



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION VIII  
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May 8, 2018

Dr. Cynthia Stevenson, Superintendent  
Boulder Valley School District  
P.O. Box 9011, 6500 E. Arapahoe Rd.  
Boulder, CO 80301-9011

Re: Boulder Valley School District  
OCR Case Number: 08-17-1273

Dear Superintendent Stevenson:

We are writing to advise you of the resolution of the above-referenced complaint that was filed with our office against Boulder Valley School District (District), alleging that the District discriminates on the basis of national origin. The issues that OCR investigated in this complaint were:

1. X – sentence redacted – X
2. X – sentence redacted – X
3. Whether the District discriminates against families of ELL students by making access to its summer program application available only online;
4. Whether the District discriminates against ELL students by providing a summer program that it not accessible to ELL students; and
5. X – sentence redacted – X.

OCR is responsible for enforcing 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 and activities that receive Federal financial assistance from the U.S. Department of Education (Department). As a recipient of Federal financial assistance from the Department, the District is subject to this law and regulation.

During our investigation, we interviewed the Complainants and reviewed evidence provided by the Complainants and the District. During the course of our investigation, the District indicated its desire to voluntarily enter into an agreement to resolve the allegations pursuant to Section 302 of our *Case Processing Manual*. We reviewed this request and determined that it was appropriate to enter into an agreement without completing a full investigation of Allegations 3 (online registration for summer program) and 4 (summer program accessibility). With respect to Allegation 1 (XXX), we determined this allegation was moot. With respect to Allegation 2 (XXX), we determined that this allegation had been resolved during the course of our investigation. With respect to allegation 5 (XXX), our investigation found insufficient evidence to establish that the District discriminated as alleged. This letter sets forth the reasons for our determinations with respect to all allegations.

## **I. Legal Standards**

### **A. Limited-English Proficient Students and Parents**

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 memorandum entitled “Identification of Discrimination and Denial of Services on the Basis of National Origin,” 35 Fed. Reg. 11,595. 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 (LEP) national origin minority students. It states that school districts must take affirmative steps to address the language needs of limited English proficient students (English learners).

OCR policy interpreting Title VI and the May 25th memorandum requires school districts to select a sound educational theory for their programs for English learners, and to use practices, resources and personnel reasonably calculated to implement their educational theory. Districts 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. In addition, districts must evaluate the implementation and outcomes of their services for English learners to determine whether the services are successful in meeting these responsibilities and the program goals set by the district. If not, districts must modify the programs as necessary.

Additionally, the May 25th memorandum states that school districts 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 analyzes this issue 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” (67 Fed.Reg. 41,455, June 18, 2002). Under the DOJ Guidance, the extent of a recipient’s obligation to provide language assistance to 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.

### **B. Different Treatment**

Under the Title VI regulations at 34 C.F.R. §100.3(a) and (b), a school district may not treat individuals differently on the basis of race, color, or national origin with regard to any aspect of

services, benefits, or opportunities it provides. Section (b)(1) states that a school district may not, directly or through contractual or other arrangements, on the basis of race, color or national origin:

- deny an individual any service, financial aid or other benefit;
- provide an individual any service, financial aid or other benefit that is different, or is provided in a different manner, from that provided to others;
- subject an individual to segregation or separate treatment in the receipt of any service, financial aid, or other benefit;
- restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit;
- treat an individual differently in determining whether he or she satisfies any admission, enrollment, eligibility or other requirement which must be met to receive any service, financial aid, or other benefit; or
- deny an individual an opportunity to participate, or afford an opportunity to participate which is different from that afforded others.

To determine whether a student has been discriminated against on the basis of race, color, or national origin under Title VI, OCR looks at whether there is evidence that the student was treated differently than students of other races, colors, or national origins under similar circumstances, and whether the treatment has resulted the denial or limitation of services, benefits, or opportunities. If there is such evidence, OCR examines whether the school district provided a nondiscriminatory reason for its actions and whether there is evidence that the stated reason is a pretext for discrimination. For OCR to find a violation, the preponderance of the evidence must establish that the school district's actions were based on the student's race, color, or national origin.

### C. Disparate Impact

Under the Title VI regulations at 34 C.F.R. §100.3(a) and (b), a school district may not treat individuals differently on the basis of race, color, or national origin with regard to any aspect of services, benefits, or opportunities it provides. Section 100.3(b)(2) states that a school district may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination on the basis of race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program for individuals of a particular race, color, or national origin.

To determine whether a school district's policy or practice has an unlawful disparate impact on the basis of race, color or national origin, OCR examines: (1) whether a policy or practice that is neutral on its face has a disproportionate, adverse effect on students of a particular race or national origin; (2) whether there is a substantial, legitimate justification for the policy or practice; and (3) if so, whether there is an alternative policy or practice that would result in a lesser disparate impact and be comparably effective in meeting the school district's objectives.

D. Evidentiary Standard

In examining evidence gathered from the Complainant and the District, OCR uses a “preponderance of the evidence” standard. Simply stated, this means that OCR must conclude, based upon the evidence gathered and reviewed during our investigation, the District’s actions more likely than not constitute a failure to comply with Section 504/Title II when viewed in light of our legal standards.

II. OCR’s Investigation

X – paragraphs redacted – X

A. Allegation 3: Whether the District discriminates against families of ELL students by making access to its summer program application available only online.

The Complainants alleged that beginning in 2017, the District made access to its summer program application available only online. They described the summer program as optional, but recommended. The Complainants alleged that the participation rate had dropped significantly District-wide, because the families of ELL students in particular had difficulty accessing the online-only registration.

OCR’s investigation thus far indicates that the online-only registration did present problems with access, especially for families of ELL students. For example, emails document that principals at multiple elementary schools raised concerns about how online summer registration would hinder access for ELL and PHLOTE students and parents. The District’s own XXX noted in an email in February 2017 that she observed some such problems firsthand and noted that “[w]e are going to need help figuring out how to get our families at Whittier, Sanchez, Pioneer, Columbine, UniHill [sic], Birch and Emerald enrolled.” The District’s table of students enrolled at the elementary and middle school level contains parent contact information and shows that many parents do not have an email address associated with their record. The June 13, 2017 school board meeting included discussion of online-only registration for the summer program, including a community member commenting on problems registering in her community; a Board member commenting that he “know[s] [the registration process] does not work for the Latino community”; and District staff commenting that they had discovered that elementary parents do not use Infinite Campus as frequently as middle or high school parents, so the barrier was the parents did not know their usernames or passwords, and that District was communicating with principals related to educating parents at the beginning of the year, including perhaps including this topic in the back-to-school nights.

The District responded that its process had provided access for families of ELL students, with application materials sent via email in both English and Spanish and on the District’s summer learning webpage as well as available in hard copies at the schools and District Community Schools office. The District added that teachers had been provided a one-page flyer to hand to parents at parent-teacher conferences intended to help families register and that principals were

instructed on how to support registration, and school staff, along with I Have a Dream<sup>1</sup> staff, helped students register. The District added, and this was also discussed at the June 13, 2017 school board meeting, that it will survey all administrators, teachers, students, and parents at the end of the summer program to get feedback, which will be reviewed and used for improvements. The District added that one reason it had moved to the online system was to resolve a labor grievance by the school registrars in 2016 that the process was too time consuming and not efficient, requiring them to work unpaid hours and that about 60 hours of work had been saved in 2017.

OCR would therefore need further investigation as to whether the District's methods for providing access were sufficient, as there is substantial information at this stage indicating that they were not. OCR would also need to assess whether there are less discriminatory alternative ways to resolve the labor grievance by registrars. OCR determined that at this stage of the investigation, a Resolution Agreement creating equal access to summer program registration is in the best interest of the parties. Specifically, in the Resolution Agreement, the District has agreed to develop a procedure, with specific required items, to ensure that LEP parents in the District are able to understand and participate effectively in all District programs for which registration/enrollment is primarily online (with specific attention paid to the enrollment process for summer learning enrichment programs).

B. Allegation 4: Whether the District discriminates against ELL students by providing a summer program that it not accessible to ELL students.

The Complainants alleged that, new in the 2017 elementary summer program, the program was in English only and therefore inaccessible to ELL students, whereas in the past, the District has made the program accessible with Spanish/bilingual options. The District responded that its summer learning program for elementary and middle school students is accessible in that bilingual students use the same curriculum as their English-speaking peers and bilingual teachers bridge vocabulary and concepts; and all lessons are infused with ELL strategies supported by the Center for Applied Linguistic Strategies and written into the curriculum by the BVSD ELL Coordinators. The District provided listing of its many bilingual teachers and staff who work in its summer learning programs.

OCR would therefore need further investigation as to whether the bridging and ELL strategies were sufficient to make the District's summer program accessible to ELL students, including but not limited to by interviewing at least a sampling of the staff identified as working in the program(s). OCR determined that at this stage of the investigation, a Resolution Agreement ensuring the accessibility of the District's summer learning program to ELL students is in the best interest of the parties. Specifically, in the Resolution Agreement, the District has agreed to develop a plan, with specific required items, to ensure ELL students have meaningful access to its summer learning enrichment programming.

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<sup>1</sup> According to its website, the mission of the I Have a Dream Foundation of Boulder County "is to empower children from low-income communities to succeed in school, college, and career by providing academic, social, and emotional support from elementary school through college, along with postsecondary tuition assistance."  
<http://www.ihadboulder.org/index.php/our-organization/mission-a-history>.

X – paragraphs redacted – X

### **III. Conclusion**

We thank the District for being willing to voluntarily address the issues in this case. A copy of the signed Resolution Agreement is enclosed for your records. When the Agreement is fully implemented, the allegations will be resolved consistent with the requirements of Title VI and its implementing regulation. OCR will monitor implementation of this Agreement through periodic reports demonstrating that the terms of the Agreement have been fulfilled. We will provide written notice of any deficiencies regarding implementation of the terms of the Agreement and will promptly require actions to address such deficiencies. If the District fails to implement the Agreement, we will take appropriate action, as described in the Agreement.

This concludes OCR's investigation of this complaint and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The case is now in the monitoring phase. The monitoring phase of this case will be completed when OCR determines that the District has fulfilled all terms of the Agreement. When the monitoring phase of this case is complete, OCR will close this case and will send a letter to the District, copied to the Complainants, stating that this case is closed.

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. The complainants may have the right to file a private suit in federal court whether or not OCR finds a violation.

Individuals filing a complaint or participating in our resolution process are protected from retaliation by Federal law.

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.

Thank you for the courtesy and cooperation you and your staff and counsel extended to us during the investigation of this case. If you have any questions, please contact XXX.

Sincerely,

/s/

XXX

Supervisory General Attorney

Enclosure: Resolution Agreement  
cc (w/enclosure): XXX, District Deputy General Counsel  
cc (w/o enclosure): Honorable Katy Anthes, Colorado Department of Education