



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION III
DELAWARE
KENTUCKY
MARYLAND
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WEST VIRGINIA

September 22, 2016

IN RESPONSE, PLEASE REFER TO: 03141175

Dr. Mark Holodick
Brandywine School District
1311 Brandywine Boulevard
Wilmington, DE 19809

Dear Dr. Holodick:

This is to advise you of the resolution in the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the Brandywine School District (the District). The Complainant, XXXXXX, alleged that the District discriminates against students on the basis of national origin, and XXXXXX. Specifically, the Complainant alleged that:

1. XXXXXX;
2. XXXXXX;
3. XXXXXX;
4. The District provides XXXXXX at its elementary schools to meet the needs of its ELL students;
5. XXXXXX; and
6. XXXXXX.

OCR enforces Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and its implementing regulation, 34 C.F.R. Part 100, which prohibit discrimination on the bases of race, color or national origin by recipients of Federal financial assistance. Title VI also prohibits retaliation. As a recipient of Federal financial assistance from the Department, the District is subject to these laws.

OCR applies a preponderance of the evidence standard to determine whether the evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports the conclusion or whether the evidence is insufficient to support the conclusion.

In its investigation, OCR reviewed documentation from the Complainant and the District. OCR also interviewed the Complainant and several District staff members, and conducted an on-site visit to the School. OCR concludes that the evidence is insufficient to establish that the District violated Title VI or retaliated against the Complainant, as alleged with respect to Allegations #1,

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

#2, #5, and #6. The District requested to resolve Allegations #3 and #4 voluntarily with OCR, and has executed an agreement (attached) to resolve those allegations.

LEGAL BACKGROUND

Allegations XXXXXX: Services for ELL Students and their Families

The Title VI implementing regulation, at 34 C.F.R. § 100.3(a) and (b)(i)-(ii) provides that a recipient of federal financial assistance may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin, exclude persons from participation in its programs, or provide any service or benefit which is different or provided in a different manner from that provided to others. 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.

On January 7, 2015, in conjunction with the Civil Rights Division at the U.S. Department of Justice, OCR issued a Dear Colleague Letter entitled, “English Learner Students and Limited English Proficient Parents” (January 2015 Memorandum).¹ This guidance provides an overview of the legal obligations of school districts to ELL students and limited English proficiency (LEP) parents under the civil rights laws.

Where 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. A district should have procedures in place for identifying and assessing students who have a primary or 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 assessment of whether national-origin minority students proficiently speak, understand, read, and write English.

Districts are also required to select a sound educational theory for their programs for ELL students that are likely to meet the educational needs of language-minority students effectively. A school must use practices, resources and personnel reasonably calculated to implement its educational theory. Schools have a dual responsibility to teach students English and to provide them with access to the curriculum, taking steps to ensure that students are not left with academic deficits. Schools must demonstrate that their programs for ELL students are successful in meeting these responsibilities, or modify them if necessary.

In order to ensure that English language development (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.

Districts are expected to carry out their programs effectively, with appropriate staff (teachers and aides), and with adequate resources (instructional and equipment). The appropriateness of staff is indicated by whether their training, qualifications, and experience are consonant with the requirements of the program.

¹ <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>. See generally OCR’s policies governing the treatment of ELL students, which are available at <http://www.ed.gov/ocr/ellresources.html>.

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 ELL students or require that teachers already on staff work toward attaining those formal qualifications. School districts must ensure that the ELL 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.

The district should ascertain that teachers who use the ELL methodology 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 ELL students and the teacher's classroom performance should be evaluated by someone familiar with the method being used.

Paraprofessionals, aides, or tutors may not take the place of qualified teachers and may be used only as an interim measure while the school district hires, trains, or otherwise secures enough qualified teachers to serve its ELL students. And if a school district uses paraprofessionals to provide language assistance services to ELL students that supplement those provided by qualified teachers, it may do so only if the paraprofessional is trained to provide services to ELL students and instructs under the direct supervision of a qualified teacher.

Additionally, teachers must be available in sufficient numbers to ensure effective implementation of the district's chosen ELD 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.

School districts must ensure that language-minority parents who are not proficient in English receive meaningful access to the same admissions information and other school-related information provided to English-proficient parents in a manner and form they can understand, such as by providing free interpreter and/or translation services. School districts have the responsibility to adequately notify national origin minority group parents of information that is called to the attention of other parents. Such notice, in order to be adequate, may have to be provided in a language other than English.

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 competent staff, or competent outside resources. Districts also should 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, children should not be used to interpret or translate.

XXXXXX

xxx – paragraphs redacted – xxx

FACTS AND ANALYSIS

xxx – paragraphs redacted – xxx

Analysis and Resolution

Under OCR procedures, a complaint allegation may be resolved before the conclusion of an investigation if a recipient asks to resolve the allegation by signing a voluntary resolution agreement. The provisions of the agreement must be aligned with the information obtained in the investigation to date and be consistent with applicable regulations. Such a request does not constitute an admission of liability on the part of a recipient, nor does it constitute a determination by OCR of any violation of our regulations. Consistent with OCR's procedures, and prior to the conclusion of OCR's investigation of these allegations, the District requested to resolve the complaint allegations through a voluntary resolution agreement (the Agreement) which was executed on September 13, 2016. Accordingly, OCR is concluding its investigation of Allegations XXXXXX. A copy of the signed agreement is enclosed. As is our standard practice, OCR will monitor the District's implementation of the Agreement.

XXXXXX

xxx – paragraphs redacted – xxx

This concludes OCR's investigation of this complaint. 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 determinations 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. Complainants may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District may not retaliate against an individual who asserts a right or privilege under a law enforced by OCR or who files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR.

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.

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Thank you for your assistance in resolving this matter this matter. In particular, we would like to thank Kim Doherty for her assistance and cooperation with OCR. If you have any questions, please contact Lucy Glasson at (215) 656-8533 or by email at Lucy.Glasson@ed.gov.

Sincerely,

/s/

Beth Gellman-Beer
Team Leader

Enclosure