



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

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REGION VIII

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April 24, 2023

Dr. Gabriel Trujillo, Superintendent
Tucson Unified School District
1010 E. Tenth St.
Tucson, AZ 85719

Sent via email to: XXXX@XXXX

Re: Tucson Unified School District
OCR Case Number 08-23-1063

Dear Superintendent Trujillo:

This letter is to notify you of the disposition of the above-referenced complaint against Tucson Unified School District (District), which the United States Department of Education (Department), Office for Civil Rights (OCR) received on October 25, 2022. The complaint alleges that the District discriminates against English Learner students (ELs) at Cholla High School (School) based on national origin. Specifically, the complaint alleges that the School is failing to:

1. timely identify ELs;
2. provide a language assistance program that is educationally sound, proven successful, and based on the individualized needs of EL students;
3. provide qualified staff and sufficient resources to effectively implement the District's chosen language assistance program;
4. ensure that parents' decisions to opt out of language assistance programs are knowing, voluntary, and appropriately documented;
5. meet the English language and other academic needs of ELs who opt out of formal language assistance programs; and
6. ensure that ELs have meaningful opportunity to participate in the grade-appropriate core curriculum (e.g., reading/language arts, math, science, and social studies).

OCR conducted this investigation under Title VI of the Civil Rights Act of 1964 (Title VI), and its implementing regulations, 34 Code of Federal Regulations (C.F.R.) Part 100, which prohibit discrimination based on race, color, or national origin in programs or activities receiving federal financial assistance. As a recipient of federal financial assistance from the Department, the District is subject to Title VI, its regulations, and OCR's jurisdiction.

I. SUMMARY OF OCR'S INVESTIGATION AND FINDINGS

Based on OCR's review of District records and interviews of twenty-nine District and School employees, OCR found by a preponderance of the evidence that during the 2021-22 and 2022-23 school years (SYs), the District failed to comply with Title VI, as well as Section 504 of the Rehabilitation Act of 1973

(Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II), for the following reasons:

- Potential ELs are not timely identified and assessed, which has resulted in some students who lack English proficiency not timely placed in an English language development (ELD) program.
- The School has not provided appropriate language assistance or ELD services to all ELs who qualify for services based on their assessment scores and have not been withdrawn from participation in EL programs by their parents.
- The District has not provided the staffing and sufficient to ensure that all ELs at the School receive ELD services from a qualified ELD teacher.
- The School has not: (a) ensured that parent decisions to opt their students out of the School's ELD program are knowing and voluntary; (b) provided parents with complete information regarding withdrawal in a language they can understand; and (c) accurately documented parent withdrawals. The School has not monitored the progress of the students in attaining English proficiency or accessing the core curriculum and has not communicated with parents regarding their students' lack of academic progress and need for ELD services.
- Not all ELs, particularly those with low levels of English proficiency and non-Spanish speakers, are meaningfully participating in the core curriculum.
- Some ELs with disabilities (dually identified students) are not receiving targeted ELD instruction from a qualified ELD teacher.
- Individualized Education Program (IEP) teams are not considering the language needs of dually identified students in self-contained settings when developing IEPs. Some IEP teams for dually identified students did not include a participant with knowledge in second language acquisition.
- The School has not consistently monitored reclassified students for two years after they exit the ELD program, addressed any deficits found, or documented these efforts.
- The District and School are not evaluating the effectiveness of the School's ELD program to ensure that ELs are acquiring English proficiency and the program is reasonably calculated to allow ELs to attain parity of participation in the standard instructional program within a reasonable period of time.

OCR's investigation also identified the following compliance concerns: The District is not monitoring whether the School's ELs who attend Tucson Unified Virtual Academy (TUVA) are receiving ELD services and have meaningful access to the core curriculum; the District is not annually monitoring the progress of all ELs in achieving English language proficiency, particularly opt-out students, students attending TUVA, and dually identified students in self-contained settings; and the School's records for ELs are incomplete and inconsistent and do not meet the District's record-keeping obligations under Title VI.

The District agreed to address OCR's noncompliance findings and compliance concerns under Title VI, Section 504, and Title II through the enclosed Resolution Agreement (Agreement).

II. BACKGROUND

The District serves about 47,000 students in 89 schools and programs. Approximately 11.75% of District students are ELs. The School serves students in grades 9 to 12. According to data from the District, during the 2021-22 SY, the School served 1,647 students, including 170 ELs (10.32%).¹ During the 2022-23 SY, the School served 1,690 students, including 215 ELs (12.72%). The School has the second highest percentage of ELs among the District's 11 high schools. The primary language of the School's ELs is Spanish; other students' primary languages include Arabic, Apache, Kinyarwanda, Russian, Swahili, and Tagalog.

According to the Arizona Department of Education's (ADE) report card for the School for the 2021-22 SY, no ELs, including ELs who were reclassified in the last four years, scored above "minimally proficient" (the lowest range possible) in English Language Arts (ELA), compared to 41% of all students. In math, no ELs tested were proficient. The 2022 four-year cohort graduation rate for ELs at the School was 50%, compared to 83.62% for all students.

During the 2021-22 SY, the School had two ELD teachers and an ELD Coordinator. During the 2022-23 SY, despite having more ELs than the previous school year, the School had one ELD teacher for the first semester and two ELD teachers for the second semester and no ELD Coordinator. The School's Instructional Data Intervention Coordinator (Data Coordinator) and Curriculum Service Provider (CSP) assisted with coordination of the ELD department and teaching ELD during the 2022-23 SY. The School's Assistant Principal of Curriculum and Instruction (Assistant Principal) supervises, among other staff, the ELD staff, Data Coordinator, and CSP.

III. IDENTIFICATION

School districts must identify and assess students in need of language assistance in a timely, valid, and reliable manner. There must be procedures in place to accurately and timely identify students with a Primary or Home Language Other than English (PHLOTE) and determine if they are ELs through a valid and reliable English language proficiency (ELP) assessment. School districts must provide notices within 30 days from the beginning of the school year to all parents of ELs regarding the ELs' identification and placement in a language instruction educational program.

District policy is that upon initial enrollment, parents complete a Home Language Survey (HLS) to identify PHLOTE students. If a parent enrolls the child online, the school must obtain a hard copy of the completed HLS. If a parent provides an answer other than English on the HLS or enrollment form, the student becomes a PHLOTE student, and the information is entered into the District's student information system (Synergy). All new PHLOTE students must be administered the Arizona English Language Learner Assessment (AZELLA) placement test within 30 calendar days of the beginning of the school year or within two weeks of enrollment thereafter. District policy is to provisionally place students in ELD classes based on teacher recommendations and informal assessments until AZELLA results are available.

Parents of all ELs must be notified of student placement using the "EL Parental Notification and Consent Form of Student Placement in an English Learner (EL) Program" (Consent Form) within 30 calendar days

¹ The ELs include students in the School's ELD program, as well as students whose parents have withdrawn them from the ELD program but who have not yet tested proficient in English.

after the start of the school year or two weeks following the student's placement thereafter. Copies of the enrollment form, HLS, and Consent Form are to be kept in a PHLOTE file in the student's cumulative file (CUM file).

The School witnesses did not provide OCR with a consistent description of the School's process for identifying ELs. The Assistant Principal told OCR that students are flagged in Synergy based on information that their parents provide about their home language in the online enrollment form, and the School tests those students who do not have current scores from their prior school. The Data Coordinator, who has been responsible for testing ELs during the 2022-23 SY, told OCR that the District's Language Acquisition Department (LAD) provides the School with a list of new students who need to be given the AZELLA placement test, and she relies on that list to determine who to test. Other witnesses, including the ELD Coordinator, Principal, and two Counselors, told OCR that they can tell which students are not English speakers and need to take the AZELLA placement test by talking to them during the registration process. None of the School witnesses mentioned the HLS when they described the School's identification process. When OCR asked if and how the HLS is used to identify students, School staff provided conflicting information.

OCR requested but the District did not provide any completed HLSs for the School for the 2021-22 SY. The Data Coordinator told OCR that, during the 2022-23 SY, the School did not send HLSs to new students until March 2023. As of March 20, 2023, 28 of the 115 students who were new to the School during the 2022-23 SY had returned signed HLSs. All the HLSs provided to OCR were signed in March 2023, although many of the students entered the District in August 2022.

The ELD Coordinator told OCR that there were delays during the 2021-22 SY in testing PHLOTE students who enrolled mid-year because of inadequate staffing and physical space, as well as technical issues with computers. The Data Coordinator stated there were delays in testing PHLOTE students who enrolled after the start of the 2022-23 SY due to the School's lack of an ELD Coordinator. Data confirms the delays during the 2022-23 SY. Twenty-two of the 31 students who took the AZELLA placement test were given the test within the timelines prescribed by the District. The other students were tested between 22 and 118 days from enrollment. For example, Student 1 registered on January 17, 2023, and as of March 24, 2023, had not been given the AZELLA placement test. The ELD Coordinator estimated that there were approximately three to four students per school year who were not given the AZELLA placement test who should have been. OCR identified two students, Students 3 and 4, who indicated a language other than English on the HLS in March 2023 but have not been given the AZELLA placement test, do not appear on the spreadsheets of PHLOTE students provided to OCR, and have been enrolled in regular English classes (not ELD classes) all school year.

OCR found that the School does not have a consistent and reliable process to ensure that all PHLOTE students are timely identified and assessed, which has resulted in some students who lack English proficiency not being identified or assessed, and therefore, not being placed in an ELD program within the timelines prescribed by the District. OCR additionally found that during the 2022-23 SY, the School did not timely notify the parents of ELs regarding their students' identification and placement in the School's ELD program.

IV. PROVISION OF AN APPROPRIATE ELD PROGRAM AND SERVICES

School districts must provide ELs with appropriate language assistance services. Language assistance services or programs for ELs must be educationally sound in theory and effective in practice; however,

the civil rights laws do not require any particular program or method of instruction for ELs. EL programs must also be designed and reasonably calculated to enable ELs to attain both English proficiency and parity of participation in the standard instructional program within a reasonable length of time. Each EL student's English proficiency level, grade level, and educational background must be considered to determine which EL program services are appropriate for the EL student. Students in EL programs must receive appropriate language assistance services until they are proficient in English and can participate meaningfully in the district's educational programs without language assistance services.

1. District and School Policy

The District and School use a structured English Immersion (SEI) model in which all ELs who have not been withdrawn from the ELD program by their parents are to receive targeted English language instruction (in lieu of regular English class) from an ELD teacher. During math, science, and social studies classes, ELs are supposed to receive integrated ELD instruction through sheltered instruction strategies alongside their non-EL peers.

During the 2021-22 SY, most ELs at the School were placed in a two-hour SEI model, which means they were supposed to receive targeted ELD instruction for two periods per day. Some students with lower levels of English proficiency were placed in a four-hour SEI model, which means they were supposed to receive targeted ELD instruction for four periods per day. The SEI four-hour model was discontinued at the School for the 2022-23 SY; all ELs not withdrawn by their parents were supposed to receive two periods per day of ELD targeted instruction with an ELD teacher, regardless of their proficiency level. The District also has a two-way dual language program and low-incidence English learner (LIEL) pull-out program, but those programs were not offered at the School during the 2021-22 and 2022-23 SYs.

Since Arizona no longer requires all core content teachers to have an SEI endorsement, District policy is that each school is supposed to designate SEI teachers in core subjects and make every effort to place ELs with those teachers so that they can receive integrated ELD instruction.

2. Placement and ELD Services

OCR's review of PHLOTE spreadsheets, course schedules, and transcripts showed that there are many ELs who were supposed to be in the School's ELD program during the 2021-22 and 2022-23 SYs but were not. Based on emails provided to OCR, the District's LAD has been aware, since at least May 2022, that not all ELs at the School are in an ELD program. On May 24, 2022, a LAD specialist notified the School that the District had discovered through a compliance check that many of the School's ELs were not scheduled into the ELD program for the 2022-23 SY. That day, the ELD Coordinator sent an email to District and School administrators with the ELD placements for 170 ELs enrolled for the 2022-23 SY. On August 1, 2022, the LAD Director emailed the Principal stating that 103 of the School's 185 ELs were not appropriately placed in two periods of ELD. On December 2, 2022, the District notified the School that there were still 20 ELs who had not been placed in ELD classes. On December 7, 2022, the Assistant Principal provided the District with the following information regarding the 20 students: three students' parents signed parent withdrawal forms in October or November 2022, ten students will be moved to ELD in January 2023,² one student attends Tucson Unified Virtual Academy (TUVA), three students want to stay in regular English and will be moved only if the School is forced to move them, and three

² At least three of these students had not been moved to ELD classes by February 28, 2023, and did not have signed parent withdrawals by that date.

students are in self-contained special education classes and will not be moved to ELD. As of January 19, 2023, the District was aware that eight ELs had not been placed in ELD classes.

In addition, as described more fully below in the staffing section, 70 students in the first two levels of ELD (ELD I and II) did not have a consistent ELD teacher for both periods of ELD targeted instruction during the first semester of the 2022-23 SY and have had no ELD teacher for one period of their ELD 1 or II classes during the second semester. In addition, 31 students in the Find My Voice through Writing (ELD V) class lacked a consistent, qualified teacher during the first semester of the 2022-23 SY.

There are also many students who are not in an ELD class that is appropriate for their proficiency level. The ELD Coordinator told OCR that sometimes ELs are moved to a level that does not match their proficiency to maintain manageable class sizes. She additionally told OCR that scheduling mistakes and conflicts sometimes lead to students receiving less than two hours of ELD targeted instruction. For example, students in a career and technical education (CTE) program were in one period of ELD and one regular English class to accommodate a scheduling conflict.

The Data Coordinator told OCR, and several teachers confirmed, that sometimes students were not moved from their provisional placement after the School received their initial AZELLA placement results. Both the ELD Coordinator and Data Coordinator told OCR that no one at the School checks students' schedules to ensure the students are in the correct ELD placement.

The ELD Coordinator and Data Coordinator also told OCR that the School is not faithfully implementing its chosen ELD program, SEI two-hour model, because ELs are placed in core classes with teachers who either lack an SEI endorsement or are not providing integrated ELD instruction for ELs despite possessing the endorsement. In addition, as discussed more fully in the access to core curriculum section, several witnesses told OCR that some of the teachers with an SEI endorsement are not consistently or effectively sheltering instruction for ELs.

Lastly, many witnesses acknowledged that there is a large number of ELs at the School who have been in the District's ELD program since kindergarten or first grade yet have not achieved proficiency on the AZELLA. Our review confirmed that there are many ELs at the School who have been in the District's ELD program for over ten years and have not yet achieved English proficiency.

OCR found, based on documents provided to OCR and witness statements, that the School has not provided a language assistance program to all of the School's ELs who qualify based on assessment scores and have not been withdrawn by their parents. Although the District and School have selected a State-approved SEI program, the School has not implemented that program with fidelity during the 2022-23 SY because many of the School's ELs have not received targeted ELD instruction from a qualified ELD teacher; or during the 2021-22 and 2022-23 SYs because not all ELs have received integrated ELD instruction from qualified teachers. Also, not all the School's ELs are receiving ELD program services that are appropriate for their English proficiency level. Lastly, many ELs at the School are not attaining English proficiency and parity of participation in the standard instructional program within a reasonable length of time.

V. STAFFING AND RESOURCES

School districts have an obligation to provide the personnel and resources necessary to effectively implement their chosen ELD programs. This obligation includes having highly qualified teachers to

provide language assistance services, trained administrators who can evaluate these teachers, and adequate and appropriate materials for the ELD programs. At a minimum, every school district is responsible for ensuring that there is an adequate number of teachers to instruct ELs and that these teachers have mastered the skills necessary to effectively teach in the district's program for ELs.

In addition to providing qualified teachers, school districts must provide ELs with adequate resources and, if appropriate, qualified support staff. Paraprofessionals, aides, or tutors may not take the place of qualified teachers and may be used only as an interim measure while the school district hires, trains, or otherwise secures enough qualified teachers to serve its ELs.

1. Staffing

The District requires ELD teachers to have: a) an Arizona Secondary Certificate with English as the approved area or a Subject Matter Expert Certificate 6-12 with English as the approved area; and b) a SEI, Bilingual, or ESL endorsement. Content teachers working with ELs delivering the required 100 minutes of sheltered instruction are required to have an SEI endorsement, Bilingual endorsement, or ESL endorsement.

During the 2021-22 SY, there were two full-time ELD teachers at the School and a full-time ELD Coordinator. ELD Teacher 1 had a Secondary Certificate with English as the approved area and Bilingual endorsement. ELD Teacher 2 had a Secondary Certificate with English and Spanish as the approved areas and Bilingual and ESL endorsements. The ELD Coordinator had a Secondary Certificate with Social Studies as the approved area and ESL endorsement.

The ELD Coordinator told OCR that, for the three years she was the Coordinator of the School's ELD program, she requested more ELD teachers for the program. At the start of first semester, there were 43 students in the ELD I class; six of the students were sitting on the floor because there was not enough room for desks. There were 27 to 28 students in the ELD IV classes and 30 students in the ELD III classes. According to one ELD teacher, the ELD IV class size reached 37 students at one point.

During the second semester, the School received District approval for one additional ELD teacher. The Former Principal told OCR that the School could not find an ELD teacher; however, OCR received conflicting evidence about whether a position was ever posted. The ELD I class, which had 34 students at the time, was split for the fourth quarter, and the ELD Coordinator received additional pay to teach three sections of ELD I students. The ELD Coordinator told OCR that she was unable to complete all her coordinator duties while also teaching three classes. The ELD Coordinator and both ELD teachers resigned from their positions at the School at the end of the 2021-22 SY; the teachers took other non-ELD teaching positions in the District.

At the start of the 2022-23 SY, the School had two full-time ELD teachers and no ELD Coordinator. ELD Teacher 3 has a Secondary Certificate with English as the approved area and SEI endorsement. ELD Teacher 4 resigned after a few weeks. He was a first-year teacher who had no experience teaching ELD and was working on his SEI endorsement. His five classes (ELD I Reading, ELD I Writing, ELD II Reading, ELD II Writing, and Find My Voice Through Writing) were assigned to different substitute teachers and School employees who lacked ELD credentials.

The Data Coordinator assisted with ELD Teacher 4's classes during the first semester. She has a Secondary Certificate with English as the approved area and ESL endorsement and is a certified trainer

for the State's SEI program. The Data Coordinator was also asked to assist with ELD program coordination, which she did with the help of the CSP, in addition to teaching ELD classes and her other duties as the Data Coordinator.

During the first semester, there were over 30 students in every ELD class, and 36 and 39 students in the ELD III and ELD II classes, respectively, which is larger than the class sizes of the non-ELD core classes taught by the teachers OCR interviewed. The Data Coordinator told OCR that she had difficulty managing the students' behavior with such large class sizes.

The Data Coordinator created an online program for those classes, which she administered from her office in a separate area on the School's campus. She gave the students assignments on Canvas and graded their work while a substitute teacher was physically present in the classroom. During the last few weeks of first semester, the CSP was physically present in the classroom for a few days because the classrooms had gotten chaotic with the substitutes. The CSP has an SEI endorsement; he had not previously taught ELD in the United States. Records provided to OCR show that, during first semester, there were 36 different substitutes and 23 School employees who covered the ELD classes in addition to the Data Coordinator and CSP.

Several School witnesses told OCR that they asked the District for assistance with staffing issues at the School. On October 6, 2022, the Assistant Principal sent an email to the LAD stating that the School was struggling with no ELD coordinator and no teacher to teach the nine ELD sections that had no teacher and were too large; and that the School needed assistance from the District with AZELLA testing and other coordinator duties. School witnesses told OCR that, in response, they received some help with AZELLA testing and filing from the District, but the assistance was insufficient.

Over the winter break, an individual was hired by the School to be an ELD coordinator/ELD teacher and started onboarding, but ultimately declined the position before the second semester. According to the LAD Director and Data Coordinator, the teacher thought the position was not a good fit for her because of the behavior problems in the ELD classes during first semester. At the start of the second semester, the CSP continued to assist substitute teachers with the classes that lacked a teacher. On or around January 9, 2023, ELD Teacher 5 was hired. She has an SEI endorsement and student taught in an English class at the School during the first semester of the 2022-23 SY. Spring 2023 was her first full-time teaching position and her first experience in an ELD class.

When ELD Teacher 5 started in her new position, the CSP assisted her in the classroom because she had 38 students in each class. The ELD I and II classes were split a few weeks later to make the class sizes more manageable. ELD Teacher 5 now teaches the ELD 1 and II students for one period per day in addition to the ELD V class. As of March 29, 2023, 16 different substitute teachers have been in the classroom with the ELD I and II students for the other period of the day. The Data Coordinator and CSP are the teacher of record for these classes but have not been physically present in the classroom all semester (other than the two weeks that the CSP assisted ELD Teacher 5). The Data Coordinator has been on leave for most of second semester.

ELD Teacher 5 told OCR that her classes are now a manageable size, particularly because approximately 30 of her 105 students do not regularly attend class. She said that, months into teaching, she has never met some of her students. ELD Teacher 3's classes have remained at between 30 and 35 students during second semester; approximately 25 to 30 students attend regularly.

OCR found that the District has not provided the staffing and administrative support sufficient to implement the SEI two-hour model at the School during the 2021-22 and 2022-23 SYs. As a result, approximately 41% of the ELs who are placed in the School's targeted ELD classes have had no qualified and consistent ELD teacher for one period during the second semester and two periods during the first semester of the 2022-23 SY, and an additional 18% had no ELD teacher for one period during the first semester.³ During both years, the ELD classes have been over-crowded, which has resulted in classroom management issues and made it more difficult to hire and retain qualified teachers. OCR additionally found that as a result of the staffing issues, many of the School ELD coordinator's duties, which are required by Title VI, Arizona law, and District policy, have not consistently occurred, including, but not limited to, timely testing new students with the AZELLA placement test, communicating with families of ELs, maintaining PHLOTE files, ensuring ELs are placed in ELD classes and that those classes are appropriate for their level of proficiency, providing professional development for teachers of ELs, and monitoring the progress of ELs in their ELD and other classes.

2. Curricular Materials and Physical Space

OCR found that the School lack sufficient materials and physical space for its EL students. The District uses the HEINLE Cengage Learning Visions (Visions) ESL curriculum in grades 6-12 and National Geographic Cengage Edge (Edge) in grades 9-12. Almost all the witness told OCR that the School has sufficient curricular materials, including textbooks, although they are sometimes difficult to locate. One ELD teacher told OCR that she could not fully teach the curriculum because she lacked the supplemental materials that are part of the program; the District did not replenish those materials because it is discontinuing the Visions program. The Data Coordinator told OCR that she created her own online program because the District did not purchase the online version of Visions. Several ELD teachers told OCR that they do not use the District textbooks because they are outdated. For example, ELD Teacher 2 told OCR that he looks at the curriculum map and finds his own way to teach the material based on his years of experience teaching ELD. Several witnesses told OCR that there is not enough physical space in the ELD classrooms for 35 to 40 students to sit at desks.

VI. OPT-OUT OF ELD PROGRAMS

Parents have a right to decline or opt their children out of a school district's ELD program or out of particular ELD services within an ELD program. School districts may not recommend that parents decline all or some services within an ELD program for any reason, including facilitating scheduling of special education services or other scheduling reasons. A parent's decision to opt out of an ELD program or particular ELD services must be knowing and voluntary. School districts must provide guidance in a language parents can understand to ensure that parents understand their child's rights, the range of ELD services that their child could receive, and the benefits of such services before voluntarily waiving them.

The District has a "Protocol for 6-12 Principals to Follow when Parents are Requesting a Withdrawal from EL Services." Withdrawal must be initiated by a parent, not the school. If a parent initiates withdrawal, school staff are supposed to meet with the parent to: (a) review the student's grades, standardized test scores, and AZELLA results; (b) explain the ELD program and its benefits; (c) explain the possible effects of not receiving ELD services; (d) explain that the student can be reenrolled in the ELD program at any time; and (e) explain that the student will continue to take the AZELLA until he or she

³ These numbers do not include the School's dually identified students who the District reported are supposed to be receiving targeted ELD instruction from their special education teacher as opposed to an ELD teacher.

becomes proficient. If, after being fully informed, the parent opts to withdraw the student from the ELD program, then the principal or the principal's designee is to email the school's LAD specialist, and copy the regional superintendent, documenting the conversation with the parent. Then, the LAD specialist completes a "Parent Request for Student Withdrawal from an English Language Learner Program" form and sends it to the school to obtain a parent signature. School staff are to obtain a parent signature on the form, email a scanned copy of the form back to the LAD specialist, and put the form in the student's cumulative file. The LAD specialist updates the student's status in Synergy as "PAR-WD." Finally, the school changes the student's class schedule.

The ELD Coordinator and ELD Teacher 2 told OCR that, during the 2021-22 SY, after the ELD staff complained about large ELD class sizes, some of the ELs with higher English proficiency were moved out of ELD classes. According to ELD Teacher 2, someone from the School called parents and told them that their students were doing well, did not need to be in the ELD program, and were missing opportunities to take other classes by being in the program.⁴ The Assistant Principal told OCR that she is aware of only one time that the School proactively reached out to a parent to discuss opting out of the ELD program. Email communications and other documents provided to OCR corroborate what the ELD Coordinator and ELD Teacher 2 told OCR regarding parent withdrawals. On March 22, 2022, after receiving an email from ELD Teacher 1 complaining about the unmanageable class size of her ELD III class, the Assistant Principal requested by email that the Data Coordinator call parents of ELs and talk to them about withdrawing their students from the ELD program, which the Data Coordinator agreed to do.

There are 15 students on the 2021-22 PHLOTE spreadsheet with a blank space for their program. The course schedules provided to OCR indicate that some of these students were removed from ELD classes for the second semester of the 2021-22 SY, even though they had not achieved English proficiency on the AZELLA, and their parents had not submitted a signed withdrawal form. For example, Student 7 was in ELD III during the first semester of the 2021-22 SY and English 9 during the second semester despite testing at the Basic level on the AZELLA in March 2022. The School changed his program designation on the PHLOTE spreadsheet from SEI two-hour to a blank. The District provided a parent withdrawal form for this student that was signed on August 24, 2022, but is not in his PHLOTE or CUM file.

As discussed above, on August 1, 2022, the District notified the School by email that 103 of the School's 185 students had not been placed in an ELD program. The Data Coordinator told OCR that after receiving this email, the School started moving ELs back into ELD classes. However, many of the students complained to her and the counselors about being in ELD classes, stating that they were not learning anything, had no teacher, or wanted to take other classes, and had their parents write letters requesting withdrawal. When the Data Coordinator received parent letters requesting withdrawal, she would call the students' parents with the student present. The student or a staff member would translate because the Data Coordinator does not speak Spanish.

From August to October 2022, the Data Coordinator sent several emails to the LAD requesting that at least 14 students be opted out of the ELD program. The LAD Director told OCR that the number of opt-out requests from the School to the LAD raised a red flag. The District called many of these students' parents to ascertain whether the withdrawals were parent-initiated. The LAD specialists and LAD Director told OCR that the District talked to 12 parents who all said that the School had called them, told them their students no longer needed ELD services, and asked them to sign a form. According to notes of these calls provided to OCR, one parent told the District that her daughter asked her to write a

⁴ OCR received conflicting evidence about who was making these calls.

withdrawal letter because a teacher or counselor told her that her chances of going to college would be negatively impacted by her being in ELD classes. Another mother said that she was told by the Assistant Principal that her son, Student 8, already knew English. Records provided to OCR indicate that Student 8 tested at the Pre-Emergent level on the AZELLA in February 2022.

Documents provided to OCR show that there are many more potential opt-outs who were placed in regular English classes for the first semester of the 2022-23 SY although their withdrawal paperwork was not signed until months later or not at all during first semester. For example, Student 9 was in a regular English class during first semester of the 2022-23 SY but her opt-out paperwork was not signed until January 30, 2023. Student 10 was in English 10 for the first semester although her parents have not signed a withdrawal form; she was subsequently moved to ELD. Other students, such as Student 11, who have not submitted opt-out paperwork, have remained in regular English classes during the second semester of the 2022-23 SY, despite assurances from School staff to the District that they would be moved to ELD in January 2023.

OCR found – based on its review of student records, communications between the District and School regarding parent withdrawals, and witness interviews – that the School recommended that parents and students opt out of the ELD program during the 2021-22 and 2022-23 SYs because of the staffing shortages and poor quality of ELD classes. In addition, the information provided to parents in connection with that decision was not always complete or in a language that the parent could understand, and students were interpreting for staff. OCR also found that the District and School have not maintained accurate and complete documentation of parent withdrawal discussions and decisions, making it difficult for OCR to ascertain how many students have been opted out and when. Lastly, OCR found that the School has removed students who indicate an interest in opting out from ELD classes before the District’s parent withdrawal process has been completed.

VII. MEETING THE ENGLISH-LANGUAGE AND OTHER ACADEMIC NEEDS OF STUDENTS OPTED OUT

If parents opt their children out of an EL program, the children retain their status as ELs, and the school district remains obligated to take “affirmative steps” to provide these ELs access to its educational programs by meeting their English-language and other academic needs. To ensure these needs are being met, school districts must periodically monitor the progress of students who have opted out of ELD programs. If an EL who opted out of the school district’s ELD program does not demonstrate appropriate growth in English proficiency, or struggles in one or more subjects due to language barriers, the school district should inform the EL’s parent of his or her lack of progress and offer the parent further opportunities to enroll the student in the ELD program at any time. In addition, opt-out ELs must have their English language proficiency assessed at least annually to gauge their progress in attaining English proficiency and to determine if they are still in need of and legally entitled to ELD services. Once opt-out ELs meet valid and reliable criteria for exiting from EL status, the school district should monitor their progress for at least two years, as it does with other exited ELs.

The PHLOTE spreadsheets provided to OCR indicate that there were 25 ELs at the School who were opt-outs during the 2021-22 SY and 34 opt-outs during the 2022-23 SY.⁵ The ELD Coordinator and Assistant Principal explained that opt-out students are not flagged in the District’s Synergy system. The ELD Coordinator told OCR that she would provide a list of those students to teachers at the start of the

⁵ As discussed above, there were likely more students, including those with blanks for their program, who were in the process of opting out.

semester. The Data Coordinator told OCR that she has not provided such a list to teachers during the 2022-23 SY. The ELD Coordinator, Data Coordinator, Former Principal, Principal, and Assistant Principal were unable to tell OCR the types of ELD support that opt-out students are getting in their core subjects, other than that instruction is supposed to be differentiated for them like all other students. All the non-ELD teachers who were interviewed told OCR that they do not know who the opt-out students are in their classes, and do not monitor these students or report their progress any differently than the other EL and non-EL students in their classes. The Data Coordinator told OCR that she is not aware of anyone at the School who has looked at the progress of opt-out students during the 2022-23 SY.

There was no indication in the documents and student files that OCR reviewed that parents of struggling opt-out students are notified and/or informed that they can re-enroll their students in the ELD program. On the contrary, Consent Forms, which indicate the ELD program and whether the student is performing at grade level, are *not* sent to the parents of opt-out students. Review of opt-out students' AZELLA History Reports, which were provided to OCR by the Data Coordinator, shows that many students who opted out of an ELD program years ago have not significantly improved their overall English proficiency score on the AZELLA. For example, Student 12 entered the District's ELD program in first grade at an overall proficiency level of Basic. His parents withdrew him from the ELD program when he was in sixth grade. In tenth grade, his overall proficiency on the AZELLA was still at the Basic level.

OCR found, based on student data and witness interviews, that the School is not monitoring the progress of the School's opt-out students in attaining English proficiency or accessing the core curriculum, and teachers do not know who the opt-out students are in their classes. Although the ELD Coordinator is aware that these students are generally not making progress in attaining English proficiency, there is no evidence that parents were provided this information (beyond receiving their children's AZELLA scores) or offered additional ELD or other academic support for their children.

VIII. ENGLISH LEARNERS' ACCESS TO CORE CURRICULUM

School districts must ensure ELs have equal opportunities to meaningfully participate in all curricular and extracurricular activities, including the core curriculum. School districts must provide ELs with language assistance programs, as well as assistance in other areas of the curriculum where their equal participation may be impaired by academic deficits incurred while they are learning English. One way to meet this obligation is to provide full access to the grade-appropriate core curriculum while using appropriate language assistance strategies in the core instruction so that ELs can participate meaningfully as they acquire English. In addition, school districts must enable ELs to attain both English proficiency and parity of participation in the standard instructional program within a reasonable period of time.

Several witnesses, including the ELD Coordinator and Data Coordinator, told OCR that ELs are struggling to access content in their core classes and that ELD skills are not reinforced in those classes (particularly in math and science). Two ELD teachers told OCR that their students, particularly those at the Pre-emergent level, would complain to them that they do not understand what is going on in their core classes, that their teachers are not helping them, and they are merely seated next to bilingual students who are not actually helpful.

These witnesses explained that one of the main reasons why ELs are struggling in their core classes is that no one at the School is ensuring that ELs are placed in core classes with EL trained teachers. The counselors told OCR that they try to place ELs with teachers who speak Spanish or have experience

working with ELs but do not look at whether the teacher has an EL endorsement. There are at least nine teachers at the School teaching core content to ELs during the 2022-23 SY who lack even an SEI endorsement. Some of the nine teachers have as many as 25 ELs in their classes. The District is aware that ELs are being taught by teachers who lack EL training. When LAD staff completed a walkthrough at the School in the Spring of 2022, they noted that one of the two core teachers observed was not SEI-endorsed and was not providing integrated ELD instruction.

OCR interviewed eight core general education teachers, who described varying methods and degrees of integrated ELD instruction in their classes. For example, Core Teacher 1 told OCR that she has not received any training on working with ELs and does not know how to shelter instruction. She said she assists ELs by providing extra time, modifying activities, grouping ELs with bilingual students, and using translation programs. Core Teacher 2 told OCR that he struggles to serve the students with low English proficiency and non-Spanish speaking ELs, who are often lost in class and give up. He uses the PowerPoint auto translation feature, provides written and verbal instructions, and seats ELs near bilingual students. Core Teacher 3 told OCR that he tries to build English vocabulary, allows ELs to demonstrate their content knowledge through diagrams and oral responses instead of written responses, and pairs ELs with bilingual students. Core Teacher 4, who is an English teacher with opt-out students in her class, said that she uses scaffolding strategies, such as graphic organizers, chunking, audio materials, one-to-one assistance, and translation of materials to assist ELs.

The ELD Coordinator and Data Coordinator told OCR that many of the teachers who possess the SEI endorsement are not adequately sheltering instruction. To obtain the endorsement, teachers must take one three-credit class in college and subsequently have minimal additional training on sheltering instruction. There was one District-led training on sheltered instruction for ELs in April 2021. Additional optional training is offered quarterly by the District. Some of the teachers interviewed by OCR have attended the optional trainings. In addition, during the 2021-22 SY, the ELD Coordinator did some brief presentations on scaffolding and literacy strategies during staff meetings. The Data Coordinator did one brief presentation at the beginning of the 2022-23 SY on displaying the ELD standards on the board in the classroom.

According to the Data Coordinator and CSP, Arizona law requires that ELD standards be incorporated into teachers' lesson plans, but the School does not require lesson plans be submitted to administration. The Data Coordinator explained that, as an alternative, the School's teachers are encouraged to post the ELD standards on the board in their classrooms. She additionally told OCR that she created a document with the ELD standards to assist teachers but very few, if any, are using the document.

The Principal and Assistant Principal told OCR that teachers are not specifically evaluated on how well they integrate instruction for ELs; rather, they are evaluated generally on how they differentiate instruction to meet the needs of all students. The Assistant Principal told OCR that she does not know how ELs are doing in their core classes, and there is no system in place to monitor their progress in their core classes. The ELD Coordinator told OCR that she once looked at ELs' grades in their core classes to see how they are doing. The Data Coordinator has not looked at ELs' grades during the 2022-23 SY. Several teachers told OCR that they do not separately monitor the progress of ELs in their classes but know that there are several ELs who are failing, largely because of poor attendance. For example, Core Teacher 5 told OCR that eight of her 20 ELs are failing her math class; Core Teacher 1 told OCR that four of her ELs are failing her science class; and Core Teacher 3 told OCR that a couple of ELs are failing his science class. ELD Teacher 3 told OCR that many of his ELs are failing multiple classes.

OCR found, based on witness statements, that not all ELs, particularly those with low levels of English proficiency and non-Spanish speakers, are meaningfully participating in the core curriculum because many of the School's core teachers lack training on how to meet the ELD and other academic needs of the ELs in their classes, and ELs generally are not gaining proficiency in a reasonable amount of time.

IX. ADDITIONAL AREAS OF NON-COMPLIANCE

During the investigation OCR identified other School practices that fail to comply with Title VI, and some practices involving ELs with disabilities (dually identified students) that fail to comply with Title VI, as well as Section 504 and Title II.

A. Dually Identified Students

School districts must provide dually identified students with both language assistance and disability-related services. To ensure that ELs with disabilities receive services that meet their language and special education needs, it is important for members of their IEP teams to include professionals with training in second language acquisition and an understanding of how to differentiate between the student's limited English proficiency and the student's disability.

Arizona law and District policy require that dually identified students receive at least 50 minutes of ELD targeted instruction and 50 minutes of ELD integrated instruction daily. For students in self-contained classrooms, the ELD targeted and integrated instruction can be provided within the self-contained classroom.

During the 2021-22 SY, there were 14 dually identified students at the School, three of whom were in a self-contained classroom more than 60% of the time and seven of whom were in the general education classroom more than 80% of the time and receive special education services in the resource room. OCR could not ascertain the placement of four of the dually identified students because they do not appear on the PHLOTE spreadsheet, and their schedules and IEPs were requested but not provided to OCR. During the 2022-23 SY, there are 25 dually identified students at the School, five of whom are in a self-contained classroom more than 20% of the time and twelve of whom are in the general education classroom more than 80% of the time. OCR could not ascertain the placement of eight of the dually identified students because they do not appear on the PHLOTE spreadsheet, and their schedules and IEPs were requested but not provided to OCR.

The School's Exceptional Education Director (Ex Ed Director) told OCR that the dually identified students in self-contained settings are receiving ELD targeted instruction from their special education teachers during Applied English, yet also told OCR that the special education teachers "do the same things" for ELs as other students with disabilities. In other words, dually identified students in self-contained settings do not receive specific ELD services. The ELD Coordinator told OCR that the dually identified students in self-contained settings are not receiving ELD direct instruction because "their disabilities override their need for ELD services." Two of the teachers of the self-contained classes (Special Education Teachers), who are both SEI-certified, told OCR that they have not been provided any specific materials, including the District curriculum, for working with ELs, and do not monitor the progress of their dually identified students in ELD or review their AZELLA scores. One of the Special Education Teachers does not recall if he has received professional development on working with ELs.

The IEP for one of the dually identified students in a self-contained setting states, “[The student] is identified as an English Language Learner, but is not receiving ELD services due to his lower cognitive skills.” The IEPs for four other students in the self-contained class state that the students are not ELs even though they have not tested proficient on the AZELLA (three have a proficiency level of Pre-emergent and one has not been tested since 2013) and have not been opted out of the ELD program by their parents.

Based on student schedules provided to OCR, during the 2021-22 SY, at least three of the dually identified students who receive special education services in the resource room did not receive the ELD targeted instruction indicated on the PHLOTE spreadsheet. For example, two of the students in the SEI four-hour model had only one period per day with an ELD teacher and a student in the SEI two-hour model was in English 9 instead of an ELD class. During the 2022-23 SY, one dually identified student who receives services in the resource room who was supposed to be in the SEI two-hour model, according to the PHLOTE spreadsheet, was placed in English 9 for one semester.

The Ex Ed Director told OCR that she does not have time to look at how the dually identified students are doing and does not know who the opted out dually identified students are to monitor them. The three opted-out dually identified students’ IEPs state that they are not ELs even though they are not English proficient based on the AZELLA.

The ELD Coordinator told OCR that, in years past, she attended some IEP team meetings, but not during the 2021-22 SY. The Data Coordinator said that she has attended some IEP meetings because she is the teacher of record but tries not to “because it is not her role.” One of the ELD teachers told OCR that he sometimes attends IEP meetings for his dually identified students, and another ELD teacher said that he has not attended an IEP meeting. Review of the attendee lists on IEPs revealed several instances in which an ELD teacher or ELD Coordinator was not present during an IEP team meeting for a dually identified student.

Based on the OCR’s review of records and witness interviews, OCR found that dually identified students in self-contained settings are not receiving targeted and integrated ELD instruction from a qualified ELD teacher that has the materials and training needed to implement a language assistance program that is educationally sound and proven successful. OCR additionally found that IEP teams are not considering the language needs of dually identified students in self-contained settings when developing IEPs and monitoring their progress in attaining English proficiency. OCR also found that some of the dually identified students in resource room, like other ELs at the School, are not placed in the ELD class indicated on the PHLOTE spreadsheet. Lastly, OCR found that some IEP teams for dually identified students did not include an ELD teacher or ELD coordinator, people knowledgeable about second language acquisition.

B. Monitoring of Exited ELs

After students have exited an EL program, school districts must monitor the academic progress of former ELs for at least two years to ensure that: (a) the students have not been prematurely exited; (b) any academic deficits they incurred as a result of participation in the EL program have been remedied; and (c) they are meaningfully participating in the standard instructional program comparable to their never-EL peers. When a school district’s monitoring of an exited EL indicates that a persistent language barrier may be the cause of academic difficulty because general education and remediation services have proven inadequate, school districts should re-test the student with a valid and reliable, grade-

appropriate English language proficiency test to determine if there is a persistent language barrier and must offer additional language assistance services where needed to meet its civil rights obligations.

The list of duties for high school ELD coordinators includes conducting a two-year review of all first- and second-year reclassified students from January to April by collecting progress grades, testing results, and teacher comments, and then making recommendations for those who are failing to make adequate progress. According to the PHLOTE spreadsheets provided to OCR, during the 2021-22 and 2022-23 SYs, there were 38 and 29 reclassified students, respectively, in the first two years of monitoring. The ELD Coordinator told OCR that four to six weeks before the end of the school year, monitoring forms are distributed to English teachers to fill out regarding the academic progress of the first- and second-year reclassified students in their classes. If the student is not making significant progress, the teacher is supposed to put a check mark on the form next to the additional supports that were provided to the student. The forms are supposed to be sent to the District with a copy placed in the students' blue folders; however, according to the ELD Coordinator, this often did not happen because teachers would not fill out the form.

The ELD Coordinator also told OCR that approximately half the students for whom forms were returned were performing well. According to the ELD Coordinator, Assistant Principal, and Interim Principal, reclassified students who are not performing well academically do not receive any additional language assistance or academic support. All three witnesses told OCR that they are not aware of any reclassified students who have taken the AZELLA again and/or re-entered the ELD program.

The ELD Coordinator additionally told OCR that she and the core teachers often did not know who the recently reclassified students are until they received the monitoring forms at the end of the school year, unless the students had been reclassified by her while at the School. She explained that she would send an email to teachers after receiving AZELLA scores of the students who she tested and achieved proficiency, and therefore, were reclassified, but that she and they had no way of knowing which students had been reclassified in the year or two before arriving at the School because there was no flag for those students in Synergy. The Data Coordinator told OCR that she is unaware of the process for monitoring reclassified students, and that the School has not done any monitoring of those students during the 2022-23 SY.

Much of the information regarding monitoring of reclassified students provided by the ELD Coordinator and Data Coordinator was confirmed through witness interviews and OCR's file review. All the math, science, and social studies teachers interviewed by OCR stated that they have not been notified by the District or School who the reclassified students are in their classes and generally do not know who those students are unless they had the student before. One of the two English teachers who was interviewed said that she completes the forms for reclassified students at the end of the year. The other told OCR that she has not completed any forms for ELs in the last five years.

While visiting the School, OCR was unable to locate CUM files for many of the first- and second-year reclassified students during the 2021-22 and 2022-23 SYs. Of the 19 files located and reviewed, six had parent notification forms of reclassification and eight had monitoring forms. For three of the students who had monitoring forms in their files, the monitoring was completed by their middle school – not the School. All the forms completed by the School were incomplete in some way, and all but one included only one score on a District assessment and no other criteria for monitoring the student. All the students for whom there were monitoring forms did not meet ELA secondary standards and required instructional support through intervention.

OCR found, based on witness interviews and review of student files, that the School is not meeting its obligation to monitor reclassified students for two years after they exit the ELD program. English teachers (and not other disciplines) are expected to assess these students' academic progress and address any deficits found, and not all English teachers are doing it consistently and comprehensively and/or documenting their efforts.

C. Program Evaluation

School districts must evaluate the effectiveness of their language assistance program to ensure that ELs are acquiring English proficiency and the program is reasonably calculated to allow ELs to attain parity of participation in the standard instructional program within a reasonable period of time. When evaluating the effectiveness of an EL program, the performance of ELs in the program and former ELs who exited the program should be compared to that of never-ELs. In addition, school districts must monitor ELs' progress from grade to grade so that districts know whether the ELD program is causing academic content area deficits that require remediation and whether ELs are on track to graduate and have comparable opportunities to their never-EL peers to become college- and career-ready.

OCR requested all assessments, evaluations, or studies conducted, since January 1, 2020, of the District's or the School's EL program services. The only documents provided by the District in response to this request relate to a May 4, 2022, walkthrough at the School that the LAD conducted in preparation for monitoring by the Arizona Department of Education (ADE). According to LAD witnesses, no formal report of that walkthrough exists. Notes of the walkthrough provided to OCR list some of the strengths and weaknesses of the four teachers who were observed and recommendations for the School, including that EL standards and sheltering strategies be incorporated into lesson plans and all ELs be placed appropriately and in a timely fashion. None of the witnesses could identify any changes at the School as a result of the District's walkthrough, other than that the Data Coordinator created an EL standards document for teachers.

The LAD Director and LAD specialists told OCR that annual walkthroughs are the primary way that the District oversees schools' ELD programs. The District's assessment team used to review student files but has not done so since the COVID pandemic started. In addition, the ADE reviews the District's ELD program every four years, but not necessarily the School.

Multiple witnesses told OCR that the School does not assess the success of its ELD program, other than reviewing ELs' AZELLA scores for overall proficiency and the letter grade provided by ADE on the school report card.⁶ The ELD Coordinator and Data Coordinator explained that the School does not assess the year-to-year progress of its ELs, such as gains in proficiency, grades in core classes, or attendance; look at how long ELs are staying in the ELD program; or compare ELs' performance to the performance of the School's never-ELs.

Based on the District's and School's lack of assessments, analyses, or studies of its ELD program and EL achievement data, OCR found that the District has failed to evaluate the effectiveness of the District's and School's language assistance program to ensure that ELs are acquiring English proficiency and the

⁶ Pursuant to A.R.S. 15-241, the ADE creates an annual achievement profile for every public school in the state using an A through F scale, which measures, among other things, the proficiency and academic growth of ELs. In 2022, the School received nine out of ten eligible points for EL growth and proficiency on the AZELLA.

program is reasonably calculated to allow ELs to attain parity of participation in the standard instructional program within a reasonable period of time.

X. COMPLIANCE CONCERNS

During the investigation in this case, OCR identified three compliance concerns. The concerns are regarding the School's ELs who attend TUVA, monitoring of current ELs, and recordkeeping for ELs.

A. School Students Attending TUVA

During the 2021-22 and 2022-23 SYs, students attending TUVA were still considered students of their home or base school. There were five School ELs attending TUVA during the 2021-22 SY, and nine School ELs at TUVA during the 2022-23 SY. District and School personnel told OCR that the School was responsible for administering the AZELLA to the School's TUVA students.

OCR could not ascertain whether the School's ELs attending TUVA are receiving ELD targeted and integrated instruction, and if so, from whom. The PHLOTE spreadsheets provided to OCR do not identify these students' ELD teacher or program, nor do their schedules; both documents only read, "TUVA Placeholder." OCR asked ten witnesses about this group of students. OCR requested to interview a TUVA ELD teacher. The witness provided currently teaches at TUVA but does not teach ELD and did not have information about the ELD program provided to School ELs who attend TUVA. No witness could answer definitively whether the School ELs in TUVA are receiving ELD instruction. In addition, several witnesses told OCR that the School is not monitoring the progress of these students; all the School does with respect to these students is administer the AZELLA to them yearly. There is no TUVA ELD coordinator, and a Former Principal does not know the extent to which TUVA's administrator is monitoring ELs.

Based on this information, OCR is concerned that the District is not monitoring whether the School's ELs who attend TUVA are in an ELD program and have meaningful access to the core curriculum.

B. Monitoring of Current ELs

School districts must monitor the progress of all ELs in achieving English language proficiency and acquiring content knowledge. Monitoring ensures that ELs are making appropriate progress with respect to acquiring English and content knowledge while in the EL program or, in the case of opted-out ELs, in the regular educational setting. With respect to monitoring ELs' acquisition of content knowledge, school districts must measure the performance of ELs in academic content areas.

The District monitors the progress of ELs by administering the AZELLA annually between January 30th and March 16th. The PHLOTE spreadsheet for the 2021-22 SY indicates that at least seven ELs were not tested during the Spring 2021 administration of the AZELLA. Two of those students are opt-out students, two attend TUVA, and two had not been tested since 2012 or 2013.⁷ The PHLOTE spreadsheet for the 2022-23 SY indicates that at least eight ELs were not tested during the Spring 2022 administration of the AZELLA.⁸ Two of those students are opt-out students, two attend TUVA, and three are students who

⁷ One of the TUVA students is also a parent withdrawal.

⁸ The 2023 administration of the AZELLA has not yet been entered into the PHLOTE spreadsheet although the majority of ELs at the School had been tested by the time of OCR's site visit.

receive special education services.⁹ One of the special education students has not been tested since 2013. In September 2021, the District notified the School of students who needed to be tested with the AZELLA. The Data Coordinator responded that since the School does not have an ELD coordinator, it was not possible at that point in time for her to test Ex Ed self-contained students with the AZELLA. The Data Coordinator similarly told OCR that she has not tested students in self-contained classrooms and at TUVA during the 2022-23 SY.

Based on this information, OCR is concerned that the District is not annually testing all ELs, including opt-out students, students attending TUVA, and special education students.

C. Record-Keeping

The regulation implementing Title VI, at 34 C.F.R. § 100.6(b), requires recipients to keep and submit timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as OCR may determine to be necessary to ascertain the recipient's compliance with Title VI. In a Title VI investigation, like this one, such records include complete and accurate records of parent notification and consent, home language surveys, AZELLA scores, ELD placement, and monitoring of reclassified students, which are necessary for OCR to ascertain whether the District is meeting its legal obligations to ELs.

OCR's investigation was impeded by the School's incomplete recordkeeping. OCR's review of over 100 EL CUM files revealed that many documents that are supposed to be in the PHLOTE folder, which is part of the CUM file, were not. OCR found either incomplete or no HLSs, enrollment forms, consent forms, parent withdrawal forms, AZELLA results, Parent Notification of Student Achievement of English Proficiency, or monitoring forms in almost every file it reviewed. In addition, in many instances, the documents in students' PHLOTE folders did not match the PHLOTE spreadsheets and/or other documents provided by the District to OCR. For example, the District indicated students had signed parent consent or withdrawal forms in their files who did not, and OCR found signed forms for students who were not on the District's list. There were also many discrepancies between the SEI programs indicated on the PHLOTE spreadsheet and students' course schedules. For example, for many students, the PHLOTE spreadsheet indicates that they are in the two-hour SEI program, but their course schedules show that they are taking regular English classes. Lastly, there were several blanks for students' programs on the PHLOTE spreadsheet, as well as students marked as being a LIEL, which does not exist at the School.

While these gaps in the records were not so significant as to prevent OCR from making a determination about the District's compliance with Title VI based on available records and other sources of evidence, like witness statements, OCR is concerned that the School's records for ELs during the 2020-21 and 2022-23 SYs do not meet the District's recordkeeping obligations under Title VI. Resolving the above-mentioned non-compliance determinations will require that the District creates and maintains timely, accurate, and complete records for all ELs, including those who have been withdrawn by their parents from the ELD program or reclassified.

XI. CONCLUSION

Upon being advised of the Title VI, Section 504, and Title II non-compliance findings and compliance

⁹ One of the TUVA students is also a parent withdrawal.

concerns, the District entered into an Agreement) to resolve the matters. A signed copy of the Agreement is attached with this letter. When the Agreement is fully implemented, the issues will be resolved consistent with the requirements of Title VI and its implementing regulations. OCR will monitor implementation of this Agreement through periodic reports from the District about the status of the Agreement terms. When fully implemented, the Agreement will address OCR's identified areas of non-compliance with Title VI, Section 504, and Title II. OCR will monitor the implementation of the Agreement until the District is in compliance with its terms and the statutory and regulatory obligations under Title VI that were at issue in the case.

This case is now in the monitoring phase. The monitoring 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 send a letter to the District stating that this case is closed.

This concludes OCR's investigation in this case 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. This letter sets forth OCR's determinations 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 Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation. Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act (FOIA), 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, personal information, which, if released, could constitute an unwarranted invasion of privacy.

Thank you for the courtesy and cooperation extended to OCR during the investigation and resolution of this case. If you have any questions, please contact the attorneys assigned to this case: Jennifer Weiser Bezoza at XXX-XXX-XXXX or XXXX@XXXX; or Jason Langberg at XXX-XXX-XXXX or XXXX@XXXX.

Sincerely,

/s/

Angela Martinez-Gonzalez
Program Manager

Attachment: Resolution Agreement

cc: Lori Bird, Counsel for District