



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

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October 4, 2017

Bob Thomas
Superintendent
Knox County Schools
PO Box 2188
Knoxville, TN 37901

Re: Complaint #04-16-1483

Dear Mr. Thomas:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against the Knox County School District (District) on May 20, 2016, alleging discrimination on the basis of national origin. Specifically, the Complainant alleged the following:

1. For two days in January 2016, a class of English Learner (EL) students at Carter High School did not have staff available to deliver the District's EL program.
2. From November 2015 through the end of the 2015-16 school year, the District did not provide EL services to students at Career Magnet Academy.

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

In this matter, OCR investigated the following issues:

- Whether in January 2016, the District failed to provide appropriate staff to deliver the District's EL program to EL students at Carter High School, in non-compliance with Title VI and its implementing regulation at 34 C.F.R. § 100.3.

- Whether from November 2015 through the end of the 2015-16 school year, the District failed to provide EL services to students at Career Magnet Academy, in non-compliance with Title VI and its implementing regulation 34 C.F.R. § 100.3.

OCR evaluates evidence obtained during an investigation under a preponderance of the evidence standard to determine whether the greater weight of the evidence is sufficient to support a conclusion that a recipient, such as the District, failed to comply with a law or regulation enforced by OCR or whether the evidence is insufficient to support such a conclusion. In reaching a determination in this matter, OCR reviewed and analyzed documents submitted by the Complainant and the District, including documents OCR requested and received from the District. OCR also interviewed the Complainant and the District's the Executive Director of Curriculum and Instruction, the Executive Director of Student Support Services, the Supervisor of Employee Relations, and the English Language Learners Supervisor. Based on its investigation, OCR has determined that the evidence is sufficient to support a finding that the District failed to deliver English as a Second Language (ESL) Program services to students at Carter High School and Career Magnet Academy, in noncompliance with Title VI.

Legal Standards

With respect to the issue of EL students, the Departmental Policy Memorandum issued on May 25, 1970, entitled "Identification of Discrimination and Denial of Services on the Basis of National Origin" (the May 1970 memorandum), 35 Fed. Reg. 11,595, clarifies OCR policy under Title VI on issues concerning the responsibility of school districts to provide equal educational opportunity to language minority students. 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 the Department's Title VI policy concerning discrimination on the basis of national origin against language-minority students. In September 1991, OCR issued a Memorandum entitled "Policy Update on Schools Obligations Toward National Origin Minority Students with Limited-English Proficiency" (September 1991 memorandum). OCR and DOJ's English Learners Dear Colleague letter (January 7, 2015 EL DCL) at Section II.B (Providing EL Students with a Language Assistance Program) and II.C (Staffing and Supporting an EL Program) provides additional guidance:

Providing EL students a Language Assistance Program

When EL students are identified based on a valid and reliable ELP test, school districts must provide them with appropriate language assistance services. Language assistance services or programs for EL students must be educationally sound in theory and effective in practice; however, the civil rights laws do not require any particular program or method of instruction for EL students. Students in EL programs must receive appropriate language assistance services until they are proficient in English

and can participate meaningfully in the district's educational programs without language assistance services.

Staffing and supporting an EL program

School districts have an obligation to provide the personnel and resources necessary to effectively implement their chosen EL programs. This obligation includes having highly qualified teachers to provide language assistance services, trained administrators who can evaluate these teachers, and adequate and appropriate materials for the EL programs. At a minimum, every school district is responsible for ensuring that there is an adequate number of teachers to instruct EL students and that these teachers have mastered the skills necessary to effectively teach in the district's program for EL students.

OCR's September 1991 policy memorandum requires a district to provide the staff necessary to properly carry out its chosen program. A district lacking adequate staff must either hire qualified teachers trained to provide alternative language services or require that teachers already on staff work toward attaining those formal qualifications. A district must complete this transition within a reasonable period, and should be able to show that its teachers have mastered the skills necessary to teach effectively in the chosen alternative language program. According to *Castañeda v. Picard* 648 F.2d 989 (5th Cir., 1981), if a District shows that it has unsuccessfully tried to hire qualified teachers, then it must provide adequate training to teachers already on staff. Such training must take place as soon as possible. The September 1991 policy memorandum also provides that 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. In making this determination, the district should use validated evaluative instruments, that is, tests that have been shown to accurately measure the skills in question. The district should also have the teachers' classroom performance evaluated by someone familiar with the method being used.

The EL DCL provides that School districts have an obligation to provide the personnel and resources necessary to effectively implement their chosen EL programs. This obligation includes having highly qualified teachers to provide language assistance services and trained administrators who can evaluate these teachers. At a minimum, every school district is responsible for ensuring that there is an adequate number of teachers to instruct EL students and that these teachers have mastered the skills necessary to effectively teach in the district's program for EL students.

When EL students are identified, school districts must provide them with appropriate language assistance services. Language assistance services or programs for EL students must be educationally sound in theory and effective in practice. When evaluating whether a recipient's chosen EL services and programs meet civil rights requirements, OCR uses a three-pronged test: First, OCR determines whether the school district has chosen a program model for providing educational services to LEP students that is based upon a sound educational approach or upon a legitimate experimental strategy. Second, OCR determines whether the district is effectively implementing the educational theory it adopted. A school district must allocate adequate and appropriate staff and resources, such as instructional materials, to implement its chosen program properly. Finally, OCR determines whether the district has taken action if the program, after a

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legitimate trial, fails to produce results indicating that the language barriers confronting students are actually being overcome.

Factual Findings and Analysis

Background

OCR's investigation revealed that, as contained in the District's Board Policy I-290, the District provides an alternative language program, known as ESL, to students identified as EL pursuant to the WIDA-ACCESS Placement Test (W-APT), a state approved English language proficiency test. Students who receive a score of less than five in either the literacy or composite categories of the W-APT are placed in the District's ESL Program. The District's ESL Policy provides that an endorsed ESL teacher must deliver the alternative language services using the state approved ESL curriculum.

The District screens all ELs in the spring using the W-APT. Students are exited from the ESL Program when they receive a score of five in both the literacy and composite categories. The ESL Policy provides that the District must monitor students' progress for two years after they have exited from ESL services.

Issue 1 (Carter High School)

OCR's investigation revealed that during the 2015-16 school year, an EL endorsed teacher (Former EL teacher) taught an EL class (Class), five days a week, at Carter High School. The Class included two students (Student A and Student B). Student A and Student B were placed in the ESL Program at the beginning of the 2015-16 school year. The Former EL Teacher taught the Class until November 9, 2015, when the District placed him on administrative leave.

On November 13, 2015, an EL endorsed substitute (EL Substitute) assumed oversight and delivery of the District's chosen program to the Class, through the end of the fall 2015 semester. The EL Substitute, after receiving a permanent position elsewhere in the District, did not return to Carter High School in the spring of 2016. The spring semester began on January 5, 2016, and on February 1, 2016, the District employed a full time EL endorsed teacher (EL Teacher) to assume oversight and delivery of the District's chosen program to the Class through the end of the spring semester. In the spring semester, before the District employed the EL Teacher, Student A and Student B reported to the guidance office and were permitted to work on school work of their choosing.

Student A and Student B were screened in the spring using the W-APT. Both students received scores of less than five in the literacy and composite categories, which established their continued eligibility for the ESL Program. However, Student A, who completed the ninth grade at Carter High School during the 2015-16 school year, moved out of the District and did not

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return for the 2016-17 school year. At the end of the 2015-16 school year, Student B graduated with a regular diploma.

In conclusion, OCR finds, based upon a preponderance of the evidence, that by failing to replace the Former EL Teacher from November 9, 2015 until November 13, 2015, and from January 5, 2015 until February 1, 2015, the District failed to provide appropriate, qualified staff to deliver ESL Program services to Student A and Student B.

Issue 2 (Career Magnet Academy)

OCR's investigation revealed that during the 2015-16 school year three students were served by the District's ESL Department. Two students (Student C and Student D), whose W-APT scores in the spring 2015 were less than five in literacy and composite, received consultation services from the Former EL Teacher. A third student (Student E), who had previously exited from the ESL Program pursuant to his successful scores in the W-APT, was in his second year of monitoring, and received monitoring oversight from the Former EL Teacher.

District administrators acknowledged that after the Former EL Teacher was placed on leave on November 9, 2015 for the remainder of the 2015-16 school year, Student C and Student D received no ESL services and Student E received no monitoring oversight. All three students were screened in the spring of 2016 using W-APT. Pursuant to their test results, Student C was exited from the ESL Program and will be monitored for two years; Student D remained eligible for ESL services and continued receiving ESL services¹; and Student E successfully completed his second year in monitoring and is now considered a former EL. OCR acknowledges that during the course of this investigation, the District shared that it had extended offers of compensatory ESL tutoring to the parents of Student C, Student D and Student E; however, no parent accepted the District's offer.

In conclusion, OCR finds that, based upon a preponderance of the evidence, from November 9, 2016 through the end of the 2015-16 school year, the District, by failing to replace the Former EL Teacher, failed to provide appropriate, qualified staff to deliver ESL Program services to Student C and Student D and monitoring oversight to Student E.

Conclusion

Accordingly, based upon a preponderance of the evidence, OCR finds that the evidence is sufficient to support that the District failed to deliver ESL Program services to students at Carter High School and Career Magnet Academy, in noncompliance with Title VI.

The District has agreed to enter into the enclosed Resolution Agreement (Agreement) and take the following corrective actions: For Student A, after providing written notice to the Student's parents, the District will convene a team of persons knowledgeable about the Student and the ESL Program instruction, including the Student's parents, to individually assess the amount of compensatory services and/or remedial measures, if any, and, if necessary, draft an action plan

¹ For the 2016-17 school year, Student D enrolled at a different school in the District and received ESL services.
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containing proposed compensatory services and/or remedial measures that will be offered to the Student's parent(s), the specific timelines for implementation, and the person(s) responsible for overseeing full and timely implementation. Should the team determine that no compensatory services are necessary for the Student, the District will provide a written explanation of the reasons for that determination, along with any supporting documentation.

This enclosed Agreement also contains monitoring provisions. When fully implemented, the Agreement will resolve the identified compliance issue. If the District fails to fully implement the Agreement, OCR will reopen the case and take appropriate action to ensure compliance with Title VI.

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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If we receive such a request, we will seek to protect, to the extent possible, any personally identifiable information, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Intimidation or retaliation against complainants by recipients of Federal financial assistance is prohibited. No recipient may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces, or because one has made a complaint, or participated in any manner in an investigation in connection with a complaint.

This concludes OCR's consideration of this complaint, which we are closing effective the date of this letter. If you have any questions about this complaint, please contact Claudia Campo, Attorney, at (404) 974-9378, or Arthur Manigault, Compliance Team Leader, at (404) 974-9376.

Sincerely,

/s/

Melanie Velez
Regional Director

Enclosure