



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

600 SUPERIOR AVENUE EAST, SUITE 750  
CLEVELAND, OH 44114-2611

REGION XV  
MICHIGAN  
OHIO

MAY 30, 2012

Mr. Brian J. Whiston  
Superintendent  
Dearborn Public Schools  
18700 Audette Street  
Dearborn, Michigan 48124

Re: OCR Docket #15-10-5001

Dear Superintendent Whiston:

By letter dated March 31, 2010, Assistant Secretary for Civil Rights Russlynn Ali of the U.S. Department of Education (Department), Office for Civil Rights (OCR), notified the Dearborn Public Schools (the District) that OCR was initiating a proactive review to evaluate the District's compliance with 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. OCR's review addressed whether national-origin minority, limited English proficient (LEP) parents are being denied meaningful communications of school-related information in a language they can understand and thus subjected to discrimination on the basis of national origin. The investigation also addressed whether English language learner (EL) students receive equal access to non-academic programs and activities, including counseling services.

OCR's investigation examined evidence related to the following issues: identification of LEP parents, methods used to communicate with LEP parents, provision of competent interpreters and translation services for LEP parents, and provision of effective counseling services to EL students.

Based on its investigation, OCR determined that the District is not in compliance with Title VI with respect to the issues of the review. OCR explains the bases for its findings below.

### **Applicable Legal Standards**

Title VI and its implementing regulation prohibit discrimination on the basis of race, color, or national origin by recipients, including the District, of Federal financial assistance from the Department. The Title VI implementing regulation at 34 C.F.R. § 100.3(a) and (b)(i)-(ii) provides 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. The memorandum clarifies OCR policy under Title VI on issues concerning the responsibility of school districts to provide equal educational opportunity to LEP national-origin minority students. The May 25, 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.

In September 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 EL students. The September 1991 memorandum also discusses longstanding OCR policy that school districts may not maintain “no dual services” policies or practices. If an EL student with disabilities needs both alternative language services and special education services, the student should be given both types of services. Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104 prohibit discrimination on the basis of disability in programs or activities operated by recipients of Federal financial assistance, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12132 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35 prohibit discrimination on the basis of disability by public entities.

Based on the general prohibitions of different treatment under Title VI, EL students may not, on the basis of national origin, be denied access to or treated differently than other students with respect to nonacademic and extracurricular programs, services, and activities, such as guidance and counseling services, provided by a school district.

### **Summary of Investigation**

During its investigation, OCR reviewed documents the District provided, including District policy documents, newsletters, and enrollment data. OCR also interviewed staff and administrators at select District schools that represent the different types of schools that exist in the District. Specifically, OCR interviewed staff and administrators at: Henry Ford Elementary School, Long Elementary School, Smith Middle School, Salina Intermediate School, Unis Middle School, Woodworth Middle School, Edsel Ford High School, Fordson High School, Dearborn High School, Henry Ford Early College, and Howe Montessori School. Finally, OCR held a community meeting in the District to obtain input from parents about the issues of the review.

In the 2010-2011 school year, the District had 19,118 students, of which 11,753 were identified as EL. Of the total EL students, 11,240 (95.6%) identified their home language as Arabic while the remaining 513 (4.4%) represented 46 other home languages, including Urdu, Spanish, Albanian, and Romanian.

The city of Dearborn is the most densely populated Arab community in the United States. The 2010 census determined that approximately 30,000 of its 100,000 residents are Arab. Several schools within the District, including one of the high schools, have majority Arab populations. The EL students identified with a low incidence home language, 513 of the identified 11,753 EL students during the 2010-2011 school year, are enrolled in schools throughout the District. The District borders the city of Detroit and has thirty schools, including nineteen elementary schools; seven schools that are middle, intermediate, or K-8 schools; and four high schools.

The District advised OCR that it identifies LEP parents through the use of a Home Language Survey (HLS), which is given to every parent enrolling a child in the District and which asks: "What languages are spoken in the home?" and "Is the language either a primary or secondary means of communication?" These are the only two questions asked by the survey, and the survey is available in English only. The District does not ask in any enrollment or other District document or through any other method whether LEP parents need translation or interpretation services. At schools that serve populations with a large percentage of Arabic-speaking LEP parents, there usually is at least one secretary who speaks Arabic and English, and that secretary or an Arabic-speaking paraprofessional at the school can help Arabic-speaking LEP parents with the HLS. The District does not have any established process to assist non-Arabic-speaking LEP parents who must fill out enrollment forms, including the HLS. One District secretary provided an example of having asked a French teacher to help when a French-speaking LEP parent needed assistance.

The District primarily relies upon bilingual staff members to provide interpreter services for LEP parents when needed. District schools that serve a large Arabic-speaking community typically have a large percentage of bilingual English- and Arabic-speaking staff, including principals, secretaries, paraprofessionals, and teachers. Additionally, the District employs paraprofessionals who speak English and Urdu, Romanian, Albanian, or

Spanish. The District does not employ staff members who speak other low incidence languages that are represented in the District, such as Greek, Portuguese, Vietnamese, Italian, and Polish, and thus the District does not provide staff interpreter services or offer other interpreter services for LEP parents who speak those low incidence languages.

With respect to counseling services for EL students, District officials explained that a common practice is for a school to assign a bilingual Arabic-speaking counselor to students whose last names begin with “A”, in an attempt to ensure that the largest number of students with Arabic last names will receive counseling services in a language they understand.

With respect to translation services, the District does not have any established process for the translation of important educational documents into languages other than English. For example, report cards and progress reports generally are available in English only. District staff did note, however, that Arabic-speaking staff may contact an Arabic-speaking LEP parent to discuss a progress report. No similar service is made available to other LEP parents. The District’s practice to date has been to translate documents only into Arabic, if at all. For example, the District provides its Code of Conduct to its schools in both English and Arabic. The only document available to District LEP parents in a language other than English or Arabic is a document on “Section 504 Due Process Rights”, which was translated into Spanish by the State of Michigan and then provided to Michigan school districts, including the District. As such, this document is available to District Spanish-speaking LEP parents. Internet sites are available only in English (one exception is that the Dearborn High School’s counseling website does provide a statement in Arabic explaining to students how to request Arabic language assistance and providing contact information). The District’s “Parent Connect” (an online system that allows parents to monitor their child’s academic progress in school) is available only in English.

OCR found that other District or school documents are translated to Arabic on an ad hoc basis only at the discretion of the building principal. As a result, some schools with large Arabic-speaking LEP parent populations translate into Arabic nearly every document that is sent home, with English on one side of a page and Arabic on the reverse, whereas schools with small Arabic-speaking LEP parent populations typically do not provide any documents in a language other than English. Some buildings rely on an online translation program for translating certain documents into Arabic, but there is no translation program used to translate documents into any other languages.

OCR’s investigation revealed that the District relied upon bilingual staff members to translate school documents and, for those schools that offer school documents translated into Arabic, the translator tends to be a community liaison.

OCR found that some documents, such as District newsletters, contain misleading and erroneous language assistance information. For instance, the District newsletter contains a notice stating “If you have difficulty understanding this notification, please call the Bilingual and Compensatory Education office at 827-2007,” and the notice is given only

in Albanian, Arabic, Italian, Romanian, and Spanish and not the other languages spoken by District parents. However, no one interviewed by the District, including the head of the Bilingual Office, could identify who would be responsible for translating a document into a language other than Arabic. Rather, while many witnesses stated that they could request to have documents translated by the District's Bilingual Office, the person responsible for the Bilingual Office stated that she was in charge of the District's foreign language program, which she stated was "Arabic," and that the Bilingual Office was not responsible for translating documents.

The District does not have any established process for notifying LEP parents in the District of the availability of interpretation services or translated documents or how to request them. Multiple District witnesses stated that with non-Arabic-speaking LEP parents, it is common for the family to bring their own interpreter, usually a family member, to assist them with meetings with District staff. At several schools, staff informed OCR that children are often used to provide interpretation for languages other than Arabic.

The District indicated that it has not taken steps, other than informal observation, to ensure that its interpreters and translators are competent to interpret or translate. The District has not determined whether its interpreters and translators are proficient in English and the language being interpreted or translated. The District has also not taken steps to ensure that its interpreters and translators have been trained on translating or interpreting, including the related ethical issues (such as privacy concerns). OCR also learned that individuals who interpret for individualized education program (IEP) meetings for students with disabilities may lack familiarity with the specialized terms being used in such situations.

District staff members also have not received guidance on how to communicate with LEP parents in a language other than English, including how and where to refer LEP parents (including those speaking a lower incidence language) who seek interpreter or translation services. While some witnesses noted that, for documents like report cards or progress reports, a parent need only speak with the teacher and the teacher could obtain interpretation services in order to communicate relevant information, this was clearly understood by District witnesses to only be the case in circumstances involving an Arabic-speaking LEP parent for whom an interpreter would be relatively easy to find and not an LEP parent who spoke a language other than Arabic. Also, as noted above, although some staff members believed that they could request to have documents translated by the District's Bilingual Office, the person responsible for the Bilingual Office denied that the office was responsible for translating documents.

### **Analysis and Conclusion**

Based on the foregoing, OCR finds that the District does not meet the requirements of Title VI with regard to providing meaningful access for national origin-minority LEP parents to important information about their children's education in a language they can understand. The District does not adequately notify LEP parents of important school-related information that is made available to non-LEP parents.

The District does not have an effective process for determining whether it has LEP parents and for identifying the language needs of these LEP parents so that it can provide appropriate and adequate language assistance to them. The District relies solely on the HLS provided when a child is enrolled to identify national origin-minority LEP parents. This survey is available only in English; it is not available in any translated versions and LEP parents are not notified of the availability of any interpreter services to assist them in completing the form. Moreover, while the survey responses reveal whether languages other than English are used in the home, the District does not solicit information in the survey or otherwise as to the language needs of the parents in the home, including whether the parents require notice of school activities in a language other than English.

In addition, the District does not notify any of the LEP parents of the availability of translation and interpreter services and does not make such services available to all LEP parents who need language assistance. While the District takes some ad hoc measures to provide interpretation and translation services to its Arabic-speaking LEP parent community, it fails to consistently provide services even for the Arabic-speaking LEP parents. Also, the District does not routinely translate or interpret routine and important educational documents, such as report cards or progress reports, for Arabic-speaking LEP parents, and the availability of translated school documents for Arabic-speaking LEP parents differs at the school level in large part based upon the size of the Arabic-speaking student population at a school and discretion of the school principal. Some progress reports are followed up with telephone calls in Arabic from District employees to Arabic-speaking LEP parents, but the District does not provide this service for other language groups. Parent Connect, which serves to keep parents apprised of a student's academic progress using technology, is not offered in any languages other than English and LEP parents are not advised of how to obtain interpreter or translation services to access the information on these systems.

While a District official who is able to serve as an interpreter to Arabic-speaking LEP parents is typically available, there is no system in place (including, for example, making available telephonic interpreter services) to facilitate communication with an LEP parent who speaks neither English nor Arabic, despite the variety of other language groups represented in the District. For languages other than Arabic, the District, has, on occasion, relied on staff, such as foreign language teachers, to assist non-Arabic speaking LEP parents. Generally, however, the evidence supports that interpreter and translation services are not offered for LEP parents who speak a home language other Arabic, which

leaves underserved or, in most instances, completely unserved a large number of other language minority groups in the District, such as Albanian, Italian, Romanian, and Spanish.

The District does not have any established method for sharing appropriate information about the language needs of LEP parents with District teachers and staff, and has not provided adequate and accurate guidance to staff about communicating with LEP parents in a language other than English. Most District witnesses were not familiar with any District process for obtaining translation and interpretation assistance other than the services of available staff at their school and, therefore, do not know how to direct or otherwise assist an LEP parent requiring such assistance or how to obtain such services for their own communications with LEP parents.

Finally, the District has not ensured that the interpreters and translators it does use are competent, that is, that the interpreters are proficient in English and in the language the LEP parent understands and are trained in translating and interpreting, including related ethical matters.

In addition, based on the evidence gathered during the review, OCR also finds that the District denied EL students, on the basis of their national origin, access to and treated them differently than other students with respect to the District's nonacademic and extracurricular programs, services and activities, such as guidance and counseling services. The District provided interpreter and translation services for these services to EL students only on an ad hoc basis, and then only for Arabic-speaking EL students.

### **Other Potential Compliance Concerns Noted During the Review**

As noted above, the District has chosen to identify EL students through a two question-HLS that asks the following questions: 1) "What languages are spoken in the home?" and 2) "Is the language either a primary or secondary means of communication?" While the District's HLS asks important questions, the District's reliance on this survey to identify EL students may result in the under-identification of these students because the survey does not specifically ask what languages are spoken or acquired by the student.

While not the subject of this compliance review, during the course of OCR's investigation several witnesses made statements that alerted OCR to potential concerns with respect to the provision of special education services required by Section 504 and Title II to EL students with disabilities. For example, one teacher reported that no students receive both EL and special education services and that EL students are not evaluated for special education or related services until they attend school in the District for five years. However, as noted above, EL students who require special education services due to a disability and also require alternative language services are entitled to receive both services. Furthermore, the District should ensure that testing of EL students to determine whether they have a disability is done in a language they can understand and that LEP parents are provided a meaningful opportunity to participate in the process.

### **Resolution of Review**

On May 23, 2012, the District signed the enclosed agreement, which, when fully implemented, resolves the issues of this review. Pursuant to the agreement, the District will develop and implement a comprehensive, written plan to provide language assistance services to LEP parents that ensure that they have meaningful access to the District's programs and activities; conduct an annual evaluation of the effectiveness of its language assistance services for LEP parents; develop and implement a process for notifying EL students in a language they understand of the availability of interpreter and translator services available with respect to nonacademic and extracurricular programs, services, and activities, such as guidance and counseling services; revise its HLS so that it asks for more information to help the District accurately identify EL students; adapt its disability pre-referral, referral, evaluation, and placement policies, procedures, and practices to ensure that EL students are not misidentified and placed as students with disabilities or denied appropriate special education services, related aids and services, or EL services if they require both disability and EL services; review all of its EL students currently identified as students with disabilities to determine whether each student's identification, placement, and services are appropriate; and ensure that students who require EL services are not denied those services because of disability status.

OCR will monitor the implementation of the agreement and the District's actions to ensure the District's compliance with Title VI. The District has agreed to provide data and other information in a timely manner in accordance with the reporting requirements of the agreement. OCR will conduct additional 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 with regard to the issues in the review. Should the District fail to fully implement the agreement, OCR will take appropriate action to ensure the District's compliance with Title VI, including possibly initiating administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce this agreement, OCR shall give the District written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

This letter sets forth OCR's determination in an individual OCR case. It 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.

We appreciate the courtesy and cooperation shown by the District during the course of this review. We look forward to receiving your first monitoring report by June 29, 2012.

If you have any questions about this matter, please contact Mr. Daniel Scharf, the OCR employee who will oversee the District's implementation of the agreement, at (216) 522-7627 or by e-mail at [Daniel.Scharf@ed.gov](mailto:Daniel.Scharf@ed.gov).

Sincerely,

/s/ Catherine D. Criswell

Catherine D. Criswell  
Director

Enclosure

cc: Dr. Jill Chochol  
Associate Superintendent of Elementary Education