



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION IX
CALIFORNIA

April 8, 2014

Dr. Nellie Meyer
Superintendent
Mt. Diablo Unified School District
1936 Carlotta Drive
Concord, California 94519

(In reply, please refer to Docket # 09-09-5001.)

Dear Superintendent Meyer:

On April 7, 2009, the U.S. Department of Education, Office for Civil Rights (OCR), notified the Mt. Diablo Unified School District (District) that it had been chosen for a compliance review. The compliance review assessed whether the District's program for English Learner (EL) students is in compliance with Title VI of the Civil Rights Act of 1964, 28 U.S.C. §2000d et seq. Title VI prohibits discrimination based on race, color and national origin. The District is a recipient of federal financial assistance from the Department and is subject to the requirements of Title VI and its implementing regulations, 34 C.F.R. Part 100.

I. Overview of the District

The District is located in Contra Costa County, east of San Francisco, California. During the 2009-10 school year, the year of OCR's investigation, it served 34,316 students in grades K-12, including 15,751 (45.9%) White; 11,743 (34.2%) Hispanic; 2,610 (7.6%) Asian; 1,698 (4.9%) African-American, and 1,488 (4.3%) Filipino. The District was made up of 54 schools. There were 29 elementary schools, ten middle schools, six comprehensive high schools, and nine community/continuation/alternative/special education schools.

According to California Department of Education (CDE) data, the District served 7,235 EL students during the 2009-2010 school year, or approximately 21% of the total student population. Approximately 82% of the EL students had a primary or home language of Spanish; the remaining 18% primarily spoke other languages, primarily Filipino, Farsi or Vietnamese. This EL population represented an increase in the number and proportion of EL students in the District over the past decade. By contrast, in 1998-99, the District served 3,589 EL students representing 10% of the total school population at that time.

Based on California English Language Development Test (CELDT) data for the 2009-2010 school year, the District's EL population tests at the following levels of proficiency

(K-12): Beginning and Early Intermediate (levels 1-2): 37%; Intermediate (level 3): 36%, Early Advanced (level 4): 23% and Advanced (level 5): 5%. OCR examined subgroup data, as described below, that described not only groups of students by proficiency level but also by years enrolled in District programs.

II. Applicable Legal Standards

The Title VI implementing regulations, at 34 C.F.R. §100.3(a) and (b)(1), provide that a recipient of Federal financial assistance may not, directly or through contractual or other arrangements, on the ground of race, color or national origin, exclude persons from participation in its programs, deny them any service or benefits of its programs, or provide any service or benefit which is different or provided in a different manner from that provided to others. Section 100.3(b)(2) provides that, in determining the types of services or benefits that will be provided, recipients may not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color or national origin.

On May 25, 1970, pursuant to its authority under Title VI, the Department issued a memorandum entitled “Identification of Discrimination and Denial of Services on the Basis of National Origin,” 35 Fed. Reg. 11,595 (May 1970 memorandum). The memorandum clarifies OCR policy under Title VI on issues concerning the responsibility of school districts to provide equal educational opportunity to limited English proficient (LEP) national-origin minority students. It states that school districts must take affirmative steps to address the language needs of limited English proficient students (ELL students). To meet Title VI standards in serving ELL students, a school district must 1) select a sound educational theory for its programs for ELL students that is likely to meet their educational needs effectively; 2) use practices, resources, and personnel reasonably calculated to implement its educational theory, and 3) demonstrate that its program is successful in teaching ELL students English and providing them with access to the curriculum, or must modify the program as necessary. See *Castañeda v. Picard*, 648 F.2d 989 (5th Cir. 1981). The May 1970 memorandum also provides that school districts must adequately notify national origin minority group parents of information that is called to the attention of other parents, and that such notice may have to be provided in a language other than English in order to be adequate.

OCR’s December 3, 1985 policy memorandum, “The Office for Civil Rights’ Title VI Language Minority Compliance Procedures” (December 1985 memorandum) clarifies OCR’s standard for determining compliance with the May 1970 memorandum. On September 27, 1991, OCR issued a policy memorandum entitled “Policy Update on Schools’ Obligations Toward National Origin Minority Students with Limited-English Proficiency” (September 1991 memorandum), which outlines the standards and procedures used to evaluate school districts for compliance with Title VI, including requiring districts to have procedures in place for identifying ELL students. The memorandum provides additional guidance for applying the May 1970 memorandum in the context of staffing, transition and/or exit criteria, and program evaluation.

III. Overview of Investigation

OCR conducted on-site visits of District schools during the 2009-2010 school year, interviewing teachers, staff, and site and District administrators, as well as reviewing District documents and procedures and site-level student data. At the time of these visits, OCR found evidence that the District was not fully implementing its adopted program at the schools visited, and that a large number of students were not receiving targeted English language development instruction, and were not making progress in learning English or participating successfully in the educational program. The investigation raised particular concerns that the District was not monitoring the progress of EL students and was not providing instruction designed to address the English language needs of those who were not making expected progress.

IV. Design of District Program for English Learners

The December 1985 policy memorandum states that OCR is to consider two general areas when evaluating a school district's alternative language program to determine compliance with Title VI: (1) whether there is a need for the district to provide alternative language services to EL students, and (2) whether the district's program is likely to meet the educational needs of language-minority students effectively. OCR's September 1991 Memorandum based on *Castañeda* provides standards to determine whether a district's program or services for EL students comply with Title VI. The Memorandum also advises districts that they retain an affirmative obligation to remedy "academic deficits" sustained by language minority students in program that temporarily emphasize English language acquisition over other subjects.

At the time of the on-site, the District's program for EL students was described in a series of policy and guidance documents, which were collected for each grade span (elementary, middle, and high school) in a document entitled "Guidelines for the Instruction of English Learners." These documents included a governing board policy and accompanying administrative rules, adopted in 2004, which set forth the District's basic expectations for the program, as well as subsequent guidance on specific program options and requirements.

The District Board Policy and Administrative Rule included basic requirements for identifying, assessing, and reclassifying EL students; for providing them with an instructional program; for ensuring that their teachers were appropriately qualified; and for evaluating the success of the program. Students were expected to be placed in educational programs based on their scores on the California English Language Development Test (CELDT). Students at 'beginning' through 'intermediate' levels (CELDT levels 1 – 3) were to be placed in structured English immersion, where they were expected to learn English and grade-level academic content simultaneously (with the exception of recently arrived high school students with limited prior schooling, who receive a program which initially concentrates on teaching English and pre-high school math and science). EL students at the 'early advanced' and 'advanced' levels (CELDT

levels 4-5) were placed in a “mainstream” program, but continued to receive English language development (ELD) instruction until they met reclassification criteria.

Since the development of the Board Policy and Administrative Rules, the District had created supplemental guidance for schools to use in implementing their programs for EL students. This guidance included a “Catch-up Plan,” which set forth performance benchmarks for EL student progress. Students were expected to meet designated performance benchmarks each year, and to qualify for reclassification as English proficient by the end of their fifth year in the program. The plan required students’ progress toward reclassification to be monitored annually, with students not meeting the designated benchmarks receiving “individual intervention plans.” These intervention plans were intended to identify additional services, such as primary language materials, additional instruction targeted to proficiency level, and after-school tutoring, that will be provided to accelerate student progress. The success of these interventions was to be monitored on a continuing basis.

Among the guidance documents developed during the years prior to the on-site were specific outlines of course placement for high school students. These documents had most recently been revised in March 2009, for implementation during the 2009-2010 school year. The guidelines for the high schools with the largest EL populations described two courses of study: one for students who were ready (or nearly ready) for grade level instruction, and one for students with limited prior schooling (at or below the third grade level) who were not ready for grade-level instruction. The guidelines specified that school principals were responsible for developing and implementing a master schedule consistent with the guidelines.

The District had not developed a comprehensive “master plan” at the time of the investigation, and the program design was outlined in a collection of documents that made it difficult for school site staff and parents to understand the requirements of the program. OCR determined, however, that the District had adopted a program approach and design that addressed the specific needs and attributes of its EL student population.

V. Program Implementation

According to OCR’s 1970 Memorandum, where inability to speak and understand the English language excludes national origin-minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students. In instances where parents refuse to enroll their children in an EL program, the school district is expected to inform parents about the purpose and benefits of the EL program in a language they understand and, if a student who has been opted out of an EL program is unable to perform at grade level without receiving the EL program, the school district is expected to periodically remind the parent that the student remains eligible for the program.

Identification and Assessment of EL students

In 2009-2010, the District operated a centralized Assessment Center that conducted all language assessments for all newly arriving EL students and continuing students at the secondary level. The Center, under the direction of the District's EL Coordinator, prepared an "English Learner's Placement" report for each school, which included a listing of all EL students, their entry date into U.S. schools, entry date into the District, "anticipated ELD level" based on years in school/entry status, state standardized testing scores, current English proficiency level based on current CELDT scores, and recommended placement. The schools were expected to use this data to place EL students in an appropriate program. The District audited EL student placements based on these reports. The Assessment Center did not administer or score CELDT tests at the elementary level and did not create English Learner Placement documents for elementary schools. Instead, elementary schools conducted CELDT testing themselves, and identified EL students based on that testing. The evidence indicated that EL students at all grade levels were identified, and that their English proficiency was being assessed on an ongoing basis.

English language development (ELD)

The District policies and class placement documents included an expectation that all EL students would receive daily systematic ELD instruction. The 2004 Administrative Rule required that all students be enrolled in ELD classes offered for at least 30 minutes daily at the elementary level and at least one class period in secondary schools. ELD classes were expected to include students whose English proficiency varied by no more than two levels. The District subsequently developed an ELD curriculum guide/course of study for grades K-12, which specified instructional strategies, materials and content standards for each level of English proficiency. In addition, the District had conducted training on an "ELD Matrix" which provided a scope and sequence for language development. The District's 13 ELD resource teachers (placed at the elementary level) developed lesson plans for the elementary ELD program, separated by grade and proficiency level. District elementary teachers accessed the lesson plans through a District intranet site.

The ELD program at the middle and high schools was designed to provide designated ELD instruction for students who had attended District schools for fewer than five years. At the time of the on-site, the most recent modification to the program design indicated that such students were generally expected to receive leveled ELD (i.e. ELD 1, 2, 3 or 4). Most were also expected to be clustered in mainstream English language arts classes for instruction with English only (EO) students (called "transitional mainstream" or TM classes). EL students who had been in District programs for five or more years were to be placed in reading support/intervention classes with EO students who were below grade level in reading.

In November 2009, the District adopted new ELD materials for grades 6-12, and made them available at all the schools shortly after the OCR on-site.

A. Cambridge Elementary

Cambridge Elementary enrolled approximately 682 students, of whom 521 were EL students. According to District data, there were 213 students enrolled in the 4th and 5th grades, 157 of whom were EL (74%). 75% of the EL students in 4th and 5th grade, had attended District schools for 4 or more years and were considered “long term” EL students. Most of these students (69%) had not yet progressed beyond the early intermediate/intermediate level of English proficiency.

OCR confirmed that all EL students received ELD for 30 minutes each day at the very beginning of the school day. EL students were placed for ELD instruction by proficiency level in each grade (4th and 5th graders were combined). No more than two proficiency levels were represented in each classroom; in most cases only one proficiency level was represented. The School’s Newcomer/ELD resource teacher provided separate ELD instruction for newly arriving students in grades 2-4. The program was about one hour a day and included initial literacy instruction in English.

The School and District described the ELD program as “systematic ELD.” Instruction was supported by staff development and the required development/provision of lesson plans. All instruction was provided by appropriately credentialed teachers (all teachers held the cross-cultural language and academic development certificate (CLAD) or the equivalent).

As part of their ELD instruction, teachers were expected to monitor the growth of their students by administering the developmental English proficiency test (ADEPT) assessment three times a year (this was a District requirement). The School was not able to describe how it used this assessment data to modify its ELD instructional program for EL students not making expected progress, particularly for those long-term EL students who had been in the District 4+ years.

OCR reviewed the educational files for ten students who were below an intermediate level of proficiency after four or more years in the District. Despite these students’ failure to reach District benchmarks, OCR did not find evidence of individual intervention plans in use in the files. Teachers had previously described concerns about the lack of progress of three of these students.

B. Oak Grove Middle School

Oak Grove Middle School enrolled 634 students, of whom about 294 were EL students. According to District data, 195 of 294 of the EL students (66%) had been enrolled in District schools five or more years and were considered “long term” EL students. Of this group, the majority (56%) were still at the early intermediate/intermediate level of proficiency. EL students at the school had not met state targets under Title III for progress in learning English (Annual Measurable Achievement Objective (AMAO) 1), reaching English proficiency (AMAO 2) or overall academic performance (AMAO 3).

Fewer than 25 EL students were reclassified as English proficient in either of the two prior years.

School administrators informed OCR that students were placed in ELD, reading and language arts classes based on data provided by the District Assessment Center, and on-site review of scores on state standardized tests and other assessments. CELDT 1-2 students generally took a 2-period ELD class; CELDT 3 students took one period of ELD 3 or 4. After completing ELD 4, students who had not yet met reclassification criteria were expected to take reading intervention (remedial reading) classes instead of, or in addition to, language arts, if they were reading below grade level. These placement criteria were consistent with District guidance for students in the District for fewer than five years.

The majority of EL students at the school had been in the district for more than five years, and most were not placed in classes on the basis of the criteria outlined above. Fewer than 50 of the 294 EL students at the site received a formal program of ELD.

Among the 87 EL students who had been in the District less than five years:

57% were enrolled in an ELD class;

17% were enrolled in a reading intervention class;

26% were in regular language arts classes without separate ELD or reading support classes (all but 5 of these students scored at the “early advanced” level on the CELDT).

Among the 195 long-term EL students at the middle school:

3% were enrolled in a designated ELD class;

60% were enrolled in a reading intervention class;

37% were enrolled in regular language arts classes without separate ELD or reading support classes. (most of these students scored a CELDT 4 or higher; however, approximately 17 of these students scored at CELDT 3).

EL students who were not enrolled in ELD or reading classes were generally clustered in transitional mainstream (TM) English classes. The teachers of these classes reported using a variety of strategies to provide the EL students in these classes with assistance, including focused vocabulary development, grammar instruction and techniques designed to improve their English reading and writing skills. They also reported that their classes were not intended to deliver a formal program of ELD.

OCR reviewed files of nine students who were below intermediate level of proficiency and were considered long-term. OCR found no evidence of individual intervention plans in use. OCR identified several students who were performing at a low level, and had

not made substantial progress in learning English for a number of years. In some cases, these students were also identified as disabled; others were suspected of needing such services but had yet been identified. Several, but not all, of these students were receiving reading intervention services.

C. Ygnacio Valley High School

Ygnacio Valley High School (YVHS) enrolled 1,433 students, of whom 367 were EL students. According to District data, 216 of 367 of the EL students (59%) had been enrolled in District schools five or more years, many since early elementary school. Of this group, 51% were still at CELDT levels 2-3 (early intermediate/intermediate), and 43% were at levels 4-5 (early advanced/advanced). EL students had not met State Title III targets for progress in learning English or reaching English proficiency. Fewer than 20 were reclassified as FEP during either of the past two years.

According to the 2009-10 model developed for Ygnacio Valley and another high school, students who had been in District schools for fewer than five years were expected to receive ELD instruction on the basis of their proficiency level. Students considered ready for grade-level instruction were to be placed as follows:

Year 1/beginning proficiency: ELD 1B (2 periods);

Year 2: Sheltered English (based on the regular 9th grade English curriculum, made accessible to EL students through sheltering strategies) and ELD 2;

Year 3: English TM (transitional mainstream -- grade level English classes enrolling both English-only and EL students) and ELD 3;

Year 4: English TM and an ELD support class;

Year 5+: Reading intervention programs.

Those not ready for grade-level instruction were to receive a two-year sequence of intensive ELD, literacy support and ELD/sheltered content instruction before proceeding to Sheltered English and ELD 2. In both cases, students in TM English classes were to receive TM English and ELD support from the same teacher.

OCR found that this program was not being implemented at the high school. Instead, newly-arrived EL students with limited prior schooling were expected to enroll in a year of ELD 1a, followed by a year of ELD 2a. These students then progressed to Sheltered English, accompanied by mixed-level ELD support classes called Academic English. New CELDT 1-2 students with prior schooling above the third grade level were enrolled in a year of ELD 1b and then progressed to Academic Language and either Sheltered English or English TM. Students who had been in the District or U.S. schools for fewer than five years continued to take Academic Language classes in addition to mainstream or TM English classes. No ELD 3 classes were offered, and only five students were enrolled in ELD 2. As a result, although the program design called for students to

receive ELD instruction that addressed their level of English proficiency for three to four years, most students received no leveled ELD instruction after their first year at the school. Even students who entered high school with less than a third grade education received only two years of leveled ELD instruction, instead of the four years contemplated in the program design.

Academic Language was variously described to OCR as a support class for mainstream English instruction and as the “ELD” class for EL students scoring at the intermediate CELDT level or higher. OCR found that the classes were not designed to address students’ level of English proficiency, as required in both the District Administrative Rule and in the 2009 guidance for placement of students at that school. Instead, they enrolled a broad spectrum of students (a large number of them below the ‘intermediate’ level) who had been in the District between one and six years. The District described the curriculum as based on teacher choice. According to the District program design, students in Academic English classes were expected to receive TM English instruction from the same teacher, and teachers informed OCR that the classes were most successful when such coordination existed. OCR was informed, however, that because of budget considerations, many students received TM English and Academic English instruction from different teachers.

OCR determined that, among the 113 EL students at CELDT levels 1 – 3 with less than 5 years in the District, 61% of those enrolled in Sheltered, TM or mainstream English had received D or F grades in English on their most recent report cards. Out of the 113 students:

15% (17) enrolled in an ELD class (all students were 2 years or less in the District);

58% (66) enrolled in “Academic Language” paired with Sheltered English I or a TM English class. Among these students, about 87% of those enrolled in Sheltered English and about 42% of those enrolled in TM English received ‘D’ or ‘F’ grades in their English classes.

17% (19) enrolled in the reading intervention program, “Academic Literacy” and a TM or regular English class; about 60% of them were receiving English grades of ‘D’ or ‘F’;

10% (11) enrolled in TM English class without Academic Language or Academic Literacy; about 55% of them received ‘D’ or ‘F’ grades.

EL students who had been enrolled in District schools for five or more years were expected to receive reading intervention (“Academic Literacy”) rather than designated ELD instruction. Academic Literacy classes were offered at two levels: strategic and intensive. Strategic students received instruction in a one-period class (these students also took mainstream English class). Intensive students received instruction in a two-period class. Academic Literacy classes served all students at the school requiring

intervention; however, a large proportion of students enrolled in these classes were long-term EL or enrolled in special education.

OCR noted the following about EL students at CELDT levels 1 – 3 with more than five years in the District. Among those students enrolled in an English class, 61% were receiving ‘D’ or ‘F’ grades in that class:

None of the students was enrolled in an ELD class;

5% (7) enrolled in “Academic Language” paired with a TM English class. About 55% of these students were receiving ‘D’ or ‘F’ grades in English;

57% (67) enrolled in the intervention program “Academic Literacy” and a TM or regular English class. Over 70% of these students were receiving ‘D’ or ‘F’ grades in English;

12% (14) enrolled in 2 periods of Academic Literacy and no TM English;

24.5% (29) enrolled in an English class without another support class;

1.5% (2) enrolled in special education English.

An analysis of grades conducted by the District during the 2008-09 school year showed that EL students were also failing English classes at a high rate during that year. At the end of the first semester of that year, 38% of the 90 students in years 1 – 4 of District enrollment who took sheltered, TM or regular English classes received D or F grades, as did 56% of the students who had been enrolled in District schools for five or more years. The same analysis found that almost 75% of the long-term EL students who were enrolled in reading intervention classes were nonetheless getting D or F grades in one or more content courses.

OCR reviewed files of 17 students who were below intermediate level of proficiency and had been enrolled in District schools for five or more years. OCR found no evidence of individual intervention plans in use. OCR identified several students who were functioning at a low level of English proficiency and had not made significant progress for a number of years. For the most part, these students were placed in reading intervention classes (“academic literacy”). OCR also reviewed the files of several long-term students receiving special education. OCR confirmed that all students were receiving special education services in a collaborative model, with either a special education teacher or aide providing instruction or support in one or more core classes.

D. Olympic Continuation High School

In 2010-2011, Olympic High School (which is the largest of the District’s continuation high schools) enrolled about 450 students, of whom 100 enrolled in a special education program. School staff explained that the school provides a setting where students who

have insufficient high school credits can make up those credits in order to graduate. Many students remain at the school until graduation because of features that are not available at comprehensive high schools, including the small size of the school and its classes. Students were taught in small grade-level classes.

At the time of the on-site, Olympic enrolled approximately 69 EL students, all but two of whom had resided in the District for five or more years. The number and proportion of EL students, however, fluctuated throughout the school year as new students started every six weeks. School administrators reported that the number of EL students had been increasing in the prior year, and that the greatest growth appeared to be EL students from Ygnacio Valley High. In the past, Olympic had not enrolled EL students below CELDT level 4 because of an informal policy; administrators reported that they continued to discourage such students from enrolling at the school because they did not have an EL program designed to meet their needs. Seventeen EL students testing at levels 2 - 3 (4 2s, 13 3s) were enrolled at the time of the on-site, primarily as the result of administrative or involuntary placements directed by the District office.

Olympic did not have designated ELD classes. Instead, EL students (and some special education students) enrolled in one of two periods of TM English with a teacher who utilized “sheltering” methods. Instruction in this class was reportedly focused on writing development and addressed specific language acquisition problems that appeared in writing, primarily for, students at the “early advanced” level.

Access to Core Instruction

EL students accessed core instruction primarily through what the District described as sheltering methodologies used in mainstream classrooms, including previewing vocabulary, use of visuals, group work, and sometimes different pacing of lessons. At the elementary school, OCR observed that teachers developed lesson plans with these strategies in place.

At the secondary schools, a few core classes for EL students were labeled “sheltered,” but EL students were generally placed with English-only students in transitional mainstream (TM) or regular mainstream classes. Teachers delivering content in classes labeled “sheltered” informed OCR that they were not able to provide grade-level instruction, while teachers in TM classes reported providing grade level instruction with sheltering support and methods. The District had provided teachers with professional development about methods to access core instruction for EL students.

The middle school had provided teachers with extensive professional development regarding instruction for English learners. The principal required every teacher to develop a “weekly plan” regarding areas of focus, content and English language arts/ELD standards they were instructing to, and how they would “check for understanding” throughout the lesson. In addition, teachers had time to collaborate by department and grade level, and to review student achievement data. The principal

spent about 50% of her day directly reviewing instruction to ensure use of these strategies.

OCR noted that Ygnacio Valley was not offering classes labeled “sheltered” consistent with the program design from March 2009. According to the program design, EL students at the beginning through intermediate levels of English proficiency should have been grouped by themselves in sheltered classes in certain subjects, including two levels of math support; and provided sheltered support classes for biology, life science, and physical science; and sheltered classes in World History, U.S. History, and Government/Economics. At the time of OCR’s visit, YVHS was offering sheltered sections only in Geometry, Algebra support (at only one level), and World History.

As part of a 2008-09 self-review at YVHS, the District determined that failure rates for EL students were high in almost all courses, and identified ten content-area courses in which between 50% and 94% of the EL students received D or F grades during the first semester. It also determined that a much higher percentage of EL students than English Only students were failing those mainstream courses for which comparative data were available.

At Olympic, TM classes were offered only in the social studies department (in addition to the TM English classes described above). Students were placed in regular classes in math and science, with some attempt made to group them in the classes of teachers who provided the greatest focus on vocabulary. In interviews with OCR, some of the teachers with EL students in their classes could not describe any methods they used to provide EL students with access to instruction.

Monitoring Student Progress

Schools should exit or reclassify EL students from the alternative language program services once they are prepared to participate meaningfully in regular instruction (i.e., are proficient in reading, writing, speaking and comprehending English) and districts should use objective measures to make sure students are fully proficient in each of these four areas before discontinuing services.

As noted above, the District’s program description included benchmarks toward English proficiency and FEP reclassification for EL students. Students’ progress toward English proficiency was expected to be closely monitored, and interventions were to be provided when students were not making expected progress. The provision of these interventions, and their success in enabling students who fell behind to “catch up,” was to be documented in an individual intervention plan.

At each of the schools that OCR visited, we identified large number of students who were not making expected progress, based on District expectations. While our analysis focused on students who were still at ‘intermediate’ English proficiency (CELDT level 3) after five or more years in District programs, we also noted that most EL students who had reached the ‘early advanced’ level, but had not acquired sufficient academic

English proficiency to qualify for reclassification as FEP, also had not met District progress expectations. OCR reviewed student files at all schools; none of these files included individual intervention plans, and few indicated that the students' failure to make expected progress had been reviewed and addressed.

OCR found that, while the District Assessment Center created lists of EL students at each secondary school that included their expected and actual levels of proficiency and other academic information, no comparable data were compiled for the elementary schools. In light of the large numbers of middle school students who had not yet reached 'early advanced' English proficiency, despite five or more years in District programs, it appears that the lack of a mechanism for monitoring elementary school student progress had negative consequences. In addition, OCR found that the data provided by the Assessment Center were used on only a limited basis, at the middle school, to review individual student progress and to identify students for whom the basic EL program was not succeeding. There was no evidence of any systematic attempt at the high school to review the records of students who were not making expected progress and to identify interventions or EL-specific program adaptations that might address their individual needs. At the continuation school, staff were not even aware of the availability of the Assessment Center data, and did not use the data to place students in classes or to monitor their progress.

OCR determined that the failure to monitor student progress was correlated with a high rate of credit deficiency among high school students. Based on a review of YVHS records from 2008-09, OCR identified 50 EL students who had not accrued enough credits to progress from grade to grade. Report cards could not initially be located for 38 of these students, indicating that they no longer attended YVHS. OCR asked the District to further investigate their status and found the following: eight had been referred to a continuation high school program but never enrolled, 13 enrolled in the District's continuation high schools (9 at Olympic), six remained at Ygnacio Valley, and the remaining 11 could not be located.

The YVHS student service coordinators informed OCR that they identified students (both EL and non-EL) who were in danger of failing to graduate due to credit deficiencies and met with all of them. However, the coordinators were able to identify only one intervention service specifically for EL students who were credit deficient. The District allowed EL students to enroll for a 5th year to earn credits, and take additional classes required for the high school diploma and/or college entrance requirements. Both coordinators reported to OCR that a small minority of EL students who were credit deficient took advantage of the 5th year.

OCR also noted the disproportionately high drop-out rate among EL students, both at YVHS and District-wide. According to California state data, the cohort drop-out rate for the class of 2009-10 (students who were expected to graduate from high school during the year of the OCR on-site) at YVHS was 29.9%; for the EL population it was 44%. The District-wide cohort dropout rate was 18.8%; for EL students it was 35.7%.

Staffing

OCR's September 1991 Memorandum states that when formal qualifications have been established and when a school district generally requires its teachers in other subjects to meet formal requirements, a district must either hire qualified teachers to provide alternative language services to EL students or require that teachers already on staff work toward attaining those formal qualifications.

The District reported that all teachers assigned to provide instruction to EL students held state credentials or certificates authorizing them to provide such instruction, or were in training and making regular progress. The teachers that OCR interviewed at all of the schools visited confirmed that they had obtained appropriate certification.

Program monitoring/program evaluation

OCR's September 1991 Memorandum requires recipients to modify their programs if they prove to be unsuccessful after a legitimate trial and further notes that as a practical matter, recipients cannot comply with this requirement without periodically evaluating their programs. If a recipient does not periodically evaluate or modify its programs, as appropriate, it is in violation of the Title VI regulation unless its program is successful.

Through its curriculum department, the District conducted annual walk-through program reviews of programs in District schools. Staff (including District and administrative staff from other District schools) reviewed the EL program as part of this process. District-level administrators were knowledgeable about the implementation of the program at the school sites.

The District used the data from the Assessment Center to generate lists of students who should be reclassified. The District completed all paperwork on reclassified students with assistance from ELD resource teachers and ELD department chairs.

In addition to the YVHS grade review referenced above, the District developed a Title III LEA Improvement Plan Addendum in December 2008, in response to a State finding that it had failed to meet AMAOs pursuant to Title III of No Child Left Behind. This report included a thorough review of EL student achievement data and of the implementation of the EL program, and identified strengths and weaknesses of the program. It noted that secondary level EL students were not consistently placed in appropriate ELD and TM classes and that ELD instruction was not systematically implemented, that long-term EL students were not consistently placed in TM content classes, that training for teacher on implementing scientifically based practices for teachers in core content areas had been inconsistent, and that parent involvement activities did not effectively engage all EL families.

OCR found that, based on these evaluation reports and reviews of implementation at the school-site level, the District was able to demonstrate an evaluation of its program

for EL students. However, OCR also found evidence that many of the recommended program changes had not been implemented.

VI. District's Revision of the Program and Services for EL Students

Prior to the conclusion of OCR's investigation, OCR learned that the District was taking actions to revise and improve its program and services for EL students. In January 2011, the District hired an outside consultant to conduct an audit of its EL program. Consistent with OCR's concerns noted above, the consultant found that a large number of EL students were not receiving specialized language services, and were not making progress in learning English or participating successfully in the educational program. The consultant also found concerns regarding a lack of monitoring of EL student progress and a paucity of targeted intervention and support programs for EL students with appropriate administrative oversight for EL students who were not successful. The consultant provided the District with a detailed list of recommended changes in its EL program.

Based on the recommendations, the District contracted with the consultant to assist in revising the District's Master Plan for Services to English Learners (Master Plan). This process began in fall 2011 with the creation of a task force of teachers, administrators and parents. OCR met with District administrators in September and October 2011 to review the recommendations of the consultant and to provide information about program components necessary for compliance with Title VI. The District posted a public version of its proposed revised Master Plan in February 2012; and OCR reviewed the draft and provided suggestions for revision.

On May 17, 2012, the District provided OCR with a revised final draft of its Master Plan. The District also provided OCR with generalized timelines for implementation of the Master Plan. OCR confirmed that the Board formally approved the Master Plan on March 11, 2013.

VII. Alignment of Master Plan with OCR Compliance Concerns

The Master Plan addresses OCR's concerns in the following areas:

- *Guidance concerning the District EL program to District schools:* Adoption of the Master Plan provides District schools, administrative departments, and parents clear guidance concerning the District's program design and the programs, instructional support, and monitoring that should occur at all schools and at all levels of District administration.
- *Implementation of the adopted program design:* The Master Plan includes a detailed schedule of activities for monitoring implementation of the program at school sites, including self-reviews, reviews of site schedules and documents by the Director of English Learner Services and other District administrators, and

school walk-throughs by site and District administrators. The Plan also requires extensive professional development and coaching by school and District-level specialists and support teachers.

- *Failure to provide English language development instruction to significant numbers of secondary level EL students:* The Master Plan clearly states that all middle and high school students must be assigned one period per day of ELD instruction until they have acquired proficiency in English. It also defines the cohorts of EL students whose needs must be addressed through ELD instruction (e.g. newly arrived students, long term English learners, etc.), and makes clear that long term English learners (ie those who have been in the District for more than five years) require ELD courses specially designed to meet their needs.
- *Failure to monitor English learners and to provide needed assistance to those not making expected progress:* The Master Plan devotes a chapter to “Monitoring Student Progress and Reclassification”. The Plan includes “expected benchmarks” for EL student progress in English proficiency and academic performance in English language arts and math. English Learner Review Teams are required to meet after each grading period to identify all students who are not making expected progress, and to develop and monitor an individualized “English Learner Catch-up plan” for each such student, and for each long term EL student.
- *Failure to provide adequate EL services at the continuation high school:* The Master Plan specifically addresses the provision of services to English learners in alternative education high schools, including continuation schools.

VIII. Implementation of the Master Plan

The District began implementation of the Master Plan, prior to its formal adoption, during the 2012-13 school year by training staff about the Plan requirements, refining the descriptions of program options to be implemented at the school sites, and implementing key program components, including daily English language development (ELD) instruction at all grade levels. In addition, it assigned staff to monitor and coach implementation of the program at the school sites.

During the 2013-2014 school year, the District expanded implementation of the instructional requirements of the Master Plan, including ELD instruction and targeted access to the core curriculum for all students. The District will also begin annual evaluation of the programs for EL students, according to detailed requirements included in the Master Plan. During the final phase of Plan implementation, beginning in September 2014, the District will implement the remaining provisions of the Plan that require the assessment of each student’s progress in learning English and accessing the core curriculum, and the development of an individual “catch-up” plans for all EL students not making expected academic progress.

OCR determined that the District's Master Plan adequately addresses the concerns raised during the OCR investigation regarding the provision of ELD instruction to all EL students, monitoring of EL student progress and provision of needed assistance to those not making expected progress, and full implementation of the program at all schools. In addition, in order to ensure that the program is fully implemented, the Board has approved the creation of several District-wide EL coach positions, and agreed to implement a "coaching model" of implementation. The District also agreed to provide release periods for teachers for coordination of services for ELs at the secondary level.

IX. Resolution Agreement

In order to resolve this review, the District executed a Resolution Agreement (Agreement) on November 15, 2013. Through the Agreement, the District committed to full implementation of the Master Plan at all District schools by September 1, 2014. Specifically, the Agreement requires that the District:

Ensure that its program for EL students provides English language services and instruction to all EL students in all educational settings, including special education, and ensure that all EL student obtain English language services and instruction, including appropriate placement of all EL students into the programs set forth in the Master Plan.

Develop and implement a Catch-up Intervention Plan for each student who has not met District benchmarks for progress toward reclassification, including all long-term English learners. Each Catch-up Intervention Plan will include a determination as to whether the student requires compensatory services, provide a description of the compensatory services that will be offered and describe how those services will be offered.

Submit annual reports to OCR that are developed consistent with the Evaluation and Accountability Section of the Master Plan, including:

copies of principals' Assurances Checklists submitted to the Director of English Learner Services for the school year;

copies of all reports created pursuant to the district- and site-facilitated reviews conducted during the prior school years, including "next steps from school improvement work";

a copy of the District's Annual Evaluation of Programs and Services for English Learners.

Submit the following information concerning staffing and professional development annually to OCR:

a list of English Learner Specialists employed at the District level during the prior year;

a list of the Site English Learner Support Teachers, with a schedule of their assigned sites;
the multi-year professional development plan developed by the Department of English Learner Services;

a schedule of professional development activities planned and/or delivered by the Department of English Learner Services during the prior year.

Based on the commitments the District has made in the Resolution Agreement, OCR has determined that it is appropriate to close the investigative phase of this compliance review. The District has agreed to provide data and other information demonstrating implementation of the Resolution Agreement in a timely manner in accordance with the reporting Agreement's requirements. OCR will closely monitor the District's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may conduct additional school visits and request additional information as necessary to determine whether the District has fulfilled the terms of the Agreement and is in compliance with Title VI and its implementing regulation with regard to the issues in review. OCR will not close the monitoring of the Agreement until it has determined that the District has complied with the terms of the Agreement and is in compliance with Title VI.

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.

Under the Freedom of Information Act, it may be necessary to release this document and related records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personal information which, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

If you have any questions about this letter, please contact James Wood, Team Leader, at (415) 486-5566.

Sincerely,

/s/

Arthur Zeidman
Regional Director

cc: XXXXXX XXXXXX, Director of English Learner Services
XXXXXX XXXXXX, Administrator, English Language Learners