



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

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

May 27, 2015

Cheryl T. Maimona, Esq.
Pepple & Waggoner, Ltd.
Crown Centre Building
5005 Rockside Road, Suite 260
Cleveland, Ohio 44131-6808

Re: OCR Docket #15-14-1351

Dear Ms. Maimona:

This letter is to notify you of the disposition of the complaint filed on September 30, 2014, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Reynoldsburg City Schools (the District), alleging that the District discriminated against English learner (EL) students based on national origin. Specifically, the complaint alleged that the District failed to provide EL students with alternative language services during a work stoppage at the District that began on September 19, 2014.

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100. Title VI prohibits discrimination on the bases of race, color, and national origin by recipients of Federal financial assistance. The District is a recipient of Federal financial assistance from the Department. Accordingly, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegation, OCR opened an investigation into whether the District failed to provide national origin minority EL students with an equal opportunity to participate in or benefit from the District's education program, in violation of the Title VI implementing regulation at 34 C.F.R. § 100.3.

OCR reviewed information provided by the Complainants and the District. Prior to the completion of OCR's investigation, the District requested to voluntarily resolve the issues of the complaint pursuant to Section 302 of OCR's *Case Processing Manual* (CPM), and signed the enclosed resolution agreement (the Agreement), which, once implemented, will fully address the issue raised in this complaint. We set forth below the applicable regulatory requirements, a summary of OCR's investigation to date, and a summary of the resolution.

Applicable Regulatory Requirements

The Title VI regulation, at 34 C.F.R. § 100.3(a), states that no person shall, on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program operated by a recipient. The Title VI implementing regulation, at Section 34 C.F.R. § 100.3(b), prohibits discriminatory acts and prohibits the use of criteria or methods of administration that have discriminatory results based on race, color, or national origin.

The OCR policy memorandum issued on May 25, 1970, entitled *Identification of Discrimination and Denial of Services on the Basis of National Origin* (the May 1970 Memorandum), 35 Fed. Reg. 11,595, articulates OCR policy under Title VI on issues concerning the responsibility of school districts to provide equal educational opportunity to EL students. The May 1970 Memorandum states, in part: "Where the 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." The May 1970 Memorandum, as affirmed by the U.S. Supreme Court in *Lau v. Nichols*, 414 U.S. 563 (1974), continues to provide the legal standards for OCR's Title VI policy concerning discrimination on the basis of national origin against EL students. In adopting the May 1970 Memorandum, the Supreme Court ruled, in *Lau v. Nichols*, that placing EL students in a regular program taught in English when they were unable to participate meaningfully in that program because of their limited English proficiency constituted discrimination on the basis of national origin in violation of Title VI.

The Departmental policy memorandum *OCR's Title VI Language Minority Compliance Procedures*, issued December 1985 (1985 Policy Memorandum), and OCR's policy update *Policy Update on Schools' Obligations Towards National Origin Minority students with Limited-English Proficiency*, issued September 27, 1991 (1991 Policy Update), set forth the standards an alternative language program must meet to comply with Title VI, using the analytic framework articulated in *Castañeda v. Pickard*, 648 F.2d 989 (5th Cir. 1981), which was adopted in the 1991 Policy Update.

School districts have an obligation to provide the staff necessary to implement their chosen program properly within a reasonable period of time. When formal qualifications have been established and when a school district generally requires its teachers in other subjects to meet formal requirements, a recipient must either hire qualified teachers for EL students or require that teachers already on staff work toward attaining those formal qualifications. School districts must ensure that the EL student-teacher ratio is proportional to the student-teacher ratio of English-speaking students and allows teachers to implement the school district's educational program. (1991 Policy Update). If a recipient uses a method other than bilingual education (such as English as a Second Language (ESL) or structured immersion), the recipient should ascertain that teachers who use those methods have been adequately trained in them. This training can take the

form of in-service training, formal college coursework, or a combination of the two. A recipient should be able to show that it has determined that its teachers have mastered the skills necessary to teach effectively in a program for EL students. (1991 Policy Update).

Additionally, the alternative program teachers must be available in sufficient numbers to ensure effective implementation of the recipient's chosen alternative program.

Alternative program support staff must be qualified for the educational support roles that they fulfill in a recipient's alternative program. Minimally, they must have the English language and native language skills appropriate to their assigned, non-instructional role in the alternative program. Certified/endorsed instructional staff must closely and appropriately supervise the support staff.

On January 7, 2015, OCR and the U.S. Department of Justice jointly issued a Dear Colleague Letter (2015 DCL), "English Learner Students and Limited English Proficient Parents," designed to assist beneficiaries in meeting their legal obligations to ensure that, in relevant part, EL students can participate meaningfully and equally in educational programs and services. The 2015 DCL provides an outline of the legal obligations of recipient institutions towards EL students, discusses compliance issues that frequently arise in OCR investigations involving EL students, and offers approaches that recipients may use to meet their obligations to EL students. The guidance provides clarifying information, for example, on a school district's responsibilities regarding staffing of EL programs, stating that recipient school districts have a Federal obligation to ensure that there is an adequate number of teachers to instruct EL students and that these teachers have mastered the skills necessary to effectively teach in the district's program for EL students.

Summary of OCR's Investigation to Date

Reynoldsburg is a first-ring suburb of Columbus, Ohio. The District, as reported on its website in February 2015, serves approximately 7,000 students in six elementary schools, four middle schools, and four high school academies. The District reported to OCR that approximately 486 District students receive services pursuant to an EL intervention plan. From September 19, 2014, to October 9, 2014, the teachers at the District went on strike for a total of 15 instructional days.

Based on the documentation provided by the District, in anticipation of the strike, the District contracted with a strike management firm for alternative teaching staff and security personnel, including 360 temporary replacement teachers. The contract did not specify the credentialing of the temporary teachers or any criteria or metric to be utilized in determining assignment of the temporary staff within the District. However, in preparation for the strike, administrators held at least 10 preparation sessions aimed at addressing staffing issues. Retired administrators were also brought in to these meetings to assist with the preparation.

Administrators utilized the document "Procedures for School Personnel in the Event of a Teacher Work Stoppage" (work stoppage procedures), which provided concrete

requirements for the operation of schools during the strike. The copy of the work stoppage procedures provided to OCR was not completed. The document included blanks that were not filled in and sets of options where none were selected. OCR was not provided a copy of the document specific to the work stoppage in September and October 2014. The work stoppage procedures did have the stated goal to keep District schools open and “functioning at the highest level of effectiveness possible.” The document outlined how District personnel were to interact with the media, assigned responsibility and duties for various District and building level operations, and outlined how employee leave was to be documented (authorized/unauthorized) in various scenarios. The document also offered a general guideline that principals were to see to the necessary staffing of all programs, in collaboration with the administration, with priority given to “classroom coverage and the teaching of basic skills.” The document did not mention or otherwise provide for the specific educational needs of EL students.

The District also provided OCR a checklist, titled “[District] Checklist for Teacher Strike.” The checklist identified several topics to be addressed in the weeks leading up to a work stoppage. The topics included testing and attendance, student discipline, extracurricular athletics programs, and special education, as well as breakfast and lunch programs; the document did not specifically discuss services for students on EL intervention plans. There was no documentation regarding the provision of services for EL students during the September-October 2014 work stoppage.

The District asserted to OCR that because the September-October 2014 teachers’ strike occurred during the last three weeks of the first quarter grading period, the District extended the end of the first grading period through the end of what was traditionally the second quarter grading period to provide students with more time to complete any online or classroom assignments.

Voluntary Resolution Prior to Conclusion of OCR’s Investigation

As noted above, prior to the completion of this complaint investigation, the District expressed interest in resolving this complaint under Section 302 of the CPM. The CPM provides that a complaint may be resolved before the conclusion of an OCR investigation if a recipient asks to resolve the complaint and signs a resolution agreement that addresses the complaint allegation(s). Such a request does not constitute an admission of liability on the part of the District, nor does it constitute a determination by OCR that the District has violated any of the laws that OCR enforces. The provisions of the resolution agreement are to be aligned with the complaint allegation(s) or the information obtained during the investigation and consistent with applicable regulations.

On May 19, 2015, OCR received the enclosed Agreement, which, when fully implemented, will resolve the complaint. The Agreement requires the District to offer each EL student who is currently enrolled at the District and was enrolled and receiving services as part of the District’s ESL program during the fall 2014 work stoppage remedial services consistent with the student’s previously developed EL intervention plan in order to address any loss of services suffered as a result of the work stoppage. The

District must also revise its work stoppage procedures to include a specific discussion of how to prevent service disruption for EL students in the event of a future teacher strike or other work stoppage. Additionally, within 45 days of OCR's approval of the plan, the District must publicize the plan and make it available to the general public.

In light of the signed Agreement, OCR finds that this complaint is resolved, and we are closing our investigation as of the date of this letter. OCR will, however, monitor the District's implementation of the Agreement. Should the District fail to fully implement the Agreement, OCR will take further appropriate action to ensure compliance with Title VI.

Conclusion

This concludes OCR's investigation of the complaint and 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 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.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the harmed individual may file another complaint alleging such treatment.

A complainant may file a private suit in federal court, whether or not OCR finds a violation.

We appreciate your cooperation and that of the District during the preliminary investigation and resolution of this complaint. If you have any questions about this letter or OCR's resolution of this case, you may contact Donald S. Yarab, Supervisory Attorney/Team Leader, at (216) 522-7634. For questions about implementation of the Agreement, please contact Chandra Baldwin, who will be monitoring the District's implementation of the Agreement, at Chandra.Baldwin@ed.gov or at (216) 522-2669. We look forward to receiving the University's first monitoring report by July 15, 2015. Should you choose to submit your monitoring reports electronically, please send them directly to Ms. Baldwin's e-mail address.

Sincerely,

/s/

Meena Morey Chandra
Director

Enclosure