



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII

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April 28, 2022

Gillian Chapman, Ed.D.
Superintendent of Schools
Teton County School District #1
PO Box 568
Jackson, WY 83001

By email only to gchapman@tcsd.edu

Re: OCR Case No. 08-22-1062
Teton County School District #1

Dear Dr. Chapman:

This letter is to advise you of the outcome of the complaint that the United States Department of Education (Department), Office for Civil Rights (OCR) received on November 9, 2021 against Teton County School District #1 (the District). The complaint alleged that the District discriminates against students on the basis of their national origin and disabilities. Specifically, the complaint alleges that:

- English Learner (EL) students are overrepresented in special education;
- EL students are underrepresented in gifted and talented education;
- EL male students attending elementary school with behavior issues are retained or placed in special education;
- Newcomer EL students are retained; and
- The District's EL program lacks qualified staff.

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; Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department; and Title II of the Americans with Disabilities Act of 1990 and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public

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

entities. Because the District receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to these laws and regulations.

On January 10, 2022, we notified the District that OCR was opening an investigation of the above allegations. We also sent the District a data request. The District expressed interest in voluntarily resolving any concerns identified by OCR during a January 11, 2022 phone call. The District provided the data requested by OCR. During a March 24, 2022 conversation with the District about the District's data response, the District reiterated its interest in voluntarily resolving the complaint. Pursuant to Section 302 of OCR's *Case Processing Manual* (CPM), a complaint may be resolved when, before the conclusion of an investigation, a recipient expresses an interest in resolving the complaint and when OCR has determined that identified concerns can be addressed through a voluntary resolution agreement. OCR has determined that the concerns identified during the course of the investigation can be addressed through a voluntary resolution agreement and that a voluntary resolution agreement is also an efficient way to resolve this complaint. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the voluntary Resolution Agreement (Agreement) in this case.

Legal Standards

Under Title VI, school districts must provide equal educational opportunity to EL students, including taking affirmative steps to address the language needs of EL students. When determining whether 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. *See Castañeda v. Pickard*, 648 F. 2d 989, 1009-10 (5th Cir. 1981). 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; and
- 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.

Investigation to Date

OCR's investigation included interviewing the Complainant; reviewing documents pertinent to the complaint allegations, including extensive information, records, and data from the District; and interviews of two District administrators.

Following the interviews and review of the submitted documentation, OCR learned the following:

General Information

During the 2021-22 school year (SY), the District's total student population of 2,817 included 425 current EL students, making EL students approximately 15% of the District's total student population. 50 Newcomer EL students enrolled in the District during the 2021-22 school year, a record-high number. All of the Newcomer EL students with the exception of one speak Spanish.

EL Programming and Services

The District currently provides the following programming and services to ELs: Dual Immersion (DI); Sheltered Instruction; Content-Based ESL; Heritage Language; and programming for Newcomers and Recently Arrived Immigrant ELs. The District has the only DI program in Wyoming, at Munger Mountain Elementary School, which opened in 2018.

ELs and Special Education

Students who are identified as EL and as special education students receive both EL services and special education services. It appears that a high percentage of EL students have been identified as special education students: Of the 425 EL students in the District, 105 have Individualized Education Programs (IEPs). The District notes that a high percentage of EL students are placed on IEPs in preschool and that when those students begin attending a District school, the District reevaluates the students and determines whether IEPs are necessary.

The District requires that IEPs for EL students address EL status and EL justification and data/scores in the present levels of academic achievement and functional performance

statements. The District also requires that case managers for EL students who need special education services collaborate with an EL specialist to identify linguistically appropriate goals and objectives and English language development services to help the EL students develop English fluency. The District has Spanish versions of key documents including “IEP Agenda” and “Notice of Procedural Safeguards – Individuals with Disabilities Education Act (IDEA).”

ELs and Gifted and Talented Education

The District’s gifted and talented program is called “PEAK” and is only offered in elementary school. The District’s secondary students can access advanced courses by choice, without any criteria to test into advanced courses or qualify for advanced courses. None of the 59 students in the District’s PEAK program for the 2021-22 SY are ELs. The District acknowledges that ELs are underrepresented in gifted and talented education, and the District has been working to remedy this.

Exiting and Monitoring

Students are exited with a WIDA ACCESS 2.0 score of 4.6 or higher on the composite score and a 4.3 in the literacy domain on the annual EL assessment. The District monitors former EL students for four years.

Staff

The District notes that recruiting and retaining staff is a challenge given the lack of affordable housing in Teton County. Given those challenges, the District sponsored EL certification classes for existing staff members. Given the District’s size, in the past, each school principal is also a director of a program, such as EL or gifted and talented programming.

Program Evaluation

The District examines data for its students each year in late winter/early spring, but has not been doing formal program evaluations of its EL program. The District states that it applies a continuous improvement mindset when examining the data. After examining its data for the 2019-2020 school year, the District noted that EL students who received direct English Language Development instruction showed good growth compared to EL students who received sheltered instruction by a classroom teacher and compared to EL students who were in classrooms with EL teacher support. Based on that examination, the District stated that it would change EL services to provide more EL students the opportunity to receive direct instruction.

Based on the information learned through the data response and interviews, OCR noted concerns that the District is not performing formal program evaluations, that EL students are underrepresented in gifted and talented programming, and that EL students are overrepresented in special education.

As previously noted, during January 11, 2022 and March 24, 2022 phone calls with OCR, the District expressed a willingness to voluntarily resolve the complaint.

Resolution

We note that the District voluntarily took actions to address the underrepresentation of EL students in gifted and talented education: In 2020, the District stopped relying solely on parent or teacher nominations to determine which second graders should be screened for the District's gifted and talented program. The District also consulted with experts in the field of gifted education. We also note that the District has taken other voluntary actions to improve its EL programming: For the 2022-23 school year, the District will have an administrator dedicated solely to the District's EL programming. The District also recently assembled an EL Leadership Team and recently hired a Family Engagement Coordinator.

On April 11, 2022, we sent the District a proposed Agreement. The District sent OCR the enclosed signed Agreement on April 27, 2022. When fully implemented, the Agreement will resolve the allegations raised in this complaint. The provisions of the Agreement are aligned with the allegations and issues raised by the Complainant and the information that was obtained during OCR's investigation, and the provisions of the Agreement are consistent with the applicable statutes and regulations. OCR will monitor the District's implementation of the Agreement until the District is in compliance with the statutes and regulations at issue in the case. Failure to implement the Agreement could result in OCR reopening the complaint. OCR will promptly provide written notice of any deficiencies with respect to the 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, which may include enforcement actions.

OCR is closing the investigative phase of the case effective the date of this letter. The case is now in the monitoring phase. The monitoring phase of the case will be completed when OCR determines that the District has fulfilled all of the terms of the Agreement. When the monitoring phase of the case is complete, OCR will close case number 08-22-1062 and will send a letter to the Complainant and to the District stating that the case is closed.

This letter sets forth OCR's determination in an individual 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.

Recipients of Federal funds are prohibited from intimidation, harassment, or retaliation against individuals filing a complaint 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.

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Please note the Complainant may have the right to file a private suit in Federal court whether or not OCR finds a violation.

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, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

We thank the District for being willing to voluntarily address the allegations raised by the complaint. We appreciate the District's attention to this matter and look forward to working with the District to meet the terms of the Agreement.

If you have any questions, please contact XXXX, the OCR attorney assigned to this complaint, at 303-844-XXXX or XXX.

Sincerely,

/s/

XXXX
Supervisory Attorney

Enclosure – Resolution Agreement

cc: Brian Schroeder, Wyoming Superintendent of Public Instruction (by email only and without enclosure)