending Education (PDE) brings this complaint against the Bryan Station High School in Lexington, Kentucky for discrimination on the basis of race (or ethnicity or national origin) in programs or activities that receive federal financial assistance in violation of both Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d *et seq.*, Title IX of the Education Amendments of 1972 (Title IX), and the Equal Protection Clause of the 14th Amendment to the U.S. Constitution.

PDE makes this complaint as an interested third-party organization with members who are parents of school children throughout the country. PDE and its members oppose discrimination and political indoctrination in America's schools. Bryan Station High School is offering race- and sex-based affinity programming for individuals who both identify as females and are students of color; the programming is not open to all.

Attached to this complaint is supporting evidence in the form of a "Daughters of Africa" affinity group webpage on District's website (Exhibit A). Exhibit A makes clear that program attendance is limited to only "female students who are descendants from Africa." The group thus excludes others, and this exclusion is based on an individual's immutable characteristics – namely, both race and sex. (Ex. A).

Possible benefits from the "Daughters of Africa" include motivational meetings, leadership opportunities, and field trips associated with the group. The webpage states a primary purpose of the program is to "inspire" and "empower" female students from Africa and new to America (Ex. A).

As the Department of Education is no doubt aware, discrimination on the basis of race, ethnicity, or national origin raises concerns that the Bryan Station High School has received federal funds in violation of Title VI of the Civil Rights Act of 1964, which declares 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 subjected to discrimination under any program or activity receiving federal financial assistance."

In addition, Section 1 of the 14th Amendment to the U.S. Constitution asserts: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person



within its jurisdiction the equal protection of the laws.” On these grounds, the Supreme Court held in 1954 that racial segregation of students is unconstitutional. *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).

Recently, the Supreme Court reaffirmed that “racial discrimination is invidious in all contexts.” *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 214 (2023) (cleaned up). “Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality.” *Id.* at 208. Simply put, “[e]liminating racial discrimination means eliminating all of it.” *Id.* at 206.

A September 29, 2015 decision from the Department of Education Office for Civil Rights during the Obama Administration is directly on point: in 2015, following “the police actions involving African American victims in Ferguson and New York and subsequent events,” Oak Park & River Forest High School District 200 held a “Black Lives Matter” assembly during Black History Month. The assembly was convened “for African American students only” because the district wanted “to provide a comfortable forum for black students to express their frustrations.” Certain students “who self-identified as white were directed by District officials not to participate in the event as this assembly was designed for students who self-identify as black.” In the letter sent on September 29, 2015 (OCR Docket #05-15-1180), OCR found that the district violated the Equal Protection Clause and Title VI because the district’s actions could not withstand strict scrutiny. Specifically, the district failed to “assess fully whether there were workable race-neutral alternatives” and “did not conduct a flexible and individualized review of potential participants.” In a Resolution Agreement with OCR, the district agreed that its programs and activities would be “open to all students . . . regardless of their race” and to adopt policies and training to ensure the district’s compliance. OCR imposed these requirements even though the district had promised “not to hold such events in the future.”

Similarly, as the Department of Education Office for Civil Rights has recently explained: “A decision to restrict membership or participation in activities and spaces based on race ... would raise significant concerns and trigger strict scrutiny under Title VI.”¹ “In determining whether an opportunity to participate is open to all students, OCR may consider, for example, whether advertisements or other communications would lead a reasonable student, or a parent or guardian, to understand that all students are welcome to participate.” (August 2023 Guidance at 11.) As the exhibits show, a reasonable student would understand that all students are not welcome to participate.

And as the Department is also no doubt aware, discrimination on the basis of sex raises concerns that Bryan Station High School received federal funds in violation of Title IX, which declares that “no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” 20 U.S.C. § 1681(a). There are only limited exceptions to that Title IX rule, and none appears to apply to the girls-only program in Bryan Station High School. Likewise, federal regulations generally prohibit excluding students from classes or extracurricular activities on the basis of sex unless the school is providing a substantially equal coeducational class or extracurricular activity in the same subject or activity that would include all students. 34 C.F.R. § 106.34.

In addition, Section 1 of the 14th Amendment to the U.S. Constitution provides: “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any

¹ Race and School Programming, U.S. Department of Education Office for Civil Rights (Aug. 2023), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-20230824.pdf> [hereinafter August 2023 Guidance].



state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” On these grounds, the Supreme Court held in 1996 that schools cannot deny opportunities on the basis of sex without showing an exceedingly persuasive justification and establishing that “the discriminatory means employed are substantially related to the achievement of those objectives.” *United States v. Virginia*, 518 U.S. 515, 524 (1996). Bryan Station High School cannot provide an exceedingly persuasive justification, let alone show that the program is substantially related to such a justification.

Accordingly, we ask that the Department promptly investigate the allegations in this complaint, act swiftly to remedy unlawful policies and practices, and order appropriate relief.

Thank you for your prompt assistance with this request for investigation and resolution.
Please contact me for further information.

Sincerely,

Caroline Moore
Vice President
Parents Defending Education

Enc. Exhibit A



EXHIBIT A



- Station Student Site
- Canvas
- Infinite Campus
- Email Login Office365
- eOS
- Odysseyware
- Counseling Office +
- Registrar
- Media Center
- Clubs -
 - Overview

Daughters of Africa

Sponsor: Ms. Gerton

Our mission is to inspire and empower the female students of Bryan Station who are from Africa and may be a new student to America. We want our students to be proud of the rich continent of Africa and to never forget their heritage.

23/24 Meeting Dates and Times: Room 516 during FLEX once a month

Requirements: Female students who are descendants from Africa