

RESOLUTION AGREEMENT

Bernalillo Public Schools OCR Case Number 08-16-5001

The U.S. Department of Education, Office for Civil Rights ("Department" or "OCR") initiated a compliance review of Bernalillo Public Schools' program to determine whether the District provides national-origin minority students who are English Learners (EL) the services necessary to participate meaningfully in the District's educational program, and whether Limited English Proficient (LEP) parents/guardians (LEP parents) are notified of school-related information in a language they understand.

Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d-1, and its implementing regulation at 34 C.F.R. pt. 100, taken together, provide in relevant part that no programs or activities receiving Federal financial assistance from the U.S. Department of Education may discriminate on the basis of race or national origin.

OCR found that the District violated Title VI related to services to EL students and LEP parents. Accordingly, the District voluntarily agrees to take the steps outlined in this Resolution Agreement to ensure that:

- a) All EL students in the District receive the services they need to participate meaningfully in the District's educational program¹; and
 - b) LEP parents are provided information about school-related matters in a language they understand.
- 1) **A Plan to Serve All EL Students.** The District will develop a written Plan with District- wide policies and procedures to ensure that EL students have equal access to the District's educational program.
- a) Within **sixty (60) days** of signing this Agreement, the District will develop and submit to OCR for review and approval an initial draft Plan for providing meaningful educational services to all its EL students. The District will continue to submit draft plans until OCR approves a final Plan for the District's full and timely implementation.
 - b) For each Plan item, the Plan will specify the appropriate policies and procedures, corresponding activities, the dates for these activities, the persons responsible, and the supporting documentation. The District's Plan will address the following educational services for EL students:
 - i) **Identification of EL Students.**
 - (1) The District will ensure that all EL students are identified at each school. These procedures will:
 - (a) Ensure home language surveys (HLS) are consistently distributed at all schools

¹ The District recognizes that it can select EL program models that are appropriate for its use based upon sound educational theories and practices. The District commits to implementing such models in its schools to ensure meaningful educational opportunities for all of its EL students. OCR does not require or endorse the use of any particular program model to serve EL students. The District may select approaches, standards, and procedures for its local needs based upon sound educational judgments and practices that ensure equal educational opportunities for its EL students.

and in a language and mode of communication appropriate for the parents;

- (b) Identify the procedures for distributing, collecting, maintaining, and reviewing the home language survey, including a description of the survey responses that will trigger an English language proficiency assessment of a student;
- (c) Describe a program of staff (including those involved in special education pre-referral/referral, evaluation, and placement decisions) training on how to accurately identify students with a primary or home language other than English (PHLOTE) and EL students;
- (d) Include timelines and procedures to ensure that the English proficiency assessments (measuring proficiency of oral, reading, comprehension, and writing domains, as appropriate to grade level) are conducted and results are available and documented in a timely and accurate manner; and
- (e) Specify the objective criteria for determining whether a student is EL (including objective assessment measure showing proficiency in oral, speaking reading and writing domains, as appropriate to grade level).

ii) **Placement of EL Students.** The District will ensure, and incorporate into the Plan procedures to ensure, appropriate placement of all EL students into an EL program. The procedures will be designed to ensure that all EL students receive appropriate English language acquisition services, including English language development services, and will include in all EL students' files the District's documentation of placement decisions.

iii) **Selected English Learners Models.** The District will:

- (1) Fully implement, and describe in its Plan, the EL model(s) that will be provided to all EL students at the elementary, middle, and high school levels; and
- (2) Delineate what educational services (including English language development services) will be provided to all EL students, based on their respective English- language and academic needs.

iv) **Staffing.** The District will ensure, and incorporate into the Plan procedures to ensure that it has assigned a sufficient number of adequately trained staff members to properly implement the EL models and services at each school.

- (1) The District will describe the staffing resources it needs to effectively implement the EL model(s), including the training and qualifications of staff that provide services in the program.
- (2) The District will determine how many certified and endorsed/qualified teachers and other staff members are necessary to fully implement the EL model(s) at each school. In making this determination, the District will consider the number of EL students and the training and qualifications of staff needed to implement each service model. The

District agrees that the primary providers of EL instruction are to be licensed teachers who are sufficiently trained and qualified to deliver EL instruction, including direct English language development services.

- (3) The District will determine whether there are a sufficient number of adequately trained staff members assigned to properly implement the EL models and services and, if not, how many additional staff members need to be trained, hired, or assigned to the EL program to fill those staffing needs. The District will implement a plan to fully and timely meet its EL staffing needs (i.e., fully qualified staff teaching all EL students). The District will describe any specific training program for its staff, and include supporting documentation regarding its development and implementation (including educational experts and/or state approvals).
 - (4) The District will show how it has determined that its teachers have mastered the skills necessary to teach effectively in a program for EL students. For example, the District may require that teachers who provide EL services have an appropriate New Mexico endorsement (e.g., bilingual and/or TESOL) or the District may use validated evaluative instruments that have been shown to accurately measure the skills in question, and have EL teachers' classroom performance evaluated by someone familiar with the method being used.
 - (5) The District will implement the staffing plan described in the preceding paragraphs to meet its staffing needs. The District will monitor the staffing plan's benchmarks or timelines to ensure adequate and timely progress in meeting the District's staffing needs.
- v) **Materials.** The District will provide sufficient instructional materials to implement its EL program. The materials will be comparable in quality, availability, quantity, and age or grade level to those provided for non-EL students.
- (1) The District will survey staff members (EL, regular education, and special education teachers serving EL students) at least annually to determine the availability and need for additional EL materials and staff training needs related to using the EL-designed materials;
 - (2) The District will take necessary steps to respond to needs identified in the survey for EL materials; and
 - (3) The District will notify staff members of the availability of existing EL-related resources, and train them about the use of the materials as necessary.
- vi) **Reclassification and Monitoring.** The District will adopt objective criteria it will use to determine whether an EL student has obtained sufficient proficiency in English to be reclassified or to exit the EL program. At a minimum, these criteria will ensure that:
- (1) The determination of English-language proficiency will be based on, in whole or in part, English language proficiency assessment objective standards or test scores. The District

will explain to OCR how the chosen standards will ensure students' meaningful participation in the general curriculum;

- (2) Prior to the decision to exit a student from the EL program, the District will assess each student for English proficiency in speaking, reading, writing, and comprehension relative to grade level. The District will use English language proficiency assessments according to the publisher's instructions on properly normed and validated assessments developed for determining English language proficiency. Students will be reclassified when proficient in the four skill areas (oral, reading, writing, and comprehension), as appropriate to their grade level.
 - (3) Reclassified students will be formally monitored at least once per semester for two years after exit from the EL program. Documentation of monitoring of each student will be consistently maintained and address academic performance; and
 - (4) The District will timely remediate academic deficiencies identified in students who have exited the EL program. A description of the remediation steps will be included in the Plan.
- vii) **Program Evaluation and Modification.** The District will incorporate into its Plan its procedures for evaluating the effectiveness of its EL program and services for EL students. The District will collect longitudinal data annually for use in its evaluations. The District will include an analysis of the evaluation data according to each factor used for determining the effectiveness of the District's ALP. The District will also describe steps to modify or improve its ALP programs and services for EL students, where necessary, based upon the results of its program evaluation. The District agrees it will not continue indefinitely with programs and services that, despite soundness of design and implementation, do not satisfy its goals and objectives for providing educational services to its EL students.
- (1) For the first self-evaluation due by **June 8, 2018**, the District will provide:
 - (a) The total number of PHLOTE students and EL students, by school, for school year 2017-18;
 - (b) An assessment of the EL program placement and services for EL students;
 - (c) A description of staff training needs and the District's response to identified needs; and
 - (d) Its policies and goals for providing educational services to EL students. This will include the District's objectives for providing educational services to EL students, including the objectives of the EL program models selected; and a list of specific, measurable language acquisition and performance goals for EL students.
 - (2) The District's Plan will provide, for school year 2018-19 and all subsequent program evaluations (to be conducted at least once every two years):

- (a) A description of the factors used to determine the effectiveness of the District's programs and services. Some factors to include in the self-evaluation are:
 - (i) Whether current EL students are satisfying established goals and objectives for student participation and achievement;
 - (ii) Whether the District's staff training program is sufficiently training teachers to meet EL students' English language development and access to content curriculum needs, and meeting the stated intent of the training program's design;
 - (iii) Whether current EL students are gaining in English language proficiency in speaking, reading, writing, and comprehension;
 - (iv) EL and former EL students' academic progress and dropout, graduation, and grade retention rates, as compared to their non/never-EL peers; and
 - (v) Whether EL students are statistically over-represented or under-represented in special education referrals and placements or the gifted and talented program. This analysis includes considering EL students with their general representation in the District and comparing them with former EL and non-/never EL students.
- (b) The procedures used to determine the extent to which staff hiring, training, or development is needed to ensure a full contingent of qualified teachers for the EL program to fully implement the Plan; and
- (c) The specific steps the District will take, including time frames and persons responsible, to ensure that program modifications or improvements are implemented when necessary to ensure program effectiveness for EL students.

c) **Implementation of the Plan.**

- i) Within **thirty (30 days)** of OCR's approval of the complete Plan, the District will submit a complete, final copy of the Plan to OCR, and begin implementing all terms of the Plan. The District will implement the specific Plan provisions in accordance with the policies, procedures, and time frames specified in the Plan.
- ii) Within **sixty (60)** days of OCR's approval of all terms of the Plan, the District will:
 - (1) Provide documentation to demonstrate that all school site administrators have received a copy of the Plan;
 - (2) Provide a training agenda for administrators and staff regarding the implementation of the Plan (including training dates and training responsibilities); and

(3) In a newsletter or other similar document or process that is used for parent notifications, notify parents and guardians of all District students (in a language they understand) that the District has developed a Plan to ensure that national-origin minority EL students have equal and meaningful access to the District's educational services.

iii) The District will provide OCR with supporting documentation of each item of the Plan, at dates to be determined by OCR. The first reporting data of implementation for each plan issue item will be due to OCR by January 30, 2018.

2) **LEP Parent Communication.** Within **sixty (60)** days of signing this Agreement, the District will develop a written plan to provide language assistance services of school-related notices to LEP parents in a language that they understand.

a) The written plan will include the following:

- i) A process for notifying LEP parents, in a language that the parents will understand, of the availability of free language assistance with respect to school programs and activities. The notice will, at a minimum, be published on the District's website, in student and parent handbooks, and in District-wide or school-based newsletters.
- ii) A process for identifying LEP parents who may need language assistance, including, at a minimum, through home language surveys, asking parents in a language they understand (in writing and/or orally as appropriate) if they need written translations or oral interpretation of communications and if so to specify the language(s) needed. The District will also identify LEP parents needing interpreter or translation services through interaction between parents and staff, and by taking into account that EL students, whom the District has an obligation to identify, may have LEP parents.
- iii) A statement that a parent does not have to be of limited English proficiency in speaking, reading, writing, and comprehending English in order to be considered LEP but, rather, that a parent be limited in at least one of these areas in order to be eligible to receive language assistance as needed.
- iv) A statement that, generally, the District will accept a parent's assertion that he or she needs language assistance without requiring additional corroboration.
- v) A process that ensures that each school building has a centralized list of LEP parents identified as needing language assistance services, the type of language assistance services that they need, and a log of the language assistance services provided to them by date of service, type of service (e.g., translation or interpreter services for special education, disciplinary proceedings), and service provider (including name, position, and qualifications). The process will ensure that the list is provided to all staff in the building that may interact with LEP parents, as well as to the central administration. Staff for purposes of this Agreement will include all relevant District and school administrators, teachers, counselors, and support staff.

- vi) A process that ensures that the central administration maintains a District-wide list of LEP parents identified by each building as needing language assistance services, the type of language assistance services that they need, and a log of the language assistance services provided to them by the central office by date, type of service, and service provider.
- vii) A process to ensure that, when the children of LEP parents transfer from one building to another within the District, information regarding the language assistance needs of the parents is transferred to the District building to which the students transfer.
- viii) A process by which District staff that are likely to interact with an identified LEP parent are advised of the parent's potential need for language assistance, the circumstances under which they may need assistance (e.g., parent-teacher conferences, documents related to disciplinary actions, disciplinary hearings, documents related to Individualized Education Programs (IEP) or Section 504 Plans, and IEP team meetings), the type of language assistance that they may need (e.g., translation services or interpreter services), and the means by which they may timely obtain such assistance for the parent.
- ix) A process by which District staff may obtain in a timely manner, adequately trained and qualified translators or interpreters as needed.
- x) A process by which the District ensures that its interpreters and translators are trained on the role of an interpreter and translator, the ethics of interpreting and translating, and the need to maintain confidentiality.
- xi) A process to ensure that interpreters have knowledge, in English and the parents' native language, of any specialized terms or concepts peculiar to the District program or activity for which they are providing services, including, but not limited to interpreters of IEP meetings having knowledge of special education terminology.
- xii) A process to ensure that translators understand the expected reading level of the audience and, where appropriate, have fundamental knowledge about the target language group's vocabulary and phraseology. The process should require, as deemed appropriate and necessary, consultation with relevant community organizations to help determine whether a document is written at an appropriate level for the intended audience.
- xiii) A process for notifying relevant District staff, on an annual basis, that the use of family members and friends for the provision of language assistance is generally not acceptable. The notice shall state that the use of such individuals may raise issues of confidentiality, privacy, or conflict of interest, and that, in many circumstances, such persons are not competent to provide quality, accurate interpretations. The process will also include notification to relevant District staff that they should not rely on such individuals to provide LEP parents meaningful access to important programs and activities and a caution that, even when LEP parents have voluntarily chosen to provide their own interpreter or translator, the District may still need, depending upon the circumstances of the encounter, to provide its own interpreter or translator to ensure accurate interpretation or translation of critical information, especially if, but not limited to, situations where the competency of the LEP parents' chosen interpreter is not established. Additionally, the notice shall state

that the use of minor children raises particular concerns about competency, quality, and accuracy of interpretations and that it is never advisable to use such children to convey information about their own education and/or complex information.

- xiv) A process for identifying and translating vital written documents into the language of each frequently-encountered LEP parent group eligible to be served and/or likely to be affected by the District's program or activities. In determining which written documents are vital the District will consider the importance of the program, information, encounter, or service involved, and the consequence to the LEP parent if the information in question is not provided accurately or in a timely manner. At a minimum, the following vital written documents will be translated into the language of each frequently-encountered LEP parent group:
 - (1) Notice of procedural safeguards in the context of providing children with disabilities with a free appropriate public education (FAPE) under Section 504 of the Rehabilitation Act of 1973 (Section 504) and the Individuals with Disabilities Education Act (IDEA);
 - (2) Documentation related to eligibility and placement decisions under Section 504 and IDEA;
 - (3) Disciplinary notices and procedures;
 - (4) Registration/enrollment forms, emergency notification forms and other forms most commonly used by the district to communicate with parents;
 - (5) Report cards and student progress reports;
 - (6) Notices of parent-teacher conferences or meetings;
 - (7) Parent handbooks and fact sheets;
 - (8) Documentation regarding the availability of academic options and planning, including gifted and talented programs, EL programs, and counseling and guidance services; and
 - (9) Screening procedures that request information from parents about the child's language background and the parents' preferred language for communication with the school.
- b) Within **forty-five (45)** days of receipt of the OCR-approved language assistance plan, the District will adopt and implement the plan.
- c) By **June 30, 2018**, the District will develop a written plan for the annual evaluation of the effectiveness of its language assistance plan. The written evaluation plan will include the following:
 - i) Identification of staff responsible for evaluating the language assistance plan on an annual basis;
 - ii) Identification of the date by which the evaluation will be completed on an annual basis;

- iii) A list of information and items to be examined when evaluating the effectiveness of the language assistance plan, which will include, at a minimum, the following: identification of the current LEP parent groups encountered by the District; the frequency of encounters with LEP parents; the nature and importance of activities to LEP parents; the availability of resources, including technological advances and sources of additional resources, and the costs imposed; whether existing assistance is meeting the needs of LEP parents; whether staff knows and understands the language assistance plan and how to implement it; and whether identified sources for language assistance are timely available and viable.
 - iv) A process for determining whether new documents, services, and activities need to be made accessible for LEP parents, and whether the District needs to provide notice of any changes in services to LEP parents and to district staff.
- d) Within **forty-five (45)** days of receipt of the OCR-approved evaluation plan, the District will adopt and implement the plan. The District will provide supporting documentation of implementation of Term 2 of this Agreement to OCR by January 30, 2018 and June 30, 2018.

The District understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce this Agreement, OCR will give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

The District understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. Further, the District understands that during the monitoring of the Agreement, if necessary, OCR may visit the District, interview District employees and students, and request such additional reports or data as are necessary for OCR to determine whether the District has fulfilled the terms of this Agreement and is in compliance with the regulation implementing Title VI of the Civil Rights Act of 1964 at 34 C.F.R. § 100.3, which was at issue in this case. Upon completion of the obligations under this Agreement, OCR shall close and dismiss this case.

For Bernalillo Public Schools:

Keith Cowans, Interim Superintendent

Date