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July 6, 2018

Thomas E. Parker, D.Ed.
Superintendent
Allentown School District
31. S. Penn St.
Allentown, PA 18102

RE: OCR Compliance Review No. 03-13-5002

Dear Dr. Parker:

This is to inform you of the resolution of the subject compliance review of the Allentown School District (the District), initiated by the U.S. Department of Education's (the Department) Office for Civil Rights (OCR) under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (Title VI).

This compliance review was conducted pursuant to OCR's authority under Title VI, and the Department's implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color and national origin in programs or activities which receive Federal financial assistance from the Department. The District is a recipient of Federal financial assistance from the Department and is subject to the requirements of Title VI and its implementing regulation.

This compliance review assessed whether: 1) English learner (EL) students are denied equal educational opportunities in the District's programs and services, and thus subjected to discrimination on the basis of national origin, including in the provision of information about the Gifted and Talented Education (GATE) program and Advanced Placement (AP) and honors courses to EL parents; and 2) whether the District discriminated against Hispanic and English learner (EL) students on the basis of race or national origin by implementing policies, procedures, or practices that result in their exclusion from the District's GATE program and AP and honors courses.

During the investigation, OCR obtained information from the District through data requests, and conducted several onsite visits to eight District schools for the purpose of reviewing student files and to interview key staff members. In selecting the eight schools, OCR chose two high EL student population elementary schools (Central and Luis Ramos), two low EL student population elementary schools (Lehigh Parkway and Muhlenberg), two of the District's four middle schools (Raub and Harrison-Morton), and both District high schools (Allen and Dieruff).

In addition, through the administration of an electronic survey, OCR obtained information from a portion of regular education and English for Speakers of Other Languages (ESOL) teachers as to the District's practices in the areas covered by this review.

As a result of its investigation, OCR has determined that the District is out of compliance with Title VI relative to its obligation to conduct a thorough evaluation of its EL program and to communicate effectively with language minority parents and guardians. On June 22, 2018, the District entered into a resolution agreement (the Agreement) to resolve the areas of noncompliance noted above. OCR found insufficient evidence of a violation with respect to Hispanic and EL students' access to GATE, AP and honors courses.

OCR's findings and conclusions are discussed below, including the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Agreement.

Legal Standards

The standards for determining compliance with Title VI are set forth in the regulation at 34 C.F.R. § 100.3(a) and (b). The regulation, at 34 C.F.R. § 100.3(a), states that no person shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program receiving federal financial assistance. Section 100.3(b)(1)(i)-(vi) of 34 C.F.R. further states that a recipient may not, on the grounds of race, color or national origin, deny an individual any service or benefit of its programs; provide any services or benefits to an individual which are different or provided in a different manner; subject an individual to separate treatment; restrict an individual in the enjoyment of any benefits of its programs; treat an individual differently in determining continued enrollment in its programs; or, deny an individual an opportunity to participate in a program through the provision of services which is different from that afforded others under the program.

In addition to the requirements set forth in the Title VI regulation, on May 25, 1970, OCR issued a policy memorandum entitled, *Identification of Discrimination and Denial of Services on the Basis of National Origin* (May 1970 Memorandum), 35 Fed. Reg. 11595. 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 standard for OCR's Title VI policy concerning discrimination on the basis of national origin against EL students and parents. 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. Concerning a district's obligations to provide effective notice to parents, the May 1970 Memorandum provides that recipients must adequately notify national origin minority group limited-English proficient parents of school activities that are

called to the attention of other parents and that such notice in order to be adequate may have to be provided in a language other than English.

District Overview

The District serves the City of Allentown, which is located in eastern Pennsylvania, approximately 60 miles north of Philadelphia. During the time period covering this investigation, the District was composed of the following fourteen (14) elementary, four (4) middle and two (2) high schools:

<u>Elementary (grades K-5)</u>	<u>Middle (grades 6-8)</u>	<u>High (grades 9-12)</u>
Central	Muhlenberg	Harrison-Morton
Cleveland	Ramos	Raub
Dodd	Ritter	South Mountain
Jefferson	Roosevelt	Trexler
Lehigh Parkway	Sheridan	
McKinley	Union Terrace	
Mosser	Washington	

The District operates a Newcomer Academy, dedicated to serving secondary level EL students who are new to the United States and who have very limited to no English language proficiency. The Newcomer Academy provides EL students with intensive English language support in a smaller-sized school setting. Students who enroll at the Newcomer Academy stay there for up to one year, and then return to their home school.

Issue #1 – Alternative Language Program/Services and Communication with Parents/Guardians

A. Demographic Information

OCR requested demographic and other statistical information from the District covering a five-year period (2010-2015). The following table shows District enrollment by race, the number of students identified as having a primary home language other than English (PHLOTE), and the number of EL students during that timeframe.

Race	2010-11		2011-12		2012-13		2013-14		2014-15	
	#	%	#	%	#	%	#	%	#	%
Hispanic	13,325	64.1	13,089	64.9	12,973	65.7	11,087	66.0%	10,346	65.6%
African - American	3,623	17.4	3,477	17.2	3,284	16.6	2,672	15.9%	2,509	15.9%
White	3,289	15.8	2,945	14.6	2,680	13.6	2,161	12.9%	1,880	11.9%
Other Races	550	2.6	667	3.3	822	4.2	887	5.3%	1,033	6.6%
Total	20,787		20,178		19,759		16,807		15,768	
Total PHLOTE	5,188	25.0	5,391	26.7	5,681	28.8			4,693	29.7
Total EL	2,117	10.2	1,983	9.8	1,904	9.6	1,727	10.2	1,746	11.1

This information shows that while overall enrollment decreased, the proportion of District students identified as PHLOTE and EL increased. A significant majority (92% in 2014-15) of PHLOTE students identified Spanish as their primary home language.

B. Prong One - Adequacy of the District's Alternative Language Program Model

Legal Standard

In evaluating a district's compliance with Title VI, OCR first determines whether the school district has chosen an alternative language program model for providing educational services to EL students that is recognized by some experts in the field as based upon a sound educational approach or upon a legitimate experimental strategy. In determining whether a school district is in compliance with Title VI, OCR considers whether the District's alternative language program is likely to meet the educational needs of language-minority students effectively. A school district may demonstrate that its program is likely to be effective by showing that the educational approach used is considered sound by some experts in the field or that it is a legitimate experimental strategy. Some approaches that OCR has recognized as falling under this category include transitional bilingual education, bilingual/bicultural education, structured immersion, developmental bilingual education, and English as a Second Language (ESL). If a school district is using a different approach, it can demonstrate Title VI compliance if it can show that some experts in the field consider the approach sound or that it is considered a legitimate experimental strategy.

Investigative Findings

The District's chosen alternative language program methodology is English for Speakers of Other Languages (or ESOL/ESL). This was confirmed in an interview with the Director of the ESOL Program and OCR's review of information about the program (staffing, training, etc.), which is also posted on the District's website. The District follows the program delivery structure established in 2007 by the Pennsylvania Department of Education's (PDE) *Pennsylvania English Language Proficiency Standards (PA ELPS)*. The PA ELPS provide a guide

for standards-based instructional and assessment planning for English language learners with the goals of attaining English proficiency, developing high levels of academic attainment in English, and meeting the same challenging commonwealth academic content and student academic achievement standards as all children are expected to meet.

Analysis and Conclusion

Based upon the information obtained and reviewed by OCR, the District's chosen instructional model for providing English language instruction – ESOL/ESL – meets the requirements of Title VI, as it is a model recognized by some experts in the field as based upon a sound educational approach. As a result, the evidence establishes that the District's alternative language plan meets the requirements of Title VI with respect to this component.

C. Prong Two – Adequacy of the Implementation of the Alternative Language Program

The second prong of OCR's analysis requires recipients to effectively implement the program model they adopted. The primary elements of an alternative language program are:

- (1) identification and assessment of EL students;
- (2) staffing;
- (3) instructional materials and facilities;
- (4) peer integration;
- (5) access to special education;
- (6) access to special programs and extracurricular activities; and
- (7) exiting criteria and monitoring of exited students.

OCR examined each element and our findings for each are explained below. The overall conclusion regarding Prong Two is provided at the end of section C.

Element One - Identification and Assessment of EL Students

1. Legal Standard

A school district must have procedures in place for identifying and assessing EL students to ensure that all national origin language minority students who are unable to participate effectively in the mainstream instructional program due to limited-English proficiency are receiving alternative language services. To carry out this obligation, school districts must identify, upon enrollment in the district, PHLOTE students. All identified PHLOTE students should thereafter be assessed in a timely manner, using objective assessment instruments to determine whether students require alternative language services because of limited proficiency in reading, writing, speaking, or understanding the English language. The criteria used to determine eligibility for EL placement must be objective and must ensure that all students who, because of limited-English proficiency, are not able to effectively participate in a school district's regular program, receive alternative language program services. OCR does not prescribe particular assessments, but school districts must assess proficiency in English in all four language domains (reading, writing, speaking, and comprehension).

2. *Investigative Findings*

OCR found that the method the District uses to identify PHLOTE students is a home language survey (HLS), which is incorporated into the student registration form that parents/guardians are required to complete for enrollment. OCR reviewed the survey which asks the following questions (in English and Spanish):

- What is the student's first language?
- Does the student speak a language(s) other than English? If yes, specify.
- What language(s) is/are spoken at home?

A student is considered PHLOTE if the answer to one or more of the questions is a language other than English, and is assessed to determine the need for ESL services. The District uses the WIDA-Access Placement Test (W-APT) to determine a PHLOTE student's English proficiency level. According to the test publisher's website, the W-APT is a test used to assist in the identification and placement of EL students, and assesses students in each of the four language domains (speaking, listening, reading, and writing). Based on the results of the W-APT, the District assigns the student an English language proficiency level as follows: 1 (Entering), 2 (Beginning), 3 (Developing), 4 (Expanding), 5 (Bridging), or 6 (Reaching). Secondary level students who are new to the United States (less than one year) and who score less than 2.0 on the W-APT are eligible to attend the Newcomer Academy for up to one year.

The District follows guidance from PDE which states that parents may opt out of ESL only when ESL instruction conflicts with the family's religious beliefs. While parents are not required to give consent for a student to receive ESL instruction, parents must receive written notification of ESL placement and the criteria for exiting, as well as information on the parental right to opt out. Non-English speaking parents must be provided communications in a language they understand; using a student or a minor to provide translation is inappropriate.

As part of this review, OCR examined the files of students identified by the District as PHLOTE to confirm the District's procedures and practices concerning the identification and assessment of EL students. OCR reviewed a total of 253 of 2,902 files, composed of students at the elementary, middle, and high school level. OCR employed a random sampling file selection method, and selected a number of files based upon the number of PHLOTE students enrolled in the schools.

OCR's review revealed the following:

- **All** files had information identifying the student's primary home language. In most cases, this was identified on the registration form through the HLS questions noted above.
- Over three-quarters (77%) of the students identified as PHLOTE were identified in Pre-K, Kindergarten, first, or second grades. Luis Ramos Elementary had the highest number of PHLOTE students identified at those grade levels. Only 13 (5%) were identified as PHLOTE in high school.
- In 73 (29%) of the files, OCR was unable to determine the specific date as to when the student was evaluated for language proficiency. Lehigh Parkway had the majority of

these students (16) at the elementary school level. Almost half of the 73 students (33), however, were identified as PHLOTE prior to the 2010-11 school year. For some of these 33 students, other documentation (for example, W-APT scores) indicated that they, in fact, had been identified as EL at some point. Of 102 students who were evaluated during or after the 2010-11 school year, 94 (92%) had documentation that showed they were assessed in all four language domains. Only eight (8%) did not. OCR notes that four of these eight students (all at Central Elementary) were assessed in pre-K or Kindergarten, which appears to explain why they were not assessed in all four domains.

- Of 106 PHLOTE students who were identified during or after the 2010-11 school year, 86 (or 81%) were evaluated on or shortly after the day they officially registered with the District. The other 20 (19%) were evaluated, but not immediately. For 10 of these students, this was due to the fact that they registered for Pre-K and were not formally evaluated until Kindergarten.

Interviews with administrative staff did not reveal any specific concerns with respect to identification and assessment. In response to the general survey statement, “I know (a student/students) who may benefit from or need ESL services but (is/are) not in the ESL program,” a majority of staff surveyed (over 90%) responded “No.” Combined with the file review data, these responses indicate that the District’s procedures for identifying and assessing PHLOTE students are being implemented effectively.

3. Conclusion – Element One

Based upon the information obtained, OCR concludes that the District’s method for assessing students identified as PHLOTE is adequate. The information demonstrated that all identified PHLOTE students are assessed in a timely manner and the District utilizes objective assessment instruments to determine whether students require alternative language services.

Element Two – Alternative Language Program Staffing

1. Legal Standard

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 district must either hire qualified teachers to provide alternative language services to EL students or require that teachers already on staff work toward attaining those formal qualifications. 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.

If a district uses a method such as ESL or sheltered instruction, the district should ascertain that teachers who use those methods have been adequately trained. This training can take the form of in-service training, formal college coursework, or a combination of the two. A district 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 and the teacher's classroom performance should be evaluated by someone familiar with the method being used.

Additionally, teachers must be available in sufficient numbers to ensure effective implementation of the district's chosen English language development program. Alternative language program support staff must also be qualified for the educational support roles that they fulfill in a district's English language development program. Minimally, they must have the English language and native language skills appropriate to their assigned, non-instructional role in the alternative program. Certified or endorsed instructional staff must closely and appropriately supervise the support staff.

2. Investigative Findings

At the time of the District's response to OCR's initial data request, staffing data showed that 96% of the District's ESOL staff held the Pennsylvania ESL Program Specialist certification. This was supported by information obtained during interviews and by ESOL staff responses to the electronic survey. All of the building principals interviewed by OCR confirmed this as well. Although one ESOL teacher did not hold the ESL Program Specialist certification, that teacher is a certified Spanish teacher.

The District also employs ESOL facilitators. ESOL facilitators serve as coaches to address instruction in ESL & mainstream classrooms, and may be assigned to multiple buildings. At the time of OCR's data request, there were six ESOL facilitators.

The District's Director of ESOL and World Language oversees the ESOL program. As of the 2012-13 school year, the District staffed its ESOL program as shown in the following table.

School/Level	Number of EL Students	Number of ESOL Teachers	ESOL Teacher Caseload
<i>Elementary</i>			
Central	89	4	22.3
Cleveland	40	2	20.0
Dodd	60	3	20.0
Jefferson	52	2	26.0
Lehigh Parkway	16	1	16.0
Lincoln	27	1	27.0
McKinley	45	2	22.5
Mosser	72	3	24.0
Muhlenberg	13	1	13.0
Ramos	75	4	18.8
Ritter	37	2	18.5
Roosevelt	54	3	18.0
Sheridan	74	3	24.7
Union Terrace	81	4	20.3

School/Level	Number of EL Students	Number of ESOL Teachers	ESOL Teacher Caseload
Washington	76	4	19.0
ES Total	811	39	20.8
Middle			
Harrison-Morton	112	3	37.3
Raub	146	4	36.5
South Mountain	116	3	38.7
Trexler	131	3	43.7
MS Total	505	13	38.8
High			
Allen	341	9	37.9
Dieruff	205	5	41.0
HS Total	546	14	39.0
Other			
Alternative Education	42	2	21.0
Newcomer Academy	*	4	N/A
Other Total	42	6	21.0
Grand Total	1,904	72	26.4

**Students were not reported separately, but are included in home school counts*

OCR also reviewed 2014-15 school year data which indicated a decrease in the number of full time ESOL teachers; there was a 12.5% drop in ESOL staff between the 2012-13 and 2014-15 school years which is greater than the 8.5% reduction in the number of EL students over the same time period. As a result, the overall ESOL teacher caseload increased from 26.4 in 2012-13 to 27.7 in 2014-15. The District provided a list of teachers and their certifications for the 2014-15 school year which shows that all of the ESOL teachers hold a minimum Pennsylvania teacher certification and the Pennsylvania ESL Program Specialist certification.

In response to OCR's request for data concerning the amount of ESOL services EL students received for the 2010-11, 2011-12 and 2012-13 school years, the District reported that it did not specifically record the amount of ESOL instruction provided in its student information system during that period of time. The District explained, however, that schools and ESOL staff are instructed to follow PDE's recommendations for the amounts of daily ESOL instructional time, which is as follows: two to three hours for non-English speaking level students; two hours for beginner level students; one to 1 ½ hours for intermediate level students; and one hour for advanced level students. In light of this, OCR reviewed this staffing information in conjunction with the number of EL students per school and found that, at each school level, the higher the number of EL students in the school, the higher the number of EL staff assigned to that school. The EL student caseload per teacher was generally lower at the elementary level than at the middle and high school level. The lowest EL student caseload per teacher was seen at

Muhlenburg Elementary (13, or one teacher for 13 EL students) while the highest caseload was seen at Trexler Middle School (43.7 or three teachers for 131 EL students).

The District later began maintaining ESOL service information and provided OCR with the ESOL service amounts provided to each EL student during the 2013-14 and 2014-15 school years. This information shows that students whose proficiency level/score was 1.0 through 2.9 (encompassing Newcomer/Entering and Beginner levels) were provided two hours of ESOL service per day. Students whose proficiency level/score was 3.0 through 3.9 (Developing level) were provided one and a half hours per day. Students whose proficiency level/score was 4.0 through 4.9 (Expanding level) were provided one hour per day. Students whose proficiency level/score was 5.0 through 6.0 (encompassing Bridging and Reaching levels) were provided up to one hour of service, or on an as-needed basis. This data comports with the service amounts recommended by PDE. OCR surveyed ESOL staff and the majority (71%) that they are able to provide the EL students assigned to them with the appropriate amount of ESL instructional services that they need.

3. Conclusion – Element Two

Based upon the information obtained and reviewed, OCR concludes that the District provides adequate staffing resources or its ESOL program and staff have been appropriately trained and certified.

Element Three – Instructional Materials and Facilities

1. Legal Standard

In order to ensure that ELD services are delivered effectively, districts must provide adequate resources, such as instructional materials and equipment, in accordance with the requirements of the program. These resources must be made available in a timely manner to staff persons providing ELD services. The resources must also be consistent with the program design and appropriate for student needs to ensure that the program has a realistic chance of success.

2. Investigative Findings

In addition to the ESOL curriculum and the English language arts development programs described above, the instructional materials used by ESOL teachers include textbooks, workbooks, computer applications for teaching ESL, intervention kits, and phonics libraries. ESOL teachers may also supplement instruction with adapted texts or content area textbooks that are available in Spanish.

Most ESOL staff surveyed reported satisfaction with the quantity, quality, and appropriateness of the instructional materials. OCR notes that of those who responded no, the concerns were not about the quantity of materials, but were about the condition or age of the materials and/or the time the District takes to respond to requests for materials. Most ESOL teachers surveyed by OCR indicated that they have resources such as whiteboard/chalkboards, computers, audio-visual equipment, and reading books available to use in their classrooms.

OCR visited ESOL classrooms at the eight schools we identified for site visits and reviewed the classroom settings where EL students receive ESL instruction, in comparison to the non-ESOL instructional areas. OCR found that each classroom was appropriate relative to the size of the class being taught, and was comparable to non-ESOL classrooms in terms of available resources, such as whiteboard/chalkboards, computers, audio-visual equipment (e.g., projector, screen, television), and reading books, and in terms of the condition (age, lighting, climate control, etc.) of the rooms.

3. Conclusion

OCR finds that the instructional materials and facilities in which ESOL services are provided are adequate to properly implement the District's ESOL program.

Element Four – Peer Integration

1. Legal Standard

Under OCR policy, EL students may not be segregated from their non-EL peers except to the extent educationally justified to meet the recipient's stated goals for the alternative language program. OCR's inquiry in this area focuses on whether the school district has carried out its chosen program in the least segregated manner consistent with achieving its stated goals.

2. Investigative Findings

OCR found no evidence that EL students were isolated from their non-EL peers, except for ESOL classes. For students who attend the Newcomer Academy, their enrollment is based on individual need, and lasts for a limited duration (up to one year), after which students return to their home school. Likewise, OCR found no evidence that EL students are segregated from other students on the basis of their limited-English proficiency. Interviews with staff members in the eight schools did not reveal any concerns about EL integration with non-EL peers. Based on our review of information from student report cards, all EL students are in the regular education setting except for their time in the EL classroom, which is 2 hours per day or less, depending on a student's language proficiency level.

3. Conclusion – Element Three

Based upon the information obtained and reviewed, OCR concludes that the District integrates EL students with non-EL peers to the fullest extent possible and there is no evidence that EL students are unnecessarily segregated from other students on the basis of their limited English proficiency.

Element Five - Access to Special Education*1. Legal Standard*

OCR investigates the placement of EL students into special education programs where there are indications that EL students may be inappropriately placed in such programs, or where special education programs provided to EL students do not address their inability to speak or understand English. In addition, OCR determines whether recipients have policies of “no double services:” that is, refusing to provide both alternative language services and special education to students who need them.

2. Investigative Findings

During the 2012-13 school year, PDE reported that 14.4% of the District’s total student population received special education services. According to data provided by the District, 19.6% of the EL student population was identified as receiving special education services. This difference between the proportion of EL students who receive special education and the proportion of non-EL students who receive special education is not statistically significant. The table below shows the breakdown of EL students by year and status (non-special education/special education).

	2010-11		2011-12		2012-13		2013-14		2014-15	
Status	#	%								
Non-special education EL	1,761	83.2	1,620	81.7	1,530	80.4	1,444	83.6	1,514	86.7
Special education EL	356	16.8	363	18.3	374	19.6	283	16.4	232	13.3
Total EL	2,117		1,983		1,904		1,727		1,746	

The District reported that its policies and procedures for special education apply to all students equally regardless of whether a student is identified as EL. The District asserted that all EL students eligible for special education services continue receiving ESOL instruction at the appropriate proficiency and developmental level while also receiving the required special education services. In an interview with OCR, the Director of the ESOL program stated that if parents need interpreting services, such as for a meeting, the District will provide such services. If immediate interpreting needs cannot be met, the meeting is scheduled and a translator is secured for the meeting.

OCR found no evidence of a policy or practice whereby ESOL services are reduced or eliminated for EL students who also qualify for special education services. During an onsite visit, OCR reviewed the files of EL students referred/evaluated for special education. OCR found evidence that the District employs non-verbal testing and utilizes a bilingual psychologist, when needed, in the evaluation of EL students for special education. The information in the files indicated that ESOL teachers participate as members of multi-disciplinary teams and Individualized Education Plan (IEP) teams for EL students who are found eligible for special education.

Specifically, Multidisciplinary team (MDT) reports and IEPs included information and specific observations from the ESOL teacher as part of the documentation collected to establish a student's present level of academic achievement and functional performance. OCR found evidence that parents were provided information in their primary language, either through translated documents or through interpreting, and this was verified through staff interviews. We also found evidence that parents were provided other types of information in their home language (Notice of Recommended Educational Placement, Procedural Safeguards, etc.). However, none of the IEPs reviewed by OCR was in a language other than English. The District relies primarily upon Parent liaisons or the Bilingual Psychologist to interpret/translate during IEP and other special education meetings. In instances when a liaison is not readily available, they will use bilingual support staff.

3. Conclusion – Element Five

Based upon the information obtained and reviewed, OCR concludes that the District has procedures and practices in place that take language proficiency into account when making evaluation and placement decisions regarding EL students who may require special education services. We also find that the District is providing both EL and special education services to students who require both services; therefore the District is in compliance with regard to EL student access to special education services.

Element Six – EL Student Access to Special Programs and Extracurricular Activities

With respect to the issue of EL student access to the District's GATE program and Honors and AP courses, please refer to OCR's discussion of Issue #2.

1. Legal Standard

In accordance with Title VI and OCR policy, recipients must provide equal opportunity for EL students to participate in nonacademic and extracurricular activities. Unless the particular activity requires proficiency in English language skills for meaningful participation, the recipient must ensure that EL students are not denied access because of their limited English proficiency. EL students cannot be categorically excluded from nonacademic and extracurricular activities.

2. Investigative Findings

OCR collected and analyzed data from the 2010-11, 2011-12, and 2012-13 years concerning the extent to which EL students participate in extracurricular activities, including athletics. We focused on data from the 2012-13 school year, because participation data was not routinely tracked, and in some cases not referenced by year. During that school year, OCR found that there were approximately 7,600 participants in clubs or activities. (*OCR notes that this number likely counts students more than once, as participation numbers were provided by each club/activity.*) Of the 7,600 participants, over 15% of them were EL students, which is greater than the proportion of District students identified as EL during the 2012-13 school year (9.6%). Generally speaking, the amount of EL participation varied depending upon the size of the EL population in each school.

The majority of building principals interviewed believed that EL students participate in extra-curricular activities and athletics at a rate comparable to non-EL students. Staff who were surveyed also indicated that EL students are able to and do participate in these activities.

The data provided by the District shows that EL students participate in a myriad of extracurricular programs and activities, including athletics. Furthermore, OCR found no policies or practices that served to exclude EL students from consideration for extracurricular activities, and we found no extracurricular activity in which participation was wholly or partially-based upon English language proficiency.

3. Conclusion – Element Six

Based upon the information gathered, OCR concludes that the District affords EL students equal opportunities to participate in special programs and extracurricular activities, and the information confirmed that EL students are participating in these programs and activities.

Element Seven - Exiting Criteria and Monitoring of Exited Students

1. Legal Standard

A recipient must exit an EL student from an alternative language program only after determining through objective measures that the student is sufficiently proficient in speaking, reading, writing, and understanding the English language to participate effectively in the district's regular education program. Exited students must be monitored for a reasonable time period to ensure that they are not in need of additional alternative language services.

Generally, a recipient will have wide latitude in determining criteria for exiting students from an alternative language program, but there are a few basic standards that should be met. First, exit criteria should be based on objective standards, such as standardized test scores, and the school district should be able to explain why it has decided that students meeting those standards will be able to participate meaningfully in the regular classroom. Second, students should not be exited from the alternative language program unless they can read, write, and comprehend English well enough to participate meaningfully in the recipient's program. Exit criteria that simply test a student's oral language skills are inadequate. Finally, alternative programs cannot be "dead end" tracks to segregate national origin minority students.

2. Investigative Findings

The District follows exiting criteria established by PDE. According to PDE, the criteria represent valid and reliable evidence of a student's English language proficiency to exit from an English language development program. To exit, students must meet a score of "Basic" on the Pennsylvania System of School Assessment (PSSA). For students transferring from other states, out-of-state academic achievement assessment results may be considered when the academic proficiency level is comparable to "Basic" on the PSSA. Students must also obtain scores of 5.0 on the Tier C (advanced level) WIDA's ACCESS (Assessing Comprehension and Communication in English State-to-State) for ELs assessment. The ACCESS for ELs is a secure large-scale English

language proficiency assessment given annually to Kindergarten through 12th graders who have been identified as English learners.

The exit criteria provide some flexibility in meeting the required scores on the ACCESS for ELs. For students who may have scored below the minimum 5.0, the W-APT may be administered between April and June. A student must, however, score 5.0 or higher on the W-APT in each domain area (listening, speaking, reading, and writing). Or, a student who achieves a composite proficiency score of 4.5 to 4.9 on the ACCESS can exit if they achieve a score of “Proficient” on the Reading section of the PSSA.

In addition to the criteria above, a student must also meet one of the following two criteria: final grades of “C” or better in core subject areas (Math, Language Arts, Science, and Social Studies); or, scores on district-wide assessments that are comparable to the “Basic” performance level on the PSSA.

As with the exit criteria, the District also follows the monitoring requirements set forth by PDE. Exited students are monitored for a two-year period and monitoring begins as soon as a student exits. ESOL facilitators have primary responsibility for monitoring exited EL students. Any student who is being monitored and encounters difficulty with English language/skills during the two-year period may be reclassified and placed back into the ESL program. Parents must be notified of the student’s progress and any reevaluation to reclassify the student.

During the 2012-13 school year, the District reported a total of 454 exited EL students in monitoring. The following chart provides a breakdown of monitored students by school and the year of monitoring (M1, M2). Monitoring counts for the 2013-14 and 2014-15 school years are also noted.

	2012-13		2013-14		2014-15	
School Level	M1	M2	M1	M2	M1	M2
Elementary	86	72	105	57	57	85
Middle	71	77	57	71	22	91
High	88	60	62	77	68	90
Grand Total	245	209	224	205	147	266

Interviews with District staff support a conclusion that the District’s exiting and monitoring practices comport with its policies and procedures. Principals confirmed that students are monitored for a period of two years after meeting the exit criteria through data collection and a review of student progress. This information is tracked on exiting forms, which include sections for regular classroom teachers to indicate student performance at the end of each year. Other information is considered in measuring students’ academic progress, such as grades, PSSA results, other assessments, and information shared during monthly meetings.

3. Conclusion – Element Seven

Based upon the information obtained and reviewed, OCR concludes that the District has objective exit criteria for exiting students from the ESL program, based on standards established by PDE, which include considering a student's score on the ACCESS exam, statewide assessments, and grades. OCR also finds that the District's monitoring practices for exited students meet the requirements of Title VI.

Compliance Determination – Prong Two

In summary, based upon the information obtained and reviewed in the six alternative language program component areas, OCR finds that the District's implementation of the chosen instructional model for providing English language instruction meets the requirements of Title VI and OCR policy.

D. Prong Three – Alternative Language Program Evaluation and Modification

1. Legal Standard

The third prong of OCR's analysis requires a school district to periodically evaluate its program to determine if it is successful in providing EL students equal educational opportunity and, if not, whether the program has been modified accordingly. OCR has interpreted Title VI as requiring that school districts do more than adopt and implement an alternative language program; districts are expected to offer programs that are successful in providing EL students with equal educational opportunities. The only way for a school district to gauge success or failure is to have an ongoing alternative language program evaluation and to promptly address any deficiencies noted during the self-evaluation process.

Generally, the success of a program is measured in terms of whether the program is achieving the particular goals the recipient has established for the program. If the recipient has established no particular goals, the program is successful if its participants are overcoming their language barriers sufficiently well and sufficiently promptly to participate meaningfully in the recipient's programs. If EL students are not acquiring sufficient English language skills to allow effective participation in regular academic programs in a reasonable amount of time and in a manner equivalent to the participation of non-EL proficient students, the school district must make appropriate modifications to its alternative program.

2. Investigative Findings

OCR requested that the District provide the results of any evaluations or analysis of data concerning its ESOL program and services conducted by the District, and to note any procedural or program changes resulting from such evaluations.

In response, the District described an April, 25, 2012 meeting regarding the results of the District's progress towards meeting Annual Measureable Achievement Objectives (AMAO). The meeting covered the District's AMAO results, state and federal requirements for EL programs,

ESOL instruction, accountability of content teachers of EL students, and the requirements of the District’s AMAO plan. The District provided a copy of its April 2012 AMAO Improvement Plan, which was developed based on data from the 2009-10 and 2010-11 school years. The plan is built around three objectives, which are designed to measure whether the District can show: 1) annual increases in the number or percentage of children making progress towards learning English; 2) annual increases in the number or percentage of children attaining English proficiency; and 3) adequate yearly progress (AYP) for EL students. The plan indicates that the District: met its target for annual increases in the percentage of children making progress in learning English during the 2009-10 school year but not for the 2010-11; met its target for annual increases in the number or percentage of children attaining English proficiency in both the 2009-10 and 2010-11 school years; and did not meet its AYP target for ELL students for the 2009-10 school year but did so for the 2010-11 school year.

OCR requested that the District share any evaluations of the District's ESOL program that were conducted internally or externally by third parties (for example, PDE or the U.S. Department of Education’s Office of English Language Acquisition), and to describe any procedural or program changes that resulted from such evaluations. The District noted the results of a PDE Title III Program Review Report, dated May 13, 2013, in which the PDE determined that the District had met all ten of the components which comprise the Title III Program requirements.

In conjunction with this information and related to the issue of periodically evaluating the effectiveness of the ESOL program for EL students, OCR analyzed information concerning the language proficiency of EL students at the conclusion of the 2010-11, 2011-12, and 2012-13 years to measure the extent of English proficiency gain or loss sustained by students over the three-year period. The following table shows the results of this analysis:

EL Student Language Proficiency Gain/Loss (2010-13)

Gain/Loss Range	#Students	%
-3.1 to -4.0	2	0.5
-2.1 to -3.0	4	0.9
-1.1 to -2.0	5	1.2
-0.1 to -1.0	64	15.1
0	13	3.1
0.1 to 1.0	169	39.9
1.1 to 2.0	112	26.4
2.1 to 3.0	46	10.8
3.1 to 4.0	8	1.9
> 4.0	1	0.2
Total	424	

Of 424 students for whom English language data was available for each of the three years, 336 (79.2%) EL students experienced a net gain in English language proficiency, while 75 (17.7%) EL students experienced a net loss in English language proficiency. Thirteen EL students (3.2%) were unchanged.

OCR also analyzed data comparing EL to non-EL students in the areas of attendance, grade retention, standardized testing (PSSA) performance, and graduation rates. OCR's analysis of this information revealed the following:

Elementary/Middle school level

- EL students had better attendance rates than non-EL students at (ten or higher) of the District's 16 elementary schools during each of the 2010-11, 2011-12, and 2012-13 school years. EL students had better attendance rates than non-EL students in only one of the District's four middle schools during the 2010-11 school year. This increased to three out of four during the 2011-12 school year, but decreased to two out of four during the 2012-13 school year.
- During the 2010-11 school year, the EL student grade retention rate was 1.2% (14 students out of 1,193) compared to 0.7% (75 students out of 11,140) for non-EL students. This rate improved the following year when the EL rate dropped to 0.6% (8 students out of 1,296) compared to 0.8% (83 students out of 10,820) for non-EL students.
- During each of the 2010-11, 2011-12, and 2012-13 school years, EL students performed far below their non-EL peers on the Math, Reading, and Science portions of the PSSA. EL students performed best on the Writing portion of the PSSA, but still worse in comparison to non-EL students.

OCR requested similar data for the 2014-15 school year, which showed that EL students continued to perform lower than non-EL peers on the PSSA English/Language Arts, Math, and Science assessments. However, EL students in monitoring (M1/M2), and those who had completed monitoring, performed comparably to – and in some cases outperformed – non-EL students in these assessments areas.

During the 2014-15 school year at the high school level, the average number of days EL students were absent (26.2) was comparable to the average number of days non-EL students were absent (24.4). Of note, the average number of days absent was lower for former EL students (19.1) and in the second year of monitoring after exit (20.3), and much lower for those in the first year of monitoring after exit (17.5).

While overall retention rates at the high school level dropped significantly overall for both EL and non-EL students during the 2014-15 school year, the rate for EL students (4.8%) was higher compared to non-EL students (1.8%). The EL student graduation rate dropped to 89% compared to 94% for non-EL students, but this difference is not statistically significant.

Interviews with key administrative staff indicate that several measures which can be used to determine the effectiveness of ESOL program services are reviewed each year, including a review of annual AMAO reports, WIDA assessments, and the performance of EL students in comparison to other student groups on standardized assessments, such as the PSSA. Generally speaking, however, the majority of these individuals did not know whether the District conducted, nor were they asked to participate in, a comprehensive evaluation of the ESOL program that meets OCR's standards.

Furthermore, the results of general and formal surveys of regular and EL staff support this conclusion. The majority of ESOL staff surveyed indicated that they had not participated in an evaluation of the ESL program nor were they aware of any evaluations that had been conducted.

3. Compliance Determination – Prong Three

Based upon the information obtained and reviewed, OCR concludes that the District does not have practices in place to fully evaluate its alternative language program and to address any deficiencies noted. Therefore, OCR finds that the District’s alternative language program is not in compliance with the requirements of Title VI and OCR policy.

E. Parental Communication

1. Legal Standard

Recipients must adequately notify national origin minority group limited-English proficient parents or guardians of school activities that are called to the attention of other parents or guardians. In order to be adequate, such notice may have to be provided in a language other than English. Recipients should consider the following factors when developing policies to communicate with parents or guardians who require language assistance: 1) the number or proportion of limited-English proficient individuals likely to encounter the program; 2) the frequency with which limited-English proficient individuals come into contact with the program; 3) the nature and importance of the services provided by the program; and 4) the resources available to the recipient.

Although they cannot be expected to know of the existence of every LEP parent or guardian, schools and districts must make reasonable efforts to identify LEP parents or guardians, and to provide assistance to these parents and guardians once identified. Such efforts may include home language surveys, interaction between parents or guardians and staff, and taking into account that LEP students also may have LEP parents or guardians. A parent or guardian’s LEP status is independent of their child’s proficiency in English.

Whether a parent or guardian is considered limited-English proficient may also vary with the service, benefit, or encounter at issue. For example, a parent or guardian may have sufficient English language skills to communicate basic information, but may require simultaneous interpretation for an important matter such as a disciplinary hearing where various witnesses will be called, or an individualized education program (IEP) meeting where complex and technical information regarding their child’s disability is discussed.

In addition, a parent or guardian does not have to be of limited proficiency in speaking, reading, writing, and comprehending English in order to be limited-English proficient. For example, a parent or guardian may be a fairly fluent reader of written English, but need assistance in understanding and communicating spoken English. A school or district that is not providing interpreter assistance at a parent/teacher conference to a limited-English proficient parent or guardian who reads but does not understand spoken English may be in violation of Title VI’s

prohibition of excluding—on the grounds of national origin—persons from participating in, denying the benefits of, or otherwise subjecting to discrimination under a program receiving Federal financial assistance.

It is important for a district to let LEP parents and guardians know, in a language they understand, that language assistance is available and is free of charge. OCR expects districts to provide language assistance for LEP parents and guardians effectively, with appropriate, competent staff, or appropriate and competent outside resources. Districts also should strive to ensure that interpreters are trained on the role of an interpreter/translator, the ethics of interpreting and translating, and the need to maintain confidentiality. The use of family members, friends, and children to provide language assistance raises concerns about confidentiality, privacy, quality assurance, and conflicts of interest; for these and other reasons the use of children to interpret or translate is generally inadvisable.

2. Investigative Findings

The District's Limited English Proficiency Program policy (#138) states that, "At the beginning of each school year, the District shall notify parents/guardians of students qualifying for LEP programs regarding the instructional program and parental options, as required by law. Parents/Guardians will be regularly apprised of their student's progress. Communications with parents/guardians shall be in the language understood by the parents/guardians, whenever possible." The policy also states that, "Communication with the parents/guardians of English language learners being considered for special education placement, who may be English language learners themselves, shall be clear and presented, whenever possible, in a mode and language they understand."

The District's enrollment/registration packet is available in English and Spanish, and includes the following documents: Student Registration form (which includes home language survey questions); Migrant Education Eligibility form; Medical, Developmental History/Sociolinguistic form; Affirmation of Prior Discipline Record; Student Health Update form; Release of Student Information form; Student Technology Use Information; Parental Permission and Acknowledgement for Technology Use; and Free/Reduced Lunch application. The District provided OCR with copies of brochures that are readily available in Spanish, which provide information regarding the Student Assistance Program, bullying prevention, Family Centers, School Outreach Workers, tutoring, and School Choice options.

The District's public website incorporates a translation function which allows visitors to translate from English into one of the following choices: Arabic, Chinese (Simplified), Chinese (Traditional), Galician, Greek, Hindi, Korean, Russian, Spanish, and Vietnamese. The translator function translates most, if not all, of the information that appears on the website in text or html format. The function does not appear to work on certain types of documents (Acrobat, for example) that are imbedded in the website or linked as attachments in the website, such as a board policy. Important documents, however, such as the Enrollment/Registration packet, Student Code of Conduct, Harassment reporting form, Procedural Safeguards Notice, and many others have been translated into Spanish and are available through the website as separate versions to English. OCR did not, however, find evidence of these documents in any other

language. Additionally, the District’s website does not include a notice about how to request oral interpretation and/or written translation of documents.

The District utilizes a web-based information system, known as the Sapphire Community Portal, which provides parents with access to information on student schedules, grades, homework assignments, attendance, links to external websites approved by a classroom teacher, and building announcements. Instructions for registering with and using the community portal are available on the District’s website in both English and Spanish, but not in other languages.

The District reported that it employs nine Parent Liaisons, who are distributed among the District schools. Each high school has two liaisons. Liaisons who are assigned to one of the District’s four middle schools are also assigned responsibility at three to four elementary schools. The District provided the position descriptions for Parent Liaisons which state that the individual must be bilingual in Spanish and the individual will provide translation services, depending upon availability, at the building. Other essential duties of the liaisons include: assisting in disseminating information to parents about school and community activities; facilitating ongoing communications/customer service with community, families, school and the District; facilitating communication of the District Code of Conduct and assisting parents/guardians with communicating; and attending community meetings to inform and promote community and school-wide community and parental involvement activities. OCR interviewed five of the nine Parent Liaisons during onsite visits who affirmed that they meet the qualification requirements of the position and perform the described duties.

In interviews with OCR, some staff members pointed to the Home Language Survey questions as one mechanism for identifying which parents/guardians might require communication in a language other than English. Other staff said that they often find out when parents present themselves as needing language assistance. Aside from these methods, there is no clear or defined written method or process for identifying parents/guardians with language communication needs. In addition, while most staff members indicated that there are in-house resources available for translation or interpreting, OCR found, with one school (Jefferson Elementary) as the exception, no specific written policies or procedures that inform parents/guardians how to request such assistance. A document entitled, “*What you need to know about the Allentown School District,*” is a helpful document available on the District’s website that provides parents with quick summaries of key information, including the process for scheduling a meeting with a teacher or principal. It does not, however, cite any information about translation or interpreting services or how to contact Parent Liaisons. Staff members indicated that the District is able to handle most requests for translation or interpreting in Spanish, but there are few resources available to handle requests for assistance in other languages, such as Arabic and Vietnamese.

3. Compliance Determination

Based upon the information collected and reviewed, OCR finds that the District does not fully meet the requirements of Title VI with regard to its communication with limited-English proficient parents and guardians, especially for those families in low incidence language populations. The District fails to provide formal notification to limited-English proficient

parents or guardians regarding available translation and interpreter services or how to request the same. Also, the District does not have an adequate process for ensuring that interpreters/translators are available when needed.

Issue #2 - Hispanic and EL student access to the District's Gifted and Talented Education (GATE) program and Honors and Advance Placement (AP) courses

1. Legal Standard

The standards for determining compliance with Title VI are set forth in the regulation at 34 C.F.R. § 100.3(a) and (b). The regulation, at 34 C.F.R. § 100.3(a), states that no person shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program receiving federal financial assistance. Section 100.3(b)(1)(i)-(vi) of 34 C.F.R. further states that a recipient may not, on the grounds of race, color or national origin, deny an individual any service or benefit of its programs; provide any services or benefits to an individual which are different or provided in a different manner; subject an individual to separate treatment; restrict an individual in the enjoyment of any benefits of its programs; treat an individual differently in determining continued enrollment in its programs; or, deny an individual an opportunity to participate in a program through the provision of services which is different from that afforded others under the program.

The regulation, at 34 C.F.R. § 100.3(b)(2), also provides that a recipient may not utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination on the basis of race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

If a district has a process for identifying gifted and talented non-EL students, it must also identify gifted and talented EL students, and provide equal opportunity for EL students to participate in gifted and talented programs. Unless the particular gifted/talented program or program component requires proficiency in English language skills for meaningful participation, the recipient must ensure that evaluation and testing procedures do not screen out EL students because of their limited English proficiency. To the extent feasible, placement tests should not be of a type that the student's limited proficiency in English prevents the student from qualifying for a program for which the student would be otherwise qualified. Also, EL students cannot be categorically excluded from other specialized programs, such as Honors and Advanced Placement (AP) courses.

2. Investigative Findings – Hispanic and EL Student Access to GATE

OCR obtained and reviewed statistical data concerning the number of students referred to and found eligible for the GATE program covering a five-year period (2010-2015). The following two tables show this information, by race.

Students Referred for GATE, by Race (2010-15)

Race	2010-11		2011-12		2012-13		2013-14		2014-15		Total
	#	%	#	%	#	%	#	%	#	%	
White	68	30.6	34	40.0	31	30.7	30	37.5	18	24.3	181
Hispanic	99	44.6	26	30.6	46	45.5	32	40.0	34	45.9	237
African American	35	15.8	10	11.8	14	13.9	14	17.5	5	6.8	78
Asian	10	4.5	3	3.5	5	5.0	3	3.8	5	6.8	26
Other	10	4.5	12	14.1	5	5.0	1	1.3	12	16.2	40
Total	222	100.0	85	100.0	101	100.0	80	100.0	74	100.0	562

Students Found Eligible for GATE, by Race (2010-15)

Race	2010-11		2011-12		2012-13		2013-14		2014-15		Total
	#	%	#	%	#	%	#	%	#	%	
White	42	28.2	23	39.7	25	36.2	17	36.2	11	21.2	118
Hispanic	67	45.0	16	27.6	28	40.6	20	42.6	24	46.2	155
African American	25	16.8	7	12.1	9	13.0	9	19.1	3	5.8	53
Asian	7	4.7	2	3.4	3	4.3	1	2.1	5	9.6	18
Other	8	5.4	10	17.2	4	5.8	0	0.0	9	17.3	31
Total	149	100.0	58	100.0	69	100.0	47	100.0	52	100.0	375

The following table indicates that - over the five-year period - the proportion of students found eligible for GATE, of those referred, was fairly comparable among White, Hispanic, and African-American students.

Percentage of Students Found Eligible for GATE, of Those Referred, by Race (2010-15)

Race	%
White	65.2
Hispanic	65.4
African American	67.9
Asian	69.2
Other	77.5

OCR also obtained and reviewed data concerning EL students referred to and found eligible for the GATE program over the same five-year period. The following table shows this information, by race.

EL Students Referred, and EL Students Eligible for GATE (2010-15)

	2010-11		2011-12		2012-13		2013-14		2014-15		Total	
	#	%	#	%	#	%	#	%	#	%	#	%
EL Referred	11		0		0		0		5		16	
Hispanic	9	81.8	0	0.0	0	0.0	0	0.0	3	60.0	12	75.0
Asian	2	18.2	0	0.0	0	0.0	0	0.0	2	40.0	4	25.0
EL Eligible	9		0		0		0		4		13	
Hispanic	7	77.8	0	0.0	0	0.0	0	0.0	2	50.0	9	69.2
Asian	2	22.2	0	0.0	0	0.0	0	0.0	2	50.0	4	30.8

This information shows that over 80% (or 13 out of 16) of EL students who were referred/evaluated for gifted were found eligible for gifted. This eligibility rate was higher than that compared to any racial group in the District over the same time period (2010-15).

The District informed OCR that the EL gifted participation data does not provide an accurate depiction of actual EL student participation in gifted, as students may be referred and found eligible *after* they have completely exited (no longer monitored) from the ESOL program.

Policies, Procedures, and Practices for Participation in Gifted

Interviews with administrative staff and teachers indicate that any student may be referred for gifted evaluation by parents or staff members. Most of the referrals for gifted evaluation, however, come through a proactive and comprehensive District-based screening and identification process which occurs each year in Kindergarten through 9th grade.

The District's gifted screening procedures require that teacher and parental input is sought, collected, and considered. There are some minor differences depending upon the school/grade level, such as the screening schedule and the types of assessments used.

In grades 10 through 12, students are no longer screened for gifted by District staff. Parents and teachers, however, may refer students for evaluation and such referrals are forwarded to a school counselor. The information that is collected and reviewed in the process to determine eligibility for gifted is similar to that for 9th grade students.

OCR reviewed the forms used in the gifted screening and evaluation process. The Gifted Screening Matrix notes that "A student will be automatically tested for gifted when s/he achieves a Full Scale or Composite Score of 130 or above on a group or individual intellectual screening measure." All other students are tested for gifted services if they obtain the required points as determined through the matrix. Guidance is also provided to school teams on additional factors to be considered in determining eligibility. These factors include: economically disadvantaged; history of ESOL; English not spoken in home; high transiency rate; and cultural factors.

Students earn points on the Gifted Screening Matrix in the following areas: achievement testing; classroom performance (reading, math, and writing performance assessments in grades

K-5, classroom grades in English, Math, Social Studies and Science for students in grades 6-12); cognitive screening; results of gifted rating scales; and intervening factors. OCR notes that the form specifically requires that EL students who are ESOL Level 1 or 2 be awarded 3 points, students who are ESOL Level 3 be awarded 2 points; and students who are ESOL Level 4 be awarded 1 point. In cases where an EL student’s language proficiency warrants testing in their native language, a bilingual psychologist will conduct all or part of the evaluation/assessment, depending on the student’s individual needs.

OCR’s review of student files confirmed that the District’s practices generally comport with its noted procedures. OCR observed the use of the gifted screening matrix in the manner described and the involvement of bilingual psychologists when needed.

While Hispanic and EL student participation in gifted remains disproportionate when compared to their representation in the overall student population, the numerical data concerning the percentage of students found eligible for GATE - of those referred (noted above) - is evidence that the use of multiple criteria, matrix points awarded for other factors, and bilingual psychologists (when needed) may benefit Hispanic and EL students somewhat more favorably than White students and that eligibility determinations are made without regard to race or English language proficiency. In an interview with OCR, the ESOL Director felt that EL student participation in gifted was comparable to that of non-EL students. The Director of Special Education stated that participation numbers for EL students may be somewhat misleading, because EL students who were evaluated and found eligible for gifted while receiving ESOL services may have since exited the ESOL program and are no longer dually identified as EL and gifted.

3. Investigative Findings - Hispanic and EL Student Access to Honors and AP courses

OCR obtained and reviewed statistical data concerning the number of Honors and AP courses taken by students over a three-year period (2010-2013). The following two tables show this information, by the race of the students taking the courses.

Number of Honors Courses Taken, by Race (2010-13)

Honors Courses Taken (2010-13)	2010-11		2011-12		2012-13		Total
	#	%	#	%	#	%	
White	737	26.6	1,063	23.3	764	23.4	2,564
Hispanic	1,518	54.8	2,598	57.0	1,847	56.6	5,963
African American	440	15.9	729	16.0	517	15.8	1,686
Asian	68	2.5	139	3.1	118	3.6	325
Other	6	0.2	28	0.6	16	0.5	50
Total	2,769	100.0	4,557	100.0	3,262	100.0	10,588

Number of AP Courses Taken, by Race (2010-13)

AP Courses Taken (2010-13)	2010-11		2011-12		2012-13		Total
	#	%	#	%	#	%	
White	405	57.5	430	48.4	423	45.4	1,258
Hispanic	184	26.1	285	32.1	324	34.8	793
African American	69	9.8	114	12.8	114	12.2	297
Asian	46	6.5	54	6.1	65	7.0	165
Other	0	0.0	5	0.6	5	0.5	10
Total	704	100.0	888	100.0	931	100.0	2,523

OCR also obtained and reviewed data concerning the number of Honors and AP courses taken by EL students over a five-year period (2010-15). The following table shows this information, by type of course.

Number of Honors and AP Courses Taken by EL Students (2010-15)

Honors/AP Courses Taken by EL Students (2010-15)	2010-11	2011-12	2012-13	2013-14	2014-15
Honors	23	52	5	102	90
AP	5	1	2	6	95
Total	28	53	7	108	185

Policies, Procedures, and Practices Regarding Participation in Honors and AP Classes

The District noted that it uses the term ‘Advanced’ when describing or identifying Honors courses, while AP courses are its most rigorous courses. Over the three years of data reviewed by OCR, the District offered the following Honors (Advanced) and AP courses (as identified in the electronic participation data). The availability of the courses differed slightly from school to school:

<i>Honors/Advanced (Middle School)</i>	<i>AP (High School)</i>	
Algebra 1	Art History	Music Theory
Algebra 2	Biology 2	Physics 2
English	Calculus AB	Physics B
Foreign Language	Calculus BC	Seminar
Language Arts	Chemistry 2	Spanish 5
Math	English Language	Spanish 6
People and Culture	English Literature	Statistics
Pre-Algebra	French 6	Student Support
Reading	German	Studio Arts
Science	German 5	U.S. Government
U.S. Citizenship	German 6	U.S. History
U.S. & Pennsylvania History	Latin 4	World History
	Macroeconomics	

While the District has no specific policies regarding the eligibility and selection/assignment of students in Honors and AP courses, the District reported that students in secondary-level schools can work with guidance counselors to schedule Honors and AP courses, based on past academic performance and teacher recommendations.

The District also reported that, as AP courses are offered only in grades 10-12, and since the District provides free PSAT testing for all students in grades 10 and 11, the District also uses the College Board's *AP Potential* tool to identify potential students for the AP program. *AP Potential* provides District high schools the ability to generate rosters of students who are likely to score a 3 or better on a given AP exam. Both of the District's high schools are provided access codes to review and enroll students in AP courses based on their PSAT performance. These rosters are then given to the guidance counselors so that they may meet with those students to assist in selecting their coursework.

OCR observed, when reviewing student files, evidence of Hispanic and EL students taking Honors and/or AP courses. The Honors and AP data provided by the District also show that the proportion of Hispanic students taking Honors and AP courses increased over a three-year period, and that the number of Honors and AP courses taken by EL students significantly increased over a five-year period.

OCR interviewed guidance counselors at two middle schools (Harrison-Morton and Raub) and at both high schools. According to them, honors and AP courses are, for the most part, selected by students at the high school level. At the middle school level, course requests can be made by students, teachers, or parents. For some AP courses, students must meet course prerequisites, such as having taken a certain class or obtaining a teacher recommendation. A counselor noted that even if data did not support placing a student in an honors or AP course, they would place them but advise them that it may not be appropriate. One of the high school counselors stated that students are encouraged to take classes that challenge them and are provided information about the benefits of taking such classes. While none of the counselors believed that access to honors or AP courses was dependent upon one's language proficiency, one of the high school counselors felt that a Level I or Level II EL student might have problems taking a class such as AP English.

With regard to providing information to language minority parents about Honors and AP courses at the high school level, the District reported that it annually holds orientations for parents of incoming freshman. Each school makes the presentation on two separate occasions during the school year, providing information about the requirements for AP participation. OCR did not find any evidence that the document is translated in Spanish or any other language, nor that the District advertises these orientations in languages other than English. District staff asserted, however, that an interpreter is present during the orientations. In addition, the District provided student handbooks for the two high schools which include references to the AP program. OCR notes, however, that these handbooks are only available in English.

Compliance Determination – Issue #2

With respect to EL and Hispanic student access to the GATE program and services, the evidence establishes that the District has procedures for referral, evaluation, and placement in gifted which utilize a variety of criteria and consider the impact of a student's English language proficiency and other factors that might otherwise limit or impact a student's opportunity to participate in GATE. The evidence also establishes that the District's practices comport with these procedures. OCR found that Hispanic students have a higher eligibility rate than other student groups. Where necessary, gifted assessment for EL students is conducted by a bilingual psychologist, and the District is able to communicate information concerning the outcome to parents who require it in a language other than English. This evidence establishes that the District provides Hispanic and EL students with equitable access to GATE.

With respect to EL and Hispanic student access to Honors and AP courses, the evidence establishes that EL and Hispanic students participate in those types of courses and that participation in those courses is not dependent upon a student's race or proficiency in English.

Conclusion

To resolve the compliance concern relative to Prong 3, identified above, the District entered into the attached Resolution Agreement (the Agreement), signed on June 22, 2018. The Agreement requires the District to conduct a comprehensive evaluation of its ESOL program at each school level (elementary, middle, and high). The evaluation will collect and consider information and data that is sufficient to enable it to conduct the evaluation, and will ensure that it seeks input and feedback from administrators, staff, parents/guardians, and students. If the evaluation shows that the ESOL program is not achieving its stated goals, the District will modify the program accordingly, within a reasonable amount of time after the evaluation, or document the reasons for not implementing the recommendations.

The Agreement also requires the District to develop and implement policies and procedures to ensure that limited English proficient parents and guardians (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. The District will provide training to staff regarding the policies and procedures and will inform LEP parents about the policies and procedures.

Once the Agreement is fully implemented, the District will be in compliance with Title VI with respect to the specific issues addressed in this letter. OCR will monitor the District's implementation of the Agreement 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.

This concludes OCR's investigation of this compliance review. 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.

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

We appreciate the District's cooperation in the resolution of this compliance review and its commitment to addressing the identified compliance concerns. If you have any questions, please contact Michael Wesley, the OCR investigator assigned to this compliance review, at 215-656-6908 or michael.wesley@ed.gov.

Very truly yours,

/s/

Wendella P. Fox
Director
Philadelphia Office

Enclosure

cc: Brian Taylor, Esquire - King, Spry, Herman, Freund & Faul, LLC