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OFFICE FOR CIVIL RIGHTS

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May 23, 2017

Dr. John Lyttle
Superintendent
Laramie County School District #1
2810 House Avenue
Cheyenne, Wyoming 82001

Re: Laramie County School District #1
Case number 08-13-5001

Dear Superintendent Lyttle:

This is to advise you of the resolution of the above-referenced compliance review of the Laramie County School District #1 (district) that was initiated by the Office for Civil Rights (OCR), U.S. Department of Education (the Department). The compliance review was initiated to examine whether the District discriminates against national origin minority students on the basis of limited English proficiency (LEP) by not providing them services necessary to participate meaningfully in the District's educational program; and whether the District fails to communicate effectively with and provide notice of school-related matters to LEP parents in a language they understand.

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d *et seq.* (Title VI), and its implementing regulation at 34 Code of Federal Regulations Part 100, which prohibit discrimination on the bases of race, color, and national origin in programs and activities operated by recipients of Federal financial assistance. The District is a public education system that receives funds from the Department and is subject to Title VI and its regulation.

OCR initiated this compliance review on May 6, 2013, when we advised you that the District had been selected for a compliance review under Title VI and its implementing regulation. We issued an initial data request to the District on May 31, 2013, with subsequent requests on August 21, 2013, November 10, 2014, and December 2, 2015, and conducted an onsite visit of the District the week of May 20, 2015, during which we interviewed 25 District staff members (including all English as a Second Language (ESL) teachers and ESL aides, selected school psychologists, regular education and special education teachers, and administrators) involved with providing services to LEP students, and reviewed randomly selected student files.¹

Pursuant to Section 302 of OCR's *Case Processing Manual*, issues under investigation may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the issues and OCR determines that it is appropriate to resolve them with an agreement during the course of the investigation. OCR reviewed the District's request and determined that a voluntary resolution agreement (Agreement) is appropriate to resolve this review. On December 21, 2016, the District entered into the enclosed Agreement, which is intended to address the issues under investigation in this compliance review. This letter describes the results of our investigation to date as well as areas in

¹ Based on the overall number of LEP students in the District at the time we made our request for files to review, we pulled a random sample of more than 10% of the LEP students, both actively receiving ESL services and in monitoring.

which the District can undertake additional steps to ensure LEP students are appropriately identified and served and that the District effectively communicates with LEP parents. We apologize for our delay in issuing this letter.

Background:

The District covers over 1,500 square miles, and for school year (SY) 2012-13 (end of year) enrolled 13,387 students. The District's total enrollment for the 2013-14 SY was 13,174, and for 2014-15 the total enrollment was 13,761 students. Twenty nine different languages are represented in the District. Until recently, most of the District's students who are PHLOTE or are LEP have Spanish as a home language. During conversations with the District, we learned that the District had an influx of Somali students, many of whom are LEP and had not previously attended school. SY data for 2010-11, notes 221 active LEP students with an additional 91 in monitoring. 2012-13 SY totals indicate 263 active LEP students with an additional 120 in monitoring, and 233 exited students. For SY 2014-15, there were a total of 245 LEP students receiving ALP services, 104 students in monitoring, and 21 additional students fully exited from the District's ALP.

Legal Standards:

The regulation at 34 C.F.R. §100.3(a) 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 otherwise subjected to discrimination under any program to which this part applies. Specific discriminatory actions are prohibited at 34 C.F.R. § 100.3(b)(1) and (2), which state that recipients may not, directly or through contractual or other arrangements, on 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 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 a program. The regulation at 34 C.F.R. § 100.3(b)(1) prohibits different treatment on the basis of national origin. The regulation at 34 C.F.R. § 100.3(b)(2) also prohibits recipients from using criteria or methods of administration which have the effect of subjecting individuals to discrimination.

The Department'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 education opportunity to national-origin minority students who are deficient in English language skills. It states in part, "Where inability to speak and understand the English language excludes such students from effective participation in a district's educational program, 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) (*Lau*), provides the legal standard for the Department's Title VI policy concerning discrimination on the basis of national origin against language-minority students.

Initially in evaluating how a school district or other recipient serves its national origin minority students with limited English proficiency (LEP), OCR determines whether the school district (1) has selected an educational theory for its programs for LEP student that is likely to meet their educational needs effectively; (2) uses practices, resources, and personnel reasonably calculated to implement its educational theory; and (3) demonstrates that its program is successful in teaching LEP students English and providing them with access to the curriculum or it has taken steps to modify the program as necessary.²

² See *Castañeda v. Pickard*, 648 F.2d 989 (5th Cir. 1981).

In applying this analytical framework, we were evaluating the District's implementation of its identified alternative language program (ALP), including procedures for identifying and assessing potential LEP students; the ALP's design and implementation, including LEP student placement and participation, staffing, materials and facilities, student exit and monitoring, ALP evaluation and monitoring, and communication with LEP parents. We also evaluated LEP student participation in the District's gifted and talented and special education programs.

District's Alternative Language Program:

The District is a member of the World-Class Instructional Design and Assessment (WIDA) consortium, which is an educational consortium of state departments of education. WIDA designs and implements proficiency standards and assessments for K-12 students, who are English language learners (ELLs). WIDA has defined proficiency standards and assessments for second language learners, and provides professional development to educators, conducts research on instructional practices, as well as the results and use of the WIDA developed English language proficiency assessments. Following WIDA standards, the District implements an English as a Second Language (ESL) alternative language program.

ALP Identification and Assessment:

A district should have procedures in place for identifying and assessing LEP students to ensure that all language-minority students who are unable to participate effectively in the regular instructional program are receiving ALP services. The procedures should be designed and implemented to ensure that a district identifies *all* language-minority students who are unable to speak, read, write, and understand the English language proficiently.

Identification:

In order to identify potential LEP students, the District screens its students to find those who have a primary or home language other than English (PHLOTE). After identifying its PHLOTE students, the District assesses the PHLOTE students to determine their English language proficiency. A Home Language Survey (HLS) is completed for every child at registration. Our review of the HLS determined that if fully implemented, it is sufficient to identify all PHLOTE students. Any answer other than English on the HLS triggers assessment to determine the student's English language proficiency. The HLS also includes a question regarding the parents' preferred language use. This information is recorded in the District's electronic records system. For students indicating a language other than English on the HLS, the District conducts a screening of English language proficiency within two weeks. Students scoring non-English proficient (NEP) or LEP are identified to receive ESL services. Notice of the results of the screening is provided to the parents and includes a description of the services available.

All interviewees reported that at registration a HLS is completed for each student. The form asks about language use by the student and within the home and any report of a language other than English triggers an assessment for the student. The student files OCR reviewed included a completed HLS form for each student. This information was corroborated and accurately recorded in the PHLOTE roster that we received. The roster also recorded the parents' preferred language for communication with the school. In fact, we noted for two students the parents had either not completely or accurately completed the HLS and the District required a corrected HLS in order to appropriately determine whether assessment was necessary to determine the student's LEP status.

Assessment:

In order to identify LEP students the District assesses PHLOTE students using the required WIDA Access Placement Test (WAPT). The WAPT assesses all four skill areas, speaking, listening, reading and writing. The WAPT is designed to identify English Language Learner (ELL) students and to assist in appropriate program placement based on the students English language proficiency skill level, and is

appropriate for use with pre-K-12 students. For pre-K and K students, however, only the listening and speaking sections of the test are administered. The WAPT uses a composite score of 5 or above to identify a student as English proficient, and a student cannot be considered English proficient if he/she scores 4 or less on an individual subtest. According to the District, elementary level students scoring NEP or LEP on the WAPT receive pull-out ESL services with the remainder of their day in the regular classroom. Secondary NEP and LEP students are assigned to an ESL class within their regular schedule. Students scoring English proficient do not receive direct ESL services, but may receive academic support for content classes. The District also uses the Measure of Developing English Language (MODEL) as an initial or interim assessment of English language proficiency. The Model measures all skill areas (listening, speaking, reading and writing) and yields a proficiency level score of 1-6. The 1-6 scores correlate to the five proficiency levels defined in the WIDA ELP Standards. The MODEL was also developed by WIDA and the test maker's description of the purpose and use of the MODEL is consistent with the manner in which the District utilizes the test as an initial or interim assessment, at a time when the WAPT cannot be utilized by the student due to the WAPT testing schedule. Annual assessment of LEP student progress (including for potential exit) is evaluated using the Assessing Comprehension and Communication in English State to State (ACCESS).

Consistently, District staff members that OCR interviewed reported that for any student indicating the use of a language other than English, the District completes an assessment to determine whether the student is LEP. Staff members also reported that ESL teachers complete the assessment and this information is used to determine placement in the District's ESL program. Individuals involved in the assessment process (ESL teachers) accurately identified the assessments used (WAPT and MODEL), and indicate that the assessments evaluate a student's ability to speak, comprehend, read, and write English, appropriate to grade level. The District's Assessment Office Specialist sends out a weekly list to ESL teachers of any newly enrolled students for whom English language proficiency assessment is to be completed within two weeks, and at the time of OCR's onsite, there were no PHLOTE students who had not been assessed for English language proficiency.

OCR collected and reviewed random samples of student files for PHLOTE, LEP, exited LEP and non-LEP students. The files cover a student's entire attendance with the District. We also received an updated roster of PHLOTE students including current information regarding assessment and program placement, if applicable. The file samples demonstrated that based on HLS results students are assessed to determine whether they are NEP or LEP as determined by either the MODEL or WAPT tests. For students scoring as LEP, the documentation accurately reflects the students' classification and program placement. This information was corroborated and accurately recorded in the PHLOTE roster that we received. The roster also recorded the parents' preferred language for communication with the school. We did not note any students who should have been screened as indicated by their HLS, or that should have been identified as LEP but were not. However, OCR would need to conduct additional individual student file reviews to determine if any student in the District was not appropriately identified as LEP.

Program Design and Implementation:

If a district is to demonstrate that its ALP is likely to be effective, it must show that the educational approach used is considered sound by some experts in the field or that it is a legitimate experimental strategy. Also, according to *Castañeda*, a district must not only adopt an alternative language program that is likely to meet the educational needs of language-minority students effectively; it must also make *bona fide* efforts to make the program work. The May 1970 Memorandum provides that, where inability to speak and understand the English language excludes national-origin language-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. OCR considers two general areas when considering whether a school district is in compliance with Title

VI. First, OCR considers whether there is a need for the district to provide alternative language services to LEP students. Second, OCR considers whether the district's alternative language program is likely to meet the educational needs of language-minority students effectively. Also, a district must provide alternative language services to all national-origin language-minority students who need such services. A district will be in violation of Title VI and its implementing regulation if it does not provide services designed to overcome effectively the language barriers of all its LEP students.

Program Models:

According to the District, its ALP is "intended to ensure that limited English proficient students develop English proficiency and meet the same academic content and achievement as their non-LEP peers." The District primarily uses a pull-out English as a Second Language program to provide alternative language program services to its identified LEP students. The District reported that it follows the WIDA English language development standards with content area instruction that is differentiated for English language learners in the four domains of language (listening, speaking, reading, and writing). According to WIDA materials made available to OCR, the English language development standards are 1) Social and Instructional language; 2) The Language of Language Arts; 3) The Language of Mathematics, 4) the Language of Science; and 5) the Language of Social Studies. These materials also include a direct link to grade-level appropriate WIDA instructional materials and resources.

The District also implements WIDA's "CAN DO descriptors" in coaching general education teachers about differentiated instruction for English language learners. The ESL program also uses National Geographic's Reach (Reach) curriculum. Reach is a core, content-based ESL program. It is a research-based program designed to provide active learning, scaffolded instruction and flexibility to meet instructional priorities while moving students to English language proficiency. Reach is appropriately implemented as a pull-out, self-contained, or push-in delivery model and uses an academic language development approach.

A properly implemented ESL program is a sound educational approach recognized by experts in the field as likely to meet the educational needs of language-minority students to effectively overcome language barriers of LEP students. Below we evaluate the District's implementation of its ESL program and OCR's requirements for adequately serving identified LEP students, including those requiring special education.

Program Placement and Participation:

Students scoring NEP or LEP on the WAPT or MODEL are placed in the District's ESL program once parental consent is obtained. We requested a roster of identified PHLOTE students indicating each student's LEP status (current, reclassified, former), an indication of whether the student participates in the District's ALP services, and whether the student receives special education services pursuant to the Individuals with Disabilities Education Act (IDEA) or Section 504. According to the District roster, identified/continuing LEP students receive "direct services" or "consultative services." The District explained that direct services include specific English language acquisition instruction through a pull-out program. Consultative services are for mainstreamed highest proficiency level students who are successful in the classroom with academic content and require the support of an ESL teacher who monitors their progress and supports the mainstream teachers. The consulting teacher develops an individualized support plan that is provided to the regular classroom teacher(s). The consulting teacher works directly with the regular classroom teacher to ensure ongoing success in academics. In both direct and consultative services, a certified teacher with an ESL certification or Bilingual endorsement is the teacher of record, although some in-class assistance may be provided by an ESL aide under the supervision of the ESL qualified teacher.

ESL services vary for NEP and LEP students depending upon individual needs and proficiency levels. Pull-out ESL services are delivered at District school sites enrolling identified LEP students. Not all schools have identified LEP students enrolled as the District LEP population is widely dispersed with very few total students. The District uses a group of ten full-time itinerant ESL/Bilingual qualified teachers and six full-time ESL aides or paraprofessionals to move from site to site delivering services. Elementary level services are provided daily to LEP students. Secondary LEP students have class sections built into the school day and these are generally 90 minute classes, so classes are on alternating days at some schools due to block scheduling. They also may have a second, “academic support” class which includes instruction and assistance for core curriculum classes. Students at both the elementary and secondary levels are otherwise mainstreamed with their non-LEP peers. LEP students are also served through push-in instruction by ESL staff, who monitor student progress and support the mainstream teachers with appropriate instructional strategies, as needed. Fluent English Proficient (FEP)1 and FEP2 students are monitored through an individual plan and unless identified for re-screening due to academic deficits or concerns, they are fully exited at the end of the second year of monitoring. The District indicates that a few parents of LEP students have “opted out” of ESL services for their students. The District, however, through its classroom teachers, continues to provide support in content classes for these opt-out students by providing content modifications through individual student plans.

Based on data provided by the District, all identified LEP students in the District receive ESL services from a qualified ESL teacher, excepting the few students for whom services were declined. Student file and roster information OCR reviewed indicate that all identified LEP students are receiving ALP services from a qualified ESL instructor. The services vary by student proficiency and grade level. Each elementary LEP student file included the student’s learning plan, which indicates the student’s proficiency level, ESL teacher, and accommodations or modifications to be implemented by the regular classroom teacher. District interviewees (teachers, ESL teachers, ESL aides, speech therapists, school psychologists and special education teachers) uniformly state that the District identifies PHLOTE students via an HLS that is completed at registration. These potential LEP students are then assessed for English language proficiency. The witnesses OCR interviewed were aware that the District assesses students to determine English language proficiency and subsequent ESL program participation, although those not involved in the process were less familiar with the assessments used. Witnesses stated that students who are LEP are provided ESL services, and confirmed that they are aware of who LEP students are either through information shared directly by the ESL instructor (when the interviewee was not the ESL teacher), information available on Infinite Campus (electronic record keeping system), or because the student’s class schedule indicates ESL classes. Witnesses also reported frequent communication with ESL qualified instructors and aides regarding services to be provided by the classroom teacher and referring to the student’s ESL learning plans.

ESL teachers indicated that they provide direct English language development (ELD) instruction to their students following the WIDA and Reach materials that are specifically designed for use with LEP students. ESL teachers also indicated that students receive additional support from ESL aides both in the ESL class and the regular classroom, but work under the supervision of the ESL teacher. ESL teachers also report that they develop their own lesson plans relying on resources and materials made available by the District. ESL teachers explained how students are provided ELD and explained that they also work with the regular classroom teacher, which they describe as “push in,” to coordinate their lessons to reinforce language arts instruction provided in the regular classroom. ESL aides confirmed that ESL teachers develop lesson plans and that they work under the supervision of either the ESL instructor (when in the ESL classroom) or the regular classroom teacher. XXX - sentence redacted - XXX. Witnesses reported that the parents of very few students found eligible for ESL services data decline ESL services. Witnesses reported that any “opt out” is valid only for the current school year and that parents are offered services again the next year, and that parents frequently will allow ESL services after the initial opt out.

The student files we reviewed on-site confirm that all LEP students are assigned to qualified ESL teachers to receive instruction, unless parents have declined services. Files also included learning plans individualized for the student based on the student's current English proficiency level. We noted for two student files that when the students came to the District from other districts, they were not previously identified as LEP. Following its HLS screening and assessment processes the District identified the students as LEP and began providing ESL services. Student files also confirm that when parents decline ESL services for their students, the declination is only for that school year, and that students can begin services the following school year if the parent agrees. Prior to declining services the District provides parents a notice explaining the nature and benefits of its ESL program.

Staffing:

To appropriately implement its ALP a district must provide the staff necessary to carry out its chosen program. A district is responsible for ensuring that there is an adequate number of teachers to instruct LEP students and that these teachers have mastered the skills necessary to effectively teach in the district's program for LEP students. Where formal qualifications have been established, *e.g.*, the state requires authorization or certification to teach in particular programs, or a district generally requires its teachers in other subjects to meet formal requirements, a district lacking adequate staff must either hire formally qualified teachers trained to provide alternative language services or require that teachers already on staff work toward attaining those formal qualifications. OCR examined the effort the District has taken to hire and train staff qualified to teach the District's ESL program and whether staffing is adequate to carry out the program.

The District provided information demonstrating that its ESL teachers are required to be certified teachers. All ESL teachers are certified teachers who have also acquired the WDE's required ESL endorsement or bilingual certification. At the time of the onsite, the District had ten full-time ESL qualified teachers and six full-time ESL aides. All ESL teachers interviewed reported that they have either an ESL certification or a bilingual endorsement. A number of ESL aides are certified teachers or have master's degree(s) in language related areas, and are fluent in Spanish. "X-Sentence redacted-X."

Witnesses reported that due to the limited number of LEP students, the number of ESL qualified staff available is sufficient to meet their needs; however, there are some concerns as to whether the itinerant teachers who travel between schools to provide services to LEP students in low LEP student population schools have adequate time to provide students with necessary instructional time. Data provided by the District, including student files, reflects that all ESL students receiving ALP services are provided services by a qualified (ESL/Bilingual) teacher with the assistance of an ESL aide who is under the supervision of the teacher. Witnesses also reported that the District makes ESL and ALP trainings available to staff, although participation is generally voluntary for non-ESL staff. Some witnesses question the consistency of ESL services for students due to lack of District-level oversight. We noted that at the time of these interviews, the former District coordinator for ALP services had left mid-school year. The District's new program coordinator started at the beginning of the 2015-16 SY. OCR would need to conduct further investigation in order to make a compliance determination regarding the District's approach to providing appropriate staff to implement its chosen program.

Materials and Facilities:

To ensure that alternative language program services are delivered effectively, districts are expected to provide adequate resources, including instructional materials and equipment, in accordance with requirements of the program. Further, a district is to ensure that resources are available timely to staff. Facilities used by LEP students should be comparable to those available to their non-LEP peers.

OCR considered whether the District provides adequate instructional materials, consistent with the delivery of an ESL program for students in the ALP. The District explained that ESL materials for teacher use are available on the District's website, which OCR confirmed. The website also provides a full description of accommodations and modifications appropriate for implementation by the regular classroom teacher to support instructional content within the classroom for LEP students. The District also explained the process for ESL staff to request additional materials for their students and explained the budget available to support the District's ALP. When acquiring new materials to support the District's curriculum, a selection committee is formed. The committee includes content area experts and participants from the parent advisory group. The selection committee meets and completes an in-depth review of the materials, and recommends the selected materials. The recommended materials are put on a 45 day public review period. After the 45 day review, public input is considered and a decision is made to forward the recommended materials to the District Board of Trustees for approval or to go back to the committee for further review. This process was used for the adoption of the District's ESL curriculum material. The District further explained that additional materials for ESL staff and student use are acquired in two ways: A request for things such as paper, pencils, and scissors, and other materials that are not curriculum content-based can be submitted at the building where the materials are needed. If additional or different curriculum-related materials are needed, teachers can make a request via phone or email to the Assistant Director of Instruction who then reviews the request and, if approved, purchases the materials.

ESL teachers and regular education staff members reported that adequate instructional materials are available for instructing LEP students. Witnesses reported that requests for additional materials are readily approved. Nonetheless, other witnesses reported that while the technology (smart boards or computers) are available they do not always function or they are unable to use them. Witnesses volunteered this information, when discussing the availability of appropriate classroom and ESL curriculum materials, which all witnesses agreed are sufficient. Based on further inquiry, we noted that interviewees who identified concerns frequently share the same facilities with non-ESL teachers who have access to the same equipment or lack of equipment. Additionally, some witnesses reported that they do not have use of comparable facilities. A number of staff reported that the use of itinerant teachers has created space availability problems. Availability of appropriate instructional facilities is particularly a problem at the elementary level where ESL staff frequently does not have an assigned classroom for their use at the schools they visit, although they typically have an assigned classroom at their "home school." While onsite, we observed that a number of the schools are at maximum capacity.

We requested additional information regarding facilities and classroom assignment for all ESL and non-ESL staff for comparison purposes. The District provided us all teacher instructional facility assignments by building, room, or other location. For all assignments that are not a traditional classroom setting, we also requested physical descriptions and photos. We noted that a number of the instructional settings that the ESL staff identified as not a typical classroom are also regularly shared by non-ESL staff for their students. We did not find evidence that ESL staff and students are more likely to be assigned to these locations. OCR would need to conduct further investigation in order to make a compliance determination as to whether LEP students are being discriminated against with regard to access to District facilities.

Student Exit and Monitoring:

Districts must monitor the progress of all of their LEP students in achieving English language proficiency and acquiring content knowledge. Monitoring ensures that LEP students are making appropriate progress with respect to acquiring English and content knowledge while in the ALP or, in the case of opted-out LEP students, in the regular educational setting.

With respect to exiting LEP students from ALP services, and status, a valid and reliable assessment of all four language domains must be used to ensure that all LEP students have achieved English proficiency. To demonstrate proficiency on the assessment, LEP students must have either separate proficient scores in each language domain (i.e., a conjunctive score) or a composite score of “proficient” derived from scores in all four language domains. The assessment must measure student proficiency in each of the language domains, and, overall, be a valid and reliable measure of student progress and proficiency in English. Once exited from the ALP, former LEP students should be able to participate meaningfully in the mainstream educational environment. In order to implement this requirement, districts must monitor the academic progress of former LEP students on an individual basis for at least two years to ensure that the students have not been prematurely exited; any academic deficits they incurred as a result of participation in the ALP have been remedied; and they are meaningfully participating in the standard instructional program comparable to their never-LEP peers.

The District uses the ACCESS to assess LEP students who may have acquired sufficient English language proficiency to exit the ALP. In order to be determined English proficient, students must have a composite score of 5 or higher with no subtest level below 4. The assessment measures speaking, understanding, reading and writing as appropriate to grade-level. The District reports FEP students’ academic progress is monitored for two school years after being exited from the ALP. It also provided sample forms that are used to document the monitoring of FEP students, and explained that if appropriate, FEP or exited students may reenter the ALP. The District also explained that it provides an academic support class offered as an elective and for which high school credit is awarded for exited LEP students, and at the elementary level provides in class support for students, as needed.

The District’s monitoring form completed for FEP students solicits the students English language proficiency assessment information in listening, speaking, reading and writing, as well as a composite score. The form notes that to be identified as FEP1 the student may not score less than 4 in any single area and must score 5 or above on the composite score. The form also requests the student’s most current grades in “reading/writing/language Arts, Math Science, Social Studies and Other.” The student’s current Measure of Academic Progress Data, the Wyoming Department of Education’s required annual student assessment, is also required. Lastly, the form directs that the student’s ELL³ teacher be involved in ELL decisions for the student, and the date when staff will next meet to review the student’s progress. A copy of the completed form is included in the student’s ESL file, which resides within the student’s cumulative file. The original of the completed form is returned to the District’s Assessment Office Specialist for inclusion in the student’s official PHLOTE/LEP records.

Witnesses OCR interviewed consistently reported that LEP students who have met English language proficiency standards are monitored for two years for academic success after being exited from the District’s ESL program. ESL staff reported that the ESL teacher is responsible for completing the monitoring, but works in conjunction with the student’s assigned teacher(s) to collect information regarding the student’s academic performance, including standardized test results, grades, and other information. Witnesses also reported that students struggling academically are provided additional support by the ESL staff and regular education instructors. Frequently, the ESL teacher assigned to the student’s school will meet with the student and parent to discuss the student’s progress. Additionally, a student’s English language proficiency may be reassessed and if the student re-qualifies (scores LEP on the District’s assessment) the student is placed back in the ESL program and provided services. Witnesses were able to provide the names of students to OCR, for whom reentry in the ESL program had occurred, noting that this is more likely to occur as students transition from middle to high school where the academic load significantly increases for students.

³ The District alternately uses the terms English Language Learner and English as a Second Language student.

OCR's review of a sample of student files support that FEP1 and FEP2 students are periodically monitored for two years after reaching English proficiency as measured by the ACCESS. Monitoring forms, including older versions of the form currently in use, indicate the student's academic performance information is collected from a variety of sources, including grades, standardized assessments, teacher and parent input. The monitoring form is then signed by the ESL teacher, the principal, and the regular education teacher, and dated. It also includes the date for the students next scheduled monitoring review, if required. In our file reviews we confirmed that students, based on the monitoring data, were reassessed, and if determined to be LEP, reentered the ESL program. If the struggling student did not score LEP, additional academic supports were identified and implemented for the student to provide ongoing support. OCR would need to further analyze exited LEP students' performance and the District's monitoring efforts in order to reach a compliance determination for this area.

Communication with Language Minority Parents:

Districts have an obligation to ensure meaningful communication with LEP parents in a language they can understand and to adequately notify LEP parents of information about any program, service, or activity of the district that is called to the attention of non-LEP parents. The May 1970 Memorandum states that districts have the responsibility to adequately notify national-origin minority group parents of school activities that are called to the attention of other parents. Such notice, in order to be adequate, may have to be provided or translated in a language other than English. Standard notices include, but are not limited to language assistance programs, special education and related services, IEP meetings, grievance procedures, notices of nondiscrimination, student discipline policies and procedures, registration and enrollment, report cards, requests for parent permission for student participation in district or school activities, parent-teacher conferences, parent handbooks, gifted and talented programs, magnet and charter schools, and any other school and program choice options. In addition, districts must develop and implement a process for determining whether parents are LEP and what their language needs are.

The District reports that parents are asked about their preferred language for communication with the District at the time of registration. The HLS form solicits this information from the parent(s). The information is recorded in the District's electronic student records information system, but documentation is also maintained in the student's ESL file. The District also reported that it communicates with parents who require information in a language other than English through document translation and oral interpretation. Some documents are translated by in-house staff and some are sent to professional companies for translation. Also, the District has access to documents available in other languages through the WDE, and oral translations are handled by contracting with qualified community individuals⁴ that can provide face-to-face translations. Broadcast equipment is available for a single translator to communicate with several families during large events. If a contracted individual is not available, the District has an account with Language Line, a service that provides over the telephone oral translations. The District also provided a letter sent out annually to all staff regarding access to the District's telephone interpreter service. The letter included information on how to access the language of your choice and provided a contact number for technical support. The system supports translation in virtually any language. Lastly, the District's website has a language menu option to self-select an appropriate language for website viewing that when used translates the information on the screen into the selected language.

The District provided sample documents and forms that are available in languages other than English, including the District's school lunch and attendance information and forms, student history form,

⁴ The qualified community members are derived from the pool of interpreters used by the local state court and have been vetted by the court. The District also reports occasionally using college level instructors who have the particular language fluency required.

household information form, and student medical forms. Additionally, the District provided screenshots for its electronic records, registration, and student information portals in Spanish and Somali. The District documented its purchase of a complete line of services from TransAct. Some of the more common languages available from the service include: Arabic, Chinese, French, Haitian Creole, Hmong, Korean, Russian Somali, Spanish, and Vietnamese. Other less common languages are also available. TransAct specializes in school-related translations for parent letters, notices, calendars, handbooks and forms. The District, however, acknowledged in its data response that it does not maintain a list or roster of parents for whom translation or interpretation services were provided or requested.

Staff members are aware that the District has multiple resources available for communicating with LEP parents, and that parents' language preference is recorded on their student's HLS and in the District's electronic record keeping system, which is available to all staff. Staff also report that they are aware of who LEP parents are (generally through prior contact or because ESL teachers let them know) and have the ability to communicate with the parents in an appropriate language either through written translation services or oral interpretation. Nonetheless, staff members reported that they were not aware of a formal system for obtaining interpreter and translation services at the school level. In some instances, OCR learned that District staff improvised by pulling ESL and Spanish teachers and other staff to provide interpreter services to communicate with LEP parents and that they are not confident that written materials are consistently provided in a language parents can understand. Some staff reported that to ensure information is received by parents, they will either make or arrange for a follow-up telephone call in an appropriate language with the parents. Not all staff does this and when it is completed, the student's file may not include a notation of the actions taken. No witnesses reported that the District tracks or alerts them of LEP parent language needs. This is largely left up to the ESL teachers to do on an informal basis.

The District provided OCR a list of all PHLOTE students that indicates responses to the HLS for students' language use and parents' language preference. Some student files indicate inconsistent use of information in a language LEP parents can understand. Examples of inconsistent use identified in student files were quite dated and did not indicate current problems. District witnesses clarified that student file information that is intended to be accessed by District staff is maintained in English in the files. We noted that when a HLS is incomplete regarding language preference or otherwise inaccurately completed, for example a HLS indicates a language the parent studied academically, the District follows up with the parent to have the HLS accurately completed. Although parent language preference information is available to staff, files do not reflect that the District formally tracks LEP parent language use or interpretation or translation services provided to ensure consistency. Additionally, although there are adequate resources available to staff to provide communication to LEP parents in a language they can understand, some staff is unaware of the process to access these resources. OCR would need to conduct further investigation to determine whether or not the District has adequately communicated with LEP parents in a manner that is similar to parents who are not LEP.

Program Evaluation and Modification:

OCR requires that districts that have designed and implemented programs for LEP students have procedures for monitoring the program to ensure that it is effectively meeting the needs of LEP students. OCR expects a district to maintain data regarding its implementation of an ALP and the progress of students who participate in the program.

The District reported that the WDE has identified Annual Measureable Achievement Objectives (AMAOs) for ALPs, which it implements to evaluate its ALP annually. The AMAOs include measurements of progress that ELLs make in learning English. AMAO 1 measures annual increases in the number or percentage of children making progress in learning English. AMAO 2 measures annual increases in the number or percentage of children attaining English language proficiency by the end of

each school year, and AMAO 3 measures student progress in meeting annual yearly progress on the state assessment for the ELL subgroup. The District's LEP students are making progress in each of the ELL specific AMAOs. OCR noted, however, that the District does not have any other procedures in place to evaluate and modify its program, and there is no available District information that compares the academic performance of former-LEP students (those students who have exited the program successfully) with their non-LEP peers (those students who have never been identified as LEP), which reflects the effectiveness of the District's ALP. While the AMAOs results for the District reflect that its LEP program is meeting the AMAOs measures required by the WDE OCR would still need to further investigate student outcomes like graduation rates for LEP students and consider whether there is additional evidence of the District's program being demonstrably effective before being able to make a compliance determination.

LEP Students with Disabilities:

Districts must ensure that all LEP students who may have a disability, like all other students who may have a disability and need services, are located, identified, and evaluated for special education and disability-related services in a timely manner. When conducting such evaluation, districts must consider the English language proficiency of LEP students in determining the appropriate assessments and other evaluation materials to be used. Districts must not identify or determine that LEP students are students with disabilities because of their limited English language proficiency. Consequently, we assessed whether the District discriminates against LEP students on the basis of their national origin and/or disability in the pre-referral, referral, evaluation and placement of minority students into special education programs and services, in violation of Title VI.

Participation of LEP students in Special Education:

The District's special education policies and procedures adequately contemplate and address the identification, evaluation and placement of PHLOTE and LEP students taking into account cultural and language differences. Special education forms are available in English and Spanish. The District also provided a roster of special education staff. For the 2014-15 SY, the District reported that three special education staff members are ESL qualified. However, none of them were providing services to LEP students.

Pre-referral:

The District reported using a Building Intervention Team (BIT) process in identifying and assisting struggling students, including those who are PHLOTE or LEP. Each school has a BIT that processes student referrals from parents, staff, or other concerned parties for students experiencing educational difficulties. The BIT reviews information and designs appropriate intervention to assist staff, and monitors and evaluates implementation of the interventions. The BIT is responsible for referring students to the Multidisciplinary Team (MDT) for further evaluations if the interventions are unsuccessful, and a disability is suspected.

The District also provided materials that support that it implements a multi-tiered intervention process. Tier 1 (Universal Interventions) are state content standards aligned core instruction and school-wide positive behavior interventions and supports provided to all students in the general education core curriculum. Tier 2 (Strategic Interventions) are academic and behavioral strategies, methodologies and practices designed for some students who are not making expected progress in the state content standards-aligned instructional system who are at risk for educational underachievement. Tier 3 (Intensive Interventions) are academic and behavioral strategies, methodologies and practices designed for students who are significantly below established grade-level benchmarks in the state content standards-aligned instruction. Materials provided by the District reflect that use of appropriate interventions may improve outcomes for students who have diverse cultural, socioeconomic, or language acquisition needs, and that

behaviors commonly associated with learning problems (*e.g.*, inattentiveness, distractibility, or disorganization) may, in fact, be due to a lack of educational opportunity, poor language comprehension, or cultural norms. Examples of effective instructional strategies for students with diverse needs include explicitly teaching culturally-specific words, concepts and idioms; using cooperative, interactive learning activities; allowing additional time for students to process verbal information; connecting new instruction to the student's prior knowledge; and promoting interest and motivation in culturally appropriate ways.

District staff members (teachers, ESL teachers, ESL aides, special education teachers, school psychologists) reported to OCR that during the BIT process team members are aware of a student's PHLOTE and LEP status. Additionally, most indicate that for LEP students the ESL teacher participates in the BIT process or provides information regarding the student to the assigned teacher, who is part of the BIT. Due to the relatively low number of LEP students a teacher may go an entire career without having one involved in the BIT or special education referral process. All schools reported, however, that ESL staff participation and or input is included in the process, and that team members are aware of the student's PHLOTE status, and LEP level throughout. Specifically, we learned that ESL teachers who did not participate in the BIT provided input to the student's assigned teacher for consideration. Additionally, witnesses referred to the students records as providing relevant language use and proficiency assessment information throughout the process.

Referral and Evaluation:

In reviewing a district's special education referral and evaluation procedures, OCR considers whether staff uses objective data and professional judgment to account for the effect of the language development and proficiency of language-minority students. If a student is not proficient in the language skills required to complete an assessment instrument, the results may not be valid. Consequently, OCR considers whether the evaluation as completed accurately reflects a student's special education needs rather than lack of English language skills.

According to the District's Special Education Manual, referrals may be initiated by a parent or District staff member. For students, who are referred through the BIT process, a referral form is completed. The referral form includes sections to discuss and detail any interventions, services, or other programs used to address the child's needs. The form also documents information about the duration of the interventions, services or programs that were attempted, the effects of the interventions, and information regarding educationally relevant functional, developmental, social, cultural background, and adaptive behavior factors. The District also reported valid and reliable assessments are administered in accordance with the producer's instructions, and are selected to ensure that if an assessment is administered to a child with impaired sensory, manual or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skill. Finally, the student is assessed in all areas related to the suspected disability.

The District identified a number of assessments it administers for LEP student evaluations as appropriate to the suspected disability. These assessments include the Bateria Woodcock Munoz – Cognitive and Achievement assessment (Spanish version of the Woodcock Johnson); Comprehensive Test of Nonverbal Intelligence-2; Test of Nonverbal Intelligence-4; Universal Non-verbal Intelligence Test; the Wechsler Non-verbal Scale of Ability; Clinical Evaluation of Language Fundamentals- Spanish; Test de Vocabulario en Imágenes –Peabody, Peabody Picture Vocabulary Test Spanish version; and the Kaufmann Assessment Battery for Children II; and the Kaufmann Brief Intelligence Test II.

The District also provided a list of all LEP students receiving special education services. At the time of our onsite visit, the District was serving fifteen special education LEP students. The District also

provided a list of qualified special education personnel at each school, and a list of school psychologists on staff. At the time of OCR's onsite, the District did not have a bilingual school psychologist on staff. The psychologist and special education teacher(s) assigned to each school are responsible for evaluating LEP students enrolled at their school. The special education teacher completes academic assessments. The psychologists interviewed explained that when dealing with a LEP student, caution is used in test selection and interpretation to ensure placement does not result due to student's lack of English proficiency. They also reported that the student's PHLOTE and LEP status and actual proficiency level and ESL participation is available throughout the special education and pre-referral processes.

School psychologists reported taking language proficiency into account by using dual language assessments (testing with an English version and Spanish version of the same assessment) to assist in determining whether a student who is LEP has a disability or whether lack of English proficiency is interfering with the student's progress. Psychologists also reported to OCR that with LEP students they use non-verbal assessments in order to determine a student's ability, rather than using language intensive assessments, which will not likely reflect the student's actual ability but his or her limited English proficiency. Psychologists also report that they on occasion have a fluent Spanish speaking staff member assist in assessing students, but noted that they ask only for translation of the instructions and not the actual assessment portion of the test, and that this is taken into account when reviewing results. However, a bilingual staff member reported that she had been called upon to provide Spanish translation and/or interpreter services during assessments and that she refused to do so because she is not qualified to provide such services in that setting. Finally, witnesses consistently reported that during referral and evaluation, the multidisciplinary team is aware of a student's language use. Building Intervention Team (BIT) records include this information, and these records are passed forward to the MDT at referral and considered in the referral and evaluation processes, and reflect that evaluations are timely (within 60 days) completed for all students, including LEP students.

While on-site, OCR reviewed the contents of two special education evaluations for the most recently evaluated LEP students and special education reevaluation information for a LEP student. The records indicated that throughout referral and evaluation the MDT was aware of the students' PHLOTE status and limited English language proficiency. Assessments selected were appropriate to each student's needs and suspected disability. Parental input was sought throughout, including the student's abilities and difficulties as perceived by the parents and home language use. OCR would need to conduct further investigation in order to determine whether the District's special education referral and evaluation procedures are in compliance with OCR policy.

Placement:

According to the District's special education policy, upon completion of assessments and other evaluation measures, a group of qualified professionals and the parent of the child meet to determine whether the student is a student with a disability. The team draws upon information from a variety of sources, including parent input, teacher recommendations and input, as well as information about the child's physical condition, social or cultural background, and adaptive behavior. If, however, the determinant factor for placement is a lack of appropriate instruction in reading or math, or limited English proficiency the child does not qualify as a child with a disability. The team also ensures that information is documented, and, if appropriate, an IEP is developed and implemented for a qualifying student.

The District's Individualized Education Program (IEP) form explicitly addresses whether the child has limited English proficiency, and, if so, whether the limited English proficiency is the determinant factor. The form also includes appropriate sections to indicate meeting participants, including the parent(s), and the child when in attendance.

All witnesses (teachers, ESL teachers, ESL aides, special education teachers, and school psychologists) report that the District convenes a MDT meeting to consider evaluation information prior to determining whether a student is qualified for special education. The team typically includes parents, regular education teacher, special education teacher, and the evaluator/school psychologist. Also, if appropriate, speech and occupational therapists are included. ESL staff report that they are not always included in IEP meetings for LEP students, but information about the LEP student is shared with the student's assigned teacher, who attends the meetings. Special education staff, including school psychologists, speech therapists, and special education teachers, had appropriate credentials and qualifications. Witnesses also reported that in the present levels of performance section of a student's IEP and in the prior written notice, the student's participation in ESL is documented for consideration by the team. Witnesses also reported that even when the ESL teacher is not part of the MDT, the ESL teacher typically provides input to the regular education teacher.

The special education files that OCR reviewed for LEP students provided evidence that throughout the special education process, including placement/eligibility determinations, the MDT was aware of the student's PHLOTE status and limited English proficiency if applicable. Parental input was sought, including the student's abilities and difficulties as perceived by the parents and home language use, and pertinent medical and family history. The student's past and continuing participation in the District's ALP program was documented in the student's records, including the need for ongoing ESL services. This was supported by witness interviews. In particular, regular education teachers, ESL teachers, and school psychologists reported that a student's limited English proficiency is considered throughout the special education process and that the District takes appropriate steps to ensure that the special education placement does not result due to limited English proficiency, rather than a disability. However, in order to reach a compliance determination regarding the evaluation and placement of LEP students with disabilities, OCR would need to review additional student files to determine whether each LEP student was appropriately evaluated and placed in compliance with procedural requirements.

Parental Notice of Special Education Matters:

Because the District's obligation to adequately notify national origin minority group parents of school activities that are called to the attention of other parents extends to special education matters, we considered whether the District communicates with parents about special education matters in a language they can understand.

The District reported that it does not have specific policies and procedures for communication with LEP parents about special education matters, rather it implements the WDE requirements which are published in the WDE, Special Programs Division's, *Policy and Procedure Manual For Special Education* (Manual).

To accomplish this, the District uses both District and WDE resources for communication with LEP parents, including available staff/personnel, dual language procedures, copies of pertinent regulations, forms in various languages, and an online program for translation of documents in various languages. The Manual includes multiple forms available in English and Spanish including: Special Education Referral Form; Prior Written Notice and Consent for Evaluation; Evaluation Report and Eligibility for Determination; Documentation of Eligibility (specific to each IDEA category); IEP; Revocation of Consent for Special Education and Related Services; Notices of Team Meeting, and Prior Written Notice. The District also reported that IEP teams have available for use qualified interpreters to communicate any information about students, including evaluation results and all parts of the IEP process to language minority parents.

Generally, witnesses report that interpreters are available and used for special education matters. A number of witnesses noted that they tend to rely on other staff members XXXXXXXXX available at their school site to provide oral interpretation for IEP meetings, but were not clear about what, if any, training

or qualifications these staff members have relating to special education matters and special education terms. Additionally, witnesses, who have been relied upon to provide interpreter services, reported that they did not feel well qualified to provide interpretation regarding special education matters. Witnesses also indicated that when oral interpretation is provided (for example, telephone calls home) it is likely not reflected in the student's records.

Gifted and Talented:

The District's Trailblazer Program. (Program) serves the District's gifted students. The Program is a district-wide, K-6, self-contained program designed to meet the academic needs of students identified as "exceptional" by virtue of outstanding academic abilities. Students may be nominated for participation by their parents or District staff members. The Program uses both single and multi-grade configurations and is located at Afflerbach and Pioneer Park schools. The District implements a "Body of Evidence" (information from a variety of sources in the areas of student performance, aptitude, behavior, and achievement) review in identifying student for participation in the Trailblazer Program. Interviews may be held with the students or parents to gain additional information in determining Program placement.

Nomination packets are available to parents at each elementary school and are reviewed throughout the school year. Once the Body-of-Evidence is collected, documentation is submitted to the Program's placement committee. Parents are notified by letter or telephone of the placement decision prior to the start of the following quarter. Identified gifted students transferring in from an out-of-district gifted program are considered for placement year round. The District evaluates student achievement using the Primary Skill Assessments, District Assessments, Measure of Academic Progress, Proficiency Assessment for Wyoming Students (Grades 3-6); aptitude using the Wechsler Intelligence Scale for Children IV (WISC), and Wechsler Preschool and Primary Scale of Intelligence; academic performance using report cards, classroom observation, student work samples; and behavior using the Teacher Rating Scale, Teacher Indicator, Parent Rating Scale, Parent Indicator, and classroom observations and/or interviews.

The District's nomination process does not rely solely on assessments that might tend to screen out LEP students. OCR noted that the district identified gifted and talented students, including those who are LEP, using methods of identification that do not rely solely on standardized assessments. These alternate methods include nonverbal assessments, teacher, parent, or peer nomination, tests of creativity, and at the secondary-level self-nomination. The District's website includes copies of all relevant forms and a notice to parents that describes the program, its purpose, and the nomination process. As noted above, the District's website also has the capability to translate content to any language the user chooses.

Witnesses generally reported that students who are both LEP and gifted would participate in both the ALP and the District's Program. Witnesses were able to identify students who are LEP (or former LEP) who were currently participating in the District's gifted and talented program, or who have participated in the past. The District also provided a roster identifying LEP (or former LEP) students currently enrolled in the District's Program.

The number of LEP (or former LEP) gifted student participants is very small. One witness reported concerns that gifted and talented staff does not want LEP students in their program as they would be unable to participate in the full day Program due to pull-out ESL services during the day. Another reported that she is aware of an ESL student who participates in the Trailblazer program for math only, but is not actually "enrolled" in the program. This same witness indicated she is also aware of a transfer LEP student who had been identified as gifted by her previous California district, but was not considered

for participation in the Program.

Conclusion:

Before OCR completed its investigation and made a compliance determination, the District entered into the enclosed Agreement on December 21, 2016, to resolve the issues raised by this compliance review. The Agreement is constructed with the benefit of OCR's understanding of the District's programs and services, and when fully implemented will ensure the District meets all compliance and regulatory standards. The terms in the attached Agreement are aligned with the specific areas analyzed in this compliance review and are consistent with OCR's policies regarding the provision of meaningful educational opportunities to LEP students. In summary the Agreement requires that the District:

- Establish identification and assessment procedures systemically and periodically train District employees on these procedures.
- Identify its instructional model, establish procedures ensuring placement of all LEP students into the instructional model, articulate the necessary staffing levels to implement the program and describe efforts to secure enough qualified teachers, ensure that appropriate materials are provided for instructional purposes, and ensure that facility use is not provided in a discriminatory manner.
- Establish its reclassification procedures in a systemic District plan of services for LEP students.
- Establish a formal evaluation process of its ALP, with specific measures of student performance, districtwide, that is conducted on a recurring basis and that provides information to the District necessary to consider whether modifications are necessary in order to achieve the ALP goals.
- Develop and implement specific steps to ensure that LEP students have equal and meaningful opportunities to qualify and participate in the District's gifted and talented programs.
- Establish effective methods to ensure that LEP parents receive effective communication from the District. The term requires that the District notify teachers and administrators of these available resources and provide training on accessing these services.
- Develop and implement policies and procedures regarding the appropriate provision of special education services for LEP students with disabilities. Following OCR's approval of those policies and procedures, the District will be required to review the placement decisions of all LEP students already receiving special education services to ensure that those placements are appropriate.

OCR will continue to monitor implementation of the Agreement. If the District fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement or judicial proceedings to enforce the Agreement, OCR shall give the District written notice of 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 District 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. Also, under the Freedom of Information Act, it may be necessary to release this letter and related correspondence and records upon request. In the event that OCR receives such a request, it 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 and that of your staff in resolving this compliance review. If you have any questions, please feel free to contact Sandra Sanchez, Civil Rights attorney at (303) 844-6096 or me at (303) 844-5927.

Sincerely,

/s/

Thomas M. Rock
Supervisory Team Leader

Enclosure: Resolution Agreement

cc: Honorable Jillian Balow
Superintendent of Public Instruction