

October 22, 2015

Mr. Gonzalo Salazar, Superintendent
Los Fresnos Consolidated Independent School District
600 N. Mesquite Street
Los Fresnos, Texas 78566

RE: OCR Case No. 06141072
Los Fresnos Consolidated Independent School District

Dear Mr. Salazar:

This is to inform you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has resolved the above-referenced complaint filed against the Los Fresnos Consolidated Independent School District (LFCISD or District), Los Fresnos, Texas, which OCR received on November 12, 2013. The complaint alleged discrimination on the basis of national origin. Specifically, the complainant alleged that the LFCISD: 1) discriminates against Mexican nationals by requiring a birth certificate (without exception) for registration purposes; and 2) failed to provide equal educational opportunities to national origin language-minority students who are limited English proficient (LEP¹) with respect to their identification, assessment, and placement during the 2013-14 school year.

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d, and its implementing regulations at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin by recipients of Federal financial assistance, either from the Department or from an agency that has delegated investigative authority to the Department (recipients). In pertinent part, Title VI provides that:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

OCR has determined that the LFCISD is a recipient of Federal financial assistance from the Department. Therefore, OCR has jurisdiction to process this complaint under Title VI.

OCR investigated the following legal issues:

1. Whether the LFCISD discriminates against Mexican nationals on the basis of national origin by requiring a birth certificate, without exception, for all students seeking to enroll in the District, in violation of Title VI and its implementing regulations, at 34 C.F.R. § 100.3, and

¹The terms *Limited English Proficient (LEP)* and *English Language Learner (ELL)* are used interchangeably.

2. Whether the LFCISD fails to provide equal educational opportunities to national origin language-minority students who are LEP with respect to the following: identification, assessment, and placement, in violation of Title VI and its implementing regulations, at 34 C.F.R. § 100.3(a), (b)(1)(i).

OCR issued notification letters to the complainant and the LFCISD and reviewed information referenced below provided by the complainant and the LFCISD.

Issue 1

Legal Standard

Specific discriminatory actions are prohibited by Title VI at 34 C.F.R. § 100.3(b)(1), which states that recipients may not directly or through contractual or other arrangements, on the ground of race, color, or national origin: deny or restrict services or benefits, provide different services or provide services in a different manner, treat an individual differently from others in determining whether he/she satisfies any requirement or condition which individuals must meet in order to be provided any service or other benefit provided under the program, or deny or offer different opportunities to participate in programs. The regulation also prohibits recipients from utilizing criteria or methods of administration, which have the effect of subjecting individuals to discrimination.

The Supreme Court held in Plyler v. Doe, 457 U.S. 202 (1982), that a State may not deny a child equal access to public education based on his or her immigration status. On May 6, 2011, the U.S. Department of Justice (DOJ) and the U.S. Department of Education (Department) jointly released a Dear Colleague Letter (DCL), which provides guidance regarding permissible means of verifying student age, residency, and immunization status without chilling enrollment based on immigration status or national origin. The May 6, 2011, DCL emphasizes that while school districts may establish documentation requirements relating to verification of a student's age, residency and immunizations status, school districts must ensure that they do not discriminate on the basis of race, color, or national origin, and that students are not barred from enrolling in public schools at the elementary or secondary level on the basis of their citizenship or immigration status or that of their parents or guardians. On May 8, 2014, DOJ and the Department jointly released a second DCL, which replaces the May 6, 2011, DCL, and provides guidance regarding permissible means of verifying student age, residency, and immunization status without chilling enrollment based on actual or perceived citizenship or immigration status. The May 8, 2014, DCL specifically states the following: "As with residency requirements, rules vary among States and districts as to what documents students may use to show they fall within State- or district-mandated minimum and maximum age requirements, and jurisdictions typically accept a variety of documents for this purpose. A school district may not bar a student from enrolling in its schools because he or she lacks a birth certificate or has records that indicate a foreign place of birth, such as a foreign birth certificate."

Preliminary Findings of Fact

The LFCISD informed OCR that a child's birth certificate is only one way for a parent/guardian to establish that a child is properly enrolled under the child's correct name. The LFCISD stated that Texas Education Code 25.002 and Board Policy FD (Legal) require that parents/guardians having legal control of a child enroll the child in a public school, and that the parent/guardian or the school district in which the child most recently attended school shall furnish the following to the LFCISD: 1) The child's birth certificate, or another document suitable as proof of the child's identity as defined by the Commissioner in the "Student Attendance Accounting Handbook" (Handbook). The Handbook indicates that the following documents are acceptable documents to identify a child's identity: 1) birth certificate or statement of the child's date of birth issued for school admission purposes by the division of the Texas Department of State Health Services responsible for vital statistics; 2) driver's license; 3) passport; 4) school identification card, records, or report card; 5) military identification; 6) hospital birth record; 7) adoption records; 8) church baptismal record; and 9) any other document that establishes identity.

The LFCISD informed OCR that it accepts all documents listed in the Handbook. The LFCISD stated that it regularly conducts training for staff who are responsible for student enrollment, with training sessions held on August 7, 2014, April 16, 2015, and August 6, 2015, to ensure that staff are aware of the acceptable forms of identification for enrollment purposes. The LFCISD informed OCR that, after the District received OCR's notification and data request letter, it checked with all campus staff who assist with registration. According to the Superintendent, all staff members, with the notable exception of a front office staff member at Los Fresnos High School, confirmed that the multiple forms of identifying information listed in the Handbook are acceptable. The front office staff member at Los Fresnos High School initially stated that a birth certificate was required, but subsequently indicated that other documents are also acceptable. As a result of this statement, the LFCISD reported it is providing additional training to the staff member referenced above and providing the staff member with close supervision.

Issue 2

Legal Standard

OCR's May 25, 1970 policy memorandum, "Identification of Discrimination and Denial of Services on the Basis of National Origin" (May 1970 memorandum), advises school districts of their responsibility under Title VI to provide equal educational opportunity to national-origin minority students who are not proficient in English. The May 1970 memorandum states in part:

Where inability to speak and understand the English language excludes such students from effective participation in a school district's educational program, the school district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.

In Lau v. Nichols, 414 U.S. 563 (1974) (Lau), the U.S. Supreme Court upheld OCR's authority to establish the policies set forth in the May 1970 memorandum. In Castañeda v. Pickard, 648 F.2d 989 (5th Cir. 1981) (Castañeda), the U.S. Court of Appeals for the Fifth Circuit delineated a

three-pronged standard for determining the adequacy of a recipient's efforts to provide equal educational opportunities for LEP students. Under this compliance standard, a program for LEP students is acceptable if:

- 1) the program the recipient has chosen is recognized as sound by some experts in the field or is considered a legitimate experimental strategy;
- 2) the program and practices used by the school system are reasonably calculated to implement effectively the educational theory adopted by the school; and
- 3) the program is succeeding, after a legitimate trial, in producing results that indicate that students' language barriers are actually being overcome.

OCR's December 3, 1985, policy memorandum, "The Office for Civil Rights' Title VI Language Minority Compliance Procedures" (December 1985 memorandum), and the September 27, 1991, policy memorandum, "Policy Update on Schools' Obligations Toward National Origin Minority Students With Limited English Proficiency (LEP students)" (September 1991 memorandum), clarify OCR's standard for determining compliance with the May 1970 memorandum, in light of Castañeda, other court cases, and OCR's enforcement experience. The September 1991 policy memorandum follows the analytic framework articulated in Castañeda, and provides standards by which to determine whether a school district's program for ELL students complies with Title VI. These compliance standards require school districts to select a sound educational theory for their programs for English language learners that are likely to meet the educational needs of language minority students effectively. A district must use practices, resources and personnel reasonably calculated to implement its educational theory. Districts 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. Districts must demonstrate that their programs for English language learners are successful in meeting these responsibilities, or modify them if necessary.

Preliminary Findings of Fact

The evidence showed that the LFCSD has written procedures for locating all students who may have a primary home language other than English (PHLOTE). The LFCISD reported that the District identified PHLOTE students by utilizing the Home Language Survey (HLS) form with new students enrolling in the District or for whom no information was obtainable from the previous school district. If an answer of English is given to both questions on the HLS, then no assessment is necessary. However, if an answer other than English is given to either question, then the student is administered an assessment (i.e., Oral Language Proficiency Test (OLPT)) by a trained professional. The LFCISD informed OCR that, on January 29, 2015, it conducted training to provide District staff with an overview of the procedures for administering the HLS.

The information reviewed by OCR showed that the District has written procedures to assess the language proficiency of PHLOTE students. The LFCISD's described the process for referring PHLOTE students to the trained professionals for language assessment utilizing the OLPT. The LFCISD informed OCR that the trained professionals administered the OLPT (i.e., Woodcock-Munoz Language Survey Revised (WMLS-R)) for students in grades K-12 and the Iowa Test of Basic Skills (ITBS) for students in grades 2-12 to determine LEP classification in accordance with Texas Education Agency (TEA) guidelines. The information also showed that the District

used the results of the assessment instruments to identify LEP students and make decisions regarding Alternative Language Program (ALP) placement, ALP placement review, and ALP exit.

The LFCISD informed OCR that the Language Proficiency Assessment Committee (LPAC) is responsible for making placement decisions for LEP students. For example, the LPAC decides if a student will be placed in a Bilingual Education (BE) program (grades K-5) or English-as-a-Second Language (ESL) program (grades 6-12) in accordance with TEA guidelines. The LFCISD's procedures state that for students who have been previously enrolled in an LFCISD school, staff must investigate prior identification as an ELL and previous school assignment before assessing the student.

Prior to the conclusion of the investigation and before OCR reached a compliance determination regarding these issues, the LFCISD informed OCR of its interest in voluntarily resolving the allegations and issues. Under OCR's case processing procedures, allegations and issues under investigation may be resolved at any time when, prior to the conclusion of the investigation, the recipient expresses an interest in resolving the allegations and issues and OCR determines that it is appropriate to resolve them with an agreement during the course of an investigation. The LFCISD submitted the enclosed Resolution Agreement (Agreement) dated October 9, 2015, to memorialize the steps that it will take to resolve the allegations and issues in the complaint. OCR has determined that the Agreement is aligned with the complaint allegations or the information obtained during the investigation, and is consistent with applicable law and regulations. Specifically, the Agreement includes provisions regarding the identification, assessment, and placement of ELL students in an ALP as well as the review and revision (if necessary) of student enrollment procedures with applicable personnel training regarding such procedures.

Accordingly, as of the date of this letter, OCR will cease all investigative actions regarding this complaint. OCR will actively monitor the LFCISD's implementation of the Agreement. Please be advised that if the LFCISD fails to adhere to the actions outlined in the Agreement, OCR will immediately resume its compliance efforts.

This concludes OCR's investigation of the complaint and should not be interpreted to address the LFCISD's compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The complainant may have the right to file a private suit in Federal court whether or not OCR finds a violation.

This letter is not intended, nor should it be construed, to cover any matters not specifically discussed herein. Because there are no further complaint allegations appropriate for resolution, OCR is closing the above referenced complaint as of the date of this letter. The complainant has been notified of this action.

Please be advised that the LFCISD may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainant may file another complaint alleging such treatment.

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

We appreciate your cooperation during the course of this investigation. If you have any questions regarding this letter, please contact Ms. Maria H. Gonzalez, Equal Opportunity Specialist, at (214) 661-9617 or via email at maria.h.gonzalez@ed.gov, or you may contact Timothy D. Caum, Supervisory Attorney/Team Leader, at (214) 661-9648, or via email at timothy.caum@ed.gov.

Sincerely,

Taylor D. August
Regional Director
OCR Dallas Office

Enclosure: As Stated.