



U.S. Department of Justice
Civil Rights Division

U.S. Department of Education
Office for Civil Rights



August 26, 2011

Via Facsimile and United States Mail

Mr. John Huppenthal
Superintendent of Public Instruction
Arizona Department of Education
1535 West Jefferson Street
Phoenix, Arizona 85007
602.542.5440

Kevin D. Ray
Section Chief Counsel
Education and Health Section
Arizona Office of the Attorney General
1275 West Washington Street
Phoenix, Arizona 85007-2926
602.364.0700

RE: **Arizona Department of Education**
OCR Case Number 08-10-4038
DJ 170-8-408
DJ 169-8-84

Dear Superintendent Huppenthal and Mr. Ray:

The Office for Civil Rights of the U.S. Department of Education (OCR) and the Civil Rights Division of the U.S. Department of Justice (DOJ) write to notify you of our determination with respect to the above-referenced matters regarding the Arizona Department of Education (ADE). On May 18, 2010, we received a statewide discrimination complaint against ADE, in which the complainant alleged that ADE discriminates against teachers of ADE's English Language Learner (ELL) program on the basis of national origin. The complainant specifically alleged that ADE enforces a policy, procedure, or practice that results in the removal of teachers from ELL classes based on a determination that their spoken English is accented or ungrammatical; the complainant further alleged that the policy may also have unlawfully discriminated against the ELL students who previously had been taught by the teachers who had been removed by the policy. We recognized that ADE denies these allegations. For the reasons set forth below, OCR and DOJ are closing the above-referenced matters effective the date of this letter.

Both OCR and DOJ are responsible for enforcing Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (Title VI), and its implementing regulation, 34 C.F.R. part 100. Under Title VI and its regulation, recipients of federal financial assistance are prohibited from discriminating on the basis of race, color, or

national origin. ADE is a recipient of financial assistance from the U.S. Department of Education and, therefore, is subject to Title VI and its implementing regulation. Additionally, Local Educational Agencies (LEAs) in Arizona that receive federal financial assistance are required to comply with Title VI, including LEAs subject to ADE's ELL monitoring procedures. Title VI also prohibits any recipient from intimidating or retaliating against an individual for the purpose of interfering with his or her rights under Title VI, or because he or she has filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing.

DOJ is further authorized to enforce Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* (Title VII), with respect to state and local government employers, and the Equal Educational Opportunities Act of 1974, 20 U.S.C. § 1701, *et seq.* (EEOA). Title VII prohibits an employer from discriminating against an employee on the basis of race, color, religion, sex, or national origin. Title VII also prohibits an employer from discriminating against an employee because he or she has opposed any practice made unlawful by Title VII, or because he or she has made a charge, testified, assisted, or participated in an investigation, proceeding, or hearing. Section 1703(d) of the EEOA, with limited exceptions, prohibits discrimination by a state or local educational agency on the basis of race, color, national origin, and sex in the employment, employment conditions, or assignments to schools of its faculty or staff.

On August 5, 2010, DOJ notified the State that its then-current application of Ariz. Rev. Stat. § 15-751(2)¹ might violate Title VII and the EEOA and that DOJ would be conducting an investigation.

In a subsequent letter dated November 15, 2010, OCR and DOJ notified the State of their joint investigation of the complaint under the above-referenced statutes and requested information. DOJ and OCR were concerned that ADE's application of ARS § 15-751(2) might violate Title VII by discriminating against Hispanics and others who are not native-English speakers who work as or wish to work as public school teachers in Arizona, and that such discrimination could deny public school students in Arizona equal educational opportunities on the basis of national origin in violation of Title VI and the EEOA. *See* 20 U.S.C. §1703(d). In subsequent correspondence, the State provided responses to those requests. At the commencement of our investigation, ADE's on-site monitoring process included on-site visits to LEAs to monitor their ELL teachers' English fluency using subjective evaluations. Examples of concerns documented by ADE during their on-site classroom visits include: "the" pronounced "da," "another" pronounced "anuder," and "lives here" pronounced "leevies here." Based only on the brief classroom on-site visits, ADE required LEAs to create and implement corrective action plans to resolve ADE's concerns about teachers' accent for spoken English, even when LEAs did not have concerns about the teachers' English fluency and had already assessed the teachers' English fluency using objective measures.

When DOJ and OCR requested information regarding this monitoring process, ADE defended its actions based on the fluency requirement in Title III of the No Child Left Behind Act of 2001, 20 U.S.C. § 6801 *et seq.* (NCLB Title III). *See* Letter from Pollock to Martinez-Gonzalez at 1 (Mar. 16, 2011). Following clarification provided to ADE from the Department of Education's Offices of General Counsel and Elementary and Secondary Education regarding this requirement, DOJ and OCR received correspondence from ADE confirming its commitment to change its on-site teacher English fluency monitoring practices. ADE will now focus its inquiry on whether LEAs have certified that their teachers

¹ Ariz. Rev. Stat. § 15-751(2) provides that "'English language classroom' means a classroom in which English is the language of instruction used by the teaching personnel, and in which such teaching personnel possess a good knowledge of the English language."

are fluent in English. ADE has submitted a revised ELL monitoring guide that confirms to OCR and DOJ that ADE has made this change.

Based on ADE's decision to change its policy, OCR determined that insufficient facts exist to establish a Title VI violation and that its investigation of the complaint can be closed. Similarly, based on this voluntary change in policy, DOJ determined that it can close its Title VII and EEOA investigations.

This letter sets forth DOJ's and OCR's determination in the above-referenced matters and, accordingly, is specific to the allegations set forth in the complaint. This letter is not a formal statement of policy and should not be relied upon, cited, or construed as such. Formal policy statements are approved by duly authorized DOJ or OCR officials and made available to the public. The complainant may have the right to file a private suit in Federal court whether or not we found a violation.

Title VI regulations prohibit ADE from intimidating or harassing anyone who files a complaint with our offices or who takes part in an investigation. Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If we receive such a request, we will protect personal information to the extent provided by law.

We thank you and your staff for cooperating in the investigation and for taking steps to resolve the issues raised by the investigation. If you have any questions, you may contact Toni Jackson at (202) 305-3194 or toni.jackson@usdoj.gov; Torey Cummings at (202) 305-4204 or torey.cummings@usdoj.gov; and Angela Martinez-Gonzalez at (303) 844-6083 or angela.martinez-gonzalez@ed.gov.

Sincerely,

/s/

Toni Michelle Jackson
Senior Trial Attorney
Employment Litigation Section
DOJ Civil Rights Division

/s/

Torey Cummings
Trial Attorney
Educational Opportunities Section
DOJ Civil Rights Division

/s/

Angela Martinez-Gonzalez
Supervisory General Attorney
OCR Denver Enforcement Office

cc: Jordan Ellel
Assistant Attorney General
Arizona Office of the Attorney General

Adela Santa Cruz
Deputy Associate Superintendent
Office of English Language Acquisition Services

Complainant