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May 25, 2018

Ms. Charie Wallace
Superintendent
Coolidge Unified School District
450 North Arizona Boulevard
Coolidge, Arizona 85128

Re: Coolidge Unified School District
Case Number: 08-16-1096

Dear Superintendent Wallace:

On December 10, 2015, we received a complaint alleging that Coolidge Unified School District (the District) discriminated against the Complainant's son (the Student) on the bases of disability and national origin, and discriminated against the Complainant on the basis of national origin. Specifically, the Complainant alleged that the District discriminated against the Student by making a unilateral decision refusing to provide door-to-door transportation and by failing to make an individualized determination regarding the Student's transportation needs. The Complainant also alleged that the School failed to communicate with her in a language that she understands. During the course of OCR's investigation, OCR identified compliance concerns regarding whether the District discriminated against the Student on the basis of national origin and disability when it failed to evaluate his English language proficiency or make a placement decision that included consideration of his English language acquisition needs, and whether it communicated with the Complainant in a language she understands.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 Code of Federal Regulations Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the U.S. Department of Education; Title II of the Americans with Disabilities Act of 1990 and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities; and Title VI of the Civil Rights Act of 1964 and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in programs and activities that receive Federal financial assistance from the Department. The District is a recipient of Department funds and a public entity, and thus is subject to these laws.

During our investigation, we interviewed you (hereafter, District's Superintendent), the Director of Special Services, the Director of Curriculum, a Migrant/ELL Interventionist, the school nurse, and the Student's special education teacher (Teacher). We interviewed the Complainant prior to initiating the investigation and have been in communication with her during the investigation.

OCR applies a preponderance of the evidence standard to determine whether the evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports or is insufficient to support the conclusion.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Transportation

The Complainant alleged that the District discriminated against the Student on the basis of disability by making a unilateral decision refusing door-to-door transportation.

The Section 504 regulations, at 34 C.F.R. §104.33, require public school districts to provide a free appropriate public education (FAPE) to all students with disabilities in their jurisdictions. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of non-disabled students are met, and that are developed in accordance with the procedural requirements of §§104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. Implementation of an Individualized Education Program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these requirements. OCR interprets the Title II regulations, at 28 C.F.R. §§35.103(a) and 35.130(b)(1)(ii) and (iii), to require districts to provide a FAPE at least to the same extent required under the Section 504 regulations.

Section 104.35(c) of the regulations requires that placement decisions (i.e., decisions about whether any special services will be provided to the student and, if so, what those services are) must be made by a group of persons knowledgeable about the student, the evaluation data, and the placement options. Placement decisions must be based on information from a variety of sources, with information from all sources being carefully considered and documented. School districts must also establish procedures for the periodic reevaluation of students who have been provided special education and/or related services. A procedure consistent with the IDEA is one means of meeting this requirement.

OCR reviewed the District's Transportation policy and procedures, bus routes, Section 504 Policies and Procedures, as well as the Student's personal transportation log and special education records. The Student's IEP and the transportation logs called for the Student receiving curb-to-curb transportation services. We did not find documentation supporting that the Complainant requested door-to-door transportation from the District. OCR asked the Complainant why she believed that the District refused to provide door-to-door transportation services for the Student. The Complainant told OCR that she was not positive that she spoke with somebody from the District Transportation Office when she was told that door-to-door services could not be provided. Also, documents provided by the District demonstrate that the Complainant has participated, to an extent, in each of the Student's IEP meetings dating back to the 2013-2014 academic year and that placement decisions have been made by a group of individuals.

Documentation provided by the District indicates that the Complainant did not request that the District provide door-to-door transportation services for the Student. The clarifying information that the Complainant provided to OCR indicated that the Complainant was not sure which district, school, or office staff member had told her that they could not provide the requested transportation for the Student.

OCR found insufficient evidence to establish the District's noncompliance with the Section 504 regulations found at 34 C.F.R. §104.35(c) and the Title II regulations found at 28 C.F.R. § 35.103(a).

Limited English Proficient Parent Communication

The Complainant alleged that the District discriminated against her on the basis of national origin when it failed to communicate with her in a language that she understands.

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

On May 25, 1970, pursuant to its authority under Title VI, the Department of Education issued a policy memorandum entitled *Identification of Discrimination and Denial of Services on the Basis of National Origin*.¹ The memorandum clarified OCR policy under Title VI on issues concerning the responsibility of school agencies to provide equal educational opportunity to limited English proficient national origin minority students and their parents/guardians (parents).

The May 25th memorandum states that recipients must adequately notify national origin minority group parents of information that is called to the attention of other parents, and that such notice may have to be provided in a language other than English in order to be adequate. OCR considers the issue of adequate, meaningful communication with LEP parents in a manner consistent with Executive Order 13166, Improving Access for Persons with Limited-English Proficiency.² Executive Order 13166 requires Federal agencies to ensure that recipients of Federal financial assistance provide meaningful access to their LEP applicants and beneficiaries and directs each agency to draft guidance, specifically tailored to its recipients, which addressed communication with LEP applicants and beneficiaries in a manner consistent with the U.S. Department of Justice (DOJ) *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons* (DOJ Recipient LEP Guidance).³ Under the DOJ Recipient LEP Guidance, the extent of a recipient's obligation to provide language assistance to limited English proficient (LEP) individuals is determined by balancing four factors: (1) the number or proportion of LEP individuals likely to encounter the program; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the services provided by the program; and (4) the resources available to the recipient. The DOJ Recipient LEP Guidance also clarified recipients' obligations to deliver information to LEP individuals in a timely and effective manner.

A recipient's obligation to ensure meaningful communication with LEP parents in a language they can understand and to adequately notify LEP parents of information about any programs, service, or activity of a school district that is called to the attention of non-LEP parents requires a recipient to provide LEP parents with oral interpretation and/or written translation of important information and documents in their primary language where necessary to ensure that they can meaningfully participate in their child's education.⁴ Further, recipients must develop and implement a process for determining whether parents

¹ 35 Fed. Reg. 11,595.

² Improving Access for Persons with Limited-English Proficiency, Exec. Order No. 13166, 3 CFR 13166 (2001).

³ 67 Fed.Reg. 41455, June 18, 2002.

⁴ In its 1970 memorandum, OCR stated, "School districts have the responsibility to adequately notify national origin-minority group parents of school activities which are called to the attention of other parents. Such notice, in

are LEP and identify their language needs. The process should be designed to identify all LEP parents, including parents of children who are proficient in English and parents whose primary language is not common in the recipient's jurisdiction.

Recipients must provide language assistance to LEP parents effectively with appropriate, competent staff – or appropriate and competent outside resources. It is not sufficient for staff merely to be bilingual. Recipients should ensure that interpreters and translators have knowledge in both languages of any specialized terms or concepts to be used in the communication at issue and they are trained in their role of an interpreter or translator, the ethics of interpreting and translating, and the need to maintain confidentiality. In addition, interpreters should be able to demonstrate proficiency in and ability to communicate information accurately in both English and in the other language and be knowledgeable of any particularized vocabulary and phraseology used by the LEP person.⁵

In an Executive Summary published by the Superintendent on February 18, 2014 and obtained by OCR through AdvancED, a non-profit, non-governmental organization that accredits primary and secondary schools throughout the United States, the District reported that its student population was comprised of 3,758 students as of November 13, 2013, and that 32.4% of students were Hispanic, 40.5% Caucasian, 15.4% Native American, 10.5% Black, and 1% Asian or Pacific Islander. The report continued, stating that at that time the District had Title III programming for 220 English Language Learners and 184 Migrant Education Students.

When the Complainant re-enrolled the Student at the District on July 28, 2015, she filled out a registration form in Spanish. On that same date, the Complainant also filled out the Primary Home Language Other Than English (PHLOTE) form and indicated that the primary language used in the home was "spanol" and that the language most often spoken by the student and the language that the student first acquired were both "spanol."⁶

The District provided OCR with copies of the Student's IEP Progress Reports from the time of his earlier enrollment in the District: May 2014, October 2014, November 2014, December 2014, March 2015, and May 2015.⁷ Each of the updates provided in these progress reports was written in English. In an interview with OCR on August 3, 2016, the Student's special education teacher (Teacher) confirmed that he sends the Student's quarterly progress reports home in English. The Teacher indicated that his communication with the Complainant was primarily through documents he sent home with the Student.

In its April 22, 2016 data response, the District provided OCR with a parent communication log that the Teacher created; the log reflects that on August 3, 2015, the Teacher sent a "welcome letter" and parent

order to be adequate, may have to be provided in a language other than English." In its guidelines, DOJ articulated that, "recipients of Federal financial assistance have a responsibility to ensure meaningful access to their programs and activities by persons with limited English proficiency (LEP)." 67 Fed. Reg. at 41455. These terms are interchangeable and reference the same legal standard. Both "adequately notify" and "meaningful access" mean that a parent who is LEP-based on his or her ability to read, speak, write or understand spoken English –is not to be excluded from, or denied the benefits of, the school district's programs.

⁵ See DOJ Recipient LEP Guidance, 67 Fed. Reg. at 41461.

⁶ The form the Complainant filled out was in English. The District provided a copy of the same PHLOTE form in Spanish in its response to OCR's request for data.

⁷ Each respective report was dated May 14, 2014, May 19, 2014, October 1, 2014, November 3, 2014, December 11, 2014, December 17, 2014, December 18, 2014, December 19, 2014, March 11, 2015, March 13, 2015, March 14, 2015, March 23, 2015, May 26, 2015, and May 27, 2015.

survey home with the student. During his interview, the Teacher told OCR that the welcome letter was in English but that he couldn't recall what language the parent survey was in, just that it was not returned. The Teacher further explained that the parent survey was used to collect current contact information and confirm that the IEP information that the school had was correct.

According to the parent communication log, on August 11, 2015, the Teacher asked the Student's brother to interpret a phone call that the Teacher and a school nurse made to the Complainant to find out whether or not the Student XXX. The log also shows that on January 4, 2015, the Teacher sent an English-only Sun Life Family Dentistry form requesting parental consent to provide fluoride treatment to the Student home in the Student's backpack; the log indicates that this form was not returned. On February 22, 2016, the Teacher sent a permission slip to attend a field trip, written in English, home with the Student requesting the signed form be returned by March 3, 2016, along with \$12 in cash. The Student returned the form with \$12 on March 1, 2016. Further, on March 28th, 29th, and 30th, the Teacher sent home an IEP meeting notice in both Spanish and English; the Complainant returned the form sent home on March 30, 2016. Notably, of the five letters the log reflects were sent home to be signed and returned to the Teacher between August 3, 2015 and March 30, 2016, only two were returned – the field trip permission slip and confirmation of the Student's April IEP meeting.

During his August 3, 2016 interview, the Teacher told OCR that if a form is not returned but it is very important, the Teacher will send a second, identical copy of the form home with the Student. The log does not show that any forms that were sent home with the Student but not returned were sent home more than once. The Teacher also expressed that while he arranged for an interpreter to attend the Student's IEP meeting on his own, without the School's assistance, he did not know the Complainant wanted information to be sent home in Spanish. When OCR asked the Teacher what he would do if a parent asked him to send information home in a language other than English, such as Spanish, the Teacher responded, "I don't know." Finally, the Teacher explained that he sends flyers home with students in their backpacks and that those flyers are in whichever language the office provides them to him in. He elaborated that he occasionally makes flyers or newsletters and sends them home with students in English. Finally, the Teacher told OCR that the only oral interactions he has had with the Complainant involved the school nurse or took place at the Student's annual IEP meeting.

The Complainant told OCR that for the Student's April 6, 2016 IEP meeting, she asked for information to be sent home in Spanish. The Complainant indicated that she was told that the District could not provide letters written in Spanish because the letters came from other offices and were not modified. Both the Teacher and District-level administrators interviewed by OCR on August 3, 2016 reported that the letters and notices that they provide in languages other than English could not be altered and were obtained from the Arizona Department of Education or other organizations. Specifically, the District's XXX who was identified by the Superintendent as being the individual with the most knowledge regarding communication with LEP parents, told OCR that, "With forms that are sent home, they don't alter them in any way, but they can get them from the State Department of Education." The XXX continued to explain that she did not know about the translation of documents that were sent home such as weekly newsletters or classroom updates.

LEP Parent/Guardian Identification & Plan for Communication

In the District's response to OCR's request for information, which included a request for a description of how the District determines which parents are LEP, the District provided their Board Policies and wrote, "Additionally, we identify or determine which parents/guardians are LEP through the question on our

Registration Form and our PHLOTE form, both of which are required at enrollment. The question reads, ‘What is the primary language used in the home regardless of the language spoken by the student?’” The District indicated that registration forms are available at all school sites and online and that the Superintendent was the employee who may have information relevant to OCR’s investigation into this issue. In this same response, the District identified the XXX as a person who OCR may wish to speak with to learn more about how individuals may make a request for translation services. During an August 3, 2016 conversation with OCR, the District’s Superintendent stated that if she has questions about ELL services or LEP parent services, she refers to either the XXX (XXX) or the XXX, respectively.

OCR interviewed each of the three employees identified by the District as potentially having information regarding communication with LEP parents. The XXX was unable to answer many of OCR’s questions regarding how the District communicates with LEP parents; however, OCR chose to ask as many questions as we believed she may be able to answer in whole or in part because she was the only individual identified by the District as having information on this topic.

The XXX stated that she did not directly have responsibilities regarding translation requests, stating: “Within the District, if there’s a translation need, our office is the first one contacted.” OCR asked who in the office helped with that, the XXX responded, “If there’s nobody on-site, our office gets a call, and we see if there’s anyone in the office that can help with translation.” We asked how parents knew how they could request assistance communicating in a language other than English. The XXX responded, “I can’t speak specifically to at the site. Usually when someone needs help translating, we try to find somebody to help. At the District Office, we usually just know and have somebody there. They indicate their language on the language form at Registration. Some people bring their own translators.” We asked who provided the translation or interpretation assistance that the XXX was talking about, and she responded that she had no knowledge of that information. The XXX stated that “I don’t know what they do on sites, but at the District level, we do the best we can to find someone who can speak or write in the language needed.”

The XXX told OCR she had no knowledge of whether the District offered forms such as the Parent Consent to Claim Medicaid Reimbursement in languages other than English, that she didn’t know about documents that were sent home from classroom teachers or whether individuals followed up with LEP parents to orally explain information sent home in English only, and that if a parent came into her office and didn’t speak Spanish or English, she would do the best she could to help the parent or find someone who spoke the parent’s native language. Finally, in response to OCR’s question regarding whether the District evaluates the effectiveness of their attempts to communicate with LEP parents, the XXX answered, “When we survey parents for input...we provide those [surveys] in different languages; with any other communications, parents can request help if they have language barriers.”

During OCR’s interview of the XXX, the XXX told OCR that his job is limited to XXX XXX XXX XXX and that he did not know how parents may request assistance communicating in a language other than English or how the District identifies LEP parents. When OCR asked the Superintendent how the District identifies LEP parents, the Superintendent responded, “We have it all written down. I depend on [the XXX and XXX] to remind me, but I do know we do it in a registration form.”

During her interview, OCR asked the Superintendent about her expectations around teacher communications with LEP parents; the Superintendent responded that she would want teachers to make each parent feel welcome and that she would “expect them to have a translator, if possible.” The Superintendent indicated that if a parent spoke a language other than Spanish, the District would “call

the State Department as a resource to ask them to advise us. There are different levels of resources that we can do at the District to provide for a translator.” The Superintendent stated that the District produces “a lot of notices in English and Spanish.” The District does not evaluate the effectiveness of efforts to communicate with LEP parents.

Written Translation and Oral Interpretation

OCR received copies of several District documents that are available in English and Spanish, including enrollment cards, Medical Cards, Primary Home Language Other Than English Home Language Surveys, Migrant Program Eligibility Forms, Family Residency Questionnaires, and English Language Learner (ELL) Forms. We noted that the ELL forms were not included in the submission, that the Coolidge Unified School District #21 Rights of Homeless Students information that accompanied the Family Residency Questionnaire was provided in English only, and the Specialized Transportation Request Form is available in English and translated into Spanish, though the form the Complainant filled out was in English only. OCR also noted that the Arizona Department of Education Arizona Residency Documentation Form that the Complainant filled out was in English; OCR does not know whether the District typically provides this form in languages other than English because the District did not provide such copies.

OCR asked the District to provide a list of all employees who the District relies on for interpretation and/or translation services. The District identified 19 individuals who provide such services; of these individuals, none have what the District describes as “official qualifications.” The District specified that four of the employees could assist with written translation or oral interpretation in Spanish, but did not provide these details for the remaining 15 employees. On June 30, 2016, OCR interviewed one of the employees (Interpreter) who was identified as an interpreter/translator by the District and who was also listed as a participant in several of the Student’s past IEP meetings.

The Interpreter told OCR that she can speak, read, and write in both Spanish and English, and that she had been providing interpreter and translation services in the District for over five years. The Interpreter explained that teachers felt comfortable with her interpretation and she felt comfortable helping them, so she would stay late to help with IEP meetings or parent-teacher conferences. When asked how the District communicates with parents who are not fluent in English, the Interpreter responded that she knew there were a lot of bilingual people and that she had helped to translate some documents, such as notices of school activities such as fairs or festivals. When asked how parents knew how to access an interpreter or translator to help them communicate; the Interpreter explained that when teachers communicated with parents and the parents responded in Spanish the teacher would find somebody who could assist with the communication between the parties.

The Interpreter told OCR that she had translated documents, helped parents register their children at the District, interpreted at IEP meetings and parent teacher conferences, and interpreted for school administrators when there were disciplinary problems and a parent/guardian needed to be called. The Interpreter explained that she grew up speaking Spanish, but that she doesn’t have any qualifications or degrees to provide translation or interpretation services and has not received any training on the ethical implications of providing such services. She further explained that she feels comfortable using most special education terminology because XXX XXX XXX, but that additional training would be helpful because language is specialized within the context of special education and it isn’t easy to translate terms such as “syntax” or “dropping consonants.”

Before the conclusion of her interview with OCR, the Interpreter indicated that some District employees were not comfortable interpreting for various reasons, such as not feeling confident doing so from Spanish to English, but that sometimes they would be asked to do so if the Interpreter or another individual were not available to do so.

Oral Interpretation at the Student's IEP Meetings

The Interpreter told OCR that she had several interactions with the Complainant, including at multiple IEP meetings. When asked by District counsel how the Complainant “seemed to react” when the Interpreter interpreted at IEP meetings, the Interpreter responded, “I’d ask her if she understood and she’d nod her head and affirm or smile and laugh if there was something we were reporting about the Student. I always asked her if she understood and she’d say ‘yes.’ We’d ask her if she was in agreement with the goals of the IEP. We’d also ask for feedback from her about how she felt about his progress and if she was in agreement, she would sign [the IEP], and then I would always ask her if she understood what we had said. She always said, ‘yes.’”

The documentation provided by the District and the statements made during interviews with OCR support the Complainant’s assertion that the District failed to consistently communicate with the Complainant in a language she could understand. Although the District makes some administrative forms available to parents in languages other than English, the Student’s teacher still provided IEP progress reports in English and mailed newsletters home in English.

Further, District administrators indicated that when they sent home information from the Arizona Department of Education they could send it home in languages other than English, but they did not know what each school did or how each school communicated with LEP parents. The information provided by the District shows that many of the documents that were sent home with information intended for the Complainant were sent in English only. Beyond day to day correspondence or updates regarding extracurricular opportunities or academics, we are aware of at least two phone calls regarding the Student’s health that were made in English and at least one health-related form that was sent home in English only. The District did not provide any documentation nor did employees make any statements that would suggest that an interpreter called the Complainant to explain the contents of the information that was provided in English only.

District administrators explained that they identify LEP parents through use of the PHLOTE survey that is collected when a student registers for enrollment; the District did not otherwise articulate how it identifies LEP parents’ language assistance needs. OCR reviewed the PHLOTE survey, available in both English and Spanish, and is confident that the form is available and utilized to an extent. Although OCR requested a copy of the District’s policies concerning communications with LEP parents, the District’s response was limited to a copy of Board Policies regarding English Instruction and Compensatory Education within the context of Title I, a copy of the District’s PHLOTE and registration forms, and a brief narrative response.⁸ Further, District administrators and teachers were unable to articulate how they

⁸ In response to OCR’s request, the District provided a copy of Board Policies IHAA, IHBD-R, and IHBD-EA. The District’s narrative indicated that: (1) community members typically are made aware of the availability of translation and interpretation services when they ask if somebody speaks Spanish; (2) the District has not had to handle anybody visiting the District who does not speak English or Spanish; and (3) there are no staff positions designated as bilingual. The District also provided a copy of their Special Education Procedures on related services, transportation as a related service, English Language Learners and special education, IEP changes, and IEP meetings – team membership and meeting preparation/facilitation.

would communicate with a LEP parent, beyond explaining that sometimes community members brought a family member or friend to interpret but that if they did not, the District would try to find somebody who could help. Notably, OCR's investigation found that, in July 2015, the Complainant filled out a Spanish language registration form, in Spanish, when she re-enrolled the Student and on the same day also filled out the PHLOTE form and indicated that the primary language used in the home was Spanish.

The District informed OCR that the individuals identified by the District as interpreters or translators did not have any formal qualifications. The Interpreter, who assisted with the Student's IEP meetings, explained that she grew up speaking Spanish but that she had not received any training regarding specialized language, the ethics of interpretation, or the need to maintain confidentiality. Similarly, the District did not convey any information that suggested that any of the individuals it identified as interpreters/translators had been trained to serve in such a capacity.

While OCR recognizes the District's efforts to create an inclusive community, a preponderance of the evidence supports that the District did not consistently provide meaningful access to the Complainant, a LEP beneficiary, and failed to adequately notify the Complainant, a national origin minority group parent, of information that is called to the attention of other parents in a language that she understands. OCR also finds that the District did not ensure that its interpreters and translators had knowledge in both languages of any specialized terms or concepts to be used in the communication at issue or that they were trained in their role of an interpreter or translator, the ethics of interpreting and translating, and the need to maintain confidentiality. In addition, there is no indication that the District evaluated whether the individuals it named as interpreters or translators could demonstrate proficiency in or the ability to communicate information accurately in both English and Spanish. Accordingly, OCR finds evidence to establish the District's noncompliance with the Title VI regulations at 34 C.F.R. § 100.3(a) and (b).

Evaluation and Placement

OCR identified a potential compliance concern regarding whether the District discriminated against the Student on the basis of national origin and disability when it failed to evaluate his English language proficiency or make a placement decision that included consideration of his English language acquisition.

As indicated above, OCR's May 25, 1970 memorandum, *Identification of Discrimination and Denial of Services on the Basis of National Origin*, clarified OCR policy under Title VI regarding the responsibility of school agencies to provide equal educational opportunity to limited English proficient national origin minority students.⁹ Specifically, the memorandum states that school districts must take affirmative steps to address the language needs of limited English proficient students (English language learners, or ELL students).

The May 25th memorandum also states that school districts may not assign national origin minority group students to special education programs on the basis of criteria which essentially measure or evaluate English language skills. Therefore, districts must employ standards and procedures for the evaluation and placement of language minority students in special education that reliably identify students' educational disabilities, rather than the students' lack of English proficiency.

⁹ 35 Fed. Reg. 11,595.

The Section 504 regulations, at 34 C.F.R. §104.35(a), also require school districts to conduct an evaluation of any student who needs or is believed to need special education or related aids and services because of disability before taking any action with respect to the student's initial placement and any subsequent significant change in placement. Under subsection (b), tests and other evaluation materials must be valid for the specific purpose for which they are used and must be administered by trained personnel in conformance with the instructions provided by their producer. If an English learner student is not proficient in the language skills required to complete an assessment instrument or procedure, the results may not be valid.

Subsection (c) requires that, in interpreting evaluation data and in making placement decisions (i.e., decisions about whether any special services will be provided to the student and, if so, what those services are), school districts must draw information from a variety of sources, including cultural background, which OCR interprets to include linguistic background. Information from all sources must be carefully considered and documented. Placement decisions must be made by a group of persons knowledgeable about the student, including about the student's language background, the meaning of the evaluation data, and placement options. In determining an appropriate placement for a student with a disability who is an English learner, the placement team must consider the student's educational needs with respect to English language acquisition as well as access to the core curriculum.

In its April 22, 2016 response to OCR's request for information, the District provided a copy of the Student's Arizona Department of Education AZELLA Student Test History Report.¹⁰ As reflected on this report, which was printed on March 31, 2016, the Student does not have an English language proficiency assessment history, although his home language is identified as Spanish. The District also provided OCR with a copy of an internal email that was sent on March 31, 2016, stating "[the Student] was not administered a language test by the previous ELL coordinator, and not since, due to SPED-criteria. As directed by the state, a student showing a SAIS need for SPED, and receiving services through an IEP, can be exempt from ELL services, since the SPED services supersede ELL."

In an interview on August 3, 2016, a District employee reiterated that while "it's possible" for a student to have an Individual Language Learner Plan (ILLP) and an IEP, students don't necessarily need to be identified as ELL because "the IEP trumps anything else." The employee continued to explain that each student's special services team should make the decision regarding whether the student should be evaluated for ELL services, but that there are not specific special education policies or procedures regarding the evaluation of ELL students. The District's XXX elaborated on this area and explained that once a student with a disability is identified as ELL (through completion of the PHLOTE survey), the student completes an AZELLA evaluation, at which point their special services team makes a decision regarding the student's English proficiency and about what balance of ELL and special education or related services is best for each student.

The District also provided OCR with a copy of notes from the Student's April 13, 2015 IEP meeting. The Student's IEP, developed on that same date, indicates that his primary home language is Spanish, as determined by completion of a primary language survey on March 26, 2013, and that his language of instruction is English. In a nine-item bulleted checklist utilized by the District to indicate whether additional information or the consideration of special information is necessary to develop an appropriate IEP, the District checked that a "statement of the language of needs, opportunities for direct

¹⁰ The Arizona English Language Learner Assessment (AZELLA) is a standards-based assessment designed to measure students' English language proficiency.

communication with peers in the child’s language and communication mode” were considered not needed. This same checklist indicates that the Student’s team did include a statement of communication needs for a child with a disability. The relevant portion of the Student’s IEP states that, “[the Student] presents with severe receptive and expressive language delays which impact his ability to effectively and efficiently communicate his ideas and share information.” The IEP continues, “[the Student] doesn’t always participate in [speech language] therapy and use[d] to refuse tasks.”

The District’s policy, as described by multiple employees on August 3, 2016, is to administer an AZELLA assessment to each student whose home language is not identified as English on the District’s PHLOTE form, which is filled out when students enroll. District employees articulated their understanding that after a student with a disability completes the AZELLA assessment, the student’s special services team makes a determination regarding the most appropriate ELL and/or special education or related services for the student.

Here, the District admitted that it did not administer an AZELLA assessment to the Student. This admission is supported by the District’s submission of the Student’s AZELLA Test History Report. Insofar as the District did not evaluate the Student to identify his language needs or determine whether ELL services were appropriate, the District could not consider the Student’s educational needs with respect to English language acquisition as well as access to the core curriculum when they made a placement decision.

Based on a preponderance of the evidence, OCR finds that the District did not take affirmative steps to address the language needs of the Student. OCR also finds that the District did not draw information from a variety of sources, including the Student’s cultural or linguistic background, when deciding where to place the Student. Therefore, OCR finds evidence to establish the District’s noncompliance with the Title VI regulations at 34 C.F.R. § 100.3(a), the Section 504 regulations at 34 C.F.R. §104.35(a), and Title II at 28 C.F.R. § 35.103(a).

Conclusion

OCR found insufficient evidence to establish that the District discriminated against the Student on the basis of disability regarding the alleged unilateral decision to refuse to provide the Student door-to-door transportation. However, OCR found sufficient evidence to establish that the District discriminated against the Student on the bases of disability and national origin when it failed to identify the Student’s language needs or determine whether ELL services were appropriate and when it subsequently failed to consider the Student’s educational needs with respect to English language acquisition as well as access to the core curriculum when making a decision regarding his placement. OCR also found evidence to establish that the District discriminated against the Complainant on the basis of national origin when it failed to adequately notify her of school-related information in a language that she understands. Finally, OCR found evidence to establish that the District has failed to ensure that its interpreters and translators have knowledge in both languages of any specialized terms or concepts to be used in the communication at issue and they are trained in their role of an interpreter or translator, the ethics of interpreting and translating, and the need to maintain confidentiality.

The District has voluntarily agreed to resolve the violations discovered in this investigation. In accordance with Section 303(b) of the CPM, the provisions of the Agreement signed by the District on May 16, 2018 are aligned with the allegations and information obtained during OCR’s investigation, and consistent with the applicable regulations.

OCR will actively monitor the District's implementation of the Agreement until the District fulfills the terms of the Agreement and is in compliance with the statutes and regulations at issue in this case. If the District fails to implement the Agreement as specified, OCR may initiate administrative or judicial proceedings as described in the Agreement. A copy of the Agreement is enclosed.

OCR has provided written notice to the Complainant that the District has entered into this Agreement, and we provided the Complainant with a copy of the Agreement. We will provide the Complainant with copies of our monitoring letters.

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.

Please be advised that 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. If this happens, the Complainant may file another complaint alleging such treatment. In addition, the Complainant may have the right to file a private suit in Federal court, regardless of whether OCR finds a violation.

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.

If you have any questions, you may contact Allison Morris, the attorney assigned to this case, at (XXX) XXX-XXXX or by email at XXX.

Sincerely,

/s/

Angela Martinez-Gonzalez
Supervisory General Attorney

Attachment: Signed Resolution Agreement

cc (without attachment): Diane Douglas, Superintendent of Public Instruction; Carrie O'Brien, District Counsel