



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII
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August 28, 2017

Mr. Keith Cowans
Interim Superintendent
Bernalillo Public Schools
560 S. Camino del Pueblo
Bernalillo, NM 87004

Re: Bernalillo Public Schools
OCR Case number 08-16-5001

Dear Superintendent Cowans:

The U.S. Department of Education, Denver Office for Civil Rights (OCR), has completed its investigation of the compliance review of Bernalillo Public Schools (District) to determine whether the District discriminates against race and national-origin minority students on the basis of their limited English proficiency (English Learners (EL)) by not providing them services necessary to participate meaningfully in the District's educational program and whether the District provides notice of school-related matters to national-origin limited English proficient parents (EL parents) in a language that they understand.

OCR investigated these issues to determine whether the District's services are consistent with the requirements of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (Title VI), and its implementing regulations. The District is a recipient of Federal financial assistance from the Department. Accordingly, OCR has jurisdiction to investigate and resolve the issues.

On January 30 through February 2, 2017, OCR conducted an on-site investigation at eight¹ of the District's nine schools, including its four elementary schools, two K-8 schools, one middle school, and one high school. During the on-site investigation, we interviewed 51 District administrators, teachers and staff members. We conducted file reviews of 205 students. Our findings also take into account data furnished by the District prior to the on-site investigation.

Based on this investigation, OCR finds that the District discriminates against EL students on the basis of national origin and race, in violation of Title VI and its implementing regulations. We also found that the District discriminates against limited English proficient (LEP) parents by not consistently communicating with them about school-related matters in a language they understand on a consistent basis. The bases for our findings are summarized in this letter.

¹ We did not visit the District's preschool.

Legal Standards

The Title VI implementing regulation at 34 C.F.R. § 100.3(a) and (b) provides that recipients 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 the benefits of its programs, or subject them to separate treatment.

The U.S. Department of Health, Education, and Welfare, Office for Civil Rights, *Identification of Discrimination and Denial of Services on the Basis of National Origin* (May 25, 1970), reprinted in 35 Fed. Reg. 11,595 (July 18, 1970) (*1970 OCR Guidance*), clarifies OCR policy under Title VI on issues concerning the responsibility of school districts to provide equal educational opportunity to language minority students. The 1970 OCR Guidance 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 EL students.

Title VI and the 1970 OCR Guidance require school districts to select a sound educational theory for their programs for English learners, and to use practices, resources and personnel reasonably calculated to effectively implement their educational theory. Districts also have a dual responsibility to teach students English and to provide them with access to the curriculum, taking steps to ensure that students are not left with academic deficits. This dual obligation requires school districts to design and implement EL programs that are reasonably calculated to enable EL students to attain both English proficiency and parity of participation in the standard instructional program within a reasonable period of time. The 1970 OCR Guidance also states that school districts have the responsibility to adequately notify limited-English proficient 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 in a language other than English.

For SY 2015-16, the District identified 888 EL students who received EL services and another 860 EL students who did not receive EL services due to the District not having enough qualified EL teachers. The District does not have a written plan, policies, or procedures for its EL program.

EL Students and the District's EL Program

The District serves students in pre-kindergarten through grade 12. The school year (SY) 2015-16 total student enrollment, excluding the preschool, was 3,185 students, representing 12% White (386), 43% Native American (1379), 43% Hispanic (1383), 0.5% Black (15), and 0.5% Asian (17). In its data response, the District reported that during SY 2015-16 888 students were classified as EL students receiving EL services. The District also reported an additional 860 EL students during SY 2015-16 who were not receiving EL services due to a lack of bilingual/TESOL endorsed staff.

Identification of EL Students

The 1970 OCR Guidance states that districts must take affirmative steps to rectify national-origin minority students' language deficiencies where inability to speak and understand the English language prevents EL

students from effective participation in the district's program. This document makes clear school districts' responsibility to provide equal educational opportunity to national origin minority students not proficient in English language skills.

The District provided a copy of its Home Language Survey, which asks, "What was the first language or languages your child learned to speak?; What language or languages does your child understand?; Does your child speak a language other than English?; In what language does your child communicate with adults in the home?; and, In what language does your child communicate with friends, peers, and siblings?" The District also provided a Teacher Observation Form which asks teachers to check any of the following, "I have observed this student speaking a language other than English in the classroom, cafeteria, halls, or playground or in other school situations; The student has indicated that the language spoken in his or her home is non-English; Conversation with a parent in a teacher/parent conference or other occasion indicates that a language other than English is probably spoken in the home; and, The student has experienced difficulty in understanding oral communication in the classroom or has difficulty expressing herself or himself using English." Additionally, the District provided a Student Language Survey form, which asks secondary students to answer the following, "Was the first language you learned English?; Can you speak a language other than English?; Which language(s) do you use most often when you speak to your friends?; Which language(s) do you use most often when you speak to your parents?; and, Does anyone in your home speak a language other than English?" The District reports that all students who register and enroll complete the Home Language Survey, the Teacher Observation Form is available to all teachers, and the Student Language Survey form is made available to high school students only. The written procedures indicate that if a home language other than English is identified on either of the forms listed above, the District will administer the New Mexico English Language Placement Test (W-APT) within the first 20 days of enrollment. The District also provided the W-APT cut scores, per grade level, for EL identification.

During interviews with OCR, District-level staff demonstrated a general knowledge of the District's identification procedures and how to identify EL students. However, at the individual school level, awareness of these procedures varied. For example, some staff members answered that all students were tested for EL identification upon enrollment. Other staff members considered all of their students to be in the process of learning English and therefore believed all of the students at the school were tested for EL identification. There were staff members that demonstrated a general knowledge of the identification procedures and still others that were aware of the various cut scores. Additionally, while some staff members indicated that their own observations played a role in identifying students that should be tested, none of the staff interviewed were aware of the Teacher Observation Form. Similarly, none of the staff interviewed at the high school noted being aware of the Student Language Survey form.

OCR's review of a sample of student files showed that the HLS forms were located in 76% (155/205) of the student cumulative files. Some of the student files that were missing HLS forms contained ACCESS scores, indicating that the student had been initially identified for testing, though how they were identified was not clear. We also found a few student files where the HLS form indicated that the student spoke a language other than English at home but there was no indication in the file that the student was tested for English proficiency.

OCR found that the District has established procedures for initially assessing language-minority students' ability to speak, read, write, and understand the English language, but many staff members, particularly at individual schools, were not aware of those procedures. OCR further found that a quarter of the

student files reviewed did not contain a home language survey or any other indication of why that student would have been identified for W-APT and ACCESS testing.

Program Participation, Design, and Delivery

In evaluating a district's compliance with Title VI, with regard to its chosen educational approach to provide educational services for EL students, OCR uses the analytic framework articulated in *Castañeda v. Pickard*, 648 F.2d 989 (5th Cir. 1981). First, OCR determines whether the school district has chosen a program model for providing educational services to EL 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 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. In its analysis, OCR considered whether the program design is educationally sound, whether the program has been implemented as intended, whether participation is available to all identified students, whether staffing needs are satisfied, and whether objective criteria have been established for exiting EL students from the program. Further, the 1970 OCR Guidance 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. 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 EL students.

In describing the District's EL program, the District reports that it provides several different programs across its schools: Dual Language Spanish; Heritage for Spanish and Keres; and Maintenance, Enrichment, and Transitional Bilingual Education. The District's Keres program is a native language enrichment program designed to teach the Native American languages, that is supported by the tribes and which the school administrations have no control over. This program is not an EL bilingual program where students receive ESL and access content in the native language.

During interviews with OCR, District administrators and staff members consistently indicated that the District recognizes the need to improve its EL program and that not all EL students are receiving EL services. The XXXXX describes that for the District's dual language programs, teachers provide English Language Development (ELD) for an hour, usually using Imagine Learning technology-based learning software. Teachers across the District however, commented that this is standard content provided to all students (EL and non-EL), and that the content is not differentiated or targeted for the purposes of EL student needs or English language development. Further, an elementary school teacher described providing 45 minutes of Imagine Learning as part of a response to intervention, but not specifically as English language development services for EL students. Further, this is offered equally for both EL and non-EL students. A bilingual certified kindergarten teacher indicated that there is no EL program for ELs who are not in Dual Language, aside from what is being done in the classroom for all students. For its Keres Heritage Programs, instruction is provided by NMPED certified staff in the Keres language for about an hour, though the instruction is not content-based, is not a program designed for EL students to learn English, and is not tied to ELD standards. For its Maintenance Bilingual Programs, students are generally pulled out of class for Spanish Language Arts courses. Also, a middle school administrator shared that the instructor of the school's class resigned years ago, the position has been vacant since then, and as a result the school is not able to offer this course. At some of the District's secondary

schools, EL students were to receive an ESL class, but transcripts did not consistently show that these students received this class and that it was taught by a qualified teacher.

In general when asked to describe a school's EL program, responses ranged from describing the aforementioned programs in varying levels of detail, to ones which described the process for identification and placement but not necessarily how EL services are delivered to EL students, to responses that there is no program at the school because services are determined and provided in the classroom rather than as part of a coordinated effort. For example, as one elementary school principal put it, "We don't have an EL program per se."

File reviews and interviews showed that during SY 2015-16, and 2016-17 some EL students received EL Program services from a qualified ELL teacher. However, not all EL students at the District are receiving EL Program services from qualified teachers. In particular, large populations of the District's middle school and high school students are not receiving any EL program services due to the lack of qualified staff and scheduling issues. The XXXXX stated that there are not enough teachers in the EL program, and the District needs to add at least 2 to 3 more qualified teachers per school in order to meet current needs. An administrator at an elementary school stated that there are simply not enough teachers for all the school's EL students to be paired with a teacher who is TESOL endorsed. Here are examples of EL students at various District schools who are not receiving EL services:

- XX, a Spanish EL elementary school student, scored a 3.0 on the 2014 ACCESS test, a 3.3 on the 2015 test, and a 2.4 on the 2016 test. An EL class is listed on her transcript but does not contain any grades. There is no identifiable teacher providing the student with EL services.
- A Bernalillo High School Keres-speaking student, XX, has almost consistently scored a 3.6 on the ACCESS test from 2010 through 2016. DC does not have an EL class listed on his transcript. DC is struggling in his classes and maintains a 2.08 GPA.
- A Santo Domingo Middle School Keres-speaking student, XX, scored a 2.6 on the 2010 ACCESS test and a 3.4 on the ACCESS 2015 test. LP was exited from the EL program in Spring 2012 when she scored a 4.2 on the ACCESS test, despite not being English proficient. In 2013 her ACCESS score dipped to a 3.8 and then dipped further on the 2015 test.

In summary, OCR finds that the District does not fully implement the EL programs it has selected. OCR found that the District does not provide EL/ELD services to all EL students who need such services to ensure their equal and meaningful participation in the District's educational program.

Staffing

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 hired qualified teachers, then it must provide adequate training to teachers already on staff. Such training must take place as soon as possible. The district should also have the teachers' classroom performance evaluated by someone familiar with the method being used.

OCR requested that the District provide a statement of the staff qualifications needed for teaching EL students in the alternative language program. The District provided documents that summarized the duties for Teaching English to Speakers of other Languages (TESOL) endorsed teachers, Bilingual teachers, and Site Bilingual Coordinators. The duties of a TESOL endorsed teachers include teaching in a State approved Bilingual program, providing at least 60 minutes a day of concentrated ESL instruction, providing grade level instruction in English/ESL and ELD according to State standards, and being site level resources for ESL, Second Language Acquisition, Differentiated Sheltered Instruction, instructional strategies, and Language & Literacy. The duties of a Bilingual-endorsed teacher include all of the duties of a TESOL endorsed teacher along with providing lesson plans showing sheltered instruction strategies and how teacher works specifically with ELL students, and communication with Spanish-speaking parents. The documents provided by the District go on to state that the fulfillment of the duties mentioned above are measured by classroom walkthroughs conducted by District personnel.

The District reported that across its eight schools, excluding the pre-school, it had 65 TESOL endorsed teachers and 26 Bilingual endorsed teachers, including 20 individuals having both a TESOL and Bilingual endorsement. At the eight schools visited, the District has 71 teachers who are either TESOL or Bilingual endorsed or both.

In interviews with OCR, school administrators and teachers consistently state that the District does not have enough qualified teachers to meet the needs of all of their EL students. This was supported by the District's response to OCR's data request which indicated that 860 ELL students were not being provided with EL services due to a lack of qualified staff. Several teachers stated that they need training in serving EL students. Additionally, OCR interviewed several TESOL and Bilingual endorsed teachers and none of them indicated that they were providing at least 60 minutes a day of concentrated ESL instruction to EL students, as the District requires through its description of EL teacher duties. To the extent that ESL instruction was being provided it was being generalized throughout the classroom as part of the general grade level curriculum, rather than a discrete amount of ELD time targeted toward teaching EL students the English language.

OCR further considered whether the District could show that it has determined that its teachers have mastered the skills necessary to teach effectively in a program for EL students (whether the District considers how teachers are meeting the EL students' needs and whether someone familiar with the method being used evaluates their performance). OCR did not find in either documents provided by the District or in interviews, evidence that District personnel were evaluating classrooms with TESOL endorsed teachers to ensure that ESL /ELD instruction was being provided to EL students. OCR learned that school principals were responsible for evaluating teachers and most have no EL Program training and do not consider if EL instruction is being implemented in the classroom when evaluating teacher performance.

In summary, OCR found that the District does not ensure that EL students are taught ELD by qualified teachers or that the instructional needs of EL students are being met.

Materials

In order to ensure that alternative language program services are delivered effectively, districts are expected to provide adequate resources, such as instructional materials and equipment, in accordance with the requirements of the program. These resources must be made available in a timely manner to staff persons providing alternative language program services. Limited financial resources do not justify failure to remedy a deficient supply of instructional materials and resources suitable for EL students.

When asked whether the District provides adequate materials to meet the English language and academic needs of EL students, most administrators and staff answered that the District fulfilled their needs. A middle school administrator stated that any teacher can access funds for materials that they need. Another elementary school teacher shared that the District provides and funds a “Treasures” program which provides curriculum for the EL component. Furthermore, staff members shared that the Keres classes generally have their own facilities within each school with adequate materials. Some staff did express concern about not always having materials on hand. For example, a 2nd grade TESOL endorsed teacher stated regarding materials that, “a whole program is needed; I just do what I am aware of, what I used to do.” A bilingual endorsed kindergarten teacher stated that “more materials like books, especially with the English component of instruction,” would be beneficial. Nevertheless, there is general consensus that schools can ask the District for more materials if needed, and the District is generally able to provide these resources.

Since OCR has determined that the District should have materials that match their programs, such as bilingual and ESL materials for the District’s chosen EL programs, OCR will continue to monitor the District’s provision of materials to ensure that following revisions to its programs it has adequate materials to meet EL student needs.

Exit Criteria and Former EL Students

Depending on individual educational need, EL students may require several years of alternative language program services by qualified staff using models that are recognized as sound, before the students will possess adequate English-language proficiency to participate meaningfully in the mainstream academic setting. Under Title VI and its implementing regulation, time limitations and other categorical or subjective criteria may not substitute for objective determinations of an EL student’s ability to speak, read, write and understand English, prior to reducing or discontinuing recognized alternative language program services.

According to data submitted by the District, approximately 73 EL students were exited during the 2015-16 School Year. The District reports that to exit a student from the EL Program, a student must score a minimum of 5.0 on the ACCESS test per State requirements. The District provides a checklist of things to look for when considering exit from the EL program, but offered no formal policy or procedures for exiting and monitoring students. According to the XXXXX, students would then be monitored for 2 years by teachers and staff at their school.

Interviews established that some school staff members and administrators were aware of the exit criteria, and others were not. During OCR’s review of student files, including reclassified files selected at random, none of the files contained documentation that a student had been exited from the program and, if so, why the District decided to exit the student and whether and how the District continued to monitor the student following reclassification. For example, student files showed:

- XX, a Bernalillo Middle School student, was exited from a Spanish EL program in 2014. He has a 1.33 GPA and is receiving failing grades in Language Arts and Spanish. XX’s student file did not contain an ACCESS score.

- XX, a Bernalillo Elementary School student, was exited from a Keres program when she was in Kindergarten. Her 2015-2016 NMPED Literacy score was a level 2.² XX's student file did not contain an ACCESS score.
- XX was exited from the EL program in 2009. She attends Santo Domingo Middle School and has a 2.0 GPA and is failing many classes. Both her 2014-2015 and 2015-16 NMPED Literacy scores were a Level 2. XX's student file did not contain an ACCESS score.

The District fails to ensure that when EL students are exited from alternative language services, they are prepared to participate meaningfully in the mainstream classroom. Further, the evidence is sufficient to conclude that the District does not consider whether students who have been reclassified out of alternative language services are participating meaningfully in the mainstream educational environment.

Program Evaluation

OCR expects districts that have designed and implemented programs for EL students to have procedures for monitoring the program to ensure that it is effectively meeting the needs of EL students. Districts are also expected to maintain data regarding its implementation of an alternative language program and the progress of students who participate in the program. Ultimately, the measure of the effectiveness of any instructional approach for EL students is whether these students are able to participate comparably with their non-EL peers in the general academic setting.

In its data request, OCR requested reports, summaries, or evaluations assessing the effectiveness of the District's programs and services for EL students. The District furnished a copy of a District form entitled *Rubric for Evaluating Program Bilingual Multicultural Education Program 2015-16*. It is a self-evaluation form that the District expects each school to complete. Neither the form nor the District's response provided guidance as to who was expected to fill-out the form, when, or how often. During interviews, District and school-level staff members stated that they were not aware of a Districtwide or school program evaluation of the effectiveness of its alternative language program nor were they aware of the self-evaluation form. Staff members did, however, identify areas for improvement. Included in interviewee statements are: several staff members stated that the District needed an actual, identifiable, ELL program; and other staff members stated that training for new staff was needed and that all staff should receive the same training to ensure consistency across the District.

OCR found that the District does not comply with its obligation under the regulation implementing Title VI to monitor the effectiveness of its alternative language program and modify any aspect found to be deficient.

Segregation and Facilities

The Castañeda court found that limited segregation of ELL students is permissible where the benefits accrued in remedying language barriers which impede their academic potential outweigh the adverse effects of the segregation.

² A level 2 score indicates a student "partially met expectations." A score below level 4 means a student needs additional support to meet expectations at the next grade level.

OCR found that EL students are not unduly segregated from their non-EL peers. At the District's secondary schools, some EL students had ESL class but for most of the day these students were with non-EL students. Furthermore, at most elementary schools the District stated and administrators and staff affirmed that EL services happened in the regular classroom, which included EL and non-EL students.

Regarding facilities, OCR found and staff interviews confirm that the facilities offered to all students are of equal quality and access.

OCR found that the District does not discriminatorily segregate its EL students. We also found that the District ensures that EL students are taught in the same facilities or facilities that are comparable to the facilities enjoyed by other students.

Communication with LEP Parents on School-related Matters

As stated previously, the 1970 OCR Guidance states that school districts have the responsibility to adequately notify limited-English proficient 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 in a language other than English.

OCR requested a description of how school staff members identify parents who require translation or interpreter services, a list of LEP parents of students provided such services. We learned that Spanish and Keres are the predominant languages of EL students in the District. The Keres language is an oral-based language and is not available in written form. The District serves students from four distinct tribes, each speaking a different dialect of Keres. Staff members state that the District's Keres-speaking parents speak English proficiently, however, some grandparents raising EL students are not proficient in English. The District has a Tribal Liaison who can make contact with Native American community resources. Additionally, each school in the District with a large Native American student population also has a Keres teacher that is certified by the local tribe to teach Keres. Those schools, through their Keres teacher, are also able to make contact with Native American community resources.

The District reported that its schools are aware of which parents require translation or interpreter services through parent requests, Home Language Surveys, and staff observations. The District also reported that its website contains a notice regarding Individualized Education Program (IEP) meetings for parents/guardians. The notice informs parents/guardians about interpreters and translators being available if needed and provides a phone number to call to make a request; the notice is also in Spanish. The District further reported that each school has a bilingual site coordinator whose responsibilities include translation of text and interpretation at IEP meetings, when available. The District reported that in some schools there are also educational assistants who can provide translation and interpreter services.

OCR conducted interviews with teachers and staff members at each school, as well as with District-level personnel. Each of the teachers interviewed stated that their school does not keep a roster of parents that require interpreter services and they were unaware of any formal procedure for identifying LEP parents. Many teachers stated that they learned which parents required interpreter services during the course of the school year, either by interacting with them or when the parents requested interpretation. Other teachers stated that it was simply known which parents needed interpretation. One staff member at the high school said that the school assumes all of its parents speak English unless they request an interpreter. A teacher at an elementary school said the school usually lets teachers know but also noted that at the time of the interview she did not know which parents needed interpretation because she had not yet

received her students' contact info and tribal affiliations. Among the teachers interviewed there were only two teachers who stated they used the home language survey to identify which parents needed interpreter services. The two teachers also served as interpreters for the school.

When asked who provides interpretation services most teachers and staff responded that the provision of interpreter services were shared among the teachers and staff at the school who speak the necessary language. At one elementary school a staff member reported that a janitor is sometimes used to interpret. Some teachers and staff stated that they did not know who provided interpretation but assumed there was someone at their school who could be called upon if necessary.

When asked how interpreter services were provided, all teachers and staff interviewed answered that interpretation was provided upon request without a formal procedure. Some teachers stated that their school sent written information home in both English and Spanish. Teachers at two schools responded that their school used automated phone calls that had options for English and Spanish, but not Keres.

OCR requested copies of parent or student handbooks, notices and other materials the District and schools use to communicate with LEP parents in each language available. The District provided the following forms in Spanish: Parental Notification of Bilingual/ESL Program Exit form, *ELL Parental Notification form*, *Home Language Survey*, *Parental Notification of Enrichment Bilingual Program form*, and *Dual Language Notification form*. During student file reviews, OCR found that generally this information was provided only in English to parents who indicated that the primary or home language is Spanish, and there was inconsistent documentation regarding whether an interpreter was used to interpret the information to LEP parents. Interviews and file reviews confirmed that registration and HLS forms are available in English and Spanish, though the registration form was generally in English even where LEP parents completed it.

The District maintains a website that contains a section entitled "Parent Resources" and a subsection entitled "Important Forms." Each of the forms listed in these sections was in English and without a Spanish translation. The District did note that its website contains a notice for Spanish-speaking parents along with a phone number to make a request for interpretation. However, the notice is not under "Parent Resources", instead it is found under the subsection "Special Education Dept." which is under the section "District Departments" of the website. Additionally, the notice states that parents should call if they need interpretation at IEP meetings. It is not clear if interpretation is also available for other meeting or conferences.

The District does not maintain a list of translators or interpreters. School sites have Spanish-speaking and Keres-speaking staff members and the District's Tribal Liaison can make contact with Native American community resources. The District and its individual schools do not have a formal process of providing interpretation or translation if a parent is non-English speaking, however, most staff members interviewed stated that if the need for interpretation or translation is brought to their attention there is usually someone at the school who can provide it. Individuals used for interpretation and translation include, teachers, counselors, school-office staff, bilingual-site coordinators, and in one school, a janitor.

The District and schools do not have a list of LEP parents who need interpreter services. OCR asked several staff persons how they know which parents need to receive notices in their native language or to have interpreters present at staffing meetings. Staff persons did not describe a consistent procedure for identifying the need to communicate with parents in a language other than English, responding that they

know through interacting with parents, parent requests, and to a lesser extent through registration or HLS forms.

Student file reviews showed that translated notices were often not used for LEP parents who indicated a need for translation, and interpreter services were not consistently provided for LEP parents. For example:

- Hispanic, 4th grade student at Placitas Elementary School. The student's home language survey notes that Spanish and English are spoken at home. There is also a note in the file that states that the bilingual coordinator interprets for the family at parent meetings. Nevertheless, none of the forms in the student file, including the home language survey and parental notices, have been translated into Spanish.
- Hispanic, kindergarten student at Carroll Elementary School. The student's home language survey notes that the student, parents, and grandparents are monolingual Spanish-speakers. While the District shared that it has copies of the home language survey available in Spanish, the survey in this student's file is in English. Additionally, there are no notices in the student file that are in Spanish nor is there any indication that interpreter services have been provided.
- Hispanic, 12th grade student at Bernalillo High School. The student's home language survey indicates Spanish is the family's home and preferred language. There are no notices in the student's file that are in Spanish or any indication that interpreter services have been provided.
- Hispanic, 12th grade student at Bernalillo High School. The student's home language survey indicates that the family members are monolingual Spanish-speakers. Despite providing some permission forms in Spanish, the School did not provide a Spanish translation of a notification letter it sent to the student's parents regarding their child's placement into a bilingual education program. There is also no indication in the student file that interpreter services have been provided.
- Hispanic, 1st grade student at W.D. Carroll Elementary School. The student's home language survey indicates that the family members are monolingual Spanish-speakers. There are some progress reports provided in Spanish while others are not. There is no indication that interpreter services have been provided.
- Hispanic, 4th grade student at Placitas Elementary School. The student's parents are supposed to receive interpreter services from the Bilingual Education Coordinator. However, the student's file doesn't note that interpreter services are needed. Furthermore, the Home Language Survey is not translated in Spanish. No other documents are translated in Spanish and there is no indication in the documents that interpreter services were used.

OCR found that the District provides some notices in an appropriate language other than English, but the District does not ensure that language-minority parents consistently receive notices containing the same information that is provided to the parents of other students in a language understood by the parents. For example, in reviewing special education files there was inconsistent documentation of whether an interpreter was used in instances where the HLS indicated that the parents spoke a language other than English and the written notices provided were in English. Further, based on interview statements and

student file reviews, we found that the District has not ensured that language-minority parents are consistently provided information about school-related matters in a language they understand.

Conclusion

Based on the evidence, OCR determines that the District is in violation of Title VI and its implementing regulation, 34 C.F.R. § 100.3(a) and (b). In summary, we found:

- The District does not ensure that the procedures it has in place for the identification of EL students is consistently applied throughout its schools, nor is the identification of EL students consistently documented in students' files;
- The District does not ensure that all students identified as needing an assessment for English proficiency are assessed;
- The District does not implement fully its selected educational model designed to meet the English-language and academic needs of EL students;
- The District does not provide alternative language services to all its identified EL students;
- The District does not ensure the availability of teachers whose qualifications are sufficient to meet the instructional needs of all its EL students ;
- Since the District is not fully implementing recognized EL program models consistently at its schools to all its EL students, it cannot be determined that there are sufficient EL program materials;
- The District does not ensure that EL students exited from EL services are prepared to participate meaningfully in the mainstream classroom, and does not consistently monitor students who have been reclassified out of EL services to see if they are participating meaningfully in the mainstream educational environment;
- The District does not monitor the effectiveness of its EL program and modify any aspect found to be deficient; and
- The District does not ensure that LEP parents are consistently provided information about school-related matters, including special education, in a language they understand.

In order to voluntarily resolve this case, the District submitted the enclosed *Agreement for Corrective Action* (Agreement), which OCR found acceptable towards addressing the compliance concerns noted above. When the Agreement is fully implemented, all review issues will be resolved consistent with the requirements of Title VI and its regulations. A failure to implement the Agreement according to its terms would require us to reopen the investigation for further proceedings.

This letter addresses only the issues identified above and should not be interpreted as a determination of the District's compliance with Title VI in any other respect. Individuals filing a complaint or participating in an investigation are protected by Federal law against harassment, retaliation, or intimidation.

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

If you have any questions regarding this letter, please call XXXXX at (XXX) XXX-XXXX or email to XXXXX. I can be reached at (303) 844-6083.

Sincerely,

Angela Martinez-Gonzalez
Supervisory General Attorney
Denver Enforcement Office

Enclosure

cc: XXXXX, XXXXX, Bernalillo Public Schools
Christopher N. Ruszkowski, Acting New Mexico Secretary of Education
Icela Pelayo, PhD, Director of NMPED Bilingual Multicultural Education Bureau