



U.S. Department
of Transportation
**Federal Highway
Administration**

1200 New Jersey Avenue, SE.
Washington, DC 20590

OCT 13 2016

In Reply Refer To: HCR-20
DOT# 2016-0034

[REDACTED]
[REDACTED]
[REDACTED]

Mr. Russell McMurry, P.E.
Commissioner
Georgia DOT
600 West Peachtree Street, NW
Atlanta, GA 30308

Subject: Letter of Finding (LOF) for Complaint DOT# 2016-0034

Dear [REDACTED] Mr. McMurry:

On November 17, 2015 the Federal Highway Administration (FHWA) Office of Civil Rights received a complaint from [REDACTED] (Complainant) alleging that the Georgia Department of Transportation (GDOT) violated Title VI of the Civil Rights Act of 1964 (Title VI) and the Title VI regulations of both the United States Department of Transportation (USDOT), at 49 Code of Federal Regulations (CFR) Part 21, and of the FHWA, at 23 CFR Part 200. This letter provides the decision for the issue raised in the complaint.

Issue

- 1. Whether GDOT's distribution of funds under FHWA's Safe Routes to School (SRTS) program, and/or its successor Transportation Alternatives Program (TAP) discriminated against persons on the basis of race, color, or national origin in violation of Title VI.**
- 2. Whether GDOT's method for selecting school recipients for SRTS and/or TAP funds discriminated against persons on the basis of race, color, or national origin, in violation of Title VI.**

Legal Background

Title VI prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving Federal financial assistance. In particular, Title VI provides:

“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.”

42 U.S.C. § 2000d.

The USDOT’s Title VI implementing regulations state that a recipient “may not utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin,” 49 CFR 21.5(b)(2). Recipients also must take “affirmative action to remove or overcome the effects” where prior discriminatory practice or usage exists. 49 CFR 21.5(b)(7). The FHWA’s Title VI regulations similarly require Title VI compliance by recipients receiving Federal financial assistance from FHWA. 23 CFR Part 200.

██████████ complaint alleged two theories of discrimination under Title VI: disparate impact discrimination and intentional discrimination. Disparate impact theory involves an allegation that a specific policy or practice, that is neutral on its face, nevertheless has a discriminatory effect on the basis of race, color, or national origin. Intentional discrimination theory involves an allegation wherein the Respondent has intentionally discriminated against persons on the basis of race, color, or national origin.

The elements of a Title VI disparate impact claim derive from the analysis of cases decided under Title VII disparate impact law. *New York Urban League v. New York*, 71 F.3d 1031, 1036 (2d. Cir. 1995). The U.S. Department of Justice (USDOJ) outlines this framework in its “Title VI Legal Manual” (USDOJ Manual):

- (a) Prima facie allegation of discrimination
 1. Specific facially neutral policy or practice of federal-aid recipient;
 2. Disparate and adverse impact on protected group; and
 3. Causation
- (b) Substantial legitimate justification proffered by federal-aid recipient
- (c) If substantial legitimate justification shown, the availability of less discriminatory alternatives

As the USDOJ Manual notes, to establish a prima facie case of disparate impact discrimination, the investigating agency must first ascertain whether the recipient utilized a facially neutral practice that had a disproportionate impact on a group protected by Title VI. USDOJ Manual at 49-50 (citing *Larry P. v. Riles*, 793 F.2d 969, 982 (9th Cir. 1984); *Elston v. Talladega County Bd. of Educ.*, 997 F.2d 1394, 1407 (11th Cir. 1993)). Next, the investigating agency must determine, through fact-intensive analysis, whether the severity, magnitude, or likelihood of the disparate impact of the identified practice is significantly adverse enough to make it an actionable harm. *Bryan v. Koch*, 627 F.2d 612, 617 (2d Cir. 1980). When determining the actionability of adversity, courts balance the benefits and burdens of the proposed policy to the plaintiffs, considering efforts to mitigate possible adverse impacts as well. *NAACP v. Med. Ctr. Inc.*, 657 F.2d 1322, 1331-2, 1340 (3d Cir. 1981); see also *United States v. Bexar County*, 484 F. Supp. 855, 859-60 (W.D. Tex. 1980). Lastly, the investigating agency must show a causal connection between the facially neutral policy or practice and the disproportionate and adverse impact on the protected group. *New York City Env’tl. Justice Alliance v. Giuliani*, 214 F.3d 65, 69 (2d Cir. 2000).

The USDOJ Manual further notes that after a prima facie showing is made, the burden shifts to the respondent to demonstrate the existence of a "substantial legitimate justification" for the allegedly discriminatory practice. USDOJ Manual at 50-51. To prove a "substantial legitimate justification," the recipient must be able to show that the challenged policy was "necessary to meeting a goal that was legitimate, important, and integral to the [recipient's] institutional mission." *Sandoval v. Hagan*, 7 F.Supp. 2d 1234, 1278 (M.D. Ala. 1998), aff'd, 197 F.3d 484 (11th Cir. 1999), rev'd on other grounds, *Alexander v. Sandoval*, 532 U.S. 275 (2001). The justification must bear a "manifest demonstrable relationship" to the challenged policy. *Georgia State Conference of Branches of NAACP v. Georgia*, 775 F.2d 1403, 1418 (11th Cir. 1985); See, e.g., *Elston*, 997 F. 2d at 1413 (In an education context, the practice must be demonstrably necessary to meeting an important educational goal, i.e. there must be an "educational necessity" for the practice).

If the recipient can make a showing of "substantial legitimate justification," the investigating agency must then focus on whether there are "less discriminatory alternatives" that meet the recipient's legitimate needs, but that will do so without the same level of disparate effect on a class protected by Title VI. *Elston*, 997 F.2d at 1407.

The USDOJ Manual outlines the following framework for establishing intentional discrimination:

- (a) Recipient was aware of race, color, or national origin of impacted persons
- (b) Recipient acted, at least in part, because of the race, color, or national origin of impacted persons

An intent claim must prove that "a challenged action was motivated by an intent to discriminate." *Elston*, 997 F.2d at 1406. However, the record does not need to contain evidence of "bad faith, ill will or any evil motive on the part of the [recipient]." *Id.* (citation omitted). The USDOJ Manual further provides that evidence of discriminatory intent may be direct or circumstantial and may be found in various sources, including statements by decision-makers, the historical background of the events in issue, the sequence of events leading to the decision in issue, a departure from standard procedure (e.g., failure to consider factors normally considered), legislative or administrative history (e.g., minutes of meetings), a past history of discriminatory or segregated conduct, and evidence of a substantial disparate impact on a protected group. USDOJ Manual at 43-44 (citing *Arlington Heights v. Metropolitan Hous. Redevelopment Corp.*, 429 U.S. 252, 266-68 (1977) (evaluation of intentional discrimination claim under the Fourteenth Amendment); *Elston*, 997 F.2d at 1406).

When direct proof of discriminatory motive is unavailable, claims of intentional discrimination may be analyzed to determine whether a recipient has engaged in a "pattern or practice" of unlawful discrimination. USDOJ Manual at 46. Such claims may be proven by a showing of "more than the mere occurrence of isolated or 'accidental' or sporadic discriminatory acts." *International Bhd. of Teamsters v. United States*, 431 U.S. 324, 336 (1977). The evidence must establish that a pattern of discrimination based on race, color, or national origin was the recipient's "standard operating procedure the regular rather than the unusual practice." *Id.* Once the existence of such a discriminatory pattern has been proven, it may be presumed that every

disadvantaged member of the protected class was a victim of the discriminatory policy, unless the recipient can show that its action was not based on its discriminatory policy. *Id.* at 362.

If the case file contains sufficient evidence to establish a prima facie case of discrimination, the investigating agency must then determine if the recipient can articulate a legitimate, nondiscriminatory reason for the challenged action. USDOJ Manual at 45 (*citing McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973)). If the recipient can articulate a nondiscriminatory explanation for the alleged discriminatory action, the investigating agency must determine whether the case file contains sufficient evidence to establish that the recipient's stated reason was a pretext for discrimination. *Id.*

Factual Background

FHWA received this complaint from [REDACTED] via e-mail on November 17, 2015. [REDACTED] alleges that GDOT has programmed Safe Routes to School funds over multiple years, and continues to do so, using criteria (or a lack thereof) that disproportionately awards funding to more school districts that serve non-minority, more affluent populations, in violation of Title VI. [REDACTED] corresponded with [REDACTED] of GDOT before filing this complaint, seeking GDOT's process for scoring and awarding projects using SRTS funds. He was unable to obtain them.

As part of FHWA's investigation GDOT has provided the following information for federal fiscal years 2011 - 2015:

- 74 SRTS Infrastructure Applications
- 42 SRTS Infrastructure awardees' pre-construction reports and concept reports
- SRTS Infrastructure Program policies and procedures

SRTS funds are awarded to local governments whose projects may include multiple schools. This resulted in benefits being distributed to 107 schools throughout the State of Georgia during this time period. 170 schools were found to have been included in all local government applications for the time period.

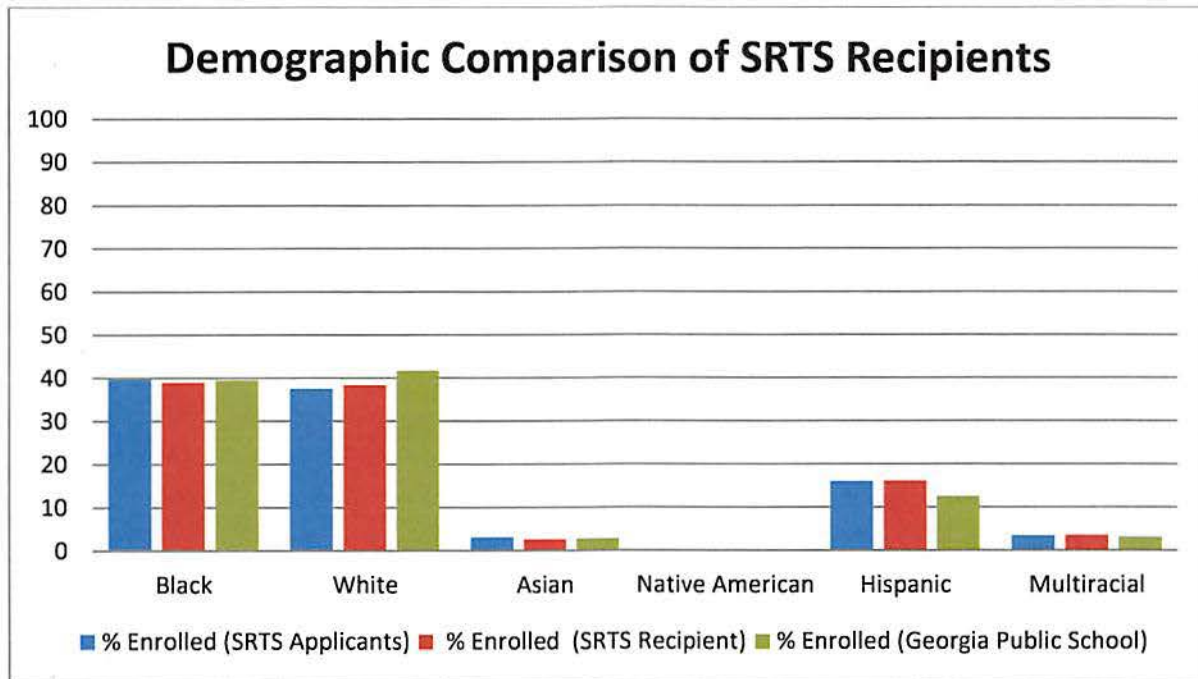
In Georgia, the Governor's Office of Student Accountability (GOSA) provides detailed demographic data for each of Georgia's public schools and the information is available online at <http://gosa.georgia.gov/downloadable-data>. The file "Enrollment by Subgroup Programs" breaks down each school's demographics by race and ethnicity. Information from the 2014-2015 school year was used to compare the demographics of SRTS awardees with those of Georgia public schools to determine if the funding was disproportionately awarded to non-minority and more affluent schools as alleged by the complainant.

FHWA's review of the demographic data showed that:

- The average SRTS awardee was 38.9% Black, 38.3% White, 2.7% Asian, 0.1% Native American, 16.1% Hispanic, and 3.6% Multiracial
- The average SRTS applicant was 39.6% Black, 37.4% White, 3.1% Asian, 0.1% Native American, 16.0% Hispanic, and 3.5% Multiracial
- The average Georgia public school was 39.5% Black, 41.6% White, 2.8% Asian, 0.1% Native American, 12.5% Hispanic, and 3.2% Multiracial

Analysis

In reviewing the demographic data, there are no clearly apparent differences suggesting that funding is disproportionately being awarded to non-minority schools. The average SRTS applicant and awardee was actually shown to have a lower percentage of White students than the average public school (38.3% vs. 41.6%). The chart below visualizes the demographics of the average SRTS awardee as compared with the average Georgia public school:



To determine if there was any measurable effect between a school's minority populations and whether or not it received SRTS funding, FHWA used a logistic regression model. Each minority racial/ethnic category percentage was used as an independent variable and whether or not a school received infrastructure funding was used as the dependent variable. An analysis of the variables representing the percentage of Black, Asian, and Native American suggested that there is no discernable statistical relationship between the percentage of these minority groups at a school and whether or not that school was awarded SRTS funds (all had p-values greater than 0.05)¹. A school's percentage of Hispanic students was statistically significant in the model with a p-value of less than 0.05, however it should be noted that according to the model a school with a higher percentage of Hispanic students was somewhat more likely to receive SRTS funds.

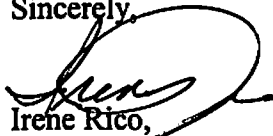
GDOT provides the policies, procedures, applications and other information related to the SRTS program through its website at <http://www.saferoutesga.org/>. A review of this and other information provided by GDOT found no evidence suggesting disparate impact or intentional discrimination in GDOT's methods and procedures for selecting schools to receive SRTS funds.

Findings

¹ A p-value is the probability under a specified statistical model (in this case logistical regression) that a statistical summary of the data would be equal to or more extreme than its observed value.

Based on the information provided by GDOT for federal fiscal years 2011 – 2015 and FHWA's analysis of the data show no violation for disparate impact or intentional discrimination in violation of Title VI related to GDOT'S Safe Routes to Schools program. This letter concludes FHWA's investigation, and the case will be closed with no further action.

Sincerely,



Irene Rico,
Acting Associate Administrator
FHWA Office of Civil Rights

cc: Rodney Barry, Division Administrator, FHWA's Georgia Division Office
Vanessa Ross, Civil Rights Specialist, FHWA's Georgia Division Office
James Esselman, Specialist Counsel, FHWA's Office of Chief Counsel (HCC-40)
Yvette Rivera, Associate Director, Equal Employment Opportunity Programs Division