

Resolution Agreement

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

The United States Department of Education (Department), Office for Civil Rights (OCR), initiated investigation of the above-referenced complaint brought against Lake County School District (District), 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 on the basis of race, color, or national origin in programs and activities that receive financial assistance from the U.S. Department of Education.

During OCR's investigation, before OCR had made any findings, the District indicated its willingness to take steps necessary to ensure compliance with Title VI. Pursuant to Section 302 of OCR's *Case Processing Manual*, a complaint may be resolved when, before the conclusion of an investigation, a recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified concerns that can be addressed through a resolution agreement.

Accordingly, to resolve the issues of this investigation, the District voluntarily agrees to take the following actions. This agreement does not constitute an admission of liability, non-compliance, or wrongdoing by the District.

- I. **English Learner Expert**: The District will identify or retain¹ an expert in the development and implementation of effective programs for English learners (ELs). The expert will work with District staff on the development of the ELD Compensatory Services Plan, EL Plan, implementation of the EL Plan, and the training specified in this Agreement.

Reporting Requirement I(A): Within 30 calendar days of signing this Agreement, the District will provide to OCR the name, contact information, and qualifications of the proposed EL expert for OCR's review and approval. The District agrees to fully and promptly respond to OCR's concerns, if any, until OCR notifies the District that the EL expert is approved. If OCR does not approve a proposed EL expert, the District will have another 30 calendar days to provide to OCR the name, contact information, and qualifications of another EL expert for OCR's review and approval.

Reporting Requirement I(B): Within 30 calendar days of OCR's approval of the EL expert, the District will provide OCR with documentation that demonstrates the District has secured, in writing, the expert's services.²

- II. **Development of EL Plan**: The District will develop an EL Plan to ensure that national origin minority EL students have equal access to the District's education program. The EL Plan will specify how the District's EL students will receive direct English language development

¹ If the District does not have an employee with expertise in this area, the District agrees to contract with or otherwise hire an expert in this field for the purpose of implementing this Agreement.

² Such documentation may include a contract, memorandum of understanding, or other written agreement.

(ELD) instruction until they are proficient in all four domains of English (*i.e.*, speaking, listening, reading, and writing), according to ACCESS scores. The District's EL Plan will also specify how the District will provide ELD instruction taught by qualified EL teachers to all NEP EL students enrolled in the District, according to the EL students' level of proficiency, and how the District will ensure that all NEP EL students attain both English proficiency and parity of participation in the standard instructional program within a reasonable length of time. The approach/methodology must be recognized as sound by some experts in the field or recognized as a legitimate educational strategy.

The District's EL Plan will also specify how the District will provide ELD instruction taught by qualified EL teachers to all LEP EL students enrolled in the District, according to the EL students' level of proficiency, and how the District will ensure that all LEP EL students attain both English proficiency and parity of participation in the standard instructional program within a reasonable length of time. The approach/methodology must be recognized as sound by some experts in the field or recognized as a legitimate educational strategy.

The District's EL Plan will also specify how the District will provide ELD support directed by qualified EL teachers to all FEP Monitor Year 1 and 2 EL students enrolled in the District, according to the EL students' level of proficiency, and how the District will ensure that all FEP EL students attain parity of participation in the standard instructional program within a reasonable length of time.

The EL Plan will address, at a minimum, how the District will:

- A. Maintain records for all EL students³, including information that allows the District to track the services provided to EL students, such as student name, school, grade level, assessment results, and language proficiency level, and the type, amount, and duration of English language development (ELD) instruction provided.
- B. Ensure that the District provides all EL students, including EL students with disabilities, with English language assistance (including ELD instruction that is based on the EL students' level of English language proficiency) that is educationally sound in theory and effective in practice in teaching them English. The EL plan will include descriptions of:
 1. The EL program(s) that will be used to instruct EL students at each of the District's schools;
 2. How the District will provide direct ELD instruction to all EL students in the District that takes into account each EL student's English proficiency level, grade level, educational background, language background, and disability (if any), until the student achieves proficiency in all four domains of English (speaking, listening, reading, and writing);

³ The term "EL Student(s)" includes non-English proficient (NEP), limited English proficient (LEP), and fluent English proficient (FEP) student(s), unless otherwise noted throughout the Agreement.

3. How EL instruction will be differentiated to address the needs of EL students at every English proficiency level and grade level, in all four language domains;
 4. How schools will provide sufficient direct instruction of the English language by qualified teachers who have mastered the skills necessary to effectively teach in the District's selected EL program(s) and address the varied needs of the EL students; and
 5. The curriculum, appropriate materials, and minimum amount of time necessary for ELD instruction for each grade level and English proficiency level.
- C. Ensure that students who may need language assistance are identified and assessed in a timely manner;
- D. Ensure that teachers who are delivering direct ELD instruction to each EL student are qualified as follows:
1. The District agrees that the primary providers of EL instruction for EL students will be licensed teachers who are sufficiently trained and qualified to deliver EL instruction, including direct English language development services.
 2. The District will show how it will determine that its teachers have mastered the skills necessary to teach effectively in a program for EL students. For example, the District may require that teachers who provide EL services have a Colorado license (which may include an ELD endorsement) and 45 hours of professional development in culturally and linguistically diverse education. The District will also use validated evaluative instruments that have been shown to accurately measure the skills in question, and have EL teachers' classroom performance evaluated by someone familiar with the method being used.
- E. Ensure that EL program staffing is sufficient to provide all EL students with ELD instruction delivered by qualified teachers. The District will incorporate into the EL Plan procedures to ensure that the District has assigned a sufficient number of qualified teachers to properly implement the District's selected EL program(s) and services. The procedures will include the following:
1. The District will describe the staffing resources the District needs to effectively implement the District's selected EL program(s), including the training and qualifications of staff that provide EL services;

2. The District will determine how many qualified teachers and other staff members are necessary to fully implement the District's selected EL program(s). When making this determination, the District will consider the selected EL program(s) and the number of EL students and the training and qualifications of staff needed to implement each service program;
 3. The District will determine whether there are a sufficient number of adequately trained staff members to properly implement the District's EL program(s) and services and, if not, how many additional staff members need to be trained, hired, or assigned to the EL program to fill those staff needs. The District will implement a plan to fully and timely meet its EL staffing needs. The District will describe any specific training program for its staff and include supporting documentation regarding its development and implementation;
 4. The District will implement the staffing plan described in the preceding paragraphs II(D) and II(E) to meet its staffing needs. The District will monitor the staffing plan's benchmarks or timelines to ensure adequate and timely progress in meeting the District's staff needs.
- F. Provide all EL students in the EL program with appropriate instructional materials, including adequate quantities of ELD materials available at the appropriate English proficiency and grade levels. The District will incorporate into the EL Plan procedures to ensure that EL students are provided with instructional materials that are comparable in the quality, availability, quantity, and age or grade-level to those provided for non-EL students. The instructional materials procedures will include the following:
1. The District will survey staff members (EL, general education, and special education teachers serving EL students) at least annually to determine the availability of EL materials, the need for additional EL materials, and staff training needs related to using EL-designed materials;
 2. The District will take necessary steps to respond to needs identified in the survey for EL materials; and
 3. The District will notify staff members about the availability of existing EL-related resources, and train them about the use of the resources as necessary.
- G. Provide all EL students with meaningful access to the core curriculum so that they can achieve parity of participation in the standard instructional program within a reasonable length of time, including descriptions of how the District will ensure that:
1. Any academic deficits incurred by current and former EL students are addressed;

2. All EL students, at all levels of English proficiency, have equal access to grade-appropriate core curriculum through instruction that is targeted to their level of English language proficiency, including any supplemental services, interventions or supports necessary to ensure equal access; and
 3. The use of supplemental materials for EL students at all English proficiency levels are appropriate to the content area being taught and the English proficiency level of students.
- H. Provide ELD instruction to EL students with disabilities, including a commitment that, for each student who receives ELD and special education dual services, the District will ensure that the student's Individualized Education Plan (IEP) or Section 504 Plan specifies the setting in which ELD will be provided and contains the student's individual English language objectives/goals. The District will also ensure the following:

That when conducting evaluations for special education and disability-related services, it will consider the English language proficiency of the EL student in determining the appropriate assessments and other evaluation materials to be used.

1. Any group of persons making diagnostic or special education evaluation and placement decisions for an EL student shall include persons knowledgeable about the student's language and culture, and the group must document that such information was considered;
 2. The group of persons making diagnostic or special education evaluation and placement decisions for an EL student shall consider the EL student's current objective assessments of proficiency in all four language domains (speaking, reading, writing, and comprehension), and the effects of language and culture on the validity and reliability of assessments considered in placement decisions;
 3. Delivery of EL services will be noted in the student IEP and/or Section 504 plan during annual reviews; and
 4. Staff providing EL instruction to EL students with disabilities will be qualified in accordance with the District's EL Plan.
- I. Monitor the progress of all EL students to ensure they achieve English language proficiency and acquire content knowledge within a reasonable period of time. The EL Plan will include descriptions of the District's process for:
1. Benchmarking for expected growth in acquiring English and academic content knowledge;

2. Monitoring and assessing student progress toward English proficiency and academic content knowledge;
 3. Identifying students who are not making expected progress or meeting the District's program goals;
 4. Making interventions or instructional modifications available to EL students not making expected progress, including services for EL students who have been enrolled in the District for five or more years without meeting the reclassification criteria; and
 5. Defining when and in what form or setting the interventions in Paragraph II(I)(4) will be provided to EL students, 6. Determining the process and frequency for reviewing the success of any such interventions/modifications for an individual EL student; and 7. Outlining the steps that will be taken to modify the intervention program at schools where the programs are not successful.
- J. Exit EL students from the District's language assistance program when they are proficient in English. The EL Plan will include descriptions of:
1. The objective criteria the District will use for exiting and reclassifying EL Students;
 2. Additional criteria, which may include a "body of evidence" provided the District identifies the evidence it will use and the person(s) by title who will make the reclassification decision; and
 3. How the chosen standards will ensure students' meaningful participation in the general curriculum.
- K. Monitor the academic and English language proficiency of students exited from the EL program for at least two years after their exit from the EL program, including a description of:
1. How the District will use to ensure that EL personnel monitoring exited students will consider, at a minimum, report card grades, progress reports, teacher input, and standardized test scores to determine whether to provide recently exited EL students with timely and appropriate interventions, including inclusion in EL program and services if necessary; and
 2. How the District will identify the EL services to be provided to exited students who are unable to achieve at the same academic level as their English only proficient peers without EL program services.
- L. Evaluate the effectiveness of the District's EL program, including analyzing data

to determine whether the program goals are being met or whether program modifications are necessary;

M. Produce an annual report, including a description of:

1. The program goals and data (including, but not limited to, a comparison of EL, former EL, and never EL students' graduation, dropout, and retention rates) that will be gathered to measure whether the District's program goals are being met;
2. A timeline for collecting data and preparing an annual narrative report that analyzes the data;
3. The contents of the annual narrative report, including, if necessary, the specific reasons that program goals are not being met and identifying whether the failure to meet a goal is due to a deficit in program design or a deficit in program implementation;
4. Actions the District will take to correct any deficits found in program design or implementation; and
5. The administrators and staff members who are responsible for each step in the evaluation process.

Reporting Requirement II: Within 120 calendar days of the date OCR approves the expert required by Term I, the District will submit to OCR, for review and approval, a copy of the EL Plan required by Term II. The District agrees to fully and promptly respond to OCR's concerns, if any, until OCR notifies the District that the EL Plan is approved.

III: Implementation of EL Plan: The District will adopt and begin implementing the EL Plan. To demonstrate implementation, the District agrees to publish and widely disseminate the EL Plan, including, but not necessarily limited to, disseminating the EL Plan to all relevant District personnel and prominently posting the EL Plan on the District's website

Reporting Requirement III(A): Within 60 calendar days of OCR's approval of the District's EL Plan, the District will submit to OCR documentation demonstrating that it has adopted, published, and widely disseminated the EL Plan in accordance with Term III. The District agrees to fully and promptly respond to OCR's concerns, if any, until OCR notifies the District that no further reporting is required for Reporting Requirement III.

Reporting Requirement III(B): After the District has implemented the EL Plan for one full semester, the District will provide OCR with a written report within 30 calendar days after the semester's end. The written report will assess the degree of implementation of the EL Plan at the District level and at each school site, and if needed, will identify steps the District will take to ensure continued and full implementation of the EL Plan. The written report will also include documentation of the implementation of the EL Plan, including, but not limited

to, any data collected and reviewed pursuant to the EL Plan, a list of instructional materials used with EL students and evidence demonstrating that the materials are appropriate, documents demonstrating the monitoring of EL student progress, staffing information, a list of EL students who met the criteria for reclassification during the semester, and documentation that the District is monitoring the progress of students exited from the EL program. The District agrees to fully and promptly respond to OCR's concerns, if any, until OCR notifies the District that no further reporting is required for Reporting Requirement III(B).

Reporting Requirement III(C): By June 30 of each of the first two full school years of the implementation of the EL plan, the District will provide OCR with the results of its annual program evaluation, consistent with the OCR-approved evaluation plan described in Term II(L), including a copy of the annual written report required by that Term and documentation of any changes the District proposes to take, including regarding training, implementation, and/or the EL Plan, as a result of the evaluation.

The District understands that its proposed changes to training, implementation, and/or the EL Plan are subject to OCR review and approval, and agrees to respond to OCR's concerns, if any, until OCR approves the proposed changes. The District agrees to fully and promptly respond to OCR's concerns, if any, until OCR notifies the District that no further reporting is required for Reporting Requirement III(C).

IV. Notice to Parents/Guardians: The District will draft and disseminate an EL Notice to Parents/Guardians, which will describe the District's educational program and design for EL students and specify the interventions, modifications, and services that are available to EL students who are not making expected progress. The EL Notice to Parents/Guardians will contain information about how parents/guardians can make complaints or otherwise express dissatisfaction with the District's EL program and will state that compensatory ELD services may be available in certain situations. The EL Notice to Parents/Guardians will also include an assurance that parents/guardians will receive a response or remedy to their complaints/expressions of dissatisfaction. The EL Notice to Parents/Guardians and related communications with parents/guardians will be translated for Limited English Proficient parents/guardians in their respective languages in a manner that is consistent with the District's obligations under Title VI.

Reporting Requirement IV(A): Within 30 calendar days of OCR's approval of the District's EL Plan required by Term II, the District will submit to OCR, for review and approval, a copy of the draft EL Notice to Parents/Guardians. The District agrees to fully and promptly respond to OCR's concerns, if any, until OCR notifies the District that the EL Notice to Parents/Guardians is approved.

Reporting Requirement IV(B): Within 15 calendar days of OCR's approval of the EL Notice to Parents/Guardians, the District will issue the notice and provide OCR with documentation that the District has disseminated the EL Notice for Parents/Guardians. Such documentation may include copies of letters, emails, newsletters, webpages, etc. The District agrees to fully and promptly respond to OCR's concerns, if any, until OCR notifies the

District that no further reporting is required for Reporting Requirement IV(B).

- V. Training: To promote effective implementation of the EL Plan, the District will develop a training plan for OCR's review and approval. The training plan will specify the names, titles, and qualifications of those providing the training, the staff to be trained, the frequency and duration of the training to be provided, and will include the training materials that will be used in order to provide differentiated training to the following groups of employees:
- A. All building principals, and assistant principals, the Superintendent of Schools and the District Equity Director to ensure that they are prepared to oversee and implement the EL Plan at school sites. The District will ensure that administrators who are responsible for overall implementation of the EL Plan are adequately trained to:
 - 1. analyze student assessment data and use this data to assess the EL program effectiveness (of the area of their supervision such as a particular building) in having students reach their goals;
 - 2. use a data informed process to make instructional/programmatic changes; and
 - 3. meaningfully evaluate EL teachers' effectiveness in:
 - a. appropriately employing the training in the classroom; and,
 - b. adequately providing EL instruction selected to ensure that the EL program model successfully achieves its educational objectives.
 - B. To ensure that they are prepared to fulfill their responsibilities under the EL Plan and able to meet the needs of EL students in the classroom, all ELD teachers will be trained on how to:
 - 1. Deliver English language development instruction that is targeted to EL students' level of English language proficiency;
 - 2. use supplemental materials, strategies, or supports that are appropriate to the needs of EL students to ensure equal access to core content; and
 - 3. monitor the progress of EL students and provide interventions and support to EL students who are not making expected progress.
 - C. To ensure that they are prepared to fulfill their responsibilities under the EL Plan and able to meet the needs of EL students in the classroom, all K-12 classroom teachers will be trained according to the timeline on the OCR approved training plan on how to:
 - 1. Deliver instruction that incorporates research-based practices for supporting EL students' level of English language proficiency within the content area,

including the use of supplemental materials, strategies, or supports that are appropriate to the needs of EL students to ensure equal access to core content; and

2. monitor the progress of EL students in their classroom and provide interventions and support to EL students who are not making expected progress.
- D. To ensure that they are prepared to support students with disabilities as dually identified as EL and a student with disabilities through the setting of goals and providing disability-related services to EL students, all ELD Teachers and special education teachers, in addition to the training in Term V(C), will be trained on how to:
1. specify the setting in which ELD will be provided within the IEP and/or Section 504 Plans; and
 2. incorporate the English language objectives/goals in EL students' IEPs and/or Section 504 Plans.

Reporting Requirement V(A): Within 45 calendar days of OCR's approval of the EL Plan required by Term II, the District will submit to OCR, for review and approval, the training plan the District developed pursuant to Term V. The District agrees to fully and promptly respond to OCR's concerns, if any, until OCR notifies the District that the training plan is approved.

Reporting Requirement V(B): Within 150 calendar days of OCR's approval of the District's training plan, the District will provide OCR with documentation demonstrating that the training has been completed for all required employees. This documentation must include, minimally, for each training, the date(s) of the training, a list of all District staff required to attend, a list of training participants, and the training materials that were used.⁴ If any District staff who are required to complete the training are absent, the District will identify the staff member(s) and describe a plan to ensure that the individual(s) are trained. The District will promptly and fully address OCR's concerns, if any, until the District receives notification from OCR that no further reporting is required for Reporting Requirement V(B).

VI. ELD Compensatory Services Plan: The District will develop a plan to assess the need and provision of compensatory ELD services. The District will convene a team, which must include the EL expert and an administrator and an ELD teacher trained in the delivery of ELD services, to determine whether compensatory ELD services are appropriate for the student(s) identified below and, if so, how the District will deliver the services. The District

⁴ The District may request technical assistance from OCR and/or retain services from an outside provider, provided it complies with the provisions within Term V. If the District elects the latter, it must still provide the training materials in advance for OCR's review and approval.

will outline the following in its ELD compensatory services plan (ELD Compensatory Services Plan):

- A. Identification: The District will identify the following students attending school in the District during the 2022-23 school year:
 - 1. Students identified as EL students during the 2021-22 school year who did not sufficiently progress on ACCESS scores based on year over year growth over the last two test administrations as a result of not receiving ELD services directly from an ELD teacher during the 2021-22 school year;
 - 2. Students who were not properly identified as EL students during the 2021-22 school year; and,
 - 3. Students whose parent(s)/guardian(s) submit a complaint regarding insufficient services provided within the 2021-22 school year within 30 calendar days in response to the notice distributed pursuant to Term IV.

All identified student(s) will be listed in the ELD Compensatory Services Plan, regardless of the determination(s) made in the provisions below.

- B. Determination: The District will determine whether compensatory ELD services are appropriate for each student identified pursuant to Term VI(A) and will document the team's determinations in the ELD Compensatory Services Plan. For any student for whom the team determines compensatory ELD services are appropriate, the District will document the proposed compensatory services and its plan for providing the services, as required by Term VI(C) below. For any student for whom compensatory services are determined to be unnecessary, the District will explain its reasoning for this determination and provide documentation justifying the District's determination.
- C. Delivery: The District will additionally describe the following in its ELD Compensatory Services Plan:
 - 1. Type(s) and amount(s) of services to be provided for each student determined to need compensatory ELD services pursuant to Term VI.B;
 - 2. Name and title/position of the person who will provide the services;
 - 3. Location where the services will be provided; and,
 - 4. Timeframe and schedule for the delivery of the services.
- D. Notification of Compensatory ELD Services: The District will communicate, in writing, with the parent(s)/guardian(s) of each student for whom compensatory services are determined to be appropriate pursuant to Term VI(B). The

communication will include the offer of compensatory ELD services and the District's plan for providing the services at no cost to the student and/or the parent(s)/guardian(s). The communication will state that delivery of compensatory services is contingent upon acceptance by the parent(s)/guardian(s) and that parent(s)/guardian(s) have 30 days from the date of the communication to accept the offer of compensatory ELD services.

Reporting Requirement VI(A): Within 30 calendar days of OCR's approval of the EL Expert as required by Term I, the District will submit to OCR, for review and approval, the proposed ELD Compensatory Services Plan pursuant to Term VI with the following documentation: all agenda(s) and/or meeting note(s) of the team; documentation supporting the determinations made pursuant to Term VI.B; and, for any student identified pursuant to Term VI(A)(3), the complaint filed by the student's parent(s)/guardian(s) and the District's response thereto. The District agrees to fully and promptly respond to OCR's concerns, if any, until OCR notifies the District that the proposed ELD Services Plan is approved.

Reporting Requirement VI(B): Within 60 calendar days of OCR's approval of the District's ELD Compensatory Services Plan, the District will provide OCR with documentation demonstrating that it issued the notification(s) to parent(s)/guardian(s) as required by Term VI and provide any responses received from parent(s)/guardian(s) in response to the offer of compensatory services. The District agrees to fully and promptly respond to OCR's concerns, if any, until OCR notifies the District that no further reporting is required for Reporting Requirement VI(B).

Reporting Requirement VI(C): Within 90 calendar days of completing the provision of compensatory ELD services, as outlined in the approved ELD Compensatory Services Plan, the District will provide OCR with documentation demonstrating that it has fully implemented the ELD Compensatory Services Plan. The District will promptly and fully address OCR's concerns, if any, until the District receives notification from OCR that no further reporting is required for Reporting Requirement VI(C).

The District understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements contained herein. Further, the District understands that during the monitoring of this Agreement, if necessary, OCR may visit the District, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the District has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Title VI, which were at issue in this case.

The recipient understands that OCR will not close the monitoring of this Agreement until such time as OCR determines that the District is in compliance with the terms of the Agreement and the statute(s) and regulation(s) at issue in the case.

The District further understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this

Agreement. Before initiating administrative enforcement (pursuant to 34 C.F.R. §§ 100.9, 100.10) or judicial proceedings to enforce this Agreement, OCR will give the District written notice of the alleged breach and 60 calendar days to cure the alleged breach.

This Agreement will become effective immediately upon the signature of the District's representative below.

For Lake County School District

/s/

8/3/22

Bethany Massey, Superintendent

Date