



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

1244 SPEER BLVD, SUITE 310  
DENVER, CO 80204-3582

REGION VIII  
ARIZONA  
COLORADO  
NEW MEXICO  
UTAH  
WYOMING

March 1, 2016

Superintendent Raquel Reedy  
Albuquerque Public School District  
PO Box 25704  
Albuquerque, New Mexico 87125-0704

Re: Albuquerque Public School District  
OCR Case Number: 08-15-1275

Dear Superintendent Reedy:

On June 1, 2015, we accepted for investigation the Complainant's allegations that Albuquerque Public School District discriminated on the basis of national origin at Alamosa Elementary School by: 1) failing to respond adequately to the Complainant's claims of harassment of students and parents by School teachers; and 2) failing to provide the School's English Language Learner students with English language development services taught by qualified teachers.

We initiated an investigation under the authority of Title VI of the Civil Rights Act of 1964 and its implementing regulation at 34 Code of Federal Regulations Part 100, which prohibit discrimination on the basis of race, color, or national origin in programs or activities that receive Federal financial assistance from the U.S. Department of Education. As a recipient of Federal financial assistance from the Department, the District is subject to this law and regulations. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

In the investigation, we considered information provided by the Complainant, documents submitted by the District, and the District's response to the complaint. We also interviewed the Complainant and conducted an on-site investigation where we interviewed numerous witnesses with information relevant to the allegations.

**I. Allegation 1 - The District discriminated on the basis of national origin by failing to respond adequately to the Complainant's claims of harassment of students and parents by School teachers.**

*Legal Standards*

Racially based conduct that has such an effect and that consists of different treatment of students on the basis of race by recipients' agents or employees, acting within the scope of their official duties, violates Title VI. In addition, the existence of a racially hostile environment that is created, encouraged, accepted, tolerated, or left uncorrected by a recipient also constitutes different treatment on the basis of race in violation of Title VI.

A school is responsible for addressing harassment incidents. In some situations, harassment may be in plain sight, widespread, or well-known to students and staff, such as harassment occurring in hallways, during academic or physical education classes, during extracurricular activities, at recess, on a school bus, or through graffiti in public areas. In these cases, the obvious signs of the harassment are sufficient to put the school on notice. In other situations, the school may become aware of misconduct, triggering an investigation that could lead to the discovery of additional incidents that, taken together, may constitute a hostile environment.

To establish a violation of Title VI under the hostile environment theory, OCR must find that: (1) a racially hostile environment existed; (2) the recipient had actual or constructive notice of the racially hostile environment; and, (3) the recipient failed to respond adequately to redress the racially hostile environment. Whether conduct constitutes a hostile environment must be determined from the totality of the circumstances.

### *Facts and Analysis*

XXX the Complainant alleges that during teacher observations at the School he witnessed several School teachers belittling and screaming at minority students, telling students speaking in Spanish to shut up and to stop talking, and witnessed another teacher call Mexican parents stupid and dumb. In April 2015, the Complainant brought these concerns to the School administration, including the School principal multiple times, and filed an internal complaint about the discrimination and hostile environment he himself was experiencing at the School.

The District acknowledges that while it investigated concerns brought up by the Complainant in his internal complaint about the retaliation the Complainant himself was experiencing at the School, it did not fully investigate Complainant's aforementioned concerns as they related to the minority parents and students. The District states that because the Complainant's internal complaint, correspondence, and interviews are devoid of references to student and parent harassment, they did not investigate these concerns further. The District also claims that the Principal talked to the Complainant about his concerns and the two came to an understanding that the situation was resolved and that they did not need to meet further about it. The Principal retired at the conclusion of the 2014-15 school year and was not available for an interview with OCR. When OCR asked to speak with the Complainant and learn if he had a rebuttal for the District's position, the Complainant would not respond to OCR's request. OCR reviewed the District's evidence concerning its investigation into the Complainant's concerns and found one interview with a teacher at the school who denied talking to minority students in the way Complainant alleges. Beyond these few facts, the District's position is that during its investigation it mostly focused on Complainant's personal concerns about his own situation rather than his allegations about the minority parents and students. Nevertheless, during the Complainant's appeal to the District's investigation, the Complainant makes reference to the parent and student situation. OCR reviewed the Complainant's allegations that he made to the District regarding the treatment of students and parents and concluded that it mentioned vague concerns.

On December 9, 2015, the School requested to enter into a 302 Resolution to resolve this allegation. Based on the data response and the information we have been able to gather and analyze to date, we determined that it justified entering into the attached agreement, which will resolve any Title VI compliance concerns.

**II. Allegation 2 - The District discriminated on the basis of national origin by failing to provide the School's English Language Learner students with English language development services taught by qualified teachers.**

*Legal Standard*

With respect to the issue of LEP students, the Departmental Policy Memorandum issued on May 25, 1970, entitled "Identification of Discrimination and Denial of Services on the Basis of National Origin" (the May 1970 memorandum), 35 Fed. Reg. 11,595, clarifies OCR policy under Title VI on issues concerning the responsibility of school districts to provide equal educational opportunity to language minority students. The May 1970 memorandum states in part: "Where the inability to speak and understand the English language excludes national origin minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students." The May 1970 memorandum, as affirmed by the U.S. Supreme Court in *Lau v. Nichols*, 414 U.S. 563 (1974), continues to provide the legal standard for the Department's Title VI policy concerning discrimination on the basis of national origin against language-minority students. In September 1991, OCR issued a Memorandum entitled "Policy Update on Schools Obligations Toward National Origin Minority Students with Limited-English Proficiency" (September 1991 memorandum).

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

### *Relevant Facts and Analysis*

To comply with state law, teachers in the District need a TESOL endorsement to teach ESL and a Bilingual Education endorsement to teach in the bilingual program.

The Complainant asserts that XXXX ELL students were not taught by qualified teachers. At least one other XXXX acknowledged this as accurate. In addition, OCR received an email from the District confirming that not all teachers who taught ELL students during School Year 2014-2015 had appropriate endorsements. Several teachers who teach ELL students at Alamosa are new during the 2015-16 school year, and we found through the data response and on-site visit that each of them has a TESOL or Bilingual Education Endorsement. These new staff members were in place during August 2015 and OCR notified the District of this complaint filing in October 2015.

The District has taken clear action to ensure that ELL students are receiving English Language Development instruction from appropriately endorsed teachers during School Year 2015-16. However, based on the information provided, interviews of staff members, and the District acknowledging that during School Year 2014-2015, some teachers who had ELL students assigned to their classrooms did not have appropriate endorsements, we find that the District did not provide all the School's ELL students with English language development services by qualified and endorsed teachers during School Year 2014-2015 in violation of Title VI.<sup>1</sup>

### **CONCLUSION**

As explained previously, we are pleased that the District voluntarily entered into the enclosed Resolution Agreement to address the allegations and issues raised in this complaint and designed to correct any potential Title VI concerns. This concludes our investigation of this complaint.

This letter addresses only the issues raised in this complaint and should not be interpreted as a determination of the District's compliance or noncompliance with Title VI, or other Federal civil rights laws in any other regard. Please note that the Complainant may have the right to file a private suit in federal court regardless of whether OCR finds a violation.

OCR routinely advises recipients of Federal funds and public educational entities that Federal regulations prohibit intimidation, harassment, or retaliation against those filing complaints with OCR and those participating in a complaint investigation. Complainants and participants who feel that such actions have occurred may file a separate complaint with OCR.

---

<sup>1</sup> During our investigation, the District informed OCR that it is presently under an active federal court settlement in *Carbajal v. Albuquerque Public Schools* involving the same issues. Under CPM Section 110(i), OCR may close a complaint where a class action with the same allegations has been filed against the same recipient with federal court and the relief sought is the same as would be obtained if OCR were to find a violation of the complaint allegations. However, CPM Section 110(i) goes on to state that where OCR has obtained sufficient evidence to support a finding under CPM Section 303(b) with regard to any allegation, OCR will not close the allegation, but will proceed in accordance with the appropriate provisions set forth in CPM Section 303. We believe we have sufficient evidence to support a CPM Section 303(b) finding, so in spite of the settlement in *Carbajal* we are not closing this allegation.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will protect personal information to the extent provided by law.

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.

Thank you for the courtesy and cooperation your staff extended to OCR during the investigation of this case. If you have any questions regarding this case, please contact, XXX XXX, Equal Opportunity Specialist assigned to this case, at (XXX) XXX-XXXX or by email at XXX.XXX@ed.gov. I can also be reached at (XXX) XXX-XXXX.

Sincerely,

/s/

Angela Martinez-Gonzalez  
Supervisory General Attorney

Enclosure – Copy of Resolution Agreement

cc: Hanna Skandera  
Secretary of Education  
New Mexico Public Education Department

Mia Kern  
District General Counsel