



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION VIII  
ARIZONA  
COLORADO  
NEW MEXICO  
UTAH  
WYOMING

August 29, 2021

Mr. Reid P. Newey, Superintendent  
Davis School District  
45 East State Street  
Post Office Box 588  
Farmington, Utah 84025-0588

*via email only to XXXX@XXXX*

Re: **Davis School District**  
OCR Case 08-21-1196

Dear Superintendent Newey:

We write to inform you of the resolution of the above-referenced complaint, filed on April 7, 2021, with the Office for Civil Rights (OCR) of the U.S. Department of Education (“Department”), alleging that the Davis School District (“District”) discriminates against English Learner (EL) students and Limited English Proficient (LEP) parents based on national origin. Specifically, the Complainant alleges that the District:

- fails to: (a) offer EL students an educationally sound language assistance program; (b) provide qualified staff and sufficient resources to instruct EL students; (c) monitor the progress of EL students in learning English and accessing the academic curriculum; (d) remedy any academic deficits EL students incur while in a language assistance program; (e) move EL students out of language assistance programs only when they are proficient in English; and (f) monitor EL students to ensure they were not prematurely exited;
- relies on students to provide interpretation for other students; and
- fails to communicate with LEP parents in a language they can understand.

We began investigating the allegations pursuant to Title VI of the Civil Rights Act of 1964 (“Title VI”), and its implementing regulation, at 34 Code of Federal Regulations (C.F.R.) Part 100, which prohibit discrimination based on national origin in programs or activities receiving federal financial assistance from the Department. As a recipient of federal financial assistance from the Department, the District is subject to this law and regulation.

Prior to OCR issuing a final determination pursuant to Section 303 of our *Case Processing Manual* (CPM), the District expressed an interest in resolving the allegations pursuant to Section 302 of the CPM. OCR determined that it was appropriate to resolve the allegations because our investigation identified issues that could be addressed through a resolution agreement. Therefore, on August 3, 2021, OCR sent the District a proposed resolution agreement (“Agreement”). On August 25, 2021, OCR received a signed Agreement from the District (dated August 17, 2021). The provisions of the Agreement are tied to the allegations and evidence obtained during the investigation and are consistent with applicable regulations.

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

This letter details the applicable legal standards, OCR's investigation to date, and the evidence that OCR collected prior to receiving the District's request to enter into an agreement.

## **I. LEGAL STANDARDS**

The Title VI implementing regulations, at 34 C.F.R. Section 100.3(a)-(b), provide that a recipient of federal financial assistance may not, on the basis 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 use criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their national origin.

### **a. EL Students**

Under Title VI, school districts must provide equal educational opportunity to EL students, including taking affirmative steps to address their language needs. In determining if a school district's programs for EL students comply with the civil rights laws OCR considers whether: (a) the educational theory underlying the language assistance program (LAP) is recognized as sound by some experts in the field or is considered a legitimate experimental strategy; (b) the program and practices used by the school district are reasonably calculated to implement effectively the educational theory adopted by the district; and (c) the program succeeds, after a legitimate trial, in producing results indicating that students' language barriers are actually being overcome within a reasonable period of time.<sup>1</sup> More specifically, school districts must:

- a) identify and assess EL students in need of language assistance in a timely, valid, and reliable manner;
- b) provide EL students with a LAP that is educationally sound and proven successful;
- c) sufficiently staff and support the LAPs for EL students;
- d) ensure EL students have equal opportunities to meaningfully participate in all curricular and extracurricular activities, including the core curriculum, graduation requirements, specialized and advanced courses and programs, sports, and clubs;
- e) avoid unnecessary segregation of EL students;
- f) ensure that EL students with disabilities under the Individuals with Disabilities Education Act (IDEA) or Section 504 are evaluated in a timely and appropriate manner for special education and disability-related services and that their language needs are considered in evaluations and delivery of services;
- g) meet the needs of EL students who opt out of LAPs;
- h) monitor and evaluate EL students in LAPs to ensure their progress with respect to acquiring English proficiency and grade level core content, exit EL students from LAPs when they are proficient in English, and monitor exited students to ensure they were not prematurely exited and that any academic deficits incurred in the LAP have been remedied;
- i) evaluate the effectiveness of a school district's LAP to ensure that EL students in each program acquire English proficiency and that each program was reasonably calculated to allow EL students to attain parity of participation in the standard instructional program within a reasonable period of time; and

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<sup>1</sup> 648 F. 2d 989, 1009-10 (5th Cir. 1981).

- j) ensure meaningful communication with LEP parents about school-related information.

**b. LEP Parents**

Recipients must adequately notify national origin minority group parents of school-related information that is called to the attention of non-LEP parents, and such notice may have to be provided in a language other than English in order to be adequate.<sup>2</sup> The extent of a recipient's obligation to provide language assistance to LEP individuals is determined by balancing four factors: the number or proportion of LEP individuals likely to encounter the program; the frequency with which LEP individuals come in contact with the program; the nature and importance of the services provided by the program; and the resources available to the recipient.<sup>3</sup>

A recipient's obligation to ensure meaningful communication with LEP parents in a language they can understand and to adequately notify LEP parents of information about any programs, service, or activity of a school district that is called to the attention of non-LEP parents requires a recipient to provide LEP parents with oral interpretation and/or written translation of important information and documents in their primary language where necessary to ensure that they can meaningfully participate in their child's education.<sup>4</sup> Further, recipients must develop and implement a process for determining whether parents are LEP and identify their language needs. The process should be designed to identify all LEP parents, including parents of children who are proficient in English and parents whose primary language is not common in the recipient's jurisdiction.

Recipients must provide free language assistance to LEP parents effectively with appropriate, competent staff – or appropriate and competent outside resources.<sup>5</sup> It is not sufficient for staff merely to be bilingual. Recipients should ensure that interpreters and translators have knowledge in both languages of any specialized terms or concepts to be used in the communication at issue and they are trained in their role of an interpreter or translator, the ethics of interpreting and translating, and the need to maintain confidentiality. In addition, interpreters should be able to demonstrate proficiency in and ability to communicate information accurately in both English and in the other language and be knowledgeable of any particularized vocabulary and phraseology used by the LEP person.<sup>6</sup>

**II. INVESTIGATION TO DATE**

Our investigation to date included requesting and reviewing information from the Complainant and requesting and reviewing extensive information, records, and data from the District.

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<sup>2</sup> 35 Fed. Reg. 11595, July 18, 1970.

<sup>3</sup> 67 Fed. Reg. 41455, June 18, 2002.

<sup>4</sup> Such programs, services, or activities include, but are not limited to: registration and enrollment in school, grievance procedures, notices of school programs, notices of special programming or extracurricular activities, notices of nondiscrimination, language assistance programs, parent handbooks, report cards, gifted and talented programs, student discipline policies and procedures, behavior concerns, magnet and charter schools, special education and related services, parent-teacher conferences, and requests for parent permission.

<sup>5</sup> School districts must not rely on or ask students, siblings, friends, or untrained school staff to translate or interpret for parents.

<sup>6</sup> See 67 Fed. Reg. at 41461.

### III. EVIDENCE TO DATE: EL STUDENTS

The following information was presented by the District to OCR. Our investigation did not reach the point of assessing the veracity of the information through subsequent requests for data and records, interviews, and other steps that would be taken in a full investigation.

#### a. Background

According to data from the Utah State Board of Education (USBE), during the 2018-2019 school year (SY), the District's total student population of 72,263 included 2,470 EL students.<sup>7</sup> The District schools with the highest percentages of identified EL students were the following elementary schools: Adelaide (22.7%), Vae View (21.0%), Washington (19.9%),<sup>8</sup> Crestview (19.8%), Lincoln (18.9%), Wasatch (16.0%), Holt (15.3%), and Meadowbrook (11.3%). The following District schools had at least 50 identified EL students: Lincoln School (141), Adelaide School (106), Northridge High (92), Foxboro School (88), Vae View School (75), Woods Cross High (74), Crestview School (71), Wasatch School (70), Holt School (67), North Davis Jr High (66), North Layton Jr High (63), South Davis Jr High (61), Clearfield High (59), Layton High (53), Washington School (53), Orchard School (52), and South Clearfield School (51).

According to data that the District provided to OCR, during the 2020-2021 SY, the District had 2,889 EL students. Among those students, 2,662 were "current" status, 205 were "reclassified" status, and 22 were "former" status. Additionally, 95.6% of the students participated in EL services, 76.4% had a home language of Spanish, 65.4% received sheltered instruction (see Figure 1), and 34.8% were considered "developing" English proficiency (see Figure 2). The most common home languages were: Spanish (2,207), Marshallese (68), Portuguese (65), Chuukese (61), Samoan (41), and Chinese (38).

Figure 1: Status of District EL students during the 2020-2021 SY

Program Service	Students	Program Service	Students
Sheltered instruction	1,889	Parent opt out	102
Monitoring	810	Exited	23
Re-entry	8	Undetermined	57

Figure 2: Proficiency levels of District EL students during the 2020-2021 SY<sup>9</sup>

Proficiency Level	Students	Proficiency Level	Students
Beginning	493	Exited	7
Bridging	308	Expanding	495
Developing	1,005	Exploring	1
Emerging	3	Initiating	1
Engaging	8	Reaching	31
Entering	379	Testing in progress	57

#### b. Program Participation

All students who are eligible for the EL program (*i.e.*, students who indicate on the Home Language Survey (HLS) that they speak any language other than English) complete an English language proficiency

<sup>7</sup> <https://www.schools.utah.gov/data/reports?mid=1424&tid=4>

<sup>8</sup> Washington Elementary School was subsequently closed.

<sup>9</sup> Does not include the 102 opted out students.

test within 30 days of initial enrollment; or, if the initial enrollment takes place after October 1st of the current school year, then the assessment takes place within 14 days of enrollment.<sup>10</sup> The proficiency tests the District uses are the WIDA ACCESS Placement Test (W-APT) and WIDA Online Screener (“Online Screener”). The purpose of these tests is to determine the academic English language proficiency levels of students in order to determine appropriate levels and amounts of instructional services. Students receive a score on each part of the test taken – *i.e.*, speaking, listening, reading, and writing – as well as an overall composite score. These scores reflect a level of English proficiency as determined by the WIDA standards and fall within the range of 1.0 to 6.0. These scores are then be used to determine levels of placement and instruction within the EL program. Based on the score, students are categorized as inactive, tracking, or active (*i.e.*, receiving direct EL services at their school).

Schools are notified of their EL students by reports found in the District’s ENCORE ELL Maintenance data system (ENCORE). Principals, assistant principals, interns, counselors, and head secretaries can access these reports at any time. The Language Listing report contains a list of all EL students by school, along with their first language, home language, WIDA placement test level, most recent WIDA Access test level, and homeroom/English teacher. The Compliance Requirement report indicates whether the required classes or services that each EL student should have are taught by an ESL-endorsed teacher, along with each student’s WIDA placement test level, most recent WIDA Access test level, exit date, and credits toward graduation in Language Arts and Math. The Monitoring report monitors ELL students’ progress on the WIDA assessments, Language Arts and Math CRTs and credits, total graduation credits, grade point average (GPA), and if they have a completed Individual ELL Educational Plan.

Students who score 4 on the WIDA ACCESS for ELL’s 2.0 are not considered Fluent but are placed on monitoring status for the current school year. These students may resume receiving direct EL services at the recommendation of teachers and administrators. Students who score in the 1 to 3 range on the WIDA ACCESS for ELL’s 2.0 receive direct EL instructional services at their school.

If a parent chooses to exercise the right to refuse EL services, the parent must do so in writing – either selecting refusal of services on the parent notification letter or via letter. A copy of the form or letter goes to the student’s school and is placed in the student’s permanent record. The form or letter also goes to the EL District Office to be entered into the ENCORE system. Parents may, in writing, reverse their services refusal or opt-out status at any time. The original reversal communication goes in students’ files maintained at schools and a copy is sent to the EL District Office.

### **c. Programming and Services**

The District’s Sheltered Instruction Program involves: mixed classrooms with English learners and non-English learners; instruction delivered by general education teachers who are also ESL-endorsed; a teacher providing instruction that simultaneously introduces both language and content, using specialized techniques and strategies to accommodate English learner’s linguistic needs; instruction focused on teaching academic content rather than the English language itself, even though acquisition of English may be one of the instructional goals; and yearly progress monitoring by administration of the

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<sup>10</sup> The USBE’s website reads, “LEAs are required to administer a WIDA Screener to newly enrolled students who indicate on the home language survey that they speak any language other than English. Screener is available to LEAs all year; however, federal law requires that students must be administered Screener within 30 days of enrollment within the first month of school, and within 10 days of enrollment thereafter.” See USBE, Assessments, <https://www.schools.utah.gov/assessment/assessments?mid=1173&tid=10>.

WIDA- ACCESS Language Proficiency Assessment and the Utah State Board of Education (USBE) end of level RISE tests in English Language Arts, Mathematics, and Science.

Students are monitored with a Second Language Academic Plan (SLAP). The SLAP includes fields for student name, grade level, WIDA scores, Language Arts CRT proficiency level, Math CRT proficient level, GPA, whether the student is on track for graduation, student strengths, areas of concern, academic learning targets, home strategies, resources needed, and incentive plan.

**d. Staffing**

According to data provided by the District to OCR, as of May 2021, the District had 1,787 ESL-endorsed staff members. Each District school has between one and 44 ESL-endorsed staff members. Additionally, the District employed 39 part-time “ESL Para Educators” or “Elementary ESL Tutors” (“Tutors”). The Tutors served 19 elementary schools and 10 secondary schools, for 1.2 hours to 5.9 hours per day.<sup>11</sup>

As stated above, OCR did not complete an investigation of the District’s policies and procedures regarding EL students; however, review of the data, records, and information provided by the District to OCR to date warrants a 302 agreement. Specifically, the District’s report raised question of whether all EL students are receiving direct English language development instruction from a qualified teacher and according to their individual need. Further, it is unclear whether students are exited or no longer receive English language development services only after they are determined to be proficient in the four skill areas of English.

**e. Exiting**

According to data provided by the District to OCR, the District exited 85 EL students in 2018, 80 EL students in 2019, and 65 EL students in 2020. The data show that the exited students in 2018 and 2020 had cumulative WIDA scores from 5 to 6; the scores for students exited in 2019 were not provided to OCR.

Parents are notified by mail when their students are exited from the EL program.<sup>12</sup> This is sent by the EL District Office, and typically annually, once the WIDA Access for ELL’s assessment results have been received at the District level. Once a student scores Level 5 on the WIDA Access for ELL’s assessment, they are considered Fluent, exited from the EL program, placed on monitoring status on June 30 of the current school year, and monitored for a period of not less than four years after the exit date. If the student maintains language and academic proficiency, as outlined in the monitoring process, the student is then placed on “Inactive” status at the end of the four-year period. These students will then be considered former LEP, and no further services are required. If the student does not maintain language and academic proficiency as outlined in the monitoring process, the student may be referred for direct EL services. These students are typically not re-assessed for language proficiency but may be looked at on a case-by-case basis.

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<sup>11</sup> Not all ESL Para Educators or Tutors were certified, ESL-endorsed teachers.

<sup>12</sup> The District maintains copies of this form letter in English, Marshallese, and Spanish, and relies on form letters from the USBE that are published in Arabic, Chinese, Portuguese, Somali, and Vietnamese.

#### **IV. EVIDENCE TO DATE: LEP PARENTS**

According to the District:

- The District provides interpretation and/or translation services related to individualized education program (IEP) or Section 504 team meetings, parent/teacher conferences, meetings with administrators, and other requested contexts.
- Student interpreters do not supplant professional interpretive services in instances where families have identified a need for services.
- The District maintains a list of translated documents and instructions on how to request interpretation on its translation and interpretation website.
- Through a plug-in, the District's website is available in eleven languages other than English and instructs visitors on how to secure translation and or interpretation services. The website includes translated documents.
- Parents are offered their students' special education documents – *e.g.*, IEP's, eligibilities, placements, and age of majority – in Spanish during team meetings.
- For interpretation, parents may use a school's bilingual staff member or call the District's Translation Services Coordinator.
- Parents may be given a "Who to Call" slip, which is available in 18 languages.
- Parents and staff may complete an Interpreter Request Form.

OCR found evidence that family members and other students were used for interpretation services, even in situations involving student safety or in IEP team meetings. Additionally, it is unclear whether approximately half of the individuals who the District identified as interpreters or translators are qualified to provide language assistance; specifically, OCR could not determine whether these individuals had been assessed to be proficient in both languages and received adequate training to interpret or translate.

OCR did not find evidence that language assistance is routinely provided during Section 504 meetings or that COVID-related communications were translated into languages other than Spanish. Moreover, evidence suggests that only one elementary school routinely translates newsletters into Spanish and that classroom information is not routinely translated or otherwise conveyed to LEP parents. Finally, OCR did not find – at least as of yet – evidence that classroom documents, such as fieldtrip information – were interpreted or translated for LEP parents.

#### **V. CONCLUSION**

We thank the District for being willing to voluntarily address the allegations raised by the Complainant. A copy of the signed Agreement is attached. OCR will monitor implementation of this Agreement through periodic reports from the District about the status of the Agreement terms. OCR will provide the District written notice of any deficiencies regarding implementation of the Agreement terms and will require prompt actions to address such deficiencies. OCR will inform the Complainant of the status of the monitoring, including providing the Complainant with copies of OCR's monitoring responses. If the District fails to implement the Agreement, OCR will take appropriate action, as described in the Agreement.

This concludes OCR's investigation of the 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 Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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 Agreement terms. When the monitoring phase of this case is complete, OCR will close this case and send a letter to the District, copied to the Complainant, 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 it should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint investigation. If this happens, the individual may file another complaint alleging such treatment.

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 seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Thank you for the District's attention to this matter. If you have any questions, please contact the attorneys assigned to this complaint: Jason Langberg (XXX-XXX-XXXX or XXXX@XXXX) and Allison Morris (XXX-XXX-XXXX or XXXX@XXXX).

Sincerely,

/s/

Angela Martinez-Gonzalez  
Supervisory General Attorney

cc (via email): Benjamin Onofrio, District Legal Counsel  
Sydnee Dickson, Utah State Superintendent of Public Instruction