



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII

ARIZONA
COLORADO
NEW MEXICO
UTAH
WYOMING

August 3, 2022

Dr. Bethany Massey, Superintendent
Lake County School District
328 West 5th Street
Leadville, CO 80461

Sent via email only to: XXX@XXX

Re: Lake County School District
OCR Case Number 08-22-1181

Dear Superintendent Massey:

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 February 4, 2022, against Lake County School District (District). The complaint alleges that the District discriminates against English Learner (EL) students on the basis of national origin. Specifically, the complaint alleges that the District fails to:

1. Provide all EL students that are identified with language assistance services that address their level of English language proficiency and give them an equal opportunity to meaningfully and equally participate in the District's programs;
2. Provide dual services (special education and English language) to EL students with disabilities;
3. Identify and assess EL students in need of language assistance in a timely manner;
4. Provide EL students with a language assistance program that is educationally sound and proven successful;
5. Provide qualified staff and sufficient resources to effectively implement the District's chosen program;
6. Ensure EL students have equal opportunities to meaningfully participate in the grade-appropriate core curriculum;
7. Monitor and evaluate EL students in language assistance programs to ensure their progress in acquiring English proficiency and meaningfully accessing grade level core content;
8. Remedy any academic deficits EL students incur while in a language assistance program;
9. Exit EL students from language assistance programs when they are proficient in English;
10. Monitor exited students to ensure they were not prematurely exited and that any academic deficits incurred in the language assistance program have been remedied; and
11. Evaluate the effectiveness of the District's language assistance program and modify any aspect found to be deficient.

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

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 and its implementing regulation at 34 Code of Federal Regulations (C.F.R.) 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 Department. As a recipient of Federal financial assistance from the Department, the District is subject to this law and its regulations.

On March 18, 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 provided the data requested by OCR in its data response. During a June 14, 2022 conversation with the District about OCR's investigation to date, the District expressed an 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 information, records, and data from the District; interviewing the XXX of Mountain Board of Cooperative Educational Services (BOCES)¹; and interviewing eight District personnel [X-phrase redacted-X]. The investigation did not reach the point of assessing the veracity of the information presented by the District; additional requests for data and records and additional interviews would have been requested in a full investigation.

During the course of the investigation, OCR learned the following:

General Information

The District is a small, rural district. According to the Colorado Department of Education (CDE), the District served 1,010 students during the 2021-22 school year (SY). The District consists of the following schools:

1. Lake County Elementary School (LCES) (grades K-2)
2. Lake County Intermediate School (LCIS) (grades 3-6)
3. Lake County High School (LCHS) (grades 7-12)
4. Cloud City High School (CCHS) (an alternative high school for grades 10-12)

According to CDE, 644 of the District's 1,010 students are Hispanic. According to the District, during the 2021-22 SY, there were approximately 200 EL students at LCES and LCIS, approximately 138 EL students at LCHS, and approximately 11 EL students at CCHS, for a total of 349 EL students, making EL students approximately 34% of the District's total student population.

¹ The BOCES supports the District in implementation of services for students with disabilities who have an individualized education program (IEP).

Identification and Assessment

The District uses the following identification and assessment process: Upon enrollment, families complete a Home Language Survey (HLS) to gather information about students' language backgrounds and to identify students whose primary or home language is other than English. Students who begin the SY with the District and have HLSs that note a language other than English complete an English language proficiency test within 30 days of initial enrollment; students who enroll after the start of the SY complete an English language proficiency test within 14 days of enrollment. However, the District acknowledged that delays in this process sometimes occur.

The District uses the WIDA ACCESS Placement Test screener (ACCESS) to assess English language proficiency. ACCESS assesses listening, reading, writing, and speaking and overall proficiency. ACCESS scores range from 1.0 to 6.0, with 1.0 being the lowest and 6.0 being the highest.

EL Programming and Services

District EL students with an ACCESS score of 2.0 or lower are designated as “Newcomers” and get some pull-out, English language development (ELD) support from an ELD teacher. District EL students with an ACCESS score of 3.0 or higher are in general education classes with little ELD support, although students with an ACCESS score in the 3s have an English language proficiency level of “Developing” and are not yet considered proficient. The District described those students as receiving “Tier 1 support,” which is distinct from ELD support. The general education teachers and paraprofessionals do not have qualifications or endorsements for serving EL students. The District provides general education teachers with training in Tier 1 support for EL students and with training in best practices to support Multilingual students; the District’s data response noted that implementation of these best practices is per teacher capacity. Students with an ACCESS score of 4.0 overall and 4.0 in literacy have an English language proficiency level of “Expanding,” and the District evaluates those students for exit from EL programming.

Since the District’s largest cohort of EL students consists of EL students with an ACCESS score in the 3s, which means that the students are not yet proficient in English, many EL students are not getting needed ELD support from an ELD teacher: Approximately 27 of 83 EL students at LCES, 35 of 68 EL students at LCIS, 49 of 78 EL students at LCHS, and 7 out of 11 EL students at CCHS.

In the middle of the 2021-22 school year, LCES started using “Hands on English,” which is a WIDA recommended curriculum and a pull-out program. LCHS uses “Get Ready!” for its Newcomers and “Get Ready!” and “Language Launch” for other EL students who receive direct English language development instruction. LCIS and CCHS do not appear to have language assistance programs. LCHS’s ELD Teacher started working with EL students at CCHS in February of 2022.

ELs and Special Education

The District strives to provide students who are dually identified as EL students and as special education students with both EL services and special education services; however, not all students who are dually identified are getting both EL services and special education services. Most assessments to determine eligibility for special education services appear to have been conducted in English. It does not appear that staff members qualified in EL instruction and second language acquisition are involved in placement decisions for EL students who need special education services. The District's special education providers consult with staff members qualified in EL instruction and second language acquisition for guidance on effective strategies for their EL students. Staff members qualified in EL instruction and second language acquisition sometimes attend special education team meetings.

Exiting and Monitoring

As previously noted, the District performs an exit review for EL students with an ACCESS score of 4.0 overall and 4.0 literacy. When performing exit reviews, the District examines the body of evidence, which includes grades; other standardized test scores, including Colorado Measures of Academic Success (CMAS), Standardized Testing and Reporting (STAR) reading and math scores, Northwest Evaluation Association (NWEA) reading, and math scores; and anecdotal information from the students' teachers. The District does not track the progress and performance of students exited from the District's EL programming.

Staff

Until November of 2021, the District had one full-time ELD teacher serving grades K-6 at LCES and LCIS. In November of 2021, the District hired another teacher to serve EL students in grades K-2 at LCES, and the existing full-time ELD teacher switched from serving grades K-6 at both LCES and LCIS to serving grades 3-6 at LCIS.

LCHS currently has one full-time ELD teacher serving all its EL students; beginning in February of 2022, LCHS's ELD teacher also began working with CCHS's EL students in a limited capacity. Before then, EL students at CCHS were not receiving any English language development support.

The District prefers that EL teachers have an endorsement for serving EL students, but does not currently require that EL teachers have such an endorsement. Currently, only one of the District's ELD teachers has a Colorado endorsement. The District notes that recruiting staff is a challenge.

Program Evaluation

The District has not been evaluating the effectiveness of its EL program in recent years. The District recognizes that it must monitor and compare, over time, the academic performance of EL students in its EL program and of EL students who exited the program, relative to the academic performance of the students' never-EL peers.

Based on the information learned through the data response and interviews, OCR noted concerns that the District is not evaluating the effectiveness of its EL program, that the academic progress of former EL students is not being monitored, and that all EL students are not receiving English language development instruction from a qualified teacher and according to their individual need.

As previously noted, during a June 14, 2022 phone call with OCR, the District expressed a willingness to voluntarily resolve the complaint.

Resolution

On July 5, 2022, we sent the District a proposed Agreement. The District sent OCR the enclosed signed Agreement on August 3, 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 statute and regulations. OCR will monitor the District's implementation of the Agreement until the District is in compliance with the statute 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 08-22-1181 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.

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 XXX, one of the attorneys assigned to this case.

Sincerely,

/s/

J. Aaron Romine
Regional Director

Attachment: Resolution Agreement

cc: Katy Anthes, Colorado Commissioner of Education (by email only and without attachment)