



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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

REGION VIII  
ARIZONA  
COLORADO  
NEW MEXICO  
UTAH  
WYOMING

September 25, 2017

Mr. Rudolph Flores  
Senior Vice President, Operations  
Ombudsman Charter Schools  
1660 W Valencia Rd.  
Tucson, AZ 85746

Re: Ombudsman Charter - Valencia  
OCR Case Number: 08-17-1152

Dear Mr. Flores:

On April 11, 2017, we accepted for investigation the Complainant's allegations that Ombudsman Charter Schools at Ombudsman Charter – Valencia (School) discriminated on the basis of national origin. Specifically, the complaint alleged that the School discriminated by not providing its English Language Learners (ELL) students with English language development services taught by qualified teachers, and not providing national origin minority limited English proficient (LEP) parents with school-related notices in a language that they understand.

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

In the investigation, we considered information provided by the Complainant, documents submitted by the School, and the School's response to the complaint. We also interviewed several School administrators and staff members.

*Legal Standard*

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:

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

"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.

**I. Allegation – The School discriminated by not providing its English Language Learners (ELL) students with English language development services taught by qualified teachers.**

Neither the data response nor staff and administrator interviews identified an educational theory that serves as a basis for the School's EL program. As a result, most of the School staff members were unable to describe the School's EL program, nor a teacher at the School responsible for providing direct ELD instruction.

The School states that it uses a Structured English Immersion (SEI) setting and creates an Individualized Language Learning Plan (ILLP) for each of its EL students. Our review of the School's data submission, however, showed that only 11 of its 31 EL students have an ILLP. We asked the School to provide copies of these 11 ILLPs but none were produced. Based on our review of the School's data submission and interviews with staff, including the School's designated EL staff, none of the School's EL students receives direct English Language Development (ELD) instruction; the School claims it provides these services through the general curriculum that all students receive, and the instruction of EL students is neither targeted nor individualized to meet each EL student's particular ELD needs.

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

**II. Allegation - The School discriminated on the basis of national origin by not providing LEP national origin minority parents with school-related notices in a language that they understand.**

The Complainant alleges that the School failed to provide national origin minority parents with the School's student handbook translated into Spanish. The School provided OCR with a copy of its student handbook translated into Spanish, and OCR verified that this copy mirrors what is provided in the English version of the student handbook provided to students. Accordingly, there is insufficient evidence that the School failed to provide a translated copy of its handbook to LEP parents, and this allegation is closed effective the date of this letter.

**III. Issue - The School discriminated on the basis of national origin by failing to monitor the progress of former EL students.**

During the course of our investigation, we discovered an additional compliance concern regarding the School's monitoring of former EL students. The School's data response did not mention or describe its monitoring of former EL students. When asked about monitoring, the School's staff members and administrators were unable to consistently identify any method of monitoring former EL students. The School provided a roster which categorized students as current ELL, former ELL, or not active, but did not identify any students that are currently being monitored. Further, School staff did not identify any person responsible for doing this evaluation, nor the method it uses for evaluation. The School currently does not have a method in place to monitor the progress of former EL students.

Based on the information provided and interviews of school administrators, we find that the School's monitoring of former EL students raises compliance concerns in violation of Title VI.

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

During the course of our investigation, we discovered an additional compliance concern regarding the School's program evaluation and modification of its EL program. School staff did not identify any person responsible for doing this evaluation, nor the method it uses for evaluation. School administrators and staff repeatedly referred to internal reading and math assessments used to measure students' academic process, but this was true of all students, not just EL students. The School currently does not have a method in place or program in place to evaluate the success of its EL program.

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

**V. Conclusion**

We are pleased that the School voluntarily entered into the enclosed Resolution Agreement to address the compliance determinations that OCR made during this investigation. This concludes our investigation of this complaint.

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

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

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

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Thank you for the courtesy and cooperation your staff extended to OCR during the investigation of this case. If you have any questions regarding this case, please contact, Jason Sinacruz, Attorney Advisor assigned to this case, at XXXXX. I can also be reached XXX.

Sincerely,

/s/

Angela Martinez-Gonzalez  
Supervisory General Attorney

Enclosure – Copy of Resolution Agreement

cc: Diane Douglas  
Superintendent of Public Instruction  
Arizona Department of Education