

June 12, 2018

Dr. James Pedersen
Superintendent
Essex County Vocational School District
Leroy F. Smith Jr. Public Safety Building
60 Nelson Place 1 North
Newark, New Jersey 07102

Re: Case No. 02-13-1097
Essex County Vocational School District

Dear Superintendent Pedersen:

This letter is to notify you of the determination made by the U. S. Department of Education, Office for Civil Rights (OCR), in the above-referenced complaint filed against the Essex County Vocational School District (the District). The complainant alleged that the District discriminated against students at Newark Tech (the School), on the basis of their national origin, during school year 2012-2013, by improperly identifying, assessing, and placing students in the District's English as a Second Language (ESL) program (Allegation 1); failing to effectively implement the District's ESL program at the School (Allegation 2); failing to exit students appropriately from the ESL program at the School (Allegation 3); treating students who are English language learners (ELL) differently from non-ELL students, by excluding them from certain higher-level academic courses (such as chemistry and foreign language courses) and instead placing ELL students in lower-level or remedial academic courses (Allegation 4); disciplining ELL students more frequently than non-ELL students (Allegation 5);¹ and, denying limited English proficient (LEP) parents access to educational information in their home languages at PTA meetings (Allegation 6).²

¹ Regarding Allegation 5, OCR's notification letter, dated May 16, 2013, initially framed the allegation as follows: the District disciplined ELL students more harshly than non-ELL students; however, during the course of OCR's investigation, OCR determined that it is more accurate to state that the complainant's allegation is that the District disciplined ELL students more frequently than non-ELL students.

² The complainant further alleged that the District retaliated for her advocacy on behalf of ELL students by: denying the complainant access to student records during school year 2012-2013 (Allegation 7); encouraging other teachers to write complaints about her during school year 2012-2013 (Allegation 8); informing her that she required professional development in September 2012 (Allegation 9); giving her unfavorable performance evaluations, from December 2012 through March 2013 (Allegation 10); failing to provide her with notice of meetings for the Technology Committee and Returning Student Committee during school year 2012-2013 (Allegation 11); and, denying her the opportunity to participate on the Intervention and Referral Services committee during school year

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), as amended, 42 U.S.C. § 2000d et seq., and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in programs and activities receiving financial assistance from the Department. The District is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate this complaint under Title VI.

The regulation implementing Title VI, at 34 C.F.R. § 100.3(a), provides that no person shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination. The regulation implementing Title VI, at 34 C.F.R. § 100.3 (b)1(i)-(vi), provides that a recipient of federal financial assistance may not, directly or through contractual or other arrangements, on the basis of race, color, or national origin, deny an individual any service or other benefit; provide a service or other benefit which is different or provided in a different manner; subject an individual to segregation or separate treatment in any matter related to the receipt of any service or other benefit; restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or other benefit; treat an individual differently from others in determining whether the individual satisfies any eligibility or other requirement or condition which individuals must meet in order to be provided any service or other benefit; or, deny an individual an opportunity to participate which is different from that afforded others. Further the regulation implementing Title VI, at 34 C.F.R. §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.

During its investigation, OCR reviewed documentation that the complainant and the District provided. OCR also interviewed the complainant and several District employees including the XXX and XXXXX XXXXXXXXXX Supervisor, Assistant Superintendent of XXXXXXXXXX and XXXXXXXXXXXXX, and the XXXXXXXX XXXXXXXXXX XXXX Supervisor.

Prior to the conclusion of OCR's investigation, the District expressed interest in resolving the complaint without further investigation pursuant to Section 302 of OCR's Case Processing Manual. Accordingly, on June 6, 2018, the District signed a resolution agreement to resolve Allegations 1-6 without further investigation by OCR.

2012-2013 (Allegation 12). During the course of OCR's investigation, the District provided documentation to OCR indicating that the complainant filed a civil complaint against the District in the Superior Court of New Jersey (the Court) on XXXXXXXX XX, , in which she alleged the same or similar allegations of retaliation in her individual employment, as described in Allegations 7 through 12 of her complaint filed with OCR. Pursuant to OCR's case processing procedures, OCR will dismiss allegations when a complainant has filed the same or similar allegations against the same recipient with a state court. By letter dated February 23, 2015, OCR notified the complainant and the District that it had dismissed Allegations 7-12 pursuant to OCR's case processing procedures. Pursuant to OCR's case processing procedures, a complainant can refile the complaint allegations with OCR within 60 days following termination of the court proceeding if there has been no decision on the merits or settlement. Dismissal with prejudice is considered a decision on the merits. OCR determined that the case was dismissed with prejudice on XXXXX X, XXXX).

Allegation 1:

The complainant alleged that the District discriminated against students at the School, on the basis of their national origin, during school year 2012-2013, by improperly identifying, assessing, and placing students in the District's ESL program. Specifically, the complainant asserted the following:

- (a) Students who had not received ESL services in middle school were offered ESL services at the School, even though they had not previously needed such services.
- (b) The District failed to properly administer ESL placement assessments to students before entering the School; specifically, some students were not given the placement test at all, and others were given the placement test mid-way through their freshman year rather than upon enrollment.
- (c) The District refused to allow the complainant or parents to see copies of the placement test, despite the fact that some parents specifically requested to see the assessment and that it would be “natural” for teachers to be able to review a student's placement test.³
- (d) As of January 2013, some tenth grade students were given tests with the first few pages blank, which would not have been appropriate because the test was designed to allow the students to complete as much of the test as they could.
- (e) The assessment for incoming twelfth grade students was not “administered properly.”⁴
- (f) Students were incorrectly placed into the various tiers.⁵
- (g) Several students remained in the ESL program when they entered the School even though they should have tested out of the program.

The complainant did not provide the names of any particular students whose alleged experiences formed the basis of her assertions.

A school district should have procedures in place for identifying and assessing students who have a primary home language other than English (PHLOTE) to ensure that all language-minority students who are unable to participate meaningfully in the regular instructional program are receiving alternative language services. Generally, these procedures must include an

³ OCR determined that for school year 2012-2013, the complainant was one of XXXXX teachers certified in XXXXXXXXXXXX and/or XXX education at the School.

⁴ The complainant did not provide any specific details in support of this assertion.

⁵ The complainant explained that there are different tiers of ESL assessments (Tier A, B, and C), which pertain to the amount of ESL instruction that students have received. For example, Tier A students have no ESL experience and they are typically students who have just arrived in the United States from their home country.

assessment of whether national-origin minority students proficiently speak, understand, read, and write English.

During school year 2012-2013, the year that OCR initiated this complaint investigation, the School had an enrollment of 749 students. The racial/ethnic composition of the students enrolled in the School for school year 2012-2013 was as follows:

Student Enrollment by Race/Ethnicity during School Year 2012-2013						
White	Black	Hispanic	Asian	Indian	Pacific Isl	TOTAL
4	480	253	9	2	1	749
0.53%	64.09%	33.78%	1.20%	0.27%	0.13%	100%

During school year 2012-2013, of the 749 students who were enrolled in the School, 257 (approximately 34%) were identified as having a PHLOTE. Of the 257 students with a PHLOTE, 111 (approximately 43%) were placed in the District's ESL Program, which is available to students who identify any language other than English as their primary home language. OCR determined that for school year 2012-2013, approximately 92% of the School's ELL students' home language was Spanish. The remaining ELL students spoke one of the following as a first language: Chinese, Ewe, French, Haitian, Portuguese, and Twi.

The District's written policy and procedures for identifying ELL students are set forth in its Policy 2423: *Bilingual and ESL Education* (the ESL Policy). The ESL Policy specifies, in part, that the Supervisor of XXXXX XXXXXXXXXX and XXX (supervisor 1) will determine the native language of each student when the student enrolls in the school district. Supervisor 1 is responsible for maintaining a census listing all students identified as students whose native language is other than English; and, reporting annually to the New Jersey Department of Education (NJDOE) on the number of such students, and of that group, the number who are ELL students. The ESL Policy further states that a NJDOE-approved language proficiency test will be administered to all PHLOTE students when they enter the school district after eighth grade to determine their level of English language proficiency. The District will also review the previous academic performance of PHLOTE students, including performance on standardized tests in English; and, review the input of teaching staff members responsible for implementing the prior educational program for the PHLOTE student.

Identification:

The District's former Supervisor of XXXXX XXXXXXXXXX and XXX, who is the current Supervisor of XXXXXXXX XXXXXXXXXX XXXX (supervisor 2) explained to OCR that upon application for enrollment into the School, students/parents are required to identify their home language. Supervisor 1 and supervisor 2 explained that a Home Language Survey (HLQ) is administered by qualified personnel as part of the enrollment/registration process. The HLQ results are considered together with other application materials to identify ELL students.⁶ Supervisor 2 stated that when reviewing student applications, she considered whether the student

⁶ The HLQ included questions such as: what was the first language your child learned to speak; what language does your child speak most often outside of school; what language do people usually speak in your child's home; and, in what language do you want notices sent to you from the school?

was being recommended for the ESL program by a prior teacher; records of previous assessments that the student might have taken (e.g., the WIDA-Access Placement Test (W-APT)⁷ or the New Jersey Assessment of Skills and Knowledge (NJ-ASK) test); the student's grades; the classes in which the student was enrolled; and, the student's attendance records.

Assessment and Placement:

Once a student has been identified as PHLOTE, to assess language proficiency, the District uses the following criteria: (1) the W-APT (for incoming students, which is administered during the spring of student's eighth-grade year); (2) the Terranova test⁸; and, (3) the academic record from the student's previous school.⁹ The District submitted to OCR students' W-APT scores for school year 2012-2013, reflecting that in February 2012 it administered that assessment to all incoming ninth grade PHLOTE students and maintained scoring records for those students. In determining the placement for ELL students, the District referred to the results of the Terranova and W-APT tests.

Based on the documentation the District provided and OCR's site visit at the School, OCR determined that the District has procedures in place to assess PHLOTE students to ensure that all language-minority students who may be unable to participate meaningfully in the regular instructional program were receiving alternative language services. Specifically, the evidence indicated that in determining whether a PHLOTE student is ELL, the District adequately assesses his/her ability to speak, read, write, and comprehend the English language; however, prior to OCR's making a determination as to whether the District discriminated against students at the School, on the basis of their national origin, by failing to appropriately determine whether PHLOTE students were ELL students, and/or failing to appropriately place all ELL students in the appropriate ESL program, the District signed a resolution agreement to resolve Allegation 1 without further investigation by OCR.

⁷ The W-APT is an English language proficiency assessment tool for students from Kindergarten through twelfth grade. The District has used the W-APT since school year 2005-2006. The W-APT measures language proficiency in listening, speaking, reading, and writing. The W-APT includes a score with regard to comprehension (a combination of reading and listening scores) as well as an overall composite score. The District stated that it relies on a student's individual rather than composite score to assess a student's English proficiency. ACCESS is an acronym for *Assessing Comprehension and Communication in English State-to-State for English Language Learners*. WIDA Consortium: <http://www.wida.us/> (site last visited on April 3, 2018).

⁸ Terranova is a series of standardized achievement tests designed to assess K-12 student achievement in reading, language arts, mathematics, science, social studies, vocabulary, spelling, and other areas. <https://www.datarecognitioncorp.com/Assessment-Solutions/Documents/TerraNova%20Overview%20Brochure%202016.pdf> (site last visited on June 7, 2018).

⁹ With respect to each grade level, OCR determined the following were used as assessment criteria for school year 2012-2013: (a) for ninth grade students, a completed ESL program application with parent signature and guidance counselor recommendation, elementary school academic records (e.g., grades, attendance), seventh grade NJ-ASK and ACCESS for ELLs (if available), and enrollment in an eighth grade bilingual/ESL program; (b) for tenth grade students, a completed ESL program application with parent signature, high school academic records, and enrollment in a ninth grade bilingual/ESL program; (c) for eleventh grade students, ACCESS for ELLs test scores, and high school academic records; and, (d) twelfth grade students were considered using the ACCESS for ELLs test scores, high school academic records, and High School Language Arts Literacy Proficiency Assessment (HSPA) scores.

Allegation 2:

The complainant alleged that the District discriminated against students at the School, on the basis of their national origin, during school year 2012-2013, by failing to effectively implement the District's ESL program at the School. 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).¹⁰ 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 national-origin minority students (herein referred to as "ELL students"). It states that school districts must take affirmative steps to address the language needs of ELL students. To meet Title VI standards in serving ELL students, a 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 it must modify the program as necessary.¹¹ Alternative language programs and practices adopted by a school district must be effectively and reasonably developed to achieve the educational goal of the district's adopted theory.

OCR learned that during school year 2012-2013, the District offered a "high intensity" ESL Program at the School for ELL students enrolled in grades 9-12. The "high intensity" model consists of two periods of ESL instruction per school day; a summer enrichment program, referred to as the Academic Bridges Summer Program, offered to incoming ninth grade ELL students; and, an afterschool academic program for ninth and tenth grade ELL students.¹² The NJDOE approved the "high intensity" model as an alternative ESL instructional program for school years 2010-2011, 2011-2012, and 2012-2013.¹³

OCR determined that for school year 2012-2013, the District maintained some aspects of its ESL Program from previous school years, while implementing several program modifications. The District continued to provide students with two periods of ESL instruction per day and incoming ninth grade ELL students participated in the Summer Bridges Program, which focused on Language Arts Literacy and Mathematics Skills; the District also: (a) offered language arts tutoring to ESL tenth grade students to improve their language proficiency skills; (b) the ninth grade ELL students participated in an afterschool academic program to help improve the areas of weakness in Language Arts and Mathematics throughout the school year; (d) ESL paraprofessionals and peer tutors from the National Honor Society were assigned to the ninth and tenth grade afterschool program to assist the teacher and ELL students with one-on-one tutoring when needed; (e) the textbook was changed from "Visions" to "National Geographic Edge" from

¹⁰ The U.S. Supreme Court affirmed the use of the May 1970 memorandum, in Lau v. Nichols, 414 U.S. 563 (1970). Hereinafter, *Lau*.

¹¹ See, *Castañeda v. Pickard*, 648 F.2d 989 (5th Cir. 1981).

¹² OCR reviewed ELL student attendance records during school year 2012-2013 for both the summer enrichment program and the after/before school academic support program.

¹³ During the course of OCR's investigation, OCR determined that the District has received ongoing approval from the NJDOE to continue employing the high intensity ESL model within the District.

the publisher Cengage;¹⁴ (f) the integration of thematic units from the regular education curriculum was added to the curriculum;¹⁵ and, (g) a cohort of teachers was to receive training on the Sheltered Instruction Observation Protocol (SIOP) Model.¹⁶

Prior to OCR's making a determination as to whether the District effectively implemented its ESL program at the School, the District signed a resolution agreement to resolve Allegation 2 without further investigation by OCR.

Allegation 3:

The complainant alleged that the District discriminated against students at the School, on the basis of their national origin, during school year 2012-2013, by failing to exit students appropriately from the ESL program. The complainant stated that some students who requested to exit and opt out of the ESL Program were prevented from doing so. The complainant reasoned that the District sought to keep a certain number of students in the ESL Program in grades nine, ten, and eleven so that they could maintain "sub-groups" (a requirement of the New Jersey Administrative Code and of the NJDOE) until they are automatically exited from the ESL Program in grade twelve. The complainant stated that as of the date of her complaint, students had become more aware of their rights, and so their parents have "pressured" the District to let qualified students exit the ESL Program.

District officials stated that parents/guardians may waive or "opt out" of alternative language services by contacting supervisor 2 with their request and submitting a form. Supervisor 2 informed OCR that in the event that the District received such a request, the student was immediately removed from the ESL program; and, the student would be permitted to continue in the District without receiving ESL services. The District provided to OCR correspondence from supervisor 2 to parents/guardians during school year 2012-2013, advising them that although the ELL Program would help their child succeed academically, the parent/guardian "had the right to decline [ELL] services being offered to [their] child." During an interview, Supervisor 2 explained to OCR that to the extent that a parent/guardian chose to opt out of the ESL Program, that parent/guardian could always choose to re-enroll their child in the ESL program if they chose to do so.

The District provided to OCR a list of all students (including their grade level, the name(s) of the individual(s) making the request, and their relationship to the student) who opted out of the ESL Program during school year 2012-2013. That included three students, all of whom were in the tenth grade. OCR determined that in each instance, the "opt out" request was addressed and

¹⁴ The District explained that "National Geographic Edge" is a leveled core language arts program for grades nine through twelve designed so that linguistic development is integrated with all content to provide students with ample opportunities to practice and apply oral and written language. This program also included a leveled library from which the students could borrow for independent reading.

¹⁵ The District explained that this integration was done to expose the ELL students to the same types of literature as the native English speaking students; for this purpose the Prentice Hall Literature textbook was used. The District advised OCR that this textbook is among the PRIME instructional materials list.

¹⁶ The SIOP Model is an instructional method for ELLs created by educational resource manufacturer Pearson. See, <https://www.pearsonschool.com> (site last visited on June 11, 2018). The information was then to be disseminated to the teachers via professional development platforms and faculty meetings.

approved by supervisor 2. Supervisor 2 informed OCR that for any student who opted out of ESL services, she communicated this information to the student's English teacher to ensure that they were apprised of the change in ELL status. Supervisor 2 was also responsible for assessing the grades of each student who opted out of ESL services to determine their progress and to ensure that, thereafter, they were able to participate meaningfully in the District's educational programs.

According to OCR's 1970 Memorandum, in instances where parents refuse to enroll their children in an ELL program, the school district should inform parents about the purpose and benefits of the ELL program in a language they understand; and if a student who has been opted out of ELL services is unable to perform at grade level without receiving ELL services, the school district should periodically remind the parent that the student remains eligible for such services and that it will provide such language services. The District did not provide any documentation of a formal or informal process and/or procedure for periodic follow-up with the parents/guardians of students who opted out of the ESL program.

Exit Criteria and Monitoring

The complainant alleged that after students completed the eleventh grade, the School automatically exited them from the ESL Program. She asserted that students were supposed to pass the state-mandated HSPA (the ESL graduation exam), but she believed that the District used test scores from ACCESS, a different test, to demonstrate that the ESL program was functioning successfully. The complainant stated that the District did not provide an ESL Program for twelfth grade students.

The District informed OCR that ESL Program staff used the following criteria for determining whether to exit a student from the ESL Program: (1) academic progress in all content areas; (2) achievement of proficient level on the ACCESS test (which measures language proficiency); (3) a score of proficient on the HSPA (which is a state mandated graduation assessment administered during the spring [March] of eleventh grade); (4) attendance records; (5) completion of the Alternative High School Assessment process (which is a state mandated performance assessment for students who do not achieve a score of proficient or better on the HSPA); and, (6) other standardized and/or local benchmark assessments.

During the course of OCR's investigation, the District provided to OCR a list of all students who exited the ESL Program during school years 2011-2012 and 2012-2013, including their grade level and the name(s) of the individual(s) responsible for the exit decision. Supervisor 2 informed OCR that prior to school year 2012-2013, no students were exited prior to their eleventh grade year. Supervisor 2 recalled that during school year 2012-2013, she exited students based on the above criteria, at the end of their ninth grade year. The District also provided to OCR email correspondence, dated July 24, 2012, evidencing that supervisor 2 communicated with ESL Program staff concerning students who were exited from the ESL Program and scheduled for regular education English and history classes.

OCR determined that per the School's practice, twelfth grade students did not receive the two periods of ELL instruction per day that ninth, tenth, and eleventh grade students received;

however, OCR determined that such twelfth grade students received English instruction until they passed a standardized competency assessment (e.g., the HSPA) and/or completed an AHSA portfolio project. In addition, OCR determined that twelfth grade students also had available to them additional academic support before and after school, similar to ELL students in other grade levels.

Prior to OCR's making a determination as to whether the District discriminated against students at the School, on the basis of their national origin, by failing to exit students appropriately from the ESL program, the District signed a resolution agreement to resolve Allegation 3 without further investigation by OCR.

Allegation 4:

The complainant alleged that the District discriminated against students at the School, on the basis of their national origin, during school year 2012-2013, by treating ELL students differently from non-ELL students in excluding ELL students from certain academic courses offered at the School, such as chemistry and foreign languages. The complainant asserted that ELL students were treated differently from others, because of their ELL status, by being placed into lower level courses, such as environmental science, which did not have a test as a prerequisite. The complainant asserted that ELL students who wanted to take chemistry, for example, would have to take the class in the summer, while non-ELL students could take the course during the school year. The complainant asserted that as a result of not having been placed in courses such as chemistry and foreign languages, ELL students were not as prepared to go to college and college-bound ELL students had to stay within the District for a longer period of time than non-ELL students. The complainant asserted that the District had allegedly discriminated against at least four of her students in this manner.

The District informed OCR that with respect to school year 2012-2013, the School had various levels of academic courses that included remedial, regular track, honors, enrichment, advanced placement and dual-enrollment. The enrichment and remedial components are offered before/after school and/or during the summer (i.e., "Academic Bridges Summer program). OCR determined that the District had different practices regarding course placement, depending upon the academic level. OCR reviewed a list of all courses offered at the School during school year 2012-2013, as well as total course enrollment figures for school year 2012-2013.

For regular track courses, during school year 2012-2013, the School used a "Course Sequence," which included course options for math, language arts, science, physical education/health, history, and foreign language. The course sequence options varied depending on the student's grade level; but generally, students were able to choose from the course sequence without input from the principal, guidance counselor, or classroom teachers.

For honors courses, which were considered more rigorous in terms of academic instruction (based on pace and a more in-depth level of instruction), the School's principal was responsible for making course placement decisions with input from classroom teachers, guidance counselors, and other ESL Program staff members such as content area supervisors. OCR determined that a number of cognitive and non-cognitive variables were considered, including: (a) NJ-ASK scores;

(b) Terranova test scores; (c) W-APT scores; (d) previous year academic performance; (e) performance on local honors assessments; (f) eighth grade attendance patterns; (g) principal admissions interview; (h) attendance; (j) NWEA-MAP¹⁷ assessments, which are computerized tests that are adaptive and offered in reading, language usage, and mathematics; (k) local benchmarks; (l) teacher recommendation; and/or, (m) citizenship.¹⁸

OCR learned that the District offers College Board advanced placement (AP) courses to students at the School based on the School's established criteria for admission, in accordance with College Board policy.¹⁹ The Assistant Superintendent of Curriculum and Instruction (assistant superintendent) informed OCR that the District did not have a formal application process for AP courses during school year 2012-2013, as the District was in the initial stages of developing its AP coursework for students.²⁰ Rather, interested students were selected by the School's principal using the following "indicators": (1) an indicator of cognitive ability such as teacher recommendations, student grade point average (GPA), or a grade average in a specific course; and, (2) a non-cognitive indicator such as attendance. The assistant superintendent asserted that WIDA-ACCESS scores measuring English language proficiency would not have been used as a measure of eligibility. The School's principal then worked with the School's teachers to create a "student cohort" of students who could be grouped into classes. In addition, the principal considered information provided by the School's guidance counselors regarding each student.

Additionally, dual enrollment in the District's Career and Technical Education (CTE) courses provided students with the opportunity to earn college credit and/or industry recognized certifications, while still in high school, through specialized assessments in a number of fields including, among others, automotive technology; dentistry; welding; music production; carpentry; nursing; and, accounting. The assistant superintendent informed OCR that beginning in their sophomore year, all students were permitted to rank their interest in each CTE program, and the principal attempted to assign students to a program based on their preference; however, because enrollment in each CTE program was controlled by capacity, if too many students expressed interest in the same program, the principal could consider a student's GPA when determining his/her CTE assignment.

With respect to course placement, supervisor 2 informed OCR that during school year 2012-2013, she recalled that certain ELL students and/or their parents had complained to District staff that ELL students were not being placed in chemistry classes. She stated that this occurred because, at that time, placement in chemistry required teacher recommendation and teachers

¹⁷ NWEA-MAP stands for Northwest Evaluation Association measures of academic progress. For this test, the difficulty of each question is based on how well a student answers all the previous questions.

¹⁸ The District's character education program identifies the following as characteristics of student citizenship: "Do you share to make your school and community better; Cooperate; Get involved in community affairs; Stay informed; Vote; Be a good neighbor; Obey laws and rules; Respect authority; Protect the environment; Volunteer.

¹⁹ The College Board offers more than 30 AP courses to students interested in participating in challenging college level coursework while still enrolled in secondary schools. Students enroll in AP coursework through their individual schools; and, participating students are eligible to complete AP examinations for which they may earn college credit. Students may be required to complete pre-requisite courses prior to enrolling in certain AP courses. See generally, <https://apstudent.collegeboard.org/home> (site last visited on June 7, 2018).

²⁰ According to the Assistant Superintendent, during school year 2012-2013, the District only offered AP Literature and AP Calculus. Since school year 2015-2016, the District has included AP Language and Composition and AP Spanish in its AP course offerings.

were generally not recommending ELL students for that course. Supervisor 2 stated that regarding chemistry courses, relevant District staff members met to discuss the matter and subsequently the practice was changed so that any ELL student who elected to take chemistry could do so. Supervisor 2 stated that as of May 2016, more sections of chemistry had been added and a teacher recommendation was no longer a barrier for ELL students wishing to take chemistry. Supervisor 2 did not provide any information regarding foreign language courses.

In addition, OCR conducted statistical analysis to determine, for school year 2012-2013, whether there was a statistically significant difference between the number of ELL students versus non-ELL students in higher-level academic courses (such as chemistry and foreign language courses) and in lower-level or remedial academic courses. According to the statistical analysis of course enrollment numbers, OCR determined that statistically significant disparities existed in terms of ELL students' underrepresentation in higher-level academic courses and overrepresentation in lower-level or remedial academic courses.

The complainant provided examples of four students who allegedly were placed in environmental science despite wanting to take chemistry. In addition, the District confirmed that teachers did not recommend ELL students for chemistry at this time.

Prior to OCR's making a determination as to whether the District discriminated against students at the School, on the basis of their national origin, by treating ELL students differently from non-ELL students in excluding ELL students from certain academic courses offered at the School, such as chemistry and foreign language, the District signed a resolution agreement to resolve Allegation 4 without further investigation by OCR.

Allegation 5:

The complainant alleged that the District discriminated against students at the School, on the basis of their national origin, during school year 2012-2013, by disciplining ELL students more frequently than non-ELL students. The complainant stated that the School requires students to wear uniforms at the School; and, that during school year 2011-2012, District personnel targeted ELL students for wearing boots and/or slacks that did not comply with the District's uniform policy, but did not similarly discipline non-ELL students who wore boots and/or slacks that failed to comply with the uniform policy. The complainant also alleged that during school year 2012-2013, the principal disciplined an ELL student for failing to wear a tie in accordance with the District's uniform policy, and that he stated, "I'm tired of you and your boys." The complainant further asserted that ELL students were disciplined for "talking in groups." The complainant provided the name of one student who allegedly disciplined more harshly than non-ELL students for not wearing slacks that complied with the District's uniform policy. The complainant stated that she was unsure whether these students were targeted due to their ELL status or because they were Hispanic/Latino.²¹

²¹ The complainant also asserted that School personnel demonstrated a preference for non-ELL students with respect to discipline decisions. As an example, the complainant stated that she was aware of an incident that occurred in January 2013, in which a non-ELL student bullied an ELL student, yet the non-ELL student was not punished. The complainant did not assert that the alleged bullying was related to the ELL student's race/national origin. Additionally, the complainant did not assert that ELL students were punished for engaging in similar conduct.

The District's discipline policies are found in the District's Code of Conduct governing student behavior; the Suspension Policy; Expulsion Policy; Harassment, Intimidation and Bullying (HIB) Policy; Cell Phone Policy; and the relevant regulations implementing the New Jersey Administrative Code (N.J.A.C.). The Code of Conduct in effect during school year 2012-2013 was updated in February 2016, although it is substantially the same. The Code of Conduct states that it is adopted to "establish standards, policies, and procedures for positive student development and student behavioral expectations on school grounds and, as appropriate, for conduct away from school grounds." The Code of Conduct specifically states that discipline will be applied "without regard to race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical, or sensory disability or by any other distinguishing characteristic."²² The Code of Conduct references District Regulation 5600, which enumerates the type and severity of discipline appropriate for various offenses. The Code of Conduct provides for progressive discipline, including a range of sanctions such as admonishment, temporary removal from the classroom, detention, in-school suspension (ISS), out-of-school suspension (OSS), and expulsion.

OCR reviewed documentation from the District regarding incidents of exclusionary discipline issued to both ELL and non-ELL students during school year 2012-2013. OCR also reviewed documentation from the District regarding non-exclusionary discipline (e.g., disciplinary sanctions other than ISS and OSS) issued to both ELL and non-ELL students during school year 2015-2016.

OCR determined that during school year 2012-2013, 11 out of 162 incidents of exclusionary discipline involved ELL students, or approximately 6.79%. The percentage of ELL students enrolled at the School during school year 2012-2013 was 21.09%. During school year 2015-2016, 42 out of 3546 incidents of non-exclusionary discipline involved ELL students, or approximately 1.18%. The percentage of ELL students enrolled at the School during school year 2015-2016 was approximately 11%.

Based on data analysis of the disciplinary incidents involving ELL students, OCR determined that ELL students were not overrepresented in incidents of exclusionary discipline during school year 2012-2013, or non-exclusionary discipline during school year 2015-2016.

Prior to OCR's making a determination as to whether the District discriminated against students at the School, on the basis of their national origin, by disciplining ELL students more frequently than non-ELL students, the District signed a resolution agreement to resolve Allegation 5 without further investigation by OCR.

Allegation 6:

The complainant alleged that the District discriminated against students at the School, on the basis of their national origin, during school year 2012-2013, by denying LEP parents access to educational information in their home languages at PTA meetings. The complainant stated that the School has never established separate PTA meetings for LEP parents, as required by the N.J.A.C. or the NJDOE, so parents were denied access to such information in their home

²² OCR notes that the District's Code of Conduct is facially neutral.

language. She stated that this applied to parents of students in all grades, over the past three or four school years.

The May 1970 memorandum 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. School districts must develop and implement a process for determining whether parents are LEP and what their language needs are. The process should be designed to identify all LEP parents, including parents or guardians of children who are proficient in English and parents and guardians whose primary language is not common in the district. School districts must provide language assistance to LEP parents effectively with appropriate, competent staff, or appropriate and competent outside resources.

OCR determined that for school year 2012-2013, the District hired a parent outreach translator, who served as a liaison between the parent coordinator and LEP parents/guardians. According to the job posting for this position, this individual was expected to demonstrate oral and written proficiency in English and Spanish. This individual's expected responsibilities included translating (from English to Spanish) correspondence to parents and providing translation services during parent meetings.

The District provided information during interviews and through documentation to indicate that it provides information to LEP parents in Spanish, particularly at PTA meetings. For example, supervisor 1 informed OCR that he sometimes provided necessary English translation to Spanish speaking parents/guardians who attended PTA meetings. Supervisor 1 also informed OCR that the District has obtained professional translation of certain documents from English to Spanish when appropriate.

OCR determined that during school year 2012-2013, six ELL students were enrolled in the School who had a home language other than English or Spanish.²³ OCR determined that the District does not have a policy or a practice in place to notify non-Spanish speaking LEP parents that they may request translation of documents or interpreter services, whether at PTA meetings or at other times. District staff asserted to OCR that they identified parents speaking languages other than English through the HLQ; but that in the past, any parents who spoke a language other than Spanish were adequately proficient in English such that these parents have never needed an interpreter.

Prior to OCR's making a determination as to whether the District discriminated against students at the School, on the basis of their national origin, by denying LEP parents access to educational information in their home languages at PTA meetings, the District signed a resolution agreement to resolve Allegation 6 without further investigation by OCR.

Conclusion

During the course of OCR's investigation, OCR noted several potential compliance concerns. On June 6, 2018, the District agreed to voluntarily implement the enclosed resolution agreement

²³ These students' home languages were reported as being Ewe, Chinese, French, Twi, Haitian, and Portuguese.

to resolve this complaint without further investigation. The resolution agreement will require the District to:

- ensure that every student with a PHLOTE will be identified by the District, and develop and implement a policy or procedure for identifying all PHLOTE students in the District, including students from low incidence language groups;
- ensure that every student with a PHLOTE is appropriately assessed to determine whether they are ELL;
- ensure that every ELL student is appropriately placed in the District's ESL program;
- develop and implement a policy or procedure to ensure that all ELL students receive alternative language services until the students meet the District's criteria to exit the alternative language program;
- provide language services to students whose parents have declined or opted out of the alternative language program, by monitoring students' academic progress and providing other language support services for such students;
- identify and describe the criteria that it will use to determine when an ELL student has obtained sufficient proficiency in English to exit the alternative language program; and ensure that exited ELL students are participating meaningfully in the District's program;
- create a process ensuring that ELL students are not excluded from, and are treated similarly to non-ELL students with respect to, gifted and talented, advanced placement, or other specialized programs;
- collect and report to OCR data regarding all students enrolled in the School, by race/national origin and ELL status, who were referred for exclusionary and non-exclusionary disciplinary sanctions during school year 2017-2018;
- Evaluate student disciplinary data on an ongoing basis, to assess whether the School is implementing its student discipline policies, procedures, and practices consistently and in a nondiscriminatory manner;
- Examine the root cause(s) of any disparities in the discipline of students in the School, including ELL students, and take appropriate actions necessary to address the root cause(s); and,
- revise and implement its policies and procedures to ensure that LEP parents are notified, in a language understood by the parents, of school activities and other information and matters that are called to the attention of other parents; and provided with information about the availability of interpreter and translation services.

OCR will monitor the implementation of the resolution agreement. If the District fails to comply with the terms of the resolution agreement, OCR will resume its investigation.

This letter 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 sets forth OCR's determination in an individual OCR case. 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 case resolution process. If this happens, the individual may file a complaint alleging such treatment.

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

If you have any questions regarding OCR's determination, please contact Joy M. Purcell, Senior Compliance Team Attorney, at (646) 428-3766 or joy.purcell@ed.gov; or Félice Bowen, Compliance Team Leader, at (646) 428-3806 or felice.bowen@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: X. XXXXXXX XXXXXX, Esq.