



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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Mr. Bruce Hill, Superintendent  
De Queen School District  
101 North 9<sup>th</sup> Street  
De Queen, Arkansas 71832

December 6, 2012

Re: OCR Docket #06-10-5001

Dear Mr. Hill:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), conducted a compliance review of the De Queen School District (District) under Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100. OCR’s review addressed whether English language learner (ELL) students are denied equal educational opportunities in the District’s programs and services and thus subjected to discrimination on the basis of national origin.

OCR’s investigation examined evidence related to the following issues: identification and assessment of ELL students, alternative language program implementation, ELL student placement and participation in the alternative language program, instructional materials, staffing and staff development, exit criteria and monitoring, program evaluation, parental communication, special services, and facilities.

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

**Overview of the District**

During the 2009-2010 school year, the District enrolled 2189 students in five schools: De Queen Primary School (Kindergarten – 2<sup>nd</sup> grade), De Queen Elementary School (3<sup>rd</sup> grade – 5<sup>th</sup> grade), De Queen Middle School (6<sup>th</sup> grade – 7<sup>th</sup> grade), De Queen Junior High School (8<sup>th</sup> grade – 9<sup>th</sup> grade), and De Queen High School (10<sup>th</sup> grade – 12<sup>th</sup> grade). The racial/ethnic composition for the identified schools is identified in the chart below.

<b>Student Enrollment by Race/Ethnicity 2009-2010 School Year</b>					
White	Black	Hispanic	Asian	Native AM	TOTAL
709	87	1337	9	47	2189
32.4%	4.0%	61.1%	.4%	2.1%	100%

### **Applicable Legal Standards**

Title VI and its implementing regulation prohibit discrimination on the basis of race, color, or national origin by recipients, including the District, of Federal financial assistance from the Department. The Title VI implementing regulation at 34 C.F.R. § 100.3(a) and (b)(i)-(ii) provides that a recipient of Federal financial assistance may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin, exclude persons from participation in its programs, or provide any service or benefit which is different or provided in a different manner from that provided to others. Section 100.3(b)(2) provides that, in determining the types of services or benefits that will be provided, recipients may not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin.

On May 25, 1970, pursuant to its authority under Title VI, the Department issued a memorandum entitled “Identification of Discrimination and Denial of Services on the Basis of National Origin,” 35 Fed. Reg. 11,595 (May 1970 memorandum). The memorandum clarifies OCR policy under Title VI on issues concerning the responsibility of school districts to provide equal educational opportunity to limited English proficient (LEP) national-origin minority students. It states that school districts must take affirmative steps to address the language needs of limited English proficient students (ELL students). To meet Title VI standards in serving ELL students, a school district must 1) select a sound educational theory for its programs for ELL students that is likely to meet their educational needs effectively; 2) use practices, resources, and personnel reasonably calculated to implement its educational theory, and 3) demonstrate that its program is successful in teaching ELL students English and providing them with access to the curriculum, or must modify the program as necessary. See *Castañeda v. Pickard*, 648 F.2d 989 (5th Cir. 1981). The May 1970 memorandum also provides that school districts must adequately notify national origin minority group parents of information that is called to the attention of other parents, and that such notice may have to be provided in a language other than English in order to be adequate.

OCR’s December 3, 1985 policy memorandum, “The Office for Civil Rights’ Title VI Language Minority Compliance Procedures” (December 1985 memorandum) clarifies OCR’s standard for determining compliance with the May 1970 memorandum. On September 27, 1991, OCR issued a policy memorandum entitled “Policy Update on Schools’ Obligations Toward National Origin Minority Students with Limited-English Proficiency” (September 1991 memorandum), which outlines the standards and procedures used to evaluate school districts for compliance with Title VI, including requiring districts to have procedures in place for identifying ELL students. The memorandum provides additional guidance for applying the May 1970 memorandum in the context of staffing, transition and/or exit criteria, and program evaluation.

## **Analysis and Conclusion**

During the course of OCR’s investigation, OCR reviewed documents provided by the District, including District policies regarding the provision of educational services to ELL students, lists of students identified as having a primary home language other than English (PHLOTE) and ELL, and lists of staff and their qualifications. In addition, OCR conducted an onsite investigation that included review of student files for the general student population, PHLOTE students, and ELL students; interviews with relevant District staff; a parent forum attended by over 100 people; and classroom observation. The District staff OCR interviewed included the Assistant Superintendent, the ESL Coordinator, Principals at all five schools, all four ESL teachers, five counselors, six general education teachers, four interpreters, one paraprofessional and three Migrant program paraprofessionals.

OCR’s investigation examined five schools in the District—De Queen Primary School, De Queen Elementary School, De Queen Middle School, De Queen Junior High School, and De Queen High School.<sup>1</sup> In the 2009-2010 school year, the District had 2,189 students enrolled at the identified schools, of which 1,244 were identified as PHLOTE. Of the 1244 PHLOTE students, 1233, or approximately 99 percent of PHLOTE students, identified Spanish as their primary home language.

### **A. Identification and Assessment**

The May 1970 memorandum provides that districts must take affirmative steps to address national-origin minority students’ language barriers that prevent ELL students from effective participation in the district’s program. The September 1991 memorandum provides that a district should have procedures in place for identifying and assessing PHLOTE students 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 the ability of whether national-origin minority students to proficiently speak, understand, read and write English.

*Identification:* The District’s written procedures for identifying students who may have a primary home language other than English (PHLOTE) are located in its *English as a Second Language, De Queen School District, Handbook of Policies and Procedures for Teaching English to Speakers of Other Languages* (DQSD ESL Handbook). The District uses the Home Language Survey (HLS) for determining whether a student has a PHLOTE. Upon enrollment, the school district administers a seven-question HLS in both Spanish and English to every parent/guardian. The District does not interpret or translate the HLS in any other languages.

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<sup>1</sup> OCR’s review excluded Lockesburg Elementary School because neither the District nor the parent forum identified any PHLOTE or ELL students at this school. OCR’s review also excluded Lockesburg High School because the District closed this school during the 2010-2011 school year.

The DQSD ESL Handbook states and interviews with District employees confirmed that if a language other than English is identified by answering “Yes” in response to any of the questions on the HLS, the student is then referred to the English-as-a-Second Language (ESL) teacher and the ESL Coordinator to schedule a language assessment. While there is no written procedure for identifying PHLOTE students besides the administration of an HLS, District teachers informed OCR that they may refer a students for ESL services if they recognize that a student was having difficulties reading, writing, speaking, and comprehending English in their classroom.

Based on a review of the information, OCR has determined that the District has procedures in place for identifying students whose primary home language is English or Spanish. However, the District does not provide translation or interpretation of the HLS for low incidence language minorities. Thus, OCR concludes that the District is not in compliance with Title VI because its current policies and procedures are not adequate to identify all PHLOTE students, as the District procedures do not provide any method for identifying PHLOTE students with a primary home language other than English or Spanish.

Assessment: According to the DQSD ESL Handbook, all PHLOTE students are referred to the ESL Coordinator for assessment. Campus ESL teachers administer the Pre-LAS 2000, the Language Assessment Scales (LAS) Oral and the LAS Reading/Writing (LAS-R/W) to PHLOTE students in order to determine whether they are ELL in accordance with Arkansas Department of Education (ADE) guidelines. The LAS is a comprehensive assessment system designed to provide complete information about a student's language proficiency. The Pre-LAS 2000 identifies oral language proficiency and pre-literacy skills of students in preschool, kindergarten, and 1<sup>st</sup> grade. The LAS consists of two major test batteries: the Language Assessment Scales-Oral (LAS-O), which measures listening and speaking, in English, and the Language Assessment Scales, Reading and Writing (LAS-R/W), which measures reading and writing skills in English.

The District reported that it administered the Pre-LAS 2000 (Oral component) for ELL identification purposes to Kindergarten and first grade students. Students in 2<sup>nd</sup> through the 12<sup>th</sup> grades are assessed with the oral, reading, and writing components of the LAS. According to the ESL coordinator, both tests (Pre-LAS 2000 and LAS) are approved by the ADE and are “research-based diagnostic assessments that measures speaking, listening, reading, writing and comprehension skills, which provides a linguistic profile” of each student. Students scoring a 1-4 on the pre-LAS or LAS are considered not proficient in English.

The DQSD ESL Handbook further provides that the LAS or ELDA must be administered within 20 school days of the student enrolling in the District. According to the ESL teachers and the ESL coordinator, the ESL teachers have been formally trained to administer the LAS tests, score the tests and interpret test results for placement purposes.

Based on a review of the information, OCR has determined that the District procedures were designed and implemented properly to ensure that the District assessed the PHLOTE students to ensure that all language-minority students who may be unable to participate

meaningfully in the regular instructional program were receiving alternative language services. As such, in determining whether a PHLOTE student is ELL, the District assesses their ability to speak, read, write, and comprehend the English language. Thus, OCR found insufficient evidence that the District failed to properly assess students to ensure meaningful participation in the District's programs.

### **B. Alternative Language Program Implementation**

OCR policy also requires that alternative language programs and practices adopted by a district be effectively and reasonably developed to achieve the educational goal of the district's adopted theory. The December 1985 policy memorandum states that OCR is to consider two general areas when evaluating a school district's alternative language program to determine compliance with Title VI: (1) whether there is a need for the district to provide alternative language services to LEP students, and (2) whether the district's program is likely to meet the educational needs of language-minority students effectively. OCR's September 1991 Memorandum based on Castañeda, provides standards to determine whether a district's program or services for LEP students comply with Title VI. The September 1991 Memorandum also advises districts that they retain an affirmative obligation to remedy "academic deficits" sustained by language minority students in programs which temporarily emphasize English language acquisition over other subjects.

The District provides an ESL instructional model for ELL students as its alternative language program (ALP). The curriculum for the ESL instructional program is the ADE's English Language Acquisition Frameworks. The District explained to OCR that its ESL instructional program included: (1) pull-out programs at the primary and elementary level and ELL instruction in the ESL teacher's classroom for grades six through twelve; and (2) ESL services in the classroom and accommodations according to the student's "Language Placement and Assessment Committee (LPAC) LPAC plan."

The DQSD ESL Handbook states that all students who are ELL will be provided with "an English Language Acquisition and Academic Plan designed to promote their growth in English Proficiency and core content subject areas" that will be created by the LPAC. The DQSD ESL Handbook further states that an LPAC, which is to consist of the ESL Coordinator, an administrator or ESOL designee, counselor, ESL teacher, classroom teacher, and other support personnel as needed, will convene within two weeks of receiving the assessment paperwork of an ELL student enrolling in school at the beginning of the year and after one month of school, this should occur within one week.

The DQSD ESL Handbook provided a form to document the LPAC's decision; however, the ESL coordinator and ESL teachers informed OCR that the LPAC did not, in fact, determine the type and amount of services to be provided to the ELL student. Moreover, a review of student files further confirmed that the District did not utilize the LPAC form to document any placement decisions. Further, OCR found no evidence to demonstrate that the LPAC met in accordance with the time frames set in the DQSD ESL Handbook. Instead, the ESL coordinator, ESL teachers, and campus principals informed OCR that the LPAC only meets when an ELL student is failing a course or may be retained in a

grade.

The ESL coordinator further explained that the primary goal of the program was to allow “ELL students to become fully proficient in English as quickly as possible and to be successful in content area.” She indicated that the District had its ESL teachers use structured instruction (sheltered instruction) as well as a supplemental “pull-out” program with an ESL endorsed teacher. Further, the District reported that migrant paraprofessionals provide translation and tutoring services in the classroom because English is the primary language of instruction and each teacher is provided an accommodation form for each ELL student for the school year.

In its investigation OCR found no documentation to demonstrate what services were provided to each ELL student to ensure English Language Acquisition. A review of the student files indicated that Accommodation forms were in the ESL folders for ELL students. These Accommodation forms detailed what accommodations the ELL student would receive in the regular education classroom, such as providing the following: a list of vocabulary words the day before a new unit is started; extended time on assignments; direction to read aloud all instruction, writing prompts, math problems, science and all other content information; direction to repeat directions; have the student repeat directions to you; and word-to-word dictionaries. The forms did not describe any ELL services that would be provided to the students.

The investigation disclosed that the individuals responsible for delivering ESL services were the ESL teachers at the various schools. According to the District, 905 students were identified by the District for ELL/ESL services during the 2009-2010 school year. The ESL teachers provided OCR with their class schedules and rosters. OCR compared the District’s list of ELL students to the ESL teacher’s class rosters and noted a significant number of identified ELL students did not receive any ESL instruction. Below is a summary by school and grade of those students.

<b>School</b>	<b>Total # ELL Students</b>	<b>Total # ELL students receiving ESL instruction per ESL teacher class roster</b>	<b>Total # ELL students receiving no ESL instruction</b>	<b>Total # “opted out” ELL students</b>	<b>Total # ELL students receiving no ESL instruction and not “opted out”</b>
De Queen Primary School	360	93	267	10	257
De Queen Elementary School	288	83	205	7	198

De Queen Middle School <sup>2</sup>	174	65	109	8	101
De Queen H.S. <sup>3</sup>	83	41	42	2	40
TOTAL	905	282	623	27	596

Of the 267 De Queen Primary ELL students who received no ESL instruction, 10 ELL students (1 kindergarten student, 5 1<sup>st</sup> grade students and 4 2<sup>nd</sup> grade students) had parents who opted out of having their children receive alternative language services.<sup>4</sup> Of the 205 De Queen Elementary ELL students who received no ESL instruction, 7 ELL students (1 3<sup>rd</sup> grade student, 5 4<sup>th</sup> grade students, and 1 5<sup>th</sup> grade student) had parents who opted out of having their children receive alternative language services. Of the 109 De Queen Middle School ELL students who received no ESL instruction, 8 ELL students (5 6<sup>th</sup> grade students, 2 7<sup>th</sup> grade students, and 1 8<sup>th</sup> grade students) had parents who opted out of having their children receive alternative language services.<sup>5</sup> Of the 42 De Queen High School ELL students who received no ESL instruction, 2 ELL students (1 9<sup>th</sup> grade student and 1 11<sup>th</sup> grade student) had parents who opted out of having their children receive alternative language services. Thus, OCR concluded that a total of 596 ELL students—257 primary school students, 198 elementary school students, 101 middle school students, and 40 high school students—in the District who did not waive or “opt out” of the receipt of alternative language services received no ESL instruction.

Although the ESL Handbook sets out a procedure whereby the LPAC determined what ESL services a student will receive and establishes criteria for determining which students should receive ESL instruction, interviews with ESL teachers indicated that the District did not follow its own procedures. Moreover, OCR found that many ELL students with low LAS or ELDA scores (composite scores one through three) did not receive any pull-out or in-class ESL instruction; and additional ELL students (level 4s) received no ELL services. The ESL Handbook outlines which students are to receive ELL services by school based upon the ELL student’s proficiency level, which is in part determined by the student’s LAS or ELDA score. Below is an explanation by school.

### **Elementary and Primary Schools**

De Queen Primary School and De Queen Elementary School, which include Kindergarten through fifth grade, provide a “pull out” program with an ESL endorsed teacher and a migrant paraprofessional in the classroom. The DQSD ESL Handbook states:

<sup>2</sup> The 8<sup>th</sup> grade students from the Junior High School are included with the middle school.

<sup>3</sup> The 9<sup>th</sup> grade students from the Junior High School are included with the high school.

<sup>4</sup> One 2<sup>nd</sup> grade ELL student had her parent opt out of receiving alternative language services but was placed in an ESL classroom for instruction. Therefore, this student is counted as having received ESL classroom instruction.

<sup>5</sup> One 6<sup>th</sup> grade ELL student and 1 8<sup>th</sup> grade ELL student had his/her parent opt out of receiving alternative language services but was placed in an ESL classroom for instruction. Therefore, these students are counted as having received ESL classroom instruction.

In elementary schools, students will be pulled out on a limited basis to receive supplemental instruction in literacy designed to help them function in the mainstream classroom more effectively and in a timely manner.

The DQSD ESL Handbook further indicates that for grades Kindergarten through 5<sup>th</sup> grade, the ESL Pullout program is offered to students and is designed for ELL students who are non-speakers, limited speakers, and/or limited in reading and writing in English. The DQSD ESL Handbook does not specify the amount of time for pullout instruction.

Documents provided by the District indicate that there are 360 ELL students at the primary school; however, the Primary ESL teacher, who teaches ELL students in kindergarten through second grade, reported that she teaches only 93 students in a “pull out” program for 40 minutes per day. According to the Primary ESL teacher’s class schedule and roster, she teaches 9 periods of ESL instruction during the day and each class includes approximately 10 ELL students. In reviewing the class schedule, OCR found that the Primary ESL teacher provides 345 minutes (5.75 hours) of instruction during the school day and has an one hour lunch/planning period. Her schedule does not provide any time for test administration or language assessments outside of instructional time or lunch/planning period.

When OCR inquired as to how students are selected to receive pull-out ESL services, the Primary ESL teacher informed OCR that she “tries to see” all students who have an ELDA score of 1, 2, or 3 and all other ELL students receive accommodations in their classes. However, when OCR inquired further about the classroom accommodations, she stated that there is no feedback or reporting to determine whether the teachers are actually providing the accommodations except for the administration of the ELDA in the Spring semester. She stated that there are no written plans as to what specific services each student should receive, such as through a LPAC plan, as the DQSD ESL Handbook requires. The Primary ESL teacher informed OCR that the only documentation as to which students receives pull-out ESL services is her class schedule and a list maintained by the ESL coordinator.

In comparing the Primary ESL teacher’s class schedule/roster and the District’s list of identified ELL students, OCR found that for the ELL students who did not opt out of receiving alternative language services, 109 ELL students in kindergarten, 71 ELL students in 1<sup>st</sup> grade, and 77 ELL students in 2<sup>nd</sup> grade do not receive pull-out ESL instruction, and included students who scored a 1 or 2 on the pre-LAS, LAS, and ELDA.

Documents provided by the District indicate that there are 288 ELL students at the elementary school; however, the Elementary ESL teacher who teaches ELL students in third through fifth grade reported that only 83 students are on a “pull out” program. The students who were identified as non-English Speaker (NES) and level 1 when tested (LAS or ELDA) are “pulled-out” from the regular classroom for 40 minutes each day for ESL for language acquisition and 45 minutes each day for reading and speaking. Students who score a 2 or 3 on the LAS or ELDA receive 40 minutes a day of “pull-out”

ESL for language acquisition, while students who score a 4 or 5 on the LAS or ELDA only receive accommodations in the regular education classroom. She indicated that the NES, and levels 1 and 2 students, utilized the “English at your command” text book, while she utilized the regular language text book for Levels 3-5. The ESL teacher explained to OCR that her students receive services according to her lesson plan; however, there is no LPAC plan for individual students. She also indicated that she teaches language to her NES students and grades 3-5 on a daily basis, and teaches her NES students reading and spelling on a daily basis. In addition, the ESL teacher stated that a migrant paraprofessional is in her class all day, and she delivers instructions (in both English and Spanish) under her supervision of classroom and/or content areas.

In comparing the Elementary ESL teacher’s class schedule/roster and the District’s list of ELL students, OCR found that of the students who did not opt out of receiving alternative language services, 84 3<sup>rd</sup> grade ELL students, 62 4<sup>th</sup> grade ELL students, and 52 5<sup>th</sup> grade ELL students do not receive pull-out ESL instruction. Contrary to the Elementary ESL teacher’s assertions, there were level 1 and 2 students who were not receiving pullout services identified during OCR’s file review. Furthermore, there were level 3 and higher students who did receive such services.

A review of primary and elementary student files indicated that the Accommodation forms were placed in the students’ files. Although Accommodation forms were in each student’s file and regular education teachers acknowledged receiving the forms, the accommodations chosen for each student were not prepared by an LPAC and did not appear to be targeted to the student’s English language development needs, but instead were based on the student’s grade or the course.

### **Middle School**

The DQSD ESL Handbook provides that at the middle school (grades 6-7), “Students receive ESL instruction in language acquisition 1-3 periods/day according to their levels. A level one student receives three (3) periods of sheltered instruction. All of the instruction at the middle school level is performed by a certified teacher who is also ESL certified or endorsed. Students are assigned to a mainstream classroom with native English speaking peers for no less than four class periods per day.” The Handbook further sets out the number of periods of ESL instruction an ELL student will received based upon their proficiency level.

While the District maintains that the above is their model for ESL instruction at the middle school, OCR found no evidence that the District in fact implements this model by having regular education teachers utilize appropriate ESL techniques in their classrooms. Rather, the District’s implementation for these students is limited to regular education instruction with an Accommodation form and ELL 4 and high ELL 3 students do not generally receive direct services from an ESL teacher.

Documents provided by the District indicate that there are 174 ELL students at the middle school; however, during an interview with the middle school ESL teacher, who

teaches sixth through eighth grade,<sup>6</sup> she reported to OCR that she has only 65 ELL students in her ESL classes. Further, although the DQSD ESL Handbook sets out the number of class periods an ELL student should receive based upon their ELL classification, the middle school ESL teacher confirmed that students were not in fact receiving the amount of services outlined in the handbook. Indeed, the middle school ESL teacher informed OCR that she provided services to ELL students who scored a 1 or 2 on the ELDA or LAS in an ESL classroom, one to two periods per day for approximately 50 minutes per period. Students who scored a 3 to 5 on the LAS or ELDA usually remained in the regular education classrooms and received accommodations.

In comparing the middle school ESL teacher's class schedule/roster and the District's list of ELL students, OCR found that for the ELL students who did not opt out of receiving alternative language services, 47 6<sup>th</sup> grade ELL students, 33 7<sup>th</sup> grade ELL students, and 21 8<sup>th</sup> grade ELL students do not receive classroom ESL instruction. In reviewing the Spring 2009 ELDA scores for the 6<sup>th</sup> through 8<sup>th</sup> grade ELL students, OCR identified students who scored a composite 1 or 2 who did not receive any direct instruction from an ESL teacher.

The middle school ESL teacher explained that she provide services to ELL students from a Smart Board and usually utilizes text books for reviewing English and the "Rosetta Stone" language computer software program for independent reading. Also, she informed OCR that her students receive services according to her lesson plan, and there is no LPAC plan for the student's services. The middle school ESL teacher stated an LPAC meeting is held only when the student is in jeopardy of failing. She also stated that ELL students have modification/accommodations in all classes. A review of ELL student files for sixth through eighth grade students confirmed that accommodation lists were in the student files and interviews with the regular education teachers further confirmed that they were aware of the accommodations. In addition, the middle school ESL teacher stated that a migrant paraprofessional is in her class all day, and under her supervision, she delivered classroom instructions (in both English and Spanish) in content areas.

The middle school ESL teacher expressed her concerns that she does not spend quality time with each ELL student because of the high number of students needing services. She stated that she would "welcome" another ESL teacher and/or another paraprofessional which would enable her to spend more individual time with her ELL students. She explained that since the junior high school did not have an ESL teacher for the 2009-2010 school year, she had to teach the 8<sup>th</sup> graders from the junior high school and as a result the number of students she taught significantly increased. The middle school ESL teacher teaches 7 periods and has one planning period. Six of her seven classes are ESL classes. Five of the middle school ESL classes are not mixed by grade level; however, all of the ESL classes have various levels of ELL students.

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<sup>6</sup> ELL students at the junior high school were taught by the middle school and high school ESL teachers because there was no ESL teacher for the junior high school during the 2009-2010 school year.

## **High School**

The DQSD ESL Handbook provides that at the secondary level (grades 8-12), students are scheduled into classes to meet their needs according to their level of English proficiency and other criteria determined to be indicators by the LPAC and further provides that ELL 1 students are scheduled for two periods daily in a block class which emphasizes English language acquisition in all four areas.

Documents provided by the District indicate that there are 83 ELL students at the high school including grades nine through twelve; however, during an interview with the high school ESL teacher, who teaches ninth through twelfth grades, she reported that she teaches only 41 ELL students. She stated that she provided services to her ELL students who scored a level 1 or 2 on the LAS or ELDA in an ESL classroom, one to two periods each day, for approximately 45 minutes per period. Students who were identified as scoring Levels 3 to 5 on the LAS or ELDA usually remained in the regular education classrooms and were provided accommodations by the regular education teacher.

In comparing the high school ESL teacher's class schedule/roster and the District's list of ELL students, OCR found that for the ELL students who did not opt out of receiving alternative language services 8 9<sup>th</sup> grade ELL students, 10 10<sup>th</sup> grade ELL students, 17 11<sup>th</sup> grade ELL students, and 5 12<sup>th</sup> grade ELL students do not receive classroom ESL instruction. In reviewing the Spring 2009 ELDA scores for the 9<sup>th</sup> through 12<sup>th</sup> grade ELL students, OCR identified students who scored a composite 1 or 2 who did not receive any direct instruction from an ESL teacher.

The high school ESL teacher informed OCR that her students receive services according to her lesson plan, and there is no LPAC plan, unless the student is in jeopardy of failing her class. She also stated that ELL students have modification/accommodations in all classes. A review of ELL student files for ninth through twelfth grade students confirmed that accommodation lists were in the student files and interviews with the regular education teachers further confirmed that they were aware and provided the accommodations. In addition, the ESL teacher stated that her migrant paraprofessional is in her class all day, and under her supervision, she delivered classroom instructions (in both English and Spanish) in content areas.

The high school ESL teacher also expressed a concern that she does not spend quality time with the ELL students in her ESL classes because of the high number of students needing services. She stated that she would like another ESL teacher and/or another paraprofessional which would enable her to spend more individual time with the ELL students. She explained that since the junior high school did not have an ESL teacher for the 2009-2010 school year, she had to teach the 9<sup>th</sup> graders from the junior high school and as a result the number of students she taught significantly increased.

Based on a review of the information, OCR determined that the District selected a program (ESL) that is recognized as sound by experts in the field and developed procedures to implement the alternative language program. However, OCR determined

that the District is not implementing the program as set forth in its own procedures. Specifically, the DQSD ESL Handbook states that the LPAC meets to plan the student's ALP and placement, and determine the student's provision of ESL instructional services; however, the District neither convenes LPAC meetings to determine the student's ALP services or placement nor develops an individualized LPAC Plan for each ELL student. Further, the DQSD ESL Handbook enumerates the amount of services particular ELL students should receive based upon their ELL classification; however all ESL teachers stated that they determine the amount and kind of services an ELL student receives and none cited the ESL handbook as the basis. Generally, the District's implementation of its policies did not provide for any services by a trained or certified ESL teacher to level 3 and 4 ELL students who are not proficient even though its ESL Handbook provides for specific strategies to be used for these students. Further, in comparing the District's list of ELL students to the ESL class rosters, OCR identified 596 ELL students in the District who did not opt out of receiving alternative language services that did not receive any ESL classroom instruction. Moreover, this included 24 ELL students who scored a pre-LAS, LAS, or ELDA score of a 1; 28 ELL students who scored a pre-LAS, LAS, or ELDA score of a 2; and 116 ELL students who scored a pre-LAS, LAS or ELDA score of a 3.

### **C. Student Placement and Participation in the Alternative Language Program**

According to OCR's 1970 Memorandum, 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. In instances where parents refuse to enroll their children in an ELL program, the school district should inform parents about the purpose and benefits of the ELL program in a language they understand and, if a student has been opted out of ELL services is unable to perform at grade level without receiving ELL services, the school district should periodically remind the parent that the student remains eligible for such services.

OCR investigated to determine if all ELL students were properly placed in the alternative language program. As noted above, the District has a written procedure to determine the alternative language services each ELL student is to receive, which includes the LPAC developing a plan for each ELL student. However, the District does not, in fact, follow its procedures and fails to utilize its own procedures in determining the alternative language services an ELL student is to receive. Indeed, at the primary and elementary school, some ELL students were "pulled-out" of the regular education environment and provided alternative language services in the ESL classroom, while others simply received accommodations in regular education classes. The ESL teachers at the primary and elementary school informed OCR that they consider the ELL student's proficiency when determining whether the student receives pull out services but acknowledged that they only see the number of students that time permits. The ESL teachers at the middle school and high school also informed OCR that they consider the ELL Students'

proficiency when determining whether they are placed in an ESL classroom but again acknowledged that they only see the number of students that time permits.

According to the DQSD ESL Handbook, a parent may waive or “opt out” of alternative language services. To do so, pursuant to District policy, the parent must come to the school or ESL Coordinator and sign an Alternative Language Program Placement Waiver form. An ELL student will continue to be given a language assessment regardless of the waiver of services. The District indicated that it annually reminds the parent that the student remained eligible for services. OCR reviewed the files of students whose parents had opted out of their participation in the ALP and found that the District had received written notice from the parent that they did not want their child to participate. However, in comparing the District’s list of ELL students and the class rosters obtained from the ESL teachers, OCR found that four students who were identified as having parents who waived services were in fact on the ESL classroom teachers’ class rosters.

Based on this information,, OCR found compliance concerns with District’s implementation of its alternative language program relating to the ELL services provided to ELL students.

### **Instructional Materials**

In accordance with the December 1985 Memorandum, the adequacy of resources is determined by the timely availability of required equipment and instructional materials. Limited financial resources do not justify failure to provide adequate resources. OCR considers the extent to which a particular remedy would require a district to divert resources from other necessary educational resources and services.

The ESL coordinator indicated that the materials the District used included but were not limited to textbooks, technology, software, and leveled readers. In addition, she stated that she believes that since there are a variety of materials for the ELL students, the materials were sufficient and effective for the instructional model. The ESL teachers verified the Coordinator’s statement above, and reported that they utilized the same materials that are in the regular classroom to deliver instruction to ELL students. The ESL teachers informed OCR that the materials they utilized to provide services to the ELL students were adequate and appropriate to the ALP model chosen by the District. For example, the middle school ESL teacher utilizes the Smart board and Rosetta Stone’s software to teach her ELL students. In addition, the District reported that other materials are available such as: word to word English/Spanish dictionaries, electronic translators and Spanish and bilingual reading material, fiction/nonfiction are located in all campuses. At the elementary level, the instructional materials include the bilingual literacy carpets (primary and elementary), Quetal scholastic current events (elementary), bilingual math content picture dictionary (primary), Spanish math dictionaries (elementary), bilingual scholastic news (elementary) and Mandarin Chinese-English dictionary and materials at the high school.

Although the District asserted that their chosen materials were sufficient to implement its

program, OCR was unable to confirm this because the District failed to implement its alternative language program as outlined in their ESL Handbook. Additionally, much of the information pointed to by the District as ESL materials were dictionaries, not ESL instructional materials. Moreover, OCR was unable to establish that the District had a sufficient quantity of instructional materials as 596 ELL students receive no classroom or pull-out ESL instruction. As such, due to the District's failure to demonstrate it had sufficient and appropriate materials to implement its selected program for the number of identified ELL students, OCR found that the District either did not have appropriate instructional materials or did not have appropriate quantities of the materials to ensure that it implements its selected alternative language program for all identified ELL students.

#### **D. Staffing and Staff Development**

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. *See* OCR's September 1991 Memorandum.

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.

The District reported having twenty-two teachers with ESL endorsements for ESL P-8, and ESL 7-12. According to the Arkansas Department of Education, an endorsement is a teaching or administrative licensure which may be added to a teaching license by only (1) the completion of a program of study or (2) reciprocity recognition of a license endorsement from another state. Of the twenty two teachers, four are identified as ESL teachers with ESL endorsement who provided language services to students in kindergarten through 12<sup>th</sup> grade. The other 18 teachers teach non ESL courses, but have taken the opportunity to get ESL certified.

The District informed OCR that every year the District encouraged the ESL endorsement and provides multiple opportunities for training, including the ESL Academy, an intensive two-week training program sponsored by the Arkansas Tech University designed to increase a participant's understanding and skills in serving ELL students and to satisfy the requirements for an ESL endorsement on the teacher's license. Further, the ESL coordinator reported that the ADE required that all certified teachers in the District should have at least 60 hours of professional development per year, which included six

hours of ESL training annually. According to the ESL coordinator, the District provided professional development that focused on ELL strategies. Specifically, it was reported to OCR during the 2008-2009 school year, the District (ESL coordinator and representative of Henderson State University) provided professional development to staff, and explained how to use the Arkansas English Language Acquisition Frameworks and the English Language proficiency levels. During the 2009-2010 school year, the District (Assistant Superintendent and a representative from El Saber Enterprises) also conducted professional development to all staff. In addition, paraprofessionals also received training, and the Migrant Education Program staff received training from the ADE Regional and State director, who focused on ELL strategies.

During interviews with the ESL teachers at the Middle and High school, they indicated that because of the increased number of students in their classes, there is a need for additional ESL teachers and paraprofessionals assigned to ESL classrooms. For example, a review of the Elementary school ESL class roster indicated that there were approximately 10-16 students who attended the ESL classroom for services during each class period. At the middle school, there were approximately 14-18 students attended the ESL classroom at any given class period. The high school had approximately 9-18 students who attended the ESL classroom during each class period. Although the in-class teacher-student ratio was not significantly higher in ESL classes as compared to regular education classroom, the ESL teachers acknowledged to OCR that they were limited by time as to the number of ELL students they could teach and would teach more students if they had more time. At the primary school, one teacher was responsible for providing alternative language services to 360 ELL students but only taught 93 ELL students in pull-out classes. At the elementary school, one teacher was responsible for providing alternative language services to 288 ELL students but only taught 83 ELL students in pull-out classes. At the middle school, one teacher was responsible for providing alternative language services to 174 ELL students but only taught 65 ELL students in the ESL classes. At the high school one teacher was responsible for providing alternative language services to 83 ELL students but only taught 41 ELL students in the ESL classes. In comparing the class rosters and the District's list of ELL students, OCR found that 596 ELL students who have not otherwise waived the receipt of alternative language services receive no in-class or pull-out ESL instruction. Rather, these ELL students receive only regular education courses with accommodations. Thus, although the District asserts it has adequate staff to implement its alternative language program, OCR found that the District did not in fact provide adequate staff to implement its chosen alternative language program for all identified ELL students.

According to the ESL coordinator, building level principals and the ESL coordinator evaluate the ESL teachers and that the District ensures that evaluators have an understanding of the ESL program. The DQSD ESL Handbook further provides that administrative staff assigned to evaluate the performance of ESL teachers will be trained in ESL methodologies; however, although the principals stated they evaluate the ESL teachers, one principal admitted that he does not ensure that the person evaluating the ESL teacher has a background in ESL methodology. Moreover, the principals informed OCR that they, not the ESL Coordinator, evaluate the ESL teachers at their campus.

Based on a review of the information, OCR concluded that all ESL teachers have their ESL endorsement. Nevertheless, OCR concluded that the District does not have the appropriate number of staff to serve all identified ELL students as a comparison of the ESL class rosters and the District's list of all ELL students revealed that 596 ELL students who have not otherwise waived the receipt of alternative language services receive no in-class ESL services from an ESL-certified teacher. OCR further determined that although the District evaluates the alternative language program teaching staff, the District does not evaluate the teacher's classroom performance by an individual familiar with ESL methodology. Although the ESL Coordinator informed OCR that she evaluates the ESL teachers, the principals indicated that the ESL Coordinator did not evaluate the ESL teachers at the campus level and they were responsible for evaluating the ESL teachers. Therefore, OCR found that the District failed to provide sufficient staff to implement its alternative language program and failed to evaluate its staff responsible for implementing the alternative language program by an individual familiar with ESL methodology.

#### **E. Exit Criteria and Monitoring**

According to OCR policy, schools should exit or reclassify ELL students from the ALP program services once they are prepared to participate meaningfully in regular instruction (i.e., are proficient in reading, writing, speaking and comprehending English) and districts should use objective measures to make sure students are fully proficient in each of these four areas before discontinuing services. The DQSD ESL Handbook states an ELL student must meet the following criteria to be reclassified as fully English proficient: (1) score of "advanced" in all of the areas on the ELDA or LAS; (2) grades of C or above in core content areas (reading, math, science, English, social studies) without modifications; (3) proficient in Literacy on the CRT or 40<sup>th</sup> percentile on the NRT in Reading; and (4) mainstream and ESL teacher recommendations. The DQSD ESL Handbook further sets out the procedure for exiting an ELL student from the ALP, which includes convening an LPAC to complete the exiting process, ensure that the student has met the criteria, and set out how the student will be monitored.

The ESL coordinator confirmed the above-criteria for exiting and stated that the District's exit criteria align with ADE requirements. A review of the ADE minimum criteria for exit and reclassification confirms that the DQSD ESL Handbook follows the state guidelines. Further, she stated that when a student is exited from the ALP, they are monitored for two (2) years.

During interviews with building principals and ESL teachers, they stated that they are aware of the exit criteria described above, and the ELL students who were exited should have all the documented criteria in their files. A review of files of exited students confirmed that parents were notified of the decision to exit the student and they satisfied the criteria; however, there was no documentation concerning the convening of an LPAC to make the decision besides the letter to the parents of the final decision. Indeed, although the ESL teachers and principals were familiar with the exit criteria, none

informed OCR that an LPAC was convened to make the decision.

Further, OCR obtained conflicting information from the staff regarding how the exited students were monitored. The DQSD ESL Handbook includes a monitoring checklist; however, during file review, OCR did not observe any “monitoring checklist” in the exited student files. The DQSD ESL Handbook indicates that exited students will be monitored for two years by the school’s counselor or building ESL designee. The monitoring is to be done on a quarterly basis and include reviewing progress reports, grades, and academic achievement data.

Although the principals, ESL teachers, and regular education teachers confirmed that students are to be monitored for two years, they did not provide OCR with specific information as to how students are monitored. The middle school and high school ESL teachers informed OCR that they review report cards and test grades and that documents relating to the monitoring are maintained in the students’ files but OCR found no evidence of monitoring in the exited student files provided by the District. Further, the regular education teachers indicated that they were not aware of the names of exited students in their classroom and thus were unable to monitor these students.

Based on the information reviewed, OCR determined that the District has written procedures and criteria for exiting ELL students, which include objective standards and measures to ensure that students can speak, read, write and comprehend English well enough to meaningfully participate in the District’s programs. Further, OCR determined that the District has written procedures for monitoring students from the ALP, as evidenced in the DQSD ESL Handbook. However, OCR concluded that the District does not adhere to the procedures for exiting or monitoring the academic progress of ELL students who exited the ESL program as outlined the DQSD ESL handbook. This is evidenced through interviews with staff who stated that although they were aware of the exit procedures, they did not have specific information as to how students were monitored for the two years. Further, during the file review, there was no indication of an “exit checklist” or any other exiting or monitoring documentation in any of the files OCR reviewed to indicate that the exited student was being monitored for academic progression. In addition, during interviews with the regular education teachers, they could not identify the exited ELL students who attended their classrooms. Therefore, OCR found that the District failed to monitor the academic progress of ELL students who exited the ESL program to ensure the exited students are proficient enough in English to participate meaningfully in the regular education program.

#### **F. Program Evaluation**

OCR’s September 1991 Memorandum requires recipients to modify their programs if they prove to be unsuccessful after a legitimate trial and further notes that as a practical matter, recipients cannot comply with this requirement without periodically evaluating their programs. If a recipient does not periodically evaluate or modify its programs, as appropriate, it is in violation of the Title VI regulation unless its program is successful.

The DQSD ESL Handbook states that the District will “conduct an annual longitudinal performance evaluation of its ESL program and will make modifications to the program as required by the results of this action” and further sets out twelve areas to review during the evaluation, including identification, assessment and placement of students in the program. The DQSD ESL Handbook sets out the procedures for conducting this evaluation, which includes having a committee consisting of the ESL Coordinator, ESL Designees, ESL teachers, and ESL paraprofessionals, to evaluate each area of the ESL program.

The ESL coordinator did not specifically cite to the DQSD ESL Handbook procedure but stated the district monitors and evaluates the effectiveness of its ALP through various ways. She stated the district analyzes State ACTAAP Benchmark scores, Norm reference scores, end of course scores, ELDA scores, and other district assessments. The ESL coordinator stated that these scores are periodically submitted as reports to the Arkansas Comprehensive School Improvement planning actions, regarding ELL students to meet its reporting requirements. Further, the ESL coordinator indicated that the District also utilized the Annual Measurable Achievement Objective report that is provided by the ADE as part of the program’s effectiveness and the Annual Yearly Progress report (AYP) to monitor the progress of ELL students. In addition, the ESL coordinator stated that the District requires evaluation from staff regarding the ESL program and has used a consultant from El Saber Enterprises regarding improvements to the ESL program.

However, District staff reported to OCR that the District has not formally evaluated the alternative language program. Interviews with the principals and the alternative language program staff revealed that they were not aware of any evaluation of the effectiveness of the alternative language program at the campus level.

Further, upon identifying the above-referenced compliance concerns, OCR reviewed data obtained during student file reviews regarding the grades and ELDA scores, two criteria utilized by the District in determining whether a student may exit the alternative language program, to further examine the effectiveness of the program. OCR analyzed the ELDA scores and grades for two years of data for all student files of third through ninth grade students obtained during OCR’s file review.<sup>7</sup> OCR’s review of the data determined that although the majority of students reviewed maintained a grade of C or better in the core content areas; the students exhibited fluctuation in the ELDA scores. For example, of the student files reviewed that included data for two school years, the ELDA score of 75% of third grade students, 86% of fourth grade students, and 90% of seventh grade students decreased in at least one area during the two previous school years.

OCR concluded that although the District has a policy in place for evaluating the effectiveness of the alternative language program, the District has not followed its policy and has failed to periodically evaluate its alternative language program for effectiveness and subsequently modify the District’s alternative language program to ensure that the

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<sup>7</sup> OCR reviewed a sample of student files of all grades during its file review. All student files obtained during OCR’s review did not include two years of data regarding grades and ELDA scores. The following information examines those files with two years of information within the student file.

selected alternative language program is effective in providing ELL students with equal educational opportunities.

### **G. Parental Communication**

The May 1970 memorandum provides that school districts must adequately notify national origin minority group parents of information that is called to the attention of other parents, and that such notice may have to be provided in a language other than English in order to be adequate. The ESL coordinator stated that the district provides all notices about school activities to ELL parents in both English and Spanish. These notices are in writing or through the “Alert Now” contact system, which is a telephone system that records and dispatches messages in English and Spanish for parents. The District identified three interpreters that interpret for both students and parents.

OCR found that the District has provided school-related documents in English and Spanish and makes interpreters available to Spanish-speaking parents. However, OCR found that the District did not adequately notify all LEP parents and ELL students of school activities which are called to the attention of other parents and students. For example, with respect to low incidence languages, the District did not provide translated documents in any language other than Spanish, provide interpreters or translators for any language other than Spanish, or have any other method for communicating with parents whose language was other than English or Spanish. In addition, the District did not provide information to OCR indicating that it tracks the interpreter and translation services provided to LEP parents or that it ensures that interpreters and translators are competent to provide interpretation and translation services and have been appropriately trained on the role of an interpreter and translator, the ethics of interpreting and translating, and the need to maintain confidentiality.

### **H. Gifted and Talented**

According to the September 1991 Memorandum, the exclusion of ELL students from specialized programs such as gifted/talented programs may have the effect of excluding students from a recipient's programs on the basis of national origin, in violation of 34 C.F.R. § 100.3(b)(2), unless the exclusion is educationally justified by the needs of the particular student or by the nature of the specialized program. ELL students cannot be categorically excluded from gifted/talented or other specialized programs. If a recipient has a process of locating and identifying gifted/talented students, it must also locate and identify gifted/talented ELL students who could benefit from the program.

The District informed OCR that ELL students attend the gifted and talented (GT) classes and Advanced Placement (AP) classes. A review of the class roster evidenced that during the 2009-2010 school year, 120 students attended GT classes, of whom seventeen are ELL students. In addition, 77 students attended AP Classes, of whom thirty-four are ELL students. Interviews with staff indicated that notice of all programs, to include GT and AP courses, are sent to parents/guardians in writing, in both English and Spanish. OCR found insufficient evidence to establish that ELL students were excluded from the

gifted/talented programs or that the selection criteria had the effect of excluding students from the gifted/talented programs.

### **I. Special Education Services**

While not the subject of this compliance review, during the course of OCR's investigation OCR found discrepancies in data, which alerted OCR to potential violations of Title VI, Section 504 of the Rehabilitation Act of 1973 (Section 504), and Title II of the Americans with Disabilities Act of 1990 (Title II) with respect to the provision of special education services to ELL students.<sup>8</sup>

The May 1970 memorandum states that a school district may not assign students to special education programs on the basis of criteria that essentially measure and evaluate English-language skills. Accordingly, a school district must employ standards and procedures for the evaluation and placement of language-minority students that reliably identify students' educational disabilities, rather than the students' English proficiency skills. The September 1991 memorandum also discusses longstanding OCR policy that school districts may not maintain "no dual services" policies or practices for ELL students with disabilities. If an ELL student with disabilities needs both alternative language services and special education services, the student should be given both types of services.

In its investigation, when reviewing the services provided to ELL students, OCR identified six high school ELL students who were identified as special education and did not receive any direct instruction from an ESL teacher. Thus, ELL students who were identified as qualified individuals with disabilities pursuant to Section 504 and Title II did not receive any direct instruction from an ESL teacher. Thus, OCR found that the District failed to provide alternative language services to all identified special education students.

### **J. Facilities and Segregation**

According to the September 1991 Memorandum, in investigating whether ELL students are segregated, OCR examines whether the district has carried out its chosen program in the least segregative manner consistent with achieving its stated goal and whether the

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<sup>8</sup> Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104 prohibit discrimination on the basis of disability in programs or activities operated by recipients of Federal financial assistance, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12132 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35 prohibit discrimination on the basis of disability by public entities. The applicable standards for determining compliance with Section 504 are set forth in the implementing regulation at 34 C.F.R. §§ 104.33-104.36. Section 104.33 provides, in pertinent part, that a recipient is responsible for providing a free and appropriate public education (FAPE) to qualified persons with disabilities. Section 104.34 prescribes standards for educating students with disabilities with nondisabled students to the maximum extent appropriate to the needs of the student with disabilities. Further, the regulation, at 34 C.F.R. § 104.35 (a)-(c) sets forth specific procedures designed to ensure appropriate classification and placement and the regulation at 34 C.F.R. § 104.36 prescribes relevant procedural safeguards. The applicable Title II regulatory provision is set forth at 28 C.F.R. § 35.130 and generally is interpreted consistently with the provisions of Section 504 mentioned above.

degree of segregation in the program is necessary to achieve the program's educational goals. An inspection of the District facilities showed that the ELL classrooms were the same as the regular education classrooms. Further, ELL students and non-ELL students participated in all classes together, except in the "pull out" ESL classes at the primary and elementary School and in the ESL language classes at middle, junior high, and high school.

OCR concluded that the physical facilities for students who attended the ALP were the same to those provided to regular education students and ELL students were not segregated from non-ELL students except for what was necessary to achieve the program's educational goals. Hence the evidence indicated the District does not segregate ELL students or house them in inferior facilities.

### **Resolution of Review**

While OCR determined that the District has selected a program that is recognized by some experts in the field for its alternative language program, OCR found that the programs and practices used by the District are not reasonably calculated to effectively implement the program. Specifically, OCR found the following compliance concerns with regard to the District's implementation of the program:

- The District failed to adequately identify all PHLOTE students because it provided its HLS in English and Spanish only.
- The District failed to provide alternative language services to all identified ELL students.
- The District failed to implement the program to determine the student's alternative language program placement, i.e., the LPAC committee did not determine the type and amount of services to be provided to the ELL students, students were not provided the services pursuant to the District's selected program.
- The District failed to provide adequate qualified staff to implement its selected alternative language program.
- The District failed to evaluate the ESL teachers' classroom performance by an individual familiar with ESL methodology.
- The District failed to provide adequate instructional materials to implement its selected alternative language program.
- The District failed to monitor the academic progress of ELL students who exited the ESL program to ensure the exited students are proficient enough in English to participate meaningfully in the regular education program.
- The District failed to periodically evaluate its alternative language program for effectiveness and subsequently modify the District's alternative language program with regard to program evaluation.
- The District failed to adequately notify all LEP parents and ELL students of school activities which are called to the attention of other parents and students.
- The District failed to provide alternative language services to all identified

special education students.

On September 6, 2012, the District signed the enclosed agreement, which, when fully implemented, resolves the issues of this review. Pursuant to the agreement, the District will ensure that every PHLOTE student, including students from low incidence groups, are identified; ensure that all ELL students are appropriately placed into the alternative language program and provide notification of the placement for each ELL student to the student's parent/guardian in a language LEP parents can understand; meet with parents who choose for their child to “opt out” of the ELL program to explain the benefits of the program in a language they can understand; ensure that there are a sufficient number of certified, trained ESL teachers to implement its selected alternative language program and develop and implement a procedure to ensure that ESL teachers’ classroom performance will be evaluated by a person knowledgeable in ESL learning methodologies; provide instructional materials to effectively implement its selected alternative language service model; ensure that exited ELL students are participating meaningfully in the District’s program and identify whether any students who have exited the alternative language program during the 2010-2011 and 2011-2012 school years have suffered any academic deficiencies and, if so, provide compensatory services to remedy those deficiencies; develop a procedure to measure the effectiveness of its alternative language program; ensure that ELL students with or suspected of having disabilities are appropriately placed and provided with special education or related aids and services and alternative language services; and revise and implement its policies and procedures to ensure that the national origin minority LEP parents are notified, in a language understood by the parents, of school activities and other information and matters that are called to the attention of other parents.

OCR will monitor the implementation of the agreement and the District’s actions to ensure the District’s compliance with Title VI, Section 504, and Title II. The District has agreed to provide data and other information in a timely manner in accordance with the reporting requirements of the agreement. OCR will conduct additional visits and request additional information as necessary to determine whether the District has fulfilled the terms of the agreement and is in compliance with Title VI, Section 504 and Title II with regard to the issues in the review. Should the District fail to fully implement the agreement, OCR will take appropriate action to ensure the District’s compliance with Title VI, Section 504, and Title II including possibly initiating administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce this agreement, OCR shall give the District written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

This letter sets forth OCR’s determination in an individual OCR case. 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 OCR procedures we are obligated to advise the institution against which the complaint is filed that intimidation or retaliation against a complainant is prohibited by regulations enforced by this agency. Specifically, the regulations enforced by OCR, directly or by reference, state that no recipient or other person shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted or participated in any manner in any investigation, proceeding or hearing held in connection with a complaint.

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

We appreciate the courtesy and cooperation shown by the District during the course of this review. If you have any questions about this matter, please contact Ms. Patricia Sinanan, the OCR employee who will oversee the District's implementation of the agreement, at (214) 661-9649.

Sincerely,

/s/

Taylor D. August  
Director, Dallas Office  
Office for Civil Rights

Enclosure