



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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March 17, 2016

Superintendent James Bailey  
Uinta County School District #1  
PO Box 6002  
Evanston, WY 82931-6002

Re: Uinta County School District #1  
OCR Case Number: 08-15-1343

Dear Superintendent Bailey:

On October 15, 2015, we accepted for investigation the Complainant's allegations that Uinta County School District #1 (District) discriminated at Uinta Meadows Elementary School (School) by failing to provide national origin minority students who are English Language Learners (ELL) the English language development services necessary to participate meaningfully in the District's educational program by teachers adequately trained to deliver the services.

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 several District administrators.

**I. Allegation - 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 ELL 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 ELL students. In making this determination, the district should use validated evaluative instruments, that is, tests that have been shown to accurately measure the skills in question. The district should also have the teachers' classroom performance evaluated by someone familiar with the method being used.

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

### *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, an employee at the School, asserts that this year ELL students at the School are not being taught by a qualified teacher. Several administrators, including XXXXXX, acknowledge this as true.

The District provided OCR with a description of its EL program where it explained that an ELL student "receives individualized instruction by an *ESL certified teacher* [emphasis added] who instructs students in language development as well as some grade-level content." [See UCSD #1 ELL Plan 2015-2016]

The School previously had an assigned ELL teacher which was shared with one other elementary school and middle school in the District. However, on August 5, 2015, prior to the start of the 2015-16 School Year, this ELL teacher resigned to take a similar position in another school district. As of February 2016, there were several qualified candidates for the position but a new ELL teacher still has not been hired.

At around the same time as the ELL teacher's resignation, the School's lone paraprofessional also resigned; the District was able to fill this position with another paraprofessional prior to the beginning of 2015-16 School Year. This paraprofessional does not hold a TESOL, ESL, or Bilingual endorsement, yet under the supervision of the District's ELL coordinator, he has been solely responsible for providing all ELD services at the School in the interim. Furthermore, during this time the District has not been providing adequate training to teachers already on staff who can help fill the void created by the ELL teacher's resignation.

Based on the information provided and interviews of school administrators, we find that the District is not providing ELD services by qualified and endorsed teachers to all EL students at the School and other schools in the District, in violation of Title VI.

**II. Issue - The District discriminated on the basis of national origin by failing to provide English language development services to all its EL students.**

*Legal Standard*

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

*Relevant Facts and Analysis*

During the course of our investigation, we discovered that the District is not providing English language development services to all its EL students, which make up approximately 6% of the total District student population. In its program, the District describes its EL program as sheltered instruction with push in or pull out English as a Second Language services, which is an acceptable model. However, there are problems with the implementation of the District's program. For example, the District's current approach lacks adequate staff, as it only allocates one ESL endorsed teacher across three different schools, including the School. Because the District does not have an ESL endorsed teacher in this position at this time, students at two other

District schools are also not receiving ELD services by a qualified and endorsed teacher. Additionally, in a flowchart explaining how the school's EL program works, the District admits that Level 1-2 W-APT students receive sheltered instruction from an ESL endorsed teacher (*when available*) (emphasis added). Level 3-4 W-APT students, on the other hand, receive Specially Designed Academic Instruction (SDAIE) (sheltered content area instruction) in English from mainstream teachers; this shows that only W-APT Level 1-2 students get ESL instruction, and they only get that based on staff availability, and not all ELL students get ELD services as they require. Furthermore, the District indicated that teacher in service workshops dealing with Sheltered Instruction Observation Protocol (SIOP) and other ELL strategies are not mandatory, and are determined according to the need of the school.

Based on the information provided and interviews of school administrators, we find that the District does not provide ELD services to all its EL students, in violation of Title VI.

### **III. Issue - The District discriminated on the basis of national origin by failing to evaluate and modify its EL program.**

#### *Legal Standard*

To determine the effectiveness of an EL program, a recipient must periodically evaluate its EL programs. Indeed, evaluation should be integrated into all EL program activities and focus on policies, procedures, programs, practices, resources, staffing, and student outcomes. Student achievement data is necessary to determine an EL program's effectiveness and ensure compliance with SEA and federal reporting requirements. An evaluation of an EL program should not be limited to annual measurable achievement objectives (AMAOs); it should be continuous and include multiple data points on ELs. The data should be gathered, analyzed, and used to change or modify the EL program and services, as appropriate. Schools can also use individual student achievement data to inform decisions about appropriate instruction and interventions. Meaningful EL evaluations include longitudinal data that compares the performance of current ELs, former ELs, and never-ELs in the LEA's standard instructional program over time. If evaluations show that EL programs are not effective, the recipient must make appropriate programmatic changes.

#### *Relevant Facts and Analysis*

During the course of our investigation, we discovered an additional compliance concern regarding the District's program evaluation and modification of its EL program. Several District administrators acknowledged that they solely use AMAOs to evaluate the success of their EL program. While student achievement data is necessary to determine an EL program's effectiveness, it should be continuous and include multiple data points on ELs. Beyond these AMAOs the District does not currently gather, analyze, or use other data to modify the EL program and services. Furthermore, despite not making its AMAO goal last year, the School has not made any programmatic changes. Finally, the principal indicated that while he is responsible for evaluating the paraprofessional, the ELL teacher when on staff, and the efficacy of the

School's ELL program, he has no specialized ELL training to carry out his responsibilities effectively.

Based on the information provided and interviews of school administrators, we find that the District's program evaluation and modification raises compliance concerns in violation of Title VI.

## CONCLUSION

We are pleased that the District voluntarily entered into the enclosed Resolution Agreement to address the compliance determinations that OCR made during this investigation. 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.

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 XXXXXXX. I can also be reached at XXXXXXX.

Sincerely,

/s/

Angela Martinez-Gonzalez  
Supervisory General Attorney

Enclosure – Copy of Resolution Agreement

cc: Jillian Balow  
Superintendent of Public Instruction

Wyoming Department of Education

Geoffrey Phillips  
District General Counsel